

**Julia Hillner, *Prison, Punishment and Penance in Late Antiquity*.** Cambridge: University Press, 2015. Pp. xx, 422. ISBN 9780521517515. \$115.00.

In this important study, Julia Hillner analyzes the reformatory and penitential aspects of late antique forms of punishment and spatial confinement, going against the long-held view of the later Roman empire as a time of “judicial savagery.”<sup>1</sup> In doing so, she teases out how such Christian conceptions of punishment built upon previous Greek and Roman views of reform. *Emendatio* is the Latin keyword at the heart of this investigation, one that evokes a debate going back to Mommsen, namely whether the Roman justice system aimed to reform or punish wrongdoers. Hillner’s contribution to this debate is a clear and resounding demonstration in favor of the former. But it is also much more than that. Building upon her previous, significant work on monastic confinement, she shows how Christian views of reform, through the notion of penance, were juxtaposed with Platonic views, and mediated through Roman thinkers and writers.<sup>2</sup> So whereas the book has monastic confinement at its center, as an innovation of late antique Christian justice, it also manages to successfully situate this type of punishment within a much wider context by analyzing the different and often competing conceptions of law and order that led to its emergence at the end of the period. In the end, Hillner makes an essential contribution to our understanding of the late antique government and its justice system, how the administration of this system operated, was influenced by the new prominence of the Christian church and its ideals, and how these ideals transformed the types of punishment meted out to offenders. Additionally, she successfully demonstrates the constant interaction and, in her own words, the “continuously improvised relationship between private, public and religious spaces in the administration of justice in late antiquity [...] which ultimately reveals much about the conservative, traditionally-minded and minimalist attitude of late Roman government” (351–2).

The book is divided into three parts, respectively devoted to the origins of the idea of reform in Greek, Roman, and Christian thinking (Part I: “Punishment, Reform and Penance”), the way prisons, punitive confinement, and exile contrasted with the ideas of reform and penance (Part II: “Prison and Punishment”), and monastic confinement in ecclesiastical and imperial justice (Part III: “Prison and Penance”). It is comprised of ten chapters, in addition to a general introduction, conclusions to each section, and three appendices that should prove extremely valuable to future researchers, which list “Places of forced residence, fourth to sixth centuries” (app. I), “Exiles in confinement” (app. II), and “Places of monastic confinement” (app. III). It is very well produced, generally free of errors, the research is thorough and well documented, it is a pleasure to read, and the bibliography includes even extremely recent items.

---

<sup>1</sup> R. MacMullen, “Judicial Savagery in the Roman Empire,” *Chiron* 16 (1986): 147–66.

<sup>2</sup> “Monastic Imprisonment in Justinian’s Novels,” *J ECS* 15 (2007): 205–37 and “Gregory the Great’s ‘Prisons’: Monastic Confinement in Early Byzantine Italy,” *J ECS* 19 (2011): 433–71.

One of the strengths of this book is its deep contextualization of the concepts Hillner analyzes. Thus the first chapter (“Philosophical and domestic foundations”), which presents the Greek origins of the late antique notions of reform, focuses on Plato’s penology. Hillner shows that, against the grain of the dominant contemporary notion that perceived offenses as contagious, and social hygiene (expulsion or quarantine) as the solution, Plato favored reforming the culprit through education. This could include pain, but only in order to improve the culprit. For Hillner, “education, healing and punishment were intertwined with each other” (32) in Plato’s thinking. The “paternalistic character of Plato’s law-giver and judge,” (38) along with his support for reforming wrongdoers, were adopted and mediated by Roman authors, who expressed them through the notion of *emendatio*. While the term originally meant admonition and persuasion in the early empire, by the late antique period the term came to mean punishment, and thus obscuring Plato’s influence.

The mediating influence of Roman writers and thinkers is further explored in Chapter Two (“Punishment and reform in early imperial legal thought”). Hillner notes that despite the frequency of medical metaphors evoking Platonic penology in authors of this period (Cicero and Seneca in particular), harsher sentences were frequent, which she explains through the use of discretionary penalties by emperors. The paternalistic Roman mindset, which determined punishments according to social status, thus limited the educational and reformative sentences to members of higher socio-economic standing. Additionally, evidence from the jurists further illustrate the Romans’ engagement with the philosophical principles behind the notion of reform as well as with the deterrence factor of legal rhetoric. Legal texts could then educate people about ways to improve themselves.

