

IMPRISONMENT  
IN GREECE



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IMPRISONMENT IN GREECE

BY

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INTRODUCTION.

When "Imprisonment in Greece" was suggested as the topic of this dissertation, it was not welcomed with great enthusiasm on my part; for not only did it seem a strange subject of research for a woman, but I had never given any particular thought to imprisonment in ancient Greece or anywhere else. In the course of my research, however, I have found that the subject is one of absorbing interest and one well worth investigation; hence it is most surprising that no works have been written about it in modern times. This, nevertheless, is the case. The most complete account of imprisonment in Greece is given in M. Caillemer's article under the heading of "Carcer" in Daremberg and Saglio's encyclopaedia; and even this article is only a few pages in length and is entirely confined to the discussion of imprisonment in Athens. Apart from this, there are some, but not many, references to imprisonment in various books on Greek law and history; but nowhere except in the above-mentioned article is there any attempt to study imprisonment in ancient Greece as a subject worthy of consideration in itself. The task of dealing with this topic with even a slight degree of adequacy has therefore necessitated a great deal of investigation of primary sources, a procedure which

requires much time. Thus, in the brief time at my disposal, I have been compelled to restrict the field of my research within narrow limits. For this reason I have passed over entirely the question of the imprisonment of slaves; and, similarly, I have made no attempt to draw comparisons between the system of imprisonment in ancient Greece and other systems, except in one or two cases. I have confined my research almost entirely to the uses made of imprisonment and the treatment of prisoners among the ancient Greeks. Even among the ancient authors, however, the references to imprisonment are not very numerous, and frequently the statements made by them are not corroborated by any other evidence and are incapable of verification. Thus in many cases it is difficult to form a satisfactory opinion about the use of imprisonment or the method of treating prisoners that is mentioned; in such cases I have endeavoured to show as clearly as possible the reasons for the conclusion that I have reached. Again, the greater part of the evidence concerning imprisonment comes from the Attic orators and other Athenian writers; hence allusions to the uses of imprisonment and to prison life in other parts of Greece are infrequent. This dissertation, therefore, is chiefly concerned with imprisonment in Athens, of which a fairly comprehensive account can be given. When we turn to the other Greek States, it is impossible to discuss imprisonment and its uses with any degree of

certainty; for, in most cases, we have only one or two references on which to base our assumptions. Thus we can only indicate what was probably the usage in these States. This dissertation, therefore, cannot be considered as a complete account of imprisonment in Greece. It is, however, more complete than any other discussion on the subject that I have seen, and, such as it is, I hope that it may be of some slight value in the extension of knowledge, even if only for the fact that in it are assembled together the evidences found in the ancient authors concerning imprisonment in Greece.

#### IMPRISONMENT IN GREECE FROM HOMER TO THE FIFTH CENTURY B.C.

No legal codes were as yet in existence in the Homeric age, and the conception of crime as an offence against the State had not yet arisen. A crime was considered a matter concerning the individual, and thus the punishment of the offender was left to the injured man or his kinsmen. The central motives in this punishment by the individual were vengeance, punishment, and compensation, and the crimes punished by self-help were robbery, rape, assault, and the like. In the case of homicide, the conception of *κωνή* and the claim of the *δαίμων* of the murdered man for compensation was early in arising. The avenger of a murder was regularly



the nearest relative of the slain man. Because of the idea of vengeance involved in punishment by self-help, like was usually requited with like. Frequently a money-penalty was inflicted in addition, and, in the case of homicide, blood-money or "wergeld" might be demanded in addition to or in place of the death of the slayer. If, however, the murderer went into exile, further action was seldom taken against him, and the majority of the murderers mentioned in Homer are living in exile and treated with great honour in the land of their adoption.<sup>(1)</sup> The famous trial-scene on the shield of Achilles depicts a lawsuit concerning the payment of blood-money.<sup>(2)</sup> Although the usual method of reprisal for a crime was self-help, other measures were sometimes taken. Occasionally a complaint was brought before the Council of Elders, when the plaintiff was not powerful enough to take personal action against the offender, or when the State might become liable to claims for redress by another State because of the offender's actions. Both these motives probably influenced Telemachus to set his complaints about his mother's suitors before the Elders.<sup>(3)</sup> Litigation also was already known among the Greeks, but only in the form of arbitration, voluntarily entered upon by both the disputants, in which the judges gave a decision

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(1) e.g. Lycophron, *Iliad* XV, 431-2; Patroclus, *ibid.* XXIII, 84-90; Tlepolemus, *ibid.* II, 661-670.

(2) *Iliad* XVIII, 497-508.

(3) *Odyssey* II, 25-257.

but assessed no penalty. The above-mentioned trial-scene is  
 an example of such an arbitration.<sup>(1)</sup>

It is clear that in a system of this kind, where punishment was inflicted by the individual and not by the State, imprisonment would be very rare. In Homer, however, there is one case of imprisonment. Melampus went to Phylace to bring back the kine of Iphiclus on behalf of his brother Bias, who wished to marry Pero, the daughter of Neleus. While he was on this quest, he was captured by Iphiclus and imprisoned for a year.

χαλεπή δὲ θεοῦ κατὰ μοῖρα πέδησεν,  
 δεσμοί τ' ἀργαλέοι καὶ βουκόλοι ἀγροῖῳται.  
 ἀλλ' ὅτε δὴ μῆνές τε καὶ ἡμέραι ἐξετελεῦντο  
 ἄψ περιτελλομένου ἔτεος καὶ ἐπήλυθον ὦραι,  
 καὶ τότε δὴ μιν ἔλυσε βίη Ἴφικληΐη  
 θέσφατα πάντ' εἰπόντα, Διὸς δ' ἐτελείετο βουλή.<sup>(2)</sup>

This is the earliest example of ἀπαγωγή, the process later so common in Athens, of which we know. This involved the immediate arrest and imprisonment of a criminal caught in flagrante delicto, in this case in a private prison, in later times in the public prison. Here Melampus was caught by

(1) For a detailed discussion of punishment in early Greece sc. Leist, Graeco-italische rechtsgeschichte, pars. 43-46; Bonner and Smith, The Administration of Justice from Homer to Aristotle, Chap. I.

(2) Odyssey XI, 287-297; *ibid.* XV, 231-233.



Iphiclus stealing his cattle. Leist seems to consider that private imprisonment of this kind was common in early Greece,<sup>(1)</sup> but as this is the only reference to it in Homer, where so many punishments by individuals are mentioned, we may assume that at this time it was a rare penalty.

Only in one other passage does Homer mention imprisonment, and in this case it is a god, and not a man, who is imprisoned. The passage is as follows:

τλῇ μὲν Ἄρης, ὅτε μιν Ὠτος κρατερὸς τ' Ἐφιάλτης,  
παῖδες Ἀλωῆος, δῆσαν κρατερῶν ἐνὶ δεσμῶν  
χαλκίῳ δ' ἐν κεράμῳ δέδετο τρισκαίδεκα μῆνας.<sup>(2)</sup>

Homer unfortunately does not tell why Ares was imprisoned, and the mythographers disagree about the reason. The only other Greek mythological character who was imprisoned was Prometheus, whose punishment of being chained to a lonely rock was tantamount to imprisonment. His crime was rebellion against Zeus. In the "Bacchae" Pentheus threatens among other things to imprison Dionysus.<sup>(3)</sup> There is no mention of this, however, in other accounts of the legend, and the threat of imprisonment is undoubtedly Euripides' own addition. Therefore, as imprisonment is so seldom mentioned in Homer, and plays such a small part in Greek mythology, we may conclude that in the Homeric

(1) Leist, op. cit. p. 399.

(2) Iliad V, 385-387.

(3) Euripides, Bacchae, 497.

age imprisonment was very uncommon in Greece.

By the time of Hesiod the settling of disputes by litigation had become much more general. In the "Works and Days" there are numerous references to lawsuits. Hesiod himself was involved in a lawsuit with his brother Perses over the division of their inheritance, and in one passage he advises Perses not to neglect his own affairs for the sake of listening to the quarrels in court, and not to "raise disputes and strive to get another's goods" (νείκεα καὶ δῆριν ὀφέλλοις κτήμας' ἐπ' ἀλλοτρίοις)<sup>(1)</sup>. Frequently, too, Hesiod complains of<sup>(2)</sup> the corruptness of the judges and their "crooked decisions". From these statements it is evident that litigation went on continually, and that the decisions of the judges were enforced in some way. This denotes a considerable development from the arbitration of Homeric times. In spite of his frequent allusions to litigation, however, Hesiod nowhere mentions imprisonment, and thus we may assume that it was still an uncommon punishment in Greece.

During the seventh and sixth centuries B.C. the laws were codified in most of the Greek States. The earliest law-giver was Zaleucus of Locri in Italy, whose code is dated about 660 B.C., and he was followed by Charondas of Catana and Diocles of Syracuse. The traditional date for the first codific-

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(1) Hesiod, Works and Days, 27 foll.

(2) Ibid. 38 foll., 220 foll., 263 foll.



ation of the law in Athens by Draco is 621 B.C. In the codes drawn up by these lawgivers, penalties were fixed for the first time and no longer left to the will of the judges. The punishments thus established were very severe, and tradition holds that Draco's laws were said in a later age by the orator Demades to have been written, not in ink, but in blood. Many trivial offences were punishable with death; for example, Plutarch states that under Draco's laws those who stole fruit suffered the same penalty as those who committed sacrilege and murder, namely, death; while Charondas provided the death penalty for entering the Assembly wearing a sword, and himself committed suicide because he inadvertently broke this law. Other penalties were of a revengeful nature, as, for example, the blinding of adulterers decreed by Zaleucus. Fines were also imposed in many cases, and Herondas gives a list of fines provided by Charondas for such crimes as assault, housebreaking, and arson. In the Gortynian Law Code, which, however, probably was not compiled until the fifth century B.C., the penalties for most offences were fines. In none of these codes, in spite of their harshness, is there any mention of imprisonment as a penalty; hence imprisonment was probably

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- (1) Plutarch, Solon, XVII.
  - (2) Ibid. XVIII.
  - (3) Diodorus XII, 19.
  - (4) Aelian, *Variae Historiae* XIII, 24.
  - (5) Herondas II, 46-54.

still little used in Greece.

In Athens, however, during the seventh century, imprisonment must have become a much more general punishment than formerly, for it is one of the penalties imposed by Solon in his revision of the laws, less than a century after Draco, and it is unlikely that he would have included imprisonment among his penalties had it not already been fairly common. Solon himself in his Elegiacs wrote this line:  
(1)

καὶ θανάτῳ τοῖς ἀδίκῳι ἀμφιτίθῃσι πένδας.

Demosthenes tells us that "the laws enacted by Solon----- declare that, if a man be convicted of theft and sentence of death be not passed, a cumulative penalty of imprisonment shall be imposed on him, and if anyone, having been convicted of ill-treating his parents, enter the market-place, he shall be imprisoned, and if a man has been fined for desertion and assumes any of the privileges enjoyed by ordinary citizens, he also shall be imprisoned". The word προστιμᾶν, which is here translated "a cumulative penalty-----shall be imposed", might rather be translated "an additional penalty"; that is, in addition to the twofold or tenfold restitution that had to be made by a convicted thief.<sup>(2)</sup> The ill-treatment of parents and failure to serve in or desertion from the army were among  
<sup>(3)</sup>

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(1) Demosthenes, de falsa legatione, 255.

(2) Idem in Timocratem, 103; trans. Kennedy.

(3) Ibid. 105.



the crimes punishable at Athens by ἀτιμία, loss of all civic rights. Thus Solon's law decrees that ἀτίμοι who usurp those rights of which they have been deprived may be taken forthwith to prison. In another passage Demosthenes states that, according to Solon's laws, thieves caught in the act may be taken straight to the Eleven, and repeats that those convicted of theft in a private action may be sentenced to five days' and nights' imprisonment in addition to paying restitution.<sup>(1)</sup> This law is also quoted by Lysias.<sup>(2)</sup> Thus Solon's laws provide for at least two types of imprisonment. In the first place, there is the summary arrest of thieves caught in flagrante delicto and the conducting of them to the Eleven, who were the officials in charge of the public prison at Athens. This is the later form of ἀπαγωγή, which, as we have seen, was employed by private individuals in the time of Homer. The imprisonment of those who usurped civic rights is also a form of ἀπαγωγή. This process involved imprisonment until the day of trial. The second type of imprisonment imposed by Solon is that inflicted as an additional penalty upon convicted thieves.

Imprisonment, then, existed but was seldom used as a punishment in the Heroic Age, and it was not included among the penalties fixed by the early lawgivers. In comparison with such punishments as death and fines, it was late in development.

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(1) Demosthenes in Timocratem 113, 114.  
 (2) Lysias in Theomnestum, 16.

By the beginning of the sixth century, however, it was sufficiently common in Athens to be included among the penalties imposed by the Solonian Law Code. By the fifth century imprisonment had become firmly established in many parts of Greece, especially in Athens, and thereafter references to it in the ancient authors are very numerous.

#### IMPRISONMENT IN ATHENS.

When we turn to the consideration of imprisonment in Athens, we find many references thereto in the classical writers. Nevertheless, many modern authorities on Greek law maintain that imprisonment was seldom decreed as a punishment in Athens, and then only as an additional penalty.<sup>(1)</sup> Thus it appears that imprisonment was regarded in a very different way among the Athenians from that in which it is regarded in modern times, where the essential motive underlying the infliction of imprisonment is that of punishment. This basic difference between the two systems makes imprisonment in ancient Greece an interesting subject of research for the modern student; and, although it is not always certain to what type of imprisonment a certain passage refers, we have ample evidence to show that several distinct and separate uses of imprisonment were

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(1) E.g. Gilbert, Kennedy.



common in ancient Athens.

Authority to Imprison.

The various courts of justice and magistrates in Athens did not all have equal power to impose imprisonment. The oldest criminal court was the Areopagus, which was the survival of the Homeric Council of Elders. This body, from very early times, tried cases of homicide, the penalty in which was, of course, death; and this was its chief judicial function throughout Athenian history. Committees of the Areopagus, the ἑφέται, also tried different types of homicide in four special courts: unintentional murder in the Palladium; justifiable homicide in the Delphinium; exiles accused of murder in the Phreatto; and unknown murderers and the instruments of murder in the Prytaneum.<sup>(1)</sup> The punishments inflicted in these courts were death and exile. The Areopagus also judged suits concerning the destruction of the sacred olive-trees, and it<sup>(2)</sup> was by this court that Lysias' client was tried. The powers of the Areopagus were greatly diminished by Ephialtes, but it still retained its jurisdiction over these two classes of<sup>(3)</sup> crime in the times of Demosthenes and Lysias.

The βουλή of Five Hundred also had certain judicial powers. Aristotle tells us that in former days it had the power

(1) Demosthenes in Aristocratem, 65-79.

