

## PLATO'S PRISONS\*

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Plato wrote two Utopian works, the *Republic* and the *Laws*. The second, written in the 350s and early 340s BC, describes a mythical city-state named Magnesia. It is often ignored as secondary, not only in terms of chronology, but also in quality – the work of the philosopher's declining years. Such a characterization is misplaced. The *Laws* may lack the optimism and brilliance of the *Republic* but it nonetheless reveals a still-powerful mind at work, sketching a more realistic societal project. Nor have its philosophic underpinnings changed: they are precisely those of the *Republic*. Instead of philosopher-kings, Plato now puts his trust in a code of virtually unchanging laws that cover every aspect of life in Magnesia – society, economy, politics, and family. It is this elaborate rule of law, in which the laws are the masters of those who rule and the latter in turn are the slaves of the laws (715d), which alone can produce a successful state and citizens that correspond to it.

Having brought his imaginary Magnesia as close to real life as he can, with laws based for the most part on those of contemporary Athens, Plato is also realistic about its citizens. They are not supermen but, in spite of a superb education, capable of wrongful, even criminal, acts. In order to deal with the latter, he elaborates a detailed penology, wherein he sets forth a host of crimes and their required punishments. One such punishment is imprisonment.<sup>1</sup>

Plato's prison system, described in some detail in that section of the *Laws* that deals with impiety (908a–909c), is somewhat of a curiosity. There are, for example, three prisons in Magnesia, each with a different function, ranging from simple confinement to lifelong punishment. This unique system has commanded the bulk of scholarly attention, with much less interest having been shown in the kind of offences that actually merited imprisonment under Magnesian law.<sup>2</sup>

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<sup>1</sup> See T. J. Saunders, *Plato's Penal Code. Tradition, Controversy, and Reform in Greek Penology* (Oxford, 1991) for a brilliant analysis of Plato's penology.

<sup>2</sup> See, e.g., *ibid.*, 157–8, 273–4, 310–12; and D. S. Allen, *The World of Prometheus. The Politics of Punishing in Democratic Athens* (Princeton, NJ, 2000), 280.

In this paper, I shall study both the prison system itself and the offences that required imprisonment as a penalty. I shall also compare Plato's prison to the prison of Athens as to both purpose and inmates. My aim here is, first, to elucidate how Plato, in his writing, transformed Athens' prison and, second and more importantly, to discover what larger principles lie behind that transformation.

What, in the first instance, does Plato have to tell us about his three prisons? He begins by distinguishing them as to venue and function (908a). One prison, situated in the *agora*, is shared by the majority of prisoners. It is meant to keep run-of-the-mill offenders in safe custody.<sup>3</sup> Another, called the Institute of Correction or Reform (*sophronisterion*), is situated near the place where the Nocturnal Council meets.<sup>4</sup> Yet a third prison is located beyond the city limits in an isolated spot in the depths of the countryside, where the land is as wild as possible. Its name implies retributive punishment (*timoria*). Simple confinement, reform, and punishment: these are the three functions of Plato's prisons.

I have already suggested above that Athens' prison formed the inspiration for Plato's Magnesian prison system. In order to appreciate the extent of the transformation he effected, we must first consider the nature of that prison. What, for example, was its purpose, how did it function, and who were its inmates? What follows then is a brief review of the current state of knowledge about the prison of Athens; the review is based on my own work.<sup>5</sup>

The location of Athens' prison is not in doubt: it was in or near the courts and so the Agora (Plato, *Phaedo* 59d–e; Dem. 24.208). Its dimensions and physical form are more problematic. It was large enough to hold forty-two conspirators incarcerated there together in 415 BC (Andoc. 1.43–5; Thuc. 6.60). In addition, it could accommodate a considerable traffic of visitors, admitted each day by the porter. For example, at least twenty persons attended Socrates alone on the day of his death.<sup>6</sup> As for the general prison population, inmates were not segregated but lived and ate together, restrained only by chains or

<sup>3</sup> 'Run-of-the-mill offenders' is based on Saunders (n. 1), 157, who construes *tois pleistois* as 'the general run of offenders'. I have used it to translate *tois pollois*, following R. G. Bury, the Loeb translator, who construes the latter as 'the average criminals'.

<sup>4</sup> Unfortunately, Plato does not indicate exactly where in Magnesia this meeting place is, but the city centre is the most reasonable possibility. Plato offers a lengthy description of the Nocturnal Council's membership, function, and education at 961a–968e. See also G. R. Morrow, *Plato's Cretan City. A Historical Interpretation of the Laws* (Princeton, NJ, 1960), 500–15.

