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## **Between sin and mitigating factor**

# Defining and constructing 'drunkenness' in late medieval Europe, 1140-1500

Master's thesis in Historical Studies

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*Veni, veni, venias*  
*Ne me mori facias*  
*(Come, come, please do come)*  
*(You must act, lest I succumb)*

This Latin citation, transmitted through the ages, can be found in:

*Carmina Burana*, MS Munich Clm 4660, fol. 69v (c. 1230-1300)

Carl Orff, 'Carmina Burana', cantata, piece nr. 20 ('Veni, veni, venias') (1937)

Nobuo Uematsu, '片翼の天使' ('Katayoku no Tenshi'), also known as 'One-Winged Angel', piece written for video game *Final Fantasy VII* (1997), afterwards reorchestrated by Nobuo Uematsu, Masashi Hamauzu and Yasunori Nishiki into 'One-Winged Angel – Rebirth' for *Final Fantasy VII Remake* (2020)

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Writing this thesis has been... quite the endeavour. That is not to say I did not enjoy it to some degree, perhaps in a masochistic attempt to attain intellectual self-satisfaction. But it would suffice to say that, were I not a teetotaler, this thesis would have driven me nuts enough at certain points to reach for a drink, or a few. (The irony of someone who does not drink alcohol studying drunkenness has not been lost on me, nor on many, *many* others.) Thankfully, hypothetically speaking, I would not have been a lonely drunk. There are many people that have contributed something to this project, either consciously or unconsciously, and it is only natural that I thank those who did.

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the tips on places where to look next, his referrals to interesting seminars and his general trust in my abilities. Furthermore, his supervision in showing me the new academic world of Paris that had opened up for me definitely merits a word of thanks. I still remember a day in mid-September of 2018, on which he convinced the librarians to give me access to the Sorbonne library despite my previously failed attempts in doing so. My French was still relatively poor and following the conversation was akin to watching two aliens talk really, really quickly (it improved, thankfully). Without his willingness to guide me around, I would have gotten lost very quickly.

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*"you must know that without Ceres and Bacchus, Apollo grows cold"*

*("sciatis quod sine Cerere et Bacone frigescit Apollo")*

(British Museum, MS Add. 8167, fol. 104r)



## Abbreviations

ACUP	<i>Auctarium Chartularii Universitatis Parisiensis</i> , 6 vols. (1894-1964), ed. Heinrich Denifle & Émile Chatelain (vols. 1-3), Charles Samaran & Emile van Moé (vols. 4-5) and Astrik Gabriel & Gray Boyce (vol. 6).
BnF	Paris, Bibliothèque nationale de France
fr.	Catalogue française
lat.	Catalogue latin
CUP	<i>Chartularium Universitatis Parisiensis</i> , ed. Heinrich Denifle & Émile Chatelain, 4 vols. (Paris, 1889-1897).
JJ	Paris, Archives Nationales, collection JJ (Trésor des Chartes)

## Notes on transcription and translation

This thesis contains several excerpts transcribed from unedited archival and manuscript material. I have attempted to replicate the original texts as accurately as possible, but it is possible slight errors may still be present. Any remaining errors are my own. In transcribing, I have used the following conventions.

For both the Latin and French citations, I have applied the following:

- Interpunction and capitalization have been changed to modern standards. In most cases, this means full stops and commas have been added, as well as colons and quotation marks in more specific instances.
- Any abbreviated words in the original text have been transcribed in full, without abbreviation or marks that they were originally abbreviated, to improve legibility.
- Roman numerals have been left as they were in the original text and have not been converted to Arabic numerals.
- While the u and v constitute a single letter in medieval script, they are distinguished from one another and not used interchangeably here ('vinum', not 'uinum'), according to the correct Latin spelling.

For the French citations specifically, a few additional conventions apply:

- Apostrophes have been added in the case of contraction (l'ostel, d'un, qu'il).
- An *accent aigu* has been added whenever there would be confusion otherwise, according to modern spelling (cf. 'pardonne' and 'pardonné'). *Accents graves* have **not** been added, as they would not cause confusion (cf. 'apres' and 'après').
- I distinguish between i and j in the transcription, contrary to the Latin transcriptions, as is customary in modern French spelling and not in Latin.

Finally, any translations from the Latin or French that have not been cited from published translations are my own. As such, any remaining errors in translation are mine as well.

## Introduction

### Between sin and mitigating factor

*For wine does not love man, the way man loves wine.*<sup>1</sup>

The Middle Ages have had – and to a certain extent, still have – somewhat of a rough reputation. Stuck between the glories of Antiquity and the grandeur of the Renaissance, the medieval period has often been depicted as an era of decay, ignorance, superstition and stagnation. This has led to untrue and often caricatural notions on the period, many of which medieval historians are still trying to correct. Some are relatively easily dismissed, such as the idea that all people in the Middle Ages thought the Earth was flat. Other, more fundamental characterizations of the period have proven more difficult to disprove or nuance, and call for a paradigm shift rather than a simple second opinion.

One of these much perpetuated notions about the Middle Ages is the prevalence of alcohol, more specifically the reasons for its predominance. Medieval scholarship has made new observations on this topic, especially concerning the rather popular myth that people's primary motivations for drinking alcoholic drinks originated in there being no drinking water, but this erroneous image still prevails outside medieval studies.<sup>2</sup> And with the ubiquity of (especially) wine, it is a small step to assume that inhabitants of medieval Europe regularly got drunk, which in turn caused them to commit disgraceful and sometimes violent acts.

Violence is at the centre of a currently ongoing structural reassessment in medieval studies. This wave in historiography has illustrated that the Middle Ages were not as brutal or inherently cruel as has often been suggested. Several historians, such as David Nirenberg and, more recently, Hannah Skoda, have argued that violence in the Middle Ages was not irrational.<sup>3</sup> Instead, they reveal that violence was understood as well as shaped, and most importantly, had *meanings* that could be understood and shaped. They argue that medieval attitudes towards violence were nuanced and complex. Most importantly, there was not just a single meaning of violence: its meanings very much depended on the type of violence, the actors involved and the social context.

Alcohol consumption, too, was a highly nuanced and ambivalent topic, revealed by even a cursory glance at its appearances in our sources. The many condemnations by the

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<sup>1</sup> Thomas Aquinas, *Sententia libri Ethicorum*, liber 8, lectio 2, paragraph 7, Editio Leonina (Rome, 1969): "Non enim vinum amat hominem, sicut homo amat vinum." Available online at: <http://www.corpusthomisticum.org/ctc0101.html>.

<sup>2</sup> Water supplies were relatively well regulated: see especially Carole Rawcliffe, *Urban bodies: communal health in late medieval English towns* (Woodbridge, 2013), 176-228.

<sup>3</sup> David Nirenberg, *Communities of violence: persecution of minorities in the Middle Ages* (Princeton, 1996); Hannah Skoda, *Medieval violence: physical brutality in northern France, 1270-1330* (Oxford, 2013). Other examples include Mark D. Meyerson, Daniel Thiery & Oren Falk (eds.), *"A great effusion of blood?": interpreting medieval violence* (Toronto, 2004) and Sarah Rubin Blanshei (ed.), *Violence and justice in Bologna, 1250-1700* (Lanham, 2018).

Church, that labelled drunkenness as an excessive consumption habit and thus as part of the sin of gluttony, were diametrically opposed to the glorification of alcoholic drinks by poets and wandering clerics, of which the Goliards are the most well-known example. All the while, wine was an important element in the Eucharist and was, in fact, one of the most consumed beverages throughout western Europe. Further still, Roman, canon and secular law guides frequently referred to drunkenness as a mitigating factor that could alleviate or even completely remise the punishment for a crime.

Despite the fact that this intriguing ambivalence has been recognized and explored by several historians, the concept of 'drunkenness' in the Middle Ages still warrants exploration.<sup>4</sup> Drunkenness, too, was not treated as a one-size-fits-all phenomenon. Similarly to violence, *ebrietas* in the Middle Ages had a fluid definition and could refer to different variations of the same phenomenon in different situations. As a result, not all *ebrietas* were judged equally. How did people evaluate drunkenness in different kinds of situations, and which situation called for which type of evaluation? In other words, how was drunkenness 'read' or given meaning, how did people legitimize the meaning they proposed and how did they attempt – and often succeed – to arrive at a certain meaning?

The goal of this thesis, put very briefly, is to illustrate the indeterminacy of drunkenness in the later European Middle Ages. It will showcase that *ebrietas*, far from having a singular meaning, was 'read' in various ways depending on the circumstances. With its seemingly paradoxical position as both a sin and a mitigating factor, drunkenness was nowhere near an open book. Yet although the interpretation of the 'reading public' – of which the historian is part – was crucial to convey a message, the author was nowhere near dead. In carefully shaping complex representations of one's own or someone else's drunkenness, people in the Middle Ages, from canon law theorists to ordinary laymen, were able to weave explicit or subliminal messages into *ebrietas*. They made sure their scribbles were understandable to their audience by shrewdly using familiar discourses as handles, signifying that the reader should ponder the meaning from a legal or social point of view, or by medically gazing at it. This thesis investigates the ways the meanings of drunkenness were 'negotiated', ultimately demonstrating that drunkenness in the late Middle Ages was considered a highly complex phenomenon, not simply the inevitable result of the prevalence of alcoholic beverages.

### Drunkenness in the late Middle Ages: a short overview

Before I lay down the theoretical and methodological aspects of this study, a short introduction to the concept of drunkenness in the Middle Ages is in order. The history of

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<sup>4</sup> Currently, a good overview of various aspects on the topic is Mireille Vincent-Cassy (transl. Erika Pavelka), 'Between sin and pleasure: drunkenness in France at the end of the Middle Ages', in: Richard Newhauser (ed.), *In the garden of evil: the vices and culture in the Middle Ages* (Toronto, 2005), 393-430.

drunkenness is inseparable from the history of drinking, which in turn is inseparable from the histories of food and drink, viticulture, violence and the Eucharist. Based on the contents of this thesis, I will limit this overview to the perspectives most relevant here: the religious, socio-cultural and medical ones. The legal and penitential discourses on drunkenness, which are part of my own analysis, will be treated in-depth throughout the thesis, especially in the first two chapters.

Drunkenness was considered part of gluttony, one of the seven deadly sins. Indeed, in most works in which it is treated, it is found under the subsection of a treatment of gluttony. But it was also often remarked that drunkenness could act as a gateway to other sins, especially lust. Next to lust, anger is another commonplace in moral discussions of drunkenness, for inebriation could lead to violence and brawls. Next to general moral condemnations, taverns and alehouses, the places where alcohol was consumed most commonly, were a cause for denunciation in and of themselves. Referred to as 'the church of the devil' by some moralists, they were the antithesis of the church and its virtues, a place of lechery and debauchery, their inhabitants citizens of the devil.<sup>5</sup> Besides drinking, taverns were also highly associated with prostitution and gambling, two additional activities the Church was all too eager to condemn.

The Bible supplied medieval authors with two major stories on intoxication, both from Genesis. One is that of Noah, the first human to plant a vineyard and thus to make wine. After he drank it, however, he became drunk, unaware of its effects. The second, more famous story of the two, is about Lot and his daughters. After their hometown, Sodom, had been annihilated by the wrath of God, and their mother turned into a pillar of salt, Lot's daughters realized that they would not be able to safeguard their family line unless they slept with their father. Thus, they got him drunk and slept with him; Lot was allegedly unaware of what was happening. The two stories were well-known and are referred to by many medieval authors when writing on the topic of drunkenness.

On the whole, drunkenness was perceived negatively, but the inebriation of certain groups was considered even more despicable than that of others. Austin Lynn Martin has illustrated the 'double standard' of drinking between genders in late medieval and early modern Europe.<sup>6</sup> Men were able to, perhaps even encouraged to, convey their masculinity by showing they could hold large amounts of drink; their drunkenness was still considered excessive, but it was also a decently common consequence of their portrayal of masculinity. Drunken women, on the other hand, would gain a reputation for their lack of self-control, which is even more explicitly connected to sexual immorality because women were already considered to be more liable to sexual urges.

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<sup>5</sup> Austin Lynn Martin, *Alcohol, violence and disorder in traditional Europe* (Kirkville (Montana), 2009), 26-30.

<sup>6</sup> Austin Lynn Martin, *Alcohol, sex and gender in late medieval and early modern Europe* (Basingstoke, 2001).

The drunkenness of one particular group was even less acceptable, namely the clergy. From the recurrent references to drunken clerics throughout the Middle Ages, it seems not all of them kept this stigma in mind. A lot of the references refer to 'the drunkenness of priests', but from other sources, we can extrapolate that this referred to all types of clerics. We should be careful in taking the literal meaning of these condemnations to heart, however. Many of the sources in which we find this discourse contain a stereotypical 'debauched cleric' and clerics were often the ones who would accuse other clerics, which might explain the overrepresentation of clerical inebriation in our sources.<sup>7</sup>

All the same, some notions attached to drunkenness could be detrimental to a cleric's reputation. The idea that it called forth lust was especially harmful, as clerics were supposed to remain chaste and celibate. Accusations of drunkenness thus frequently turned into accusations of sexual escapades. One preacher described that "just like Lot got acquainted with his daughters in drunkenness, drunk priests get acquainted with their spiritual daughters", perhaps referring to both the sexual act and a metaphorical 'rape of faith' simultaneously.<sup>8</sup>

Indeed, drunkenness could be a useful literary trope to accuse a certain individual, as well as certain groups. Perhaps the most frequent usage of this literary trope is found in national stereotypes. For instance, various sources, particularly from the French areas, portrayed the English and Norman people as drunkards, generally as a way to discredit them or to chastise them and demand improvement.<sup>9</sup> These stereotypical images likely have some sort of basis – perhaps the English did drink more than the French were used to – but they are first and foremost rhetorical devices that do not necessarily reflect reality.

However, drunkenness was not just a curious phenomenon that was to be condemned and used to frame a certain individual or group. Physicians and medical theorists tried to understand where drunkenness came from. While there was no completely unified theory, there were several points that most physicians agreed upon. Wine, the drink we will encounter most frequently, was considered to be nourishing for the body of most individuals. Human bodies in medieval humoral theory fundamentally consisted of the four Aristotelian qualities (warmth, cold, dryness and moistness), and the pursuit of health was considered one of balance between these four qualities. Wine held the most precious of

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<sup>7</sup> Vincent-Cassy, 'Between sin and pleasure', 410-411.

<sup>8</sup> BnF, lat. 3565, fol. 46ra: "in Loth, qui in ebrietatus cognovit filias suas, sic sacerdos inebriatus cognoscit filias suas spirituales".

<sup>9</sup> Claire Weeda, 'Images of ethnicity in later medieval Europe' (unpublished dissertation, University of Amsterdam, 2012), 296-323 (for the c. 11<sup>th</sup>-13<sup>th</sup> centuries); Vincent-Cassy, 'Between sin and pleasure', 400 (for a 14<sup>th</sup>-century example); Matthieu Lecoutre, *Le goût de l'ivresse: boire en France depuis le Moyen Âge (Ve-XXIe siècle)* (Paris, 2017), 159-162 (for a 15<sup>th</sup>-century example). The national stereotypes of drinking in Salimbene de Adam's *Cronica* are explored in Jussi Hanska, "'Volebam tamen ut nomen michi esset Dyonisius': Fra Salimbene, wine and well-being", in: Sari Katajala-Peltomaa & Susanna Niiranen (eds.), *Mental (dis)order in later medieval Europe* (Leiden, 2014), 128-150, here 143-146. See also Austin Lynn Martin, 'National reputations for drinking in traditional Europe', *Parergon* 17:1 (1999), 163-186.

the four: warmth.<sup>10</sup> Warmth was crucial to the body because it enabled the process of digestion and it (re)filled the 'natural heat' of a human body, which was considered the source of life from a medical perspective. As such, wine was highly recommended in many dietary regimes because of its generally positive effects on health. In some cases, it could even be used as a medicine.<sup>11</sup>

The most common medical conception of drunkenness relied on the idea that wine was a source of warmth. Due to the combination of wine's innate warmth and the natural body heat, wine turned into fumes while in the body.<sup>12</sup> These fumes entered the liver and veins through digestion, and moved upwards due to the laws of physics. Their final destination: the brain's cerebral ventricles and the organs of the head, such as the eyes – the fumes could diminish the eyesight, and their spinning movements in the veins of the eye could cause the illusion of the world revolving around the drinker.<sup>13</sup> Surprisingly, some medical authors, such as Avicenna, actually recommend infrequent inebriation as a purging remedy, to get rid of excess humours in the body.<sup>14</sup> In general, however, drunkenness was not considered very healthy.

Finally, it should be noted that the idea of 'drunkenness' was a very variable one: there was no single concept of it, because 'addiction' (and by consequence, 'alcoholism') was unknown or at least not phrased in terms that would allude to something akin to a modern definition.<sup>15</sup> Although it was generally agreed upon that chronic drunkenness was a disease of the soul that in turn also poisoned the body, it remained difficult to ascertain at what point 'drinking' turned into 'drunkenness', and when 'drunkenness' turned into 'chronic drunkenness'. It is exactly this lack of a clear definition that allowed medieval authors to shape their own definition of what drinking superfluously and drunkenness entailed. As a result of this, 'drunkenness' could mean different things and have different implications in different situations, depending on the context.

### Approach and topics

As has been stated in the first part of this introduction, the underlying principle of this thesis – that 'drunkenness' could be understood in various ways in various circumstances and could, to a certain degree, be 'shaped' to fit a certain interpretation – was highly inspired by literature on the negotiation of deviance in the Middle Ages. This notion is especially prominent in recent works on medieval violence, which were the primary source of inspiration for this approach.

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<sup>10</sup> Azéline Jaboulet-Vercherre, *The physician, the drinker and the drunk: wine's uses and abuses in late medieval natural philosophy* (Turnhout, 2014), 54-56.

<sup>11</sup> Ibid, 65-73.

<sup>12</sup> Ibid, 183-185.

<sup>13</sup> Ibid, 193-199.

<sup>14</sup> Ibid, 184-185.

<sup>15</sup> Ibid, 159-164; Marcel Benos, "'Yvrognerie': où commence le péché?", *Rives méditerranéennes* 22 (2005), 49-63; Beverly Ann Tlusty, 'Defining "drunk" in early modern Germany', *Contemporary Drug Problems* 21:3 (1994), 427-451.

The main concept this thesis takes from literature on medieval violence is the idea that a given notion in the Middle Ages was indeterminate and can be studied as such.<sup>16</sup> In the case of violence, this means that the ways violence was interpreted were highly ambivalent, not just depending on the eye of the beholder, but also on the conditions under which the violence was performed, the way it was framed and the actors involved in the violence. 'Violence' was an intricate topic and did not merely summon hatred, fear or disgust.<sup>17</sup> Again, depending on the context, it could have ritual functions or constitute either order or disorder, nor did people have to agree on what it effectuated.

Violence thus had meaning, but the specific meaning(s) were reliant on a process of communication between the actor and the recipient. The latter could be at the receiving end of the violence, but he could also be an innocent bystander or someone who got word of the violence through an intermediary. This communication went two ways: the recipient was the one who ultimately formed the meaning, but the actor could add nudges or hints in his portrayal of violence that would lead the recipient to interpreting the violence in the way the actor intended. This can be considered a form of 'negotiation'. This meaning could get distorted, muddled or changed, depending on the specific situation.

Of course, the concept of drunkenness cannot completely be equated with violence from this perspective. As we have seen, drunkenness was generally perceived as negative, a few exceptions notwithstanding. However, within the range of 'negative', there is plenty of room for negotiation. What types of drunkenness were more negative than others? What were the common criteria set to allow for these distinctions to be made in the first place? How was negative or less negative drunkenness utilized to paint a specific picture of an individual or group? These questions will come to the fore throughout this thesis.

With these focal points, this thesis allies itself with studies aiming to nuance popular conceptions of the Middle Ages that frequently portray the period as backwards and inherently irrational. This imagery has been around since at least the 19<sup>th</sup> century, but some influential theories of the 20<sup>th</sup>-century have not aided in rectifying this view. The most eye-catching of those is Norbert Elias' theory of the 'civilizing process', which has also had its fair share of influence on the historiography of alcohol and drunkenness.<sup>18</sup> Following Elias, who argues that sixteenth-century conduct books are a sign of increased self-surveillance and -control that would have been absent in previous centuries, some scholars of alcohol and drunkenness have regarded the early modern pamphlets and tracts

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<sup>16</sup> See especially Skoda, *Medieval violence*, 234-238.

<sup>17</sup> A quote in the introduction of the collective volume by Meyerson, Thiery and Falk illustrates the point: "[...] violence was not an expression of the irrationality and extreme emotions of medieval people but a product of their rationality, a behaviour well understood and strategically deployed." Meyerson, Thiery & Falk, "A great effusion of blood?", 6.

<sup>18</sup> Norbert Elias, *The civilizing process: sociogenetic and psychogenetic investigations*, trans. Edmund Jephcott, revised edition (Oxford, 2000).

with 'moral critiques' against drunkenness as an expression of Elias' theory.<sup>19</sup> However, Elias' narrative can be challenged on many fronts. For one, conduct books are nowhere near a Renaissance invention and predate the early modern period by centuries.

Elias' influence is likely also part of the cause of an increased attention to the early modern period when it comes to historiography on drunkenness. Of course, there are other good reasons. Much more readily available source evidence exists for the early modern era, and the rise of alehouses and similar spaces mainly meant for drinking (although taverns were a medieval phenomenon as well) allow for a thorough investigation of public drinking cultures.<sup>20</sup> And it is true that many fascinating tracts specifically directed against drunkenness do not appear until the sixteenth century, and that they continued to proliferate in subsequent centuries.<sup>21</sup> Yet this does not mean that there was no attention for drunkenness in the Middle Ages; we have already touched on some of the many medieval writings that discuss it.

It does mean, however, that the concept of drunkenness in the Middle Ages has not been explored as much as it could have, which is where this thesis comes in. It will treat three relatively uncharted topics on drunkenness in the late Middle Ages that each, in their own unique ways but with some interconnections, illustrate how complicated the meaning of drunkenness could be. These topics have been chosen because of their suitability to the question and the relative lack of interest in them up to this point.

The first two topics are partially interrelated, because they both deal with the role of drunkenness in the medieval court of law. However, they treat two different sides of the same coin, namely legal theory and legal practice. The first is principally about the role of drunkenness in canon law theory. Ever since the compilation of Gratian's *Decretum Gratiani* (c. 1140), theorists of ecclesiastical law were contemplating the ramifications of drunkenness on a crime with renewed interest, scrutinizing under what circumstances a drunk perpetrator could be held accountable for their crime. These highly academic thoughts were then adopted by the counterpart of the external court: the *forum internum*, or the realm of penance. Writings on penance from the 13<sup>th</sup> century on, which were much more practically oriented, were heavily influenced by theories posed in canon law, and we can determine that the ideas about drunkenness suggested in canon law were spread, and also popularized, by penitential guides and similar sources.

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<sup>19</sup> For the Netherlands: Jaap van der Stel, *Drinken, drank en dronkenschap: vijf eeuwen drankbestrijding en alcoholhulpverlening in Nederland* (Hilversum, 1995). For France: Matthieu Lecoutre, *Ivresse et ivrognerie dans la France moderne* (Rennes, 2011).

<sup>20</sup> See e.g. Beverly Ann Tlusty, *Bacchus and civic order: the culture of drink in early modern Germany* (Charlottesville & London, 2001); Beat Kümin, *Drinking matters: public houses and social exchange in early modern Central Europe* (Basingstoke, 2007).

<sup>21</sup> Adam Smyth, 'It were far better be a Toad, or a Serpent, then a Drunkard': writing about drunkenness', in: Adam Smyth (ed.), *A pleasing sinne: drink and conviviality in seventeenth-century England* (Cambridge, 2004), 193-210; Matthieu Lecoutre, '"Sac à vin infâme, tu ne bouges du cabaret"! Critiques morales de l'ivresse dans la France moderne (XVIe-XVIIIe siècle)', *Food & History* 12:3 (2014), 133-160.



Furthermore, drunkenness was used as a mitigating factor in court, which was justified by theories from Roman and canon law. Yet the question remains *how* people used drunkenness as a mitigating factor in the late Middle Ages. Back in the 1980s, Natalie Zemon Davis eloquently showed that court records can be considered a narrative that was carefully crafted by the supplicant, with the goal of ultimately exculpating him.<sup>22</sup> From this perspective, drunkenness, a condition that took away the voluntary will of the perpetrator, could be a very useful tool to plead for acquittal. Indeed, we can trace the effectiveness of this 'drunkenness plea' throughout court records. Dana Rabin has already investigated this phenomenon for 18<sup>th</sup>-century England.<sup>23</sup> Her focus on the discourses and words the defendant used to convey a narrative as convincingly as possible to become suitable for mitigation does not yet have a medieval equivalent, while such a research is certainly possible.

The closest we currently have to an examination of the legal perspective on drunkenness is a thesis by Klaus Ebel on thoughts in medieval canon law and scholasticism.<sup>24</sup> Its focus is primarily on legal traditions, but due to this focus, it does not account for similar opinions in the *forum internum* or other sources that treat the same discourse, such as *quodlibeta*, university discussions on 'whatever one wanted'. It also does not go into the impact of legal thought on actual legal practices. Thus, a broader study of drunkenness across different types of sources has yet to be executed for the late Middle Ages.<sup>25</sup>

This is surprising, considering that it has long been known that many legal and religious authors were writing about the conditions under which drunkenness was either 'acceptable' or not. Specific circumstances could alter the assessment of how sinful or how punishable the drunkenness of a certain person was, most notably whether the person in question got drunk sporadically or frequently, and whether he did so purposefully or unwillingly. This has been noted as far back as 1905 in the case of Luther, who also wrote about these topics.<sup>26</sup> More recent works, too, have recognized this discourse, but none of

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<sup>22</sup> Natalie Zemon Davis, *Fiction in the archives: pardon tales and their tellers in sixteenth-century France* (Stanford (California), 1987).

<sup>23</sup> Dana Rabin, 'Drunkenness and responsibility for crime in the eighteenth century', *Journal of British Studies* 44:3 (2005), 457-477.

<sup>24</sup> Klaus Ebel, 'Die strafrechtliche Bewertung der Trunkenheitsdelikte in der italienischen Wissenschaft bis zum ausgehenden 16. Jahrhundert: Studien zur Rezeption kanonistisch-scholastischen Gedankengutes durch das weltliche Strafrecht im speziellen Bereich der Trunkenheitsdelikte' (unpublished doctoral dissertation, Philipps Universität Marburg, 1968).

<sup>25</sup> There are some studies on theories on drunkenness from a legal perspective for the early modern period: David McCord, 'The English and American history of voluntary intoxication to negate *mens rea*', *Journal of Legal History* 11 (1990), 372-395 and Raoul van der Made, 'L'influence de l'ivresse sur la culpabilité (XVI<sup>e</sup> et XVII<sup>e</sup> siècles)', *Tijdschrift voor Rechtsgeschiedenis* 20:1 (1952), 64-88. A general study on drinking and responsibility is Barbara Critchlow, 'Blaming the booze: the attribution of responsibility for drunken behavior', *Personality and Social Psychology Bulletin* 9:3 (1983), 451-473.

<sup>26</sup> S.J. Grisar, 'Der "gute Trunk" in den Lutheranklagen', *Historisches Jahrbuch* 26:3 (1905), 479-507.

them have elaborated on it.<sup>27</sup> These works tend to refer to it in passing, usually citing Thomas Aquinas' *Summa theologiae* as the *de facto* source. Due to this, the prevalence of this discourse has long been understated, and this needs to be rectified, as it is crucial to our understanding of the medieval conception of drunkenness.

The final topic of this thesis moves away from the legal sphere and into the social stereotyping function of drunkenness. To do so, it will use a specific case study: medieval students. The choice for this case study hinges on several reasons. First, students were very much renowned for being drunk regularly, and there are many different source types in which the purported drunkenness of students is discussed. Secondly, it responds to a historiographical tendency to picture medieval students as drunkards without considering the image and framing that is utilized in this picture. This thesis aims to correct this tendency, illustrating how complicated the drunkenness of medieval students could be. Thirdly, it is possible to connect these stereotypes of drunkenness to recent theoretical frameworks posed by historians of student violence, which have often been inspired by changing notions in historiography of violence in general.<sup>28</sup> Historians have been recognizing that the ways student (mis)behaviour is portrayed is very much reliant on a twofold division of extremes: the good, 'true' student is posited against the 'false' student. Drunkenness was obviously the territory of the false student, but what happens when we add our observations on 'good' and 'bad' drunkenness to this framework, and what implications does this have for our conception of medieval students? These questions will be treated in this topic.

### Region, period, sources and structure

Because of its big scope and diversity of the subjects discussed throughout this thesis, a wide and interdisciplinary array of sources is needed for a proper analysis. The three topics, as discussed above, will also be employed as chapters. Each chapter will focus on its own set of sources, building on insights from the previous chapter(s) while also discussing its own separate case.

