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Punishment in the Order of Preachers

The paper unfolds the forms and functions of punishment in the thirteenth century Order of Preachers. For that purpose, I use the codification of statutes entitled the *Liber constitutionum* (1241). This source indicates the consequences of the Dominican punitive system on the brethren's consciences, body and communal spirit, on their understanding of sin and guilt, and on cohesion, identity and stability. Additionally, the paper is concerned with the Humbert of Romans' commentaries on the Dominican law. Ultimately, the paper aims to comprehend better which kinds of punishment were seen as normatively admissible by the community oriented towards the *vita perfectionis*.

Keywords: Dominicans, *Liber constitutionum*, punishment, discipline, conscience, body, guilt, stability, authority, Humbert of Romans.



Introduction

The paper analyses the forms and functions of punishment in the early Dominican Order.¹ It does not focus on any particular case study; rather, it tends to comprehend better which disciplinary solutions had a potential to be

¹ This paper has evolved as part of the project activities of the Croatian Historical Urban Landscapes project, funded by NextGenerationEU through the National Recovery and Resilience Plan, under the 581 Recovery and Resilience Facility of the Faculty of Croatian Studies. The paper is a result of my broader researches about the disciplinary systems, control, punitive measures, and techniques of regulating the cloistered life in the milieu of urban and other religious orders. These researches have the same objective—to distinguish the variety of disciplinary forms and functions in medieval *vita religiosa*. The idea is to establish first the functionality of discipline in different orders and different type of texts, and then to compare the results in the consequent studies. Parallel to this paper, I have prepared the one dealing with the Carmelite system of bi-behavioural control in which, among other issues, I also dealt with punitive measures. It will be published in the volume *Authority and Discipline in Religious Communities*. Eds. Jerković, Marko-Krešić Nacevski, Lucija. Zagreb. Being prepared for print in 2026. In the Carmelite punitive system, we can see some of the similar intentions and effects onto community and individual as in the Dominican one.

written as norms in the earliest period of the Order's institutionalization.² In that way, the paper aims to open a debate on the punitive solutions that were seen as admissible in a nascent spiritual institution. I take into account the Order's *Liber constitutionum* (1241), the legislative codification in which the early considerations about discipline were preserved most clearly.³ This will be complemented with the analysis of the commentary on the Dominican law (*Expositio in constitutionum*), written by the Order's prolific author Humbert of Romans in the 1250s–1260s.⁴

The social theory has dealt with the purpose of punishment on many occasions. My intention is not to apply any concrete theory in this research; however, I would like to emphasise that the very idea of analysing the function of punishment and its impact onto the relation between the community and individual was inspired by the “classical” study of Michel Foucault *Discipline and punish* (I use the edition of 1977). Hence, this paper builds upon his question of how, indeed, punishment effects social organizations.

The functionality of punitive systems started to play more prominent role in the historiography of religious orders. This refers primarily to the research dealing with the implications of deviance and the mechanisms of accomplishing the institutional control by responding to misbehaviour.⁵ In such context, the Dominican disciplinary forms offer the important perspective. It is the Order whose members were the institutional entrepreneurs of medieval *vita religiosa*. They introduced novelties into the governing practises, which provided the Dominicans the highest degree of institutional viability.⁶ Therefore, exploring the Dominican penal system means gaining a better understanding of how discipline works in a stable organization.

² I leave out the questions of the evolution of punitive system throughout the medieval period, the analysis of regulation and application of particular punishments, the comparison to other orders etc. In historiography of the Dominican order, we find studies regarding the punitive system in the last twenty years, relating to some of these, as well as to some other questions. For example, CALDWELL 2004. p. 109–134, analysed the punitive solutions of Dominican inquisitors (evolving from the internal Order's disciplinary system); HOYER 2018. p. 323–347 deals with the imprisonment (and provides the overview of the transgressions meriting such punishment), and LINDE 2018. p. 349–367 with the forced deportations.

³ Hereinafter: L.C.

⁴ Hereinafter: HUMBERTUS. His other works are cited by writing the shortened title in the brackets next to his name.

⁵ See e.g.: MELVILLE 1996. p. 153–186; OBERSTE 1996; FÜSER 2000.

⁶ As historiography indicated, unlike many other religious orders (e.g. the Franciscans, Cistercians, Cluniacs, Premonstratensians), the Dominicans did not experience the crises of governance in the early phase of its institutionalization. All the more, it was exactly the Dominican constitutional solutions that were taken over by other orders to stabilize their organization and resolve crises. For the Dominican institutional innovation in the context of the Order's stability: MELVILLE 2000. p. 579–604; MELVILLE 2010. p. 377–388; MELVILLE 2016a. p. 29–43. Also: CYGLER 2012. p. 72 and the references in the footnote 69. For the taking over of the Dominican solutions by other orders: CYGLER 2014. p. 239–250. For the comparison with the instability of the e.g. the Franciscan Order: DALARUN 2007.

Besides, the Dominicans devised rather innovative understanding of religious life. They insisted on the *vita activa* (the itinerant preaching, pastoral care, and urban ministry), which was combined with the more classical cloistered life.⁷ So, their structures of discipline were formulated within the form of a professed life which required the adequate balancing of the *old* and *new* disciplinary forms.

Finally, the analysis of religious penalization concerns the soul of its adherents. The efficient disciplinary system offers the platform for making the continual penance, which is absolutely necessary for both the inner purification and better following of Christ. Hence, the punishment that originated within such group reflects how the religious community deals with sin and impurity and how it handles the deviation from the fundamental task of acquiring the more perfect human condition.

Distinction I

Textualization

The *Liber constitutionum* refers to the Order's codification of statutes made by the distinguished Dominican Canon Law expert Raymund de Peñaforte in 1241. It captures the formative experiences and normative solutions devised in the first two and a half decades of the Order's existence.⁸ In 1216, a group of preachers gathered around Dominic de Guzmán in Toulouse, formulated the first set of norms, devised to supplement the *Rule of Augustine*, which was accepted as a fundament of a developing community.⁹ The more intense legislation started in 1220, at the Order's first General Chapter in Bologna.¹⁰ The assemblies that followed continued to legislate, and by 1228 a bulk of Dominican laws was formulated.¹¹ From 1228 to 1236/1237 the General Chapter was working not only on creating laws but also on their systematization, the initiative that resulted with the *Liber consuetudinum*.¹² Already in 1239, the assembly required the better organization of the codified material, the one that could be more practically used by the brethren.¹³ The result was the second redaction, entitled the *Liber constitutionum*, made by the aforementioned Raymund de Peñaforte.¹⁴

⁷ For the intersections of these two principles: VICAIRE 1966, 74–103. On the Dominican (and Franciscan) innovation in the broader context of *vita religiosa*: MELVILLE 1999a, p. 1–23.

⁸ On the Dominican constitutions: MELVILLE 2020, p. 253–281; on the Raymund's codification p. 262–263.

⁹ LIBELLUS p. 46. MELVILLE 2020, p. 256–257.

¹⁰ LIBELLUS p. 67. On this first General Chapter: HINNEBUSCH 1966, p. 80–87.

¹¹ More in: MELVILLE 2020, p. 260–261. The most detailed analysis of the earliest Dominican legislative work (concerning the statutes about the government and organization) in: TUGWELL 2001, p. 5–182.

¹² The edition in: THOMAS 1965, p. 311–369. On the functional value of first codification: CYGLER 1999, p. 385–428.

¹³ MELVILLE 2020, p. 262.

¹⁴ MELVILLE 2020, p. 262.

This codification consists of the Prologue and two *Distinctiones*. The first Distinction contains 20 chapters, regulating the conventual regular observances. The second included 15 chapters, relating to the Order's organization and governance, preaching activities, study, mobility, and duties of the lay-brothers.¹⁵ The punitive measures were textualized in both Distinctions. In the first one, the chapters XVI-XX relate directly to the delinquent behaviour and enlist the appropriate punishments (chs. XVI *De levi culpa*, XVII *De gravi culpa*, XVIII *De graviori culpa*, XIX *De culpa gravissima*, XX *De apostatis*).¹⁶ Apart from writing the penalties in the specialized chapters, the codification interpolates them throughout the entire codification, in a form of sanctions for breaking the particular laws.

The Distinction I shows that the Order used the already existing normative solutions as the template—the Dominicans relied on the *Liber consuetudinum* of the Premonstratensian regular canons.¹⁷ They took over not only the idea of cataloguing the crimes and punishments but also much of the content of the Premonstratensian penalising statutes.¹⁸ Such technique was not uncommon; medieval religious communities were regularly taking over the constitutional models from each other and were adapting them to their own particular needs.¹⁹ In that way, the Dominican *Liber constitutionum* indicates that, just like other orders, the friars preachers understood the norms concerning observance and discipline as a transferable category. Such understanding had the obvious pragmatic connotation—the solutions that were tested in existing practises were helping the nascent community to start functioning more easily.

Apart from the pragmatism, this taking over had two other implications. The first one concerns the validity. The IV Lateran Council in 1215 prohibited the foundation of orders not willing to accept the old customs.²⁰ Accordingly, in making preparations for the promulgation of such decree, the Papacy rejected the Dominic's request for the approval of his rule just before the Council.²¹ It was for that reason why the community in Toulouse turned to the old and widely used *Rule of Augustine*.²² Accordingly, the implementation of the Premonstratensian statutes was another way of adapting to the official Papal standing. Hence, it can be said that the important function of the disciplinary norms, together with other norms based on the

¹⁵ LC p. 29-30 (Prologue); 30-47 (Distinction I), 47-68 (Distinction II).

¹⁶ LC p. 42-47.

¹⁷ For a comparison see the Premonstratensian customary of c. 1174, edited in MARTENE 1737. sp. 893-926. See also: TUGWELL 1982. p. 455-465.

