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**G. Geltner: The Medieval Prison**

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## INTRODUCTION

ON 17 FEBRUARY 1327, a group of appellants at the Sienese General Council decried the state of local prisons. Reminding those assembled that “not two years have passed since over sixty men died there [in prison] on account of the terrible conditions and neglect” (*propter pessimam conditionem et corruptionem*), the petitioners reiterated the need for a facility “in which there would be distinct places for holding perpetrators of major offenses, for those of minor offenses, and for those held for debt.”<sup>1</sup> The plea was summarily adopted, and soon the commune purchased the properties occupying the site of the future compound.<sup>2</sup> A master mason was at work on the project by December,<sup>3</sup> and within three years Siena’s new prison stood complete as the lateral extension of the Palazzo Pubblico on the side of via di Malcucinato.<sup>4</sup> On 28 July 1330, the prisoners left their old cells at the Palazzo Cerretani (Alessi), and entered the new facility.<sup>5</sup>

Constructing a new prison was a sound move. First, it ended the migration of local custodial spaces among several aristocratic *torri* rented by the commune since the 1240s.<sup>6</sup> Next, the new compound was planned to enable the magistrates to distinguish among categories of prisoners, provide for the inmates’ efficient processing, and improve their living conditions. All these purposes were deemed imperative since by that point prisoners were more numerous and the duration of their incarceration lasted longer than ever before. Last but not least, the act corresponded nicely with the reorganization of Sienese civic space under the Nine (1287–1355) in two interrelated ways. The new prison flanked—in fact, it completed—the communal palace, the most concrete expression of the city’s transition from a polycentric oligarchy to a centralized communal regime, a process commonly dubbed “from tower to palazzo.”<sup>7</sup>

At the same time, erecting a prison at the city center reflected a broad shift in contemporary attitudes toward social marginals, namely from expulsion to containment. This strategy is evident across western Europe, especially in urbanized regions such as central and northern Italy, the Rhine Valley, the Lowlands, and directly north and south of the Pyrenees. Here local governments developed mechanisms for maintaining social order in a new key.<sup>8</sup> Rather than physically annihilate or otherwise eliminate the presence of social and religious deviants,



**Fig. I.1.** The Palazzo Pubblico of Siena and its former prison wing.

various regimes created or annexed “marginalizing” institutions such as leper-houses, brothels, hospitals, and Jewish quarters.<sup>9</sup> The central, municipally run prison was a later but equally ubiquitous expression of such attitudes to social control.

For Siena’s was not an isolated case. By the early fourteenth century, responding to similar needs and under analogous circumstances, prisons already dotted the landscape of western Europe. This moment in the history of the prison marked the end of a process that commenced sometime around 1250, when scores of city-states, capitals, and rural strongholds began founding such facilities and employing them as punitive institutions for sentenced culprits alongside their traditional role as places of custody (e.g., pretrial arrest) and coercion (e.g., torture chambers and debtors prisons). In its geographical scope and quantitative scale such recourse to incarceration in *any* of its modes was virtually unprecedented prior to the mid-thirteenth century. And although five centuries would go by before imprisonment became the cornerstone of European penology, both the measure and its physical counterpart—the prison—were widely integrated into judicial administrations by the close of the fourteenth century. This trajectory, from foundation to routinization, established the chronological boundaries of the present study.

Although ubiquitous, the process is nowhere clearer than among the Italian city-states, whose prisons are the best-documented institutions of their kind. Yet there are few detailed modern studies of these facilities’ medieval phase.<sup>10</sup> Over time, tangential works such as urban surveys and histories of charity have helped chart the creation of local prisons, and topical investigations have remarked the medieval origins of these institutions as preludes to their modern successors.<sup>11</sup> What remains untold is the story of the many and varied local facilities—a necessary step toward a well-grounded regional portrait, which is the major object of this book.

