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Confined Exiles: An Aspect of the Late Antique Prison System*

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Abstract: A number of Roman imperial laws from the fifth and sixth centuries address the phenomenon that convicts to banishment were held in confinement. A law by Justinian, issued in 529, strictly prohibits the practice. This article investigates how widespread the practice of confining exiles was, why it was applied, and, finally, why it was deemed to be illegal, drawing on late antique laws on the use of prisons and exile, anecdotal evidence, particularly from church historians, on the exile of late antique clerics, as well as letters and treatises written by exiles in confinement themselves. The article argues that the practice can be linked to a peculiar late antique normative mindset about the ideal function of exile, which foregrounded social hygiene and morality, but, somewhat paradoxically, neglected resulting security issues. This led to frequent subsequent attempts by provincial authorities to restore order through confining seditious exiles. At the same time, ideas of honour in Roman culture and the fashioning of the Christian past defined imprisonment as abusive, which meant that the practice could not be endorsed by the imperial authority.

Early in his reign, the emperor Justinian (526–565) set out to overhaul the disordered ways in which prisons were used in his empire. In 529, he issued no less than three laws on the current prison system. The first one dealt with the

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question of how long those charged with a crime could be held in preventive custody before trial. Justinian established a maximum detention period for the accused. A free man should only be held for up to twelve months, if accused by a private citizen, or six months, if the investigation had been launched by the judge himself. Only where guilt was manifest or the crime serious, defendants could be held without time limits.¹ A second law concerned the use of private prisons (*ιδιωτικὰς φυλακάς*). Whether they were in town or country, Justinian strictly prohibited them. Anyone who had held someone in a private prison for a certain period of time was to be punished by imprisonment in a public prison for the same period of time.² The third law regulated the place of exile a provincial governor, or other magistrate with judicial competences, could choose for those sentenced to banishment. As a rule, exiles were not to be confined either in the prison at the place of their trial or anywhere in the province to which they had been banished.³

Historians have frequently examined Justinian's laws on preventive custody and on private prisons. On both issues, these were only the last in a series of imperial legislation. This evidence has been used to shed light on the arbitrary and coercive ways in which late antique provinces were governed and the wealthy and powerful conducted their private business. Public prisons, it seems, were full of people whose trials were never held or whose sentences never enforced, or of people who by law were not supposed to be there, such as tax debtors. Private prisons, in turn, served to put pressure on debtors, extort money, enforce sales, or gain a profit of some other kind.⁴ Much of our evidence on the

1 CJ 1.4.22 (529), CJ 9.4.6 (529), CJ 9.47.26.3 (529): all three were originally part of the same promulgation; see also CJ 9.47.6.1 (529) which refers to the legislation on prisoners on remand.

2 CJ 9.5.2 (529).

3 CJ 9.47.6 (529). I use the term 'confined' instead of 'imprisoned', because not all exiles in question were held in public prisons; a fact the law also acknowledged. Even though, as we shall see further below, 'confinement' in an alternative space could and would easily be conceptualised as 'imprisonment'.

4 On preventive custody: CTh 9.3.1.pr (320); CTh 9.3.6 = CJ 9.4.5 (380); CTh 9.1.18 (396); on private prisons: CTh 9.11.1 (388); CJ 9.5.1 (486). On both issues see J.-U. Krause, *Gefängnisse im Römischen Reich* (Stuttgart, 1996), 75–79 and 60. On long-term custody without trial see also A. Lovato, *Il carcere nel diritto penale romano dai Severi a Giustiniano* (Bari, 1994), 216–7; V. Neri, *I marginali nell'occidente tardoantico. Poveri, "infames", e criminali nella nascente società cristiana* (Bari, 1998), 25; on private imprisonment: O. F. Robinson, 'Private Prisons', *Revue internationale des droits de l'antiquité* 15 (1968), 389–398; J.-U. Krause, *Spätantike Patronatsformen im Westen des römischen Reiches* (München, 1987), 115–116; A. Marcone, 'La carcerazione nell'Egitto tardoantico', in C. Bertrand-Dagenbach (ed.), *Carcer: Prison et privation de liberté dans l'Antiquité classique* (Paris, 1999), 41–52; S. Torallas, 'Violence in the Process of Arrest and Imprisonment in Late Antique Egypt', in H. Drake (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot, 2006), 101–110.

practice of private imprisonment, particularly where linked to debt, originates from Egyptian papyri, but it was rife throughout the late Roman empire.⁵ It is recorded, for example, in the spectacular fraud case of Antony of Fussala, Augustine of Hippo's former protégé and a black sheep among late antique bishops if ever there was one. Antony made the estate steward of the church of Fussala detain a man in private prison (*custodia privata*) to force him to sell the bishop his land at a price below its real value.⁶

By contrast, much less attention has been paid to the detention of those convicted to banishment, despite a recent rise of interest in the history of exile as a legal penalty in late antiquity.⁷ This article will look at the phenomenon of confined exiles. After attempting a definition of what 'prison' and 'exile' meant in late Roman law I will present the legislation that dealt with the practice of confining those sentenced to banishment in more detail. I will then proceed to examine the evidence we have for incidents of this practice, which indeed seems to have been wide-spread, certainly much more so than in classical antiquity. It is particularly noticeable in, but not exclusive to, the case of banished clerics. I will argue that the practice can be linked to a peculiar late antique mindset about the function of exile, which foregrounded social hygiene and morality, but, somewhat paradoxically, neglected resulting security issues, leading to frequent subsequent attempts to restore order through confining seditious exiles.

Some of those who underwent periods of imprisonment while in exile left us detailed accounts, most notably, but not exclusively, Eusebius, bishop of Vercelli, who was banished to Scythopolis after the council of Milan in 355.⁸ Such accounts offer an invaluable insight not only into actual experiences and the varied places used for detaining exiles, but also, more importantly, into their literary representations and the ways in which experiences were developed rhetorically to reveal an abuse of the system that was also of concern to legislators. The perception of imprisonment as abuse, linked to both ideas of honour in Roman culture and to the role imprisonment played in the fashioning

5 See, e.g., P. Grenf. II 78 (307); P. Abinn, 51–52 (346); P. Cair.Masp. I 60075 (ca. 568); PSI VII 824 (6th c.).

6 Augustine, *ep.* 20* (CSEL 88:110).

7 For recent research on late antique exile see E. Fournier, 'Exiled Bishops in the Christian Empire: Victims of Imperial Violence?', in H. Drake (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot, 2006), 157–166; D. Washburn, *Banishment in the Later Roman Empire: The Rhetoric and Realities of a Disciplinary Institution* (diss. Stanford, 2007); P. Blaudeau (ed.), *Exil et rélegation : Les tribulations du sage et du saint durant l'antiquité romaine et chrétienne (I-VIe s. ap. J.-C.)* (Paris, 2008), and, therein, on the legal penalty of exile in particular R. Delmaire, 'Exil, rélegation, déportation dans la législation du bas-empire', at pp. 115–132.

8 Eusebius of Vercelli, *ep.* 2 (CSEL 9:104–109); on this case see now D. Washburn, 'Tormenting the Tormentors: A Reinterpretation of Eusebius of Vercelli's Letter from Scythopolis', *Church History* 78 (2009), 731–755.

of the Christian past, goes some way in explaining what lay behind Justinian's prohibition of the practice.

Legal Forms of Prison and Exile in Late Antiquity

Prison

Roman legal sources defined the function of imprisonment in an ambiguous way, but all made a careful distinction between lawful and abusive forms of imprisonment. It is clear that Roman law considered the primary function of public prisons to be the provision of preventive custody, before and during trial, and in expectation of the execution of a sentence.⁹ Given that governors were supposed to hold those sentenced to *deportatio*, or those they had banished to an island without having an island at their disposal, under guard while awaiting the emperor's decision about their place of banishment, exiles sometimes were quite legally taken to prison, and stayed there during the slow process of communication between governor and emperors.¹⁰

Not every criminal defendant and convict was to end up in prison, however. There also existed the possibility to release defendants on bail or to place them under house arrest or under military guard. The early third-century jurist Ulpian suggested putting exiles awaiting decision about their place of banishment from the emperor under such military supervision, rather than in prison. This could mean, and at least in late antiquity probably frequently did, placing someone under guard of a magistrate's administrative staff.¹¹ Furthermore, late Roman laws prohibited the use of public prisons to hold those who had appealed to the emperor, who were to be placed under *custodia militaris* if the case was criminal, and not to be held at all in the case of a civil dispute. *Custodia militaris* was also prescribed for those criminal defendants who had to travel to court and were

9 Th. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 299, 952, 963.

10 See D 48.22.6 (Ulpian) on deportees in prison.

11 D 48.3.1 (Ulpian): *De custodia reorum proconsul aestimare solet, utrum in carcerem recipienda sit persona an militi tradenda vel fideiussoribus committenda vel etiam sibi*; D. 2.11.4.1 (Ulpian); D 48.22.7.1 and 6 (Ulpian) on those banished to islands outside the province under military guard. On alternatives to the public prison see also Th. Mommsen, *Römisches Strafrecht* (1899) (cf. fn. 9), 317; P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford, 1970) 147; Y. Rivière, 'Carcer et vincula: la détention publique à Rome (sous la République et le Haut-Empire)', *Mélanges d'École française de Rome/Antiquité* 106 (1994), 643–4; Krause, *Gefängnisse* (1996) (cf. fn. 4), 180–188. See Neri, *I marginali* (1998) (cf. fn. 4), 428 on *custodia militaris* in particular.

hence granted a period of grace to order their domestic affairs.¹² Avoiding the public prison usually aimed at safeguarding the honour of members of the upper classes which the prison experience could jeopardise.¹³

The fact that laws to the effect had to be issued and at times re-issued demonstrates, however, that Roman judges often used imprisonment to maintain law and order, and overall preferred it to other means of control, particularly in the late Roman period.¹⁴ There is also evidence that some magistrates, who doubled as landowners, used public imprisonment to extort forced sales of land from impoverished farmers, not to speak of the many cases where private debtors were placed in public prisons, to coerce their families to come up with the money.¹⁵ At least some inhabitants of the empire were aware of their rights, however. In an Egyptian papyrus of the second half of the fifth century one Aurelius Sarapion, who had given a warranty for debt, complained that he had been put in a public prison and tortured when the creditor was unable to pay. In his petition to the *defensor civitatis* of Hermopolis, he pointed out that such treatment of Roman citizens was illegal.¹⁶

The length of preventive custody was another thorny issue in late antiquity. Imperial laws since Constantine, including that of Justinian in 529, urged for swift trial and punishment, condemning judges who let innocent people linger in prison.¹⁷ Comments in the contemporary literature confirm the impression transpiring from this legislation that the custodial prison system was often corrupt. Many late antique authors described or condemned the negligence of governors to observe correct criminal procedure, leading to long-term detain-

12 Appellants in civil cases: CTh 11.30.15 (329), see also CTh 11.30.2 (314); period of grace for criminal defendants: CTh 9.2.3 (380); CTh 9.2.6 (409) = CJ 1.55.7, which cites the law of 380.

13 See the explicit comment in D 26.10.3.16 (Ulpian): *ceterum eos, qui sunt in aliqua dignitate positi, non opinor vinculis publicis contineri oportere* ('I do not think that those who have been placed in some position of rank ought to be confined in the state prison').

14 See Y. Rivière, 'L'État romain, les chrétiens, la prison', in C. Bertrand-Dagenbach (ed.), *Carcer. Prison et privation de liberté dans l'Empire romain et l'Occident médiéval* (Paris, 2005), 210–12.

15 NVa 32.1 (451). On public and private debtors in public prisons see Neri, *I marginali* (1998) (cf. fn. 4), 435–438.

16 Chr.Mitt.71 (= FIRA III 180). The *defensor* was a lesser judge, who increasing numbers of late Roman cities appointed for the protection against abuse and corruption at the hands of landlords, see J. Harries, *Law and Empire in Late Antiquity* (Cambridge, 1999), 54. Aurelius may have referred to the *Lex Iulia de vi*; on this see Krause, *Gefängnisse* (1996) (cf. fn. 4), 8–9.

17 CTh 9.3.1.pr (320); CTh 9.3.6 = CJ 9.4.5 (380); CTh 9.1.18 (396).

ment of people or even their deaths in prison, because trials were never held and sentences not implemented.¹⁸

If the issue of preventive and coercive custody was already contentious and, particularly in relation to the socio-legal status of those affected, often described as being close to abuse, this may have even been more the case where punitive imprisonment was concerned, although here the evidence is somewhat inconclusive. Scholars of Roman legal and social history have hotly debated the penal character of the Roman prison. Many historians argue, that, at least in terms of legal norms, a prison penalty did not exist officially. Where incarceration was pronounced by a judge as a judicial penalty this was in defiance of the legal norm, an abuse that was, when revealed, also officially and sharply rebuked. This view, going back to Theodor Mommsen, rests on a famous passage in the Digest, Justinian's collection of Roman jurists' commentaries, drawn from the work of the early-third-century jurist Ulpian.¹⁹ His words in the version edited by Mommsen himself can be translated as such:

Governors are in the habit of condemning men to be kept in prison or to be kept in chains, but they ought not do this. Penalties of this type are forbidden. Prison indeed ought to be employed for confining men, not for punishing them (*Solent praesides in carcere continendos damnare aut ut in vinculis contineantur: sed id eos facere non oportet. Nam huiusmodi poenae interdictae sunt: carcer enim ad continendos homines, non ad puniendos haberi debet.*)²⁰

Mommsen's view has, however, not gone unchallenged.²¹ Attention has been drawn in particular to the fact that Ulpian's passage is the only evidence we

18 The most vocal example is Libanius, see his *Or.* 33.30–31 and 41–42 (Loeb 220–22; 230–32); and *Or.* 45.6–11, 32 (Loeb 164–170, 190); for comment see M. Matter, 'Libanios et les prisons d'Antioch', in C. Bertrand-Dagenbach (ed.), *Carcer. Prison et privation de liberté dans l'Empire romain et l'Occident medieval* (Paris, 2005), 53–69. For further evidence see e.g. Pelagius, *De divit.* 6 (PLS I:1386); John Chrysostom, *Homily on Corinthians I* 9.1 (PG 61:77).

19 Mommsen, *Römisches Strafrecht* (1899) (cf. fn. 9), 299, 952, 963. Supporters include: U. Brasiello, *La repressione penale nel diritto romano* (Naples, 1937); R. Grand, 'La prison et la notion d'emprisonnement dans l'ancien droit', *Revue historique de droit français et étranger*, 4 ser., 19–20 (1940–41), 58–87; T. Mayer-Maly, 'Servum sub poena vinculorum domino reddere', *Studia et Documenta Historiae et Iuris* 23 (1957), 323–334; Garnsey, *Social Status* (1970) (cf. fn. 11), 150; Y. Rivière, 'Carcer et vincula' (1994) (cf. fn. 11), 579–652; Krause, *Gefängnisse* (1996) (cf. fn. 4).

20 D 48.19.8.9 (Ulpian).

21 Supporters of the legal character of the prison penalty during the empire include: 'Carcer' [Hitzig], RE 3.2:1578; S. Solazzi, 'La condanna ai "vincula perpetua" in CI.9.47.6', *SDHI* 22 (1956), 345–348; W. Eisenhut, 'Die römische Gefängnisstrafe', *ANRW* I.2 (1972), 268–82; M. Balzarini, 'Peine détentive e *cognitio extra ordinem* criminale', in: *Sodalitas. Scritti in onore di Antonio Guarino* vol. 6 (Milan, 1984), 2865–2890; Lovato, *Il carcere* (1994) (cf. fn. 4); Neri, *I marginali* (1998) (cf. fn. 4), 422–424; P.

have that prohibits the prison penalty outright, against a number of legal sources that point at a legal form of the prison penalty.²² In consequence, the complex transmission history of the passage has been reviewed. In particular in light of its uneven grammar, it has been argued that the *aut* after *damnare* may have been a later interpolation or a copist error. If this was the case, the original prohibition may have been not to condemn someone to imprisonment, but to order someone already condemned to imprisonment to be held additionally in chains.²³

However we interpret the legal character of the prison penalty, from the anecdotal evidence it is clear that the prison penalty was often employed as a non-capital penalty for minor crimes in late antiquity and before, particularly for those committed by lower-class people.²⁴ For example, according to the fourth-century astrological writer Firmicus Maternus 'long-lasting' imprisonment (*diuturna carceris custodia*) was a similar penalty for lower-class people as exile was for those of higher social status.²⁵ A legal source from Ostrogothic Italy indicates that, in addition, at some point during late antiquity the prison penalty acquired a decidedly Christian connotation. Cassiodorus, the Ostrogothic king Theoderic's Roman chancellor, wrote in his model letter for the appointment of a Gothic count:

You have the right of the sword, but nonetheless your sword should be of a bloodless kind. Those driven by the ill-will for minor crimes should be confined by the bonds of chains (*claudantur nexibus catenarum*). Whoever gives a judgement about health, should linger: while other sentences can be corrected, to put an end to a life cannot be changed.²⁶

Pavón Torrejón, *La cárcel y el encarcelamiento en el mundo romano* (Madrid, 2003), 193–198.

