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Captured with malicious intent?[1] The opportunities and limits of debt imprisonment in late medieval Bruges.

Abstract:

Debt imprisonment was one of the tools a creditor had to enforce a debt. When creditors believed that their debtors were defaulting, they could imprison debtors to ensure they would not disappear and debts would be settled. As a practice, debt imprisonment was never fundamentally challenged in the Middle Ages though the way it was executed did come under scrutiny. In the city of Bruges, the city magistrate regulated the practice. As debt imprisonment was an essential part of the commercial framework in Bruges, the city tried to avoid princely interference. However, merchants could also complain to princely courts about their imprisonment. If the city hesitated to change the existing framework, it risked losing these cases to princely courts. In the context of increased control from princely institutions, the city government kept the mechanism of debt imprisonment while, for example, Antwerp sought alternative tools for creditors. The adaptations that did happen in Bruges were not the result of the requests of merchants, but a means of rather safeguarding its own jurisdictions from princely courts.

I. Introduction

When in 1447 the Navarrese merchant Martin Dolais tried to use forgeries in court to claim a debt was owed to him by the English merchant Willem Chatock, he was imprisoned on behalf of the count of Flanders and the city of Bruges.[2] People who disrespected the aldermen could find themselves quickly imprisoned in the *Steen* of Bruges, located at the Burgh of Bruges next to the aldermen's house.[3] As Guy Geltner has pointed out, prisons were a visible part of the urban landscape, and a part of the city's political authority.[4] Imprisonment was one of the coercive tools the aldermen possessed and was an integral part of the urban prowess. Yet the

[1] (…) *met quader causen gevanghen* (…); City Archive Bruges, Old Archive (CAB), 157, *Civiele Sententiën*, 1465-1469, fol. 41 r.

[2] In the fifteenth century, the count of Flanders is commonly denominated as duke of Burgundy. The sources refer to 'our revered lord', sometimes in combination with the title of duke of Burgundy. His authority in legal matters derived from the fact that he was count of Flanders; CAB 157, *Civiele Sententiën*, 1447-1453, fol. 3 r. – v.

[3] H. Deneweth, J. D'hondt, and L. Vandamme, *De oude steen. Bouw- en bewoningsgeschiedenis van huis nummer 29 aan de Wollestraat in Brugge* (Zellik, 1997), 20-21.

[4] G. Geltner, 'La prison urbaine. Pratiques civiques, discours religieux et enjeu social', in I. Heullant-Donat, J. Claustre and E. Lusset (eds.), *Enfermements. Le cloître et la prison (VIe-XVIIIe siècle)* (Paris, 2011), 330; G. Geltner, 'Medieval prisons: between myth and reality, hell and purgatory', *History Compass*, 4, no. 2 (2006), 262, 265.

city was not the most frequent user of the prison, and criminals were not its most frequent occupants. Private individuals mainly used the Bruges prison to lock up other individuals. Merchants in need of credit indebted themselves, and, occasionally, they would find themselves defaulting on these debts with all the – possibly dishonourable – consequences that followed. A way to enforce the debt was to lock the debtor in prison so that the debtor would pay the debt or, at least a court procedure would follow. This mechanism was called debt imprisonment or in middle-Dutch *vangnesse*. This mechanism of distraint was ubiquitous in late medieval Bruges. No less than 20% of the cases handled before the court of aldermen had some connection to debt imprisonment. This was an extremely high percentage compared to its commercial successor, the sixteenth-century trade hub of Antwerp, where legal debt imprisonment existed but was rarely used.[5]

This raises questions about the divergent choices Bruges made in comparison to sixteenth-century Antwerp and about the daily dangers merchants faced in medieval Bruges.[6] Creditors could (mis)use the institution to pressure and cause harm to debtors. In this respect, Daniel Smail has identified the practice of 'predation', where creditors consciously used imprisonment to the debtor's detriment.[7] However, Julie Claustre has shown that the practice in itself might not have been very effective in recovering debt. In addition, she has argued in the case of medieval France, that the state mainly used debt imprisonment to integrate forms of private conflict resolution into its own framework. By regulating the practice and using its prisons, the French king demonstrated his primacy in matters of law.[8] In medieval Bruges, both the element of private conflict resolution and state intervention were present.

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[5] For the fifteenth century, debt imprisonment was common in Antwerp, and there are many parallels between the two cities. Dave de ruysschere, 'Why we need a history of collateral rights. The example of Antwerp,´ in L. Brunori, S. Dauchy, O. Descamps and X. Prévost (eds.), *Le droit face à l'économie sans travail* (Paris, 2018), 305; D. De ruysschere, 'Crafting the hierarchy of debts: the example of Antwerp (fifteenth and sixteenth centuries), in L. Kolb, G. Oppitz-Trotman (eds.), *Early Modern Debts 1550-1700* (New York, 2020), 149.

[6] J. Puttevils, P. Stabel and B. Verbist, 'Een eenduidig pad van modernisering van het handelsverkeer: van het liberale Brugge naar het gereguleerde Antwerpen?' in M. Van Ginderachter, H. De Smedt, B. Blondé, H. Greefs and. I. Van Damme (eds.), *Overheid en economie: geschiedenissen van een spanningsveld* (Brussel, 2014), 41-43.

[7] For what Smail calls 'predation', see: D. Smail, *Legal Plunder. Households and Debt Collection in Late Medieval Europe* (London, 2016), 29, 139-144 ; D. Smail, 'Violence and predation in late medieval Mediterranean Europe', *Comparative Studies in Society and History*, 54 (2012), 11-13; D. Smail, 'Les dettes et les saissies de biens dans la région de Lucques au XIV siècle', in M. Dejoux, D. Chamboduc de Saint Pulgent (ed.), *La Fabrique des sociétes médievales méditerranéennes* (Paris, 2018), 181-184.

[8] J. Claustre, 'La dette, la haine et la force: les débuts de la prison pour dette à la fin du Moyen Âge', *Revue Historique*, 309 (2003), 798; J. Claustre, *Dans les geoles du roi: L'emprisonnement pour dette à Paris à la fin du Moyen Âge* (Paris, 2007), 313.

In addition, debt imprisonment in medieval Bruges was a mechanism of private conflict resolution in one of the most vibrant merchant communities of the time. In the fifteenth century, Bruges was the commercial hub where merchants from all over Europe convened and traded. These merchants organized themselves into merchant communities (called nations), which could settle disputes between their own members. Genoese, Hanseatic, Portuguese, Venetian, Florentine, Castilian, Catalan, English and Scottish merchants all interacted, and obviously, sometimes defaulted on debts and quarrelled.[9] The aldermen of Bruges would intervene when two persons from different merchant communities disagreed. Historians have explained Bruges' success by the city's ability to minimize transaction costs.[10] Proponents of the New Institutional Economics use this concept in order to explain how certain institutions facilitated trade. One of the costs that defined efficient institutions were the 'law and enforcement' costs. These were the costs a merchant had to incurr to recover what he considered as rightfully his. Debt imprisonment was such a cost. By imprisoning his debtor, the creditor was assured the debtor would acknowledge the Bruges aldermen as the competent court and proceedings would follow. For Oscar Gelderblom, these mechanisms assuring the proper flow of trade were in the hands of the city government to provide expedient conditions for commerce.[11] However, on the matter of debt imprisonment, Gelderblom only briefly ascribed Bruges some adaptive flexibility towards foreign merchants.[12] In respect to debt imprisonment, Gelderblom only studied the normative sources, not the legal practice appearing in the sentence registers.[13]

Yet, legal practice is essential in the debate on how law could influence commerce within a city. The day-to-day regulation of debt imprisonment was probably one of the most important tasks a town's legal system was responsible for. However, debt imprisonment happened largely in the private sphere. That is to say, while merchants used the city's prison, debtors were imprisoned on private initiative. In contrast to citizens of Bruges, foreign merchants could be incarcerated without prior approval from the aldermen. Consequently, debt imprisonment was

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[9] There are some problems in counting these 'nations'. The Hanseatic, Scottish, Castilian, Aragonese, English and Portuguese had acknowledged consulates (though they were not always working properly). The Florentine, Venetian and Genoese identified themselves as 'nations', but did not have charters acknowledging their judicial power in the city of Bruges.

