

BETWEEN FACTS AND FAITH.  
THE JUDICIAL PRACTICES OF THE CONSEILLERS OF THE PARLEMENT  
DE TOULOUSE (1550-1700).

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by  
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This dissertation studies the professional practices of a college of royal judges in a French sovereign court, from the beginning of the Wars of Religion to the end of the seventeenth century. The Parlement de Toulouse was a court of final appeal that had jurisdiction over a large swath of Southern France, and that the kings used as a bureaucratic outpost to assert their authority over what had remained a rather unruly border-region. Through an analysis of the genealogy of ideas regarding kingship, justice, and the body social, an account of the material and temporal constraints of judicial activity, and a close examination of dozens of lawsuits involving all classes of men and women from the Languedoc region, this research transforms the extensive archive produced by this early-modern French court into a broad-ranging historical analysis that is at once cultural, intellectual, social, and political. The analysis of the court's records, focused on the magistrates' professional practices—how they investigated, interrogated, tortured, and sentenced litigants while at the same time translating social and political conflicts into legal statements of fact, demonstrates that the mutually constitutive relationship between ideals of justice and everyday judicial practices, was at the core of a judicial epistemology which, situated between facts and faith, calls for a revision of our understanding of the political role of those courts, and beyond, of our understanding of early-modern political culture.

## BIOGRAPHICAL SKETCH

Guillaume Ratel was born in Avignon, France in 1974. He graduated from Lycée Ernest Hemingway in Nîmes, France. From 1992 to 1996, he attended *classe préparatoire aux grandes écoles* at Lycée Alphonse Daudet in Nîmes and Lycée Pierre de Fermat in Toulouse. Beginning in 1996, he attended the Ecole nationale des chartes in Paris, where he received his degree of *Archiviste-paléographe* in 2001, following the defense of his *thèse* entitled “*Que le droit du roi soit gardé*”: *Les plaidoiries des gens du roi aux parlements de Paris et de Poitiers (1418-1436)*. During his time in Paris, he also completed a Master in medieval history at Université Paris-I Sorbonne (1999). Guillaume Ratel first came to Cornell University as a visiting student in 1999 and, in 2000, joined the doctoral program of the History Department where his research focused on early-modern French legal history.

To my father, Lucien Louis Roland Ratel (1922-1991).

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## LIST OF ABBREVIATIONS

ADHG: Archives départementales de la Haute-Garonne.

AN: Archives nationales.

d.: denier (currency).

l.: livre (currency).

s.: sou (currency).

## INTRODUCTION

This is a study of the judicial practices of the magistrates of the Parlement de Toulouse between 1550 and 1700 CE. This concise definition of my research topic immediately raises a few questions that I will address shortly—What is a Parlement? Why Toulouse? Why this timeframe? What qualifies as “judicial practice?” Before I answer those questions however, I would like to first lay out the larger historical questions that frame this research, as they will help understand the more specific choices—object, time, and place—that frame this research.

### **Law, society, and judicial practices: problems and goals**

Let us start then with an even more concise and deceptively simple question that underlies this research: What do judges “do”? This question, which is central to a proper understanding of how law and society relate to one another, helped to set the main objective of this research: to enhance our understanding of the complex relationship between law and society through a case-study of the Parlement of Toulouse in the early-modern period. Then as now, law and society constantly reshaped one another with significant consequences for the ways in which we, as individuals, relate to one another, and the content of the ethical and moral standards which, whether we personally subscribe to them or not, define us, both as individuals and members of a larger social group.

Because there is nothing profoundly groundbreaking about the idea that judges might play a crucial role in this important process of interchange, it is quite surprising to see how little attention, scholarly or otherwise, the professional practices of judges have received so far. To be sure, there are numerous studies of justice, judicial institutions, criminality, or groups of legal and paralegal

practitioners—actually quite a few of them based on studies of early-modern European courts—<sup>1</sup> but almost none of them have paid substantial attention to the actions and practices of judges. Thus, while “law and society” have sparked—and rightly so—significant scholarly interest, and even became the eponym of an academic field with learned society in tow, at the confluence of several disciplines, most scholars interested in this topic, whether originally trained as historians, sociologists, or legal scholars, have mainly focused on judicial sentences.

This narrow focus on sentences when studying the law court, can be attributed to a widely shared assumption that judicial decisions are all we need to focus on in order to understand what goes on at the point of contact between law and society. More specifically, the assumption is that we only have to study sentences to bridge two main axes of analysis: the critique of the legal theorizing of jurists and lawmakers—taken to represent “law”—and the observation of conflicts and disputes—taken to represent “society.” Judicial decisions certainly matter as an important locus where law and society do indeed come into contact, but judgments constitute only the surface of what could and should be studied at the level of the law court in order to form a critical evaluation of the relationship between law and society. In my view, the judicial processes and practices that involve both judges and litigants, and by which legal decisions are reached—inquiring, interrogating, translating data into legal language, deliberating, sentencing—should constitute the primary focus of any study concerned with the relationship between law and society.

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<sup>1</sup> See for instance Richard Cosgrove, *Scholars of the Law: English Jurisprudence from Blackstone to Hart*, New York: New York University Press, 1996 ; John A. Carey, *Judicial Reform in France Before the Revolution of 1789*, Cambridge: Harvard University Press, 1981 ; Malcom Gaskill, *Crime and Mentalities in Early Modern England*, Cambridge ; New York: Cambridge University Press, 2000 ; Benoît Garnot, *La Justice en France de l'an mil à 1914*, Collection 128. Histoire ; 26, Paris: Nathan, 1993 ; Michèle-Laure Rassat, *La justice en France*, Paris: Presses Universitaires de France, 1994 ; *Les justices de village: administration et justices locales de la fin du Moyen Age à la Révolution*, ed. Annie Antoine and Michel Brizay, Rennes: Presses Universitaires de Rennes, 2003.

## Approaching judicial practices

My approach to judicial practice can be summed up by a few more specific questions that stem from my original question “what do judges do?” How did judges conceptualize their judicial practices? What kind of knowledge did they mobilize and produce in the process of administering the law? How did they order social phenomena and transform them into legal statements of facts? To what extent did litigants’ own knowledges and practices shape that of their judges?

In my view, the best way to address these questions is to ground the analysis—thus the answers—in a study of the concrete, that is, in a case study that seeks to relate a specific group of judges with the judicial practices they deploy in the face of actual disputes. This approach to judicial practices, is congenial to—although not originally inspired by—Michel Foucault’s definition of practical systems, an idea that he developed in “What is the Enlightenment?”<sup>2</sup> In this piece, Foucault advocates the study of what he calls “practical systems,”

(...) [t]hat is, the forms of rationality that organize [men’s] ways of doing things (this might be called the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, modifying the rules of the game, unto a certain point (this might be called the strategic side of these practices).<sup>3</sup>

It seems that justice as a human institution fits perfectly Foucault’s definition of a practical systems. Further, and more importantly, Foucault does not just provide a working definition of my object of study, he lays out what I think are the pertinent “axes of analysis” for a study of justice as a practical system:

The practical systems stem from three broad areas: relations of control over things, relations of actions upon others, relations with oneself. (...) We have three axes whose specificity and whose

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<sup>2</sup> Michel Foucault, “What is Enlightenment?,” in *The Essential Foucault. Selections from the Essential Works of Foucault, 1954-1984*, New York: The New Press, 2003, 43-57.

<sup>3</sup> *Ibid.*, 55

interconnections have to be analyzed: the axis of knowledge, the axis of power, the axis of ethics.<sup>4</sup>

This is, in my view, a very fitting description of what judicial practices, in my view, are and are about. They are simultaneously “a technological type of rationality” and “strategic games of liberties,”<sup>5</sup> and, what is always at stake in the deployment of this ambivalence is knowledge, power, and ethics. Judicial practices are very explicitly connected, from the point of view of both judges and litigants, to attempts to clarify one’s relation to things, others, and oneself. Thus, one could say that in the particular case of justice as a practical system, knowledge, power, and ethics are twice at stake: first generally, in the deployment of practices over a given time and space, and then specifically, in relation to each particular case that appears before the judges on a daily basis. My goal then, is to grasp the main features of judicial practices thus defined: their technological and strategic dimensions, and the effects of this dual nature on the adjudication of knowledge, power and ethics.

Those are, however, general definitions, situated at a very theoretical level, and I would like to spell out more specifically the implications of this theoretical view of judicial practices for the scope and methodology of this research. First, this systematic approach entails a rather broad research scope, for a wide range of activities and phenomena potentially fall within the purview of judicial practice as I defined above. Normative sources, such as codes of laws, manuals of procedure, or official bylaws of the court, are absolutely necessary to understand the mechanics of judicial practice, but those sources will not help us much to understand the strategic dimension of those practices, that is, how individuals bend those rules. Paying attention to the strategic dimension of judicial practice as a critical part of the analysis means, for instance, that litigants’ mobilization of their clientele networks outside of the court—thus correspondence and exchanges that are not strictly speaking legal or judicial in nature—are very relevant to this research. Given the broad chronological scope of this research however, it is simply impossible to

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, 56

locate, gather, and analyze the extremely vast range of paralegal sources, which, in theory, could shed light on the strategic dimension of judicial practice.

I believe, however, that what French historians call “the documents of practice” (*documents de la pratique*)—by which they mean the documents produced by practitioners as a result of the deployment of their professional practices, in this case trial documents—constitute a sound documentary basis for a study of judicial practice. As my research will demonstrate, those documents are produced at the intersection of the technological and strategic dimensions of judicial practice. On the one hand, the form and structure of those documents can be read “backward,” to reconstitute the rules and goals that guided their production. An analysis of the ways in which, for instance, a medical report, a record of testimony, or the record of a torture session, are organized—what information do they record? How is this information organized and presented?—can reveal the technological dimension of judicial practices. At the same time, the substance of those documents, their content can also reveal, when read closely and “against the grain,” the strategic dimension of those practices. We will see how, for instance, the content of both the questions of the torturer and the answers of the tortured, can help show how individuals on both sides of this process attempt to bend the rules of the practice to deploy their own strategies.

The methodology behind this type of reading is ethnographic. My own strategy here is to interrogate the documentary traces of judicial practice, to reveal the technological and strategic underpinnings of their process of production, that is, something that is mostly transparent to the practitioners, users and subjects of those practices. A classic ethnographic approach would entail a direct exchange with practitioners, that is, observing them in action and asking them about what they do. This is the method employed by Bruno Latour a few years ago in his ethnography of the French Conseil d’État,<sup>6</sup> in some way a distant descendant of the court I will be studying here. While Latour’s study illustrates the tremendous potential of this methodology, not everyone enjoys his status of prominent public intellectual figure that can open the doors of the deliberation chamber of an institution such as the Conseil d’État.

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<sup>6</sup> Bruno Latour, *La fabrique du droit. Une ethnographie du Conseil d'Etat*. Paris: La Découverte, 2002.

More generally, though, there are two main limitations to this ethnographic methodology for a study of judicial practices. The first one is a classic ethnographic issue: informants' actions and testimonials are shaped by the anticipation and expectation of the ethnographer's agenda. It takes the interpretive experience and talent of a seasoned ethnographer—which I am not—to work around this difficulty. The second difficulty, in my view as constraining as the first one, has to do specifically with judicial institutions and the necessarily contentious and often secretive nature of their practices. Even when, exceptionally, a court such as the Conseil d'État lets an ethnographer in, important parts of the judicial process remain hidden or, at the very least, are affected by the presence of the observer and the anticipation of his agenda, no matter how sympathetic to the institution the observer might be.

### **Why the early-modern period?**

This is one of the ways in which a historical approach can compensate the loss of direct observation that an ethnographic study of contemporary justice could allow. The possibility of unrestricted access to the documents of judicial practice—which admittedly requires the interpretive experience of an historian—constitutes a first reason to turn to the past for a study of this kind. There are other reasons, more historiographical than methodological, to turn to the past and more particularly to the early-modern period to study judicial practice.

The choice of the early-modern period is particularly relevant for a research that seeks to critically evaluate and extend the conclusions reached by existing studies of modern law and society. Conclusions yielded by those studies often tend to be predicated on modern assumptions about the relationship between law and generally taken-for-granted phenomena such as the ubiquity of the state, the bureaucratic nature of judicial institutions, administrative centralization, the “medicalization” or “scientification” of legal knowledge, and the particular power structure entailed by a capitalistic organization of socio-economic structures. Shifting the chronological focus back to the early-modern period forces us to consider those features of modernity, not in the illusory state of completion that the

present seems to give them, but at a crucial stage of their development. The crimes and offenses that emerge from the study of trials in an early-modern royal court—cases of witchcraft and heresy, crimes against the king (“*lèse-majesté*”), theft, sexual crimes and offenses, infanticides, vagrancy, inheritance (to name a only a few)—offer invaluable windows on a critical moment in the genesis of important features of modernity: transition from “witch-hunts” to the decriminalization of witchcraft, secularization of the stigmatization of sexual crimes, hardening of the repression of crimes against property and infanticides, increased anxiety towards vagrancy, to name a few. Because those cases crystallized fundamental social and symbolic conflicts (over definitions of property, family, community and over the boundaries between normalcy and deviancy, elite and popular, orthodoxy and heresy, sacred and secular, and genders), they offer an ideal background for a study that seeks to situate judicial practices within much broader socio-cultural evolutions.

Considering those elements in the making will allow us to embed the analysis of their relation to law and judicial practices within a dynamic perspective, which an exclusive focus on modern law and society precludes. My further delimitation of the period studied here to the years 1550 to 1700 has to do with the history of France, another choice that befits particularly well, I think, an analysis concerned with the broad political and cultural implications of judicial practice.

## **Why France?**

There are several reasons, both intellectual and historiographical, to choose France for a study of early-modern judicial practice. France offers a fascinating and peculiar example of the broad early-modern transformations I just mentioned. At the beginning of the early-modern period indeed, France already offered a relatively advanced example of administrative centralization and bureaucratization. The rapid expansion of royal justice and its jurisdiction, the extension of its claims and procedures since at

least the thirteenth century had played an important role in those early developments.<sup>7</sup> Royal jurists and royal judges had been at the forefront of the intellectual transformations that contributed to the relative robustness in France of concepts such as royal sovereignty at the turn of the fifteenth century. As Jacques Krynen put it,

the end of the Middle Ages witnessed an astounding reconceptualization of the relationship between rulers and ruled. Within three centuries [i.e. from the twelfth to the fifteenth century], the fundamental elements of a political consciousness, both monarchical and communal, took shape and explained the forming of a consensus that was solid enough to last without any major change until the end of the Old Regime.<sup>8</sup>

While I do agree with Krynen's assessment of this important medieval transformation, I find it difficult to subscribe to his view that a consensus existed at the end of the Middle Ages and that no major change occurred in this area until 1789. There was more early-modern contention over the question of the relationship between rulers and ruled than Krynen allows here. In fact, contention turned into full-fledged conflagrations at several moments of intense crises that span the entire early-modern period: the religious wars of the second half of the sixteenth century, peasant revolts of the 1630s, the Fronde, the crisis of Jansenism to name the main ones. Those episodes are the major turning points of an intellectual and political transformation that contradicts Krynen's idea of a relative immobility in this area until the Revolution. What was at stake in all of those otherwise diverse crises, was precisely the nature of the relationship between ruler and ruled, and more particularly the definition of sovereignty and of the rights (or lack thereof) of the king's subjects.

A century and half ago already, Alexis de Tocqueville established the chronology of those changes and recognized their political and social implications. According to Tocqueville, in the wake of the civil peace achieved in France at the beginning of the seventeenth century, urban political life

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<sup>7</sup> See Chapter 1 for more details on those changes at the end of the medieval period.

<sup>8</sup> “*La fin du Moyen Âge est l'époque d'un formidable ajustement intellectuel des relations de gouvernants à gouvernés. En l'espace de trois siècles, on voit se dessiner les éléments fondamentaux d'une conscience politique, monarchique et communautaire, explicatifs d'un consensus suffisamment solide pour perdurer sans grands changements jusqu'à la fin de l'Ancien Régime.*” Jacques Krynen, *L'empire du roi. Idées et croyances politiques en France, XIII<sup>e</sup>-XV<sup>e</sup> siècle*: Gallimard, 1993, 6.

witnessed the degeneration of vibrant “small democratic republics,” where city officials “were freely elected by all people and were responsible to them, where municipal life was public and active, where the city was still proud of its rights and very jealous of its independence,” into “small oligarch[ies]” where “a few families ran “everything to their own interest, far from the public eye and without being responsible to it.”<sup>9</sup> A number of historians adopted and built on Tocqueville’s insight, for instance Roland Mousnier, who argued that, as an increasingly assertive monarchy expanded its hold over provincial government over the course of the seventeenth century, the nature of political participation changed dramatically and the range of those who were entitled to a share of public life declined markedly. To some extent, both Tocqueville’s and Mousnier’s views are informed by their longing for a time when “subjects’ rights were guaranteed by their participation in legislation, in *la police* or administration, or, to a lesser extent, in government, through orders and corporations of different sorts.”<sup>10</sup> While I certainly do not share in this lamenting of the loss of a pristine—and in my view, largely romanticized—provincialism, I do agree with Tocqueville and Mousnier’s overall assessment of the social and political significance of those seventeenth-century transformations. I am especially interested in the question of how those changes came about, and in clarifying how exactly the monarchy expanded its hold in practice, that is, not only with the support of bolstered political claims that appeared in the works of royal eulogists, but with the help and daily work of agents on the ground. The increased assertiveness of the Bourbon kings and their supporters in discourses does not suffice to explain monarchical successes in practice. My contention, based on my analysis of judicial practice, is that royal courts in the provinces were at the forefront of those transformations. While my approach to those political questions via judicial practice is sympathetic

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<sup>9</sup> Alexis de Tocqueville, *The Old Regime and the Revolution*, ed. François ; Melonion Furet, Françoise, Chicago: University of Chicago Press, 1998, 125-27. “(...) *de petites républiques démocratiques, où les magistrats sont librement élus par tout le peuple et responsable envers lui, où la vie municipale est publique et active, où la cité se montre encore fière de ses droits et très jalouse de son indépendance. (...) Au XVIII<sup>e</sup> siècle le gouvernement municipal des villes avait donc dégénéré partout en une petite oligarchie. Quelques familles y conduisaient toutes les affaires dans des vues particulières, loin de l’œil du public et sans être responsable envers lui.*” *L’Ancien Régime et la Révolution*, Paris: Flammarion, 1988, 136-40.

<sup>10</sup> “*Les droits des sujets sont garantis par leur participation à la législation, à la “police” ou administration, à un degré moindre au gouvernement, par l’intermédiaire d’ordres et de corps de diverses sortes.*” Roland Mousnier, *La plume, la faucille et le marteau. Institutions et société en France du Moyen Age à la Révolution*, Paris: P.U.F, 1970, 321.

to the idea that those changes had primarily to do with rights, liberties, and participation in government, it does not assume a somewhat Manichean and hard-headed opposition between the monarch and his subjects. In other words then, and this would be, I think, another way in which my approach differs significantly from Tocqueville's and Mousnier's—I am not interested in those developments from the perspective of the causes of the French Revolution, but out of a desire to elucidate the ways in which the institutions of the monarchy functioned relatively successfully. The study of judicial practices in those courts can shed light on this important question of sovereignty and subjects' rights. The question is significant not just for the history of France, but also more generally because it can enrich our understanding of sovereignty and its practical workings, by adding an historical perspective to reflections and debates on this topic that are often circumscribed to the realm of pure ideas and theories.

### **Why a Parlement?**

This interest for the history of the contentious expansion of sovereignty in France, both in theory and practice, and as seen through the prism of judicial practice, almost dictated the choice of a Parlement as a site of observation. At the top of the hierarchy of “ordinary” royal courts, Parlements were early-modern supreme courts, so to speak, because they were courts of appeal, for both civil and criminal cases, whose own sentences could not be appealed. The Parlements differed from modern supreme courts in several respects that make them all the more interesting for a study of judicial practice with an interest in sovereignty. First, there were several Parlements in the kingdom (thirteen in 1789), all descended (the French contemporary term was “*démembré*”) from an original Parlement located in Paris. Each one of those courts exercised concurrently “sovereign justice” within their own territorial jurisdiction. In that sense, and to make an analogy with the organization of the U.S. justice system today, the Parlements could be compared to states supreme courts but exerting concurrently the power of the federal supreme

court. To further complicate this situation, Parlements were also courts of first instance for those litigants who possessed the privilege of *committimus*.<sup>11</sup>

The Parlements were divided into a hierarchy of chambers, each with its own functions. At the top of this internal hierarchy, the *Grand' Chambre*, treated the cases that were deemed the most important, on account of either the matter at stake or the persons involved. The *Tournelle* was the criminal section of the *Grand Chambre*, and it heard the criminal cases, either in the first instance for those who possessed the privilege of *committimus*, or in appeal for those cases coming from lower courts (this was the case for instance for any trial that had resulted in a death sentence). The *Chambres des Enquêtes* (two in Toulouse), treated the lesser civil and criminal cases that had not been “distributed” to the *Grand Chambre* or the *Tournelle*. Finally, the *Chambre des Requêtes* heard civil cases in the first instance, that is, the civil cases of those who possessed the privilege of *committimus*.

To reflect their role and position in the judicial hierarchy of the kingdom, Parlements were also known as “sovereign courts” and their sentences were called *arrêts*. The term *arrêt* signified that the decisions of the Parlements could not be appealed—for they “stopped” (*arrêter*) once and for all the judicial process—and it was also a reminder that the Parlements found their distant medieval origin in the royal council, the only other royal institution that was permitted to call its decisions *arrêts*.

This institutional genealogy of the court is well known<sup>12</sup> and is significant because it explains that the judges of the Parlements—also known as “*conseillers*”—had an ambivalent and somewhat ambiguous relationship with the monarchy. On the one hand, because the *conseillers* held directly a share of sovereignty that the king had “communicated” rather than “delegated” to them, they “represented” the king in the provinces,<sup>13</sup> and as such, enjoyed an unparalleled authority, at least in theory.<sup>14</sup> On the other

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<sup>11</sup> High ranking nobles, a number of religious institutions—for instance some abbeys and monasteries—members of the Parlement, but also anyone to whom this privilege had been granted for one reason or another.

<sup>12</sup> I retrace this genealogy in Chapters 1 and 2.

<sup>13</sup> I analyze those notions, how they differ, and with what consequences in Chapter 1.

hand, the attributions of the court, regarding the exercise of justice but more particularly in relation to the courts' role in the registration of new royal edicts and ordinances, created tensions with the monarchy that turned into open conflicts on several occasions throughout the early-modern period—most famously during the Fronde and in the second half of the eighteenth century.

While I will argue below that this particular role of the sovereign courts is best understood as an integral part of their judicial attribution, the historiography of the Parlements has traditionally represented this role as a legislative function of the court. This is an important point because this view has crystalized the dominant historical accounts of the Parlements.

### **Political teleology and the historiography of the Parlements**

Before I further outline my own research agenda, I would like to address the main main characteristics of the historiography of the Parlements, because, while I part ways with all its major trends, my focus on judicial practice in a sovereign court, is inspired, at least partly, by a fundamental objection to what I think are the misguided assumptions of a number of studies of the sovereign courts.

First, I would like to address one important trend of the historiography, the largest one in terms of volume, but one with which this research is not in dialogue. Those are the monumental institutional studies of the Parlements,<sup>15</sup> which, written for the most part during the Third Republic—and to some extent under its ideological influence—are now largely outdated in several respects. Though out of date, they still function very well for their original purpose, that is, as clearly organized and synthetic descriptions of the internal organization and overall functioning of the Parlements.

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<sup>14</sup> In practice, other agents of the king in the province could muster significant force and authority. The best example is that of the *intendants* beginning in the 1630s, who, although simple *commissaires* of the king—that is, having received a temporary and limited delegation of authority—could wield much more power than the Parlements, if only because the king could entrust them with considerable military backing.

<sup>15</sup> See for instance Félix Aubert, *Histoire du Parlement de Paris de l'origine à François Ier 1250-1515*, Paris: A. Picard et fils, 1894 ; Edouard Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, Paris: A. Picard, 1913 ; Jean Baptiste Dubédat, *Histoire du Parlement de Toulouse*, Paris: A. Rousseau, 1885 ; André Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, Albi: Impr. des orphelins-apprentis, 1953.

Authors in that first historiographical tradition conceived the Parlemement as an institution in a traditional sense, that is, primarily as a set of laws, administrative rules, and conventions that regulated a specific area of public life. This understanding of the term “institution” has both the merits and shortcomings of any systematic approach: while ideally providing an organized and clear account of an “institution” such as the Parlement de Toulouse, this type of approach equates the Parlement with a synthesis of a massive corpus of normative sources (edicts, ordinances, remonstrations, harangues, internal regulations, jurisprudence collections, procedure manuals, etc.). This is precisely the approach of Félix Aubert, Edouard Maugis, and, in the case of Toulouse, Florentin Astre, Jean-Baptiste Dubédat, Eugène Lapierre, Emile Vaïsse-Cibiel, and, to a lesser extent, André Viala. While one certainly feels humbled by—and genuinely thankful for—their titanic research and the mass of information on the Parlement they have already organized for us, those studies often ignore deliberately the documents of everyday judicial practice. In the process, they dilute an integral dimension of the judges’ activity I want to focus on and explore: the messiness of everyday judicial practice, and its embeddedness in the constraints of a local historical setting (material, social, political).

The more recent historiographical trends with which I contend in this research have suffered, in my view, from their obsession with the political origins of the French Revolution. This obsession helped canonize a triple and almost exclusive focus—on politics, on Paris and on the eighteenth century—that has led to a very partial, and I think misguided and misleading account of the sovereign courts. For the most part indeed, studies of the Parlements in the second half of the twentieth century have been guided by assumptions about the role the sovereign courts supposedly played in what historians generally perceived as an eighteenth-century political drama that would ineluctably end with the revolutionary outburst. It would be an understatement to say that, within this historical perspective, accounts of the sovereign courts have been largely unsympathetic.

The opening lines of Bailey Stone’s 1981 study of the Parlement of Paris from 1774 to 1789, illustrates perfectly an hostility towards the sovereign court grounded in the perception that it was a primarily political institution completely out of touch with its enlightened century:

In late eighteenth-century France, the Parlement of Paris, while playing a vital role in royal justice and administration, helped frustrate critically needed reforms and thereby contributed to its own destruction and to that of the monarchy. There was an especially great irony in this situation, for, of the myriad institutions obstructing reform during those years, none stood closer to the crown or derived a higher prestige from French monarchical traditions than did this high court of law in the king's capital.<sup>16</sup>

This passage aptly epitomizes the full range of historians' scathing critiques vis-à-vis the Parlements. Indeed, Stone's view is situated at the intersection of the two main axes of critique that have directed a variety of hostile approaches to the sovereign courts.

The first axis, adopted by the dominant trend in this historiography, borrows its arguments from contemporary enemies of the courts—and thus finds its roots in the eighteenth century itself. The central view here is that Parlements embodied the forces of conservatism that barred practical application of the “Enlightenment project” in eighteenth-century France.<sup>17</sup> Proponents of this approach, widely accepted both in France and in the English-speaking world, tend to rely on a set of “pre-postmodern” assumptions on the unity of the *Lumières* and the undisputable validity of their “project.” Further, followers of this historical trend understand the project of the *Lumières* as being in essence unquestionably rational and liberal, two characteristics they often consider as almost identical. As seen through this first prism, the Parlements seems to be the champions of a reactionary movement, and thus represent the main obstacle to the realization of a laudable project, courageously endorsed by an enlightened monarch.<sup>18</sup>

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<sup>16</sup> Bailey Stone, *The Parlement of Paris, 1774-1789*, Chapel Hill: University of North Carolina Press, 1981, 3.

<sup>17</sup> Among the most prominent representatives of this approach to the parlements are found Alfred Cobban, Robert Palmer, Bailey Stone, and to a certain extent Jules Flammermont and Michel Antoine.

<sup>18</sup> Robert Palmer is one of the best representatives of this view that oriented his treatment of the parlements in the *Age of Democratic Revolution*. Palmer argued that the parlements' opposition to the “perfectly justifiable” policies of the French government had “favor[ed] ideology at the expense of realism in French political consciousness at an important stage in its early growth” (R. R. Palmer, *The age of the democratic revolution a political history of Europe and America, 1760-1800*, 2 vols., Princeton, N.J.: Princeton University Press, 1959, 87). In his opinion, the success of the parlements in their obstructionist maneuvers is best explained by their better command of public relations and control over public opinion: “The voice of opposition to government could be heard, but not that of government itself. The irresponsible talked, where the responsible kept silent” and “the main victim of the withholding of public information was the French monarchy itself, and (...) its failure was a failure of public relations.” *Ibid.*

The second axis of criticism has guided the more marginal but also more virulent attacks of those who, out of a more or less acknowledged nostalgia for the Ancien Régime, nursed a deep hatred for the Parlements.<sup>19</sup> These historians held the Parlements responsible for having opened a constitutional debate which, in their view, precipitated—in both meanings of the word—the fall of a much regretted French monarchy.<sup>20</sup> This intellectual tradition too has its roots deep into the eighteenth century itself, as it grew out of early counter-revolutionary ideology. This historiographical tradition has stigmatized the Parlements for having opened up a constitutional discussion that went out of hand, a debate that was the Pandora’s Box of eighteenth-century French politics: to open it was to throw the venerable monarchy to the revolutionary wolves.

Despite their clear ideological opposition, the two brands of critique of the Parlements thus share a common eighteenth-century origin and a similar historical focus. Although the two families of disparagers of the courts would certainly disagree as to whether or not, as Stone would have it, “enlightened reforms” were “critically needed” in eighteenth-century France, both trends castigated the Parlements for their assumed political agenda, and for that purpose, focused exclusively on the courts’ actions and their attributions in the legislative domain.

A more recent trend in the historiography of the parlements has sought to account for the connection between the political and judicial activities of the sovereign courts, and a few studies even

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<sup>19</sup> Pierre Gaxotte, Lucien Laugier, and, to a certain extent again, Michel Antoine, Marcel Marion, Roland Mousnier and François Bluche are representative of this second trend.

<sup>20</sup> Pierre Gaxotte’s *La Révolution française* (1928) and *Apogée et chute de la royauté* (1973) most aptly illustrate this marginal but violently hostile view of the Parlements that stems from reactionary sympathies for the monarchical regime. For Gaxotte as for others in this ideological tradition, the Parlements are singled out for having sped up the fall of the French monarchy because their opposition to royal legislation encouraged others to undermine the authority of the kings.

adopted an explicit focus on *judicial* politics,<sup>21</sup> thus highlighting how the Parlement wielded its judicial action as a political instrument and, on occasion, as a political weapon. While those studies make a much more critical use of the same normative sources as the rest of the historiography, their presentation of the Parlements and their action is still almost exclusively geared toward an historical analysis of the ambivalent relationship (an alternation of cooperation and confrontation) between the sovereign courts and the crown. This particular approach is seminal for a reappraisal of the role of the courts in the grand scheme of the political history of early-modern France, but its almost exclusive focus on politics forces it into a representation of the Parlement, which, in the end, feels very similar to that depicted by the older historiography.

My own focus on the judicial activities of one of those courts is not meant to simply allow me to take a different route and eschew the political focus of the existing historiography. On the contrary, my focus on judicial practice is very relevant to older historiographical concerns, for I think that my analysis calls for a major revision of the way in which we should think of those courts and more generally of Old Regime politics. The issue here, is not so much that the teleological obsession with the French Revolution has led to an omission of an important aspect of the sovereign courts' activity, but that it has obfuscated the very important point that justice played a central role in early-modern judicial political culture. The point of a study of judicial practice in an early-modern French sovereign court is not to rehabilitate those

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<sup>21</sup> Jean Egret can be said to have been an early precursor of this trend. Constantly elaborating on the basis of his meticulous Jean Egret, *Le Parlement de Dauphiné et les affaires publiques dans la deuxième moitié du XVIII<sup>e</sup> siècle*, Grenoble: B. Arthaud, 1942), Egret ended up producing in his *Louis XV et l'opposition parlementaire*, Paris: A. Colin, 1970), a more sophisticated analysis: while acknowledging the magistrates' efforts to preserve their privileges and interests, it also shed light on their efforts to contain the authoritarian drift that threatened a mass of subjects whose political representation was naught. Julian Swann is the historian who, in my view, has most recently explored this interesting avenue. In his Julian Swann, *Politics and the Parlement of Paris under Louis XV, 1754-1774*, Cambridge: Cambridge University Press, 1995, Swann focused his analysis on the interaction between the court at Versailles and the *palais de justice* in Paris and offered an alternative account of *parlementaire* opposition to ministerial policies in the second half of the eighteenth century. According to Swann, *parlementaire* opposition underwent a serious transformation and intensified in the wake of important changes in governmental practices that occurred in the 1740s and 50s. In his account, the reappearance of *grandees* from the sword nobility in royal councils of government heralded the collapse of the *louis-quatorzien* mode of governance. Henceforth, rivalries between aristocratic factions and intrigues unseen since the *Fronde* became once again the structuring principle of French politics, and, in this context, the parlements became one of the political instruments court factions utilized to undercut one another. Thus, in Swann's narrative, the *conseillers* of the sovereign courts are no longer reactionaries motivated by their sole interests but rather pawns on the chessboard of courtiers.

courts by showing that they were in fact apolitical and thus met our modern—and often disingenuous—expectations of a clear separation between justice and politics, but that, on the contrary, those were highly political institutions, precisely because justice was at the core of early-modern politics.

## **Why Toulouse?**

Primarily then, the choice of a provincial Parlement can help us keep our distance from an older historiographical point of view that has been guided, for the most part, by a teleological focus on politics. The focus on the political role of the sovereign court has been so deeply rooted in studies of the Parisian court in its relationship—and proximity—to the organs of central, monarchical government, that the choice of a provincial court allows a fresh perspective on the court.

There were six provincial sovereign courts in existence in 1550 (Toulouse, Rouen, Grenoble, Bordeaux, Dijon, and Aix-en-Provence) and seven more<sup>22</sup> by 1700 (Rennes, Pau, Arras, Perpignan, Colmar, Besançon, Douai). Why Toulouse then? Toulouse offers a number of interesting vantage points for some of the questions I have formulated above. I will get to those advantages shortly, but the main reason to choose the Parlement de Toulouse is an unparalleled set of archival sources that enables the approach and methodology I have described. While the materials preserved in the archives of other French courts is mostly composed of the final transcriptions of legal judgments and pleas, in the case of Toulouse, all the documents produced in the entire course of hundreds of individual lawsuits—including drafts of interrogations, judgments, pleas, litigants' requests, administrative correspondence—have been preserved.

These documents are still bundled in their original “bags” (*sacs*) which occupy the greater part of

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<sup>22</sup> That is, if we include *conseils souverains* that were courts created in annexed territories and organized on the model of the Parlements. While similar to the Parlements in all other points, those were considered as having a somewhat inferior authority and prestige because they were thought of as created *ex nihilo* rather than descended from the original *curia regis*. Three *conseils souverains* (Arras, Perpignan, Colmar) were created between 1660 and 1667 as a result of Louis XIV conquests.

an entire floor of stacks in the Archives départementales de la Haute-Garonne. This archival wealth is such that successive generations of archivists have not found the time yet to index them all, and, as a consequence, the collection has remained to this day a daunting mass of 80,000 to 100,000 “bags” mostly avoided by historians.

The exceptional wealth of sources preserved in the archives of the Parlement de Toulouse can help us understand how the judges of the Parlement de Toulouse transformed the mass of social relations, feelings, actions, motives, and norms that these cases reflect, into legal statements of facts. Properly analyzed, they can help us uncover the various knowledge practices at work in this process of “judicialization” of the social. To further an analogy once proposed by Carlo Ginzburg, if we are to consider inquisitors, or more generally speaking, judges, as anthropologists, one could say that what is to be found in the Archives départementales de la Haute-Garonne, is not only the final product of the judges’ professional activity, that is the judgments they pronounced, but the entire corpus of documents they drafted in the course of their fieldwork. My own methodology, however, significantly differs from that of Ginzburg, for my interest is not centered on a few exceptional documents that deviate from the norm—what Ginzburg called the “normal exceptional”—but on the contrary, I focus on the mass of stereotyped documents that reflect the norms of judicial practice. Thus, by making use of the documents judges produce not simply as a result, but in the process of administering justice, I intend to expose the mechanics of the “normal normal,” so to speak, of judicial practice and to explain the genesis and functions of judicial stereotypes themselves. The documents contained in the *sacs-à-procès*—drafts of interrogations, police reports, secret deliberations, memos, instructions, administrative correspondence—constitute testimonies of the particular methodologies and epistemologies the magistrates called upon in order to articulate, in a specific judicial language, the “truth” of the individual criminal and civil cases they handled. My goal is to identify and expose the main characteristics and patterns of these methodologies and epistemologies. Because these documents also attest to the knowledges and practices of litigants

as refracted by those of their judges, my analysis of judicial practices will not develop in a contextual void, but will be anchored in the localized circumstances that the proceedings of individual lawsuits record. Thus, those “documents of practice” that the Archives départementales de la Haute-Garonne uniquely preserved, constitute the ideal source for my analysis because they were produced at the intersection of the technological and strategic dimensions of judicial practice.