- 22 The interpretation of these passages is, however, hindered by the fact that most speak about *vincula* rather than *carcer*, which could point at a sentence to forced labour, rather than pure imprisonment: D 48.19.35 (Callistratus); CJ 9.47.6 (214); D 48.19.8.13 (Ulpian); D 26.10.3.16 (Ulpian); D 48.19.33 (Papinianus); on the terminology of *vincula* and *carcer* see also S. Arbandt, W. Macheiner, 'Gefangenschaft', *Realenzyklopädie für Antike und Christentum* 9 (1976), 319.
- 23 M. A. Messina, 'Riflessioni storico-comparative in tema di carcerazione preventiva. A proposito di D 48, 19, 8, 9, Ulp. 9 De off. Proc.', *Annali dell'Università di Palermo* 41 (1991), 65–208; Lovato, *Il carcere* (1994) (cf. fn. 4), 129–132; Neri, *I marginali* (1998) (cf. fn. 4), 421–22.
- 24 Balzarini, 'Peine détentive' (1984) (cf. fn. 21), 2889; Neri, *I marginali* (1998) (cf. fn. 4), 424; Lovato, *Il carcere* (1994) (cf. fn. 4), 114–117.
- 25 Firmicus Maternus, *Mathesis*, 5.5.2, 4.8.3 (ed. P. Monat (Paris, 1992), 277, 140). For similar descriptions of prison as a penalty see Lactantius, *Mort. pers.*, 22.2 (SC 39:103); Libanius, *Or.* 22.24 (Loeb 392); *Or.* 21.8 (Loeb 354); *Or.* 18.196 (Loeb 418–10).
- 26 Cass. *Var.* 7.1.3 (MGH AA 12:185): *Habes etiam et ferrum nihilominus incruentum. Claudantur nexibus catenarum, quos levium criminum pulsat invidia. Cunctator esse debet, qui iudicat de salute: alia sententia potest corrigi, de vita transactum non patitur immutari.*

The letter was heavily clothed in the Christian language of correction and healing that also increasingly featured in late Roman laws and from which Cassiodorus certainly took inspiration.²⁷ The prison penalty was, so Cassiodorus argued, a way to avoid the death penalty, which he deemed appropriate for a Christian judge. As the death penalty was accepted for severe crimes, this appears disingenuous, but it is similar to what Ambrose of Milan had already suggested to the Christian judge Studius in the fourth century, who had been concerned about how to match his earthly duties and his account to God. Ambrose explained that he had to do his job, but where possible, should use imprisonment as a punishment for less severe offences, to avoid shedding blood.²⁸ In line with this, Basil of Caesarea approached his friend Candidianus, the governor of Cappadocia, in 358 with the request to detain the man who had burgled his house at Annesi and physically abused his female servants in prison for a short time, as a sufficient punishment.²⁹ Crucially, Libanius, the pagan orator from Antioch and Basil's contemporary, suggested that the reason why many people lingered in prison was that governors avoided meting out 'real' justice due to their Christian-inspired reluctance to apply corporal punishment and the death penalty. In Libanius' eyes this was utterly wrong: whoever was squeamish to this extent was not fit to be a governor.³⁰ We do not know what Candidianus decided to do, but he may well have heeded Basil's, rather than Libanius', advice.

Late Roman judges hence may have faced a serious dilemma regarding prison. Imprisonment was considered a measure that unduly affected the body and was therefore unacceptable for people of *dignitas*, whether in coercive, custodial or in penal form. Even if there was a legal prison sentence supported by Roman law, the evidence suggests that by tradition and probably due to its historical association with coercive measures directed against non-citizens it was largely reserved for lower-class people. The spread of Christianity, in turn, transformed prison into an attractive option for those interested in avoiding lethal measures to deal with crime. As we shall see below, however, some

27 For 'correction' (*correctio, emendatio, σωφρονισμός*) mentioned in late Roman laws: CJ 9.51.13.4 (321); CTh 6.4.22.5 (373); CTh 9.38.6 (381) = CJ 1.4.3 (385); CTh 12. 1.153 (397); CTh 16.2.27.1 (390); CTh 16.4.3 (392); CTh 16.5.35 (399); CTh 12.1.161 (399) = CJ 10.32.51; NTh.11pr. (439); CJ 1.3.38.5 (unknown year); CJ 1.1.5.4 (527); CJ. 1.5.20.7 and 8 (530); CJ 1.3.45.7a (530); CJ 1.3.52.11 (531); NJust 12.1 (535); NJust 28.5.1 (535); NJust 17.5 (535); NJust 25.2.3 (536); NJust., Edict 8.2 (548); NJust 129.1 (551); NJust 143 = 150 (563); NJust 30.11 pr. (536).

28 Ambrose, *ep.* 50 (CSEL 82:56–59).

29 Basil, *ep.* 3.2 (PG 32:236).

30 Lib. *Or.* 45.27–28 (Loeb 184–186). See on Christians and the prison penalty also Krause, *Gefängnisse* (1996) (cf. fn. 4), 331; Neri, *I marginali* (1998) (cf. fn. 4), 127.

Christians had their own issues with prison, which perpetuated the institution's career as a symbol of cruelty.

Exile

Unlike confinement in a prison, exile appears as a well established penalty in Roman law.³¹ Justinian's Digest dedicated an entire rubric to its discussion, an indication of how much the penalty mattered throughout the imperial period and into the sixth century.³² Roman law distinguished between two forms of exile, *relegatio* and *deportatio*.³³ The difference between them concerned predominantly the question of what was to happen with an exile's property and civic rights. Under the penalty of *relegatio* some property could be confiscated if stipulated in the sentence, but the relegated maintained ownership of the remaining property and also citizenship.³⁴ *Relegatio* could be temporary or life-long.³⁵ *Deportatio* was always life-long, and led to loss of property and civic rights, such as the legal right to enter into marriage.³⁶ The difference, in short, was between a non-capital and a capital penalty. As a consequence, provincial governors, or other appointed judges, could pronounce a sentence of *relegatio*, but had to obtain confirmation from the emperor for the execution of a sentence to *deportatio*.³⁷

Many of the serious crimes that carried a sentence of *deportatio* by statute in the later Roman empire implied that those who committed them were of propertied status or in imperial service, and can therefore be described as elite

31 The history of exile as a legal penalty dates back to the end of the republic, see G. P. Kelly, *A History of Exile in the Roman Republic* (Cambridge, 2006), in particular 39–45. See also E. L. Grasmück, *Exilium: Untersuchungen zur Verbannung in der Antike* (Paderborn, 1978), 104–108, who dates the innovation to the time of Sulla. Before this time exile had been a voluntary action to escape punishment.

32 D 48.22.

33 For the terminology and forms of Roman exile see Mommsen, *Römisches Strafrecht* (1899) (cf. fn. 9), 967; Garnsey, *Social Status* (1970) (cf. fn. 11), 111–122; E. Rocovich, *Exile in Roman Life and Thought from Augustus to Constantine* (diss. Chapel Hill, 2004), 43–6; F. Stini, “*Plenum exiliis mare*”. *Untersuchungen zum Exil in der römischen Kaiserzeit* (Stuttgart, 2011), 47–8; Delmaire, ‘Exil’ (2008) (cf. fn. 7), 115–132. For the distinction still being made under Justinian see his Inst. 1.1.12.1–2.

34 D 48.22.1 (Ulpian); D 48.22.4 (Marcian); D 48.22.18pr. (Pomponius).

35 D 48.22.7.2–3 (Ulpian); D 1.6.2 (Ulpian).

36 D 48.22.15 (Marcianus): Deportees could still conduct business while alive, in order to earn their livelihood; D 48.22.18 (Pomponius). For this purpose it was stipulated that they could retain a fraction of their property, the amount of which varied, see D 48.20.6, CTh 9.42.8 (380), CJ 9.49.10 (426).

37 D 48.1.2 (Paul); D 48.22.6 (Ulpian); D 48.22.18.1 (Pomponius).

offences.³⁸ This demonstrates that this penalty was preferentially imposed upon upper-class criminals, because it did not affect the body in the way death, forced labour or indeed imprisonment did, a fact that we already observe in early imperial sentencing practice.³⁹ In fact, a number of laws specified varying penalties based on the socio-legal status of the offender, typically exile versus forced labour, corporal punishment or death, for crimes that could in actuality be committed by both elite and lower class criminals. Among these was desecration of tombs, counterfeiting money, or unlawful marriage.⁴⁰ For some crimes, which were *a priori* associated with lower classes, forced labour was the first penalty of choice, as for those slaves who tried to escape from Roman territory.⁴¹

A significant development regarding exile in late antiquity was its evolution into the penalty *par excellence* for Christians who deviated from the definition of faith that was officially acknowledged as rightful. It was Constantine who set a precedent in this regard. In both the Donatist and the Arian controversy the emperor endorsed the decision of a church council as the orthodox position (Arles in 314 and Nicaea in 325, respectively) and imposed a public penalty, exile, on those who did not subscribe to it. From then on, emperors regularly followed up church councils' depositions of bishops, or other high-ranking clerics deemed heretical, with a civil penalty of exile.⁴²

While in the early fourth century such incidents of exile had been sporadic and originated from the coercive power of emperors to maintain law and order, from 380 on, the year in which Theodosius I legally proclaimed adherence to the

38 See e.g. crimes that affected sexual *mores*: CTh 10.11.1 (317) = CJ 10.13.1; CTh 3.16.1–2 (331); CTh 9.24.1 (320); CTh 3.5.5 (332); CTh 3.10.1 (409); CTh 9.8.1 (326); CTh 4.22.2 (326); CJ 6.23.29 (531); NJust 12.1 (535); NJust 142.1 (558); and those related to corruption by imperial officials: CTh 8.5.4 (326?); CTh 9.26.1 (397); CTh 14.15.6 (399); CTh 6.30.16–17 (399); CJ 8.12.1 (485–6); NJust 8.8.1 (535).

39 See M. Vallejo Girvés, 'In insulam deportatio en el siglo IV d. C. Aproximación a su comprensión a través de causas, personas y lugares', *Polis: Revista de ideas y formas políticas de la Antigüedad Clásica* 3 (1991), 155. For early imperial court practice regarding exile see Rocovich, *Exile* (2004) (cf. fn. 33), 49.

40 CTh 12.1.6 (319) = CJ 5.5.3; CTh 9.21.2.4 (321); CTh 1.5.3 (331); CTh 9.21.1 (323/5); CTh 9.17.1 (340); CTh 16.5.64 (428); NJust 12.1 (535).

41 CJ 6.1.3 (317–323).

42 On Constantine in particular see K. Girardet, *Kaisergericht und Bischofsgericht. Studien zu den Anfängen des Donatistenstreits (313–315) und zum Prozeß des Athanasius von Alexandrien (328–346)* (Bonn, 1975); on the general development see Vallejo Girvés, 'In insulam deportatio' (1991) (cf. fn. 39), 157–58; V. Escribano, 'Disidencia doctrinal y marginación geográfica en el s. IV d. C. Los exilios de Eunomio de Cízico', *Athenaeum* 94 (2006), 232–34; M. V. Escribano Paño, 'El exilio del herético en el s. IV d. C. Fundamentos jurídicos e ideológicos', in F. Marco Simón (ed.), *Vivir en tierra extraña: emigración e integración cultural en el mundo antiguo* (Barcelona, 2004), 255–257; E. Fournier, 'Exiled Bishops' (2006) (cf. fn. 7), 157–166.

Nicene creed and communion with those bishops who confessed it as the general benchmark of orthodoxy, a series of laws were promulgated which ordered exile for all non-conforming Christians.⁴³ Theodosius' measure was entirely novel in Roman law, which hitherto had not considered religious dissidence a public crime, unless it led to public disturbance or offences which could be prosecuted under existing criminal law, such as magic. To be sure, even the late antique heresy laws rarely had a general vision of heresy, but usually ousted single named 'brands', such as Manicheans, Donatists, Arians, or Eunomians, and considered as evidence for the adherence to heresy certain forms of conduct, such as congregation, possession of controversial books, or performance of divine service. Yet, under these statutes anyone could now come forward to charge a person with such crimes and both emperors and their officials in the provinces with judicial competences could and would hold trials of those considered heretics *ex officio*.⁴⁴ Those holding trials and pronouncing banishment routinely included the Praetorian Prefects, their vicarii, and, above all, the provincial governors, who were endowed with regular judicial competences.⁴⁵ At times we come across a sentence of an 'heretic's' banishment issued by more unusual officials, often of a military background, who the emperor had entrusted with a specific task to restore law and order. For example, the banishment of the Chalcedonian bishop Elias of Jerusalem in 516 came at the hands of the *dux Palaestinae*, Olympus, who Anastasius had sent to force Elias to enter into communion with the Miaphysite leader Severus of Antioch.⁴⁶

Legal Places of Banishment

In its most basic form, *relegatio* could mean mere expulsion from a particular place within in a city, from a city itself or from a province. During the early empire, this penalty was frequently demanded for or applied to lower class offenders at times when they were seen as endangering the peace of the community, such as disruptive youths, astrologers, magicians, philosophers, actors and foreigners. In the case of the latter such expulsions will also have happened as a coercive measure, without a formal court hearing.⁴⁷ Yet, those

43 Theodosius' laws: CTh 16.1.2 (380); CTh 16.1.3 (381); CTh 16.5.6 (381).

44 On congregation: CTh 16.5.3 (372), 16.5.15 (388), 16.5.53 (412), 16.5.54 (414); on books: CTh 16.5.34.1 (398), 16.5.66 (435); on services: CTh 16.5.3 (372). See generally on this development L. Barnard, 'The Criminalisation of Heresy in the Later Roman Empire: A Sociopolitical Device?', *Legal History* 16 (1995), 125–128.

45 Washburn, 'Banishment' (2007) (cf. fn. 7), 62–75.

46 PLRE III.2 Olympus, 804.

47 Stini, "Plenum exiliis mare" (2011) (cf. fn. 33), 87–111; O. Robinson, *Penal Practice and Penal Policy in Ancient Rome* (London, 2007), 81–2; see also Rocovich, *Exile* (2004) (cf.

relegated could also be banished to a specific place, or banishment to a specific place could be imposed at a later date to increase the severity of the penalty.⁴⁸ Deportation, by contrast, was always connected to forced residence.⁴⁹

The second and third-century jurists frequently described such specific places as an island (*in insulam*).⁵⁰ Late Roman laws, particularly from the time of Constantine and his sons and from the time of Justinian, continued to use the phrase *in insulam* when discussing exile to a specific place.⁵¹ There is reason to believe, however, that in late antiquity the phrase *in insulam* was a sort of legal short-hand for a place where the banished was isolated, and deprived of customary amenities and support. To begin with, provincial governors were only allowed to banish to places within their provinces, which may by nature have been short of islands.⁵² While a governor could apply for an island in a different province to the emperor, the jurists also discussed a range of other options available to him.⁵³ For Egypt, a sentence of *relegatio in insulam* could be converted into *relegatio* to an oasis. Governors of other provinces could also force relegated people to reside in a certain part (*in parte certa*) of their province, such as a city (*civitas*) or district (*regio*). It was accepted practice, Ulpian acknowledged, that governors chose the more deserted parts of their provinces as places of *relegatio*. Governors could also sentence someone to be interned in their house, or to be confined to the walls of their city, in a sort of house-arrest.⁵⁴

Where *deportatio* was concerned, the shortage of islands was less of an issue, as the place of banishment was chosen by the emperor who naturally had the

fn. 33), 97–110 with detailed discussion of the sources; Garnsey, *Social Status* (1970) (cf. fn. 11), 119; R. MacMullen, *Enemies of the Roman Order. Treason, Unrest and Alienation in the Roman Empire* (Cambridge Mass., 1966), 133.

48 D 48.19.4 (Marcian).

49 Herennius Modestinus, *Regularum et Differentiarum fragmenta* 2 (E. Seckel, B. Kübler (eds.), *Iurisprudentiae anteiustinanae reliquia*, vol. 2.1 (Leipzig, 1911), 169–70); D 48.22.6 (Ulpian).

50 See, for example, D 48.22.5 (Marcian); Pauli Sententiae 5.21.1 (FIRA II:406).

51 *Deportatio in insulam*: CJ 9.12.17 (319); CTh 3.16.1 (331); CTh 9.16.1 (320); CTh 9.21.2.4 (321); CTh 10.11.1 (317) = CJ 10.13.1; CTh 12.1.6 (319)=CJ 5.5.3; CTh 16.5.53 (398); CTh 16.5.54 (414). *Relegatio in insulam*: CTh 1.5.3 (331); CTh 3.5.5 (332); CTh 8.5.4 (326?). Also see Justinian, *Institutes* 1.1.12.1–2.

52 For the restrictions on the provincial governor to banish to places within his province see D 48.22.7 (Ulpian) and CTh 9.40.12 (378); see Delmaire, ‘Exile’ (2008) (cf. fn. 7), 119.

