General Considerations on Punishment in Medieval Europe

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ABSTRACT: The subject of punishment in medieval European history is quite broad for several reasons. First of all, the Medieval Age stretches over a period of over 1300 years and punishment has evolved in close connection with the social evolution of man in this long period. On the other hand, from a cultural and religious point of view, Europe was divided into two parts (Eastern Europe and Western Europe) and the punishments evolved differently due to the Christic vision that influenced the two parts of the continent differently. I would not be wrong to say that there was a third part of Europe (central) in which there was a mixture of rivers in the two extremities; however, here criminal law has acquired an original aspect; it cannot be considered closer to either of the two limiting areas. Punishments have also evolved in close connection with human social emancipation. For this reason, as we will see in our study, we will encounter at the beginning of the Middle Ages punishments adapted to those times but unimaginable to be applied in the contemporary era. Last but not least, it is important to add that European historiography deals with this subject in fragments (only in certain areas) - this being an additional reason why we have brought references from all over the continent in order to have an overview as much as possible complete on the measures taken by law and applied by a court as a sanction.

KEYWORDS: punishment, criminal law, Christianity, Salic law, prison

Introduction

The European civilization that exists today or Europe that we know in all its aspects will be created at the beginning of the Middle Ages (4th-5th century AD) when *Christianity* will take face and shape. In other words, Europe was created according to the *Christian idea*. However, it developed differently in the two parts of the administrative part of the Roman Empire: the one based in *Rome* and the one based in *Constantinople*.

The different development comes from certain peculiarities of Christian thought brought by the Church Fathers. Thus, in the West, the society was built on the foundations launched by *St. Augustine*, then resumed by *Martin Luther* and the eastern part, eastern, was created according to *Cappadocian* ideas such as those of *John Christopher* (as a consequence of the different Christian foundations, it belongs to the academician Răzvan Theodorescu, for a more complete overview (Theodorescu, 2013).

The Western world imagined by *Augustine*, which later led to the birth of capitalist ethics, is the one in which man is born a sinner and in order to please God and inherit the predestination (i.e., to be saved) he must work. All his actions must be done with simplicity, modesty and humility without pomp and without emphasis and only then, maybe God will receive man in the bosom of Abraham. Theocratic conception

will be applied in the East (*Theocracy* is a form of government in which God is recognized as the supreme civil ruler of the state or, in other words, a form of government in which the state is governed by immediate divine guidance or by officials who are viewed as a divine guide. For a more complete overview see: Brague 2007, 231), embraced by *St. Basil the Great* and *John Christostom* in which man is part of the Godhead, is the child of *God-loved* by the unconditional *Creato*r. That is why the Eastern man is much more "relaxed" in his relationship with the Divinity than the Western one, and his efforts for salvation are smaller. Perhaps hence the difference between the duality of Heaven/Hell in the East and that of the three states that the soul will experience after physical death: hell-purgatory-heaven - where purgatory is a place where the soul must do another work in plus to be saved.

The two models created (*the ideocratic* and the *western consumerist*) will influence all spheres of activity: political, social or economic. This fact can also be observed in terms of criminal law or, related to what we are interested in in this study, on punishments. It can be seen that the Eastern model based on the uniqueness of man will make the punishments applied in more cases individually than in the western part, where work has embraced a common form and the punishment will be applied collectively in several cases. Also, the idea of the way man is perceived by the Divinity will make it easier for man to be forgiven in the east for certain mistakes and for the sentences, in many cases, not to be as harsh as in the West.

Based on, as is natural, the model of the creation of medieval Europe, the purpose of this study, aside, is to present, at an ideational level what were the punishments in various parts of Europe. I also set out to summarize some common features of punishments that have emerged and evolved over time. In the last part, we aimed to present the particularities of some punishments that are derived from the medieval idea of society, particularities that refer to the way people were perceived (woman *versus* man) and certain practices.