For the first chapter, the sources are relatively self-evident. To determine how the theoretical discourses on drunkenness were constructed, writings of canon lawyers and scholastics are the first obvious choice. As for the realm of penance, different types of

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<sup>27</sup> Vincent-Cassy, 'Between sin and pleasure', 404-405; Jaboulet-Vercherre, *The physician, the drinker, and the drunk*, 171; Lecoutre, *Le goût de l'ivresse*, 149-150; Tlusty, 'Defining "drunk"', 439-440.

<sup>28</sup> This topic has grown to be quite popular in historiography in the past decade. Skoda's work contains a chapter on student violence as a case study: *Medieval violence*, 119-158. See also Hannah Skoda, 'Student violence in fifteenth-century Paris and Oxford', in: Jonathan Davies (ed.), *Aspects of violence in Renaissance Europe* (Farnham, 2013), 17-40; Sophie Cassagnes-Brouquet, *La violence des étudiants au Moyen Âge* (Rennes, 2012); Scott Jenkins, 'Medieval student violence: Oxford and Bologna, c. 1250-1400' (unpublished doctoral thesis, Swansea University, 2014); Christopher Carlsmith, 'Student violence in late medieval and early modern Bologna', in: Sarah Rubin Blanshei (ed.), *Violence and justice in Bologna: 1250-1700* (Lanham, 2018), 207-225.

confessional manuals will be the main sources. Alongside, smaller source types that discuss the same academic discourse will be consulted, the main category being *quodlibeta*. There is no strict geographical focus other than 'Western Europe', as academic thoughts on this topic were relatively unified all across Europe. Most canon lawyers that will be discussed worked in the Italian areas, but attention will be paid as well to sources from the English and French regions.

The topic of canon law is, however, crucial for determining the temporal boundaries of this thesis. My era of investigation starts at 1140, at the *Decretum Gratiani*, for it is afterwards that we begin to discern a revitalized legal discourse on inebriation.<sup>29</sup> It ends at about 1500, although this dividing line is less clear – the aim is to show that the discourse has been firmly established, not so much where it ends. The chapter will be divided in two parts: 1140-1265 and 1265-1500. In the former timeframe, the discourse on 'good' and 'bad' drunkenness was still being established, whereas in the latter, it had settled in the thoughts of high all academics. Thomas Aquinas' *Summa theologiae* will be used as a – somewhat arbitrary – cut-off point between the two.

The second chapter, on legal practice, will utilize letters of remission from the French king's court at Paris to investigate how people were able to 'negotiate' drunkenness in a narrative in court. By using these sources, that are fundamentally narratives constructed by the suppliant (but written down and altered to fit standard conventions by a notary) to persuade the court to mitigate his punishment, it will consider to what degree the common laity itself was able to represent drunkenness in court in order to shape a narrative that could lead to an alleviated sentence. The chapter will focus on framing and the ways a drunken perpetrator – or opponent in the narrative – could be represented. These ways of framing will be referred to as 'negotiating' drunkenness. Finally, it argues that the laity was more or less aware of the conventions in law at the time, as we can find several (implicit) references to legal theory. In light of the ways these references are utilized, they resemble legal theory too much to be a coincidence.

The French case has first and foremost been selected for its abundant material: over 50.000 letters of remission can be found in the *Trésor des Chartes* in the Archives Nationales, Paris. Furthermore, Claude Gauvard has found that about 30 percent of the supplicants in the French letters of remission appealed to drunkenness as a reason for mitigation.<sup>30</sup> In contrast, looking at thirteenth-century plea rolls from England, Naomi Hurnard has determined (although she mentions it rather fleetingly) that drunkenness was actually not generally relied upon for mitigation.<sup>31</sup> As such, the French sources have been

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<sup>29</sup> There is some discussion on the exact dating of compilation of the *Decretum Gratiani*, but 1140 is the most commonly suggested year of origin (grossly), so I will use 1140 as the guideline for the temporal axis of this thesis.

<sup>30</sup> Claude Gauvard, "De grace especial": crime, état et société en France à la fin du Moyen Âge, 2 vols. (Paris, 1991), I: 449-450.

<sup>31</sup> Naomi D. Hurnard, *The king's pardon for homicide before A.D. 1307* (Oxford, 1969), 98.

chosen for their relevant material. The specific sample the chapter uses is letters issued between 1390 and 1400, which is right after the compilation of a law manual for the king's court in Paris (the *Grand coutumier de France*, 1385-1389) that confirms drunkenness could be a factor that justified a change in degree of punishment. This will be expanded upon in the chapter itself.

The third chapter, on student drunkenness, does not employ a particular source type. References to the drinking habits of students are found in so many source types that it would not make sense to limit to even a few. Instead, the chapter will use a variety of sources, from chronicle accounts, statutes and rules of the university, to sermons, books of the nations and court records. All of these sources give different perspectives on how student drunkenness was treated, and the chapter aims to establish how the subject was treated, what implicit implications moral accusations of student intoxication hold for the topic at large and how this relates to student drinking practices that we can discern from other sources.

For this chapter, the main case study is the University of Paris, with additional material from the University of Oxford. The Paris case keeps in line with the French focus of the second chapter and has the most and most accessible source material for the topic. Supplementary sources will be found in Oxford, especially in areas where the Parisian case has few sources available, most notably on the subject of disciplining drunk students. As the chapter argues that the two cities seem to have treated their drunk students relatively similarly, there will be no major comparative analysis between the two. Conforming to the time frame of the first chapter, this chapter focuses on the period from the conception of the universities (early 13<sup>th</sup> century) to the end of the Middle Ages (1500).

All the while, wherever applicable, next to legal opinions on drunkenness (that, admittedly, take most of the focus), the thesis will consider and reference religious, medical and social implications and meanings of drunkenness. It argues that in the case of drunkenness, these discourses are very much interconnected and influence one another. In doing so, it shows that, to fully understand the concept of 'drunkenness' in the late Middle Ages, one should take into account many different perspectives on the topic. In addition, one should move beyond just the conceptions of 'sin' and 'mitigating factor', and delve into the large space of meaning that lies in between the two sides of this spectrum.

## Chapter 1

### The 'good' and the 'bad' drunk

#### Late medieval scientific debates on drunkenness

*However, it should be noted that drunkenness is not a sin.*<sup>32</sup>

This quote, by Thomas of Chobham (c. 1160-1236), written in his handbook on penance and advice for confessors, may seem to be at great odds with the statements outlined in the introduction. How could drunkenness at once fall under the sin of gluttony as well as not being considered a sin at all?

As we will see, this has to do with the different definitions medieval authors attributed to the word *ebrietas* and to the idea of drunkenness in general. The drunk constituted an enigma to many authors: he was a sinner, yet in court, drunkenness was often considered a mitigating factor, which could lessen or even completely abolish a punishment for a crime committed during inebriation. These two observations seem very much at odds with each other. After all, was drunkenness itself not a sin, a crime against God? Medieval legal theorists and other scholars were actively pondering the question how to solve this problem, first in legal theory and later in texts originating from confessional, theological or university circles. This chapter will outline the discourse surrounding drunkenness, sin and punishment from Gratian's *Decretum Gratiani* to the end of the Middle Ages. It will make clear its predominance and argue that views on late medieval drunkenness cannot be understood without taking this discourse into account.

#### Judging drunkenness in court and penance (1140-1265)

##### *The forum externum*: Gratian and the decretists

Where did the idea that drunkenness could lessen responsibility originate? In modern criminal law theory, this is outlined through the following: a criminal offence generally requires both an *actus reus* ('guilty act', an act punishable by law) and a *mens rea* ('guilty mind', the willingness to commit that act). The *actus reus* is usually easy to identify, but pinpointing the *mens rea* can be more difficult. Typically, the *mens rea* in a given case today relates to the motive(s) and the intention(s) of the accused. However, there are many cases in which intoxication or other incapacities are involved, whether they are temporal (besides inebriation, e.g. drug use, somnambulism, affect) or continuous (e.g. insanity, mental disorders).<sup>33</sup> Because of this, the mental state of the defendant becomes

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<sup>32</sup> Thomas of Chobham, *Summa confessorum*, ed. F. Broomfield (Leuven & Paris, 1968), 409: "Est autem notandum quod ebrietas non est peccatum".

<sup>33</sup> Christoph Safferling, 'Insanity and intoxication', in: Markus D. Dubber & Tatjana Hörnle (eds.), *The Oxford handbook of criminal law* (Oxford, 2014), 654-676.

muddled and it is harder to determine whether they were fully aware of what they were doing and whether they *wanted* to.

Medieval law theorists and judges were faced with the exact same problem. They were familiar with the notion that in order to be punished fairly, one needed to be sufficiently aware of what they were doing and/or capable of stopping themselves from doing it. After all, this notion was already present in Roman law. As the law schools of the high and late Middle Ages mostly adapted and built upon Roman law, it should come as no surprise that it was prominently present in medieval law as well. Its implications, however, were altered slightly in the context of ecclesiastical law, because not only did the criminal acts themselves have to be taken into account, but also the degree of sin that resulted from the criminal act. Thoughts on when a person was sinning were actually quite similar to the *mens rea* discourse on crime. Just like a crime, a sin had to be called into life by the will of the sinner. An involuntary sin was not a sin, or at least not a grave one.

Drunkenness was the example of this *par excellence*. It was this idea, that drunkenness takes away the essential component of sinning and acting malignantly – the liberty of free will – that created the paradoxical situation in which one sin could mitigate another, for a sin had to be voluntary. Drunkenness was not alone in this category of causes that inhibited the use of reason; it was joined by madness, sudden bursts of anger, infancy, somnambulism and sleep, in the case of nocturnal emissions (which were a cause of concern for clerics, who needed to stay celibate). Anger especially was often treated together with drunkenness whenever the concept of inculpability came up throughout the late Middle Ages.<sup>34</sup>

The twelfth century saw a legal revival, which is often labelled as part of the 'Renaissance of the twelfth century'. Responding to socio-political needs and church reforms, scholars started to re-examine Roman law, particularly the *Digest*, a part of the *Corpus Iuris Civilis* compiled at the order of Emperor Justinian in the 6<sup>th</sup> century. This development was given a notable impetus by the foundation of the law schools of Bologna in the late 11<sup>th</sup> century, which would later merge into the University of Bologna. This university would remain the predominant scholarly centre of legal education and thought in the Middle Ages and the alma mater of many of the most influential scholars on canon as well as secular law.

The most important work from this period is the *Decretum Gratiani* (c. 1140). The *Decretum* was a large compilation of laws from different sources, that became the standard text for canon law during at least the 12<sup>th</sup> and 13<sup>th</sup> centuries and also formed the basis for

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<sup>34</sup> For more on anger as a concept in court and its treatment there, see Elizabeth Papp Kamali, 'The devil's daughter of hell fire: anger's role in medieval English felony cases', *Law and History Review* 35:1 (2017), 155-200; Suzanne Pohl-Zucker, 'Hot anger and just indignation: justificatory strategies in early modern German homicide trials', in: Kate Gilbert & Stephen D. White (eds.), *Emotion, violence, vengeance and law in the Middle Ages: essays in honour of William Ian Miller* (Leiden, 2018), 25-48.

subsequent refinements of legal theory. It is from Gratian onward that we start to find elaborate discussions on what we would refer to as *mens rea* that are important for understanding the legal significance of drunkenness in the following centuries.<sup>35</sup> The first question of the fifteenth *causa* in the *Decretum* deals with a variety of questions on the relation between soundness of mind and punishment, and intoxication is at the basis of one of them. Gratian writes – primarily based on Ambrose’s *De patriarchis* – that:

“[T]hey who have indulged in too much wine does not know what they say; they recline defeated; and therefore, should they commit a crime through wine, the learned judges have indeed granted them mercy, but the perpetrators are judged to be acting irresponsibly.”<sup>36</sup>

The relation between drunkenness and irresponsibility is thus established. However, although Gratian’s text confirms that a drunken perpetrator could be excused, it does not mean that he should be in all cases. That still depended on whether the suppliant had a *mens rea* while enacting his *actus reum*, or, put otherwise, how conscious he was during the acts he was committing. Huguccio (d. 1210), who wrote a commentary on Gratian’s *Decretum* around 1190 that would become one of the most influential works in the early manifestations of canon law, makes this distinction in the case of drunkenness: if the perpetrator failed to understand what he had done and why, he was to be excused entirely; if he partially understood, a punishment was in order, but a more lenient one than for someone wholly responsible.<sup>37</sup>

High and late medieval canonists had theological ideas in mind that corresponded to this idea, too. During the 12<sup>th</sup> century, with the growth of intentional ethics as a major building block for moral discourse, it was being established that someone’s will was known to God. Thus, the acts done willingly should be the central focus on deciding whether one fell on one side of the line between innocence and blame, or the other.<sup>38</sup> And with reference to Augustine, theologians and canonists from the 12<sup>th</sup> century onwards accepted that

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<sup>35</sup> This does not mean traces of *mens rea* do not exist before Gratian, cf. Martin R. Gardner, ‘The *mens rea* enigma: observations on the role of motive in the criminal law past and present’, *Utah Law Review* (1993, nr. 3), 635-750, here 641-684.

<sup>36</sup> Gratian, *Decretum Gratiani* C. 15, q. 1, c. 7: “Nesciunt quid loquantur qui nimio vino indulgent, iacent sepulti, ideoque, si qua per vinum deliquerint, apud sapientes iudices venia quidem facta donantur, sed levitatis dampnantur auctores.” All references to Gratian are to the online version of the Bayerische Staatsbibliothek, which is primarily based on the Emil Friedberg edition (Leipzig, 1879): <https://geschichte.digitale-sammlungen.de/decretum-gratiani/online/angebot> [last accessed 01-11-2019].

<sup>37</sup> Heikki Pihlajamäki & Mia Korpiola, ‘Medieval canon law: the origins of modern criminal law’, in: Markus D. Dubber & Tatjana Hörnle (eds.), *The Oxford handbook of criminal law* (Oxford, 2014), 203-224, here 206.

<sup>38</sup> The impact of this thought on canon law theory is illustrated by Michael Müller, *Ethik und Recht in der Lehre von der Verantwortlichkeit: ein Längsschnitt durch die Geschichte der katholischen Moraltheologie* (Regensburg, 1932), 72-73 and Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX* (Città del Vaticano, 1935), 24-30.

anything that impeded the use of this free will automatically reduce the blame of the supplicant, for God was aware that the person had done things without willing to do so.

Yet while this guideline of mitigation was put into effect, it only excused the supplicant of the perpetrated act; it did not excuse the drunkenness, which was a sin in and of itself. It is for this reason that Gratian, following Augustine, states that "Loth should be blamed not for his incest, but for his drunkenness".<sup>39</sup> Drunkenness was classified as a *culpa praecedens*, a preceding guilty act, the nature of which contained the basis of how the subsequent crime should be treated and punished.<sup>40</sup> Thus, the crime on trial was not the crime committed in drunkenness, but drunkenness itself. However, how to measure this crime? Gratian does not give a clear answer. Later 12<sup>th</sup>- and early 13<sup>th</sup>-century decretists take up the task of developing this question, and it is in their works that we start to find a nuanced treatment of drunkenness that would dominate discourses in law, penance and (perhaps) medieval culture as a whole in the centuries afterward.

The decretists recognized that, unlike sudden anger or sleepwalking, drunkenness originated from a deed that was at its best a venial sin. While there were still some discussions on whether the drunkenness or the perpetrated act was the one on trial, ultimately, the authority status of Ambrose (through Gratian) and Augustine won out and drunkenness was the primary *actus reum* to be weighed.<sup>41</sup> But for an *actus reum* to be punishable, a *mens rea* was required. This is where a new treatment of drunkenness was introduced. Rufinus, one of the most influential decretists from 12<sup>th</sup>-century Bologna, stated the following in the case of Loth: he was to be blamed for the drunkenness, but the crime would have been much graver if he had gotten drunk by his own volition.<sup>42</sup> The question posed is not about *whether* drunkenness should be treated as a sin (and thus an offense in canon law), but *how*.

While we cannot trace a full-fledged consensus throughout the 12<sup>th</sup>- and early 13<sup>th</sup>-century decretists, there are two concepts that turn up frequently and that are crucial for understanding the legal discourse on drunkenness as a possible mitigating factor.<sup>43</sup> The first is *contemptus*. The term is a bit vague and remains poorly defined by the decretists themselves, but it refers to an attitude of 'contempt' towards the law and the moral position of the Church. This means that a perpetrator is aware that he is committing a crime (and a sin), yet still chooses to do so.<sup>44</sup> With *contemptus*, there is always the possibility of an alternative choice, which the culprit does not take. Put in other terms, *contemptus* refers to a sort of intentionality.

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<sup>39</sup> Gratian, *Decretum Gratiani* C. 15, q. 1, c. 9: "Loth non de incestu, sed de ebrietate culpatur".

<sup>40</sup> Ebel, 'Die strafrechtliche Bewertung', 8-10.

<sup>41</sup> Kuttner, *Kanonistische Schuldlehre*, 119-124.

<sup>42</sup> Müller, *Ethik und Recht*, 92-93. See Rufinus, *Summa decretorum*, ed. Heinrich Singer, *Die Summa Decretorum des Magister Rufinus* (Paderborn, 1902; reprint Aalen, 1963), 346.

<sup>43</sup> Kuttner, *Kanonistische Schuldlehre*, 33-34.

<sup>44</sup> *Ibid*, 29-30.



The second concept is *assiduitas*, which is easier to define. Translated literally it means 'continuance' or 'frequency'; in the case of drunkenness, it refers to regularly getting drunk. 'Habituality' fits as a definition as well. Habitual intoxication in the medieval tradition comes closest to what we would today call 'alcoholism'. A light sin becomes a grave one in the case of either *contemptus* or *assiduitas*, and especially in the case of both.

How did the decretists come up with these two criteria specifically to determine whether drunkenness was tolerable? Some references to other passages of Gratian's *Decretum* provide clues. While *contemptus* is not used in the specific passage, Gratian does state, citing Bede, that sins stemming from ignorance or illness should be considered diminished compared to ones sprung from deliberate intent.<sup>45</sup> In the case of *assiduitas*, *distinctio* 35, *capitulum* 9 is sometimes referred to. This seems to be accurate, as Gratian mentions a stricter punishment for "him, who will have continually been drunk".<sup>46</sup> Yet the different phrasing (Gratian uses *constiterit*) leads me to believe the decretists had another inspiration in mind: a sermon attributed to Augustine, which is also quoted in Gratian. This is actually a sermon by Caesarius of Arles, but our medieval authors refer to it as a sermon by Augustine.<sup>47</sup> This pseudo-Augustinian sermon distinguishes between minor and capital sins. The latter category, the author states, includes "drunkenness, if habitual" (*ebrietas, si assidua sit*).<sup>48</sup> This sermon seems to be the definite origin of all claims that only habitual drunkenness is a mortal sin, and that non-habitual drunkenness is merely a venial one.

Some decretists only connect the evolution of a venial drunkenness to a mortal one to one of the two concepts, but most do consider both.<sup>49</sup> The *Summa 'Animal est Substantia'*, likely written at the University of Paris between 1206 and 1216 (formerly known as the *Summa Bambergensis*), for example, mentions that both drunkenness 'with contempt' and frequent drunkenness aggravate the sin.<sup>50</sup> Vincentius Hispanius' commentary on the constitutions of Council of Lateran IV stresses that a cleric's

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<sup>45</sup> Gratian, *Decretum Gratiani*, D. 25, c. 3, § 4: "Criminis appellatio alias late patet, complectens omne peccatum, quod ex deliberatione procedit. Unde Beda super epistolam Iacobi: 'Peccata, que ex ignorantia vel infirmitate humana committuntur, dicit et precipit alterutrum confiteri, quia facile dimittuntur: quecumque vero fiunt ex deliberatione, non nisi per penitentiam.'"

<sup>46</sup> Ibid, D. 35, c. 9: "Itaque eum, quem ebrium fuisse constiterit, (ut ordo patitur) aut triginta dierum spatio a comunione submoveatur, aut corporali subdatur suplicio."

<sup>47</sup> Ibid, D. 25, c. 3, § 6.

<sup>48</sup> This sermon was originally printed and attributed to Augustine as sermo CIV in *Patrologia Latina* 39 (1863), col. 1946. However, nowadays it has been recognized that this sermon is pseudo-Augustinian and is in fact a sermon by Caesarius of Arles, classified as sermo CLXXIX in modern collections. Caesarius of Arles, *Sancti Caesarii Arelatensis Sermones*, ed. G. Morin, Corpus Christianorum Series Latina 103-104, 2 vols. (Turnhout, 1953), here II (104): 724-729, specifically 725. My thanks to Shari Boodts for clarifying this and helping me with finding the correct source.

<sup>49</sup> For a more exhaustive selection of decretal commentaries and their treatment of drunkenness, see Ebel, 'Die strafrechtliche Bewertung', 10-24.

<sup>50</sup> *Summa 'Animal est Substantia'*, ed. Chris Coppens (Nijmegen, 2015), 523: "Primus enim motus invidie vel superbie non est mortalis, set venialis tantum. si assidua. Ebrietas enim veniale peccatum est, set contemptus inebriandi se mortalis. Et pro assidua ebrietate bene deponitur quis, .xxxv. d. Episcopus." Available online at:

<https://repository.ubn.ru.nl/bitstream/handle/2066/197926/197926b.pdf?sequence=3> [last accessed 17-10-2019].

drunkenness should be thoroughly investigated to determine whether it was either willingly (he uses *scienter*) or habitual, or both.<sup>51</sup> As for a final example, the *Apparatus or Glossa Ordinaria* by Johannes Teutonicus (c. 1216), which were endorsed by the University of Bologna, mentions both *contemptus* and *assiduitas*, stating that “drunkenness, if it is habitual: i.e. the intentionality of inebriating is called a mortal sin”.<sup>52</sup> In doing so, Teutonicus equals *contemptus* to *assiduitas*, which makes sense: by drinking habitually, the drinker becomes aware of the fact he is able to get drunk. He cannot fall back on the accidentality argument, thus making him break moral law knowingly and willingly.

In some later law manuals, we can also discern a precursor of a distinction in definition that would frequently appear in works on the *forum internum* (discussed in the next section). The *Summa 'Animal est Substantia'* contains an attempt to more precisely define what *ebrietas* means, in this case giving another definition: “in another meaning, a certain property in a man from which man gets inebriated more easily is [also] called ‘drunkenness’”.<sup>53</sup> It seems the author means a continuous predisposition, as a result of which a certain drinker gets drunk more easily. This likely refers to a natural susceptibility originating in someone’s complexion.

A very similar statement is made by Vincentius Hispanius, who states that it is a “property that is in a man, from which he is inebriated more easily” and designates that merely having this predisposition “is not a sin”.<sup>54</sup> But that is not all: *ebrietas*, in another definition, also refers to “a passion from which one is ruined by wine and does not know what one is doing”.<sup>55</sup> In other words, the condition one enters after having drunk too much.

Thus, *ebrietas* had different definitions, which further complicated how much sin a certain *ebrietas* had: was the state of being drunk sinful in itself? However, is this distinction made in the first place? Perhaps it is not just good for distinguishing between definitions, but also because getting drunk sporadically could be healthy from the viewpoint of dominant late medieval medical humoral theories, according to which it could purge

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<sup>51</sup> Vincentius Hispanius, *Glossae ad Constitutiones Concilii quarti Lateranensis*, ed. Antonio García y García, *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum* (Città del Vaticano, 1981), 309-310: “Quandoque dicitur ebrietas actus et tunc distinguitur an sit assiduus vel non, xxv. [sic] di § Criminis appellatio. Et appello assiduum quia alii precedunt, ‘alias idem actus non reiteratur’, vel aliter ubi quis scienter se inebriat, peccat mortaliter. Si vero ignoranter, peccat venialiter, quia decipitur ab uxore vel a serviente. Ideo autem ecclesia facit vim an sit ebrietas assidua an non, quia sic presumit magis contempnere vel minus.”

<sup>52</sup> “ebrietas si sit assidua: i.e. contemptus ebriandi dicitur mortale peccatum”. Quoted from Kuttner, *Kanonistische Schuldlehre*, 33.

<sup>53</sup> *Summa 'Animal est Substantia'*, 523: “In alia autem significatione ebrietas dicitur quedam qualitas que est in homine qua homo de facili inebriatur. Hoc autem non est peccatum, set pena peccati, .xv. q.i Sane.” Interestingly, the cited passage from Gratian (C. 15, q. 1, c. 7) does not seem to contain the information needed to create this statement; that would be D. 35, c. 9. See also the distinction made by Raymond of Peñafort as discussed in the next section.

<sup>54</sup> Vincentius Hispanius, *Glossae ad Constitutiones*, 309: “Ebrietate quandoque appellatur qualitas que inest homini, ex eo quod de facili inebriatur, et est quedam dispositio. Habet enim forte tenue cerebrum, et hoc non est peccatum, licet quidam dicant contrarium.”

<sup>55</sup> *Ibid*, 309: “Quandoque ebrietas dicitur passio ex quo iacet sepultus vino et nescit quod facit”.

superfluous liquids.<sup>56</sup> This *ebrietas* could refer to a different sort of 'drunkenness' than habitual 'drunkenness', which we would consider 'alcoholism' today.<sup>57</sup> Whatever the case, we will find more elaborate discussions on the topic of definition in later works.

To put it briefly and in non-legal terms: in canon law, the crime of drunkenness was increasingly being judged on the basis of two factors: whether the drinker had intended to get drunk, and whether he did so only occasionally or frequently. While the above discussions may be highly theoretical and technically only applicable to canon law, they would have a major impact on discussions on drunkenness in other circles. Next, we move to the internal counterpart of the *forum externum* of the ecclesiastical court, that took much from canon law, including these discussions on drunkenness.

#### *The forum internum: the first confessors' handbooks*

It is well-established that the similarities between the 'law' of penance and canon criminal law are too prevalent and striking to be coincidental.<sup>58</sup> The re-emergence of legal studies in the 12<sup>th</sup> century was paired with an increased interest in penance and confession. This development gained considerable momentum after the Fourth Lateran Council in 1215, which resulted in the decree *Omnis utrusque sexis* by Pope Innocent III, establishing that all adults had to confess annually. From that point onward, it was considered of the utmost importance that priests knew how to hear a confession properly. With this newfound development, several major confessors' handbooks were written throughout the 13<sup>th</sup> century, most notably the *summae confessorum* and *summae de casibus*.<sup>59</sup>

Much inspiration for these confessors' manuals was drawn from canon law. In fact, during the 12<sup>th</sup> and 13<sup>th</sup> centuries, confession was gradually considered to be a sort of counterpart to the ecclesiastical courts. The *forum externum*, the physical court of the Church, was intrinsically linked to the *forum internum*, the 'court' dealing with penance and confession.<sup>60</sup> There were no clear-cut manifestations of two different courts; the *forum externum* and *internum* were part of a metaphorical boundary between law and confession, while the two were actually intermingled. Boundaries between the theory of law and its practical applications were very much blurred. Furthermore, it should be noted that the term *forum internum* is a sixteenth-century invention and refers to a collective of several functions, grouped together to create a duality between two *fora*.<sup>61</sup>

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<sup>56</sup> Jaboulet-Vercherre, *The physician, the drinker and the drunk*, 184-185.

<sup>57</sup> This was suggested by Tlusty, 'Defining "drunk"', 433-435.

<sup>58</sup> Pihlajamäki & Korpiola, 'Medieval canon law', 204-205.

<sup>59</sup> Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au Moyen Âge (XIIe-XVIe siècles)* (Leuven, 1962).

<sup>60</sup> An excellent introductory article to this concept and its implications for confessional guides is Joseph Goering, 'The internal forum and the literature of penance and confession', *Traditio* 59 (2004), 175-227.

<sup>61</sup> Wolfgang P. Müller, 'The internal forum of the late Middle Ages: a modern myth?', *Law & History Review* 33:4 (2015), 887-914, here 888.

Nevertheless, the *summae confessorum* had a different audience than treatises on canon law. Essentially, their primary function was to make accessible to clerics dealing with confession the intricacies discussed in canon law. As such, these *summae* are drenched with knowledge gathered from canon law texts.<sup>62</sup> This is especially the case for the early *summae*, which were compiled at a point at which the *summa confessorum* was not yet an established genre.

One can easily trace the influences of canon law in a *summa* released shortly after – and as an immediate result of – the Fourth Lateran Council: the *Summa de casibus* by Raymond of Peñafort.<sup>63</sup> Having studied in Bologna, Raymond compiled two instructive works for his fellow confessors in the 1220s and 1230s, which combined make the *Summa de casibus*. It was given a commentary by William of Rennes in the 1240s, and the text and commentary together became the most authoritative text on confession in the 13<sup>th</sup> century. At first glance, the *Summa de casibus* does not seem to adopt the discussion on drunkenness made in several of the commentaries referenced in the previous section. In a section about appropriate punishment for a drunk, we do not find an elaborate discussion about possible circumstances and their effect on the gravity of the transgression. The only reference to the remising quality of drunkenness is found in a passage in which Raymond, following Augustine, states that Lot was excused due to drunkenness, and thus it might excuse sin.<sup>64</sup> Any further specifications are absent.