<sup>5</sup> 'The Prison of Athens: A Comparative Perspective', *Phoenix* 51 (1997), 296–326, a reconstruction based on the model of the pre-penitentiary prison in eighteenth-century England.

<sup>6</sup> *Ibid.*, 298.

fetters (Dem. 25.60–3). Escapes were common, some of them effected by prisoners digging through or under the walls, indicating that the walls were probably no different in material from the mud-brick used for houses.<sup>7</sup> As to the actual form of the building we have no notion.<sup>8</sup>

One must then divest oneself of all modern notions of prison life based on the model of the penitentiary. Athens' prison had no impenetrable walls or heavy guard, nor did prisoners live in single cells. Hence there was no solitude or solitary confinement. In addition, the authorities (in this case, the Eleven) made no effort to redeem, rehabilitate, or 'normalize' those incarcerated there.<sup>9</sup> In fact, we know of no instance in which a convicted person was sentenced to an actual prison term, with years determined by the gravity of the offence. 'As a product of the Enlightenment and of eighteenth- and nineteenth-century religious and scientific ideas and economic conditions, the penitentiary has little in common with the prison of Athens.'<sup>10</sup> As for inmates, the latter was primarily a place of detention for public debtors, some of whom remained there for many years (Andron: Dem. 24.125, 135; Aristogiton: Dem. 25.30, 61; Din. 2.2, 9) and for those passing through the justice system who required temporary custody. These included criminals condemned to death or some few awaiting trial. Imprisonment in Athens has been described as 'precautionary'.<sup>11</sup> It remains debatable whether it was ever a 'normal penalty', although some were sentenced to prison as an additional penalty (*prostiman*) until they paid a fine (Arist. [*Ath. Pol.*] 67.5; Dem. 24 *passim*).<sup>12</sup> An unusual example was the penalty that the jury might

<sup>7</sup> *Ibid.*, 316, n. 53.

<sup>8</sup> In my 'Appendix on the Poros Building' (*ibid.*, 319–23), I reject that building's identification as the prison of Athens, as suggested by E. Vanderpool, 'The State Prison of Athens', in K. De Vries (ed.), *From Athens to Gordion. The Papers of a Memorial Symposium for Rodney S. Young* (Philadelphia, PA, 1980), 17–31. The Poros Building was not only too small for Athens' needs but, more significantly, did not have an adequate water supply either for consumption or for hygiene, an absolute necessity for prisoners living in close confinement.

<sup>9</sup> 'Normalize' is a term used by M. Foucault, *Discipline and Punish. The Birth of the Prison*, trans. A. Sheridan (New York, 1979), 184, 248. According to Foucault, the power of the Norm has become a principle of coercion throughout the disciplines (teaching, medicine, etc.) since the eighteenth century, imposing both homogeneity and individualization on society (184). It is part of the carceral apparatus: 'the technico-medical model of cure and normalization' (248). Normalization in this sense is a characteristic of the modern (post-classical) world. Here, in the case of both Athens' and Plato's prison, it indicates merely conformity to society's norms.

<sup>10</sup> Hunter (n. 5), 314.

<sup>11</sup> P. J. Rhodes, *The Athenian Boule* (Oxford, 1972), 179, n. 3; *A Commentary on the Aristotelian Athenian Politeia* (Oxford, 1981), 580.

<sup>12</sup> With Rhodes, *Commentary* (n. 11), 724–8. D. S. Allen, 'Imprisonment in Classical Athens', *CQ* 47 (1997), 130–2 argues that imprisonment as a penalty was introduced c.460–450 but was at first limited, being merely a substitute for a fine. Only in the fourth century, sometime before 350, she believes, did it become a penalty within the power of the jury to impose. See too

impose for theft (Dem. 24.105, 114). The convicted thief was required to spend five nights and five days in prison (or possibly just outside the prison) so that all might see him in chains. This must refer to public exposure meant to cause humiliation and disgrace.

Life in Athens' prison was anything but pleasant: those who had been incarcerated there complained of physical hardship (Andoc. 2.15; Antiph. 5.18; Dem. *Ep.* 2.17). Direct physical restraint was the major form of security, with prisoners routinely bound (*dein*, *dedemenos*), that is, kept in chains (*desma*). Indeed, the very word for prison, *desmoterion*, expresses the notion of binding. Far from experiencing silence or solitude, prisoners engaged in shared activity in a communal setting that mimicked society outside (Dem. 25.60–3; Din. 2.9–10). There was no discipline enforced and no reform of inmates attempted. In other words, the prison of Athens was not, and was not intended to be, a place of improvement.