There are additional, albeit less momentous reasons to choose Toulouse and its Parlement as a site of observation. As we will see in more detail in Chapter 3, Toulouse was a uniquely “legal” provincial city. While *conseillers* in other provincial courts played an important role in local politics and in the local society and economy, judicial and legal professions were nowhere else in France as prominent as in Toulouse.<sup>23</sup> The Toulousain *conseillers* not only constituted, as in other *parlementaire* cities, the top tier of the municipal and regional elite—politically and economically—, but they also represented the top tier within an unusually large group of legal professionals who staffed the many courts of the city.<sup>24</sup> This specificity of Toulouse means that the *conseillers*’ judicial practices, and more particularly the technological dimension of those practices can be situated within a fairly large epistemic community.

In addition, the number of the magistrates of the court—varying between 20 and 50 judges exercising at the same time for the period 1550-1700—is suitable for a study that seeks to situate these men within the networks constituted by the political, social, and intellectual elite of Toulouse in this period. In addition, the set of local institutions found in Toulouse is especially appropriate for an analysis concerned with situating the magistrates’ practices in their socio-cultural context: Toulouse’s university—boasting a faculty of arts, a law school and a medical school—, its municipal court, the palace of its archbishop, its numerous monasteries, and guilds,

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<sup>23</sup> See p. 120 below.

<sup>24</sup> See p. 121 below.

were populated with the provincial elite of which the judges of the Parlement were an integral part.

## **Outline**

This study is divided into three main parts. The first part, “Ideas and Representations,” comprises two chapters in which I present the intellectual framework within which the judicial practices of the *conseillers* took shape and took place. The goal of those two chapters is to assess the normative representations of royal justice that underlay the professional practices of the *conseillers* in the parlement de Toulouse. More specifically, this assessment is meant to address a number of questions that foreground the ideological underpinnings of the judicial practices at the core of this dissertation: How was the judicial power of the king conceived of and justified? What kind of ideal of the king-as-judge matched this conception? Did this ideal simply transfer to royal magistrates or did the delegation of justice entail distinct features of the ideal royal judge? Did the status of the Parlement as a “sovereign court” further transform this ideal of the royal judge into a portrait of the ideal *conseiller*?

Chapter 1, gives an overview of the medieval genesis of the concepts, ideas, and theories of kingship, justice and sovereignty that framed judicial practices around 1550. This chapter details in particular how, starting in the eleventh century, jurists in the king’s entourage began to revamp an older association between kingship and justice to back the political claims of the Capetian kings. Building on this core, royal jurists from the thirteenth century on developed a specific ideology of royal justice that drew from three different traditions: “feudal” (for lack of a better term at this point), Christian, and Roman. What emerged at the intersection of these three traditions was an idealized portrait of the king-as-judge. This portrait informed ideas and expectations about royal justice, which, in turn, grounded idealized representations of the royal magistrate. As we will see indeed, at the same time as the king came to personify this specific ideal of justice, in practice, the expansion of royal justice on the ground meant that the king had to rely increasingly on agents who acted as judges in his stead. The new group that

emerged, and that prefigured the *corps* of the early-modern *conseillers*, was eager to define its own authority and legitimacy to justify its specific role alongside nobility and clergy. One of the most important aspects of this effort was the elaboration of the theory of “representation,” which both explained and justified the “communication” of sovereign power from king to magistrate.

Both of those medieval developments—the elaboration of a new ideal of the king-as-judge and the construction of theories that allowed royal agents to share into this ideal—constituted the intellectual substructure upon which early-modern judges developed a portrait of the perfect magistrate. I investigate this portrait in Chapter 2, insisting in particular on how it related to evolving notions of sovereignty and the question of the relationship between judicial and legislative power as it was perceived by the *conseillers*.

The second part of this study is entitled “the Archive and the Clock” after the two main towers of the *parlementaire* “palace” in Toulouse (“*Palais de justice*”), which I use as representations of judicial space and judicial time. In this part, I approach those two dimensions as practical constraints on the ideal of judicial practice that emerges in Chapters 1 and 2. Chapter 3 deals with the spatial, and more generally material constraints, that limited the reach of sovereign justice by circumscribing its capacity to know and to act. I use a document drafted by François Garipuy, a local engineer commissioned to assess the repairs needed in the *Palais*, as my main basis to explore sites of tension between judicial theory and practice.

In this chapter, I observe a number of points of contact between theory and practice. Indeed, my analysis of a few sites within the *palais* begins to address the friction between theories (those presented and analyzed in the first two chapters) and practices (those of the magistrates in their everyday institutional environment). As my analysis will suggest, place itself is one element of a complex relationship in which practice is caught in a productive tension between ideas and materiality. Thus, one admittedly simple idea explored in this chapter is that the translation in practice of political theories, ideals of justice, and legal norms is not a transparent and neutral top-down process, but a mutually constitutive relationship between theory and practice, a relationship that can be affected or at least

inflected by space, but also and more generally by the material paraphernalia—papers, robes, furniture, etc.—of the exercise of justice.

In Chapter 4, I turn to the temporal constraints that also affected the practice of justice in the Parlement de Toulouse. I assess the impact of the various timescales of royal justice—*longue durée* of the monarchy, lifetime of reigns and careers, judicial year, daily sessions, etc.—to account for the multiple ways in which temporal constraints affected the practice of justice. I show that those different timescales created practical problems for the *conseillers*, because they could impose conflicting demands on the exercise of justice. I focus in particular on how new socio-economic conditions for the *conseillers* at the turn of the seventeenth century put the time of individual careers at odds with day-to-day practice. Further exploring this tension, I show in what particular way judicial time was money and with what consequences on judicial practice.

The third and final part of this study focuses on an analysis of judicial practices based on a close reading of the documents produced in the course or as a result of the deployment of those practices. Rather than offering a descriptive catalog of each step of the judicial procedure that the *conseillers* supposedly followed, my presentation approaches judicial practices as knowledge practices. In other words, I focus on judicial practices not as prescribed in manuals of procedure, but as refracted in the documents of practice drafted in the process of producing the judicial truth of specific legal cases. Chapter 5 that opens this part focuses on the mundane practices which, guided primarily by the individual financial and political concerns of the magistrates, bracketed, at the beginning and the end of each lawsuit, the production of judicial truth.

The last three chapters are organized around three different stages of this production of judicial truth in the Parlement de Toulouse. Chapter 6 focuses on the discovery of truth, Chapter 7 investigates practices geared toward the articulation of truth, and chapter 8 looks into the problem of the enforcement of truth. Those three chapters are not only united by this focus on the production of judicial truth but also share a similar approach that seeks to account for both the technological and strategic dimension of the

practices that participated in this process of production. Taken together, those three chapters serve as a basis for a final discussion of an overall notion of judicial epistemology.

## **PART I: IDEAS AND REPRESENTATIONS**

“...the Court has condemned and condemns [Arnaud du Tilh] to make honorable amend in front of the church of Artigat and there, on his knees, wearing only a shirt, bare-headed and barefoot, the noose around his neck and holding a wax candle, he will ask for forgiveness from God, from the king, from justice, and from the said Martin Guerre and de Rolz, husband and wife...”

*Arrêt* of the Parlement de Toulouse, sentencing Arnaud du Tilh to death (September 12, 1560).<sup>25</sup>

The sentence that condemned Arnaud du Tilh to death in the famous Martin Guerre affair<sup>26</sup> fit on just one of the more than 300 folios of *arrêts* recorded by the *Chambre Tournelle* of the parlement de Toulouse for the month of September 1560.<sup>27</sup> Two years later however, Jean de Coras—the reporting judge<sup>28</sup> who had drafted the sentence—published a 178 page-long version of his own *arrêt*, “enriched with one hundred and eleven beautiful annotations.”<sup>29</sup> In this widely circulated *Arrest memorable*,<sup>30</sup> Coras would, on occasion, spend several pages commenting on a single word of the original sentence, but he had very little to say about the *amende honorable* section that opens this chapter. Most likely, this is because this particular provision, which seems so peculiar to us, was self-explanatory to both Coras and his contemporaries, and the magistrate probably thought that there was, in fact, not much to comment on in that particular instance. The apologetic ritual of the *amende honorable* imposed on Arnaud du Tilh was

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<sup>25</sup> “*lad. court l’a condamné et condamne a faire emande honorable au devant l’esglise du lieu d’Artigat et illec de genoulz, en chauses, teste et piedz nudz ayant la hard au col et tenant en ses mains une torche de cire ardent, demander pardon a Dieu au Roy a Justice ausd. Martin Guere et de Rolz mariez...*” Archives départementales de la Haute-Garonne (hereafter ADHG), 2Mi 1607.

<sup>26</sup> Natalie Zemon-Davis, *The Return of Martin Guerre*, Cambridge: Harvard University Press, 1983. The affair inspired a play, two novels, and an operetta (Robert Finlay, “The Refashioning of Martin Guerre,” *American Historical Review* 93-3 (1988): 553).

<sup>27</sup> The *Chambre de la Tournelle*—originally a mere criminal section of the *Grand Chambre*—came to be considered as a chamber of its own in the fifteenth century. As a result of this change of perception (and also because the increasing number of cases treated by the court made it harder to bound both civil and criminal *arrêts* in the same physical registers) the *Tournelle* started to keep a separate record of its own *arrêts* in 1518. About the distribution of cases between these two chambers see Chapter 5.

<sup>28</sup> See “*Le métier de rapporteur*” in Chapter 7 below.

<sup>29</sup> Jean de Coras, *Arrest memorable du Parlement de Tholose contenant une histoire d’un supposé mary, advenue de nostre temps: enrichie de cent et onze belles annotations. Par M. Jean de Coras, Conseiller en la Cour, & rapporteur du procès. Prononcé ès arrests généraux, le XII septembre 1560*, Paris: Gallior du Pré, 1562

<sup>30</sup> See Natalie Zemon-Davis, ““On the Lame,”” *American Historical Review* 93-3 (1988): 572, n. 1.

almost exactly identical to the one applied in a few other notorious cases —and in countless forgotten ones— spanning across several centuries, most famously that of Robert François Damiens (1757), which Michel Foucault described so vividly in the opening pages of *Discipline and Punish*,<sup>31</sup> and those of Giulio Cesare Vanini (1617) and Jean Calas (1762), both of whom were, like Arnaud du Tilh, sentenced to death by the parlement de Toulouse.<sup>32</sup> The invariability of this ritual that linked together God, the king, and a quasi-anthropomorphized “justice” through the civico-religious atonement of the condemned, should not be interpreted, however, as the formulaic froth of early-modern judicial practice. Quite on the contrary, the permanence of the *amende honorable*<sup>33</sup> is in my view better explained by the fact that the words, actions, and symbols that it tied together retained throughout the Old Regime their force and their ability to encapsulate something fundamental about royal justice. It is not the emptiness of this ritual then, but on the contrary its capacity to fully embrace the unique and complex fusion of perceptions of religion, kingship, and society that formed the conceptual and moral core of royal justice, thus rendering the ritual seemingly transparent to contemporaries and possibly explaining Coras’s ellipsis on this point.

In the first two chapters of this dissertation, I want to unpack the set of ideas and representations about kingship, law, justice and magistracy which, unfamiliar to us but made evident to contemporaries through acts such as the *amende honorable*, not only warranted the efficacy of those rituals but served more generally as the conceptual bedrock of judicial practice. Indeed, I approach the constellation of ideas, norms, and beliefs that I unwind in the following pages as the intellectual framework within which

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<sup>31</sup> Michel Foucault, *Surveiller et punir. Naissance de la prison*, Paris: Gallimard, 1975.

<sup>32</sup> This ritual however was not limited to these few famous cases, nor was it used only as a part of a larger ritual of capital punishment (the most famous case here is that of Jacques Coeur who submitted to the *amende honorable* in 1453 and remained in jail for two years before he escaped), nor was it even limited to criminal cases: it was applied in countless other anonymous cases and in many of them the *amende honorable* was not a preliminary but the main sentence itself.

<sup>33</sup> For an illustration of the resilience of this ritual, see the 1788 example of pre-revolutionary appropriation on p. 101 below.

judicial practices developed in royal courts between 1550 and 1715.<sup>34</sup> In other words, the goal of this first part is to assess the normative representations of royal justice that underlay the professional practices of the *conseillers* in the parlement de Toulouse. More specifically, this assessment is meant to address a number of questions that foreground the ideological underpinnings of the judicial practices at the core of this dissertation: How was the judicial power of the king conceived and justified? What kind of ideal of the king-as-judge corresponded to this conception? Did this ideal simply transfer to the royal magistrate or did the delegation of justice entail distinct features of the ideal royal judge? Did the status of the Parlement as a “sovereign court” further transform this ideal of the royal judge into a portrait of the ideal *conseiller*?

A few caveats are in order before I set out to answer these questions. Because ideals and ideas about royal justice and its agents changed over time and, at each point in time, could vary significantly from one social group to another, answers to these questions were neither uncontested nor fixed. Because those two chapters are driven by a more immediate question however,—how did the *conseillers* in the parlement de Toulouse represent to others and to themselves the judicial power that underlay their professional activities?—I will focus here on a specific set of answers at a specific point in time. I will concentrate on self-representations, that is, on representations and ideals of royal justice and magistracy that came from the royal milieu itself, broadly understood. In addition, while I will make a few forays into the medieval genealogy of these ideals in Chapter 1, I intend to focus on the state of these self-representations between 1550 and 1620, in the early decades of the period considered in this study. I will

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<sup>34</sup> This idea of “development” is not meant to imply that this intellectual framework simply “produced” judicial practice, for the relationship between the two was more complex, at the same time ambivalent and reciprocal. Ambivalent first, because ideas, norms and representations could be a powerful incentive for practical changes but also a formidable obstacle to transformations in the practice of justice (and the permanence of the ritual of the *amende honorable* in its form and purpose aptly illustrates the latter possibility). The relationship was also reciprocal because the practice of justice was not simply subservient to conceptualizations of justice, for both were caught in a mutually constitutive relationship: changes in the practice of justice could affect conceptualizations of justice and, conversely, evolving conceptualizations of justice could lead to changes in its practice. I will explore this reciprocity between ideas and practices later on, once my detailed study of judicial practices can allow me to properly reflect on this question, but for now my focus is on the intellectual assemblage, which, encapsulated in the few words of the *amende honorable*, tied together and at the same time distinguished between God, the king, “justice,” and society.

come back to conceptualizations of royal justice and their evolution into the early eighteenth century, once my intervening study of judicial practices can support my argument that ideals and practices of justice were caught in a mutually constitutive relationship. In contrast, the two chapters that compose this first part, although frequently hinting at this dynamic relationship between ideas and practices, mainly dwell in the realm of intellectual norms and representations of royal justice and magistracy.

Whether at the level of the *cour ordinaire* of the *juge royal* or in the sovereign court of “*messieurs du Parlement*,” all royal justice came from the king. As obvious as this tautology might seem on the surface, it was in fact rooted in a long and rich intellectual tradition that had defined the judicial attributions of the king, as part of a more general reflection on the nature of royal power. In order to understand in its specificity the judicial power that royal magistrates exercised in the name of the king, it is first necessary to go back to what was perceived as its foundation, that is, the judicial power that the king himself exercised in person. Thus, in Chapter 1, I go back to the medieval foundations of this power, which, evolving into the early-modern period, still accounted for a certain ideal of the king-as-judge around the year 1550. I demonstrate how royal eulogists between the eleventh and thirteenth century assembled features of Christianity, feudalism and Roman law to shape a model of the ideal king-as-judge that Louis IX (1214-1270) ended up embodying from his own time on, until the end of the Old Regime and even beyond.

In Chapter 2, I use this idealized portrait of the king-as-judge to foreground questions about another ideal: that of the royal judge. I first problematize the notion of delegation of judicial power and highlight the way in which the transfer of judicial power from king to magistrate entailed a different ideal of royal justice, with significant political implications in the case of “sovereign courts” such as the parlement de Toulouse. Then I show how the particular notions of “representation” and “*corps*” developed in those courts gave way to a reformulation of the ideas and ideals presented in Chapter 1. Finally, I rely on the *Treze livres des Parlements de France* (published in 1617), the normative work of Bernard de La Roche-Flavin, a president in the parlement de Toulouse, to show how these *parlementaire*

ideas and ideals informed a portrait of the ideal *conseiller*, that not only shaped but utilized a normative representation of judicial practice as one of the features of the *parfait magistrat*.

## CHAPTER 1:

### *FONS JUSTITIAE, FONS LEGIS: THE MEDIEVAL GENESIS OF THE KING-AS-JUDGE*

By 1550, the system of ideas that linked together king, justice, and society was hardly new. At that time, the configuration of this intellectual framework was already the result of a already long intellectual evolution that we must keep in mind to understand how and why it still shaped and informed judicial practices in the sixteenth and seventeenth centuries. The idea that “the era of great monarchs ... who ... following Machiavelli substituted the new notion of “reason of state” to the Christian ideal”<sup>35</sup> began during that time period is a misleading simplification of that intellectual evolution. A number of concepts (sovereignty, crown, majesty), legal theories (*justice retenue/déléguée, cas royaux, prévention*), political theories (absolutism, gallicanism, “fundamental laws” of the kingdom), procedures (*appeal, évocation, lit de justice, enregistrement, remontrances*), and legal acts (*ordonnances, édits, arrêts, commissions, provisions*), will remain elusive if we fail to recognize the enduring consequences of the genesis of this intellectual framework in the later Middle Ages (from roughly 1000 to 1500). Neither sovereign justice nor the concept of “reason of state” were simply and abruptly substituted to a former “Christian ideal” of justice at the turn of the sixteenth century. In this chapter, I explore how conceptions of French royal justice not only remained religious at the core in the sixteenth and seventeenth centuries, but had been fueled by politico-religious reflections since at least the first Capetians (987-1180).<sup>36</sup>

I do not intend, however, to provide here a detailed genealogy of this intellectual framework. I am only interested in the features of this medieval genesis that can help us

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<sup>35</sup> Philippe Wolff, *Histoire de Toulouse*, Toulouse: Privat, 1958, 181-2.

<sup>36</sup> Hugues Capet (987-996), Robert le Pieux (996-1031), Henry I (1031-1060), Philip I (1060-1108), Louis VI (1108-1137), Louis VII (1137-1180).

understand the peculiar ways in which French political thinkers, lawmakers, judges, and lawyers of the early modern period articulated and weaved together conceptions of kingship, law, justice, magistracy, and society. My cursory historical inquiry into the elaboration and transformation of these concepts from the eleventh to the sixteenth century, is thus meant to help us understand the particular content and potency of older notions which, still vigorous in the sixteenth and seventeenth centuries, remained critical to contemporary legal and political debates, changes and reforms within judicial institutions and procedures, and, most importantly for my purpose, conceptions and expectations about the practice of royal justice.

In order to understand, for instance, how and why at the turn of the seventeenth century the question of whether the king of France was “first lord” or “first magistrate” of the kingdom<sup>37</sup>—a question that had significant impact on idealized conceptions of royal justice, its function and practice—it is necessary to understand the intellectual transformations of the eleventh and twelfth centuries, when clerics wove together feudal, Christian, and Roman conceptions and traditions around the figure of the king of the Franks. Many early modern political thinkers, for instance Charles Loyseau, hid the medieval origins—especially the feudal origins—of royal power behind the “fictitious clarity” of their intellectual constructions.<sup>38</sup> Early modernists have often taken this fictitious clarity at face value, thus failing to acknowledge the significant conceptual debt sixteenth- and seventeenth-century political thinkers and jurists owed to the major intellectual changes effected by their medieval predecessors. Medievalists have told the history of these transformations a number of times already<sup>39</sup> and I do not intend to repeat it here. I want to insist instead on the features of this evolution that had the most enduring effects on the

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<sup>37</sup> Robert Descimon, "La royauté française entre féodalité et sacerdoce. Roi seigneur ou roi magistrat?," *Revue de synthèse* 112 (1991): 455-73.

<sup>38</sup> *Ibid.*, 461.

<sup>39</sup> Although indulging at times in the contrary excess of exaggerating the modernity of the Middle Ages (for instance with the idea that the reign of Philippe Auguste (1180-1223) “ushers in the State and founds the Nation”, two concepts that the best-advised early modernists tend to use very cautiously), Jacques Krynen has offered the best summary to date of these intellectual transformations in Krynen, *L'empire du roi. Idées et croyances politiques en France, XIII<sup>e</sup>-XV<sup>e</sup> siècle*, esp. p. 4-61.

normative representation of justice and on the idealized relationship between kings and magistrates that this relationship entails.

In order to do so, it is necessary, in my view, to turn to the beginning of the second millennium. Although royal justice was, by our modern standard, at its lowest point around the Year One Thousand, a major intellectual and material transformation began at that time. This transformation would eventually make it possible to think of the judicial power of the king as intrinsically different from that of other lords, regardless of their rank and of the power they effectively commanded. Clerics of the eleventh and twelfth centuries played a critical role in laying down the main conceptual foundations for this transformation. Clerics, to a large extent reacting to a dominant mode of conflict resolution that was at the same time vindictive and private, clerics initiated a conceptual shift that would redefine notions of kingship, law, justice, and society in relation to one another. This shift hinged on a few intellectual achievements that preceded the import of notions and concepts drawn from Roman law: the promotion of Christian ideals of peace and justice, the preservation and revival of the idea of the sacred nature of kingship, and the mobilization of that idea to reshape the existing web of feudo-vassalic relationships into a political and social hierarchy dominated by the king. Later on—roughly from the thirteenth to the fifteenth century—jurists and political thinkers in the royal entourage would superimpose on that “feudo-Christian” intellectual construct concepts and ideas drawn from Roman law. In doing so, they introduced in both the realm of justice and that of law-making a notion of sovereignty that would prove critical to further reshaping the understandings of how kingship, law, justice and society related to one another.

## **Kingship revived: the intellectual origins of the ideal king-as-judge**

An important focus of the intellectual transformations of the eleventh to the thirteenth century was the figure the king. The principle of kingship had never disappeared, even in the wake of the break-up of the Carolingian empire in the ninth century and the atomization and privatization of public power in the tenth century. By the time Hugues Capet became king of the Franks (987), however, the monarch could hardly be considered a *princeps* [“the first”], not even a *primus inter pares* [“first among equals”].<sup>40</sup> At that time, the king only retained effective authority on the rather small domain centered around Paris that he had inherited as a personal possession from his Robertiens ancestors. In that respect, the king had become virtually indistinguishable from the *grandees* of the kingdom, some of them (for instance the duke of Aquitaine) commanding even more resources and arguably more authority over a larger territory than the king did.

This political situation was at the same time cause and consequence of a particular conception and practice of both law and justice. The power of the king as a lawmaker was then close to null. To be sure, this was in great part due to the fact that within the paradigm still dominant at the time, a prevalent idea was that law, if written at all, was a mere sanction of local uses, not the creative prerogative of the political ruler. Thus, we cannot simply attribute the absence of legislative activity to the weakness of the king: it resulted, primarily maybe, from the fact that the intellectual repertoire of the time did not offer the tools necessary to conceive of lawmaking as an active creative process.

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<sup>40</sup> Richer, a contemporary of Hugues Capet, while favorable to the king famously noted that at the apex of his reign, “the king, powerless to reign, live[d] without glory” (“*Le roi, incapable de régner, vit sans gloire.*” Richer, *Histoire de France (888-995)*, trans. Robert Latouche, vol. II, Paris: Les Belles Lettres, 1937, 271).

The double, interrelated absence of a state and of a legislative power did not mean, however, that the kingdom was in a state of anarchy, without law and without justice.<sup>41</sup> To begin with, the idea of active rule-making through writing was not completely foreign to that world: although the *Corpus juris civilis* still remained, around 1,000 CE, in the intellectual limbo of Western Europe, monks and later the papacy resorted to written rules to both govern themselves and, in part by doing so, assert their specificity as a dominant social group.<sup>42</sup> Clerics however, only represented a small minority of *litterati* and at the turn of the millennium, local oral customs were the almost unique expression of the law, the *placitum*—the seigneurial council held in the *aula*—was the judicial institution that came the closest to what we conceive as a court of justice, and revenge was for most the main mode of conflict resolution. It is reductive to characterize this primarily vindictive conception of justice that clerics sought to reform as simply “confused.”<sup>43</sup> Revenge was the dominant mode of conflict resolution, not only because it was “present everywhere (...) [and] practiced at all levels of society,”<sup>44</sup> but also and primarily because it was an integral mode of social regulation, with its own norms and procedures, one that made cultural sense to most.<sup>45</sup>

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<sup>41</sup> On this point, see the pioneering article of Patrick Geary, "Vivre en conflit dans une France sans Etat (1050-1200)," *Annales (Economies, Sociétés, Civilisations)* (1986): 1107-33.

<sup>42</sup> This phenomenon concerns Western Europe as a whole and the example of England described by Alain Boureau is similar in most respects to the French case. See Alain Boureau, *La loi du royaume. Les moines, le droit et la construction de la nation anglaise (XI<sup>e</sup>-XIII<sup>e</sup> siècle)*, Paris: Les Belles Lettres, 2001.

<sup>43</sup> Georges Duby, "Recherches sur l'évolution des institutions judiciaires pendant le X<sup>e</sup> et XI<sup>e</sup> siècle dans le sud de la Bourgogne," *Le Moyen Âge* 52 (1946): 149-50.

<sup>44</sup> Claude Gauvard, "Introduction," in *La Justice en l'an mil*, Paris: La documentation française, 2003, 12.

<sup>45</sup> See Dominique Barthélémy, "Introduction : La vengeance, le jugement et le compromis," in *Le règlement des conflits au Moyen Âge, XXXI<sup>e</sup> congrès de la Société des historiens médiévistes de l'enseignement supérieur public, Angers, 2000*, Paris: Publications de la Sorbonne, 2001, 11-20. Legal anthropology (see for instance the studies published in *La vengeance : études d'ethnologie, d'histoire et de philosophie*, ed. Raymond Verdier, Paris: Cujas, 1981-1986) contributed significantly to apprehend revenge as a formalized practice, regulated by unwritten codes structured around principles such as that of *fama* in the case of societies in medieval Western Europe, still described as “societies of honor” on the eve of the early modern period, in the countryside as in cities (see for instance Thierry Dutour, *Une société de l'honneur : les notables et leur monde à Dijon à la fin du Moyen Âge*, Paris: H. Champion, 1998).

Some, however, began to object to this mode of social regulation, which, based on an alternation of armed clashes and settlements, was primarily meant to restore honor. Clerics first suggested that this system could be counter-productive, because rather than solve conflict, it could foster further disputes, thereby threatening rather than preserving social peace. In the early eleventh century, monks and clerics started to argue, self-servingly to be sure, that this system was particularly detrimental to those who did not possess the military might required to enforce peace settlements to their advantage. Thus, the clerical involvement with the promotion of a reformed ideal of justice, kingship and social relations began with an argument that the atomization and privatization of political power led to the establishment of local lords' monopoly over military and economic means, thus overturning the vindictive mode of social regulation into a violent mode of unilateral appropriation. Clerics were the first to react to this "deregulation," not only because it endangered their material possessions and undercut their spiritual leadership,<sup>46</sup> but also and maybe mainly because they possessed the *ouillage mental* and intellectual repertoire necessary to imagine an ambitious overhaul of the dominant mode of conflict resolution.

The Peace of God movement—the first clerical attempt to limit the excess of private wars through excommunication—<sup>47</sup> happened well outside of the Capetian domain (Synod of Charroux, in the West of France, in 989), and did not call on the king as a guardian or enforcer of the peace. Thus, the idea of a *pax dei*, was developed in the eleventh century independently from the idea of a *pax regis* that would only emerge a century later. The Christian ideal of peace and the idea that the royal function entailed a particular right and duty of the king as keeper of the peace thus began on two distinct paths in the eleventh century. In the following century, the revival of Roman law would operate as a conceptual bridge that allowed clerics in the royal

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<sup>46</sup> While the phenomenon should not be generalized and one should be careful not to take at face value the complaints and grievances of clerics on the matter (our main documentary source in those years), there seem to be multiple examples of exactions committed by lords, mainly to the detriment of the humble and churches, starting in the years 950.

<sup>47</sup> Dominique Barthélemy, *L'an mil et la paix de Dieu : la France chrétienne et féodale, 980-1060*, Paris: Fayard, 1999.

entourage to bring the two ideals together, and transfer concepts and values between clerical and royal approaches to law and justice.

This intellectual bridging had become possible at the end of the twelfth century because a renewed Christian ideal of justice and the promotion of a conception of kingship centered on a peace-keeping function of the king had converged, in the eleventh century. As a result, the concepts, values, tropes, and norms originally attached to either ideal, transferred more easily and more frequently over time to the other. Thus, on the one hand, the clerical reflection that provided the intellectual basis for the Peace of God movement had revived the concept of the kingship of Christ, and, on the other hand, the effective loss of regalian powers and the withdrawal of the king onto a confined territorial domain led the embattled intellectual entourage of the Capétiens to burnish the main ideological weapon they had left: the sacrality of the royal function.

### **Vicar of Christ: the king as anointed judge.**

Thus, while the king still did not have the material resources (financial, administrative, military) to enforce peace outside of his domain at the end of the twelfth century, the idea that justice and peace were linked to, and to some extent linked by the royal function, had been preserved. The model of the French “king-as-judge” that the early modern period inherited was in great part based on the “new” kingship that emerged in the eleventh and twelfth centuries as a result of the mobilization of what Marc Bloch once called the “latent energies” of kingship.<sup>48</sup> Understanding the specificity of royal justice in the later Middle Ages but also in the early modern period requires understanding first the specificity of royal power as it was defined—or rather redefined—in the eleventh and twelfth centuries. The reconceptualization of kingship in

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<sup>48</sup> Marc Bloch, *Les rois thaumaturges. Etude sur le caractère surnaturel attribué à la puissance royale, particulièrement en France et en Angleterre*, Paris: A. Colin, 1961, 258.

that time period was the result of the cross-fertilization of intense reflections on two, increasingly interrelated topics: the Christian foundations of royal power and the place of the king in an evolving feudo-vassalic hierarchy.

Although the clerics who sought to promote the Peace and Truce of God at the turn of the millennium did not seem to think that the Capétien king had the political and military clout necessary to be a relevant actor in this movement, the idea of a particular relation between kingship and peacekeeping was not unfamiliar nor even new.<sup>49</sup> This idea had been preserved and had been expressed repeatedly by an oath<sup>50</sup> the king swore during the coronation ceremony. This oath indeed, clearly associated peace, justice and Christianity in a definition of the royal function: “To this Christian populace subject to me, I promise in the name of Christ: First, that by our authority the whole Christian populace will preserve at all times true peace for the Church of God.”<sup>51</sup> This oath, and the coronation ceremony as a whole, presented the king as the Vicar of Christ on earth (“I promise in the name of Christ”) and thus participated in the medieval revival of the idea of the kingship of Christ.<sup>52</sup> The comparison certainly functioned as a reminder—in particular from the point of view of the clergy that orchestrated the ritual—that the sacred nature of kingship extolled but also limited the power of the French kings.

Within this perspective, the idea that justice was as much a prerogative as it was a duty for the Christian prince (hence the form of the oath), underlay the figure of the king-as-judge represented during the coronation ceremony. This ambivalence of royal justice, both prerogative

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<sup>49</sup> One should note first that while the principle of the *pax regis* had disappeared in France, it remained one of the main foundations of royal authority in England at the time (Krynén, *L'empire du roi. Idées et croyances politiques en France, XIII<sup>e</sup>-XV<sup>e</sup> siècle*, 37).

<sup>50</sup> By using the term “oath” I simply follow here the dominant trend in the historiography, but it should be noted that the question of whether the king swore an oath or pronounced a somewhat less binding promise can be and has been debated (see in particular Marcel David, *Le serment du sacre du IX<sup>e</sup> au XV<sup>e</sup> siècle. Contribution à l'étude des limites juridiques de la souveraineté*, Strasbourg: Palais de l'Université, 1951).

<sup>51</sup> Richard A. Jackson, *Vive le roi! : a history of the French coronation from Charles V to Charles X*, Chapel Hill: University of North Carolina Press, 1984, 58-59 This oath was “sworn by the king with his hands placed upon the Gospels, and afterward he kissed the Gospels” (*Ibid.*).

<sup>52</sup> See Jean Leclercq, *L'idée de la royauté du Christ au Moyen Âge*, Paris: Editions du Cerf, 1959.

and duty, explains that while the association between kingship and justice had been repeated for a long time (this promise first appeared in 869),<sup>53</sup> it had not become simply formulaic in the first half of the eleventh century. When Eudes de Blois, a turbulent vassal of Robert le Pieux (996-1031), told the king in 1023, “justice and peace are the root of your office,”<sup>54</sup> his remark was certainly intended to work both as a recognition of a particular royal prerogative in judicial matters, and a mildly threatening reminder that this recognition by the barons was justified by the fact that the royal “office” entailed both judicial rights and judicial duties.

Beyond the promise made by the king, the coronation ceremony further specified the nature of that “office” in ways that indirectly shaped conceptions of royal justice. Indeed, the coronation ceremony put forth a specifically religious conception of the nature of royal power, which, in turn, had significant implications for the conception of royal justice. More precisely, the anointing ritual was the key moment of the coronation, for it manifested the recognition of the king as chosen by God and this recognition effectively transformed the very person of the king. No longer a pure lay because he had shared in the priests’ privilege of the *huile sainte* [holy oil], the king became a sacred figure. This transformation not only entailed the sacerdotal character of kingship—as a direct consequence of this ritual the king was reputed “bishop of the outside” [i.e. outside of the Church]—but soon helped to justify the preeminent position of the king at the top of the political and social hierarchy. This link was made explicit in the twelfth century, not only in political theory but also in the acts of practice such as this 1143 diploma delivered by Louis VII and which stated in its preamble:

We know that, in accordance with the prescriptions of the Old Testament and the laws of the Church in our own times, kings and priests alone are consecrated

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<sup>53</sup> Krynen, *L'empire du roi. Idées et croyances politiques en France, XIII<sup>e</sup>-XV<sup>e</sup> siècle*, 36.

<sup>54</sup> *Ibid.*

by unction of the holy chrism. It is thus fitting that only the ones who are united by the sacrosanct chrism are placed at the head of the people of God...<sup>55</sup>

The reference to the Scriptures did more than just attempt to situate the French kings within the long line of Old Testament kings, for it referred back to a period when not only kings, high priests and prophets were anointed,<sup>56</sup> but also when there was no clear-cut distinction between those different functions.<sup>57</sup> Thus, the reference was meant to suggest that the anointment not only indicated that the French king was chosen by God in the same way as the kings of the Old Testament, but was also the sign that his power was religious, almost magical in nature.<sup>58</sup> This power, manifested rather than created by the anointment,<sup>59</sup> justified the preeminent position of the king “at the head of the people of God,” a position in which God himself had put him. It is

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<sup>55</sup> “*Scimus qui ex auctoritate Veteris Testamenti, etiam nostris temporibus, ex ecclesiastica institutione soli reges et sacerdotes sacri crismatis unctione consecrantur. Decet autem ut qui, soli pre ceteris omnibus, sacrosancta crismatis linitione consociati, ad regendum Dei populum proficiuntur, sibi ipsis et subditis suis tam temporalia quam spiritualia subministrando provideant, et providendo invicem subministrent.*” Charter by which Louis VII renounce the right of his predecessors to appropriate the furniture of the bishops of Paris upon their death (1143). *Monuments Historiques. Carton des rois*. Jules Tardif ed., Paris: J. Claye, 1866, 253.

<sup>56</sup> While most of the examples are of anointment of kings—for instance Solomon (*1 Chronicles* 29.22b), David (*1 Samuel* 16.1-13), or Saul (*1 Samuel* 9.25-10.1)—there are also a few examples of anointment of a high priest (e.g. in *Exodus* 29.4-8).

<sup>57</sup> David, who among Old Testament kings held an iconic status with medieval authors, can be seen acting as a priest (e.g. in *2 Samuel* 6.12-19), or even as a prophet (e.g. in *2 Samuel* 23.1-7).

<sup>58</sup> See Bloch, *Les rois thaumaturges. Etude sur le caractère surnaturel attribué à la puissance royale, particulièrement en France et en Angleterre*, .