(2) Lysias, περὶ τοῦ ὁγκοῦ, 22.

(3) Ibid. 22; Demosthenes in Aristocratem, 67.

of inflicting punishments of death, imprisonment, and fines. On one occasion, however, when a certain Lysimachus was being taken to the executioner, he was taken from the Council by Euclides of Alopece, who said that it was not right for an Athenian citizen to be put to death without the verdict of a court of law. On being tried in court Lysimachus was acquitted. The people then deprived the Council of its right to impose these penalties and enacted a law that, in cases in which the Council passed sentence, the Thesmothetae should bring the sentences before the court of justice for ratification. The Council could try any of the officers of State, especially those who handled public moneys, and any private citizen could indict officers of State before the Council; but in both cases the decision of the Council was not final, and appeal could be made to the court of justice.<sup>(1)</sup> In one case, however, the Council did have authority to impose imprisonment, namely, when citizens did not pay their taxes.<sup>(2)</sup> Andocides also states that the Council was allowed by law to imprison tax-farmers who did not pay their debt to the State.<sup>(3)</sup> Demosthenes quotes in part the oath of the βουλευταί, in which they swore not to imprison any Athenian citizen who offered three sureties taxed in the same class as himself, except those guilty of conspiring to betray

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(1) Aristotle, Constitution of Athens, XLV.

(2) Ibid. XLVIII.

(3) Andocides de Mysteriis, 93.

the city or to subvert the democracy, and defaulting tax-  
 farmers and their sureties and collectors.<sup>(1)</sup> Furthermore, he  
 states that this oath was concerned, not with the sentence  
 of imprisonment after trial, but with the imprisonment of  
 those who were awaiting trial. Otherwise, he says, the Heli-  
 astic jury to whom he is now speaking would not have the right  
 of inflicting any "penalty corporal or pecuniary" (παθειν ἢ  
 ἀπορεῖσθαι), for this would include imprisonment; and it would  
 not have been enacted that the Eleven should put in the  
 stocks any man who was informed against or arrested, if only  
 those offenders mentioned in the oath could be imprisoned.<sup>(2)</sup>  
 This argument is not valid, for, as Demosthenes himself  
 points out, the oath is that taken by the members of the  
 Council and is not binding on the Heliasts nor yet on the  
 Eleven.<sup>(3)</sup> It is probable, however, that the oath did refer to  
 imprisonment before trial, for those accused of conspiracy  
 against the State and of treason would be impeached, and  
 impeachment involved imprisonment before trial; while, as we  
 shall see later, those who were in debt to the State could be  
 thrown into prison without a trial. We also know that the  
 Council could bring impeachments before the court.<sup>(4)</sup> Furthermore.

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(1) Demosthenes in Timocratem, 144.

(2) Ibid. 146, 147.

(3) Ibid. 147, 148.

(4) Ibid. 63.



we are told that the βουλή could only inflict punishment up to the value of five hundred drachms; more serious cases (1) it had to refer to the popular courts. The power of the Council to impose imprisonment was therefore very much restricted.

Sometimes, when the whole fabric of the State seemed to be threatened, the people entrusted extraordinary powers to the Areopagus and the Council. Thus, in the affair of Harpalus the Macedonian, when several prominent Athenian citizens were suspected of receiving bribes, the investigation was handed over to the Areopagus. During this investigation the Areopagus charged several men with intriguing with the exiles at Megara, but even in this case the accused men were (2) handed over to the Heliastic court for sentence. Similar powers were given to the Council in the case of the desecration of the Mysteries, and it used these powers in bringing Teucrus (3) from Megara to give evidence. When the Council was given such extended powers, it was called the βουλή αὐτοκράτωρ Andocides, however, was tried by the popular court, so that it seems that those accused of the desecration were taken by the Council to the Heliaea for trial.

The annual magistrates at Athens, the Archons, had

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- (1) Schoemann, *Antiquitates iuris publici Graecorum*, p. 215.  
 (2) Perrot, *Droit public d'Athènes*, pp. 107 foll.; Dinarchus in Demosthenem, 5, 58, 59.  
 (3) Andocides de *Mysteriis*, 15.

jurisdiction over certain cases. The ἀρχὸν ἐπώνυμος judged certain private cases, particularly those concerning inheritances; the βασιλεύς cases connected with religious matters; and the πολέμαρχος private cases in which aliens were involved. Small fines, however, were the only penalties that they could impose.<sup>(1)</sup> The powers of the Polemarch were slightly greater in that, whenever a metic was charged with treason or sacrilege by the process of εἰσαγγελία, he had to appear before this magistrate, who would decide whether he must stay in prison until the trial, or whether he might give bail.<sup>(2)</sup>

The Heliastic court was the one before which the majority of cases were presented in the time of Demosthenes. In the oath taken by the Heliasts there was no restriction against the infliction of imprisonment,<sup>(3)</sup> and, as we have seen above, they were permitted by law to impose either pecuniary or corporal punishment. According to one of Solon's laws, they were empowered to sentence those convicted of theft in a private action to five days and nights in the stocks, in addition to double restitution.<sup>(4)</sup> Demosthenes also states that they had full authority to inflict imprisonment or any other sentence that they pleased (καὶ δεσμὸν καὶ ἄλλο ὅ τι ἂν βούλωνται).<sup>(5)</sup> When citizens were brought before the court by

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(1) Schoemann, op. cit. p. 243.

(2) Perrot, op. cit. p. 266.

(3) Demosthenes in Timocratem, 149.

(4) Ibid. 114.

(5) Ibid. 151.

the magistrates, Council or Areopagus, the jury could fix any penalty at all. Thus, in the case of those accused of intriguing with the exiles at Megara, the Heliaea sentenced some to death, others to imprisonment, and others to banish-  
 (1) ment. Thus it would appear that the Heliaea had much wider powers of imposing imprisonment than the other judicial bodies. In a great many of the actions brought before this court, however, the accuser and the accused each proposed a  
 (2) penalty, as in the trial of Socrates; and the jury had to impose either the one or the other of these, without the right of choosing any alternative punishment. Thus the Heliaea, in many cases, could only inflict the penalty of imprisonment if it was proposed by one of the parties in the action; this  
 (3) happened in the case of Andocides.

#### Jurisdiction.

The officers in charge of the prison at Athens were officially known as the Eleven. Other unofficial names were, however, also given to them. Antiphon once calls them ἐπιμεληταὶ  
 (4) τῶν κακούργων, while Pollux states that Demetrius of Phalerus called them νομοφύλακες.  
 (5) Hence he calls the prison the νομοφυλάκιον. Other grammarians give them the name of δεσμοφύλακες,

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(1) Perrot, op. cit. p. 108; Dinarchus in Demosthenem, 62, 63, 83, 85.

(2) Plato, Apology, 36b, 38b.

(3) Lysias in Andocidem, 21 foll.

(4) Antiphon de caede Herodis, 17.

(5) Pollux VIII, 102.



which is probably derived from the same source.<sup>(1)</sup> Pollux tells us that this body consisted of ten men, one chosen from each tribe, and a secretary who shared their duties.<sup>(2)</sup> Lipsius disagrees with this statement for two reasons; in the first place, he says, it is contradictory to what is otherwise known about the position of the official secretaries; and, secondly, the Eleven existed before the tribe-classification of Cleisthenes, since they are mentioned in decrees of Solon.<sup>(3)</sup> Kennedy, however, agrees with Pollux' statement,<sup>(4)</sup> and it is quite possible that, even if the Eleven were in existence before the division of the Athenians into ten tribes, after this classification they were appointed one from each tribe.<sup>(5)</sup> Aristotle tells us that the Eleven were appointed by lot, and their election, like that of the other magistrates, was probably annual.

The Eleven, who are often compared to the Roman triumviri capitales, had various duties, the most important of which were the supervision of the prison and the execution of those condemned to death. They received into custody from the judges those condemned to imprisonment and were responsible for their safe-keeping. Thus, if a prisoner escaped, they had

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(1) Lipsius, Attische Process, par. 72.

(2) Pollux VIII, 102.

(3) Lipsius, op. cit. par. 71; sc. Demosthenes in Timocratem, 105, 113.

(4) Kennedy, Demosthenes' Orations, vol. III, p. 154, note 3.

(5) Aristotle, Constitution of Athens, LII.

to effect his recapture; and Demosthenes tells us that, when Aristogeiton ran away from prison, it was the Eleven who searched for him and had him <sup>(1)</sup>cried. In connection with these duties they had to keep a list of the prisoners. The Eleven also had a summary jurisdiction over certain classes of malefactors, and, by the processes of ἀπαγωγή and ἐφ' ἡμέρας, could arrest and take to prison those caught in the act of theft, house-breaking or kidnapping. If these criminals confessed to their crimes in prison, the Eleven had the power to put them to death immediately; if not, they had to keep them in custody until the day of the trial, and then, if they were condemned to death, to see to their execution. <sup>(2)</sup>With regard to those condemned to death, the Eleven had to see that they were securely incarcerated and that the execution was duly performed. They evidently also had to inform the condemned man when the time of execution came, for Plato tells us that on the day of Socrates' death the Eleven came to strike off his chains and <sup>(3)</sup>to tell him that he would die that day.

The Eleven had other duties in addition to these. Under their authority they had servants (ὑπηρέται, παραστάται), who included the gaoler and the public executioner, the δήμιος. By means of these subordinates they strove to keep watch over

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(1) Demosthenes in Aristogeitonem I, 56.

(2) Aristotle, Constitution of Athens, LII; Pollux VIII, 102.

(3) Plato, Phaedo, 59e.

all suspicious characters who had been lured to Athens by  
 the wealth of the city.<sup>(1)</sup> They also had to be present whenever  
 torture was inflicted, whether in a private or public suit,  
 and in certain cases their servant, the δῆμιος, inflicted  
 the torture.<sup>(2)</sup> Their secretary kept a list of State-debtors so  
 that they could more easily imprison those who exercised civic  
 rights while they were δῆμιος because of their indebtedness  
 to the State.<sup>(3)</sup> This also enabled them to imprison those who  
 inherited δῆμιος because of their fathers' unpaid debts. In  
 one case at least, the Eleven were authorised to assist in  
 the collection of these State-debts and to imprison immediately  
 those who failed to pay.<sup>(4)</sup> This, however, as we shall see later,  
 was contrary to the usual practice at Athens with regard to  
 State-debtors. In certain cases also the grammarians state  
 that the process of ἐνδεξις was heard before the Eleven;<sup>(5)</sup> while  
 Kennedy says that they had judicial authority over questions  
 concerning confiscated property.<sup>(6)</sup>

#### Forms of Procedure.

There were a variety of ways in which an offender  
 might be brought to court in Athens. In the first place, the

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- (1) Perrot, op. cit. p. 273.  
 (2) Lipsius, op. cit. par. 74.  
 (3) Gilbert, Constitutional Antiquities of Sparta and Athens,  
 pp. 256-257; Lipsius, op. cit. par. 74.  
 (4) Ibid. par. 74; Demosthenes in Androtonem, 49, 50.  
 (5) Ibid. par. 77.  
 (6) Kennedy, op. cit. vol. III, p. 154, note 3.



prosecutor might avail himself either of a private ( δίκη ) or public ( γραφή ) action. Furthermore, in addition to γραφή there were many kinds of procedure which could be used for different offences. Those with which we are chiefly concerned are ἀπαγωγή, ἐφήγησις, ἔνδειξις, and εἰσαγγελία, all of which involved imprisonment before trial. Ἀπαγωγή was the seizure by the injured party of a thief, housebreaker, kidnapper, or similar criminal caught in the act, who was forthwith taken to prison. This action was taken at the risk of personal injury, and the accuser had to pay a fine of a thousand drachms if the accused man were innocent. Ἐφήγησις was a similar proceeding, but in this case the accuser summoned the magistrates and conducted them to the place where the arrest was to be made. In ἔνδειξις an information was laid against the criminal before the magistrates, who were then obliged to keep him in prison until the day of trial, unless they accepted bail. These three processes were only allowed in the case of those who were caught in the act of committing a crime, and of those who exercised civic rights while ἄτιμοι. Thus Lysias' client in the speech against Agoratus has to justify his use of ἀπαγωγή and ἔνδειξις in bringing Agoratus before the court for a murder committed several years earlier.<sup>(1)</sup> Εἰσαγγελία or impeachment was employed in particular against offenders of three kinds; those who

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(1) Lysias in Agoratum, 85-87.

committed serious offences, such as treason or sacrilege, and were impeached before the Council or people; *δαιτηταί* who were charged with wronging those who had appeared before them; and those accused of ill-treatment of their parents, of widows, orphans, and the like. The last type, which was called *εἰσαγγελία κακώδεως*, was probably a later development than the other two, and is indicative of the way in which *εἰσαγγελία* was applied in later Athens in even more trivial cases. The reason for this was, no doubt, that the accuser in a case of *εἰσαγγελία*, if he was defeated, did not have to pay a sixth part of the amount assessed, as did the accuser who used the process of *γραφή*. Those against whom an impeachment was made were kept in custody until the day of trial.<sup>(1)</sup> There were other processes that were used at Athens in public trials, but none of them involved imprisonment before trial. In private suits we are told that arrest was not allowed except in the case of aliens, who might be held to bail.<sup>(2)</sup>

#### Imprisonment before Trial.

Imprisonment before trial was apparently quite common in Athens. We have already discussed *ἀπαγωγή*, *ἐφήγησις* and *ἐνδειξις*. Here we must again lay emphasis on the fact that these processes could be employed only in the case of criminals

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(1) Demosthenes in *Pimocratem*, 63.

(2) Kennedy, *op. cit.* vol. III, p. 374; for a detailed discussion of these processes see Schoemann, *op. cit.* pp. 271 foll.

of certain types, caught in the act of committing a crime. These included thieves, housebreakers, kidnappers, cut-purses, and clothes-stealers, all of whom were designated by the general term *κακοῦργοι*. Those who ill-treated their parents<sup>(1)</sup> were also included among the *κακοῦργοι*. Demosthenes, in the speech against Timocrates, mentions laws of Solon which enact that those who steal anything by day above the value of fifty drachms may be taken to the Eleven, while those who do so by night may also be taken to the Eleven, or even killed or<sup>(2)</sup> wounded in pursuit. Furthermore, he states that these criminals<sup>(3)</sup> were not permitted to regain their freedom by giving bail. He also mentions elsewhere the taking to prison of thieves caught<sup>(4)</sup> in the act. Lysias tells us that Agoratus' brother was<sup>(5)</sup> summarily arrested as a clothes-stealer. Arson was probably included among the crimes classified as *κακουργία*, and we are told that the *ταμίαι* who set fire to the Opisthodomus, the inner cella of the Parthenon, were imprisoned until judgment<sup>(6)</sup> was given. Demosthenes implies that they, too, were not allowed to give bail, as he includes them in an enumeration of people who had not expected to be released from prison on giving bail.