¹⁸ Compare: MARTENE 1737. sp. 914-920 and LC. p. 42-47. See also: JOHNSON 2006. p. 307-308.

¹⁹ For example, the Cistercian constitution was commonly used as a role-model. See: MELVILLE 2016b. p. 158-179.

²⁰ CONSTITUTIONES CONCILII QUARTI LATERANENSIS. p. 62.

²¹ LIBELLUS p. 45-46. The consequences of this Papal rejection were much debated in historiography. More recent view in: WESJOHANN 2012. p. 334-347 (also see the bibliography in footnotes, pointing to the previous debates).

²² LIBELLUS. p. 46. See also the text earlier: On the *Rule of Augustine*: VAN GEEST 2020. p. 127-154; on its use in religious communities, esp. in orders of regular canons: MELVILLE - MÜLLER 2002.

Premonstratensian template, was to mobilise the collective sense of canonical validity.

The second relates to identity. The Premonstratensian law fitted also because it evolved in the milieu of regular canons, who were anchored in the Augustinian tradition. This would seem acceptable to Dominic, who himself was a regular canon of Osma before organizing a community in Toulouse, and to his followers, who saw in Augustine the most excellent preacher²³ and the role model for their mission. Humbert of Romans confirms that the first friars chose the Premonstratensian statutes as a template because this order surpassed all others grounded in Augustinian spirituality.²⁴ The Dominicans then worked to adjust the template to fit their conception of life and promote their own embedment into the tradition of Augustine's monasticism.²⁵ Hence, the value of norms in the Distinction I was to affirm the Order in the desired, Augustinian identity. The disciplinary norms were, thus, acceptable since they belonged to such, identity-building, legislative corpus.

The penal code rested on the principles of differentiation and gradation. By defining the faults as lesser, grave, more grave and gravest, and by inserting the according punishments in each chapter, ranging from the "simple" reciting of psalms to the expulsion from the community (see the next sub-chapters),²⁶ the text wanted to assure the brethren that their penal code sanctions the misbehaviour in accordance to its quality. This indicates the desire to promote the idea that "punishment must fit the crime", i.e. the conception which the modern legal theory calls the principle of proportionality.²⁷ In the *vita religiosa*, the sixth century *Rule of Benedict* inaugurated such principle as the basis of a monastic just discipline.²⁸ In the central Middle Ages it was integrated into the legal practise not only of orders following the Benedict's precepts but also of regular canons (like the Premonstratensians, who catalogued the crimes and punishments most meticulously).²⁹ With that in mind, the purpose of gradating crimes, accompanied with the appropriate punishments, was to instil the sense of a just community into the Dominican brethren. By doing so, the text was anchoring the Order not only in the tradition of regular canons but also in the "criminal justice system" based on proportionality.

Besides, the Dominican penal code was textualized as both reactive and preventive. On the one hand, it was providing the platform that could be pragmatically used to react in cases of misbehaviour. On the other hand, the

²³ LIBELLUS p. 31, 46.

²⁴ HUMBERTUS, p. 2-3. On the Premonstratensian identity in modern historiography: RÖSLER 2020.

²⁵ HUMBERTUS p. 3.

²⁶ See shortly: HOYER 2018. p. 324; earlier: JOHNSON 2006. p. 308.

²⁷ On this principle: DAVIS 1983. p. 726-752; FRASE et al. 2020. p. 213-260.

²⁸ RB p. 86: *Secundum modum culpae et excommunicationis uel disciplinae mensura debet extendi.*

²⁹ For the Cistercians and Cluniacs, who accepted the Benedict's differentiation concerning the *levis culpa* and *gravis culpa* see: FÜSER 2000. pp 75-90. For the Premonstratensian catalogue of faults and punishments in the twelfth century codifications: VAN WAELFELGHEM 1913. p. 50-58. LEFÈVRE - GRAUWEN 1978. p. 35-44; MARTENE 1737. sp. 914-920. For a comparison with the gradation of punishment in the inquisitory processes shortly: CALDWELL 2004. p. 130.

textualization of penalties was considered as being capable to mobilise the brothers' inhibition and prevent them from misdeeds. This is indicated by Humbert of Romans who claims that the fear of punishments (written in the *Liber constitutionum*) possesses just enough capacity to restrain a person from committing a crime.³⁰ The statutes concerning punishments were, thus, targeting not only the sense of a just community, but also of a community of double-natured (preventive/reactive) disciplinary efficiency.

Penal code: the catalogue

By enlisting some 40 transgressions concerning liturgy and daily life in convent, chapter XVI shows that the vast majority of offences was considered by the Order as minor offences.³¹ For these, the punishment was the reciting of one or two psalms or a combination of saying one psalm and receiving one strike. The prior was to decide which of the two will be enforced.³² Clearly, the lighter offences always merited the psalms. Humbert of Romans, who confirms that the "greatest part of our penance consists in saying the Office",³³ provides the useful insights into the Dominican understanding of psalmody and, consequently, the meaning of such punishment. He explains that this is the most spiritual scripture, because almost in every verse the psalms speak of or praise God. For this, the saying of psalms is an excellent tool of edification and salvation (since, as Augustine claims, it drives away demons and makes a man saintly). The psalms are also the most fitting way of repentance. They do not only prevent from sin but embed deeply within the person the example of the conversion of David, their author, whose repentance resulted with the aggrandization in prophecy.³⁴

It is easy to conclude that the punishment by psalms targeted the conscience.³⁵ To punish meant to make the offender aware of a deviation from the true conversion. To punish also meant to give a chance to the offender to get back in the spiritual balance, to edify himself and to gain another opportunity for a salvation. The punishment is, finally, a way of reconnecting with God, i.e. of utilizing the psalms' praises for becoming more strengthened in Him.³⁶ Hence, the significant function of the punitive code was the revocation of a more exalted spiritual state of the individual. In other words, the punishment for the faults committed on a daily level must not deny the

³⁰ HUMBERTUS p. 47.

³¹ These relate to the faults like not executing the office of reading or chanting in a proper way, disturbing others in dormitory or elsewhere in monastery, not coming to the edificatory readings or common meal, not behaving decently while on preaching tour, reading forbidden or non-approved books, sleeping during the classes, failing to put the clothes and books at the proper place, breaking the material goods, spilling drink, not being present at the chapter or collation, proclaiming someone falsely, etc. LC p. 42–43.

³² LC p. 43.

³³ HUMBERTUS p. 106.

³⁴ For all these views on psalms: HUMBERTUS p. 99.

³⁵ On religious concerns with the conscience generally see: BREITENSTEIN 2016. p. 19–55.

³⁶ HUMBERTUS p. 99.

spiritual benefices and it must not degrade or devastate the offender morally. The acceptable penalty is the one that spiritually reintegrates, reedifies and reassures the moral integrity within the community oriented towards Divine. Hence, the punishment for the lighter fault intended not to exclude the offender, to perpetuate the guilt or distress the conscience (even though these elements were present) but to work as the building and productive force in directing the conscience towards the *status perfectionis*.

This was acceptable since it was in accordance with the Dominican understanding of monastic life. It was, indeed, the salvation of people by preaching that was defined as the Order's earthly purpose.³⁷ Yet, apart from this societal goal, Humbert indicates a more personalized one—he claims that the main motivation for entering the monastery is to avoid sin.³⁸ This means that the monastery must function as a place enabling the adequate handling with impurity. The punishment aiming at spiritual re-edification was clearly fitting in the general view on the effects of cloistered life. In other words, the acceptability of the Order's penal code was also resting on the fact that, by reedifying and purifying the individual, it actually contributes to getting the offender back into the authentic state of mind, the one that motivated the religious to enter the monastery.

The acceptable punishment was, however, also the one targeting the body. As indicated, the beating *could* be applied for minor faults; the Order could utilise the pain to expel the guilt more tangibly and to instil the fear into the brethren observing it.³⁹ Besides, as Caldwell pointed out, the pain "was the means by which the order cultivated right desire among the brothers, and helped them to make reparation for their faulty desires."⁴⁰ Yet, the beating could not stand alone; it, as seen, had to be accompanied with psalms.⁴¹ Besides, it also had to restrain from violence—one strike was enough to punish, and set the painful example to others, and, more importantly, direct the offender towards the consequent spiritual rehabilitation by reciting psalms.

The "grave faults" include some 15 transgressions relating to quarrelling, insulting, threatening, lying, evil whispering, cursing, sowing discord, breaking silence, speaking maliciously against others, defending a guilty party, accusing someone for the fault for which the penance was done, riding horses or eating meat with no permission, communicating with women when they were not confessing, complaining about the dress or food, not returning to a monastery from a mission in time. The penalties for those admitting a fault were flogging (three strikes on the back), fasting on bread and water for three days, and reciting the number of psalms in accordance with the prior's command. For

³⁷ LC p. 29.

³⁸ HUMBERTUS p. 116. On the relation between the sin and punishment see chapters 3) and 4).

³⁹ As indicated, the fear of punishment was considered as a powerful disciplinary tool. See: HUMBERTUS p. 37.

⁴⁰ CALDWELL 2004. p. 116.

⁴¹ For the similar combination of psalmody and corporal punishment in the Dominican inquisition: CALDWELL 2004. p. 127.

those proclaimed (i.e. which did not confess on their own), the additional fasting day and a strike was anticipated.⁴²

The grave faults had the same objectives (the conscience and body) and goals (the edificatory purification and the exemplary pain). But here we see two other characteristics. Firstly, the acceptable punishing rested on quantification. The flogging now included three to four strikes, and reciting psalms in the amount that pleases the prior.⁴³ Secondly, the grave faults demanded the additional quality. This is clear from integrating the new punishment, the corporal deprivation of food, into the penal code. The consummation of only bread and water for some days was in accordance with practises of other religious communities, which were utilising the abstaining from food as punishment.⁴⁴ This may seem odd as punishment, since the monastery was perceived as a place of mortification of “the earthly side of our nature”, in which the religious triumph over the human needs.⁴⁵ It becomes understandable when we have in mind that such fast implied the involuntarily deprivation; it was not the self-renunciation but the imposition. Besides, what mattered was the very *differentiation*; the offender had to realise that he is excluded from the normal fasting and eating cycles.⁴⁶ Hence, the deprivation could function as the acceptable punishment when transformed from the ascetic-like training to the non-voluntary separation from the regularized practices.