However, in an earlier section, named 'de sobrietate ordinandum', Raymond does refer back to the drunkenness discussion in canon law works. Furthermore, he introduces another element that would be frequently cited in subsequent works, having to do with definition. Raymond distinguishes between three definitions of *ebrietas*. The first definition is a "numbness of the mind", the state of being drunk, and is specifically *not* a sin, but the consequence (*poena*) of a sin.<sup>65</sup> The second definition re-introduces the distinction between occasional and habitual drinking, as the former is a venial sin, while the latter is a mortal one.<sup>66</sup> The final definition he gives refers to what could also be called *ebriositas* in Latin: a disposition of the mind for getting drunk, i.e. deliberately wanting to get drunk.<sup>67</sup> This is always a mortal sin.

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<sup>62</sup> For an exploration of how canon law knowledge re-appears in confessional manuals, see Winfried Trusen, 'Forum internum und gelehrtes Recht im Spätmittelalter: *Summae confessorum* und Traktate als Wegbereiter der Rezeption', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte / Kanonistische Abteilung* 57:1 (1971), 83-126.

<sup>63</sup> Michaud-Quantin, *Sommes de casuistique*, 34-42.

<sup>64</sup> Raymond of Peñafort, *Summa de casibus*, ed. Xaverio Ochoa & Aloisio Diez, *S. Raimundus de Pennaforte: Summa de paenitentia* (Rome, 1976), col. 728-729.

<sup>65</sup> Ibid, col. 584: "Nota tamen quod ebrietas dicitur tribus modis. Primo dicitur ebrietas: poena et oblivio mentis; ista non est peccatum."

<sup>66</sup> Ibid, col. 584: "Secundo modo dicitur ebrietas: actio sive frequens actus bibendi; et haec, ut ait Augustinus, est veniale peccatum, nisi sit assidua, quia tunc est mortale, maxime si novit vires vini et non vult apponere aquam."

<sup>67</sup> Ibid, col. 584: "Tertio dicitur quaedam dispositio mentis et studium ad inebriandum se de facili; et hoc semper est mortale peccatum."

However, Raymond of Peñafort's *Summa de casibus* is not the first non-legal work in which we find a thorough treatment of drunkenness along the lines of the decretists. The earliest work I have found is that of Peter the Chanter (d. 1197), a theologian operating from 12<sup>th</sup>-century Paris. He seems to have adapted a fair amount of canon law concepts in his *Summa de Sacramentis et Animae Consiliis*, a series of casuistic questions on the sacraments.

First and foremost, at two distinct occasions, Peter cites the pseudo-Augustinian sermon in stating that (only) frequent drunkenness is a mortal sin.<sup>68</sup> Yet he is not satisfied, pointing at the fact that *ebrietas* had multiple meanings, referring to medical theories of wine's effects: "For drunkenness in itself is some sort of stupor in the mind or in man, stemming from the strong smokiness of wine and obstruction of the nerves; this stupor is not a sin, but a punishment".<sup>69</sup> At the same time, the act of inebriating oneself is also called *ebrietas*, which Augustine (i.e. Caesarius of Arles) seems to be referring to, according to Peter.<sup>70</sup> But when can we call drunkenness *assidua*? Peter proposes that this is the case "when one descends [into drunkenness] by volition".<sup>71</sup> In another section, he specifically refers to this as *contemptus*, likely indicating that he was inspired by canon law texts on this matter.<sup>72</sup>

It is not quite a systematic approach, but Peter comes close. When his ideas are taken over by one of his protégés, Thomas of Chobham (c. 1160-c. 1236), who studied under Peter in the 1180s, they are placed in the framework of confession in his *Summa confessorum*, a guideline for confessors that was particularly popular in England. Thomas of Chobham was seemingly not particularly interested in legal casuistry and based his arguments less heavily on canon law texts and more on intermediate sources of moral theology.<sup>73</sup> However, in his passages on drunkenness, canon law influence does become apparent through the intermediary of Peter the Chanter, whose ideas he often takes over.

Chobham discusses drunkenness at length. Just like Peter, Chobham does distinguish between a state of inebriation that is not a sin and an urge to get drunk / enjoying it all

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<sup>68</sup> Peter the Chanter, *Summa de sacramentis et animae consiliis*, ed. Jean-Albert Dugauquier, 5 vols. (Leuven, 1954-1967), here II: 154: "Sequitur, quod dicit ebrietatem si assidua sit, esse mortale peccatum"; and V (IIIb): 565: "quia ebrietas nisi fuerit assidua, non est peccatum mortale, ut dicit Augustinus".

<sup>69</sup> Ibid, II: 154: "Ebrietas enim proprie est stupor quidam celebri vel hominis, proveniens ex fumositatem forte vini et opilatione nervorum, talis stupor non est peccatum sed pena." Cf. V (IIIb): 565: "Similiter ebrietas, id est stupor ille capitis pena est, non culpa."

<sup>70</sup> Ibid, II: 154: "Sed forte quia actio inebriantis habet talem stuporem sibi adiunctum, actio ipsa ebrietas appellatur."

<sup>71</sup> Ibid, II: 154: "Potest dici quod actio inebriandis etiam prima, dummodo ex proposito descendit, mortalis est. Quod autem sequitur si assidua sit, dicimus sicut supra adiectum esse quasi signum ex quo cognoscitur quod ex proposito descendat."

<sup>72</sup> Ibid, V (IIIb): 565: "Si dixerit quis quod quando ex contemptu se inebriat, mortaliter peccat."

<sup>73</sup> I follow the suggestion by Broomfield that Chobham was likely influenced by the works of Peter the Chanter and not by the decretist commentaries that had already been written, although he does reference Gratian at certain points. See Broomfield, *Thomae de Chobham Summa confessorum*, lxii-lxix.

the while, only the latter of which is a sin.<sup>74</sup> Chobham also designates acts perpetrated in drunkenness as arising from an 'impulsive cause', i.e. a cause that arises suddenly and without use of active rational will, which included drunkenness.<sup>75</sup>

His discussion on how to make someone confess their drunkenness is the most significant passage, however. Chobham gave a big role to the initiative of the confessor: he was to find out the exact circumstances of the drunkenness before deciding how much the penitent had sinned. Chobham stated that it was of the utmost importance that the confessor asked the penitent how he had inebriated himself, for drinking to drunkenness was a venial sin if the drinker had done so "either because he perhaps did not know the strength of the wine, or because of guests, or because of excessive thirst".<sup>76</sup> The label of mortal sin applied when the drinker had drunk "solely because of the eagerness to drink and because of a desire for pleasure".<sup>77</sup> Even outside of his section on drunkenness, when Chobham refers to drunkenness being among the mortal sins, he adds that this was only the case "when it is a constant habit", similarly to how short bursts of anger were not a deadly sin until they were held for a long time.<sup>78</sup>

#### Thomas Aquinas on the case

While the early thirteenth century seems to be characterized by a growing standardization of a method on how to deal with drunkenness, the second half of the century marks the point where these ideas became truly established. This will be demonstrated by a discussion of its treatment by Thomas Aquinas. The *Summa theologiae* (1265) discusses many of the questions posed in canon law and theology. Drunkenness is one of them: quaestio 150 of the *Secunda secundae* provides us with the most exhaustive and developed discussion on the nuances of drunkenness in the late Middle Ages thus far. Although the passage in the *Summa theologiae* was not very unique or even innovative in its opinions, Aquinas was one of the first to comprehensively and succinctly summarize all concepts that had been thought of up to that point. While it should be addressed that Aquinas' works might not have been as widely read outside the Dominican order (which was the originally

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<sup>74</sup> Thomas of Chobham, *Summa confessorum*, 409: "Est autem notandum quod ebrietas non est peccatum, sed est potius stupor et morbus capitis et perturbatio sensuum et pena totius corporis. Sed affectus et diligentia inebriandi se et delectatio potus ista sunt peccata ex quibus nascitur talis pena."

<sup>75</sup> Thomas of Chobham, *Summa confessorum*, 56: "Causa impulsiva est que subito nata impellit hominem ad aliquod scelus, ut ebrietas, ira, amor, forma muliebris, fames, sitis, nuditas et similia."

<sup>76</sup> Ibid, 409: "Diligenter ergo sacerdos debet inquirere a penitente suo ebrioso quomodo se inebriaverit, vel quia forte ignoravit potentiam vini, vel propter hospites, vel propter nimiam sitim supervenientem, quia in talibus casibus ebrietas est veniale peccatum."

<sup>77</sup> Ibid, 409: "Sed si ex solo studio potandi et ex desiderio delectationis inebriavit se, mortaliter peccavit."

<sup>78</sup> Ibid, 18: "Sacrilegium, homicidium, adulterium, fornicatio, falsum testimonium, rapina, furtum, superbia, invidia, avaritia, et si longo tempore teneatur iracundia, et ebrietas, si assidua sit, in eorum numero computatur." This passage is an almost verbatim citation of the sermon by Caesarius of Arles (attributed to Augustine) cited earlier.

intended audience of the *Summa*), Aquinas is cited frequently as a source in passages on drunkenness in subsequent works.

Quaestio 150, found in Aquinas' treatise on temperance, contains four articles, each with their own main question.<sup>79</sup> His text is not a clear-cut argument on how inebriation should be treated, but rather a series of pros- and cons-lists in the midst of which his arguments are buried. The first three questions deal with the status of drunkenness as a sin, respectively whether it is a sin, a mortal sin and the gravest of sins. The fourth question, that is of particular interest to us, is whether drunkenness excuses from sin.

The first article asks whether drunkenness is a sin. Here, Aquinas, too, distinguishes between two definitions of *ebrietas*: the state of drunkenness and the act that incurs drunkenness. The first definition is not a 'fault' in itself, but a "penal defect due to a fault".<sup>80</sup> Furthermore, he divides the act of drinking that leads to drunkenness in two more categories, depending on whether the drinker is aware the wine he is drinking is too strong, or consumed in too great a quantity for him to handle. This is important, for according to Aquinas, the first category is excused from sin; the Noah story from Genesis also belongs to this category. If someone is fully aware they are getting drunk, however, it is an act of "inordinate concupiscence" and pertains to the sin of gluttony.<sup>81</sup>

Article 2 of quaestio 150 introduces a further distinction in the latter category, having to do with the degree in which someone is sinning. If someone considers the drink to be immoderate, but is unaware that he is consuming an intoxicating beverage, he only commits a venial sin.<sup>82</sup> However, if a man is fully aware that a drink is intoxicating and immoderate, yet still chooses to get drunk, the mortal sin of gluttony applies and the sinner is entitled to the label of *ebrius*: drunkard.<sup>83</sup> The key component here is purpose: the person who willingly and knowingly (*volens et sciens*) drinks abundantly, knowing it will deprive him of his reason, commits a mortal sin.<sup>84</sup>

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<sup>79</sup> This text is also discussed (much more elaborately) in Ebel, 'Die strafrechtliche Bewertung', 48-76, who arrives at fundamentally the same conclusions as I do here.

<sup>80</sup> Thomas Aquinas, *Summa theologiae* IIa IIae, q. 150, art. 1: "Uno modo, prout significat ipsum defectum hominis qui accidit ex multo vino potato, ex quo fit ut non sit compos rationis. Et secundum hoc, ebrietas non nominat culpam, sed defectum poenam consequentem ex culpa." All references to the *Summa theologiae* are to the Editio Leonina, 9 vols. (Rome, 1888-1906), available online at <http://www.corpusthomicum.org/repedleo.html> [last accessed 13-11-2019].

<sup>81</sup> Ibid: "Alio modo ebrietas potest nominare actum quo quis in hunc defectum incidit. Qui potest causare ebrietatem dupliciter. Uno modo, ex nimia vini fortitudine, praeter opinionem bibentis. Et sic etiam ebrietas potest accidere sine peccato, praecipue si non ex negligentia hominis contingat, et sic creditur Noe inebriatus fuisse, ut legitur Gen. IX. Alio modo, ex inordinata concupiscentia et usu vini. Et sic ebrietas ponitur esse peccatum."

<sup>82</sup> Ibid, q. 150, art. 2: "Alio modo, sic quod aliquis percipiat potum esse immoderatum, non tamen aestimet potum esse inebriare potentem. Et sic ebrietas potest esse cum peccato veniali."

<sup>83</sup> Ibid: "Tertio modo, potest contingere quod aliquis bene advertat potum esse immoderatum et inebriantem, et tamen magis vult ebrietatem incurrere quam a potu abstinere. Et talis proprie dicitur ebrius, quia moralia recipiunt speciem non ab his quae per accidens eveniunt praeter intentionem, sed ab eo quod est per se intentum. Et sic ebrietas est peccatum mortale."

<sup>84</sup> Ibid: "Quia secundum hoc, homo volens et sciens privat se usu rationis, quo secundum virtutem operatur et peccata declinat, et sic peccat mortaliter, periculo peccandi se committens."

It is not called *contemptus*, but again, intentionality is the first major criterium on how to treat drunks in Aquinas.<sup>85</sup> There is a slight difference here, however. Aquinas argues that involuntary inebriation is completely devoid of sin, whereas for most of the discussed decretists (e.g. Rufinus) and authors of confessional guides (e.g. Thomas of Chobham), it is still a venial sin. Aquinas' complete negation of the sin allows for someone to get drunk and not sin, unless there was a voluntary component involved. Judging from a passage in Aquinas' *De malo*, it is not unlikely that he had a hypothetical situation from canon law in mind, as he draws on the example of a (voluntary) homicide in a drunken state: "For example, we impute homicide committed due to drunkenness to a human being as a moral fault, since the initial drunkenness was voluntary."<sup>86</sup>

The second criterium, *assiduitas* or habituality, is not referred to explicitly by Aquinas, although it does not seem much of a stretch to insert it here. A drunkard, after all, can be considered a repeat offender, as a drunkard only becomes a drunkard when he gets drunk more than sporadically. A man in full knowledge that wine is intoxicating yet still gets drunk, is a sinner. But this knowledge would be acquired through experience, and some people would get drunk faster than others due to their natural constitution. Thus, each man had the responsibility to be aware of his limits and not drink to satiety, for failing to do so would not only endanger the body, but also invoke sin.<sup>87</sup>

The third article ('Is drunkenness the gravest of sins?') does not add any knowledge relevant to us here, so let us consider the apex: the fourth article. Indeed, does drunkenness excuse from sin? Aquinas uses the arguments he set up in the previous articles to form a streamlined theory. If one takes drunkenness to be the state of mind through which reason is lost, then drunkenness excuses from sin.<sup>88</sup> If the preceding act is without sin, the subsequent sin is excused entirely.<sup>89</sup> If, however, the preceding act is sinful – which is the case if the drunkenness was voluntary (and by association, habitual) – the crime is not excused altogether, only by an equal amount to the degree of

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<sup>85</sup> Aquinas makes a similar case in his *De malo*, in which he states that drunkenness is only bound to sin when it is voluntary. Thomas Aquinas, *De malo* q. 16 a. 5, trans. Jean T. Oesterle, *The collected works of Thomas Aquinas: On Evil* (Notre Dame (Indiana), 1995), 487: "Just as a drunkard is bound not to sin, not indeed in view of his present condition but when considered as the voluntary cause of his drunkenness, according to which a thing is imputed to him as a fault, so also it can be understood that the devil is bound to turn toward God, although this is impossible for him according to his present state because he has fallen into this state of his own free will."

<sup>86</sup> Ibid, q. 3 a. 10.

<sup>87</sup> Jaboulet-Vercherre, *The physician, the drinker and the drunk*, 169-170; Vincent-Cassy, 'Between sin and pleasure', 402.

<sup>88</sup> Thomas Aquinas, *Summa theologiae* IIa IIae, q. 150, art. 4: "Ex parte autem defectus consequentis, in quo ligatur usus rationis, ebrietas habet excusare peccatum, in quantum causat involuntarium per ignorantiam."

<sup>89</sup> Ibid: "Sed ex parte actus praecedentis, videtur esse distinguendum. Quia si ex actu illo praecedente subsecuta est ebrietas sine peccato, tunc peccatum sequens totaliter excusatur a culpa, sicut forte accidit de Lot."



involuntariness.<sup>90</sup> (Thomas remains silent on how to measure this degree of involuntariness, however.)

Thus, Thomas comes to much of the same conclusions that we have seen before. His treatment is nowhere near new, but it is very elaborate and commonly referenced by later authors (particularly Dominicans). Furthermore, his copious discussion marks the standardization of this discourse, which would continue to dominate in subsequent centuries.

### Drunkenness after 1265: further developments

#### Penance, confession and the laity

Yet another influential confessional guide from the end of the 14<sup>th</sup> century was the *Summa confessorum* by John of Freiburg (d. 1314).<sup>91</sup> Freiburg's intention was to write a condensed and more easily usable version of Raymond of Peñafort's *Summa de casibus*. This work can be considered a revised version of Raymond's work – its structure and separation in sections is nearly exactly the same – that was also supplemented by citations of Aquinas' *Summa theologiae*. Due to its complexity in arguments, Freiburg also compiled a condensed version of his *Summa*, the *Confessionale*, a work specifically designed to teach confessors. In terms of discussion on drunkenness, Freiburg cites the aforementioned articles of Aquinas, again stressing the tripartite division and distinguishing between occasional and accidental drunkenness, and habitual and intentional drunkenness.<sup>92</sup> In terms of arguments, very little novelty is found here.

In fact, that much is true for the entire fourteenth and fifteenth centuries. Now that a clear guide on how to deal with drunkenness as a confessor had been established, most authors seem to be content with repeating what has previously been stated, apart from very slight developments. We do see an evolution, however, in the manner of presentation, due to changes in genre conventions. From the late thirteenth century onward, the confessional genre saw the rise of *casus conscientiae*. In this structure, a specific moral and/or judicial problem, a *casus*, was offered that was confined to a discussion on that problem only, without being preceded by a general introduction or being treated in an overarching narrative.<sup>93</sup> This improved accessibility, for a confessor only had to read a single section on the specific problem he was facing to understand what he had to do. We can already see this development in John of Freiburg and even Thomas of Chobham, which were arranged thematically, but later on, these *casus* were also arranged alphabetically,

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<sup>90</sup> Ibid: "Si autem actus praecedens fuit culpabilis, sic non totaliter aliquis excusatur a peccato sequenti, quod scilicet redditur voluntarium ex voluntate praecedentis actus, in quantum scilicet aliquis, dans operam rei illicitae, incidit in sequens peccatum. Diminuitur tamen peccatum sequens, sicut et diminuitur ratio voluntarii."

<sup>91</sup> Michaud-Quantin, *Sommes de casuistique*, 43-53.

<sup>92</sup> John of Freiburg, *Summa confessorum* (Lyon, 1518), fol. 99r (especially quaestio 2).

<sup>93</sup> Michaud-Quantin, *Sommes de casuistique*, 52.

to further improve readability. *Ebrietas* was no longer just a subsection of *gula*, but is treated as its own, separate *casus*.

Astesanus of Asti's *Summa de casibus conscientiae* (c. 1317) is one of the first works to do this, treating it together with its opposite virtue, sobriety. His explanation is more of the same, although he does emphasize Aquinas' thought that the amount of sin detracted could be quantified, i.e. that it was equal to the degree of free will lost by drunkenness.<sup>94</sup> This *casus*-treatment is continued by e.g. Bartholomaeus of San Concordia (c. 1260-1347), basing his case mostly on Aquinas.<sup>95</sup> Later on, Antoninus of Florence (1389-1459) follows suit in his *Confessionale* as well.<sup>96</sup> Drunkenness also earned a spot in the *Pantheologica* of Rainerius of Pisa (d. c. 1348), sometimes referred to as 'the oldest theological encyclopaedia', in which it was discussed extensively.<sup>97</sup> Thus, drunkenness had been established as a topic worthy of discussion in confessional manuals and *summae de casibus* and it continued to be so in the fifteenth century, with it being discussed all throughout Europe, from Italy to the Low Countries.<sup>98</sup>

The discourse was not just limited to confessional tracts. The *Manipulus curatorum* by Guido de Monte Rochen, a very popular handbook for simple priests written around 1331, contains a much shorter, but still very similar treatment of drunkenness. Guido, too, distinguishes the state of drunkenness from the action of drinking frequently and a disposition and eagerness for getting drunk.<sup>99</sup> Furthermore, Guido illustrates that the other parts of the discourse have been accepted, for in other parts of his work, whenever he refers to drunkenness, he almost always underlines that only deliberate or habitual drunkenness is a mortal sin.<sup>100</sup>

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<sup>94</sup> Astesanus of Asti, *Summa de casibus conscientiae* (Strasbourg, c. 1469), fol. 77v: "Queritur utrum ebrietas excuset a peccato. Respondeo: in ebrietate duo attenduntur, scilicet defectus consequens et actus precedens. Primum excusat peccatum in quantum involuntarium causatur per ignorantiam. Circa secundum [...] si autem actus precedens fuit culpabilis sic excusatur non a toto peccatum sequens per eo quod redditur voluntarium ex voluntate actus precedentis, sed a tanto quia diminuitur ibi ratio voluntarii."

<sup>95</sup> Bartholomaeus of San Concordia, *Summa de casibus conscientiae* (Speyer, 1479), fol. 71r-71v. Bartholomaeus heavily relies on Thomas Aquinas and Raymond of Peñafort in his treatment of drunkenness, citing both of them.

<sup>96</sup> Antoninus of Florence, *Confessionale: Defecerunt* (Rome, 1478), fol. 50r.

<sup>97</sup> Rainerius of Pisa, *Pantheologica* (Venice, 1486), fol. 177r-177v.

<sup>98</sup> For Italy, see e.g. Angelus Carletus de Clavasio, *Summa Angelica de casibus conscientiae* (Venice, 1487), fol. 86v-87r; for a work from the Low Countries, see Arnold Gheyloven of Rotterdam, *Gnotosolitos parvus*, ed. and trans. Anton Weiler, *Het moderne veld van de Moderne Devotie, weerspiegeld in de Gnotosolitos parvus van Arnold Gheyloven van Rotterdam, 1423: een summa van moraaltheologie, kerkelijk recht en spiritualiteit voor studenten in Leuven en Deventer* (Hilversum, 2006), 141-142.

<sup>99</sup> Guido de Monte Rochen, *Manipulus curatorum*, ed. and trans. Anne T. Thayer, *Handbook for curates: a late medieval manual on pastoral ministry* (Washington, 2011), 234.

<sup>100</sup> Ibid, 79 ("But if the thought did not have deliberate consent, or the drunkenness or intoxication was not deliberate or habitual, it is a venial sin"); 206-207 ("Likewise, drunkenness by its own nature is not a mortal sin; the circumstance "how often" is added, that is, that one is already in the habit of getting drunk, now it is a mortal sin."); 225-226 ("when one willingly drinks oneself into a state that one does not know how to conduct oneself, and then gluttony is a mortal sin"); 233 ("let the confessor ask [...] if he got drunk, and if he has the habit of getting drunk").

In most, if not all confessional and theological works that contain passages on drunkenness, the discourse is referred to. This is the case up to at least Luther, who distinguishes between *ebriositas* (habitual drunkenness) and *ebrietas* (irregular intoxication).<sup>101</sup> The prominence of this discourse should be clear. Thus, we can determine it was transmitted from works on canon law theory, drawn up in highly learned circles, to less learned circles through the medium of confession.

Can we also find out whether this discourse was known in even less learned circles, i.e. by a lay audience? We do not have much information on how such information was disseminated to people who could not read, but it can be reasonably assumed that laymen could have picked up on these concepts through confession. After all, they were obliged to confess annually. Further hints might be found in sources that were aimed at the laity in the context of confession. Forms of confession could be a promising source, as they had the primary goal of giving the laity a 'form' to follow so they would know how to confess properly. However, this genre has largely been unexplored so far, and most of the relevant sources have not been edited and are only available in manuscript form.<sup>102</sup> As such, I have not been able to perform a systematic search. Some of them do mention drunkenness, and I would like to highlight one example, dating from around 1300 and likely made for a Benedictine monastery in England. Drunkenness is mentioned as one of the sins to confess, and interestingly, it is noted that drunkenness could be either willing or unwilling.<sup>103</sup> There is no further clarification on what this means for the gravity of the confession, but the fact that it is mentioned in the first place might hint at a reference to the discourse on drunkenness and voluntariness.

Sermons could be a another good source to try and answer the question of lay knowledge. However, yet again, most of the material is only accessible in manuscript form. Because of this, I have not been able to conduct an exhaustive investigation into a large body of sermons. One specimen mentioned in passing by Hervé Martin does seem to confirm that the intricacies of drunkenness were, in fact, treated in sermons.<sup>104</sup> It specifically refers to the difference between venial drunkenness (accidental) and mortal drunkenness (intentional).<sup>105</sup> Perhaps this could also be an indication that the laity was

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<sup>101</sup> Tlusty, *Bacchus and civic order*, 74; Grisar, 'Der "gute Trunk"'.  
<sup>102</sup> Michael E. Cornett, 'The form of confession: a later medieval genre for examining conscience' (unpublished PhD dissertation, University of North Carolina, Chapel Hill, 2011) should be the primary point of departure for dealing with this source type.

<sup>103</sup> London, British Library, MS Cotton Galba E IV, fol. 93v: "Sepe et multum usque ad ebrietatem potum sumpsi, [quoque] scienter, [quoque] ignoranter et invitus." I owe the reference to Cornett, 'The form of confession', 141.

<sup>104</sup> Hervé Martin, *Le métier de prédicateur en France septentrionale à la fin du Moyen Âge (1350-1520)* (Paris, 1988), 375.

<sup>105</sup> Clermont-Ferrand, Bibliothèque municipale et universitaire, MS 44, fol. 100r. Regrettably, I have been unable to consult the manuscript and Martin does not give a Latin citation, although he does cite a French translation of several excerpts, so I will give part of his text here: "Est-ce à dire que trop boire soit toujours un péché? Pas s'il agit d'ébriété accidentelle, 'par ignorance de la force du vin'. La faute n'est que vénielle 'si l'on sait que le vin est capiteux, mais que l'on pense pouvoir

able to gain knowledge on the subject. However, it is impossible to determine whether this one case is exemplary of a larger trend, but it might be. Further research will have to clarify lay knowledge on the implications of drunkenness.

#### *Quodlibeta* on drunkenness and punishment

From the late 13<sup>th</sup> century onwards, we find another source type that discusses questions around the discourse of drunkenness. These would be *quodlibeta*, (reports of) sessions at universities at which scholars had to answer a question without preparation. I have identified three surviving late thirteenth-century *quodlibeta* on the question whether someone who commits a murder in a state of drunkenness should be punished two times (once for the drunkenness, once for the crime), one from the Gonterus collection and the other two by the secular masters Peter of Auvergne and Henry of Ghent.<sup>106</sup> Although the immediate inspiration for the subject of these *quodlibeta* originates from a different source, namely Aristotle's *Nicomachean Ethics*, the fact that the question was thought interesting enough to be posed in the first place suggests that these sources, too, were part of the broader late medieval discourse around the repercussions of drunkenness.<sup>107</sup>

Gonterus' *quodlibet* (*Quodlibet Gonteri*, 49) as we have it is very brief and treats intoxication along with 'passion' or frenzy; we have already seen that these two states were considered to be similar.<sup>108</sup> Gonterus argues that if we do consider drunkenness to be an involuntary state, the amount of sin is diminished by the amount of consciousness lost; we have seen the same argument in various works discussed above, such as those by Thomas Aquinas and Astesanus of Asti.<sup>109</sup> We can gather from this that these academically trained theologians were aware of the discussions on drunkenness that were circulating at the time, and had accepted their validity.

Peter of Auvergne (d. 1304) (*Quodlibet* II.18) approaches the problem from the angle of a different question, namely: should we consider drunkenness to be an additional punishable delict, or should we consider drunkenness to be part of the offense, treating them together and punishing them as one?<sup>110</sup> But even if the question is slightly different,

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bien le supporter'. En revanche, elle devient mortelle 'si l'on sait que le vin est fort est délicieux' sans s'en priver pour autant."

<sup>106</sup> Peter of Auvergne speaks about rape or thievery ('incestum vel furtum') instead of murder, but the implications are the same.

<sup>107</sup> *Nicomachean Ethics* book 3, section 5 specifically mentions that penalties were doubled in a state of drunkenness in the time of Aristotle. See for a more elaborate discussion of this discourse and the role of Aristotle: Ebel, 'Die strafrechtliche Bewertung', 32-38.

<sup>108</sup> This *quodlibet* is part of the collection by Nicholas of Bar (manuscript 15850 as given below was owned by Nicholas of Bar) and is identified as belonging to the corpus known as *Gonteri*, hence the attribution to Gonterus here. It is very unclear who Gonterus was and how he fits into this collection. See Sylvain Piron, 'Nicholas of Bar's collection', in: Chris Schabel (ed.), *Theological quodlibeta in the Middle Ages: the fourteenth century* (Leiden, 2007), 333-343.

<sup>109</sup> BnF, lat. 15850, fol. 24rb: "Dicendum quod illud homicidium, scilicet se acceptum non est voluntarium, est tantum voluntarium relatum ad radicem peccati precedentis, tantum voluntarie dimisit."