<sup>59</sup> Since at least the end of the fourteenth century, political thinkers and theologians generally agreed that the coronation ceremony was not “constitutive” of kingship, that, in other words, the ritual performed in the cathedral at Reims did not create but simply confirmed the legitimacy of the prince who had already become king on the very moment his predecessor had died. (Jean Barbey, *Être roi. Le roi et son gouvernement en France de Clovis à Louis XVI*, Paris: Fayard, 1992, 64. See also Jackson, *Vive le roi! : a history of the French coronation from Charles V to Charles X*, The medieval origins and political implications of that theory were most famously analyzed by Ernst Kantorowicz (Ernst Kantorowicz, *The king's two bodies; a study in mediaeval political theology*, Princeton: Princeton University Press, 1997). In the sixteenth century, Jean Bodin, formulated that older theory in terms that befitted his reflection on sovereignty: “The king never ceases to be king, even without coronation or consecration, neither of which partake in the essence of sovereignty” (“*Le roy ne laisse pas d’être roy sans le couronnement ni consécration qui ne sont point de l’essence de la souveraineté*” (*La République*, Lyon, 1593, liv. VI, chap. 9, p. 203)). Although a mere confirmation of the authenticity of royal power from a legal standpoint, the ceremony remained however a significant constitutive element of the royal dignity, for it manifested most aptly the divine essence of the monarchy, the majesty of its kings, and the sovereignty of their power. Thus, the coronation was an important moment of representation of kingship and the emphasis on the king’s role as a judge or more generally as a guarantor of justice played a critical role in this representation.

in that particular position that the king acted not only as a ruler (“head”) but also, as the oath of the coronation made clear, as a keeper of the peace among the “Christian populace subject to [him].” The model of the king-as-judge was based on this ideal of peace-keeping, the position of preeminence of the king that made it a particular royal prerogative, and the justification of this position by the idea of the sacred nature of kingship.

### **A lord without superior: the judge-king as supreme suzerain.**

Both this claimed position of preeminence and its justification were certainly appealing to those clerics who, in the royal entourage, sought to take advantage of the contemporary reorganization of feudo-vassalic relationships to build a new political hierarchy dominated by the king. While the reflections of royal eulogists on the matter were not primarily concerned with the judicial power of the king, they eventually had consequences for both the conceptualization and the practical organization of royal justice. To understand those developments, it is necessary to explain first how justice related to the feudo-vassalic system and how the dominant position that the king claimed for himself in that system had lasting consequences for royal justice.

At the risk of overlooking the complexity and diversity of “feudalism” as a particular historical phenomenon in that time and place, one could describe these relationships as stemming from a contractual bond between lords and their vassals. This bond was of a dual nature: it was both a personal bond between two men that created vassalage and a “real” bond that resulted from the concession of a fief, most often in the form of land.<sup>60</sup> Within the particular social and political organization entailed by that system of interpersonal relations, adjudication and arbitration were, as in any society, necessary processes and their conception was shaped by both dimensions—

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<sup>60</sup> I do not mean to imply that “real” and “personal” are somehow mutually exclusive categories. I simply use those terms here with the technical meaning that the canonical historiography of feudalism gave them (see Jean-François Lemarignier, *La France médiévale: institutions et société*, Paris: A. Colin, 1970, 126).

personal and real—of the feudo-vassalic relationship. The two-part ritual—homage and oath of fidelity—that created the personal bond between lord and vassal, carried mutual obligations, which, although not primarily directed at maintaining peace and justice, provided the basis to conceive of the role of the lord as an arbiter. Indeed, the obligation to protect one’s vassal entailed that the lord found himself in a position to arbitrate conflicts between his vassals. Thus, the lord’s judicial power, his personal jurisdiction, was rooted in the sum of contractual relationships established with those who had accepted to become his men. As for the territorial jurisdiction of the lord, it was founded in the “real” bonds that resulted from the concession of landed fiefs to his vassals.

At the turn of the millennium the king of the Franks took part in this system of relationships. Thus, his judicial court was a seigneurial court that treated mostly cases relating to the exercise of his seigneurial rights, and its jurisdiction was limited territorially to his personal possessions and the fiefs of those vassals who still felt compelled to pay homage to him.<sup>61</sup> In practice, the king-as-judge was virtually indistinguishable from any lord-as-judge, who exercised the judicial power that came to him as one of the rights attached to the lordship he owned. This was due in part to the situation of relative weakness of the first Capetians, but it also stemmed from the fact that the feudal system of relationships, because it was primarily based on one-on-one relationships negotiated on an individual basis, could do without a hierarchy of ranks. One could even say that in practice, this system undermined such a hierarchy: a lord could be, for some his lands, the vassal of another lord of a much inferior rank, and he could even be, the case is not so rare, the vassal of one of his vassals.<sup>62</sup>

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<sup>61</sup> *Le gouvernement royal aux premiers temps Capétiens, 987-1108*: A. et J. Picard, 1965, 163-6. Lemarignier describes royal justice in the eleventh century as a “justice of the first feudal age” (*ibid.*, 163).

<sup>62</sup> Louis Halphen, “La place de la royauté dans le système féodal,” *Revue Historique* 172 (1933): 249-50. Halphen gives the example of the count of Champagne who, “at the end of the thirteenth century held fiefs not only from the king of France and the Emperor, but also from the duke of Burgundy and the archbishops or bishops of Reims, Sens, Autun, Châlons-sur-Marne, Langres, and from the abbot of Saint-Denis, and all of them happen to be his vassals as well.” (*ibid.*, 250).

The great intellectual achievement of political thinkers in the royal entourage in the twelfth century (and most notably of Suger, abbot of Saint-Denis), has been to successfully utilize to the advantage of the king (and to their own) a situation of political weakness that was both a cause and a consequence of the demise of the power formerly concentrated in the hands of the Carolingian emperors and kings. The insight of Suger was that the web of discrete personal links between lords and vassals could be reordered into a pyramidal political structure that would best serve the interest of the French king (and of the Abbey of Saint-Denis, to which the Capétiens were closely associated).<sup>63</sup> Of course, Suger did not singlehandedly create that structure, but he did play a major role in a significant reinterpretation of feudo-vassalic relationships that had already started around 1100, evolving in a direction that benefited the French kings. This earlier reinterpretation was not itself a purely intellectual construction, it reflected the growing importance, in practice, of the “real” element (land) over the personal element (fidelity) as the basis for the link between lords and their vassals.<sup>64</sup> At a time when the Capetians had started to extend their territorial domain and increase their military might (both extensions feeding into each other), this emphasis on land favored the position of the king within the web of feudo-vassalic relationships. This material evolution was required to give to Suger’s reflection a semblance of credibility, and his reflection, in turn, would not only support the position of the king, but, more significantly, effect a radical break by placing the king outside, or rather above this system of feudo-vassalic relationships.

Suger’s account of a 1124 episode, when Louis VI took the *oriflamme*<sup>65</sup> at the Abbey of Saint-Denis to lead a royal army to defend the Champagne region, then threatened by Emperor Henry V, is the best-known illustration of Suger’s theory and of the mobilization of the sacrality

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<sup>63</sup> Françoise Autrand, Claude Gauvard, and Jean-Marie Moeglin, *Saint-Denis et la royauté : études offertes à Bernard Guenée*, Paris: Publications de la Sorbonne, 1999.

<sup>64</sup> Lemarignier, *La France médiévale: institutions et société*, 126.

<sup>65</sup> The *oriflamme* is the military banner of the Saint-Denis abbey. Philippe Contamine, "L'oriflamme de Saint Denis aux XIV<sup>e</sup> et XV<sup>e</sup> siècles. Etude de symbolique religieuse et royale," *Annales de l'Est* 3 (1973).

of kingship as its justification. Suger's observation that Louis "acknowledged that he held [the Vexin français] from the abbey and that, in his quality of standard-bearer, he should pay homage for it [i.e. the Vexin] *if he were not king* [my emphasis]"<sup>66</sup> was the starting point of the theory that the king of France had no earthly superior, except for the Pope in spiritual matters. Suger expressed this idea more strongly and connected it more clearly to the particular nature of royal power in his less famous account of the same episode in his *Life of Louis VI* where he wrote that the king "because of this county [of Vexin], was obligated to pay homage [to the abbey], *if royal authority had not opposed it* [my emphasis]."<sup>67</sup> In this particular passage, Suger does not connect this *auctoritas* that justified overriding the elementary rules of the feudo-vassalic system to the coronation ceremony. He does so in other places, however, for instance when, in order to establish the particular prominent position of the Abbey of Saint-Denis in the kingdom,<sup>68</sup> he notes that "[Louis VI], with much devotion, gave back to the Martyrs [i.e. to the abbey] his father's crown that he had unjustly kept, for, by right, all the crowns of the deceased kings belong to them [i.e. the Martyrs]."<sup>69</sup> Regardless of the role of the coronation in this justification, a comparison of Suger's two accounts suggests that what he calls *auctoritas regia*, must be understood not as royal "authority" but rather as the quality of being king (cf. "*si rex non esset*"), or what other

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<sup>66</sup> "(...) *in pleno capitulo beati Dionysii professus est se ab eo habere, et jure signiferi, si rex non esset, hominum ei debere.*" Suger, "*Liber de rebus in Administratione sua Gestis*," in *Œuvres Complètes*, ed. A. Lecoy de la Marche, Paris: vve de J. Renouard, 1867, 162.

<sup>67</sup> "(...) *quod de eodem comitatu, nisi auctoritas regia obsisteret, ecclesie homagium facere tenebatur.*" *Vie de Louis le Gros*, Paris: A. Picard, 1887, 142.

<sup>68</sup> Suger's association of Saint-Denis with the royal authority of the French kings was meant in part to support rather bold claims for the abbey. Based on a forged diploma in which Charlemagne was supposed to have given some outrageous privileges to Saint-Denis (among which the primacy of the abbot over all the bishops and archbishops of the kingdom), Suger pushes forward the idea that the entire kingdom was a fief held from the abbey. Not surprisingly however, the French kings dismissed the idea that the recognition they had made for the Vexin could be extended to the kingdom as a whole (Robert Barroux, "L'Abbé Suger et la vassalité du Vexin en 1124," *Le Moyen Age* 64 (1958): 15-16).

<sup>69</sup> "*coronam patris sui, quam injuste retinuerat – jure enim ad eos omnes pertinent –, devotissime restituerit.*" Suger, *Vie de Louis VI le Gros*, ed. Henri Waquet, Paris: H. Champion, 1929, 229.

authors called the royal “dignity” (*dignitas regia*).<sup>70</sup> What matters to us here is that this *dignitas regia* troubled the rules of feudo-vassalic relationships with important consequences for the conception and actual administration of royal justice.

As for the theory of royal justice, the idea that the king “was not a lord like any other,”<sup>71</sup> entailed that he was not either a seigneurial judge like any other. Kingship was exclusive of vassality—in the sense that the king paid homage to no lord—and the consequences of this idea that had quickly become fact were multiple. Indeed, the *dignitas regia* allowed for exceptions to the feudal rules that affected the nature of both the personal and the real element of the feudal bonds contracted with the king. In judicial terms, this change is best understood as a shift in the nature of the king’s jurisdiction, both personal and territorial. For the king’s vassals, it meant that there was no suzerain to appeal to to overturn the rulings of the king, thus transforming the royal court into a *de facto* supreme court. In territorial terms, because the king could not be a vassal, his lands and the rights attached to them could not be, properly speaking, a fief, with the consequence that the king could never lose (nor even transfer willingly, as would be soon argued)<sup>72</sup> the *propriété éminente*,<sup>73</sup> hence the jurisdiction, attached to the lands he had either inherited or acquired. Applied retroactively, this theory led to the idea that all fiefs in the kingdom proceeded from the crown, and thus that the territorial jurisdiction of the king coincided with the territory of the kingdom.

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<sup>70</sup> The phrase was first used in England, and started to appear in the twelfth century, especially in writs that linked *corona* (crown) and *dignitas regia*. See Albert Rigaudière, "Pratique politique et droit public dans la France des XIV<sup>e</sup> et XV<sup>e</sup> siècles," *Archives de la philosophie du droit* 41 (1997): 92-93.

<sup>71</sup> Halphen, "La place de la royauté dans le système féodal," 250.

<sup>72</sup> This is indeed the origin of the theory of the “inalienability of the royal domain,” that would develop in the fourteenth and fifteenth century. See Jacques Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440) : étude de la littérature politique du temps*, Paris: A. et J. Picard, 1981, 303-12.

<sup>73</sup> A person or institution that had the *propriété éminente* [“eminent” ownership] of a land owned it by title and had rights over that land but did not exploit it themselves. Those who exploited that land were said to hold *propriété utile* [“useful,” or rather “use-related” ownership] over it.

In other words, the peculiar position of the king in the web of feudo-vassalic relationships created *de facto* a royal jurisdiction that had some of the essential features of sovereignty even before jurists trained in Roman law started to employ this word to bolster royal prerogatives. *De facto*, because justice seems to have been, very early on, a privileged site of implementation for new ideas about kingship and its relation to the increasingly hierarchical feudo-vassalic political structure of the kingdom. Indeed, core elements of the political reflection of Suger and others were reflected in ideas and procedures that were fundamental for the later development of royal justice as a sovereign justice. For instance, the appeal and the *évocation*<sup>74</sup> procedures that could move cases upward along the pyramidal hierarchy of royal courts of justice were predicated on the same *dignitas regia* that justified Suger's likewise pyramid-shaped political structure. Suger offers a clear illustration of the feudal basis of ideas about royal justice, its rationale and its organization when he recounts how the duke of Aquitaine allegedly declared to king Louis VI in 1126 “[a]s for the count of Auvergne, since he holds Auvergne from me and that I hold it from you, if he has committed some fault it is my duty to make him appear before your court on your command.”<sup>75</sup> What is important in this remark is not so much that a vassal could appeal to a suzerain—this was a common occurrence—but that the duke of Aquitaine, a vassal of the king who was then arguably more powerful than the king, already recognized that it was his “duty” to forward cases involving his own vassals to the king. At this early date (the episode takes place only two years after the *oriflamme* story), the logic behind this recognition is still primarily feudal, for the judicial case of the count of Auvergne goes to the court of the king, moving “from the bottom up,” following a line that had been created in the contrary “top down” direction by the concession of a fief. Because fiefs had been granted according to local, most often military,

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<sup>74</sup> *Evocation* was the practice of taking a case away from one court to transfer it to another one. Most often, cases were “*évoqués*” from a lower court to a higher one (for instance, from a *bailliage* to a *Parlement*). In other instances, a case could be transferred between two courts of a same level, for instance from one *Parlement* to another one.

<sup>75</sup> Suger, *Vie de Louis VI le Gros*, 241.

considerations and regardless of any sort of theoretical hierarchy, there was at the time a profusion, one is tempted to say a confusion, of such lines of vassality that crisscrossed each other in a myriad of directions. Soon, however, the idea that all fiefs—hence all judicial rights—proceeded from the crown would prompt a reordering of those lines into a pyramid that led to the king’s judicial court and ended there for he held the kingdom from God.

Because this elementary structure of judicial appeal predated and survived the import of Roman conceptions of sovereignty, royal justice was and would remain at its core of a double nature, both religious and feudal. The eleventh and twelfth centuries thus constituted a period of solidification of a long-lasting ideal of royal justice, that saw the revival of the idea of a sacred nature of kingship that led to conceive of the king as supreme judge in his kingdom. With the backing of the material and military successes of the first Capetian kings, this conception led to a critical reorganization of feudo-vassalic relationships that both shaped indirectly the elementary structure of royal justice and extended the personal and territorial jurisdiction of the king.

### **Kingship and Roman law: juristic reformulations of the king-as-judge**

While Roman conceptions of sovereignty could be—and indeed would be, as we will see shortly—superimposed on this core, these Christian and feudal origins were never erased from the understanding of the nature of kingship and of royal justice. Arguably, it could even be said that eleventh- and twelfth-century reflections on kingship in its relation to religion and feudalism explain in part the success of the revival of Roman law outside of the academic circle. Indeed, the figure of the king-as-judge at the end of the twelfth century—that of an arbiter in charge of peace-keeping by virtue of both his anointment and his newly-found position in an evolving feudal hierarchy, and that of a judge who was at the same time a semi-cleric acting as the vicar of Christ and a warrior in his quality of supreme suzerain—eased the import of a number of Roman

concepts into medieval statecraft, in particular in its judicial area. Justinian's *Institutes* opened with a famous formula, "The imperial majesty must be not only decorated with arms, but also armed with laws that it be able to govern rightly in either time, in war and in peace," and it is easy to see how this introduction might have resonated at the end of the twelfth century with contemporary representations of the king-as-judge. This king-as-judge as a cleric-warrior figure was identifiable for instance in the iconography by the essential *regalia* he received at the coronation ceremony: the crown, the sword in one hand, the "hand of justice" in the other.<sup>76</sup>

While it is necessary to uncover, as I have tried to do this far, the religious and feudal origins of royal power that early modern authors have tended to mask, it would certainly be an exaggeration to try and downplay Roman law as just some lexical coating applied to a more authentic core. As Kantorowicz put it, "scientific jurisprudence gradually began to change the vocabulary of statecraft, and the new vocabulary began to influence statecraft itself."<sup>77</sup> Justice, a fundamental area of statecraft in the later Middle Ages, was certainly influenced in both its representation and its workings by the reflections of the jurists trained in Roman law who started to surround and advise the French king in the thirteenth century. Those jurists made three major contributions to the renewal of conceptions of royal justice from the thirteenth century on: they reformulated the position and role of the king-as-judge within an anthropomorphized conception of the body social, they revived the legislative power of the kings, and they inaugurated the professionalization of the study of law and of the administration of justice.

The jurists' reformulation of conceptions of the body social as a human body with the king as its head, reshaped the understanding of the purpose of royal justice as consisting in

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<sup>76</sup> When recounting the coronation ceremony of Louis VI Suger noted that these *insignia* symbolized the king's role as a peace-keeper. He wrote that the archbishop "gave him the sword of the Church for the punishment of criminals, crowned him and congratulated him for the royal crown, and with the greatest devotion, gave him the scepter and the hand of justice, and by this gesture entrusted him with the defense of the churches and of the poor." (*ibid.*, 87).

<sup>77</sup> Ernst Kantorowicz, "Kingship under the impact of jurisprudence," in *Selected Studies*, Locust Valley, N.Y.: J. J. Augustin, 1965, 161.

“giving each one his due” (“*rendre à chacun son droit*”), an understanding still prevalent in the early modern period. This particular conception of justice itself was far from new, for this ubiquitous medieval formula was in fact a translation of Augustine’s definition of justice as a virtue.<sup>78</sup> The reconception of society as a human body from the twelfth century on,<sup>79</sup> gave a new, particular content to what “one’s due” meant, a meaning that was dependent on what one’s position and role as a member—literally—of the body social was thought to be. More importantly for our purpose, the conception of both the body social and the body politic as a human body adopted by many theorists in the thirteenth century,<sup>80</sup> led to a reformulation of the role of the king in this *corps*, and more particularly of the purpose of royal justice. This analogy that represented the king as the head of this body, its soul and intelligence, nobles and knights as its arms or hands, the subjects as its feet, was fraught with political implications—for instance about authority and its origin, its delegation, tyrannicide—that were central to the thought of many theorists, especially in the fifteenth century.<sup>81</sup> But the analogy, by binding individuals into a living whole whose survival was dependent on the maintaining of a symbiosis between the different members, also provided a new way of understanding the purpose of royal justice. The role of the king as the head of that body, was precisely to safeguard this symbiosis, to prevent dysfunctions of the whole by keeping all members within the bounds of their proper bodily function. Justice, already defined as consisting in “giving each one his due,” fit this particular view of an essential role of preserving the whole. Far from egalitarian, the purpose of justice thus conceived was on the contrary to maintain a hierarchy of rights (tellingly, the French formula is

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<sup>78</sup> “*justitia porro ea virtus est, quae sua cuique distribuit.*” *De Civitate Dei*, XIX, 21.

<sup>79</sup> John of Salisbury (c. 1120-1180) was the first one to formulate this analogy in his *Policraticus* (c. 1159, Book V). His claim that he drew this concept from Plutarch has been seriously contested (see Hans Liebeschütz, “John of Salisbury and Pseudo-Plutarch,” *Journal of the Warburg and Courtauld Institutes* 6 (1943)).

<sup>80</sup> Otto Friedrich von Gierke, *Political Theories of the Middle Age*, Cambridge: Cambridge University Press, 1900, 140-50.

<sup>81</sup> For instance, Jean Juvénal des Ursins, Philippe de Mézières, Jean de Terrevermeille. See Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440) : étude de la littérature politique du temps*, 73, 107, 15, 319, 35.

“rendre à chacun son droit”), in order to maintain the harmony within the body, peace between its members. As Guillaume de Saint-Pathus put it at the end of the thirteenth century in his *Life of saint Louis*, the “virtue of justice” had two purposes: to “give each one his due [“son droit”]” and to “guard the common good.”<sup>82</sup> The organicist analogy provided a particularly apt way of thinking of these two purposes as intimately connected. This analogy both reframed and reinforced the older idea that the king was “*princeps*” or “at the head of the people of God” and that justice was both the essence and the main instrument of the particular role entailed by that position.

This conception of the king as the head of the body social also underlay jurists’ efforts to develop ideas in support of a revival of royal legislative power. While the organicist analogy was certainly in the back of the mind of the royal jurists who contributed to this revival, they drew more directly and explicitly on Roman law, and more particularly on the already well-known *lex regia*,<sup>83</sup> in order to ascertain the legislative power of the French king. This particular law served as a basis for the famous sentence “*Quod principi placuit, legis habet vigorem*” [What has pleased the Prince, has the force of the law], a maxim that was not simply meant to justify that the king could make the law but intimated that the king was himself the law, or living law [*lex animata*].<sup>84</sup> This was a major shift, in fact a shift of paradigm, for it led to a transition from the conception that law was a collective and largely unattended—if not unintended—creation, the

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<sup>82</sup> “*La vertu de justice, qui a chacun donne son droit et garde le commun profit*” (Guillaume de Saint-Pathus, *Vie de Saint Louis, par Guillaume de Saint-Pathus, confesseur de la reine Marguerite. Publiée d’après les manuscrits par H.-François Delaborde*, Paris: A. Picard, 1899, 121).

<sup>83</sup> This law was discussed as early as the late eleventh century, in the context of the struggle between Pope Gregory VII and Emperor Henry IV, when jurists in the papal and imperial entourage resorted to Roman law to debate the question of whether or not the pope could depose the emperor. The debate had focused on the question of the origin of imperial sovereignty and jurists in both camps had dedicated a lot of attention to the *lex regia*, a law which, quoted in the *Digest*, the *Code* and Justinian’s *Institutes*, intimated that the Roman people had bestowed the *imperium* on the Emperor. (Kantorowicz, “Kingship under the impact of jurisprudence,” 157).

<sup>84</sup> Walter Ullman, *Law and politics in the Middle Ages : an introduction to the sources of medieval political ideas*, London: Sources of History Limited, 1975, 60-1.

manifestation of pre-existing rules sanctioned through use, to the idea that law was the concrete expression of an individual will, fully aware of its own creative intent.<sup>85</sup>

However, while these principles at the origin of the renaissance of a royal legislative activity certainly helped to further the king's claim to exclusive sovereignty<sup>86</sup> (and the famous royal jurists' maxim is here that "the king is emperor in his kingdom"), including judicial sovereignty, they did not necessarily reinforce the king in his role as a judge. Indeed, together with this idea that the king was *fons legis* ["the source of law"], jurists sought to give authority to this other idea that the king should not pass judgment himself.<sup>87</sup>

Jurists were unconcerned with what would have been anachronistic qualms about the separation between legislative and judicial powers.<sup>88</sup> This idea, while expressed once again through Latin maxims that seemed to give it an ancient cachet,<sup>89</sup> had in fact very little basis in Roman law, but was rather a reflection of a recent change in practice that saw the king sit less and less often as a judge in his council. Tellingly, in what can be interpreted as a sign of persistence of the feudal origins of royal justice, the French kings only tended to sit as judge in their court for

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<sup>85</sup> This latter paradigm would of course undergo multiple adjustments between the thirteenth and sixteenth centuries, some of them very significant, but by and large, the paradigm itself would remain unquestioned until the religious conflicts of the second half of the sixteenth century when clashing theological conceptions of community led to call the sovereignty of the king into question, and I would even argue until the transfer of sovereignty from king to nation first imagined and then enshrined—if not realized—during the French Revolution.

<sup>86</sup> *Renaissance Du Pouvoir Législatif Et Genèse De L'Etat*, ed. André Gouron, Montpellier: Société d'histoire du droit et des institutions des anciens pays de droit écrit, 1988.

<sup>87</sup> Kantorowicz, "Kingship under the impact of jurisprudence," 155-6.

<sup>88</sup> Most, if not all of them, argued on the contrary that the judicial and legislative activities were tightly linked, indeed inseparable from one another. For a specifically *parlementaire* view on this point, see below p. 83.

<sup>89</sup> Andreas of Isernia wrote for instance "*Rex aut Imperator non cognoscunt in causis eorum*" [king and emperor do not pronounce judicially in their causes]. Quoted in Kantorowicz, "Kingship under the impact of jurisprudence," 155-6.

cases of high treason.<sup>90</sup> For the most part, however, royal justice was increasingly, and soon in practice almost exclusively, administered by judges who received a “delegation”<sup>91</sup> from the king.

This change was due in part to the practical consequences of the extension of the royal jurisdiction, which, as I have argued before, had started in the twelfth century as a result of a territorial expansion of the royal domain, concomitant with the reordering of feudo-vassalic relationships. As the royal jurisdiction reached new lands, either directly owned by the king or considered as fiefs proceeding from the crown as the new theory had it, it became simply impossible for the king to adjudicate the increasing number of cases that naturally followed from that extension. The change, however, is not solely explained by the advance of royal power in practice, it also reflects on the ground, so to speak, the progress royal power had made on a theoretical level as a result of the reflection of jurists. Roman law indeed, was not merely a new source of law—as matter of fact, the French kings decided early on that Roman law could not be invoked in their courts—, or even just a stock of ideas and concepts jurists could readily draw on to bolster a range of royal claims, it also entailed a new approach to law. The nature of Roman law, its organization, its written form and its antiquity, entailed an approach, scientific and systematic, that was necessarily different from the former approach to customs and the still very thin corpus of royal legislation. While in the former context of a “conception of the judicial function [that] was predicated on interpersonal relations and domestic considerations,”<sup>92</sup> the king could lay claims to interpreting, under divine inspiration, the customs of the land and older royal laws, no one expected him to have the ability to administer in person the new, increasingly

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<sup>90</sup> As Kantorowicz pointed out, this seems to have been the case in the Empire and in England as well. (*ibid.*, 155 n. 19).

<sup>91</sup> As we will see below (p.62-66), the contemporary notion of “communication” is more appropriate than that of “delegation.”

<sup>92</sup> Duby, "Recherches sur l'évolution des institutions judiciaires pendant le X<sup>e</sup> et XI<sup>e</sup> siècle dans le sud de la Bourgogne," 149-50.

technical, body of royal legislation that resulted from the influence of Roman law on his legislative activity.<sup>93</sup>

While this decisive shift found its origin in practice, it was theorized by jurists who drew a parallel between the relation of the prince to law and his relation to justice. In the same way the king, *lex animata*, was the “source of law” [*fons legis*, that is literally, “fountain of law”], he became by analogy “source of justice” [*fons justitiae*]. This emphasis on the person of the king as a source of power, both legislative and judicial, was to a certain extent self-serving, for it allowed jurists to justify of delegation of power that they themselves received as advisers in the king’s council or as judges in his courts.<sup>94</sup> The concomitance of this delegation of judicial power to professional judges with the progress of the judicial sovereignty of the king is best illustrated by the appearance of the first Parlement of the kingdom in the 1250s.<sup>95</sup> The creation of this court formalized indeed some of the most significant trends I have discussed above: as a supreme court it institutionalized both the appeal procedure and royal claims to judicial sovereignty, but as a court manned with professional judges its creation was also indicative of the depersonalization of sovereign justice, or rather of the delegation of judicial power from king to magistrate that the increasing technicality of law entailed.

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<sup>93</sup> Again, Kantorowicz report that this was the case in the Empire and in England as well. In the early fourteenth century, Andreas of Isernia expressed the general opinion that “rarely will a prince be found who is a jurist.” In England, Sir John Fortescue was even more specific, writing to the king that he should not “investigate precise points of the law ... but these should be left to [his] judges and advocates ... and others skilled in the law.” Quoted in Kantorowicz, “Kingship under the impact of jurisprudence,” 156.

<sup>94</sup> Further, one should note that this delegation had become necessary in great part because of the technicalities that those same jurists had introduced in the law. In other words, by helping advance the cause of the king, jurists had made themselves indispensable to the monarchy.

<sup>95</sup> See p. 106 below on how this Parlement was progressively detached from the royal council and has no foundation act or date.

## Medieval legacy: Louis IX as embodiment of the ideal of the king-as-judge.

“Depersonalization” is in fact probably not the right word, for the Parlement detached itself from the royal council during the reign of Louis IX,<sup>96</sup> the king who, more than any other French monarch, would personify the model of the king-as-judge until the end of the Old Regime and even beyond.<sup>97</sup> Before we turn to the figure of the professional judge who increasingly became the central figure of royal justice, it is worth pausing on the figure of Louis IX and on the long-lasting example of the king-as-judge that his reign set. This model informed indeed the ideal of the perfect magistrate I analyze in more detail in Chapter 2. Joinville’s original account of Louis IX distributing justice under an oak tree at Vincennes, despite all the later distortions that transformed this episode into a myth still present in the French national memory today, gives us a model of the king-as-judge that was congruent with both persistent features and drecent changes in the conception of royal justice I have just described:

Often in the summer he went after Mass to the wood of Vincennes and sat down with his back against an oak tree, and made us all sit around him. Everyone who had an affair to settle could come and speak to him without the interference of any usher [“*huissier*”] or other official. The king would speak himself and ask, “Is there any one here who has a case to settle?” All those who did would then stand up and he would say, “Quiet, all of you, and your cases shall be dealt with

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<sup>96</sup> Aubert, *Histoire du Parlement de Paris de l'origine à François Ier 1250-1515*, II, 5.

<sup>97</sup>The figure of saint Louis is already very prominent in the fourteenth and fifteenth centuries in the *miroirs du prince*, a literary genre intended for the education of future kings (see Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440) : étude de la littérature politique du temps*, 91-2). The figure of Saint Louis as the embodiment of the ideal judge went beyond the monarchy, as it was extolled by the Third Republic—and to some extent, still is today—and beyond France (Saint Louis is represented, for instance, on a frieze in the courtroom at the Supreme Court of the United States).

in turn. Then he would call my Lord Pierre de Fontaines and my Lord Geoffroy de Villette and say to one of them, « Now give me your judgment in this case ».<sup>98</sup>

The excerpt reminds the reader of the Christian foundations of the judicial function of the king. First in a obvious manner, by noting that Louis IX acted as a judge after mass, that is, immediately after having received the body of Christ in Communion. The inscription within the Old Testament tradition is performed through the symbol of the oak tree, reminiscent of a passage in the Book of Judges where justice was distributed under a palm tree,<sup>99</sup> and even more compellingly of another passage (*Isaiah* 61.1-3) that associates anointment, crown and the “oaks of justice.”<sup>100</sup> As for the persistence of feudal traits, it can be inferred from Joinville’s use of “us”: the group that surrounds Louis IX and to which the king distributed justice was made of close companions, mainly knights like Joinville himself, who were at the same time advisers and litigants, attached to the king by personal bonds of fidelity.<sup>101</sup> In addition, as the expression “without the interference of any usher” highlighted, this idealized justice was still a “man to man” justice so to speak, between lord and vassal, not yet spoiled—from the aristocratic perspective of the author—by the ignoble clerks of a growing judicial bureaucracy. While the king, anointed

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<sup>98</sup> "Il arriva bien des fois qu'en été il allait s'asseoir au bois de Vincennes, après sa messe, et s'adossait à un chêne et nous faisait asseoir autour de lui. Et tous ceux qui avaient une affaire venaient lui parler, sans être gênés par des huissiers ou par d'autres gens. Et alors il leur demandait de sa propre bouche : "Y a-t-il ici quelqu'un qui ait une affaire ?" Et ceux qui avaient une affaire se levaient, et il leur disait : "Taisez-vous tous, et l'on règlera vos affaires l'une après l'autre." Et alors il appelait messire Pierre de Fontaine et messire Geoffroi de Villette et il disait à l'un d'eux : "Réglez-moi cette affaire." Jean de Joinville, *Vie de Saint Louis*, Paris: Classiques Garnier, 1998, 59.

<sup>99</sup> "4. Now Deborah, a prophetess, the wife of Lappidoth, was judging Israel at that time. / 5. She used to sit under the palm tree of Deborah between Ramah and Bethel in the hill country of Ephraim ; and the sons of Israel came up to her for judgment." (*Judges*, 4.4-5).

<sup>100</sup> "1. The Spirit of the Lord God is upon me / Because the Lord has anointed me / To bring good news, to the afflicted / He has sent me to bind up the brokenhearted, / To proclaim liberty to captives / And freedom to prisoners. / 2. To proclaim the favorable year of the Lord / And the day of vengeance of our God ; / To comfort all who mourn, / 3. To grant those who mourn in Zion, giving them a garland [*coronam* in the Vulgate] instead of ashes, / The oil of gladness instead of mourning, / The mantle of praise instead of a spirit of fainting / So they will be called oaks of righteousness [*ea fortes justitiae*], / The planting of the Lord, that He may be glorified."

<sup>101</sup> In the early fifteenth century, this small group of noble companions had already become a crowd including the weak and the destitute. Christine de Pisan wrote for instance in her *Livre de la Paix* (1412-1413), "O ! What a pleasant thing it was to see him regularly give a hearing after mass to all kinds of poor and others. There could be seen nobles, women and people from all estates, high, medium and small." (Christine de Pisan, *Livre de la Paix*, ed. Charity C. Willard, S'Gravenhage: Mouton, 1958, III, 26, fol. 84).

suzerain, remains source of justice in this passage, this justice is also clearly delegated to professional judges: Geoffroy de Vilette had been *bailli* [royal judge] in Tours and Pierre de Fontaines had not only been *bailli* as well (in Vermandois) but was also a famed jurist who had incorporated elements of Roman law in the customs of Vermandois in his *Conseil à un ami*.<sup>102</sup> Thus, Joinville's account aptly sums up the major evolutions of royal justice in the two to three preceding centuries, and in this respect it is already an end point rather than the mandatory starting point of any history of French justice.<sup>103</sup>

While Joinville's account of Louis IX under the oak had not yet been turned into the myth it would become, it already idealized in its own time a symbiosis of sorts between religion, feudalism, and the Romanization of justice, smoothly coming together in the peaceful and bucolic setting of the woods of Vincennes. Another episode of Louis IX's reign, one that created a much greater sensation among contemporaries, reveals that those three elements did not come together so naturally to support this model of the ideal king-as-judge. The trial of Enguerran de Couci (1259)<sup>104</sup> suggests indeed that, on the contrary, the background for the portrait of Louis IX as the ideal judge-king was a state of great tension between the religious, feudal and Roman dimensions of royal justice. The trial reveals that, at this particular juncture, conflicting views on the kind of social order royal justice was supposed to maintain led some to question the relationship and hierarchy between these three elements.

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<sup>102</sup> Arlette Lebigre, *La justice du roi. La vie judiciaire dans l'ancienne France*, Paris: Albin Michel, 1988, 245, n. 1.

<sup>103</sup> I would thus take issue with Jean-Pierre Royer's intimation that "any history of French justice necessarily begins under the oak at Vincennes" [Royer's emphasis]. On a side note, when one considers the numerous distortions that transformed Joinville's account into the Third Republic *image d'Épinal* of this national myth on which we still live today, there is also reason to doubt that "the image that Joinville gave us in his *Histoire de Saint Louis* remained intact through the centuries." (Jean-Pierre Royer, *Histoire de la justice en France : de la monarchie absolue à la République*, Droit fondamental. Droit politique et théorique, Paris: Presses universitaires de France, 1995, 23).

<sup>104</sup> See Edmond Faral, "Le procès d'Enguerran IV de Couci," *Revue historique de droit français et étranger* 26 (1948): 213-58.

Since these conflicting views also entailed conflicting models of the king-as-judge, it is worth analyzing this trial in some detail. Enguerran de Couci had been summoned to the king's court for having hung three children caught hunting on his land. In front of Louis IX, Enguerran and his imposing group of relatives and friends argued, on a number of feudal grounds, that he should escape judgment by the king's judicial court. Enguerran first argued that the quality of his fief gave him a privilege of barony that should entitle him to be judged by his peers (that is, the barons of the kingdom). In that first instance, Louis IX retorted that Enguerran's fief did not carry this privilege, for the barony had fallen to one of his brothers' share after the division of the paternal inheritance, but the king did not question the feudal logic and the principle that the privilege of barony entitled to a judgment by one's peers. In fact, it is very likely that Louis IX granted the request nonetheless, since, one of the sources tells us, the king "established a day for all the barons of the kingdom to come [to the trial]."<sup>105</sup> It is at this point that, as Edmond Faral noted, "the affair took a worrying turn" for the king, for all the lords present were related to Enguerran in one way or another and sided with him.<sup>106</sup> Thus, "the judges became advisers to the accused," and the king was left "all alone except for his council."<sup>107</sup> The barons exited the king's court to go advise Enguerran, leaving the king alone in the throne room with the councilors of his own household<sup>108</sup>—and one can assume that some of them at least were jurists of the kind of Pierre de Fontaines or Geoffroy de Vilette—, and this movement of people translated clearly the opposition of two groups, two conceptions of royal justice.