As indicated, the punishment now placed the additional emphasis on the body: it had to be flogged more, be more deprived, and symbolize the separation from the common practises. The increased value of the penalised body becomes even more interesting when we inspect the content of the enlisted faults. The vast majority of the grave faults relate to the inappropriate speech. In the Dominican order, the speech was an ambiguous element. Humbert claims that speech may be used for preaching, edificatory readings and in the “democratic” discussion about the laws; the first two are adequate because of their salvific effects while the second mirrors the brethren’ virtue of greater “discretion” (i.e. of wisdom).⁴⁷ In other cases the speech is a dangerous instrument, the one that utilizes the tongue to release the sin from a man and materialize his impurity.⁴⁸ Thus, it can be supposed that the appropriateness

⁴² LC p. 43-44.

⁴³ LC p. 43.

⁴⁴ See e.g. the Cistercian example: STATUTA p. 132, 158, 203, 212, 222, 246, 283, 298, 302, 314, 347, 354, 360, 377, 406, 430, 599, 665, 690. Or, the Franciscan one: JOHNSON 2006. p. 309-312.

⁴⁵ BERNARDUS p. 145. On the symbolical understanding of a monastery: SONNTAG 2008; on the food deprivation p. 289.

⁴⁶ As other orders, the Dominicans arranged the consummation of food in accordance to the dietary “seasons”. LC p. 33-35. The imposition of fasting regardless of these seasons was a clear marker of the offender’s differentiation.

⁴⁷ HUMBERTUS p. 31-34, esp. 32; 111-121; also p. 58, where he claims that their decision making in government, which include more discussions than in other orders, is better since such “*modus [...] habet majorem discretionem*”.

⁴⁸ HUMBERTUS p. 116. On the Dominican views on speech see: JERKOVIĆ 2025. p. 111-112.

of corporal sanctions was also grounded in the idea of disciplining the person's material form because of its physical predisposition to verbalize the sin.

The "more grave faults" were disobedience, receiving secretly the forbidden goods, sin of flesh, attack, and similar "capital" crimes.⁴⁹ Evidently, this category enlisted the deviations from the fundamentals of a religious status, i.e. from the religious *tria substantialia* (obedience, chastity, poverty).⁵⁰ Also, as it included the violence against the Order's members, it was a serious deviation from the idea of a community based on spiritual unity, expressed in the *Rule*.⁵¹ And since these crimes were endangering the very core of the religious status, the penalties had to be more complex, all-encompassing and more threatening.

They included the corporal punishment—the offender had to be flogged immediately after the crime was revealed (receiving the number of strikes in accordance with the prior's discretion).⁵² Also, the prior could decide to flog him additionally during the time of penance—in this case, the offender would prostrate before each member of a choir and receive strikes.⁵³ Clearly, the quantity mattered; the offender was receiving more strikes and was feeling more pain. The punishment was targeting the external man by destructing the body even more tangibly and by instilling the greater uneasiness and fear of pain into spectators. The degradation also mattered—when being at feet of brethren, the offender was lower than others. Besides, the degradation was evident from the fact that the offender lost his hierarchical place and became the *novissimus in conventu*.⁵⁴ So, the punishment was displacing from the *cursus honorum*. This must have had a tremendous psychological effect, since all the advancements in the monastic career, the position that came naturally with seniority, and the achievements that came as a result of the monastic training, were now annulled. In other words, the punishment had to work as a destabilizing force within the offender's mind.

The punishment was a force that humiliates and disintegrates. The offender had to undergo the ritual of "naked presentation", i.e. to appear with no habit (in non-monastic clothes) in front of everyone.⁵⁵ The community was, thus, symbolically stating that the time of penance means the time of sequestration. However, to be efficient, the degradation had to be perpetuated. So, the offender had to prostrate regularly in front of the chapter room at the canonical hours and before church.⁵⁶ This had a double effect—firstly, the offender was being assured that he is outcasted. Secondly, by being visibly displayed, the

⁴⁹ LC p. 44.

⁵⁰ These were defined as *substantialia* by medieval canonists. See e.g.: GOFFREDUS p. 155r: On this Goffredus' text and on the religious *substantialia* in Canon Law: MELVILLE 2001. p. 171–176.

⁵¹ RA p. 417: *Primum, propter quod in unum estis congregatis, ut unanimes habitetis in domo et sit uobis anima una et cor unum in deum*. Also in: HUMBERTUS (Regula), p. 66.

⁵² LC p. 44.

⁵³ LC p. 44.

⁵⁴ LC p. 44.

⁵⁵ LC p. 44. For a comparison with the Franciscans: JOHNSON 2006. p. 313–314.

⁵⁶ LC p. 44.

humiliated body was affecting the community itself by discouraging them to commit the crime.

The disintegrative quality is affirmed by other measures. During the meals, the offender had to sit on the floor in the middle of refectory, and dine only bread and water.⁵⁷ Here we see most drastically the punishment's role in making the offender degraded and fully aware of guilt. His body was visible sign of such measure since it was positioned lower than the normal sitting level. Also, since the body was in the middle of the room, the guilt was made the object of greater visibility. Unlike prostrations before the chapter room, when the community spotted the offender while passing by, the guilty offender was now visible to others all the time during the meal. He was always in front of them, the brethren' eyes could not escape seeing him.⁵⁸ In that way, the offender was realising more directly and more totally, that his misdeed is known to everyone and that his guilt makes him different. Furthermore, the deprivation from food now lasted more than three days. It was prolonged all the way until the end of the repentant cycle,⁵⁹ and it that way, it was functionalized to instil more strongly the sense of the efficient disintegration. And also—the remnants of the offender's food (of a slice of bread that he was eating) were not to be mixed with the remnants of others' food.⁶⁰ It was not only the offender that was outcasted but everything that he touched or that was in contact with him.

The disintegration included the prohibition to perform the priestly and Order's duties, most specifically the preaching.⁶¹ The offender was removed not only from the regular rhythm but also from the working obligations that defined the Order's essence. The Dominicans were the clerical order, which saw the salvific preaching as its main service.⁶² But the serious offender was denied of such exalted job,⁶³ and excluded from the priestly society. Besides, he was banned from communicating to brethren,⁶⁴ and deprived of the Communion.⁶⁵ The acceptable punishment was, thus, targeting the sense of usefulness and was making the offender's role destabilized in the communal, social, professional, and salutary sense.

Two other penalties accompanied the mentioned ones. In the case of sexual misconduct, the offender was prohibited to dwell in the place of committed crime.⁶⁶ The sin of flesh was considered as graver than other "more grave

⁵⁷ LC p. 44.

⁵⁸ For the Franciscans similarly: JOHNSON 2006. p. 309.

⁵⁹ LC p. 44.

⁶⁰ LC p. 44.

⁶¹ LC p. 44.

⁶² LC p. 29.

⁶³ Humbert claims that preaching excels all other Order's practices. HUMBERTUS p. 31.

⁶⁴ LC p. 44.

⁶⁵ LC p. 44.

⁶⁶ LC p. 45.

faults”,⁶⁷ not only since it was a deviation from a more perfect status, but also because of its connotations regarding the *Rule*. Augustine devoted much intention to the warnings against the lust.⁶⁸ The Dominicans wanted to stay loyal to the *Rule* not only by punishing such deviance with the strikes and days in penance but also by physically fully displacing the offender. Besides, this method was undoubtedly also intended to preserve the Order’s *bona fama* among the society which the preachers were servicing and within which the crime was made. The Order was punishing by disintegrating the offender from a society simultaneously with protecting its reputation.

The second was the lifelong degradation in hierarchy and deprivation from “voice”. This was applied in the case of conspiracy.⁶⁹ While all other penalties implied the “time of penance”, the higher degree of disobedience merited the entirety of time. The conspiracy was not the individual disobedience; it was a consensus of disobediences.⁷⁰ It was a crime implying not the personal break with the superior, but the entire organization of bad consciences that were breaking the ties. The entire conventual order was in jeopardy. So, the conspirators had to internalize the burden of non-prosperous future by being disintegrated from the decision-making community, from the opportunity-giving community (the prohibition to advance in hierarchy), and by being forever labelled as the degraded transgressors (in the future, the offender could speak, but only when accusing himself).⁷¹

To summarize, the gradation of faults meant not only the differentiation of punishments in quantity but also in quality. While the lesser faults primarily implied the purification, and the grave faults more purification with greater emphasis on pain and deprivation, the graver fault had to be punished primarily with the feeling of not belonging, of being degraded and ashamed, and of being more strongly aware of guilt. So, the punishment went from targeting primarily the spiritual man to the drastic feeling of being detached from the community, profession, society, social order and sacraments. Yet, it is evident that this detachment did not mean the expulsion; it was the temporary disintegration from the regular practises and the established order of things. The offender, however, had to get back into the normal order after receiving punishment and reconnect either with God or routine of community.⁷² Even the offenders punished with the life-long sentences were getting back in a routine, the one that was modified for them.⁷³ The reason for this reconnecting

⁶⁷ LC p. 45. See: HOYER 2018. p. 325, 337 (here he also notes that all the punishments for such sin were replaced by the imprisonment in 1298).

⁶⁸ RA p. 424–428.

⁶⁹ LC p. 45.