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- (1) Demosthenes in Timocratem, 60, 105.
  - (2) Ibid. 113; sc. in Cononem, 1.
  - (3) Ibid. 113.
  - (4) Idem in Stephanum I, 81.
  - (5) Lysias in Agoratum, 68.
  - (6) Demosthenes in Timocratem, 136.

In spite of Demosthenes' statements that bail was not permitted, several modern writers consider that those arrested by these three processes might be set free by providing three sureties taxed in the same class as themselves.<sup>(1)</sup> This is the provision made in the oath of the βουλευταί.<sup>(2)</sup> Probably the solution of this problem is that in earlier Athens, of which Demosthenes is speaking in his references to Solon's law and the ταμίαι, the giving of bail was not permissible; while, by the time of Demosthenes, the law had been relaxed and sureties were accepted from those who were summarily imprisoned. Another difficulty that arises is the question whether murderers were included among the κακοῦργοι and were thus liable to summary arrest. To quote two opposing opinions, Leist thinks that the process of ἀπαγωγή arose from the power of the blood-avenger to hale a murderer to private imprisonment, and that murder would thus be the chief form of κακοῦργία;<sup>(3)</sup> whereas Kennedy states that murderers were not summarily arrested unless the murder were accompanied by robbery or other atrocious circumstances.<sup>(4)</sup> Lipsius says that murder was not one of the crimes listed under the decrees concerning κακοῦργία, but was later thus classified by analogy.<sup>(5)</sup> As far as the ancient authors are concerned, we find that the only case of ἀπαγωγή mentioned in

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(1) Gilbert, op. cit. pp. 405 foll.; Kennedy, op. cit. vol. III, p. 358; Schoemann, op. cit. p. 272.

(2) Demosthenes in Timocratem, 144.

(3) Leist, op. cit. pp. 371 foll.

(4) Kennedy, op. cit. vol. III, p. 358.

(5) Lipsius, op. cit. par. 76.



(1)  
Homer was applied against a thief. Antiphon's client accused of the murder of Heros complains that he has been informed against as an evil-doer (ἐνδεδειγμένος κακοῦργος), and then accused of murder, a thing which never had happened to anyone else in this land. For, he says, the law concerning κακοῦργοι was made for thieves and clothes-stealers, to neither of which categories he belongs. Furthermore, if his accusers say that murder is a characteristic act of κακοῦργοι, he maintains that so are sacrilege and treason; but there are special (2) laws for both of these and also for murder. This passage seems to prove fairly conclusively that the summary arrest and imprisonment of murderers before trial was an uncommon and irregular proceeding at Athens, even if it was occasionally used. The imprisonment of Antiphon's client, moreover, was probably due to the fact that he was an alien rather than because he was accused of murder. Again, Plato in the Laws, among his recommendations for the treatment of criminals, says that those charged with intentional homicide should be imprisoned by the magistrates until the day of trial, unless sureties (3) are appointed. Since most of Plato's other suggestions, as we shall see later, are new to Athenian practice, we may assume that this also is an innovation, and that the imprisonment of

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(1) Homer, Odyssey XI, 287-297.

(2) Antiphon de caede Herodis, 9, 10.

(3) Plato, Laws IX, 871e.

murderers before trial was not general in Athens. In addition to the κακοῦργοι, those who had been placed under the ban of ἀτιμία might be summarily imprisoned if they took any part in civic life.<sup>(1)</sup> Thus Demosthenes tells us that those who failed to serve in the army might be arrested by the Eleven if they entered the market-place.<sup>(2)</sup> Also included among the ἀτιμοὶ were State-debtors, if they did not pay their debts within a certain time.<sup>(3)</sup> This included those who had not paid fines to which they had been sentenced. If the debtor died before the debt was paid, the ἀτιμία was inherited by his sons, who then became liable to imprisonment if they exercised civic rights,<sup>(4)</sup> as in the case of Androtion.

The other form of procedure which involved imprisonment before trial was impeachment (εἰσαγγελία).<sup>(5)</sup> The misdemeanours for which impeachment was used have been mentioned. Timocrates proposed a law, quoted by Demosthenes, stating that those impeached by the Council must be brought into court within thirty days from the time when they were taken into custody.<sup>(6)</sup> This suggests that the period of incarceration was frequently longer than this. Probably these prisoners also

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- (1) Schoemann, op. cit. p. 285.
  - (2) Demosthenes in Timocratem, 60, 105.
  - (3) Kennedy, op. cit. vol. III, p. 372.
  - (4) Demosthenes in Androtionem, 34.
  - (5) Kennedy, op. cit. vol. III, p. 359.
  - (6) Demosthenes in Timocratem, 43.

could regain their freedom by giving bail. At any rate, after the trial of the Six Generals, the people voted that anyone who had deceived the people should furnish sureties until he was brought to trial.<sup>(1)</sup> This was probably a case of impeachment, for deceiving the people would be considered a form of treason.

Another class of persons upon whom imprisonment was, as a general rule, inflicted until the day of trial was the metics or resident aliens. These metics had no civic rights,<sup>(2)</sup> although they had to pay a tax, unless they were formally admitted to the citizen-roll. If they took any part in civic life, proceedings might be taken against them by means of a *ξενίας γραφή*, the penalty in which was enslavement and the confiscation of their property. The metic could, however, make an appeal on the ground that his accuser had used false witnesses.<sup>(3)</sup> He had to remain in prison until the trial for false testimony took place and was not allowed to give bail.<sup>(4)</sup> The treatment of metics seems to have been equally strict in other cases, although bail was sometimes allowed. If a metic was accused of sacrilege or treason, he had to appear before the Polemarch, who would decide whether he must

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(1) Xenophon, Hellenica I, vii, 35.

(2) Demosthenes in Androktionem, 61.

(3) Smith, Dictionary of Antiquities, s.v. Xenias Graphe.

(4) Demosthenes in Timocratem, 131.

stay in prison until his trial or whether he might give bail.<sup>(1)</sup>

In a speech on immorality charges, Aeschines mentions some foreigners who were ordered to go straight to prison for having corrupted a free youth.<sup>(2)</sup> In the case of Antiphon's client, who was an alien accused of murder, bail was not accepted. He complains that he was willing to provide three sureties, in accordance with the law, but that in a most illegal manner (παράνομῶστα) this privilege was refused him; while no other alien who wanted to provide sureties had ever been imprisoned.<sup>(3)</sup> This statement does not seem to agree with what has been said above. If, however, the Polemarch had the right to decide whether a metic charged with sacrilege or treason should be imprisoned or whether he might give bail, it is reasonable to assume that a similar decision rested with the magistrates with reference to other crimes as well. The most probable explanation of this procedure is that the right to give bail was withheld from those aliens who seemed likely to flee the country before trial and thus escape punishment; whereas Athenians who fled in this way and let the trial go by default were henceforth virtually exiles and were liable to arrest as soon as they set foot on Attic territory. Since exile was considered by Athenian citizens one of the most

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(1) Perrot, op. cit. p. 266.

(2) Aeschines in Timarchum, 43.

(3) Antiphon de caede Herodis, 17.

severe of punishments, few citizens would care to avail themselves of such flight; aliens, on the other hand, were not bound to Athens by any ties of affection, and would readily go elsewhere to avoid punishment.

#### Imprisonment for Debt.

Perhaps the most common type of imprisonment in Athens was imprisonment for debt. This was imposed, not as a punishment for non-payment, but as a means of enforcing payment of the debt. Furthermore, all debtors were not liable to imprisonment, and we do not hear of private debtors being imprisoned. The infliction of imprisonment for debt was confined chiefly, if not entirely, to State-debtors, to those who did not pay the fines that were adjudged against them, and to those sentenced to pay fines in δίκαι ἑμπορικαί. The last class of debtor is a subdivision of the second class rather than a distinct class by itself, but there are sufficient references to it to enable us to deal with it separately.

In early times the punishment for debt at Athens was enslavement, but this was abolished by Solon.<sup>(1)</sup> Hereafter the recognised punishment was imprisonment, but even this was apparently not applicable in every case. Demosthenes argues that the essential difference between a slave and a free man lies in the fact that, in the case of the latter,

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(1) Plutarch, Solon, 13.



it is the property, and not the person, that is answerable  
 (1)  
 for all offences. Thus free men can, as a rule, escape bodily  
 chastisement by making money payments; and therefore Androtion,  
 instead of imprisoning citizens and resident aliens for non-  
 payment of their taxes, should have sequestered and scheduled  
 (2)  
 their houses and lands. Wayte says that men could not be im-  
 prisoned merely for being in arrears with their taxes, and  
 (3)  
 that this was illegal even in the case of metics. He adds,  
 however, that the practice was not on a level with the theory.  
 Demosthenes also charges Timocrates not only with having  
 imprisoned those from whom he levied double payment in collect-  
 ing the taxes without allowing them to give bail, but also  
 (4)  
 with having done so even before they were tried. This lends  
 corroboration to Wayte's statement that individuals were not  
 liable to imprisonment for non-payment of their taxes. In  
 Aristotle, however, we find the following passage: "There are  
 ten receivers (ὑποδέκται) appointed by lot by tribes. When  
 they have received the lists, they cancel the moneys as they  
 are paid in in the presence of the Council in the council-  
 chamber, and again return the lists to the public notary. If  
 anyone fails in payment the fact is then recorded, and the

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(1) Demosthenes in Androtionem, 55.

(2) Ibid. 54-56.

(3) Wayte on Demosthenes in Timocratem, 96.

(4) Demosthenes in Timocratem, 169.

reason why; and he must pay the deficit or go to prison, and the Council has authority by law both to compel payment and to commit to prison"<sup>(1)</sup>. This passage seems, on the surface, to refer to the collection of taxes from the individual citizens, and to be quite contradictory to Demosthenes' statements. The best solution of the problem is to assume that the ten receivers were appointed to receive from the tax-gatherers the money which they, in turn, had collected from the taxpayers. The theory that the ἀποδέκται had a position superior to that of the tax-gatherers is borne out by several sources. In an inscription quoted by Sandys it is decreed that the rentals of the sacred enclosures be paid to the ἀποδέκται, who are to hand them over to the ταμίαι of the other gods.<sup>(2)</sup> Again, Aristotle tells us that the ἀποδέκται, who were also called ταμίαι, "treasurers", received the revenues from the public lands and distributed them to the various departments.<sup>(3)</sup> These two references show that the duties of the ἀποδέκται were of a more responsible nature than those of the ordinary tax-collectors. Demosthenes, too, states that when Androtion was authorised to collect taxes he illegally took to the homes of those in arrears not only the Eleven, but the ἀποδέκται as well.<sup>(4)</sup> This again suggests that the ἀποδέκται were more than

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- (1) Aristotle, Constitution of Athens, XLVIII; Trans. Dymes.  
 (2) Sandys on Aristotle, Constitution of Athens, XLVII, 4; C.I.A. iv, fasc. 2, 53a.  
 (3) Aristotle, Politics, 1321b, 30-33.  
 (4) Demosthenes in Timocratem, 162, 197.

mere tax-collectors. Strength is also lent to the assumption that it was the tax-collectors who paid in these moneys to the ἀποδέκται by the clause in the oath of the βουλευταί by which they were allowed to imprison tax-farmers, their sure-<sup>(1)</sup>ties and collectors. From other sources too we know that stringent measures were taken against the τελῶναι (tax-farmers); the ἐκλογεῖς, who collected unfarmed revenues, such as tribute from the allies, and also farmed taxes under the τελῶναι; those who leased public revenues, such as public lands and mines; and those who held other public moneys, such as prize money.<sup>(2)</sup> These persons were allowed a certain time for payment (thirty days,<sup>(3)</sup> according to Wayte), and after this were liable to imprisonment. After this time also the amount of the debt was doubled<sup>(4)</sup> or multiplied ten times. Andocides tells us that a certain Cephisius was liable to imprisonment because he had leased<sup>(5)</sup> a public tax and absconded with the profits. The law which Demosthenes indicts in his speech against Timocrates is one which allows State-debtors, with the exception of the τελῶναι, the ἐκλογεῖς, and the lessees of public revenues, to avoid imprisonment by the appointment of sureties. Moreover, no reference is made to any increase in the amount owed through

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(1) Demosthenes in Timocratem, 144.

(2) Ibid. 40.

(3) Wayte on Demosthenes in Timocratem, 32.

(4) Sc. Demosthenes in Timocratem, 83.

(5) Andocides de Mysteriis, 92-93.

non-payment within the prescribed time, but the debtor who has not paid the original debt by the ninth Prytany may be imprisoned and the property of his sureties confiscated.<sup>(1)</sup>

Since this law is indicted as contrary to the existing laws, it is evident that those in debt with public moneys were not allowed to go free on giving bail. Again, as the law is in reality merely a privilegium for Timocrates' friends, Androtion, Melanopus, and Glaucetes, who were in possession of nine and a half talents of prize-money from a captured ship,<sup>(2)</sup> this class of State-debtor was clearly subject to the same laws as the tax-farmers. Those who failed to pay their debts to the State within the required time were deprived of their civic rights and were thus also liable to summary arrest as ἀτίμοι as well as for their indebtedness. In the event of the debtor's dying before payment was made this ἀτιμία was inherited by his sons, as has been pointed out above. Thus Demosthenes states that Androtion was ἀτίμος because of his father's unpaid debts;<sup>(3)</sup> while Aristogeiton was imprisoned, not only for his own debts, but also for those of his father, and thus was not allowed by law to take any part in civic life.<sup>(4)</sup>

Those convicted in a trial and sentenced to pay a fine were compelled to remain in prison until the fine was

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(1) Demosthenes in Timocratem, 40.

(2) Ibid. 11-13.

(3) Ibid. 168; in Androtonem, 34.