Enguerran's next request translated this clash in legal terms, for it clearly pitched feudal custom against new royal procedures inspired from Roman law. Enguerran argued indeed that he should not be submitted to the inquest procedure—a procedure inspired from Roman law that had

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<sup>105</sup> *Ibid.*, 224.

<sup>106</sup> *Ibid.*, 226.

<sup>107</sup> *Chronique* of Primat (*ibid.*, 219).

<sup>108</sup> In his *Vie de saint Louis*, Guillaume de Saint-Pathus says that Louis IX was then left alone "except for his household [*fors que sa mesniée*]" (*ibid.*, 220).

already been in use in the Church for more than two centuries—<sup>109</sup>, because this inquest would infringe on “his person, his honor, and his possessions” and that in such case he should have the right to defend himself by judicial duel.<sup>110</sup> Louis IX first sought to deny the request on moral grounds, arguing that the judicial duel should not apply when the weak were involved, for “no one would be foolish enough to fight for this kind of people against the barons of the kingdom.”<sup>111</sup> The king also invoked a precedent during the reign of Philip Augustus (1180-1223), but neither this point nor the moral argument destroyed the principle of the legal argument put forward by Enguerran.<sup>112</sup> In the end, Louis IX had to admit that the inquest procedure could not be applied in this instance, because the custom of the kingdom was indeed that, if the accused had refused to submit to the inquest, the judge could not pronounce a sentence against him.<sup>113</sup>

A final move on the king’s part however, revealed another tension, this time between feudal law and religion. Despite his admission that the inquest procedure could not be applied, Louis IX did not agree to the judicial duel. Instead, he invoked his privileged relation to God to still judge the case himself, stating that “for he knew well God’s will in this case, he would not let

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<sup>109</sup> See Paul Fournier, *Les officialités au moyen âge. Etude sur l’organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 à 1328*, Paris: E. Plon et cie, 1880 ; Paul Guilhaume, *Enquêtes et procès : étude sur la procédure et le fonctionnement du Parlement au XIV<sup>e</sup> siècle ; suivie du Style de la chambre des enquêtes ; du Style des commissaires du Parlement et de plusieurs autres textes et documents*, Paris: A. Picard, 1892.

<sup>110</sup> Faral, "Le procès d'Enguerran IV de Couci," 220.

<sup>111</sup> “*es fez des povres, des eglises ne des personnes [dont en doit avoir pitié], l'en ne devoit pas ainsi aler avant par loy de bataille; car l'en ne troveroit pas de legier aucuns qui ne vouldissent combatre pour tele manieres de personnes contre les barons du royaume.*” (*ibid.*).

<sup>112</sup> *Ibid.*, 228-9 Thus, when the count of Brittany later spoke for him he just articulated with the same phrasing the previous opposition: the count told the king “he should not maintain that inquests should be conducted against the barons of the kingdom in matters concerning their person, their possessions and their honor.” (*ibid.*, 229).

<sup>113</sup> Guillaume de Saint-Pathus tells us that the king acknowledged that “according to the customs of the kingdom he could not judge by an inquest held against him since this punished him in his person, given that my lord Enguerran had not submitted himself to the said inquest ” (transl. Paul Hyams, Medieval Source Book, <http://www.fordham.edu/halsall/source/1259coucy.html>). Adolphe Tardif had noted this rule in the customary law of the time: “it was a principle, in all of northern France, that [the inquiry procedure] could only produce effects against the accused if he had willingly submitted to it.” (Adolphe Tardif, "La date et le caractère de l'ordonnance de saint Louis sur les duels," *Nouvelle revue historique de droit français et étranger* 11 (1887): 168).

the nobility of [Enguerran's] lineage or the power of some of his friends prevent him [i.e. the king] from doing full justice of him [i.e. Enguerran]."<sup>114</sup> It seems that in this final instance Louis IX had his way, for if the inquest did not take place, neither did the duel Enguerran and the barons had been asking for: Louis IX stripped the count of his right of high justice, confiscated the wood where the youth had been caught and imposed a fine of 12.000 l. As if to confirm the religious inspiration of his "royal coup" and of his judgment, Louis IX gave the wood to the neighboring abbey of Saint Nicolas, sent the money from the fine to Acre to help with the ongoing crusade, and had Enguerran "make and endow three perpetual charities for the souls of those hanged."<sup>115</sup>

A popular song composed in the aftermath of the trial aptly represented what could have been the barons' opinion on the matter. While Edmond Faral has entitled this anonymous piece "Song against the inquiry procedure,"<sup>116</sup> and while it is true that the song indeed conveyed resentment on the part of the French "born of the fiefs" stripped of their privileges [*franchise*] and "cruelly duped" by this procedure, it also explains this violation of their rights by the influence of the clergy on the king.<sup>117</sup> The song echoes and questions Louis IX's assertion that he was doing the will of God by denying the duel and passing judgment himself, opposing that "such a servitude does not come from God."<sup>118</sup> The song however, did not question the king's "loyalty"—that is literally, his fidelity to the law—but blamed instead "the clergy" whom the author indicts

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<sup>114</sup> "se il seust bien la volenté de Dieu en tel cas, il ne lessast ne pour noblece de son lignage ne pour la puissance d'aucuns de ses amis que il ne feist de lui pleine justice."

<sup>115</sup> Hyams, *ibid.*

<sup>116</sup> Faral, "Le procès d'Enguerran IV de Couci," 252. Leroux de Lincy, who first published this song in 1840, had given it a less specific title, "Chanson sur les Etablissements du roi saint Louis" (Le Roux de Lincy, "Chansons historiques des XIII<sup>e</sup>, XIV<sup>e</sup> et XV<sup>e</sup> siècles," *Bibliothèque de l'Ecole des Chartes* 1 (1840): 370-4).

<sup>117</sup> "Mult vous a l'en de franchise esloigniez, / Car vous estes par enquete jugiez. / Quant deffense ne vos puet faire aïe / Trop iestes cruelment engingiez / A touz pri." "Chansons historiques des XIII<sup>e</sup>, XIV<sup>e</sup> et XV<sup>e</sup> siècles," 372.

<sup>118</sup> "Je sai de voir, que de Dieu ne vient mie / Tel servage, tant soit il exploitié." *Ibid.*, 373.

as responsible for a move that had “blended together charity and sin.”<sup>119</sup> It is worth noting that the song also told that an adviser of Louis IX, “loyal” as well, was also “prisoner” of the Church and its harmful influence.<sup>120</sup> Edmond Faral failed to identify this man close to the king, “apparently both noble and lay,”<sup>121</sup> and I would propose that Faral’s failed attempt to put a name on this character is not all that surprising if we consider that it might not have represented any particular individual but the archetypal figure of the ideal *conseiller*, friend of the law but victim of the Church. In any case, the song did not question the authority of the king, nor the Christian foundation of that authority, nor even Roman law *per se*, it lamented the passing of a former ideal of the king-as-judge, now a *primus inter pares*, whose main duty should have been to maintain a pristine social order that preserved the barons’ privileges, their “franchise,” that is, their rights as free men.<sup>122</sup> The new ideal enacted by Louis IX on the contrary, was that of a supreme judge who was also a lawmaker, one who, in the name of a divinely inspired sense of equity—we are not quite yet at this point where the king could do without this explicit religious justification and simply argue that “what has pleased the king has the force of the law”—, could limit the “law of the sword” that the barons longed for.

The trial of Enguerran de Couci reveals that, to a certain extent, the role of the king-as-judge had become subservient to his role as lawgiver. As Edmond Faral pointed out, the trial was not a simple application of the recent law on the judicial duel. The trial had farther-reaching consequences for it revealed that royal justice could extend royal jurisdiction “in ways no one had thought of at first [when the law on duels was promulgated].”<sup>123</sup> The two royal activities,

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<sup>119</sup> “*Tout ont ensemble broié / L’aumosne et le péchié.*” *Ibid.*

<sup>120</sup> “*Et icelui est si pris du clergie / Q’il ne vous puet fere aïe.*” *Ibid.*

<sup>121</sup> Faral, “Le procès d’Enguerran IV de Couci,” 253. Leroux de Lincy “believe[d] he had recognized Robert de Sorbon” in this figure, but did not provide any evidence for this identification besides his intuition. (Lincy, “Chansons historiques des XIII<sup>e</sup>, XIV<sup>e</sup> et XV<sup>e</sup> siècles,” 372).

<sup>122</sup> The language of the song (“*franchise*,” “*servitude*,” “*land of subjects*”) reveals that the crux of the matter had to do with clashing conceptions of the social order. I will go back to this important point at the end of next chapter.

<sup>123</sup> Faral, “Le procès d’Enguerran IV de Couci,” 246-7.

legislative and judicial, now clearly worked in a tandem that reflected the double meaning of *auctoritas* in relation to law, that is, on the one hand and in the etymological sense of the term, the power to create law, to “author” it, and on the other hand and in the modern sense of the term, the power to enforce it.

CHAPTER 2:  
PARLEMENTAIRE REPRESENTATIONS: SOVEREIGN JUSTICE,  
PARLEMENTAIRE ETHOS, AND THE *PARFAIT CONSEILLER*

As the trial of Enguerran de Couci illustrates, in the middle of the thirteenth century the king could still judge in person in matters relating directly to this *auctoritas*. At that point in time, however, professional royal judges already handled the great majority of the ever-growing number of cases that ended in front of a royal court. Thus, the remapping of law through judicial practice was increasingly carried out by professional magistrates who had received a delegation of royal judicial power. As we shift the focus from king to royal magistrates in this chapter, however, both the notion of “delegation” and that of “professional group” appear to be anachronistic and misleading shortcuts. Both terms distort the contemporary understandings of the ideal *conseiller* that I wish to depict in this second chapter. The clarification of these two notions—which I propose to replace with those of “representation” and “*corps*”—serves as my basis to reconstitute the portrait of the ideal *conseiller* that underlay standards and expectations of the practice of justice in the Parlement de Toulouse in the second half of the sixteenth century.

I begin by reflecting on the notion of “delegation” of judicial power from king to magistrate that our perception of modern administrative practice and a misguided but entrenched historiographical distinction between justice the king “reserved” for himself (*justice retenue*) and justice he “delegated” to royal officials (*justice déléguée*), would have us use. Indeed, this clarification is first in order, for the principles and workings of the transmission of the king’s judicial power had a formative impact on ideas about the origins, nature, function and extent of the judicial power held by royal magistrates. As we will see, because royal judicial power was at the same time transmitted and transformed in this process, these ideas accounted for the specificity of a portrait of the ideal royal judge that both resembled and differed from that of the ideal king-as-judge described in Chapter 1. As we will see moreover, this process was further

complicated in the case of *conseillers* in a sovereign court such as the Parlement de Toulouse, where the magistrates as a “*corps*,” that is collegially, claimed to “represent” majesty and the very person of the king.

My explication of these interrelated notions of *corps* and representation points to the existence of a particular *parlementaire* ethos. In this chapter I focus on how this ethos, as it was envisioned and represented by the *conseillers* themselves, bespoke a specific conception of sovereign justice, of its political and social function, and consequently, of the magistrates’ self-understanding of their position in the body politic and the body social. Because of its diverse and far-reaching roots (political, social, religious), this idealized *parlementaire* ethos resists modern analytical categories such as that of professional ethos. In order to work around this elusiveness, I use the repertoire of *parlementaire* imagery the magistrates mobilized to represent themselves (“knights” of a “legal militia”, “priests of justice”, “senators”) to extract from it a self-portrait of the ideal *conseiller*, highlighting both its similarities and differences with the portrait of the ideal king-as-judge. Finally, I suggest how this self-portrait, congruent with the *parlementaire* conception of sovereign justice, shaped the practice of sovereign justice.

### **“Communication”: theorizing the flow of judicial power.**

The reflections of jurists on the nature and origin of royal judicial power presented in the first chapter, raised a number of theoretical difficulty regarding the transmission of this power to others—to non-kings, so to speak. How could the king “delegate” judicial power and still retain, contained in his sole person, the majesty, the *dignitas regia*, that founded this power? Indeed, royal jurists had bound judicial power so tightly to the very person of the king, to unique features of kingship—most notably the exclusive quality of the king as a sacred figure and supreme suzerain—, that they had created a paradox of sorts: the theories they had elaborated to support

the idea that the king was the “fountain of justice” seemed to preclude the possibility that judicial power could plainly “flow,” unchanged, from king to others. Thus, the “delegation” of royal judicial power was a transmission that necessarily required a transformation of this power, a transformation that preserved its essence while changing its substance. The central question for our purpose is the following: did this “delegation” result in a simple transfer of the ideal of the king-as-judge onto the magistrate or did it imply a different kind of ideal, specific to the royal judge? To assess the specificity of the judicial power bestowed on the magistrate and the model of the ideal royal judge it entailed, we need first to look further into this process by which, in practice, royal power was both transmitted and transformed. With those general principles of the “delegation” of royal power in mind, I explore the specific case of the magistrates of the Parlement and focus on how the sovereign status of this court further complicated the question of delegation and explained that particular variations on the theme of the king-as-judge were available to the *conseillers* to shape their own ideal self-portrait.

As Jacques Krynen noted, the concept of “delegated justice” (*justice déléguée*) was created by legal historians of Old Regime France as a counterpart to the concept of “reserved justice” (*justice retenue*)—that is, justice exercised by the king in person or through his council—that they had invented as well.<sup>124</sup> In fact, neither the concept nor the word “delegation” was part of the intellectual apparatus of the time. Instead, contemporaries thought of and formulated the transmission of royal power in terms of “communication.” Jean Bodin for instance, wrote in his *République* that the magistrate is the person to whom the sovereign “communicated the force, the authority and the power to command.”<sup>125</sup> This “communication” entailed limitations, for the

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<sup>124</sup> Jacques Krynen, “De la représentation à la dépossession du roi : Les parlementaires «prêtres de la justice»,” *Mélanges de l'École Française de Rome. Moyen Âge* 114-1 (2002): 100.

<sup>125</sup> “(...) le magistrat après le souverain, est la personne principale de la république, et sur lequel se déchargent ceux qui ont la souveraineté, luy communiquant l'autorité, la force, et la puissance de commander (...)” Jean Bodin, *Les Six Livres de la République*, de J. Bodin, Angevin, Lyon: à l'imprimerie de Jean de Tournes, 1579, III, ch. 4, 284.

magistrate was an “officer” whose power to command was “limited by edict.”<sup>126</sup> This limitation inscribed in the letters that communicated royal power to the officer was first and foremost a temporal one, for, Bodin explains, “kings and princes, who are (...) protective of their own power, are in the habit of including in any letter of office an ancient clause, which bears the mark of seigneurial monarchy, stipulating that the officer will enjoy the office “as long as we please.””<sup>127</sup> Historical research confirms Bodin’s explanation that this limitation found its origin in the administrative practices of medieval kings. Roland Mousnier for instance, attempting to retrace the deep historical roots of the early-modern venality of royal offices, pointed to a form a proto-venality which, inaugurated by the first Capetian kings, was meant to put an end to a practice of infeudation of “public” functions that had undercut the authority of their predecessors.<sup>128</sup> To counter this practice that had led, over the course of the ninth and tenth centuries, to the fragmentation and privatization of royal power into the hands of the vassals of the Carolingian kings, the Capetians began to lease out the many powers—including judicial power—they delegated to their *prévôts*.<sup>129</sup> One administrative rank higher, the judicial power given to the *baillis* was similarly limited in time, not in the form of a lease but in that of a commission. Thus, the communication of royal judicial power began, for the period that interests

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<sup>126</sup> *Ibid.*, III, ch. 2, 259.

<sup>127</sup> “(...) *les rois et princes qui sont plus jaloux de leur grandeur, ont accoutumé de mettre en toutes lettres d’office une clause ancienne, qui retient la marque de la monarchie seigneurial, c’est à sçavoir que l’officier jouïra de l’office « tant qu’il nous plaira » (...)*” *ibid.*, III, ch. 3, 273.

<sup>128</sup> Roland Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, Paris: PUF, 1971, 14.

<sup>129</sup> According to Mousnier, this new practice began as early as the reign of Robert Le Pieux (996-1031) (*ibid.*).

us here, as a royal reaction against a feudal mode of transmission of power,<sup>130</sup> and this reaction was congruent with the views of prominent jurists of the time such as Baldus, who was of the opinion that “ordinary judges are not lords but mere administrators of their jurisdiction.”<sup>131</sup>

In addition to the temporal limitation inscribed in the official act that communicated royal power to the king’s agent, a jurisdictional limitation was implied as well by the possibility to appeal against the decisions of royal judges.<sup>132</sup> We have already seen how the trial of Enguerran de Couci suggested that, by the end of the thirteenth century, this procedure was already in place within the hierarchy of royal jurisdictions. The trial also showed how new royal legislation—in that particular instance, a provision of Louis IX’s *ordonnance* on judicial duels—, had allowed the appeal procedure to infiltrate the seigneurial jurisdictions of the barons as well. Contrary to the temporal limitation, this jurisdictional limitation of the power of the royal judge was not thought of as a reaction against the feudal system, but to a certain extent partook of this system in

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<sup>130</sup> This reaction however hardly entailed the end of the privatization and patrimonialization of royal power. It was due in part to the fact that, in practice, the Capetians lacked the authority and the material means necessary to effectively control and restrain how royal agents exercised their power. As Mousnier noted indeed (*ibid.*, 15, *ibid.*), in practice the *prévôts* had full control over their judicial court, their military force, their archives and their finances; in the eleventh and twelfth centuries they sometimes simply ignored the orders of the king; still in the fourteenth century they stayed in office as if their lease was automatically renewed; and from the start the king had even authorized some of them to bequeath their office to their heirs (*ibid.*, 15). As late as the end of the fourteenth century, even some *baillis* whose power was defined by a revocable commission, leased their office. The *Songe du vergier* (1378) for instance castigated those *baillis* who had taken after “the pastors in the churches and especially in Paris and in other places where the cure of souls are auctioned to those who will pay the most. For each cure has a leaseholder [*fermier*] as if it was the leaseholder of a barn.” (*Le songe du vergier*, ed. F. Chatillon, vol. 13-14, *Revue du Moyen Age Latin*, 1957-8, II, 92, fol. 134). But I would argue that, maybe more importantly, what we might simply perceive as a sign of Capetian failure to reform the practice of the infeudation of royal offices was above all indicative of the persistence and pervasiveness of a deep-seated patrimonial conception of power, including judicial power. Despite the reflections of contemporary jurists on the link between the particular nature of royal power and Roman notions of common good and interest, seigneurial as well as royal administrative practices were still ingrained in a domestic conception of government. Indeed, this form of delegation that still entailed a significant degree of privatization and patrimonialization of royal power certainly seemed like normal practice for the king and his agents in a time when “there was no real distinction between private property and public office, between general and particular interest, and it seemed natural to draw a profit (...) from the possession of public power.” (*La vénalité des offices sous Henri IV et Louis XIII*, 16).

<sup>131</sup> “*les juges ordinaires ne sont pas seigneurs de leur juridiction, mais simples administrateurs.*” Cited in Descimon, “La royauté française entre féodalité et sacerdoce. Roi seigneur ou roi magistrat?,” 457.

<sup>132</sup> See Serge Dauchy, *Les voies de recours extraordinaires : proposition d'erreur et requête civile (de l'ordonnance de Saint Louis jusqu'à l'ordonnance de 1667)*, Paris: PUF, 1988 and “Aux origines des voies de recours extraordinaires: la proposition d'erreur,” *Cahiers du CRHIDI* 1 (1993).

which one could appeal against one's lord to his suzerain. In the royal judicial system as in the feudal political system, the appeal followed backward, from the bottom up, the path of the transmission of power, from the top down.

Within the royal judicial administration, the *prévôts* were also called “inferior judges,” not to denigrate these judges who, at the lowest rank of the judicial hierarchy, were the face of royal justice for most French men and women at the time, but to indicate that their decisions could be appealed against, to a superior judge.<sup>133</sup> For practical reasons, this superior judge was most often the *bailli*, situated immediately above the *prévôt* in the hierarchy, but it could as well be the king himself. Although appealing directly to the king was a rare occurrence, it was more than a vague possibility: even at a much later time, Louis XIV still collected himself, every morning after mass (note in passing the enduring legacy of the episode of Louis IX under his oak tree), the *placets*—a written request, meaning literally “may it please”—which those subjects who managed to get close enough could hand to him in person, to appeal against the decision of one of his judges.<sup>134</sup> Louis XIV, as Louis IX five centuries before him, did not judge the appeal himself: the former gave the *placet* to one of his *maîtres des requêtes* to examine, the latter, as Joinville told us, to one of the jurists of his entourage. That is, in both cases, the “appeal” was presented to the king but the judgment was left to his council, whether in its early modern or its medieval form.

### **The sovereign twist: the theory of representation.**

It is precisely because the Parlement had been progressively “detached” from this royal council that the general principles of the “communication” of judicial power I have just described

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<sup>133</sup> Lebigre, *La justice du roi. La vie judiciaire dans l'ancienne France*, 38.

<sup>134</sup> These *placets* could be used more generally to ask any personal favor from the king. *Ibid.*, 49.

could not apply to that court. Indeed, both the temporal and jurisdictional limitations implied in the communication of judicial power contradicted the particular status of the Parlement. In 1489, the Parlement de Paris presented remonstrations (*remontrances*) to king Charles VIII that aptly summarize the *parlementaire* view on this point, highlighting the key differences between the Parlement and other royal courts:

(...) while the king has in his whole kingdom a variety of ordinary judges whose jurisdictions, by way of the appeal, fall within one another, all of them ministers and distributors of justice, past kings however, have instituted and always maintained a Parlement made up of one hundred men—of which the king in his person is the head and the first—, XII peers of France, both clerics and lay, his chancellor, IV presidents, VIII *maîtres des requêtes*, and the remainder made up of *conseillers*, all of them together, mixed clerics and lay, forming a mystical *corps*, holding the authority of Senators representing the person of the king, for it is the last jurisdiction and the sovereign justice of the kingdom of France, the true seat, authority, grandeur [*magnificence*] and majesty of the king.<sup>135</sup>

This is an extremely rich passage that links together a number of fundamental ideas and politically-loaded concepts and metaphors in order to support a rather bold self-representation of the Parlement. I will come back later to the critical analogy with the Roman senate and the related arguments about the nature of the court as a “mystical *corps*” and its authority.

Before that, we should further explore those differences between the *parlementaires* and the “ordinary judges” that this passage spelled out, for they served as the basis for a different theory of transmission of judicial power, summarized here in the expression “representing the person of the king.” As opposed to “ordinary judges” who are “ministers” of justice (temporal limitation) and who can be appealed against (jurisdictional limitation), the Parlement is first a perpetual court (it has “always been maintained”), and second a sovereign court, that is, a court

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<sup>135</sup> " (...) combien que le roy ait par tout son royaume plusieurs juges ordinaires ressortissans par appel les ungs aux autres, tous ministres et distributeurs de justice, néantmoins les prédécesseurs roys ont institué et tousjours entretenu ung Parlement composé de cent hommes, dont le roy en sa personne est chef et le premier, XII Pers de France clerks et lays, son chancelier, IV presidents, VIII maîtres des requêtes et le surplus de conseillers faisans ung corps mistique meslé de gens ecclésiastiques et lays, tous en auctorité de Sénateurs, représentans la personne du roy, car c'est le dernier ressort et la souveraine justice du royaume de France, le vray siège, auctorité, maginificence et majesté du roy." Cited in Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, I, 374-5.

against which one cannot appeal, that has no judicial superior, for the king is one of its members. Both notions of perpetuity and sovereignty are key to understand the nature of the judicial power that the *conseillers* held, or at least argued they held.

The notion of perpetuity is supported by the mention of the Peers of France, a reminder that the Parlement was *cour des Pairs*, that is, a section of the royal council from which it had been progressively detached. The gradual character of this “detachment” was also critical to support the notion of perpetuity: the Parlement had no birth act, no dateable document had created it, in fact, the idea advocated by the *conseillers* was that it had not been created at all and had existed, as the expression went, “from time immemorial.”<sup>136</sup> In his opusculum on the Parlement de Toulouse (1515), Nicolas Bertrand, a lawyer in the court, thus considered that it had never been “properly and explicitly” founded.<sup>137</sup> The perpetuity of the court reflected by extension the perpetuity of the judicial power it held, thus invalidating the idea that this power could have been delegated in any way. This point was also made clear through symbolic manifestations such as the wearing of red robes—a reference to the Roman purple that was meant to manifest the authority of the court—at the funeral of the king:<sup>138</sup> by not wearing mourning clothes in this occasion but the formal attire that bespoke their authority in the most solemn circumstances, the *conseillers* of the Parlement asserted that like justice itself, the authority of the court did not die with the king.<sup>139</sup> This notion of perpetuity of both the court and its judicial power was the first

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<sup>136</sup> Krynen, “De la représentation à la dépossession du roi : Les parlementaires «prêtres de la justice»,” 101 In the eighteenth century this argument would be pushed even further, the parlements arguing that the court predated the advent of kings.

<sup>137</sup> “*Cum enim nullum in Francia proprie ac expressim fundatum fuisset parlamentum.*” Nicolas Bertrand, “*Opusculum de magnifica parlamenti tholosani institutione atque noveissima illius roboratione sive confirmatione,*” in *Opus de tholosonarum gestis*, Toulouse: Jean Grandjean, 1515.

<sup>138</sup> On the wearing of the red robes, see p. 93 below.

<sup>139</sup> Ralph E. Giesey, *The royal funeral ceremony in Renaissance France*, Genève: E. Droz, 1960, 92-102.

pillar of the notion of representation, a connection made explicit in a number of contemporary sources, *parlementaire* but not only.<sup>140</sup>

The second pillar of the theory of *parlementaire* representation was the notion of sovereignty of the Parlement, manifested and justified in the fact that one could not appeal against the decisions of the court. The 1489 *remonstrances* still took the trouble to mention that it was so because the king himself was a member of the court, its head (litteraly, its *chef*, I will come back shortly to the implications of this organicist metaphor), thus playing on the implicit idea that it would be counter-intuitive, indeed illogical, to appeal to him against a sentence he had himself pronounced. A little more than a century later, Bernard de La Roche-Flavin, would formulate the same idea more peremptorily, linking it explicitly and directly to the notion of representation: “(...) as one does not appeal against the king, one does not appeal either against his parlements, who represent him immediately [that is, with no intermediary] in the distribution of justice.”<sup>141</sup> La Roche-Flavin’s conclusion as well was *sans appel*: the judicial power held by the Parlement was not a share of the judicial power of the king, it was the judicial power of the king in its entirety and integrity, for the court and the sovereign were “together as one” (“*tout un*”).<sup>142</sup> A century earlier already, during a royal session in the Parlement de Paris, president Guillart had formulated the same idea, using a metaphor that anticipated Louis-quatorzian expressions of sovereignty, when he declared to Francis I: “As there is one sun in the universe and there is one king in France, so there should be a single sovereign justice, which should (...) be permitted to remain, as it was, in the Parlement of Paris.”<sup>143</sup>

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<sup>140</sup> Chroniclers of royal funerals in the fourteenth and fifteenth century as well as political theorists such as Jean Bodin in the sixteenth century also made this connection explicit. See Krynen, "De la représentation à la déposition du roi : Les parlementaires «prêtres de la justice»," 103.

<sup>141</sup> "Or comme on n'appelle point du Roy, on n'appelle point aussi de ses Parlemens, qui le representent immediatement en la distribution de la justice (...)." Bernard de La Roche-Flavin, *Treze livres des Parlemens de France*, Bordeaux: S. Millanges, 1617, XIII, ch. 59, 811.

<sup>142</sup> *Ibid.*

<sup>143</sup> Quoted in Elizabeth A. R. Brown, *The Lit de justice : semantics, ceremonial, and the Parlement of Paris, 1300-1600*, Sigmaringen: J. Thorbecke, 1994, 66.

The success of this notion of “representation” with the *conseillers* should be explained in part by the legal dimension of this concept that made it amenable to political uses. As Jacques Krynen noted, “at the end of the medieval period, jurists never shied away from thinking the political realities and necessities of their times with the categories of private law,”<sup>144</sup> the notion of representation was indeed such a concept which, drawn from private law, allowed the *conseillers* to think the political reality of their relationship to the king in terms that befitted their legal intellectual repertoire.<sup>145</sup> More precisely, the concept of representation was drawn from the law of succession and had been imagined in the thirteenth century by the jurists of the Orléans school as a mechanism to fully substitute, in cases of intestate successions, a third person (generally a son or a nephew) to the predeceased beneficiary of the inheritance (father or uncle).<sup>146</sup> This concept that rapidly became a full-blown “law of representation” (*jus repraesentionis*),<sup>147</sup> thus substituted fully (that is—as opposed to the *procuratio*—with no limitation of time nor right)<sup>148</sup> one person to another, absent one. In the thirteenth century, a time when the king physically withdrew from his own judicial court, this legal concept must have seemed, to the mind of royal jurists who were familiar with it, like a particularly apt way of theorizing and justifying the substitution of this court (the council, *curia regis*, that was then becoming in its judicial capacity “cour de Parlement”) to the person of the absent prince. The king himself, by way of these same jurists who drafted his laws, was the first one to introduce this concept of representation into the

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<sup>144</sup> Krynen, “De la représentation à la déposition du roi : Les parlementaires «prêtres de la justice»,” 102. See also *L’empire du roi. Idées et croyances politiques en France, XIII<sup>e</sup>-XV<sup>e</sup> siècle*, 135 ff.

<sup>145</sup> The “communication” of royal judicial power to ordinary judges was also understood and formulated after the legal model of the Romano-canonical *procuratio*. The *lettres d’offices* received by ordinary judges followed indeed the model of the *instrumentum* of a procuration in which the procurator is designated by name and the object and duration of his mandate are defined (“De la représentation à la déposition du roi : Les parlementaires «prêtres de la justice»,” 100).

<sup>146</sup> Robert Besnier, *La représentation successorale en droit normand*, Paris: Libr. du ‘Recueil Sirey’, 1929.

<sup>147</sup> Krynen, “De la représentation à la déposition du roi : Les parlementaires «prêtres de la justice»,” 101.

<sup>148</sup> See note 130 above.

political realm, precisely to found the judicial authority of the Parlement.<sup>149</sup> The Parlement was indeed explicitly said to “represent” the king in the earliest legislative texts regulating its organization.<sup>150</sup>

### **The Parlement as corps: the organicist theory of representation.**

From the very beginning of the existence of the court as an institution distinct from the council, the use of this concept to formulate the particular relation between the king and his Parlement drew not only on the legal mechanism of the *jus repraesentationis*, as it had been defined in private law, but on the much older etymological and literal meaning of *repraesentare*, “to make present,” “to be the living image of.” This literal understanding of the concept of representation of the king was critical for it founded the *parlementaire* self-understanding of their relation to the prince, of their existence as a *corps*, and of the significance of their exercise of sovereign justice. In other words, the idea that the *conseillers* formed a *corps* and that this *corps* represented the mystical body of the king<sup>151</sup> was at the core of a *parlementaire* ethos.

In order to get at this ethos and at the portrait of the ideal *conseiller* it entailed, it is necessary first to explain this idea in some detail, for it is key to understanding how and why the *parlementaires* appropriated some of the features of the ideal of the king-as-judge but also departed from that model in significant ways. What I would call the organicist theory of

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<sup>149</sup> This was retrospectively an ironical move, for if it was originally meant to assert the authority of a court which, at the time—late thirteenth- early fourteenth-century—was one of the king’s main instruments to effectively extend his own authority in practice (for instance, by systematizing the appeal procedure), the theory of representation would eventually be used as we will see to resist the king and even, in the eighteenth century to undermine his authority.

<sup>150</sup> Ordonnances of November 17, 1318 (*Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, ed. François-André Isambert, Decrusy, and Alphonse-Honoré Taillandier, 29 vols., Paris: Belin-Leprieur, 1821-33, III, 195), December 1344 (*ibid.*, IV, 495), March 11, 1345 (*ibid.*, IV, 513).

<sup>151</sup> Kantorowicz, *The king’s two bodies; a study in mediaeval political theology*, 193-272.

representation of the king is ubiquitous in *parlementaire* discourse—in *remonstrances*, in the published works of the *conseillers*, in lawyers' speeches pronounced in the court—from the thirteenth to the eighteenth century. This organicist theory certainly underlay the 1489 *remonstrances* quoted above which made clear that the king was the "head" of the Parlement, not simply as its leader, but also, as the idea was to be understood literally within the context of a corporal metaphor, as the head of the "mystical body" of the Parlement, the *corps* that the *conseillers* formed as its members. Thus, the court was a *corps*, its judges were its "members" in a quasi-literal sense, and in this quality were part of the body of king.

This last point is illustrated most clearly in practice by the fact that physical attacks against members of this *corps* were legally treated as cases of *lèse-majesté*, for they were considered as attacks against the body of the king. Jean Le Coq, a renowned fourteenth-century lawyer put it most clearly in a passage of his *Quaestiones*. Commenting on the stabbing of a *conseiller* by a litigant in 1393, he approved of the treatment of the crime as a case of *lèse-majesté* "because the lords of the Parlement, especially in the exercise of their office, are part of the body of the king (...), and consequently, it was as if the king himself had been killed."<sup>152</sup> Beyond exceptional occurrences such as the stabbing of a *conseiller*, the organicist theory operated in fact on a day-to-day basis, for each one of the *arrêts* of the court was "supposed to be pronounced," as Bernard de La Roche-Flavin put it in the early seventeenth century, "by the mouth of the king."<sup>153</sup> La Roche-Flavin elaborated: "in fact, the formal *arrêts* [*arrêts en forme*] always begin with the person and quality of the king and thus the sovereign courts make the king speaks in their *arrêts*."<sup>154</sup> This idea was not new, for it went back to the first years of existence of the Parlement as a judicial court distinct from the royal council and actually preceded the explicit

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<sup>152</sup> Quoted in Françoise Autrand, "Offices et officiers royaux en France sous Charles VI," *Revue Historique* 242 (1969).

<sup>153</sup> "Les Arrests sont censez comme prononcez de la bouche du Roy." La Roche-Flavin, *Treze livres des Parlemens de France*, XIII, ch. 61, 824.

<sup>154</sup> "De faict les Arrests en forme commencent tousjours par la personne, et qualité du Roy, si que les Cours Souveraines font parler les Roys en leurs Arrests." *ibid.*

use of the legal notion of representation in royal legislation. Indeed, when royal laws started using explicitly the notion of representation in the early fourteenth century, they merely reformulated in legal terms the *parlementaire* ventriloquism that had already started to take place in practice to overcome a problem inherent to the very existence of this court. Jacques Krynen aptly summarized this problem: “when under the reign of saint Louis the *curia parlamento* began to regularly hold sessions in the absence of the king, the distance from the person of the king raised a juridical issue (...): how does one turn a judgment decided without the king into a sovereign sentence?”<sup>155</sup> The problem was quickly solved by the use of the royal voice in the text of the *arrêts* (“It has been judged by *our* court...”) <sup>156</sup> and this practical solution prefigured the legal fiction of representation that would retroactively justify this *parlementaire* ventriloquism. <sup>157</sup>

This organicist understanding that anticipated and to some extent founded the notion of representation, had a profound impact on the ways in which the *conseiller* understood the origin, nature, and purpose of their judicial power. As for the origins of this power, the organicist theory of representation allowed the Parlement to claim that, like the king, it found its authority and power in its own *corps*. Because the *conseillers* were part of the mystical body of the king, because, as the king himself put it in the fourteenth century, “they properly represent[ed] in the eyes of the people the highness of [his] majesty,”<sup>158</sup> they felt entitled to appropriate royal theories to justify their own judicial power. And indeed, in the fourteenth and fifteenth centuries, the idea that the Parlement itself was “origin”<sup>159</sup> of “fountain of justice”<sup>160</sup> appeared increasingly in royal *ordonnances*.

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<sup>155</sup> Krynen, “De la représentation à la dépossession du roi : Les parlementaires «prêtres de la justice»,” 97.

<sup>156</sup> The formula “*Judicatum fuit per nostra curia*” first appeared in 1276 (*ibid.*).

<sup>157</sup> I will come back later to this “ventriloquism,” when I reflect on the practice of *arrêter* and on the idea that the Parlement “made the king speak in its *arrêt*.” See p. 363 below.

<sup>158</sup> Françoise Autrand, *Naissance d'un grand corps de l'Etat. Les gens du Parlement de Paris, 1345-1454*, Paris: Université Paris I Panthéon Sorbonne, 1981, 136.

<sup>159</sup> “the Court is the mirror and origin of the entire justice of our kingdom” (August 15, 1389. *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, VI, 681).