⁷⁰ On the problem of conspiracy and violence in medieval monasteries: DIMIER 1972. p. 38–57; MELVILLE 1996. p. 153–186; SAYERS 1990. pp 533–542; FÜSER 2000. p. 91–157.

⁷¹ LC p. 45.

⁷² For the comparison with the integrative value of punishment in the inquisitory processes: CALDWELL 2004. p. 122–123.

⁷³ As indicated, the conspirators had to get back into the routine even though their punishment included the lifelong deprivation from voice. They were obliged to participate in the chapter in a

nature of punishment, avoiding expulsion, is logical; the profession itself was not the temporarily but everlasting category. All the avowed religious were declaring the eternal belonging to God and communitarian norms, and the punishment had to align its quality with the eternalized human status.

The punishment had the tremendous impact on the community, not only the offender. It was not only the preventive or didactic measure (showing the brothers what happens if they misbehave); by reconnecting the offender, the entire community were becoming assured in the capacity of the Order to efficiently deal with impurity, to enable adequate penance and keep the stability of the communitarian spirit. The punishment was, thus, demonstrating the ability of a monastery to fulfil its duty of providing the means of living the *vita perfectionis*.⁷⁴ Besides, it was also affecting the communal self-understanding. The chapter concerning the more grave fault obliges the community to instill the awareness into the offender of being excluded not only from regular practices but also from the “company of Christ’s sheep”.⁷⁵ He had to be reminded of being the lost sheep, which needs the reintegration. In such way, the community understood punishment not only as purifying and reintegrative force but also the one enforcing the divine self-perception in both the offender (receiving such admonitions) and the community (providing them).

Yet, one crime did merit the expulsion. It was the incorrigibility (the *culpa gravissima*, c. XIX), accompanied with not being afraid to admit the fault and with the refusal to make penance.⁷⁶ As long as there exists the desire to resocialize, the community was keeping the individual with them. But when there constantly lacked willingness to comply to the norms, the bad sheep had to be removed. Here we must emphasize two things. Firstly, the Order understood the constancy in deviation as the rejection of a profession in the heart.⁷⁷ This means that the incorrigibility was seen not as a behavioural misconduct but a human state. All other faults required punishment that will keep the offender in the community, since there was no desire in him to leave the more perfect condition. But the constancy of misdeeds implied the reverse *conversio*, a change of a true self. And just as the reintegration was the right way for those staying on the good path, the expulsion was only logical for those proven in sin. Secondly, the Order was, again, protecting the community. The gravest fault had to be stopped not for the welfare of the offender—he was damned anyway—but for the sake of brethren; the expulsion was the medical procedure that will cure others.⁷⁸ Here we see, once more, the use of

reduced and modified way (just to confess their faults there). See the text above and previous footnote.

⁷⁴ On the conception of *vita perfectionis* in medieval monasticism: EDER – MANUWALD – SCHMIDT 2021.

⁷⁵ LC p. 44.

⁷⁶ LC p. 46.

⁷⁷ LC p. 46.

⁷⁸ For the punishment’s “medical” value: HUMBERTUS (Regula) p. 338–339. In older monasticism: FÜSER 2000. p. 66–67. For the comparison with the medical connotations in the inquisitory processes: CALDWELL 2004. p. 120–121.

punishment not just for sanctioning but also for safeguarding the spirit of the perfecting organism.

In reality, however, the prelates refrained from the ejection. Humbert tells us that this prescription was interpreted differently by the persons in authority—some of them, indeed, were removing the repetitive offenders from the monastery, but some rather inflicted the imprisonment or the punishment of excommunication. Humbert himself advocates the view that it is better and more just to adjudge the punishment in accordance to situation and the gravity of repetitive fault instead of the mere expulsion.⁷⁹ These views support the idea that punishment was seen as the measure which must strive to preserve the membership. For that reason, the custom could validly modify the norm; the intention to keep the nature of profession and the communal spirit was overpowering the rigidity of law.

Penal code: outside the catalogue

The penalties outside the “catalogue” we find in three chapters. Chapter XII anticipates the reciting of one psalm and praying one *Pater noster* for a single breaking of silence. For breaking it three to five times in one day, the flogging is added. For the sixth and seventh offence in one day, the fast on bread and water is added. For breaking the silence deliberately in refectory, the punishment is fasting on water at one meal and flogging.⁸⁰ The penalty for asking mattress for bed (c. IX) is fasting on bread and water for one day.⁸¹ In Chapter XX, the fugitives not returning to a monastery within forty days were to be excommunicated. Those returning within forty days, were punished by the penalties for the more grave faults. Besides, they had to fast for two days a week during one year, were prohibited from obtaining the prior’s office, and were denied of priestly duties.⁸²

The Order applied much of the punitive repertoire from the catalogue. Again, the punishment targeted the conscience (breaking the silence) and the body (the repeated breaking of silence or asking for sleeping comfort); it was also instilling the sense of disintegration, humiliation and degradation, or was obstructing the career and depriving from the priestly duties’ (apostasy). The quantity, following the quantity, mattered—more of the breaking of silence more of the punitive measures. The quality, followed by quantity, mattered—less serious offence (complaints about the bed) merited one fasting day, while the apostasy demanded the entire set of punitive measures. These same measures imply not the Order’s lack of creativity. Rather, they suggest that the punishment was acceptable if more standardized. The brethren had to see the punishment as a more or less defined “pool” of measures, a set of penalties

⁷⁹ HUMBERTUS (Regula) 339.

⁸⁰ LC p. 37–38.

⁸¹ LC p. 36.

⁸² LC p. 46–47. More on apostasy: HOYER 2018. p. 325, on the regulations and penalties after 1241: p. 329–330.

from which the Order excerpts what is appropriate in any given situation. The acceptable punishment, thus, must invoke the feeling of a “system”.

This system is not rigidly enclosed; it accepts the modifications. But it would be best if it would creatively combine the existing solutions. This system also accepts the novelties—like the Lord’s prayer. Yet this was not the real novelty. It was joined to the psalmody, thus empowering the purifying function of punishment. In other words, when innovating, the system had to remain focused on the fundamental purposes of penal code. The second innovation—the excommunication in cases of long apostasy—confirms this view. It was another way, more drastic one, of disintegrating the offender, similarly to punishments for the graver fault.

Apart from these three chapters, in Distinction I there are no others with the appended penalties. The “special” place of these transgressions is, thus, intriguing. To understand such “privileged” status, it seems that we should take into account the broader meaning of observances to which they refer. The apostasy implied the intentional leaving of the profession and the unauthorised leaving of the monastery.⁸³ It also implied the leaving of the Christ’ sheep, meaning not only the destabilization of a community but also the endangerment of the idealised vision of a monastery. As Thomas Fuser showed, in the eyes of the *vita religiosa*, the apostate was leaving the earthly paradise (the monastery) and was willingly immersing himself into the Hell of the outer world.⁸⁴ The apostasy, thus, embodied the break with the profession, communal instability, and the disruptive communitarian self-image. All the more, it was showing to the outer world (in which the apostate went away) the frailty of a community, thus endangering its perception as the place of greater perfection. For these reasons, the apostasy required not only the special arrangement of penalties, but also the special place in the codification. It was more than disobedience and, thus, it had to be more visibly displayed. The special chapter was symbolising the gravity of fault, and this type of textualization served as a more functional mechanism of preventing such dangerous deviation.

The apostasy also required the special status because it could lead to the excommunication (in case of longer absence). Yet, even though such offender was separated from the community of faithful and denied the participation in communal activities, he was not released from the communal ties.⁸⁵ He was cut

⁸³ On the implications of apostasy in monasticism: MAYALI 1990. p. 121–142; FUSER 2000. p. 262–270. See also: HOYER 2018. p. 325.

⁸⁴ FUSER 2000. p. 1–6; 260–261.

⁸⁵ For the implications of excommunication: HUMBERTUS (Regula) p. 339. For monasticism in general: see [as in the fn 76] FUSER 2000. p. 155. Instead of ejection, the LC p. 46–47 anticipates the above-mentioned penalties even for the repetitive apostates. In case of the first apostasy the penance would last for one year, while for each new apostasy (up to four times) one year would be added. Besides, those not returning willingly “were not only to be excommunicated, but actively sought and, if caught, thrown into prison.” HOYER 2018. p. 326. This all indicates that the Order wanted to keep them in the Order even if that means a few years long penance time or the drastic measure of imprisonment.

off, but not ejected. By doing so, the penalty was targeting the community in a way that it had to realise that even in the apostasy, the profession stays. The punishment was, thus, disciplining the conscience by perpetuating the durable quality of profession ties.

The silence required the special status for it was the fundament of the monastic life.⁸⁶ Its observance within the Dominican monastery was instilling the sense into the brethren that their vocation is most profoundly linked to this monastic fundamentality. Despite the emphasis on *vita activa*, the Dominican monastery had to be also a place of more classical contemplation. By insisting on silence, and by attaching the special punitive regulation to offences against it, the Order was affirming a desire for the monastic authenticity.

The penalties for bedding comforts were affirming the image of a monastery as a place following the example of martyrs.⁸⁷ Also, the special status of this observance can be understood within the context of the Order's *vita activa*. The friars were mobile,⁸⁸ and on their preaching tours the body was exhausted. It required more comfortable arrangement in the hosting facilities. The prohibition to ask for such comfort was a tool of preventing the deviation from the monastic austerity while on the road. The penalisation became a practical tool of disciplining the itinerant friars and a symbolical way of keeping the vision of an austere community.