53 For island applications see D 48.22.7.1 and 6 (Ulpian).

54 D 48.22.9 (Ulpian); D 48.22.7.5, 8, 9, 19 (Ulpian). *Relegatio in oasin* continued to be described for late antique Egypt, see CTh 9.32.1 (409) = CJ 9.38.1. See on exile to the oasis J. Schwartz, ‘In Oasin relegare’, in R. Chevallier (ed.), *Mélanges d’archéologie et d’histoire offerts à André Piganiol* (Paris, 1966), 1481–1488; M. Vallejo Girvés, ‘¿Locus Horribilis? El destierro en el gran Oasis egipcio durante la Antigüedad Tardía’, *L’Africa romana*, vol. 15 (Rome, 2002), 691–698.

liberty to select any island he wished.⁵⁵ Still, a number of late Roman laws also discussed other places of *deportatio*. For example, at the time of Constantine, *curiales* who were to be deported for counterfeiting money were to be sent to ‘distant municipalities’.⁵⁶ An amnesty law by Honorius from 405 explained that all those sentenced to *deportatio* or *relegatio* were to be released from the islands (*insulae*) and less specific ‘desolate places’ (*loca desolata*) they had been assigned to, except those who had refused to go to their place of punishment (*ad locum poenae*). According to this law there was hence a range of exile places beyond islands, also for those deported.⁵⁷

The geographical dimension of heretics’ banishment came in two forms. For lay followers of heretical sects late Roman emperors generally prescribed *relegatio* in the form of expulsion from a place. From the late fourth century on laws abounded with orders to drive various ‘brands’ of heretics from cities (*civitatibus*), city walls (*a moenibus urbium*) and villages (*vicis*), and specifically from Rome and Constantinople and their territories (*finibus*). Even though laws increasingly also demanded expulsion from the ‘soil of the Roman empire’ (*extra...romani imperii solum repelli*), the radius of banishment was usually 100 miles around the city walls.⁵⁸ Within the groups of heretics there was, however, a particular focus on their priests, who were to be treated differently. As a law from 384 put it, priests were particularly to ‘be separated from the congregations of the good’ (*a bonorum congressibus separentur*).⁵⁹ A law from 388 differentiated between heretical congregations, simply to be expelled from cities, and their bishops:

[Apollinarians] have no authority in creating bishops; those with the name of bishop however will lose the designation of such dignity. They shall go to places

55 D 48.22.6 (Ulpian).

56 CTh 9.32.1 (409).

57 CTh 9.38.10 (405): *Omnes omnium criminum reos vel deportatione depulsos vel relegatione aut metallis deputatos, quos insulae variis servitutibus aut loca desolata susceperunt, hac nostra indulgentia liberamus, separatis illis, qui ad locum poenae destinatum contra iudicum sententias ire noluerunt.*

58 CTh 16.5.6.3 (381); CTh 16.5.31 (396); CTh 16.5.32 (396); CTh 16.5.43 (398); CTh 16.5.14 (388); CTh 16.5.20 (391); CTh 16.5.18.1 (389); Sirm. 6 (425); CTh 16.5.62 (435); CJ 1.5.8.6–7 (455); CJ 1.1.3 (448); NJust 131.8 (545); NJust 146.2 (553). See D. Caner, *Wandering, Begging Monks. Spiritual Authority and the Promotion of Monasticism in Late Antiquity* (Berkeley and Los Angeles, 2002), 199–200; Barnard, ‘The Criminalisation’ (1995) (cf. fn. 44), 128; Delmaire, ‘Exile’ (2008) (cf. fn. 7), 116–117.

59 CTh 16.5.13 (384); priests are also singled out in CTh 16.5.30 (396/402); CTh 16.5.31 (396); CTh 16.5.32 (396); CTh 16.5.34 (398); CJ 1.7.6 (455).

(*adeant loca*) which will best separate them, as if by a fortification (*vallum*), from the community of men.⁶⁰

Increasingly heretical bishops were therefore ordered to be deported, which included forced residence in a particular place.⁶¹ Donatist priests, for example, were to be sent to the rather vague destination of ‘separate regions’ (*ad singulas quasque regiones*), which in 414, when ongoing conflicts in North Africa prompted renewed legislation, became a somewhat more specific order to send them to ‘separate islands and provinces’ (*ad singulas quasque insulas adque provincias*).⁶² Some heretical leaders were also to be repatriated (*ad proprias terras redire iubeantur*). The law in question, from 383, also urged officials to ensure that such heretics who had been sent home were not to wander between cities, so the idea was probably to place them under house arrest.⁶³

The reference to the exile of heretical priests to ‘regions’, ‘provinces’ or places ‘separated by fortifications’ confirms the conclusion that the expression *deportatio in insulam* was mostly nostalgic juridical jargon in late antiquity. It was a phrase inherited from a long tradition of associating exile with islands that reached back to the time of Augustus.⁶⁴ While this shift away from islands, also for the deported, may seem surprising, we will see below that it actually fitted well with late antique concerns about social hygiene, particularly, but not exclusively, in the case of heretics.

Late Roman Legislation on Confined Exiles

Justinian’s law of 529 was not the first imperial piece of legislation on the phenomenon of exiles in confinement. Already Theodosius II had ordered to release exiles from prisons or other enclosed places at their place of banishment if they had spent the period of time assigned to their punishment in confinement. In another instance Theodosius explained that exiles who were kept in prisons could also be beneficiaries of amnesties which released them from the public *carcer*, even though they were, technically, not the type of prisoners that amnesty laws usually envisaged (defendants in non-capital

60 CTh 16.5.14 (388): *Nulla his episcoporum faciendorum praebeatur auctoritas; ipsi quoque episcopi nomine destituti appellationem dignitatis huius amittant. Adeant loca, quae eos potissimum quasi vallo quodam ab humana communione secludant.*

61 Deportation of heretical clerics: CTh 16.5.36 (399) (Eunomians); CTh 16.5.53 (398) (Jovinianists); CTh 16.5.52.5 (412) (Donatists); CTh 16.5.54 (414) (Donatists).

62 CTh 16.5.53 (398); CTh 16.5.52 (412); CTh 16.5.54.3 (414).

63 CTh 16.5.12 (383).

64 For the emergence of islands as places of banishment as dating particularly to the time of Augustus see S. T. Cohen, ‘Augustus, Julia, and the Development of Exile *Ad Insulam*’, *Classical Quarterly* 58 (2008), 206–217.

criminal trials).⁶⁵ Theodosius directed his constitutions to the Praetorian Prefect of the East, which shows that the practice must have been widespread.

The phenomenon was hence not new in the sixth century. Still, unlike Justinian, as far as we can tell from the abridged versions of his laws contained in the Theodosian Code, Theodosius had not prohibited it outright. His laws responded to specific issues that had arisen from the practice, seeking to rectify these, probably because the emperor had received a complaint or a query about these issues. These queries had concerned the applicability of amnesty, and the ability to hold exiles in confinement in excess of the period of their punishment, and not the legitimacy of confining exiles more generally. This is not to say that imprisoning exiles or placing them under guard at their place of banishment was not a contentious issue in the early fifth century. Still, Theodosius' laws are an example of the reactive and piece-meal nature that usually characterises Roman law.⁶⁶

By contrast, Justinian's law, addressed like those of Theodosius to the Praetorian Prefect, set out to abolish the practice throughout. The emperor prescribed that exiles should be able to move freely within the province they had been banished to, although they were not to leave it and not to stir up sedition. The law suggests that local authorities either sent exiles to a form of confinement straight away, or, and more frequently, imposed a form of confinement as a harsher penalty when exiles revealed themselves as troublesome. Justinian prohibited this and ordered that such troublemakers were to be put to death, either by the governor of the province to which they had been exiled, or of the province they had escaped to. Judges were also not to send people to 'prisons' (φυλακαί) in other provinces. 'Prisons' does not necessarily have to mean here that exiled people were held in public city prisons. The law distinguished between the δεσμοτήριον, the city prison where people had been held during their trial, and the φυλακή where they were held in the province, a term that could denote a whole range of spatial confinements.⁶⁷ For example, Gypsus, a 'fortress' (φορούριον) in Egypt was considered to be such a φυλακή. Gypsus almost certainly referred to the imperial alabaster quarries in the Nile Valley near Alabastrine (modern Qum el-Akhmar).⁶⁸ Only the governors of the

65 CTh 9.40.22 (414); 9.40.23 (416). On late Roman imperial amnesties see W. Waldstein, *Untersuchungen zum römischen Begnadigungsrecht: abolitio-indulgentia-venia* (Innsbruck, 1964), 188–194.

66 For the largely reactive nature of the laws included in the Theodosian Code, despite their programmatic rhetoric see Harries, *Law and Empire* (1999) (cf. fn. 16), 47–55.

67 On the semantic range of φυλακή, most basically meaning 'custody' or 'watch' see H. G. Liddell, R. Scott, *A Greek-English Lexicon* (Oxford, 1996), s.v. 'φυλακή', 1960.

68 On the Egyptian alabaster quarries see A. M. Hirt, *Imperial Mines and Quarries in the Roman World: Organisational Aspects 27BC – AD235* (Oxford, 2010), 222; as a place of

Egyptian provinces of Alexandria and the Thebaid had the right to exile convicts there and to the Oasis (*Oasis magna* in the Thebaid, now known as the New Valley/Wadi el-Gedid), and this only for the maximum of one year. Any longer or permanent exile was to be spent within the entire territory of a province. Exiles to the alabaster quarries were therefore clearly distinguished from those banished there for hard labour, for these were certainly not expected to be released to roam the province after one year, as hard labour was a life-long sentence.⁶⁹

Justinian's law dealt with such a wide variety of potential issues, ranging from the confinement of exiles in prison at the place of their trial to the confinement of exile at the place of their banishment, that it is difficult to see where it was reacting to a specific situation brought to the emperor's attention. The mentioning of Gypsus and Oasis may indicate that problems in Egypt had prompted the legislation. Still, the emperor took up a provincial issue to promulgate a more general vision than Theodosius had done. Furthermore, it is certainly no coincidence that Justinian's law was issued in the same year as other laws on the prison system, which reveals a comprehensive approach to the institution. It was also wholly innovative, as it prohibited a hitherto accepted practice, as we have seen above, that provincial governors could banish to a specific place within their province or even to house arrest. All three of Justinian's laws on imprisonment fit very well into the image developed by contemporary observers, and to a large extent corroborated by later historians, of Justinian as an energetic, programmatic and often untraditional legal reformer.⁷⁰

Cases of Confined Exiles and the Varieties of Surveillance

While Justinian's and his predecessors' concerns confirm the existence of the practice, their laws beg the question how widespread confinement of exiles in late antiquity really was. Turning now to more anecdotal evidence we can observe what can perhaps be described as a proliferation of the phenomenon from the fourth century on. It should be noted that confinement of exile is rarely attested during the early empire, whether in prisons, house arrest or under military guard. As recent research into early imperial practices of banishment has shown, even island banishment, the most common form of exile in this

hard labour Gypsus is also mentioned in NJust 22.8 (536) and L. Duchesne (ed.), *Le Liber pontificalis*, vol. 1 (2nd edn, Paris, 1955), 302).

69 On hard labour in the late Roman period see M. Gustafson, 'Condemnation to the Mines in the Later Roman Empire', *Harvard Theological Review* 4 (1994), 421–433; Neri, *I Marginali* (1998) (cf. fn. 4), 474–476.

70 See H. Leppin, *Justinian. Das christliche Experiment* (Stuttgart, 2011), 110–126.

period and one that scholars have traditionally connected with security functions, did not aim at the prevention of escape or the physical control of the convict's body. The main purpose of island exile was to impose a sense of alienation and loss of identity, through emphasising the distance between the convict and Rome, the loss of urban culture and the quality of life a member of the Roman elite was usually accustomed to. Islands were not chosen because they were considered secure, for island banishment quite legally allowed access to water and ships and exiles' movements were only nominally guarded by an island's inhabitants, if at all.⁷¹

Between the fourth and the sixth centuries, by contrast, we know of numerous incidents of the phenomenon of confining exiles. It is equally clear, however, that there were variations to the practice. Most notably, we can distinguish between exiles sent into some form of confinement straight away, possibly even by virtue of their court sentence, and exiles who were only confined at some stage during the period of their banishment. As we have seen, also Justinian's law made the distinction between these two categories.

Into the first category fall incidents of exile which we could describe as 'fortress banishment' (see Appendix). For example, during the mass expulsion of Athanasius' supporters from the churches across Egypt ordered by the *dux Aegypti* Sebastian in 356, one bishop, Dracontius, was sent to, in Athanasius' words, 'the desert places about Clysma' (southwest of modern Suez). Jerome reported that the Palestinian anchorite Hilarion visited this bishop at the 'fortress (*castrum*) of Thaubastum' a short while later. While this fortress cannot be clearly identified, the passage suggests that Dracontius was held within a military compound. This may also be true for his fellow bishop Paul, exiled on the same occasion to Babylon, where he was also visited by Hilarion. Babylon (now part of Old Cairo) was an ancient fortified town in the Nile delta and headquarter of the Legio XIII Gemina in the fourth century. A third bishop, Adelphius of Onuphis was sent to Psinaula, a fort on the east side of the Nile south of Antinoë, where the *Ala II Herculia dromedariorum* was stationed.⁷² In

71 See Stini, "Plenum exiliis mare" (2011) (cf. fn. 33), 171–188; F. Drogula, 'Controlling Travel: Deportation, Islands and the Regulation of Senatorial Mobility in the Augustan Principate', *Classical Quarterly* 61 (2011), 230–266; both argue against Mommsen, *Römisches Strafrecht* (1899) (cf. fn. 9), 973, who considered the desire for security the most pressing motivation behind island exile. On surveillance of exiles by local inhabitants of the place of banishment see M. Braginton 'Exile under the Roman emperors', *Classical Journal* 39 (1943–44) 395; Rocovich, *Exile* (2004) (cf. fn. 33), 81–3; S. Bingham, 'Life on an Island: A Brief Study of Places of Exile in the First Century AD', in C. Deroux (ed.), *Studies in Latin Literature and Roman History* 11 (Brussels, 2003), 379.

72 Athanasius, *Historia Arianorum* 72 (PL 25:780); on Dracontius and Paul see Jerome, *Life of Hilarion* 20 (SC 508:268). On Babylon and Psinaula see E. Böcking, *Notitia*

all three cases Athanasius claimed that the purpose of the choice of exile place was that the bishops should in fact not reach their destinations, but die on their strenuous journey through the desert. Jerome's account proves that this did not happen. One may suspect, therefore, that these three bishops sent to military forts were singled out as in need of closer control than the other dissidents on whose banishment Athanasius reported on the same occasion and who were mostly simply expelled from cities.

In the course of events following John Chrysostom's second deposition as patriarch of Constantinople in 405 again a number of his followers were sent to what were clearly fortresses. These were the four bishops who had been part of John's embassy to Rome, and hence had revealed themselves as particularly troublesome.⁷³ One of them, Palladius of Helenopolis, who was also John's biographer, wrote that all four were held under public guard (ὑπὸ δημίῳν εἰσέτι καὶ νῦν φρουρούμενοι) in 'barbarian regions' (βαρβαρικαῖς ζωναίς). Eulysius of Bostra was dispatched to the fortress Mispas in Arabia in the proximity of the Saracens, Cyriacus of Emesa to Palmyra, 'a Persian fortress' (τῶν Περσῶν φρούριον), and Palladius himself to the fortress of Syene (Assuan, modern Awan) in the Thebaid, where, according to the early fifth century *Notitia Dignitatum*, the *Milites Miliarenses* and the *Cohors V Suentium* were stationed.⁷⁴ The fourth bishop was Demetrius of Pisinum, who was forced to reside under guard at *Oasis magna*.⁷⁵ Palmyra and Syene were of course also cities and bishop's sees, but it seems that it was their role as military forts that recommended them as exile places on this occasion, to deal with a particular group among those who had supported the deposed patriarch.⁷⁶ Fortresses also feature in clerical exile episodes from the sixth century. Flavianus of Antioch

Dignitatum 25 and 28, vol. 2 (Bonn, 1839), 68 and 76; also 'Babylon' [Sethe], RE 2.2:2700; 'Psinaula' [Kees], RE 33.2: 1407. On Sebastian see PLRE I, Sebastianus 2, 812.

73 On the delegation see Palladius, *Dialogue on the Life of John Chrysostom* 4 (SC 341:84–92).

74 Palladius, *Dialogue on the Life of John Chrysostom* 20 (SC 341:396–406).

75 For the military presence at *Oasis magna* see M. Reddé, 'L'occupation militaire tardive dans les oasis d'Égypte. L'exemple de Douch', in A. S. Lewin, P. Pellegrini (eds.), *The Late Roman Army in the Near East from Diocletian to the Arab Conquest* (Oxford, 2007), 421–429.