## **Priests, Knights, Senators: metaphors of *parlementaire* self-representations.**

The organicist underpinnings of the representation theory also introduced, however, a significant difference in nature between the judicial power of the king and that of the Parlement. Indeed, while the king found his judicial power in himself, as an individual, the court only found its own power in itself as a *corps*, that is collectively, as the sum of members without which this *corps* did not exist. Thus, while the court could claim to represent the king, it was much more difficult to claim that the Parlement, as a collection of individual *conseillers*, was the anointed vicar of God on earth or the supreme suzerain of a feudal hierarchy that antedated it. Yet, as the 1489 *remontrances* made clear, the “mystical *corps*” of the Parlement was in the image of the sacred supreme suzerain it represented, formed of members who were “mixed clerics and lays.” In order to appropriate the two essential features of kingship that founded sovereign justice—the sacred nature of kingship and the king’s preeminent position in the political hierarchy of the kingdom—the *conseillers* developed their own repertoire of political images. These images, those of the *conseillers* as “priests of justice,” as “knights of a legal militia,” and above all as “senators,” were the intellectual contraptions that allowed the magistrates to translate the notion of representation at their own individual level. These images are of particular interest to us here for they were the normative metaphors that shaped the portrait of the ideal *conseiller*.

The image of the “judge as priest” and that of the “judge as knight” were neither *parlementaire* inventions nor exclusively applied to the *conseillers* in the Parlement. Both images were products of the reasoning jurists had developed in the twelfth and thirteenth century in order to carve for themselves a new political, social and cultural position, beside the two existing elites, clerical and aristocratic. The *conseillers* in the Parlement quickly appropriated the two sets of images and theories precisely because they helped them cast themselves as both priests and

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<sup>160</sup> “our supreme and capital court is the fountain and origin of justice in our entire kingdom” (November 13, 1403. *Ibid.*, VII, 71).

knights, thus mirroring a duality which, as we have seen, was inherent to the figure of the king-as-judge they claimed to represent. Both faces of this medieval juristic self-portrait—priest and knight—were developed independently from one another, on the basis of distinct elements found in Roman law and history. The *conseillers* picked on those two images, precisely because they appealed to a different intellectual and cultural tradition, sufficiently distinct from contemporary theories of kingship to allow them to develop analogies between themselves as individuals and the king-as-judge, and yet, compatible enough with current theories of royal power to preserve the principle of the collective representation of the king that the organicist theory entailed.

Despite Baldus's intimation that judges ought to be considered—and consider themselves—not as “lords” but as simple “administrators,” professional judges who held a degree in law demanded to be called “lords” [*domini*]. They did so not because of the jurisdiction they held, but on account of a self-representation of their social position, which they considered to be on par with that of the existing elites, both secular and religious.<sup>161</sup> This claim happened to fit neatly with contemporary royal claims to a legislative power that was presented, as we have already seen, as the counterpart of the king's military might. Indeed, it seemed natural enough to argue that the Roman idea that majesty “must needs be not only decorated with arms, but also armed with laws,” not only justified the legislative power of the warrior-king but also supported the claim that, as there was a *militia armata* [militia in arms] of chivalry, there was a *militia legum* [militia of laws] and that jurists were its knights. While this claim to a legal knighthood was based on a rather loose interpretation of passages of Roman law,<sup>162</sup> it was put forward and repeated by some of the most famous jurists of the late twelfth and early thirteenth century, Placentinus, Azo, Accursius, among others.<sup>163</sup>

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<sup>161</sup> Kantorowicz, "Kingship under the impact of jurisprudence," 153.

<sup>162</sup> The claim was indeed supported on the one hand by a reading of the Roman *miles* (soldier) as equivalent to the medieval *miles* (knight) and on the other hand by a rather generous expansion of references to the Roman *advocatus* (lawyer) as encompassing all medieval *jurisperiti* (legal experts). See *ibid.*, 154.

<sup>163</sup> *Ibid.*

The jurists' claim to being "priests of justice" was based on different ideas and passages found in Roman law, but the method they employed to justify this claim—combining loose analogies and lexical interpretations—was very similar to the one used to support the idea of a legal knighthood. In the same way jurists were knights because laws were swords, they were also priests because laws were "things holy." Both this expression and the analogy to priesthood were used for instance by Accursius in his *Glossa ordinaria* :

Just as the priests minister and confection things holy, so do we, since the laws are most sacred ... And just as the priest, when imposing penitence, renders to each one what is his right, so do we when we judge.<sup>164</sup>

Thus, in order to cast themselves as "priests," jurists did not attempt to Christianize Roman justice and law. Indeed, they presented Christianity not as a source from which the sacredness of laws was derived, but rather as one of the two terms of an analogy between two kinds of sacredness, one religious and the other secular. This analogy was not the prerogative of renowned jurists such as Accursius, for it pervaded the entire field of legal studies. The anonymous author of the rubric "*De sacris et sacratis*" in a late twelfth-century legal dictionary for instance, articulated it even more clearly and drew more explicit conclusions for the existence of two types of sacredness:

There is one thing holy which is human, such as the laws; and there is another thing holy which is divine, such as things pertaining to the Church. And among the priests, some are divine priests, such as presbyters; others are human priests, such as magistrates, who are called priests because they dispense things holy, that is, laws.<sup>165</sup>

Clearly then, instead of drawing the sacredness of their function directly from the spiritual realm, province of the theologians, twelfth-century jurists behaved as quasi-

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<sup>164</sup> *Glos.ordin.* on *D.1,1,1*, v. *Sacerdotes*, cited in *The king's two bodies; a study in mediaeval political theology*, 121.

<sup>165</sup> *Petri Exceptionum appendices*, l. 95. Ed. Fitting, *Jurist Schriften*, 164.

anthropologists, uncovering the sacredness of the temporal realm and casting themselves in the process as its priests.

For all their reasoning on the distinct sacredness of their field however, jurists did not try and most likely did not even intend to place human laws and justice outside of the realm of Christian faith. Quite on the contrary, the contemporary portrait of the ideal magistrate is that of a judge who, in his sacred role of guardian of secular laws, was to be guided by his Christian faith, the two elements were perfectly compatible. This interplay between Christian faith and the “secular sacredness” of royal justice is still clearly seen in the early modern period in the oath that the judges in the Parlement took at the beginning of each judicial year. In the early seventeenth century, Bernard de La Roche-Flavin tells us, reporting the words of Président de Pibrac addressing his colleagues in a plenary opening session of the parlement de Toulouse, “the formula we use in our oath is abbreviated [*compendieuse*] : in a few words it obliges us to much, for we swear to guard the royal laws [*Ordonnances*].”<sup>166</sup> By “much” [*beaucoup*], Pibrac pointed to the same sacredness of human laws that twelfth-century jurists had emphasized, for this duty of guarding the laws was, in his words, a “good and sacred thing” (“*chose bonne et sainte*”). God was called as a witness to the judges’ oath, not because of the sacredness of their mission—for that sacredness was founded in “human things” as twelfth-century jurists had put it—, but because as “in any instance we [i.e. “we judges”, for Pibrac was addressing the court] ask for his favor and his assistance without which we cannot do anything.”<sup>167</sup>

Thus, the judge who failed to keep this oath would not only incur the divine punishment for perjury, but this punishment “would be doubled because this profane mockery [i.e. mockery of the duty to guard the laws] is full of impiety.”<sup>168</sup> The idea that a mockery of something profane could be full of impiety referred to this now older idea of the sacredness of human justice. Yet,

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<sup>166</sup> “*La formule (...) dont nous usons en nostre serment est compendieuse : en peu de parolles elle nous oblige à beaucoup.*” La Roche-Flavin, *Treize livres des Parlemens de France*, 327.

<sup>167</sup> “*nous invoquons sa faveur et son ayde, sans laquelle nous ne pouvons rien*” *ibid.*

<sup>168</sup> “*laquelle [peine] redoubleroit par ceste moquerie proffane pleine d’impiété.*” *ibid.*

the idea that God would punish this mockery twice as harshly, intimated that this “secular sacredness” was not disconnected from but encompassed by Christian faith and religion, if only indirectly because the *conseillers* represented a king who was source of law and justice as well as a sacred Christian figure.

Thus, as they had done to prove their nobility, jurists used a strategy that consisted in trying to not simply incorporate themselves into an existing ruling group, nobility or clergy, but rather to claim an affiliation with both of them while carving a new social and political space for a group of their own. The two images were especially appealing to the *conseillers* in the Parlement who were supposed to “represent” the person of the king, for they provided the basis to draw a dual self-portrait—half warrior, half cleric—that was reminiscent of, not identical to that of the king.<sup>169</sup>

The *parlementaires* however, did not simply draw on these medieval metaphors that could apply to royal judges in general, they resorted to a metaphor of their own, that of the *conseiller* as senator, that aptly fused together priesthood and knighthood into a model that was considered proper and exclusive to the magistrates of the sovereign courts, especially in the South of France.<sup>170</sup> Drawing parallels between contemporary royal institutions and the institutions of

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<sup>169</sup> One could even say that, on the contrary, it is the position of preeminence of the king which, to a certain extent, was redefined as a consequence of the jurists’ self-serving remapping of the social, political and cultural landscape. We have seen how the idea that laws were weapons to restore peace supported the idea that the king’s role as a lawmaker was a counterpart to his role as a warrior. It is easy to see how the existence of the legal militia that the jurists claimed to form further supported this argument. Similarly, the idea of a sacredness that was not derived directly from God, but was present in “things human,” and primarily in human laws, meant that the king, both as supreme judge and law-maker, could claim a sacredness that did not require the anointment nor, more generally, the involvement of the Church. This is, in fact, what happened later, for the reasoning first developed by twelfth- and thirteenth-century jurists in support of their self-identification as lords and priests would feed the reflection of late-medieval and early-modern jurists on royal sovereignty (for example Jean Bodin or Guillaume Budé).

<sup>170</sup> A few southern jurists were cautious toward the analogy (Jean Coras, a *conseiller* of the court even rejecting it). In the north, some jurists refused the political analogy (for instance Guy Coquille), others (for instance Jean Bodin) limited its use to the royal council. (see Jacques Krynen, “Senatores Tolosani.” La signification d’une métaphore,” in *Actes du colloque international de Toulouse, mai 2004, réunis par Nathalie Dauvois*, Paris: Honoré Champion, 2006, 53).

ancient Rome was nothing original,<sup>171</sup> but the use of the senatorial metaphor in the case of the Parlement was more than a simple comparison. It was a “fundamental assimilation,”<sup>172</sup> for it incorporated both the religious and aristocratic analogies into the figure of the Roman senator, that is, a figure who was both a member of an aristocracy, and a member of a *corps*, the Senate, that had, in its own time and place, claims to the exercise of sovereign power. Although the senatorial reference resonated clearly and specifically with the *conseillers*’ self-understanding, they did not create it *ex nihilo*, for they were not the first ones to make use of it.<sup>173</sup> Late medieval authors indeed recommended that the king’s adviser imitate the qualities of the Roman people: “the love of virtue, the passion of honor, the cult of common good that had underlain the solidity of the [Roman] state.”<sup>174</sup> The model offered to the royal *conseiller* in general was that of the Roman official, especially that of the senator who divested himself from “[his] personal affections and desires to put on the common ones, that is, for the common good, without bias.”<sup>175</sup> In their own quality of “*conseillers*”<sup>176</sup> the magistrates in the Parlement certainly did not shy away from picking on this senatorial model. The *conseillers* in the parlement de Toulouse were

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<sup>171</sup> City magistrates, *baillis*, royal treasurers were respectively compared to municipal decurions, governors and quaestors. See Katia Weidenfeld, "Le modèle romain dans la construction d'un droit public médiéval. Assimilations et distinctions fondamentales devant la justice aux XIVe et XVe siècles," *Revue historique de droit français et étranger* 81-4 (2003): 479-502.

<sup>172</sup> Jacques Krynen, "Une assimilation fondamentale. Le Parlement "Sénat de France"," in *A Ennio Cortese*, Roma: Il cigno Galileo Galilei, 2001.

<sup>173</sup> The equation between the Roman Senate and the Sacred College of cardinals was already commonplace among thirteenth-century canonists (cf. Ugo Petronio, "I senati giudiziari," in *Il Senato nella storia*, Roma: Istituto poligrafico e zecca dello Stato, 1997, 376-7).

<sup>174</sup> Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440) : étude de la littérature politique du temps*, 96.

<sup>175</sup> "Ils laissoient leurs propres affections et voutentés et prenoient les communes, c'est-à-dire pour le bien commun, sans partialité." Jean Gerson, "Rex in sempiternum vive, discours au roi contre Jean Petit, 4 septembre 1413," in *Oeuvres complètes*, ed. Mgr. Glorieux, 1018.

<sup>176</sup> While the use of the title of *conseiller* was certainly not the exclusive prerogative of the magistrates in the Parlements—judges in lower courts as well as agents in other royal administrations used this title as well—judges in the sovereign courts had a unique claim to belonging to an institution that was organically born out of the *conseil du roi*.

particularly keen on their self-representation as “senators,”<sup>177</sup> not solely on account of the appeal of the model of Roman virtue it carried,<sup>178</sup> but also and more importantly because the Roman senate as an institution seemed to offer striking parallels with the self-understanding the *parlementaires* had of their own *corps*.

As early as the twelfth century, jurists had developed an organicist interpretation of the administrative structure of the Roman Empire, considered as a body of which the Prince was the head and the senators formed the *magna pars*, the main member.<sup>179</sup> Early modern jurists, for instance Charles de Grassaille, did not fail to pick on this interpretation to draw a parallel between the Parlement and the Roman Senate, both part of the body of the prince (“*pars corporis principis*”).<sup>180</sup> Combined with the idea that the Roman senators worked for the salvation of the *respublica*—an idea explicitly developed, for instance, by Nicolas Bertrand—the senatorial metaphor helped to further specify how the Parlement participated of the mystical body of the king and to what effect: the *conseillers*, like the Roman senators, were “the soul of the Prince” as Charles de Grassaille put it, or as La Roche-Flavin later intimated, “the soul, reason, and intelligence of a republic.”<sup>181</sup> This analogy did more than help identify more precisely the location of the Parlement within the mystical body of the king, for the soul was, not any part of the body, but its *magna pars*, the main part which, attached to the physical body, transcended it. As the soul was both instrument and object of salvation, the analogy was meant to stake out the

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<sup>177</sup> *Senatus tholosanus* or *Senatus Tolosae* are standard latin expressions used to designate the court. The *parlementaires* themselves commonly went by the titles *consiliarius in curia Senatus Tholosae*, *senator in tolosatum curia*, or, more simply, *senator tolosanus*. The senatorial metaphor applied to the parlement de Toulouse was introduced in the *Repetitio* (published 1523) of Guillaume Benoît, *conseiller* in Toulouse in the fifteenth century (see Patrick Arabeyre, *Les idées politiques à Toulouse à la veille de la Réforme. Recherches autour de l'oeuvre de Guillaume Benoît (1455-1516)*, Toulouse: Presses de l'Université des sciences sociales de Toulouse, 2003, 437-45), and later relayed and expanded in the *Regalium Franciae libri duo* (1539) of Charles de Grassailles, a graduate from the Toulouse law school. See Krynen, "Une assimilation fondamentale. Le Parlement "Sénat de France", " and ""Senatores Tolosani." La signification d'une métaphore," .

<sup>178</sup> See below p. 79.

<sup>179</sup> Krynen, ""Senatores Tolosani." La signification d'une métaphore," 44-5.

<sup>180</sup> *Ibid.*, 50-1.

<sup>181</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 1-2.

Parlement's claims to an essential and central function within the mystical body of the king, hence the body politic at large.

Indeed, if we follow further the logic implied in this image of the Parlement as soul of the king, the senatorial metaphor did more than just give ancient authority to a familiar organicist theory: it provided an intellectual tradition and a new repertoire of tropes and images that could be used to formulate new theories on the function of the court. Nicolas Bertrand clearly laid out the audacious claim that his observation that the Roman senate worked for the salvation of the *respublica* was meant to support: similarly, the "senators" in the parlement de Toulouse had the authority and an "evident duty" to "rule the world."<sup>182</sup> This combination of rights and duties that stemmed from the exercise of sovereign justice was certainly reminiscent of the figure of the king-as-judge as it appeared in the oath of the coronation.<sup>183</sup> The *conseillers*, however, instead of referring to the sacrality of kingship, turned again to the senatorial exemple to formulate this point. In this case, the image that was mobilized was that of the senators as "fathers" of the Roman people, an analogy founded on the idea that the Senate was entrusted with the legal guardianship of the *respublica*.<sup>184</sup> As in the case of the notion of "representation," a legal concept—guardianship—and the senatorial metaphor were the instruments of a process of both identification with and distancing from the king. Identification, for Louis XII—a king whose reign (1498-1515) was still idealized as a golden age at the beginning of the seventeenth century—had been nicknamed "*père du peuple*" on account of the supposedly moderate character of his government.<sup>185</sup> This moderation suited the ideal of a royal power exercised collegially and constrained at the top, in gestation at the time, for instance in the thought of Charles de Grassaille

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<sup>182</sup> "*Verum (...) in tholosano parlamento tanti sunt senatores (...) ad universum regendi orbem apertissimi.*" (Bertrand, "*Opusculum de magnifica parlamenti tholosani institutione atque noveissima illius roboratione sive confirmatione*," fol. 62, col. 2).

<sup>183</sup> See p. 37 above.

<sup>184</sup> Petronio, "I senati giudiziari," 370-85, *ibid.*

<sup>185</sup> See Laurent Avezou, "Louis XII, père du peuple : grandeur et décadence d'un mythe politique, du XVI<sup>e</sup> au XIX<sup>e</sup> siècle," *Revue Historique* 625 (2003): 95-125.

who entrusted this role of control to the *conseillers* of the Parlement, “senators” and “soul of the prince.”<sup>186</sup>

While the *conseillers* too called themselves “fathers of the people,” they did so not in reference to an ideal of moderation but drawing again on the senatorial tradition, this time to convey the idea of fatherly authority and duties implied by what the *parlementaires* conceived as their role and position within the body politic. Indeed, this mix of fatherly authority and duties reminiscent of the “*patres conscripti*,” bespoke the blend of severity and love that befit the salvation-driven role implied by the identification of the Parlement as the “soul” of the republic.

As it was not lost on the *conseillers* that the Roman senate was not a judicial but a legislative body, the magistrates began, in the first half of the sixteenth century to see that this role of regulation of the body politic involved not only the exercise of sovereign justice but also a control of the legislative activity of the king through the practice of remonstrance. Debates among jurists over the nature and extent of the *parlementaire* power entailed by the senatorial analogy<sup>187</sup> reveal that, in the first half of the sixteenth century, the *conseillers* had started to take the senatorial metaphor in directions that could pit them against the king. The “stormy royal sessions”<sup>188</sup> of the early 1520s in which Francis I explicitly rejected, in front of the court, the senatorial analogy<sup>189</sup> that his predecessors, most notably Louis XII, had tolerated or even encouraged,<sup>190</sup> heralded indeed the beginning of a protracted conflict between the king and the

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<sup>186</sup> Krynen, “Senatores Tolosani.” La signification d'une métaphore," 50-1.

<sup>187</sup> For Nicolas Bertrand, the *auctoritas* of the Parlement is “of a high and senatorial eminence,” Guillaume Budé validated the comparison from an institutional point of view, Robert Gaguin made its political implications clear, noting that “the authority of the Parlement (...) has always been so revered by the French that the decisions of the king himself in matters of public affairs, law and finances cannot be implemented without a decree of this Senate.” Pierre Rebuffe pushed the claim the farthest, drawing up a list of thirty-four privileges of the parlements that began: “Here are the privileges of the supreme courts. (...) First, that it is certain they can make laws.”

<sup>188</sup> Brown, *The Lit de justice : semantics, ceremonial, and the Parlement of Paris, 1300-1600*, 65.

<sup>189</sup> Arguing that the court’s *remontrances* had delayed a levee of taxes that had cost him the duchy of Milan, Francis told the court that it was “not a senate of Rome” and that its authority came from him and from him alone. (*ibid.*, 59).

<sup>190</sup> *Ibid.*, 50.

sovereign courts that would reach two peaks, in the middle of the seventeenth century during the Fronde and in the second half of the eighteenth century.

Although this early stage of what was not yet, in the sixteenth century, a full-fledged confrontation between the king and his sovereign courts is of great significance for the political history of early modern France in the long run,<sup>191</sup> what interests us here more particularly is what these new developments reveal of the *parlementaire* conception of the exercise of justice at the end of the Middle Ages. Indeed, the *parlementaire* sense of entitlement to control the production of law did not simply “grow out” of an organicist parallel with the Roman senate but stemmed from a particular understanding of the preeminence of justice over law. If the Parlements had been established not only “for the judgment of affairs and trials between private parties,” but also “for public affairs and de verification of edicts,”<sup>192</sup> these two functions were intimately linked, an idea which eighteenth-century *parlementaires* would resume and reinvigorate with great force.<sup>193</sup> The two functions, judicial and legislative, were not only connected but organized into a hierarchy in which justice had the primacy. As La Roche-Flavin put it, “laws must be interpreted [“*entendues*”] and observed as far as justice permits it,”<sup>194</sup> and even more clearly, “justice is the

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<sup>191</sup> Ironically from this *longue durée* perspective on Old Regime politics, *parlementaire* claims to legislative control were often formulated in the sixteenth century in support of royal power. Pierre Rebuffe’s catalog of *parlementaire* privileges was part of a commentary on the Concordat of Bologne that asserted the rights of the king over the pope to nominate bishops in the kingdom. Similarly, when Charles de Grassaille noted in his *Regalium Franciae libri duo* that these “senators,” “who sit side by side with the Prince, not at his feet” (Charles de Grassaille, *Regalium Franciae libri duo, jura omnia et dignitates Christianiss. Galliae regum continentes, Carolo Degrassalio, Carcassonensii, authore*, Lugduni: Prostant apud heredes Simonis Vincentii, 1538, 166) “make the kings reign” [*reges faciunt regnare*], it is not because the *conseillers* in the Parlement were independent from, and even less superior to the king, but on the contrary because, like the Roman senators, they were “part of the prince’s body” [*pars corporis principis*], the king’s “soul.”

<sup>192</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, XIII, 17, 701.

<sup>193</sup> See for instance the *remontrances* of the parlement de Paris, presented to Louis XV on November 27, 1755: “...this legislative power, inseparable from justice, or rather, which is, within our kings, nothing more than justice itself.” (“*cette puissance législative, inséparable de la justice, ou plutôt qui n’est dans nos rois que la justice même*” *Remonstrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, ed. Jules Flammermont, 3 vols., Paris: Imprimerie nationale, 1888, II, 87).

<sup>194</sup> *Treze livres des Parlemens de France*, XIII, 17, 703

end of law.”<sup>195</sup> La Roche-Flavin was neither the only *parlementaire* nor the first one to hold this opinion,<sup>196</sup> and members of the parlements were not the only ones to assert this idea: Bodin, Charondas le Caron had already developed it as part of what can be called a “constitutional thought” of the sixteenth century,<sup>197</sup> itself indebted to the idea, formulated by medieval jurists, that justice was the end and *raison d’être* of political power.<sup>198</sup>

But *parlementaire* legislative claims were not only based on theories and ideas about the preeminence of justice, they were also corroborated by an argument about the magistrates’ experience of judicial practice. Because of their daily exercise of justice, because they were in charge of the practical handling of law—what *remontrances* in the eighteenth century would call, reviving this theory, the “*manutention* of public order”—<sup>199</sup>, because through justice they accomplished, as Etienne Pasquier put it, the mission of “mediating between the king and the people,”<sup>200</sup> the *conseillers* argued that they could foresee better than anyone whether the interpretation and observation of new laws would bring about justice. The daily exercise of sovereign justice was thus the basis of a practical and technical knowledge, which, besides in-house theories of sovereignty, justified *parlementaire* control over the registration of new laws.

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<sup>195</sup> *Ibid.*, XIII, 49, 785.

<sup>196</sup> Etienne Pasquier had already formulated this idea before him (William Farr Church, *Constitutional Thought in Sixteenth-century France; a Study in the Evolution of Ideas*: Harvard University Press, 1941, 155), president Guillart had made the point in front of Francis I (P. S. Lewis, *La France à la fin du Moyen Age : la société politique*, [Paris]: Hachette, 1977, 141), president de Harlay in front of Henri III (Sarah Hanley, *Le lit de justice des rois de France. L'idéologie constitutionnelle dans la légende, le rituel et le discours*, Paris: Aubier, 1991, 207-8).

<sup>197</sup> Church, *Constitutional Thought in Sixteenth-century France; a Study in the Evolution of Ideas*, 140-3, 47.

<sup>198</sup> Krynen, "De la représentation à la dépossession du roi : Les parlementaires «prêtres de la justice»," 117.

<sup>199</sup> The "*représentation*" the premier président of the Parlement de Paris made to the king on November 27, 1755, read: "*Ce tribunal, Sire, à qui, par les lois et ordonnances du royaume appartient la manutention de l'ordre public (...)*" *Remontrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, II, 20.

<sup>200</sup> Pasquier wrote that the Parlement had a "*mission metoyenne entre le roy et le peuple.*" Quoted in Elie Barnavi and Robert Descimon, *La Sainte Ligue, le juge et la potence : l'assassinat du président Brisson (15 novembre 1591)*, Paris: Hachette, 1985, 129.

### ***Parlementaire* ethos and the portrait of the ideal *conseiller*.**

We have seen thus far how the metaphors of the judge-as-priest, of the judge-as-lord, and above all, that of the *conseiller*-as-senator—a synthesis of the first two that suited particularly well the *parlementaire* self-understanding of their *corps*—served as anchoring points for the magistrates’ formulation of their conception of the sovereign justice they exercised as both related to and distinct from that of the king. Those metaphors however, were not simply constitutive elements of a self-reflexive *parlementaire* discourse on the nature of sovereign justice, for they were located at the articulation between this particular conception of sovereign justice and the model of the ideal *conseiller* this conception entailed. Those metaphors indeed, because they invoked archetypal figures—the priest, the lord-knight, the senator—vested with specific moral traits and values, were also the constitutive elements of a *parlementaire* ethos. This ethos is an elusive object of analysis, but it is accessible through its reflection into the normative portrait of the ideal *conseiller*. This portrait was shaped and informed, like the more abstract ethos it reflected, by the wide range of moral features attached to the three archetypal figures of the priest, the lord, and the senator.

We are fortunate enough that a contemporary work, produced by an insider of the parlement de Toulouse, has already organized these features into a self-portrait of sorts of the ideal *conseiller*. Bernard de La Roche-Flavin’s *Treze livres des Parlemens de France* (1617) is of great interest and of great help to untangle the richness and variety of features which, borrowed from these three archetypes, were arranged into a new one, specific to members of the *corps* of the Parlement. “Conceived for the moral and professional edification of royal magistrates, and mainly the “young” members of the Parlement,”<sup>201</sup> La Roche-Flavin’s massive book—928 pages

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<sup>201</sup> Krynen, "De la représentation à la dépossession du roi : Les parlementaires «prêtres de la justice»," 109.

in its first, 1617, edition—is a normative work,<sup>202</sup> fraught with comparisons and parallels between those three archetypes, from which an early seventeenth century portrait of the ideal *conseiller* can be extracted.

Especially striking is the way in which La Roche-Flavin draw on these models to reframe the ideal magistrate as it was defined, very succinctly, in royal *ordonnances*. The formula, ubiquitous in royal legislation touching the matter, was that the men chosen to become “officers and ministers of justice” should be the “best-read, most experienced and of the best reputation we can find in our kingdom.”<sup>203</sup> Under La Roche-Flavin’s pen, those elementary requirements are reframed and expanded in terms drawn from the political metaphors we are now familiar with, especially that of the *conseiller*-as-senator. The end result of his elaboration is a portrait of an ideal *conseiller* who possesses the essential Roman virtues: *pietas, gravitas, dignitas*.

La Roche-Flavin’s reframing of the requirements of royal law is best illustrated in his presentation of the requirements for the “reception” of new *conseillers*—their acceptance as new members of the corps. This particular topic is for us a first fruitful site of investigation in La Roche-Flavin’s book, for it not only gives us access to what a toulousain *président* thought the essential qualities of the ideal *conseiller* should be but it also illustrates how the moral character demanded of the magistrate was framed, sometimes forcibly, to fit a senatorial model.

By the time La Roche-Flavin wrote the *Treze livres*, a would-be *conseiller* had first to pay to obtain a royal “letter of provision” attesting that the king had “provided” him with the office. The “*pourvu*”—literally, “one who had been provided”—, however, still had to go through, a specific procedure before he could be accepted as a member of the *corps*. The two stages of this procedure, the “inquiry” (“*enquête*”) and the “exam” (“*examen*”), sought to establish whether the applicant had the qualities that the *ordonnances* prescribed. The “inquiry of

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<sup>202</sup> "A propos des "Treze Livres des Parlemens de France"," in *Les Parlements de province*, ed. Jacques Poumarède and Jack Thomas, Toulouse: FRAMESPA, 1996.

<sup>203</sup> For an exemple, see the *ordonnance* of June 1510 in *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, XI, 580.

life, mores, and religion” was meant to ascertain the reputation of the would-be *conseiller* while the two-part exam was meant to test his legal knowledge (the kind of knowledge implied by the phrase “well-read”—“*lettrez*”—in the *ordonnances*) and his experience of judicial practice (“experimented” in the *ordonnances*). This procedure was of recent origins and had been devised to address two specific sixteenth-century developments: the Reformation and the open practice of the sale of royal offices.

La Roche-Flavin acknowledged his preference for the former, medieval mode of recruitment through *parlementaire* cooptation and he recognized explicitly that the inquiry was intended to ascertain the catholicity of the applicant. He also acknowledged that the examination was meant to prevent the “ignorant” who had bought his office to become *conseiller*. All those acknowledgments are contained in a single paragraph,<sup>204</sup> much shorter than his extensive catalog of ancient parallels to the practice of the inquiry<sup>205</sup> and his attempt to describe this procedure as an appropriate way of making sure that the applicant to the office of *conseiller* possessed the moral qualities necessary for the exercise of his office. Specifically, the moral qualities that the “inquiry” sought to identify fall under the rubric of the Roman virtue of *pietas*, a concept best translated by the idea of devotion or duty to both one’s god(s) and one’s *familias* (another idiosyncratic Roman concept that finds a close early modern equivalent in the wide group designated by the contemporary expression “parents, friends and *affins*”<sup>206</sup>).

Although La Roche-Flavin described Calvinism as a “damnable” “contagion,” he never pointed out specifically any fundamental incompatibility between the reformed faith and the

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<sup>204</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 340.

<sup>205</sup> . In doing so, La Roche-Flavin did not really innovate, for others had long before him put forward the Roman method of recruitment of public officials as a model to be followed in their own time. Christine de Pisan, for instance, already noted two centuries earlier that the Romans, in order to select “the worthiest and wisest”<sup>10</sup> be their public officials and make sure they were not corrupted by “vices and bad morals,” (Pisan, *Livre de la Paix*, II, 1, fol. 40) proceeded by “good inquiry” [*bonne enquete*] (*ibid.*, I, 13, fol. 23).

<sup>206</sup> See Françoise Autrand, “Tous parens, amis et affins’: le groupe familial dans le milieu de robe parisien au XV<sup>e</sup> siècle,” ed. Philippe Contamine, Thierry Dutour, and Bernard Schnerb, Paris: Presses de l’Université Paris-Sorbonne, 1993.

exercise of the office of *conseiller*. Under his pen, the purpose of the inquiry into the applicant's faith becomes a way of ascertaining less his religious orthodoxy than his religious devotion. This particular reframing of the purpose of the inquiry is corroborated throughout La Roche-Flavin's work by the idea that, after the model of the Roman public official, the *conseiller's* religiosity plays a functional role in the exercise of his judicial office. I have already mentioned above how the oath the *conseillers* took at the beginning of each yearly session of the court pointed to the interplay between the secular sacredness of the *conseiller's* duty to guard royal laws ("things holy") and a religious faith without which none of the duties of the *conseiller* could be properly carried out. This faith was specifically Christian but for La Roche-Flavin, religion in a more general sense was meant to inspire the ideal judge in the day-to-day exercise of his office. He noted that each daily session began with a mass in the chapel of the court, "after the example of the Romans, (...) who were so religious that their Senate could not convene nor decide on anything anywhere else than in a place consecrated and dedicated by their augurs (...) and without first praying and sacrificing to their gods."<sup>207</sup> Likewise, La Roche-Flavin saw Mass as a "very holy and precious sacrifice," a purifying ritual, a "marvelous antidote" that "prepares [the *conseiller's*'] conscience."<sup>208</sup> What prepared the judge's conscience was not, in La Roche-Flavin's mind, the commemoration of the sacrifice of Christ on the cross, but "the sacrifice of Mass"<sup>209</sup> itself, intended to obtain inspiration from the Holy Spirit whose name "must be invoked,

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<sup>207</sup> "Pour la celebration desquelles Messes, il y a en tous les Palais et Parlemens de France des chapelles consacrées, à l'exemple des Romains : lesquels estoient si religieux, que leur Senat ne se pouvoit assembler ny rien resouldre, sinon en un lieu consacré et dedié par leurs Augures (...) les Grecs et Romains ont eu ceste bonne et loüable coustume de ne rien faire sans prealables prieres et sacrifices à leurs Dieux (...)." La Roche-Flavin, *Treze livres des Parlemens de France*, 422-3.

<sup>208</sup> "(...) la cour assiste à la celebration du tres-sainct et precieux sacrifice (...). Quoy faict, et apres avoir prepare nos consciences par cest antidote merueilleux (...)" *ibid.*, V, 3, 321.

<sup>209</sup> *Ibid.*, VIII, 4, 423.

especially in matters of justice,” for it “purifies the air” and “his wings (...) always feather [the] actions [of the just man].”<sup>210</sup>

Thus, this particular relation of the *conseiller* to God in which the Holy Spirit is called upon to inspire the magistrate in his actions as a judge, closely resembles the relation between God and the model of the king-as-judge embodied by Louis IX, who heard cases after mass or declared in the trial of Enguerran de Couci, to “know well what God’s will was in this case.” In fact, La Roche-Flavin, refers explicitly to Louis IX on this point, noting that “Saint Louis had the *Sainte Chapelle* built at the entrance of the *Palais* in Paris so that (...) those whom he had commissioned to distribute justice, and himself first, could go there to invoke the Holy Spirit.”<sup>211</sup> In another passage, it is clearly the exercise of sovereign justice, and explicitly the notion that the Parlement “represents” the king, that grounds the parallel between the king and the acting *conseiller*, for both possessed a status of exception in religious matters. Noting that “the kings of France have obtained from the Popes this privilege that they cannot excommunicate them (...) this privilege has been extended to their Parlements who represent the king in the exercise of sovereign justice.”<sup>212</sup> This point not only highlights a practical application of the notion of representation, it also suggests that, while the Holy Spirit was to inspire the *conseiller* in the exercise of his “sacred” duty, the secular sacredness of sovereign justice seems to take precedence over the religious sacredness of Christianity when the two comes into tension. Even the *conseiller*-bishop was expected to abide by this hierarchy on the very moment of his reception in the *corps* of the Parlement, taking the oath “to keep the *ordonnances* of the king, the *arrêts* and

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<sup>210</sup>“*Le soleil levé ne purge l’air si sommairement et ne l’esclaircit si vivement, comme le fait l’esprit de Dieu, qui est invoqué. L’homme juste, qui a les aïles du S. Esprit, tousjours elles l’accompagnent, et tousjours le portent, et tousjours emplument ses actions. Nous ne devons jamais faillir de l’invoquer, principalement es fonctions de la justice.*” *Ibid.*, V, 9, 325.

<sup>211</sup> “*Saint Louis fit edifier la Sainte Chappelle à l’entrée du Palais à Paris, pour (...) ceux qu’il commettoit pour la rendre [i.e. justice], et luy mesme le premier, alloient invoquer le S. Esprit.*” *ibid.*

<sup>212</sup> “*Comme les Roys de France ont obtenu ce Privilege des Papes de ne pouvoir estre par eux excommuniés (...) ce privilege a esté estendu à leurs Parlemens qui representent le Roy en la justice souveraine (...).*” *Ibid.*, X, 4, 590.

rulings [*“règlements”*] of the court” on his knees, a kneeling otherwise strictly reserved for God.<sup>213</sup>

Thus, the quality that the “inquiry of religion” attempted to ascertain, according to La Roche-Flavin, was not only the candidate’s catholicity—that is, what the royal *ordonnances* had originally meant the inquiry to establish— but more importantly his devotion, his aptitude to properly discharge his religious duties, that is, his religious *pietas*. This virtue was the basic requirement which, on the model of the Roman senator, reflected the ability to duly practice the sacrifice through which the judge could obtain “a clear mind and the conscience necessary to discriminate between false and true, between uprightness and injustice.”<sup>214</sup>

Similarly, La Roche-Flavin does not present the inquiry into the applicant’s “life, mores, and conversation” as a means to uncover signs and manifestations of religious heterodoxy, but rather as a search for signs, in the domestic sphere, of the moral aptitude and rectitude required to exercise a public office, that is, signs of the applicant’s “familial” *pietas*. Indeed, La Roche-Flavin’s view is that “economic science, that is the art of ruling one’s household, is one of the main parts of political science (...) also consists in applying oneself to one’s domestic and private affairs.”<sup>215</sup> As was his habit, La Roche-Flavin immediately backed this idea of a link between civic and domestic virtues with the authority of a Roman example, in this instance that of Cato

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<sup>213</sup> This formula is taken here from the reception of the bishop of Nîmes in December 1644 (Etienne de Malenfant, *Collections et remarques du Palais*, ADHG MS 147, vol. III, fol. 75) “(...) *et après s’alla mettre à genoux devant M. le premier president qui lui fit jurer sur le tableau de la passion figurée de notre seigneur qu’il tenoit en ses mains de garder les ordonnances du roi, arrêts et reglemens de la cour (...)*” For another illustration of this hierarchy, see p. 144 below for how the bishop-*conseiller* had to have his cross lowered and put behind him once he entered the *salle d’audience* of the Parlement.

