authority. Such in theory often illegal, but in practice widespread, accepted and often court-evolved uses of prisons considerably complicated the imperial aim to narrow the function of prison to one of just preventive custody. In addition, they complicated the distinction between 'public' and 'private' imprisonment, to which we will turn in the next chapter.

CHAPTER 6

Private power and punitive confinement

In an attempt to define correct legal terminology to describe imprisonment, the early third-century jurist Venuleius Saturninus argued that the term 'chains' (*vincula*) could be used to denote both private and public forms of restraint. *Custodia*, he continued, was to be used, however, only with reference to publicly authorised containment.[1] This advice was certainly not heeded as even in the legal literature instances of confinement in private households, for example that of slaves, were often called *custodia*.[2] Nonetheless, with this statement Venuleius tried to make sense of the fact that there were other institutions apart from the state that had the power to address wrongdoing. Since his reasoning was included in Justinian's Digest we must assume that it still mattered in the sixth century.

Non-state institutions with the power to punish concerned originally and predominantly the *paterfamilias*' legal control over children, slaves and freedmen, which ruled real social relations even in the Roman provinces as evidence from late antique Egypt shows.[3] A new category of people that came under the authority of elite Roman property owners in late antiquity were the tenant farmers who worked their estates, alongside slaves and wage labourers, which our sources call *coloni*. The origin of this dependency, its nature and its extent are quite obscure, a point to which I will return below. During the course of the late antique period, further non-state punitive authorities started to be recognised, such as, as we have seen in Chapter 3, that of the Christian bishop, but also that of monastic leaders. I subsume these under a label 'private' that, following Kate Cooper, defines institutions, practices and spaces that were not funded by public resources (but which were not, as the modern usage of the term would suggest, shielded from the public gaze or indeed out of the public interest).[4]

[1] D 50.16.224 (Venuleius Saturninus). [2] See e.g. CTh 9.12.1 (319). [3] Arjava (1998) 147–165.
[4] On Roman definitions of 'public' and 'private' see Cooper (2007a) 17–24.

If we now turn to norms and practices of punishment in these various institutions, we will see that confinement played a role, as the jurist Saturninus implied. This deserves our attention, as it suggests that it was in domestic discipline, geared, as we have seen in Chapter 1, towards the values of 'education' rather than 'retribution', that spatial punishment was primarily and, contrary to the incidents described in the previous chapter, quite legally probed. This is not to say, however, that the lay or monastic household included formally designed prison space. In the lay household, forms of confinement were determined by the socio-legal status of offenders and their role within the family, which to some extent mirrored status-based attitudes to the legitimacy of public imprisonment discussed in the previous chapter. Domestic confinement, framed not as 'prison' but as seclusion from the outside world, exclusion from the central space of the house, or as segregation to a secondary domestic space, was an accepted way to discipline free members of the household, which Christian writers even encouraged as 'educative', particularly for women. Forms of confinement that resembled the public *carcer*, with severe restriction of movement, were, however, frowned upon in the case of free-born and freed members of the household, although, as we shall see, such methods were frequently used to compel behaviour in the private sphere, even beyond the context of the immediate household.[5] Domestic imprisonment was considered reserved for slaves (the likely object of Saturninus' comment) and, perhaps, fugitive *coloni*. Yet, the use of idle imprisonment in the case of unfree members of the household was not as common as sometimes thought, for it would have infringed on their ability to work and the main purpose of the punishment of unfree dependents, visible deterrence. Alongside beating, degrading work assignments, often in forms of confinement underlining the culprit's status as outsiders, fitted the bill. Late antique monastic rules drew on these traditions of segregation and seclusion, but put an ulterior emphasis on the ordering of punitive space to facilitate penance.

Segregation and confinement of children and wives

As a matter of principle, Roman law expected parents, slaveholders and spouses to deal with defiance of their authority at home, within certain limits set by the law on physical harm. This did not only refer to disciplinary issues that were out of scope of public judicial proceedings, such

[5] For the fluctuating boundaries between free and unfree domestic dependants and the corresponding alignment of domestic discipline see also Clark, P. (1998).

as filial disobedience, but also included delicts such as theft and *iniuria*, that is, verbal insult or bodily harm.[6] The restrictions on bringing an action for such delicts extended to a patron against his freedmen, clients and labourers (which in late antiquity may have included *coloni*).[7] Spouses also could not sue each other for *iniuria* or theft.[8] These restrictions were designed to safeguard the honour of the parents, slave-owner and patron, and the institution of marriage, which rested on the principle of marital harmony.[9] They were also intended to underline the *paterfamilias*' and slave-owner's time-honoured authority to enforce domestic discipline, not to speak of saving the public courts a lot of work.

Legal and cultural norms concentrated on the *paterfamilias* when discussing domestic punishment. This does not mean, of course, that he was always the one meting out the punishment. Particularly where smaller children were concerned, mothers, grandmothers, teachers and slaves took part in instilling discipline, but for the law such power was merely delegated by the *paterfamilias*, or, if he had died and the child was still a minor, the guardian.[10] In the case of rural slaves or tenants, geographical spread of landholding could mean that between foreman, estate steward and agents there were many layers of interaction. Even if masters were present during the castigation of a slave, they seem to have often handed over the actual task of punishing to subordinates.[11] It is therefore important to remember that any uniform punitive strategy postulated on a theoretical level was not necessarily matched by reality with so many agents involved.

During the empire, the *paterfamilias* lost the right to kill a child *in potestate* (the so-called *ius vitae necisque*).[12] Beyond this, however, the law had little to say about moderation or immoderation in the treatment of children in the household, perhaps drawing on a wider cultural consensus that parents would not treat their children unreasonably.[13] As we have seen in Chapter 1, jurists, law-givers as well as classical and Christian moralists postulated that the purpose of punishment of young household dependents was *emendatio*. The methods of *emendatio* were varied. It could refer to verbal admonition, and particularly classical commentators on the education of children advocated a system based on rewards and privileges,

[6] See CJ 3.41.1 (224); CJ 4.14.6 (287); see also Hillner (2013b). [7] D 47.2.90 (89) (Paulus).
[8] Treggiari (1991) 377–378. [9] Treggiari (1991) 430–431.
[10] On the role of individuals beyond the *paterfamilias* in the education of children see Kunst (2006) 47–57.
[11] Harper (2011) 230.
[12] Thomas (1984) 501–548; Harris (1986) 81–96; Shaw (2001) 56–77, who argues that the *ius vitae necisque* had always been a cultural construct, never a legal right.
[13] Hillner (2013b) 25.

as much as on punishment.[14] Yet, as we have seen, *emendatio* could also be thought of as a process based on the infliction of pain and humiliation, even in the case of free members of the household.

The Greek historian Dionysius of Halicarnassus (d. after 7 BC) explained in his *Roman Antiquities*, written to acquaint a Greek audience with the customs of their Roman rulers, that possible penalties inflicted by the *paterfamilias* could include imprisonment (φυλακῆς), chaining or forced labour.[15] During the late republic and early empire imprisonment of children was sometimes recorded in literary sources. Seneca the Younger told the story of L. Tarius Rufus, *consul suffectus* in 16 BC, whose son had attempted to kill him. The father exiled the son to a property he had in or near Marseille. Seneca represented this as an alternative to death or *carcer*, and one that reflected the father's clemency.[16] The early imperial rhetoricians who composed declamation handbooks, usually in the form of two or more perspectives on the same case, also mentioned the imprisonment of children. Seneca the Elder, for example, had one of his orators suggest imprisonment for children who refused to support their parents, while in Calpurnius Flaccus' *Declamationes* the same was demanded for a son who had attempted parricide.[17] The evidence of the rhetoricians is hard to assess. Their sole purpose was to present oral elaboration on complicated, controversial and colourful cases, without much regard for current law or custom.[18] Furthermore, it is unclear whether the *carcer* mentioned at least by Seneca referred to domestic imprisonment at the hands of a father or public imprisonment inflicted by a magistrate. Imprisonment in the public *carcer* may also have been implied in the incident involving Tarius Rufus.[19] These stories suggest collaboration between *paterfamilias* and state, where the former had the choice between private and public punishment, even in cases that later came to be defined as public crimes. All, however, idealised fatherhood, and did not necessarily reflect social practices.

Already at the time of Dionysius of Halicarnassus, therefore, his description of children's imprisonment at the hands of a father probably reflected a nostalgic memory of an ancient past.[20] Whether discussed positively or negatively, evidence throughout Roman antiquity, including from the late

[14] Saller (1994) 133–153; Saller (1996) 144–165.
[15] Dionysius of Halicarnassus, *Roman Antiquities* 2.26.4 (ed. C. Jacoby, vol. 1 (Stuttgart: Teubner, 1967) 326).
[16] Seneca, *de clem.* 1.15.7 (Loeb 402).
[17] Seneca, *Contr.* 1.7 (Loeb 150); Calpurnius Flaccus, *Declamations* 4 (ed. L. A. Sussman (Leiden: Brill, 1994) 30–33.). See also Quintilian, *Inst.* 7.1.54–7.1.56 (Loeb 38).
[18] Bonner (1949) 94–95. [19] Krause (1996) 84; see also Pavón Torrejón (2003) 210.
[20] See Gabba (1960) 98–121.

Roman world, shows that, where painful and humiliating punishment of children was mentioned, it mostly concerned some form of beating. On the basis of the surviving evidence frequency of childhood beating is hard to measure and a matter of some debate among historians.[21] Yet, it was certainly mentioned more frequently than imprisonment. Formal imprisonment, particularly where it involved the use of chains, was, perhaps even more so than beating, a treatment associated with submission of the body and hence slavery. Roman law, while emphasising their duty of obedience, prohibited even freedmen from being put in chains (*vincula*), so we can imagine that they were seen as morally highly dubious for free-born children, particularly of elite families.[22] In the ficticious *Acta Chrysanthi et Dariae*, a martyr narrative from Rome whose earliest Latin version perhaps dates from the fifth century, the protagonist, a young Christian, was 'dragged' (*truserat*) into the darkness of a prison (*carcer*) by his father, a senator and ardent pagan. For the purpose of the story, this action clearly marked the father, and hence paganism as a whole, as abusive and perverted, for he violated the natural father–child relationship based on *pietas*.[23]

Conversely, some forms of punitive uses of space could be postulated as an alternative to beating. John Chrysostom, who in many ways echoed classical reservations about the appropriateness of beating children, advised the men of his congregation at Antioch that they should order misbehaving children, slaves or wives to retire to sleep without dinner. John reassured his audience, who might have been worried about such levelled treatment of different household dependents, that such disciplinary measures brought 'no damage, but a gain' (οὐχὶ ζημίαν, ἀλλὰ κέρδος φέρει). In John's eyes, imposing fasting was a 'spiritual' act (τὰ πνευματικά), bringing 'swift reform' (καὶ ταχίστην τὴν διόρθωσιν), to be favoured over physical measures such as beating. He also advocated it in his treatise on the upbringing of children.[24] However, withholding dinner also meant

[21] Laes (2005) rejects the earlier position by Saller (1994) that, at least in classical antiquity, beating of children was rare, arguing that corporal punishment was a daily reality for many children across the Roman empire, including older ones, and certainly at school, as it was culturally accepted as a necessary feature of classroom discipline and an aid to learning.
[22] *CJ* 6.6.6 (242): 'it is certain that freedmen and freedwomen, particularly those upon whom no service is imposed, have to show the usual obedience to those who have manumitted them rather than provide servile labour, and should not be put in chains' (*libertos sive libertas, maxime quibus impositae operae non sunt, consuetum potius obsequium quam servile ministerium manumissoribus exhibere debere neque vincula perpeti non est opinionis incertae*).
[23] *Acta Chrysanthi et Dariae* 4 (BHL 1789).
[24] John Chrysostom, *Homily about the Statues* 5.7 (PG 49:79). On rejection of beating, or at least 'frequent' beating of children, and on fasting see also John Chysostom, *de inani gloria* 30 (SC 188:120–122); Leyerle (1997) 156–157. On the implication for wives see Dossey (2008) 9.

segregating culprits from the community of the household at the crucial moment of evening mealtimes, which for the free inhabitants of the house was a key occasion of convergence, and from the rooms dedicated to dining, which particularly in late Roman domestic architecture marked the centre of the house.[25] In this way, it was a form of punishment with a clear spatial feature, even though commentators may not have wished to draw the parallel to formal imprisonment.

Spatial segregation was also the defining feature of a more severe domestic disciplinary measure for adolescent or grown-up children often mentioned in late republican and early imperial sources: the expulsion of children from the household itself.[26] While under Roman law such expulsion (*abdicatio* or *relegatio*) did not lead to a termination of *patria potestas* and hence an exclusion of children from property succession, the Greek East knew a legal form of child expulsion, ἀποκήρυξις, that led to disinheritance of the child, turning this very child into a stranger to the household (ξένος). In 288 Diocletian prohibited the practice, calling it *Graeco more*, which shows that it was still strong in some provinces of the empire. It may have continued to be common also after this date.[27] More regular, however, also in late antiquity, seems to have been the informal and reversible sending away of children, which was mentioned by both Augustine, who called it *abdicatio*, and by John Chrysostom.[28] At least in the earlier sources, it was often conceived of as an order to reside at a rural property. For example, young Sextus Roscius, accused of parricide in 80 BC, had been sent to the countryside by his father. His lawyer Cicero tried very hard to make this look like paternal benefaction, rather than punishment, in his defence speech, in order to play down any potential feelings of revenge by his defendant.[29] The purpose of such a measure was, as John Chryostom put it in his *De verbis apostoli* – with a clear parallel drawn to the Scripture parable of the prodigal son – to make children return 'chastened' (γενόμενοι σωφρονέστεροι). The severity lay in the social

[25] Ellis (2000) 171–174.