[10] Douglas North described transactions costs as 'the costs involved in capturing the gains from trade'; D. C. North, 'Transaction costs in history', *The Journal of European Economic History*, 14 (1985), 558; J. P. Masschaele, 'Economic takeoff and the rise of markets', in C. Lansing and E. D. English (eds.), *A Companion to the Medieval World* (Oxford, 2009), 90; O. E. Williamson, 'Transaction-cost economics: the governance of contractual relations', *Pledge*, 22 (1979), 233-261.

[11] O. Gelderblom, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250-1650* (Princeton, 2013), 74-75.

[12] Gelderblom, *Cities of commerce,* 51.

[13] Gelderblom mainly looked to the normative sources edited in the (selective) works of L. Gilliodts-Van Severen, *Inventaire des archives de la ville de Bruges*, 7 vols. (Bruges, 1871-85).

both a private order mechanism where merchants – without the interference of a court – could seek the enforcement of debt and a mechanism that had to be surveyed by the aldermen. The aldermen had to make sure that this practice did not become inherently malicious. However, if the magistrates failed to regulate it appropriately and allowed creditors to abuse debt imprisonment, the debtors might petition higher courts and bypass a city's court.

This brings us to the second element of increasing state intervention. In the fifteenth century, the city of Bruges was increasingly confronted with Burgundian rule. When the count of Flanders also became duke of Burgundy, the balance of power between city and count shifted in favour of the latter. Whereas in the fourteenth century Bruges was largely free to organize its administration of justice, in the fifteenth century the count of Flanders was increasingly becoming a factor to take into account.[14] In Bruges, the prison and its authority were shared between city and state. The building that functioned as a prison, the *Steen*, was still partially owned by the count.[15] The city's public prosecutor, the Burgomaster of the commune, and the officers of the count of Flanders, confined both criminals and occasionally debtors in the prison.[16] A real problem occurred for the city when a merchant appealed a decision relating to debt imprisonment before a princely court. An appeal would include an evaluation of the aldermen's legal practice and in addition to imposing an expensive fine for a vexatious appeal, could prompt further assessment of the legal practice of the aldermen, which was an intrusion the aldermen of Bruges were keen to avoid.[17]

It is the nexus between the first element of individual merchants solving conflicts, the second element of state intervention and the third of a commercial city that makes Bruges so interesting. The aldermen of Bruges had to take care of the commercial character of their city, while at the same time they had to protect their jurisdiction against the princely courts like the Council of Flanders.[18] In this contribution, I want to explain how Bruges dealt with this dilemma. The city

[14] J. Dumolyn and B. Lambert, 'Cities of commerce, cities of constraints. International trade, government institutions and the law of commerce in later medieval Bruges and the Burgundian state', *TSEG – The Low Countries Journal of Social and Economic History*, 11, no° 4 (2014), 99; W. Prevenier and W. Blockmans, *The Promised Lands. The Low Countries under Burgundian Rule, 1359-1530* (Philadelphia, 1999).
[15] CAB 96, *Groenenboek A*, fol. 186 r.
[16] CAB 216, *Stadsrekeningen*, 1445-1446, fol. 41 r. – v.; CAB 165, *Chamber*, 1474-1475, fol. 9 r. – v.
[17] See on the difference between an 'reformatie' and 'appel' in J. Monballyu, 'Van appellatien ende reformatien: de ontwikkeling van het hoger beroep bij de Audientie, de camere vanden rade en de raad van Vlaanderen (ca. 1370 – ca. 1550)', *Tijdschrift voor rechtsgeschiedenis*, 61, no° 237 (1993), 248; F.L. Ganshof, 'Etude sur le faussement de jugement dans le droit flamand des XIIe et XIIIe siècles', *Bulletin de la commission royale des anciennes lois et ordonnances*, 15 (1935), 115-140.
[18] See for state forming trough legal institutions: J. R. Strayer, *Medieval Statecraft and the Perspectives of History* (Princeton, 1971), 345.

illustrates how a commercial city confronted with increasing princely influence used law to influence commerce. This contribution will discuss debt imprisonment in the way that medieval Bruges envisioned it (I), how it was (ab)used by merchants (II) and how the aldermen reacted to these abusive practices (III). Using the court registers that record the dealings of the aldermen of Bruges in a procedure called 'in the chamber' (in camera),[19] I argue that fifteenth-century Bruges increased its control over debt imprisonment due to rising princely power. Bruges developed a stance that started with the least amount of regulation possible, and transformed into a situation where debt imprisonment was increasingly regulated to save its jurisdiction over debt imprisonment from the princely courts. Yet its endeavours were still limited. Bruges only intervened when the city was liable or when its jurisdiction in matters of debt imprisonment was in danger of being diverted to princely courts. It did not fundamentally alter the mechanism. Whereas Antwerp constrained the practice of debt imprisonment at the end of the fifteenth century, the main mechanisms of debt enforcement still happened privately in Bruges. Thus, the reason for the eventual – and in comparison with Antwerp – small change was not so much a result of pressure from the foreign merchants, but rather a defence of its prerogatives.

I. Debt imprisonment in medieval Bruges

The Flemish jurist Philips Wielant (1441/1442–1520) made a clear distinction between debt imprisonment in the Flemish cities and debt imprisonment happening before the princely court, the Council of Flanders. As a former councillor of the Council of Flanders, Wielant described the court as having clear and restrictive rules on the procedure of distraint, while the cities adhered to more arbitrary practices.[20] The comital court only allowed distraint when six cumulative requirements were met: the debt had to be undisputed, the debtor was prone to flight, the suspicion of flight risk had to be new and could not have existed prior to the debt, no goods could be owned in the county of Flanders allowing an arrest, the debtor tried to evade the jurisdiction of the Council of Flanders, and that, at the moment the obligation was made, the

[19] The procedure 'in camera' was one of the two official procedures the aldermen had. The other 'in vierschaar' was mainly used for criminal law and the citizens of the city. Foreign merchants could only appear before the 'chamber' who held a session daily and mainly occupied themselves with debt enforcement cases. See on this difference: N. Fieremans, 'Brugse schepenen, internationale handelaren en ingewikkelde conflicten. Handelsconflicten voor de Brugse schepenbank in de vijftiende eeuw', *Handelingen van het Genootschap voor Geschiedenis*, 159 (2022), 82-96.

[20] On Wielant and his carreer: A. J.M. Kerckhoffs-De Hey, *De Grote Raad en zijn functionarissen 1477-1531. Biografieën van raadsheren* (Amsterdam 1980), 157-161; J. Buntinx, 'Wielant, Philips', *Biographie nationale*, 27 (1938), 279-298; J. Monballyu, 'Philips Wielant, Pracktijcke civile, 1508-1519', in G. Martyn, L. Berkvens and P. Brood (eds.), *Pro Memorie. Juristen die schreven en bleven. Nederlandstalige rechtsgeleerde klassiekers* (Hilversum, 2020), p. 22.

debtor could meet that obligation.[21] If one of these conditions was not met, the council would not be able to detain the debtor. Interestingly, Wielant presents these conditions as a contrast to the practices of the medieval cities in the county of Flanders. According to Wielant, the cities took a more arbitrary view of distraint. In these Flemish cities like Bruges, debtors could be held in prison during the entire litigation procedure and for as long as was needed to resolve the case and repay the debt.[22] No further comments were given, but the implication is clear: restraints were few and excesses numerous.

Wielant suggested a distinction between controlled debt imprisonment from the state and uncontrolled debt imprisonment by the cities. Such a claim was not innocent: the Council of Flanders, and the count, since 1384 also duke of Burgundy, had no monopoly on violence, and the cities did not hesitate to challenge their authority in defence of their rights. Dukes like Philip the Good (1419–1467) and Charles the Bold (1467–1477) took initiatives to centralize jurisdictions, but it is doubtful whether this was the result of a well-conceived plan.[23] In the fifteenth century, several courts with similar jurisdiction still had to carve out their competence. Therefore, the procedure and the way in which debt imprisonment was practised were controlled by several actors and institutions. Although these courts were not always in competition, they could try to obtain more control due to this confusion. For most of the fifteenth century, the court of aldermen of Bruges remained the most important competent court in private debt disputes between merchants. However, if Bruges failed to act appropriately, an increasingly powerful state could intervene.