<sup>110</sup> BnF, lat. 15841, fol. 20ra: "Primo considerandum est utrum ille qui committit furtum vel incestum propter ebrietatem committat peccatum duplex, scilicet ebrietatis et furti, aut unum

the *quodlibet* is still actively engaging with the same discourse on drunkenness. Peter's answer, too, hinges on two definitions of drunkenness: the first is the state of drunkenness, which is without sin.<sup>111</sup> The second is the act of inebriation, which – again, a sin if voluntary – causes the 'incestum vel furtum' to occur.<sup>112</sup> In this line of thought, the latter is a direct consequence of the preceding act, which technically means they are part of the same sin and not a separate sin, according to Peter.<sup>113</sup> Thus, it is also justified that they are punished as one and the same, but judged by the amount of sin originating from the act of inebriation – which is only marginally different from what we have seen before.

The final surviving *quodlibet* on this topic, by Henry of Ghent (c. 1217-1293) (*Quodlibet* III.26), is by far the longest account on drunkenness known to us from the Middle Ages, spanning several pages, citing many authorities, giving many examples and tackling many philosophical and scholastic debates.<sup>114</sup> It has already been explored thoroughly by Elsa Marmursztejn, and it fundamentally discusses the same crucial elements that are present in all our other sources, especially the question of free will and voluntariness.<sup>115</sup> After a discussion of the definition and interpretation of *ignorantia* and a reconsideration of the role of the *culpa praecedens*, Henry arrives to what is essentially the same conclusion that we have seen before: the sins of the drunk are involuntary, but the drunkenness was voluntary, so the amount of sin is to be measured by the amount of sin gained from drunkenness.<sup>116</sup>

#### Legal opinions from 1300 on

The legal scholars from the 13<sup>th</sup> to 15<sup>th</sup> centuries show a similar adoption of the criteria of habituality and intentionality as we have seen in penitential texts. However, we find less of a unanimous opinion and more of a variety of opinions that differ on the specifics, but

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tantum. Sero ex hoc poterit apperere utrum una vel duplex sit penia iniungenda." Another variant of this *quodlibet* can be found in Città di Vaticano, Biblioteca Apostolica Vaticana, MS. Vat. lat. 932, fols. 129vb-130rb, but I will use the BnF manuscript here.

<sup>111</sup> Ibid, fol. 20ra-20rb: "De primo est intellegendum quod ebrietas aliquando est involuntaria puta cum aliquis adhibuit in bibendo diligentiam, quam potuit et debuit adhibere ne inebriaretur, et sic inebrierari peccatum non est formaliter, quia involuntarium nec aliquid eorum que fiunt propter talem ebrietatem peccatum est. Sed de omnibus que fiunt ex tali ebrietate videtur esse dicendum individuum sicut de factis in furia vel frenesi involuntariis."

<sup>112</sup> Ibid, fol. 20rb: "Alium autem est voluntaria puta cum aliquis vult vel eligit inebriari, vel vere vel interpretatione, aut non apponit diligentiam, quam potuit et debet adhiberi ne inebrietur, et tunc, quia ponit se voluntarie extra usum rationis, peccatum est simpliciter."

<sup>113</sup> Ibid, fol. 20rb: "[...] igitur furtum vel incestus commissi in ebrietate non sunt scilicet se formaliter peccatum, quia tantum ebrietas causa est huiusmodi actuum, et ebrietas fuit voluntaria et sicam voluntaria est effectus est voluntarius. Furtum et incestus voluntaria sunt voluntate illa precedente per quam ebrius inebriari voluit quod ita quod illa una voluntate actus sequentes sunt voluntarii, et propter hoc actus inebriandi et omnes actus commissi propter ebrietatem sunt unum peccatum formaliter, multa autem quantum ad illud quod est multe in peccato."

<sup>114</sup> Henry of Ghent, *Quodlibet* III.26, in: *Quodlibeta magistri Henrici Goethals a Gandavo* (Paris, 1518), fols. 84v-87v.

<sup>115</sup> Elsa Marmursztejn, *L'autorité des maîtres: scolastique, normes et société au XIIIe siècle* (Paris, 2007), 233-244. Marmursztejn stresses the originality of Henry's position, but I am not sure I would call it wholly original, although his elaborate discussion certainly is.

<sup>116</sup> Ibid, 239-244.

still often hark back to judging the circumstances of drunkenness. During this period of the glossators and postglossators, commentaries on Roman law took centre stage, but there was still an apparent influence of canon law. The field of law had radically changed in the 14<sup>th</sup> and 15<sup>th</sup> centuries by the growing popularity of *consilia*, practical advices on specific legal issues, but legal scholars were still writing about the impact of drunkenness on punishment.<sup>117</sup>

There is more variety to be found here than in penitential opinions. First of all: we still find regular references to the discourse on acceptable and unacceptable drunkenness. Albericus de Rosate (c. 1290-c. 1360), for instance, was clearly inspired by canon law opinions when he stated, citing Gratian, that a drunk person committing a crime should not be punished, but his superfluous drinking can still be a mortal or venial sin.<sup>118</sup> There are also still several legalists that continue to regard inebriation as a *culpa praecedens*, meaning that the circumstances of getting drunk determined the crime and thus the punishment. Angelus de Ubaldis (1328-1407) was a particular proponent of this treatment.<sup>119</sup>

Yet there are also further specifications on what drunkenness can and cannot mitigate, although this very much depends on the author. First, there is heavy debate over whether drunkenness should remise a crime in its entirety, or merely partially: the postglossators do not agree on this topic.<sup>120</sup> Some are in favour of a milder punishment for a delict committed in drunkenness. Despite this call for a punishment equal to the degree of sin attained by the drunkenness involved, however, many accounts repeat that drunkenness can excuse a crime in its entirety. Many law guides state, for instance, that blasphemy can be remised if the perpetrator was inebriated.<sup>121</sup> Despite this, it appears some city courts remained uncomfortable with drunkenness acquitting another crime. This was the case in Genoa and Arona. In the former, drunkenness was considered enough of a delict in itself that it could never remise another crime, and should instead be punished harshly, namely with a ten-year banishment to the dungeons.<sup>122</sup>

Furthermore, there are also specifications on what drunkenness can mitigate. Jacobus de Belvisio (c. 1270-1335) asserts that drunkenness can excuse verbal insults, but not

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<sup>117</sup> Woldemar A. Engelmann, *Die Schuldlehre der Postglossatoren und ihre Fortentwicklung: eine historisch-dogmatische Darstellung der kriminellen Schuldlehre der italienischen Juristen des Mittelalters seit Accursius* (Leipzig, 1895; reprint Aalen, 1965), 30-32.

<sup>118</sup> Albericus de Rosate, *Commentaria secunda super codice* (Lyon, 1545), fol. 188v; Ebel, 'Die strafrechtliche Bewertung', 100-102.

<sup>119</sup> Engelmann, *Die Schuldlehre der Postglossatoren*, 30-31; Ebel, 'Die strafrechtliche Bewertung', 123-124.

<sup>120</sup> Examples are found throughout Engelmann, *Die Schuldlehre der Postglossatoren*, 30-32 and Ebel, 'Die strafrechtliche Bewertung', 90-129.

<sup>121</sup> Corinne Leveaux, *La parole interdite: le blasphème dans la France médiévale (XIII<sup>e</sup>-XVI<sup>e</sup> siècles), du péché au crime* (Paris, 2001), 273-275.

<sup>122</sup> Georg Dahm, *Das Strafrecht Italiens im ausgehenden Mittelalter: Untersuchungen über die Beziehungen zwischen Theorie und Praxis im Strafrecht des Spätmittelalters, namentlich im XIV. Jahrhundert* (Berlin, 1931), 255.

physical assault.<sup>123</sup> The most significant specification, however, is that legalists started attempting to determine to what extent different degrees of drunkenness could excuse a crime. Baldus de Ubaldis (1327-1400) was the most important author that systematically tried to distinguish between *ebrietas levis* and heavy or complete drunkenness, keeping in mind the circumstances from which the drunkenness originated (i.e. a potential intentionality or habituality).<sup>124</sup> Light drunkenness, he argues, should not be excused, whereas heavier gradations of drunkenness could warrant a lighter punishment.<sup>125</sup> Light drunkenness, after all, means the drinker does partially know what he is doing, which can be attributed to a form of free will.

Finally, an interesting passage by Lucas de Penna (c. 1325-c. 1390) deserves mention, because it possibly illustrates how courts were dealing with drunks. De Penna still focuses on the distinction between habitual and occasional drunkenness in his commentary on the Code of Justinian, which is nothing new.<sup>126</sup> However, he does add a passage that advises judges on how to discover whether one's drunkenness is habitual, based on Biblical descriptions, illustrating that ascertaining the accidentality of drunkenness was something courts struggled with.<sup>127</sup>

#### The rise of secular law

Although theorists of Roman law did recognize and sometimes adopt the treatment of drunkenness from canon law, there was also another budding legal tradition, connected to the increasing amount of bureaucracy and centralization: secular law. How was drunkenness treated in secular law, in which the correlation between sin and crime was not as central?

André Laingui argues that the idea that homicide could be involuntary (homicide was the most commonly discussed crime perpetrated while inebriated) was transmitted into secular law from canon law.<sup>128</sup> From this perspective, it is not surprising that intoxication, being one of the major causes of involuntariness, would be treated in secular law in a similar way to canon law. Of course, it is difficult to pinpoint exactly what would have influenced a certain rule or guideline in secular law, but it seems reasonable to assume that the idea that drunkenness could alleviate a crime was taken over from learned law.

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<sup>123</sup> Ebel, 'Die strafrechtliche Bewertung', 99-100.

<sup>124</sup> Ibid, 103-115.

<sup>125</sup> This train of thought also appears in early modern German law guides: see Tlusty, *Bacchus and civic order*, 83-84.

<sup>126</sup> Walter Ullmann, *The medieval idea of law as represented by Lucas de Penna: a study in fourteenth-century legal scholarship* (London, 1945; reprint New York, 2010), 133; Lucas de Penna, *Lectura super tribus codicis* (Lyon, 1586), fol. 317v-318r: "Assuefacta vero ebrietas est mortale peccatum [...] alias sed non assuefacta veniale [...] E contra si delinquens assuetus erat inebriari, nec exinde corrigi se volebat [...] Nam ebrietas non assueta licet excusatur a tanto, non tamen a toto."

<sup>127</sup> Ibid, fol. 318r (no. 7).

<sup>128</sup> André Laingui, 'Le droit pénal canonique, source de l'ancien droit pénal laïc', in: *Églises et pouvoir politique, Actes des journées internationales du droit d'Angers (juin 1985)* (Angers, 1987), 213-232, here 215-217.

There were some theoretical tracts that discussed civil and criminal law that we can refer to as 'secular law', which were still part of the theoretical law discussions as outlined above. We do find that in these sources, drunkenness can be treated as a mitigating factor. The *Tractatus de maleficiis* by Albertus Gandinus (d. 1310) is considered one of the first works of secular legal scholarship. In Gandinus' work, drunkenness that shuts off the mind results in a more lenient punishment.<sup>129</sup> In addition, although Gandinus does not explicitly distinguish between voluntary and involuntary drunkenness, his thoughts on guilt in this section seem very much inspired by canon law. He refers to the idea that God judges based on what happens in the heart, not based on the acts he commits.<sup>130</sup> Furthermore, his emphasis on premeditation in his ideas on the relationship of premeditation, action and perfection was fundamentally taken from ideas in canon law (specifically, from the Bolognese legist Odofredus (d. 1265)).<sup>131</sup> Another author of criminal law, Bonifazio Vitalini (c. 1320-c. 1388) directly references canon law in the context of drunkenness: "[the drunk] is not punished, if he transgresses [...] unless he had inebriated himself with wrongful intent".<sup>132</sup> He cites Gratian, so in this case, we can be certain Vitalini was influenced by canon law theory.

In practice, secular law around the 13<sup>th</sup> century was based on custom, especially in the north of France. However, as Esther Cohen has shown, the concept of an 'isolated customary law' is mythical.<sup>133</sup> Custom law was influenced by other types of law, the two main candidates being Roman and canon law: two types of law that asserted that drunkenness was, or at least could be, a mitigating factor.<sup>134</sup> As for drunkenness, one *coutumier* that treats it is the *Grand coutumier de France* from 1385-1389.<sup>135</sup> It is very difficult to determine whether this reference to drunkenness as a factor that can alleviate a punishment is a reference to learned law, but seeing as the *coutumier* genre was influenced by Roman and canon law, it is not impossible.<sup>136</sup> As we will see in the next

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<sup>129</sup> Hermann Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik*, 2 vols. (Berlin, 1907, reprint 1926), II: 212 ("Si autem est maior et sane mentis, iterum subdistingue: quia aut propter ebrietatem aut per lasciviam aut non. Primo casu mitius punitur"); 276 ("Item mitius punitur, si per vinum aut ebrietatem lapsus est").

<sup>130</sup> Ibid, II: 211: "Deus enim non ex operibus iudicat, sed ex corde".

<sup>131</sup> Pihlajamäki & Korpiola, 'Medieval canon law', 216-217.

<sup>132</sup> Bonifazio Vitalini, *Tractatus de maleficiis*, in: *Tractatus diversi super maleficiis* (Lyon, 1555), 352: "Item in ebrioso, qui non punitur, si deliquit. XV.q.ii.c.inebriaverunt [*Decretum Gratiani*, C. 15, q. 1, c. 2]. Nisi dolose inebriaverit." See also Ebel, 'Die strafrechtliche Bewertung', 116-122.

<sup>133</sup> Esther Cohen, *The crossroads of justice: law and culture in late medieval France* (Leiden, 1993), 27-42.

<sup>134</sup> Jean Gaudemet, 'L'influence des droits savants (romain et canonique) sur les textes de droit coutumier en Occident avant le XVI<sup>e</sup> siècle', in: *Actas del II congreso internacional de derecho canónico, Pamplona, 1976* (Pamplona, 1979), 165-194.

<sup>135</sup> Jacques d'Ableiges, *Le grand coutumier de France*, ed. Rodolphe Dareste de la Chavanne & Édouard Laboulaye (Paris, 1868), 649: "Et toutes les meffaicts aggravent ou alégent les peines en sept manières. La première [...] ou quant aucun excès est fait par aucune personne folle ou yvre."

<sup>136</sup> Gaudemet, 'L'influence des droits savants'. Unfortunately, Gaudemet does not treat the *Grand coutumier de France*.



chapter, perhaps canon law theories on drunkenness *did* have their influences on the treatment of drunkenness in secular court, albeit indirectly.

### Concluding remarks

Drunkenness was an indeterminate phenomenon in the Middle Ages. However, to be indeterminate in the first place, some degree of differentiation is needed. From the 12<sup>th</sup> century on, a theoretical basis for this differentiation was laid down in canon law and, later, penitential literature. The return of interest in Roman and canon law led to the recognition that drunkenness absolving another sin while being a sin itself was a problem. Legalists and scholastics attempted to solve this issue by introducing a differentiating 'flowchart'. Two major criteria were introduced to designate whether someone's drunkenness was acceptable and suitable for mitigation or not: intentionality and habituality. These ideas moved along the lines of canon law, confessional literature and theological tracts. From the 13<sup>th</sup> century onward, they were increasingly accepted. Lawyers, both canon and secular, confessors and scholars were all in relative agreement that drunkenness could waive crime or sin in case of accidentality.

Yet these authors were writing from a theoretical point of view. How would drunkenness have been indeterminate in actual law courts? How would these guidelines have been followed in practice? And would habituality and intentionality have been definite criteria to persecute someone's drunkenness? In the next chapter, I will show that drunkenness in court could indeed function as a mitigating factor. Furthermore, the circumstances surrounding one's drunkenness were crucial in deciding how a drunk perpetrator should be treated – and surprisingly, canon law criteria turn up as well.

## Chapter 2

### The one pleading to save his life

#### ‘Negotiating’ drunkenness in letters of remission

*Let us remise, renounce and pardon the aforementioned deed with our superseding grace and royal authority.*<sup>137</sup>

While we have seen that the discourse of drunkenness as discussed in this thesis was heavily influenced by thoughts proposed in canon law, we have not yet determined what effects these thoughts had on actual court cases. It has been shown that in several instances – at least in late medieval France – drunkenness could be a mitigating factor in court. But can we find traces of or references to the discourse in actual legal practices, that is to say, court records? Were the accidental and incidental natures (as outlined in chapter 1) actually utilised as criteria? This chapter will illustrate that this was indeed the case, and will argue that it was precisely the discourse on (un)acceptable drunkenness that is crucial for understanding practical legal treatments of drunkenness in court.

Furthermore, this chapter vouches for the ingenuity of non-educated laymen, building on *Fiction in the archives* by Natalie Zemon Davis.<sup>138</sup> Davis shows that nearly anyone in the late Middle Ages or the early modern period knew the importance of a well-crafted story to defend one’s case in court and features many examples of people who did so very successfully. This chapter, in a sense, reconfirms the relevance of her argument, applying discourses of drunkenness to her insights on narrative strategy (fiction) in court records (the archives). It ponders whether the common man was aware of this discourse on drunkenness. It is a microhistorical chapter about framing, narratives and culture, in which the voices of everyday people come to the fore, although attention will be paid to the ways in which they might be partially distorted. Yet these small court stories that I wish to uncover from the archives and highlight here could very well speak for a much larger reality. They attest to the widespread usage and predominance of the discourse, showing that ideas proposed in law discussions and confessional manuals could either trickle down to a ‘collective unconsciousness’ – possibly through the process of confession and the information granted to laypeople by confessors – or had equivalents in lay circles. To investigate these questions, I will use a particular source type that lends itself excellently to studying the voices of the supplicants in court: letters of remission.

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<sup>137</sup> “[R]emettons, quittons et pardonnons de nostre grace especial et auctorité royal le dit fait”. This is a standard formula used in most if not all French letters of remission that are discussed in this chapter, although the exact wording could vary slightly.

<sup>138</sup> Davis, *Fiction in the archives*.

## Letters of remission, quintessential sources of negotiation

### Introduction to the source type

In short, a letter of remission is an act of the chancellery through which the king grants his pardon over a crime or delict, negating the ordinary course of justice, whatever that might be (royal, seigneurial, urban or ecclesiastical). Usually, these concerned crimes that were to be punished by death, so these letters were, quite literally, a lifeline for many convicts. In France, they start appearing at the start of the fourteenth century and burgeon in number at around 1350.<sup>139</sup> Although the phenomenon of remission was prevalent all throughout late medieval Western Europe, the French sources, stored at the Trésor des Chartes at the Archives Nationales in Paris, are especially rich in content and moreover in quantity – they exceed 50.000 cases between 1304 and 1568.<sup>140</sup> The source type has been used extensively to gain insight into the history of crime and justice.<sup>141</sup>

Letters of remission hold an interesting intermediary position between the learned men of the court and the criminals to be tried. They were composed by a royal notary, but in heavy consultation with the supplicant, as they were expected to be at least somewhat accurate renditions of what happened.<sup>142</sup> After the letter had been drawn up, it had to be read aloud before the chancellor, sometimes before the king itself. If it was then approved, it still needed to be ratified by a royal court, where the judges asked questions, and relatives of the victim (or the victim himself, if he was still alive) could plead for their own case. This process took time and had a price tag, which did restrict remission to a certain part of the population.<sup>143</sup> However, while the price seemed fixed, it was possible to obtain a letter for a cheaper price, possibly even for free.<sup>144</sup> This is attested to by the fact that we encounter all layers of society – from nobles to peasants – in these letters. They were very successful; after all, they were a helpful source of income for the state.

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<sup>139</sup> Michel François, 'Note sur les lettres de rémission transcrites dans les registres du Trésor des Chartes', *Bibliothèque de l'École des Chartes* 103 (1942), 317-324 gives an overview of the numbers, albeit with some slight errors.

<sup>140</sup> Paris, Archives Nationales, collection JJ. Henceforth abbreviated as JJ, with set number, item number, folio and year being given. The vast majority of these letters has been digitized and can be found on <http://himanis.huma-num.fr/himanis/>. [last accessed 18-7-2019].

<sup>141</sup> A recent historiographical overview is given in Quentin Verreycken, 'The power to pardon in late medieval and early modern Europe: new perspectives in the history of crime and criminal justice', *History Compass* 17:6 (2019).

<sup>142</sup> For more on the notaries, see Claude Gauvard, 'Les clerks de la Chancellerie royale française et l'écriture des lettres de rémission aux XIV<sup>e</sup> et XV<sup>e</sup> siècles', in: Kouky Fianu & DeLloyd J. Guth, *Écrit et pouvoir dans les chancelleries médiévales, espace français, espace anglais: actes du colloque international de Montréal, 7-9 septembre 1995* (Louvain-la-Neuve, 1997), 281-291; Davis, *Fiction in the archives*, 15-25.

<sup>143</sup> On the subject of pricing, see Jacqueline Hoareau-Dodinau, 'Argent et miséricorde: les amendes dans les lettres de rémission du roi de France à la fin du Moyen Âge', in: Benoît Garnot (ed.), *Justice et argent: les crimes et les peines pécuniaires du XIII<sup>e</sup> au XXI<sup>e</sup> siècle* (Dijon, 2005), 225-236.

<sup>144</sup> Gauvard, *De grace especial*, I: 70-75.

While they are somewhat formulaic and repetitive on a surface level, these letters offer more than merely a summary of the events and a set of autographs. In essence, these letters can be considered stories told as convincingly as possible from the perspective of the accused. Although there were certain formulary rules to be fulfilled, there was ample room for framing the narrative for both the supplicant and the notary. The supplicant was the one retelling the story, who knew the context of the story (albeit heavily coloured, of course) and the events that had occurred. The notary, on the other hand, would have been familiar with law codices and court practices and would have an idea of how to transform the supplicant's narration of events into a suitable plea for remission. With the collaboration of both, a past event turned into an account of 'what happened', one that was obviously in favour of the defendant. There was a fine line to be trod between credibility and overcompensation, but as the tens of thousands of approved letters indicate, this type of storytelling was incredibly successful.

According to Claude Gauvard's ground-breaking study on the remising of crime in late medieval France, drunkenness was in fact used as a mitigating factor in letters of remission. Specifically, about 10 percent of the defendants stated their drunken state had made them do things they did not want to as the sole reason why they should be excused without punishment. If we add the numbers of people who called upon drunkenness in combination with other reasons, this increases to about 30 percent.<sup>145</sup> A survey conducted by Monique Bourin and Bernard Chevalier even puts the number at 35 percent.<sup>146</sup> Taking the enormous number of letters of remission left to us into account, this observation becomes highly indicative of how inebriation was treated in judicial practice.

Was there a theoretical basis for this practice? The closest we have to a law manual for the Parisian court is the *Grand coutumier de France* by Jacques d'Ableiges, written between 1385 and 1389. It was a practical guide for the Châtelet, the royal court in Paris, although it never became an official guide. Like most authors of *coutumiers*, d'Ableiges intended it to be an educating manual for people without knowledgeable about the law.<sup>147</sup> Nevertheless, it is a compilation of laws applicable to Paris in the late 14<sup>th</sup> century. And indeed, as we have seen, the *Grand coutumier* contains a clause on circumstances that could alter the type or gravity of the punishment, which included "when an excessive act is perpetrated by someone mad or drunk".<sup>148</sup> There is no specification on what this means specifically. For that, we will have to consider the letters of remission themselves.

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<sup>145</sup> Claude Gauvard, *"De grace especial": crime, état et société en France à la fin du Moyen Âge*, 2 vols. (Paris, 1991), I: 449-450.

<sup>146</sup> Monique Bourin & Bernard Chevalier, 'Le comportement criminel dans les pays de la Loire moyenne, d'après les lettres de rémission', *Annales de Bretagne et des pays de l'Ouest* 88:3 (1981), 245-263, here 255.

<sup>147</sup> Cohen, *The crossroads of justice*, 31.

<sup>148</sup> Jacques d'Ableiges, *Le grand coutumier de France*, 649: "Et toutes les meffaits aggravent ou alégent les peines en sept manières. La première [...] ou quant aucun excès est fait par aucune personne folle ou yvre."

In light of this theoretical basis, it is not very surprising to see drunkenness represented heavily in the letters of remission as a cause for mitigation. Many types of crimes could be excused if one appealed to it, even lese majesty.<sup>149</sup> Drunkenness did not lend itself as a suitable explanation for every crime, however. It would be very strange, for example, if a money launderer would appeal to drunkenness to justify his actions because of the voluntary nature of the crime. Some crimes border on the line between impulsive and deliberate, such as thievery. Drunkenness is rarely mentioned by thieves in letters of remission, showing that stealing was generally seen as something one did with premonition.<sup>150</sup>

Yet how exactly did the supplicants narrate their drunkenness into the larger story they were trying to convey? What literary functions did it serve, and how were descriptions related to the discourse surrounding drunkenness as expressed in judicial theory? In other words, how were the 'authors' of the remission letters able to frame their drunkenness in a way that it was acceptable to the members of the court? In the following, I will use several letters of remission in which the defendant asserts he (or his opponent) was drunk at the time of the crime to illustrate how inhabitants of France were able to do exactly this. All letters I will cite were issued between 1390 and 1400, so just after the period the *Grand coutumier de France* was written, a period in which drunkenness had been (re)ratified as a valid excuse. The short timeframe of only ten years will illustrate just how common it was for supplicants to appeal to drunkenness and thus, either consciously or unconsciously, 'negotiate' their drunkenness. However, it is not a comprehensive study; all examples serve to illustrate.

#### 'Negotiating' drunkenness: a proof of concept

To mould these thoughts into a usable and clear framework, I will introduce a concept here to analyse the sources in this chapter. I have dubbed it 'negotiating drunkenness', as the ways this impacts court procedure contain many similarities to a negotiation process. In essence, 'negotiating drunkenness' boils down to a rhetorical and narrative strategy. It refers to a type of framing through which the framer's drunkenness is, ultimately, rendered acceptable OR through which the drunkenness of the opposing party is rendered unacceptable. It is like a presentation of a duo of fictional characters (usually, two people are involved), one of which is subtly suggested to be in the right. This is the one put on trial, who is pleading to save his life. This automatically means the opposing party is in the wrong. The concept of negotiating drunkenness presupposes that the courtroom, like 'all the world', is a stage, at which these two characters, a protagonist and antagonist,

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<sup>149</sup> Gauvard, *De grace especial*, I: 449.

<sup>150</sup> Valérie Toureille, *Vol et brigandage au Moyen Âge* (Paris, 2006), 209-210. It is not non-existent, however, cf. e.g. JJ 150, no. 72, fol. 37v (1396): "le dit Berthant [...], tempté de l'ennemi et abeuuré de vin, eust pris en l'ostel de nostre dit sergent un gobelet d'argent assez petit et ligier et de petit pris".

convince the 'reader' of their arguments – the judge(s) – that theirs are more valid than the other's.

Yet negotiation is never a one-way street: essentially, the protagonists of our letters were bargaining at the same table as their antagonist why the judge(s) should buy their (side of the) story. This meant catering to the judge, in this case through framing, but not doing so too much, for that would mean they would be making promises they could not keep. In court, this refers to diverting from the truth too much that it would turn unrealistic and would break the immersion of the 'reader'. Making untruthful statements or ones that could not be reasonably proven would deter the judge from believing the story, making the other party victorious. It was a fine line to walk between believability and a well-framed imagery, and falling off this tightrope literally meant death for the suppliant of the letter in many cases.

It should be noted that we remain limited to but a single perspective, that of the issuer of the remission letter. Very rare exceptions notwithstanding, we have no documentation of the other party's narrative. The fact that a letter of remission was left to us in the first place is because it was accepted and thus copied in the notarial archive of the king's court. Although some suppliants did not get away with their crime entirely, in which case some form of punishment was introduced (such as jail time or a fine), next to all letters of remission we have close on a happy ending for the issuer of the letter. This makes it nigh impossible to determine exactly how successful a certain narrative strategy actually was. In the case of drunkenness, however, the frequency of its usage affirms its popularity and, derived from its popularity, its success.

The fact that someone is able to negotiate their drunkenness inherently infers some degree of agency. People were able to tell their own story and do so convincingly. However, the freedom of a storyteller is not boundless. He has to keep in mind his audience, showing them a frame that was not entirely foreign to them. The case of drunkenness is no exception. This is where the discourse on drunkenness comes in. I will argue that (partly) because of the criteria posed in theoretical discussions on canon law and confession, people were able to frame their drunkenness in a way that allowed them to escape both sin and punishment. Put otherwise, they were able to 'negotiate' their drunkenness in such a way that it was rendered acceptable.

There are three components of medieval discourse that made this agency possible. First, the very loose definition of 'drunkenness' and 'drunkard' allowed for room for negotiation in the first place. Without a clear standard to fall back on, people could shape, to a certain extent, their own definition of a passable drunkenness. Of course, people could not limitlessly 'negotiate' their drunkenness; they were limited to what was considered acceptable. It was a fine line to tread between accidentally drinking too much and being labelled a drunkard. This is where the second component comes in: the criteria put forth

in chapter 1. These criteria were essential in giving medieval people the handles to shrewdly position themselves in a way that felt acceptable to authorities.

The third and final component is an asymmetry of information, combined with the medieval discourse on free will. Augustine had already said that all sins had to be voluntary by nature, and as such, canon law (and in this case, secular law) was to punish based on what was done voluntarily. However, how to ascertain that someone *did*, in fact, do something out of their own free will? It was impossible to reliably measure the degree of free will lost while drunk; this fact was known to God, but people were hardly able to examine their own mind and free will, let alone that of another. Authorities had no way to determine this accurately, so they had to rely on the account of the drinker himself. This gave the latter a huge advantage: they were the one to present the information.