[26] See e.g. Cicero, *pro Sex. Rosc.* 15–17 (ed. F. Schoell (Leipzig: Teubner, 1923) 66–69); Livy, *Roman History* 7.4 (Loeb 368); Valerius Maximus, 5.4.3 (Loeb 496), here presented negatively; Orosius, *History against the Pagans* 5.16 (ed. K. Zangemeister (Leipzig: Teubner, 1889) 164–165). Although the latter wrote in the early fifth century, he described a case that occurred during the late republic.

[27] Diocletian's law: CJ 8.46.6 (288); on the continuation of the practice see Taubenschlag (1955) 137; Kaser (1975) 213. On Roman *abdicatio* see Kaser (1971) 69; Saller (1994) 117–119; Garnsey (1997) 115–116.

[28] Augustine, *ep. ad Galatas* 39 (CSEL 84:108); John Chrysostom, *de verbis apostoli, Habentes eumdem spiritum* 9 (PG 51:289); see also his *de Anna sermo* 1.3 (PL 54:636–637) though here he uses the term ἀποκηρύττοντες.

[29] Cicero, *pro Sex. Rosc.* 15–17 (ed. F. Schoell (Leipzig: Teubner, 1923), 66–69).

disgrace that living in the countryside entailed due to its distance from an urban lifestyle as well as from access to paternal patronage. Augustine also explained that for parents it was a way to deflect shame from the family.[30] As such, it displayed some parallels with the public penalty of exile, to which we will return in the next chapter. Again, it is hard to say how frequently such segregation to a secondary domestic space was applied, also because it was clearly only possible for families who had such space at their disposal.

The desire to restore correct moral behaviour as well as to protect a family's honour by shielding the culprit from the public eye may well have led to this form of segregation being more frequently imposed on daughters than on sons. A famous example is that of Valentinian III's sister Honoria, segregated on an imperial property after she had consummated a love affair with her estate steward.[31] Although there was a certain overlap in this case between Valentinian's role as Honoria's closest agnate relative with a responsibility to restore domestic order, and his role as an emperor with a responsibility to restore public morals (the case was one of *stuprum*, a public crime), his choice of punishment suggests that Valentinian was keen to be seen as returning his sister to the sheltered lifestyle that was traditionally expected of well-born girls in antiquity.[32] Procopius of Caesarea eloquently described this ideal, deploring the emperor Justinian's choice of a former actress as a wife, rather than a woman 'who ... was ... blessed with a nurture hidden from the public eye'.[33]

Seclusion and surveillance were more frequently mentioned with reference to the treatment of wives than that of children. The institution of *patria potestas* assigned a peculiar role to wives. Under the most common marriage type throughout the time of the Roman empire a wife did not enter the *potestas* of her husband, but stayed in the *familia* of her own father or grandfather. Upon the death of her *paterfamilias* she would become *sui iuris*, literally meaning 'in her own right', with the power to hold property, including slaves, as would any adult who did not have a living ancestor in the paternal line.[34] Ancient cultural conceptions, however, meant that wives were generally seen as subordinate to their husbands, which was

[30] Augustine, *ep. ad Galatas*, 39 (CSEL 84:108): *malos enim filios ne de his erubescant, etiam parentes abdicare solent.*

[31] Jordanes, *Getica* 224 (MGH AA 5:115); see also Marcellinus Comes, *Chronicle* a. 434 (MGH AA 11.2:79); John of Antioch, frg. 223.2 (Mariev 405) reported that Honoria was betrothed to a trusted courtier on the occasion; see PLRE II Iusta Grata Honoria, 568.

[32] See Clark, G. (1993) 94; Kunst (2006) 52.

[33] Procoplus, *Secret History* 10.2 (Loeb 120): τροφῆς κρυφαίου μεταλαχοῦσαν ....

[34] See Saller (1999) 182–197; Cooper (2007b) 111–112.

perhaps even more pronounced from the fourth century onwards, when, due to Christian influences, the legitimacy of divorce came under scrutiny. In the late Roman East we also see the continuation of a Hellenistic legal concept at play, the husband's guardianship over his wife.[35]

Late antique men expressed strong sentiments that the ideal environment of wives, as that of daughters, was the home. John Chrysostom, for example, advised his audience that wives should not leave their houses unless they went to the church or the baths.[36] Basil of Caesarea envisaged as one of the duties of married men to keep their wives under watch (γυναικὸς φυλακή).[37] Augustine described in a sermon how an astrologer, after he had sold his predictions to his customers, went home and beat up his wife for as little as looking out of the window, even though his wife had told him that a stellar constellation had induced her to behave like this. Augustine's point was not to claim that the woman had the right to look out of the window, or the husband did not have the right to compel seclusion. The point of the story was to ridicule the astrologer's absurdity of believing in fate on a professional basis, but not seeing this through in private. The story hence shows that wives were normally expected to spend most of their time indoors, at least in late Roman North Africa.[38] Constantine issued a number of laws allowing wives to send representatives to court litigation, so that public appearance would not have to drag them from the seclusion of their homes and jeopardise their modesty (*pudicitia*).[39] There is no doubt that both Christian and legal literature drew on inherited moral tradition that female chastity was best preserved through wives' seclusion from the public gaze, which we have already seen manifest itself with daughters.[40]

Such expectations were not necessarily matched by reality. Certainly, in a sermon preached as bishop of Constantinople in 402–403, John Chrysostom commented matter-of-factly that the weakness of women was not only due to nature, but – at least where urban women were concerned – also their lifestyle, for they were always sitting in the seclusion of their homes, like a tree in the shade. While still a priest at Antioch he had explained in a sermon that, conversely, women may be wiser than men,

[35] Arjava (1996) 177–198 (on divorce), 147–148 (on the husband's guardianship), 131 (on the cultural perceptions of the husband–wife relationship).
[36] John Chrysostom, *Homily on John* 41.3 (PG 59:340).
[37] Basil of Caesarea, *ep.* 2 (PL 32:225).
[38] Augustine, *en. psalm.* 140.9 (CC 40:2032); the same story also appears in Augustine, *ep.* 246.2 (PL 33:1061). See Shaw (1987) 31.
[39] CJ 2.12.21 (315); CTh 1.22.1(316); CTh 2.17.1.1(324); see also NJust 124.1(545).
[40] Arjava (1996) 243–249. Domestic life for wives was also extolled in non-Christian late Roman texts: Julian, *Panegyric on Eusebia*, 127–128 (Loeb 336–340); Symmachus, *ep.* 6.67 (Callu 39).

because they spent so much time at home.[41] These remarks may indicate that domestic isolation was not only an ideal in late antique eastern cities. At the same time, the Western ascetic Jerome's commentary on female life in fourth-century Rome demonstrates large freedom of aristocratic wives to appear in public with great ostentation.[42] Both authors were of course tendentious, which makes it hard to generalise about any real custom. John's and Jerome's divergence may show that, as has been sometimes argued, there were more traditional customs of female domestic seclusion in the Greek east.[43] Yet, Egyptian papyri bear witness to a great number of wives appearing in public, and, in particular in court trials, despite Constantine's concern about their *pudicitia*, which defies any conclusion of large-scale ethnic differences concerning the behaviour of women.[44]

Still, because the association of wives and domestic seclusion existed, grounding a wife at home may have been seen as a suitable disciplinarian measure, to restore chastity and to shield misbehaving women-folk from public sight, in order to protect a husband's honour. This may have been the case in particular when their misbehaviour could have also prompted public criminal proceedings in court, such as in the case of adultery.[45] For Christian authorities, encouraging locking women away was also seen, again, as a way to steer men away from beating as a way to exert control, this time over their wives. While they believed in subordination of women to men, and a husband's duty to care for his wife and train her in right behaviour, late antique Christian writers did not, on the whole, approve of physical abuse of wives.[46] Augustine represented keeping a wife at home if she had misbehaved as a good way to restore order in the household and contrasted it directly with flogging a slave-girl. He also called disciplining a wife *emendatio*, as such awarding a husband educational authority.[47] John Chrysostom, as we have seen, advised men to exclude unruly wives from meals as a way to 'educate' them. The Council of Toledo, in 400, encouraged a remarkably strict treatment for unruly wives of clerics. If they had sinned, their husbands had the right to bind them in their house and, again, force them to fast and exclude them from spaces of

[41] John Chrysostom, *Homily on Hebrews* 29.3 (PG 63:206); John Chrysostom, *Homily on John* 61.3 (PG 59:340).
[42] Jerome, *ep.* 77.4 (Labourt, vol. 4:43).
[43] See Dossey (2008) 31–32.
[44] Beaucamp (1992) 21–28; Arjava (1996) 246.
[45] See Chapter 3 for the tendency of some families to avoid criminal proceeding for sexual misbehaviour of their womenfolk.
[46] Arjava (1996) 131, with references; see also Hillner (2013b) 21–45.
[47] Augustine, *tract. in ev. Joh.* 10.9 (CC 36:106). For *emendatio* of wives see also Augustine, *ep.* 246.2 (PL 33:1061).

mealtime.[48] We should remember that the reason the council had been called was to deal with the Priscillian heresy and the issues it had generated for conventional, male authority through attracting a female following and promoting an egalitarian form of male and female asceticism. The council canon should therefore perhaps not be taken as representative of what late Roman men, or clerical men, thought about the punitive treatment of wives in general, but as a reflection of what Spanish clerics thought was needed to restore church order and clerical honour.[49] Still, it is significant that a wife's confinement was presented as the most appropriate measure to do so.

Archaeologists have long argued that it is difficult to discover any rooms specifically set aside for female members of the family in Greco-Roman domestic remains. This is either because we have not yet developed the necessary techniques to investigate the material culture of more invisible groups in the household, or because houses did in fact not have spaces segregated by gender, which at least for Roman houses seems to have been the case. At most spaces might have been screened off flexibly by using devices such as curtains.[50] Despite the potential lack of female quarters that could double as spaces of confinement, some late Roman husbands seem to have been able to develop intricate measures of surveillance of their wives. In an emotional plea for the benefits of virginity over marriage, John Chrysostom reminded his listeners that employing his slaves as spies was customary behaviour of jealous husbands, which meant that wives lived in terror like in a prison (φυλακή), 'a captive' (δεσμώτου) in their own homes:

> She cannot go out, she cannot utter one word, she cannot take one breath, without having to give account to her corrupt judges.

While John also admitted that not all marriage was like this, husbands encouraging friends or neighbours to spy on their wives in their absence was also mentioned by Augustine.[51]

[48] Council of Toledo I (400), c. 7 (Vives 21–22): *placuit ut si cuiquunque clericorum aliorum uxores peccaverint, ne forte licentiam peccandi plus habeant, accipiant mariti earum hanc potestatem praeter necem custodiendi, legandi in domo sua, ad ieiunia salutaria non mortifera cogentes, . . .; cum uxoribus autem ipsis quae peccaverint nec cibum sumant, nisi forte ad timorem Dei acta poenitentia revertantur.*

[49] See Burrus (1995) 104–114, with discussion of this canon at 113.

[50] On the potential lack of gendered space in the Roman household see Wallace Hadrill (1994) 8–9; see Ellis (2000) 178 on the possible existence of women's quarters in Greek houses; on the importance of analysing floor deposits to potentially identify gendered spaces see Morris (1998) 193–220. On the use of curtains to create gendered spaces see Wieber-Scariot (2000) 97–112.

[51] John Chrysostom, *On Virginity* 52.5 (SC 125:294). Augustine, *tract. in ev. Ioh.* 13.11 (CC 36:136) and see Shaw (1986) 30–31 for comment.

Locking away wives inside the home could, therefore, also be represented as abusive behaviour. In the sixth-century *Passion of Anastasia*, a ficticious martyr narrative from the city of Rome, Publius, a pagan senator, imposed enclosure at home on his wife Anastasia, daughter of the *vir illustris* Praetextatus. Anastasia had not only ministered to Christians in the public prison, but had also feigned illness to avoid conjugal relations. It is notable that Publius publicly charged Anastasia with magic and sacrilege, but then had her imprisoned at home. Perhaps this episode drew on customary house arrest for Roman elite women on criminal trial, an important measure, as we have seen above, for shielding them from the public gaze. At home, Publius denied his wife food and light, with a view to killing her, and, on leaving for official duty, trebled her guards; in short, he created public prison-like conditions. It was hence not the house arrest that was the issue in the story, but Publius's abuse both of the domestic power that derived from his role as a husband and of his official power that he had been publicly granted as Anastasia's guard. Despite her situation, Anastasia managed to smuggle out some letters to her friend, the Christian Chrysogonus. Chrysogonus now advised her to endure her condition and to follow the virtue of *patientia*.[52] For the purpose of the story this turn of event, of course, underlined Anastasia's suffering as the martyr that she was later to become, and also, as Kate Cooper has shown, was constructed to emphasise God's rather than man's role in her eventual release. It is, however, possible that it also reflected contemporary Christian views that a wife should behave submissively, even if her husband was clearly abusive, so as to attain eternal glory.[53]

In a roughly contemporary Italian martyr narrative, the *Passion of Nereus, Acheilles and companions*, possibly originally written in Greek, the pagan husband of the Christian heroine Domitilla, niece of emperor Domitian, shut her up in his house, 'as if in a private prison', the author was quick to emphasise, a fierce choice of words in a late antique context, as we shall see further below (*intra parietes domesticos quasi in privato carcere continet clausam*). Domitilla was not allowed to receive any visitors, to see her parents, slaves, neighbours and even her own children. In this case, there is no attempt by a Christian authority in the story to rationalise such behaviour.[54] Lesley Dossey has argued recently that this narrative, with its

[52] *Passion of Anastasia* 2–7 (ed. H. Delehaye (Brussels: Société des Bollandistes, 1936), 221–249 (BHL 400–401)).

[53] Cooper (2007a) 28–29; Dossey (2008) 21.