Bruges was particularly protective of its prerogatives over its prison and jurisdiction because of their close link to the city's autonomy and authority to regulate its own affairs. Every time Bruges found itself in a position of strength, it demanded further 'liberties' concerning – among other things – the prison. The oldest prison regulation dates back from 1299 as a charter given by the French king Philip IV to the city of Bruges. It gave the city undisputed jurisdiction over its prison and already contained clauses relating to debt imprisonment.[24] The county of Flanders was in turmoil at this time, as King Philip had invaded the county, deposed count Guy of Dampierre and had tried to win the support of the Flemish cities in his effort to seize the county.

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[21] F. Wielant, *Briève instruction en causes civiles*, ed. L. Sicking and C.H. van Rhee (Brussels, 2009), Cap. 54, 4-9, p. 71-72.
[22] Wielant, *Causes Civiles*, cap. 54, 71.
[23] E. Lecuppre-Desjardin, *Le royaume inachevé des ducs de Bourgogne (XIVe-XVe siècles)* (Paris, 2016), 331-344.
[24] Julie Claustre only saw the coming of debt imprisonment from the 15th century on; Claustre, *Dans les geoles*, 317; CAB, *Politieke Charters*, 1st, no° 148; Fifteenth century copy in: CAB 96, *Gheluwenboek*, fol. 16 r. – v.

One of the tools available to him was the grant of privileges to the important cities. This tactic convinced Ghent, but not Bruges.[25] The prison charter did not suffice to keep the burgesses of Bruges 'bribed'. The craft guilds chose the side of the count of Flanders and managed to defeat a French army near Courtrai in 1302.[26] Bruges provided the bulk of the army that was present at the decisive battle and felt that it needed to be compensated by the count. This would eventually lead to the Bruges 'Great Charter' of 1304, further articulating the jurisdiction of the aldermen over the prison in relation to comital officers.[27] In 1337, when the Flemish count Louis of Nevers was in dire need of support in the upcoming war against the English, Bruges received the privilege that its citizens would not be detainable without the prior consent of the aldermen.[28]

Thanks to these charters, the city of Bruges had the authority to supervise the prison. Theoretically, all debtors imprisoned in Bruges fell under the jurisdiction of the city of Bruges. However, while Bruges exercised nominal control over the prison, it had little influence over its use. The origins of the system are obscure, but it is important to understand how the practice came into being.

In medieval Flanders, the prince did not create debt imprisonment so he could gain influence in Bruges. Debt imprisonment already existed and the aldermen asked for concessions so they could minimize malfeasances.[29] The authority Bruges gained over the medieval prison was mainly to safeguard the rights of its citizens against existing practices. The 1304 charter was aimed at curbing the excesses of comital officers such as the bailiff (acting as the public prosecutor on behalf of the count) who could arrest debtors.[30] It suggests that the charter regulated a practice where malfeasances were already present. In this respect, Adam Kosto

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[25] M. Boone, '"charter van Senlis" (november 1301) voor de stad Gent: een stedelijke constitutie in het spanningsveld tussen vorst en stad (met uitgaven van de tekst)', *Handelingen der Maatschappij voor geschiedenis en oudheidkunde te Gent*, 57 (2004), 8-9.

[26] Despite the financial bribes Philip VI paid to the craft guilds; J.F. Verbruggen 'De getalsterkte van de ambachten in het Brugse gemeenteleger (1297-1340)', *Belgische tijdschrift voor Militaire Geschiedenis* 25 (1984): 461.

[27] CAB, *Politieke Charters*, 1[ste], n.° 201; Gilliodts-Van Severen, *Coutume de la ville de Bruges*, t. 1, (Brussels, 1874), 307-323; M. Speecke, 'Het eerste 'democratische' regime van Brugge (1302-1310). Een herziening', *Handelingen van het Genootschap voor* Geschiedenis*,* 154 (2017), 238-239; D. Van den Auwele, 'Een fragmentaire tekstgetuige van het Brugse 'groot privilegie' (1304)', *Het Brugse Ommeland*, 16 (1976), 135-142; CAB 96, *Rudenboek*, fol. 17 r. – 20 r.

[28] CAB 96, *Rudenboek*, fol. 96 r. and CAB 96, *Gheluwenboek*, fol. 51 r.

[29] Claustre, *Dans les geoles*, 24-25; J. Cohen, 'The history of imprisonment for debt and its relation to the development of discharge in bankruptcy', *The Journal of Legal History*, 3, no° 2 (1982), 153-171.

[30] Clauses 3 – 6 determine that there should be no more than twelve legal captors, that they are recognisable and not dressed as citizens of Bruges, swear an oath, and they cannot be born in Bruges: CAB, *Politieke Charters*, 1[ste] serie, n.° 201.

made an important link between conditionality and hostageship. Before debt imprisonment became a practice, hostages were regularly taken as part of an agreement to assure the good behaviour of one or both parties, thereby enhancing their trust.[31] Of course, taking hostages became impractical in international commerce, but medieval Flanders seemed to have employed a closely-related practice: the *charte privé*. In these cases, a person had to stay in an inn until the fulfilment of an agreement. When relations were deteriorating, one of the parties could limit the freedom of the other party in order to gain more assurance. This procedure operated without a judgement from the aldermen.[32]

Allowing captures to take place without limitations could lead to violence and disrupt the common peace. Although the aldermen had a clear incentive to control these captures, they could only do so through princely charters. The 1299, 1304 and 1337 charters regulated practices already taking place and attempted to minimize disruptive elements. Whether this was princely violence, as dealt with in the 1304 charter when the power of the bailiff was curbed, or communal violence, as with the 1337 charter when citizens were required to ask their approval to arrest fellow citizens, the result was the same. Bruges increased its control over the prison to minimize violence against its citizens. Most merchants were foreigners and had to petition the count of Flanders to increase their protection against debt imprisonment.[33] For some merchants, acquiring citizenship might have been a useful trick to evade imprisonment; others had to actively seek privileges from the prince to protect them against arbitrary and premature imprisonment. Nevertheless, despite the merchants' privileges, they did not have the same rights as citizens. A citizen could only be arrested after consent from the aldermen while international merchants were in danger of ending up in the prison for private debts much quicker.[34]

There was a somewhat uneasy link between city and state. The aldermen of Bruges were responsible for order in the city but did so with authority from the count. Private imprisonment still existed in fifteenth-century Bruges but the aldermen were keen on regulating such aspects

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[31] A. Kosto, *Hostages in the Middle Ages* (Oxford, 2012), 147.

[32] As this procedure happened in the private sphere, evidence is very scarce. As Godding mentioned, most written documents are city ordinances limiting this practice and its abuses; P. Godding, *Le droit privé dans les Pays-Bas méridionaux du 12e au 18e siècle* (Brussels, 1991), 511.

[33] Something the city did not resist but encouraged and even did in the name of the merchant's communities. However, the point of departure is important. The prince gave – possibly at the city's request – charters to the merchants.

[34] For example, the Scottish were granted in 1394 the right to first be brought before the aldermen bench if they were apprehended for debt to assure its validity and be put on trial immediately. If the aldermen were not in session, individuals would be brought into the prison and could still be released on bail. CAB 96, *Ouden Wittenboek*, fol. 44r.; P. Bonenfant, J. Bartier, A. Van Nieuwenhuysen, *Ordonnances de Philippe le Hardi et de Marguerite de Male du 17 janvier 1394 au 25 février 1405* (Brussel, 1974), 53.

of violence more closely. This is especially apparent in their demand to use one of the legal captors (*wettelijke vangers*). These legal captors were a small group of people who could order someone to be imprisoned at the creditor's request. These legal captors were part of the rudimentary police force operated by the city called damage preventers (*scadebeletters*) and operated by the count called the lord’s men (*sheerencnapen*).[35] The Bruges aldermen increasingly criminalized private imprisonment, but this was a slow process. A rudimentary level of control was exercised over the force by using these officers to deliver a formal notice that someone needed to go to prison. However, even though entirely private imprisonment was the exception rather than the rule, some people were still being incarcerated in private inns during the middle of the fifteenth century.[36]

Even with these legal captors, large parts of the debt imprisonment procedure still operated in the private sphere. The 1304 charter states that two aldermen should visit the Bruges prison to ensure that each prisoner had been imprisoned based on a legitimate cause; when creditors imprisoned debtors, they were required to state why. However, the validity of the cause was not verified at that point but only after the prisoner had been incarcerated. Imprisoned debtors could provide a pledge before the aldermen and start a procedure concerning the existence of the debt, or they could challenge the validity of imprisonment before the court of aldermen. Only the last two choices were registered before the aldermen. If the debtor acknowledged and paid the debt, the procedure would be concluded without the involvement of the aldermen.