But negotiating one's drunkenness in practice was not without its obstacles. As stated above, the suppliant was not alone in court and had an antagonist to deal with. Furthermore, witnesses could, on their part, 're-negotiate' the drunkenness of the perpetrator by presenting information that the perpetrator had withheld. The mental image of what happened that was planted in the mind of the priest or judge at the end of the negotiation process was crucial for the outcome. But this imagery did not arise in a vacuum: it was not just based on the description given by the perpetrator, but also on the representation of the perpetrator as a whole. What sort of impression did he make? Did he appear to be a respectable man? Did he have a good reputation? Did he seem likely to sin or commit crimes?

Some groups abstained from defending one's crime with drunkenness, and this could have various reasons. First, it could be damaging to someone's standing if the word spread that he had lost his control and/or temper while drinking. The nobility was hesitant to fall back on drunkenness as an excuse for unsightly behaviour for this very reason.<sup>151</sup> It is not unreasonable to think the clergy – while they had their own courts, they were free to commission a letter of remission, which were only issued at the king's court – would be less willing to resort to excessive drinking in defence of a crime, due to their self-proclaimed moral superiority and the many complaints about their drinking habits. Of course, they were burdened with the stereotype of the wandering cleric, which was regularly alluded to in trials involving a cleric(s), with them being called "houliers" (debauched persons) or, worse, "gouliards".<sup>152</sup>

A similar analysis can be made for university students, not in the last place because they were associated with the clerical world. They already had a reputation of being drunkards and were commonly associated with wandering clerics and the Goliardic image. While this errs on the side of speculation, it is perhaps because of this reason that from

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<sup>151</sup> Gauvard, *De grace especial*, I: 450.

<sup>152</sup> *Ibid*, I: 394.

the letters we find that involve students I have looked at, no student ever referred to being drunk when committing crime.<sup>153</sup> In light of their reputation, explicit references to wine are notably absent in all but a single letter, in which wine is not drunk, but used as a projectile.<sup>154</sup> This subject matter will be discussed more extensively in chapter 3.

Now that the concept of negotiating drunkenness has been established, let us look at some examples from the sources. After all, as the popular writer's mantra states, to make a compelling argument, it is much more effective to *show* a phenomenon in action, rather than to *tell* the reader all about it.

### Drunkenness in letters of remission

#### The implications of phrasing

First of all: how is drunkenness described in these letters of remission? Most appeals to drunkenness do not move much beyond a description that the suppliant had "drunk a lot, and he was so overloaded by wine, that he did not know well what he was doing".<sup>155</sup> In fact, even this description is uncommonly extensive. The majority of the letters in which drunkenness is used as a mitigating factor for the defendant do not provide us with much detail on how he got drunk or why.<sup>156</sup>

By far the most common denominator of intoxication is a simple 'surpri(n)s de vin'. It had variations such as 'surpris de boire' or 'chargié de vin', but 'surpris de vin' is the most widely used.<sup>157</sup> While the notary could be creative in his description – one letter refers to 'meu par chaleur de vin', for example – 'surpris' remains the most common by a landslide.<sup>158</sup> It is so common, in fact, that it can be reasonably assumed that it is a notarial formula. This likely indicates that notaries, who would have enjoyed a legal education, were aware of the ramifications of drunkenness and knew which phrase to use to stress the mitigating function of inebriation. It is worth delving a little into why this phrase specifically was utilized, for it can tell us various things about both how drunkenness was framed as well as how it was commonly perceived.

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<sup>153</sup> My investigation was based on the list of letters of remission involving students in Christian Gillon, 'Les étudiants et la délinquance au Moyen Âge (XIII<sup>e</sup>-XV siècles)' (unpublished doctoral thesis, University of Clergy-Portoise, Paris, 2017), 333-334. I have not looked past the JJ series. Gillon also asserts that "il faut peut-être chercher ailleurs que dans l'excès de boisson, les causes de la délinquance étudiante" (p. 239).

<sup>154</sup> JJ 153, no. 305, fols. 197v-198r (1398). During a fight that breaks out at the dinner table, a student throws a pint of wine onto another student, see Gillon, 'Les étudiants et la délinquance', 102-103.

<sup>155</sup> JJ 150, no. 63, fol. 33r (1396): "il avoit tant beu, et estre si chargé de vin, qu'il ne scavoit pas bien qu'il faisoit".

<sup>156</sup> The letters of remission share this aspect of brief descriptions of drunkenness with 18<sup>th</sup>-century English court records, see Rabin, 'Drunkenness and responsibility', 467-468.

<sup>157</sup> See e.g. JJ 146, no. 55, fol. 24r (1394); JJ 150, no. 203, fol. 100v (1396); JJ 153, no. 86, fol. 42v (1398); JJ 153, no. 261, fol. 170r (1398); JJ 153, no. 382, fol. 260v (1398); JJ 154, no. 621, fol. 350r (1399), although it is found in many more instances. Davis has also noticed the regular occurrence of this phrase: *Fiction in the archives*, 38.

<sup>158</sup> The phrasing 'meu par chaleur de vin' appears in JJ 150, no. 280, fol. 134v (1397).



First of all, it should be noted that all of these variants are in the passive form. This automatically draws the blame away from the drunk and puts it onto the alcoholic beverage. As such, the phrase testifies that the suppliant was not responsible for his actions. The image of a 'surprised drinker' shows the court that 1) the defendant was not used to being drunk, 2) he had not intended to get drunk, 3) he had not meant to do whatever he did during his drunkenness. Even though there is no unambiguous mention of the accidental nature of the drunkenness, it is implied that the getting drunk was, in fact, accidental enough to warrant mitigation in punishment. There are further conventions that attest to the idea that 'surpris' was a stock phrase to illustrate unaccountability and accidentality: 'surpris' is also used in cases of illness or madness, which could be placed in the same category of 'accidental' causes that caused the suppliant to be irresponsible for his actions.<sup>159</sup>

But while the usage of 'surpris de vin' can certainly be considered a rhetorical device to portray the absence of blameworthiness, it was likely also fed by the contemporary medical paradigm that explained how drunkenness worked. Throughout these letters of remission, we find many references to medical discourses. One of the phrases for drunkenness as described above was "meu par chaleur de vin" ("moved by the heat of wine"), which is unambiguously a signifier of the medical idea that wine heated up the body and produced vapours which rose to the head and through the veins, causing them to turn diluted and weakened.<sup>160</sup> And in fact, other mitigating factors were also considered to have bodily causes. The young were burdened with their natural body heat, which caused them to be impulsive and irrational. This would only diminish with experience that came through the ages, and slowly, their complexion would become cooler and calmer.<sup>161</sup> Madness was associated with the melancholic temperament, the most unstable and undesirable of all temperaments, which could cause illusions and hallucinations. Anger, finally, was heavily related to the choleric temperament. The bodily state was considered the cause of these bursts of anger and also the main reason they were only short bursts – a persistent state of anger fell under the sin of *ira*. In these letters of remission, anger is most explicitly connected to medical explanations: the most common description is *chaude cole*, 'hot bile', literally turning a temper into a temperament.

Turning our attention towards the medical gaze – to paraphrase Foucault – is important because it allows us to further excavate why drunkenness could be treated the way it was. Drunkenness was very easily pointed at as an outside force because it *was* an outside force in medical theory. An alcoholic beverage was part of the six *res non naturales* (one of which was food and drink), or outside factors that were considered to have a

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<sup>159</sup> Aleksandra Pfau, 'Madness in the realm: narratives of mental illness in late medieval France' (unpublished doctoral dissertation, University of Michigan, 2008), 22-23.

<sup>160</sup> Jaboulet-Vercherre, *The physician, the drinker and the drunk*, 183-184.

<sup>161</sup> For youth as a mitigating factor, see Gauvard, *De grace especial*, I: 360-367.

significant impact on health and the body.<sup>162</sup> The idea that wine was a substance that influenced the body due to coming from outside the body might have influenced the way drunkenness was perceived. In essence, wine was a foreign force that entered the body and – most importantly – could disrupt it. This might explain, at least partially, why it was so easy to be considered ‘surpris de vin’.

#### Appeals to one’s own drunkenness

We should not just consider tiny details in phrasing, however. How was drunkenness generally appealed to? If we consider a letter as a whole, drunkenness often only takes a very small role. It is frequently merely a minor detail, not significant enough to spend too much words on. But the fact that it was mentioned in the first place means it was, in fact, relevant enough to include. And it is not rare that drunkenness is just one of many elements that call for a remission. Many letters sum up several reasons as an explanation for why the perpetrator had acted the way he did (violently, usually). Martin Mochon, for instance, states that he incited a brawl “because of youth and bad temptation, charged by wine”.<sup>163</sup> The brief notices of these aspects seem unimportant at first. But one could consider any element of the story essential for bringing across the message that the defendant’s crimes should be waived. If we take this holistic approach, the short mentions of drunkenness are still important to the plea, as one ingredient of many instead of a central focus.

In some letters, however, drunkenness is more central to the argument. In many of those examples, more words are spent on why and how the perpetrator got drunk. Many letters introduce a ‘Chekhov’s drink’ early on in the story that takes over the body gradually and eventually becomes relevant to the narrative. We find that Jehan le Feure recalls that he had “drunk very well outside of the residence of one of his neighbours” before he uttered scandalous words, which got him into a fight.<sup>164</sup> It only makes sense, then, that he accepted the fight, for he was “swamped by wine and hurt by what had been said”.<sup>165</sup> For this same reason, it is also frequently mentioned that the events happened on a holiday – as that was a cause of celebration and thus inebriation – or near or in a tavern.

Sometimes, drunkenness is even more prominent, and in these, we find some other techniques to fortify the plea. Repeating that the suppliant was drunk is another common rhetorical strategy, as repetition is key for remembrance. In 1396, Gilot Hardi went to the tavern after he had sold his bread at the market, where he got drunk, and afterwards he encountered someone else’s wife.<sup>166</sup> It is also mentioned that it was a hot day, probably

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<sup>162</sup> The list consists of: 1) air; 2) food and drink; 3) exercise and rest; 4) sleep and wakefulness; 5) secretion and excretion and 6) mental affections.

<sup>163</sup> JJ 144, no. 137, fol. 75r (1392): “par jeunesse et mauvaise temptation, chargé de vin”.

<sup>164</sup> JJ 153, no. 158, fol. 97v (1397): “le dit suppliant, qui a celle heure avoit bien beu yssi hors de l’ostel d’un de ses voisins en disant ces paroles”.

<sup>165</sup> Ibid: “le quel suppliant, qui estoit abruvez de vin et qu’il estoit mal meu pour ce qui on lui avoit dit”.

<sup>166</sup> JJ 146, no. 242, fol. 129v (1394): “Et apres ce qu’il eust vendu ycelui pain, s’eust alé, pour ce qu’il faisoit chaut, en la taverne, ou il beut telement qu’il fu si surprins de vin que a grant peine se

to summon the image of someone quenching his thirst and accidentally getting drunk in the process. Later on in the letter, when he harasses the woman, it is reiterated that he did this "being drunk, as has been said".<sup>167</sup> Another strategy is to give away that the perpetrator had gotten drunk at the very start, so that any subsequent events are already interpreted with drunkenness in mind. This is the case in a letter describing the rape of Guillemete Michoite by Guillaume Giraud in 1391.<sup>168</sup> Of course, it worked in Guillaume's favour that Guillemete was, according to the letter, "a depraved and badly renowned woman who spoke dishonestly".<sup>169</sup> In the end, Giraud did have to spend one month in prison on water and bread, but that likely would have seemed a more preferable outcome than embracing his execution.<sup>170</sup>

Speaking of women: it should be noted that when it came to drunkenness, they were in a different position when explaining their crimes. Whereas men appealed to drunkenness left and right, women were very much inhibited from doing so. Even in the relatively small percentage of letters in which they are the protagonist – around 4%, if we follow Claude Gauvard – they were much less likely to appeal to drunkenness.<sup>171</sup> Part of this is caused by the fact that they generally committed different types of crime. They were less likely to get into a tavern fight or commit war crimes and more likely to steal.<sup>172</sup> Generally, the crimes that we find women committing in these letters are less likely to be suitable for a drunkenness excuse. Another reason, however, was the double standard of drinking: between the two sexes, female drunkenness was considered worse than men's. Male drunkenness was acceptable to some extent whereas female drunkenness was nothing but despicable, and as such, we find very few women appealing to drunkenness in their letters of remission.<sup>173</sup>

In the end, however, it seems that references to drunkenness for a man required little explicit motivation or elaboration, even though drunkenness as a whole was still frowned upon as part of gluttony and disordering to society. Accidental drunkenness, 'being

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savoit soustenir ne parler, et en ycelui estat se feust parti de la dite taverne environ soleil couchant".

<sup>167</sup> Ibid: "icelui Gilot, par temptation de l'annemi, lui estant yvre, comme dit est".

<sup>168</sup> JJ 140, no. 70, fol. 86v (1391): "Le dit Guillaume Giraud, Jehan Esmonnet et Symon Burgueau, en un jour apres ce qu'ilz eurent esté en la taverne et beu excessivement, eulz comme gouvernez du vin", followed later on in the letter in the verdict (describing the reasons for remission) by "attendu que les faiz et cas dessus diz ont esté faiz en chaleur et par vin". This letter is also found in Paul Guérin & Léonce Célier, *Recueil des documents concernant le Poitou contenus dans les registres de la chancellerie de France*, 14 vols. (Poitiers, 1881-1958), VI: 41-42.

<sup>169</sup> Ibid: "en un femme dissolue et mal renommee et de deshonneste conversacion".

<sup>170</sup> Ibid, fol. 86v: "Pour ce est il nous, etc, audit Guillaume Giraud, etc, avons remis, quicté et pardonné, etc, satisfacion faicte a partie premierelement, se faicte n'est, et parmy ce que le dit Giraud tendra un mois prison au pain et a l'eau."

<sup>171</sup> Gauvard, *De grace especial*, I: 300-301.

<sup>172</sup> Ibid, I: 308.

<sup>173</sup> Charlotte Pichot, 'Le corps féminin est-il un miroir de l'honneur? Quelques pistes de réflexion autour des sources judiciaires de la fin du Moyen Âge', *Annales de Janua: Moyen Âge* 6 (2018), paragraphs 21-25, available online at <http://annalesdejanua.edel.univ-poitiers.fr/index.php?id=1801> [last consulted 29-10-2019].

surprised by wine', was seemingly the default option in the French royal courts at the end of the 14<sup>th</sup> century: someone did not have to explicitly state it was accidental, rather it seems to have been assumed it was. The letters in which drunkenness is expanded upon appear to be a relative minority, and most suppliants were able to get away with a simple 'surpris de vin'. But alcohol consumption was usually one of several key factors in the story – one did not *exclusively* rely on drunkenness to save one's life. Anger, provocation and the Devil's temptation were appealed to often as additional reasons for mitigation.

#### Appeals to someone else's drunkenness

However, just like defendants could frame their own drunkenness in a way that made it seem acceptable, so could they construct the drunkenness of their antagonists in a way that made it seem *unacceptable*, or at least to blame for what the adversary had gone through. Letters that frame the antagonist this way contain notable differences from previously discussed ones. First, they tend to be much more elaborate in how their opponent had been drunk, why he had got drunk in the first place and why it mattered. Considering the fact that mitigation seems to have been the default option when someone was drunk, it makes sense that it was not enough to sketch one's opponent as just drunk. These examples also provide us with much more nuanced treatments of drunkenness.

To start, some suppliants play with the unaccountability aspect of drunkenness in very creative ways to make a stronger case for themselves. In 1391, in the town of Montcornet, Jacquemins Tiene was accused of having murdered a certain Jacquemart from the same town.<sup>174</sup> It happened at the festivities of Notre-Dame, when the town organized a number of games. Jacquemins had invited Jacquemart to play a game with him, but the latter refused, calling Jacquemins the son of a whore. Jacquemins left in peace, but he encountered Jacquemart again later on, when the latter had gotten drunk. Jacquemins asked why Jacquemart insulted him, only for Jacquemart to repeat his words. In response, Jacquemins hit him on the head and Jacquemart stumbled back to his place, but failed to open his door and fell asleep in the porch. When he eventually was found, he was severely hypothermic and died soon afterward, despite his sons trying to warm him up.

The fact that Jacquemart was drunk plays a central role in the framing of this letter. Even though Jacquemart was not yet drunk when he first insulted Jacquemins (which is in itself a sign of Jacquemart's bad character), the confrontation afterwards illustrates how Jacquemins' drinking habits differed from Jacquemart's. The letter describes that Jacquemins went home "peacefully" after having drunk at the tavern and asking Jacquemart "very courteously" why he had called him names, showing that he had not been overtaken by his drinks, in contrast to Jacquemart, who was "completely drunk and

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<sup>174</sup> JJ 144, no. 68, fols. 35r-35v (1392). The verdict was reached in January 1392, but the events occurred in September 1391.

full of wine".<sup>175</sup> Furthermore, the fact that Jacquemart was not able to open his front door is blamed on his drunken state, not on the "two or three hits on the head, without hurting him otherwise" Jacquemins dealt to him.<sup>176</sup> Jacquemart "was so drunk and out of it" that he fell down and "because of his drunkenness", he could not open his door.<sup>177</sup> As a result, he had to sleep in the cold, which ultimately proved his demise.

Jacquemins hedged himself very carefully against possible accusations by blaming the death on factors outside of his control. If Jacquemart had not been drunk, he would not have died, was his reasoning. His drunkenness is also not portrayed as suitable for mitigation. There is no mention of Jacquemart being "surpris" by the wine he had drunk. Instead, the more neutral "yvre" ("drunk"), "plain de vin" ("full of wine") and "l'ivresse" ("(the) drunkenness") are preferred, which distinguishes these accusations from the 'accidental' drunkenness that featured in pleas for remission in which the defendant had been drunk. Contrary to a passive form that blames the wine, the implicitly active form blames Jacquemart for his own drunkenness. This is not to say the usage of these words is exclusive to narratives in which the antagonist is blamed, but it seems to be significantly more common.<sup>178</sup>

Another example using more neutral terminology is found in a case from 1398, which is actually a reconfirmation of a letter that had been issued eleven years earlier (this was necessary because the suppliant of the letter had escaped from prison and evaded his banishment in the meantime).<sup>179</sup> This case involves Jehan Bernart, who had killed Heliot Durant during a brawl. Durant's drunkenness only comes into play relatively late into the letter, namely after the brawl was over and Durant was on his way back to the hotel, where his wife, searching for him, encountered him by chance, wondering what happened.<sup>180</sup> However, its implications – and most likely, the way the court (and we) ought to read the drunkenness – are introduced much earlier. When Heliot grabs a stick to prepare for battle,

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<sup>175</sup> Ibid, fol. 35v: "[...] le quel suppliant non obstant ce s'en passa oultre et s'en ala avecques lez autres compaignons de ladite ville, qui avoient fait lez dis jeux boire en la taverne, et puis s'en retourna paisiblement en son hostel. Et ausi qu'il estoit encores a son huis, le dit Jacquemart passa part devant lui, tout yvre et plain de vin, au quel ledit suppliant demanda tres courtoisement pourquoy il lui avoit dit lez dites iniurés [...]"

<sup>176</sup> Ibid: "Et pource le dit suppliant soy veant ausi iniurié sans cause par ledit Jacquemart, prist un petit baton de fagot, qu'il trouva pres de lui, du quel il frappa le dit Jacquemart ii ou iii cops sur la teste sanz riens entamer [...]"

<sup>177</sup> Ibid (follows right after the previous citation): "desquelx cops, pource qu'il estoit ainsi yvre et abuuré, comme dit est, ycelui Jacquemart cheut a terre et puis fut levé par aucunes gens estans illeuc et s'en ala [ahis] de son hostel pour le [cuidier] ouvrir et entrer de dens, mais pour l'ivresse de lui ne s'eut oncques ouvrir le dit huis et cheut a terre et s'en dormi au travers de son dit huis [...]"

<sup>178</sup> For an instance in which the suppliant is the "yvre" one, see JJ 150, no. 209, fol. 102v (1396), where the defendant is described as "yvre et chargé de vin".

<sup>179</sup> JJ 153, no. 418, fols. 281r-281v (1398). This letter is also found in Guérin & Célier, *Recueil des documents concernant le Poitou*, VI: 313-315.

<sup>180</sup> Ibid, fol. 281r: "et sa femme, qui riens ne savoit de ce et qui queroit la dicte truye, trouva d'aventure le dit Heliot, qui estoit yvre [...] et le firent retraire bien et doucement en son hostel, sans rien declairier qui ce lui avoit fait, pour ce qu'il estoit yvre."

he is described as “out of it” and “full of will without reason”.<sup>181</sup> Interestingly, these terms could very well describe someone who claimed to have gotten drunk on accident, especially the loss of reason. However, later on, when Heliot is back to being sober (!) he is characterized as having a “small and bad amount of self-government”.<sup>182</sup>

Although it is not made very explicit, one could argue that the combination of stressing Heliot’s general lack of self-constraint and his drunken state is there to make the court combine the two. We have previously seen that late medieval society valued a responsible and incidental drunk over an uncontrolled habitual one. The fact that Heliot is painted as having little restraint in general could be retroactively applied to how he got drunk, perhaps even alluding to him regularly doing so because of his inadequate self-discipline. A shortage of self-constraint led to someone drinking to excess regularly, would be the reasoning, which made his drunkenness unacceptable. Thus, Heliot’s drunkenness was not suitable for mitigating *his* actions, automatically placing Jehan in the better position. Of course, we should remember that this remains a framed account and does not mean Heliot was actually a regular drunkard. Yet this letter, if analysed this way, is a fascinating example of how an antagonist’s drunkenness is made to be objectionable without explicitly stating so. Furthermore, it seems to suggest that theories on drunkenness in canon law (as discussed in chapter 1) are applicable here, as well.

While the previous example does not make a very explicit connection to habitual and voluntary drunkenness, there are other letters that do so. In 1400, Jehan Le Naire also described his antagonists as people who had “frequented the taverns in the town of Sailly and multiple other places every day or at least very often, and had drunk large amounts of wine”, stressing the habitual aspect of their drinking.<sup>183</sup> Guillaume Guenlain asserted in 1394 that his wife Thomine – who suspected Guillaume was cheating on her – “willingly filled herself with wine”, as did Radulphus Trochet in 1400 with his opponent Gilot.<sup>184</sup> In both cases, the description is used to discredit the opponent and is accompanied by other phrases that serve the same purpose. The double standard of drinking is relevant in the case of Thomine, too. When women were drunk, they were automatically condemnable. As such, it is quite easy for a suppliant to frame a woman into being drunk, especially if it is

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<sup>181</sup> Ibid: “et incontinent, le dit Heliot tenant en sa main un baston, comme plain de sa volenté desraisonnable”.

<sup>182</sup> Ibid: “Lequel Heliot le lendemain, par son petit et mauvais gouvernement, environ heure de midi, ala de vie a trespasement.”

<sup>183</sup> JJ 155, no. 47, fol. 27r (1400): “par chacun jour ou au moins bien souvent conversé es tavernes de laditte ville de Sailly et en plusieurs autres lieux, la ou il a beu du vin largement”. Quoted from Gauvard, *De grace especial*, I: 450.

<sup>184</sup> JJ 147, no. 5, fol. 2v (1394): “ycelle Thomine, la quelle estoit ancienne femme, souspeconnant son dit mary qu’il n’eust afané a autre femme que a elle, et qui aussi moult volontiers se chargeoit de vin, lui commenca a mener noise et riote”; JJ 155, no. 212, fol. 131v (1400): “et que le dit seu Gilot fu premier agresseur, et aussi que le dit seu Gilot estoit un homme noiseux et ryoteux, et se chargeoit volontiers de vin”.

mentioned she was drunk habitually or intentionally.<sup>185</sup> In the first case, it also functions as foreshadowing, as Thomine gets drunk later in the story.<sup>186</sup> Gilot, however, does *not* get drunk in the story, which means he is merely framed as a voluntary drunk to portray his bad character.

A final example illustrates the intricate difficulties that some defendants faced in shaping their narrative. In 1400, Jehan Tessander requested a letter of remission on grounds of an incident that happened in Toulouse.<sup>187</sup> After Jehan had returned to his residence, he encountered his wife, drunk out of her mind, face-down on the bed, naked all the way up to her breasts, holding Jehan's niece and speaking "injurious words" to her. Jehan was not amused and hit her, "by way of discipline", drawing a bit of blood. His wife was outraged and told him he should be hanged, and then ran outside. What happens afterward is a little unclear, but the wife ended up dead; according to the letter, she "strangled or choked herself". Whatever the case, Jehan is accused of murder, and it is remarked the dead body "looked like it had been strangled by a gorge".

Disregarding the somewhat strange circumstances of the murder, Jehan's plea that he had acted righteously is based upon him stressing his wife's drunken state – which was despicable, in contrast to his own morally just behaviour. In this relatively short letter, there are no less than three instances in which it is emphasized that his wife was drunk, one stating that his wife was "accustomed to inebriating herself".<sup>188</sup> Jehan, however, presents himself as a paragon of virtue, mentioning twice that he was not violent and, on another occasion, that he had only hit her once, and slightly at that.<sup>189</sup>

But let us focus on the portrayal of the wife, for it gives us insight into a dilemma Jehan was facing. First of all, we should consider that the events described in the letter could not be exaggerated beyond reason; thus, it is likely that his statement that his wife was drunk was veracious. But this could have actually worked against Jehan, because drunkenness was a mitigating factor – however, only if incidental. The addition of his wife being "accustomed to inebriating herself" saves Jehan from this pickle, for it placed the blame back on his wife and not the wine. Furthermore, insults from a wife were generally accepted as a justification for physical violence by the husband, which gave Jehan enough

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<sup>185</sup> See another example in Pichot, 'Le corps féminin', paragraph 23.

<sup>186</sup> JJ 147, no. 5, fol. 2v: "sa dite femme, qui moult estoit chargiee de vin et remplié de l'ennemi".

<sup>187</sup> JJ 155, no. 276, fol. 168r-168v (1400).

<sup>188</sup> Ibid: "sa femme, qui estoit coustumiére de soy enyvrrer, telement surprinse et chargiee de vin que elle estoit tout enversé sur un lit et desouverté jusques a bien pres de mamelles"; "Et incontinent, ladite femme luy dist, si yvre comme elle estoit"; "tant pource que elle estoit si chargié et surprinse de vin, toute forcenée et temptée de l'ennemy".

<sup>189</sup> Ibid: "Jehan, qui venoit de ses besoingnes paisiblement"; "Jehan, qui est homme paisible et n'avoit curé de noise"; "Et lors ycelui [...] par maniere de discipline, leust une foiz seulement hurtée ou boutée en glissant du presur lenez ou visaige, duquel nez issi un peu de sane."

credible elements to plead his case successfully.<sup>190</sup> However, his wife's actions were still explained as originating from her drunkenness, as testified to by the multiple usages of "surprins de vin". Why would Jehan have wanted to use this phrase, that, in fact, might weaken his argument? We might be able to answer this if we consider Jehan's honour. If Jehan's wife would have been one to blurt out insults out of her own volition, what would that say about Jehan himself? It might have tarnished his reputation. He circumvented this by blaming the drunkenness, but still pointing at his wife as the antagonist in the story.

Whenever the issuer of a letter of remission wanted to frame someone else into drunkenness, they had to be careful to not make their narrative opponent appear irresponsible for their own drunkenness. Thus, they found several solutions, such as using more neutral terminology or explicitly referring to self-inebriation or frequent drinking. And clearly, these attempts at framing were very successful. After all, the perpetrator had walked away with his head attached to his body.

### Further considerations

To conclude this chapter, I would like to address several points that both complement and complicate this analysis. First, it should be stressed again that, even though the stories in these letters of remission reflect the original stories as submitted by the suppliants, they were written down by an intermediary notary. We know that they had an impact on the story, at the very least in terms of language and the use of standard phrases.<sup>191</sup> Yet nowhere near everything was institutionalized and for many terms, such as signifiers of profession, we find no singular standard.<sup>192</sup> To what degree did these notarial clerics, who tended to be university-educated in law, affect how the story was written down? In other words, would these clerics have been responsible for adding references to accidental or habitual drunkenness, or would these have been part of the issuer's story already?

The answer is likely impossible to know, but it could have some ramifications for the spread of this discourse. If the notary were the one who added the references, he likely did so because he was aware of the dual function of drunkenness. If it were the suppliant himself, this could indicate that the discourse had spread further into non-learned circles. Following this train of thought, we could fundamentally argue that thoughts that were originally conceived in highly theoretical law discussions had trickled down to the world of the commoners, likely by way of penance, which functioned as an intermediary. In that case, harking back to the discussion about the impact of canon law on secular law in the previous chapter, the treatment of drunkenness at the French king's court was not *directly*

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<sup>190</sup> Hannah Skoda, 'Violent discipline or disciplining violence?: experience and reception of domestic violence in late thirteenth- and early fourteenth-century Paris and Picardy', *Cultural and Social History* 6:1 (2009), 9-27, here 15; Mäkinen & Pihlajamäki, 'The individualization of crime', 534.