The specific contribution of this study is threefold: first, in filling the Italian lacuna; second, in augmenting the traditional historiography of the prison with anthropological, urbanistic, and sociological perspectives; third, in grounding arguments about the history of the prison in documents of practice rather than by recourse to prescriptive texts, as has been the norm so far. I posit that the birth of the prison was more than a legal development, “a sign of advancing civilisation.”<sup>12</sup> Rather, it was a complex and contingent creation in which politics engaged architecture, religious imagination fused with penal practices, and an ancient legal tradition that abhorred punitive incarceration yielded to the reorganization of urban space according to new attitudes toward

social marginals. In the process, prisons emerged as constituents of the urban landscape and proud symbols of a hard-won independence: their foundation dovetailed with the communes' desire to impose security in the city, efficiency in the courts, and expediency in business; and it responded to changing attitudes toward the "other," namely, a shift from ejecting to containing deviants. In fine, this study seeks to understand the advent of prisons in general and of punitive incarceration in particular by taking surrounding society and culture into account.<sup>13</sup>

Two partially overlapping goals guide this book. The first is to delineate the variety of processes by which medieval society developed practices of punitive imprisonment, mostly against the grain of contemporary jurisprudence. To this end, I trace a range of alternative structures underwriting the proliferation of prisons particularly in urban environments, and relate the ways in which these facilities became engrained in contemporaries' political thinking, embedded in their concepts of justice, sovereignty, and citizenship, and integrated as a *sine qua non* of their social and physical environment. To those who consider the prison as axiomatic to Western penology, this study underscores both the contingency of institutional development and the diversity of its functions.

The second is to offer a living image of medieval imprisonment by focusing on the various persons comprising the human fabric of these institutions and the relations among them. These men, women, and children, however, are not limited to debtors, prostitutes, criminals, heretics, or vagabonds. This is due in part to the legal and administrative roles of communal prisons, in part to their physical centrality in late-medieval cities. For instance, a main factor in alleviating the inmates' conditions was the constant human traffic passing through the prison gates (and occasionally over its walls and through its windows). Prisoners, moreover, were visible: they roamed the city as licensed beggars, as debtors in search of settlement, and as criminals en route to court. And inmates' visibility increased during civic events such as routine festive releases, triumphal amnesties, and occasional riotous break-ins accompanying political turmoil. At the same time, there were many incomers to the prison: servicemen, lawyers, and physicians; guards and prison administrators; local priests, lay and religious friars, confraternity members, and court magistrates; families traveling far and near to supply their imprisoned kin with food and cash; prostitutes on nocturnal calls; and of course the daily flow of new and recidivist offenders. Prisons' location and accessibility meant that their inmates were not fully cast out of late-medieval urban life: the deprivation of these men's freedom failed to turn them into liminal people, altogether stripped of their social identity and ties. Rather, prisons developed as semi-exclusive—and ipso facto semi-inclusive—institutions, places of

punishment and detention whose walls operated as breathing membranes, not hermetic seals.

As in modern, “total” institutions, the realities of medieval incarceration often departed from their intended political and theoretical aims.<sup>14</sup> The effective factors on daily life in this nascent institution were many and diverse, and jointly lend themselves to an interpretation of local power relations and social norms. It is not the case, for instance, that prison routines—insofar as they existed—were entirely dictated by local governments, nor were they always fashioned in response to inmates’ behavior and concerns. While such pressures were certainly operative, many other elements shaped life in and around the prison, from altruistic or egotistic interventions to broader and changing contemporary outlooks on social deviancy, civic identity, and lay piety. Accordingly, the urban prison not only marked a new stage in the history of punishment, but also epitomized an increasingly complicated attitude that developed toward indexing social “in” and “out.”

Beyond shedding light on an obscure aspect of medieval urban life and legal history, the study of medieval prisons illuminates the so-called persecuting mentality of late-medieval society from a fresh perspective. For the creation of these institutions and especially their physical and administrative organization reveals an impulse not simply to eradicate, but rather to *contain* and *maintain* deviancy. If prisons played an important role in what Alfred Soman defined as “a process of sensitization and desensitization to crime,”<sup>15</sup> they also testify to an increasingly nuanced understanding of social control in the late thirteenth and fourteenth centuries.