As understood above, our presentation is composed of three parts: the first part brings information from the three areas of Europe: the eastern, central and western part - each subdivision being divided into general information and concrete examples on each area in part. The second part of the presentation begins with the classification of the prison in the criminal system, goes until the moment of changing the prison into compulsory work and brings details about reconciliation and the punishment of political crime. The last part shows why the woman was punished differently from the man what were the punishments on children in the absence of an institution to protect them and, last but not least, touches on the subject of divination as a practice in antithesis to the Christian conception.

Punishment in the middle Ages

In the *Middle Ages,* different from today, the application of punishment was closely related to the religious conception that pain was the only way to obtain forgiveness for sins committed. Therefore, corporal punishment, which caused pain, was often applied. Also, through the involvement of the Western church in the application of punishments, through the instrument called Inquisition, the regime of punishments becomes characterized as being full of cruelty where corporal torture, the death penalty, mutilation, adoption, deprivation of liberty, torture, were the order of the day, civic degradation, shaving of the chin.

Sometimes the consequences of religious conflicts, insidious political interests or civil wars have led to the stigmatization of certain social categories or people with whom they believed in certain principles and ideas. As such, in order to "maintain

balance", those considered heretics, witches, suspects of dissent, Jews, operative Freemasons, Templars or immigrants became, at some point, victims of stigma. In this context, the activities of less conciliatory justice systems that have abused public prosecution, special investigative procedures known for their effectiveness, the use of torture to obtain confessions, corporal punishment and public executions are also highlighted. At the same time, these justice systems have often been subjected to strong social pressures, especially from victims of the local population, who wanted justice (Rousseaux translated Dwyer 1997, 118).

In the western part of Europe, the crime was considered by the representatives of the political power a dangerous deed for man and consequently the sanction was made by the public bodies. Also, the link between the crime and the punishment was indissoluble as such the right to punishment was of social origin (Chilom 2002, 129). In general, we can say that the despot had the power to apply a sanction over what was provided in written law and could allow the accumulation of penalties. Another thing that could be observed is that for identical facts the sentences could be unequal, and in many cases the judge could deliberate regardless of the rules. (Chilom 2002, 131).

The first known code of laws governing punishment in the Middle Ages in this part of Europe belonged to the *Germans* and the *French*, being the *Salic Law*. This was in fact a compilation of Frankish laws whose official form was given by Clovis I (481-511). This *praecepta aequitatis* clearly set out the situations in which the death penalty was imposed and the situations in which fines were imposed for theft or damage to private property. Also, one third of the amount of the fine was given for the costs and the penalty was set by a jury of citizens. (Cucerescu 2020, 120). In the *Salic law*, the sanction of the offender in case of crime or offense was composed of the actual sanction called *fadius* (Latin language), payment for charging public order, recovery of damage, and another tax called *deltaura* which was compensation for the period of delay in restoring justice (Fischer Drew 1991, 135). In the Germans, we find the legitimate defense for the first time in a code of laws (Caroligia code) of Carol the Fifth (1526–1539): *"if someone has attacked you, or if someone will be shot deadly, if he has been beaten, or has been subjected to violence and he cannot avoid them by fleeing, then he for the defense of life, body, honor and honor, you could defend yourself without being punished with the help of self-defense"* (Cucerescu 2020, 125). From the Caroligia code it is very clear that in the case of self-defense, when a conflict could not be avoided at all, the one who defended himself, even if it caused the death of the defender, was not punished at all.

In the *Italic peninsula* in the area that no longer belonged to the Roman Empire, we find regulations, replacements as well as changes in punishments. Thus, in 643, in the longobards, by Rothari's edict, the punishment of revenge of blood ("*Revenge of the blood*" was a punishment that allows the commission of a crime as revenge for a previous murder - the author's note) is replaced by *wergild* - payment of monetary compensation. The total amount was determined taking into account the social position of the injured party. For example, for killing a free peasant the fee was 200 gold solids, for a semi-free man the amount was only 60 and for a servant in the house 50 solids were paid. (Bădescu 2002, 107-108).