[54] *Passion of Nereus, Achilles and companions* 4 (ed. H. Achelis (Leipzig: J. C. Hinrichs, 1893), 66–68); the Latin text is in AASS May 3, 6–13.

Greek credentials, reflects that in Greek mentality isolating wives at home in this way, to shield them from any protection they might receive from the outside world, was considered scandalous, because due to endogamic marriage customs wives' relationships to the local community were much closer in the Greek east. In this sense, the message was very different from that of the *Passion of Anastasia*, although it should be noted that the Greek origin of this text is debated.[55] In any case, the stories from the martyr narratives show that in contemporary perceptions there was a fine line between perfectly acceptable domestic seclusion and outrageous imprisonment of wives, and that, where it suited an author's purposes, the former could easily be presented as the latter.

The problematic consequences that some forms of wives' seclusion could have had are also visible in two real-life cases from late antique Egypt. In a fourth-century affidavit, which is usually interpreted as originating from a divorce lawsuit, a wife complained that her husband had not only taken some of her property and shut up her slaves, but had also threatened her with confinement by ordering his slaves to enlist men who could act as guards.[56] In another papyrus, dated to the fourth or fifth century, a woman called Aurelia Attiana wrote to a tribune, Marcellus, with a complaint about her husband, who, when she sent him a notice for divorce because he lived with a concubine had not only shut her up, but had also raped her while in confinement, resulting in pregnancy.[57] While the exact purposes of the documents are unclear, both women were probably seeking recovery of their dowries, an essential requirement for the preservation of female honour and the possibility of remarriage. Despite recent changes in divorce law under Constantine, which had prohibited divorce unless filed if the other spouse was a convicted criminal, divorce initated by just one spouse continued to be widely practiced, particularly in the Eastern provinces of the late Roman empire, as it had been under classical Roman law.[58] It should be noted, however, that even classical divorce law did not, on the whole, make it easy for wives. While it is difficult to generalise as much depended on the attitudes of individual judges, cases for the recovery of dowry met with most success if a woman could prove heinous forms of violence against her, such as flogging or

[55] Dossey (2008) 23. Her argument follows Achelis' assumption that the original version of the *passio* was Greek, but see also Schäfer (1894) 89–119, who argues that the Greek version reworked the Latin text, which he dates to the fifth century.
[56] P.Oxy VI 903. See Bagnall (1987) 41–61.
[57] P.Oxy L 3581. See also Beaucamp (1990–1992) vol. 1, 93–94.
[58] On late Roman divorce legislation see also below Chapter 10.

whipping (*verbera*), that were, as a law from 439 explained 'unfit for the freeborn'.[59] In both of the cases from Egypt, there had been some previous attempts by family members and the local clergy to reconciliate the wives with their husbands. These mediators had probably tried to convince the woman in question that it was her duty to endure the travails of marriage.[60] The decision to take the dispute a step further and involve a public court only came after the episodes of imprisonment, or threats of imprisonment. This means that, even by family and clergy, such actions by a husband were at times considered so serious that a wife was allowed to seek legal help.

The ambiguous position of a wife, as an adult with legal rights and a separate family background, but at the same time culturally subordinate to a husband, probably provided more scope for moralists to define correct behaviour of men, but also for wives to add their own voice in the debate. It is for this reason that we hear more about incidents of confinement involving wives than those involving children, either male or female. In all cases concerning free members of the household, it is clear, however, that domestic discipline could include or could be recommended to include spatial segregation, be this within the house, in particular exclusion from central spaces, such as dining rooms, or to a separate domestic space altogether. Such measures were justified by highlighting the deflection of shame from the core family unit and, particularly in a Christian context, the moral improvement of the individual concerned. Where such treatment exceeded an order just to stay indoors, especially where it included confinement in small and dark or underground places under guard behind walls instead of curtains, however, it was easy for those with an interest in discrediting whoever had imposed it to draw parallels with the treatment of slaves and with the public prison.

Imprisonment as a domestic penalty for slaves

Unsurprisingly, it is in the context of slave management that we hear most about formal imprisonment as a domestic penalty. Kyle Harper has recently argued that the way a late antique master treated a slave depended on many different factors, such as the tasks a slave performed, the gender of slaves and physical proximity between master and slave. As a consequence, there is no way we can generalise on techniques of slave domination, which

[59] CJ 5.17.8 (449): *si se verberibus, quae ab ingenuis aliena sunt, adficientem probaverit.* On flogging wives in classical antiquity see Saller (1998) 85–91.
[60] Bagnall (1987) 59; Cooper (2007b) 159–160; for discussion of these papyri see also Bryen (2013) 179–182.

customarily included incentives as well as punishment. At the same time, it is clear that where slave punishment was advised and administered its focus was on visibility, exemplarity and deterrence. Furthermore, masters seem to have been commonly concerned not to impose punishment that infringed on a slave's productivity.[61] Although we cannot draw any firm conclusions about the frequency of imprisoning slaves, it certainly played a role within this system, but its function was diametrically opposed to imprisonment of freeborn members of the household. Rather than shielding a culprit from the public gaze to protect the family's honour, confinement of slaves meant to highlight bodily submission and was usually connected to work.

Although agricultural slavery persisted in late antiquity, we know most about the punishment of urban domestic slaves, mainly because our most extensive sources on slave management from the late antique period, Christians' moralising preaching about slave treatment to an urban audience, usually addressed the immediate level of interaction between masters and slaves in the house.[62] Within the urban context of slavery, the predominant kind of punishment was whipping, the most ordered and direct submission of the body and, as we have seen in Chapter 1, at the heart of an ancient understanding of pain in the learning process of those considered ignorant due to age or status.[63] Slaves should fear their masters; this would ensure their obedience and docility. Christian authors developed the theme, as they endorsed existing social hierarchies, even where they consoled those at the bottom of society, the poor and the unfree, that their price of salvation was nigh as a result. Masters were urged to minimise cruel treatment, but not to give up painful punishment altogether. The trick was to administer such punishment with the correct emotional attitude, without anger or passion.[64]

In two laws, from 319 and 326/9 respectively, included in the Theodosian Code under the heading *De emendatione servorum*, Constantine assured masters that they did not face a murder charge if a slave had died as a result of the exercise of *potestas domestica* with the aim of correction (*correctio*). Among forms of correction that were considered acceptable and 'impassionate', were beating with whips or leathern scourges and prolonged submission 'to chains for the sake of custody'

[61] Harper (2011) 219–223. [62] Nathan (2000) 169–175.
[63] Bradley (1987) 118–119; Nathan (2000) 177; Harper (2011) 228–230.
[64] On slave fear as a method of control Bradley (1987) 113–114, 134. On Christian ideas of slave punishment see John Chrysostom, *Against the Jews* 8.6 (PG 48:935–937); John Chrysostom, *Acts of the Apostles* 15 (PG 60:126).

(*custodiae causa in vinc<u>la*).[65] A similar view on homicide charges for slave killing was already expressed in the *Sententiae of Paul* from the time of Diocletian, so Constantine seems to have replicated a legal tradition here.[66] If we take these laws as indicative, we can conclude that *vincula* were indeed a common slave punishment, for Constantine certainly meant to clarify slave masters' and judges' confusion in the face of legal interventions against maltreatment of slaves over the course of the second and third centuries.[67] Indeed, after flogging, placing a slave in *vincula* or its Greek equivalent δεσμοί is the most attested form of slave punishment also in literary sources, and chains were often presented as a conspicuous symbol of slavery.[68]

Vincula and δεσμοί are, however, not unequivocal terms. As we have seen above with reference to the public penal process, they were umbrella terms denoting imprisonment itself, forced labour (that could also be accompanied by enchainment) or simple enchainment.[69] Where slave punishment is concerned, we cannot automatically assume, therefore, that chains also meant spatial confinement, as has sometimes been done.[70] In an elaboration on the necessity to patiently endure worldly existence, Basil of Caesarea gave an insight into the types of penalties that could be imposed on a slave:

> Are you a slave? Even then there is always someone below you. Give thanks that you are placed above someone, that you are not condemned to the mill, that you are not flogged! But even this one has occasion to be grateful. He

[65] CTh 9.12.1 (319) = CJ 9.14.1; CTh 9.12.2 (326/329). Forms of punishment that were not deemed 'corrective' were: beating with clubs or stones, inflicting a fatal wound with a weapon, hanging, poisoning, throwing a slave from a high place, public laceration of the body with iron hooks, and burning or amputating limbs. See also Gaius, *epit.* 1.3 (FIRA II:235): *sed distringendi in servos dominis pro sua potestate permittitur; occidendi tamen servos suos domini licentiam non habebunt, nisi forte servus, dum pro culpae modo caeditur, casu forsitan moriatur*, which clearly reflects this legislation. For further comment see Lovato (1994) 174–176.
[66] *Pauli Sententiae* 5.23.6 (FIRA II:408): *servus si plagis defecerit, nisi id dolo fiat, dominus homicidii reus non potest postulari; modum enim castigandi et in servorum coercitione placuit temperari.* Note, however, that the *Sententiae* also have textual layers that include subsequent late Roman law, so it is not always possible to distinguish between Diocletian and later influences, see Liebs (1995) 151–170.
[67] For an overview of Roman law on slave maltreatment see Buckland (1908) 38.
[68] The evidence for this type of punishment is vast and originates from across the late Roman empire. See, for example: Ambrose, *fug. saec.* 3.15 (CSEL 32, 2, 175); Augustine, *City of God* 21.11 (CSEL 22:539); Claudian, *in Eutr.* 2.342–2.345 (ed. J. Koch (Leipzig: Teubner, 1893, 79); John Chrysostom, *On Virginity* 41.2 (SC 125:236–238); John Chrysostom, *Homily on I Corinthians* 40. 5 (PG 61:354). On the symbolism of slave chains see Harper (2011) 231.
[69] See above Chapter 5.
[70] See Mommsen (1899) 962; Mayer-Maly (1957) 324. The latter analysed the directive in early imperial legal sources to hand slaves publicly convicted for a minor crime back to their masters *sub poena vinculorum*, which ensured both their punishment and prevented economic loss for the master.

> does not wear chains, he is not tied to the stocks. The one in chains, however, can be grateful for his life. He sees the sun, he breathes the air; for this he gives thanks.[71]

Significantly, in this penal kaleidoscope there is no mention of simple spatial confinement as punishment. Spatial confinement was linked to work in the flour mill, an issue to which we will return below. The wearing of iron chains or the placement in wooden stocks, in turn, was clearly not envisaged to be the same as being imprisoned indoors. In fact, slave chains often seem to have been in the form of footshackles (*conpedes*) mentioned in both literary texts and, in their iron forms, attested in the archaeological record, which allowed slaves to move about. This was a penalty imposed on both male and female slaves.[72] We hear of slaves having been put in chains for running away or roaming the streets, where an impediment of movement made sense. However, Augustine also claimed that slaves were put in chains for years on end for as little as insulting a master, while Maximus of Turin attested the same for a slave's slowness, and Ambrose and others for theft. Even if we take into account the polemical character of these passages, they confirm that penal choices were down to the master's discretion and that the prevention of escape was perhaps not the most important motivation behind the imposition of chains. Shaming through visible submission of the body also played a role.[73]

Imposition of *carcer* or δεσμωτήριον, terms that imply spatial confinement similar to the public prison, was also at times mentioned as a punishment for slaves. Ambrose, for example, claimed that slaves did not fear anything more than the punishment with *carcer* and *vincula*.[74] In a series of sermons delivered during Lent, Leo of Rome urged masters to adopt a lenient attitude towards their slaves and not to succumb to a desire for vengeance when offended. They should, as a consequence, not punish

[71] Basil of Caesarea, *Hom. In martyrem Iulittam* 6 (PG 31:252): Οἰκέτης εἶ; Ἔχεις τὸν σεαυτοῦ ταπεινότερον· εὐχαρίστει, ὅτι ἑνὸς ὑπερέχεις, ὅτι μὴ ἐν τῷ μυλῶνι καταδεδίκασαι, ὅτι μὴ πληγὰς λαμβάνεις. Οὐκ ἐπιλείψουσιν οὐδὲ τοῦτον αἱ τοῦ εὐχαριστεῖν ἀφορμαί. Οὐ γὰρ ἔχει πέδας, οὐ δέδεται ἐν ξύλῳ. Ὁ δεσμώτης ἔχει τὸ ζῆν ἀρκοῦσαν ἀφορμὴν εἰς εὐχαριστίαν· ἥλιον ὁρᾷ ἀναπνεῖ τὸν ἀέρα, ἐπὶ τούτοις εὐχαριστεῖ.

[72] Lactantius, *de ira* 5.12 (SC 289:108); Claudian, *in Eutr.* 2.342 (ed. J. Koch (Leipzig: Teubner, 1893, 79); John Chrysostom, *Homily on Genesis* 39.4 (PG 53:366): τοῖς ποσὶ δεσμὰ; Augustine, *serm.* 161.9 (PL 38:883); Maximus of Turin, *serm.* 36.3 (CC 23:142–143); Gregory of Tours, *Virt. Mart.* 3.41 (MGH SRM 1.2:192). For the archaeological evidence on iron footshackles see Henning (1992) 408.

[73] Running away: John Chrysostom, *Homily about the Statues* 2.4 (PG 49:39); slave-girls roaming the streets: John Chrysostom, *Homily on Genesis* 39.4 (PG 53:366); insults: Augustine, *City of God* 21.11 (CC 48:777); slowness: Maximus of Turin, *serm.* 36.3 (CC 23:142–143); theft: Ambrose, *fug. saec.* 3.15 (CSEL 32.2:175); John Chrysososstom, *Homily on Genesis* 37.5 (PG 53:349).