<sup>191</sup> Gauvard, 'Les clercs de la chancellerie royale française', 284. The same argument is made for 18<sup>th</sup>-century England by Rabin, 'Drunkenness and responsibility', 467-468.

<sup>192</sup> Gauvard, 'Les clercs de la chancellerie royale française', 284-285.



influenced by canon law, but *was* apparently influenced by it *indirectly*, in a roundabout way. All the same, this is an intriguing example of how canon law theories could influence treatments in secular courts.

Next to the role of the notary, there are two additional considerations I would like to make that complicate this discourse of mitigation, in terms of time and space. First, the element of time. To what degree was drunkenness still an effective mitigating factor in the early modern period? There are signs that its position might have been weakened. The first legal ordonnance in France that designated drunkenness was a crime was an edict of Francis I, on August 30<sup>th</sup>, 1536, which ordained that drunkards were to be punished by either imprisonment on bread and water, whipping in prison or in public, or, in case of a recidivist offender, banishment.<sup>193</sup> A similar edict was issued in Flanders in 1531 by Charles V.<sup>194</sup> England also has a case from 1551 containing a jurisprudential statement that specifically severs the ties between drunkenness and mitigation:

“If a person that is drunk kills another this shall be felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no understanding nor memory; but inasmuch as that ignorance was occasioned by his own act and folly, he shall not be privileged thereby.”<sup>195</sup> [Reniger v. Feogossa 1551]

To what extent did rules like these affect the mitigating function of drunkenness? It seems to depend on where you look. This is also related to the second factor: space. We have already seen that judged in thirteenth-century England were apparently not very willing to accept drunkenness as an excuse. To what degree were appeals to drunkenness unique to medieval France? Using data from several countries and time periods, a preliminary overview can be presented (on the next page):

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<sup>193</sup> See Lecoutre, *Ivresse et ivrognerie*, 31-54 for a detailed discussion of this ordinance.

<sup>194</sup> Van der Made, ‘L’influence de l’ivresse’, 74.

<sup>195</sup> Quoted from Critchlow, ‘Blaming the booze’, 453.

*Table 1: Amount of appeals to drunkenness in secular law courts*

	France*	England	Germany	Low Countries*
Pre-1500	~30% <sup>196</sup>	Negligible <sup>197</sup>		
c. 1500-1680	Negligible <sup>198</sup>		'Hundreds did so' <sup>199</sup>	2% <sup>200</sup>
c. 1680-1800	24% <sup>201</sup>	2,5% <sup>202</sup>		

\* based on letters of remission only

What implications do these numbers have? We can determine two major points. First, it appears that laws or ordonnances that prohibit drunkenness being used as a mitigating factor did have an actual effect on how much the 'drunkenness plea' was utilized. In England, the Low Countries and 16<sup>th</sup>-century France, all of which had rules in place that disconfirmed drunkenness as a mitigating factor, the numbers are very low. On the other hand, pre-1500 France did not have a similar rule, and had large amounts of people that appeal to drunkenness. A correlation seems likely.

However, it is probably not the whole story. In 16<sup>th</sup>-century Augsburg, on which the German numbers are based, it had been declared in 1537 that inebriation would no longer be treated as an excuse for any offense, yet there are still 'hundreds of defendants' that continue to appeal to it.<sup>203</sup> And on the other hand, for sixteenth-century France, even after the edict of Francis I, Thomas Brennan notices that outside letters of remission, intoxication does not seem to have been treated as a punishable offense, eyeing the few times it is remarked in reports.<sup>204</sup> As such, a particular country's (legal) traditions are most likely also part of the story. France especially is a curious case: how come drunkenness could not be

<sup>196</sup> Gauvard, *De grace especial*, I: 449-450. This number applies to 1380-1424.

<sup>197</sup> Hurnard, *The king's pardon*, 98. This number applies to the late 13<sup>th</sup> century, up to 1307.

<sup>198</sup> Aude Mussin & Michel Nassiet, 'Les récits de rémission dans la longue durée: le cas de l'Anjou du XVe au XVIIIe siècle', *Revue d'histoire moderne et contemporaine* 57:4 (2010), 51-71, here 62-63. This number applies to 1500-1600, and only to cases from the Anjou region. For the end of the 15<sup>th</sup> century, the authors find that 7% of the supplicants appealed to drunkenness. Davis does cite two examples of drunkenness from 1536: Davis, *Fiction in the archives*, 36-37 (JJ 249B, fols. 1v-2r and 31r).

<sup>199</sup> Tlusty, *Bacchus and civic order*, 96, based on records from Augsburg from c. 1500-1650. See also Pohl-Zucker, 'Hot anger and just indignation', 43-44, for two examples from Stuttgart, implying that it might have been treated as a proper mitigating factor there as well.

<sup>200</sup> Marjan Vrolijk, *Recht door gratie: gratie bij doodslagen en andere delicten in Vlaanderen, Holland en Zeeland (1531-1567)* (Hilversum, 2004), 186. This number applies to 1531 to 1567, and only to suppliants from Holland and Zeeland.

<sup>201</sup> Musin & Nassiet, 'Les récits de remission', 67. This number applies to 1700-1800.

<sup>202</sup> Rabin, 'Drunkenness and responsibility', 466. This number applies to 1680-1750, on a corpus based on the Old Bailey Sessions Papers.

<sup>203</sup> Tlusty, *Bacchus and civic order*, 96.

<sup>204</sup> Thomas Brennan, 'Social drinking in old regime Paris', in: Susanna Barrows & Robin Room (eds.), *Drinking: behavior and belief in modern history* (Berkeley, 1991), 61-86, here 68.

a mitigating factor in the 16<sup>th</sup> century, whereas it was frequently appealed to in the 14<sup>th</sup> and 18<sup>th</sup> centuries? Furthermore, inhabitants of all of these countries would have been exposed to the same drunkenness discourse during their annual confession, so why the major differences? These observations – and the blank spaces in the table – show that there is still much work to be done to clarify the role of drunkenness as a mitigating factor throughout time and space.

### Concluding remarks

The indeterminacy of drunkenness can be attested to not only in theory, but also in practice. In late 14<sup>th</sup>-century Paris, defendants were very successful in presenting their drunkenness as a justified reason to attain lenience in punishment. The very reason they were was because 'drunkenness' did not have the same meaning in every single context. Medieval laymen were aware of this fact, and used it to their advantage in a process of negotiation. Furthermore, in determining which meaning of 'drunkenness' they wanted to present, they appear to have been referring to discussions that were previously limited to learned clerics. Perhaps this knowledge would indeed have been acquired through the realm of penance.

So far, we have designated that 'drunkenness' could have multiple meanings that were reliant on the context. However, these supplicants were trying to negotiate the judges to a single meaning of their choice. What happens when we analyse a type of drunkenness that had multiple meanings at once, one that did not necessarily refer to the actual drunkenness of a specific person? Furthermore, what consequences does the notion of there having been 'more acceptable' and 'less acceptable' types of drunkenness have on the imagery and treatment of a certain group? The final chapter will explore these questions, grounded in the case study of medieval student life.

## Chapter 3

### The purported 'alcoholic'

#### Constructing meanings of student drunkenness

*Yet often, my virtuous companions during the times in which I studied in Paris, when it had gotten very late, drank beer on top of wine after getting drunk instead of any medicine. Afterwards they went to sleep and early in the morning, they drank once more and even more and stronger wine, all of them swearing by the following proverb: "a nocturnal drink or nightly overindulgence will be cured by a morning drink", which is a saying of the lecherous, not of philosophers or wise men.*<sup>205</sup>

Pondering a rather unorthodox solution to hangovers, even in the medical frame of the Middle Ages, Jacques Despars (c. 1380-1458), physician at the court of Charles VII of France, reflected back on his years as a student in Paris. There is an aftertaste of lamentation in his words: how come his fellow students, who were supposed to belong to the wisest of men, desecrated their own bodies with drunkenness and the resulting hangover? And why did they, instead of following the teachings of the great Avicenna, resort to "drinking even more" as a solution for their ills? They should have known better.

Despars was surely not the only one bemoaning the sorry state of student ethic. According to sermons, penitential guides and manuals of behaviour, students were degenerate, lazy, promiscuous, loud, violent, nefarious and not least of all, frequently found at the tavern instead of their masters' classes. Boncampagno da Signa (c. 1170-c. 1250), for one, summarized these aspects in a list of student life's nine deadly sins.<sup>206</sup> It is probable that these stereotypes were distorted by a minority of students and do not represent the entire student population. But this does not mean they do not hold true at all. If we follow the train of thought that moralists were not completely misconstruing student affairs, drunkenness must have been at least *somewhat* common.

This chapter poses the question what 'drunkenness' actually *means* in the imagery of 'the drunken student'. Like the first chapter, it challenges and complicates the notion that 'drunkenness' is a one-size-fits-all reference that portrays a purported drinker in a negative

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<sup>205</sup> "Sed boni socii temporibus quibus parisiis studui sepe ebrii facti, pro omni medicina sero super vinum cervisiam bibebant. Post ibant dormitum et mane secundo bibebant egregie de meliori, proverbium illud commune allegantes: nocturna potatio seu serotina superabundans potatione matutina curator, quod est leccatorum non philosophorum neque sapientum." Cited from Jacques Despars, *Expositio supra librum Canonis Avicenne* (Lyon, 1498) (not foliated), Book III, fen. 1, d. 2, c. 24 ("De cura soda evenientis ex ebrietate"). See Jaboulet-Vercherre, *The physician, the drinker and the drunk*, 145.

<sup>206</sup> Boncampagno da Signa, *Testi riguardanti la vita degli studenti a Bologna nel sec. XIII*, ed. Virgilio Pini, *Bibliotheca di Quadrivium: Testi per esercitazioni accademiche* 6 (Bologna, 1968), 25: "fornicatio, ebrietas, ludus, intemperanti expensarum, avaritia, inconstantia, fermentum sodomiticum, commixtio gomorrea et furtum".

sense, and like the second chapter, it argues that authors could 'negotiate' their depictions of drunkenness to achieve a certain goal. In doing so, it attempts to further amend the historiographical tendency to portray medieval students as good-for-nothing scoundrels, following recent attempts that do so.

Furthermore, this chapter explores what impact our newfound knowledge on the different 'degrees' of acceptance of drunkenness can have on our analyses of a particular drunkenness, in this case the drunkenness of students. The question is what qualification student drunkenness was given: was it entirely unacceptable or relatively tolerable? The stereotypes might suggest it was the former, but in the first part of this chapter, I argue that the frames this stereotyping utilizes actually reveal the latter is more likely. The second part then builds on this observation by turning to actual alcohol practices within medieval student life, as well as giving a possible hypothesis why medieval students' drunkenness was actually treated much more leniently than one might presume.

### Medieval students: a history and a historiography

#### Problematic images

To re-examine the image that students were rowdy, violent rascals by nature, we must first determine where this picture originated in historiography: the end of the nineteenth century, when many principal sources for the study of medieval university life, especially university statutes and other institutional records, were first made accessible to scholars in print.<sup>207</sup> The editing of sources previously confined to manuscripts made for much easier research, and led to the output of a large number of new studies, the crown jewel of which was probably Hastings Rashdall's *The Universities of Europe in the Middle Ages*.<sup>208</sup> His work introduced several key concepts that would be adapted and expanded upon in the following century.

Unfortunately, the characterization of medieval student life Rashdall employs is quite dismissive of any positive imagery. Rashdall portrayed students as being all too happy to dive into what he called "the wilder side of university life".<sup>209</sup> In general, Rashdall's outlook on students was rather bleak: he emphasizes the absence of discipline and the inability of the universities to enforce it consistently until the fifteenth century, the frivolity of students' recreational activities and the apparently inherently violent nature of scholars. If the major authority on universities described students (and, in fact, adults in general) as "full-grown and well educated men [who] fought and quarrelled and informed against one another on the slightest provocation, like children in a nursery", it should come as no surprise that

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<sup>207</sup> For Paris, the result of this was the *Chartularium Universitatis Parisiensis*, eds. Heinrich Denifle & Émile Chatelain, 4 vols. (Paris, 1889-1897). Henceforth CUP. Oxford saw multiple publications mapping its early university years, too many to briefly mention here.

<sup>208</sup> Hastings Rashdall, *The universities of Europe in the Middle Ages*, 3 vols. in 2 (Cambridge, 1895).

<sup>209</sup> *Ibid*, III: 677-685.

these stigmas have endured for a long time.<sup>210</sup> Scholars' drinking habits were but one of the features sketched by Rashdall, who stated that "the violence of medieval University life was almost equalled by its bibulosity".<sup>211</sup>

Granted, Rashdall's characterization of medieval student life is not completely unfounded. Yet brushing aside students as drunk and violent for violence's sake prevents any further analysis. This image of the brutal, ruthless medieval student has been very pervasive. Citing Austin Lynn Martin, students were a "special category", and "their drunken violence often appeared so mindless that an analysis of causes and precipitants would produce few conclusions".<sup>212</sup> In 1998, Alan Cobban still stated that "from a cynical point of view it could be argued that the participation by scholars in brawls with townspeople or with each other was a form of recreational activity".<sup>213</sup> Only recently has this perspective been subject to revision, although precursors can be found in earlier works.<sup>214</sup>

Since the 1980s, various historians have studied medieval student violence, most of them trying to determine what sorts of crimes they committed and at what times and locations.<sup>215</sup> However, only very recently has the *why*-question explicitly come to the fore. Scholars have started to question the idea that students performed (all of) their misbehaviour while drunk and/or as a source of entertainment, and have looked into their specific motivations. Scott Jenkins has stressed, based on the universities of Oxford and Bologna, that student violence was not apolitical and certainly did respond to the world around it, and was not just the result of overindulgence in alcoholic drinks.<sup>216</sup> Furthermore, Hannah Skoda has illustrated that medieval students used crime and misbehaviour to establish their own identity.<sup>217</sup> Not only does she acknowledge the meanings that hide

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<sup>210</sup> Ibid, III: 416.

<sup>211</sup> Ibid, III: 687.

<sup>212</sup> Martin, *Alcohol, sex and gender*, 115.

<sup>213</sup> Alan Cobban, *English university life in the Middle Ages* (London, 1998), 198.

<sup>214</sup> See e.g. Carl I. Hammer Jr., 'Patterns of homicide in a medieval university town: fourteenth-century Oxford', *Past & Present* 78 (1978), 3-23, who already argued that, while there are certainly many documented cases in which students committed acts of violence, this does not necessarily mean that the average medieval student was more inclined to violence than his non-academic counterpart.

<sup>215</sup> Sophie Cassagnes-Brouquet, 'La violence des étudiants à Toulouse à la fin du XVe et au XVIe siècle (1460-1610)', *Annales du Midi Toulouse* 94 (1982), 245-262; François Verdier-Castagne, 'La délinquance universitaire dans les lettres de rémission', in: *La faute, la repression et le pardon: actes du 107e congrès national des sociétés savantes, Brest, 1982* (Paris, 1984), 283-298 and lately Gillon, 'Les étudiants et la délinquance'.

<sup>216</sup> Scott Jenkins, 'Medieval student violence: Oxford and Bologna, c. 1250-1400' (unpublished doctoral thesis, Swansea University, 2014), esp. 240-284 for a categorization of student crime. He rejects Alan Cobban's thesis that students at universities in Northern Europe did not have the chances to organize themselves against their teachers and did not have 'student power', thus rendering any violence apolitical and unable to be analysed. Cf. Alan Cobban, 'Medieval student power', *Past & Present* 53 (1971), 28-66.

<sup>217</sup> Hannah Skoda, *Medieval violence: physical brutality in northern France, 1270-1330* (Oxford, 2013), 119-158; Eadem, 'Student violence in fifteenth-century Paris and Oxford', in: Jonathan Davies (ed.), *Aspects of violence in Renaissance Europe* (Farnham, 2013), 17-40.

behind seemingly arbitrary acts of violence, she also stresses students' agency in how to position themselves. Students were acutely aware of the various ways they were portrayed, she argues, and could negotiate these portrayals to assert their own identity.

Yet despite these findings, many scholars still equate any reference to alcohol use by students as material supporting the statement that students were drunken rascals, although perhaps not as explicitly as before. The infamous brawls, evidence for which is found in chronicle accounts, are a case in point. Both Paris and Oxford were host to several outbreaks of violence involving students, most notably the incident in 1200 and the strike of 1229 in the former city and the St. Scholastica Day's Riot of 1355 in the latter. Each involves wine in some way or another. However, the meanings that are attributed to this wine, if unravelled, reveal a very difficult picture than drunken student frivolities.

It should first be noted that whenever chronicle accounts describe student misbehaviour, they tend to focus on large-scale outbursts of violence between town and university. Of course, it makes sense that chroniclers were not as interested in minor incidents between individual students as they were in the large-scale battles. Furthermore, sketching the university in a negative light (which included going into student misbehaviour) did not align with the glorification of the monarch that these chroniclers were often aiming for. Therefore, medieval students only enter the chronicle whenever they encounter the common folk.<sup>218</sup> Yet as a result, the setting of these events as described in chronicle accounts is more often than not the primary place where scholars would meet townspeople: the tavern.

Thus, the association with drinking is made by default. Roger of Hoveden, the main source for the 1200 tavern brawl, does not do so explicitly. The servant of a German student orders wine, but the townsman who beats him up and the students that come to his defence could have been either sober or drunk. This is left unspecified.<sup>219</sup> Accounts on the other two events do connect the incidents to wine, but perhaps not in the way one might expect. Matthew Paris, our main source for the riots of 1229, states that the riot ensued because of a dispute between the students and the tavernkeepers over the subpar quality and price of the wine. This led to blows and the students end up bruised. The next day, they returned, armed with weapons and companions, and – besides attacking the visitors of the tavern – smashed open all of the wine barrels.<sup>220</sup> The progression of the events at the St. Scholastica's Day Riot in Oxford is very similar from a narrative sense: two students are outraged at being served poor-quality wine (in some accounts, it is beer

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<sup>218</sup> Skoda, *Medieval violence*, 154-155.

<sup>219</sup> Roger of Hoveden, *Cronica magistri Rogeri de Hovedene*, ed. William Stubbs, 4 vols. (London, 1871), IV: 119-120.

<sup>220</sup> Matthew Paris, *Cronica majora*, ed. Henry Richards Luard, 7 vols. (London, 1876), III: 166-169.

or ale), cause an uproar by throwing the wine in the taverner's face and from that point, the fight spreads, ultimately resulting in altercations all throughout Oxford.<sup>221</sup>

None of these accounts seem to stem from excessive drinking; if they were, there is no evidence to support it in the sources. The events of 1229 and 1355 occur at the tasting of the wine. Although scholars are slowly realizing that a reference to wine does not always mean inebriation, there are still scholarly works that treat these brawls as caused by drunk students.<sup>222</sup> More recently, however, scholars have pointed at the significance of wine in the accounts of the ensuing events in respect to broader conflicts between the town and the university. Both Scott Jenkins and Hannah Skoda have argued that the St. Scholastica Day's Riot of 1355 can be interpreted as the culmination of the struggles over the assize of wine. Throughout the fourteenth century, the university had issued various complaints that the quality of wine in Oxford was poor and the price too high. If one attempts to 'read' the significance of the motifs chosen in the accounts, Skoda argues, the wine can be interpreted as a symbol of friction between the university and the town.<sup>223</sup> The reading of drunkenness into these symbolic references to wine is more of a negotiation attempt of 20<sup>th</sup>-century historians than it is one by medieval authors, and we should reject their offer.

Putting an emphasis on this other, less gluttonous connection between wine and the university sheds a new light on other references to wine and drinking, too. For instance, when the University of Oxford complained about the high prices of goods in the town in 1275, it is probably not without reason that these goods were labelled as "wine and other things" and "assizes in bread, drink, and especially in the sale of wine and other victuals".<sup>224</sup> And in 1311, Edward III of England blamed the consumption of rotten wine by Oxfordian scholars as the cause of the deterioration of academic prowess.<sup>225</sup> Alcohol and the university were integrally associated, but not merely because of scholars' drinking habits.

Unlike Oxford, the University of Paris did not hold power over the assizes of wine and this does not seem to have been a major source of conflict between the university and the town. In 1369, however, we do find a potential spark, when Charles V exempts scholars

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<sup>221</sup> I follow the version of Robert of Avesbury, *Historia de mirabilibus gestis Edwardi III*, ed. E. Maunde Thompson (London, 1889), 421-423. For other sources, cf. Rashdall, *The universities of Europe*, III: 405n; William A. Pantin, *Oxford life in Oxford archives* (Oxford, 1972), 99-104.

<sup>222</sup> See e.g. Skoda, who states that the 1200 brawl "was fuelled by alcohol" (*Medieval violence*, 142), seemingly extrapolated from the fact that the incident took place in a tavern; and Ruth Mazo Karras, *From boys to men: formations of masculinity in late medieval Europe* (Philadelphia, 2003), 96, who blames the St. Scholastica Day's Riot on "excessive drinking".

<sup>223</sup> Hannah Skoda, 'Collective violence in fourteenth- and fifteenth-century Oxford', in: Pieter Dhondt & Elizabethanne Boran (eds.), *Student revolt, city and society in Europe – from the Middle Ages to the present* (London, 2017), 222-234, here 224-226. See also Jenkins, 'Student violence', 173-182.

<sup>224</sup> Ibid, 175-176; *Calendar of the Close Rolls preserved in the Public Record Office, Edward I, A.D. 1272-1279*, ed. H.C. Maxwell Lyte (London, 1900), 232.

<sup>225</sup> Skoda, 'Collective violence', 225.



from taxation on wine and various other goods ("de tous vins et autres biens").<sup>226</sup> This was reaffirmed only two years later, perhaps indicating that the townspeople had contested the rule.<sup>227</sup> Like in Oxford, this apparently caused similar tensions between town and gown. In 1372, Adam of Fleming, a wine vendor, was prosecuted after he had attacked a law student who claimed the price for his wine was different due to his privilege, and several 15<sup>th</sup>-century court records in the *Parlement de Paris* exist that refer to incidents having to do with this privilege.<sup>228</sup> But this uneasy balance does not seem to have caused any major violent incidents like the St. Scholastica Day's Riot.

However, the reference to the quality of wine is not entirely symbolical. There are several sources that illustrate frustration about the persistence of taverners mixing their wine with water to save money. It is regularly mentioned (negatively) in the so-called 'battles between wine and water', in which water and wine try to prove their respective superiority by entering in a disputation with each other.<sup>229</sup> Moving on to the fifteenth century, we still find references to taverners mixing wine with water in drinking songs that are very fond of condemning the taverners for doing so.<sup>230</sup>

Thus, we should first and foremost realise that references to wine and drunkenness in the case of medieval students do not always refer to actual alcohol use or drunkenness; yet at the same time, paradoxically, could still refer to actual alcohol consumption. In this sense, wine or drunkenness could hold multiple meanings at once. With this, the construction of 'drunkenness' is complicated further: what meanings could this 'illusory drunkenness' have, and how could they be negotiated? And how did references 'illusory drunkenness' relate to actual drunkenness? This observation of a dual meaning of drunkenness, referring to both a fictional category and actual drunkenness, becomes highly relevant when we consider how students are portrayed.

#### The 'true' and the 'false' student

Historians have increasingly become aware of how the image of the 'average medieval student' is the result of a process of construction of extremes. Increasingly, it has been asserted that representations of medieval students could be seen as a spectrum of which the ends were overrepresented. Scott Jenkins and Hannah Skoda in particular have drawn

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<sup>226</sup> CUP III, nr. 1357, p. 188. Exemption on taxation of drinks was not unique to Paris, but is also present in e.g. Leuven and Leiden: J. Dauwe, 'Het drinken in het Leuven studentenleven', in: S. Libert (red.), *Drinken in het verleden* (Leuven, 1973), 212-236, here 219-220.

<sup>227</sup> CUP III, nr. 1367, p. 198-199.

<sup>228</sup> CUP III, nr. 1382, p. 207-209. For the court records (between 1445 and 1452), see Gillon, 'Les étudiants et la délinquance', 336.

<sup>229</sup> For an overview of the genre, see James Holly Hanford, 'The mediaeval debate between wine and water', *Publications of the Modern Language Association of America* 28:3 (1913), 315-367 and Lambrech Régine, 'Le "débat du vin et de l'eau" (XVe siècle)', in: Max Milner & Martine Chatelain-Courtois (eds.), *L'imaginaire du vin* (Marseille, 1983), 123-129.

<sup>230</sup> BnF, fr. 2206, fol. 178v for the *Ballade contre ceulx qui mectant de l'eau au vin ou contre nos ennemy*. This is a slight variation on what appears to be the standard version of the poem, that is spiteful towards taverners nonetheless. See S.V. Spilsbury, 'The imprecatory ballade: a fifteenth-century poetic genre', *French Studies* 33:4 (1979), 385-396, here 389-390.

up this framework.<sup>231</sup> On the one hand, you had the ideal, 'true' student: pious, diligent, respectful and full of love for both his studies and his faith. On the other, you had the non-behaving student painted by moralists. The latter was often treated as a 'false' student.

Neither of these labels were meant to accurately portray actual students. Instead, they were offered to students as frames of reference that each had their own sets of attributes and behavioural patterns. The 'true' and 'false' student can be regarded as two options, two paths, and the ones propagating this duality clearly had a favourite option in mind. Thus, the two were presented as polar opposites, and whenever the unruly and lascivious nature of 'a student' was referenced, it was nearly always in comparison to the ideal student. The 'true' student was a goal to strive for, but it was not something that most students would attain. Most portrayals of this 'true' student were as perfect as they were imaginary.

Hannah Skoda has stressed that medieval students used crime and misbehaviour to establish their own identity, positing it somewhere on the spectrum between the 'true' and 'false' scholar.<sup>232</sup> As a result, any discussion of student life and identity in the Middle Ages should take into account that students were not passive recipients of their stereotypes, but were actually competent agents in framing their own image. Furthermore, she explains, students used the 'true' and 'false' student range as a frame of reference in shaping their own identity through their actions.

But the 'true' and 'false' students, while very present in moralist texts, are not entirely ungrounded and did not emerge spontaneously. Even though they were illusory frameworks in between which students could explore their own identity, the 'false' student especially had a basis in reality. In the early years of the university especially, the learned clerics had had experience with people who had claimed a clerical status, but who had not acted like it. The Goliards – even though they were not as much of a distinguishable group as they were a literary construction – were well-renowned and certainly a group that weighed on the minds of university authorities. But the Goliards were far from the only 'false' clerics; the label could also apply to former clerics, i.e. clerics who went astray, but did not abandon their clerical privileges.<sup>233</sup> Pretending one was a cleric for the sake of claiming right to privileges was not a rare practice.<sup>234</sup>

These privileges were the main reason anyone would have wanted to pose as a student. As clerics, students enjoyed both *privilegium fori* (the privilege to be tried only by ecclesiastical courts) and *privilegium canonis* (a protection through which anyone who tried

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<sup>231</sup> Jenkins, 'Student violence', 103-118; Skoda, *Medieval violence*, passim but esp. 136-138. While this chapter focuses on students, masters were also subject to a good-bad scale. See e.g. Astrik L. Gabriel, 'The ideal master of the medieval university', *Catholic Historical Review* 60:1 (1974), 1-40.

<sup>232</sup> Skoda, *Medieval violence*; Eadem, 'Student violence'.

<sup>233</sup> Jenkins, 'Student violence', 105.

<sup>234</sup> See Bronislaw Geremek, *The margins of society in late medieval Paris* (Cambridge, 1987), 138-145.

to attack them risked excommunication).<sup>235</sup> The first one was particularly sought after, as corporal punishment was not used at ecclesiastical courts, originating from the idea that clerics should not commit bloodshed.

Seeing as it was very difficult for the university to keep track of all its students, as they were initially not obliged to register, it must have been relatively easy for someone to claim himself a student, gaining access to clerical privileges, but not actually work under a master or attend any lectures. We can see that the university was aware of this issue and tried to enforce matriculation to distinguish between actual students and 'false' students who just wanted to enjoy the privileges.<sup>236</sup> Both Oxford and Paris have statutes that aim to tackle the issue, with a Paris one specifically referring to the problem as "discerning scholars are good or legitimate or feigned".<sup>237</sup> While this is a different category than students who preferred to drink their days away, they fall under the same label – 'false' students – and the term could refer to either or both at the same time.

Other sources also affirm that 'false' or pretend students were an actual problem that the university had trouble getting rid of. The College of the Treasurer in Paris, for instance, did not want "hunters of prostitutes and taverns, but good and true scholars".<sup>238</sup> And it does not seem this fear waned in subsequent centuries. In both Paris and Oxford, we find fifteenth-century references that the universities are plagued by 'pseudo-scholars' that lurk in taverns and brothels and commit crimes and murders under the pretence of being scholars.<sup>239</sup> Thus, while the 'false' student many moralists are referring to is a construct opposite to the 'true' ideal student, their fears that students would be led astray or tempted to leave their studies were not unfounded.

