FROM CUSTODY TO CONTROL: A BRIEF HISTORICAL ANALYSIS OF THE EMERGENCE OF IMPRISONMENT AS A MEANS OF PUNISHMENT

DA CUSTÓDIA AO CONTROLE: UMA BREVE ANÁLISE HISTÓRICA DO SURGIMENTO DA PRISÃO COMO MEIO DE PUNIÇÃO

DE LA CUSTODIA AL CONTROL: UN BREVE ANÁLISIS HISTÓRICO DEL SURGIMIENTO DE LA PRISIÓN COMO MEDIO DE CASTIGO

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ABSTRACT

The theme of imprisonment is a contemporary reality, present in both public and private debate and at various levels of social life. Due to the significant presence of this issue in social discourse, the impression is created that imprisonment as punishment has been part of this institution since its earliest records. In fact, places of confinement have existed since Antiquity, being observed in Egyptian, Mesopotamian, Hellenic, and Roman civilizations, extending into the Middle Ages. However, during this period, prisons served primarily as a means of custody, with rare examples of imprisonment having punitive purposes. At the end of the Middle Ages, some monastic orders of the Roman Catholic Church began to use confinement in cells as a means of discipline and correction of clergy, and it was occasionally applied to laypersons as punishment for the commission of offenses regarded as serious in light of Catholic dogma. Only in the Modern period did the first prison facilities begin to acquire new functions, as a result of changes in the economic and social system.

Keywords: Prison. Custody. Transformation. Social Control.

RESUMO

O tema prisão é uma realidade contemporânea, presente no debate público e privado e em diversos níveis do convívio social. Em razão da presença significativa da temática no debate social, cria-se a impressão de que prender para punir faça parte dessa instituição desde seus primeiros registros. De fato, cárceres existem desde a Antiguidade, sendo observados em civilizações egípcias, mesopotâmicas, helênicas e romanas, estendendo-se até o Medievo. No entanto, as prisões durante esse período serviam como meio de custódia, sendo raros os exemplos de prisões com finalidades punitivas. No final da Idade Média, algumas ordens monásticas da Igreja Católica romana passaram a utilizar o recolhimento em celas como meio de disciplina e correção de clérigos, tendo, algumas vezes, sido utilizado também para a punição de leigos em face do cometimento de infrações reputadas sérias diante dos

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dogmas católicos. Apenas na Modernidade as primeiras instalações prisionais passaram a adquirir novas funções, em razão das mudanças do sistema econômico e social.

Palavras-chave: Prisão. Custódia. Transformação. Controle Social.

RESUMEN
El tema de la prisión es una realidad contemporánea, presente en el debate público y privado, y en diversos niveles de la vida social. Debido a su importante presencia en el debate social, da la impresión de que el encarcelamiento como castigo ha formado parte de esta institución desde sus primeros registros. De hecho, las cárceles han existido desde la antigüedad, existiendo en las civilizaciones egipcia, mesopotámica, helénica y romana, extendiéndose hasta la Edad Media. Sin embargo, durante este período, las cárceles sirvieron como medio de custodia, siendo escasos los ejemplos de prisiones con fines punitivos. A finales de la Edad Media, algunas órdenes monásticas de la Iglesia Católica Romana comenzaron a utilizar el confinamiento en celdas como medio para disciplinar y corregir al clero, a veces también para castigar a los laicos por cometer infracciones consideradas graves según el dogma católico. Fue en la Edad Moderna cuando las primeras instalaciones penitenciarias comenzaron a adquirir nuevas funciones, debido a los cambios en el sistema económico y social.

Palabras clave: Prisión. Custodia. Transformación. Control Social.

1 INTRODUCTION

Arresting someone to punish as a result of a crime committed is an almost omnipresent reality in contemporary society. It is an immanent activity in the practice of modern states, not least because it is one of the most visible forms of exercising state power. As if that were not enough, it is a recurring theme in the mass media, being practically daily on the agenda of newsrooms and editorials. In the everyday imaginary, prison occupies a relevant space, being the object of many cinematographic, literary, musical works, etc., when it is not a subjective reality, lived and suffered by a significant portion of the population. In fact, at some point the topic of imprisonment has already occupied space in people's lives, even if in trivial conversations. This means that prison is more than a mere punitive instrument, constituting a social and political institution that occupies multiple segments in society and, not infrequently, is the object of long studies and debates.

Its presence does not mean unanimity, as there are those who see it as a highly harmful and inhumane modality, in which, for the most radical, proscription would be an alternative. However, there are others who see it as an acceptable and more humane means of punishment compared to other means of punishment already tried in history. On the other hand, there are those who see it as an insufficient means, especially when it is used for certain types of violent crimes, and should be relegated to the background in favor of other more incisive means of punishment, such as capital punishment. However, although permeated with criticism, there is no current state that dispenses with its use as the main means of punishment.

In this context, since prison is impregnated in the collective imagination and in legal systems around the world, it ends up appearing to be a very ancient punitive institution, which would be present since the first civilizations, causing the debate about this form of punishment to be harmed by the construction of a common sense of this almost ethereal nature, as if it were an immutable reality from the beginning and that should be included in all analyses of this punishment in society.