By providing pledges, the debtors were bound to a network that made sure they did not disappear and remained in Bruges. They were released from prison, but were not free to go wherever they wanted.[37] These pledges were often made by members of the debtor’s commercial network or important hostellers, and they had to have had a permanent residence

[35] The *scadebeletters* formed a rudimentary police force that aimed to keep the peace in the city of Bruges. They were paid by the city and were under the supervision of the Burgomaster of the municipality. The Burgomaster aimed at safeguarding the ‘common good’ of the city, was an influential magistrate member and was often present in political decisions: CAB 216, *Stadsrekeningen*, 1469-1470, fol. 61 r. A lot of research still needs to be done on the *scadebeletters*. For an introduction, see J. Dumolyn, G. Dupont, J. Haemers, en A. Ramandt, ‘Political power and social groups, c.1300 – c.1500’, in J. Dumolyn and A. Brown (eds.), *Medieval Bruges* (Oxford, 2018), 273-274; CAB 216, *Stadsrekeningen*, 1469-1470, fol. 52 r.; CAB 216, *Stadsrekeningen*, 1476-1477, fol. 25 v. and 34 r.; CAB 216, *Stadsrekeningen*, 1485-1485, fol. 163 r. *Sheerencnapen* were under the supervision of the city bailiff of Bruges (also known as *schout* or *éscoutete*) and acted as his ‘servants’. They could not come from the city of Bruges but also received compensation from the city; CAB 96, *Rudenboek*, fol. 4v. – 5 r.-; For the oath they had to take: CAB 96, *Rudenboek*, 230 r.

[36] See, for example, CAB 157, *Civiele Sententiën*, 1447-1453, fol. 137 v.

[37] L. de Carbonnières, ‘Prison ouverte, prison fermée. Les règles procédurales de la détention préventive sous les premiers Valois devant la chambre criminelle du Parlement de Paris’, in I. Heullant-Donat, J. Claustre et E. Lusset (eds.), *Enfermements. Le cloître et la prison (VIe-XVIIIe siècle)* (Paris, 2011), 185-186.

in the city. When the pledges were hostellers, the aldermen could make use of their authority as the key to economic activities in the city. These hostel keepers had expanded their activities from providing accommodation, food, and a place to stock merchandise, to being brokers, for certain merchandises, in every commercial deal in the city.[38] In the fifteenth century, these hostellers had the political and financial power to appease over-eager creditors, but also probably to destroy any future commercial aspirations a merchant might have in Bruges.

The second option was fighting the imprisonment itself. If the debtor could prove that incarceration was unjustified, the creditor could also be held liable for paying all expenses.[39] There were no punitive clauses, but the debtor's upkeep in the prison needed to be paid.[40] For some merchants it was more advantageous to prove that a capture had happened maliciously than to abide and provide a pledge. If a debtor was released, with or without a real debt, he could disappear and leave the creditor behind.

II. Malicious merchants

In the fourteenth and fifteenth centuries, foreign merchant communities received privileges that gave them protections. In particular the Hanseatic and Scottish merchants were well protected from debt imprisonment. Often, the privileges protected these so-called merchants' nations from having their goods seized for a debt that was not a personal one. It was not unheard of in the diplomatic arena for a prince to retaliate against merchants or nations that were beyond their grasp by simply confiscating the goods of foreign merchants present in the city. By the fifteenth century, however, most merchant nations had privileges stating that this could not be done.[41] In fact, the Hanseatic merchants were completely exempt from such seizures. [42]

The problem lay in what the privileges did not protect the merchants from. It was still possible for most merchants to be incarcerated quite swiftly for owing personal debts. The mere existence of a debt sufficed. In this way notable figures were imprisoned such as Luciano

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[38] Although they were member of the same guild there is a difference between hostellers (owners of a hostel) and brokers. The last group could also work for a hosteller; CAB, *Makelaars*, Cartularium, fol. 1 r. – v.; J. A. Van Houtte, 'Les courtiers au Moyen-Age. Origine et caractéristiques d'une institution commerciale en Europe occidentale', *Revue historique de droit français*, 15 (1936), 105 ; J. Murray, *Bruges, Cradle of Capitalism 1280-1390* (Cambridge, 2005), 187.

[39] CAB 157, *Civiele Sententiën*, 1469-1471, fol. 180 r.

[40] Sometimes there were even pledges assuring this: CAB 157, *Civiele Sententiën*, 1447-1453, fol. 321 r.

[41] Nevertheless this was something that still happened in the form of *lettres de marque*. Someone who was wronged could try to demand compensation from the wrongdoer or his compatriots. The merchant nations always vehemently complained when these were issued by the prince; M.-C. Chavarot, 'La pratique des lettres de marque d'après les arrêts du parlement (XIIIe – début XVe siècle)', *Bibliothèque de l'école des chartes*, 149 (1991), 53.

[42] This rule was not always observed; CAB 96, *Groenenboek Ongecotteerd*, fol. 30 v. – 31 r.

Spinola in 1448, John Pickering in 1452 and Paolo Strozzi in 1459.[43] Obviously there were sufficient incentives to fight or try to avoid imprisonment.[44] Although debt prisoners enjoyed better conditions than criminals, it is unlikely to have been a pleasant experience.[45] While prisoners had access to the outside world, had some basic sanitary arrangements, a bed, paper, and ink and were able to play games, their freedom was severely curtailed.[46] Robert Muchembled has also pointed out that the prisons formed a true 'lieu de passage' and were mostly overcrowded.[47] As was the case all over Europe and in Bruges too, the treatment one received in prison depended very much on one's status and the money one could bring in for the prison's governor.[48] In a worst-case scenario, a debtor could find himself locked up in the 'dark chamber' (*Donkere camere*). This was a special part of the prison for the poorest debtors who had to rely on the city's donations and benefactors to sustain themselves.[49]Although wealthier merchants could pay to upgrade their stay and choose not to live off the alms given to the 'dark chamber' prisoners, many merchants still had enough reason to fight their imprisonment and be liberated.[50]

Debt imprisonment called into question a merchant's competence and creditworthiness. Pierre Prétou mentioned that imprisoning someone was often accompanied by a 'great dishonour' for the merchant and might even have coincided with the loss of social capital.[51] Daniel Smail went even further and mentioned that a part of the creditors' 'reimbursement' was the humiliation of the debtor.[52] Evaluating how detrimental imprisonment was for a merchant is a difficult task.

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[43] Luciano Spinola was part of the powerful Genoese Spinola family. John Pickering was an important English mercer who would later become the governor of the English nation. Paolo Strozzi represented an important Florentine firm, CAB 157, *Civiele Sententiën*, 1447-1453, fol. 61 r., 77 v. 312 r.; CAB 157, *Civiele Sententiën*, 1453-1461, fol. 223 v.; On John Pickering, see A.F. Sutton, *The Mercery of London. Trade, Goods and People, 1130-1578* (London, 2019), 262.

[44] (…) *ende omme zinen persoon ute vanghenesse te houdene, hij hem absenteirde vanden voorscreven stede van Brugghe* (…); CAB 157, *Civiele Sententiën*, 1465-1469, fol. 146 r.

[45] Sometimes the sources give a glimpse into these conditions. The Flemish sailor Jehan Lamsin was arrested by the water bailiff for his crimes in Lisbon and imprisoned in 'grand pauvreté' for eight months; Archives Départementales du Nord, série B (ADNB), 6087, *Accounts of the water bailiff*, fol. 2 r.

[46] See for comparison with the prisons in Normandy: L. Gandeboeuf, 'Prisonniers et prisons royales en Normandie à la fin du Moyen Age (XIVe – XVe)', Paris IV Ph.D. thesis, 1995, 675, 743.

[47] R. Muchembled, *Le temps des supplices. De l'obéissance sous les rois absolus (XVé-XVIIIé siècles)* (Paris, 1992), 42.

[48] See in comparison the case in the Conciergerie, the prison below the parliament of Paris; C. Dégez, 'Les conditions de vie en prison à l'époque moderne. L'exemple de la conciergerie', in J. Claustre, I. Heullant-Donat et E. Lusset (eds.), *Enfermements. Vol. I. Le cloître et la prison (Vie- XVIIIe siècle)* (Paris, 2011), 200-201.

[49] CAB 216, *Stadsrekeningen,* 1454-1455, fol. 48 r.