*The Medieval Prison* is based on archival research conducted in Siena, Venice, Florence, and Bologna. The prison profiles of the latter three cities are related in chapter 1, while information drawing on Sienese documents is interspersed throughout the book. (The division is not a commentary on Siena’s inherent significance or lack of pertinent documentation; my intention was to obviate burdening the reader with yet another profile.) Chapter 2 examines how each city tackled common problems connected with the creation and running of its prisons, under the general headings of urban development, administration, finance, and law. This chapter also adopts a comparative view toward similar facilities and problems in England and France. Jointly, the first two chapters serve as a frame of reference for chapter 3, which advances through stations in prison life, from arrest to the end of incarceration. As such it offers a sense of the variety of medieval prison regimes and experiences, occasionally juxtaposing them with major observations by and debates among students of modern prison life. How

contemporaries perceived and interpreted local prison spaces and the purpose of incarceration itself is the subject of chapter 4. The conclusion situates the creation of urban prisons at the intersection of local power and social marginality by examining this process vis-à-vis the development of other facilities that ostensibly defined social marginals. This comparison proved to be particularly useful, for while much has been said recently about medieval leprosaria, brothels, hospitals, and Jewish quarters, situating the prison among them deepens our understanding of the social functions of deviancy in general and of “marginalizing” institutions in particular.

Numerous studies inform the time frame, geographical focus, and methodology of the present investigation. In general, earlier works on medieval prisons jointly point to the years 1250–1400 as a period of concentrated activity in and around these facilities; and despite premonitions to the contrary, scholars have left the prisons of Italy’s urbanized center and north as a lamentable lacuna. In any case, the variety of approaches pursued by previous scholars, be they religious, institutional, legal, literary, or social historians, enabled the multiplicity of perspectives that this study adopts.

Although few and far between, scholars have been tracing the early history of the prison for over three hundred years, ever since Giovanni Battista Scanaroli’s *De visitatione carceratorum libri tres* (1655). Scanaroli, archbishop of Modena, sought to document the impact of ecclesiastical ethics on civil penal practices. His work was a Catholic apology, yet it also betrays clerical anxieties over the rise of Absolutism, since identifying the role of Christian piety under a new political order was one of its main concerns. A later attempt to underscore the church’s role in the development of modern penology was F.A.K. Krauss’s edifying *Im Kerker vor und nach Christus*, published in 1895. After delineating the use of prisons in several ancient cultures, the work links the impetus of contemporary prison reforms to the imperatives of early Christianity, whose advent Krauss construes as *the* watershed in penal history. Despite their antiquarianism and strong pious bent, both Scanaroli and Krauss convinced later scholars of the church’s seminal role in fostering imprisonment as a penalty against clerics, monks, and, later, heretics. They also implicitly argue that the imaginary of the prison was mostly developed among monastic and clerical milieus, which shaped their contemporaries’ horizons of expectations regarding the roles and functions of incarceration. While their historical claims are basically correct, they are nonetheless overstated and, insofar as they ignore nonecclesiastical agents of change, they are misleading and partial.

Precious information on the origins of European penology was also recovered by early prison reformers such as John Howard (1726–90)

and Martino Beltrani-Scalia (1829–1909).<sup>16</sup> These learned state officials drafted platforms for overhauling the penal systems of England and Italy, respectively. Fortunately, they were also historically minded, and their reports are replete with data about the institutions they visited, some of which can be dated to the late Middle Ages. Beltrani-Scalia had even perused several local archives, culling on occasion information that would otherwise be lost today. On the whole, however, they conducted no systematic inquiries into the history of any specific prison, took its existence more or less for granted, and assumed, at least implicitly, that earlier facilities were at least as problematic as those they sought to reform. This telescopic view is one that the present study seeks to correct.