Authority

The Distinction I emphasises the prior's authority. To remind ourselves, it was the superior that could choose the type of punishment for the lighter offences, it was him who could add the number of psalms or strikes for the grave faults, it was the prior who was overseeing the correction procedure in cases of graver faults (which apply also for the returning apostates) and decide about the number of beatings for more serious offenders.⁸⁹ So, the authority of a superior was resting on his freedom to choose the punitive measure, to decide about its quantity, and on directing the offender's reintegration. Besides, most likely it was him that was in charge for executing at least some of the public punishments (the flogging in front of everyone in the chapter hall).⁹⁰

The prior's role in the punitive system is not surprising. The decisions about the gravity of faults were from the monastic beginnings the part of the superior's governing duties.⁹¹ In religious orders of High Middle Ages such arrangement was also commonly applied.⁹² The Dominican penalisation system, thus, only confirms the desire not to deviate from the disciplinary

⁸⁶ Detailed analysis in: WATHEN 1973; KUNZ 1996. p. 632–682.

⁸⁷ On such image: SONNTAG 2008. p. 2, 77, 106, 390–391, 633.

⁸⁸ The regulations concerning mobility: LC p. 64–65.

⁸⁹ LC p. 43–44, 47. See the previous sub-chapter.

⁹⁰ For the confirmation that the public punishments were executed in the chapter hall: LC p. 43.

⁹¹ See e.g. the RB p. 86. On the superiors' authority and the relations with community: CONSTABLE 1982. p 189–210.

⁹² See for the Cistercians: ECCLESIASTICA OFFICIA p. 429, and the Premonstratensians: LEFÈVRE – GRAUWEN 1978. p. 21.

conventionality. In that way, the Order was additionally affirming its tendency to stabilize itself by relying on tested and traditional solutions.⁹³ Yet, the prior's disciplinary authority was not unlimited, or even sovereign. His right of discretion was delineated by the text of the written law. The superior could choose the punishment and he could decide about its quantity, but only in a relation to the codified punitive measures. The text was above the prior, reflecting the power of the author of law, the General Chapter.⁹⁴ It was, furthermore, the text that defined the procedure of reintegration and the prior was there to direct the process in accordance with it. Hence, the prior's authority was based on, and was derived from, the law. His power was envisioned as affirming and servicing such law. It would be, however, wrong to conclude that law diminished the prior's authority. The prior remained the pastoral superior, he cared for souls, and was in charge of all convent's affairs.⁹⁵ This arrangement, rather, means that discipline rested on the balanced relational system between the two stances. The law was instilling inhibition and setting the punitive interface, while the prior was deciding how this interface will be applied. Having the law before him, it must be again emphasised, it was exactly him that was allowed to decide about the quantity of punishments and direct the resocialization process.⁹⁶ In that way, we can say that the authority system included both the supreme authority of law and judicial/executive authority of a superior.

The prior's disciplinary authority, deriving its validity from law, was also resting on the use of dispensations and licenses. In cases of graver faults, out of mercy, the prior could provide some additional food for the offender.⁹⁷ Also, he could save the offender from the additional flogging.⁹⁸ In other words, for the reason of deep compassion, the prior could dispense the transgressor from some of the penalties, or, better, from something of quantity of punishments. All the more, it was the superior's mandatory duty not to ruin the offender,⁹⁹ but to mercifully conduct his reintegration and to get him back into the regular routine. Here we clearly see that the acceptable punishment embodies the prelate's *misericordia*.

The efficient punishment was also the one that controls the sense of time. For the lighter faults, the time was not so the issue, since the reciting of psalms or flogging was done at once, i.e. not throughout the larger sequence of time. For the grave faults, time counted something more, since the fasting period of three days was demanded. But in cases of graver faults, the offender had to undergo the time of penance, in which he had to fast regularly, be degraded and humiliated regularly, be flogged occasionally, and in which he had to

⁹³ See the chapter *Distinction I*.

⁹⁴ LC p. 29. On the Dominican legislative methods: MELVILLE 2018. p. 19–35.

⁹⁵ On his office: HUMBERTUS (Instructiones) p. 201–209.

⁹⁶ See earlier in this sub-chapter.

⁹⁷ LC p. 44.

⁹⁸ LC p. 44.

⁹⁹ LC p. 44.

become gradually reintegrated into society of Christ.¹⁰⁰ What mattered here is the sense of continuation, of process, of *getting* back into the routine. And also, what mattered here was the non-defined period of time—the period of penance was lasting until the offender becomes converted or until the prior confirms it.¹⁰¹ Hence, the prior was instilling its disciplinary power now not only by demonstrating its ability to punish, but by showing the capability to interiorise in the offender the anxiety about the end. In this way, the acceptable punishment was the one that removes the sense of control over the course of time from the offender.

And finally—the community. On the conventual level, the common brothers participated in the punitive system in several ways. Firstly, as indicated, they were the present observers, which implies their non-active role. But the fact that they were present mattered. They were there for watching flogging and they were there to observe the degraded and humiliated offender. Their participation was, clearly, important to embed more strongly the sense of guilt into offender and to work as the force preventing the community from misdeeds by showing what happens to transgressors. In other words, the acceptable punishment was the one that strengthens stability (the communal effect) and enlarges the guilt (the effect on individual). The brethren also participated in resocialization as the prior's helpers. In order not to ruin the offender, the superior was obliged to send some of the brothers to him, to show compassion and encourage him to persevere in resocialization.¹⁰² Their role was also manifested in proclaiming others for the faults; they were not entitled to correct the offenders, but to use their own conscience and inform the superior.¹⁰³ In that way, the acceptable punishment was including the sense of communal responsibility in maintaining the social order (proclamations), the sense of emotional connectivity to the transgressor (by showing compassion), and generally the communal involvement in resocialization (by helping the prior).

The common responsibility involved also the inspection of prior's actions. The brothers were obliged to oversee the superior, warn him if he failed to behave properly, and report him to the provincial prior, visitor, Provincial or General Chapter.¹⁰⁴ This, however, leads us to a question concerning the punishment in the context of provincial and general order's structure, the question with which I deal in the next chapter.

¹⁰⁰ LC p. 44–45.

¹⁰¹ LC p. 45.

¹⁰² LC p. 44.

¹⁰³ The proclamations and self-accusations were the essential part of the monastic chapter of faults, at which the faults were being established and penalties defined. The practice of the proclamations is confirmed by the LC p. 42–43. On the chapter of faults: FÜSER 2000. p. 69–70. On the Dominican chapter of faults: CALDWELL 2004. p. 114–115.

¹⁰⁴ LC p. 45–46.

Distinction II

In the Distinction II, the penalties from the chapter of more grave faults and the excommunication were anticipated for building the extravagant monasteries, for accepting the possessions or *cura monialium*, or churches with pastoral care (c. I), and for not respecting the election procedure or the election of Master at the General Chapter (c. IV). The excommunication was also anticipated for changing the status of Order in the time of *sedis vacantia* (c. IV). For appealing against the General Chapter's verdict or for influencing the free decision making of representatives in government the penalty was anathema (c. VIII). For revealing the General Chapter's decisions to the outer world and working on division of Order, the penalty was excommunication together with labelling the offender as the *destructor ordinis* and *schismaticus* (c. VIII). For the rebellion against the election of Master such labelling was joined with the excommunication and all the penalties contained in the chapter of graver faults (c. IV).¹⁰⁵

Again, the very choice of statutes containing the penalties is indicative. It suggests, firstly, that the Dominicans wanted to preserve their mendicant identity orientation; the specially regulated penalisation for non-modest buildings was protecting the Order's poverty, while the ban of receiving possessions aimed at affirming the Dominicans in the absolute poverty, which was the prime identity marker of mendicants.¹⁰⁶ Secondly, by prohibiting the acceptance of pastoral care for nuns and of churches with parochial privileges they intended to preserve the stable relations to Church, i.e. with bishops and other diocesan clergy. Indeed, the Order was oriented towards preaching and it was the clerical order sharing the ecclesial orientation; but it was the order, whose pastoral orientation was something new in the *vita religiosa*. The rejection of *cura animarum* with regard to parochial churches and women was the solution which had a potential not to disturb the diocesan system and keep the Order as its non-competing part.¹⁰⁷ The special penalization was, thus, showing that the Order was not in opposition to the established pastoral system, but was complementing it by preaching, which, as Humbert puts it, was preparing the souls for salvation.¹⁰⁸

The selected statutes indicate also the Order's desire for ensuring its inner stability. The subject that was protected by these statutes was the General Chapter—its procedures, decisions, and representatives. The General Chapter

¹⁰⁵ LC p. 48, 52–53, 57–59. On the fault of revealing secrets and dividing the Order: HOYER 2018. p. 339–340.

¹⁰⁶ On the mendicant poverty: KEHNEL – MELVILLE 2001. On the Dominican poverty: HINNEBUSCH 1966. p. 145–168. For the Dominican economy: CYGLER 2004. p. 77–117.

¹⁰⁷ For the general relations between the Dominicans and bishops in the early period: SICKERT 1999. p. 295–320. Despite the efforts, there were constantly tensions, especially in the mid-thirteenth century, between the secular clergy and mendicants concerning the pastoral care. See: SCHMIDT 2010. p. 1–17; MELVILLE 2016b. p. 286–289.

¹⁰⁸ HUMBERTUS. p. 32.

was the legislator and highest authority in the Order,¹⁰⁹ and the specially arranged penalization was securing such supreme standing. The penalties were the technology of self-preservation, since they were created by the legislator to protect this same legislator. Besides, it was a technology of protecting the Order's specificities. The Dominican government rested not only on the idea of corporatism, present in religious orders already in the twelfth century,¹¹⁰ but also on inclusion and equality, the conceptions which were completely new in the *vita religiosa*. Both the provincial priors and the elected representatives of community were allowed to participate in government, and both groups had the same authority.¹¹¹ This was the important innovation, because in the earlier religious governance, only the superiors participated.¹¹² The special penalisation for contesting the operation of Chapter was protecting the fundaments of innovative government, and the Order's constitutional identity.