[50] CAB 96, *Ouden Wittenboek*, fol. 115 v.

[51] P. Prétou, 'La prise de corps à la fin du Moyen Âge: pistes et remarques sur l'interaction avec la foule', in F. Chauvaud and P. Prétou L'arrestation (eds), *Interpellations, prises de corps et captures depuis le Moyen Âge* (Rennes, 2015), 36.

[52] Smail, *Legal Plunder*, 205.

On the one hand, the debt of the merchants was as much a social phenomenon as a financial one. The imprisoned merchants risked getting discredited. The imprisonment had happened because the creditor no longer believed in the creditworthiness of the debtor. A debt had changed into a lack of trust, thus providing a rupture in relations.[53]

On the other hand, we can assume that since many important merchants found themselves imprisoned at some point during their career, the effects could not have been that disastrous if they were quickly released under pledges. The picture we have is, therefore, quite ambivalent. Debt imprisonment was not a marginal phenomenon, as most merchants were probably sufficiently wealthy and, most importantly, in most cases, their arrest did not result in a loss of creditworthiness.[54] The Pisan merchant Battista Aliate was arrested in 1450 by the Genoese Luciano Leonardi, but was able to quickly provide a pledge for his release given by Bernardo Cambi.[55] In later years Battista Aliate became a prominent arbiter in commercial cases. As arbiters were often 'trusted figures', it was unlikely that the arrest of a merchant resulted in him becoming an outcast.[56]

After someone was imprisoned, pledges were given to the Bruges court of aldermen promising attendance in court proceedings and the person was released. No real statement about the creditworthiness of a person was made until that point. Therefore, in medieval Bruges, it was not the imprisonment itself that was humiliating. Humiliation could arise, if one was unable to release oneself by providing pledges (suggesting insufficient social capital) or if the creditor refused to allow pledges (hinting at an outstanding debt or the trustworthiness of the debtor), that would have been – indirectly – humiliating. That was, however, a result and not a cause of imprisonment: the aldermen never imprisoned anyone with the premeditated goal of humiliation.

Some merchants did interpret these practices somewhat liberally and used debt imprisonment as a bullying tactic directed toward other merchants. Since there was no clear obstruction before someone was imprisoned, it was possible that if a merchant questioned the validity of his imprisonment, the creditor would not show up in court. Nevertheless, the Bruges aldermen gave

[53] C. Muldrew, *The Economy of Obligation. The Culture of Credit and Social Relations in Early Modern England* (New York, 1998), 181-2.
[54] See, for example, Francois Pimenes, Antonio Francisci, Asselin Spinola; CAB 157, *Civiele Sententiën*, 1447-1453, fol. 83 v. and 324 v.; CAB 157, *Civiele Sententiën*, 1453-1461, 36 v.
[55] CAB 157, *Civiele Sententiën*, 1447-1453, fol. 128 v.
[56] N. Fieremans, '"In the hope to have judged a good sentence as merchants." Arbitration as a litigation strategy in late medieval Bruges', *Tijdschrift voor Rechtsgeschiedenis*, 74, no° 3-4 (2021), 24-25.

the creditor three chances to appear before the court, before they decided – in the absence of the creditor – whether or not the imprisonment had been carried out in error.[57] Throughout this period, the alleged debtor remained imprisoned. It is difficult to calculate how long this process would last, but we can imagine it might have taken some time, given that the aldermen would provide the creditor ample chance to appear before the courts.[58] This happened to the Florentine merchant Antonio Francisci in 1453. He was arrested by the Englishman William Sfrenoy, but when the Florentine claimed before the aldermen that there was no outstanding debt, William Sfrenoy never appeared before the aldermen to defend his claims. Eventually Francisci was released, but it is unlikely that he was very pleased about the situation.[59]

If imprisonment was done maliciously, a debtor could be released without ever making any statement about creditworthiness. The late intervention of the aldermen in the imprisonment made it a legal feature that operated mostly in an informal sphere. Although merchants had to abide by a certain set of rules that ensured the correctness of imprisonment, the punishment of false imprisonment was not severe if they failed to do so.[60] Certainly, the captor had to pay for the upkeep of the prisoner, but in cases of false or suspected false imprisonment, the aldermen did not issue a fine.[61]

There are some known cases where merchants capriciously decided to imprison people they believed were defaulting. In 1466, the aldermen reprimanded the Aragonese merchant Fernando Salvines for taking his right of distraint too liberally. His cargo of wine was impounded by Melchior de Wale in the Flemish city of Ypres. Aggrieved by this, Fernando Salvines arrested Melchior de Wale once the latter was in Bruges and imprisoned him until he released the cargo. Melchior questioned his imprisonment before the aldermen, and the latter agreed that the distraint happened in an abusive way. Fernando Salvines was ordered by the aldermen to bring his case before the aldermen of Ypres as his goods were impounded there.[62] In 1457, the Portuguese merchant Rui Massado was to be equally disappointed when he tried to recover

[57] '*Ghevanghenen worden ontslanghen van vanghenesse zo wanneer de beveildere drie of vier waerf ontboden zijnde ende compareirt om heesch te maeckene*'; CAB 96, *Groenenboek Ongecotteerd*, fol. 41 v. and 78 v.
[58] In 1491, there were fourteen days between each session; CAB 120, *Register van de Hallegeboden van Brugge*, 1490-1499, fol. 58 v. – 59 v.
[59] CAB 96, *Groenenboek Ongecotteerd*, fol. 59 r.
[60] The exception to this seems to be the water bailiff. He penalised people who arrested each other maliciously; ADNB, 6097, *Accounts of the Waterbailiff*, fol. 1r.
[61] Some years there were exceptions to this, and did they fine a couple of merchants 3 lib. gr.; CAB 216, *Stadsrekeningen*, 1446-1447, 8 v., 9 r.; Arresting someone while you were not a 'legal captor' was fined 20 lib. gr. in 1450; CAB 216, *Stadsrekeningen*, 1449-1450, fol. 12 v.
[62] CAB 157, *Civiele Sententiën*, 1465-1469, 26 r. – v.

'his' cargo of fruit. Massado had imprisoned a shipmaster from Normandy and claimed that this shipmaster had stolen his goods at sea and brought them to Zeeland. However, Massado was suspected of committing piracy himself in order to obtain the fruit and he was therefore not recognised as the legitimate possessor of these goods. The aldermen decided that the shipmaster from Normandy was falsely imprisoned.[63] Most merchants tried to dismiss their imprisonments based on procedural errors, and, by so doing, obtained their release without having a statement about the validity of the debt.

However, when imprisonment was effectively challenged (on procedural grounds, for example), the debtor was freed but his debt remained unpaid.[64] Therefore, most captors wanted to remain within the legal boundaries laid out by the Bruges aldermen. The easiest way to imprison someone was always by proving a debt. In the case of mutual obligations, it happened that when one party was imprisoned, the other returned the favour.[65] In cases drawn out over several years and where the trust between both parties was lost entirely, imprisonment was often used as a way to harm the opposing party. This was probably the case between Nicolas de Poge, an international banker from Lucca, and the Strozzi family from Florence in the 1450s. First, Nicolas de Poge detained Ludovico Strozzi for alleged debts, and the latter had to be bailed out by his relative Jacopo Strozzi and other Florentine merchants.[66] After members of the Strozzi family had been imprisoned several times, Jacopo simply retaliated in 1458 once the verdict of the aldermen was in their favour. Since the aldermen had now ruled that Nicolas de Poge should pay the Strozzi, Jacopo incarcerated him when de Poge hesitated with the fulfilment of the decision.[67]

The aldermen of Bruges also showed some leniency. These merchants were not only aware of the formal rules of medieval Bruges, but also of the legal practice of the aldermen as was demonstrated by the *contreprise*. When a supposed debtor was imprisoned excessively unjustly, the debtor could sometimes also order the creditor to be imprisoned. Now both parties were imprisoned, even though the debtor could not claim a debt from the creditor. Nevertheless, the aldermen accepted these imprisonments out of equity and discussed the 'great injustice' that

[63] CAB 157, *Civiele Sententiën*, 1453-1461, fol. 212 r.
[64] Each prisoner could only be imprisoned for one debt at a time. Other creditors had to wait until the release of the debtor.
[65] CAB 157, *Civiele Sententiën*, 1453-1461, fol. 105 v. and 107 v.
[66] See for the Strozzi in Bruges; A. Crabb, *The Strozzi of Florence. Widowhood and family solidarity in the renaissance* (Ann Arbor, 2000), 115-116. CAB 157, *Civiele Sententiën*, 1453 – 1461, 157 v. and 167 v.
[67] CAB 157, *Civiele Sententiën*, 1453-1461, fol. 248 v.

