Madness
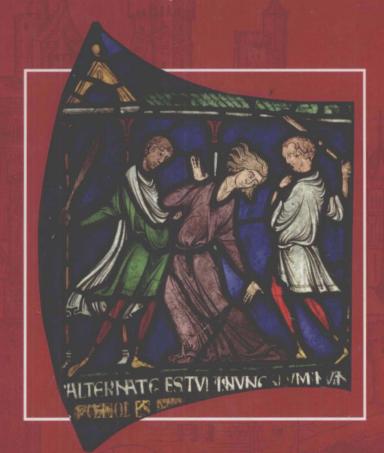# in Medieval Law
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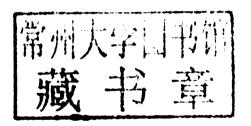
Edited by

Wendy J. Turner

Madness in Medieval Law and Custom

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BRILL

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Board of the Late Medieval Series for their guidance. We would also like to thank Lotte Nielsen of Brill for her support of this work. Without Marcella and her capable and supportive staff and editors at Brill, this work would be just another collection of papers instead of a holistic work on the topic of madness in law and custom.

ABBREVIATIONS

AN   Archives Nationales

BL   British Library, London.

CCR   *Calendar of the Close Rolls Preserved in the Public Record Office, 1227-1485*. Public Record Office. 45 vols. London: HMSO, 1892-1954.

CIM   *Calendar of Inquisitions Miscellani (Chancery), Henry III-Henry V*. Public Record Office. 7 vols. London: HMSO, 1916-1968.

CIPM   *Calendar of Inquisitions Post Mortem and other Analogous Documents Preserved in the Public Record Office*. Public Record Office. 20 vols. London: HMSO, 1904-1970.

CPR   *Calendar of the Patent Rolls Preserved in the Public Record Office, 1216-1509*. Public Record Office. 52 vols. London: HMSO, 1891-1901.

EETS es   Early English Text Society extra series

EETS os   Early English Text Society original series

LRS   Lincoln Record Society

OV   Orderic Vitalis. *The Ecclesiastical History of Orderic Vitalis*, ed. and trans. Marjorie Chibnall. Oxford: Oxford University Press, 1978.

PPC   *Proceedings and Ordinances of the Privy Council of England: vol. 6—22 Henry VI (1443) to 39 Henry VI (1461)*. Edited by Harris Nicolas. London: G. Eyre & A. Spothswoode, 1837.

TNA: PRO   The National Achives: Public Record Office in Kew, UK.

WM   William of Malmesbury. *Gesta Regnum Anglorum*. Edited by R.M. Thomson, R.A.B. Mynors, and M. Winterbottom. Oxford: Oxford University Press, 1998.

CONTRIBUTORS

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Dr. King is an Associate Professor at Midwestern State University, Wichita Falls, Texas and is a past president of the Texas Medieval Association. He is the author of "The Friar Tuck Syndrome: Clerical Violence and the Barons' War," in *The Final Argument: The Imprint of Violence on Society in Medieval and Early Modern Europe* (Boydell, 1998). His presentation on, "Bishops, Priests, and Monks: The Clerical World of a Medieval Diocese," recently appeared in the *Midwestern State University Faculty Papers*. Dr. King's current research involves the role of English and French monastic houses in the patronage of parish churches in the thirteenth-century diocese of Lincoln. His contribution to this volume was inspired by his own experience as a mental health worker at hospitals in Iowa City and Wichita Falls.

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Dr. Rushton is an Assistant Professor in English at St. Francis Xavier University in Antigonish, Nova Scotia, Canada. While his primary interests are Arthurian literature, medievalism, and narrative theory, he maintains a strong interest in disability studies as applied to the Middle Ages. He is co-editor of *The Erotic in the Literature of Medieval Britain* (D. S. Brewer) and co-author of *The Medieval quest of Arthur* (Tempus). Rushton is currently editing a volume on "Medieval Disability, Law, and Society," co-editing *The Companion to Popular Romance*, and finishing a manuscript titled, "Arthurian Legend, Arthurian Empire."