76 Palmyra had been turned into an important military post on the *strata Diocletiana* by Diocletian. The *Notitia Dignitatum* of the early fifth century records the *Legio I Illyricorum* at Palmyra (E. Böcking, *Notitia Dignitatum* 31, vol. 2 (Bonn, 1839) (cf. fn. 72), 85). Diocletian had also fortified Syene. In addition to the garrison in Syene, the *cohort I felix Theodisiana* was posted on the nearby island of Elephantis and the *cohort VI Saginorum* in Syene's granite quarries, on all see E. Böcking, *Notitia Dignitatum* 28, vol. 2 (Bonn, 1839), 74–77 and 'Syene' [Kees], RE 4 A.1:1024–1023.

was exiled to the *castellum* of Petra in 512,⁷⁷ and in 516 Elias of Jerusalem was sent to the *castellum Paraxenense*. This fortress may have been situated in Aila on the Red Sea, south-east of Gaza, where the Palestinian archimandrite Sabas later visited the banished bishop. The trading city Aila (modern Eilat) had been the home of the *Legio X Fretensis* in the early fifth century, although the military presence in this region had been much reduced since that time.⁷⁸

We can notice, therefore, that in some instances there were attempts to place exiles under a sort of surveillance right from the start of their banishment. This did not always have to happen in a military environment. In the context of the round-up on John Chrysostom's followers, Palladius reports about one bishop, Heracleides of Ephesus, who was held in 'custody' (εἰρκτή) in Nicomedia. This term may denote a perhaps less informal form of confinement, such as house arrest.⁷⁹ Usually, however, a military space was chosen. When Victor of Tunnuna and his fellow North African bishop Theodore of Cebarsussi were banished to Alexandria in 555 in the context of the Three Chapter Controversy, they were first held in a public prison, the *carcer* of the Praetorium, but after a few days they were moved from there to a fortress, the *castellum Diocletiani*.⁸⁰

Fortress banishment was not limited to only clerical exiles. Some lay people also suffered this kind of banishment. However, we mostly hear about this from the fifth century, and from one particular scenario, the series of usurpations during the troubled reign of Zeno, which was dominated by the emperor's relationship with his *magister militum* Illus.⁸¹ The usurper Basiliscus, Basiliscus' sister and Zeno's mother-in-law Verina, Verina's friend, the Praetorian Prefect Epinicius, and Verina's son-in-law, the usurper Marcianus were all sent at

77 Marcellinus comes, *Chronicle* ann. 512 (MGH AA 11.2:98). It is unclear whether this was a reference to the ancient city in Arabia or to Petra in Colchis/Lazika on the Black Sea (modern Tsikhisdziri in western Georgia) where Justinian built a large fort. On the latter see D. Braund, *Georgia in Antiquity* (Oxford, 1994), 294. On Petra in Palestine during late antiquity see B. Kolb, 'Die spätantiken Wohnbauten von ez Zantur in Petra und der Wohnhausbau in Palästina vom 4. bis 6. Jh. n. Chr.', in *Petra. Ez Zantur II* (Mainz, 2000), 203–11.

78 Victor of Tunnuna, *Chronicle* a. 509 (MGH AA 11.2: 194); Cyril of Scythopolis, *Life of St Sabas* 56, 60 (transl. R. M. Price, *Cyril of Scythopolis. The Lives of the Monks of Palestine* (Kalamazoo, Mich. 1991), 160, 170–1). On the *Legio X Fretensis* see Kolb, 'Die spätantiken Wohnbauten' (2000) (cf. fn. 77), 216.

79 Palladius, *Dialogue on the Life of John Chrysostom* 20 (SC 341:396–406). On the meaning of εἰρκτή see H. G. Liddell, R. Scott, *A Greek-English Lexicon* (Oxford, 1996), s.v. 'εἰρκτή', 490.

80 Victor of Tunnuna, *Chronicle* 556.2 (MGH AA 11.2: 204–5).

81 On Illus see PLRE II, Illus 1, 586–590; and now A. Kiel-Freytag, 'Betrachtungen zur Usurpation des Illus und des Leontius (484–488 n. Chr.)', *Zeitschrift für Papyrologie und Epigraphik* 174 (2010), 291–301.

different times to fortresses in 'Isauria', among which the most conspicuous were the fortresses Dalisandros and Papius.⁸² The role Isaurian fortresses played during the years of Zeno's reign must have been intrinsically connected with the Isaurian origin of the emperor and his crony Illus, which meant that both could fall back on networks among the populations of the Taurus mountains, for military support and for guarding people removed from the capital. The fortresses mentioned were therefore not regular military posts, but centres of brigandage, usually out of official Roman control, but which could be mobilised for state concerns at opportune moments in time.⁸³ The incidents of lay fortress banishment that accumulated in the years of Zeno may therefore have been unique and not representative of exile in this period at all.

More numerous, in fact, than incidents where detention of an exile had been planned right from the start, were those that fell into the second category, confinement of an exile at their place of banishment due to perceived troublesome behaviour. Many late antique exiles were indeed at some point moved from their place of banishment to places with closer surveillance, to allow for a higher level of control. One notable case was that of Barses, the deposed Nicene bishop of Edessa, who in 373 had been sent to the island of Aradus off the coast of Phoenicia (today's Ruad in Syria). Here he attracted such throngs of visitors that he was subsequently sent to Oxyrhynchus in Egypt, a city perhaps not coincidentally endowed with a military garrison at the time. After he had exercised the same attraction at Oxyrhynchus as he had on Aradus, however, Barses eventually ended up at Φηρό, a remote fortress according to Theodoret of Cyrus.⁸⁴ Another exile who was sent to ever tighter levels of control was the deposed patriarch of Constantinople Nestorius. After the council of Ephesus in 431, Theodosius II allowed him first to reside at his old monastery on the outskirts of Antioch. Three years later, however, Theodosius banished Nestorius to Petra.⁸⁵ He ended up at *Oasis magna*, perhaps due to the influence of Cyril of Alexandria who may have preferred Nestorius' residence in Egypt for it allowed for more control. Yet, Nestorius was taken from *Oasis magna* by the Blemmyes, a loose conglomeration of Nubian desert tribes, during a raid. After his release, he turned himself in to the authorities in Panopolis. The

82 For references see Appendix. On Papius see J. Gottwald, 'Die Kirche und das Schloss Papius in Kilikisch-Armenien', *Byzantinische Zeitschrift* 36 (1936), 86–100; on Dalisandros see B. Shaw, 'Bandit Highlands and Lowland Peace: The Mountains of Isauria-Cilicia. Part II', *Journal of the Economic and Social History of the Orient* 38 (1990), 245.

83 On the relationship between Isaurian 'bandits' and imperial circles in the second half of the fifth century see Shaw, 'Bandit Highlands' (1990) (cf. fn. 82), 248–255.

84 Theodoret, *Ecclesiastical History* 4.16 (SC 530:240–42). On the military garrison in Oxyrhynchus see R. Bagnall, *Egypt in Late Antiquity* (Princeton, 1993), 46 n. 13.

85 ACO 1.1.3:67.

count of the Thebaid, however, did not allow him to live in the city, and neither to return to *Oasis magna*, but ordered Nestorius to reside in a fortress near Panopolis.⁸⁶ It is such endemic changes of location and tightening up of security measures which demand our attention, for they suggest that the initial functions assigned to exile and the actual outcome often did not match up in late antiquity. It is to this that we will now turn.

Functions of Late Antique Exile: Retribution, Social Hygiene, and Moral Lessons

In order to fully understand the frequent necessity of imposing additional security measures on late antique exiles it is important to look firstly at a number of changes that the practice of banishment, and particularly its geographical dimension, underwent in late antiquity. These changes reveal innovations in the functions assigned to the penalty of exile, which, as we shall see in the next section, led to unforeseen security blips. The following discussion is based on the quantitative analysis of ca. 170 specific places of exile mentioned in a variety of sources between the reign of Constantine and the reign of Justinian.⁸⁷ The subjectivity of ancient literary sources inevitably skews our evidence on exile towards spectacular cases that involved people, and especially men, at the upper end of the social scale, and, in addition, the particular focus of many writers of the late Roman period was the fate of high-ranking churchmen within this 'elite' group. While this does not have to mean that lay people (and, indeed, women) were less subject to the penalty of exile than in previous periods, our evidence is most representative where clerical exiles are concerned. Still, as we shall see, while some changes in the practice of exile seem to have originated in the context of clerical banishment, over time they also affected that of lay people.

Within the evidence on clerical banishment we can note that clerics were more often banished to the mainland than to islands in late antiquity. Mainland places of exile were varied, but there was a tendency, not only by provincial governors who may always have chosen remote exile places within their provinces, but also by the emperor and imperial judges, to banish to places on

86 Evagrius, *Ecclesiastical History*, 1.7 (SC 542:124–140); John Rufus, *Plerophoriae* 36 (PO 8: 82). It may be the fort mentioned in P. Panop. 8 (338), or the fortress at Sinbelge, near Akhmim, see R. Kosiński, 'The Fate of Nestorius after the Council of Ephesus in 431', *Sakarya Üniversitesi Fen Edebiyat Dergisi* 10 (2008), 41.

87 To indicate all references would exceed the spatial parameters of this article. For a full record and methodological considerations see my forthcoming book, *Prison, Punishment and Penance in Late Antiquity* (Cambridge University Press), in particular Appendix I and II and Chapter 7.

the margins of the empire. Such places frequently were located in the diocese of Thrace (Bizya, Halmyris), the diocese of Pontus (Chersonesus, Pityus, Euchaita, Gangra), the diocese of the East (Palmyra, Petra, Aila), in southern Egypt (Syene, *Oasis magna*), and in Britain.⁸⁸ Some exile places were also situated in regions that were considered to be hotspots of internal rebellions, such as the mountains between Cappadocia and Armenia with their constant threats of ‘Isaurians’, where Cucusus, John Chrysostom’s place of banishment, was situated.⁸⁹ Exile to frontier regions or regions with current military operations had been very rare prior to the fourth century, at least for senatorial or equestrian criminals the emperor convicted, who provide our most representative evidence in the early empire.⁹⁰

Similar to islands in the early empire, the choice of remote regions as places of banishment for dissident clerics had little to do with security concerns. Rather, it was due to a combination of continuing assignment of retributive and humiliating functions to exile, and an emerging association of exile with social hygiene. A concern about purifying the community from wrongdoers through exile was far more pronounced in the official rhetoric of late antiquity than in the early empire.⁹¹ Late antique laws, particularly those on heresy from the Theodosian age, abounded with language describing the pathology of crime. Heresy was ‘madness’ (*dementia, furor*), an expression of ‘polluted contagions’ (*polluta contagia*), and ‘contamination’ (*contaminatio*), which ‘corrupted’ the people (*infecit*). Heretics had to be segregated, so the minds of the people could be ‘cleansed’ (*tergeantur*).⁹² The later Roman laws hence drew on Christian representations of sin, in particular heresy, as disease and remedies as surgery, but also merged the representation of the heretic with that of the sorcerer who

88 See on this trend also Washburn, ‘*Banishment*’ (2007) (cf. fn. 7), 177–178.

89 On John in Cucusus see J.N.D. Kelly, *Golden Mouth: The Story of John Chrysostom – Ascetic, Preacher, Bishop* (Ithaca, 1995), 250–271. On the threat of ‘internal enemies’ in late antiquity see D. Lee, ‘The Army’, in A. Cameron, P. Garnsey (eds.), *Cambridge Ancient History*, vol. 13 (1998), 218.

90 Stini, “*Plenum exiliis mare*” (2011) (cf. fn. 33), 177–8. The poet Ovid, who Augustus exiled to Tomis (late Roman Constantiana) on the western Black Sea, presented an exceptional case, although, ironically, he would provide Roman exile literature with inspiration for centuries to come. On Ovid and his influence on exile literature see J. M. Claassen, *Displaced Persons. The Literature of Exile from Cicero to Boethius* (London 1999), 229–251; Rocovich, *Exile* (2004) (cf. fn. 33), 136–41. On his place of banishment as exceptional also Y. Rivière, ‘L’Italie, les îles et le continent: Recherches sur l’exil et l’administration du territoire impérial (I^{er}-III^e siècles), in *Securité collective et ordre public dans les sociétés anciennes* (Genève, 2008), 279.

91 Stini, “*Plenum exiliis mare*” (2011) (cf. fn. 33) does not even consider social hygiene or purification of the community as a motivation behind exile in the early empire.

92 CTh 16.5.6 (381); CTh 16.5.13 (384); CTh 16.5.14 (388); CTh 16.5.20 (391); CTh 16.5.32 (396); CTh 16.5.34 (398); CTh 16.2.35 (400/405) = CJ 1.3.14 = Sirm. 2; Sirm. 6 (425).

was traditionally seen as a ‘corruptor of minds’, and whose capacity of infiltrating the mind was often likened to that most demonic device, poison.⁹³ They were, however, different in an important respect from early imperial treatment of astrologers and sorcerers. In the early empire any such expulsion had been temporary and directed at single individuals or groups, to momentarily suppress a bad variety of a practice whose benefit to the community was at other times accepted.⁹⁴ The expressed aim of late Roman laws, by contrast, was to eradicate entire practices of false teaching and to permanently cleanse society.

The distribution of actual exile locations suggests that judges sought to realise such eradication in practice, sometimes responding to lobbying by Christian authorities. Philippe Blaudeau has recently charted the influence that the fifth-century Roman bishops sought to gain on the geographical dimension of exile, which was inspired by this quest for elimination of the heretic’s ‘pestiferous mind’ (*pestiferis sensibus*).⁹⁵ The case of the archimandrite Eutyches may provide a case in point. After his condemnation as a heretic at the synod of Constantinople in 448 had been confirmed at the council of Chalcedon in 451, Eutyches was first allowed to retire to his monastery in the suburbs of the capital, but was then moved to Doliche in Syria. Pope Leo explained in a letter to the empress Pulcheria that the place had been chosen because it was very distant and hence Eutyches would no longer have the support of the people at Constantinople who he had drawn into impiety.⁹⁶ Crucially, however, no consideration was given to what his presence meant to the piety of the people of far-away Doliche.

‘Segregation’, in fact, did not mean, in the first place, from human society in general. The ‘solitude’ evoked by some laws as the desired status of the condemned heretic was not complete solitude, but segregation from the one community, which, at the particular moment in time, was seen as in most need of

93 See M. V. Escribano Paño, ‘The Social Exclusion of Heretics in Codex Theodosianus XVI’, in J.-J. Aubert, P. Blanchard (eds.), *Droit, religion et société dans le Code Théodosien* (Genève, 2009), 39–40. On Christian ideas of heresy as disease and madness see I. Opelt, *Die Polemik in der christlichen lateinischen Literatur von Tertullian bis Augustin* (Heidelberg, 1980), 68, 119–120, 222, 226–227. On sorcery as corruption of minds see *Pauli Sententiae* 5.21.1 (FIRA II:406); CTh 9.18.11 (389).

94 For the character of early imperial expulsion of sorcerers see Stini, “*Plenum exiliis mare*” (2011) (cf. fn. 33), 87–114.

95 P. Blaudeau, ‘Quand les papes parlent d’exil : L’affirmation d’une conception pontificale de la peine d’éloignement durant la controverse chalcédonienne (449–523)’, in P. Blaudeau (ed.), *Exil et rélegation : Les tribulations du sage et du saint durant l’antiquité romaine et chrétienne (I-VIe s. ap. J.-C.)* (Paris, 2008), 273–308. The quote is from Simplicius, *ep.* 14 to Zeno (PL 58:53–4), referring to the exile of Peter the Fuller in 476.

96 Leo, *ep.* 84 (ACO 2.4:44): *ne frequentioribus solatiis eorum quos ad impietatem suam traxit, utatur.*

protection.⁹⁷ In late antique heresy laws the ‘good’ community was usually thought of as urban, and hence the most pressing aim of exile was expulsion from cities, in particular great Christian centres, such as Rome and Constantinople.⁹⁸ Heretics in consequence had to live ‘in other places’ (*in aliis locis vivant*).⁹⁹ In the late fourth century, it was seen as healthy enough to condemn heretics to provincial remoteness. Yet, with the spread of Christianity also the countryside around cities was seen increasingly at risk, as a law of 398 that ousted Eunomians and Montanists observed. If heretics after their expulsion from cities were found to hold gatherings in the countryside they were to be deported.¹⁰⁰ The law did not say to which location, but we can imagine that a place like the military stronghold Halmyris on the mouth of the Danube where Eunomius himself was sent was also chosen because, although clearly inhabited, it fitted the requirement of being away from ‘human’ society, almost outside Roman territory.¹⁰¹ The same is likely to apply to the banishment, in 360, of the Anomoian leader Aetius to Pepuza, a Montanist stronghold, and later to ‘pagan’ Amblada, or the frequent banishment of heretics throughout the fifth and early sixth century to places like Petra, known for its persistent paganism.¹⁰² Again, little attention seems to have been paid to the possibilities of cultural encounter between the heretic and the inhabitants of these places, whose ‘pagan’, ‘heretic’ or ‘barbarian’ characteristics mostly served to emphasise the places’ marginality. In the sixth century Justinian even explicitly ordered exiles to reside together in an imagined no one’s land. In the law that banished the Miaphysite leaders Severus of Antioch, Peter of Apamea and the Syrian monk Z’ura from Constantinople in 536, after the failed dialogue between the Miaphysites and

97 Solitude as a desired attribute of the penalty of exile is mentioned in CTh 16.5.62 (435), on Manicheans.

98 CTh 16.5.14 (388): *a moenibus urbium*; CTh 16.5.32 (396): *de civitatibus*; CTh 16.5.34 (398): *conversazione civitatum universarum adque urbium expellantur*; CTh 16.5.62 (435).

99 CTh 16.5.13 (384); see also CTh 16.5.14 (388).

100 CTh 16.5.34 (398). For legal anxiety about the late antique countryside as a hub of heretical activity, expressed for example in laws that sought to eradicate the harbouring of heretics by estate stewards (e.g. CTh 16.5.21 (392)), see K. Bowes, *Private Worship, Public Values and Religious Change in Late Antiquity* (Cambridge, 2008), 189–200.

101 On Eunomius’ exile see Philostorgius, *Ecclesiastical History* 10.6 (ed. J. Bidez (2nd edn, Berlin, 1972), 127–128. On Black Sea cities, particularly those on the northern shore, as being conceived as ‘outside’ the empire see E. Jastrzebowska, ‘Ephesos und Chersonesus in Spätantike und frühbyzantinischer Zeit’, *Rivista di Archeologia Cristiana* 75 (1999), 476.