[74] Ambrose, *Tob.* 8.31 (CSEL 32.2:535).

their slaves with prison in a dark place (*carcer, claustra poenalia, custodia tenebrosa*) or chains (*vincula*). Furthermore, they should fashion their behaviour after the example of the Christian emperors who, in this very period of Easter, were in the habit to 'release from chains' (*vincula solvantur*).[75] The reference to imperial amnesties at Easter, however, raises the question whether Leo was here describing actual practices of punishment in the household, or whether *carcer et vincula* was not simply a phrase believed to aptly underpin a discourse on clemency modelled on imperial conduct and public penal processes.

A more realistic picture was drawn by Augustine, in a sermon on the necessity to do good not out of fear for punishment, but love for God. A slave, he argued, usually altered behaviour only out of fear, for he did not love his master. Among the types of punishment inflicted on the trembling slave, Augustine mentioned flogging (*verberare*), chains (*compedes*), prison (*carcer*) and condemnation to the flour mill (*pistrinum*).[76] It may be possible that Augustine was here following a customary view on these penalties as being gradually more severe. John Chrysostom mentioned imprisonment in a δεσμωτήριον as a penalty for theft by a slave. This comment was part of a sermon on woman's shameful attachment to clothes and jewellery. If a slave stole one of these objects, women were prone to have the whole household whipped or imprisoned. John clearly disapproved of such behaviour and expected the men in his audience to do so as well. This may mean that John, and others, thought imprisonment should be reserved for serious misdeeds, rather than trivialities, matters that only women became agitated about.[77] Elsewhere, in fact, drawing a parallel between God and slave-masters, John told of the master who had rightfully thrown his slaves into prison (εἰς δεσμωτήριον ἐμβάλλοντας) for many great offences (πολλὰ καὶ μεγάλα ἁμαρτήματα).[78] Among such misbehaving slaves clearly were those who tried to run away, for whom John suggested there was no other remedy than locking them away.[79] In reality, of course, the reasons to imprison slaves could have been myriad. A slave, John Chrysostom said, may be locked up to teach other slaves how not to

[75] Leo, *serm.* 26.5 (SC 49bis:74–76); 27.5 (SC 49bis:88–90); 28.3 (SC 49bis:98); 29.6 (SC 49bis:112–114); 31.3 (SC 49bis:136); 35.4 (SC 49bis:178).

[76] Augustine, *serm.* 161.9 (PL 38:883).

[77] John Chrysostom, *Homily on Genesis* 37.5 (PG 53:349–350). The use of the δεσμωτήριον as unreasonable punishment inflicted on slaves by female masters – this time widows who did not know how else to control their slave-folk – was also mentioned in John Chrysostom, *de non iterando coniuglo* 2.4 (SC 125:184–186).

[78] John Chrysostom, *Against the Jews* 5.5 (PG 48:891).

[79] John Chrysostom, *Homily about the Statues* 2.4 (PG 49:39).

behave.[80] He also claimed that slaves were imprisoned for spying on their masters, while, in turn, the abusive husband from fourth-century Egypt mentioned above incarcerated his wife's slaves and his own to test their loyalty.[81]

Despite the terminology of *carcer* and δεσμωτήριον (provided that these do not refer to sending slaves to the public prison), there is little evidence that urban houses had a formal, designated prison space for unruly slaves in late antiquity. Rather, existing spaces were used flexibly for slave confinement. In his sermon *About the Statues*, meant to deter his Antiochene community awaiting imperial property confiscations for rioting in 386 from too close attachment to their elusive wealth, John Chrysostom aroused an image familiar to his audience, of a fugitive and re-captured slave, who simply could not be secured:

> Should you throw over him ten thousand chains, he will make off dragging his chains after him. Frequently, indeed, have those who possessed him shut him up with bars and doors (μοχλοῖς καὶ θύραις), placing their slaves round about for guards (φύλακας). But he has over-persuaded these very servants, and has fled away together with his guards (τῶν φυλαττόντων); dragging his keepers after him like a chain, so little security was there in this custody (φυλακῆς).[82]

John Chrysostom's description makes it clear how much giving occasion to other slaves to observe punishment meant to slave-owners, to the extent that they allowed for much communication between detained and other slaves and hence compromised the prevention of the formers' escape. This suggests an informal use of space, rather than a formal 'house prison'. There may have been numerous places in the late Roman house where facilities for confinement of slaves would have been found, although it is perhaps most likely that underground spaces were used where possible, not necessarily to prevent escape, but visibly to underline the act of outcasting. Roman domestic buildings were often serviced by slaves through semi-subterranean underground corridors, cryptoporticoes, which created a unique 'upstairs–downstairs' scenario where the serene world of the free-born household was manifestly set apart from the dark and dirty world of slave labour. We can imagine that domestic punitive methods sought to exploit this marked distance between the free and the unfree by

[80] John Chrysostom, *opp.* 3.3 (PG 47:352).
[81] John Chrysostom, *On Virginity* 52.7 (SC 125:296); P. Oxy. VI 903.
[82] *Homily about the Statues* 2.4 (PG 49:39; transl. NPNF 9:348); also see John Chrysostom, *In ascensionem* 4 (PG 50:448).

condemning misbehaving members of the latter to remain in this slave environment for lengthy periods of time, which, at the same time, did not infringe on their ability to perform work.[83] The husband from Egypt shut his own and his wife's slaves up 'under the ground' (εἰς τὰ κατάγαια), and John Chrysostom at times seems to refer to underground imprisonment of urban slaves.[84]

To be sure, up to the fourth century the term *ergastulum* appears in sources describing slave management, which has at times been taken as referencing domestic prison space.[85] However, the term more likely indicated either a group of rural slaves working together, and therefore chained together during day-time, or the space where these slaves were held at night.[86] Every estate, the first-century agricultural writer Columella suggested, should have such living quarters, distinct from those of the unfettered slaves. It should be underground, but not window-less, so as not to endanger slaves' access to fresh air.[87] Such architectural prescriptions were, however, purely idealistic, as the complete lack of archaeological evidence for comparable spaces confirms. As Annalisa Marzano has recently argued, there never seems to have been any systematic building of prison-like barracks in the architectural history of Roman villas.[88] There was hence, true to the origin of the word from the Greek *ergasterion* (workshop), a strong connection between *ergastulum* and labour, for the emphasis was not so much on the spatial and custodial issue, but on management of a workforce through chaining and housing them together. The primary use of the term was not with reference to punishment, but to the exploitation of slave labour on large estates.[89]

This does not exclude, of course, that putting a slave with a group of rural fettered slaves who were assigned to the same task and held together over night could be a form of punishment, also in the late antique period.[90]

[83] On cryptoporticoes see Marzano (2007) 150. At 153 Marzano mentions a find from an underground storage room at a Pompeian villa of a skeleton with a neck collar, which she interprets as a slave put there for punishment.
[84] P. Oxy. VI 903; John Chrysostom, *Against the Jews* 5.5 (PG 48:891).
[85] Dunbabin (2002) 21–24. This interpretation hinges mainly on the use of the term *ergastulum* in early medieval monastic literature, see further below Chapter 8.
[86] For a nuanced discussion of the term *ergastulum* see Etienne (1974) 249–266; Marzano (2012) 2488–2489.
[87] Columella, *de re rustica* 1.6.3 (Loeb 66).
[88] Marzano (2007) 148–153.
[89] Etienne (1974) 264; Bradley (1987) 119–120.
[90] Pavón Torrejón (2003) 210. See Seneca, *de ira* 3.32.1–3.32.3 (Loeb 332) on masters' customary habit to condemn to *ergastulum*, which he, for once, criticised. See also Livy, *Roman History* 7.4.4–7.4.5 (Loeb 368): a critique of the dictator of 362 BC, Lucius Manlius, for having sent his son to an *ergastulum*, apparently on one of his rural properties.

Still in the early fourth century, Lactantius explained that a fugitive slave deserved 'lashes and chains (*vinculis*) and *ergastulum* and crucifixion (*crux*) and every type of punishment'.[91] It may also be possible that when John Chrysostom mentioned an urban slave being condemned to a δεσμωτήριον, he envisaged transfer to a rural group of fettered slaves, for δεσμωτήριον may have been the Greek equivalent of *ergastulum* used in this sense.[92] At least in the late antique West, large estates that predominantly ran on slave labour continued well into the fifth century, perhaps due to low population rates that made wage labour, common in the East in this period, impracticable.[93] The archaeological record shows a widespread use of footshackles on third and fourth-century imperial estates in Northern Gaul that may indicate a use of slave-gangs, although, again, there is little evidence that these slaves were housed in purpose-built barracks, underground or otherwise.[94] It may hence well be that Lactantius recommended enlisting misbehaving urban slaves into this rural workforce.

While not explicitly using the term *ergastulum*, many further late antique commentators on slave-life also mentioned the transfer to rural work as a customary punishment. Late Roman slave-masters, as their classical predecessors, usually had their slaves organised in a hierarchy of labour, which may have been based on skills (such as the ability to read and write in order to manage financial accounts or literary tasks, or the knowledge of a certain craft). Such hierarchy could be reshuffled according to behaviour. A domestic slave in charge of his master's wardrobe, for example, could be made to guard the door of the house upon having committed an offence, or even to clean the sewers of the house, a most blatant form of degradation. Often, however, misbehaving slaves were sent to work on the rural estates of the master.[95] We hear about this practice mostly in the context of the provincial curial ranks, which made up the listeners of many late antique bishops' sermons, such as those of Augustine, John Chrysostom and Basil of Caesarea. Their landholdings lay close to the

[91] Lactantius, *Div. Inst.* 5.18 (CSEL 19.1:460): *verberibus et vinculis et ergastulo et cruce et omni malo dignissimus iudicatur.*

[92] See Plutarch, *Tiberius and Caius Gracchus* 8 (Loeb 169): δεσμωτηρίων δὲ βαρβαρικῶν ('gangs of foreign slaves').

[93] Harper (2011) 144–158. [94] Henning (2008) 33–53; see also Harper (2011) 196–197.

[95] Cleaning the sewers: Augustine, *de libero arbitrio* 3.9.27 (CC 29:291); doorkeeping: Augustine, *en. psalm.* 103.4.10 (CC 40:1530). On the hierarchy of labour see Klein (1988) 157–160. Urban slaves threatened with being sent to the country for punishment are also mentioned in previous centuries: Horace, *Sat.* 2.7.118 (Loeb 234); Juvenal 8.179 (Loeb 338), using the term *ergastula*; D 38.5.35.3 (Ulpian).

cities where they resided, which made the punitive or rewarding transfer of slaves between urban and rural properties a feasible disciplinary option.[96] In the countryside, culprits could be assigned to work in the fields or to the industrial enterprises of the ancient household, like the manufacture of bricks. Most frequently, however, slaves seem to have been assigned to work in the flour mill (*pistrinum*) as a form of punishment.[97] Work in mills was considered severe, for it was dangerous, physically demanding, limiting mobility, but also particularly degrading for male slaves as it was seen as women's or animals' work.[98] The stark humiliation slaves may have felt when assigned to the mill is reflected in the story Augustine told about a group of rebellious slaves who, when they got hold of their masters, forced them to work in the mill 'like the most contemptible animals'.[99] Most writers referred to male slaves punished in this way, but work assignment, particularly in the mill, could also be imposed on female slaves.[100]

While these penalties, due to the presence of fetters or the assignment to a work-space, had a custodial aspect, their prime purpose was exploitation of the body for social and economic purposes. The focus was on work degradation and the humiliation visible to other slaves and onlookers that came with it, through personal distance from the master, the proximity to unclean environments, separation from urban life as well as a slave's family. Working in a mill, in particular, was a 'reformative' penalty, at least according to Gregory of Nyssa, for it aimed at restoring the slave to more docile behaviour.[101] Common sense would suggest, even though the surviving evidence does not allow for conclusive estimates, that idle custody of slaves for punishment was rare. Even fugitive slaves were often branded or given a neck collar to mark out their shameful misbehaviour and to keep them in the productivity cycle of the household at the same time.[102] Shutting up slaves in a formal (and hence also potentially costly)

[96] On *curiales*' slaveholdings in late antiquity see Harper (2011) 184–185; Klein (1988) 148–149.

[97] Fields: Ambrose, *apol. Dav.* 1.14.67 (SC 239:168); mills: Basil of Caesarea, *hom. in martyrem Iulittam* 6 (PG 31:252); Libanius, *or.* 25.13, *decl.* 1.147; *decl.* 33.33 (ed. R. Foerster, vols. 2, 5 and 7 (Leipzig: Teubner, 1904, 1909 and 1913, 543, 98 and 98); Augustine, *serm.* 161.9.9 (PL 38:883); *de spir. et lit.* 33.58 (CSEL 60:217); *de libero arbitrio* 3.9.27 (CC 29:291); *en. psalm.* 122.6 (CC 40:1819); Gregory of Nyssa, *bapt. diff.* (PG 46:428).

[98] Harper (2011) 138–139. It is not clear, however, whether slave work involved turning mills, in addition to loading and emptying mills, and possibly producing the bread.

[99] Augustine, *ep.* 185.15 (CSEL 57:14): *tamquam iumenta contemptibilia.*

[100] Procopius of Gaza, *comm. in Isaiam* 47 (PG 87.2:2444); see Harper (2011) 138.

[101] Gregory of Nyssa, *bapt. diff.* (PG 46:428): ἀνδραπόδου πονηροῦ ἡ προαίρεσις· μύλωνος ἀξίου καὶ δεσμοῦ καὶ μαστίζων, ἐκδῦναι μόνον τὰς τιμωρίας σπουδάζοντος.

[102] Nathan (2000) 177. Branding of slaves was prohibited in late antiquity, but still practiced. Gradually it may have come to be replaced by the assignment of inscribed neck collars; see Hillner (2001) 193–216.

house prison with nothing to do would not have fulfilled the purposes of domestic slave punishment: visibility and deterrence on the one hand and the safeguarding of slaves' ability to work on the other. The same can be said for the management of *coloni*, to which we will now turn.