<sup>214</sup> “(...) *afin d’obtenir le Saint Esprit et avoir l’esprit net, et la conscience pour discerne le faux d’avec le vray et la droicture d’avec l’injustice, jus ab injuria, aequum ab iniquo, verum a falso, purum ab impuro, rectum ab obliquo.*” La Roche-Flavin, *Treze livres des Parlemens de France*, VIII, 4, 423.

<sup>215</sup> “*Bien que la science oeconomique, c’est-à-dire l’art de bien regir un mesnage soit l’une des principales parties de la science politique (...) toutesfois elle consiste aussi, et se doibt estendre à un honneste soing de pouvoir à ses affaires domestiques et privées.*” *Ibid.*, VIII, 10, 436. See also VI, 28, 356: “they should not be promoted to the office of magistrates, those who don’t know how to govern their families and their servants, and who do not manage well their private property, and neglect their own affairs, for they are not capable of handling the public ones” (“*on ne doit promouvoir aux Offices et Magistratures ceux qui ne savent gouverner leur familles et leur domestiques et qui ne conduisent pas bien leur fortune privée, et font fort negligemment leurs affaires, pour n’estre capable de manier les publiques.*”).

“the Censor” who was known to be “as a good and wise governor of public affairs, as well as a good father.”<sup>216</sup>

This probity at home, however, and the ability to conduct one’s domestic affairs were not just signs of the integrity and capacity necessary to properly act as a public official. Indeed, the requirement of domestic virtue had a twofold justification in La Roche-Flavin’s mind, for it was also the moral requirement that founded, in the eyes of the public, the authority of the judge and of his sentences. “Having to judge of the possessions, properties, and honor of others, [the magistrates] must be free of criticism,”<sup>217</sup> for “if the subjects have a bad opinion of those who command, how will they obey? And if they don’t obey, what kind of outcome should we expect?”<sup>218</sup> In other words, the inquiry is meant to establish a set of qualities, “good judgment [“*prud’homme*”], probity, integrity of conscience, purity of hands,”<sup>219</sup> that fall under the category of the Roman *pietas*, all required because the magistrate “must be irreprehensible” in order to judge others.

This idea that this ancient model of moral perfection of the judge is the foundation of the authority of his sentences and, to a lesser extent, a requirement to exercise his judgment in judicial affairs to reach these sentences, drives much of the rest of La Roche-Flavin’s work. Turning to the acting *conseiller* indeed, La Roche-Flavin dedicates much time and attention to those exterior signs—attitudes, ways of behaving, speaking, holding one’s body, dressing—which, taken together, bespoke the virtues—Roman again—of *gravitas* and *dignitas* of the

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<sup>216</sup> “*Cato dict le Censeur, lequel avec ce qu’il fut bon et sage gouverneur de la chose publique, il fut aussi bon père de famille.*” *Ibid.*, VIII, 10, 437.

<sup>217</sup> “*ayant à juger des biens, des fortunes, de la vie, et honneur d’autrui, ils doivent estre exempts de blasme.*” *Ibid.*, VI, 2, 340.

<sup>218</sup> “*Et si les sujets ont mauvaise opinion de ceux qui commandent, comment obeiront ils? Et s’ils n’obeissent quelle yssue en peut on esperer?*” *Ibid.*, VI, 1, 339 Following another formulation: “the people and subjects of the king, having to give to the [magistrate] respect and obedience, they must be disposed to do so by his good life and reputation. Which would be a difficult thing if the magistrate bore a stain or imperfection.” (“*le peuple et sujets du Roy, estans obligez de luy rendre tout respect et obeissance, il faut que la bonne vie et reputation les y dispose. Ce qui seroit mal-aisé si le Magistrat estoit noté de quelque tasche ou imperfection.*” *Ibid.*, 340).

<sup>219</sup> *Ibid.*, VI, 3, 341.

individual *conseiller*, virtues that were supposed to both manifest and reinforce the authority of the court.

The *gravitas* sought from the *conseiller* was achieved through a self-discipline that mixed repeated calls to moderation and strict prohibitions on a range of topics. Moderation and sobriety, a quality “commendable to all, but even more to the magistrates, who must be the mirrors and examples of virtue to others,”<sup>220</sup> must be applied to drinking,<sup>221</sup> eating,<sup>222</sup> dressing,<sup>223</sup> speaking,<sup>224</sup> laughing,<sup>225</sup> to postures, gestures, and composure.<sup>226</sup> These recommendations, down to considerations on how to hold one’s hands, whether sighing is acceptable, frowning tolerable, are laced with the usual amount of ancient, preferably Roman, examples. La Roche-Flavin is more ambivalent on the question of moderation in one’s possession, for if ostentatious luxury is to be avoided—for instance with furniture, horses, coaches, jewelry—<sup>227</sup> the wealth of the magistrate is both a sign of a social standing that carries a form of personal authority, and a safeguard against the temptations of corruption. The *gravitas* thus manifested by this moderation was to be maintained through prohibitions against a number of practices and activities deemed frivolous or immoral: hunting,<sup>228</sup> gambling, attending public dances<sup>229</sup> and the “farces of comedians,”<sup>230</sup> wearing perfume, and wigs, dying one’s hair.<sup>231</sup>

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<sup>220</sup> *Ibid.*, VIII, 9, 432.

<sup>221</sup> *Ibid.*, VIII, 9, 432-3.

<sup>222</sup> *Ibid.*, VIII, 9, 433-6.

<sup>223</sup> *Ibid.*, VIII, 13, 449-59.

<sup>224</sup> *Ibid.*, VIII, 15, 460-2.

<sup>225</sup> *Ibid.*, VIII, 47, 517.

<sup>226</sup> *Ibid.*, VIII, 32, 495-8.

<sup>227</sup> *Ibid.*, VIII, 33, 498-502.

<sup>228</sup> *Ibid.*, VIII, 43, 511-3.

<sup>229</sup> *Ibid.*, VIII, 44, 513-4.

<sup>230</sup> *Ibid.*, VIII, 74, 541.

<sup>231</sup> *Ibid.*, VIII, 46, 515-7.

The *gravitas* and *dignitas* of the *conseiller* were to a certain extent related, in that both virtues were meant to function as manifestations of the majesty attached to the office of sovereign judge. Where *gravitas* can be seen as a passive reflection of this majesty (mainly achieved through restraint), *dignitas* appears to be an active assertion of this majesty (achieved through a certain lavishness of gestures and symbols). The elementary requirement for the *dignitas* of the *conseiller*, has to do with his quality of office-holder and sends us back to the virtue of *pietas*, which, as we have seen, is the basis of the reputation of the magistrate. As La Roche-Flavin put it quoting Loyseau,<sup>232</sup> “the office being defined as a *dignité*, this honorary title cannot be granted to those who have lost their honor,” that is “good fame, good opinion and reputation.”<sup>233</sup> Thus, the basic idea is that the *dignitas* of the *conseiller* should match the *dignité* of his office. Drawing on the theory of representation, royal majesty was attached to the “dignity” of the office of *conseiller*, and reframed through the senatorial metaphor, this majesty became imperial. The idea, formulated for instance by Nicolas Bertrand at the beginning of the sixteenth century, that the Parlement was of “great and senatorial *eminentia*,”<sup>234</sup> translated in very practical terms at the level of the individual *conseiller*.

The wearing of the *parlementaire* red robes (the prescriptive counterpart to the prohibition against wearing indecent clothes), best exemplifies how the idealized *conseiller* was expected to wear his *dignitas* on his sleeve, so to speak. Those judicial robes were reminiscent of the senatorial toga and the color red was understood to manifest both imperial majesty and the sacred dimension of justice. As La Roche-Flavin put it, “scarlet, was the color that Ezekiel

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<sup>232</sup> Charles Loyseau, *Cinq livres du droit des offices*, Paris: Veuve Abel L'Angelier, 1613, I, 13, 38.

<sup>233</sup> “l’office estant defini dignité, ce titre d’honneur ne peut demeurer à ceux qui n’ont plus d’honneur (...) c’est-à-dire bonne renommée et la bonne opinion et reputation de tous.” La Roche-Flavin, *Treze livres des Parlemens de France*, VI, 19, 352.

<sup>234</sup> Bertrand, “*Opusculum de magnifica parlamenti tholosani institutione atque noveissima illius roboratione sive confirmatione*,” fol. 62v.

attributed to justice and divine severity”<sup>235</sup> The function of this display was no less clear: the goal of “this majesty and gravity is to impress in the people’s minds, respect and veneration of justice.”<sup>236</sup> Thus, the virtue of *dignitas* consisted in the proper representation to others—and this word of representation can be taken in its theatrical meaning—of the majesty of the office of *conseiller*. While the wearing of the red robes was reserved for solemn occasions such as the entrance ceremony of the opening session of the Parlement, processions and lit de justice, the black robe, less solemn but which still clearly bespoke the rank, *dignité* and authority of those who wore it, was to be worn at all times, on the model of both the priest and the senator.<sup>237</sup>

The resulting normative portrait of the ideal *conseiller*, combining the virtues of *pietas*, *gravitas*, and *dignitas*, was congruent with in-house theories of *parlementaire* power. This ideal *conseiller* who demonstrated, through those virtues, that he carried his office at all times, in himself and on himself, was the individualized translation of the idea that the perpetual and sovereign *corps* he was a member of found the origin of its power in itself. Thus, what La Roche-Flavin spelled out through hundreds of pages packed with hundreds of Roman *exempla*, are the elements of a discipline that was meant to regulate the attitude, demeanor, appearance of the individual *conseiller*, thought of as exterior manifestations of the authority the royal magistrate carried within himself. In other words, the ideal *conseiller* whom this individual discipline intended to produce was conceived as a reflection of the majesty of the whole *corps*. While calling on ancient virtues associated with the Roman senator, the application of this self-discipline, the sense of the higher purpose that motivated it—to “work for the salvation of the *respublica*”—also points to both the noble and ecclesiastical dimensions of this normative portrait.

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<sup>235</sup> "escarlante, de telle couleur qui est attribué par Ezechiel à la justice et severité divine." La Roche-Flavin, *Treze livres des Parlemens de France*, V, 3, 321.

<sup>236</sup> "Et ce affin que par ceste majesté et gravité nous imprimions en l'esprit des personnes, le respect et la veneration de la justice." *ibid.*

<sup>237</sup> *Ibid.*, VIII, 11, 451.

As for the nobility of the *conseiller*, it appears in discussions of the title of *messire* or *chevalier* attributed to members of the court<sup>238</sup> which send us back to medieval jurists' self-fashioning as "knights" of a "legal militia." Arguing that the *conseillers* had, throughout history, saved the kingdom, La Roche-Flavin puts them on par with the sword nobility, and called on the now traditional arms-laws binary to draw a parallel, set in a specific historical context:

(...) we can say that our monarchy has been preserved, particularly during the disorders and civil wars that have begun in this kingdom in the year 1562, and several times before during the long wars against the English and other foreigners, and during interregna or the absence of kings, not only by the victorious arms of our brave and valorous nobility, but also by the authority, judgment and foresight of our Parlements, solid columns and flying buttresses [*arcs-boutans*] of this State [Estat].<sup>239</sup>

The argument, however, functioned as a historical illustration of a nobility of the *conseiller* that La Roche-Flavin more often derived from his favored parallel with the Roman senator and the higher purpose of the duties of sovereign judge.

Because La Roche-Flavin insisted on the sacred nature of this duty—thus following in the now long tradition of the jurists' self-fashioning as priest—, the parallels between the judicial function of the *conseiller* and that of the cleric, are more frequent under his pen. I have just mentioned above how La Roche-Flavin prescribed that *conseillers* should wear their robes, "the mark of their magistracy", not just in the *Palais*, but "through the entire city," on the model of the priests, who were not allowed to appear in public without their "sacerdotal cloth."<sup>240</sup> The analogy is present throughout the book on a much more general level, stemming from a view of the

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<sup>238</sup> *Ibid.*, II, 6-9, 46-8.

<sup>239</sup> "mesme nostre Monarchie peut dire avoir esté conservée singulièrement pendant les troubles et guerres civiles esmeues en ce Royaume puis l'année mil cinq cens soixante deux, et plusieurs fois auparavant durant les guerres longues des Anglois et autres estrangeres, et pendant les interregnes, ou absence des Rois, non seulement par les armes victorieuses de nostre brave et valeureuse noblesse, mais aussi par l'autorité, prudence, et prevoyance des Parlements, fermes colonnes et arcs-boutans de cest Estat." *Ibid.*, I, 2, 2.

<sup>240</sup> "les Presidens et Conseillers doivent porter la robe longue à la grand et large manche, amis aussi par toute la ville et ès faux-bourgs, pour la marque de leur Magistrature, ayant le Pape Leon IV faict pareil commandement aux Prestres, de ne paroistre en public et hors leurs maisons sans leurs habits sacerdotaux, de peur que les seculiers n'en recoivent du scandale et eux, peut estre, de l'injure." *ibid.*, VIII, 11, 451.

exercise of justice as a sacred activity that underlay La Roche-Flavin's contention that the *parlementaire* dignity is a sacerdotal dignity.<sup>241</sup>

A striking passage of La Roche-Flavin's book demonstrates how the sacredness of justice, the representation of *parlementaire* dignity as a sacerdotal dignity, and the normative representation of the *conseiller* as priest they entailed, underlay a particular normative representation of judicial practice as well. Elaborating on the view that "the chambers of the Parlement are altars that have been erected in the temple of Justice," La Roche-Flavin wrote,

Nothing can be more pleasant to God than a trial whose throat has been properly slit on these altars. One wishes that every hour, minute after minute we performed a massacre of trials and that we found ourselves with the blood of trials up to our knees. Judges, if they do so, should not fear to be called cruel, for in those matters, piety is cruel [*"in hac re, pietas esse crudelem"*]. We wish indeed that trials only had one head and that we could sever it in one clean gesture of our knife, so that its root would be killed forever.<sup>242</sup>

As this passage suggests, judicial practice was not simply an object that was framed by representations of the ideal *conseiller*, it was also, in and of itself, an element of the normative portrait of the magistrate. As I have mentioned earlier in this section, experience in judicial practice was a requirement vaguely defined in the *ordonnances* and scrutinized more specifically by way of an examination that preceded and conditioned the reception of the *conseiller*. La Roche-Flavin's observations on this two-part examination—the court tested first the legal knowledge and then the practical experience of the applicant—was a translation, at the level of the individual *conseiller*, of the ideal of a preeminence of justice over law that I have mentioned

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<sup>241</sup> *Ibid.*, VIII, 16, 463-4. On this point, also see the analysis of Colin Kaiser, "Les cours souveraines au XVI<sup>e</sup> siècle: morale et Contre-Réforme," *Annales. Economies, Sociétés, Civilisations*. 37 (1982).

<sup>242</sup> "[les chambres du Parlement de Paris] sont autant d'autels qu'on a dressés au temple de la Justice, sur lesquels autels on dresse ordinairement les sacrifices, on presente les holocaustes, non pas seulement au matin, mais aussi les apresdinées (...) dieu ne pouvant avoir une victime plus agreable que d'un procès bien esgorgé sur ces autels, estant à desirer qu'à chascune heure, voir de moment en moment on fit des heccatumbes de procès, et que nous fussions jusques au genoüil dans le sang des procès esgorgés. Auquel cas il ne faut que les juges craignent qu'on les appelle cruels, car in hac re, pietas este crudelem. (...) Car nous voudrions que tous les procès n'eussent qu'une teste et que d'un seul coup on la peut si bien trancher que la racine à jamais en fust esteinte et périe." La Roche-Flavin, *Treze livres des Parlemens de France*, I, 22, 40.

before.<sup>243</sup> His assessment of the examination of the *théorique* (as opposed to *pratique*),<sup>244</sup> is rather critical, for, while the examination was meant to prevent the “ignorant” to become *conseiller*, La Roche-Flavin expresses serious doubts on the usefulness of the knowledge tested in this first part of the exam. In most cases indeed, candidates who were able to “cackle like magpies”<sup>245</sup> on the passages of the law-books randomly opened in front of them, once appointed *conseiller* became silent during the deliberation on trials. La Roche-Flavin blamed this outcome on the law schools where the educational focus was on the humanities and elements of Roman law that were completely irrelevant to the practice of justice in the Parlement, disconnected as they were from the laws and legal matters actually in use in the kingdom.<sup>246</sup>

More fundamentally, La Roche-Flavin’s doubts about the usefulness of doctrine came from his view that “the true science of law is learned in the *Palais*, and more particularly at the hearings [“*ès audiences*”].”<sup>247</sup> This view is in keeping with the idea that “justice is the end of law,” a view which La Roche-Flavin reformulates in terms of day-to-day judicial practice, explaining that, because laws have a rigidity that does not suit the diversity of circumstances and situations which trials bring about, the “office” of the judge consists in “accommodating the laws to serve current affairs, rather than accommodating affairs to suit the laws.”<sup>248</sup> In fact, immediately following this observation, knowledge of the laws *per se* has altogether disappeared

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<sup>243</sup> See p. 83 above.

<sup>244</sup> La Roche-Flavin, *Treize livres des Parlemens de France*, VI, 28, 361-3.

<sup>245</sup> “*Mais le malheur est que ces respondans, ou la plus part apres avoir longuement discouru et caquetté comme des pies, des le leandemain de leur reception estans distribué et installés en leur Chambre et veans aux prises et à opiner sur le jugement des procez qui se presentent, ils demeurent muets comme de poissons, sans sçavoir presque la moindre decision ou resolution du droict practiqué et observé en France.*” *Ibid.*, VI, 28, 361.

<sup>246</sup> *Ibid.*, VI, 28, 361-2. Most of these relevant legal matters are related to private law. Among them, La Roche-Flavin quotes “contracts, pacts, transactions, stipulations, wills, legacies, substitutions, intestate successions.”

<sup>247</sup> *Ibid.*, IV, 38, 307.

<sup>248</sup> “*Il ne suffit pas, pour estre bon juge et magistrat, d’avoir beaucoup estudié et estre bien versé es loix, mais il faut sçavoir les bien accommoder et faire servir aux affaires occurans, et non accommoder les affaires à icelles.*” *Ibid.*, VIII, 56, 527-8.

from the list of qualities required of the ideal judge. The judge must be “first, gifted with a good and sound natural judgment, secondly he must be prudent, mature and without passion or any affection except for the common good and salvation, and thirdly, he must be well-versed and experimented in various types of trials.”<sup>249</sup>

Thus, experience in judicial practice is for La Roche-Flavin an essential feature of the ideal *conseiller*. In order to be a good judge, one has to study the *arrêts* of the court rather than the laws,<sup>250</sup> to have been not only a practicing lawyer but one who has “haunted the bar” (“*hanter le barreau*”),<sup>251</sup> and “attended hearings assiduously.”<sup>252</sup> As a result, La Roche-Flavin is much more favorable in his observations on the exam on practice, for which he drops his criticism of contemporary universities and jurists to go back to his usual stock of ancient models, putting forward the example of Cato of Utica, who would not assume the office of quaestor because he had not familiarized yet with all the practical aspects of the charge.<sup>253</sup>

Ultimately, when thinking of the qualities required of the ideal *conseiller*, La Roche-Flavin places the experience of the practice of justice and the possession of Roman virtues on the same level. He noted indeed, that practical experience, like the honor without which one cannot hold the office,<sup>254</sup> is a requirement of the *parlementaire* dignity. Without it, magistrates “cannot exercise their charge with dignity.”<sup>255</sup>

On the surface, it might seem that a detour via the Old Testament, ancient Rome, Saint-Denis, or the coronation of Hugues Capet, has taken us very far, in time and space, from Arnaud

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<sup>249</sup> “il faut que le juge et magistrat soit doüé en premier lieu d’un bon et sain jugement naturel, et qu’il soit en second lieu sage, meur et sans passion, ny affection aucune, fors qu’au salut et bien public ; et tiercement qu’il soit versé et expérimenté en plusieurs sortes d’affaires.” *ibid.*, VIII, 56, 528.

<sup>250</sup> *Ibid.*, VIII, 77, 542.

<sup>251</sup> *Ibid.*, IV, 39, 307-8. This was not only the opinion of La Roche-Flavin but a legal requirement: one had to have been a registered lawyer for four years before he could be received *conseiller*.

<sup>252</sup> *Ibid.*, IV, 39, 306.

<sup>253</sup> *Ibid.*, VI, 36, 372-3.

<sup>254</sup> See p. 93.

<sup>255</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, VIII, 6, 426.

du Tilh and his *amende honorable*. The theories of power, legal concepts, and political imagery that underlay, as we have seen, a specific, self-reflexive *parlementaire* discourse, also shed light however, on the meaning of this ritual and on a shared conception of the ideal of royal justice it entailed. What we have learned thus far, tracing the roots of the ideal of the king-as-judge and of *parlementaire* conceptions of their own judicial power, certainly helps elucidate why and how God, the king, “justice,” and the victims—Bertrande and Martin Guerre—were perceived to be bound together in a way that justified Arnaud’s request for forgiveness to each one of them separately and to all of them together.

God had been offended not only because, in that particular instance, Arnaud had defiled specifically the sacred institution of marriage, but because his “despicable crime” was an offense to and an attack on a divinely ordered organization of the body social, a body which, anthropomorphized not just by jurists and political theorists but in the minds of all, was in the image of God, that is, sacred and perfect. Thus, Arnaud had also committed an offense to the king, to a certain extent to “his” king Charles IX, but much more generally to the king as an abstraction, that is, to the mystical body of the king, the *dignitas regia*, in a word to a French kingship, which, God had recognized, represented him on earth, as the coronation ceremony sought to make clear. This offense to the king was in fact a betrayal, for this unique position in which God had put the king, sacred figure “at the head of the Christian people,” entailed a contract between the monarch, whose duty it was to maintain peace among the French men and women who, in exchange, owed him fidelity and thus became his subjects. Justice was both the instrument and the object of this contract, and as such was both the central duty and the main source of power attached to the royal office. Justice was an eternal principle, one of the cardinal virtues of Christianity, but also a feature of the *dignitas regia*, which, like the mystical body of the king, never died—justice never moves (“*jamais justice ne bouge*”).

Although justice thus came from the prince, the condemned, after he had already asked for forgiveness to the king, turned to his immediate judges when he next asked for forgiveness

from justice. This was more than just a logical next step in the apologetic sequence that gave its rhythm to the *amende honorable*, for a process of assimilation between the intangible, eternal principle of justice and the judges who “distributed” it was already well under way in the middle of the sixteenth century, especially in the case of *conseillers* such as Jean de Coras—Arnaud’s judge—, who had claimed with some success, that they were members of a *corps* whose perpetuity and sovereignty were in the image of justice itself. This *corps*—the Parlement, but also more generally the judicial *corps* that royal magistrates arguably formed together—was part of the *corps* of the king, and as such, occupied a particular location and function in a larger *corps*, that of the anthropomorphized body politic and social, to which all involved in the *amende honorable* were related: God as its creator, the king as its head, justice as the life principle that regulated its proper functioning, Arnaud, Bertrande, and Martin, like millions of subjects the king of France, as the hardworking members that fed and carried this *corps*. Arnaud had betrayed this *corps* he belonged to: he had scorned not only justice but some of the elementary institutions—marriage, familial piety, trust—which maintained, on a day-to-day basis, the harmony and health of peripheral regions of this body, of remote village-communities such as Artigat, whose life, far away from the head, was regulated on a daily basis without intervention from the king or the judges who “represented” him. Because he had violated some of the basic principles of this regulation, Arnaud had become a gangrenous member, a malignant element that threatened the health of the whole body.

Arnaud had to ask for forgiveness from God, the king, justice, and the members—Bertrande and Martin—that stood for the whole of this body he had endangered, because he had committed not just “a prodigious crime,” but a multi-layered parricide against all of them: against his divine author, against his earthly protector, against those who, through justice, “worked for the salvation” of the body he belonged to, and finally against this very body social of which he was both a member and the progeny. The *amende honorable* translated a conception of justice which was so entrenched in the collective imaginary of early modern France that the ritual

seemed to have that ability to transcend major shifts in the political culture of the country at the end of the Old Regime. In 1788, at a time when the desacralization of the monarchy was well under way, when a transfer of sovereignty from king to nation had already become imaginable,<sup>256</sup> when the notion of representation was undergoing a major transformation, when conceptions of the body social had started to change in radical ways, a Parisian crowd apparently still thought that the ritual of the *amende honorable* was a potent form to express their conception of justice. Having hung a sign that read “traitor to the king and the *patrie*, disturber of public peace” around the neck of a mannequin of minister Lamoignon, the crowd carried it in cart around Paris and stopped in several different places to take it down, force it on its knees, and demand that he asks for forgiveness “to God, to the king, to justice and to the Nation for the offense he had done to them.”<sup>257</sup>

Sixteenth-century *parlementaire* self-representation, was a particular, politically-loaded, reformulation of this shared and deep-seated conception of justice. Through the self-serving promotion of the idea of a distinctive secular sacredness of justice, it contributed from afar to make possible this later transformation of the conception of justice into an ideal that ended up transcending its own monarchical origins. We have seen how a number of ideas originally developed by medieval jurists—conceptions of sovereignty, the notion of representation, the metaphors of the jurist as priest and knight—have been appropriated by *parlementaires*, and how these ideas underlay a self-reflexive political discourse on the nature of the power, both judicial

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<sup>256</sup> See Chap. 5 of *Qu'est-ce que le Tiers Etat?* (1789) : “The nation exists prior to everything; it is the origin of everything. Its will is always legal. It is the law itself. Prior to the nation and above the nation there is only natural law. ... In each of its parts a constitution is not the work of a constituted power but a constituent power. ... The national will ... simply needs the reality of its existence to be legal. It is the origin of all legality. ... However a nation may will, it is enough for it to will. Every form is good, and its will is always the supreme law.”(Emmanuel Joseph Siéyès, “What is the Third Estate,” in *Political Writings: Including the Debate between Siéyès and Tom Paine in 1791*, ed. M. Sonenscher, Indianapolis and Cambridge: Hackett Publishing Co., 2003, 136-8).

<sup>257</sup> Clarisse Coulomb, “L'Heureux retour”. Fêtes parlementaires dans la France du XVIII<sup>e</sup> siècle,” *Histoire, Economie, et Société* 19-2 (2000): 210.

and legislative, of the Parlements. As La Roche-Flavin's *Treze livres des Parlements de France* illustrates, these ideas and the particular discourse they supported, also shaped a specific normative portrait of the ideal *conseiller*. Judicial practice in the sovereign courts, was not simply shaped by this portrait, for, as we have discovered as well, a normative representation of judicial practice was also an integral part of this portrait of the *parfait magistrat*.

La Roche-Flavin's use of a conditional mode of expression in the striking passage where he describes judicial practice as a religious sacrifice of trials performed by a *conseiller*-priest, ("one wishes," "we would," "if"), reminds us of the gap between these representations and the practical realities they intended to reform rather than reflect accurately. Concluding Book 8 of the *Treze livres*, La Roche-Flavin himself notes that the *parfait magistrat* does not exist, that he is an imaginary figure, an assemblage of ideal features which can be found separately in the collection of individual magistrates, but not together in any single one of them.<sup>258</sup>

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<sup>258</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, VIII, 82, 549.

**PART II:**

**THE ARCHIVE AND THE CLOCK: JUDICIAL PRACTICE IN  
ITS SPACE AND TIME**

CHAPTER 3.  
THE SPACES OF JUDICIAL PRACTICE.

**Kingdom, *ressort*, city: the imagined spaces of sovereign justice.**

I approach the French kingdom, the *ressort* (the territorial jurisdiction of the Parlement), and the city of Toulouse as “imagined spaces” because they shaped the *conseillers*’ judicial practices mostly on a conceptual level. To be sure, the material reality of those different spaces also affected the judges’ activities in practical ways. At a time when it took more than two weeks to travel from Toulouse to Paris and several days to reach the most remote parts of the *ressort*, distance affected concretely the circulation of news, information, orders, men, with direct and obvious consequences on the practice of justice. In this chapter however, I argue that those spaces—kingdom, *ressort*, city—had as much, if not a greater influence on judicial practices as imagined spaces as they had as physical spaces. Even at the local level of Toulouse, a physical space that the *conseillers* mastered more effectively than the *ressort* or the kingdom, sovereign justice was thought of as integral to the imagined city of Toulouse—that is, its imagined urban space and its imagined local community.

## *Kindgom*

As the king's procurator (*procureur général du roi*) reminded the court in 1512,<sup>259</sup> "the kingdom of France contains the whole of Gaul," an ancient territory that the magistrate then proceeded to identify—using Caesar's old definition—as a space found between "natural" frontiers: the Rhine river, the Alps, the Pyrenees.<sup>260</sup> Because the king "[was] emperor in his kingdom," the procurator continued, all the seigneuries of Gaul fell within the royal jurisdiction. In accordance with the contemporary understandings of sovereignty presented in the first two chapters and illustrated here by the *procureur général* in Toulouse, the primary imagined space of sovereign justice was the kingdom, the territory over which the French kings claimed sovereignty. This basic, quasi-tautological point raises a number of difficulties, for if sovereign justice was in theory indivisible, it was shared between, or properly speaking, exerted concurrently by several sovereign courts. In the first and second chapters, I have shown how the theory of representation helped explain that sovereign justice always remained in the hands of the king and at the same time exercised by his sovereign courts. From a territorial perspective, the difficulty seems to be further complicated by the existence of several parlements that exercised sovereign justice concurrently with the king but also with one another.<sup>261</sup> The seemingly counterintuitive idea that sovereign justice could be divided territorially between the jurisdictions of several courts of final appeal was justified by the theory that all the parlements were part of a larger entity, a "super-parlement," as Robert Palmer once called it to explain the *parlementaire* theory that came to be known as "*union des*

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<sup>259</sup> Quoted in Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 2, 221.

<sup>260</sup> This is a practical illustration, in the law court, of the famous theory of "natural frontiers," developed by late-medieval and early-modern French jurists and political thinkers and later championed (militarily) by the French kings, most notably Louis XIV at the end of the seventeenth century with his aggressive policy of the "pré carré."

<sup>261</sup> In 1550, there were seven parlements, in chronological order of their date of creation: Paris (1250s), Toulouse (1444), Grenoble (1453), Bordeaux (1462), Dijon (1477), Rouen (1499), Aix (1501). Six more were created between 1550 and 1715: Rennes (1553), Pau (1620), Dombes (1623), Metz (1633), Tournai (1668), Besançon (1676).

*classes*” in the eighteenth century.<sup>262</sup> While the “*union*” component of the theory served an ideology of *parlementaire* solidarity that emerged in the specific political context of the courts’ opposition to a number of monarchical reforms in the second half of the eighteenth century, the concept of “*classes*” was much older and arguably already in use—albeit under a different guise—at the end of the Middle Ages. This idea that each parlement was a subdivision of a larger sovereign court whose territorial jurisdiction corresponded to the kingdom as a whole, is attested in *parlementaire* theory as early as the first half of the seventeenth century.<sup>263</sup> This idea can even be traced back to a much older theory, which the kings themselves had put forward to justify the institution of new parlements, presenting them not as creations *ex nihilo* but as divisions of pre-existing sovereign courts. This was precisely the rationale that underlay the establishment of the parlement de Toulouse in 1444, presented by the king as a “dismemberment” (*démembrement*) of both the territorial jurisdiction and the *corps* of the parlement de Paris.<sup>264</sup> Thus, the imagined space of sovereign justice was always, at least in theory, not simply the territorial jurisdiction of a particular parlement but the kingdom of France as a whole. And in theory at least, the *arrêts* of each

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<sup>262</sup> “[The parlements] now claimed that they were parts of a general or super-parlement, a parlement of all France, of which the several actual parlements were simply subdivisions, or what they called “classes” in the older Latin sense of the word.” Palmer, *The age of the democratic revolution a political history of Europe and America, 1760-1800*, 94.

<sup>263</sup> A *conseiller* argued in an *assemblée générale des chambres* in 1615 that “[The Messieurs of Bordeaux] are treated as *confrères* and as part of the *corps*, and it is also true that all the courts of Parlement of France are deemed to be one Parlement, equal in power and jurisdiction.”<sup>263</sup> “*On traitoit [Messieurs de Bordeaux] comme confrères et comme tenans du corps, aussi est-il vrai que toutes les (...) cours de Parlement de France ne sont estimées qu’un Parlement, égales en leur pouvoir et leur ressort.*” Malenfant, *Collections et remarques du Palais*, I, 149. Thirty years later, in the course of a deliberation on the letters endowing François Fouquet, bishop of Agde and formerly *conseiller* in the parlement de Paris, with an office of *conseiller* in the parlement de Toulouse, a toulousain *conseiller* offered a more elaborate formulation, placed within a historical perspective : “the parlement de Paris is the first parlement of France, and that of Toulouse was erected by Philip the Fair at the same time as that of Paris, thus one could say that these two parlements fraternizing with each other are reputed to be one same parlement.” (“*le parlement de Paris est le premier parlement de France, et celui de Toulouse a été erigé par Philippe le Bel a même temps que celui de Paris, et par ainsi il se peut dire que ces deux parlemens fraternisans ensemble ne doivent être censés qu’un même parlement.*”) *Ibid.*, III, 90 (1<sup>er</sup> avril 1645).

<sup>264</sup> In his letters that founded the parlement de Toulouse, the king (Charles VII) first acknowledged the inconvenience and difficulty for his Southern subjects to plead their cases in “our city of Paris, where our supreme court of Parlement is established,” and then proceeded to establish that same court in “our city of Toulouse.” The act never distinguished the two courts because, according to the royal logic, they were in fact the same court “sitting” in two different cities. (Lettres portant institution du Parlement de Toulouse, ADHG, 1B 1899, October 11, 1443, read and published in Toulouse on June 4, 1444). From the perspective of the Parisian *parlementaires* this “dismemberment” was experienced as a “mutilation” and an humiliation (see Viala, *Le Parlement de Toulouse et l’administration royale laïque, 1420-1525 environ*, vol. 2, 281).

parlement—the sovereign act *par excellence* for only the *conseil du roi* and the parlements could call their decisions “*arrêts*”—took effect in the kingdom as a whole and their authority was mutually recognized and enforced by all sovereign courts.

The kingdom as space was imagined not just as a somewhat abstract geographical area but also as a collection of sites which, situated outside of the territorial jurisdiction of the parlement de Toulouse, occupied a special place in the mental landscape of the *conseillers*. The residence of the kings, still partly nomadic in the first half of the sixteenth century but increasingly fixed in Paris and then Versailles (1682), was an anchoring point of the *parlementaire* spatial imaginary. The toulousain *conseillers*—like their counterparts in the other provincial parlements—had an ambivalent relationship to the distant seat of the central government, for it was the location whence both their power and its limits came from. This seat was not only the throne—the literal royal seat—it was also the location of a number of organs of central government related to the exercise of sovereign justice. *Bureau des parties casuelles*, *chancellerie*, *conseil du roi*, for instance, were the locations through which the sale of the *conseillers*’ office—the core of their sovereign judicial power—was negotiated.<sup>265</sup> The magistrates could thus perceive Paris and Versailles as the source of their power, but they were also places from which conflict, threats, deprivations, and punishments came to the toulousain *conseillers*. The *conseil privé* was the place where the cases that were removed from their purview were judged,<sup>266</sup> where their *arrêts* could be quashed,<sup>267</sup> where the letters of the *premier président* reporting their resistance to the king or their breaches of discipline were sent, read, debated and sometimes led to reprimand, punishment, or disgrace. Finally, and in a similarly ambivalent way, Versailles and Paris were also central to the *conseillers*’ imaginary, for

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<sup>265</sup> See Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, , esp. 150-83.

<sup>266</sup> David Parker, "Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France," *Past and Present* 122 (1989): 56.