In the *Scandinavian peninsula*, we also know that *blood revenge* was maintained until the twelfth century, and then probably inspired by the *Lombard model*, this punishment was replaced by a fee similar to the *wergild* but could be paid by descendants, ascendants and collateral relatives (brothers or primary cousins) for a period of up to three generations (Arama și Chicu 2009, 2).

In Eastern-Byzantine Europe (Eastern Roman Empire), in the first centuries of the Middle Ages, punishments were part of Roman law influenced by Greek

philosophy, sprinkled with oriental elements, and above all the conception of Christian theology reigned. New Christianity has, at least apparently, softened the punishments by giving them a more humane character (Arama și Chicu 2009, 3).

We also know that in this part of Europe, the death penalty applies only in very serious situations: murder, witchcraft or adultery. From the eighth century witchcraft will no longer be punished with death but from this moment the death penalty will be applied for treason (Certainly the death penalty was applied and before that time it appears in medieval documents – author's note). The punishments that were generally given for crimes were the pecuniary ones: confiscation of assets and goods and the imposition of fines, exile in monasteries and sometimes even outside the empire (For a more complete overview you can consult : Drîmba 2003, 305-365) as we know it was done in ancient pre-Christian times: the best examples of this are the exile of *Ovid* to Tomis (Iliescu, Popescu and Ştefan 1964, 271-344) or the expulsion of *Dion Chrysostomes* from the Roman Empire in Dacia (*Ibidem*, 453).

After the appearance of the Slavs, in the current area of Croatia, in the state called Corciula, we find that the death penalty was not applied for murder, but in certain situations a collective punishment was applied. In another set of laws published in 1288 entitled the *Statute of the Voivode*, it is provided that in case of murder, if the perpetrator fled, his relatives were liable to punishment by paying half of the amount set for the fine. However, the code of laws does not specify which of the relatives had to pay and they were "delegated" at the discretion of the judge (Arama și Chicu 2009, 2).

In the Serbian Land, there was the code of laws of Stefan Dușan (1308-1355) in which it was written that if a traitor was not caught the one who could be punished in his place could be the brother and if there was a certain son the father could be punished. In the case of killing children, if the perpetrator was not caught, any relative could be punished without specifying the degree of kinship (*Ibidem*, 2-3).

In central Europe, the area that has been culturally influenced by both extremes, there have been some discrepancies in terms of penalties. In the criminal law applied to Hungarians, there were some different ones from the one applied to Romanians. The best example is Transylvania where there were differences between the cohabiting populations. As they themselves claimed, Hungarians had criminal law inspired by their own archaic rules, Roman law and German law. However, a good part of their laws, as *Nicolae Iorga* demonstrated without being able to fight history in a speech during a lecture in Văleni de Munte, were based on *Ius Valachius* - the old laws of the Romanians (For this argument you can consult in detail: Iorga 1938).

In Transylvania (Romania), Hungary as well as other areas under Hungarian influence (*Slovacia, parts of present-day Ukraine*, etc.) the harshest punishments were applied for crimes, violation of property, injury to others or theft. Most of the punishments were accompanied by confiscation of assets. Like Western Europe, nobles were forgiven or protected in most cases; there were also many situations in which the king was the one who forgave and protected those who had to be punished (Gavrilă 2021, 1-3). During the reign of the Hungarian king Ladislaw I (1077 - 1095) the person accused of murder could escape the death penalty if he paid a fairly large fine, sometimes almost impossible to pay (*Ibidem*).

Between 1000-1300 the perpetrator was sent directly to prison, his existing properties were taken, they could even be agricultural land, servants, slaves and were given to the relatives of the murdered. In case a person forcibly entered the house of a nobleman as punishment, two thirds of the fortune was taken from him and it was given to the nobleman and to the wife and children of the criminal one third of the fortune belonged to him. In other situations, the accused had to pay 10 bulls (Hasan 2004, 113).