Let us turn now to the inmates of Plato's prisons, leaving aside for the moment those guilty of impiety. Depending on the gravity of their offence, the latter are to be incarcerated either in the *sophronisterion* or in the Centre of Retributive Punishment. Apart from the impious then, there are nine instances of imprisonment meted out as a penalty. Most of them seem to require confinement in the run-of-the-mill prison, where the majority of prisoners were lodged. At least, we shall begin by making this assumption. Nine examples, of course, scarcely cover all possible prisoners: many must go unmentioned, requiring no legislation. These would include, as in Athens, offenders passing through the justice system and in prison on a temporary basis (for example, those awaiting trial or execution).<sup>13</sup> Several of the nine examples, however, do point to a prison that, in its function, was not far different from the prison of Athens. I shall mention two.

A thief who is unable to make restitution to his victim must remain in prison until he pays up or persuades his prosecutor to let him off (857a–b).<sup>14</sup> Similar, but more serious, is the case of an individual who is unable to pay a fine, because he does not have the resources to do

I. Barkan, 'Imprisonment as a Penalty in Ancient Athens', *CP* 31 (1936), 338–41 and A. R. W. Harrison, *The Law of Athens* (Oxford, 1971), ii.177, who also believes that imprisonment in Athens was a normal penalty. S. C. Todd, *The Shape of Athenian Law* (Oxford, 1993), 140 and Hunter (n. 5), 306–7 remain skeptical.

<sup>13</sup> One example is explicit. Anyone accused of homicide who is unwilling or unable to produce three sureties is kept in prison until his trial (871e).

<sup>14</sup> The same rule applies if the thief has stolen public property: he must pay or 'persuade' the state to release him from prison. The payment in both cases is twice the value of the object stolen.

so (that is, the fine would deplete the surplus over and above what is necessary to work his allotment). If friends will not come forward to act as sureties or to pay his fine, his punishment is to be lengthy imprisonment open to public view, together with some form of humiliation (855b).<sup>15</sup> In these instances, Plato seems merely to have replicated Athens' prison. Certainly, the terminology he uses is identical with that discussed above in respect of Athens' prison. A prison is a *desmoterion*, while imprisonment is indicated by the noun *desmos* and its plural *desma* or the verb *dein*. This surely implies that, at least in one respect – the use of chains as a device of physical restraint – Plato's imagination did not extend beyond the Athenian model.

But that is not the whole story. In fact, Plato's imagination did expand beyond the bounds of his Athenian model in his use – dare we say, invention – of the prison term. There are four examples, all worth noting: anyone who forcibly prevents a litigant or witness from attending court is to be imprisoned for a year (954e–955a);<sup>16</sup> one type of homicide, who is obliged to go into exile for a year, will face imprisonment for two years if he returns to his native land before that time elapses (864e); anyone who assaults a person twenty years or more his senior, if convicted, faces imprisonment of no less than one year, two years if the one who perpetrated the assault is a *xenos* (foreigner), three years if he is a metic (880b–c); a Magnesian citizen who engages in commercial activity such as retail trade and is, as a result, found guilty of degrading his hearth, is to be made to refrain from such activity by a year's imprisonment, with each repeat offence resulting in a doubling of the term (919e–920a).<sup>17</sup>

The notion of a prison term has important implications. First, it implies permanence: detention lasts for as long as the term sentenced. Second, it makes a judgement about the nature and gravity of the offence committed by legislating differential penalties, here from one to three and even, as we shall see below, five years in prison. Third, it suggests that time in prison might have some effect on the outlook of the prisoner, whether just to deter him in future from repeating his

<sup>15</sup> Cf. the additional penalty that, in Athens, the jury might impose for theft (above, p. 196).

<sup>16</sup> Not only is the case annulled, but he is also liable to a charge of kidnapping, which anyone may bring. Status is involved here: if the person prevented from attending court is a slave, the case is merely annulled.

<sup>17</sup> A similar law applies to *xenoi*, who may pursue only one craft (847a). If they disobey, they are punished by imprisonment, fines, or even expulsion from the *polis*. Following T. J. Saunders' translation (Harmondsworth, 1970), I interpret *te kai . . . kai* here as implying three possibilities, not three penalties imposed on one offender. Our final example of imprisonment concerns neglect of parents or failure to carry out their wishes (932a–c): the guilty are punished by whipping and imprisonment, up to the age of thirty for men and forty for women.

offence or to teach him a lesson and perhaps even lead to improvement in his outlook. Are we right in these assumptions? In answer, we shall turn to the larger principles that lie behind Plato's unique prison system.