was claimed. These merchants were not incarcerated for their outstanding debts but rather due to abusive distraint. Evidence is scarce for this and is never clearly communicated in Bruges customary law, but in some cases, the aldermen accepted the *contreprise* as a valid cause for imprisonment. In this respect, the *contreprise* was not a result of a contractual relationship but accepted as a measure of good governance by the aldermen.[68] In 1461, Scottish merchant sailors raided some English ships at sea, took some of the merchants captive, and locked them up in the city prison of Bruges as if they were debt prisoners.[69] Unfortunately for the Scottish, shortly afterwards, the English nation detained those very Scottish merchants under the same pretext: claiming them to be debtors.[70] It is unlikely that either was indebted to the other, but the aldermen accepted the imprisonment because the English lamented the injustice of the first capture. Both annotations in the aldermen registers were quite short and there was probably not much discussion about the detainment itself. The merchants were released after various burghers gave their pledges to the merchants. In this way, the *contreprise* created a stalemate and forced the two parties to come to a solution.[71]

The imprisonment of merchants had a number of advantages. It bound the merchants to the Bruges court, it assured the creditor of the enforcement of the decision of the aldermen, and for those aware of the intricacies of the system, it could be used to get themselves out of a difficult situation. The informality of the practice gave way to some creative solutions by merchants. When a debt could be proven, a merchant could be arrested. That was the normal way of commerce. The insufficient checks before the act of imprisonment could lead to wrongful incarceration, but in most cases, merchants tried to remain within the confines of what was allowed. The knowledge and effective use of the *contreprise* demonstrates that some merchants were correctly informed of these boundaries and how far they could stretch them. That, of course, leads us to the question how the aldermen reacted to this.

III. Reacting to malfeasances: Efforts by the city

The existence of legal mechanisms such as the *contreprise* should not come as a surprise. The aldermen started from their customary law, but also decided on each case according to the nature of the case itself. The system was based on municipal bylaws and customs, but these could certainly not anticipate all the situations that were presented, and often, the aldermen

[68] '(…) *qui avoit aussi fait arrester* (…) *par maniere de contreprinse* (…)'; CAB 157, *Civiele Sententiën*, 1465-1469, fol. 170 r.
[69] CAB 157, *Civiele Sententiën*, 1453-1461, fol. 370 v.
[70] CAB 157, *Civiele Sententiën*, 1453 – 1461, fol. 379 r.
[71] See for example, CAB 157, *Civiele Sententiën*, 1453-1461, fol. 41 r.

responded to the situation on a case-by-case basis. Nevertheless, certain tendencies in the practice are detectible. One of the most striking is that the aldermen always tried to curb the greatest excesses. In 1399, the famous Hanseatic merchant Hildebrand Veckinhusen was compensated by the city council and on behalf of a hat maker from Bruges. Veckinhusen had a claim on the hat maker and imprisoned him several times, but the city council pitied him due to 'the harshness of the Easterner', intervened, and finally paid the debt on his behalf.[72] This was an informal intervention as Veckinhusen was presumably in the right.[73] Other offences were also sometimes punished. Burghers of Bruges could not just imprison each other but had to obtain special permission from the aldermen's bench. Transgressors were fined.[74] However, such a rule did not exist for foreigners.

The aldermen only provided the framework, not how it was to be used or even managed. This was in the hands of the Prison Governor or *steenwaerder*. Although prison governors like Jan Baervoet were well connected to the city magistrate, the prison governor was separate from the city council. There was a clear prohibition on combining the city council mandate and being the prison's governor and the same person could definitely not be both the Burgomaster of the commune and the prison's governor.[75] The prison's governor was the official solely in control and responsible for the (private) management of the city's prison: he was appointed directly by the aldermen and had to take an oath to fulfil his office faithfully. To ensure his good conduct, the governor had to provide several pledges by which he would be held accountable for any damages the prison's governor might inflict upon the city.[76]

The prison governor had control of the city's prison under a lease system and had to try to make a profit from the 'users', both debtors and creditors, of the prison. The problems – or rather abuses – of this system quickly became apparent. The governor had certain strategies to

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[72] (…) *mids der hartheit van den vorseide Oosterlinc dat hime emmer in den steen doen wilde* (…); CAB 216, *Stadsrekeningen*, 1399-1400, fol. 90 r.; My special thanks to Mathijs Speecke for noticing this event.

[73] Unfortunately for Veckinchusen, he was also arrested after 1422 and had to stay in prison for an incredibly long period, until 1425, resulting in a loss of his network and the ruin of his enterprise; A. Lorenz-Ridderbecks, *Krisenhandel und Ruin des Hansekaufmanns Hildebrand Veckinchusen im späten Mittelalter. Untersuchung des Briefwechsel (1417-1428)*, 59; 109-110; J. H. A. Beuken, *De Hanze en Vlaanderen* (Maastricht, 1950), 44. J. Mertens, 'Hildebrand Veckinhusen te Brugge: de activiteit van een Hanzatisch koopman in de eerste decennia van de vijftiende eeuw', *Handelingen van het Genootschap voor Geschiedenis*, 133 (1996), 60.

[74] CAB 216, *Stadsrekeningen*, 1446-1447, fol. 8 v. and 9 r.; CAB 216, *Stadsrekeningen*, 1449-1450, fol. 12 v.; CAB 216, *Stadsrekeningen*, 1450-1451, fol. 15 v.; CAB 216, *Stadsrekeningen*, 1479-1480, fol. 37 r.

[75] '(…) *Steenwaerder ghecoren burchmeester vande courpse ende mits dat beede officien niet en zijn compatible was ontsleghen van officie van steenwaerderscepe* (…)'; CAB 96, *Groenenboek Ongecotteerd*, fol. 280 v.

[76] See, CAB 96, *Groenenboek A*, fol. 372 v.; CAB 96, *Groenenboek Ongecotteerd*, fol. 44 v.; CAB 96, *Groenenboek Ongecotteerd*, fol. 131 r.

maximise profits. For example, during a law suit, it was not uncommon for merchants to be distrained several times or to be imprisoned at intervals. In those cases, the governor tried to charge them every time they entered the prison, even though it was customary to pay only once.[77] In 1455, the aldermen had to explicitly forbid the selective acceptance of prisoners, probably based on their ability to pay for the expenses relating to their stay.[78] The governor tended to accept only the most lucrative prisoners and dismiss the less fortunate ones. This reached such levels that the aldermen decreed that everyone who suffered from this policy of selective acceptance could seek compensation from the governor.[79]

Mismanagement with financial repercussions in particular would not be tolerated. For example, if someone managed to escape from prison, the prison governor himself would be held responsible for the person that had managed to escape.[80] As this could often amount to hundreds of Flemish pounds, it was something that the prison's governor tried to avoid at all costs. When the Florentine merchant Guglielmo Berti managed to escape from prison, the governor Jan Baervoet argued against his responsibility for the matter, claiming that a compatriot of the prisoner, Talento de Totaldo, had broken the prison wall.[81] It was only after gathering more information and providing several pledges that the governor was dismissed.[82] Jan Baervoet was less lucky in 1457 after he had entertained several prisoners at his table to discuss their release 'for his profit'.[83] When they overpowered the governor, threatened his life, and escaped from prison, he was seen as liable.[84] The scandals in which Jan Baervoet was involved were so great that he lost the confidence of the aldermen and found himself incarcerated in his own prison to prevent further damage.[85]

There was a reason why the city was so careful concerning the prison governor. If the governor mismanaged the prison, it damaged the city's reputation, and, more important, exposed the city to liability claims. Any faults in the procedure could lead to damages being claimed by merchants from the city. Take for instance the case of Simon Wintervelt; the city had to walk a