In this vein, this article seeks to understand at what moment prison as a means of punishment has its root, that is, when does prison effectively acquire this new function?

To answer the problem, it is necessary to analyze the historical context in which prison begins to encompass a punitive function, meeting the primary objective of unveiling the point of change in prison functions and using the methodology of bibliographic review. To this end, it is essential to meet some secondary objectives that are summarized, first, in the analysis of the historical functions of prison from Antiquity and, later, in the emergence of the first punitive prison devices. However, considering the large temporal elastic that a historical

analysis presupposes and the need to maintain strict adherence to the problem and objectives proposed in this article, it will be limited only to the relevant historical points in which it is possible to highlight the inflection point of the functions of prison, not analyzing the problems and consequences that arise from the establishment of prison as a means of punishment, leaving these questions to other works on the subject that are abundant in the scientific literature.

2 DEVELOPMENT

2.1 IMPRISONMENT OR IMPRISONMENT?

In penology and penitentiarism, the words *prison* and *prison* are similar ideas, but not identical. There would be a distinction in the use of the expressions, since *prison* would precede *prison*, since the first would identify places, even if rudimentary, intended for the custody of a person, while the second would be close to the meaning of penitentiary or prison, where a sentence imposed in the face of a sentence is served.

According to Neuman (1971, p. 24):

> Prison (word and institute) precedes prison, prison and penitentiary, which specifically designate different modes of execution and places of execution of the custodial sentence. From this it is indisputable that the expression prison historically and technically designates the place or building in which the accused or accused are housed (what the French call *prévenus*); and prison, prison or penitentiary, indicates, on the other hand, the place intended for those convicted judicially.

However, the distinction of the expressions does not seem relevant to us, since the expression prison does not represent its own legal category in various legal systems. In Brazil, the expression prison is generic and encompasses both the various types of establishments intended for the restriction of liberty (jails, prisons and penitentiaries) while the expression prison is intended more to name the legal institutes that deprive someone's liberty, such as temporary detention, preventive detention, civil prison, etc. Certainly, the very idea of distinguishing the expressions *prison* and *prison* is artificial, since the distinction was made a *posteriori* due to new functions added to incarceration.

Thus, we consider the idea of imprisonment as a generic expression that encompasses any and all establishments intended for the imprisonment of a person, whatever its purpose. Thus, in order to facilitate the exposition, we will treat the expressions prison and prison as synonymous, discarding merely formalistic linguistic rigors.

2.2 PRISONS IN ANTIQUITY

In Egyptian civilization, prisons were known, but in the overwhelming majority of cases, they typically had custodial functions. Arrests for punitive purposes were not an Egyptian practice, despite the fact that a prisoner could be taken into custody because he had been subjected to slavery or forced labor.

Gusmão (2010) states that the usual punishments were batons, mutilations, exiles, death, including by incineration at the stake, while Dotti (2010) points out that, in this period, death penalties, enslavement, mutilation and other types of corporal punishment were common, in addition to forced labor in mines.

Peters (1995) mentions that there are records of prisons in Ancient Egypt from the so-called Middle Kingdom, especially for the public function performed by the pharaohs in maintaining the so-called *maat* (a concept that could be approximated to justice or order, and on which the balance of the universe would depend), with prison being highlighted, along with physical punishment, compared to the death penalty. These prisons could be resembled fortresses with cells, dungeons, or institutions such as future *workhouses* or labor camps, since it seems that inmates are expected to work during incarceration.

Peters (1995) continues that, in these places, there was no distinction between classes of prisoners, and people who were there for various reasons were allocated, such as those who were waiting for their cases to be heard, who were waiting for punishment or who were indefinitely held for the purpose of forced labor. It was also suitable for people suspected of being spies, disgraced officers, or to hold foreign captives who were captured in war.

In the cultural and religious imagination, perhaps the most vivid example of the existence of prisons in Ancient Egypt is recorded in a passage from the biblical book of Genesis (Gen 39:19-23), sacred in common to both Christianity and Judaism, where it is mentioned that Joseph, one of the twelve sons of the patriarch Jacob, enslaved in Egypt, was incarcerated in an Egyptian prison after being unjustly accused by the wife of his captor of committing a crime (Bible, 2021).

Prison in Egyptian civilization, therefore, was an instrument of custody in essence, especially for the purpose of exploiting forced labor and enslavement, which can be seen by most of the colossal Egyptian historical monuments that largely used enslaved or forced labor, with prison being a preponderant place of custody of forced labor.

In the kingdoms of the civilizations of the region of the Euphrates and Tigris rivers there are also sparse records of arrests, although, as in other civilizations, they were intended for custody. The forms of punishment were predominantly corporal, when they did not involve the death of the punished.

Gusmão (2010) describes that the Babylonian legislation bet on capital punishment through drowning, crucifixion, with penalties of mutilation, enslavement, pecuniary penalties, amputations, payment of fines, etc. According to Peters (1995), prisons were rarely mentioned in the historical codifications of that period, being mentioned in other sources of literature, indicating that they were used for cases of debts, thefts, bribes, slave rebellions and captured foreigners.