It should be self-evident that drunkenness was not considered part of the 'true' student whatsoever. As such, it automatically belonged to the 'false' student, who is often depicted in the tavern, the place where 'wine, women and song' reigned over all else. Yet because this 'false' student was more of a construct than an actual category of students, his enjoyment of excess was also a construction. At the same time, it was a response to pretend students and to practices of actual students who regularly drank too much. Again,

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<sup>235</sup> Marie-Madeline Davy, 'La situation juridique des étudiants de l'Université de Paris au XIII<sup>e</sup> siècle', *Revue d'histoire de l'Église de France* 17 (1931), 297-311, here 297-302; see also Pearl Kibre, *Scholarly privileges in the Middle Ages* (Cambridge (Massachusetts), 1962), 7-8.

<sup>236</sup> Rainer Christoph Schwinges, 'Admission', in: Hilde de Ridder-Symoens (ed.), *A history of the university in Europe, volume 1: universities in the Middle Ages* (Cambridge, 1992), 171-194, here 178-179.

<sup>237</sup> For Oxford, see *Statuta antiqua Universitatis Oxoniensis*, ed. Strickland Gibson (Oxford, 1931), 60-61; 83; 107; 227. For Paris, see CUP II, no. 561, p. 35-36: "qui sunt boni ac legitimi aut ficticii scholares discernere non possumus". See also Jacques Paquet, 'L'immatriculation des étudiants dans les universités médiévales', *Pascua Mediaevalia: studies for Prof. Dr. J.M. de Smet* (Leuven, 1983), 159-171.

<sup>238</sup> Michel Félibien, *Histoire de la ville de Paris*, 5 vols. (Paris, 1725), III: 287.

<sup>239</sup> For Oxford: *Munimenta academica, or documents illustrative of academical life and studies at Oxford*, ed. Henry Anstey, 2 vols. (London, 1868), I: 320-321; Jenkins, 'Student violence', 104. For Paris: CUP IV, no. 2073, p. 323-324; Skoda, 'Student violence', 26.

we find that the 'false' drunk student refers to a suppositious drunkenness, but also responds to physical drunk students. This observation is complicated even more if we consider the analysis of 'good' and 'bad' drunkenness. As the 'false' student was at the far end of the extreme, his drunkenness would have been intentional and frequent. Yet as the 'false' student was more of a construct than an actual representation of students, would that not mean that only a small minority of students conformed to this type of drunkenness? After all, the vast majority of students would be placed somewhere on the spectrum between 'true' and 'false'. How does this impact our view of students?

Let us take a look at some sources to determine how authors negotiate drunkenness to fit the frame of the 'false' student. Sermons are a particularly helpful source for this. First, scholars were considered a specific audience for a sermon *ad status*. The sermon collections of Jacques de Vitry (c. 1165-1240), Guibert of Tournai (c. 1200-1284) and Humbert of Romans (c. 1195-1277) contain one or multiple sermons *ad scolares*.<sup>240</sup> There are likely to be more in hitherto neglected collections.<sup>241</sup> However, these collections are mostly concerned with reminding scholars of their moral responsibility of conducting science and conducting it well, constantly, not overindulgently and for the right reasons.<sup>242</sup>

More information on student misbehaviour does turn up in other sermon collections, and it stands to reason that most of these sermons were indeed preached to students, or at least resemble the actual words spoken – as many of these sermons were not written down by the actual preacher, but as *reportationes* by others. Hannah Skoda has described the function of these sermons as 'public shaming'; the references to student lasciviousness were meant to make them feel embarrassed and steer them in the right direction (although this could have the opposite effect).<sup>243</sup> Preaching was considered to be an essential part of theological education and attendance at university sermons was often compulsory, so it is no surprise many have survived, most of them by thirteenth-century preachers.<sup>244</sup> Both Paris and Oxford had their fair share of preachers condemning student practices.

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<sup>240</sup> Jacques de Vitry, *Sermones vulgares et ad status*, ed. Jean Longère, Corpus Christianorum, Series Latina, Continuatio Medievalis 255 (Turnhout, 2013), 266-306 for two sermons; three sermons of Guibert of Tournai are found in Marjorie Burghart, 'Remploi textuel, invention et art de la mémoire; les Sermones ad status du franciscain Guibert de Tournai (†1284)' (unpublished doctoral dissertation, Université Lyon-2, 2013); Humbert de Romans, *De eruditione praedicatorum*, in: *Bibliotheca maxima veterum patrum* 25 (Lyon, 1677), 487-491 for one sermon to scholars in general, and eight additional sermons for different types of scholars, from grammar school to theology students.

<sup>241</sup> See Amiens, Bibliothèque municipale, MS 287, fols. 374vb-377rb, a 15<sup>th</sup>-century manuscript containing an (anonymous?) *ad status* sermon 'ad scholaribus'.

<sup>242</sup> Maria Salmela-Mattila, 'Tria competunt ad scholaribus: the image of a scholar in thirteenth-century *ad status* sermons', *Medieval Sermon Studies* 47 (2003), 78-82; Antonio Marson Franchini, 'I sermones ad status del XIII secolo rivolti agli studenti: i vizi del mondo accademico medievale' (unpublished Tesi di Laurea Magistrale, Università di Bologna, 2016), esp. 92-102.

<sup>243</sup> Skoda, *Medieval violence*, 127.

<sup>244</sup> Sita Steckel, 'Universitätspredigten', in: Jan-Hendryk de Boer, Marian Füssel & Maximilian Schuh (eds.), *Universitäre Gelehrtenkultur vom 13.-16. Jahrhundert: ein interdisziplinäres Quellen- und Methodenhandbuch*, 2 vols. (Stuttgart, 2018), II: 539-558, here 540-541.

Unfortunately, I have not been able to access any of the Oxford manuscripts myself. Any specific references in the following will thus be limited to Paris.<sup>245</sup>

We do indeed find the connection between excessive drinking and the 'false' student in preaching. One preacher who explicitly does so is Odo of Châteauroux (c. 1190-1273), chancellor of the University of Paris between 1238 and 1244. Odo provides us with a clear dichotomy between the 'false' student and a specific 'true' student. In one of his sermons, he recalls that Saint Dominic did not drink wine during the entirety of his studies in Palencia, and extended his abstinence for six years afterwards.<sup>246</sup> Dominic's virtuous, 'true' attitude to study is juxtaposed to that of contemporary students, who barely tread in Dominic's footsteps. Students in Odo's time "study the binging of chalices"; gluttony and drunkenness are rampant, dulling the mind and confounding the brain.<sup>247</sup> Students ought to avoid luxurious foods and wine and eat their vegetables, for that would be reason for God to gift them with wisdom and learning, just as he did to Daniel and his companions.<sup>248</sup> But no, "the thing most worthy of praise today is loving the best wine", Odo establishes, even though "wine is also loved by quarrels, wounds and impairments of the eyesight".<sup>249</sup> Another of Odo's sermons repeats the same message (using similar phrases, even), but briefer.<sup>250</sup>

Other preachers choose to juxtapose the 'false' student with perhaps a more relatable person: the preacher himself. In a sermon on the vices of the tavern from 1260/1261, Robert de Sorbon (1201-1274), the founder of the Sorbonne college, equates his own past

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<sup>245</sup> Possible points of entry for Oxford: Siegfried Wenzel, *Latin sermon collections from later medieval England: orthodox preaching in the age of Wycliff* (Cambridge, 2005) and Idem, *Macaronic sermons: bilingualism and preaching in late medieval England* (Ann Arbor, 1994) list several interesting manuscripts. See also Beryl Smalley, 'Oxford university sermons, 1290-1293', in: Beryl Smalley (ed.), *Studies in medieval thought and learning: from Abelard to Wycliff* (London, 1981), 183-203.

<sup>246</sup> This sermon is edited in: Constance de Courrèges d'Agnos, 'Saint Dominique et les Dominicains dans les sermons d'Eudes de Châteauroux (1190?-1273)' (unpublished master 1 thesis, Université de Lyon, 2014, 2 parts), II: 24-49, based on BnF, lat. 15497, fols. 273vb-277vb. I will be citing the edition here. For the citation, see 36-38: "Veniens [Beatus Dominicus] Palenciam ubi tunc florebat studium, a vino abstinuit per illos quatuor annos quibus studuit et etiam per sex alios sequentes."

<sup>247</sup> Ibid, 38: "Qui maiores habentur in studio student calicibus epotandis [Proverb 23:30] et labor unus erat evacuare civos. Gula et ebrietas ingenium ebetant, confundunt cerebrum."

<sup>248</sup> Ibid, 38: "Porro Daniel et eius socii cibaria regalia et vinum regium respuentes, legumina comedebant, et ideo 'Deus dedit eis scientiam et disciplinam in omni libro et' in omni sapientia, Dan. i<sup>o</sup>." (Daniel 1:16-17).

<sup>249</sup> Ibid, 38: "Hodie laus est amare vinum optimum, et iam vertitur in proverbium, quod omnis religio amat bonum vinum et omnis bonus clericus. [...] Similiter rixe, vulnera, suffossiones oculorum, amant vinum ut a quo generantur." For an exploration of the relation between gluttony (of which drunkenness was a part) and eyesight, see Joy Hawkins, 'Did drunkenness dim the sight? Medieval understandings and responses to blindness in medical and religious discourse', in: Naoë Kukita Yoshikawa (ed.), *Medicine, religion and gender in medieval culture* (Cambridge, 2015), 203-220.

<sup>250</sup> Also found in de Courrèges d'Agnos, 'Saint Dominique', II: 10-23, based on BnF, lat. 15497, fols. 269va-271vb. Here 16-18: "Existens [Beatus Dominicus] scholaris carnem suam a[bs]trahit a vino per decem annos continue. [...] Heu quam dissimilis fuit scholaribus nostri temporis qui commessacionibus et ebrietatibus incumbentes et aliis pompis, vacui recedunt a studio, sicut et vacui venerunt [...] Non sicut aliqui qui, licet nomen usurpaverint optimi vini et preciosi, student calicibus epotandis."

self with the 'true' student as opposed to his audience, which likely consisted of students. He recalls a day at which he was passing through Rue Garlande in Paris, when he was invited by two students to join them in the tavern. Robert responds that the tavern will not have the type of wine he is looking for. His thirst will only be quenched by the wine Christ referred to at the cross when he exclaimed "I am thirsty", this being the metaphorical saving of his soul. One of the students is moved and changes into a 'true' student when he confesses his sins to Robert.<sup>251</sup>

Some other references to drinking are more subtle. It is not unthinkable, for instance, that when Walter of Château-Thierry (d. 1249) urged students to "work in the vineyard of the Lord, i.e. the Sacred Scripture, and take back to your homeland and church the wine of learning", that this message would have been accompanied by an implicit 'instead of the wine you tend to enjoy' for the listener.<sup>252</sup> A similar passage found in the works of Jean Gerson (1363-1429), the famous chancellor of the University of Paris, testifies to this interpretation. In a passage on the excesses of clerics (in general, not just students), he contrasts the food and wine that lead to voracity and drunkenness with "Jacobine tarts" and "the wine of theologians".<sup>253</sup>

As we had already surmised, drunkenness is construed as being part of the 'false' student. Its polar opposite, the 'true' student, is equated with complete abstinence. However, if we consider that the 'false' student, at the far end of the spectrum and having the worst possible imagery, was regularly drunk and the 'true' student never was, what does that mean for the large space in the middle? In Odo's sermons particularly, students appear to have the intention of drinking (they "study the binging of chalices") and also encourage others to do the same. We have already determined that this drunkenness was undesirable, but that does not mean *every* type of drunkenness was just as loathsome. By highlighting the extreme drinking habits of the 'false' student, these preachers seem to inadvertently condone more moderate types of drinking and drunkenness. Although they aimed to steer students away from the 'false' student, they most likely were aware that they were fighting an uphill battle. The grand majority of students would never reach the level of the 'true' student, i.e. completely abstain from drinking.

In addition, we should also consider that most elements of the stereotypical student are not used exclusively for the student population. Students, after all, were part of the

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<sup>251</sup> Palémon Glorieux, *Aux origines de la Sorbonne*, 2 vols. (Paris, 1965-1966), here I: 50. Regrettably, Glorieux does not give a manuscript reference, only a partial lemma ('Refloruit'), which likely refers to 'Refloruit caro mea' (Psalm 27:7). It is possibly found in BnF, lat. 15971, fol. 172r, but I am not certain.

<sup>252</sup> BnF, lat. 15959, fol. 434v: "et quia ut laborent in vinea divini, id est Sacra Scriptura, et reportent in patriam suam ad ecclesias suas vinum doctrine".

<sup>253</sup> Jean Gerson, 'De excessu clericorum ac prelatorum', in: *Oeuvres complètes*, ed. Palémon Glorieux, 11 vols. (Paris, 1960-1973), III: 101: "adeo ut jam de se proverbia quedam apud vulgus generaverunt suae ebrietatis vel crapulae, nam et cibi aliqui et vina praecellentia tamquam ab inventoribus aut cultoribus demoninantur, sicut dicitur: Tartae Jacobitarum, et vinum theologorum, etc."

clerical world, and thus they shared in the many accusations made against clerics (mostly by other clerics). In *De planctu ecclesiae libri duo*, Alvarus Pelagius (c. 1280-1352), for instance, assails the ecclesiastical debauchery of the world he lives in, and university masters and students do not escape his rebuttal.<sup>254</sup> He chides them – among many other things – for “spending all money that was given to them by parents or churches on taverns, dice games, eating, bad company and whores, and coming home empty-handed, with neither conscience or money, nor knowledge”.<sup>255</sup> Here, students are not treated as a unique group, but as part of the world of the cleric; they are expected to behave conform to the standards of clerics. And it should be restated that the stereotypical ‘debauched cleric’ was very much a constructed image.<sup>256</sup>

Further still, many complaints made about students, such as their supposed turbulent and violent behaviour, brutality, arrogance, disrespect towards authority and tendency to act in a group, were accusations made against youth in general.<sup>257</sup> And on the other hand, some characteristics of the ‘true’ student originate in positive portrayals of youth or clerics. For the latter, cosmopolitanism is an example of this, as is the idealization of poverty.<sup>258</sup> Their young age and clerical status are both crucial elements in defining the ‘identity’ of the medieval student, thus it makes sense that many condemnations against youth and clerics were also applied to the student body.

At the same time, students constituted a very visible category. Students would have constituted a substantial part of the city’s population in both Paris and Oxford, especially in the latter, which was much smaller and quite reliant on the university for its prosperity. They were also visible in a literal sense, as their clothes and tonsure would have stood out. Furthermore, being clerics and residing in cities with universities, they were at the heart of medieval high-brow society. We should take into account that they are likely overrepresented in our sources compared to other youth because they were esteemed important enough a subject to write about and were constantly near people who were writing what would eventually become our sources. Students are so prominent in our

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<sup>254</sup> Alvarus Pelagius, *Status et planctus ecclesiae* V:34, ed. and trans. Miguel Pinto de Meneses, *Estado e pranto da igreja (Status et planctus ecclesiae)*, 7 vols. (Lisboa, 1988-1997), V: 328-341, here 334-335. See also Patrick Gilli, ‘Péchés et vices des maîtres et étudiants médiévaux: le regard d’Alvaro Pelayo, pénitencier pontifical et évêque de Silves’, in: Dominique Boutet & Catherine Nicolas (eds.), *La question du sens au Moyen Âge: hommage au professeur Armand Strubel* (Paris, 2017), 151-166.

<sup>255</sup> Alvarus Pelagius, *Status et planctus*, 334-335. “Decimo quinto, quia expensas, quas habent a suis parentibus uel ecclesiis, expendunt in tabernis et taxillis et commensationibus et malis societatibus et meretricibus, et uacui ad domum redeunt sine conscientia et pecunia uel scientia.”

<sup>256</sup> Vincent-Cassy, ‘Between sin and pleasure’, 410-411.

<sup>257</sup> See Michel Pastoureau, ‘Les emblèmes de la jeunesse: attributs et mise en scène des jeunes dans l’image médiévale’, in: Giovanni Levi & Jean-Claude Schmitt (eds.), *Histoire des jeunes en Occident*, 2 vols. (Paris, 1996), I: 255-275, here 270-271; Jenkins, ‘Student violence’, 107.

<sup>258</sup> Skoda, *Medieval violence*, 126; Jenkins, ‘Student violence’, 107-110.

sources, in fact, that a large chunk of our information on the various taverns in Paris is drawn from the books of the nations in Paris.<sup>259</sup>

If we assume that moralists were aware of the fact that most students aligned somewhere in the middle between 'true' and 'false', this large body of students would not have been considered heavy drunks. However, moralists present their student audience with an illusory 'false' student that *is* continually and intentionally drunk, negotiating his drunkenness to deter students from treading in the 'false' student's footsteps. With this deconstructed image, also considering that students were in the limelight because they were very visible, I would like to keep in mind the tentative notion that student drunkenness might have been treated much more leniently than the sources suggest at first glance. Having expressed these deliberations, let us look at how student drunkenness was actually treated.

### The bibulosity of medieval student life

#### Enjoying and bonding

According to Rashdall, medieval student life was "bibulous". Can we find out how much students drank, why, when, where and what happened to them if they did? A major obstacle when considering whether these questions can be answered is the fact that very few of these students left sources that describe their own daily life. Even letters and correspondences between students and their masters or parents, a source type that seems very fruitful, are left to us almost exclusively in model letter collections, which – while not making them useless – makes it difficult to find reliable glimpses that provide us with information about their daily lives.<sup>260</sup> Regrettably, this also makes it very difficult to find out to what degree students could 'negotiate' their own drunkenness, similarly to how they could 'negotiate' their violence (following Skoda).

How about records kept by the university, one might ask? In that case, another issue arises. Individual students, who could live anywhere in the town and owed responsibility to no one except their *natio*, were hard to grasp for university authorities. In the early years of both Paris and Oxford, there was very little supervision or control over students. This gradually began to change in the course of the fourteenth and especially the fifteenth century. In Oxford especially, the halls and later the colleges were installed principally to

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<sup>259</sup> These are collected in the *Auctarium Chartularii Universitatis Parisiensis*, 6 vols. (1894-1964), ed. Heinrich Denifle & Émile Chatelain (vols. 1-3), Charles Samaran & Emile van Moé (vols. 4-5) and Astrik Gabriel & Gray Boyce (vol. 6). Henceforth *ACUP*. The taverns have been mapped by Émile Chatelain, 'Notes sur quelques tavernes fréquentées par l'université de Paris aux XIV<sup>e</sup> et XV<sup>e</sup> siècles', *Bulletin de la Société de l'Histoire de Paris* 25 (1898), 87-109.

<sup>260</sup> Charles Homer Haskins, 'The life of mediaeval students as illustrated by their letters', in: Idem, *Studies in mediaeval culture* (New York, 1929), 1-35. A more recent overview, predominantly focusing on sources from the German areas is Antonia Landois, 'Briefe, Gelehrtenkorrespondenz', in: Jan-Hendryk de Boer, Marian Füssel & Maximilian Schuh (eds.), *Universitäre Gelehrtenkultur vom 13.-16. Jahrhundert: ein interdisziplinäres Quellen- und Methodenhandbuch*, 2 vols. (Stuttgart, 2018), I: 51-66.



fulfil this function.<sup>261</sup> However, there was still a substantial student population that did not join the colleges. Yet as it is very difficult to grasp the lives and drinking customs of individual students, we must mostly rely on congregations of students, those being the colleges and nations.

The nations were corporations at the university that served to house students from a particular region of origin, and provide them with a sense of belonging and identity. In Paris, four nations emerged in the second quarter of the 13<sup>th</sup> century: the French, Norman, Picard and English nation. The latter was renamed the German nation due to the Hundred Years War. In Oxford, there were only two: the *australes* (for the ones who came from south of the Trent river) and the *boreales* (from north of the river). However, they were less important of an institutional system within the university, and have left much fewer records than those of Paris.<sup>262</sup>

The nations spent a large amount of their funding at taverns, and the meticulous records of their meetings allow us to confirm the specific tavern, the exact amounts spent and sometimes who was paying for the drinks. Specific occasions that called for a tavern visit were the inception of a new procurator or master.<sup>263</sup> Next to these celebratory occasions, a trip to the tavern also seems to have been mere routine for the nations' congregations, for lack of a suitable alternative (as there were no common rooms or anything of the sort), not unlike the contemporary custom of having drinks after afternoon or late-night meetings. One time, a long meeting had clearly been testing a student's patience, and he asked whether it could be ended prematurely.<sup>264</sup>

New students were traditionally assigned to be designated payers; as part of 'the jocund advent', the final part of their *be(j)anus* or *béjaune* (from *bec-jaune*, 'little chicken') at the nation, they were to pay for an evening at the tavern.<sup>265</sup> We should regard the *béjaune* as a sort of initiation ritual for medieval students whenever they entered a nation or other university congregation.<sup>266</sup> Akin to the hazing at modern confraternities, the goal of this initiation, that involved derision and humiliation, was to establish a common group identity and a feeling of responsibility toward that group. Spending money on drinks for all members of the group was a prime way to illustrate one's attachment to the group.

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<sup>261</sup> See Rashdall, *The universities in Europe*, 615-617; Cobban, *The medieval English universities*, 117-118.

<sup>262</sup> Pearl Kibre, *The nations in the mediaeval universities* (New York, 1948), 166.

<sup>263</sup> *Ibid*, 193.

<sup>264</sup> *ACUP* I, col. 345: "De tertio nullus supplicavit preter unum, cujus supplicatio fuit, ut iremus ad tabernam."; Ruth Mazo Karras, 'Sharing wine, women and song: masculine identity formation in medieval European universities', in: Jeffrey Jerome Cohen & Bonnie Wheeler (eds.), *Becoming male in the Middle Ages* (London & New York, 1997), 187-202, here 193.

<sup>265</sup> See Rashdall, *The universities of Europe*, III: 629.

<sup>266</sup> Recently, see Antoine Destemberg, *L'honneur des universitaires au Moyen Âge: étude d'imaginaire social* (Paris, 2015), chapter 4. My thanks to Eve Defaÿsse for pointing my attention toward this work.

We do not have many sources on the *béjaune* in Paris or Oxford; most of the references come from other universities.<sup>267</sup> The German universities in the 15<sup>th</sup> century have a particularly high number of sources on the *béjaune*, with the *Manuale scholarium* being a major one for the rituals and functions of the process in the German areas.<sup>268</sup> However, we know they were there from references in general university statutes, the books of the nations and rules of the colleges.<sup>269</sup> At the Cambrai College in Paris, for instance, we find that whenever a new student received a bursary from the university, he was ordered to pay twenty solidis, part of which was to be spent on a quart of wine for everyone present at his initiation.<sup>270</sup>

We can find several attempts to stop copious spending on drinks in the records of the nations.<sup>271</sup> On September 14<sup>th</sup>, 1370, the English-German nation in Paris voted "that the nations funds should be preserved faithfully and diligently for the use, undertakings, and progress of the nation, and by no means vainly expended in taverns or elsewhere".<sup>272</sup> Only five days later, the nation reaffirmed its statement.<sup>273</sup> This could indicate that the students were not bent on following this rule, but perhaps it was a clarification for the ones that had been worried this meant they would not be feasting at the holiday of Saint Edmund, the nation's patron saint.<sup>274</sup> In 1391, the nation ultimately prohibited any squandering of money on drinks (again, except on St Edmund's Day).<sup>275</sup>

Besides each nation having a patron saint, all university clerics celebrated the holidays of the Virgin, St Nicholas and St Catherine.<sup>276</sup> The feasts of the patron saints

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<sup>267</sup> See Jacques Verger, 'Rites d'initiation et conduites d'humiliation: l'accueil des béjaunes dans les universités médiévales', in: E. Crouzet-Pavan & Jacques Verger (eds.), *La dérision au Moyen Âge: de la pratique sociale au rituel politique* (Paris, 2007), 73-85, passim for many source references.

<sup>268</sup> Ruth Mazo Karras, 'Separating the men from the goats: masculinity, civilisation and identity formation in the medieval university', in: J. Murray (ed.), *Conflicted identities and multiple masculinities: men in the medieval west* (London, 1999), 189-213.

<sup>269</sup> In Paris, especially the rules ordained in 1340 and 1342: *CUP* II, no. 1032, p. 494-497; no. 1057, p. 523-524. Apart from these, letters 10 and 11 from Adriaan de But, a fifteenth-century student from Flanders, also reference his initiation: Alfons de Poorter, 'Un recueil de lettres adressées à Adrien De But, étudiant au collège S. Bernard à Paris', *Annales de la Société d'Emulation Bruges* 62:2 (1912), 104-136 for the letters themselves and Thomas Haye, 'Briefe aus der Studentenzeit: die Pariser Korrespondenz des Adrian de But (1437-1488)', *Analecta Cisterciensia* 55 (2005), 269-300 for an analysis.

<sup>270</sup> Félibien, *Histoire de la ville de Paris*, III: 433: "Item, quicumque recipietur ut percipiat bursas domus, solvat in suo adventu viginti solibus pro utensilibus, et unum sextarium boni vini sociis tunc praesentibus in aula."

<sup>271</sup> E.g. *CUP* III, nr. 1384, p. 210: "ne pecunia nostre nationis in comessationibus seu potationibus consumatur quoquomodo, aut aliis quibuscunque usibus preterquam per modum subscriptum applicetur".

<sup>272</sup> *ACUP* I, col. 361, quoted from Karras, 'Sharing wine, women and song', 193.

<sup>273</sup> *ACUP* I, col. 363: "Primo statuit nacio, in qua XXII magistri presentes protunc erant, quod pecunia nacionis de cetero nullatenus in tabernis nec alibi in potacionibus vel comestionibus expendetur nec consumetur..."

<sup>274</sup> *ACUP* I, cols. 363-364 (continued from the previous quote): "... excepto duntaxat die beati Eadmundi regis et martiris, in quo tota nacio simul ad convivandum et festivandum convenire consuevit, sed potius ipsa pecunia ad utilitatem et profectum nacionis cum diligencia conservetur."

<sup>275</sup> *CUP* III, nr. 1592, p. 542-543; Kibre, *The nations*, 86.

<sup>276</sup> *Ibid*, 87.

provided students as well as masters with an opportunity to enjoy themselves, although they were still a cause of concern for the nations and university authorities. In 1476, the Picard nation set a limit to the amount of money that could be spent for the festival of St Nicholas.<sup>277</sup> Seemingly, the behaviour of masters was also a cause for concern: in 1275, it was ordained that no master was to attend more than one nation's feast, those of St Nicholas and St Catherine notwithstanding.<sup>278</sup> Simon de Brie attempted to ban all festivities in 1276, describing a series of merriments from drinking and the playing of dice on the church steps to choruses on the street and the carrying of weapons, also inserting a hint of nostalgia to past scholars (*scolarum, qui olim Parisius studuerunt*), who *obviously* did not partake in such activities.<sup>279</sup> It is hard to determine whether these complaints reflect genuine practices – the past scholars likely function as 'true' scholars in comparison to today's 'false' students – but it seems there were at least precedents for holidays getting out of hand.

It is clear that the nations functioned as an association in which students could find like-minded individuals, with whom they already shared, speaking broadly, a region of origin. Ruth Mazo Karras has stressed the ways in which drinking together could serve as a bonding mechanism between people to shape a group identity.<sup>280</sup> Alcohol was not just drunk because it was enjoyable, it was also a social lubricant and was positioned at the heart of the activities in the nation because it allowed all members of the nation to share in a common activity that promoted the group as a whole. Thus, even though the copious spending at the tavern may seem like squandering of money (and may have seemed that way to the nations themselves), it was an integral part of assimilation within the nation's identity.

#### Regulating and punishing

The university and its masters did try to implement measures that would limit the nefariousness of students. The creation of halls and colleges was found to be one of the most effective and rose in popularity throughout the last centuries of the Middle Ages. The colleges could be regarded as a community for students, somewhat similar to the nations, but they were much stricter. They were founded in part to house the poorer students and give them a bursary; in return, the students were to follow the rules of the college. The starting point of the European history of colleges is often attributed to the foundation of the Sorbonne in Paris in 1257/1258 by Robert de Sorbon, and in the 1260s to 1280s in Oxford with the founding of Merton College, University College and Balliol College. These initial colleges were exclusively for graduates; colleges for undergraduates emerged a bit later.

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<sup>277</sup> ACUP IV, col. 31-32; Kibre, *The nations*, 87.

<sup>278</sup> CUP I, nr. 461, p. 531-532; Kibre, *The nations*, 87.

<sup>279</sup> CUP I, nr. 470, p. 540-541; Kibre, *The nations*, 88-89.

<sup>280</sup> Karras, *From boys to men*, 95-96; Eadem, 'Sharing wine, women and song', 193.

We do not know much about the internal life at the colleges due to a lack of sources, so we are left to rely on their rules and statutes. How did these colleges respond to drinking students? When examining several of these college rules, interdictions on going to taverns are a common trend. The statutes of Harcourt College in Paris from 1311, state, for instance, that no one should go drink in a tavern, which would be punished by a fine of six *denarii*.<sup>281</sup> Frequenting taverns could also cause one to lose his bursary provided by the college.<sup>282</sup> Many other colleges have a similar rule.<sup>283</sup> However, it should be noted that many of these statutes are so similar in set-up and phrasing that it cannot be called coincidental. When a new college was founded, it likely used existing statutes as inspiration or even copied their contents in some cases.<sup>284</sup> This does beg the question to what degree these rules were copied without modification; they may not have reflected the actual practices. This is but speculation, however.