Around the turn of the twentieth century, already in the age of professional historiography, and responding to the growing prestige of modern prisons, there appeared several studies that focused on the legal and institutional origins of prisons in France and Italy.<sup>17</sup> Among their many contributions, these efforts were the first carefully to sketch the profiles of premodern facilities and to document the employment of punitive incarceration in the Middle Ages. Jointly they coalesced into a compelling revision of European penal and institutional history, and built up a confidence that underwrites the greatest achievement of prison history in that period, Gotthold Böhne's two-volume *Die Freiheitsstrafe in den italienischen Stadtrechten des 12.–16. Jahrhunderts* (1922–25). To this day, Böhne's tomes remain a point of departure for any study of medieval incarceration.

As its title suggests, *Die Freiheitsstrafe* is not limited to imprisonment, but also encompasses deprivations of freedom such as slavery and forced labor. Yet its significance lies especially in the attempt to understand the cultural origins of a new form of punishment—incarceration—and the mobilization of resources for its employment. In particular, it is a somewhat long-winded study of dozens of Italian city-statutes available in print at the time, from among whose rubrics Böhne amassed prescriptions that dealt with incarceration, prison administration, inmates' welfare, and their terms of release.<sup>18</sup> This was also the first major work systematically (albeit perhaps too rigidly) to distinguish among coercive, custodial, and punitive incarceration (respectively, *Zwangshaft*, *Sicherungshaft*, and *Strafhaft*), and to assert that all three modes are already attested in late-medieval Italy.

Böhne sought to relate the development of penal incarceration in the early Renaissance to Jacob Burckhardt's influential ruminations about the roots of modernity, as developed in *The Civilization of the Renaissance in Italy* (1860). According to Böhne, the so-called rise of individualism enabled, and in a profound way accomplished, the introduction of imprisonment as a routine penalty. He argued that, prior to the emergence



of freedom as the desirable state of the individual, limitations on personal liberty would not have been effective, and, to an extent, even conceivable, as a viable punishment. Conversely, the notion of personal liberty allowed incarceration to be perceived as an independent measure, distinct from the variety of corporal punishments with which it was associated, and possessing a rehabilitative element.<sup>19</sup>

*Die Freiheitsstrafe* was adamantly revisionist. Its geographical and chronological focus sought to undermine the prevailing view, originally expressed by Robert von Hippel in 1907, that the modern prison stems from the Amsterdam prison-workhouse, the Tuchtuis, inaugurated in 1596.<sup>20</sup> Thus, the publication of Böhne's first volume in 1922 sparked a heated exchange between the author and notable legal scholars such as Eberhard Schmidt and Georg Dahm, who were followers of von Hippel with a Weberian bent. Böhne's opponents reiterated that, prior to the late sixteenth century, imprisonment was essentially a corporal punishment and that the origins of rehabilitative deprivations of freedom could only be a manifestation of the social values embodied by the Protestant Reformation (as construed by Max Weber) and perpetuated under the aegis of the modern, rational state, with its monopoly over legitimate violence. Schmidt in particular was so appalled by Böhne's thesis, that he suggested forgoing the publication of the planned second volume.<sup>21</sup>

Thankfully, Böhne stayed his course, but throughout the twentieth century his opponents have had the upper hand, at least outside of medieval studies: the foundation of the Amsterdam workhouse and Elizabethan bridewells, the first institutions explicitly designed for rehabilitative confinement, continue to be seen as seminal moments in informed discussions on the birth of modern penology.<sup>22</sup> That the explicit association among incarceration, labor, and rehabilitation is an early modern one is not an argument that the present study refutes, especially since both the "total" and rehabilitative attributes of modern prisons were absent from even the most highly regulated medieval facility. Nor does it seek to resurrect Böhne's Burckhardtian idealism and uncritical reliance on prescriptive texts in order to prove the widespread employment of punitive incarceration. However, it is possible to distinguish between the "birth" of the prison per se and that of modern penology. It is in this sense that Böhne's chronology resurfaces as coherent, correct, and applicable well beyond late-medieval Italy.