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WENDY J. TURNER

Dr. Turner is an Associate Professor in History at Augusta State University in Georgia and a graduate of UCLA. She concentrates her work on the intersection between law and medicine in medieval England. Her first major monograph, *The Care and Custody of the Mentally Incapacitated in Late Medieval England*, is under review. Turner is the author of several articles, including: "Mental Incapacity and Financing War in Medieval England" in *The Hundred Years War (Part 2): Different Vistas* (Brill), "The Legal Regulation and Licensing of Alchemy in Late Medieval England" in *Law and Magic: A Collection of Essays* (Carolina Academic Press), and due out this year, "Defining Mental Afflictions in Medieval English Administrative Records" in *Disability and Medieval Law: History, Literature, Society* (Cambridge Academic Publishing).

CONTENTS

INTRODUCTION

WENDY J. TURNER

The idea for this volume grew out of a series of panels on 'madness' over the course of three years' International Congresses on Medieval Studies at Western Michigan University in Kalamazoo, Michigan and the International Medieval Congresses at the University of Leeds in Leeds, England. The panels ranged from defining mental illnesses in law, to legal custody of persons and property, to the extension of compassion, to the mentally disabled in cities. In each of these six panels, and others on mental illness generally, we had questions arise from the audience of where to find more information, how we were using certain terms, and how the laws in various areas compared. The authors were encouraged to write from their discipline on legal or administrative treatment and understanding of the mentally incapacitated and ill. The essays are expressly not about the medical condition of insanity, in a specific definition, but about how society legally and culturally categorized and perceived those persons with mental conditions during the Middle Ages. We hope that these essays will help begin to answer these questions and many others on how the law and administration of the law conceived of, treated, and classified the mentally disabled in the Middle Ages; although, as it is with most collections of essays, we realize more work has yet to be done on these topics.

We have taken the definition of 'mental disability' to be all encompassing of medieval mental afflictions, including short-term illnesses that 'disable' for a brief time.[1] Other general terms in this volume include 'madness,' which is taken from the Latin *furiosus*, 'madman'; 'mentally incapacitated' or 'mentally impaired,' indicating a lack of cognitive ability, which might be better or worse at times; and, 'mentally incompetent' or 'feeble minded,' referring to those persons recorded as having what has been described elsewhere as 'simple' minds. When at all possible, the medieval terminology has been preserved both for clarity and to get a sense of what the medieval records

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[1] Metzler, *Disability in Medieval Europe: Physical Impairment in the High Middle Ages, c. 1100-c. 1400* (London: Routledge, 2006).

considered madness to be. When the delicate relationship of an individual's mind, body, and spirit collapsed, the damaged connections became evident in the associations between a person's intent and action, understanding and reaction, emotion and situation, memory and community, or passion and circumstance. Detection of a disconnect between any of these pairs signaled to a jury, guardians, or civil or ecclesiastical officials that the individual before them was mentally or emotionally disabled.

A History of the Study of Madness and Law

No study in the last fifty years on the history of madness would be complete without some mention of Michel Foucault; though, for the purposes here, he does not mention law and has had no direct impact on the works in this volume. Foucault's now famous work, *Madness and Civilization*, popularized the study of madness, which has fostered the growth of a great body of works.[2] The major criticism of Foucault's work is his use of sources; he neglects to distinguish between the customs of various countries and regions, and compares practices over time on a gross scale without any regard for subtle changes, especially for the Middle Ages. One assumes Foucault wrote mostly about the fourteenth and fifteenth centuries when he refers to 'medieval' or 'classical' ages. It is certainly this period to which he alludes when he was writing about the "Ship of Fools."[3] Statements such as, "… the experience of madness in the fifteenth century generally takes the form of moral satire,"[4] come the closest to representing the crux of his thesis: a study of literary motifs, theatrical performances, and poetic themes as reflections of society. To his credit, these are interesting and thought provoking reflections worthy of contemplation. Nevertheless, they are not reflective of the historical evidence preserved in the sources.