In the Assyrian Empire, Peters (1995) points out that traffickers, thieves, deserters and tax evaders were imprisoned in places intended for the submission of those in custody to forced labor. Babylonian terms such as *bit asiri* designated forced labor for captured foreigners, and *biti kili* would be places similar to prisons where criminals, kidnapped, rebels, etc. However, Dotti (2010) points out that Assyrian practices were generally cruel and bet on the profligacy of death penalties and cruel punishments.

In the Hebrew civilization, the main forms of punishment were death and exile, with the purpose of eliminating from the community those who violated the order of society and, in the spiritual conception, the purity of the people, which could attract the wrath of God on the community. Strongly inspired by the ordinations of the Pentateuch (the first five books of the Bible), the sanctions aimed at

According to Peters (1995), the main forms of execution were stoning, incineration, decapitation or strangulation, as well as the punishments of mutilation, physical punishment, payment of fines, compensation and mandatory sacrifices. The existence of prisons is rarely mentioned, although there is news, mainly from records in sacred books, of the existence of prisons with custodial characteristics, despite the fact that Mirabete and Fabbrini (2009) point out that, through the Talmud, there was a progressive replacement of talionic punishments by other sanctions, such as forced labor.

Within the scope of Hellenic civilization, depending on the *polis*, punitive practices varied. They could range from moral and political punishments (such as enslavement, ostracism from public life, banishment, etc.) to pecuniary punishments and corporal punishment. However, as in other civilizational experiences, prison, despite not being a punitive practice in itself, was also a reality as a custody.

Taking the example of Athens, Peters (1995) states that prisons had a temporary custody function, as a means of forcing the payment of debts, places for the practice of torture and as places where individuals with long or life punishments could be placed, not having a great punitive role, being more common death penalties, fines and exile, although they were used with some frequency (Peters, 1995).

It was in Rome, however, that the prisons would be more visible and their use as punishment would have their first records.

Carrara (2002) mentioned, in his famous program, that Roman imprisonment was not about punishment, but about custody. He did not deny their existence, acknowledging the presence of several prisons in Ancient Rome, but emphasizing that they did not have a punitive purpose. Lyra (1955) stated that historians would not agree on the existence of public prisons of a penal nature, except for custody, although there were limitations on freedom, enslavement and the so-called *condemnatio ad metalla* (Lyra, 1955).

Peters (1995) mentions that the Law of the Twelve Tables, although it did not directly provide for the management of prisons, authorized private imprisonment executed by creditors against debtors for a period of six days to coerce them to pay the debt or, ultimately, subject them to slavery. Furthermore, considering the power that the male head of the Roman family possessed (*pater familias*), he was not forbidden to maintain a domestic prison to discipline the members of his family, to imprison rebellious slaves or to enclose those recalcitrant for work, in what was called *ergastulum*.

However, in addition to private prisons, there are records of the practice of incarceration in Roman public society through the *latumiae*, which were a kind of prison-quarry, being part of a prison complex located in the lower part of the Roman Capitoline Hill. Near this place there was also an underground complex named *Tullianum*, later renamed *Carcer Mamertinus*, built around the third century BC, in the northeastern part of the Roman forum known as *Comitium*, where many matters of a judicial nature were handled, so it is thought that it was idealized for the convenience of being close to the courts, being destined for custody and executions. The author, however, mentions that it was difficult to imagine such places as prisons as an instrument of long-term punishment, even because of the terrible conditions of the places, but that it would be possible to imagine them as a place of custody for prisoners of war and those sentenced to long, even life, punishments, although such cases were rare (Peters, 1995).

This same impression is placed by Ferrajoli (2011), acknowledging that the prison is a very ancient institution, noting the existence of the Tullian prison, later called Mamertino, something that would have already been mentioned by Sallust and Livy and given rise to the legend that the prison would have been built by King Ancus Márcio to instill fear in the plebs. The author also points out that, in Rome, in addition to capital punishments, penalties such as *damnatio ad metalla*, a kind of forced labor, *deportatio in insulam*, *relegatio ad tempus* or *in perpetuum*, were foreseen, while Emperor Zeno would later have established the eminently public character of prison, and Emperor Justinian would have reaffirmed that no one could

be arrested without an order from the magistrate. However, it should be noted that, during the Roman period, imprisonment was not seen as punishment, and the author highlights Ulpian's adage: *carcer enim ad continendos homines, non ad puniendos haberi debet*.

If analyzed from a structural perspective, it is seen that prison is an appropriate place to prevent someone from escaping, keeping him available for the purposes that are in the best interest of the captor. That is why, originally, it was not intended to punish a person, but to guard him so that, later, he would be subjected to the true sanction, primarily corporal, such as the infliction of injuries, amputations or death. There were exceptions, but imprisonment, primarily, was placed to ensure the execution of corporal punishment[3].

2.3 PRISONS IN THE MEDIEVAL PERIOD

In the Middle Ages, the prison went through a slow process of historical resignification from the point of view of its functions, without, however, losing its function as an instrument of custody.

There are reports, according to Peters (1995), that the Franks, in the region of the ancient Roman province of Gaul, used monasteries to guard rebels, but most of the time, like the Lombards, the use of sanctions such as fines, enslavement, mutilation and death penalties was preferred.