<sup>267</sup> Albert N. Hamscher, *The Conseil Privé and the Parlements in the Age of Louis XIV: A Study in French Absolutism*, Philadelphia: American Philosophical Society, 1987, 85.

there gravitated around the king the *grands* whose patronage was critical to *parlementaire* careers.<sup>268</sup> In the parlement de Toulouse, as in that of Rouen studied by Jonathan Dewald, “what was critical to most robe careers (...) was not loyalty to the crown but patronage from members of the great aristocracy.”<sup>269</sup>

Of course, in all those cases, it was the men who resided and acted in those places who could empower or disempower the toulousain *conseillers*, not the places themselves, be they the room where the *conseil privé* convened in the chateau de Versailles, the bureau of the Chancellerie where the *conseillers*’ letters of provision were sealed, or the Parisian *hôtel particulier* of an influential grandee. But what matters here from a spatial perspective is not so much the locations themselves but the distance, or rather the sense of distance that shaped the magistrates’ perception of these ambivalent influences on their political, judicial and social power. Because of this ambivalence, this distance was both a blessing and a curse on the magistrates.

This ambivalence of geographical distance appears most clearly in the way in which the rules of political interaction between a sovereign court and the king changed depending on how far a parlement was from the physical person of the king. For instance, when the Parlement de Paris refused to register an edict, the text of the law could be back on their desk the following day, while it would take about a month in the case of Toulouse—about two weeks for the *lettres de remontrances* to reach Paris and two additional weeks for the king’s *lettres de jussion* to come back. This precious time, a luxury that the parlement de Paris could never afford, could be used to prepare and deploy pre-emptive strategies of defense against the central government. On the other hand, when the court was in conflict with local forces—be they other judicial institutions, royal or not, or popular movements against monarchical

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<sup>268</sup> See Sharon Kettering, *Patrons, Brokers and Clients in Seventeenth-Century France*, New York and Oxford: Oxford University Press, 1986 ; *Judicial Politics and Urban Revolt in Seventeenth-Century France. The Parlement of Aix, 1639-1659*, Princeton: Princeton University Press, 1978. See also the role of the Prince de Condé in the career of Philippe Giroux, président in the parlement de Dijon, James Richard Farr, *A tale of two murders : passion and power in seventeenth-century France*, Durham: Duke University Press, 2005. See Chapter 3: “Manutentionnaires de la loi: the men behind the practices.”

<sup>269</sup> Jonathan Dewald, *The formation of a Provincial Nobility. The Magistrates of the Parlement of Rouen, 1499-1610*, Princeton: Princeton University Press, 1980, 86.

policies, especially tax policies—the *conseillers* found themselves cut off from the backing—most critically the police and military backing—of the power they represented.

Similarly, the ways in which both *conseillers* and litigants perceived the distance that separated them from the king affected their respective perception of the nature and extent of the judicial power of the magistrates. In the situation of relative spatial isolation of the court from the material and military support from the king, this perception of the power of the Toulousain *conseillers* was at the core of the court's actual authority (or lack thereof), and thus shaped the magistrates' ability to deploy their judicial practices. For most of those who lived within the territorial jurisdiction of the Parlement de Toulouse — that is, a 90 to 95% rural population who would never embark on a two-week journey to Paris—the distance from the king was immense. To them, the physical person of the king was not just symbolically but literally a distant figure, Paris and Versailles were other worlds which they knew they would never see. This perception was also a double-edged sword for the judicial authority of the magistrates. On the one hand, distance from the king could paradoxically enhance the royal pedigree of the *conseillers* in the eyes of the provincial litigants, for the magistrates probably were the closest to an incarnation of royal majesty most of them would ever get close to. On the other hand, because of this distance, those displeased with the *conseillers'* judgments could be tempted to test the court's capacity to enforce its decisions, as was the case in the context of local political struggles involving the sovereign court.<sup>270</sup>

Thus, whether we consider the kingdom as a whole or as a nexus of islands of power outside the territorial jurisdiction of the Parlement de Toulouse, the influence of this distant space on the practice of sovereign justice had two main characteristics: it was ambivalent and it was indirect. Indeed, the ambivalent influence of distance and isolation from the king rarely affected judicial practice in a direct

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<sup>270</sup> “Judicial commotions” were, however, extremely rare. Contrary to what Arlette Farge suggested in her study of public opinion in Paris in the eighteenth century (Arlette Farge, *Dire et mal dire. L'opinion publique au XVIII<sup>e</sup> siècle*, Paris: Seuil, 1992), rebellions against sentences perceived as unjust were not frequent at all. Pascal Bastien noted for instance only five rebellions against capital executions in Paris for the whole eighteenth century (Pascal Bastien, *L'exécution publique à Paris au XVIII<sup>e</sup> siècle*, Seyssel: Champ Vallon, 2006, 128). This phenomenon was restricted neither to Paris or to the eighteenth century. In his study of “scaffold rebellions,” Jean Nicolas counted only 32 judicial commotions for the whole kingdom over 125 years (1661-1789) (Jean Nicolas, *La Rébellion française. Mouvements populaires et conscience sociale, 1661-1789*, Paris: Seuil, 2002, 379-86).

way—it was the case, for instance, when a trial was removed from the purview of the court to be transferred to Paris, a rare occurrence in the history of the parlement de Toulouse. Rather, this imagined distance was a remote but permanent backdrop to the *conseillers*' conception of their practices and to the litigants' appreciation of the actual authority and power vested in those practices. To put it simply, the judges of the parlement de Toulouse appeared as both the biggest and the most isolated local players on the mental political map of early-modern Languedociens.

In this particular provincial situation, the interdependency between the practices of the *conseillers* and representations of the sovereign nature of their power was even more critical than in the Parlement de Paris. In Toulouse as in Paris, judicial practices were both an end and a means of representation of *parlementaire* power. An end, for these repeated and often ritualized representations participated in the production of the judicial and largely symbolic authority that founded the *conseillers*' practices. An instrument as well, for practicing sovereign justice meant being seen acting as sovereign judge and thus was in itself a representation and assertion of sovereign power. In the parlement de Paris too, judicial practice was both a significant goal and instrument of representations, but in the case of Toulouse, the distant and provincial situation of the court turned self-representations of sovereign power into a truly vital foundation of judicial authority.

### *Ressort*

Although the kingdom as a whole and a few sites of central government constituted important sections of the conceptual backdrop that shaped, obliquely, the practice of sovereign justice, the *ressort*—that is, the territory over which each parlement had jurisdiction—<sup>271</sup> was a more prominent spatial reference that framed the *conseillers*'s judicial practices more directly. The *ressort*, however, also remained for the most part an imagined space. While the shape of the *ressort* of the parlement de

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<sup>271</sup> One could say that, as each parlement was a *classe* of an imagined “super-parlement,” each *ressort* was a territorial subdivision of the kingdom over which each court exerted full sovereign justice.

Toulouse was delimited with great precision and was thus known to the *conseillers*, most of the space contained within its borders had to be imagined. The *ressort* of the parlement de Toulouse covered a vast stretch of Southern France, roughly equivalent to fourteen of today's departments.<sup>272</sup> In a time when traveling was much slower and much less frequent than today, even the most mobile of contemporaries—merchants, peddlers, itinerant preachers, journeymen—could only know partially or at least very indirectly this area of more than 45,000 square miles. *A fortiori*, the most assiduous *conseillers*—that is, those who were present almost every day in the *Palais* in Toulouse (as the attendance records of their chambers attest)<sup>273</sup> were even less likely to have direct knowledge of most of the places from which a significant number of their cases came.

Although each *conseiller* could certainly write down the list of the twenty-five *sénéchaussées* and maybe even a list of most of the one-hundred-and-ninety-two *sièges royaux* that fell under their jurisdiction,<sup>274</sup> most of the *ressort* remained to them an unseen space. Arguably, this nomenclature of royal jurisdictions that took the form of a list of cities where the lower royal courts resided rather than that of map of the *ressort* divided into smaller territorial jurisdictions, operated as an elementary and reassuring administrative tool, devised precisely to overcome a lack of direct knowledge of the space over which the court had judicial authority.

While some of the magistrates of the parlement de Toulouse might have visited those imagined places, to Paris, to Versailles, and while many of them came from remote corners of the *ressort*, they remained largely ignorant of the spaces and places that fell under their jurisdiction. The great majority of their judicial practices and more generally most of their actions as *conseillers*, took place within the

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<sup>272</sup> In 1462, the *sénéchaussées* of Landes, Agenais, Bazas, Périgord, Saintonge and Guyenne were taken away from the *ressort* of the parlement de Toulouse to form the *ressort* of the newly created parlement de Bordeaux, but in 1788 the *ressort* of the parlement de Toulouse was still the second in size after that of Paris and included the quasi-totality of today's départements of Haute-Garonne, Aude, Hérault, Tarn, Gard, Lozère, Ardèche, Haute-Loire, Tarn-et-Garonne, Lot, Aveyron, Gers, Hautes-Pyrénées, and Ariège. The creation of the parlement de Pau in 1620 and of the conseil souverain de Roussillon in 1660 only led to minor territorial subtractions from the *ressort* of the parlement de Toulouse.

<sup>273</sup> On the question of *parlementaire* attendance, see p. 184 below.

<sup>274</sup> See Appendix 1.

circumscribed space of the *Palais*. Only under a limited number of specific circumstances did the *conseillers* officiate outside of the *Palais*: deputations (to the king, to a grandee, to a royal official such as the governor of the province or a freshly appointed *premier président*), processions, visitations of the prisons of Toulouse three times a year (“*reddes*”), an occasional one year assignment to serve in the *Chambre de l’Edit* in Castres,<sup>275</sup> and the rather rare commissions to carry out an investigation on locations outside of Toulouse. The work that the *conseillers* did at home, in their private study, was the judicial activity that the magistrates conducted most regularly outside of the *Palais*, that is not very far from the *Palais*, for, as we will see shortly, they lived in the neighborhood and some of the *conseillers* could see the *Palais* from their window.

The *conseillers*’ “spatial ignorance” of most locations that fell under their territorial jurisdiction, was not a new phenomenon in the sixteenth and seventeenth century. A number of early-modern transformations contributed to accentuate this ignorance: the geographical widening of the magistrates’ recruitment pool meant that an increasing number of “foreigners” were brought in to administer regions unknown to them, the expansion of territorial jurisdictions (as a result of the territorial expansion of the French kingdom) meant that “foreign” regions were brought under the authority of local administrators, and the tightening and extension of the administrative network of the monarchy within pre-existing jurisdictions meant that royal agents started reaching places which, in practice, had remained blank zones on the royal jurisdictional map. The spatial ignorance of the magistrates however, predated these transformations, for, even when the royal domain was confined to the Paris region in the eleventh and twelfth centuries, it had been an administrative requirement that local royal agents—the *prévôts*—came from outside the circonscription they were sent to administer and that they be transferred to a new district

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<sup>275</sup> This *Chambre de l’Edit*, also known as *Chambre mi-partie*, was instituted by the Edict of Nantes (1598) to judge the trials of Protestants with equity. Manned equally by protestant and catholic magistrates, the court was installed in Castres (about fifty miles East of Toulouse) and was abolished by Louis XIV in 1670, just a few years ahead of the abolition of the Edict of Nantes (1685). See Stéphane Capot, *Justice et religion en Languedoc au temps de l’édit de Nantes. La chambre de l’édit de Castres (1579-1679)*, Paris: Ecole des chartes, 1998.

after a few years on the job.<sup>276</sup> Thus, the sixteenth-century *conseiller* in the parlement de Toulouse was in a similar judicial situation as that of the twelfth-century *prévôt* in that they both received a great majority of cases from places—that is, from communities with their own local privileges, customs, balance of power—they did not know.

Although this state of spatial ignorance persisted into the early-modern period, it was apprehended very differently by the sixteenth-century *conseiller*, with significant consequences on judicial practices. The change in the perception and attitude vis-à-vis this ignorance must be linked to the slow transformation of the nature of judicial truth which took place between these two time periods.<sup>277</sup> Within the context of this general transformation, the “spatial ignorance” that had been largely irrelevant to the medieval judge who operated in a primarily ethical system of truth that gave precedence to the testimony of worthy members of the local communities, became a constraint for the early-modern judge increasingly concerned with a need to establish the factual circumstances of legal cases.

Trying to understand the way in which space was imagined, and more particularly the way in which the space that remained unknown to the *parlementaires* within and outside their territorial jurisdiction was perceived, can help us understand larger trends in the transformation of judicial practice in the early-modern period. A number of judicial practices—for example inquiring, interrogating—underwent transformations that were guided by a new need to overcome ignorance—as we will see not just ignorance of space. This judicial need to overcome ignorance was itself not new. After all, it could be said that all judicial systems share as their most basic purpose the uncovering of some form of truth—but it was felt in new ways in the early-modern period as a change in the nature of judicial truth drove *parlementaire* practice away from judicial ethics and toward judicial epistemology.

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<sup>276</sup> March 23, 1302. *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, II, 773.

<sup>277</sup> To put it in general terms for now, judicial truth—that is, the truth established by judicial processes and procedures—underwent a shift in standards and in focus, transforming from an ethical system concerned with establishing the social and moral worthiness of the litigants through the testimony of co-jurors, into a system increasingly geared towards reaching the “objective” truth of a crime through knowledge practices aimed to establish “facts.”

### *Toulouse, judicial city*

Although the city of Toulouse was, in contrast, a fairly well-known space, I would like to approach it as an imagined space as well, for it is as such that the city's local space primarily shaped judicial practice in the Parlement. Toulouse can be called a judicial city: justice was one of the main local activities, it involved a large segment of the population and constituted the basis of the social standing, financial clout and political power of the top tier of the Toulousain elite. This particular situation of justice in the local space—a situation that was not confined to an imaginary level for it manifested itself physically in the stone of parlementaire *hôtels particuliers*, suburban mansions, castles, and close-by landed property—had a significant formative influence on the *conseillers*' judicial practices.

A contemporary traveler approaching Toulouse could get a sense of the local prominence of the *conseillers* well before the city walls had appeared in sight. Somewhere along one of the main roads that led to Toulouse, in that suburban area—in fact completely rural—called the *gardiage*,<sup>278</sup> the Parlement started to manifest itself physically. A little less than ten miles or so away from the city, especially in the northern and eastern part of the *gardiage*,<sup>279</sup> large parlementaire mansions, some of them genuine castles, began to appear on both sides of the road (Illustration 1).

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<sup>278</sup> In 1195, Raymond VI, count of Toulouse, had given a charter that placed a territory (extending about 15km north and south of Toulouse) under the guard (hence “*gardiage*”) of the capitouls—the municipal magistrates of the city. This rather large territory (30,000 acres), almost entirely deforested, was heavily exploited and populated and, although situated out of the walls, constituted an integral part of the city and thus directly fell under the jurisdiction of the capitouls. This is the reason why the *commune* of Toulouse today is larger than that of Paris. (Michel Taillefer, *Vivre à Toulouse sous l'Ancien Régime*, 35-36).

<sup>279</sup> See Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 1, 268.

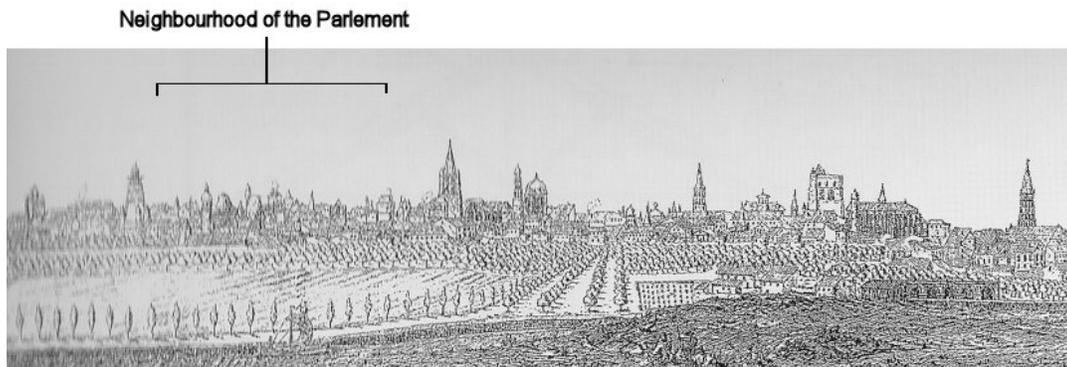


**Illustration 1: Château de Merville, property of the de Chalvet family.**

Most of the surrounding fields, vineyards, orchards, woods belonged as well—directly or indirectly—to a few *messieurs* of the Parlement. If that traveler could have mentally translated the surrounding landscape into a land register bearing the names and titles of the owners, he would have certainly realized that in the immediate vicinity of the capital city of Languedoc, an office of *conseiller* or—better—*président* in the Parlement de Toulouse, put much more than a share of royal authority in the hands of the magistrates. With that virtual land register in mind, our traveler would have discovered that in every direction he turned his gaze most of the trees, stones, fences, fields and cattle he saw belonged to members of the Parlement. The local inhabitants of Toulouse and its immediate vicinity—that is, a good number of the litigants in the parlement de Toulouse—did not need a land register: they knew all too well, and without the help of any archives, to whom the bulk of their landscape belonged.

Resuming his journey to Toulouse, our traveler would have started to make out the profile of the city. At first, he would have seen a profile that resembled that of any major French city of the size of

Toulouse at the end of the sixteenth century (about 35,000 inhabitants in 1600, 64,000 in 1789): thick and high walls enclosing a mass of buildings spiked with a number of towers.<sup>280</sup>



**Illustration 2: View of Toulouse in 1775**

As he got closer however, the traveller would have started to distinguish some peculiar features. First of all, he would have noticed an unusual profusion of these spikes, many of them, including the tallest ones, topped with crosses.<sup>281</sup> Many of those spikes, however, did not bear a cross and concentrated in the southern part of city (Illustration 2). Those were the *hôtels particuliers* of the most prominent citizens of Toulouse and the purpose of the towers raising from their *hôtel* was precisely to manifest the local importance of their owner, their varying height reflecting the supposed degree of prominence of these men. The oldest of these towers—often the tallest ones as well (Illustration 3)—had sprouted in the first half of the sixteenth century atop the *hôtels particuliers* of a few merchants who invested the profits

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<sup>280</sup> My imaginary voyager traveled in the 1590s. Toulouse underwent some major changes between that time and 1778—when Garipuy wrote his *rapport* that will serve as a basis for our exploration of the *Palais*. While a late eighteenth century traveler would have certainly noticed important transformations (especially on the periphery of the city), he would have easily recognized the main features of the urban landscape. Contrary to most French cities for instance, Toulouse still had its walls in 1789. The inhabitants had been obliged to destroy the walls after the capture of the city that marked the end of the *croisade des Albigeois* in 1215. In 1346 however, they had been authorized to rebuild to defend themselves against the English who occupied the close-by province of Guyenne. These walls were only destroyed at the beginning of the nineteenth century.

<sup>281</sup> Despite being only the seventh or eighth largest city in the kingdom, Toulouse was probably only second to Paris for the number of its churches. The tallest spikes would have been the *clochers* of Notre-Dame de la Dalbade (81m) and Saint-Sernin (65m).

they had made in the *pastel* business<sup>282</sup> to buy offices of *conseillers* in the Parlement de Toulouse.<sup>283</sup> Thus by the beginning of the seventeenth century, most of these towers belonged to members of the Parlement, whether these men had inherited, bought or built them. The social, economic and political dominance of the *parlementaires toulousains* literally towered over the vast majority of smaller *toulousains* who swarmed in their long shadows.



**Illustration 3: Hôtel de Mansencal**

Coming from the north our traveler would have seen these towers in the background, that is, in the southern part of the city. One could almost say in another city. Indeed, although the old interior wall that used to separate the northern *bourg* from the southern *cit * had long been destroyed,<sup>284</sup> the contrast between the two parts could not go unnoticed and, as matter of fact, is still visible in the *toulousain* urban landscape today. In 1544, Guillaume de La Perri re, then historiographer of the city, noted:

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<sup>282</sup> The *pastel* is a blue dyeing plant cultivated in the region. The trade of pastel in these years allowed powerful businessmen, experts in international trade, to constitute huge fortunes, while employing numerous workers, some of them, such as *essayers*, *peseurs*, or *emballeurs*, practiced entirely new professions. The trade started to stall in the 1560s because of rash speculation, overproduction of a lower quality, difficulties on the market of Anvers—its main outlet—and, most importantly, the discovery of the indigo, a better and cheaper dye coming from “the Indies.”

<sup>283</sup> I will look at those merchant ascensions to the Parlement in more detail in Chapter 5.

<sup>284</sup> Michel Taillefer, *Vivre   Toulouse sous l’Ancien R gime*: Perrin, 2000, 16.

As much as the city is full of houses and inhabitants around the *Château narbonnais* [as we will later see, this is the location of the *Palais*], Saint Etienne, la Pierre, les Changes, la Daurade, it is empty and deserted around the *Bourg* of Saint-Sernin, Saint-Pierre des Cuisines, Lascrosses and their surroundings.

Thus, having passed the *porte Arnaud Bernard* at the north of the enclosed city, the traveler would have entered the *bourg* and, whatever street he chose to continue his journey to the *Palais*, he would have walked between the large and almost cross-ruled plots of this northern part of Toulouse. The religious communities of that area had constituted the largest *moulons*—the local, contemporary term for city blocks—in the city: the *Chartreux* for instance, had progressively constituted, between 1571 and 1617, the largest plot of the city (about 25 acres) east of the *porte du Bazacle*.<sup>285</sup> This tendency will be even more pronounced in the seventeenth-century with the installation of numerous new religious communities in that area of Toulouse.<sup>286</sup> Thus, still walking south in the direction of the *Palais*, our traveler would have first passed by the blank walls of these enclosures and of the churches and *collèges* that mainly constituted this northern part of the city.<sup>287</sup>

Arriving where the *place du Capitole* would later stretch,<sup>288</sup> the surroundings began to change: continuing his journey he would have left the blank walls of the *bourg* for the profusion of shops and smaller houses of the *rue Saint-Rome*, *rue des Changes*, *rue des Filatiers*. Not only the smaller *moulons* and higher density of buildings but also the multitude of the crowd and the effervescence in these streets contrasted with the relative calm of the *bourg*. Here started indeed the *cit *, this part which, as noted

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<sup>285</sup> *Ibid.*, 26.

<sup>286</sup> Dames noires (1603), Capucins (1615), Carmelites (1617), Tiercerettes (1625), Visitandines (1649), P nitents gris (1609), Filles de l'Enfance (1662).

<sup>287</sup> More than 50% of the Bourg was ecclesiastical property. The *cadastre* of 1680 thus indicates that in the *capitoulat* of Saint-Sernin, the 25 *moulons* included a major abbey (Saint-Sernin), a parochial church (Notre-Dame du Taur), eight convents, three colleges each of them with its church or chapel, an hospital and a cemetery. (Taillefer, *Vivre   Toulouse sous l'Ancien R gime*, 56-57).

<sup>288</sup> Today's square and building (« *le Capitole* ») were cleared and built in the 1750s. Symbolically, the *maison commune* (later *h tel de ville*) was built at the end of the twelfth century at the junction between the two parts of the old city, where the *porterie*, a gate of the roman wall that enclosed the *cit *, had been standing.

above in the words of Guillaume de La Perrière, was “full of houses and inhabitants.” The architectural density and human activity kept increasing until that point where the *rue des Changes* crossed the *rue Saint Géraud*, at the *Halle de la Pierre*, where the old Roman *forum* once stood. The *Halle*, Toulouse’s central market and commercial key point, was certainly the most active spot in the city. As the traveler resumed his journey south toward the Parlement the activity decreased: entering the neighborhood where the *hôtels* he had seen from afar were located, the streets became smaller, tortuous, less populated, and less busy (Illustration 4). He would have discovered that these *hôtels* with their high towers were surrounded by a number of smaller *hôtels*.



**Illustration 4: Rue Vélane, in the Parlement neighborhood.**

Taking for instance the *rue Tolosane* in the direction of the Palais, he would have walked a street made up almost exclusively of *hôtels particuliers*, most of them belonging to *officiers de justice*, but none of them surmounted with one of these high towers. Here on his left the *hôtel* of Pierre Roguier, *conseiller* in the Parlement (1568-1578), that of François de Gargas, *conseiller* (1553-1602), Arnaud de Campistron, *docteur et avocat* and capitoul in 1589-1590, Mathieu de Chalvet, *président* of the *seconde chambre des*

*Enquêtes* (1573-1604) and his son François, *conseiller* (1583-1605) (see Illustration 5), there on his right that of Jean de Melet, *conseiller*, Simond de Garaud, capitoul in 1585-1586, *conseiller* (1587-1605), son-in-law of the *premier président* Duranti, Guillaume d’Ambes, *conseiller* (1554-1585), Jean Vigoros, procurator in the Parlement, Jean de Bonnefoy, *secrétaire du roi*, Antoine Alart, *conseiller* in the *présidial*. Thus, except for an apothecary shop and a *salle de jeu de paume*, this street—typical of this neighborhood situated between the *Halle* and the *Palais*—was almost entirely made up of *hôtels* that belonged to Toulouse’s *gens de justice*.



**Illustration 5: Hôtel of Mathieu de Chalvet, rue Tolosane.**

Thus, the owners were not solely members of the Parlement, for many of them practiced in one of the numerous judicial institutions of the city. At the end of the sixteenth century indeed, Toulouse boasted the seats of three ecclesiastical jurisdictions, the *Officialité métropolitaine*, the *Officialité diocésaine*, the *Chambre souveraine du clergé* ; a seigneurial jurisdiction, the *Temporalité* of the archbishop ; a municipal jurisdiction, the tribunal of the Capitouls ; the commercial jurisdiction of the *bourse des marchands* ; special royal jurisdictions: the tribunal of the *maréchaux de France*, the *Bureau des finances*, the *Cour des monnaies*, the *Bureau des gabelles*, the *Maîtrise des ports*, the *Grande maîtrise des eaux et*

*forêts* ; finally two royal jurisdictions *de droit commun*, the tribunal of the senéchal, and the Parlement. Thus, not surprisingly, judicial professions represented an important part of toulousain society. As matter of fact, justice constituted the most important sector of activity in the city, even ahead of the textile industry that represented 15.1% of the inhabitants.<sup>289</sup> According to the records of the *capitation* in 1695 Toulouse counted 202 magistrates, 142 lawyers, 168 procurators, 37 notaries, 57 *huissiers*, 118 *praticiens*, 71 “*employés subalternes*” in the various courts. These 795 people represented 2.7% of the population of the city at that time, 18.6% if one includes their dependents, family and domestics.

Thus, still several hundred meters away from the Palais our traveler could have seen magistrates in their coach, *huissiers* and *sergents* carrying orders and summons to litigants, *secrétaires* dragging *sacs* of procedure from a *praticien*'s office to a magistrate's house, litigants and lawyers converging to the *Palais*, litigants again, lining up at the door of their judge, like in Racine's *Plaideurs*, and the crowd that Toulouse's intense judicial activity set in motion. From this point of view, the judicial neighborhood around the *Palais* resembled the commercial neighborhood around the Halle.

Thus, the judicial practices of the *conseillers* were visible and inscribed in indirect but multiple ways in the local urban and suburban space. The mansions and landed properties in the *gardiage*, the *hôtels particuliers* in the *cit * and, as we will see below, the iconographic use of the *Palais* as the symbol of the highest secular power in the city, were all unmistakable reminders of the social, economic, political and cultural capital that grew out of the practice of sovereign justice. Conversely, the judicial practices of the magistrates were shaped in part by local political concerns: the practice of sovereign justice, especially in the case of those judicial practices performed publicly, was an instrument of assertion of local power, for to be seen doing justice was not only, as the adage has it, a crucial legitimizing part of the

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<sup>289</sup> Taillefer, *Vivre   Toulouse sous l'Ancien R gime*, 223.

judicial process,<sup>290</sup> it was also for the judges a critical part of a process of assertion of their judicial authority through repeated representations of that authority in action.

### **The *Palais* as judicial maze**

Thus, while a number of *parlementaire* judicial practices were deployed against the backdrop of distant and imagined places, and while on occasions judicial procedure required that the *conseillers* actually transport themselves physically to places distant from Toulouse to perform some of those practices, most judicial practices were enacted in the circumscribed space of the *Palais*.

Situating these judicial practices within the *Palais* offers an opportunity not just to look at yet another important way in which space shaped some of the *conseillers*' professional activities, but to test a novel approach to the sovereign court, at a distance from the two main trends in the historiography of Parlements.<sup>291</sup> Despite their ideological antagonism,<sup>292</sup> these two historiographical trends share a number of methodological similarities that are reflected in the way in which they circumscribe *parlementaire* history within very few locations within the *Palais*. Indeed, both trends dwell almost exclusively in the *salle d'audience de la Grand Chambre*, that is, in only one of many locations in the *Palais*, in the one room which members of the Parlement themselves sought to frame as the unique stage of their self-

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<sup>290</sup> Some French legal historians are keen on characterizing the saying "Justice must not only be done, but also be seen to be done" as an "anglo-saxon" adage (quoted by Antoine Garapon, "L'archéologie du jugement moderne," in *Les rites de la justice : gestes et rituels judiciaires au Moyen Âge*, ed. Claude Gauvard and Robert Jacob, Paris: Léopard d'or, 2000, 222 and Robert Jacob, *Images de la justice: essai sur l'iconographie judiciaire du Moyen Âge à l'âge classique*, Paris: Léopard d'Or, 1994, 6), maybe because of its reformulation by a British judge, Lord Hewart, in the twentieth-century ("it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done," Lord Chief Justice Hewart in *R v. Sussex, ex parte McCarthy*). The maxim has been repeated quite often in recent decades in the context of the development of humanitarian law (e.g., the Antonio Cassese, President of the International Criminal Tribunal for the Former Yugoslavia, quoted in Rachel Kerr, *The International Criminal Tribunal for the Former Yugoslavia : an exercise in law, politics, and diplomacy*, Oxford: Oxford University Press, 2004, 92).

<sup>291</sup> On those two trends, their differences and similarities, see p. 12-15.

<sup>292</sup> This antagonism, as I noted in my introductory chapter, perpetuates the rift that the Enlightenment opened in eighteenth-century French politics (see Introduction, p. 15).

serving representations. Staged in that particular room, this representation of a united *corps* sitting in general assemblies for a variety of aggrandizing purposes (to validate or reject royal laws, conduct the trials of *grandeues*, publicize the highly ritualized *rentrées parlementaires*, pronounce *arrêts généraux* in solemn red robes, etc.), obfuscates a far less magnificent but sprawling “backstage,” a labyrinthic architectural complex in which judges, but also litigants, lawyers, procurators and judicial auxiliaries of all kinds, enacted with words, papers and objects the everyday judicial practices that occupied most of parlementaire time and space.

### *The judicial maze*

As a starting point, I would like to develop the analogy I have just hinted at: the Parlement is a labyrinth. This is what the court looks like to the neophyte historian, this is what it still feels like after months of research and despite a decent degree of familiarity and understanding, this might be as well the impression it left on the unknowing litigant who entered the *Palais* for the first time. The Parlement is a jumble of parchment, papers, *sacs*, walls, stairs, corridors, studies, halls, archives, shelves, desks, benches, prisons, etc., which constructed and housed a variety of entangled jurisdictions, attributions, offices, social relations, political fictions, legal theories, rules, procedures, emotional and symbolic investments and expectations, and, of course, practices.

The image of the Parlement as a labyrinth seems to hold true on a number of levels. Materially first, since, as we will see shortly, the *Palais* was quite literally a labyrinth. On a less literal level as well, for in the Parlement’s records, dichotomies such as those between civil and criminal, ordinary and extraordinary, public and private, secular and religious, blur into an unfamiliar haziness that makes the Parlement look like an elusive “judicial maze” to our modern eyes. Finally, on a human level too, for the idea of labyrinth befits the sophisticated tangle of the many interpersonal relationships that were regulated by a variety of taxonomies: professional hierarchy, the division of labor dictated by judicial procedure, patron-client networks within and outside the *corps*, dynastic positions and linkages.

Maybe most interestingly for my purpose, the labyrinth analogy can also help us approach the judicial *process* without falling prey to what I call the “rhetoric of linearity” of judicial *procedure*. Reading dozens of lawsuits helps realize that judicial procedure, as the historian can reconstitute it, is no less a normative framework than law itself<sup>293</sup> and produces the illusion of a rather smooth and linear path which, starting with the filing of a case in the *greffe* and ending with the pronouncement of an *arrêt* in the *Grand Chambre*, is nothing but a fictional judicial itinerary. This archetypal journey is almost never realized in practice and overlooks the multiplicity of paths litigants treaded in the judicial maze, the legal loops in which they often got caught, the obstacles (legal or otherwise) that brought their lawsuits to a halt, the dead ends in which they could get lost or sidetracked. Their judicial journey could last from a few minutes—if the case was dismissed at the *greffe*—to several decades and in many cases, possibly most cases, did not even end with a sentence.<sup>294</sup> Thus, the labyrinth analogy can function as a safeguard against an uncritical acceptance of the rationalization of the judicial process that judicial procedure itself seeks to erect as a façade, precisely in order to mask the messiness of its actual practices.

This analogy leads to a methodological difficulty however, for the labyrinthic representation evidently threatens to complicate rather than ease the task of presenting the Parlement de Toulouse: how can one go about unfolding with some sort of order this intricate assemblage of elements of such diverse nature? How can we render this whole intelligible without simplifying its complexities, flattening its irregularity or solving its inconsistencies? However heterogeneous the “jumble” of the Parlement, it was not a shapeless mass, an aggregate without order and I chose to call it a labyrinth rather than chaos or confusion, precisely because its many elements are connected to one another following pathways that might seem extremely intricate—if not plainly random—when seen from afar, but which *in practice* were trodden daily by insiders familiar with at least parts of the construction.<sup>295</sup> None of these insiders might

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<sup>293</sup> In that respect, it comes as no surprise that the first legal codes drafted by the royal legislator pertained to procedure, first civil (1667) and later criminal (1670).

<sup>294</sup> This could and did happen for a variety of reasons: an amicable agreement could be reached within the Parlement (*accord*) or outside the court, the lawsuit could “die” because neither party pushed it further.

<sup>295</sup> At times, the engineer Garipuy expresses this idea very explicitly, see p.158 below.

have had a clear and complete understanding of the overall architecture of this eclectic complex, but most, if not all of them, seem to have had an intimate knowledge of the corners, bends and junctions of the particular areas they dwelled in and needed to navigate for the purpose of doing their job, advancing their careers, and even more frequently, their cause.

In order to sort through the *parlementaire* tangle and also to meet my goal of conveying how the Parlement was enacted through practices by its insiders—a group in which I include magistrates, litigants and judicial auxiliaries—I propose to forget temporarily about the construction as a whole, to focus instead on these “corners,” “bends,” “junctions,” and “areas” and approach them very literally, that is, as physical locations. In other words, I intend to explore these locations as sites of judicial practices based on a spatial representation of the Parlement de Toulouse, starting from the very literal labyrinth that was the *Palais*, a building which the contemporaries sometimes called *le Parlement*, precisely because it could be perceived as a metonymical representation of both the institution and the *corps*. Thus, my characterization of the Parlement de Toulouse as a labyrinth only holds as an overall, preliminary and admittedly vague assessment of the whole. It does not function as a concluding or conclusive definition but as a mere starting point for a more detailed representation through architecture. This representation will serve as a heuristic tool to assess the relationship between space, practice and the legal and political theories analyzed in the first chapter, the organization of judicial practices within that space, and the movement of people, papers and lawsuits through that space.

*An engineer in the judicial maze: François Garipuy and his rapport.*

The first methodological problem when one tries to infuse a representation of this architectural complex with an insider’s perspective stems from the almost complete lack of internal accounts of the *Palais*—an understandable absence since insiders were primarily users of a space which they had no particular reason to represent. To work around this issue, I will cross-read different sources in order to superimpose users’ practical uses of the judicial space onto an outsider’s account of that space.

Fortunately, this outsider visitor is not some hypothetical individual that I would need to create *ex nihilo* in order to hold up an account of a fictional journey into the *Palais*. In 1778, the engineer François Garipuy, “directeur des travaux publics de la sénéchaussée,” had been commissioned by the *Etats de Languedoc* to establish an estimate of the repairs needed in the *Palais*, and, as a result, left us an extremely valuable *Vérification et rapport de l'état actuel du Palais où siège le Parlement de Toulouse, ainsi que des divers battiments qui en dépendent, tels que les greffes, les prisons, les bureaux de la chancellerie*.<sup>296</sup> I use this very detailed, late eighteenth-century description of the *Palais* as my Ariadne’s web in and out the Parlement. I follow in the footsteps of this outsider who, not unlike us, had to find his way in the *Palais*, circumnavigate the buildings, assess their arrangement, and eventually find his way out.

Before we let Garipuy be our guide, it is necessary to acknowledge that his *rapport* is, after all, yet another subjective representation of the Parlement de Toulouse, concerned with goals significantly different from ours. It is useful then to reflect first, if only briefly, on Garipuy’s status as an “outsider” to the Parlement and on the context of his commission in order to address the blanks and distortions of his account.