Interest in the early history of prisons continued to increase throughout the turbulent twentieth century, now underwritten by legal and institutional enquiries that privileged documents of practice over prescriptive texts and jurisprudential literature. Ironically, this development passed over the Italian city-states, despite Beltrani-Scalia's

learned survey, Bohne's massive study, and the relative abundance of peninsular records. Instead, legal and institutional historians such as Roger Grand, Annik Porteau-Bitker, Margery Bassett, and Ralph Pugh focused their attention on medieval French and English institutions.<sup>23</sup> And in fact it was Pugh who produced, in 1968, the first monograph on English medieval incarceration, thoroughly based on local archival records. Forty years after its publication, *Imprisonment in Medieval England* remains the only regional study of its kind, a testimony to the fine state of English and Welsh records and a tribute to Pugh's capacity as an institutional historian.<sup>24</sup> As such, it not only informed the methodology of the present study, but also enabled a responsible transregional comparison.

For many years, Marxism presented a special obstacle to the study of medieval imprisonment, quite apart from the contentions of Bohne's Weberian antagonists. According to this strand of historiography, punitive incarceration developed out of a new stage in labor relations in which imprisonment could be identified with one's loss of control over productive time. Since this phase is usually associated with the rise of capitalist ideology in the early modern era, the deprivation of freedom would have been an unworkable penalty in earlier times.<sup>25</sup> The claim is largely erroneous, as nearly a century of scholarship has by now established, and notwithstanding the recognized protocapitalistic tendencies among the Italian city-states.<sup>26</sup> However, neo-Marxist historiography did succeed in promoting fruitful methodologies for studying punishment in terms of its social functions and the cultural values that it engenders. Such an approach informs much of the scholarship on modern penology and other "total" institutions, a category seminally framed by Erving Goffman.<sup>27</sup> Yet, with one exception to be discussed below, it has yet to be applied to the study of medieval prisons.

As already noted, the early development of ecclesiastical (episcopal, monastic, and inquisitorial) prisons has long been acknowledged as an important, albeit indirect, contribution to the reception of penal incarceration among secular jurisdictions. Although the imprisonment of religious deviants is mostly peripheral to the present investigation, it must be recognized that it was the medieval papal inquisition, particularly in Languedoc, northern Spain, and northern Italy, that first brought this erstwhile clerical punishment into the urban public sphere through the wide-scale immuring of laymen. As Yves Dossat, James Given, and others have shown, the majority of penalties imposed by thirteenth- and fourteenth-century inquisitors involved or were limited to incarceration.<sup>28</sup> Local inquisition campaigns, moreover, foreshadowed legal developments underlying the proliferation of secular prisons in another way, namely through the introduction of the inquisitorial method into

criminal jurisprudence and its gradual encroachment on accusatorial forms of litigation.<sup>29</sup> Relinquishing accusatorial procedures meant longer detainment of defendants for questioning (and torture) by the state, so that the overall impact of this process on the history of the prison was to increase the number of imprisoned defendants and prolong their stay. One response to these developments was the creation of new custodial spaces that would be both accessible and salubrious enough to maintain more inmates for longer periods.

Given's study of inquisitorial prisons and Jacques Chiffolleau's work on criminality in papal Avignon were the first major works by medieval historians seriously to engage Michel Foucault's *Surveiller et punir* (1975).<sup>30</sup> Foucault's influential thesis, or rather its implications for historians of medieval penal practices, was methodological rather than contextual.<sup>31</sup> The chronology undergirding Foucault's discussion ignores the early history of the prison, as delineated in the series of studies related above, and which would have been entirely available to him. It also had the detrimental effect of construing a persuasive (and highly idealized) model of the modern prison that obliterated the significance of earlier institutions: if the prison was essentially the brainchild of post-Enlightenment penology, its predecessors were relegated to a hazy prehistory. Given's work did much to correct this view, especially by illustrating how the use of prisons fit into and augmented the inquisitors' technology of power and control. There are many similarities between Given's conclusions and those presented here regarding municipal prisons, but the broader methodological point that I wish to advance is that premodern prisons are better studied without recourse to modern penological concepts. Conversely, to understand the development of the modern prison requires a longer historical perspective regarding an institution that was already hundreds of years old in the days of Beccaria and Bentham, the fathers of modern penology.