Yet, the body had to have its head. Hence the special emphasis on the election of Master. The Master is not above the Chapter, but he takes care of the Order in between the Chapter's sessions (throughout the year).¹¹³ He is, after all, the highest prelate and edifier of all souls in the Order.¹¹⁴ Hence, the special penalising arrangement concerning the election of Master had the two-fold value. On the one hand, it was affirming the Chapter's authority, since this was the stance which elects the Master.¹¹⁵ On the other, it was confirming the higher value of the Master's office, since it was exactly the offences concerning the Master that were punished the same as offences against the fundamental identity orientation of the Order.

Furthermore, in cases of the offences against the identity orientation and stability the Order, again, preferred the use of the "standardized" penalties. The acceptable punishment was the one that degrades, humiliates, deprives, inflicts pain, and disintegrates. Yet, here the disintegration from regular practises was organically joined with the excommunication or anathema, i.e. with the cutting off from all rites and the communion of brethren and with the damnation of soul. All the more, such cutting off and damnation in case of contradicting the election procedure of master came in force *ipso facto*.¹¹⁶ The insistence on this

¹⁰⁹ On the General Chapter see the "classical" works: GALBRAITH 1925, p. 85–109; HINNEBUSCH 1966, p. 176–193, esp. p. 179. In recent historiography, on legislative work: MELVILLE 2000, p. 579–604.

¹¹⁰ For the functioning and general characteristics of the General Chapter in religious orders: CYGLER 2002.

¹¹¹ On the Dominican government: MOULIN 1960, p. 50–66; HINNEBUSCH 1966, p. 177–178 (on the composition of Chapter); SHOWALTER 1973, p. 556–574 (on representation); CYGLER 2012, p. 61–78, on the inclusion of elected friars 71–77; MELVILLE 1999b, 441–460 (on the conflicts between the two groups).

¹¹² This arrangement was first laid down by the Cistercian *Carta Caritatis*, CC p. 278. On the functioning of such General Chapter: CYGLER 2002, p. 41–118.

¹¹³ On his powers: HINNEBUSCH 1966, p. 195–205, on his authority in between the Chapter's sessions 201–202.

¹¹⁴ See: HUMBERTUS (Instructiones) p. 179, 181.

¹¹⁵ LC p. 51–53.

¹¹⁶ LC p. 52.

obviously tended to overwhelm the consciences of brethren. Any transgressor against this Chapter's constitutional set-up had to realise that his soul is endangered and his human integrity devastated immediately. Clearly, this meant not only that the body had to suffer, or that the conscience had to suffer during the time of penance, but also that the soul had to suffer more profoundly when not respecting the Order's constitution.

The suffering was accomplished more fully by adding the new punishment. The offender now had to be labelled as *alienus*, *destructor ordinis*, and *schismaticus*.¹¹⁷ These attributions were not only the pejorative enlargements of the disintegrated status; they implied the desire of the Order to ensure the negative perception of the offender. The society of Christ had to become fully aware of the gravity of crime and to collectively interiorise the according view of the transgressor. The brethren had to see him as a stranger, as the one disrupting the ideal of communal harmony, emphasised as the essential religious goal by both the *Rule* and the Prologue of the codification.¹¹⁸ This suffering was also accomplished more intensely and more totally by obliging the brethren to respect the statutes protecting the constitutional set-up and identity specificities *in virtute obedientie* or *in virtute Spiritus sancti et obedientie*.¹¹⁹ In that way, the brethren were warned that the transgression means not only the disintegration or labelling as devastator, but also the disconnection from the Grace and virtuosity. The offender had to be seen as defying the Divine mercy, and the appropriate punishment was the one that outcasts him from the spiritual rewards.

Furthermore, we should bear in mind that in accordance to the Dominican understanding of law, most statutes analysed here possessed the quality of mandatory precepts.¹²⁰ The significance of such understanding becomes understandable when we turn to the Prologue of *Liber constitutionum*, where it was declared that breaking of the Dominican law does not imply sin, but simply transgression, except when it is made out of contempt or when it violates the command.¹²¹ This revolutionary principle of non-culpability, already emphasised by the historians,¹²² did not remove the sin from law; rather, it implied the more nuanced view on the relation between the norm and deviation. Unlike earlier orders which automatically connected the breaking of norms and sinning, the Dominicans wanted to relax the conscience by acknowledging not the automatic existence of sin but its presence in cases of the intentional breaking the law or when the deviation opposed the prescribed

¹¹⁷ LC p. 53, 58.

¹¹⁸ RA p. 417; LC p. 29.

¹¹⁹ LC p. 48, 53, 58–59.

¹²⁰ This relates to the statutes concerning the pastoral care for women, respecting the election of Master, not changing the status of Order, not appealing to the General Chapter's verdicts, not influencing the decisions of representatives, not revealing secrets of Chapter, not working on the division of Order. On these statutes having the quality of "precepts": HUMBERTUS p. 53.

¹²¹ LC p. 29.

¹²² See: CYGLER 2001. p. 387–401. For the earlier studies on the issue here p. 388, note 3.

mandate.¹²³ In the *Distinctio* I, the transgressions automatically meriting the sin were the incorrigibility and tonsuring women.¹²⁴ In all other cases, the intention of the culprit had to be established (undoubtedly by the prior) if he was to be proclaimed a sinner. But, in cases of statutes regarding the constitutional stability or stability with regard to diocesan authority, the transgression was always automatically implying a sin. Evidently, unlike the regular conventual practices, the identity and constitutional innovativeness as well as the ecclesial status, had to be protected more. Hence, the appropriate punishment relating to innovative outlook and stability of the Order, was the one that heavily burdens the soul.

And, who inflicts the penalties on the level of government? As we already saw, in individual convent the prior had the authority to punish in accordance to law. As also indicated, the prior's power was not unlimited, since he was subjected to the inspection by brothers.¹²⁵ This inspection, however, did not include the punishing of a prior, only the right to warn him.¹²⁶ The warning was acceptable, since it was a sign of a brotherly care, demanded by the *Rule*, but the punishment by brothers would not be felt as "natural" in the type of community whose prime directive is to live in obedience.¹²⁷ Yet, the superiors, just like the common friars, were objects of correction. For that purpose, the Order devised the most complex system, which will be in line with the fundamental marker of the Dominican identity, the equal responsibility for the Order. Indeed, the brothers were expected not only to participate in legislation and administration, but also in penalisation and generally in the regulation of discipline. Such collective involvement we see in three spheres. Firstly, both the provincial priors and the commoners had the obligation to visit, reform, and correct the behaviour in monasteries of province—to the former this was the ordinary obligation, while the latter were designated for such duty (at different time than the provincial priors) by the Provincial Chapter.¹²⁸ During the visitation of both the provincial superior and the commoners the state of the entire convent was inspected.¹²⁹ Secondly, the disciplinary equality was seen at the Provincial Chapter. At this annual assembly, the delegates elected in convents, would select among themselves four diffinitors that would decide upon all the provincial affairs together with the provincial prior, including the penalties for the deviant brothers. In addition, the provincial prior himself was a subject of rectification, and the diffinitors were entitled to correct him.¹³⁰ Thirdly, at the General Chapter, for two consecutive years the delegates that

¹²³ See: CYGLER 1999. p. 405–406; CYGLER 2001. p. 388. On the idea of relaxing the conscience as the background for the non-culpable law: *ibid*, p. 392. For the latter also: MELVILLE 2020. p. 267.

¹²⁴ HUMBERTUS p. 53.

¹²⁵ LC p. 45–46. See the sub-chapter "Authority".

¹²⁶ LC p. 45–46.

¹²⁷ For the brotherly correction in the *Rule*: RA p. 426–427. For professing the obedience: LC p. 41.

¹²⁸ See: HUMBERTUS (Instruiones) p. 199, 350–356; LC p. 62–63.

¹²⁹ HUMBERTUS (Instruiones) p. 198; LC p. 62. On their duties also: HINNEBUSCH 1966. p. 207, 209–210.

¹³⁰ LC p. 56.

were elected as the representatives of community would decide about the administrative, legislative and punitive measures together with the Master. The same was done by the provincial priors and master the third year. Besides, the Master of the Order was confessing his faults before each of the group, and each group had an equal right to punish him.¹³¹

In historiography, such system was described as the “descending chain of command” and the “ascending line of control”,¹³² i.e. as a model in which the authority of superiors (from above) and the control by commoners practised at the chapters—was excellently balanced. Within this model, the punishment by the superiors was nothing unusual since they were the prelates responsible for souls and their authority was deeply embedded into tradition.¹³³ But in the case of punishment by commoners, such overcoming of the pure obedience was a huge constitutional change. It was a way of perpetuating the Dominican understanding of brotherhood and a demarcating line to other communities. Yet, as evident, the punishment inflicted by the commoners was not a kind of disciplinary measure which could be done individually. It was the disciplinary feature that the commoners could practise only through the constitutional bodies (the Provincial and General Chapter or the commoners’ visitation mandated by the provincial assembly). In other words, it was the constitutional bodies that validated the power of commoners, thus making them the executors of the non-personal disciplinary entity. This latter right was based not on the argument of tradition or pastoral care but on law. In that way, we can say that the Dominican constitution recognised not only the conventionally validated punishment by superiors but also the innovatively devised and legislatively validated “transpersonal punishment”.¹³⁴

Humbert’s explanations

Humbert of Romans was a significant figure of the thirteenth century Dominican Order. He was the Order’s master from 1254 to 1263, and a fruitful author who wrote important works about the Dominican life.¹³⁵ His *Expositio in constitutiones*, which interests us here, was written in the 1250s and 1260s, during his governance of the Order and after the resignation from the office.¹³⁶ Unfortunately, Humbert did not finish this work; in fact, he commented only the Prologue and first two chapters of the Distinction I (the second chapter, however, leaving also unfinished). Despite this, his meticulous analysis of each

¹³¹ On the functioning of General Chapter: LC p. 57–58.