In the attempts to rescue the Roman legal tradition through edicts of the Germanic kingdoms, which occupied the political space of the former Western Roman Empire[4], it is possible to find mentions of the use of prisons, although they are rarely mentioned.

Dotti (2010) mentions the use of prison in an eighth-century edict of King Luiprand, of the Lombards, requiring each city to have a prison to imprison people accused of being thieves for a period of up to two years, as well as in a capitular of Emperor Charlemagne, in the ninth century, determining that people of *boni generi* could be imprisoned until they could amend, which would have already been cited in the doctrine as a rare situation, in the period, of imprisonment as a sanction.

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[3] Despite the non-existence of the institution of prison as a means of punishment in Ancient Rome, it is curious to find in historical records current discussions about the problems related to contemporary prisons. On this point, Peters (1995) mentions the Code of Theodosius – which, in fact, was a compilation of several previous edicts – which contains an edict of Constantine, from the year 320, preventing custodians from being kept chained with instruments that injured the bones, determining that those in custody were kept in bright places and in good health, as well as other norms that determined that judges should make periodic visits to prisons, they ensured food at the expense of the Roman treasury and the right of these to go to the baths accompanied by guards.

[4] This movement gave rise to the codifications that can be classified as part of the Vulgar Roman Law, having as examples, according to Paulo Dourado de Gusmão, the historical *Lex Romana Wisigothorum*, of the Visigoths, *Lex Romana Burgundionum*, of the Burgundians, and the *Edictum Theodorici*, of the Ostrogoths (Gusmão, 2010).

Bruno (1978, v. 3) points out that the exclusively precautionary purposes of the existing prisons were maintained during the Middle Ages, considering the prominence of corporal punishment, infamous punishment and capital punishment. However, it identifies some situations where prisons were used with some sanctioning characteristics, such as in the Edict of Liuprando, king of the Lombards, of 720, for some cases of theft, indefinite imprisonment by edict of Charlemagne, in addition to provisions in the ancient criminal law of Nuremberg, where incarceration was provided as a model of punishment for some crimes. In addition, several medieval German and Italian cities had prisons for detention, substitution of fines, and punishment of petty crimes.

Peters (1995) also mentions the edict of King Liuprando as a rare example of the standardization of prisons in the early eighth century, adding the information that it was up to the judges to build the prisons in their respective district. Also according to the author, the Visigoths, in the region of present-day Spain, were strongly influenced by Roman legal practices, highlighting the existence of Visigothic laws that mentioned imprisonment as an instrument of custody of prisoners for later execution.

In the period of the Late Middle Ages, with the beginning of the slow process of replacing the old traditional and decentralized monarchies with models that, henceforth, would give way to monarchies centralized in the figure of a sovereign, the use of prisons becomes better documented and with facilities (castles, forts, palaces, etc.) adapted to be transformed into prisons, without, With this, one can speak of the use of prison as a penalty.

According to Neuman (1971), except for sporadic cases at the end of the sixteenth century, the idea of deprivation of liberty was not known in the Middle Ages. In fact, incarceration took place in underground cells called *vade in pace* or in dungeons, rooms in fortresses and palaces adapted for incarceration, such as the Tower of London, initially a fortified palace, the Bastille Fortress in Paris, originally a palace and treasury of the Templars, the *Bicètre*, which would have been built to be an episcopal palace or *Piombi di Venezia*, apartments of the Venetian ducal palace.

In the Kingdom of England, Peters (1995) points to the Tower of London, built by order of King William I and which was used as a prison to guard the king's enemies. In other prison buildings, it was already possible to find people in custody by order of local judges, as they were prisoners of war or hostages. In addition, when the *Assizes of Clarendon* was issued in 1166 by King Henry II, *the sheriffs* were ordered to build local jails in their respective counties, for the custody of prisoners accused of offenses until the arrival of the itinerant royal judges, who would promote the respective trials.

The arrests of these periods maintained clear precautionary purposes, intended to keep the prisoners in custody until their trials. Also according to Peters (1995), punishment in English law was made to be quick and discourage the practice of other crimes, and the forms of punishment were vexatious, involving mutilation, branding, public flogging, in addition to death penalties that could be given by hanging, drowning, incineration, live burial or decapitation, without forgetting the possibility of inflicting previous torments.

In the French Kingdom, a similar situation was found. The justice system of that period consisted of decentralized levels of administration of justice, where, alongside royal justice, the justice of the nobility, municipalities and ecclesiastical courts coexisted, a reality that, in fact, would persist until the appearance of the Napoleonic codifications. It was during this period that well-known fortifications began to be used as prisons. The best known and most emblematic were the fortifications of the *Châtelet,* on the banks of the Seine River, which had already been used for the custody of detainees around 1200, and the emblematic fortress of the Bastille, which, although it was designed as a defensive structure of Paris, was successively modified in the following kingdoms, becoming a prison facility (Peters, 1995).

It is necessary to recognize that, even though penitentiary facilities have existed in France since the period of the Late Middle Ages and in the centuries that followed, the use of prison as a punishment was not the main means of sanction. Hence the warning of Carrara (2002, v. 2) that it was only with the enactment of the Penal Code of 1791 – therefore, after the events that determined the outbreak of the French Revolution and the end of the Modern Age – that prison began to be used properly as a penalty.