[77] CAB 96, *Groenenboek Ongecotteerd*, fol. 57 r. – v., 91 r.
[78] CAB 96, *Groenenboek Ongecotteerd*, fol. 60 r.
[79] CAB 96, *Groenenboek Ongecotteerd*, fol. 60 r.
[80] This was also a measure to free the city from any additional costs. Some countries had acquired privileges that if a debtor escaped, the creditor could seek compensation from the city; CAB 96, *Oude Wittenboek*, fol. 18 r.
[81] CAB 96, *Groenenboek Ongecotteerd*, fol. 119 v.
[82] Tommaso Portinari, Baptiste de Scracy, Franscique Totaldi et Borromeo Salmari had to stand surety, and the Lord of Gruuthuuze was the pledge of Pieter Baervoet; Gilliodts-Van Severen, *Coutume de Bruges*, t. II, 166.
[83] CAB 96, *Groenenboek A*, fol. 372 r. – v.
[84] CAB 96, *Groenenboek A*, fol. 372 r. – v.
[85] CAB 96; *Groenenboek Ongecotteerd*, fol. 76 v.

narrow path between upholding its jurisdiction and not being liable for the enormous cost that could accompany it. Simon was a German merchant trading in Bruges in the early 1450s. In 1453 he decided to leave the county, but first, had to complete his unfinished business and did so by apprehending his debtor Lieven de Clerq, a citizen of Ghent. Ghent generally vigorously defended the rights of its citizens, but it was just recovering from a civil war and therefore did not intervene.[86] Simon must have felt that he had enough leeway to handle the matter quickly and brought Lieven to Bruges. Lieven then claimed that his arrest was carried out violently. In cases where the person making an arrest acted more forcefully than acceptable, the aldermen considered the arrest illegitimate. In this case, the aldermen dawdled, not knowing how to handle the case and postponed it.[87] However, in the meantime, the case was quickly appealed before the Council of Flanders. The aldermen lost the case, but the city accounts indicate that they released Lieven, and the man disappeared. To prevent the Council of Flanders from making a judgment to fine the aldermen, the city made a deal with Simon compensating him with the sum of 70 lib. gr.[88] The city paid this off over 5 years.

IV. Reacting to malfeasances: Adjusting the policy of distraint

The case of Simon Wintervelt clearly illustrates Bruges' risks in dealing with debt imprisonment. The first risk was the financial aspect, whereby the city could incur serious damages. The second risk were the negative consequences and the potential dangers of a judgment by the Council of Flanders, no matter how loosely the mechanism of debt imprisonment was regulated. If the Council of Flanders actively intervened in the management of debt imprisonment in Bruges, the city would lose its authority over the mechanism. The aldermen of Bruges paid Simon Wintervelt to ensure that the Council of Flanders would not come to a decision.

In order to avoid these cases, the aldermen could change the mechanism and avoid certain malicious practices. This could essentially be done in two ways. Firstly, through their initiative using municipal bylaws, or secondly through princely legislation. The former gave the aldermen the advantage of controlling the process, since the aldermen could dictate how the distraint operated, even though it entailed less authority. This was possible for small procedural matters, and as we have seen, the aldermen tried to enhance their control over the practice by imposing

[86] see J. Haemers, *De Gentse opstand (1449-1453): de strijd tussen rivaliserende nerwerken om het stedelijke kapitaal* (Kortrijk, 2004).
[87] CAB 157, *Civiele Sententiën*, 1453-1461, fol. 11 r.
[88] CAB 216, *Stadsrekeningen*, 1467-1468, fol. 76 v; CAB 216, *Stadsrekeningen*, 1468-1469, fol. 106 r.; CAB 216, *Stadsrekeningen*, 1469-1470, fol. 51 r.

the intervention of the legal captors. The second option was ducal interference. This avenue implied more authority and presented a unified rule for the entire county, but it was trickier. We should be careful not to represent the duke as a predatory power that opposed Bruges. However, the situation had drastically changed when the dukes of Burgundy also became the counts of Flanders in the late fourteenth century. The duke's grip on power was much stronger than his predecessors', and whereas the previous counts had profound difficulties with rebellious cities, the duke repressed them more decisively.[89]

In 1456, for example, Bruges and other cities petitioned the duke to end some unwanted customs regarding distraint, and he happily obliged. The cities probably did not expect the charter to be sent to the Council of Flanders (who recorded it in two registers), suggesting that they might also have jurisdiction over it.[90] The above-mentioned privileges constituted an act of good governance on behalf of the duke and not an attempt by the city to obtain more control over the system, or to curb the local bailiff's power. On the contrary, the duke was gaining the authority to intervene in the prison and the imprisonment practices in Bruges.

In the Burgundian Netherlands, there was a negotiated system where different courts like the Council of Flanders and the Great Council of the duke could also hear appeals from Bruges itself. Initially, direct involvement in the organisation of the Bruges prison system was absent, but as previously stated, the prison was a key political symbol and become more integrated into the different princely courts. In the middle of the fifteenth century, we see the Council of Flanders considering cases relating to debt imprisonment between citizens of Bruges. [91] Later, merchants fought their imprisonment before the Council of Flanders when they were not detained in Bruges but in other smaller cities.[92] The Bruges prison system was not threatened by this and was largely left alone. Both merchants and city used the Council of Flanders to their advantage.

Nevertheless, in the late 1450s the Council of Flanders grew even bolder and also started to take cases that arose between foreign merchants, despite the hefty protestations from the

[89] J. Dumolyn, *De Brugse opstand van 1436-1438* (Heule, 1997).

[90] A part of the tasks of the Council of Flanders was publishing princely decrees. It was, however, unusual to publish them in the sentence registers; SAG 2374, Council of Flanders, Sentences, 1456-1456, fol. 448 r.; SAG 2375, Council of Flanders, Sentences, 1456-1457, 1 r.

[91] SAG 2369, Council of Flanders, Sentences, 1453-1454, fol. 128 r.; SAG 2383, Council of Flanders, Sentences, 1461-1462, fol. 273 r.; SAG 2384, Council of Flanders, Sentences, 1462-1463, fol. 183 v.

[92] SAG 2369, Council of Flanders, Sentences, 1453-1454, fol. 460 v.

aldermen of Bruges.[93] By the 1480s, Bruges found itself confronted with several cases before the Council of Flanders discussing the distraint of merchants.[94] Take the case between Roderigo Catalan and Nicholas de May. The Aragonese merchant Roderigo Catalan owed the money changer Nicholas de May, but, according to Rodrigo, Nicholas extorted more money than was due from Rodrigo. Nicholas de May captured and imprisoned Rodrigo and seized all his possessions. 'Out of fear of imprisonment', Rodrigo Catalan quickly gave in and promised to pay what Nicholas claimed.[95] Subsequently, Rodrigo was freed on the condition that he should use this freedom to collect the money, but, once Rodrigo had left prison, discussion arose over the total amount he had to pay. Nicolas imprisoned Rodrigo again, and the latter brought his case before the aldermen. The aldermen confirmed his imprisonment, and Rodrigo appealed the decision before the Council of Flanders. The aldermen saw themselves confronted by the Council of Flanders which had to decide whether these urban magistrates, in their function as representatives of the count, had acted correctly. Although the aldermen tried to contain the case as much as possible, the Council of Flanders reached the decision to release Rodrigo from his imprisonment.[96]

Rodrigo appealed the aldermen's judgment with considerable effect and avoided extensive damages.[97] Although the Council of Flanders never actively called cases of debt imprisonment before its own court (a procedure called evocation), cases could come to the court when they were appealed against the aldermen of Bruges. At first, such cases were only rarely considered, but as time passed and the fifteenth century came to a close, the Council of Flanders was

[93] Because they believed that imprisonment fell within their jurisdiction, they often asked a 'renvoy' of the council. If the council agreed, the case would be brought back before the aldermen court; SAG 2375, Council of Flanders, Sentences, 1457-1458, fol. 77 v.; SAG 2385, Council of Flanders, Sentences, 1462-1463, fol. 230 v.

[94] SAG 2411, Council of Flanders, Sentences, 1480-1480, fol. 265 r.; SAG 2412, Council of Flanders, Sentences, 1480-1481, fol. 525 r.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 43 r.; SAG 2414, Council of Flanders, Sentences, 1483-1483, 62 r.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 73 r.; SAG 2414, Council of Flanders, Sentences, 1483-1483, 106 r. – v.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 143 v.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 150 v.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 177 v.

[95] (…) *ende hoewel de heesschere zo vele niet schuldich en was nietmin uut vreesen van vanghenessen hadde te vrede gheweest hemliede de voorscreven somme te betalene* (…); SAG 7512, Council of Flanders, Sentences interlocutoires, 1483-1485, fol. 84 r

[96] (…) *ende wijst tselve hof bij hemlieden quelic ende ondeuchdelic ghewijst zijnde ende hier vonnesse corrigierende ordonneert den voorseiden heeschere van vanghenessen ontsleghen* (…); SAG 7512, Council of Flanders, Sentence interlocutoires, 1483-1485, fol. 86 r.