At that time, the arsonists had to rebuild the houses they had destroyed by fire and pay 16 bulls. If an accused did not have the necessary opportunity (wealth or other goods) to pay his sentence, he was shaved on the head and carried through the public square where he was whipped and then sold only in the area where he lived. There were situations in which the church gave punishments or additional punishments, materialized through fasts (*Ibidem*, 115).

Starting with the year 1231, King Andrew II will give a law by which the goods of an individual convicted by the judicial procedure will come into his possession or were given to whom he wanted (*Ibidem*, 117).

In Transylvania, the Romanians made a discordant note in the sense that the Hungarian authorities did not interfere in judging their own causes that were not related to public law and the interest of the Crown. This is attested during the Hungarian Arpadian dynasty (855-1301) but also later. The evidence comes from Hungarian documents of the time. We can mention here the diploma of *Elizabeth of Pomerania* (mother of the Hungarian king Sigismund of Luxembourg) dated October 28, 1366 which will not allow the royal servants from Bereg county to judge the Romanian issues: "*We order, as in the previous government, olachi (Romanians) afara apart from theft and robbery, the court rules to concern them...*" (Mihali 1900, 59: "*Mandamus quatenus a modo praefatos Olacos et iobbagiones praedictorum Olacorum nostrorum in vestris possessionibus ac vestri in medio, in causis quibuslibet, exceptis furto, latrocinio et aliis publicis criminalibus, iudicare.(…) vel res et bona eorum arestare vel facere prohiberi nullatenus praesummatis.*"). Another argument appears to us five years later, in 1371, when the Romanian princes demanded (and managed to obtain) that a certain Peter, convicted of iniquities be tried and punished according to *Romanian law* (**legem Olachorum**)*: "they intervened and prevented the sentencing and demanded that the procedure be done according to the Romanian law"* (Motogna 1922, 190-192. "*...dicendo ut iidem officiales iuxta **legem Olachorum** eundem Pei rum comprobare possent, sed non cum aliis iuribus regni.*").

For the Romanians, at the beginning of the Middle Ages and continuing for more than a millennium, the punishments were regulated by *ius valachicus* (the old unwritten Romanian law) - a set of legal norms specific to the *vlach/wallachian* community that was applied uniformly throughout Romania, but also outside the borders, everywhere where there were Romanian conclaves (Safta 2015, 143-155): *Balkan area, Poland, Ukraine or Hungary* (See: Petriceicu Hașdeu 1865, 25; Frigyes 1876, 82). *Ius valachicus* was the result of a long process that was not created by a certain person, it was not passed in a written code, but went hand in hand with the formation of the Romanian people, always evolving and adapting to the context of time (Motogna 1922, 190-192).

We know that in the criminal law of *ius valachicus* there was a punitive system: the injury or hitting of persons was punished and were considered criminal acts even before the formation of the medieval Romanian states (Guțan 2008, 40). As for the death penalty, it applied only in exceptional cases the culprit if he did an extremely serious thing was expelled from the community which was equivalent to a civil death (Panaitescu 1964, 50-58). Also, in the village community there was the collective punishment when for certain deeds some members of the community were punished, and sometimes the whole community (collective responsibility) (Negru 2014, 66). These rules concerning *Ius Valachicus*, even after the advent of written law (referred to here in the modern period of history), were applied in parallel.

After the formation of the Romanian Principalities and implicitly after the appearance of the Institution of Lordship, leaving aside the *"hiclenia"* (betrayal) which was punished almost equally throughout Europe, only the rule of personal criminal liability applied - the

perpetrator was exclusively punished. This was regulated by *Vlastares's Syntagma* (Blastarès) - a code of laws of Byzantine origin that was the basis for drafting the first rules and codes of written Romanian laws (Bogdan 1971, 188). From a judicial point of view, the Lord was the supreme judge - the highest judicial institution that could pronounce the death penalty, have the right to pardon, or give the right that the death penalty could be redeemed with money (Filitti and Suchianu 1927, 26).