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[2] Foucault's full title is: *Madness and Civilization: A History of Insanity in the Age of Reason,* (orig. *Histoire de la Folie*, Paris: Librairie Plon, 1961) translated by Richard Howard (New York: Vintage Books, 1988), see esp. his chapter I: "*Stultifera Navis.*"

[3] Sebastian Brant, *Das Narrenschiff* (Basil: Johann Bergmann, de Olpe, 1 March 1497), and *The Ship of Fools,* translated by Edwin H. Zeydel (New York: Dover Publications, 1944).

[4] Foucault, p. 27.

A careful inspection of records pertaining to medieval society reveals that, even as late as the fifteenth century, a significant percentage of the poor and mentally incompetent populations were still cared for on a local level.[5] Mentally incapacitated persons were not marginalized in great numbers, as posited by Foucault, nor were all the poor, and, certainly among the landed segment of society, the mentally disabled were cared for at home. Most mentally impaired adults took an active role in mainstream medieval society, and beginning in the thirteenth century, a few received special legal attention and care. Those adults with more severe mental conditions could not participate as adults, and within many sources, they were referred to as if children. Much of the work on the mentally incapacitated for the medieval period since Foucault's work came out has concentrated on social history and social readings of literature, which certainly has influenced the direction of the research of many of the authors in this volume. Works such as Jerome Kroll's "Sin and Mental Illness in the Middle Ages" (1984)[6] and Roy Porter's "Margery Kempe and the Meaning of Madness" (1988)[7] provide insight into social treatment and understanding within the legal culture generally.[8]

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[5] For example: Elaine Clark, "Social Welfare and Mutual Aid in the Medieval Countryside," in *Journal of British Studies* 33 (Oct. 1994): 381-406; Jeffrey Richards, *Sex, Dissidence and Damnation: Minority Groups in the Middle Ages* (London and New York: Routledge, 1990); and Miri Rubin, *Charity and Community in Medieval Cambridge,* (London and New York: Cambridge University Press, 1987).

[6] Kroll, *Psychological Medicine* 14 (1984) 3: 507-514.

[7] Porter, *History Today* 38 (Feb 1988): 39-44.

[8] Many general works, which have some information on the legal standing or treatment of the mentally ill in the Middle Ages, include: Simon Kemp, "Modern Myth and Medieval Madness: views of mental illness in the European Middle Ages and Renaissance," *New Zealand Journal of Psychology* 14 (1985) 1: 1-8; Sander L. Gilman, *Difference and Pathology: Stereotypes of Sexuality, Race and Madness* (Ithaca: Cornell University Press, 1985) and *Disease and Representation: Images of Illness from madness to AIDS* (Ithaca: Cornell University Press, 1988); Stanley W. Jackson, *Melancholia and Depression from Hippocratic Times to Modern Times* (New Haven and London: Yale University Press, 1986); Andrew T. Scull, *Social Order / Mental Disorder. Anglo-American Psychiatry in Historical Perspective* (London: Routledge, 1989); Roy Porter, *Mind-Forg'd Manacles: A History of Madness in England from the Restoration to the Regency* (Cambridge: Harvard University Press, 1987), *A Social History of Madness: Stories of the Insane* (London: Weidenfeld and Nicholson, 1987), and *A Social History of Madness: A World through the Eyes of the Insane* (New York: Weidenfeld and Nicolson, 1988); Michael W. Dols, *Majnun: The Madman in Medieval Islamic Society* (Oxford: Clarendon Press, 1992); Vivian Nutton, "Madness," in *The Western Medical Tradition 800 BC to AD 1800,* edited by Lawrence I. Conrad, Michael Neve, Vivian Nutton, Roy Porter, and Andrew Wear, Members of the Academic Unit, The Wellcome Institute for the History of Medicine