[97] Although it would prove to be a long and strenuous trail; SAG 7512, Council of Flanders, Sentences interlocutoires, 1483-1485, fol. 16 r.; SAG 2414, Council of Flanders, Sentences, 1483-1483, fol. 143 v., 150 v., 177 v.; SAG 2415, Council of Flanders, Sentences, 1483-1484, fol. 3 v., 85 r., 116 r., 132 v., 170 v.

discussing cases dealing with debt imprisonment. Entrepreneurial merchants were aware of this and used it to their advantage.

The aldermen reacted to these cases by using regulation in order to improve debt imprisonment and avoid appeals. We should not see this as an active policy by the prince to undermine urban prerogatives. Instead, it shows that merchants regarded these princely courts as options to influence their litigation proceedings, and faulty distraints were more likely to be appealed. As a consequence, these princely courts increasingly influenced the jurisdiction of Bruges, something that the aldermen of Bruges were keenly aware of.[98] In the aldermen's legal practice, it is striking to see that they increasingly tended to regulate the practice of debt imprisonment. The demand for using legal captors was already present during the entire fifteenth century, but would become more pronounced towards the end of the century when the aldermen started systematically fining perpetrators.[99] The aldermen increasingly demanded that their consent should be secured before an imprisonment, and we can observe bigger fines for those who ignored this.[100]

Furthermore, the aldermen's influence over the actual prison grew. In 1480 they published a new prison ordinance, and in 1481 they received a dispensation from duchess Mary of Burgundy and Maximilian of Austria to purchase the basement of the city's prison, which they bought in 1481.[101] The charter stated that this was done to 'improve and increase incarceration in the city of Bruges.'[102] This aim was undoubtedly a factor in limiting princely interference. In an undated charter from the end of the fifteenth century the aldermen of Bruges stated a new prison ordinance, curbing the power and excesses of the prison governor and assuring a minimum level of comfort for the prisoners.[103] The governor's remuneration was fixed and

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[98] See, for example, an order to release a prisoner from the city prison by the Council of Flanders; CAB 96, *Groenenboek Ongecotteerd*, fol. 284 r.

[99] The legal captor is also important in the symbolic image. He represented the higher authority (city or duke) entitled to make the arrests; D. Roussel, 'La légitimité de la contrainte à l'épreuve de la rue: les sergents et la prise de corps à Paris au début de l'époque moderne', in F. Chauvaud and P. Prétou (eds.), *L'arrestation. Interpellations, prises de corps et captures depuis le Moyen Âge* (Rennes, 2015), 47, 52-53.

[100] CAB 157, *Civiele Sententiën*, 1469-1471, fol. 61 v.; CAB 165, *Chamber*, 1479-1480, fol. 9 v., 19 r. ; the fine of a capture 'without commission' was 50 lib. gr. in 1479; CAB 216, *Stadsrekeningen*, 1479-1480, fol. 37 r.

[101] The prison below the actual prison of the city was held by a Joos van Varsenare, the bailiff of Bruges, as a fief from the count of Flanders; The dispensation: CAB, *Politieke Charters*, 1ste, no° 1180; the transfer: CAB, *Politieke Charters*, 1ste, no° 1182.; CAB 216, *Stadsrekeningen*, 1480-1481, fol. 182 r.

[102] *Omme te beterne ende vermeerderne de vangnesse van de stede van Brughe*; CAB, *Politieke Charters*, 1ste, no° 1180; Nevertheless, it seems the city of Bruges rented the place; CAB 216, *Stadsrekeningen*, 1492-1493, fol. 7 r.

[103] CAB 96, *Rodenboek*, fol. 112 r.; This was an enlargement from an earlier – also undated – prison charter that already fixed some remunerations and regulated the prison governor; CAB 96, *Ouden Wittenboek*, fol. 115 v. – 116 r.

clarified and the aldermen decreed that debt prisoners could no longer be shackled. The aldermen also stated that the governor should provide candles, wood, and a cook, without additionally charging his occupants. Next, they clarified what the guardian could ask his prisoners in terms of extra money. If prisoners wanted to eat, the governor should provide them with good bread, soup, and some beer for a fixed price every morning and evening.[104] If the prisoner wanted wine, he was to pay for it according to market prices. Unfortunately for some of the prisoners, the aldermen's text had a moral overtone: all prisoners were banned from having dance parties, playing the flute, or engaging in gambling.[105]

In brief, the aldermen affirmed their dominance over the city's prison in a period during which their authority was being questioned. Such moral statements were far from innocent. Indeed, they clearly demonstrate that the aldermen took these measures to improve the management of the prison and to improve the city. Debt imprisonment did not disappear, however. This is important to note, because there was another commercial city changing its judicial framework at about the same time. In the 1480s, Antwerp stipulated that all imprisonments should be sanctioned by their local bailiff, the *Amman*, resulting in tight control of and a high cost for merchants wishing to obtain imprisonment. More importantly, though, the legal practice of the Antwerp aldermen made debt imprisonment less necessary. The Antwerp aldermen introduced new legislation making debt easier to prove, and by consequence an imprisonment redundant. Furthermore, the context of the wars against Maximilian of Austria in the 1480s made the freezing of goods and seizures easier, thus making the (rather expensive) process of debt imprisonment redundant by the sixteenth century in Antwerp.[106]

In Bruges, such changes were not visible, in part because most of the city ordinances before 1490 were lost, but also because there are no real indications that debt imprisonment became any less popular.[107] Although there were some minor changes to the system, these changes were mainly to stop merchants from taking the right to imprison too liberally, or to prevent the prison governor from using his power abusively. In contrast to Antwerp, there was no real alternative. Both cities were confronted with the same problem, but reacted differently.

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[104] Although he was not to hold a monopoly on these goods if prisoners wanted beer from the market, they ought to be able to get it; CAB 96, *Rodenboek*, fol. 112 r.

[105] (…) *dat ghevanghene boven noch beneden dansighe houden zullen moghen nichtemeer met pypen, muselen, tamboeren dan anders, by daghe of by nachte in eenegher manieren, noch eenich spel met teerlinghen* (…); CAB 96, *Rodenboek* fol. 112 r.

[106] D. De ruysscher, 'Why we need a history of collateral rights', 303-4.

[107] This is suggested by some samples from the sixteenth-century sources: CAB 165, *Chamber*, 1521-1522, fol. 35v-36r; CAB 165, *Chamber*, 1540-1541, fol. 31 v.–32 r.; CAB 165, *Chamber*, 1569-1570, fol. 35 r.

V. Conclusion

In the middle of the fifteenth century, there were few constraints in the way in which debt imprisonment was executed. The control the aldermen exerted over the mechanism was *a posteriori*, leaving space for merchants to use it to threaten, bully and enforce their debt without much interference. Serious cases were fined, and most merchants were clever enough to stay within the boundaries of the law. Violent arrests seldom occurred, and the mechanism already in place was cleverly used to benefit those making the arrests. The established practice ensured that people could be brought to prison and consequently before the Bruges municipal court where the aldermen decided whether prisoners had to pay the sum.

The duke, in particular the Council of Flanders, were an unwelcome presence in this system of distraint. Initially, the aldermen were mainly occupied with the fraudulent activities of the prison governor. The guardian's attempts to increase his income drastically damaged the prison's reputation, and it was here that they acted. However, courts like the Council of Flanders were gaining greater control over the management of debt imprisonment in medieval Bruges. The aldermen reacted to this in addition to other incentives at the end of the fifteenth century by enforcing their authority in matters of imprisonment and prison management. As such, Bruges is an example of a commercial hub confronted with an increasingly present state, the choices the city could make, and the role merchants played in these considerations. The city was mainly concerned with the rights of its citizens and the preservation of its jurisdiction over the prison. Foreign merchants appealing their decision before princely courts were the main nuisance the aldermen tried to stop by ending the most malicious captures. While Bruges chose to defend its prerogatives, affirmed its authority over the prison, and tried to limit malicious captures, Antwerp made the figure of debt imprisonment redundant. Although this should not suggest a strict causality between debt imprisonment and trade flows, the difference in legal attitude merits further research.