(4) Idem in Aristogeitonem I, 28, 53, 74; Dinarchus in Aristogeitonem, 13.

paid. This was a means of "putting on the screw" to extract payment, and, as far as we can establish, bail was not allowed. Schoemann states that foreigners could be compelled to pay a fine immediately after judgment was pronounced, or else kept in prison until they paid.<sup>(1)</sup> Aeschines quotes a law which enacts that those who are convicted of outraging a freeborn child or a slave and are sentenced to a fine must pay the fine within eleven days after the trial and must remain in custody until it is paid.<sup>(2)</sup> As the convicted man in both these cases was kept in confinement until the fine was paid, the time limit set for payment had no bearing on the time of incarceration; but probably the amount payable was increased after this time. Kennedy says that fines were doubled if unpaid by the ninth Prytany.<sup>(3)</sup> Socrates, in the Apology, says that he might have fixed a fine as his punishment, but that this would have been equivalent to imprisonment for life, "for money I have none, and cannot pay".<sup>(4)</sup> Demosthenes, after being convicted of receiving bribes from Harpalus, was sentenced to pay a fine of fifty talents; being unable to pay, he was cast into prison.<sup>(5)</sup> Miltiades, after his unsuccessful attack on Paros, was impeached and found guilty

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- (1) Schoemann, op. cit. p. 285.
  - (2) Aeschines in Timarchum, 16.
  - (3) Kennedy, op. cit. vol. III, p. 372.
  - (4) Plato, Apology, 37c.
  - (5) Kennedy, op. cit. vol. III, p. 344.



of deceiving the people. He was condemned to pay a fine of fifty talents, but he died immediately after the trial, and the fine was paid by his son, Cimon. According to Cornelius Nepos, Diodorus, and Plutarch, Miltiades died in prison.<sup>(1)</sup> Demosthenes also quotes a law moved earlier by Timocrates, providing for the imprisonment of those condemned to a money penalty in an impeachment trial until the penalty was paid.<sup>(2)</sup> Probably in the case of unpaid fines, as in the case of State-debts, the debtors were subject to ἀτιμία and their sons to the inheritance thereof. In Solon's law concerning those convicted of ill-treatment of their parents, desertion, or the illegal exercise of civic rights, either corporal or pecuniary penalties might be imposed; if the latter, the condemned man had to remain in prison until he paid the fine.<sup>(3)</sup>

Merchants and shipowners who had been wronged, and also those who had been wronged by them, could prosecute those who had injured them in special actions called δίκαι ἐμπορικαί.<sup>(4)</sup> The penalty imposed in these actions was usually a fine, but in this case the fine was apparently paid to the prosecutor and not to the State. This, no doubt, was to offset any loss sustained by the merchant through the actions

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(1) Cornelius Nepos, Miltiades 7, Cimon 1; Diodorus, Bk. X, fragment 64; Plutarch, Cimon 4.

(2) Demosthenes in Timocratem, 63-64.

(3) Ibid. 105.

(4) Idem in Apaturium, 1.

of the wrongdoer. In δίκαι ἔμπορικαί alone, the prosecutor was compelled to pay a fine if he was defeated in court. Both defendant and prosecutor, if condemned to pay a fine, were liable to imprisonment until the fine was paid. Thus Demosthenes' client in one speech complains that not only will he and his fellow-prosecutors lose their suit, but that they will have to pay a fine to the defendant in compensation, and will be put in prison if they do not pay.<sup>(1)</sup> In another maritime case, men who had lent money on a maritime venture were defrauded of their loan and then taken to court by the fraudulent debtors. Hereupon they were condemned to pay a fine, and were liable to imprisonment until it was paid.<sup>(2)</sup> It was probably in order to prevent such injustices as this that the unsuccessful prosecutor was liable to a fine and imprisonment. Indeed, Demosthenes tells us that those who wilfully preferred a false charge against merchants and shipowners were liable to imprisonment in addition to a fine of a thousand drachms.<sup>(3)</sup>

#### Imprisonment as a Punishment.

There is considerable dissension among modern writers with regard to the part that imprisonment played as a punishment in ancient Athens. Gilbert maintains that

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(1) Demosthenes in Dionysodorum, 4.  
 (2) Idem in Lacritum, 46.  
 (3) Idem in Theocrinem, 10.

imprisonment was never decreed except as an additional penalty;<sup>(1)</sup> Caillemer, on the other hand, contends that it was a common punishment.<sup>(2)</sup> To reach a satisfactory conclusion, therefore, we must examine the evidences found in the ancient writers; and these indicate that imprisonment was used as a punishment to some extent.

First, of all, Aristotle tells us that in earlier times the Council had the right of inflicting the punishments of death, imprisonment, and exile.<sup>(3)</sup> He also states, to be sure, that it was soon deprived of this power; but at any rate it is clear from his statement that imprisonment was known in early Athens as a punishment. Andocides mentions the oath of the Council and people, in which they swore not to imprison, exile,<sup>(4)</sup> or put to death any citizen without a trial. In this case it is undoubtedly imprisonment as a punishment to which reference is made. There are many references also of a more specific nature to imprisonment as a punishment. The summary arrest and imprisonment of *ἄτιμοι* who exercised civic rights, which was decreed by Solon, was probably punitive in character.<sup>(5)</sup> In Timocrates' earlier law it was enacted that those brought to court upon an impeachment by the Council might be sentenced

(1) Gilbert, op. cit. p. 414.

(2) Daremberg and Saglio, s.v. Carcer.

(3) Aristotle, Constitution of Athens, XLV.

(4) Andocides in Alcibiadem, 3; sc. Demosthenes in Timocratem, 147.

(5) Demosthenes in Timocratem, 60, 103.

to any corporal or pecuniary penalty that the Heliaea thought  
 (1) fit. This would, of course, include imprisonment. We cannot,  
 however, assert that this law was in accordance with the  
 usual Athenian practice, inasmuch as the law later proposed  
 (2) by Timocrates was so foreign to Athenian usage. Demosthenes  
 tells us that sailors who deserted were punished with imprison-  
 (3) ment. He also says that those who were fitting out ships for  
 the State were liable to imprisonment if their ship was not  
 brought around to the pier by the last day of the month; else-  
 (4) where he maintains that, during his supervision of the navy,  
 (5) no trierarch was imprisoned by the Admiralty. In both of these  
 cases the imprisonment may have been inflicted as a punishment,  
 but it is just as likely, if not more so, that it was the  
 imprisonment before trial which was imposed upon those against  
 whom an impeachment was brought; in these cases the impeachment  
 would doubtless be for deceiving the people. Demosthenes also  
 mentions the legal phrase παθεῖν ἢ ἀποτεῖσθαι with reference  
 to the sentences passed by the Heliaea, and points out that  
 imprisonment is included in παθεῖν (ἐν γὰρ τῷ παθεῖν καὶ ὁ  
 δεσμός ἐστι). (6) He also states that every question brought to

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- (1) Demosthenes in Timocratem, 63.  
 (2) Ibid. 39, 40.  
 (3) Idem on the Naval Crown, 11.  
 (4) Ibid. 4.  
 (5) Idem de Corona, 107.  
 (6) Idem in Timocratem, 146.

trial is decided by the courts, who may pass sentence of imprisonment or any sentence that they please. Imprisonment<sup>(1)</sup> was evidently one of the penalties that might be proposed by the prosecutor or defendant in a lawsuit. Socrates, in his trial for corrupting the youth and worshipping strange gods, says that he might have proposed as his punishment imprisonment, <sup>(2)</sup> (ζῆν ἐν δεσμωτηρίῳ). Anaxagoras, we are told, was condemned to imprisonment because of his theories concerning the sun.<sup>(3)</sup> Lysias tells us that, when Andocides was brought to trial on a charge of desecrating the Mysteries, he proposed the penalty of imprisonment, although he could have just as easily proposed a fine, and that as a result he lay in prison for nearly a<sup>(4)</sup> year. Finally, we are informed that after the scandal of Harpalus many of those suspected of conspiring with the exiles at Megara were condemned to death, while others were<sup>(5)</sup> punished with imprisonment or exile. From these statements, although equal credence cannot be placed in all of them, we may assume with assurance that imprisonment as a punishment in itself was known and used to some extent in Athens under the democracy.

During the Oligarchic Reaction of 411 B.C., the Four

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- (1) Demosthenes in Timocratem, 151.
  - (2) Plato, Apology, 37c.
  - (3) Kennedy, op. cit. vol. III, p. 347.
  - (4) Lysias in Andocidem, 21 foll.
  - (5) Perrot, op. cit. p. 108.



Hundred made considerable use of imprisonment as a punishment. Andocides was convicted of supplying oar-spars and grain to the democratic army at Samos and was almost put to death, but was instead imprisoned.<sup>(1)</sup> Thucydides also tells us that the Four Hundred put to death a certain number of men, although not many, whom they thought it desirable to put out of their way; while others they imprisoned or drove from the city.<sup>(2)</sup>

Imprisonment could be imposed as an additional punishment in certain cases at the discretion of the court. Demosthenes tells us that those convicted of theft in a private action might, according to one of Solon's laws, be sentenced to five days and nights in the stocks in addition to paying double restitution.<sup>(3)</sup> As we have seen above in discussing the δίκαι ἐμπορικαί, anyone who brought a false accusation against merchants and shipowners might be sentenced to imprisonment as well as to the payment of a fine of a thousand drachms.<sup>(4)</sup> This additional punishment of imprisonment doubtless served two purposes: to deter the convicted man from similar offences in the future; and to brand him with disgrace. Antiphon emphasises the disgrace and humiliation that was brought upon him and his whole family by reason of his imprisonment before

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(1) Andocides, on his Return, 13-15; Lysias in Andocidem, 27.

(2) Thucydides VIII, 70.

(3) Demosthenes in Timocratem, 105, 114; Lysias in Theomnestum, 16.

(4) Demosthenes in Theocrinem, 10.

(1)  
his trial for murder; and presumably imprisonment as a punishment was considered much more disgraceful.

We may suppose, then, that imprisonment, both as a punishment in itself and as an additional penalty, was far from uncommon in Athens, although it was not as general as punishment by death, exile, or fines. Plato, in the Laws, suggests punishment by imprisonment to a much greater extent than was usual at Athens. His proposals, however, will be discussed separately later.

Imprisonment before Death.

All those who were condemned to death at Athens were confined in prison in fetters until their execution. These prisoners were under the special custody of the Eleven and were guarded with especial care. The usual method of execution was by the drinking of hemlock. According to Athenian law, only one man could be condemned to death at one time. Thus, when the Six Generals were condemned to death after the battle of Arginusae by a single vote, proceedings were taken against several members of the Council on the ground that  
(2)  
they had deceived the people. Lysias, moreover, attacks as illegal the condemnation to death of three hundred citizens  
(3)  
at one time by the Thirty at Salamis and Eleusis.

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(1) Antiphon de caede Herodis, 18.  
(2) Xenophon, Hellenica I, vii, 35.  
(3) Lysias in Eratosthenem, 52.

Among Athenians who were imprisoned prior to their execution were those condemned as enemies of the State by the Thirty, including Lysias' brother-in-law, Dionysodorus;<sup>(1)</sup> those charged with desecrating the Mysteries;<sup>(2)</sup> and the Athenian allies of Cleomenes.<sup>(3)</sup> The most famous case of imprisonment before the infliction of death at Athens is, of course, that of Socrates, the account of which has been handed down to us by Plato in the *Phaedo*. Socrates remained in prison for thirty days before he was put to death, because of the absence of the sacred mission to Delos, during which the law forbade any executions in Athens.<sup>(4)</sup> The period of incarceration was generally much shorter than this. From Xenophon's account of the condemnation of Theramenes by the Thirty, his death seems to have followed almost immediately upon his seizure by the Eleven, to whom those sentenced to death were handed over after the trial.<sup>(5)</sup> Aeschines quotes a law which states that anyone who is condemned to death for having outraged a freeborn child or a slave must be handed over to the Eleven and put to death on the same day.<sup>(6)</sup> The execution of the death sentence was probably carried out with similar despatch in most cases.

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(1) Lysias in *Agoratum*, 39-40.

(2) Thucydides VI, 60; Andocides de *Mysteriis*, 45, 48, 66, 67.

(3) Herodotus V, 72.

(4) Xenophon, *Memorabilia* IV, viii, 2.

(5) Idem, *Hellenica* II, iii, 54 foll.

(6) Aeschines in *Timarchum*, 16.

Plato's Theories of Imprisonment.

The recommendations made by Plato in the ninth and tenth books of the Laws with regard to the punishment of criminals are of peculiar interest to the modern student of imprisonment in ancient Athens. For, although his suggestions in some cases correspond closely to the system then in force in Athens, in others he seems to have in view a system which resembles the treatment of criminals in modern times rather than that in Athens.

The first class of criminal which Plato discusses includes temple-robbers, traitors, and subverters of the State by violence.<sup>(1)</sup> These are to be punished by money penalties, and, if they seem to deserve a greater punishment, they are in addition to be imprisoned for a time and otherwise dishonoured, unless some of their friends are willing to go surety for them. In no case, he says, must anyone be outlawed or banished as a punishment for any crime, but rather punished with death, imprisonment, corporal chastisement, or fines.<sup>(2)</sup> This procedure seems to correspond quite closely with contemporary Athenian practice. Offenders of this type were frequently condemned to death, and sometimes to money penalties. The additional imprisonment suggested by Plato is analogous to that which was

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(1) Plato, Laws IX, 857a.

(2) Ibid. IX, 855b.

imposed upon thieves by Solon's law.<sup>(1)</sup> The veto against banishment, however, is apparently quite new, for this was a common punishment in Athens.

In the case of thieves, says Plato, whether their thefts be small or large, let there be the same law for them<sup>(2)</sup> all. Those convicted of theft shall pay double the amount that they stole, if they have sufficient money; if they cannot pay, they must remain in prison until they either pay the fine or persuade their accuser to forgive them. This is to hold good<sup>(3)</sup> of theft both against individuals and against the State. This denotes a considerable mitigation of the severity with which thieves were treated in Athens. According to Solon's laws, those convicted of theft in a private action were sentenced to double restitution and, if the court saw fit, to imprisonment for five days and nights in addition.<sup>(4)</sup> Plato's suggestion is similar to this, except that he makes no mention of the additional imprisonment. In the case of thieves caught in the act, however, Solon's laws were much more rigorous; those who stole anything worth more than fifty drachms by day and those who stole anything at all by night might be taken forthwith to the Eleven, who had the power to put them to death at once

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(1) Demosthenes in Timocratem, 105.

(2) Plato, Laws IX, 857a.

(3) Ibid. 857a.

(4) Demosthenes in Timocratem, 114.



if they confessed; after trial too the death penalty might be imposed. The same applied to those who stole anything worth more than ten drachms from any public place, such as the Academy, the Lyceum, the gymnasia, and the harbours.<sup>(1)</sup> Thus Plato's establishment of one and the same penalty, namely, double restitution, for every case of theft is an innovation in Athenian practice.

If any of the above-mentioned crimes, however, are committed, not through depravity of character, but because of madness, disease, or old age, Plato says that the offender must go into exile for a year, presumably to recover from his affliction. If, however, he returns to his native land before the expiration of the year, the guardians of the law shall keep him in prison for two years and then let him go free.<sup>(2)</sup> The imprisonment of those who returned to Athens while under sentence of exile was common enough in Athens, since exiles were, of course, included among the ἀτίμοι. The point of greatest interest in this passage is the fixing of a definite period of imprisonment for a specific offence. This is not mentioned anywhere else in the ancient writers, except in the case of the additional imprisonment of thieves mentioned above. Plato, however, fixes definite times of imprisonment in other

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(1) Demosthenes in Timocratem, 113, 114; sc. Aristotle, Constitution of Athens, LII.