102 On exile to Petra and the persistent paganism in the city see Kolb, ‘Die spätantiken Wohnbauten’ (2000) (cf. fn. 77), 225. On Aetius’ banishment to Amblada see Philostorgius, *Ecclesiastical History* 5.2 (ed. J. Bidez (2nd edn, Berlin, 1972), 67–68); see also Paulinus of Trier’s exile to pagan and barbarian Phrygia as described in Hilary, *Contre Constance* 11 (SC 334:190).

Chalcedonians the emperor had initiated, Justinian explained that they could not reside in any city, but should be forced to keep company with only each other.¹⁰³

While we find the rhetoric of disease and purification mostly in contemporary discourses on heresy, framing crimes as ‘mental disease’ increasingly went beyond religious deviance in late antiquity. For example, an amnesty law dated to 381, heavy with imagery of purification through punishment, talked of the ‘madness’ (*furor*) of the parricide, and the ‘stain’ of the murderer (*maculatus est*). Like other serious crimes – treason, adultery, *raptus*, and poisoning – these were excluded from imperial *indulgentia*, to keep the community safe, so the law suggested.¹⁰⁴ The imperial law that announced the exile and property confiscation of the eunuch and imperial chamberlain Eutropius, convicted of treason in 399, talked about his ‘repulsive filth’ (*taetra illuvie*) and lamented that he had defiled the consulship by his ‘contagion’ (*contagione*), as well as ‘polluted’ (*polluit*) the dignity of the patrician rank. All this justified his *damnatio memoriae*, the destruction of his images everywhere, so that they could not ‘pollute’ (*polluat*) the places they had decorated. Eutropius himself was to reside in Cyprus, ‘walled up’ (*vallatus*) and under strict military guard, to prevent that he disturbed things through his ‘madness’ (*rabie*). After a short while, he was moved to Chalcedon, where he was killed, so clearly Cyprus had not lived up to expectations.¹⁰⁵ Significantly, from the second half of the fourth century we also see an unprecedented rise of lay banishment to remote frontier regions, such as Phronimius, the usurper Procopius’ Urban Prefect of Constantinople, who Valentinian I banished to Chersonesus (near modern Sevastopol on the Crimean Peninsula in Ukraine) in 366, Valentinus, the brother-in-law of the Praetorian Prefect Maximinus, who the same emperor sent to Britain for treason in 369, and the *magister militum* Abundantius, who fell prey to the greed of the eunuch Eutropius in 396, and was exiled to Pityus on the Black Sea (modern Pitsunda in Georgia).¹⁰⁶

By the sixth century, and particularly in Justinian’s legislation, the connection drawn between lay crime and disease was common place, but so was another aspect of this connection, that of ‘healing’, which focused the

103 NJust 42.3.pr (536).

104 CTh 9.38.6 (381).

105 CTh 9.40.17 (399); see Escribano Paño, ‘Social Exclusion’ (2009) (cf. fn. 93), 39; PLRE II Eutropius 1, 443.

106 On Phronimius: Ammianus Marcellinus, *Roman History* 26.10.8 (Loeb 642–644); PLRE I Phronimius, 701; on Valentinus: Ammianus Marcellinus, *Roman History* 28.3.3 (Loeb 132); PLRE I Valentinus 5, 935; on Abundantius: Jer. *ep.* 60.16 (ed. J. Labourt (Paris, 1953) 106); Asterius, hom. 4 (PL 40:224); PLRE I Abundantius, 5.

attention more on purification of the wrongdoers than their community.¹⁰⁷ Providing moral lessons through pronouncing exile is a further late antique development that had a particular impact on the choice of place of banishment. We can indeed observe in late antiquity, and again firstly in the context of religious dissidence, the rise of cities as places of banishment whose bishops were loyal to the Christian variety the emperor of the moment supported.¹⁰⁸ Ample evidence for this procedure derives from the events that ensued in the wake of the council of Milan, which Constantius II had called in the summer of 355 to review the condemnation of Athanasius of Alexandria at the councils of Sirmium in 351 and Arles in 353.¹⁰⁹ As it stood, the opposite occurred, quite as the emperor had intended. The council confirmed Athanasius' condemnation and ratified the semi-arian creed of the council of Sirmium. In line with his previous edict, which had threatened with banishment all bishops who would not subscribe to Sirmium, the emperor exiled the dissident bishops Lucifer of Cagliari, Eusebius of Vercelli, and Dionysius of Milan, who had refused either to condemn Athanasius or to sign the creed or both.¹¹⁰ In the autumn of 355 Liberius of Rome, who had not attended the council, was summoned to Milan. Constantius tried to persuade him to sign the creed of Sirmium and gave him three days time to make up his mind. Liberius refused and was also duly exiled.

All four Italian bishops were sent to the East. Of Dionysius of Milan we only know that he died in Armenia, yet the other three were placed, at least in the first instance, under supervision of Constantius' clerical allies.¹¹¹ Liberius of Rome ended up at Beroea/Augusta Traiana in Thrace (today's Stara Zagora in Bulgaria), the see of the Homoian Demophilus, before he became bishop of Constantinople in 370.¹¹² Lucifer of Cagliari was first sent to Germanicia in

107 See in particular NJust 25.2.3 (536): 'The magistrate must hate and punish all cases of adultery, even more homicide and above all the abduction of virgins. He must immediately punish the unjust, who are, as it were, inflicted by an incurable disease; but if they are only slightly [sick] should convert them to the better'. (καὶ τοὺς ἀδικοῦντας, εἰ μὲν ἀθεράπευτα νοσοῖεν, καὶ καθάπαξ κολαζέτω, εἰ δὲ μετριώτερα, πρὸς τὸ κρεῖττον μεθαρμοζέτω).

108 On bishops' sees as places of late antique exile see also M. Vallejo Girvés, 'Obispos exiliados: Mártires políticos entre el concilio de Nicea y la eclosión monofisita', in E. Reinhardt (ed.), *Tempus implendi promissa. Homenaje al Prof. Dr. Domingo Ramos-Lissón* (Pamplona, 2000), 517; Washburn, 'Banishment' (2007) (cf. fn. 7), 162–163.

109 These are described in detail in T. Barnes, *Athanasius and Constantius. Theology and Politics in the Constantinian Empire* (Boston, 1993), 116–119.

110 Constantius' edict, specifying exile for dissident bishops, is mentioned by Sulpicius Severus, *Chronicle* 2.39.2 (CSEL 1:92).

111 On Dionysius' place of exile see 'Dionysius von Mailand' [Ekkart Sausser], *Biographisch-Bibliographisches Kirchenlexikon* 17 (2000) 275–276.

112 Sozomen, *Ecclesiastical History* 4.11 (SC 418:236); Theoderet, *Ecclesiastical History* 2.13 (SC 501:412).

Commagene (now Kahramanmaraş in southeastern Turkey), where he was placed under the guard of bishop Eudoxius, one of the most important clerical supporters of Constantius in the East. Lucifer was later moved from Germanicia to Eleutheropolis in Palestine (near today's Bet Gurwin), the see of the Homoian Eutychius, perhaps because Eudoxius became bishop of Antioch in 358.¹¹³ Eusebius of Vercelli had to reside at Scythopolis in Palestine (now Beit She'an in Israel), where Patrophilus was bishop, who had previously given Arius a friendly welcome on his exile from Egypt in 323.¹¹⁴

Also successive clerical exiles suffered the fate of being placed under control of a religious opponent, which suggests that this practice may not have been an isolated one sprung from Constantius' arbitrary attitude to rulership. One such bishop's city that over the fifth century became a prime place of exile for those declared heretics was Gangra, the metropolitan see of Paphlagonia (today's Çankırı in northern Turkey). Dioscorus of Alexandria was banished here after his deposition at Chalcedon in 451, as was his successor Timothy in 460, for not subscribing to the decisions of Chalcedon.¹¹⁵ In 518, on order by the new emperor Justin, Philoxenus, the flamboyant bishop of Hierapolis and one of the leaders of the Syrian Miaphysites, arrived in exile at Gangra. We owe to himself the information that he was hosted by the bishop of Gangra and felt that he was strictly supervised.¹¹⁶ The same may have been true for his forerunners Dioscorus and Timothy. It can certainly not be a coincidence that the first

113 Lucifer, *De Athan.* 1.9 (CC 8:17); *Lib. precum* 63, 89 and 109 (CC 69:375, 387, 548); Jerome, *vir. ill.* 95 (ed. W. Herding (Leipzig, 1879), 55). On his removal see the editorial comment in CC 8: xiii.

114 Eusebius of Vercelli, *ep.* 2.11.2 (CC 9:109); Sozomen, *Ecclesiastical History* 5.11 (SC 495:142–149); Sokrates, *Ecclesiastical History* 3.5 (SC 493:272). On Demophilus, Eudoxius, Eutychius and Patrophilus see Barnes, *Athanasius and Constantius* (1993) (cf. fn. 109), 123.

115 Dioscorus: Priscus *frg.* 28 (ed. R. Blockley, *Fragmentary Classicising Historians of the Later Roman Empire*, vol. 2 (Liverpool, 1983), 324); Evagrius, *Ecclesiastical History* 2.5 (SC 542:256); Victor of Tunnuna, *Chronicle* a. 453 (MGH AA 11.2: 185); Liberatus, *Breviarium* 14 (ACO 2.5:123); Theophanes, *Chronicle* 5944 (ed. K. De Boor (Hildesheim, 1963), 105–106). Ps.-Zachariah, *Chronicle* 3.2 (CSCO 83. Script. Syr. 38: 154–155) erroneously has Thrace. Timothy: Evagrius, *Ecclesiastical History* 2.11 (SC 542:294); Ps.-Zachariah, *Chronicle* 4.7, 4.11–12, 5.1 (CSCO 83. Script. Syr. 38:178–179, 184–186, 109–211); Theodore Lector, *Ecclesiastical History* epitome 380 (ed. G. C. Hansen (Berlin, 1971) 107); Theophanes, *Chronicle* AM 5952 (ed. K. De Boor (Hildesheim, 1963), 111–112).

116 Philoxenus of Hierapolis, *Letter to the Monks at Senoum* (CSCO 232. Script. Syr. 99:76, 77–78). On his exile to Gangra see also Ps.-Zachariah, *Chronicle* 8.5 (transl. G. Greatrex, R. R. Phenix, C. B. Horn (Liverpool, 2011), 299); Theophanes, *Chronicle* 6011 (ed. K. De Boor (Hildesheim, 1963), 165). See, however, also A. Halleux, 'Introduction' (CSCO 232. Script. Syr. 99:iv) who argues Philoxenus was at Philippopolis when hosted by a bishop.

attestation of Gangra as a place of exile coincides with the patriarch of Constantinople's assumption of the privilege, at the council of Chalcedon, to ordain the metropolitan of Gangra, which previously had been held by the bishop of Ancyra.¹¹⁷ Under this arrangement events at Gangra, as well as the political culture and religious orthodoxy of its bishops were tightly controlled by Constantinople, which must have made it appear as a perfect place to send religious dissidents.

The reasons why exiled clerics were forced to reside at the see of a religious opponent are never clearly spelled out in the sources. One might imagine, however, that one rationale was, again, to make the period of exile unpleasant and degrading. In his *Life of John Chrysostom*, Palladius commented on the humiliation that came through cruel treatment by the bishops of the cities through which his fellow exiles had to pass, for example by prohibiting members of their community to host them.¹¹⁸ Another reason for banishing dissident bishops to their opponents' sees, might have been the hope that being exposed to this humiliation and the doctrinal 'truth' propagated at the place of banishment the exiles in question would be coerced to change their minds. In their quest for religious unity, late antique emperors clearly stood to gain politically from such success. In the case of Constantius, Athanasius suspected that 'reform' of the four bishops exiled in 355–6 was on the emperor's agenda, for he wrote of the emperor's hope that 'being separated from each other, they would forget the concord and unanimity which existed among them'.¹¹⁹ While this was, of course, a polemical perspective on Constantius' actions, bringing him into line with the persecutor's stigma of religious coercion, it could very well have been the emperor's aim to break the opposition, as his selection of banishment places betrays a certain systematic attitude and was also highly innovative compared to traditional choices of exile places. If 'coercion' had been Constantius' strategy, he could certainly mark a success, for Liberius of Rome, two years into his exile to Beroea, and on urging by Demophilus, decided, in fact, to condemn Athanasius. A little later Constantius recalled him to Rome.¹²⁰

As with the aspect of social hygiene discussed above, over time aspects of 'moral lessons' also became a factor in making a lay exile reside at a particular bishop's see. It underpins the entirely novel development in late antiquity of replacing exile of lay people with forced clerical ordination. We first hear about such measures in the early fifth century, but they became increasingly more

117 R. Janin, L. Stiernon, 'Gangres', in *Dictionnaire d'histoire et de géographie ecclésiastiques* 19 (Paris, 1981), 1096.

118 Palladius, *Dialogue on the Life of John Chrysostom* 20 (SC 341:404).

119 Athanasius, *Historia Arianorum* 40 (PL 25:740): ἡ χωρισθέντες ἀφ' ἑαυτῶν, ἐπλάθωνται τῆς ἀλλήλων ὁμοφροσύνης τε καὶ ὁμοψυχίας.

120 Liberius' condemnation of Athanasius: Hil. Coll. Antiar. Paris., B VII.8 (CSEL 65:168–170); recall of Liberius: Theodoret, *Ecclesiastical History* 17 (SC 501:412).

common during that century.¹²¹ A famous example is Justinian's former Praetorian Prefect John the Cappadocian, who in 541 was made a priest in Cyzikus on the southern shore of the Marmara Sea, where Eusebius, a good friend of the imperial couple, was bishop.¹²² Justinian may have hoped that forced ordination would curb John's attempts to return to civic office, for this was of course precluded to clerics. Yet, it was clearly also a penalty with a moral message. Commenting on John's fate Procopius explained that for a man who had held posts of authority in the civic sphere, being a priest, and hence part of the entourage of another man, meant a considerable step back on the social ladder, not to speak of the indignity that must have come, for a man of secular power, with the submission to the ideal of poverty, the visibility of the tonsure, and the compliance with strict liturgical requirements.¹²³

John's story, however, also shows that forced clerical ordination was not fit for security purposes. John, in fact, managed to get mixed up in the murder of bishop Eusebius and had to be transported to a different exile place, Antinoopolis in Egypt, where he was placed under house arrest. While the circumstances of the case are shrouded in mystery, it is clear the John had used his close proximity to Constantinople to kindle hopes and mobilise networks for a return to his political career.¹²⁴ None of this, however, apparently had been anticipated at the moment of his banishment to Cyzikus.

Exile and Security

From the fourth century on, we can hence observe that the 'new' crime of religious dissidence, and related functions of exile as 'social hygiene' or 'moral reform', led to a number of changes in the practice of banishment, in particular the emergence as destinations of choice of either remote regions or of bishop's sees. These changes resulted in an entirely new set of security issues that were

121 The first known case is that of chamberlain Antiochus, who in 421 was made a priest in Constantinople or at St Euphemia in Chalcedon, see PLRE II Antiochus 5, 102. See Delmaire, 'Exil' (2008) (cf. fn. 7), 123–124 for further references.

122 Procopius, *Persian War* 1.25 (Loeb 248–252). On Eusebius of Cyzikus see also *Prosopographie chrétienne du Bas-Empire 3: Diocèse d'Asie (325–641)* (Paris, 2008).

123 Procopius, *Persian War* 2.30 (Loeb 554–556). See on the implications of forced clerical ordination also C. Rapp, *Holy Bishops in Late Antiquity* (Berkeley, 2005), 202.

124 Procopius, *Secret History* 17.40 (Loeb 210); *Persian War* 1.25 (Loeb 248–252). Malalas, *Chronicle* 480.16–18/18.89 (transl. E. and M. Jeffreys (Melbourne, 1986), 286) reported that John formed a conspiracy with the landowners at Cyzikus and killed the bishop. On John see PLRE III.1, Ioannes 11, 634. Other exiles who had been made clerics actually managed to return to a civic life, for example the patrician Apion, made a priest at Nicaea in 510, but recalled and made Praetorian Prefect by Justin (PLRE II Apion 2, 112).

usually not foreseen by legal authorities and with which they were only slowly coming to terms, if at all. This was partly due to a protracted understanding of the consequences of exiling religious dissidents, as opposed to more conventional criminals. Recent research has shown that in the case of the latter, even or in particular if they were members of the senatorial elite exiled for treason, imperial authorities over centuries had been quite unconcerned about activities at or escape from a place of banishment. The danger that aristocratic exiles could cause far away from the political centre of the empire and their networks of power had been deemed minimal, unless they were sent in the vicinity of the military, one reason why frontier regions which allowed exiles' contacts with military units and enemies beyond the border had been usually shunned in the early empire.¹²⁵ Furthermore, running away and roaming the provinces represented a less desirable option for aristocratic exiles than staying put at the place of banishment, as it meant living an underground life and forfeiting the little control over property left and, in consequence, family, friendship and client networks.¹²⁶

The crime of heresy, however, essentially a crime of spreading false beliefs through teaching and ritual, was a very different issue compared with treason and political opposition. In contrast to senators, the social and cultural connections of high-standing clerics were often located in the provinces to start with and, due to the decentralised nature of Christianity and its proselytising aspects, they were able to build up powerful communities of followers the central authority struggled to control wherever they went and also in remote locations. In fact, the frequent exile of religious dissidents may have considerably aided the spread of Christianity, for it led to an unprecedented circulation of ideas and Christian writing.¹²⁷ This image of the exile as a 'holy man' with an immediate impact on his surroundings was also articulated in a triumphal fashion in a great many of late antique exile stories, from the Anomoiian leader Aetius who allegedly averted pestilence and drought from the inhabitants of his place of banishment Amblada in Pisidia, to the two Nicene hermits Macarius the Elder and Macarius the Younger, who converted the

125 Stini, "*Plenum exiliis mare*" (2011) (cf. fn. 33), 177–178.

126 See Rocovich, *Exile* (2004) (cf. fn. 33) on the success of lay exile precisely because it hit the core of a senator's power base: political participation, closeness to the emperor, and relationship to clients and friends at Rome.