In the Iberian Kingdoms there were prisons and, like many models spread in the Western world, they were intended for the custody of individuals so that, in the future, they would be the object of the common punishments of the period. However, what draws attention in some of these kingdoms is the existence of advanced legislation dealing with prisons, which found no parallel in many of the kingdoms that were contemporary with them.

Peters (1995) alludes to the *Siete Partidas*, a collection of laws organized and published in 1265 by King Alfonso X of the Kingdom of Castile, which contained the most extensive discussion of the use of prisons in that medieval period. If it is not possible to know the extent of the de facto application of this legislation to Castilian prisons, the existence of a legislative work of this magnitude would indicate a concern with the situation of prisons, and it is not a legislation that was a mere copy of ancient Roman laws or laws of the Kingdom of France.

However, if there is a medieval institution that developed the purposes of imprisonment in the period, it was the Roman Catholic Church. Originally, the juridical questions with which

the Catholic Church dealt were of an ecclesiastical nature. However, with the increasing intervention in worldly affairs, the Church began to position itself as the authority to regulate matters that would involve the entire Christian community or Christendom.

According to Peters (1995), bishops assumed responsibility for broad matters of interest to the clergy, as well as those related to the property of the Church itself and immoral behaviors within their communities. Writings of bishops and religious of the city of Rome, which contained legislative and consultative acts, had their authority accepted in much of European Christendom. Furthermore, from the sixth century A.D., as various materials of a legal nature were produced by local ecclesiastical assemblies, individual books of penance, liturgical books and edicts of Germanic kings, they began to be the object of study and systematization by scholars, and from the twelfth century onwards, they began to receive the referendum of the Church, having as its starting point the *Decretum* of 1140 ("Concurrence and Disagreement of the Canons")[5].

Imprisonment will appear in Canon Law as a punitive and correctional alternative, a true disciplinary instrument seeking the punishment and expiation of sins by cellular isolation.

Dotti (2010) notes that punitive practice in canon law was responsible for clearly introducing the punitive nature of an individual's submission to prison. The prison would have the function of subjecting the sinner to the awareness of his sin and his consequent expiation through imprisonment.

Mirabete and Fabbrini (2019, v. 1) highlight the contribution of canon law to add another purpose to punishment, which, in addition to being an expiatory means, should also be regenerating.

For Peters (1995), the development of canon laws in the cases of monks, secular clergy and laity can be understood as a remote articulation of an institutionalized system of discipline, based on the ideal of correction and penitentiary atonement, where the prison emerges with a new function.

There is no certain date as to when the use of imprisonment as a means of punishment by Canon Law begins. According to Peters (1995) one could point to the recovery of the Roman practice of *ergastulum* in monasteries, since during the Synod of Tribur, in 895, a letter from the bishop of Tarragona, at the end of the fourth century, was republished, containing in that document the defense that rebellious monks and nuns should be enclosed in *ergastula*, separate compartments in the monasteries where they would receive discipline

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[5] Also according to Peters (1995), the *Decretum* of 1140 would be a collection carried out by Gratian, which came to be accepted as a basis for the study of ecclesiastical or canonical laws. Canon laws were widely recognized by various political entities of the time, such as individual monarchies, principalities, and free cities, until the advent of the Reformation in the sixteenth century.

through forced labor. This practice was included in the collection of the *Decretum* of 1140. As if that were not enough, from the sixth century onwards, many monastic constitutions, although not part of the *legislative corpus* of the Roman Catholic Church, used the expression cárcere (*carcer*) to designate a place of penitentiary enclosure at the discretionary disposal of the abbot, including, in some more extreme cases, perpetual enclosure being possible. With the systematization of canon law at the end of the twelfth century, it was already expected that each monastery would have a prison or something similar, and in the thirteenth century, monastic enclosure was already formally mentioned as a punishment, being compared by many writers of the time, when perpetual, as comparable to the death penalties imposed in the secular sphere.

In this point, he points out:

> Monastic prisons also served to confine the secular clergy under the supervision of bishops. The process was known as *detrusio in monasterium* ('confinement in the monastery'), and this may suggest either living as a monk in a normal monastic discipline or being held in a monastic prison. During the twelfth century, bishops were expected to have their own diocesan prisons for the criminal punishment of clergy. The episcopal use of imprisonment as punishment was regularized in a decree entitled '*Quamvis*' and published by Pope Boniface VIII in his legal collection, *Liber sextus*, of 1298. Addressing the doctrine of Roman law that prisons should serve as places of confinement, not punishment, Boniface nevertheless allowed abbots and bishops to punish offenders with *poena carceris* ('prison sentence') either for a period or in perpetuity. Boniface VIII was the first sovereign authority in the Western tradition to define that imprisonment as punishment was a legitimate instrument of a universal legal system (Peters, 1995, p. 28-29).

Although monastic enclosure was used primarily for internal disciplinary matters, the influence and interference of the Roman Rite Catholic Church in the daily life of the laity meant that, at a certain point, there are also records that it was used as a means of punishment to the detriment of the laity.