(2) Plato, Laws IX, 864e.

cases as well, as we shall see later.

Another innovation proposed by Plato is the imprisonment before trial of those charged with murder, unless they appoint sureties.<sup>(1)</sup> As we pointed out in the section of this chapter dealing with imprisonment before trial, this was not the usual practice in Athens.

In dealing with those who are convicted of assaulting their elders, Plato again proposes as the penalty a fixed term of imprisonment. Citizens convicted of this crime shall be imprisoned for at least one year; strangers who are only temporarily in Athens, for two years; and metics, for three years. In each case the magistrates may sentence the offender to a longer period of incarceration.<sup>(2)</sup> When a slave assaults a free man, the injured party may keep him in chains and beat him as much as he likes, but must return him to his master. The master, however, must keep the slave in chains until the assaulted man says that he may be released.<sup>(3)</sup>

The most interesting part of Plato's theory is found in his discussion of impiety. Here he says: "There shall be three prisons in the State; the first of them is to be the common prison, in the neighbourhood of the agora, for the safe-keeping of the generality of offenders; another is to be in the

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(1) Plato, Laws IX, 871e.  
 (2) Ibid. IX, 880b-880d.  
 (3) Ibid. IX, 882a.

neighbourhood of the nocturnal council, and is to be called the "house of reformation"; another, to be situated in the centre of the country, shall be called by some name expressive of retribution<sup>(1)</sup>. This penal system bears a striking resemblance to that of modern times, and Plato's proposed prisons correspond almost exactly to the gaols, reformatories, and penitentiaries of the present day. The chief difference between the two systems seems to be that in our reformatories the inmates are taught a useful trade, whereas in Plato's "house of reformation" they were apparently to be given no such instruction, but merely to gain a better understanding of right and wrong during their confinement. Plato, unfortunately, does not develop his theory sufficiently to enable us to discover what the function of this "house of reformation" was to be. In ancient Athens there is no trace of such a system, and modern writers are agreed, for the most part, that there was only one prison in Athens. This seems to have been the case, for the Attic orators, numerous though their references to the prison are, never attempt to distinguish between more than one prison. Plato tells us that the prison in which Socrates was confined was near the court (δικαστήριον)<sup>(2)</sup> where his trial was held. Demosthenes, in the speech against Timocrates, says that, if a loud outcry was heard near the court (πρὸς τῷ δικαστηρίῳ)

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(1) Plato, Laws X, 908a; trans. Jowett.

(2) Idem, Phaedo, 59d.

and the jurors were told that the prison had been thrown open and that the prisoners were escaping, they would all hasten to the rescue.<sup>(1)</sup> This also indicates that the prison was close to the law-courts. Furthermore, Demosthenes three times refers to the prison as τῷ οἰκῆματι τούτῳ.<sup>(2)</sup> There is some dissension among the modern editors of Demosthenes with regard to this phrase, some considering that τούτῳ is used with deictic force and that the prison was visible from the court, while others think that the phrase merely means "the prison in question". In view of the above-mentioned statements of Plato and Demosthenes, the former interpretation seems to be the correct one. There is no reference in the ancient writers to any other prison, and we may therefore assume that there was only one prison in Athens, which was near the law-courts. Plato's proposal to have three prisons for various criminals is thus quite contrary to Athenian practice. The institution of these prisons, as has been stated, is suggested in connection with the punishment of the impious. Those who have committed impiety through lack of understanding rather than through an evil nature are to be confined in the "house of reformation" for not less than five years, during which time they are to have no intercourse with other citizens; those who are utterly

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(1) Demosthenes in Timocratem, 208.

(2) Ibid. 131, 135, 136.

depraved, and who not only believe that no gods exist, but even say that they can conjure up the dead and charm the gods with sacrifices and prayers, are to be condemned to imprisonment for life in the "house of retribution", where no citizen<sup>(1)</sup> can ever approach them. This, again, is similar to the modern theory of punishment, in which a distinction is made between those who have turned to crime as a result of their environment or ignorance and those who are inherently criminal by nature.

The most important theories, then, that Plato advances, and those most foreign to contemporary Athenian usage, are the greatly extended use of imprisonment in the punishment of wrongdoers, the institution of fixed periods of confinement, and the establishment of a prison system very similar to the modern one. There is no evidence, however, to show that any of Plato's recommendations were ever put into effect in ancient Athens.

#### Imprisonment by Individuals.

In Homeric times, as we have seen, the individual could inflict punishment upon anyone who wronged him, and thus<sup>(2)</sup> had the right to take the offender into private custody. In Athens in classical times, however, this power no longer existed except in certain specified cases.

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(1) Plato, Laws X, 908e-909c.

(2) Homer, Odyssey XI, 287-297; XV, 231-233.

One case in which the offender could be imprisoned by the injured man was that of adultery. The adulterer, however, could bring a charge of false imprisonment against the man who had detained him.<sup>(1)</sup> Those who provided bail apparently were also allowed to keep in confinement the man for whom they were sureties. This would, of course, be to ensure that he did not depart from the city before his trial, thus causing the money that they had provided to be forfeited to the State. Thus we are told that, after the trial of the Six Generals, Callixeinus and the four other men charged with deceiving the people were put into confinement by their bondsmen.<sup>(2)</sup>

Occasionally, however, people took the law into their own hands and detained others quite illegally. The case of such imprisonment to which there are the most numerous references is the detention of the painter Agatharcus by Alcibiades. Agatharcus, when asked by Alcibiades to paint pictures in his house, says Andocides, pleaded lack of time; whereupon Alcibiades imprisoned him, and he was kept in confinement for four months<sup>(3)</sup> before he managed to escape his guards and run away. Plutarch's account agrees with this.<sup>(4)</sup> Demosthenes, however, states that Agatharcus was caught by Alcibiades committing an offence; and

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(1) Kennedy, op. cit. vol. III, p. 349; Leist, op. cit. pp. 300-301.  
 (2) Xenophon, Hellenica I, vii, 35.  
 (3) Andocides in Alcibiadem, 17.  
 (4) Plutarch, Alcibiades, 16.



Ulpian, in his note on this passage, says that Agatharcus<sup>(1)</sup> was having a disgraceful intrigue with Alcibiades' wife.

Photion quotes the detention of Agatharcus as an example of <sup>(2)</sup> 'Ερμῶς δίκη, the unjust detention of one individual by another.

Such imprisonment was apparently also used to obtain legacies; for Solon, we are told, disallowed all legacies that were obtained by the administration of drugs, imprisonment, and<sup>(3)</sup> violence. During the rule of the Four Hundred, relates Thucydides, the hoplites in the Peiraeus arrested Alexicles, who was favourable to the Oligarchs, and imprisoned him in a house<sup>(4)</sup> there. The use of private detention as a means of coercion, however, was apparently not extensive.

#### Conclusion.

In this chapter imprisonment in ancient Athens has been discussed as fully as possible. In some cases, to be sure, the sources of information on which our conclusions depend are somewhat doubtful, but, on the whole, the picture presented of imprisonment and its uses at Athens seems to be comparatively accurate. The point which I wish to stress above all in conclusion is that imprisonment was used to some extent as a punishment in Athens, despite the denials of some

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(1) Demosthenes in Meidiam, 147.

(2) Photion, Lexicon, 670, 9.

(3) Plutarch, Solon, 21.

(4) Thucydides VIII, 92.

modern authorities. This, I think, has been satisfactorily proved above.

#### IMPRISONMENT IN THE OTHER GREEK STATES.

In the discussion of imprisonment and its uses in Athens, we found numerous references in the ancient authors on which to base our conclusions. As to imprisonment in the other States, however, the sources of information are very limited. Even in the case of Sparta and Gortyn, where we can form a rough idea of the uses of imprisonment, our conclusions are derived from only one or two sources; while, as far as the other States are concerned, we can do no more than record the instances of imprisonment mentioned by the ancient writers, without attempting even to outline the way in which imprisonment was used.

In Sparta, as far as can be established, only two uses were made of imprisonment. The Ephors, who formed the highest board of magistrates, supervised the lesser magistrates and had the power of deposing them from office, of exacting fines from them, of imprisoning them and bringing them to trial on capital charges.<sup>(1)</sup> The imprisonment thus imposed was apparently intended to ensure the appearance of

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(1) Xenophon, On the Spartan Constitution, VIII, 4; Gilbert, op. cit. p. 57; Schoemann, op. cit. p. 128.

the accused man at the trial, and could be employed even  
 against the kings.<sup>(1)</sup> These proceedings were taken, it seems,  
 by the Ephors against those guilty of political misdemean-  
 ours or treasonable activities. Thus we are told that the  
 king Pausanias was recalled to Sparta and thrown into prison  
 by the Ephors because he was intriguing with the barbarians  
 at Colonae in the Troas, where he had settled.<sup>(2)</sup> He escaped,  
 however, and offered himself for trial by anyone who wished  
 to investigate his case. Criminal cases, including murder  
 cases and State trials, were tried before the Gerousia, the  
 Spartan Senate. The punishments inflicted in these trials,  
 we are told, were fines,<sup>(3)</sup> ἀτιμία, banishment, and death. The  
 execution of the death penalty was carried out in two ways.  
 The condemned man was either thrown into the Καΐδας or  
 strangled in the Δέχας. The Καΐδας was apparently a pit or  
 cavern similar to the βάρβαρον at Athens. Pausanias tells us  
 that it was into the Καΐδας that those punished for the  
 greatest crimes were thrown,<sup>(4)</sup> while Thucydides says that it  
 was the intention of the Ephors to fling the king Pausanias  
 into the Καΐδας,<sup>(5)</sup> had he not taken refuge in a temple. Strabo  
 tells us that καίετας was the word used by the Lacedaemonians

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(1) Thucydides I, 131; Gilbert, op. cit. p. 55; Schoemann, op. cit. p. 128.

(2) Thucydides I, 131.

(3) Gilbert, op. cit. p. 80; Schoemann, op. cit. pp. 131-132.

(4) Pausanias IV, xviii, 4.

(5) Thucydides I, 134.

for their prison, which was a sort of cavern. This state-<sup>(1)</sup>  
ment, however, is not corroborated by any other source, and  
it is most unlikely that the *Κελιδας* was used as a prison as  
well as a means of execution. Probably into it, as into the  
*βίραθρον*, were also thrown the bodies of criminals who had  
been put to death by other means. The other method of execu-  
tion was by strangulation in the *Δέχας*, which Plutarch says  
was the room in the prison in which execution of this kind  
was inflicted.<sup>(2)</sup> Herodotus states that at Sparta criminals were  
never put to death by day, but always at night, and that for  
this reason the Minyae, when condemned to death because of  
their demands for equal powers with the Spartiates, were  
thrown into prison.<sup>(3)</sup> If Herodotus' statement that executions  
took place only at night is correct, those condemned to death  
must have suffered imprisonment for a short time at least, as  
sentence would undoubtedly be passed in the morning. We hear  
of imprisonment before death at Sparta in other cases as well.  
By Herodotus again we are informed that a certain Hegesistratus<sup>(4)</sup>  
was imprisoned by the Spartiates as a preliminary to death;  
while Xenophon tells us that Pausanias was condemned to death  
but escaped, presumably from prison, and died a natural death

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(1) Strabo VIII, v, 7.  
(2) Plutarch, Agis, 19.  
(3) Herodotus IV, 146.  
(4) Ibid, IX, 37.

(1)  
 at Tegea. Other forms of corporal punishment were sometimes inflicted, but, as far as we can determine, these were not connected with imprisonment. For example, a certain Cinadon, who headed a conspiracy against the Spartiates, was arrested by the Ephors, bound in a collar (κλοιός), and dragged through the city under scourge and goad. (2)  
 Cleomenes, when he went mad, (3)  
 was put in the stocks. No mention is made of imprisonment in connection with these punishments. The only forms of imprisonment at Sparta of which there is any evidence are imprisonment before trial and before death.

From the Gortynian Law Code we get a considerable amount of information about legal procedure in this Cretan State. The greater part of the Code, however, deals with civil procedure and states the regulations concerning inheritances, marriage, adoption, and the like; thus, unfortunately, little evidence is given of the treatment of criminals. The first and second tables of the Law, however, deal with the seizure of persons before trial and with adultery, and from them we may assume that the penalty inflicted for most minor offences at Gortyn took the form of fines. Anyone who was about to bring a suit to court in relation either to a free man or to a slave was not permitted to seize the defendant

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(1) Xenophon, Hellenica III, v, 25.  
 (2) Ibid. III, iii, 11.  
 (3) Herodotus VI, 75.

before the trial; and if he did so the judge could condemn him to pay a fine of ten staters in the case of a free man, five in the case of a slave, and order the release of the defendant within three days. If the defendant was not then released, an additional fine was imposed for each further day of detention.<sup>(1)</sup> Similarly, if, in a suit concerning the ownership of a slave, the man in possession of the slave was defeated, he had to surrender the slave immediately, or else pay a fine in proportion to the length of the detention of the slave. After a year's time, however, only three times the amount of the original fine could be exacted. If the slave took refuge in a temple, the defendant was released from his fine, provided that he pointed out the slave's refuge to the plaintiff; if the slave died during the trial of the suit, the defendant had to pay the simple fine.<sup>(2)</sup> Elsewhere in the Code we are told that, if a man was seized before trial, anyone could give him asylum.<sup>(3)</sup> From these regulations it is evident that the seizure of a free man before trial and the detention of a slave both before and after trial was illegal and punishable by fines of varying amounts. There was, however, one exception to this law; for the seizure of a man condemned for debt (νεκικαμένον) or one who had mortgaged his person (κατα-

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(1) Gortynian Inscription, I, i-xii.  
 (2) Ibid. I, xviii-li.  
 (3) Ibid. XI, xxv.



<sup>(1)</sup>  
 κείμενον) was not penalised. With regard to adultery, an  
 adulterer caught in the act in the house of the father, brother,  
 or husband of a woman might be seized by the master of the house.  
 The master then had to give information before witnesses to the  
 relatives of the captured man, so that they might ransom him  
 within five days. If he was not ransomed, the captors might do  
 to him whatever they pleased.<sup>(2)</sup> This right enjoyed by the indiv-  
 idual to detain an adulterer is similar to that observed in the  
 discussion of imprisonment in Athens. The procedure of giving  
 information to the relatives was probably intended to safeguard  
 the captor against a charge of false imprisonment, or, if he  
 slew his captive after the expiration of the five days, against  
 a charge of murder.<sup>(3)</sup> It is clear, then, that in Gortyn the seiz-  
 ure and detention of anyone by an individual, except in the  
 case of those persons specified, namely, those condemned for  
 debt, those who had mortgaged their persons, and those caught  
 in the act of adultery, was illegal and punishable by fines.  
 Nowhere in the inscription is there any mention of imprison-  
 ment inflicted by the courts of justice or by the State as a  
 punishment; but, as has already been stated, the Code is con-  
 cerned with civil law, and makes no reference to murder,  
 theft, or other criminal offences. Hence it is impossible to

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(1) Gortynian Inscription I, lvi-II, ii.