127 See W. H. C. Frend, 'The Failure of Persecution in the Roman Empire', *Past and Present* 16 (1959) 10–30; Rocovich, *Exile* (2004) (cf. fn. 33), 196; Escribano Paño, 'El exilio' (2004) (cf. fn. 42), 259; 'Disidencia doctrinal' (2006), 236 (cf. fn. 42); Washburn, '*Banishment*' (2007) (cf. fn. 7), 115–116, 178.

inhabitants of the Nile island they had been banished to in 373.¹²⁸ Banishment of exiles to remote locations where they would reside among pagans, other heretics, barbarians and peasants could be celebrated as social hygiene and protection of the ‘congregation of the good’, but in practice increased the danger emanating from their power of conversion and agitation.¹²⁹ Strikingly, ideals of social hygiene and moral teaching through exile were so strong in late antiquity that they even overrode the few time-honoured security measures which had traditionally been applied in cases of political exiles, such as keeping them away from resources for agitation. Otherwise it is difficult to understand why in 369 the treasonous Valentinus would have been sent to Britain, where he was able to quickly stage a revolt with military troops stationed in that province, or why in 541 John the Cappadocian was kept so close to the capital, the centre of his former power and influence.¹³⁰

The cases of fortress banishment discussed above, in particular that of John Chrysostom’s friends, which, given their wide geographical spread may have been ordered directly by Arcadius, suggests that at times concerns about neutralisation could have influenced the choice of place. The many cases where exiles had to be subsequently moved to a tighter scenario of surveillance, on a haphazard emergency basis, however, demonstrate that there was little concerted thinking regarding the function and the reality of exile in late antiquity. In this context, it was often local authorities, and, among these, frequently local bishops faced with the prospect of a rival, who favoured neutralisation through a form of confinement and sought to iron out ill-advised choices of place. For example, in the case of Nestorius, who at first had been banished to his own monastery on the outskirts of Antioch, the bishop of the city and Nestorius’ former friend, John, complained about the continuous influence of the former patriarch and desperately urged the emperor to remove him.¹³¹ Nestorius’ story powerfully demonstrates that his influence and authority had not diminished by his placement in a non-urban environment.

128 Philostorgius, *Ecclesiastical History* 5.2 (ed. J. Bidez (2nd edn, Berlin, 1972), 68–69); Sokrates, *Ecclesiastical History* 4.24 (SC 505:100–104); Sozomen, *Ecclesiastical History* 6.20 (SC 495:334–340).

129 CTh 16.5.13 (384): *a bonorum congressibus separentur*. See Washburn, ‘Banishment’ (2007) (cf. fn. 7), 163, 177–178.

130 On Valentinus’ revolt see Ammianus Marcellinus, *Roman History* 28.3.4 (Loeb 132). On John the Cappadocian see above ns. 122–124.

131 John of Antioch’s complaints are reported by Evagrius 1.7 (SC 542:124–140) and Theophanes, *Chronicle* AM 5925 (ed. K. De Boor (Hildesheim, 1963) 90–91); John’s jealousy is particularly commented on by a Syriac Life of Nestorius preserved in a sixteenth century manuscript, see M. Brière, ‘*La légende syriaque de Nestorius*’, *Revue de l’Orient chrétien*, 2nd series, 5 (1910), 21.

We gain insight into such processes of competition between exiles and local authorities in particular through the case of Eusebius of Vercelli, banished, as we have seen, to Scythopolis in 355, the see of Constantius' clerical ally Patrophilus. Here, as Eusebius explained in a letter to his diocese in Italy, he had taken up residence at a *hospitium*, which Patrophilus himself had assigned to him with the help of imperial *agentes in rebus*. The *hospitium* he refers to may have been a commercial inn, but it could also indicate just a lodging place, perhaps with a citizen of Scythopolis.¹³² Collaboration between the bishop and the imperial agents suggests that Patrophilus initially had been content about Constantius' exile plan for Eusebius, but things apparently did not go according to plan. After their arrival Eusebius and his companions began to tend to the poor of the city. At some point, a mob (*multitudo*) arrived, seized Eusebius and brought him to the *officina infidelitatis*, perhaps Patrophilus' church. He was then placed under guard in another *hospitium*. Eusebius went on hunger strike, which he declared to Patrophilus in a report (*libellus*), a copy of which he also attached to his letter to Italy, and was released after four days. About a month later, Eusebius all the while tending to the poor again, 'armed men' burst into his *hospitium*, and once again confined him, this time together with his presbyter Tegrinus. They also confiscated his belongings and sent his clerics to the public prison (*carcer*). Those who came to visit both him and his companions in the *carcer* to bring them food were also arrested.

Earlier commentators of Eusebius' letter have taken the events he described at face value, and followed him in his characterisation of his exile as 'imprisonment'.¹³³ Daniel Washburn has recently shown, however, that Eusebius' powerful rhetoric of martyrdom and persecution masks the fact that the bishop had not been in confinement throughout his stay in Scythopolis. It was a result of his actions after he had come to the city. His and his clerics' food distributions from their lodgings to the city's still largely pagan poor had incited the anger of the city's actual bishop, Patrophilus, with the described results, for it had crucially undermined Patrophilus' power base and reputation as a bishop.¹³⁴ A similar conflict seems to have ensued at Eleutheropolis, the place of

132 On the meaning of *hospitium* see C. Lewis, C. Short, *A Latin Dictionary*, vol. 1: A-I (Oxford, 1879, repr. 1975), s. v. '*hospitium*', 867. We know from Epiphanius of Salamis (Epiphanius, Panarion 30.5.1–5 (GCS 25:339–40)) that during his sojourn at Scythopolis Eusebius stayed with the Jewish convert Joseph, a *comes*, but it is not clear whether this was before or after the events of Eusebius' confinement. On Joseph see PLRE I, Iosephus, 460.

133 See M. Goemans, 'L'exil du pape Libère', in *Mélanges offerts à Mademoiselle Christine Mohrmann* (Utrecht, 1963), 184–189; L. Dattrino, 'La lettera di Eusebio al clero e al popolo della sua diocesi', *Lateranum* 45 (1979), 60–82.

134 Washburn, 'Tormenting the Tormentors' (2009) (cf. fn. 8), 731–755. I also follow Washburn's reconstruction of events.

banishment of Eusebius' colleague Lucifer and the see of bishop Euthyches, for Lucifer's lodging, where he used to celebrate mass, was invaded at some point, and his books and sacred vessels seized. We can imagine that Euthyches did not tolerate competition over spiritual authority in his city either.¹³⁵ While we do not know the concrete identity of Lucifer's attackers, in Patrophilus' case it is clear that he was assisted by the local secular authorities, as he also managed to detain some of Eusebius' followers in the public prison.

One may imagine that similar resentments about exiles' behaviour at their place of banishment also led to other incidents of confinement we know of. It was certainly behind Philoxenus of Hierapolis' detention in a *xenodochium* at Gangra in 519 at the hands of the local bishop.¹³⁶ Liberius of Rome, in exile at Beroea after 356, the see of the Homoian Demophilus, also alluded, albeit in a more oblique way, to his subsequent confinement after his arrival in the Thracian city. In a letter written to his friend Vincentius, bishop of Capua, whom he entrusted with delivering the message that he had renounced communion with Athanasius to the emperor, he complained that he had been recently separated from his deacon Urbicus by the *agens in rebus* Venerius, which suggests some sort of arrest while they had been at Beroea.¹³⁷

It was not only bishops who struggled to control exiled religious dissidents who arrived on their doorsteps. Confinement of such exiles could also come, and probably for the same reason of addressing a neglected security concern, at the hands of civic officials. Athanasius reported that in 350 Paul of Constantinople was locked away at Cucusus in Armenia and later strangled in this place. Athanasius laid the blame for this treatment squarely at the door of the Praetorian Prefect Philippus and warned not to believe any stories that claimed Paul had died of illness, for it was the *vicarius Ponticae* Philagrius himself, surprised and outraged at this abuse, who had made it public.¹³⁸ This suggests that Paul's confinement had not been ordered at the time of his banishment, but was a later development, probably to address a concern about sedition. This was certainly the case of the arrest of the wandering monk Alexander in the early fifth century. Alexander, who in 420 was to found the monastery of the 'Sleepless Monks' in Constantinople, some time before had been exiled to Chalcis by the military count of Antioch on request of bishop Theodotus. The count seems to have spent little thought on what his action meant to the city of Chalcis. His objective was the short-term restoration of peace at Antioch. After

135 Lucifer's fate is described in *Liber precum* 109 (CC 69:387).

136 Philoxenus of Hierapolis, *Letter to the Monks at Senoum* (CSCO 232. Script. Syr. 99:76, 77–78).

137 Liberius to Vincentius, *Hil. Coll. Antiar. Pars.*, BVII.11 (CSEL 65:172–3).

138 Athanasius, *Historia Arianorum* 7 (PG 25:701). Sozomen, *Ecclesiastical History* 4.2 (SC 418:194) was not so sure whether Paul had been murdered. On Philagrius see PLRE I Fl. Philagrius, 694.

his arrival in the neighbouring city Alexander was placed under the guard of municipal slaves, 'since the magistrates feared him', as his hagiographer put it. The town councillors in Chalkis were hence less than pleased with the sudden presence of this man in their city.¹³⁹ Exiles' and particularly clerical and ascetic exiles' behaviour at their place of banishment could hence lead to the worsening of the relationships with the local authorities and ultimately their confinement.

Even clerical fortress banishment, which on the surface seemed to be concerned with security, often and certainly at the beginning arose in a provincial and pragmatic context. As discussed above, we encounter it for the first time during the *dux Aegypti* Sebastian's clean-up of Athanasius' supporters in 356 on special order by Constantius. It should not be regarded as a coincidence that he was a judge who as *dux* also held military competences.¹⁴⁰ Other fortress banishment, such as that of Elias of Jerusalem at Aila in 516, also happened on the watch of military men, in this case of that of the *dux Palaestinae* Olympus. Like other judges such men must have chosen exile places from a pool of existing infrastructure, but the overlap of military and civil competences in their case meant that military compounds came to be part of this pool. What this means is that, while a degree of security concern may be detected in fortress banishment, this may not have been the primary motivation behind the decisions taken, which often could have been a pragmatic decision to make the judge's life easier.

Unfortunately, we know very little about what life was like for exiles held in confinement. Archaeological research on the late Roman army may help us to illustrate experiences of those exiles sent to fortresses, but can do so only on a very general level. Late Roman fortresses were often forbidding strongholds, with thick, towered walls around which the barracks hovered, looking out onto a central square-shaped courtyard, and accessible only via one gate. This invokes an image of a panoptic layout, and fit to create a claustrophobic feeling.¹⁴¹ Physical constraint, in this or in any form, was a humiliating experience for those of higher social rank. As we shall see now, exiles in confinement often seized on this fine line between legality and abuse when describing their experiences, which makes the reality of exile in confinement even more illegible.

139 *Life of Alexander Acoimetes* 42 (PO 6:691; transl. D. Caner, *Wandering, Begging Monks* (2002) (cf. fn. 58), 273). See on this episode N. Lenski, 'Servi publici in Late Antiquity', in J. U. Krause, C. Witschel (ed.), *Die Stadt in der Spätantike – Niedergang oder Wandel?* (Stuttgart, 2006), 345.

140 PLRE I Sebastianus 2, 812. On the office of *dux Aegypti* see B. Palme, 'The Imperial Presence: Government and Army' in R. Bagnall (ed.), *Egypt in the Byzantine World 300–700* (Cambridge, 2007), 247.

141 P. Southern, K. Ramsey Dixon, *The Late Roman Army* (London, 1996), 133–139.

Exiles in Prison: Tales of Abuse

Late antique banished clerics frequently instrumentalised episodes of confinement in their writings. It is important to note, in this respect, that very few of them were detained in actual prisons. As we have seen, Eusebius of Vercelli at Scythopolis, Philoxenus of Hierapolis at Gangra, Liberius of Rome at Beroea and possibly also Heracleides of Ephesus at Nicomedia and Paul of Constantinople at Cucusus were all held in what can be best described as house arrest. Even the monk Alexander, while guarded by public slaves, was free to leave the city disguised as a beggar, which suggests that he had not been properly incarcerated. In fact, a stay in the public prison, the *carcer* of the *praetorium* in Alexandria, is known positively only of Victor of Tunnuna and Theodore of Cebarussi, and they were moved from there to a fortress and then to the monastery of Canopus fairly quickly within months.¹⁴² What this means is that, on the one hand, places of detention could vary according to on whose authority the arrest happened – for bishops may not always have had access to public prisons – but also that, on the other, there was an attempt to take note of an exile's dignity and status.

Nonetheless, even where exiles were actually not in a public prison links between their condition and the public prison were drawn in order to fully express the outrage. The clearest example of this rhetorical strategy derives from Eusebius of Vercelli's letter to his clergy and congregation back home in Italy.¹⁴³ Eusebius described three, or possibly four different types of imprisonment. Firstly, there were his own detentions in perhaps three different places, all of which were not in a public prison. Eusebius explained that he had already been quasi-imprisoned from the beginning of his stay in Scythopolis, in a *hospitium* 'from which I did not leave except due to your violence' as he wrote to bishop Patrophilus (*ep.* 2.4: *e quo numquam nisi vestra violentia egressus sum*). In a second *hospitium* he was then even locked up alone 'in one room' (*cella*; *ep.* 2.4). Finally, he was taken to an unnamed place and confined under 'very strict guard' (*arctiori custodia recludunt*). Secondly, there were his clerics, who were locked up (*includunt*) elsewhere (*ep.* 2.6), but it remains unclear whether in the public prison. The prison (*carcer*) was certainly the place where those who came to visit him were sent. Finally, the Christian virgins who also came were placed in *custodia publica*, which may mean the public prison, although one might also imagine that, for modesty reasons, they were put under some sort of house arrest (*ep.* 2.6).

Crucially, however, Eusebius repeatedly conflated his experiences under house arrest and those of his followers in the public prison. To begin with, he

142 Victor of Tunnuna, *Chronicle* 556.2 (MGH AA 11.2: 204–5).

143 Eusebius of Vercelli, *ep.* 2 (CC 9:104–109).

called Patrophilus his ‘jailer’ (*custos*; *ep.* 2.4 and 11), and those who held him ‘hangmen’ (*carnifices*, *ep.* 2.3), with all the connotations of formal and informal violence in the prison that this entailed.¹⁴⁴ Eusebius also used the verb *recludere* indiscriminately for the act of inclusion in the *carcer* or some other official place of detention, and at his place of confinement (*ep.* 2.3, 6, 8) and called both *custodia* (2.6, 8, 9). He further employed the verb *retrudere* (*ep.* 2.4) to describe what had happened to him, which in Latin literature was frequently used to denote imprisonment and to being thrown underground, into darkness.¹⁴⁵ Most importantly, however, he converged his situation in the *hospitium* and that of his companions in the public *carcer* into one, when he claimed that they were all prevented from visitors and hence exposed to starvation, even though everyone knew that even the worst criminals were usually allowed to receive charity from outside the *carcer* (*ep.* 2.7).

Also other reports on confined exiles emphasised the prison-like conditions, such as darkness and starvation. For example, when Athanasius reported on the exile of Paul of Constantinople in 350, he did not fail to mention that the bishop was first put in chains and sent to Singara in Mesopotamia, where Constantius probably resided at the time. Constantius then most likely took him to Emesa, from where he was sent to Cucusus. At Cucusus Paul was

‘locked away...in a very confined and dark place, and left to perish of hunger, and when after six days they went in and found him still alive, they immediately set upon the man, and strangled him.’¹⁴⁶

Equally dramatic was the story which Philoxenus of Hierapolis told some faithful monks from the monastery of Senoum near Edessa in a letter sent from his exile at Gangra in 519. Although he was allowed to keep his companions with him, they were all locked up in a *xenodochium*, in a very small room without any ventilation, perhaps above a bath or a kitchen, which was so full of fumes that Philoxenus feared for his companions’ eyesight. They were also

144 For the customary association of prison staff and violence see Krause, *Gefängnisse* (1996) (cf. fn. 4), 291–295. For the association of the ‘hangman’ with the prison see G. Clark, ‘Desires of the Hangman: Augustine on Legitimized Violence’ H. Drake (ed), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot, 2006), 137–146.

145 See H. Huntzinger, ‘Incarcération et travaux forcés’, in C. Bertrand-Dagenbach (ed.), *Carcer. Prison et privation de liberté dans l’Empire romain et l’Occident medieval* (Paris, 2005), 28.