For Peters (1995), Catholic religious discipline imposed that it was the duty of the Church to ensure the expiation of the sins of the faithful, which, *a priori*, was done through penances in the face of sinners who confessed their sins in secret. However, in some cases, when the sins were public and caused scandal that offended the Christian community, they were required to be regarded as criminal sins and the object of public penances, admitting, in some cases, extreme measures such as exclusion from the Church, exclusion from the sacraments, and the imposition of public penalties of various kinds, including confinement in monastic prisons. In several councils held during the eighth and ninth centuries, incarceration was directly insisted upon as a means of dealing with public sins, such as incest, witchcraft, and divination.

Neuman (1971) emphasizes the possibility of applying imprisonment outside the clerical ranks, highlighting the difference between the *detrusum in monasterium*, applied to the detriment of clerics who violated ecclesiastical norms, and the punishments imposed to the detriment of "heretics", highlighting the difference, even, in regimes, such as the one called common or *murus largus* from those of a cellular nature or *murus arctus o arctissimus*.

Gradually, therefore, the monastic prison is transformed from an instrument for the disciplinary issues of the Catholic clergy into a means of punishment that can be enforceable against the other individuals over whom the authority of the Church was in fact exercised, which can be explained by the political decentralization of the period, where the Catholic Church, through the prestige of its Roman heritage, of its organization and political hierarchy, was one of the rare examples, in the Middle Ages, of a minimally organized legal structure that managed to make itself respected to the point of having the authority to impose sanctions.

However, even though the prisons existing in the medieval period had maintained the preponderantly precautionary purposes, it is already observed, in that period, the appearance of structural problems faced in many contemporary penitentiary systems. Peters (1995), using the English example, points out that, with the growth of criminal matters, jails began to suffer from overcrowding, leading the Crown to appoint commissions to solve penitentiary problems as early as the thirteenth century. there are records of prisons maintained by nobles or under a franchise regime, where the right to imprison people in exchange for remuneration was assured.

2.4 THE FIRST PRISON EXPERIENCES OF MODERNITY

With the beginning of the Modern Age, the first prison institutions begin to take shape. The change in the functionality of the prisons was not immediate, but gradual. As Prado (2013, v. 3, p. 113) points out, "[...] prison, until the eighteenth century, continued as an instrument of procedural custody, so that those institutions remained with an exceptional character".

Pimentel (1989) states that the radical of prisons is located in the Middle Ages, through the monastic cells dedicated to the penance of monks and clerics who were absent, in a place where, due to isolation, they would dedicate themselves to silence, meditation and repentance. However, the first prison facilities for the incarceration of criminals have as precursors the experiences of the *houses of correction*, built in London in the sixteenth century, which were replicated in Amsterdam at the end of the century, in male and female establishments, and later in what would be present-day Germany, in the seventeenth century,

while, in the eighteenth century, they would also spread in what would be present-day Belgium, also remembering the creation of the Hospital of St. Michael, in Rome, by the work of Pope Clement IX.

In England, around the sixteenth century, the so-called Houses of Correction or *Bridewells appeared*. According to Lyra (1995, v. 2), the British and Americans understand the *bridewells* as being the first examples of facilities intended for the fulfillment of sentences, being sketches of the sentences of correctional houses. This conception is further noted by Bruno (1978, v. 3), for whom Bridewell was the first experience of a house of correction, which began in London around the second half of the sixteenth century A.D., and which ended up being repeated not only in England, but also in other centers, in Amsterdam, German cities and even in the aforementioned correctional centers for minors in the Italian peninsula.

Melossi (2010) mentions that Bridewell Castle was intended to welcome vagabonds, idlers and thieves who committed minor crimes, with the aim of reforming the unemployed through strong discipline and submission to work, as well as discouraging other people from following such a path. Due to the apparent success, the other houses of correction that followed also came to be called *bridewells*. These *bridewells*, however, functioned as a means of forcing people to work in the condition offered to them, whatever it might be, under penalty of authorizing judges to submit idlers capable of working to prisons.

In the region of the present-day Netherlands – generalized inaccurately as the Netherlands – there were also institutions for incarceration and the imposition of work on prisoners, known as workhouses (*Tuchthuis*) or even as *Rasphuis* and *Spinhuis*.

They have peculiarities that do not necessarily make them mere repetitions of the English *workhouses*, being known as *tuchthuis*, whose main activity was the scraping of wood so that dyes could be produced from this process, something profitable at the time and which is related to the history of Brazil, considering that one of the raw materials for such activities was brazilwood wood, extracted in abundance in the Brazilian colonial period. Such institutions would also have been known as *rasphuis*, as they were the houses of correction intended for men, while the *spinhuis* were those intended for the gathering of women.

Melossi (2010) states that the Dutch workhouses were not necessarily directly influenced by the English *houses of correction*, as the *tuchthuis* would have reached a high degree of development due to the economic context of the period. For the author, there was a context of stimulation of forced labor due to the changes caused by the Protestant Reformation throughout Europe, as well as the growth of the mercantile traffic, which increased the labor market and began to demand instruments to regulate the available labor forces through changes in punitive instruments, especially due to the fear that there would

be a high cost of this labor. Furthermore, in addition to controlling remuneration, it sought to control the workforce itself, educating and domesticating it.