(2) Ibid. II, xxviii foll.

(3) Headlam, The Procedure of the Gortynian Inscription, Journal of Hellenic Studies, vol. 13, pp. 54 foll.

infer, merely from the absence of any allusion to imprisonment in the Code, that imprisonment was not used at Gortyn; it is equally impossible to state that it was used.

The references made to imprisonment in the other Greek States are so infrequent that we can only say that imprisonment was known and used in them, without giving any details as to the reasons for which it was used. The evidence from inscriptions is negligible, and there is only one inscription that even suggests the use of imprisonment. This is an inscription relating to a monetary union between Mytilene and Phocaea, in which it is stated that, in the case of those who adulterate the coinage, τιμᾶτω τ[ὸ] δικάστηριον ὅτι χρῆ<sup>(1)</sup> αὐτ[ο]ν πάθην ἢ κατθέ[μ]εναι<sup>(1)</sup> πάθην in this case, as in Athens, might include imprisonment. This is the only evidence that imprisonment was employed in these States, and it is far from conclusive.

Xenophon tells us that, during the overthrow of the polemarchs in Thebes, Phillidas went to the prison and had the door opened on the pretext that he was bringing a man from the polemarchs to be imprisoned. When the prison-keeper opened the<sup>(2)</sup> door, he was killed and the prisoners were released. Later we are told that a guard was formed of the released prisoners,

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(1) Hicks and Hill, Greek Historical Inscriptions, inscription 94.  
 (2) Xenophon, Hellenica V, iv, 84

who were about one hundred and fifty in number.<sup>(1)</sup> From the number of these prisoners it is clear that imprisonment was used to a considerable extent in Thebes. There is no evidence, however, to show for what reasons they were imprisoned; but under an oligarchic government, such as that of the polemarchs, it is probable that imprisonment was chiefly used as a means of removing those who were opposed to the government. This use of imprisonment has already been indicated under the rule of the Four Hundred at Athens. The assumption that these Theban prisoners were incarcerated because of their opposition to the polemarchs would account for their release during the overthrow of the government. Another State in which imprisonment was probably used for a similar purpose was Samos, which was ruled by tyrants. We are told that on one occasion the tyrant Maeandrius summoned all the chief men, one by one, to the citadel, under pretence of showing them his accounts, and, as soon as they arrived, arrested them and put them in irons. Not long after this, Maeandrius fell ill and one of his brothers, Lycaretus, put all these prisoners to death in order to make his accession to the throne easier.<sup>(2)</sup> Undoubtedly it was for political reasons that these men were imprisoned. Herodotus also tells us that Maeandrius imprisoned one of his brothers,

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(1) Xenophon, Hellenica V, iv, 14.  
 (2) Herodotus III, 143.

Charilaus, who was light-headed; Charilaus, on being granted an audience with the king, reviled him for keeping his own brother chained in a dungeon, when he had done nothing worthy of imprisonment<sup>(1)</sup>. From this we may conclude that at Samos the tyrants could avail themselves of imprisonment on the slightest pretext to rid themselves of opponents whose removal they thought desirable; and under the rule of the polemarchs at Thebes imprisonment was probably used for the same reason.

At Argos, says Aristotle, those because of whom a new law had to be passed were punished, as well as those on whose account a new prison had to be built<sup>(2)</sup>. This is the only indication we have that imprisonment was known at Argos. In one passage Lysias states that Agoratus' second brother was caught in the act of abducting a slave-girl from Corinth and was therefore thrown into prison and put to death<sup>(3)</sup>. This reference may be made to imprisonment in Corinth, for it is reasonable to suppose that an abduction from Corinth would be punished at Corinth. On the other hand, since Lysias' speech was made in Athens, and since the punishment of kidnappers in Athens, as we have seen, was summary arrest and death, it may be that the kidnapped slave was brought to Athens and that the kidnapper was punished there. Caillemer mentions this as a

(1) Herodotus III, 145.  
 (2) Aristotle, Rhetoric I, xiv.  
 (3) Lysias in Agoratum, 67.

case of imprisonment at Athens, and furthermore states that the imprisonment in this case was inflicted as a punishment in itself and that Agoratus' brother died in prison while serving his sentence.<sup>(1)</sup> In view of what we know of the punishment of kidnappers at Athens, however, it is much more likely that the word ἀνέθυε is here used, as it so often is by the Greek writers, as the passive of ἀποκτείνεiv, and that the punishment inflicted was death. If this reference is to imprisonment in Corinth, which is very doubtful, the use of imprisonment indicated is identical with that inflicted on kidnappers in Athens. Our only other information concerning imprisonment at Corinth comes from Stephanus of Byzantium, who says that at Corinth the prison in which thieves and runaway slaves were incarcerated was given the name of κῶς.<sup>(2)</sup>

The only other references to imprisonment that are found in the Greek writers concern foreign States. Herodotus<sup>(3)</sup> in one passage mentions a prison in Ethiopia. Whether Herodotus knew of the existence of such a prison or whether his statement is based on his knowledge of the widespread use of imprisonment in the rest of the world is a question impossible to determine. Lysias, in his speech against Andocides, says that Andocides was imprisoned by the king of Citium in Cyprus

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(1) Daremberg and Saglio, s.v. Carcer.

(2) Stephanus of Byzantium, s.v. κῶς; ed. Meineke, Berlin, 1849, p. 402.

(3) Herodotus III, 23.

when he was caught in an act of treachery; while on another  
 occasion he sailed to the king of Cyprus and was imprisoned  
 when he committed some crime.

From these few instances of imprisonment in the various Greek States, we may conclude that imprisonment was known throughout the Greek world. Except in the case of Athens and Sparta, however, there is insufficient evidence, for the most part, to indicate the reasons for which imprisonment was imposed.

#### PRISON LIFE IN GREECE.

Our knowledge of prison life in Greece is very fragmentary and is derived solely from references, few in number and frequently uncorroborated, made by the ancient orators and writers. Even in Athens, where the sources of information are considerable, only an incomplete picture of prison life can be found; while in the other Greek States practically nothing is said of the treatment of prisoners. The best method, then, of dealing with this subject is to describe as fully as possible the condition of prisoners in Athens, and then to discuss the similarities with and the

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(1) Lysias in Andocidem, 26.  
 (2) Ibid. 28.

contrasts to the Athenian system as shown in the other States.

(In fifth-century Athens the prisoner's life was most unpleasant, as far as can be ascertained from the writers of the period. Antiphon, the earliest of the Ten Attic Orators, who flourished at the end of the sixth and the beginning of the fifth centuries, in speaking of his detention in prison twice uses the phrase <sup>(1)</sup>κακοπαθεῖν τῷ σώματι. He also refers to a certain Lycinus as having been <sup>(2)</sup>δεδεμένους καὶ λυμαινομένους. Andocides, in a speech towards the close of this century, while complaining of his imprisonment by the Four Hundred (411 B.C.), says, "Δεδεμά τε ὕστερον καὶ κακὰ ὄσα τε καὶ οἶα τῷ σώματι ἤνεσχόμην, <sup>(3)</sup>παρὸν δὲ εἶη μοι λεγέιν". Neither orator gives any details of his "bodily suffering", but they are both probably referring to the fact that they were shackled during their imprisonment either with fetters or in some form of stocks or pillory.

There are numerous indications that, during the earlier part of the fifth century at least, the inmates of Athenian prisons were subjected to bodily restraint. The strongest proof of this is found in Athenian terminology, the word most commonly used for "prison" being δεδωτήριον, and the technical verb "to imprison" being δέω. It is reasonable to

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(1) Antiphon de caede Herodis, 2, 18.  
 (2) Ibid. 63.  
 (3) Andocides, on his Return, 15.



assume from this use of the verb "to bind" and of a noun derived from δεσμός that imprisonment was attended by some form of enchainment. Furthermore, as has been shown in a previous chapter, imprisonment for a long period of time was unusual in Athens, and it is highly improbable that prisons used only for temporary confinement were provided with strong walls or bars that would make escape impossible. Hence, to ensure that a prisoner would remain in custody, it was most necessary that he be made fast with fetters. These two facts in themselves are sufficient to justify the assumption that prisoners were fettered, but there are in addition several passages in the Greek authors that lend it weight. Herodotus, in describing a prison in Ethiopia, says that there all the prisoners were bound with fetters of gold, since copper was considered the most valuable of all the metals by the Ethiop-  
 (1)  
 ians. This anecdote, no doubt, is purely fictitious, but the important point for our purpose is that the reason given by Herodotus for the use of golden fetters in Ethiopia, namely, the preciousness of copper, implies that in the rest of the world, as he knew it, prisoners were regularly bound with bonds of copper. With special reference to the use of fetters in Athens, we find in a passage from Solon's Elegiacs preserved by Demosthenes the following line:

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(1) Herodotus III, 23.

καὶ θαμὰ τοῖς ἀδίκοις ἀμφιτίθῃσι πέδας. (1)

"And often puts fetters on the unjust."

Demosthenes also speaks of "taking to prison and putting in  
(2) bonds", and, in the speech against Androtion, says that And-

rotion's father, Andron, "went dancing off with his fetters  
(3) at the procession of the Dionysia". In the latter case, the

mention of fetters may be made merely to heighten the comic  
exaggeration of the statement, for it seems hardly likely

that anyone could get far away from the prison unnoticed in

fetters, even at the Dionysia. At any rate, whether Andron

made his escape with or without fetters, Demosthenes' use of

the word exemplifies once more the prevalence of the custom  
of securing the persons of prisoners with bonds. Plato tells

us that on the morning of Socrates' death, the Eleven came  
(4) and took off his chains, and it is probable that those sentenced

to death were always fettered during their time of imprisonment,  
no matter how the use of bonds may have been modified in later

Athens in the case of other prisoners.

( As well as fetters, various types of stocks and  
pillories were used in the punishment of wrongdoers. As far as  
can be established, some of these were used in connection with

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(1) Demosthenes de falsa legatione, 255.

(2) Idem in Timocratem, 145.

(3) Idem in Androtionem, 68.

(4) Plato, Phaedo, 59e.

imprisonment, while others were set up in public places.

Among those connected with prisons were the ποδοκάκκη and the ξύλον. Both Demosthenes and Lysias quote a law of Solon which states that as an additional punishment those convicted of theft may be δεδέσθαι ἐν τῇ ποδοκάκκῃ ἡμέρας πέντε τὸν πόδα.<sup>(1)</sup>

In two other passages Demosthenes refers to the same law, and in both cases he describes the additional punishment as imprisonment (δεσμών), which, he says, is inflicted ὅπως ὁρῶεν ἅπαντες αὐτὸν δεδεμένον.<sup>(2)</sup> The word δεδεμένον is apparently used here, not in its technical sense, "imprisoned", but with its original meaning, "bound". The conclusion drawn from these statements is that the convicted thief was imprisoned and also fastened in the stocks before the public gaze, probably just outside the prison. Lysias mentions this law among others noteworthy for the archaic words that they contain, and says that ἡ ποδοκάκκη means the same as the more modern legal phrase ἐν τῷ ξύλῳ δεδέσθαι. The ξύλον was the name given in general to instruments of punishment, since these, for the most part, were made of wood. That these instruments were made of wood is shown by the phrase ξύλον σιδηροδέτον<sup>(3)</sup> used on one occasion by Herodotus, for instruments made of any metal would not need to be "iron-bound". At least three forms of instruments of punishment were called the

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(1) Demosthenes in Timocratem, 105; Lysias in Theomnestum, 16.  
 (2) Demosthenes in Timocratem, 103, 114.  
 (3) Herodotus IX, 37.

ξύλον. The first of these is the stocks, the ποδοκάκκη. In the above-mentioned passage from Herodotus we are told that when a certain Hegesistratus was taken by the Spartans and imprisoned as a preliminary to being put to death, he escaped by cutting off his foot and thus freeing himself from the stocks. This suggests that in this case only one foot was confined in the stocks. Probably the ξύλον in which Cleomenes of Sparta was bound when he went mad was also the stocks, as he had sufficient freedom of arm to gash himself to death with his dagger.<sup>(1)</sup> Andocides and Aristophanes both mention the ξύλον,<sup>(2)</sup> probably meaning the stocks, in connection with imprisonment. In the New Testament also we are told that Paul and Silas were imprisoned in a Macedonian town, and that the gaoler, on being instructed to guard them safely, ἔβαλεν αὐτοὺς εἰς τὴν ἐσωτέραν φυλακὴν καὶ τοὺς πόδας ἡσφαλίσατο αὐτῶν εἰς τὸ ξύλον.<sup>(3)</sup> This took place, of course, under Roman sway, but serves to confirm the fact that the stocks were used in prisons. The second instrument to which the name ξύλον, or rather πεντε-δύριγγον ξύλον, was given was a combination of the stocks and collar, a pillory with five holes for the neck, arms, and legs.<sup>(4)</sup> This instrument is mentioned by Aristophanes and Aristotle,

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(1) Herodotus VI, 75.

(2) Andocides de Mysteriis, 92; Aristophanes, Equites, 394.

(3) Acts of the Apostles XVI, 23-24.

(4) Aristophanes, Equites, 1049; Aristotle, Rhetoric III, x, 7.

and Pollux tells us that it was used in the prisons. <sup>(1)</sup> The word ξύλον is also twice used by Aristophanes to denote a wooden collar placed about the neck. <sup>(2)</sup> This use, however, seems to be a rare one, as these are the only two passages where ξύλον has this meaning. It is probably the same instrument as the κύφων, a wooden collar which was fastened around the neck of the wrongdoer, and which, says Aristotle, was set up in the market-place at Thebes and Heraclea. <sup>(3)</sup> Pollux, in speaking of Cratinus' use of the word in the Nemesis, says that it must be considered as an instrument in which the market-clerk <sup>(4)</sup> placed those who did evil in the market. A similar instrument was the κλοιός, which is mentioned by Xenophon and Euripides, and which apparently was a pillory fastened about the neck <sup>(5)</sup> and shoulders. The last of these instruments was the χοῖνιξ, possibly so called from its resemblance to the dry measure of the same name. <sup>(6)</sup> This was a form of shackles for the legs. There is no evidence to show that the last three instruments, the κύφων, κλοιός, and χοῖνιξ, were used in connection with imprisonment.

( During the course of the fifth century the use of

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(1) Pollux VIII, 72.

(2) Aristophanes, Nubes, 592; Lysistrata, 680.

(3) Aristotle, Politics V, v, 10.