Plato's penology has been called 'reformatory'.<sup>18</sup> It has also been described as 'medical', based as it is on a metaphor of disease and cure.<sup>19</sup> Both adjectives are appropriate, since reform is effected through cure. In fact, the notion of cure permeates the *Laws*. Consider the following example from Book 9, the closest approximation in Greek literature to a criminal code. Here Plato offers a partial definition of 'crimes' as offences that are difficult, if not impossible, to cure (854a: *dusiata kai aniata*; cf. 731b). Among the worst crimes is temple-robbery, which he likens to a disease. He does not, however, expect this disease to infect a properly nurtured citizen of Magnesia. If it should do so and a citizen is ever convicted of temple-robbery, he is to be deemed incurable (854e: *aniaton*) and put to death. Elsewhere throughout the *Laws*, Plato distinguishes the curable, who can and must be cured, from the incurable, who face the same fate as the temple-robber – death. This harsh penalty has two purposes (862e–863a): first, it serves as an example to others not to engage in the worst forms of criminal activity; and, second, it rids the *polis* of those who are evil. In a word, the death penalty acts both as a deterrent and as a form of 'social hygiene'.<sup>20</sup>

But what, in this medical analogy, is being cured? In Plato's words, it is diseases of the soul (862c), which are synonymous with injustice. Injustice itself he later describes as the tyranny in the soul of states of mind such as anger, fear, pleasure, pain, envy, and desire (863e). The law plays a role here, by instructing the guilty and compelling them never to dare repeat their wrongful acts, or at least to do so less often (862d). Plato also refers to the good judge, whose task is to dispel bad traits – ignorance, intemperance, cowardice, indeed every kind of injustice – in those who are curable, while condemning the hopeless to death, in itself a form of cure for the soul (957e–958a; cf. 964b–c). Punishment is effective in this curative process, but it must not be of the kind to cause suffering. The latter, *timoria*, he distinguishes from *dike*, justice or judgement, as a form of punishment that does not cure. Relentless as he is in the face of those deemed incurable, Plato is lenient towards their opposite. He pities them, suggesting that they be

<sup>18</sup> Saunders (n. 1), 354.

<sup>19</sup> *Ibid.*, 139–95.

<sup>20</sup> *Ibid.*, 145.

treated gently (731b–d), presumably instructed as above by the law and led to better opinions by the good judge. This approach to the criminal or wrongdoer stems, of course, from his belief that no one does wrong willingly, the famous Socratic paradox.

Plato's penology then has three aims: first, to cure those who are curable through change, improvement, or reform, substituting good traits for bad in the soul; second, to deter others from wrongdoing, often by example; and third, to eradicate the incurable and their noxious influence.

With these principles in mind, let us return to Plato's prison system, beginning with the Centre of Retributive Punishment. Located in the depths of the countryside, this is the most curious of the three prisons. It is also the least significant in terms of penology. It is introduced, along with the Institute of Reform, in that section of the *Laws* that concerns impiety, where the punishment that awaits the convicted atheist is described in some detail (908e–909d). Earlier, Plato set out his typology, isolating two general kinds of atheist (908b–e): the just atheist, who may convert others but does limited harm; and the atheist who is full of trickery and guile and commits sins worthy of death many times over. In condemning the latter to lifelong imprisonment in the Centre of Punishment, Plato describes him as bestial or subhuman (909a: *theriodes*), a man who attempts to destroy not only individuals but whole families and cities for the sake of money. Once imprisoned, the guileful atheist is not allowed to associate with the free but receives his ration of food from slave attendants. Being an incurable criminal, he is left to moulder alone and to live a life of endless suffering for what he has done or even thought. No attempt is made to instruct or improve him. In death, he is cast unburied beyond the borders of Magnesia.

*Timoria* or retribution and its attendant suffering, we may recall, is a principle that Plato eschews, as it does not hold out the possibility of cure and so is senseless (728c). Paradoxically, it is the principle underlying the Centre of Punishment. A second inconsistency is the preservation of the life of one whom Plato has deemed worthy of death many times over. On the other hand, incarceration in the Centre of Punishment – and we must presume that other savage criminals besides the guileful atheist might find their way here – does serve the same purpose as the death penalty: not only is it an example to others, and so a deterrent, but it also rids the *polis* of the truly evil. The recourse to *timoria* remains nonetheless totally inconsistent with the principles that Plato espouses throughout the *Laws*.