Also according to Melossi (2010), the beginning of this institution had as its starting point the installation, in 1596, in a convent in the city of Amsterdam, due to a decision by the local magistrates to install a house so that vagabonds, evildoers and braggarts could be arrested to be punished and occupied with work for as long as the magistrates deemed convenient. The institution was designed to be self-sustaining with the work of prisoners, although it did not aim at personal profit, even for its leaders. In addition, the penalties would be brief and would admit modification through the behavior of the prisoner. Furthermore, the creation of this institution would not have replaced the other forms of punishment, becoming just another punitive instrument intermediate between pecuniary punishments and physical punishments and the penalties of banishment and capital.

The nomenclature, in turn, comes from the type of forced labor that began to be carried out in these institutions: the scraping of wood for the purpose of producing dyes, being a kind of manufacture, a means of production until then dominant, much thought out for idle and lazy people, due to its strenuous nature, which could cause serious injuries, although it did not translate into quality, as there were already complaints that the quality of the powder produced would not be as good as that produced in the mills. In addition, these places were assured the monopoly of production, typical of a mercantilist structure, which caused problems with municipalities that sought modern means of production (Melossi; Pavarini, 2010).

In a similar vein, Prado (2013, v. 3), highlighting that the appearance of these institutions took place in 1596, in Amsterdam, reinforces that the *rasphuis* were those work facilities intended for men, while the *spinhuis* for women, being houses of correction that influenced the proliferation, in Germany, of similar establishments.

As can be seen, the influence of the *tuchthuis* in the history of prison is very much felt in Europe, either because they represent a model of institution very similar to the houses of correction, attributing a different purpose to the prison from that of mere custody, or because they proved useful according to the mercantile and colonialist model of the period, marked by the exploitation of both the natural resources of the overseas colonies and the labor of captives and prisoners.

In addition to the houses of correction that originated in the sixteenth century in what is now the United Kingdom and the Netherlands, another type of correctional institution was operationalized in the late seventeenth and early eighteenth centuries in the Italian peninsula: the so-called hospices or hospitals for young delinquents, whose nomenclature should not

be confused with the contemporary institutions of the same name. but it concerned a kind of houses of correction that were structured to collect young people accused of crimes so that they could, by rigid discipline typical of monastic prisons, reform them.

Carrara (2002, v. 2), although he states that prison sentences took shape after the liberal revolutions, recalls that there were monasteries in the seventh century, used for penitentiary purposes, recalling that it was already pointed out that there were already prisons for young delinquents in the Hospital of San Miguel, in Rome, in 1703, and in San Felipe, in the city of Florence, in the year 1701.

Prado (2013, v. 3) indicates that in the second half of the seventeenth century, the priest Filippo Franci created the Hospice of St. Philip Neri, in Florence, intended for the correction of young people; however, it was in Rome, in 1704, that Pope Clement XI himself created the institution of the Hospice of St. Michael, in the wake of the reforming ideas, being a house of correction that subjected young people to a penitentiary regime of daytime silence and nighttime cell collection for the purpose of reform.

2.5 THE ATTRIBUTION OF THE NEW FUNCTION TO PRISON: PUNISHING TO CONTROL

With the emergence of the first modern prison experiences, there is then a turning point: new functions begin to be attributed to prison. From a means of custody, the embryonic prison establishments become a means in themselves.

The reasons are varied. On the one hand, there are theories that identify that its emergence was due to humanitarian or utilitarian reasons, either because of the lesser harm when compared to other corporal punishments, or because of the impossibility of applying some types of punishment en masse, such as capital punishment.

Lyra (1955, v. 2) pointed to several factors that culminated in the appearance of the first modern prison experiences. On the one hand, the religious conception of penance that encouraged incarceration for the purpose of correction and expiation of sins. On the other hand, the increase in crime in the sixteenth and seventeenth centuries and the impossibility of mass application of corporal punishment generated imprisonment as a viable alternative. Thus, the first attempts to solve this problem were practices of seclusion with the imposition of forced labor, citing as examples installations in Amsterdam, between the years 1595 and 1597, Bremen in 1609, Lubuque in 1616, Hamburg in 1622 and Danzig in 1629. The author also mentions places identified as houses of refuge for minors, which welcomed such people, such as in Florence in the period from 1650 to 1667, prisons on Giulia Street, in Rome, around 1655, and the Hospital of San Miguel, in 1703.

On the other hand, however, there are those who see that the punitive function attributed to imprisonment is related, first, to the need to create a new mechanism of social control that could adapt to the new economic and social context of the capitalist production system of the State.

Melossi (2010) emphasizes the changes of an economic and cultural nature as preponderant for the appearance of the modern prison. He states that, with the changes in the structure of production observed at the beginning of the modern period, as well as the processes of secularization of properties due to religious reforms, there was the dismantling of Church properties that practiced charity and were used for the sustenance of peasants, resulting in the appearance of a large number of helpless masses who ended up becoming unemployed and resorting to begging. Seen as vagabonds, they were not only listed as such, but also objects of various laws that sought to repress this condition of misery, which imposed physical punishment, banishment or even capital punishment.