The punishments for the most important causes were judged by the *ruler*, and the small ones were left to the boyars. If one of those involved considered that the boyar had judged him crookedly, he could appeal to the lord to retrial the trial. In the situation where the Lord found that the boyar did not distribute justice correctly, he punished him, and if he had been judged right then the one who initiated the second action was punished in addition by a beating (*Ibidem*, pp. 43-44).

Also, the punishments included in the *norms of criminal law* are in direct line with the religious conception of iniquities. In other words, the crime is one and the same as sin, and the punishment was called atonement. As such, according to Byzantine norms, acts such as murder, slander, insult, or witchcraft were criminalized. The punishments were both physical: *mutilation*, beating and capital punishment, but also of a *"spiritual" nature: fasting, rosaries* and *prayers*. (Ristea 2018, 207).

The evolution of punishment until the modern period

Even though, as we saw above, for the same faults, the punishments were different throughout Europe, still during the medieval period there were certain characteristics or transformations of the punishments that were applied in a uniformly uniform way everywhere. We can speak in this sense of the prison sentence as a measure integrated in the criminal system and then of replacing the prison sentence with that of forced labor. There has also been uniformity across Europe in terms of finding ways to reconcile the parties to the detriment of the application of punishments but also in terms of the failure of uniformity in terms of political crimes.

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Resocialization through work was another expedient carried out by the justice systems related to the medieval period, a procedure put into practice especially in times

of economic crisis. This was particularly noticeable in the context of the labor crisis of the 16th century, which witnessed the creation of working classes. The model underwent significant developments at the end of the medieval era and the beginning of the modern era of history, during the industrial revolution when forced labor was integrated as a predominant form of punishment to the detriment of imprisonment. Since then, the criminal justice system seems to have focused on cracking down on property crimes (Rousseaux 1997, 118). In the *Romanian Principalities* according to the laws of the old rules, the commutation of the punishment with imprisonment in compulsory labor applied only to the lower social classes when those in question were sent to the salt mines. For the boyar, only the exile was sent to the monastery (Volume managers: Firoiu and Marcu 1984, 321).

One of the most important things during this period was to find ways to reconcile those involved in conflicts, methods that would replace punishment in certain situations in order to avoid recidivism (Rousseaux 1997, 116). In the Romanian Principalities, reconciliation was regulated in the penal system only during the Phanariot period with the appearance of the Caragea code from 1818. It could be applied in situations of slander, deception and fornication (*Caragea Code reproduced from the original Romanian manuscript, edited by Ion Palade and with a preface by D. Alexandresco* 1907, 60, 98, *passim*).

A special situation (where the Romanian countries were no exception) in which punishments were not applied according to a well-established set of laws was political crime that occurred by killing a king or prince. In some cases, the deeds were not punished or the punishments were symbolic, especially when a rival came to the throne (Rousseaux 1997, 113). Political crime was also considered treason; the culprit was killed, in some cases his family and his property confiscated (Stoicescu 1968, 117-118, *passim*). The opposition to the city authorities was also framed here and the punishment that applied especially in the western part of Europe was the exile of the one found guilty (Rousseaux 1997, 114).

Excesses of the application of punishment in the medieval period in women and children

In order to have a complete picture of the time, in our study we have to write a few words about certain punishments or frameworks in which a punishment could be applied which today, due to the evolution of society, not only no longer existed in Europe but would be difficult to imaginary. We can speak in this sense of the differentiated application of punishments for men and women, a fact derived from the status that women had at the time and about the punishments that were applied to children, not being able to speak at that time of an institution similar to the today. Last but not least, we must remember the punishments that were given to practices that were in total antithesis with the religious conception of that time, in fact with the understanding of religious dogmas.

The medieval conception of woman meant that she, for a similar deed, was punished more severely than a man. This fact is closely related to the different social evolution that is based on the biblical religious connotation and the Greco-Roman thought on which the European civilization was based. According to these two conceptions, women, regardless of their social status, were considered, compared to men, inferior and powerless beings. However, the punishments for a noble woman, for the same deed, were milder than for a man of inferior social status (Norman 1963, 129). The medieval woman was also part of the "property" within the property of the man. As such, because the man considered that the woman belonged entirely to him, he

considered that he had the right to punish her. However, the death penalty was allowed only in the situation of infidelity (this exceptional situation was also found in Romanians) (Lung and Zbuchea 2003, 71).