146 Athanasius, *Historia Arianorum* 7 (PG 25:701): ὡς Παῦλος ἀποκλεισθεὶς παρ’ ἐκείνων εἰς τόπον τινὰ βραχύτατον καὶ σκοτεινόν, ἀφείθη λιμῶ διαφθαρήναι εἶτα μεθ’ ἡμέρας ἕξ, ὡς εἰσελθόντες εὗρον αὐτὸν ἔτι πνέοντα, λοιπὸν ἐπελθόντες ἀπέπνιξαν τὸν ἄνθρωπον. καὶ οὕτω τέλος ἔσχε τοῦ βίου τούτου. On the circumstances of the various legs of Paul’s journey to Cucusus see Barnes, *Athanasius and Constantius* (1993) (cf. fn. 109), 216–217. Paul’s first exile had been to Thessalonika, his home town, most likely in 342, from where he fled to Rome.

constantly guarded. The perpetrator of this treatment, the bishop of the city, also allegedly prevented Philoxenus' access to books.¹⁴⁷

As Daniel Washburn has pointed out correctly, how exiles experienced their treatment was of course subjective, and hence it is hard to measure their degree of suffering.¹⁴⁸ Yet, there is reason to believe that some aspects of these confinement stories, in particular that of total seclusion, were exaggerated and served rhetorical ends. In the case of Eusebius of Vercelli, his letter both meant to encourage his community in Italy to remain steadfast in their resistance against the creed of Sirmium and was part of a wider denunciation of Constantius, and the bishops who supported him as un-Christian, which also Eusebius' fellow exile Lucifer of Cagliari engaged in.¹⁴⁹ Philoxenus of Hierapolis, in turn, wrote his letter to the monks at Senoum to fortify them in their faith which clearly he considered not as strong as it could be.¹⁵⁰ Both audiences, the letter writers might have thought, would have responded to a pointed description of suffering and abuse of the faithful, with the prison at its centre. The fact that imprisoned exiles could write letters in any case somewhat undermines the image of isolation, for the practice of ancient epistolography demanded human contact, in the form of scribes and messengers.¹⁵¹ In both instances of imprisonment after Eusebius had been taken from his first *hospitium*, he had the opportunity to write, first the *libellus* to Patrophilus, of which he was also able to take a copy, and then the letter to his Italian supporters. In his second stint of confinement, he also had a presbyter with him and he managed to send off his letter.¹⁵² The same is true for Philoxenus, whose letter to Senoum was even a response to an earlier epistle sent to him by the monks, which demonstrates that he was able to receive messages.

Yet, these writings also show that detention of exiles – wherever this was – always had the air of arbitrary abuse of power about it, of a measure unsuitable to persons of honour. It is in this context that we need to interpret the accusation of Eusebius of Vercelli levelled at Patrophilus that his treatment, which also contained in his eyes a degree of torture, was against the *ius publicum*. What is

147 Philoxenus of Hierapolis, *Letter to the Monks at Senoum* (CSCO 232. Script. Syr. 99:76, 77–78); see also Ps.-Zachariah, *Chronicle* 8.5 (transl. G. Greatrex, R. R. Phenix, C. B. Horn (Liverpool, 2011), 299). On the localisation of the monastery at Senoum see A. Halleux, 'Introduction' (CSCO 232. Script. Syr. 99:vi-vii).

148 Washburn, 'Banishment' (2007) (cf. fn. 7), 234.

149 Washburn, 'Banishment' (2007) (cf. fn. 7), 167–168. See, e.g. Lucifer of Cagliari, *Ad Constantium Imperatorem liber unus* 5 (CSEL 14:12).

150 A. Halleux, 'Introduction' (CSCO 232. Script. Syr. 99:xii).

151 See W. Mayer, 'John Chrysostom: Deconstructing the Construction of Exile', *Theologische Zeitschrift* 62 (2006), 254 with reference to John Chrysostom's complaints about isolation as a literary construct.

152 Washburn, 'Tormenting the Tormentors' (2009) (cf. fn. 8), 749.

more, however, Eusebius also accused Patrophilus of having infringed not only the *ius publicum*, but also the *ius divinum*.¹⁵³ Here we witness a new development in the conceptualisation of the prison as a place of abuse that derives not only from the traditions of Roman social rank and honour, but from the Christian past and from Christian scripture.

To start with, imprisonment was an iconic experience of the period of persecution. Nearly every story of martyrdom from the pre-Constantinian period mentioned the suffering of the martyrs in prison as a part of their journey towards fulfilment of their faith. This applies to the *Acts of the Christian Martyrs*, many of which originated from a nucleus of authentic court records and eye-witness accounts, but also, crucially, to post-constantinian examples of fictional martyr narratives, such as the fifth- and sixth century Roman *gesta martyrum*, which amplified the prison scenes with fantastic details that betray the nature of these texts as devotional literature.¹⁵⁴ Graphic descriptions of suffering in the prison were a crucial element in this literary construction of martyrdom. The *gesta* often include as elements of suffering being kept in dark places, and exposed to smoke, heat and damp, which vividly echo Philoxenus of Hierapolis' description of his imprisonment at Gangra.¹⁵⁵

Given this role prison played in Christian memory it is not surprising that accusations of clerics causing imprisonment of their opponents by the state authorities played a substantial role in the religious conflicts of the post-persecution era. In a particularly telling example, at the council of Tyre in 335 Athanasius was charged, among others, of having falsely denounced a presbyter of casting stones at the statue of the emperor, a case of treason, as such bringing about his imprisonment, despite his orthodoxy and his rank.¹⁵⁶ Athanasius, in turn, did not hesitate to blame his opponent, George of Alexandria, of imprisoning even Christian virgins during Easter week, clearly emphasising the outrage of such behaviour at a time of year reserved for mercy and forgiveness.¹⁵⁷ Eusebius' accusations levelled at Patrophilus, and hence indi-

153 Eusebius juxtaposes the *ius publicum* and the *ius divinum* at ep. 2.4 (CC 9:106).

154 Particularly vivid descriptions of suffering in the prison can be found in *The Martyrs of Lyon 27*; *The Letter of Phileas 9*; and of course the *Martyrdom of Perpetua and Felicitia* (ed. H. Musurillo, *The Acts of the Christian Martyrs* (Oxford, 1972), 70, 322 and 106–131. See Musurillo's introduction for assessment of the *Acts'* authenticity).

155 See e.g. *Passio Agapiti* (AASS Aug. III: 532–7); *Passio Rufinae et Secundae* 27, 31–2 (B. Mombritius, *Sanctuarium seu Vitae Sanctorum*, vol. 2 (Hildesheim/New York, 1978), 444–445); *Passio Caeciliae* 31 (Delehaye, *Étude sur le légendaire romain: les saints de novembre et de décembre* (Brussels, 1936), 194–220). For the literary techniques of martyr construction in the *gesta* see L. Grig, *Making Martyrs in Late Antiquity* (London, 2004).

156 Sozomen, *Ecclesiastical History*, 2.25 (SC 306:336).

157 Athanasius, *De fuga* 6 (PL 25:652); Sozomen, *Ecclesiastical History* 4.10 (SC 418:282) also reported that George imprisoned 'many men and women'. Similar stories circulated

rectly at Constantius, neatly fall into this rhetorical strategy to draw a link between the persecutor of Christians and the persecutor of the orthodox, exemplified by their use of the prison:

See, holiest brethren, if it isn't persecution when we who guard the catholic faith suffer these things!¹⁵⁸

For Eusebius personally this strategy paid off. He was, as we know from his epitaph in the church of Vercelli, venerated as a martyr in his home city from at least the sixth century on, even though he had not died in exile and had returned to Vercelli in 361, after having been recalled by Julian. The epitaph explained that Eusebius had attained the status of martyr on account of the fact that he had been steadfast in his faith despite the suffering he had experienced in exile. An epitaph from the same place, which may even be slightly earlier, commemorated a bishop Honorius, who had apparently been one of Eusebius' clerical companions in exile, and had shared, as the epitaph put it, his suffering in prison (*carcer*). Eusebius' letter may have played a substantial role in his fashioning as a martyr.¹⁵⁹ Also Philoxenus of Hierapolis was regarded as a martyr. While it is unclear whether he died during his stay at Gangra the details of his exile which he so vividly described in his letter to his monastic supporters became the backbone of a narrative on his life preserved in a fourteenth-century Syriac manuscript. This *vita* styled him as a martyr who died at Gangra through purposeful suffocation in confinement above a bath, after five years of incarceration and torture.¹⁶⁰

about George's Arian successor, Lucius, when he became bishop of Alexandria for the second time in 373: Sokrates, *Ecclesiastical History* 4.21 (SC 505:78–80); Theodoret, *Ecclesiastical History* 4.19 (SC 502:282–290), as well as about Macedonius of Constantinople: Sozomen, *Ecclesiastical History* 4.20 (SC 418:292); Sokrates, *Ecclesiastical History* 2.38.5 (SC 493:190–192). Among the long list of charges against John Chrysostom at the 'Synod of the Oak' in 403 were also imprisonment of monks and clerics in his entourage; see Kelly, *Golden Mouth* (1995) (cf. fn. 89), 299–301. On similar accusation against Dioscorus of Alexandria see below n. 170.

- 158 Eusebius of Vercelli, *ep. 2.7* (CC 9:108): *Videte, sanctissimi fratres, si non est persecutio, dum haec patimur qui fidem catholicam custodimus: et altius cogitate, num valde etiam deterior sit quam illa, quae fiebat per hos qui idolis serviebant. Illi mittebant in carcerem, non tamen prohibebant ad se venire suos.* (Washburn's translation, slightly modified).
- 159 CIL 5.6723; CIL 5.6722: *exilii poenas et carceris iste subivit*; see Vallejo Girvés, 'Exilios y exiliados' (2007) (cf. fn. 54), 1477–1482, who lists previous bibliography at n. 24 on the context of dating. See on Eusebius' transformation from *confessor* to *martyr* also Y. M. Blanchard, 'L'Exil, enjeu de la sainteté: réflexions sur la construction de la figure de l'évêque en Italie dans la seconde moitié du IV^e s. ap. J. C.', in P. Blaudeau (ed.), *Exil et rélegation: Les tribulations du sage et du saint durant l'antiquité romaine et chrétienne (I-VI s. ap. J.-C.)* (Paris, 2008), 248–249.
- 160 A. Mingana, 'New Documents on Philoxenus of Hierapolis and on the Philoxenian Version of the Bible', *The Expositor* 19 (1920), 155–6. Already Ps.-Zachariah implied

Perhaps even more significant than his comparison of Patrophilus to pagan persecutors, however, was Eusebius of Vercelli's attempt to depict the bishop of Scythopolis as far exceeding even their evil deeds. One of the most scathing accusations Eusebius of Vercelli levelled at his 'jailer' Patrophilus was the bishop's alleged prohibition of visitors and food provisions both to Eusebius himself in his *hospitium* and to his companions in the *carcer*, which turned him into a larger-than-life persecutor:

Consider further whether this is not even far worse than that perpetrated by those who served idols! Though they sent to prison, at least they did not prohibit their supporters from coming to them... Even judges and torturers do not deny imprisoned robbers the possibility to see their relations: to us and our supporters it is prohibited and in order that the devout brothers do not go they are not only kept away from the *hospitium* where we are held, but are also deterred by threats that they do not go to the prison...¹⁶¹

Eusebius here touched on a crucial aspect of the Roman prison. While prisoners in principle received official rations of food, it was widely accepted that their meagre provisions were to be topped up by friends and family from outside.¹⁶² By denying this, Patrophilus hence increased the suffering of the prisoners, including Eusebius, beyond belief. Nearly two-hundred years later also Philoxenus of Hierapolis, in his letter to the monks at Senoum, emphasised his and his companion's isolation from the world outside. No one was allowed to speak to them. The guards would see to this. When they asked to be transferred to the more comfortable surroundings of the public prison, even at the risk that they would have to reside with criminals, the bishop declined, for he hated Philoxenus even more than the civil authorities.¹⁶³ In this way, Philoxenus argued, house arrest was actually worse than the public prison as it foreclosed the level of community that came with the latter.

For Eusebius of Vercelli and for Philoxenus of Hierapolis such behaviour was more heinous than that of pagan persecutors, for it subverted one of the most important duties of Christians: charity for prisoners. Already Ignatius of Antioch had interpreted the scripture passage: 'I was in prison and you came to visit me' (Matt 25:36) as a call to Christians to minister to prisoners, as they

that his death had been deliberate in *Chronicle* 8.5 (transl. G. Greatrex, R. R. Phenix, C. B. Horn (Liverpool 2011), 299).

161 Eusebius of Vercelli, *ep.* 2.7 (CC 9:108): *et altius cogitate, num valde etiam deterior sit quam illa, quae fiebat per hos qui idolis serviebant. Illi mittebant in carcerem, non tamen prohibebant ad se venire suos... in carcere latronibus clausis a quaestionariis vel a iudicibus non denegatur facultas videndi suos: a nobis et nostris prohibentur, et devoti fratres ne veniant, non solum ab hospitio arcentur quo tenemur, sed ne adeant carcerem, comminatione terrentur...*

162 Krause, *Gefängnisse* (1996) (cf. fn. 4), 279–283; see Libanius, *Or.* 45.9 (Loeb 166–168).

163 Philoxenus of Hierapolis, *Letter to the Monks at Senoum* (CSCO 232. Script. Syr. 99:76, 77–78).

represented the body of Christ.¹⁶⁴ Incidentally, such charity was also demanded for strangers, who the same scripture passage equally represented as the embodiment of Christ (Matt 25:25). In the early fifth century John Chrysostom exhorted his flock to set aside rooms in their own houses and receive the poor, as to offer hospitality to a stranger was to offer it to Christ.¹⁶⁵

By the fourth century, while remaining an obligation for all Christians, such care for prisoners and strangers came to define in particular the bishop's civic duties, as part of his wider concern for the poor and the forlorn.¹⁶⁶ Where prisons were concerned, it ranged from intercession for those who faced imprisonment, to practical assistance of prison inhabitants, especially with healthcare and with food.¹⁶⁷ Fifty years after the episode at Scythopolis late antique laws institutionalised this charity, which demonstrates how socially significant it had become by this time. Ten years after Philoxenus' exile to Gangra Justinian reconfirmed these laws in his general prison legislation of 529.¹⁶⁸ As for hospitality, we see in the course of the fourth century a rise of specialised institutions, from hospices for strangers (*xenodochia*) to those of the sick (*nosokomeia*) under the direction and patronage of bishops, particularly in the Eastern cities of the Mediterranean.¹⁶⁹

164 Ignatius, *Letter to the Smyraeans* 6 (PG 5:712).

165 John Chrysostom, *In Acta Apostolorum Homilia* 45 (PG 60:319–20). On the early Christian relationship with prison charity see also G. Geltner, *The Medieval Prison. A Social History* (Princeton, 2008), 84–85, with further references.

166 See already Justin, *apol.* 1.67 (PG 6:429); and for the fourth century Ambrose, *De officiis ministrorum* 2.21 (PL 16:138–9). On the late antique bishop's image as a 'lover of the poor' and the social power it entailed see P. Brown, *Power and Persuasion in Late Antiquity. Towards a Christian Empire* (Madison, Wisconsin, 1992), 89–103.

167 Augustine, *serm.* 161.4 (PL 38:879–880), mentioned the frequent call for bishops' intercession; he himself interceded between 409 and 423 for the estate steward Faventius (*epp.* 113–115 (PL 33:428–430)) and tried to convert his incarceration into house arrest, citing CTh 9.2.3 (380). On food as a central part of prison charity see Aug. *serm.* 178.4.4 (PL 38:962), Conc. Aurelianense, c. 20 (CC 148 A :155) and Krause, *Gefängnisse* (1996) (cf. fn. 4), 281.

168 CTh 9.3.7 (409); Sirm. 13 (419); CJ 1.4.22 (529). See B. Raspels, 'Der Einfluß des Christentums auf die Gesetze zum Gefängniswesen und zum Strafvollzug von Konstantin d. Gr. bis Justinian', *Zeitschrift für Kirchengeschichte* 102 (1991), 298–302; V. Neri, 'Chiesa e carcere in età tardoantica', in C. Bertrand-Dagenbach (ed.), *Carcer. Prison et privation de liberté dans l'Empire romain et l'Occident medieval* (Paris, 2005), 251.

169 The distinction between 'hospice' for strangers and 'hospice' for the sick is not always clear in the sources. See W. Mayer, 'Welcoming the Stranger in the Mediterranean East: Syria and Constantinople', *Journal of the Australian Early Medieval Association* 5 (2009), 92–96 and 102. One such institution was the hospital of Samson in Constantinople founded under bishop Macedonius (342–346, and again 351–360), see T. S. Miller, 'The Sampson Hospital of Constantinople', *Byzantinische Forschungen* 15 (1990), 101–136. Other bishops who busied themselves in this regard included Basil of

According to Eusebius, Patrophilus of Scythopolis had already demonstrated his ineptness for office through his negligence for Scythopolis' poor, which had necessitated the Italian bishop's and his companions' food distributions in the city. Imprisoning Eusebius and his followers was another example of this lack of ability. Eusebius may in fact, rather cynically, have insisted on calling the place he was confined a *hospitium*, to draw attention to the, in reality, rather inhospitable nature of his surroundings and the failings of the bishops as a host, as a Christian and as a civic authority. The same might be said about Philoxenus' *xenodochium*, although, by the sixth century we can imagine that a church-controlled hospice was a space that a bishop would most naturally have chosen to imprison an opponent.¹⁷⁰ For Eusebius, Patrophilus' behaviour was a sign that he, and his co-religionists, were driven by the devil. As Eusebius continued after he had compared Patrophilus to the pagan persecutors:

How deep did the devil hurt the churches through the cruelty of the Arians! They send into public custody (*custodia publica*) while they should release from it...¹⁷¹

Patrophilus hence had entered an unholy alliance with current secular power also because he prevented other Christians from fulfilling scripture and therefore jeopardising their salvation, by employing and intensifying secular power's very own abusive tools of coercion and punishment, where he should have obstructed them.