While Roman jurists maintained a marked interest in the good of society as a whole, Christian thinking followed Plato more closely in advocating the betterment of wrongdoers, which Hillner explores in Chapter Three (“Christian principles of punishment”). Based on evidence ranging from the third-century *Didascalia* to Justinian’s legislation, the chapter argues that Christian principles transformed restrictive Roman notions of reform by presenting the idea that all of humankind, because of its weak, sinful, and ignorant nature, should benefit from “educative punishment”(66).

While scholars have traditionally considered the late Roman justice system as harsh and brutal, recent studies have questioned this consensus. Building upon these recent studies, Chapter Four (“Punishment, reform and penance in late Roman law”) analyzes the application of Christian concepts of reform and penance through late Roman legal evidence. It shows that penalties, especially for small offenses, were regularly presented as educative devices aiming at the improvement of their subjects. The most important departure from Roman tradition, according to Hillner, was the late antique assimilation of Christian penance as legally acceptable. Medical metaphors, which represented sin as “disease” and sentences as “cures,” are the expressions of such changes that considered wrongdoers as redeemable. Blending the

Roman notion of the emperor as father of his subjects and Christian expectations of the good ruler, the Christian Roman emperor could accept repentance of crimes, conceived as sins, as legally acceptable.

Opening up part II (“Prison and Punishment”), Chapter Five (“The public prison in late antiquity”) shows, against Mommsen’s view that there was no legal sentence of prison in the Roman justice system, that the normative legal discourse was not often applied in practice. Indeed, while numerous late antique laws attempted to limit the number, uses, and harshness of prisons, Hillner demonstrates that magistrates and other local officials often used incarceration against lower-ranked offenders for deterrent and educational purposes. Senators were probably put on house arrest in order to maintain their honor, although military custody (*custodia militaris*) was increasingly employed, even against members of the elite (131). In this fascinating chapter, the author also emphasizes our lack of knowledge on the material aspects of late antique prisons, probably to be explained by their improvised and makeshift nature.

Building upon the remark that the nature of late antique incarceration often blurred the line between “public” and “private,” Chapter Six (“Private power and punitive confinement”) further scrutinizes the use of private forms of confinement. This concerns mainly *coloni* (tenant farmers) and monks who suffered imprisonment for reformatory purposes, more specifically penance in the case of monastic institutions. Reviewing the complex debate regarding the “estate prisons” mentioned in papyri about *coloni adscripticii*, Hillner suggests that “en tè phulakè” might refer to the “localisation of their tax liabilities” (182) rather than a physical prison, and concludes that this is an illustration of the convergence of private and public interests in confinement of workers to limit their mobility and increase productivity. Additionally, monasteries did not have specific designated incarceration spaces, but used their existing structures creatively to facilitate the virtual internal excommunication imposed on monastic wrongdoers.

Chapter Seven (“Exile and confinement”), the longest of the book, reviews the different forms of banishment in this period, insisting primarily on their custodial features, and argues that imprisonment was an increasingly common aspect of late antique exile. Hillner explains this transformation as “a result of a peculiar late antique mindset about the function of exile, which foregrounded social hygiene and religious coercion, but somewhat paradoxically neglected resulting security issues” (194). Indeed, because exile was frequently used against theologically wayward bishops, their displacement to other parts of the empire repeatedly backfired, allowing the displaced bishops to spread their ideas in their new location, and so requiring further security measures such as stricter confinement. The frequency of medical metaphors and the prevalence of the rhetoric of contagion, in such contexts, betray the late antique mindset that imagined these religious offenses as curable through measures of social hygiene. The author also makes an interesting argument regarding the rise of lay exile and forced clerical ordination, from the 5<sup>th</sup> century onward, that she links to legal changes on church asylum (236). Hillner detects a

pattern in which offenders (usually imperial officials) seek church asylum, the bishop appeals on their behalf, and the emperor orders their ordination, which projected an image of Christian imperial clemency (237–9).

Although a fascinating chapter, one can question the inclusion of forced labor in its discussion on exile, since victims of banishment were typically members of the elite who, as such, were theoretically immune to physical coercion, and a sentence of forced labor was equivalent to a death penalty. A discussion of the differences between lay and clerical exile would also have enriched the discussion. Similarly, it is unfortunate that Hillner left the Germanic kingdoms outside her purview, since much western contemporary evidence would have corroborated her point that “religious coercion, in the sense of fostering acceptance of doctrine, was hence another function of late antique exile, which had a particular impact on the choice of banishment places” (221).