The Institute of Reform (*sophronisterion*) is the most significant of Plato's prisons. It is also the one in which his penological principles are most deeply embedded. Once again, he offers a convicted atheist as the example of an inmate. Here it is the just atheist, a man who may be guilty of folly but whose temperament and character are not bad. What he requires is admonition and imprisonment. Accordingly, the judge is to sentence him to a period of no less than five years in the reformatory. During that time, he (or they, since Plato uses the plural) shall not enjoy the company of any other Magnesians citizen, with one exception – members of the Nocturnal Council. The latter will visit the prisoners in order to offer them the requisite admonition and to ensure the salvation of their souls (909a). When the five years are over, if any prisoner seems to have regained his self-control (*sophronein*), that is, has been rehabilitated or 'normalized', he may live among normal people (*sophrones*).<sup>21</sup>

Here is an example of punishment meant to cure (*dike* or judgement). It does so through incarceration and instruction aimed at restoring psychic health, through the eradication or diminution of negative states of mind, the target of the good judge. To this end, the prisoners are isolated from society, though perhaps not from one another, and are privileged to have the company and instruction of the Nocturnal Council. The *sophronisterion* then illustrates the application of Plato's principles of cure. In no wise, however, should we assume that cure of this kind is intended only for the just atheist or that he is the sole inmate of the Reformatory. This is a programme or regimen intended for all who are curable. I am thus led to withdraw my earlier assumption that most of the nine other instances of imprisonment in the *Laws* seem to require confinement in the run-of-the-mill prison. Several, whom we noted, do seem correctly lodged there. Others, however, require a cure and so were probably sent to the Reformatory for instruction and reform. Whom would I choose? Those who received a prison term. The length of the term in itself implies that a judgement has been made about the gravity of their offence and, more particularly, the state of their psychic health. Unlike the extremely serious crime of atheism, however, none of their offences warranted a prison term of more than three years.

It is now clear how Plato transformed Athens' prison. He did so by creating a system in which imprisonment is unequivocally a normal penalty, including prison terms of from one to five years. It is also a

<sup>21</sup> If he is ever convicted a second time, the penalty is death.



tripartite system in which each prison fulfils a different function. There is nothing unique about the run-of-the-mill prison: it follows the Athenian model. At the same time, the Centre of Punishment has little more significance than a medieval dungeon. With the *sophron-isterion*, on the other hand, Plato entered new terrain, offering the possibility of improvement or rehabilitation – in his terms, cure – through incarceration and some form of discipline. Of course, Plato's transformation of the regime and purpose of the prison must be seen within the perspective of his entire penology, which, following Saunders, we have called 'reformatory'. Its principles differed markedly from the penology of the courts, as expressed in the discourse of the Attic orators, who did not advocate punishment as a way to improve an opponent but, virtually without exception, sought retribution or even out-and-out vengeance, arguing that it would make others better or simply deter them.<sup>22</sup> Eschewing retribution, Plato developed a programme of reformation meant to cure all offenders who were curable.

Apart from its reformatory innovations, it is also worth noting that Plato's prison anticipates some of the principles that lay behind the penitentiary of the late eighteenth and early nineteenth centuries. These principles fundamentally altered the purpose of the prison and life within it. Far from being, like its predecessor, a place that made inmates worse, the early penitentiary held out the prospect of improvement and reform through enforced solitude and the discipline of hard labour. Its ultimate aim became moral reformation and redemption, its target the immortal soul. These at least are the Christian principles that motivated prison reformers.<sup>23</sup> In placing the soul at the centre of his philosophy, Plato also made it central to his prison system. Of course, the salvation of the soul ministered to by the Nocturnal Council was not meant to achieve penitence or redemption. These are nineteenth-century Christian notions. Rather it sought the eradication of psychic disease and with it the restoration of the health of the soul. Different as the principles are that lie behind both prison systems, the notion of the soul as requiring transformation lies at the heart of both. For this forward-looking innovation, Plato surely deserves some recognition.

<sup>22</sup> Examples are manifold. See, e.g., Dem. 21.37, 227; Dem. 53.1–2; Dem. 58.1–2, 58–9; Dem. 59.1, 12, 126; Lycurg. 1.27, 141; Lys. 12.94–6; Lys. 13.1, 41–2; Lys. 22.19–20; Lys. 27.5–7; Lys. 30.23–4.

<sup>23</sup> On the intellectual, economic, and material background of the transformation of the prison in the eighteenth and nineteenth centuries, see M. Ignatieff, *A Just Measure of Pain. The Penitentiary in the Industrial Revolution, 1750–1850* (New York, 1978); Foucault (n. 9); and J. Semple, *Bentham's Prison. A Study of the Panopticon Penitentiary* (Oxford, 1993).