'Private prisons', 'estate prisons' and the late antique colonate

In a classic article published in 1968, Olivia Robinson investigated late antique laws that prohibited so-called 'private prisons' (*carceres privati*).[103] She came to the conclusion that such institutions were a widespread phenomenon across the late Roman countryside, linked to the rise of large estates that characterised rural regions in this period. They were both a consequence of the weakness of the late Roman state vis-à-vis great landlords and of rural troubles such as brigandage and wandering heretics, which allowed but also forced estate owners to take the law into their own hands. These conclusions were much indebted to Edward Hardy's seminal book *The Large Estates of Byzantine Egypt* (1931). On the basis of papyri evidence mainly from Oxyrhynchus and the so-called archive of the Apion family, which, at the time had only just begun to be examined, Hardy had argued that, at least in Egypt from the fifth century on, the authority of the great landowners started to eclipse that of the state in a 'semi-feudal' manner. The main focus of Hardy's work was the alleged failure of estates like that of the Apions to pay taxes, their reliance on rent-returns from tenants (*coloni*) bound to their land like serfs, and the resulting autarkic nature of their estate divorced from urban economy and trade. One aspect of this scenario was landowners assuming a judicial role, to settle disputes among their tenant-serfs, and to combat social misconduct in the local community, and for this, Hardy assumed, they maintained prison facilities. According to Hardy, a number of late antique papyri mention such an 'estate prison' (φυλακή), and this may be the same as the *carcer privatus* referenced, and prohibited, in imperial law of roughly the same period.[104]

Building on Hardy's approach, Roger Rémondon assumed that the discrepancy between the vision of an ordered society that transpired from late antique laws, including that on the prohibition of *carceres privati*, and the disordered realities of landowners evading taxes as well as keeping their own armed forces and prisons was only superficially contradictory. The state, while rhetorically prohibiting it, tolerated such behaviour as it

[103] Robinson (1968) 389–398. [104] Hardy (1931) 67–79.

allowed, when needed, the mobilisation of landowners' resources for public purposes, for example the maintenance of law and order.[105] Jean Gascou developed this perspective in an influential article published in 1985, by arguing, in direct defiance of Hardy's 'semi-feudal' model, that the association of the rural population as tenants to a landed estate, which became responsible for collecting their taxes, was a successful imperial strategy to harness private power for public benefit, a form of systematic imposition of a liturgy that turned the estate into a 'semi-public' institution and saved public expenses. Rather than usurping legal power, private prisons were part of this system, as they indirectly helped the state to combat crime, with a function equivalent to the public prison.[106]

It needs to be stressed that Hardy considered the evidence from the papyri to be inconclusive, even where he thought that the laws pointed strongly in the direction of 'estate prisons'. Nonetheless, his interpretation and its elaborations by Robinson, Rémondon and Gascou of the role of private prison in estate jurisdiction has had a noticeable influence on historiography until very recently.[107] The connection between the φυλακή of the papyri, the *carcer privatus* of the law, and the alleged light they shed on the role of estate owners in the combat of crime in the countryside, however, has also begun to be revisited. As I will argue, the laws that prohibited private prisons concerned entirely different phenomena of 'imprisonment' than those mentioned in the papyri, which were perfectly legal institutions. Furthermore – and here I will build on Jens-Uwe Krause's excellent work – neither laws nor papyri concerned the use of prisons in private criminal jurisdiction against *coloni*. Rather, the purpose of *carceres* mentioned in the laws was mostly to coerce debt or other forms of financial benefits. The purpose of the 'household'-φυλακή in most papyri was custody (though perhaps not technically imprisonment) of a particular type of tenants, the *coloni adscripticii*, in order to safeguard tax liabilities. Neither *carcer privatus* nor the φυλακή of the papyri, however, are likely to have referred to a physical space on estates routinely and exclusively used for imprisonment that would merit a label 'estate prison'.

The earliest late Roman law to mention *carceres privati* was issued by Theodosius, Arcadius and Valentinian II and addressed to the Prefect of Egypt. It declared that sending an accused person (*reus*) to a private prison

[105] Rémondon (1974) 17–37.
[106] Gascou (1985) 1–90, on private prisons: 26. I follow here the excellent overview of historiographical developments of Sarris (2006) 131–148.
[107] See e.g. Torallas Tovar (2003) 209–223; Marcone (2004) 41–52; Torallas (2006) 111–112. All discuss the role of private prisons in the combat of crime.

(*carcer privatus*) was an act of treason.[108] Two further late Roman laws on private prisons are known. The first one, which Zeno addressed to the Praetorian Prefect Basilius in 486, prohibited anyone in Alexandria, Egypt or elsewhere in the empire 'to impose custody in a private prison either on his estate or in his house' (*vel in agris suis aut ubicumque domi privati carceris exercere custodiam*) and, again, equated this to treason. In 529 Justinian renewed this constitution, with a clear reference to Zeno's previous law. He also published Zeno's law, but not Theodosius', alongside his own in his Code. Whether in town and country, private prisons (ἰδιωτικὰς φυλακάς) were prohibited, and anyone putting someone into a private prison for a time was to be punished by being sentenced to detention in the public prison of equal length.[109]

The term *reus* in Theodosius's law may suggest that here the private prison was envisaged to play a role in a formal judicial process, where someone had been publicly accused of a crime.[110] This could mean that the original issue of the law, which was heavily truncated by the editors of the Theodosian Code, and its reference to 'treason', probably need to be seen in the context of other fourth-century laws, discussed in the previous chapter, that barred imperial, military and civic officials without judicial competences from holding defendants. As far as the law was concerned, such un-authorised prisons may have been considered 'private'. This is shown by the (possibly) late fifth-century *Edict of Theodoric*, which certainly followed Roman legal terminology, and also prohibited custody imposed by an official without decree of a magistrate (*iudex*), calling this *privata custodia*.[111] The object of Theodosius's law may therefore have been neither the role of private individuals acting as illicit judges, nor the same as that of Zeno's and Justinian's much later laws, but illegal prison facilities within the imperial administration. In the case of Zeno's and Justinian's laws, Jens-Uwe Krause has convincingly argued that they dealt with coercive imprisonment, in particular of debtors, for Justinian explained that those running a private prison would lose any financial claims against those imprisoned.[112] Zeno and Justinian seem to have primarily reacted to the situation in Egypt, presumably because they had been alerted to local

[108] CTh 9.11.1 (388). [109] CJ 9.5.1 (486); CJ 9.5.2 (529).
[110] On the meaning of *reus* in legal texts see Heumann, Seckel (1971) 517–518.
[111] Ed. Th. 8 (FIRA II:685): *sine iudicis auctoritate nullum ingenuorum debere teneri. Sine competentis iudicis praecepto nullus ingenuorum sustineat detentionis iniuriam, aut ad iudicium deducatur vel in privata habeatur cuiuslibet praesumptione custodia.* On the Edict of Theodoric and its relationship to Roman law see Lafferty (2010) 337–364.
[112] Krause (1987) 115–116; Krause (1996) 60.

circumstances there. We hear indeed much about such circumstances from Egyptian papyri. For example, in 568 a widow from Antinoopolis, called Sophia, asked the *dux* of the Thebaid for help against a man who had confined herself and her child for unnamed reasons, but probably involving the inheritance from her husband.[113] Both Zeno and Justinian, however, sought to extend their regulations to the entire empire, perhaps because they knew that private coercive imprisonment was an endemic problem.

Many sources indeed confirm that coercive imprisonment in private spaces, as much as that in public prisons discussed in the previous chapter, was rife throughout the empire, for a variety of reasons. It is recorded, for example, in the spectacular fraud case of Antoninus, bishop of Fussala and Augustine of Hippo's former protégé. Antoninus made the estate steward of the church of Fussala detain a man in private imprisonment (*custodia privata*) to force him to sell the bishop his land at a price below its real value.[114] Ammianus Marcellinus told of fourth-century Roman senators who confined their debtors like slaves until they paid up.[115] Also in Rome, in 384, the senator Fulgentius had called on two *agentes in rebus* to detain in his own house a trial witness against himself.[116] John Chrysostom in one of his sermons condemned the creditor who without mercy pursued his debtors, seized them and imprisoned them, and even imprisoned those who did not owe him anything.[117] Callinicus, the hagiographer of the fifth-century holy man Hypatius of Bithynia, narrated the story of the imperial chamberlain Urbicius who asked Hypatius to cure a man, Aetius, who had been confined and driven insane by Urbicius' brother. The circumstances are unclear, but since Aetius was wealthy and ultimately left his property to Urbicius, we can imagine that behind his imprisonment were questions of inheritance.[118] Procopius accused the empress Theodora of keeping a private prison in her palace, in 'concealed' rooms (ἀπόκρυφα) which were completely hidden, dark and isolated, and where she sent those who insulted her without trial. This accusation was particularly scathing, as Procopius and his audience must have known quite well that Justinian

[113] P. Cair. Masp. I 67005 (ca. 568); see also P. Grenf. II 78 (307; for comment see Bryen (2013) 118–120); P. Abinn. 51–52 (346; for comment see Bryen (2013) 92–94); P.Lond. V 1830 (fourth century).
[114] Augustine, *ep.* 20* (CSEL 88:110).
[115] Ammianus Marcellinus, *Roman History* 28.4.25 (Loeb 152–153). He probably refers to a case where a defendant voluntarily became the accuser's debtor in order to avoid a criminal trial.
[116] Symmachus, *Relatio* 23.8 (Barrow 130) and see Harries (1999) 113.
[117] John Chrysostom, *Homily on John* 67.2 (PG 59:372). He used the term εἱρκτή, which suggests private imprisonment.
[118] Callinicus, *Life of Hypatius* 12.4–12.5 (SC 177:116); see PLRE II Urbicius 1, 1189.

himself had prohibited such facilities.[119] Not all of these stories need necessarily be true; yet, they show that imposing private imprisonment could be mobilised as a distinct literary motif to frame utterly abusive and inept behaviour of the powerful, including, as we have seen above in the context of wife and children, at the domestic level.

If we want to look for a contradiction between the norms promulgated by the laws and the situation on the ground, as postulated by Rémondon, private imprisonment certainly presents a case. It continued to exist despite the repeated attempts to ban it. At the same time, there is little evidence that late Roman authorities universally condoned private imprisonment. As the papyri show, people in late Roman Egypt knew that, under the right circumstances, they could get help against such illicit behaviour, even if it was a cumbersome process. Furthermore, coercive imprisonment for debt or extortion of money or land was not new and had little to do with the rise of great estates.[120] It had long been established that a public charge could be brought for coercive private imprisonment under the *Lex Iulia de vi*.[121] As the second- and third-century jurists had specified under the *Lex Iulia*, any claim to property seized through confinement was void.[122] These discussions among jurists show that private individuals had been shutting each other up long before the fourth century. The issue of debt was a little more complex, for, as we have seen, archaic Roman and Hellenistic law had allowed for debt bondage.[123] The late antique laws on private prisons, certainly those of Justinian and Zeno, sought to combat such persistent customs. As such, they had little to do with formal private criminal jurisdiction from which the state could have benefitted.

Let us now turn to the papyri mentioning a household-φυλακή. These present an entirely different scenario, not the least because they give the impression of a formal and legally regulated use of private prisons. Our largest evidence for alleged 'estate prisons' in late antique Egypt derives from a series of papyri presenting a so-called deed of surety (ἐγγύη).[124] These documents, dating from the fourth to the seventh centuries, were contracts between a landholding household and a third person who provided financial insurance that a labourer would remain on and work a piece of this land and pay the taxes (or possibly rent) for which he was liable.

[119] Procopius, *Secret History* 3.21–3.29 (Loeb 38–40). [120] On the following see Krause (1996) 61.
[121] D 48.6.6 (Ulpian); D 4.2.22 (Paulus) and *Pauli Sententiae* 1.7.8 (FIRA II:327); 5.6.14 (FIRA II:395–6); 5.30 (FIRA II:414); CJ 9.12.3 (293).
[122] D 22.3.20 (Iulianus); D 41.2.23.2 (Iavolenus); D 4.2.23.2 (Ulpian); D 48.19.28.7 (Callistratus).
[123] See above Chapter 5.
[124] For an extensive discussion of these documents see Palme (2003) 531–555.

Some of these documents, though not all of them, also ordered those who gave warranty to collect the labourer from the φυλακή of their landowner's household (*oikos*), and to return him there when ordered. These latter, mostly dating to the late sixth and seventh centuries, and mostly originating from the Apion archive and the Oxyrhynchyite nome, are usually interpreted as documents that established bail for fugitive, re-captured and confined *coloni* and arrangements against a potential second escape.[125]

The appearance of the term ἐν τῇ φυλακῇ in these deeds of surety, could, of course, be connected to the rise of more complex large estates in fifth- and sixth-century Egypt, which also, in reflection of their social role, may have started to have formal prison space. It is reasonable to conclude, however, that it is also and perhaps more importantly connected to the simultaneous appearance of the *georgoi enapographoi*, or, as they are called in contemporary laws, *coloni adscripticii*, a particular type of tenant in the late antique countryside from the fifth century on.[126] Both traditional and recent scholarship has extensively discussed these. Without going too much into the details of this complex debate, its results may be briefly summarised here, to better explain the meaning of the term ἐν τῇ φυλακῇ in the deeds of surety.