But what exactly does an indictment from going to tavern imply, exactly? Even though some statutes specifically refer to drinking in the tavern, the tavern was not the only place one could fetch a drink. Furthermore, as we have seen, besides drinking, the tavern also meant prostitution, gambling and games. I would argue we should read these rules as prohibiting students from going to certain places at which they might be liable to sin or act frivolously (i.e. taverns "and other dishonourable places"), not from prohibiting them to get drunk (or drink, but that would have been very cumbersome to enforce). Not every college follows this exact pattern, however. In the Montaigu College in Paris, for instance, drinking wine was prohibited in 1502, let alone getting drunk.<sup>285</sup>

In 1319, the Sorbonne introduced a rule that specifically barred its inhabitants from getting drunk, further testifying to the notion that forbidding taverns does not automatically mean forbidding drunkenness.<sup>286</sup> To my knowledge, it is the only example of a college that did so. We find that this rule was also followed from 15<sup>th</sup>-century

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<sup>281</sup> "Item quod nullus de domo bibat, in taberna tabernarie sub poena sex denariorum". Henri-Louis A. Bouquet, *L'ancien collège d'Harcourt et le lycée Saint-Louis* (Paris, 1891), 583.

<sup>282</sup> Ibid: "nec assuescat sub poena unius burse, et si assuefactus fuerit et post monitionem prioris vel magistri non dimittat, expellatur omnino".

<sup>283</sup> Taking several examples from Paris: Cécile Fabris, *Étudier et vivre à Paris au Moyen Âge: le collège de Laon (XIVe-XVe siècle)* (Paris, 2005), 314 (Laon College, 1327); Félibien, *Histoire de la ville de Paris*, III: 441 (Boncourt College, 1357, very similar in phrasing to Laon College); Ibid, V: 627 (Bayeux College, 1315, very similar in phrasing to Harcourt College).

<sup>284</sup> Cf. the rule on taverns from Fortet Collège, Paris (1396) to the one from Harcourt College (1311, cited above): "Item, nullus bibat in taberna aut aliis locis inhonestis sub pena sex denariorum nec assuescat sub pena unius burse et si assuefactus post monitionem provisorum et magistri non absteineat, substrahuntur burse vel alias puniatur prout ulterius videbitur magistro." R. Busquet, 'Étude historique sur le collège de Fortet, de l'Université de Paris (1394-1764)', *Mémoires de la Société de l'histoire de Paris et de l'Île-de-France* 34 (1907), 1-151, here 145.

<sup>285</sup> Félibien, *Histoire de la ville de Paris*, VII: 731: "omnes a carnibus et vino, ut cum Salomone spiritum transferant ad sapientiam, abstinebunt".

<sup>286</sup> Glorieux, *Aux origines de la Sorbonne*, I: 212: "Item, fuit eadem die ordinatum ut a crapula et ebrietate omnes abstineant, tam presentes socii quam futuri, quod quicumque de cetero ebrius inveniatur solvat ii.sol. societati. Si autem talis inventus fuerit inter nos, quod absit, et monitione verbi facta a priore ut ipse recedat non recesserit, solvet v.sol."

punishments that mention drunkenness as an infraction, using the same fine.<sup>287</sup> Yet even in these cases, the focus seems to be on what the drunkenness produced, i.e. disorder and scandals. It might have been the case that in other colleges, other regulations in regard to comportment and behaviour more or less covered drunkenness, but the fact that a rule was introduced specifically for drunkenness suggests that this was not always the case.

In addition, other sources and some of the rules indicate that drinking in the colleges was not as barred as one might expect. The rules and statutes of many colleges state that specific infractions would be repaid by paying for a round of wine for the masters, especially in Oxford. This was called 'sconcing', and can be found in many a statute of the various colleges in both Oxford and Paris.<sup>288</sup> At the Sorbonne – the college that had specifically banned drunkenness! – there was an incident in 1431: a student accused his masters of being drunkards who let students pay for their wine if they had insufficient funds.<sup>289</sup> While it might not necessarily reflect on the entirety of the university body, it is revealing of drinking cultures nonetheless.

These rules reveal a prominent place of alcohol in college life; one could even argue it was institutionalized. As a result, this leads me to argue that the colleges, even though their focus on living together in peace and harmoniously differed from the aims of the nations, were generally not very alarmed by cases in which a student had drunk too much. They did punish students for disturbing the peace or acting maliciously because of their intoxicated state, but that does not mean they actively suppressed any drinking activity because of a fear of drunkenness. On the contrary, colleges were just as much concerned with community building as the nations, so it made sense that the lubricating function of alcohol usage was deployed in the colleges as well.

It is even more difficult to retrace the students' own opinion on their drunk peers. One of the only times we are able to hear individual students' voices is in a report of a scrutiny from 1338-1339 at Merton College, Oxford.<sup>290</sup> 'Scrutinies' in Oxford were triannual events at which students could voice complaints about other students at the same college, and Rashdall has interpreted them mostly as opportunities at which students could snitch out their fellow college inhabitants.<sup>291</sup> Regardless of whether one agrees with his

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<sup>287</sup> *Le livre des prieurs de Sorbonne*, ed. Robert Marichal (Paris, 1987), nr. 42, p. 37; nr. 45, p. 38; nr. 838, p. 224.

<sup>288</sup> Rashdall, *The universities of Europe*, III: 617-619; Robert S. Rait, *Life in the medieval university* (Cambridge, 1912), 84-86.

<sup>289</sup> *Le livre des prieurs de Sorbonne*, nr. 9, p. 29; quoted by Rashdall, *The universities of Europe*, III: 619; Karras, *From boys to men*, 96; Ad Tervoort, 'Studeren ver van huis: strategieën voor de bescherming van studenten (dertiende-zestiende eeuw)', in: Leendert F. Groenendijk & Benjamin B. Roberts (red.), *Losbandige jeugd: jongeren en moraal in de Nederlanden tijdens de late Middeleeuwen en de vroegmoderne tijd* (Hilversum, 2004), 23-38, here 30.

<sup>290</sup> This series of consecutive reports, the only one known to have survived (the contents of most scrutinies do not seem to have been noted down), is found in Thorold Rogers, *History of agriculture and prices*, 2 vols. (Oxford, 1866), II: 670-674.

<sup>291</sup> Rashdall, *The universities of Europe*, III: 617.

characterization, they do provide a unique opportunity to hear students' own criticisms, and not just the masters' and authorities'. But the students, at least in this specific case, do not seem to have been very concerned about drunken peers, for there are no references to drinking whatsoever, be it excessive or normal; they are mostly concerned with quarrels between students or practical problems. And while I would not extrapolate from these few scrutiny sessions, this might imply that even if students got drunk frequently at colleges like Merton, the students themselves might not have regarded it as a major issue, or even as extraordinary.

While colleges could instigate rules and enforce them, they were not the only organ of justice at medieval universities. As students were part of the cleric population, they would not appear before a secular court when they had committed a felony, but before an ecclesiastical one. In practice, however, it seems students would only appear before an actual court in case of very grave offenses. The 15<sup>th</sup>-century archives of the archidiaconal officiality in Paris, which constitute the bulk of Parisian ecclesiastical court documents left to us, do not contain any reference to students.<sup>292</sup> For most (i.e. minor) infractions, students would have been summoned to a university tribunal. Unfortunately, we do not have any records of the medieval university jurisdiction for Paris.<sup>293</sup> For Oxford, the picture is a bit less bleak, as we have the 15<sup>th</sup>-century records of the Chancellor's Court.<sup>294</sup> These records contain many convictions of misbehaving students, who would generally be subjected to a fine. While the amount of material is not staggering, it should be sufficient to gather at least some conclusions about how drunkenness was treated in regards to reprimanding and punishing students.

That is, if there were any references to drunkenness to base our conclusions on. I have not found any mentions of *ebrietas* or any synonym referring to excessive drinking (e.g. *ebrius* or *ebriositas* or any of its forms, *crapula*, *vinum* and *cervisia* in the context of drinking) throughout the *Registrum Cancellarii Oxoniensis*. At the very least, it does not seem to be explicitly mentioned anywhere. This is somewhat striking, as other felonies that were common complaints in moralist texts are called by name, most notably the carrying of arms (*portacio / lacio armorum*) and vagabonding at night (*noctivagacio*), which are referred to most frequently.<sup>295</sup> Other infractions, such as visiting prostitutes, appear more sporadically, but are specifically mentioned nonetheless.<sup>296</sup>

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<sup>292</sup> Léon Pommeray, *L'officialité archidiaconale de Paris aux XVe-XVI siècles: sa composition et sa compétence criminelle* (Paris, 1933), 208, states that: "Il ne saurait être question à l'époque que nous étudions de voir comparaître devant l'officialité archidiaconale des étudiants, des croisés ou des *miserabiles personae* (veuves, orphelins, pauvres). Les premiers s'adressent à leurs juridictions propres: juridiction de la conservation des privilèges ou tribunal du recteur."

<sup>293</sup> Skoda, 'Student violence', 23.

<sup>294</sup> *Registrum Cancellarii Oxoniensis, 1434-1469*, ed. H.E. Salter, 2 vols. (Oxford, 1932).

<sup>295</sup> See several examples and some further discussion in Skoda, 'Student violence', 27-28.

<sup>296</sup> See e.g. *Registrum Cancellarii*, I: 98-99 for several examples from 1444. They take the form of "Lewys Ydern iuravit pro pace seruanda et de non fouendo meretricio nec lenocinio." (p. 98).

We can also find a more general category of students being punished 'for disturbing the peace' (*de perturbacione pacis*), which is a phrase used copiously. From this description alone, the historian cannot determine what events actually transpired that led to the punishment of the student. However, it is revealing that some infractions are mentioned specifically by name, while others are not. Why was this the case? It seems to be the case that explicitly named crimes fell under specifically punishable offenses (as codified by the rules of the university and colleges), whereas 'disturbing the peace' functioned as an 'other' category.<sup>297</sup>

Would drunkenness have fallen under this more general category? We do not know. However, we can speculate to the reason as to why drunkenness appears to be completely absent. The crimes that do appear generally contain a component of free will: walking around with weaponry, vagabonding or paying visits to prostitutes *could* be caused by drunken behaviour, but more commonly, they are done by choice of the perpetrator. This is possibly further testified to by the fact that nowhere in the *Registrum*, whenever any of these deeds are referred to, it is mentioned that it was done while drunk. Perhaps drunkenness was even a reason for mitigation, similar to what we have seen in chapter 2. If that were the case, a possible reason why we do not find any references to acts committed in drunkenness is because they were remised and thus not recorded. There is, however, no firm basis for mitigation of crimes within the *Register*, so this remains speculation.

#### Students and drunkenness: a complex(ion) relationship

From all of this, we can distil a rather lenient engagement with drunken students. Alcohol seems to have had a prominent role in medieval student life, and while overarching organs such as the colleges appear to have tried to prevent abuse of drinks through instating rules, from our sources, we have little reason to assume these rules were very strictly enforced. This corresponds to our findings on moralist images of students, that unintentionally reveal through their focus on the extreme drunkards that alcohol use and infrequent drunkenness might have been condoned. So then, why was this case? This final paragraph will suggest a possible answer and reconsider moralist images of students in light of all what we have determined.

In Paris, 1446, seven students were contained in the Châtelet. Following their imprisonment, the rector of the University and several of its masters pleaded for their release. The corresponding case has come down to us in the civil pleads of the Châtelet, and in it we find the University delegation stating the following: "Students are young people, and act upon their youth sometimes, and the recognition of these excesses in their

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<sup>297</sup> The college regulations discussed in the previous section frequently contain prohibitions on vagabonding at night and visiting prostitutes. For the case of weapons being forbidden by university and college regulations, see Karras, *From boys to men*, 99.

fickleness appertains to their masters".<sup>298</sup> We have previously considered that representations of students might not be that radically different from representations of youth in general. We should keep in mind here that students, even though they formed a specific and visible category, were still considered youth themselves. If we regard students from the perspective of being youthful, a few new deliberations should be made.

Students could be as young as 14, and as old as their late 20s. Although youth was considered the time of folly, could all of these students be categorized as 'young'? Multiple conventions of medieval typologies suggest that this could indeed be the case. 'Young' was an elastic concept that could apply to many different ages. Claude Gauvard has determined that the term 'jeune homme' in French letters of remission was used for suppliants between the age of 20 and 30.<sup>299</sup> And in most medieval categorizations of age, as well as in humoral theory, only around the age of 28 to 30 did adolescence pass into adulthood.<sup>300</sup> Thus, even bearing in mind their variable ages, they were considered to be in the same stage of life.

This stage of life is possibly important for how student drunkenness was treated not just because youth was the age of recklessness and *jeunesses*, but also because their humoral complexion made them particularly well-suited to drinking wine, especially in the case of young men from the north of Europe. Adolescence was already characterized by a predominance of blood in humoral balance, making the body relatively warm, and the northern region of origin only amplified this warmth. Due to the similarities in qualities between wine and a young man's body, the heat of wine only strengthened the complexion of young men and was therefore considered especially nourishing.<sup>301</sup> In light of this, it would have been almost expected for students to drink a lot of wine to preserve their health. Of course, moderation would have been required, but this might have been a factor in deciding that crossing the line of moderation occasionally would have been condoned.

And we do have evidence that temperamental theory was applied to medieval students. One such indicator is the *De disciplina scoliarum* by Pseudo-Boethius, written between 1230 and 1240, likely in the Paris area. The work is an example of a student manual, composed to show upcoming students what behaviour they should adopt and what they should shun.<sup>302</sup> This specific manual was very popular, judging from its manuscript

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<sup>298</sup> CUP IV, nr. 2606, p. 668: "Escoliers sont jeunes gens et font aucunes autres fois des jeunesses, dont *in levibus* appartient la cognoissance à leurs maistres".

<sup>299</sup> Claude Gauvard, 'Les jeunes à la fin du Moyen Âge: une classe d'âge?', in: *Les entrées dans la vie, initiations et apprentissages: XIIe Congrès de la Société des historiens médiévistes de l'Enseignement supérieur public* (Nancy, 1982), 225-244, here 230.

<sup>300</sup> See especially Isabelle Cochelin, 'Introduction: pre-thirteenth century definitions of the life-cycle', in: Isabelle Cochelin & Karen Smyth (eds.), *Medieval life cycles: continuity and change* (Turnhout, 2013), 1-54.

<sup>301</sup> Jaboulet-Vercherre, *The physician, the drinker, and the drunk*, 151-153.

<sup>302</sup> Charles Homer Haskins, 'Manuals for students', in: Idem, *Studies in mediaeval culture* (New York, 1929), 72-91 is still a useful introduction to the subject, albeit slightly dated. More up-to-date is Marcel Bubert & Jan-Hendryk de Boer, 'Studienführer', in: Jan-Hendryk de Boer, Marian Füssel & Maximilian Schuh (eds.), *Universitäre Gelehrtenkultur vom 13.-16. Jahrhundert: ein interdisziplinäres Quellen- und Methodenhandbuch*, 2 vols. (Stuttgart, 2018), I: 337-356.



diffusion and a thirty-odd commentaries, probably not in the least place due to the attestation to Boethius.

In its second section, which talks about the general conduct a student should have, three reasons for intemperance are mentioned, one of which is drunkenness. As was common, drunkenness here is characterized as stemming from immoderateness in drinking.<sup>303</sup> However, the exorbitant drinking is made more explicit in the *De disciplina scolarium* by the subsequent passage, that actually encourages scholars to consume wine in moderation to stimulate the senses and thus acquire knowledge more easily.<sup>304</sup> This further corroborates the idea that drinking and getting drunk relatively moderately was overlooked. It makes *De disciplina scolarium* one of the few sources that connect alcohol use to scholarly life without chastising the scholar for drinking too much, cementing the place of alcohol in medieval student life as something that was taken for granted. In addition, this is in line with the idea that drinking wine was healthy for students. This medical reading is not unfounded, for in some passages, the work actually uses the four complexions (sanguine, choleric, phlegmatic and melancholic) as guidelines to give specific advice to students with a particular complexion.<sup>305</sup>

Finally, the author of the manual advises the soon-to-be-student not to surround himself with friends who frequently drink and get drunk, as they will distract him, detracting from his opportunities to study.<sup>306</sup> The addressed reader is presented with a counter-example to reinforce the path the author is laying down for him, namely that of the 'true' and virtuous student. He should be accompanied by other 'true' students that motivate and encourage him in his studies, and should therefore choose his friends wisely.

A second source I have found, however, makes the connection between drunkenness and complexion much more explicitly. It is a sermon by an anonymous Parisian Minorite to a group of students. It is unclear who these students are, although a reference to baking might suggest that they had access to the Couvent des Jacobines and were thus Dominicans. From this perspective, this sermon could be considered an attack on Dominican students by a Franciscan. The Minorite complains that students are more interested in the worldly pleasures of food and drink than in their studies, "baking cakes"

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<sup>303</sup> Pseudo-Boethius, *De disciplina scolarium*, ed. Olga Weijers (Leiden, 1976), 102:

"Comessationibus autem et ebrietatibus secunda species dotata permutatim cum predicta tamquam causa et causatum gaudet sustineri. Propter enim coitum fit ebrietas relative necnon et ceterorum viciorum genera."

<sup>304</sup> Ibid, 102: "Vinum autem sumptum modice intellectus acumen prebet, non modice autem sumptum rationem perturbat, intellectum hebetat, memoriam enervat, oblivionem inmittit, errorem infundit, ignoranciam producit."

<sup>305</sup> Ibid, 108-109.

<sup>306</sup> Ibid, 102-103: "Qua consorte vinoso pestis deterior? Si nequeat studere, ceteros gignasiis corrodit inhyare vel horrore litis sonat vel pugnus cesus opem orat. O qualis permixtio studentis et desolacio! Ergo eiciat consorcii ab integritate tales prudentum discretio ordine et irregressibiliter tempore determinato."

instead of attending to their work.<sup>307</sup> Zealous enjoyment of wine is also part of this gluttonous attitude.

Yet next to the common claims that drunkenness caused lust and numbness of the mind, the Minorite tries to convince the students to quit their eating and drinking habits on the basis of a medical argument.<sup>308</sup> While wine suits the complexion of youth, too much of it results in adding fire to fire: the heat of the wine only amplifies the natural heat of youth, resulting in indiscipline, inconstance and lust. Within this argument, the Minorite also (very loosely) cites Jerome, narrating him in the first person (*cum essem iuvenus*). Jerome's habits were meant to be exemplary: the 'false' student – the audience – should be following the example of the 'true student' – Jerome himself.

It is difficult to pinpoint the exact reasons why student drunkenness was not perceived as a major issue and other reasons could be posited. However, I would argue that the fact students were perceived as youthful was at least part of the reason and should not be overlooked.

#### Concluding remarks

Compiling all of this evidence, it appears we can state that drunk students were not treated very harshly. First, references to wine and drinking did not necessarily mean factually drinking to excess, but could have other literary and rhetorical functions. Drunkenness did not always refer to a set concept. Unlike past historians, who have taken moralist complaints at face value, this analysis has aligned itself with more recent approaches that consider these complaints as part of a discourse on the 'false' student. The primary goal of its promulgation was to lead students away from a nefarious life and closer to 'true' studenthood. In this frame, drunkenness was utilized as part of this hypothetical 'false' imagery, but as the 'false' student stood at the very end of the spectrum, his drunkenness would have been unacceptable, being intentional and habitual. More acceptable drunkenness would have been placed more towards the middle of the spectrum.

This does not mean that student drunkenness would have been celebrated or ignored completely, just that it seems to have been nowhere near as important to student life as previous historians have argued. Thus, even students, the 'purported alcoholics' of the Middle Ages, might have been misrepresented. Most students would not have been a 'true' or 'false' student, but somewhere between the two. And as we have seen multiple times before, the space between the two extremes is the perfect space for negotiation.

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<sup>307</sup> BnF, lat. 15005, fol. 160v: "Sunt enim solliciti in cibos delectabiles, unde libenter pastillant et huiusmodi".

<sup>308</sup> Ibid, fol. 160v: "Et detestabile est hoc vitium, quia repugnat complexioni iuvenum, quia pueri et iuvenes habent intensum calorem naturalem et de se sunt quasi ardentes. Quid ergo est si calor calori addatur. Enim Ieronimus de se ipso dixit quod se posuit in deserto et a vino et huiusmodi alio abstinebat. Verbi gratia: 'Cum essem iuvenis et vie solitudinis deserta vallarent sustinere non potarem scentina libidinis et parum potus. Vinum et adolescentia duplex est incendium voluptatio.'" The preacher cites (very loosely) Jerome's Letter XXII to Eustochium, 7-8.

## Conclusion

### Between sin and mitigating factor

*To alcohol! The cause of, and solution to, all of life's problems.*<sup>309</sup>

Who would have thought a day would come on which words exclaimed by Homer Simpson would be relevant to medieval studies? Nevertheless, they ring surprisingly true here. Homer eloquently describes how alcohol use, and by extension, drunkenness, is given meaning in such intricate ways that people can arrive at fundamentally opposite conclusions, forming two ends of a spectrum. Sadly, Homer does not elaborate on the large amount of space of meaning in between these two extremes (which is somewhat understandable, as the directors likely would not have been happy with the episode exceeding its allotted runtime). Instead, this thesis has taken up the task of doing so, using the late Middle Ages (1140-1500) as the frame for its analysis.

This thesis was conceived from the notion that drunkenness in the Middle Ages was indeterminate and could be studied as such. It set out to move beyond the two extreme meanings of drunkenness – a sin and a mitigating factor – and look at the field *between* sin and mitigating factor, in which ample different meanings of drunkenness were shaped. Responding to the relative lack of interest in the topic of drunkenness in the Middle Ages up to this point, this thesis has shown just how complicated 'drunkenness' could be in the medieval era. Centred around three distinct topics that each deal with the definition, representation and framing of drunkenness, it has explored manifold meanings of 'drunkenness' in the late Middle Ages. Furthermore, it has illustrated that authors, from university-trained lawyers to the common laity, were able to distinguish between these meanings. They were also capable in steering their audience to a meaning of their choice, which has been dubbed 'negotiating' drunkenness. Finally, this thesis has suggested that, in carefully dissecting medieval authors' attempts at negotiation, we can determine what norms of drunkenness were in place in a certain time and space.

The first chapter has shown that the learned clergy of the late medieval world was actively examining the question how drunkenness could act as both a sin and a mitigating factor. In doing so, they arrived at the foundation of a middle ground between the two extremes. Intoxication could be a mortal sin, a venial sin or not a sin at all, depending on the circumstances, and in line with its degree of sin, it either could or could not mitigate a crime. In line with the 12<sup>th</sup>-century discourse on free will, intentionality and habituality were selected as the crucial factors that established how drunkenness should be judged (literally, in many cases). These thoughts, having been conceived in canon law discussions,

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<sup>309</sup> Homer Simpson in *The Simpsons*, Season 8, episode 18 ("Homer vs. the Eighteenth Amendment").

'trickled down' to less scholarly circles through the road of penance, and we have seen that they were accepted almost ubiquitously from the late 13<sup>th</sup> century onward.

The second chapter moved away from canon law theory and onto secular law practices. Using letters of remission from late 14<sup>th</sup> century France, it illustrated how drunkenness was used as a mitigating factor, and moreover, how suppliants narrated their story in such a way that the court would arrive at the conclusion that *ivresse* in their specific case was, or was *not*, suitable as a mitigating factor. Natalie Zemon Davis had already illustrated that they were perfectly competent at doing so, and this chapter only reconfirms her argument. Furthermore, it has demonstrated that the criteria of intentionality and habituality seem to have been used as guidelines for distinguishing between 'acceptable' and 'unacceptable' drunkenness in secular law as well, although perhaps in a roundabout way, with the realm of penance acting as an intermediary.

The third and final chapter then used these criteria as a framework to reconsider the drunkenness of a specific group: medieval students. Medieval students have often been depicted as irrationally violent and drunk, and this chapter was part of an ongoing trend in historiography to nuance this image. It suggested that the construction of two extremes in imagery of students (the 'true' versus the 'false' student) would mean that the 'false' student, who was at the far end of the spectrum, would have been assigned the worst type of drunkenness, one that was intentional and habitual. However, as we have seen, other, less severe types of drunkenness were treated much more leniently. As most students would not have fit the image of the 'false' student completely, this chapter has raised the thought that these more moderate forms of drunkenness would not have been treated as a big problem. Non-normative sources on student life provide further evidence for this view. Finally, the chapter has proposed that this lax attitude towards student drunkenness might have originated in the fact that students were thought to be young and fallible.

In short, this thesis has argued that medieval attitudes towards inebriation were highly dependent on context. As a result, one person's drunkenness might have been tolerated much easier than another's. In addition, the evaluation of someone's drunkenness relied not only on context, but also on the eye of the beholder and the narrative that beholder was served. And that narrative, of course, was inherently framed. As such, the representation of drunkenness was always a process of negotiation between the 'author' and the 'reader'.

During the course of this thesis, many interesting additional questions have come up that I have not yet been able to sufficiently answer. The main reason for that, of course, is the fact that the contents of this thesis had to be limited to but a selection of cases. This was especially apparent in the second chapter. The legal traditions of France appeared particularly curious because how they handled drunkenness: in 16<sup>th</sup> century remission letters, drunkenness barely ever registered as a mitigating factor, whereas in the 14<sup>th</sup> and

18<sup>th</sup> centuries, it was used abundantly. In an international perspective, the French and German regions appeared to be quite responsive to the 'drunkenness plea', while England and the Low Countries were not as willing to accept it. Further investigations across time and space should clarify how drunkenness' position as a mitigating factor was affected by laws and legal traditions.

In addition, this thesis has stumbled upon an interesting and somewhat unexpected (partial) answer to a question medievalists have asked for a long time: to what extent was the laity aware of the theories discussed in the academic world, and what knowledge did they acquire and utilize themselves? In the case of drunkenness, it appears as though laypeople were familiar with the idea that it was less acceptable in case it was frequent or on purpose, as we have seen references in several letters of remission. Although it remains very difficult to decisively answer this question, there are sources that come close to representing the voices of medieval commoners, and throughout these sources, we might find hints that people did know about learned discussions in one way or another. Sources on penance are probably the most relevant, at least for initial investigations, for penitential ideas were built around ideas suggested in canon law or theology, and court records could perhaps be mined for references to these ideas. There is likely more material to be found, and I encourage medieval scholarship to take up the task.

Finally, this research has demonstrated how a certain concept can have a much bigger degree of indeterminacy than initially assumed. However, to fully grasp the multiplicity of a topic, it needs to be investigated thoroughly. As such, I highly stimulate other researchers to delve into other seemingly uniform notions and to deconstruct them and show how complicated a given notion can be, depending on the context it is placed in. This is not just applicable to medieval studies – in fact, this should be possible for any given period, provided there is sufficient material – but in the case of the Middle Ages, it is notably relevant. Going into the indeterminacy of a subject is a very useful method for nuancing the subject and consequentially nuancing the perception of the Middle Ages. And in a world whose perception of the Middle Ages continues to principally consist of 19<sup>th</sup>-century stereotypes, Arthur-esque fantasy and far-right conspiracy theories, we have a sore need for nuance.

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## Abstract

Enduring stigmas, stemming from the 19<sup>th</sup> century, have long befuddled our understanding of the Middle Ages. One of them is the notion that drunkenness was commonplace. This stereotypical view has left us with little understanding of how drunkenness was perceived and constructed in the Middle Ages. Contrary to what one might believe, drunkenness was actually considered a highly complex phenomenon. Inspired by the notion of 'indeterminacy', i.e. the idea that the meaning of a certain topic was not set in stone and was highly dependent on context, which is used in recent literature on the medieval era, this thesis investigates how a variety of these meanings were constructed and utilized in the late Middle Ages (1140-1500).

The first part of the thesis focuses on learned theories that distinguish different types of drunkenness. By examining 12<sup>th</sup>- and 13<sup>th</sup>-century canon lawyers and scholastics, it determines that drunkenness could be relatively 'acceptable' if it was not intentional or habitual. It then illustrates that this discourse was transmitted to less learned circles through the realm of penance, and may perhaps even have reached lay audiences. These lay audiences are at the heart of the second part of the thesis, which focuses on the ways drunkenness was given meaning by framing in late 14<sup>th</sup>-century French letters of remission. In pleading for a mitigation or acquittal of their punishment, many French commoners used a 'drunkenness plea' to bolster their argument. It is also made apparent that at times, these commoners typologized drunkenness through the lines of intentionality and habituality, further suggesting that they might have been aware of learned discourses in one way or another. The third part of the thesis, finally, further complicates the notion of a 'meaning' of drunkenness in showing that 'drunkenness' in the case of medieval university students could refer to an hypothetical drunkenness that was nonetheless based on actual student drinking practices. Furthermore, it shows that because of the construction of extremes by medieval moralists – the 'true' student versus the 'false' student – drunkenness has been unfairly treated as a natural part of student life. Instead, this part argues that because there were degrees to how 'bad' drunkenness could be and the stereotypical view only focuses on the 'worst' kind of drunkenness, student drunkenness was actually treated rather leniently compared to what is often thought. This is further corroborated by sources on practices of medieval student life.