Van der Slice (1936) pointed out that, since the reign of Henry VIII, legal statutes have been issued to punish beggars or vagrants who did not have certain licenses granted by *justices of* peace, and that they could be physically punished, even mutilated. In this way, the laws enacted sought to solve the problem of poverty and unemployment through measures of a criminal nature. However, despite the severity of the measures, such problems not only persisted, but increased, with space emerging for the adoption of experimental measures, including incarceration for correction purposes in the so-called *houses of correction*.

Also according to Van der Slice (1936), people were initially collected at the Bridewell fortification. Petty offenders, thieves and vains were collected, but there were also people who were detained merely because they had become a problem in a certain city. In that place, the ideal of the reform of the person through discipline and work was believed, being distributed according to the greater or lesser aptitude of the prisoners. The services were varied, the supply increasing over time, but included services in loom rooms, bakeries, mills, etc. The work was paid and the food provided by the watchmen. In addition to the discipline of work, physical punishment of prisoners was practiced by means of whippings, food restrictions and torture. In a short time, similar *houses of correction* began to be applied in cities such as Oxford, Salisbury, Norwich, Gloucester, Ipswich, Acle and Chester.

Fenton (1954) points out that punishments in England in the sixteenth century were severe and corporal, and only in this period did the use of prisons for punishment purposes begin. However, its use was not based on humanitarian issues, but with the management of poverty due to the collapse of the feudal model and the new legislation on land fencing. In

this way, many people were incarcerated in institutions that were precursors to penitentiary facilities such as Bridewell, and the other institutions were called *Bridewells*.

Baratta (1982) also points out that the new functions attributed to the prison and the factory work regime have historical similarities, since both are aimed at controlling the peasant masses separated from the means of production, adapting them to the models of discipline of modern factories, so that the understanding of the penitentiary institution is born together with the idea of capitalist society, although this single element is not sufficient to explain the current relationship between prison and society, but by analyzing its origin[6].

Foucault (1999), analyzing the resignification of the function of prison, highlights that the use of prison was restricted to custody. At one point, its use was even seen as a despotic means of justice. In spite of this, what we saw was that, from being a semi-proscribed, it became an institution of generalized punishment, which could not be explained only by humanitarian reasons. He then pointed to the rasphuis as a precursor, highlighting the influence of this model as an instrument of control through the exploitation of labor and the economic dynamics as possible remote causes of this change.

According to Vacani (2015), it is during mercantilism that imprisonment gradually becomes a punitive form and thus due to the new economic-social program that Western states acquired.

According to the author:

Prisons manifested themselves as diverse spaces in which people deprived of liberty were housed (galleys, mines, military and naval prisons, border forts and forts) throughout the Middle Ages and early Modern Ages. At the same time, the idea of exploiting the labor force of prisoners and rehabilitating them for this purpose appears in the sixteenth century as a practice aimed at training all that population excluded from this social structure. Thus, the first attempts to bring together the strategy of excluding the inadmissible other (from the leper to the beggar, passing through the one who commits a crime or professes another faith) with the disciplining of the useful other (Vacani, 2015, p. 120)

Bustos Ramírez and Hormazábal Malarée (1997, v. 1), despite thinking that the appearance of the prison sentence was related to the consolidation of the liberal State, attributing humanizing, utilitarian and resocializing functions to prison, recognize that antecedents could already be observed since the sixteenth, seventeenth and eighteenth centuries, especially in the experiences of the *tuchthuis* and of the correction houses, which

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[6] However, Baratta (1982) states that the function of the prison to produce unequal individuals would still be important in the economic dynamics, because the prison would produce a stigmatizing and reductive effect, either in the dynamics of the labor market, as well as outside this dynamic, such as, e.g., by providing human and material means for criminal practices such as the crime industry, the drug cycle, etc.

would have the function of forcing marginals to work in favor of the State, fulfilling both an economic function in favor of the new model of capital accumulation and of overcoming the monopoly of craft corporations, a concept that would have been extended to France and England.

3 CONCLUSION

Prison as a means of punishment, in historical terms, is a recent reality, but with remote antecedents. Prisons are reported during much of Classical Antiquity, despite their use not being recurrent, existing in the overwhelming majority of times as custody facilities in favor of the future application of other punishments, especially corporal punishment.

During the Middle Ages, this system of using prisons as a means of custody was maintained, however, it was already possible to see the use of prisons as an instrument of custody and exercise of power, as in the case of fortified facilities adapted to receive prisoners of war and political opponents. However, the use of prison as an instrument of correction and control is recorded in this historical period, mainly due to the contribution of the clerical practice of using prison as an instrument of correction and ecclesiastical discipline, with records of its use also in the face of lay people.

The turning point of the purposes of prison, from the institution of precautionary purposes to a means of punishment, is linked to the new purposes that have been attributed to it. Since the *bridewells* in present-day England and *Tuchthuis*, *Rasphuis* and *Spinhuis* in the present-day Netherlands, modern antecedents of the current penitentiaries, there has been a change in the function of the old prisons, in order to attribute correctional-punitive objectives to those through the submission of prisoners to work due to changes in the context of the means of production and social control.

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