Also, as a consequence of the medieval conception of woman, there were all kinds of deeds for which she could be incriminated and punished. An example we can't even imagine today is that a woman could be punished if she gossiped. If found guilty it was her husband who had to mount a mask on the girl who had a piece of metal in the center and blocked her tongue so that she could no longer speak. In some situations, the woman was walked by her husband with that object on her face in order to be immediately recognized that she was being punished for gossip and that she was generally a gossip. We must also say that this object was called the "Gossip Cauldron", and the punishment was first applied in England in 1567 and then spread to Scotland, Wales and Germany (Preda 2019, 1). The medieval conception of the status of women was not different from that of the West even in the Romanian Lands. As such, the judge considered that the "real beating" was only when *the woman cannot tell the judge not to appeal*" (Andrei Rădulescu-coordinator 1962, 97). As such, the man received the right to punish his wife with moderation and gentleness (when he considered it appropriate) (Mătușan 2012, 102).

As for the punishments on minors, they appear regulated for the first time during Carol V. In the German king's code of laws, the child was considered a private thinker because of his young age, so the law said that in their case commissions of experts should be set up to investigate similar crimes to determine whether a punishment was necessary. In article CL-XIV of the "Carolina" law, if the thief was up to 14 years old, the maximum punishment that could be applied to him was the death penalty depending on the circumstances. However, he was in extreme conditions and the most common punishment was corporal punishment accompanied by an oath that he would not steal forever. After the age of 14, the possibility of applying the death penalty was much more pronounced and a pecuniary punishment could also be applied (Melnic 2013, 35). We also know that the death penalty could be reached in other countries. An example in this sense is England where two children aged 9 and 10 respectively were punished with death following sentences of a trial (*Ibidem* 36).

A phenomenon of the Middle Ages that was severely punished was divination - a practice that was defined as a process of searching for the truth or things hidden by inappropriate methods (*Macmillan Encyclopedia of Religion* 2006, 2369). It was divided into several subdivisions: oniromancy (dream interpretation), forebodings, involuntary body movements, medium possession, necromancy (consultation of the dead), observation of animal behavior, and here the best-known practice was ornithomania (bird flight interpretation) or decoding natural phenomena (geomancy, phrenology, astrology) (Hasan 2007, 13). The prohibition and punishment of this practice appear at the very beginning of the Middle Ages, with the officialization of Christianity, more precisely, it will be banned in 353 along with witchcraft and nocturnal sacrifices (*Macmillan Encyclopedia of Religion* 2006, 2373). Those who were found guilty of such practices were the subjects tried and in the period we are talking about only in central Europe the documents show us over 2000 trials. We know that the punishments were quite varied from imprisonment to the death penalty (Hasan 2007, 18).

Conclusions

At the end of antiquity and at the appearance of the Middle Ages, punishments will be closely linked to the new Christian conception - a religious doctrine that would guide Europe until now.

In Western Europe the offense was seen by the authorities as an act dangerous to humans and the consequential punishment was made by public bodies.

The first code of laws governing punishment in the West of the Middle Ages was given by the Franks; we are talking in this sense about the Willow Law.

In the Eastern Roman Empire, in the first centuries of the Middle Ages, punishments were given in accordance with Roman law, which in turn was influenced by Greek philosophy. Also, there were oriental influences and things were coagulated conception of Christian theology.

In Central Europe, punishments were an amalgam of the influences of the two areas that bordered it.

Prison, as a regular punishment integrated in the criminal system, will be outlined only after 1300. The appearance of this punishment was a solution that wanted to minimize the crime rate in society.

During our study period, a woman was punished more severely than a man for an act similar to that of a man. This was closely related to the different social evolution that was based on the biblical religious connotation and the Greco-Roman thinking on which European civilization was based.

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