(4) Pollux X, 177; Cratinus, Nemesis, 8.

(5) Xenophon, Hellenica III, iii, 11; Euripides, Cyclops, 234-236.

(6) Aristophanes, Plutus, 276; Demosthenes de Corona, 129.

such instruments of constraint in Athens seems to have become less universal, and by the time of Demosthenes we hear of one case at least in which prisoners were not fettered or otherwise restrained. This relaxation was probably due to the typical Athenian idea that a citizen of Athens would prefer imprisonment to exile, which would inevitably follow should he run away from prison. Demosthenes, in the first speech against Aristogeiton, tells of an incident which occurred in prison and which, by its internal evidence, precludes the use of fetters. The incident was as follows. While Aristogeiton was still in prison because of his father's unpaid debts, a man from Tanagra was brought in for forfeiting his bail. Aristogeiton came up and chatted with the new arrival, and during the conversation stole his wallet. On discovering his loss the newcomer accused Aristogeiton of the theft, which the latter of course denied. A fight thereupon ensued, and, as Aristogeiton was faring rather badly, he bit off the other man's nose. The wallet was afterwards found in a box belonging to Aristogeiton. In view of his disgraceful conduct, the other prisoners passed a resolution that they would have no dealings at all with Aristogeiton, and would share with him neither fire nor light, meat nor drink. This tale is corroborated by Dinarchus. It is inconceivable that such an occurrence could

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(1) Demosthenes in Aristogeitonem I, 60-62.  
 (2) Dinarchus in Aristogeitonem, 9.

have taken place if the prisoners were fettered, and yet this is the only passage in Greek literature from which we can definitely say that Athenian prisoners were not fettered. It is unlikely, however, that both Demosthenes and Dinarchus would venture to tell the story of so remarkable a happening, if the juries to whom they were speaking knew that prisoners were always bound and that such an occurrence could not have taken place. We may therefore conclude that by this time fetters were not always put upon common prisoners at Athens.

From the above narrative it is evident that the prisoners lived a communal life, and this is borne out by other sources. In the passage mentioned above, Dinarchus uses the word *κοσμεῖν*, "to eat at the mess-table", and also speaks of "sharing the customary sacrifices". Andocides, in describing the first night in prison of those accused of desecrating the Mysteries, says, "ἐπειδὴ δὲ ἐδεξέμεθα πάντες ἐν τῷ αὐτῷ <sup>(1)</sup>". This, of course, might merely mean that they were all put into the same prison, and not necessarily that they were all together in the prison. If, however, as we have tried to show in a previous chapter, there was only one prison at Athens, to say that these men were all put in the same prison is mere tautology. In addition, Thucydides tells us that Andocides, while in prison, was persuaded by one of his fellow-prisoners to

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(1) Andocides de Mysteriis, 9.



(1)  
 make a confession. This shows that the prisoners had intercourse with each other, and that Andocides probably means that they lived together in the prison. As far as can be ascertained from Plato, however, Socrates was separated from the other prisoners during his incarceration. Throughout the *Phaedo* there is no mention of any other prisoners, and Socrates seems to have been alone with his wife and friends. Perhaps those condemned to death were always separated from the other prisoners, or it may be that the authorities kept Socrates apart so that he would not influence the others by his "harmful" teaching. At any rate, this is the only time that we can definitely state that a prisoner at Athens was in solitary confinement, and the common life was far more usual among Athenian prisoners.

The inmates of Athenian prisons apparently fared better than those of modern prisons in one respect, namely, that visitors were readily admitted to the prison. In every case it seems to have been only those condemned to death who received visitors, but this is quite natural, as imprisonment for other offences was of such short duration that it would not have been worthwhile for the prisoners to be visited by their friends. The most frequent and most privileged visitors were the female relatives of the condemned men. Lysias tells that those condemned to death by the Thirty sent for their

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(1) Thucydides VI, 60.

sisters, wives, mothers, or any female relatives so that they might bid them farewell. These messages were delivered, and the women came immediately to the prison, some of them already wearing black because of the sad fate of the men.<sup>(1)</sup> Andocides says that after the prison had been locked up on the first night the mothers, sisters, wives and children of those accused of desecrating the Mysteries came to visit the men, and that wailing and lamentation continued during the night.<sup>(2)</sup> This shows that the womenfolk were allowed to remain in the prison even when it was locked and barred to any other visitors. This fact is also demonstrated in the *Phaedo*, for, when Socrates' other friends came to pay their last visit on the day of his death, the doors were still locked, and yet they found Xanthippe and her child already with Socrates.<sup>(3)</sup> The *Phaedo* is our only source of information concerning visitors to Athenian prisons other than the female relatives. From this dialogue we learn that Socrates' friends were in the habit of meeting every morning at the court where the trial took place, which was near the prison, and of waiting there until the prison doors were opened; and, we are told, "they were not opened very early". The friends were admitted to the prison every day as soon as the doors were opened, except on the last morning, when they

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(1) Lysias in *Agoratum*, 39, 40.  
 (2) Andocides *de Mysteriis*, 18.  
 (3) Plato, *Phaedo*, 60a.

had to await the departure of the Eleven, who were with Socrates striking off his chains. <sup>(1)</sup> On the last day Socrates' friends stayed with him from the morning until his death at sunset, and probably every visit was of a similar length. There is no evidence to show that permission had to be given by the Eleven or any other authorities before visitors were admitted to the prison, although Phaedo is asked by Echechrates whether the friends were present at Socrates' death or whether their presence was forbidden by the authorities. <sup>(2)</sup> This suggests that permission had to be given, but Phaedo's reply is merely that they were present, and in any case Echechrates was not an Athenian, but a citizen of Phlius, and he may have been thinking of the regulations in his own city.

There are one or two other rather interesting bits of information found about prison life in Athens. Towards the end of the Phaedo we are told that Socrates went to the bath-chamber to take a bath, so that the women would not need to wash his body after death. <sup>(3)</sup> This is the only reference to the presence of baths in Greek prisons, but there is no reason for doubting Plato's statement. Another interesting fact is pointed out by Ulpian, who, in his note on Demosthenes' statement that Andron escaped from prison on the Dionysiac

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(1) Plato, Phaedo, 59d foll.  
 (2) Ibid. 58c.  
 (3) Ibid. 116a.

festival, says that prisoners were always paroled on this festival so that they might enjoy themselves.<sup>(1)</sup> There is no evidence among the ancient writers to corroborate this statement, but the modern editors of Demosthenes accept it without demur. Another Scholiast on Demosthenes, in discussing the phrase πολλὰς πεντηρίδας, says, "κατὰ πέντε ἔτη ἤγεται τὰ Παν-  
 Ἀθηναία, τότε δὲ ἐξῆν ἀφεῖσθαι τοὺς δεσμώτας διὰ τὴν πανήγυριν".<sup>(2)</sup>  
 By this he apparently means that an amnesty was granted to prisoners on the occasion of the Greater Panathenaea, which was held every four years. There is no reference to such a practice elsewhere, however, and the Scholiast is probably thinking of Ulpian's statement about the Dionysia. It is possible that a parole similar to that given at the Dionysia may also have been granted at the Greater Panathenaea, although in that case Ulpian would probably have mentioned both. It is more likely, however, that the Scholiast's statement is a figment of his imagination, based upon Ulpian's remark about the Dionysia.

There is just one more point that arises for discussion concerning the treatment of prisoners at Athens. At the beginning of this chapter a passage from Andocides was quoted, in which he complained of the bodily suffering that he had undergone during his imprisonment by the Four Hundred.<sup>(3)</sup> This

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(1) Ulpian on Demosthenes in Androtionem, 68.  
 (2) Scholiast on Demosthenes in Timocratem, 125.  
 (3) Andocides on his Return, 15.

bodily suffering, I stated, probably consisted of confinement in fetters or in some instrument of punishment. Lysias, however, tells us that Andocides was tortured, but not unto death, during this imprisonment.<sup>(1)</sup> Thucydides also states that a certain Argive implicated in the murder of Phrynichus was seized and put to the torture by the Four Hundred.<sup>(2)</sup> The torture in this case was applied for the usual purpose of forcing a confession. These are the only two instances of which we know in which torture was inflicted at Athens on anyone but slaves, and are indicative of the ruthless methods employed by the Four Hundred to rid themselves of their opponents. These methods were, of course, by no means the same as ordinary Athenian procedure.

The main points established in this discussion of the treatment of prisoners at Athens are the following: that common prisoners for the most part and those condemned to death always were bound in fetters or, in some cases, in stocks and pillories; that the prisoners led a communal life; and that visitors had more or less free access to the prison. When we turn to the other Greek States, however, and examine the treatment of prisoners as displayed in them, the sources are so few that no adequate account can be given, but only a brief glimpse of prison life can be obtained.

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(1) Lysias in *Andocidem*, 27.

(2) Thucydides VIII, 70.

Little is known of imprisonment at Sparta, as there it was a most uncommon punishment. Our only information about prison life in this State comes from Herodotus, who tells us that, when the Minyae began to desire excessive power, they were condemned to death and thrown into prison to await their doom. At Sparta no executions took place during the day, so the wives of the Minyae, who belonged to the best Spartan families, begged for permission to visit their husbands and bid them farewell. This permission was granted, the women went to the prison, and, when they saw their husbands, exchanged clothes with them and thus enabled them to escape.<sup>(1)</sup> This passage shows, in the first place, that prisoners at Sparta cannot have been fettered, as were the inmates of Athenian prisons. This is quite natural, for in a small and concentrated State like Sparta escape would be well-nigh impossible. In Sparta, too, visitors to the prison were evidently viewed with greater suspicion than at Athens, for even the wives of the condemned Minyae had to ask permission before they could visit their husbands.

At Samos, we are told, the king Maeandrius seized all the chief men and put them "in irons" to make his throne more secure.<sup>(2)</sup> He also imprisoned his brother Charilaus, who, "by peering through his bars", saw the Persians sitting

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(1) Herodotus IV, 146.  
 (2) Ibid. III, 143.

peacefully outside. Thereupon he summoned his brother, the king, and reviled him for keeping him, his brother, chained in a dungeon (ἐν γοργύρεν)<sup>(1)</sup>. From these remarks it is clear that the prison at Samos in which Charilaus was incarcerated was more strongly built than that at Athens, and was not only an underground cell but also had its windows provided with bars. This was probably because the prison was used by the tyrants to get rid of their opponents, whom they might keep there in chains for a whole lifetime. This is very different from the Athenian practice, except for the fact that the prisoners were fettered.

Our only other glimpse of prison life in the Greek world comes from Lysias, who says that Andocides sailed to Citium in Cyprus, where the king imprisoned him for an act of treachery. During his confinement in prison, Andocides was in constant fear, not only of death, but of torture, for he expected to be docked of his extremities alive<sup>(2)</sup>. This incident shows a more barbaric and cruel treatment of prisoners than we have found in other States, but Cyprus was not as civilised as the Greek States that we have mentioned.

Although prisoners of war are not in the same category as those imprisoned for criminal offences, a survey of their condition is necessary in dealing with prison life

(1) Herodotus III, 145.  
 (2) Lysias in Andocidem, 26.

in ancient Greece. Until the ransom demanded by the victorious State was paid, the captives were fettered and either set to work as slaves or cast into prison. The Athenians, we are told by Herodotus, put their Chalcidian and Boeotian captives in irons and kept them in close confinement until a ransom of two minas was paid for each man. The chains with which these prisoners were fettered were afterwards suspended in the citadel.<sup>(1)</sup> Herodotus also states that the Lacedaemonians<sup>(2)</sup> fettered the Tegeans whom they defeated, and that Polycrates of Samos forced the Lesbians whom he took captive after a sea-fight to dig the moat around the castle at Samos in fetters.<sup>(3)</sup> In 425 B.C. an Athenian force under Cleon compelled the Spartan army at Sphacteria to surrender and took a considerable number of prisoners, including one hundred and twenty Spartiates. These were brought to Athens, and the Athenians decided to keep them in prison (φυλάσσειν δεσμοῖς) until some agreement should be reached with the Lacedaemonians and to put them to death if the Lacedaemonians should invade Attica.<sup>(4)</sup> When Athens and Sparta made a treaty in 422 B.C., one of the conditions was that the Athenians should set free the Lacedaemonians who were in the public prison (δημοσίῳ) at Athens or in any place under

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(1) Herodotus V, 77.

(2) Ibid. I, 66.

(3) Ibid. III, 39.

(4) Thucydides IV, 38-40.



Athenian rule, and likewise any allies of the Lacedaemonians. (1)

More than one reference to the pitiable condition of these Spartiate prisoners is made by Aristophanes. In the Equites, which is an attack on Cleon, the Sausage-seller says of them:

νῦν δὲ τοὺς στάχους ἐκείνους, οὓς ἐκεῖθεν ἤγαγεν,  
ἐν ξύλῳ δῆσας ἀφάυει καὶ ἀποδόσθαι βούλεται. (2)

In the Nubes Aristophanes depicts their condition in the passage where Strepsiades has the door opened so that he may see Socrates, and as soon as the door is opened a throng of disciples rushes out, pale, dirty, and clothed in rags. On seeing them, Strepsiades cries out in astonishment, and, on being asked who he thought they resembled, says,

τοῖς ἐκ Πύλου λεηστέϊσι, τοῖς Λακωνικοῖς. (3)

From this we may conclude that prisoners of war were rather badly treated in ancient Greece and spent an even more unpleasant time in prison than common criminals.

This brings to an end the discussion of the conditions of prison life in ancient Greece. The survey is of necessity rather incomplete because of lack of sources of information. Nevertheless, it throws considerable light on the condition of prisoners in ancient Greece, particularly in Athens.

{1} Thucydides V, 18.  
{2} Aristophanes, Equites, 394.  
{3} Idem, Nubes, 186.

TERMINOLOGY.

To give a catalogue of all the words used by the ancient writers in connection with the various subjects touched upon in this dissertation would be an onerous task. I have therefore confined this chapter strictly to the terminology employed with regard to the most important subjects; namely, imprisonment itself, the methods of procedure in Athens, and fetters and other instruments of punishment. For the sake of clarity and conciseness, these will be discussed in a tabulated form. I have made no attempt, in the case of the more common words, to give a complete list of the passages wherein they are found, but have selected a few representative examples of their use.

Imprisonment.Verbs.