From the fourth century on, legal, documentary and narrative sources register a category of late antique people called *coloni*, who appeared to be fiscally bound to the land they were working. Historians largely agree that their appearance in the sources was linked to the fiscal innovations under Diocletian and Constantine. These innovations demanded permanently tying each individual to a place of tax registration with a view to suppressing mobility and hence increasing tax return. For rural labourers, this place of tax registration on many occasions seems to have become the estate of their land-owning employer. The processes under which this happened are not very clear and are at the centre of the debate. Some scholars argue that the late Roman state compelled rural workers to register through a local landowner. Other historians conclude that the state came only to retrospectively institutionalise and regulate private relationships between rural workers and their landlords that may have reached back to social dependencies during the principate, or may have come into existence through contractual arrangement.[127]

[125] Hardy (1931) 76; Fikhman (1991) 7–17; Krause (1996) 62; Mazza (2001), 122–124; Torallas (2006) 106–112; Hickey (2012a) 95. For papyri references see below.
[126] The relevant laws are collected in CJ 11.48.
[127] For excellent reviews of the historiography see Scheidel (2000) 727–732; Sarris (2006) 149–176.

There is now, however, consensus that the extent of the colonate was less pronounced than previously thought. Not all those working the land (or indeed called *coloni*) in late antiquity were permanently tied to a great estate and hence also continued to pay taxes in the customary way, through their city. This also means that the colonate's emergence was regionally and chronologically diverse.[128] In the west, where rural mobility was by tradition not great, tenant-farming more widespread and rural people tied in patronage relationships to local landowners, it may have been a fairly automatic process that tenants registered with a great estate for tax purposes. In the east, and in particular in Egypt, where due to higher population density and more sophisticated market-oriented agricultural production there was more employment of mobile wage-labourers, permanent tax registration may have been a more gradual and patchy process. It is in the fifth- and sixth-century east that we encounter the terms *coloni adscripticii* or *enapographoi georgoi*. These terms describe tenants who a landlord registered on their city's tax list, either as a tenant responsible for shouldering the tax burden attached to a particular plot on the landowner's estate or as a tenant whose taxes were to be paid by the landlord.[129] Again it is unclear whether such tax registration came about as an administrative imposition by the state, through coercion by landlords, for example of debtors, or through voluntary contract, which may have been attractive to wage-labourers in a competitive labour market.[130] It is also unclear how many of such *coloni adscripticii* existed. What is clear is that, by becoming a *colonus adscripticius*, a tenant also committed to performing services for a landlord, such as, most importantly, pay rent, work the land and remaining on the estate.[131] While the late Roman state acknowledged that *coloni adscripticii* were free, it increasingly came to define their status as 'servile', to emphasise, for its own tax purposes, limitations on their mobility. As Justinian declared in a law of 530 on the regulation of marriage between *coloni*, slaves and freeborn, a *colonus adscripticius* and his children stood, like slaves, under the *potestas* of a landowner.[132] Even though their 'servile status' only concerned the relationship between *coloni adscripticii* and a landlord, not society at large, this

[128] Grey (2007) 165; Sirks, A. J. B. (2008) 122; on regional differences in particular see Harper (2011) 153–154.

[129] This is a matter of debate. See for the different position Grey (2007) 171 and, in direct response, Sirks, A. J. B. (2008) 124–127. See also Banaji (2007) 97.

[130] For the attraction of the arrangement to tenants themselves see Sarris (2006) 174.

[131] For a detailed discussion of these services see Fikhman (2006) 190–250.

[132] CJ 11.48.21 (530).

legal framework consolidated a landlord's control over some rural labourers.[133]

To return to the subject of 'estate prisons', it seems to usually have been *coloni adscripticii* who were to be collected and re-presented ἐν τῇ φυλακῇ of a household in the deeds of surety that have this clause, as far as this can be reconstructed from the at times fragmentary evidence.[134] This term φυλακή has, by those scholars who interpret the deeds of surety as documents bailing fugitive *coloni*, invariably been interpreted as denoting a place, the prison of a great estate.[135] The interpretation may be confirmed by a further deed of surety from mid sixth-century Oxyrhynchus that clearly established bail of a wrongdoer. It was addressed to Menas, the steward of a church, and concerned a freedman (δουλελευθέρου) who had apparently stolen gold from the steward's house. Three men now guaranteed for the return of the gold and promised to produce the freedman for this purpose 'in a public place in this city, without recourse to holy precincts, divine images or any attempt at asylum, in the φυλακή of the hospital of the same holy church, where we received him'. Here the reference seems to be to an actual building.[136]

Restraining a fugitive *colonus*, through, as the law phrased it, putting him in chains, was something that already Constantine had allowed.[137] As we have seen, the state was interested in reducing rural mobility, so it is no surprise that it gave landowners much freedom or even encouragement to deal with escape of those tied to the land for tax purposes.[138] In this context then, we may be able to see an overlap between the private and the public spheres, in the sense that landowners benefited from keeping labourers prone to flight under control, if necessary through confinement or enchainment, while the state benefited from constraining fugitive

[133] On the subtle distinctions between slaves and registered tenants see Grey (2007) 168.

[134] P. Oxy XVIII 2203 (sixth century?); P.Oxy I 135 (579); P. Oxy XXVII 2478 (595/6); P. Oxy VI 996 (584); P. Oxy XXIV 2420 (610); P.Oxy LXX 4802 (600–625); PSI I 61 (609); PSI I 62 (613): ἐν τῇ φυλακῇ τοῦ ἐ[νδόξου ὑ]μῶν οἴκου; P. Mert. II 98 (seventh century). The following papyri lack the clause, but are fragmentary, and may well have included it originally. All regard an *enapographos georgos*: PSI I 59 (596), from the Apion archive; P. Lond. III 778 (= P. Oxy I 199 descr) (568), from the Apion archive; P. Heid. III 248 (sixth/seventh century); SB XII 10944 (= P. Oxy I 200 descr.) (sixth century); PSI III 180 (sixth/seventh century).

[135] For references see above n. 125.

[136] P.Oxy XIX 2238 (551): Παραφέρονεν καὶ παραδόσομεν δημοσίᾳ ἐπὶ ταύτης τῆς πόλεως ἐκτὸς ἁγίων περιβόλων καὶ θείων χαρακτήρων καὶ παντὸς τόπου προσφυγῆς, ἔνθα αὐτὸν καὶ παρειλήφαμεν ἐν τῇ φυλακῇ τοῦ νοσοκομίου τῆς αὐτῆς ἁγίας ἐκκλησίας. On church prisons see below Chapter 9. Also compare P.Oxy XVI 1835 (late fifth/early sixth century) on the bailing out of the wives of tax-debtors from (apparently) a public prison, which uses strikingly similar language to the deeds of surety.

[137] CTh 5.17.1 (332); CJ 11.53.1 (371).

[138] Krause (1996) 61–63.

tax-payers. At the same time, landowners may also have supplied space on their estates to hold tax-debtors, which, certainly from the time of Justinian on, was not entirely illegal, as we have seen in Chapter 5. A fragmentary seventh-century list named fourteen village-elders from Teruthis in the district of Oxyrhynchus as being in the φυλακή of the household of one Anianus, and may refer to tax-debt.[139]

Collaboration between civic authorities and private landlords, who often at least at the highest levels were identical anyway, was close, but we do not have to assume that this turned imprisonment on an estate formally into a 'public institution' or that such collaboration was a uniquely late antique development. As we have seen in the previous chapter, when it came to holding individuals, Roman state authorities had traditionally made use also of non-civic spaces. Certainly, some deeds of surety equated the φυλακή of a household to a public place. For example, Zacharias, the steward of the church of Oxyrhynchus declared in 595/6, in a deed of surety addressed to Flavius Apion with regard to one Aurelius Pambechius, *georgos enapographos* on the Apion estate, that he would 'hand him over in a public place without recourse to any place of sanctuary or letter of safe-conduct, where I received him, in the φυλακή of your honoured household.'[140] Hardy thought such incidents to be a scribe's confusion of two different phrases, but its appearance in the papyri is too numerous to really warrant this assumption.[141] The phrase, however, was usually accompanied by a customary prohibition for the insured person to seek asylum, presumably with another landlord, the church or perhaps a monastery, and the reference to a 'public place' where the fugitive was to be produced may have been meant to emphasise this provision. After all, the phrase also appears in the above mentioned document apparently bailing out the freedman from the *nosokomion* of the church (prohibiting him to seek church asylum) where it certainly did not mean to equate the *nosokomion* with a public institution whose maintenance was imposed on the church as a liturgy.

Yet, there are features in these deeds of surety that complicate a neat picture of 'estate prisons'. Strictly speaking, none of the deeds of surety

[139] P. Oxy XVI 2056 (seventh century). On this list and its interpretation see Torallas (2006) 105.

[140] P. Oxy XXVII 2478 (595/6): παραδώσω ἐ[ν] δημοσίῳ τόπῳ ἐκτὸς παντὸς τόπου προσφυγῆς καὶ λόγου ἔνθα αὐτὸν κ[αὶ] παρείληφα ἐν τῇ φυλακῇ τοῦ ἐνδόξου ὑμῶν οἴκου. See for comment on this papyrus Keenan, Manning, Yiftach-Firanko (2014) n. 8.3.4. The same formula appears in P.Oxy I 135 (579), P. Oxy VI 996 (584) and P. Mert. II 98 (seventh century). The last document mentioned the φυλακή of Keles.

[141] Hardy (1931) 69 n.2.

mentioned directly that they dealt with already fugitive and confined *coloni* (even though they clearly expected potential flight). Furthermore, there are deeds of surety predating the sixth century, which did not use the phrase ἐν τῇ φυλακῇ, and which, in consequence, have not been interpreted as documents establishing bail for fugitives. Still these are formally strikingly similar to those deeds of surety that use the phrase. In the earliest of these documents, for example, dating to 345 and addressed to a town councillor of Oxyrhynchus, the signee, a man called Aurelius Paris, a contractor for field irrigation, promised financial security to ensure that another man, Aurelius Aion, a wine-grower, would remain in the village of Amata, cultivate his land, 'fulfilling everything which has been agreed by him'.[142] The document may refer to a contract of employment on the town councillor's land, or it may refer to an agreement on Aurelius Aion's tax registration through the town councillor or the city of Oxyrhynchus. No mention is made of the φυλακή, or for that matter, of any place where Paris collected or was ordered to take Aion, if required. Neither is Aion called a *georgos enapographos*. In all other respects, however, the document, and other earlier ones are similar to the later deeds of surety that incorporate the missing aspects.

Furthermore, some deeds of surety order labourers to be presented not in the φυλακή of a private household, but in a 'public place of the city' (ἐπὶ δημοσίου τόπου ἐπὶ τῆς πόλεως).[143] In documents dated to the later sixth century, the public place in the city was at times further qualified as ἐν τῇ φυλακῇ τῆς αὐτῆς πόλεως, as, for example, in a deed of surety dated 588 and addressed to a woman of illustrious senatorial rank called Flavia, from Oxyrhynchus, perhaps Flavia Anastasia, a well-known landowner. Where this phrase was used, the addressee of the contract was usually someone who also held a civic office connected to imperial tax collection, most notably, as we know Flavia Anastasia did, that of pagarch, the chief tax collector.[144] Of course, as we have seen in Chapter 5, such civic officials

[142] P. Wisc. I 12 (345). For a similar fourth-century document see P. Oslo III 113 (346). See also P. Heid. IV 307 (450/5); P. Lond. V 1793 (472) for fifth-century documents that do not have the clause or mention *georgoi enapographoi*.

[143] P. Heid. IV 306 (413); SB XVIII 13953 (492); P. Cairo masp. III 67297 (535), from the archive of Dioscorus. Note, however, also the curious phrase in P.Lond.inv.2229 (sixth century), which orders return of apparently a *georgos enapographos* ἐν τῇ φυλακ(ῇ) τοῦ Καισαρίου ταύτης τῆς πόλε(ως), which may refer to the Caesareum of Oxyrhynchus, now possibly transformed into a church. The papyrus is too fragmentary to allow for establishing a firm context. For discussion see Hickey (2012b).

[144] P. Oxy XLIV 3204 (588): παραδώσω ἐν δημοσίῳ τόπῳ [ἐκτὸ]ς παντὸς τόπου προσφυγῆς καὶ λόγου ἔνθα αὐτὸν καὶ παρείληφα, ἐν τῇ φυλακῇ τῆς αὐτῆς πόλεως; see also P.Oxy LXIX 4756 (590), also addressed to Flavia; PSI I 52 (between 602 and 647), addressed to the pagarch Flavius Iulianus;

often maintained prison facilities, even though their use was not always an entirely legal one. As the pagarch was usually recruited from the ranks of wealthy landowners, the potential use of a public prison to restrain fugitive *coloni* perhaps emblematises the double nature of the contract: it was to ensure labour to the pagarchs in their role as landowners and tax to the pagarchs in their role as tax collectors.

Yet, it might also be significant that the labourers in the deeds of surety that mention the φυλακή of a city usually do not seem to have been *georgoi enapographoi*. There also exist deeds of surety addressed to pagarchs that do not involve agricultural labourers at all, but a soldier, or a priest, to be presented to the public φυλακή. Whether they had committed an offence for which they needed to be bailed is unclear, but it is certainly unlikely that it was flight from the soil.[145] The conclusion that those deeds of surety that invite for return of an insured person to a φυλακή, but only these, refer to already fugitive *coloni*, in fact hinges on the understanding of the term φυλακή as exclusively meaning prison, in the sense of a designated space of confinement on an estate or a city. Yet, φυλακή, just like *vincula* is an ambiguous term, but 'prison building' is only its secondary meaning. It denotes any form of custody or safe-keeping.[146] It must be significant that the appearance of the phrase ἐν τῇ φυλακῇ in the deeds of surety, both that referring to the φυλακή of a household and that of a city, developed around the same time as the appearance of *coloni adscripticii* or *georgoi enapographoi* in contemporary sources and their distinction from other *coloni*, which in itself is a reflection of the ever tighter fiscal control that sixth- and seventh-century public officials and landowners sought to exercise upon some of those who worked the land. We can very tentatively postulate the possibility, then, that the phrase ἐν τῇ φυλακῇ did not refer to the actual place where someone was to be produced and confined, but to the localisation of their tax liabilities: the presentation of the *georgos enapographos*, whenever required, ἐν τῇ φυλακῇ of his landowner confirmed that for fiscal purposes

see also P. Cairo masp. III 67297 (535): a *riparius*; P. Heid. IV 306 (413): a *nauarchus*. These last two do not mention a φυλακή. On the pagarch see above Chapter 5 and on Flavia Anastasia as pagarch Banaji (2007) 150; PLRE IIIA, Anastasia 4, 61.