Conclusions

The confinement of exiles was often an unplanned product of provincial circumstances, to counter any troubles that had arisen from an exile's presence at a certain place. Such troubles seem to have become more widespread from the fourth century on due to changes in the practical choice of exile places by those pronouncing banishment. Rather than being sent to islands, exiles, and particularly clerical exiles, were now often sent either to remote regions on the mainland as a symbolic gesture of expulsion, or to cities whose predominant religious culture was opposed to the exile's belief. This change in selecting places of banishment, in turn, was a result of the newly assigned functions of social hygiene or moral teaching to the penalty of exile, in particular for

Caesarea and John Chrysostom, see H. Wehr, 'Gastfreundschaft', *RAC* 9 (1976), 110–112.

170 On bishops using hospices as prisons see ACO 2.1:213–215: at the council of Chalcedon the deacon Ischirion of Alexandria presented a complaint about having been imprisoned in a *xenon* for lepers by his patriarch Dioscorus; POxy 19.2238 (551): a freedman of the church of Oxyrhynchus was held in a *nosokomeion* for theft.

171 Eusebius, *ep.* 2.7 (CC 9:108): *Quantum ergo satana Ecclesias vulneraverit per Ariomanitarum crudelitatem! In custodia publica mittunt, qui liberare debent...*

religious dissident, but also increasingly for 'lay' crimes. New Christian inspired definitions of crime hence led to new definitions of the aims of punishment, but there was little consistent thinking about the consequences in practice. These were left for the grass-roots authorities in the provinces to address, which often involved a local bishop or a local magistrate, or a collaboration of both, quarantining a trouble maker. Perhaps such divergence between aims and consequences of exile is not surprising, for considerations of security were traditionally fairly underdeveloped in Roman thinking on banishment. Therefore, while geographical changes in exile practice suggest that there was an understanding of crime as a 'disease', the measures to reign in 'contagion' and the measures of 'healing' were wholly inadequate. To continue the medical metaphor suggested by many of the sources, a judge pronouncing a sentence of banishment was often more concerned with purifying his community, than troubled by the prospect of contaminating another. Authorities worked on the assumption that exiles were suppressed or even 'corrected' in their activities when removed from their primary theatre of action and put in the vicinity of either very 'immoral', for example pagan, individuals, or very 'moral' ones, such as loyal bishops. They seemingly found it hard to come to terms with the fact that this approach did not work, particularly in the case of exiled clerics and matters of belief, which, it turned out, needed more stringent mechanisms of security.

When choosing such mechanisms of security civic and ecclesiastical authorities in the provinces may have thought that house arrest or the assignment of a military guard were perfectly legal, appropriate and, above all, bloodless ways to address the problem, including the sedition stirred up by leading churchmen. After all, as specified by the jurists, a provincial governor could place exiles under house arrest or confine them to a city. House arrest and military guard also were the forms of custody the law suggested for members of the elite who got into legal trouble. Furthermore, some laws on heresy alluded to spatial confinement of heretics (*loca, quae... quasi vallo...secludant*), albeit in very vague terms, and may therefore have provided a context for security measures.¹⁷²

In addition, emperors themselves provided a poor role model with regard to the prohibition of the practice. We can even observe Justinian himself engaging both in transferring exiles to tighter security arrangements and in fortress banishment, which confirms that confinement of exiles could be an imperial strategy, even if denied to local authorities. In fact, around twenty years after he had published his law prohibiting confinement of exiles, Justinian specified Gypsus in Egypt as the place of exile for those who performed castration,

172 CTh 16.5.14 (388): *Adeant loca, quae eos potissimum quasi vallo quodam ab humana communione secludant.*

although in this instance sentence to hard labour could also have been meant.¹⁷³ As we have seen, the emperor also had John the Cappadocian transferred from Cyzikus to house arrest in Antinoopolis. Most significantly, in 536, he interned the deposed Miaphysite bishop Theodosius of Alexandria, together with three-hundred of his clergy, as well as the monastic leader Z'ura and the bishop John of Hephaestopolis in the fortress Derkos in Thrace, a day's journey away from the capital, where they were all kept under strict guard.¹⁷⁴ This action was part of the emperor's clamp-down on Miaphysites in that year, which also sought to put an end to the years of agitation that Miaphysite exiles had been allowed to pursue, particularly in Egypt.¹⁷⁵

John of Ephesus, our witness to Theodosius' exile experience and, despite theological differences, well disposed towards the imperial couple, even though he emphasised the harshness of the conditions at Derkos, implied that the choice of place had been that of Justinian's wife Theodora, who, significantly, also made sure that the inmates had enough food.¹⁷⁶ While the emperor shared the conclusions of his delegates in the provinces that at times some exiles simply must be controlled more tightly, John's version of events suggests that Justinian tried to influence that this was not presented in any way as a form of cruelty, but as imperial benefaction. Although we cannot precisely reconstruct the context that prompted the law in 529, such anxieties about the notion of 'abuse' that surrounded any spatial confinement of members of the elite, which had gained additional vigour in late antiquity due to the role of the prison in Christian memory, seem to have underpinned Justinian's programmatic prohibition of the practice of confining exile. It is tempting, although purely speculative and perhaps too narrowly focused on clerical exile, to connect this to the more conciliatory and diplomatic tone the emperor adopted towards Miaphysites at the beginning of his reign and the emperor's concern about creating martyrs.¹⁷⁷ In any case, at the beginning of his reign, at least, Justinian was so keen to weather any association between exile and imprisonment that in his law of 529 he gave up the concept of exiles' forced residence altogether and stipulated that they should be free to roam an entire province. He also introduced the death penalty for any subsequent sedition, which seemingly brushed away any concerns about bloodshed and hence preference for less lethal forms of

173 NJust 142.1 (558).

174 John of Ephesus, *Life of Z'ura* (PO 17: 35) and *Life of John of Hephaistopolis* (PO 18: 528–9).

175 See S. Ashbrook Harvey, *Asceticism and Society in Crisis. John of Ephesus and the Lives of the Eastern Saints* (Berkeley, Los Angeles, London 1990), 79–80.

176 On John of Ephesus' complex relationship with Justinian and Theodora see Ashbrook Harvey, *Asceticism and Society* (1990) (cf. fn. 175), 80–82.

177 See on Justinian's dealings with the Miaphysites at the beginning of his reign Leppin, *Justinian* (2011) (cf. fn. 70), 92–98.

neutralisation that, according to some late antique sources, made some Christian judges turn towards imprisonment of offenders.¹⁷⁸ Justinian wanted to strictly distinguish between imprisonment as a custodial measure and proper legal penalties, such as exile and execution. It is hence no coincidence that his law was released in the same year as his rules on arrest and prohibition of private prisons, equally set to stamp out abuse.

Justinian's concern that allowing for confinement of exiles could have an impact on his image of rulership was well founded. In his *Secret History*, written in the early 550s as an invective of Justinian's reign, Procopius of Caesarea commented on an aspect of the dismal behaviour of the empress Theodora that may have been written to recall the case of John the Cappadocian's exile. It was also, however, a remarkable echo of the law on imprisonment the emperor had issued more than twenty years earlier:

When [Theodora] did not wish an offender's punishment to be generally known, she used to take the following course. She would summon the man, if he happened to be a person of position, and secretly would put him in the charge of one of her ministers, and command him secretly to convey the man to the uttermost parts of the Roman empire. At dead of night the attendant would put the offender on board a ship, seeing that he was thoroughly bundled up and shackled, and go on board with him. Then at the place which the Empress had appointed he would furtively hand him over to someone well qualified for this task. Then he departed after directing the man to guard the prisoner as securely as possible (φυλάσσειν τε ὡς ἀσφαλέστατα ἐπιστείλας τὸν ἄνθρωπον), and forbidding him to say a word to anyone until either the Empress should take pity on the poor wretch, or, suffering for years a lingering death by reason of the miseries of his existence in that place and utterly wasting away.¹⁷⁹

Procopius must have expected his audience to be able to relate this anecdote to Justinian's legislation on exile and to actual episodes of exile during his reign. For Theodora to engage in incidents of private imprisonment was bad enough, but the implication that she defied her husband's law that had prohibited this exact behaviour was particularly scathing. It was scathing, above all, for Justinian's credibility as a ruler, for he allowed his wife to 'secretely' (λαθραϊότερον) bend his own rules 'at dead of night' (ἀωρὶ τῶν νυκτῶν). Procopius' passage hence suggests that Justinian, despite his laws of 529, never quite managed to overcome an image as a 'jailer' himself.

178 With this measure Justinian may have recalled CTh 9.10.1 (317?) = CJ 9.12.1, in which Constantine reminded judges that manifest violence (*vis*) was to carry a sentence of *supplicium capitale* rather than *deportatio* or *relegatio in insulam*.

179 Procopius, *Secret History* 16.16–17 (Loeb 192–194; translation modified).

Appendix

Exiles in 'prisons'

Date	Name of Exile	Place of Confinement	Responsibility	Source
349–50	Paul of Constantinople	Cucusus, in a confined and dark place, without food	Philipp, Praetorian Prefect (?)	Athanasius, <i>Historia Arianorum</i> 7 (PL 25:701)
After 356	Eusebius of Vercelli	Scythopolis, in a <i>hospitium</i> , without food	Patrophilus, bishop of Scythopolis	Eusebius of Vercelli, <i>ep.</i> 2 (CC 9:104–109).
After 404	Heracleides of Ephesus	Nicomedia, in confinement (είρκτή)	Arcadius, emperor (?)	Palladius, <i>Dialogue on the Life of John Chrysostom</i> 20 (SC 341:396–406)
After 404	Sophronius, deacon	Thebais, in custody (ἐν φυλακῇ)	Arcadius, emperor (?)	Palladius, <i>Dialogue on the Life of John Chrysostom</i> 20 (SC 341:396–406)
ca. 420	Alexander Acoimetes	Chalcis in Syria, guarded by municipal slaves	The magistrates of Chalcis	<i>The Life of Alexander Acoimetes</i> , 42 (PO 6:691)
449	Ibas of Edessa	in twenty different prisons (φυλακάς)	Count of the Orient (?), supposedly on instigation by Eutyches	ACO 2.1:376
519	Philoxenus of Hierapolis/Mabug	Gangra or Philippopolis, in a <i>xenodochium</i> , in a room above the kitchen, full of smoke	The bishop of Gangra	Philoxenus, <i>Letter to the Monks at Senoum</i> (CSCO 232. Script. Syr. 99:76, 77–78)
After 541	John the Cappadocian	'shut up' (καθειρξεν) at Antinopolis	Theodora (?)	Procopius, <i>Secret History</i> 17.40 (Loeb 210)
After 544	Victor of Tunnuna and Theodore of Cebarsussi	Alexandria, in the <i>carcer</i> of the <i>praetorium</i> , and then in the <i>carcer</i> of the <i>castellum Diocletiani</i>	?	Vic. Tonn, <i>Chronicle</i> , ann. 555–6 (MGH AA 11.2: 204, 205)

Exiles in fortresses

356	Dracontius	Fortress (castrum) of Thaubastum	Sebastian <i>dux Aegypti</i> ; and George, bishop of Alexandria	Jerome, <i>Life of Hilarion</i> 20 (SC 508:268)
356	Philo	Babylon (in Egypt) = headquarter of Legio XIII Gemina	Sebastian <i>dux Aegypti</i> ; and George, bishop of Alexandria	Athanasius, <i>Historia Arianorum</i> 72 (PL 25:780); Jerome, <i>Life of Hilarion</i> 20 (SC 508:268)
356	Adelphius of Onuphis	Psinaula = fort of <i>Ala II Herculia dromedariorum</i>	Sebastian <i>dux Aegypti</i> ; and George, bishop of Alexandria	Athanasius, <i>Historia Arianorum</i> 72 (PL 25:780)
361	Valentinian ¹⁸⁰	A fortress (φρούριον) in the desert ?	Julian, emperor	Theodoret, <i>Ecclesiastical History</i> , 3.16 (SC 530:147)
373	Barses of Edessa	The fortress (φρούριον) of Pheno	Valens, emperor, or the governor of Thebaid (?)	Theodoret, <i>Ecclesiastical History</i> 4.16 (SC 530:240–2)
After 404	Eulysius of Bostra	Fortress (φρούριον) Misphas in Arabia	Arcadius, emperor (?)	Palladius, <i>Dialogue on the Life of John Chrysostom</i> 20 (SC 341:396–406)
After 404	Cyriacus of Emesa	Palmyra, ‘a Persian fortress’ (τῶν Περσῶν φρούριον)	Arcadius, emperor (?)	Palladius, <i>Dialogue on the Life of John Chrysostom</i> 20 (SC 341:396–406)
After 404	Palladius of Helenopolis	Syene, under guard (φρουρεῖσθαι)	Arcadius, emperor (?)	Palladius, <i>Dialogue on the Life of John Chrysostom</i> 20 (SC 341:396–406)
After 435	Nestorius of Constantinople	Fortress near Panopolis	Andreas, count of the Thebaid	John Rufus, <i>Plerophories</i> 36 (PO 8: 82)

180 According to Theodoret Julian exiled Valentinian to a fortress in the desert for refusing to sacrifice. Philostorgius, *Ecclesiastical History* 7.7 (ed. J. Bidez (2nd edn, Berlin, 1972), 86), however, reported that his place of banishment was Thebes, while according to Sozomen, *Ecclesiastical History* 6.6 (SC 495:272–274) he was sent to Melitene in Armenia. The reason for this contradicting information, and particularly the reference to fortress banishment may be that Theodoret remembered an earlier incident in Valentinian’s life, an inspection of fortresses in Mesopotamia ordered by Constantius on the pretext of removing Valentinian from court for a while. It is therefore not at all clear whether Valentinian really suffered this type of exile, even though the passage in Theodoret may indicate that by his time fortress banishment was a common phenomenon. See D. Woods, ‘Valens, Valentinian I, and the *Ioviani Cornviti*’, in C. Deroux (ed.), *Studies in Latin Literature and Roman History* 9 (Brussels, 1998), 462–486.

476	Basiliscus and his family ¹⁸¹	Fortress (κάστρον) Limnae in Cappadocia	Zeno, emperor	Malalas, <i>Chronicle</i> 380/15.5 (transl. E. and M. Jeffreys (Melbourne, 1986), 210); Marcellinus Comes, <i>Chronicle</i> ann. 476 (MGH AA 11.2: 91)
478	Epinius, Urban Prefect	Isauria, under guard (φυλάττεσθαι)	Zeno, emperor/ Illus, <i>magister militum</i>	John of Antioch 234.2 (ed. S. Mariev, <i>Ioannis Antiocheni fragmenta quae supersunt</i> . (Berlin, New York, 2008), 426–427)
478	Verina ¹⁸²	Fortress Dalisandros in Isauria, under guard (ἐφύλαττον)	Illus, <i>magister militum</i> /Zeno, emperor	John of Antioch 234.2 (ed. S. Mariev, <i>Ioannis Antiocheni fragmenta quae supersunt</i> . (Berlin, New York, 2008), 426–427); Malalas, <i>Chronicle</i> 386/15.12 (transl. E. and M. Jeffreys (Melbourne, 1986), 214).
479	Marcian	Fortress (καστελλίον) Papius in Isauria	Zeno, emperor	Theophanes, AM 5971 (ed. K. De Boor (Hildesheim, 1963), 126); John of Antioch 234.4 (ed. S. Mariev, <i>Ioannis Antiocheni fragmenta quae supersunt</i> . (Berlin, New York, 2008), 430)
512	Flavian of Antioch	Fortress (<i>castellum</i>) of Petra	Anastasius, emperor	Marcellinus Comes, <i>Chronicle</i> ann. 512 (MGH 11.2:98)
516	Elias of Jerusalem	<i>Castellum Paraxenense</i> (at Aila on the Red Sea?)	Olympus, count of Palestine	Victor of Tunnuna, <i>Chronicle</i> , ann. 509 (MGH AA 11.2: 194)

181 Evagrius, *Ecclesiastical History* 3.8 (SC 542:406), and Theophanes, *Chronicle* AM 5969 (ed. K. De Boor (Hildesheim, 1963), 124) have Cucusus, while Victor of Tunnuna, *Chronicle* a. 476 (MGH AA 11.2:189) knew of Sasima.

182 Theophanes, *Chronicle* AM 5972 (ed. K. De Boor (Hildesheim, 1963), 128) has the fortress of Papius as Verina's place of exile, but this is probably due to a confusion between her banishment and her last days during the final stand-off between Illus and Zeno at this fortress.

536	Theodosius of Alexandria and 300 of his clergy, the monastic leader Z'ura and John of Hephaistopolis	Fortress Derkos in Thrace	Justinian, emperor, and Theodora	John of Ephesus, Life of Z'ura (PO 17:35), and Life of John of Hephaistopolis (PO 18:528–529)
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