One of the most comprehensive works on the mentally incapaci-
tated in a legal and social context in recent years is H. H. Beek's
*Waanzin in de middeleeuwen: Beeld van de gestoorde en bemoeienis
met de zieke* (which translates to *Madness in the Middle Ages: The
Vision of the "Disturbed" and Involvement with the Sick*) (1969).[9]
Beek examines the social position of mentally incompetent persons
in Dutch medieval culture. He is one of the first scholars to demon-
strate that the mentally incompetent were cared for by local com-
munities, and that they were not excluded or shunned. The field of
disability studies of the Middle Ages would benefit from a translation
from Dutch to English or other languages of this seminal work,
which would make its insights more accessible to the broader his-
torical community.[10]

In the last fifty years, other investigations into the lives of the men-
tally incapacitated in medieval society have targeted one aspect of
focus around which to center their researches. Two of the first schol-
ars to begin to rework some of the historical literary theories are
Penelope Reed Doob and Judith S. Neaman. Doob's work, *Nebuchad-
nezzar's Children: Conventions of Madness in Middle English Litera-
ture* (1974),[11] combines ecclesiastical theories, literature, and social
understandings of the *mentalité* of the medieval consciousness.

(London, Cambridge: Cambridge University Press, 1996); Muriel Laharie, *La folie au
moyen age: XIe – XIIIe siècles* (Paris: Le Léopard d'Or, 1991); Jonathan Andrews, et al,
The History of Bethlem (London; New York: Routledge, 1997); Penelope Reed Doob,
The Idea of the Labyrinth from Classical Antiquity through the Middle Ages (Ithaca
and London: Cornell University Press, 1990); Jean-Marie Fritz, *Le discours du fou au
Moyen Age: XIIe-XIIIe siècle: étude comparée des discours littéraire, médical,
juridique et théologique de la folie* (Paris: Presses universitaires de France, 1992); and
Karen Louis Jolly, *Popular Religion in Late Saxon England: Elf Charms in Context*
(Chapel Hill & London: University of North Carolina Press, 1996).

[9] Beek has an English summary of his chapters at the end of the volume (Haar-
lem, De Toorts; Nijkerk, G.F. Callenbach, 1969). Many thanks to Hubert van Tuyll
for correcting my rough translation.

[10] I understand that Beek died before the book came out and before translation
efforts could be undertaken. For other works on the social history of mental inca-
pacities, see: Thomas Graham, *Medieval Minds: Mental Health in the Middle Ages*
(London: Allen and Unwin, 1967); Heinrich Schipperges, "Der Narr und sein Huma-
num im islamischen Mittelalter," *Gesnerus* 18 (1961): 1-12; and George Rosen, "The
mentally ill and the community in Western and Central Europe during the late Mid-
dle Ages and the Renaissance," *Journal of the History of Medicine* 19 (1964): 377-388.
For the later period, see: Michael MacDonald, *Mystical Bedlam: Madness, Anxiety,
and Healing in Seventeenth-Century England* (Cambridge and New York: Cambridge
University Press, 1981).

[11] Doob (New Haven: Yale University Press, 1974).

Neaman, in *Suggestion of the Devil: The Origins of Madness* (1975),[12] looks at the state of madness as a trope within the medieval belief structure, as well as mental illness and mental expression in society. R. Colin Pickett, trained in religion and theology and writing somewhat earlier than these others, works from an ecclesiastical perspective on the early church in *Mental Affliction and Church Law: An Historical Synopsis of Roman and Ecclesiastical Law and a Canonical Commentary* (1952).[13] Richard Neugebauer's "Treatment of the Mentally Ill in Medieval and Early Modern England (1978)[14] adds to the historical end of the discussion, while Basil Clarke examines the mentally incapacitated in England, *Mental Disorder in Earlier Britain: Exploratory Studies* (1975).[15] As the title indicates, Clarke's pursuits were ambitious explorations into the field of mental health in England. He wrote chapters on saints' lives and chapters on kings (such as Henry VI), but he looks generally at treatment literarily, legally and medically. An interesting but brief work on the medieval legal standing of the mentally incapacitated deals with a particular case: "Peytevin v. La Lynde," by Donald W. Sutherland (1967).[16] Naomi D. Hurnard, the author of *The King's Pardon for Homicide before A.D. 1307* (1969), has a valuable chapter on "Infants and the Insane" that certainly needs to be included as one of the few works seriously examining the workings of the court in medieval England and the legal status of the mentally ill.[17]