Attempting to look at how confinement was lived in practice, Chapter Eight (“Exile, prison and the Christian imagination”) naturally becomes a study of how the Christian rhetoric of martyrdom consistently depicted prisons as a tool of persecution, which contributed to its reputation as a cruel punishment. Prisons also became obvious conduits of charity, as well as emblems of asceticism.

The final, third, part of the book (“Prison and penance”) builds upon the previous eight chapters to contextualize more fully the late antique novelty of monastic confinement. Hillner highlights that, despite Foucault’s neglect of the late antique institution in his *Surveiller et punir: Naissance de la prison*, “sixth-century monastic confinement demonstrates that not only an idea but also the practice of educative punishment – punishment that aimed not only at the body but also the ‘soul’, through segregation, surveillance and discipline of behaviour – existed in Western society over a thousand years prior to the introduction of the modern prison penalty” (348). Thus Chapter Nine (“Monastic confinement and ecclesiastical justice”) documents mainly Gregory the Great’s propensity to use monasteries in order to implement *emendatio*, but also its origins mainly in the eastern part of the empire. Hospices, institutions for the care of the poor, infirmaries, and even purpose-built prisons all appear in the sources as venues to achieve the wrongdoer’s healing. Although specific monastic confinement was reserved to “clerics,” as mentioned explicitly for the first time by the Council of Agde, in 506, formalizing a practice already in place in local monasteries such as Lérins, Hillner argues (290). Undoubtedly, however, her claim that this practice became an “ecclesiastical norm” (292) will be debated, as the works of Gregory of Tours attest that Frankish rulers continued to exile bishops as well as sending some to monasteries. Moreover, the fact that most of the evidence attesting western monastic confinement comes from 6<sup>th</sup> century Italy, and the letters of Gregory the Great especially, one wonders whether this represents a unique situation because of the special status of the bishop of Rome. Indeed, questions arise regarding the theoretical *praescriptio fori* (privilege of being judged by their peers) of bishops: did it end with the rise of the “papal” see? Was it increasingly ignored? Did the bishops of Rome

attempt to assert their power over their western peers through this punishment?

Turning to the imperial legal acceptance of the sentence as a “statutory penalty” (316) in the final Chapter Ten (“Monastic confinement and imperial justice”), Hillner underlines how “Justinian’s legislation established a legal penalty of educative confinement for the first time in Roman law, both in the spiritual sense, for individual moral improvement, and in the social sense, in the case of temporary stays in the monastery that included release back into society” (315). Confining bishops to monasteries allowed imperial control and religious coercion while projecting an appearance of moderation and compassion. Beneath the veneer of imperial Christian rhetoric, however, she reveals that some of these confined bishops were in fact seeking shelter from imperial prosecution in supportive monasteries. The Christian ideals of the ruler’s responsibilities, to protect clerics’ morality, his subjects’ virtue, and the realm from pollution, led to Justinian’s inclusion of monastic penance as a public punishment prescribed by law. Once again, however, the rhetoric of persecution deployed by Christian clerics describing the conditions in which they were confined clashes with the imperial legal rhetoric.

As the above summary should make abundantly clear, Hillner’s book presents various fascinating discussions on numerous topics of relevance to late antique justice generally. It is to be especially commended for its appropriate and enlightening combination of intellectual, legal, socio-economic, and cultural approaches to its topic. Its challenge of long-held assumptions regarding the cruelty of the late Roman justice system and its punishments are likewise of significant historiographical value. Although, perhaps, one might contend that the author went too far in the other direction in her presentation of the educational and reformative aspects of late antique justice. Is it possible that this is the view, that of a realm embodying Christian values, which our sources wished to present? Hillner herself concedes that “monastic confinement was not the most dominant penalty in this period, and may even have been marginal in practice” (348). Readers need therefore put her discussion of reformative punishments alongside the well-documented increasing severity of public and ecclesiastical penalties, as she noted herself regarding flogging (74–5). The geographical and chronological conception of the period presented here may also surprise some readers, with a focus on imperial lands, which tends to privilege the eastern situation, from the fifth-century onward, and to neglect sources from former Roman territories. It will be interesting to explore some of the points raised by Hillner in sources documenting post-Roman Germanic kingdoms more thoroughly. Nonetheless, this is an excellent study well worth the read for students of Late Antiquity, the late Roman government and its justice system, the influence of Christian values on Roman society, and for students of prison, penance, exile, and confinement in any period.