[145] CPR 22.4 (625–645): ἐν τῇ δ[ημοσίᾳ] φυλακῇ; CPR 24.24 (591–602). The latter features the phrase ἐν τῇ δημοσίᾳ εἱρκτῇ.

[146] On the semantic range of φυλακή, most basically meaning 'custody' or 'watch' see Liddell, Scott (1996), s.v. 'φυλακή', 1960. See also Basil's use of the term mentioned on p. 158 to describe husbands keeping their wives under control, which certainly did not refer to a wife's prison: Basil of Caesarea, *ep.* 2 (PL 32:225). Note, however, that some papyri (though not necessarily the deeds of surety) clearly seem to refer to spaces of imprisonment on Egyptian estates, e.g. PSI VIII 953, establishing wine-supply to those held in a space alternatively called φυλακή and δεσμωτήριον τοῦ ἐνδόξου οἴκου.

he was under control of the latter, while others remained registered directly through their city and hence were to be presented to their pagarch or other civic official.[147]

However we interpret the meaning of the term ἐν τῇ φυλακῇ, it mostly appears in the context of public tax or private debt liabilities. There is little evidence that late Roman landowners assumed criminal jurisdiction over their tenants, becoming responsible for the maintenance of law and order in the countryside with the state's blessing, or that prisons played a role in such alleged processes.[148] Certainly, several late Roman laws from the first half of the fifth century originating from the context of the Donatist schism in North Africa granted some punitive authority over *coloni* to landowners by stipulating that *domini* should return their slaves and *coloni* to the right faith through corporal punishment (*verbera*).[149] The issue behind these laws was, however, less to prevent landowners from illicitly acting as judges in such cases, complete with the running of prisons, than from the suspicion that they, or rather their estate stewards, would do little about or even be complicit in such wrongdoing.[150]

A papyrus at times cited in the context of criminal jurisdiction by late antique landlords lists a number of people ἐν τῇ φυλακῇ, some of whom were apparently accused of cattle theft. Among those who had delivered the culprits were a *defensor*, a *riparius*, and a *comes chartularius*, titles that had an equivalent in the public realm. There was a high degree of overlap between titles of civic officials and estate officials in Byzantine Egypt, which makes it difficult to decide whether what we are dealing with here was a private context at all.[151] Furthermore, the document's date of origin may not be earlier than the eighth century. Yet, even if it can be dated to an earlier period and taken as referring to imprisonment on a landed estate, the papyrus does not present evidence for a landowner's self-assumed or publicly imposed authority to police social misconduct in the countryside. Cattle theft was a wrongdoing first and foremost to the

[147] See also Keenan, Manning, Yiftach-Firenko (2014) 438, where the 'fiscal nature' of deeds of sureties is stressed: 'they exist to help protect the government's revenue, not simply to control a semi-servile labor force'.

[148] Krause (1987) 115–116; Krause (1996) 62–63.

[149] CTh 16.5.52.4 (412): *servos etiam dominorum admonitio vel colonos verberum crebrior ictus a prava religione revocabit*; CTh 16.5.54.8 (414); NVal 23.3 (447). About landowners' indifference towards belief on their estates see Krause (1987) 124–125 and Bowes (2008) 159.

[150] A similar concern was behind laws that ordered landowners to deliver heretics, deserters or robbers (*latrones*) hiding on their estates to the public courts: CTh 9.29.2 (383); CTh 7.18.7 (383); CTh 7.18.12 (403); CTh 16.5.52.1 (412); CJ 9.39.2 (451).

[151] Stud. Pal. X 252; for discussion see Hardy (1931) 70–71; Krause (1996) 62; Torallas (2006) 112.

detriment of the landowner. As we have seen above, a master did not have the right to start a law-suit for theft against a slave, nor a patron against his freedmen, clients or employees. He was expected to deal with such behaviour internally.[152] While we lack the evidence for whether this provision extended to *coloni* by the sixth century, we do know that a *colonus adscripticius* could not sue his landlord in any civil or charge him for a criminal matter, with the exception of extortion, precisely because, like a slave or freedman, he was under the landlord's *potestas*.[153] It can therefore not be excluded that the same may have applied the other way around, to protect a landlord's honour. It was certainly under this provision that the church steward at Oxyrhynchus mentioned above acted against his freedman for the latter's theft of gold. Some property-owners, then, may well have wished to sort out such behaviour by their dependents without interference of the public authorities, and had the right to do so. This right was not new in late antiquity, but its extension to *coloni* may have been.

The terminology applied in the deeds of surety perhaps creates more riddles than it solves. Overall, the evidence is too inconclusive to firmly claim that there were private prisons on estates with a function equivalent to the public prison, whether in a semi-feudal manner or as a liturgy imposed by the state. From this also follows that we should not make the terminology of the papyri fit a preconceived idea of spatial features of late antique Egyptian estates, about which we have very insufficient knowledge. In light of what we know about late Roman domestic space and the management of domestic dependants, we should not imagine the φυλακή of the papyri (if it refers to a place) or indeed the *carcer privatus* of the laws as a purpose-built and routinely managed estate prison. Both φυλακή and *carcer* may have come into existence by employing a variety of spaces, as was customary in the late Roman household. Furthermore, where the confinement of *coloni adscripticii* was concerned, either for escape or for offences below the level of public crime, comparison with the treatment of slaves suggests that landowners may not have wanted to detain them for too long, for it would have impacted on their productivity and diminished the deterrent aspect of punishment. In fact, wherever we hear about punishment of *coloni* the suggested method, as with slaves, was flogging.[154] At the same time, if we choose to read the deeds of surety as documents establishing bail, we may imagine that being confined had a

[152] See above p. 153. [153] CJ 11.50.2.3–11.50.2.4 (396); see Sirks, A. J. B. (2008) 142.
[154] CTh 16.5.52.4 (412); CJ 7.24.1.1 (531–534) = CJ 11.48.24.1; NJust 22.17 (536).

powerful coercive effect on a fugitive *colonus*, forcing him to find an affluent guarantor.

Monastic prisons

From the fourth century on, the coenobitic monastery, a form of Christian asceticism that emphasised communal life, emerged alongside the worldly household as an institution that sought to administer punishment of its members.[155] We are informed about late antique monastic penal systems in minute detail thanks to the Christian literary genre of monastic guidelines and reflections, also called rules (*regulae*), though not necessarily by their authors. Late antique rules developed as a consequence of the success of the coenobitic lifestyle and the great number of men and women attracted to it, which led to it it becoming the dominant monastic form in the west, and one of the most pronounced in the east.[156] While embracing asceticism in itself was seen as an act of penance for general human sinfulness; leaders of monastic communities worried that life in common generated many further temptations for individuals and hence needed to be ordered.[157] As normative sources, monastic rules of course do not give us any indication of how frequent or widespread certain punitive methods were, although they were certainly also institutionalising practices. They offer, however, a window into punitive ideals and concepts. As we shall see, imprisonment played a role in these concepts from early on, both in the east and in the west, but again, as in the lay household, this punitive use of space came in the form of segregation of culprits in multifunctional spaces, rather than as confinement to purpose-built prisons.

Late Roman law, at least under Justinian, fully accepted that monastic communities were free to order their internal discipline as long as it did not concern offences that qualified as public crimes or were directed against third parties. Monastic leaders had the legal right to punish their subordinates. This, in turn, meant that monks and nuns, even though it was never clearly specified that they were under the *potestas* of their abbot or abbess, were unable to accuse the latter of maltreatment at a public court.[158]

[155] On the development of coenobitic monasticism see Rousseau (2000) 745–780; Dunn (2003).
[156] On the development of monastic rules see Diem (2005) 175–228. Note that monastic writers, such as Basil, did not necessarily think about their writing as establishing firm 'regulations' of monastic life. On the development of monastic penal systems see Pancer (2003) 261–275.
[157] For the concept of Christian ascetic life as one of penance see below Chapter 8.
[158] Entry into a monastery terminated *patria potestas*, but monks and nuns kept a limited right to inherit. See Granić (1930) 672–673.

Justinian here as elsewhere seems to have institutionalised social practice. Even in cases of very serious monastic leadership crises, such as the accusation against Shenoute, abbot of the Pachomian White Monastery in the Thebaid (d. 466), of killing a monk through excessive beating, we hear very little about appeals to outside authorities.[159] At most, appeals that have been recorded were lodged with ecclesiastical authorities, a practice that Justinian, with a view to strengthening episcopal authority, turned into law.[160] For example, Palladius of Helenopolis recorded in his *Lausiac History*, a description of monastic life in Egypt (written ca. 419–420), an incident in the Pachomian female monastery at Tabennesi, where a nun had been falsely accused of having indecently talked with a man. The nun committed suicide, and so did, shortly afterwards, her accuser. Apparently being unable to solve this crisis by themselves, the remaining nuns reported it to their priest, who excommunicated all of them for seven years for complicity in calumny.[161] The nature of late antique monastic literature may of course have prevented the widespread transmission of stories that undermined the authority of monastic leaders. Yet, the modelling of the coenobitic community on the family and their spiritual leaders as 'father' or 'mother', well established by the early fifth century, the underlying ideal of complete withdrawal from the secular world and submission to God's ultimate authority, as well as quite practical social dependency of monks and nuns on their monasteries, might also often have inhibited most from seeking outside external justice, particularly in rural areas.[162]

The law, however, specified that where ascetics had committed a wrongdoing against someone outside the monastery, in particular if it involved a public crime, they were to be brought before a public court. Justinian, similar to his specifications on clerical jurisdiction, envisaged collaboration between a public judge and the local bishop on such matters.[163] It is likely, however, that, due to the increasing social importance of late antique monasteries for their local communities, such cases were in effect often handled internally as well. This is what a recurrent motif in late antique hagiography suggests: in a number of stories narrating the lives of 'cross-dressing' saints, the heroine, having entered a monastery disguised as a man, was accused of having fathered a child by a woman living near the

[159] For a full discussion of the various crises surrounding Shenoute's leadership style, particularly in relationship to the women in his monastery, see Krawiec (2002) 31–50.
[160] NJust 67 (538). See Granić (1929) 24–25.
[161] Palladius, *Historia Lausiaca* 40 (PG 34:1105–1106).
[162] On the coenobitic community as a 'family' see Krawiec (2002) 133–144; Vuolanto (2008) 72–79.
[163] NJust 83.1; NJust 123.21.1; NJust 67. See above Chapter 3.

monastery. Although this clearly could have been defined as *stuprum*, a public crime, she was invariably tried, with seeming consent of the victim and her family, by her abbot and (refusing to reveal her female identity) expelled from the monastery, but readmitted after a time of penance. One of these protagonists, Marina, was also subject to further penalties of cooking and cleaning upon return. The babies, in turn, were taken into the monastery.[164] For the point of the stories, which was to praise the saint's endurance as a victim of the same female sinfulness which she had sought to overcome through her embracement of male asceticism, the identity of the judge was not the most important matter, even though submission to the abbot's verdict of course underlined the heroine's acceptance of monastic authority and obedience and her own inherent sinfulness. The stories may therefore reflect that monasteries by this point had become accepted centres of justice in their localities, particularly, once again, where wrongdoing was of a sexual nature and victims keen on deflecting shame.