δέω: This verb, both in the active and passive voices, had the original meaning "to bind" or "to fetter". It is found with this meaning, among other places, in: Lysias in Theomnestum, 16 (δεδέσθαι ἐν τῇ ποδοκάκκῃ, ἐν τῷ ξύλῳ); Demosthenes in Timocratem, 105; de falsa legatione, 255 (δεσμοῖσι δεθέντες); Andocides de Mysteriis, 45 (ἔδησεν ἐν τοῖς ξύλοις), 92, 93; Herodotus III, 23, 39; VI, 75; IX, 37; Xenophon, Hellenica III, iii, 11 (δεδεμένος ἐν κλοιῷ); Aristotle, Politics, 1306b; Aristophanes, Equites, 395, 1050; Euripides, Cyclops, 234 (δήσαντες

κλῦς). In almost every one of these cases, in which δεῖν means "to bind", it is accompanied by a noun signifying the instrument in which the prisoner is to be bound. Δεῖν, used absolutely, early acquired the meaning of "imprison", and became the technical verb "to imprison", especially in Athens. With this significance it is found more frequently than any other verb; e.g. Demosthenes in Timocratem, passim; in Androktionem, 54, 56, 68; de Corona, 107; on the Naval Crown, 4, 11; Lysias in Andocidem, 21, 23, 26, 27; in Agoratum, 34, 60, 67; Andocides de Mysteriis, 48, 58, 66, 67; in Alcibiadem, 3, 17, 18; Antiphon de caede Herodis, 17, 63; Dinarchus in Demosthenem, 63; Plato, Laws IX and X, 855b-909c, passim; Phaedo, 82e; Apology, 37c; Aristotle, Constitution of Athens, 45, 48; Thucydides VI, 60; VIII, 70; Herodotus III, 145; IX, 37; Xenophon, Hellenica I, vii, 35. The universality of this word is clearly shown by the number of writers who use it with this meaning. Compounds of δεῖν were also used with this significance, e.g. καταδεῖν, Herodotus III, 143; sc. Pollux VIII, 71.

ἔργω, εἶργω, εἰργω : This verb also means "to imprison" and is sometimes used by the ancient writers instead of δέω. Its use never became so widespread as that of δέω. It is found in: Xenophon de republica Laconica, VIII, 4; Hellenica V, iv, 8; Lysias in Andocidem, 28; Aeschines in Timarchum, 16; Pollux VIII, 71. In Athens this verb had a more specialised significance than δέω, and was used of imprisonment by individuals, such as

that of Agatharcus by Alcibiades. With this meaning ἐργω is found in: Demosthenes in Meidiam, 147; Andocides in Alcibiadem, 18; Thucydides VIII, 92; Photion, Lexicon, 670, 9. The collateral form ἐργύω is found with this special Attic significance in Andocides, in Alcibiadem, 27. The compound καθεργυσι is used by Stephanus of Byzantium, s.v. κῶς, without this special meaning.

### Nouns.

#### 1. "Prison".

δεσμητήριον: This is by far the most common word for "prison" and is found in almost all the Greek writers; e.g. Demosthenes, passim; Plato, Cratylus, 400c; Gorgias, 525c; Phaedo, 58c, 59d; Apology, 37c; Laws X, 908a, 909c; Aristotle, Rhetoric I, xiv; Constitution of Athens, 52; Lysias in Agoratum, passim; in Eratosthenem, 52; Andocides de Mysteriis, 48; in Alcibiadem, 18; Aeschines in Timarchum, 43; in Ctesiphonem, 150; Dinarchus in Aristogeitonem, passim; Thucydides VI, 60; Herodotus III, 23; Plutarch, Solon, 15; Agis, 19, 20; Strabo VIII, v, 7; Pollux VIII, 71, 72, 102; IX, 45.

δεσμός: This word originally meant a "bond" or "fetter", but, in the singular number, acquired the significance of "prison". Next to δεσμητήριον, it is the word most frequently used to denote "prison". It is found in: Demosthenes in Timocratem, passim; in Aristogeitonem I, 74; in Apaturium, 1; on the Naval Crown, 4; Plato, Laws IX, 864e; X, 907e; Apology, 37c; Homer, Iliad V, 386; Odyssey XV, 232; Lysias in Andocidem, 21, 22;

Andocides in Alcibiadem, 4; Herodotus III, 145; Pollux VIII, 71.

ἀνάκλειον, ἀνάκειον : This word for "prison" is mentioned by Suidas. It may have been a Boeotian word, for it is used by Xenophon (Hellenica V, iv, 8 and 14) of the prison at Thebes. It is also found in Demosthenes in Stephanum I, 80.

γόρυρα, γόρυρη is used by Herodotus (III, 145) of an underground dungeon at Samos. Pollux (IX, 45) quotes it as the word used for "prison" by the Ionians.

δημόδιον : The usual meaning of this word is the "State". It is used once, however, by Thucydides (V, 18) with the meaning of "public prison". This is the only time that the word has this significance. The adjective δημόδιος is once used by Plato (Laws IX, 864e) with reference to imprisonment in the phrase δημοδίῳ δεσμῷ.

δικαιωτήριον, "the house of correction", is found only once, in Plato, Phaedrus, 249a. The word apparently is Plato's own invention.

εἶργμός is also found only in Plato, Republic VI, 495d (in the plural) and Phaedo, 82e. It is also mentioned by Pollux (VIII, 72).

εἶρκτή, ἐρκτή means "enclosure" or "prison". With the latter significance it is found in: Thucydides I, 131 (of Sparta); Xenophon, Cyropaedia III, i, 19; Herodotus IV, 146 (of Sparta); Euripides, Bacchae, 497; Plutarch, Agis, 19 (of Sparta); Pollux VIII, 72. From the number of times in which

this word is used with reference to Sparta it seems probable that it was a Spartan word.

κέραμος usually means "potter's clay", "jar", or "tile". In one passage, however, it undoubtedly means "prison", namely, in Homer, Iliad V, 387. The Scholiast on this passage says that κέραμος was the Cyprian word for "prison".

κῶς: Stephanus of Byzantium (ed. Meineke, Berlin, 1849, p. 402) tells us that this was the name given at Corinth to the "trench" in which thieves and runaway slaves were imprisoned. The word is not found in earlier writers.

νομοφυλάκιον is not found in any of the early writers. Pollux (VIII, 102) uses it of the prison in Athens.

οἶκημα: The usual meaning of this word was "dwelling-place", "building", or "room". In Athens, however, it was used as an euphemism for δεσμωτήριον, according to Plutarch (Solon, 15) and Pollux (IX, 45). With the significance of "prison" it is found several times in Demosthenes; e.g. in Timocratem, 131, 135, 136; in Aristogeitonem I, 61, 63; in Dionysodorum, 4; in Zenothemim, 29. In Thucydides IV, 48, οἶκημα may mean "prison", but more probably it merely means "building". Οἶκημα meaning "prison" is also mentioned by Plutarch (VIII, 72).

σωφρονιστήριον: Plato coins this word, meaning the "house of reformation", in the Laws X, 908a. This is the only place where the word occurs.

φρουρά: The usual meaning of this word was "guard"

or "watch". It is used with the meaning of "prison" in Plato, Gorgias, 525a; Phaedo, 62b. Pollux mentions it in his list of words connected with imprisonment (VIII, 72).

φρούριον generally means "watch-post" or "garrison". With the meaning "prison" it is found only once, in Plato, Axiochus, 365e. It is also mentioned by Pollux (VIII, 72).

φυλακή usually has the same meaning as φρούριον. It is once used as "prison" by Herodotus (V, 77); even in this case the phrase ἐν φυλακῇ may mean "under guard" rather than "in prison".

## 2. "Prisoner".

δεδεμένος, the perfect participle passive of δέω, is sometimes used with the force of a noun to mean "prisoner", e.g. Lysias in Agoratum, 60.

δεσμώτης is found in: Demosthenes in Timocratem, 208; Herodotus III, 143; Xenophon, Hellenica V, iv, 8; Pollux VIII, 71.

συνδεσμώτης, "fellow-prisoner", is found in Thucydides VI, 60.

### Forms of Procedure.

ἀπαγωγή was the noun and ἀπάγειν the verb used in Athenian legal parlance to denote the summary arrest of a malefactor caught in the act. The noun ἀπαγωγή is found in: Demosthenes in Timocratem, 113, 146; in Aristogeitonem I, 78; in Cononem, 1; in Theocrinem, 10, 11; Lysias in Agoratum, 85, 86; Andocides de Mysteriis, 88, 91; Antiphon de caede Herodis, 9.

The verb is found in: Demosthenes in Timocratem, 113, 146, 164; in Androtonem, passim; in Aristogeitonem II, 9; in Stephanum I, 81; in Lacritum, 47; Andocides de Mysteriis, 94, 105; on his Return, 18; Lysias in Agoratum, 44, 68, 86; in Theomnestum, 10; in Eratosthenem, 52; Dinarchus in Aristogeitonem, 9, 10; Aeschines in Ctesiphonem, 150; Aristotle, Constitution of Athens, 52; Xenophon, Hellenica II, 3, 54, 56; Pollux VIII, 71, 102, 50, 51.

ἐφ' ἡγήσεις was the noun and ἐφ' ἡγέομαι the verb similarly used to denote the summoning of the magistrates to the place where the arrest was to be made. This procedure was apparently not as frequently used as ἀπαγωγή or ἐνδείξις, for the words are not often found. The noun ἐφ' ἡγήσεις is not found at all in the classical writers, but is mentioned by Suidas (ed. Bekker, Berlin, 1854, p. 452). Modern writers also use the noun to denote this process, e.g. Schoemann, op. cit. pp. 271, 272. The verb is found in: Demosthenes in Aristogeitonem II, 9; in Androtonem, 26.

ἐνδείξις and ἐνδείκνυμι were the technical terms at Athens for laying an information. The noun ἐνδείξις is found in: Demosthenes in Theocrinem, passim; in Aristogeitonem I, 14, 69, 78; II, 15; in Timocratem, 22, 50, 146; Andocides de Mysteriis, passim; Aristotle, Constitution of Athens, 52; Pollux VIII, 49. The verb occurs in: Demosthenes in Timocratem, 146; in Androtonem, 33; in Aristogeitonem I, 49; in Nicostratum, 14; in Theocrinem, 22, 23, 42, 45; Andocides de Mysteriis, 33, 71, 76, 105;



on his Return, 14; Antiphon de caede Herodis, 9; Dinarchus in Aristogeitonem, 13, 14; Lysias in Andocidem, 30; Pollux VIII, 50.

εἰσαγγελία, "an impeachment", and εἰσαγγέλλειν, "to impeach", were also Athenian legal terms. The noun is found in: Demosthenes in Timocratem, 63; in Aristogeitonem I, 47; Andocides de Mysteriis, 43; Dinarchus in Demosthenem, 94. The verb occurs in: Demosthenes in Aristogeitonem I, 94; Andocides de Mysteriis, 14, 27, 37; on his Return, 19, 21; Lysias in Agoratum, 50, 56; in Theomnestum, 1; Dinarchus in Demosthenem, 52, 94, 100, 101; Aristotle, Constitution of Athens, 45.

δουλαμβάνω was frequently used with the meaning "to arrest". When thus used, it was practically synonymous with ἀπαίγω, but was less technical; hence the use of the word is less strictly confined to the Attic orators. It is found in: Thucydides VI, 60; VIII, 92; Xenophon, Hellenica III, iii, 11; Lysias in Agoratum, 34; Antiphon de caede Herodis, 29; Aristophanes, Acharnians, 206.

#### Fetters and Instruments of Punishment.

δεσμοί is the word most frequently used by the Greek writers to denote "fetters". In many cases in the later writers this word is almost synonymous with δεσμός, "prison". The word δεσμοί is found throughout Greek literature. A few instances are: Homer, Odyssey XI, 293; Plato, Laws VIII, 847a; IX, 855b, 864e; X, 890c, 908e, 909a; Demosthenes in Timocratem, 40; de falsa legatione, 255 (in a quotation from Solon's Elegiacs); Thucydides IV,

41; Andocides de Mysteriis, 2; Lysias in Andocidem, 31; Plutarch, Solon, 21. The form δαμά is also occasionally found; e.g. Andocides on his Return, 15.

πέδα is also frequently used of "fettters" and is related to πούς and πῆμα, "foot". Thus this name is given to chains attached to the ankles. It is found in: Demosthenes in Androctionem, 68; de falsa legatione, 255 (again quoting Solon); Herodotus III, 23; V, 77; Plato, Laws IX, 882b; Aristophanes, Plutus, 276.

κλοιός, κλωός literally means "dog-collar" and hence came to be the name given to a form of pillory, which was apparently fastened about the neck and shoulders. It is mentioned by: Xenophon, Hellenica III, iii, 11; Euripides, Cyclops, 235.

κύφω: This word in itself meant a "crooked piece of wood"; hence it was often used to denote the "yoke of a plough". More rarely it was used by the Greek writers as the name of an instrument, similar to the κλοιός, which Pollux (X, 177) says was used by the market-clerk to punish offenders. The word is found with this meaning in: Aristotle, Politics V, v, 10; Aristophanes, Plutus, 476, 607. Pollux also says that Cratinus mentioned this instrument in the Nemesis.

ποδοκάκη was the name given to the "stocks" in early Athens. This word had apparently become obsolete by the time of Lysias and Demosthenes, and is found only twice, in passages quoting one of Solon's laws: namely, Demosthenes in Timocratem,

105; Lysias in Theomnestum, 16. It is also mentioned in Pollux, VIII, 72.

ξύλον in itself merely meant "wood". It was early in being given as a name to instruments of punishment, probably because these were, as a general rule, made of wood. Apparently in some cases these instruments were strengthened by the addition of metals, for in Herodotus (IX, 37) we find the phrase σίδηροδέτον ξύλον, "iron-bound wood", applied to the stocks. The name of ξύλον was given in classical times to the "stocks", which were earlier known as the ποδοκάκκη. As well as in the passage of Herodotus mentioned above, the word is found with this significance in: Herodotus VI, 75; Demosthenes in Timocratem, 146; Lysias in Theomnestum, 16; Acts of the Apostles, XVI, 24. Probably it is also to the stocks that reference is made in: Andocides de Mysteriis, 45, 92, 93; Demosthenes de Corona, 129; Aristophanes, Equites, 368, 395, 1046. The name ξύλον was also given to a pillory similar to, or the same as, the κύφων, but this use of the word is much rarer. It is found in: Aristophanes, Nubes, 592; and Lysistrata, 680. In the latter passage the pillory is called the τετρημένον ξύλον, "the perforated pillory". Another type of pillory, which was a combination of stocks and collar, was called the πεντεδύριγγον ξύλον, apparently because it had five holes, for the neck, arms, and legs. This instrument is mentioned by Aristophanes (Equites, 1050), and reference is made to it in Aristotle, Rhetoric III, 107. Pollux (VIII, 72)

speaks of it as an instrument used in prisons.

χοῖνις: This word, in general parlance, was the name given to a certain dry measure. For some reason, possibly through similarity of shape, the word also came to mean a form of shackles or stocks. With this significance the word χοῖνις is found in: Demosthenes de Corona, 129; and Aristophanes, Plutus, 276.

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