At the start of the new century, work by medieval scholars continues in the areas of literary depiction and legal description of the mentally ill. The works on insane characters in literature include: *Insanity, Individuals, and Society in Late-Medieval English Literature: The Subject of Madness* (2003) by Stephen Harper; *Madness in Medieval French Literature: Identities Found and Lost* (2003) by Sylvia Huot; and "Heresy, Madness, and Possession in the High Middle Ages" by

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[12] Neaman (New York: Doubleday Anchor Books, 1975).

[13] Pickett (Ottawa, Ontario: The University of Ottawa Press, 1952).

[14] Neugebauer, *Journal of the History of the Behavioural Sciences* 14 (1978): 158-169. See also: Neugebauer, "Mental Illness and Government Policy in Sixteenth and Seventeenth Century England," (Ph.D. thesis, Columbia University, 1976).

[15] Clarke (Cardiff: University of Wales Press, 1975).

[16] Sutherland, *Law Quarterly Review*, v. 83 (1967): 527-546.

[17] Naomi D. Hurnard, *The King's Pardon for Homicide before A.D. 1307* (Oxford: Clarendon Press, 1969).

Sabina Flanagan (2005).[18] All three of these are fascinating studies using the character of the insane person to reflect social attitude and treatment. *The Mystic Mind: The Psychology of Medieval Mystics and Ascetics* (2005) by Jerome Kroll and Bernard Bachrach[19] adds a more ecclesiastical element; they are using the *vitae* and stories of saints and mystics to find insight into how medieval society qualified mental illness as opposed to mystical zeal. These works inform readers of the societal perceptions of the mentally ill, but say little about legal conditions, treatments, and care. The overall corpus of works touching on the subject of medieval historical mental conditions provides scholars with information from which to study medieval mental incapacity in law.[20]

Current studies on the history of madness and law have taken topical approaches, choosing one aspect or theme to investigate. This is helpful in limiting the source materials and remaining consistent with regard to time and place. Many earlier works skipped around from one time or place to another, pulling in whatever information they could find. These new works focus on the specifics of time and place finding more clarity in their studies of medieval mental disabilities. Interesting and informative new work has been presented on how mental illness affected household relationships, how the stress of war and subsequent imprisonment led to mental illness, how administers of justice defined mental conditions, how those persons guilty of criminal activities while mad were treated, and how the insane were perceived in medieval literature.[21] For example, the Roffes' article contains an overview of the wonderfully detailed case

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[18] Harper, Studies in Medieval Literature 26 (Lewiston; Queenston; Lampeter: The Edwin Mellen Press, 2003); Huot (Oxford; New York: Oxford University Press, 2003); Flanagan in *Heresy in Transition: Transforming Ideas of Heresy in Medieval and Early Modern Europe*, eds. Ian Hunter, et al. (Aldershot: Ashgate, 2005).

[19] Kroll and Bachrach (New York: Routledge, 2005).

[20] One of the interesting general works to appear just at the turn of the century is Michael B. Thorne and Tracy B. Henley's *Connections in the history and systems of psychology,* 2nd edition (Boston and New York: Houghton Mifflin Company, 2001).

[21] On household relationships, see: Sara M. Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden and Boston: Brill, 2007). Also of interest is: Butler, "Degrees of Culpability: Suicide Verdicts, Mercy, and the Jury in Medieval England," *Journal of Medieval and Early Modern Studies* 36:2 (Spring 2006): 263-290.
On war and mental illness, see: Wendy J. Turner, "Mental Incapacity and Financing War in Medieval England," in *The Hundred Years War (Part II): Different Vistas,* edited by L.J. Andrew Villalon and Donald Kagay (Leiden and Boston: Brill, 2008);