Late antique monasteries hence were, and perhaps had to be to preserve their integrity, fairly enclosed punitive spaces. The stories of the 'cross-dressing' saints also give a reasonable idea of monastic penalties, such as work assignment and expulsion. Both were also mentioned in late antique monastic rules. Many of these, particularly Western ones, suggested a graded penal system with a fixed penal catalogue becoming increasingly more severe upon repeat offending or failure to submit to the superior's authority. Others, in particular the Short and Long Rules by Basil of Caesarea (clearly inspired by Platonic values), supported the idea of fitting penalties to the offence, and the disposition of the offender.[165] Most monastic rules foresaw excommunication from the monastery as a whole only as a last resort, if the trespass was very grave.[166] Their emphasis was on healing and education, as also suggested by the use of the term *emendare* in

[164] *Life of Theodora of Alexandria* (fifth to sixth century) (AASS Sept. 3:788–797; BHG 1727–1730); *Life of Marina* (fifth to seventh century) (AASS July 4:286–287; BHG 1163–1163e, BHL 5528–5530, BHO 690–697). See also *Life of Susanna* (fourth century) (AASS Sept. 6:151–160, BHG 1673–1673b). Susanna was tried by the local bishop (of Jerusalem), which may be explained by the early date of this narrative. On the motif of the cross-dressing saint see Patlagean (1981) 597–623; Hotchkiss (1996) 138–141.
[165] See Hillner (2009) 773–791.
[166] Basil, *Short Rule* 44 (PG 31:1112); *Long Rule* 28 (PG 31:988); Augustine, *Praeceptum*, 4.9 (ed. L. Verheijen (Paris: Études Augustiniennes, 1967) 427; note that Augustine's authorship is uncertain); *Rule of Macarius* 17 (SC 297:380); *Oriental Rule* 35 (SC 298:490); *Third Rule of the Fathers* 2 (SC 298:534); *Rule of Benedict* 28 (SC 182:550–552). On expulsion in the Pachomian monasteries see Rousseau (1985) 96–97.

the context of punishment in many Latin rules.[167] The aim was to set an individual member of the community back on the path to salvation, but also, since this by necessity included reintegrating the culprit into a closely-knit group, to ensure that the community could do so without danger.[168] It is therefore not surprising that late antique monastic rules also valued the visibility, humiliation and hence deterrent effect inherent in some penalties proposed, such as public rebuke or beating.[169]

The same principles also underlay to some extent the monastic penalties of confinement. Punitive uses of space involved, in the first place, exclusion from either table or oratory, or both. This was a form of excommunication, but did not automatically mean spatial segregation. For example, the *Rule of the Master* (written in mid sixth-century southern Italy) envisaged an unruly monk to eat separately from the others, but in the same room. He was, however, not allowed to participate in making the sign of the cross before the meal. Equally, a monk excluded from the oratory could be present during service, but was prohibited from participating in hymn-singing.[170] Some rules, however, also prescribed complete isolation from the entire monastic group. In the *Rule of Benedict* (ca. 540) this was a more severe penalty than excommunication from table or oratory. Rather than just non-participation in communal activities it meant entire closure of common space to culprits.[171] In other monastic writing, isolation was seen as the right measure for certain wrongdoing, such as, in Basil of Caesarea's *Short Rule*, for being angry when awakened from sleep, or, for the fifth-century Western *Rule of the Four Fathers*, for idle talk or murmuring. In the latter case, silence that came with isolation may have been seen particularly fit for the misdeed.[172] Unlike spatial segregation in the lay household such penalties were not represented as an alternative to beating. Both beating and confinement had their places in the penal catalogue. Some monastic rules saw beating as a more severe punitive method, for those who had revealed themselves as ignorant through their stubborness; others as a method fit for certain offences, such as those committed manually (e.g. theft), rather than verbally (e.g. murmuring).[173]

[167] Pachomius, *Praecepta atque iudicia* 15 (Boon 69): *monasterii regulis emendabitur*; for more references see above Chapter 1.
[168] Lehmann (1951) 80–81; Pancer (2003) 273. [169] Cassidy-Welch (2001) 25–27.
[170] *Rule of the Master* 73.8–73.11; 73.17 (SC 106:308–310).
[171] *Rule of Benedict* 25.3 (SC 182:546). On the grading of these penalties see also Flint (2000) 151; Pancer (2003) 272–275.
[172] Basil, *Short Rule* 44 (PG 31:1109); *Rule of the Four Fathers* 15 (SC 297:202).
[173] Hillner (2009) 773–791.

Spatial segregation was a measure that can be traced back to the origins of coenobitic monasticism. We already find it pronounced in the Latin version of the Pachomian Rules translated by Jerome in 404, who perused an organically grown array of Greek texts collected at a Pachomian monastery at Canopus near Alexandria (modern Abu Qir), called *Metanoia*.[174] As other surviving fragments in Coptic, Greek and Ethiopian show, only Jerome's translation contained a penal catalogue. Yet, contemporary or even slightly earlier biographical evidence on the fourth-century monastic leader often credited with the introduction of coenobitic monasticism into the Egyptian countryside, for example the *Bohairic Life of Pachomius*, suggests that, when his monastic communities had become more complex, Pachomius himself had introduced a more sophisticated internal penal system beyond mere expulsion.[175] The Pachomian rules advised complete isolation of seven days of a monk in case of slandering, but only if admonishment did not work. The *Paralipomena*, a fifth-century Greek collection of Pachomian anecdotes, narrated how Pachomius ordered a monk who had been showing off through producing two mats while only one had been required, to be confined to his cell for five months, without being able to receive visitors.[176]

One of the purposes of spatial segregation as a punishment in the late antique monastery was, similar to segregation in the lay household, separation from the social life and the central spaces of the community, in order to shame and humiliate, or, as the fifth-century Western ascetic thinker John Cassian put it, 'to disturb'.[177] The *Rules of Pachomius* also expressed the hope that a monk may not return 'until he was cleansed from filth'.[178] This implies that segregation was to purify the community.[179] The focus of spatial segregation was hence on exclusion, as we have also observed in the lay household.[180] In contrast to the lay household, however, exclusion from daily monastic life also meant, like ecclesiastical excommunication, primarily exclusion from the routines and rituals understood to holistically support the path towards salvation, such as prayers, blessings and meals. The *Rule of the Master*, for example, strictly prohibited food brought to a confined monk to be blessed with the sign of the cross.[181]

[174] On the history of the text see Veilleux (1981) 11.
[175] *Bohairic Life* 104 (CSCO 89:134; CSCO 107:88); Lehmann (1951) 38–43; Rousseau (1985) 87–104.
[176] Pachomius, *Praecepta atque iudicia* 1 (Boon 64); *Paralipomena* 15 (transl. Veilleux, vol. 2:37).
[177] John Cassian, *Institutiones* 10.16 (SC 109:410): *publica omnium vestrum segregatione confusus.*
[178] Pachomius, *Praecepta atque iudicia* 4 (Boon 65): *donec mundetur a sordibus.*
[179] Pancer (2003) 272–275. [180] Lehmann (1951) 83; Flint (2000) 151.
[181] *Rule of the Master* 13.41–13.48 (SC 106:40–42). For deprivation of blessings see also Basil, *Short Rule* 44 (PG 31:1109). See also Cassidy Welch (2001) 27.

Often the place of segregation seems to have been a monk's individual cell.[182] Yet, just like in the lay household, at times places chosen were also meant to visibly highlight the humiliation of the offender. This was particularly the case with confinement in a monastery's gate-house, or the 'remote cell of the porter' (*cella salutatorii remota*), mentioned as a punishment in Caesarius' *Rule for Nuns*, and possibly also the *Rules of Pachomius*. In Shenoute's White Monastery the gate-house was the place where the novices lived and where beating was administered, so being sent here emphasised the distance from the centre of the monastery and the shame of downgrading.[183] The *Rules of Pachomius* also envisaged confinement in the infirmary, where an unruly monk was to be considered as one of the sick. What the *Rules of Pachomius* proposed, then, following the Christian definition of sin, was that offending was a form of disease. Yet, confinement of some offenders was not only for the security of the community, to prevent moral pollution, but also curative, so they 'could return to the truth' (*donec redeat ad veritatem*).[184] Palladius's *Lausiac History* mentioned incidents of Egyptian hermits who put fellow-hermits who had fallen into the trap of pride in chains to cure them with the antidote of physical humiliation.[185] The *Rules of Pachomius* went a step further by ordering diseased offenders also to reside among the real diseased, but to their own benefit. In the same spirit, but with more vagueness, some later Western rules implied that a monastic leader would choose a room in relation to the disposition of an offender.[186]

In addition to this emphasis on reform and healing through the choice of particular spaces, monastic rules put an importance on the ordering of time that is quite unprecedented compared to the commentators on spatial segregation in the lay household. Monastic rules were frequently anxious that confined members of the community should not be idle, and in company of mentors. Caesarius of Arles suggested in both his *Rule for Monks* and in his *Rule for Nuns* that those excommunicated and isolated sit with a more senior brother or sister to read the Scriptures, as long as it took

[182] See e.g. *Oriental Rule* 37 (SC 298:490).

[183] Caesarius, *Rule for Nuns* 65 (SC 345:252); Pachomius, *Praecepta atque iudicia* 4 (Boon 65) specifies isolation *extra monasterium*, which might indicate the gate-house; on the role of the gate-house in the White Monastery see Krawiec (2002) 43.

[184] Pachomius, *Praecepta atque iudicia* 5 and 12 (Boon 65–66, 68). On both gate-house and infirmary see Lehmann (1951) 63, 68–69; Cassidy-Welch (2001) 25–27. On the institution of infirmaries in Pachomian monasteries see Crislip (2005) 9–12.

[185] Palladius, *Historia Lausiaca* 31 and 32 (PG 34:1089–1092).

[186] Caesarius, *Rule for Nuns* 34.1 (SC 345:214); Ferreolus, *Regula ad monachos* 39 (PL 66:975).

to be recalled to reconciliation.[187] The sixth-century Italian rules assigned work.[188] The anecdote included in the *Paralipomena* about the brother who had produced two mats instead of one reported that Pachomius ordered him to produce two mats daily while in confinement.[189] Work assignments resemble the punishment of slaves, especially if they were connected to downgrading. The focus, however, was not only on bodily submission through work, but on a learning process, although the two were not mutually exclusive. The monk ordered by Pachomius to weave two mats would be reminded, on a daily basis, of his boasting. The monk or nun ordered to sit with a senior would be faced with an example of virtue. Both work and reading would also allow a confined member of the community to still participate in monastic occupations, and their orientation of both body and mind towards the journey to God. In fact, it was a harsher punishment to be condemned to idleness, without the opportunity of ascetic endeavour, while in confinement.[190] The focus of the rules was hence not just on safeguarding the community or the ritual outcasting of offenders, but also on their spiritual development, with particularly the sixth-century Latin rules calling the period of isolation a period of penance (*paenitentia*).[191]

As with the lay household, there is, however, no indication that late antique monasteries had formal prison space.[192] In many ways, the flexible use of different spaces in the monastery for confinement sufficiently fulfilled the functions late antique monastic rules associated with spatial segregation. It is only from the early seventh century on that we encounter the term *carcer* or φυλακή in monastic writing to describe a particular space in the monastery.[193] The *carcer* was meant to address the sin of pride in the *Communal Rule*, usually thought to have been composed by the Irish missionary Columbanus for his triple monastery Annegray, Luxueil and Fontaines around 590, but perhaps only written after his death in 615 by his successors who needed a written record of his administration of discipline.[194] In the early seventh-century east, John Climacus, a monk at the

[187] Caesarius, *Rule for Monks* 23 (SC 398:222); *Rule for Nuns* 34.1 (SC 345:214).

[188] *Rule of the Master* 13.44–13.48 (SC 106:42); *Rule of Benedict* 25 (SC 182:546).

[189] *Paralipomena* 15 (transl. Veilleux, vol. 2:37).

[190] Idleness was prescribed for confinement in the infirmary in Pachomius, *Praecepta atque iudicia* 5 (Boon 65–66) with a clear intention to make this state undesirable for those who suffered it, see Crislip (2005) 82.

[191] Caesarius, *Rule for Nuns* 34.1 (SC 345:214); *Rule of the Master* 13.54–13.57 (SC 106:44); *Rule of Benedict* 25 (SC 182:546).

[192] Lehmann (1951) 83. [193] Ohm (1982) 145–155.

[194] Columbanus, *Communal Rule* 15 (ed. G. S. M. Walker (Dublin: Dublin Institute for Advanced Studies, 1957), 168). On the history of the text see Walker at xlix–lii who argues that only chapters 1–9 of the first recension can be securely attributed to Columbanus.

St Catherine monastery at Sinai (and possibly correspondent of Gregory the Great), described a monastic prison (φυλακή) in his didactic treatise *Ladder of Divine Ascent*. John had once visited a renowned abbot of a monastery on the outskirts of Alexandria, who exhorted his disciples to love each other and, where someone showed hatred, 'banished him like a convict to a separate monastery' about a mile from the main monastery. Here, in a dark and filthy place, the monks were to go without cooked food, dwell in separate cells, engage in uninterrupted prayer, all the while weaving baskets, for as long as the abbot thought appropriate.[195] While it is not entirely clear what was meant by the term *carcer* in Columbanus' *Rule*, John Climacus's description unmistakingly shows a purpose-built facility. In the West, it is from the time of the Carolingians onwards that we find routine recommendations for a prison-building in monasteries.[196] At that point, confinement in the monastic prison seems to have come to replace expulsion as the most severe penalty. The rise of prison-buildings may therefore be connected to the development of irreversible monastic vows in the early medieval period, which meant that expulsion was not an option anymore and all sins had to be expiated internally.[197] It should be noted, however, that at least in sixth-century Italy unruly monks and nuns, and particularly those who tried to leave the monastic life, were also transferred to different and 'stricter' monastic communities, in order to circumvent the problems that arose with the appearance of monastic vows.[198]

Overall, late antique norms, and perhaps practices, of monastic punishment had a strong spatial aspect. Those who endangered their own path to salvation and the community's spiritual life were to be distanced to a remote place in the monastery, in a sort of 'internal' exile, or to a secondary monastic community. There was a very conscious development of this form of excommunication towards confinement. This was perhaps modelled on the domestic methods of punishment described earlier in this chapter, but had a more pronounced emphasis on ordering space and time of confinement to facilitate self-reflection. The penalty of monastic confinement, however, was not called imprisonment during late antiquity, and neither was the space of confinement called 'prison'. Perhaps monastic

[195] John Climacus, *Ladder of Divine Ascent*, step 4 (PG 88:685): ἐν τῷ ἀφοριστικῷ μοναστηρίῳ ὡς κατάκριτον ἐξώριζεν; for the term φυλακή see step 5 (PG 88:764–775) and below Chapter 8; on John himself see Chitty (1966) 173–174.

[196] Synods of Murbach (816) ch. 18 and Aachen (817) ch. 31 (ed. B. Albers, *Consuetudines Monasticae*, vol. 3 (Stuttgart 1907), 88 and 127). See Cassidy Welch (2001) 39–40.

[197] Diem (2002) 63–78.

[198] Pelagius, *ep.* 63 (Gassò and Batlle:164–166); Gregory, *ep.* 4.6; *ep.* 4.9; *epp.* 8.8 and 9 (CC 140/140A:223, 226, 525–526).

writers of this period did not make the connection with the public prison, or, as for free members of the lay household, it was deemed too controversial due to the prison's image of abuse. The fact that we see monastic writers both in the east and in the west, quite independently from each other, embracing the concept from the early seventh century on, shows, however, that suffering in the prison, and its coercive and punitive aspects, also struck a chord with the monastic imagination. As we shall see in Chapter 8, this built on roots reaching back into late antique concepts of asceticism. For now, however, let us return to the public sphere.