¹³² HINNEBUSCH 1966, p. 170. See also: CYGLER 2012, p. 72–73.

¹³³ For conventionality in authority see the sub-chapter “Authority”. For understanding the superiors’ posts as being the ordinary curating offices in its nature: HUMBERTUS (Instructiones) p. 179.

¹³⁴ With the term “transpersonal” MELVILLE 2016b, p. 317 denotes the organizational model of religious orders resting on the collegiate government and not on the leadership of the charismatic person or charismatic abbot. Accordingly, I use it to denote a kind of disciplinary authority coming out of collegiately based governing system.

¹³⁵ On him: TUGWELL 1982, p. 31–35; BRETT 1984.

¹³⁶ BRETT 1984, p. 197.

commented sentence, makes it possible to see how he was looking at the Dominican law and some practices.¹³⁷

Apart from the already indicated comments on the value of punishment for the cloistered life, Humbert provides some other useful insights into the Dominican punitive system. He deals with the disciplinary measures for not observing the “unity of hearts and mind”, which, so the author, implies three things: the keeping of goods in common, observing the religious practices uniformly, and accepting interiorly only what is of God.¹³⁸ Humbert, also, explicitly warns that this unity is a command, which means that it binds under the guilt of sin.¹³⁹ Indeed, it was the prime precept of the *Rule of Augustine*.¹⁴⁰ He also notes that the disunity of hearts and mind and the lack of uniformity of observances are in close connection to the lack of fraternal charity.¹⁴¹ In other words, disunity endangers both the cohesion and emotional links in community.

Even though some statutes dealing with disunity were contained in constitutions,¹⁴² the regulation concerning the breaking of unity defined in the above-mentioned way was lacking. For that reason, Humbert suggests the according punishments: the removal from communal practices and deprivation of communication with the offender. Alternatively, the deprivation of voice or the transfer to another community should be imposed. He also opts for the imprisonment or the expulsion in case of “hopeless infection [by such sin]”.¹⁴³ Clearly, for Humbert, the appropriate punishment for breaking the unity is disintegration. Indeed, he claims that the offender should receive some other “serious remedies”¹⁴⁴ (maybe beatings or fasts) but this is of lesser importance than preventing the transgressor from influencing others in the future by out casting him. To accomplish that, Humbert not only repeats the legal prescriptions for more grave faults but applies the solutions grounded in practise: the transfer to another community and imprisonment.¹⁴⁵ Hence, Humbert is not so interested in quantity of days in penance as in quantity of possible solutions. For him, the disunity which opposes the *Rule* requires the wider range of penalties, that will stand at disposition to superiors.

By emphasising the solutions for breaking the Augustine’s idea of fraternity, Humbert was perpetuating the link with the professed *Rule*. This was of the special importance in the mid-thirteenth century, when there was the initiative

¹³⁷ For the excellent analysis of the legal value of the text: FIEBACK 1996. p. 125–151.

¹³⁸ HUMBERTUS p. 4.

¹³⁹ HUMBERTUS p. 3.

¹⁴⁰ RA p. 417.

¹⁴¹ HUMBERTUS p. 7–8.

¹⁴² As seen, “sowing discord” is the grave fault, while “conspiracy” (the obvious sign of the lack of disunity) is a graver fault. LC p. 43-45.

¹⁴³ HUMBERTUS p. 3–4.

¹⁴⁴ HUMBERTUS p. 4.

¹⁴⁵ The transfer to another community was used by the General Chapter as punishment from the mid-thirteenth century. See: LINDE 2018. p. 349–367. The imprisonment was used from 1236 (ACG I. p. 10), and made the formal law for the cases of the *culpa gravissima* in 1276 (ACG I. p. 183; HOYER 2018. p. 328). For the comparison with the inquisitory process: CALDWELL 2004. p 117–118.

within the Order to modify the *Rule* because, as it seemed to some, it did not emulate fittingly the Dominican *propositum vitae*.¹⁴⁶ Humbert opposed such view, and wrote his commentary on the *Rule* to defend its appropriateness.¹⁴⁷ The part in his commentary on constitutions, in which he anticipates the wider range of penalties for those transgressing the Augustine's mandates, also suggests the Humbert's desire to strengthen the Order's attachment to its original monastic orientation.

It seems, furthermore, that the transfer to another community was acceptable to Humbert since it was in line with the general intention of punitive system to resocialize the offender.¹⁴⁸ The transfer fitted such purpose by providing the new environment for socialization and by cutting the links with the community in which he felt comfortable to sin.¹⁴⁹ And while Humbert does not contradict the legal prescription concerning the full expulsion for the repetitive offenders, he nevertheless suggests the imprisonment as the possible penalty. It seems that this confirms the Humbert's idea that the acceptable punishment is also the one that preserves the integrity of the Order's membership and tries to keep the offender in the Order, even if he was recidivist.¹⁵⁰

Humbert also deals with the relation between the discipline and the Order's main occupations, the preaching and study necessary for preaching. In this, just as in his other works, Humbert considers preaching as more excellent than any other human work; he claims that it is the most efficient salvific work, since it moves the interior man for subjecting to Christ, and that no office is as apostolic and angelic as preaching.¹⁵¹ To enable the brothers to prepare themselves for this activity, Humbert considers it necessary to adapt the cloistered life to the preachers' needs. He advocates the statement in constitutions which oblige the superiors to dispense more easily from the regular observances those brothers occupied with study and preaching, and suggests the priors to refrain themselves from tasking the preachers with the administrative duties.¹⁵² Accordingly, Humbert believes that the excessively strict correction of preachers is harmful for Order.¹⁵³ Instead of the strictly imposed penance, the prelates should support the "inequality of preacher's life", i.e. enable him to live the more relaxed lifestyle than the one regularly observed in the cloister.¹⁵⁴ In other words, the appropriate punishment is the one supporting the positive discrimination of preachers.

The Humbert's text deals with the punishment in the context of using the books. The author claims that every convent must possess the updated book

¹⁴⁶ See: BRETT 1984. p. 119–120; CYGLER – MELVILLE 2002. p. 425–426.

¹⁴⁷ See: BRETT 1984. p. 120; MÜLLER 1999. p. 354; CYGLER – MELVILLE 2002. p. 437–451.

¹⁴⁸ See the chapter *Distinction I*.

¹⁴⁹ Similarly: LINDE 2018. p. 350–351.

¹⁵⁰ See also the sub-chapter "Penal code: the catalogue".

¹⁵¹ HUMBERTUS p. 31–32. Also: HUMBERTUS (*De eruditione*) p. 374–380, esp. 374.

¹⁵² HUMBERTUS p. 28–31, 33.

¹⁵³ HUMBERTUS p. 33.

¹⁵⁴ HUMBERTUS p. 33.

of constitutions, ordinations of the General and Provincial Chapter, privileges of the Order, and liturgical books, and that brothers are obliged to know their content.¹⁵⁵ For the brothers, however, who do not know or not care for these scriptures, and who do not study them, Humbert suggests the penalty of reciting the psalms and reading the neglected books.¹⁵⁶ Clearly, Humbert does not want to apply harsh penalties; he, rather, approaches the problem more functionally. Instead of burdening the conscience or afflicting the body, he wants to encourage the awareness that the ignorance is also a fault. He wants to show the brethren that to transgress means not only to observe the religious practices badly but also to ignore them,¹⁵⁷ and includes the psalms as a warning before God about the dangers of such negligence. Yet, the conscience must not be overburdened; instead, it has to be functionally directed towards the apprehension of neglected observances by directing the offender towards learning the content that was ignored. In other words, in case of the fault of ignorance, punishment must work “didactically”.

Humbert’s commentary then considers the use of discretion. Already from the above analysed Humbert’s text, we see that the author supports the more rational approach to the penal code. This is clear from his suggestions to broaden the range of penalties with those grounded in practices. This Humbert’s view comes out of his general understanding that it is permitted to “impose things not written” if they derive from the approved custom in Order or if the persons of authority see a good reason for that.¹⁵⁸ In other words, the going beyond the written constitution is possible if grounded in the customary law or the discretion of prelates. He adds that the novelty can be also made by the diffinitors, working with superiors at the chapters.¹⁵⁹ Humbert explains that both are entitled to permit something new, but as long as its content does not deviate from the pertinent law.¹⁶⁰ The novelty must be the “supererogation” of the existing law, something that only widens the meaning of the established prescriptions. And, as long as the permission of authorities emulates the existing sense of law, so Humbert, it is, in fact, not any addition.¹⁶¹ When such view is applied to the penal code, we can conclude that the novel punishment or novel combination of punishments is allowed, but when it is grounded in the reason or custom, and when it keeps the “spirit of laws”.

Finally, Humbert paid the attention to the Dominican ideas of culpability, i.e. of the principle that their law does not bind under the guilt of sin.¹⁶² He is a strong advocate of the non-culpable law, and defends this principle before the friars that were criticising it. Humbert implies that some Dominicans thought

¹⁵⁵ HUMBERTUS p. 9.

¹⁵⁶ HUMBERTUS p. 9.

¹⁵⁷ See: HUMBERTUS p. 9.

¹⁵⁸ HUMBERTUS p. 11.

¹⁵⁹ HUMBERTUS p. 11.

¹⁶⁰ HUMBERTUS p. 11.

¹⁶¹ HUMBERTUS p. 11.

¹⁶² LC p. 29. See the chapter *Distinction II*. On the general meaning of such principle for the early Order: CYGLER 2001. p. 387–401.

that the absence of sin from the transgression could cause the loosened discipline, and that the non-culpable law is not just, for no religious should be punished if he is not guilty as a sinner.¹⁶³ Humbert here offers an intelligent scholastic solution. He claims that those brothers which would use the non-culpable nature of law to observe the discipline less zealously, would automatically fall into the fault of contempt.¹⁶⁴ In other words, it is not the presence of sin in law that is crucial for strictness, but the free will of individual to remain disciplined¹⁶⁵ and the fear of becoming a *contemptor*. Furthermore, Humbert claims that the implementation of culpable law would lead to the enormous increase of sin in the community, i.e. to the non-logical situation in which the brothers that transgressed by the simple negligence would become sinners.¹⁶⁶ In other words, Humbert brilliantly implies that the minor negligence—which would require the punishment for sinning if breaking the law would equal sin—would not be in line with the principle that punishment must fit the crime.

Apart from this, Humbert gives several other reasons for not accepting the culpable nature of law. He emphasises more theological reason: the non-culpable law fits better the human condition and it is often more acceptable to God when someone serves him with no moral burden; he indicates the pragmatic reason: if the culpability would be appropriated it would be impossible to guard oneself before sin and many would not enter the Order; the constitutional reason: the friars would stop writing the laws, even the useful ones, because they would want to reduce the chances to sin; the psychological reason: the conscience of many would be disturbed. From all these reasons, Humbert concludes lapidary that culpability of law does not bring good to the Order; rather, it is evil.¹⁶⁷ And, the acceptable punishment must not be connected to evil, must not result with lesser novices, must not refrain from writing laws, and must not overwhelm the consciences.

Conclusion

The inspection of the Dominican penal code has shown not only the variety of punitive measures that could be used by the holders of authority in cases of deviance, but also the different functions of punishment within the Order's communal life. When creating the penal code, the Dominicans utilized much of the Premonstratensian solutions. This pragmatic move enabled the new Order to start operating more easily. It also helped the Dominicans to prove their

¹⁶³ HUMBERTUS p. 47.

¹⁶⁴ HUMBERTUS p. 47.

¹⁶⁵ On the importance of free will for accepting the non-culpable law: CYGLER 1999. p. 407. Also: CYGLER 2001. p. 394.

¹⁶⁶ HUMBERTUS p. 47–48.

¹⁶⁷ HUMBERTUS p. 48–49. In CYGLER 1999. p. 409; CYGLER 2001. p. 398–401 the author emphasises that Humbert's affirmative view on the non-culpable law was connected to his understanding that it contributes to the bigger functionality to the Order.

commitment to a legitimate monastic heritage, required by the Papacy, and to anchor their identity within the desired Augustinian tradition.

The Order based its penal code on the gradation and differentiation of punishment in accordance to the quality of crime. The purpose was to formulate the sense of a just community, built upon the idea that punishment must fit the crime. Besides, they promoted the double-natured penalty, affecting the community as both the preventive and reactive force. The gradation was best seen in the catalogue of the Distinction I. Here, the majority of offences, primarily relating to liturgy and daily life, were regarded as minor faults. The appropriate penalties were those enabling the re-edification and spiritual reconnection with the Divine. This was accomplished by utilizing the recitation of psalms. The main target was, thus, the friar's conscience. And while for the minor faults the corporal punishment could be enforced, for grave faults (primarily caused by the speech) such measure was absolutely necessary. The body now had to suffer, feel deprivation, and become the symbol of differentiation. This, however, did not stand alone, but was, again, adjoined to reciting of psalms, which was affecting the conscience. The quantification was the most important principle; the community had to realise that in case of deviation, the pain and deprivation, and the spiritual reconnection will be applied in greater measure, thus increasing both the pressure on conscience and the fear of pain and deprivation. The graver faults related to offences against the religious fundamentals. Again, it was both the inner and external man that were the targets. Now, however, it was most important to instil the sense of differentiation and disintegration from community and to remove him from regular practices. The offender had to realise that, while being in the community, he is excluded from the privileged status of greater perfection. This disintegration was accomplished by making him feel humiliated, degraded, outcasted, deprived of communal and priestly duties, or from voice. The body had to be punished accordingly, and, apart from flogging it more, it had to be displayed as a degraded and humiliated material form of a ruined conscience. The body had to reflect and assure the profound feeling of guilt, the sense of lowliness and the feeling that no sin can escape the corporate knowledge.

Hence, the catalogue was insisting on gradation of punishment, working first as the edifying force in cases of minor transgressions, as the force adjoining more pain to a more burdened conscience in case of grave faults, and as disintegrative force in cases of more grave faults. Yet, the disintegration was not the force of exclusion. It understood the time of penance in which the offender gets back into the regular practices. The appropriate punishment was, again, the one that re-converts the offender and keeps the integrity of its membership. The full expulsion was anticipated only for the incorrigibility, since this was understood as the bad human state, the one that can infect others. However, even in this case, the Dominicans favoured the alternative penalization. The stability and integrity of a community mattered the most, despite the "disease" that cannot be cured. The appropriateness of such view

rested upon the idea that the profession is eternal and the religious community must serve its primary duty of joining the brethren and not breaking the professed unity.

Outside the catalogue, the penalties are contained in statutes concerning the apostasy, bedding and silence. Here, the Order used similar penalties but combined them differently. This shows that the Order favoured the standardization of punitive solutions and the feeling of their systematic application. The greatest novelty was the excommunication in cases of long-term apostasy. The special regulation concerning the apostasy, and the gravity of such penalty (having serious consequences on the salvation), clearly shows a desire to use the penalty for protecting the exalted value of the professed life. In cases of breaking the silence and bedding arrangements, the function of the punishments was to preserve the link with the fundamentals of monastic life in general, and to affirm the community's sense of authentic austerity.

The Distinction I of the *Liber constitutionum* anticipated the conventional, vertically based authority system. The prior was in charge of deciding about the application of punitive measures and was conducting the process of re-conversion. This was additionally embedding the Order into the monastic tradition. The prior's authority was strengthened by empowering him with the control of disciplinary time. However, the prior's role was not monarchical; the main authority rested in law. The appropriate punishment was the one inscribed and validated by the law and executed by the prior. The appropriate prior's disciplinary authority was also the one which does not ruin but cares for the offender—the prior's obligation was to punish but also to help the deviant to recovery. For that reason, the law provided him the right to use dispensations and gave him the possibility to apply mercy. Such arrangement was there not only to provoke charity; it was the additional disciplinary technology. If the offender wanted to earn the dispensation from fasting penance or to be dispensed from the additional flogging, he had to show himself tamed and re-converted. The community participated in the system by proclaiming the delinquent, by helping the prior in the process of re-conversion (by admonishing or comforting the offender), or by increasing the notion of guilt by observing the degradation or by being present during ritualistic disciplinary acts.

The function of penalties textualized in the Distinction II was to preserve the internal stability, the stability in the relation to diocesan clergy, and the Order's identity and constitutional specificities (mendicant poverty and proto-democratic constitution). To accomplish that, the Order used not only the punishments prescribed for more grave faults but also those burdening the soul more profoundly. It was not only the body and conscience that was targeted, and it was not only the sense of disintegration, but also the sense of being cursed and detached from the society and from the salvific effects of the religious community, that had to be interiorised. Besides, the punitive technology was working as the force creating the bad image, since the offender was now negatively perceived and declared as the schismatic and destructor.

This technology was instilling the feeling in the offender that he is breaking the ties with Holy Spirit and obedience, thus making himself cut off from the Divine grace and chances to advance in virtuosity. Finally, such technology was making the offender the sinner *ipso facto*. While vast majority of faults were declared as non-culpable category, the crimes against stability and Order's specificities were always a sin.

The Distinction II shows also that, unlike on the conventual level, in government, the common brothers participated in control over the Order together with the superiors. This arrangement was supporting the dual-typed disciplinary system in which there existed both the punishment practised by superiors and "transpersonal punishment" (practised by the commoners).

A highly valuable insights into the punitive system were provided by Humbert of Romans. He deals with the braking of unity, which he considers extremely serious fault because it endangers the appropriate observance of *Rule*. His major concern is the preservation of the Order's link with the *Rule*, and punitive measures should also serve that goal. Humbert is also interested in preventing the offender from repeating the crime. Hence, he advocates not only the application of punishments contained in constitutions, but also opts for the penalties based in customs. For him, the appropriate penal code is flexible, giving enough opportunity to punish. However, even though he suggests the removal, ban of communication with the offender or imprisonment he is strongly attached to the idea that punishment must preserve the integrity of membership and primarily resocialize the offender.

The custom, together with the good reason, is the most important basis for adding some new punishments. Humbert opts for the disciplinary system which is rational, reasonable and practical, and for the use of authority which could indeed "supererogate the law" but only while it keeps the "spirit" of this same law.

Humbert wants to make the brethren aware that negligence is also the fault. But, here, the penalty should be didactic, and make the offender learn the content he neglected. Furthermore, he strongly supports the idea of inequality of preacher's life, suggesting the superiors not to burden the preachers with the excessive duties or cloistered discipline. Hence, the essential element of the penal code is punishment supporting the positive discrimination of preachers. Finally, Humbert defends strongly the principle of non-culpability, and claims that it is the will to be disciplined that must serve as the primary disciplinary force, and not the fear of culpable guilt. In that way, he promotes the punishment's more rational and human-based character.

Indeed, we can conclude that for the Dominicans, the punishment was acceptable when formulated as a multifunctional disciplinary tool. Its viability was not evolving from the orientation towards a single goal but from the variety of aims that it was serving. The acceptable punishment was the one effecting the individual conscience, body and soul, the community's integrity and Order's stability, it was also the one that maintains the fundamental conceptions of the Order's religious life (the pastoral orientation and

attachment to the *Rule*), and, finally, it was the one enabling the regular reconnection with God by insisting on the recitation of psalms, those “most spiritual texts” that move the transgressor most deeply and most emotionally.

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