First, it is important to note that Garipuy was not, of course, as much of a complete outsider or genuine foreigner to the Parlement de Toulouse as we are today, more than two centuries after the court was dissolved and the *corps* disbanded. Although not necessarily familiar with the internal arrangement of the *Palais* or with the functioning of the court on the eve of his commission, we can rest assured that, on the day Garipuy passed through one of the gates of the *Palais* to begin his report, the Parlement de Toulouse was not a completely unknown object on his mental map. First, and simply because Garipuy was a contemporary of the court and furthermore an educated citizen of Toulouse, we can assume that he presented himself at the gate of the *Palais* with some knowledge, at least a more extensive knowledge than ours, of what he was about to discover within the walls of the Parlement. As a Toulousain, he must

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<sup>296</sup> Rapport: ADHG, C 2254 ; Plans: ADHG, PA 263.

have passed by—if not crossed—these gates many times, and, the *Palais*, at least as seen from the outside, was already a familiar landmark in Garipuy’s literal and imagined landscape.<sup>297</sup>

A second caveat concerns the limited scope of the commission Garipuy had received from the *Etats de Languedoc* and the kind of partial perspective it entailed in practice. However detailed Garipuy’s description of the *Palais*, it always remains circumscribed within the bounds of his specific assignment: Garipuy’s assessment of the building is unsurprisingly terse, as the engineer set aside any consideration irrelevant to the practical goal of his mission. This is precisely what makes Garipuy an outsider, since his perspective on the *Palais* is that of an expert but not an expert of law or justice, or even royal administration.<sup>298</sup> This particular outsider position, the specific representation of the *Palais* it entails, and the constraints of the commission certainly explain why throughout his exploration of the *Palais*, Garipuy ignored (or maybe just did not see) two interrelated dimensions that are crucial for my own account: the symbolic and human dimension of the *palais*.

First, while giving a very detailed description of the architectural elements he saw, Garipuy constantly ignored their symbolic dimension and function. I believe this ignorance to be intentional and it can be partly explained by the rather modest goal of Garipuy’s commission: his *rapport* was meant to establish an estimate of the repairs needed to ensure the solidity of the *Palais*. While Garipuy duly stuck to a plain assessment of these repairs, the somewhat disillusioned conclusion to his *rapport* indicates that he was well aware of the insufficiency—if not outright inadequacy—of the *Etats’* project:

Despite the details I delved into in order not to forget anything that is necessary to ensure the solidity of the buildings of the Parlement de Toulouse, I cannot promise I have included in this estimate all the repairs indispensable to achieve that goal. When one works on repairing constructions that are this old and dilapidated, it almost always happens that when one demolishes the parts that are visibly defective he discovers others that are in a comparably bad state and need as well to be built anew, although these additional repairs could not be foreseen at first.

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<sup>297</sup> If only because Garipuy’s father had an astronomical observatory built at 16 rue des Fleurs, just across the street from the *Palais* (Maurice Prin and Jean Rocacher, *Le château Narbonnais : le Parlement et le Palais de Justice de Toulouse*, Toulouse: Privat, 1991, 90).

<sup>298</sup> Although his first-hand experience as a royal engineer might have informed his report, especially when adopting a realistic approach to the bureaucratic and financial obstacles to the realization of the *Etats’* project.

I have already said that, in order to diminish the expenses, the works we propose here are only repairs relative to solidity only and will not change anything to the organization of this palace, a building as much unpractical as it is irregular.<sup>299</sup>

Thus, Garipuy certainly realized that the *Palais* was in need for much more than the haphazard papering over cracks that had been the rule in the course of the previous two centuries, but because the project of the *Etats de Languedoc* was rather limited in its scope, Garipuy rarely commented explicitly on the matter. Scattered throughout the *rapport* however, one finds hints—such as the conclusion above—that Garipuy considered that the *Palais* was in need of a complete structural overhaul in order to do away with a tortuous spatial structure that congested papers, records, litigants, prisoners, lawyers, procurators, and magistrates within a few narrow spaces. While I argue below that this congestion had become a constitutive part of judicial practice—and for that reason was maybe not perceived by inside users as an impracticality of the *Palais*—, the engineer did not fail to notice what appeared as a considerable architectural hindrance in his idealized and rationalized outsider’s conception of the practice of justice — a conception that might have been closer to ours than to that of contemporary practitioners of justice. However, probably because his *rapport* was not meant to document plans for the construction of an ideal *palais de justice*, but more modestly to layout the most urgent repairs needed, the building that emerges from Garipuy’s description is significantly different from the one he had visited. The edifice of his *rapport* seems like a huge, empty, and wormy ghost vessel, very different from the *Palais*, to be sure dilapidated, but filled up with a constant flow of men and paper, resounding with the speeches of lawyers, pronunciations of *arrêts*, chanting of the daily mass in the chapel, and the hubbub of the crowd. Because his commission did not require him or give him the means to address this perceived impracticality, Garipuy cleared all this life away from his *rapport*.

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<sup>299</sup> "Malgré les details ou nous sommes entrés pour tacher de ne rien omettre de ce qui est necessaire affin d'assurer la solidité des battiments qui dependent du parlement de Toulouse, nous ne sçaurions nous promettre d'avoir compris dans ce devis toutes les reparations indispensables pour remplir cest objet. Lorsqu'on travaille a reparer des ediffices aussi anciens et aussi vetustes il arrive presque toujours qu'en demolissant les parties dont les vices etoient aparents on en decouvre d'autres qui sont en aussi mauvais etat et dont la reconstruction est egalement necessaire quoy qu'il ne fut pas possible de la prevoir. Nous avons deja dit que pour diminuer la depense les ouvrages que nous vous proposons ne sont que des reparations relatives a la solidité seulement et ne changent rien a la distribution aussi incommode qu'irreguliere de ce palais." ADHG, C 2254, fol. 112.

As the brief conclusion to the *rapport* quoted above indicates, Garipuy understood that the project of the *Etats* was quite insufficient. Not surprisingly then, the patching of the *Palais*, inadequate yet very expensive,<sup>300</sup> never followed through and Garipuy's report went unheeded. Thus the *Palais* remained in the same state for a few more decades because of a fundamental impossibility to reform and build anew that had lasted for over two centuries. There is an obvious parallel to be drawn here, as if the old fissured stones Garipuy described a mere decade before the Revolution materialized the cracking monarchical edifice as it still stood then: a massive but dilapidated construction that had started to groan under its own weight, that no one seemed able—by lack of means and/or will—to consolidate, but that had been standing for so long that no one seemed able either to realize that it could be on the verge of collapsing.

The analogy interests me here not so much as an hermeneutical device to read the political history of the couple decades that lie ahead of Garipuy's *rapport*, but rather as an invitation to read the 1778 *Palais* back as a text, or rather, given its multilayered structure, as a palimpsest of its own human history. As we now proceed to follow Garipuy and observe this palimpsest-palace from both the outside and the inside, the multilayered structure the engineer mentioned in his conclusion and observed throughout his *rapport*, will serve as the basis for a particular kind of archaeology, one that cuts through these successive layers that looked "defective" to Garipuy, not to build anew in our case but to read the men and the activities that accommodated this material setting into a practical judicial space.

But where and how to follow this guide? What itinerary should we take to circumnavigate the *Palais*? Garipuy followed a path that was determined by both the goals and constraints of his particular mission.<sup>301</sup> With my own goal in mind I will dismantle and rearrange the engineer's report in order to bring out the mutually constitutive relationship between the materiality of the *Palais*, the judicial practices and the theories (political and judicial) that did more than simply "take place" in it.

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<sup>300</sup> Garipuy's final estimate amounted to 161,984 l. 4 s. Garipuy, *Vérification et rapport*, *ibid.*

<sup>301</sup> Clearly, not all repairs were dimmed equally urgent or necessary. The priority given to certain locations over others certainly explains why Garipuy started with the *Salle d'audience de la Grand Chambre* and ended with the prisons, however appalling their state.

Instead of replacing Garipuy's itinerary by my own however,<sup>302</sup> I propose to sort out and interpret the dozens of individual physical locations Garipuy described by identifying and analyzing a limited number of sites in the *Palais* that can fall under three main spatial rubrics: "outside views," "stages," and "behind the scenes."

As I have just suggested above with my two caveats, while Garipuy can guide us from site to site, his description will need to be completed. Fortunately, Garipuy's *rapport* can be used in combination with other primary sources which, as an almost perfect complement to his report, let us know about the life of the court but are not the least concerned with situating these episodes within a systematic description of the *Palais*.

*Outside views. Asymmetry, irregularity, heterogeneity: history inscribed on the surface.*

(Place de la monnoye, Château Narbonnais, private houses, Porte de l'Inquisition, courtyard)

The importance of the two caveats mentioned above appears immediately when reading the first notes Garipuy scribbled as he was standing at the foot of the *Palais* on the *place de la monnoye* (today *place du salin*), one morning of August 1778. Garipuy was only interested in assessing the nature and state of the buildings that housed the court and thus, his description of the outside of the *Palais* is rather succinct and only mildly concerned with architecture and, to a lesser degree, what we would call "urban planning":

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<sup>302</sup> This refusal is motivated in part by the prevention against the rhetoric of linearity mentioned above, in part by the fact that I want to avoid privileging only one of a multiplicity of itineraries that all together make up the organization of judicial practice within the space of the *Palais*: that of the magistrates, in itself not one but different itineraries depending on the chamber in which they served, that of the litigants, determined by the type of lawsuit, their status as either plaintiff or defendant, as either men or women if prisoners, that of the auxiliaries, dictated by their particular functions in the judicial process.

The Palais where the Parlement holds its sessions is part of the former residence of the counts of Toulouse. It is situated on the edge of the city, near the gate called of the *château Narbonnois*.

All the depending buildings are enclosed within a sort of compound [*une espèce d'enceinte*], closed at the south by the walls of the city, at the west and most of the northern part by their own walls bordering the surrounding streets and square, and for the remainder by the party walls of the adjoining houses that belong to private individuals and depend from the [royal] *domaine*.<sup>303</sup>

Garipuy omitted here a number of details of interest to us. First, the *place de la monnoye* on which Garipuy was standing: to say the least, the engineer did not do justice to the exuberant activity, the swarming crowd, the noises, and cries which, most of the time, filled this space. Standing there, Garipuy certainly could see—but did not see fit to report—the intense activity of the *Palais*' neighborhood I described above.<sup>304</sup>

Similarly, Garipuy's simple mention of the "*château Narbonnois*" and more generally his succinct description of the outside of the buildings must be completed because it fails to render the part of Toulousain history that was inscribed on the surface of the *Palais*. Had the project of the *Etats* been more ambitious and aimed at a major reconstruction of the *Palais*, Garipuy would have probably expressed a severe judgment on the lack of exterior visibility and solemnity of the judicial compound. He could have then pointed to the lack of luster of the architectural patchwork that had been pieced together on the ruins of the medieval castle of the counts of Toulouse, in order to insist on the necessity of a *tabula rasa* project. The contrast between architectural projects *dans l'air du temps*, for instance that of Claude Nicolas Ledoux for the *Palais de justice* in Aix-en-Provence (also the seat of a provincial parlement, see Illustration 6 below), and the façade presented by the *Palais* in Toulouse was stark indeed. A simple look at one of the entrances of the *Palais* (Illustration 7) gives a clear measure of the discrepancy between the

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<sup>303</sup> "Le Palais ou siege le parlement fait partie de l'ancienne demeure des comtes de Toulouse. Il est placé sur le bord de la ville près de la porte apellée du château Narbonnois. Touts les battiments qui en dependent sont renfermés par une espece d'enceinte fermée au midy par les murs de ville, au couchant et sur la plus grande partie du nord par les murs qui les terminent vers les rues et la place voisine, et le reste par les murs mittoyens avec les maisons contigues qui apartiennent a des particuliers et qui relevent du domaine." ADHG, C 2254, fol. 1.

<sup>304</sup> See p.121. The litigants I described above lining up at a *conseiller*'s door could have been standing here at number 12 *place de la monnaie*, the *hôtel* of the de Chalvet family, which, without interruption throughout the seventeenth century, counted at least one of its members on the bench of the nearby Parlement.

actual building and an idealized vision of justice imbued with the Roman *gravitas* that transpired in projects such as Ledoux's but also in the "senatorial" self-representation of the *conseillers* in the Parlement.<sup>305</sup>



**Illustration 6. Claude Nicolas Ledoux, Project for a Palais de Justice in Aix-en-Provence, 1786.**

A nineteenth-century engraving representing one of the gates of the *Palais (la porte de l'Inquisition,*<sup>306</sup> see Illustration 7 below) that was still standing before the ensemble was demolished in the course of the nineteenth century<sup>307</sup> gives us a better sense than Garipuy's *rapport* of the exterior aspect of the complex. On this engraving one can get a sense of the aggregate of public and private, of the asymmetry of the ensemble, of the successive layers which, adding on top of one another, had ended up constituting a highly heterogeneous architectural ensemble. As one can see on this engraving, the ogival

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<sup>305</sup> The Parlement de Toulouse as a *corps* often represented itself as the "senate of Toulouse" and the *conseillers* commonly self-titled "*Senator Tolosae*." See Chapter 1, part 2: "*Le parfait magistrat: early modern portrait of the ideal judge*."

<sup>306</sup> This "Inquisition" does not have anything to do with the Parlement. The gate was given this name because it faced another building across the street that had been the seat of the Holy Inquisition.

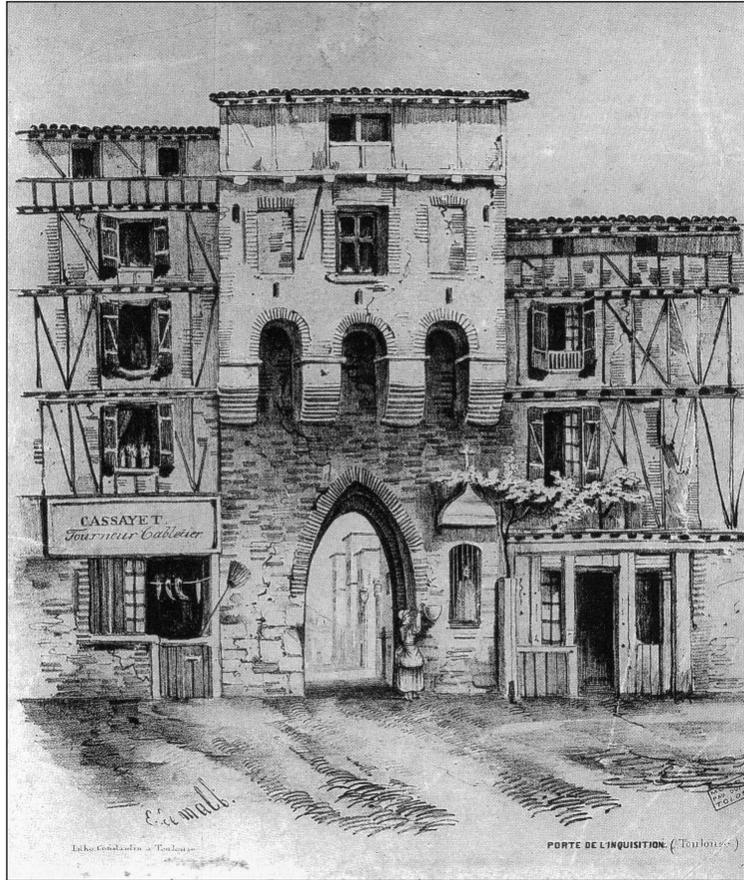
<sup>307</sup> The old *Palais* was demolished in stages, starting in 1825, to be replaced by a new *palais de justice*, to a large extent the one that still stands today (Prin and Rocacher, *Le château Narbonnais : le Parlement et le Palais de Justice de Toulouse*, 135-56).

arch and the small bricks that made up the gate itself reveal the medieval origin of the gate. The corbelled construction hanging above the gate displays architectural features of a later time—probably the sixteenth century—and was a former guardroom from which a sliding iron gate could be operated. A quick look at this construction reveals that it was modified on several occasions over time. First, the modillions (the small projecting brackets placed in a series under the crown moulding of the cornice) between the two parts suggest that the upper half of this construction was not originally planned and was added later. The two bricked-up windows of the lower—and older—half of this upper part are symptomatic of the makeshift architectural solutions that were most often adopted when modifications and repairs were needed anywhere in the *Palais*.<sup>308</sup> From this point of view then, after the *tabula rasa* decision of 1549 the *Palais* was very much in the image of the corpus of royal legislation: parts were never destroyed to be built anew, and except for a few ambitious but rare renewals, the edifice was patched willy-nilly, always in the hope that these temporary solutions would hold until the major reconstruction that was always called for but never came.

The general asymmetry of the *Palais* is summarized here on both sides of the gate where the “private houses” rose to unequal heights. One can see in the architecture of these constructions too that floors were added at different points in time, with no apparent planning. Finally, the heterogeneity appears in the juxtaposition of various elements: a niche was carved in the old gate of the royal *Palais* to host a religious statue, on the left side of the gate a shop was set up, on the right side the former *chambre du concierge du Palais* seems to have been converted into a shop as well by the time the engraving was drawn in the early nineteenth century.

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<sup>308</sup> Maybe the nineteenth-century owner bricked up these windows to avoid paying the tax on doors and windows (instituted in 1798).



**Illustration 7. Porte de l'Inquisition at the beginning of the nineteenth century (Musée Paul Dupuy).**

Looking through this gate one can make out on the other side what just looks like yet another street, bordered by unaligned buildings of varying heights. This “street” was in fact the largest courtyard of the *Palais*. Thus, a foreign traveler, unaware that this was the location of the former *Château Narbonnais*, now of the Parlement, could have unknowingly passed through this gate and entered the *Palais*. This almost seamless integration in the urban landscape is manifest on the contemporary maps of the city. On all of them, it is in fact very difficult to distinguish the courtyards of the *Palais* from the surrounding streets (see Illustration 8 and Illustration 9).

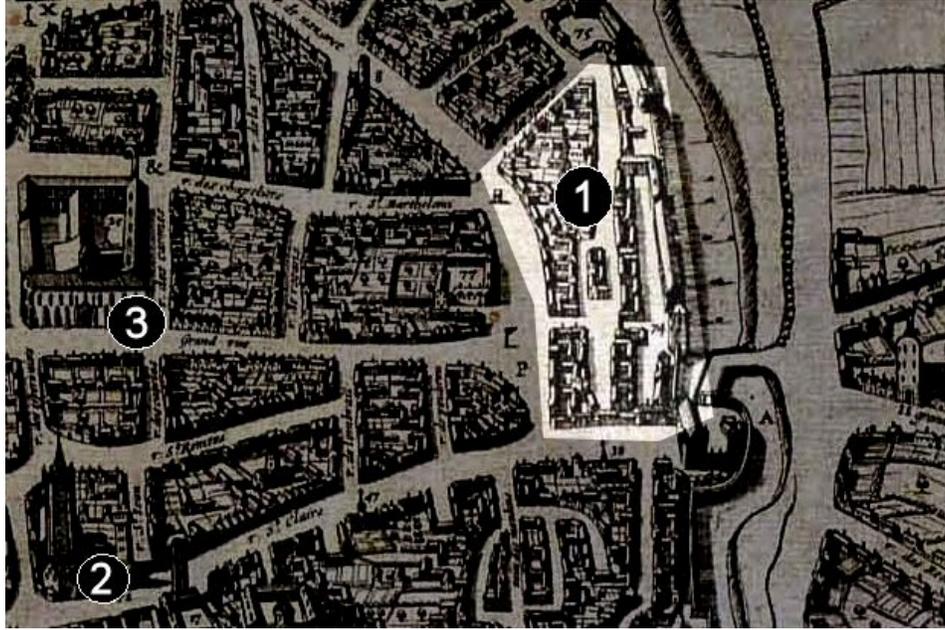


Illustration 8. The neighborhood of the Palais on a seventeenth-century map. (Plan Tavernier, 1631, AMT ii 671). The highlighted section marks the Palais (1). On both this illustration and the following one, compare the Palais to the architectural unity of other “institutions,” for instance the complex of the Dalbade church (2) and of the Augustins cloister (3).



Illustration 9. Neighborhood of the Palais on another seventeenth-century map (Plan Boisseau, 1645, AMT ii 674).

Thus, the physical presence of the former castle was only attested by a few scattered architectural elements such as the ogival arch of the *porte de l’Inquisition* that had survived in the early modern *palais*,

and one can understand that in the perspective of his *rapport* Garipuy did not spend more than a couple lines on the matter of the *Château Narbonnais*. The symbolic significance of the appropriation of the site of the *château* however, the former center of local power turned into a seat for the highest royal jurisdiction in the province, could not be lost on either Garipuy or any Toulousain. The unification of Languedoc with the royal domain in the thirteenth century was still, in the eighteenth century, a well known history<sup>309</sup> and the *Château Narbonnais* was one of the main sites of that history: it had been the scene of a major battle when Simon de Montfort, leading the army of the French king, attacked Raymond VI, count of Toulouse, and besieged the city (1215).<sup>310</sup> Immediately after the defeat of count Raymond VI, Simon de Montfort had settled in the *château Narbonnais*, as later did the representative of Alphonse de Poitiers,<sup>311</sup> and later again the *sénéchal* the king of France sent to Toulouse to oversee the newly incorporated province. Thus, the occupation of the former residence of the counts of Toulouse had become synonymous with the possession of the highest secular authority in the city and the province. It is certainly worth noting that the magistrates of the court in the early modern period were not only keenly aware of this history but that some of them apparently took a particular interest in these episodes. François de Chalvet for instance, *conseiller* (1583-1605) and later *président* (1605-1622) in the Parlement, owned in his personal library a fifteenth-century manuscript of the *Histoire de la guerre de Simon de Montfort contre le comte de Toulouse et les albigeois*, an account of the events rather favorable

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<sup>309</sup> It resulted from a major armed conflict which, in the context of the *croisade des Albigeois* (1208-1215), had opposed the king of France to the counts of Toulouse. After Raymond VI was defeated at the siege of Toulouse (1215), and the immense territory that had been under his almost autonomous and exclusive authority later became an *apanage* entrusted to Alphonse de Poitiers. When the latter died without a male heir (1270), all his possessions, including the province of Languedoc, were incorporated into the royal domain. At that point, the king of France had direct authority over Toulouse and Languedoc.

<sup>310</sup> This episode has been told and retold many times, for instance in the *Chanson de la croisade* and by the chroniclers Pierre des Vaux de Cernay and Guillaume de Puylaurens.

<sup>311</sup> The treaty of Meaux (1229), included a clause by which the count of Toulouse Raymond VII gave his lands as a dowry for his daughter Jeanne who was to marry Alphonse de Poitiers, brother of Louis IX then king of France. The *Château Narbonnais* was one of nine “fortresses” to be given immediately to the king. (Prin and Rocacher, *Le château Narbonnais : le Parlement et le Palais de Justice de Toulouse*, 13).

to the count of Toulouse, and a contemporary edition of a slightly more neutral *Histoire des albigeois et gestes de Simon de Montfort*.<sup>312</sup>

Not surprisingly, when in 1444 the second Parlement of the kingdom was created in Toulouse, its *Palais* was installed in the *château* where the *sénéchal* and *viguier* had had their seat since the late thirteenth century.<sup>313</sup> While the choice of the *château* as a seat for the Parlement must have been partly guided by practical considerations,<sup>314</sup> there can be no doubt that this decision was also, and probably mainly, motivated by the political statement that this occupation of the former *château* entailed. The importance of this occupation is underlined by its duration: over three centuries, from 1444 until the end of the Old Regime, despite the fact that the building offered less than ideal conditions. The unpractical and unsuitable character of the *château* for the activity of the Parlement resulted in its partial destruction between 1550 and 1555, but complaints about the new *Palais* were voiced as early as the late sixteenth century and would be repeated until the end of the period. Significantly, when the decision to give the court new premises was taken in 1549, no one suggested that the court be moved somewhere else and it was decided that the old castle would be demolished but that a new *Palais* would be built on the exact same spot where the counts of Toulouse had held their own court. In this case again, while many practical factors were certainly taken into account when making this choice,<sup>315</sup> symbolic motivations should not be underestimated: as we will see repeatedly and in more details in subsequent chapters, the authority of the Parlement—a fundamental element for the functioning of the court—depended to an important extent on symbolic manifestations and representations of this kind. The physical location of the *palais* indeed manifested the appropriation and occupation of the traditional seat of the highest authority in the

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<sup>312</sup> Célestin Douais, "Les manuscrits du château de Merville," *Annales du Midi* 2 (1890): 36-64, 170-208, 305-64.

<sup>313</sup> When the *château* was partly demolished in the sixteenth century (1550-1555), the court of the *sénéchal* was relocated in the *bourg*, rue Mirabel (today rue Rémusat) where it remained until the end of the Old Régime.

<sup>314</sup> It was the only building in fifteenth-century Toulouse that was large enough to host the court (Prin and Rocacher, *Le château Narbonnais : le Parlement et le Palais de Justice de Toulouse*, 32).

<sup>315</sup> Among other reasons, the demolition of the *château* would at the same time clear a space that was large enough and provide a mass of stones that would be necessary for the construction of the new *Palais*.

province, and thus functioned as a literal reification of the Parlement's claim to being the natural and exclusive successor to a long line of justice holders in the province.<sup>316</sup>

Thus, this space not only served as a ground for the *Palais* but also bore a topographical and historical testimony to the idea that the authority of the court, and thus the basis and means of the exercise of *parlementaire* justice, were derived from two different and at times competing sources of power. The local source, that is, the lost power of the *seigneur (dominium)* which, although it had passed from the counts of Toulouse to the king of France—one could say the *roi seigneur*—, had always remained attached to a local space now occupied by the court, and the source of sovereign power, that is the allegedly superior power of the *roi magistrat (imperium)* which was passed on to the *conseillers* in the form of *lettres de provision*.<sup>317</sup> I thus argue that the very location of the *Palais*, can be interpreted as a comprehensive account of the nature of royal power, here in its judicial manifestation. To my mind, this account is less partial than that of most of the contemporary political literature that put a particular and arguably exaggerated emphasis on the “fiscal king” over the “feudal king” (Kantorowicz).<sup>318</sup> In other words, the *Palais*, while absorbed in theory in the royal “seigneurie *in abstracto*,” remained a physical object, an element of a “seigneurie *in concreto*” that had formerly belonged to the counts of Toulouse and retained a certain confusion of power that the lessons of political thinkers such as Loyseau tended to erase beneath the “fictitious clarity” of their intellectual and theoretical reasoning.<sup>319</sup>

The power of the king of France as direct lord, was also tied to the space of the *Palais* by a peculiar jurisdiction that delimited the enclosure of the Palais much more clearly than seventeenth-century maps. As Garipuy noted, this enclosed space was part of the *domaine*. In other words, this plot was, within the walls of a city that had long had its own *libertés et privilèges*, a direct and personal possession of the king of France. Thus, despite the fact that, as Garipuy duly noted, the compound

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<sup>316</sup> As we have already seen in chapter one, *parlementaire* claims to constituting the “senate” of Toulouse actually attempted to place the origin of the court's authority within a much older historical tradition.

<sup>317</sup> Descimon, “La royauté française entre féodalité et sacerdoce. Roi seigneur ou roi magistrat?,” 471.

<sup>318</sup> Cited in *ibid.*

<sup>319</sup> *Ibid.*, 461-2.

comprised and was partly made of houses owned by private individuals (“*des particuliers*”) the location kept a theoretical unity by virtue of the king’s *propriété éminente* and the jurisdictional affiliation it entailed.<sup>320</sup>

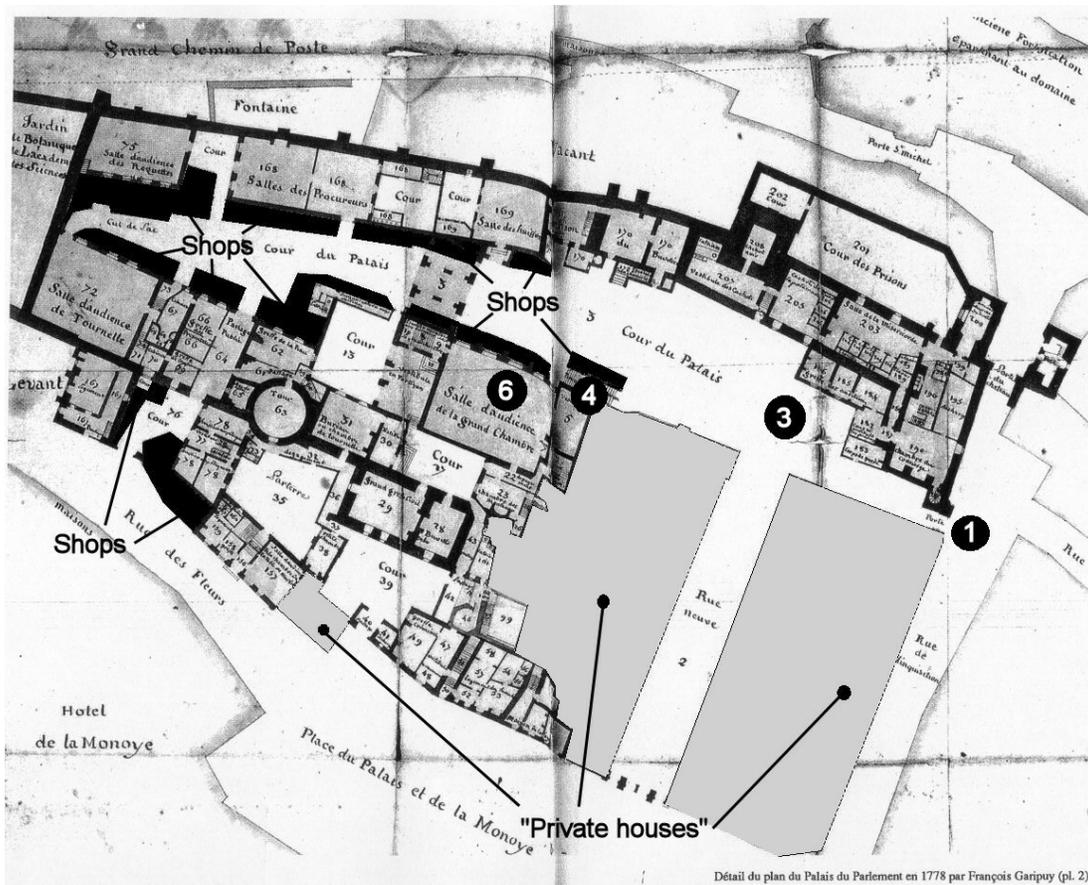
This interlocking of public and private buildings constitutes a first illustration of the peculiar labyrinthine nature of the *Palais*. While Garipuy was apparently not surprised by this tangle, he could not fail to take note, even before entering the *Palais*, of the architectural irregularity we have already noted on the *porte de l’Inquisition* and on the maps:

The irregularity of this palace, the numerous rooms it contains, the unequal height of the floors where they are located, the twists and turns of the passages that lead to them, made it necessary that, in order to give an exact idea, I joined to this *verification* a plan of each floor and give each room a number corresponding to the one used in this report.<sup>321</sup>

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<sup>320</sup> The Parlement had direct jurisdiction over this space: all crimes and offenses committed within the enclosure of the Palais, whether in Palais proper or in these “private” houses were to be handled in first instance by the Chambre des requêtes, that is, literally on the spot.

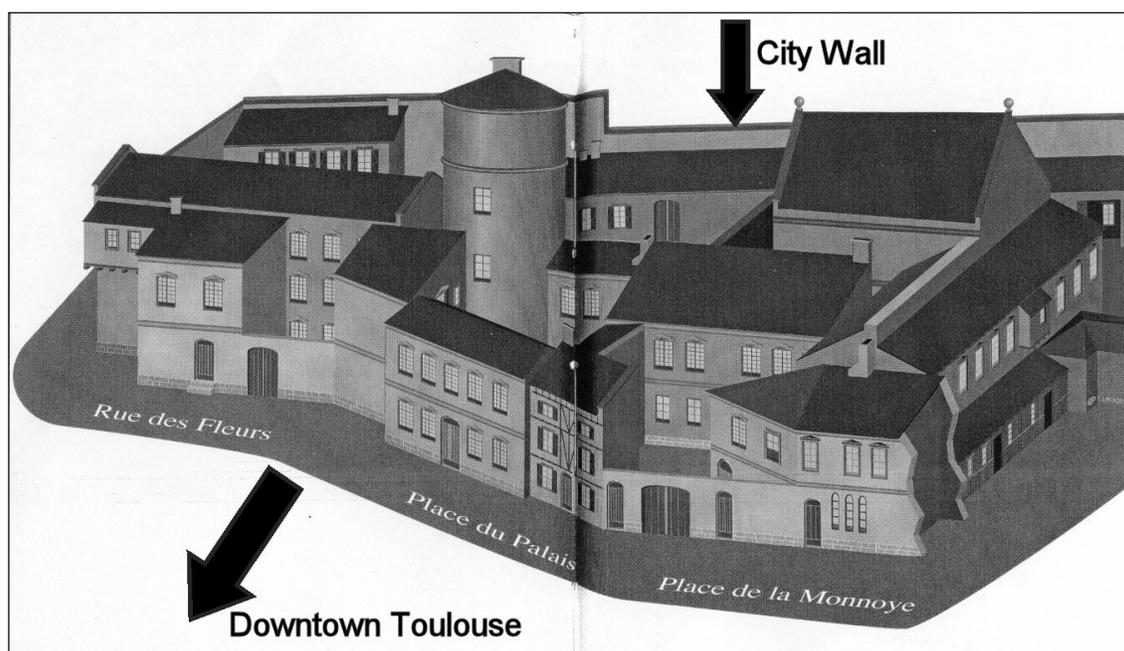
<sup>321</sup> "*L’irregularité de ce palais, le nombre des pieces qu’il renferme, l’inégale hauteur des etages ou elles sont placées, et les detours des avenues qui y conduisent ont exigé pour en donner une idée exacte qu’on joignit à cette verification le plan de chacun des etages, et qu’on y cotta chaque piece du meme numero par lequel elle est designée dans ce raport. Ces plans sont divisés en deux feuilles sur lesquelles sont colés des papiers de retombe pour indiquer certaines pieces de distribution qui sont placées les unes sur les autres.*"ADHG, C2254, fol. 1v.



**Illustration 10. Garipuy's map of the first floor of the Palais.**

What Garipuy describes as “private houses” appear in light grey, the “shops” appear in black (ADHG 2 Mi 615).

Garipuy’s two-dimensional plan sought to present a rationalized view of the *Palais*. Thus, despite the number of rooms and the asymmetrical structure that can still be seen on his plan, much of the tangle of the *Palais* is lost in this representation. In order to try and reconstitute it I have marked on Garipuy’s plan above (Illustration 10) the “private houses” and shops that interlocked with the premises of the court.



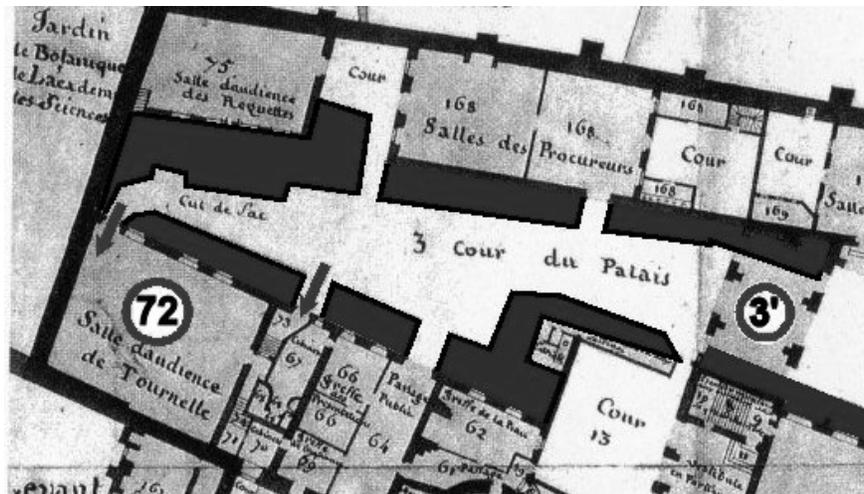
**Illustration 11. Attempt of a reconstitution of the Palais at the end of the eighteenth century. (Prin and Rocacher, *Château Narbonnais*, Figure 16)**

The reconstituted elevation of the *Palais* at the end of the eighteenth century above gives a better idea of the overall irregularity of the architectural complex. Still, it displays an artificial uniformity and smoothness that these buildings did not have—as the engraving of the *porte de l’Inquisition* attests—at the time Garipuy visited them.

Entering this long and irregular courtyard (56 feet wide and 394 feet long, see Illustration 10, location 3 above)<sup>322</sup> one could believe he had actually just arrived on a market place, strangely located in a dead end. Garipuy’s plan clearly reflects that this courtyard was surrounded with shops on all sides. These shops not only generated an intense commercial activity that could have misled one into believing he had reached some trading center rather than the siege of sovereign justice in the province, they actually masked the buildings where justice was dispensed. A litigant looking for the *Chambre de la Tournelle*, could have explored the courtyard in vain in search for a sign or an imposing and solemn entrance to the

<sup>322</sup> Garipuy: “This street is connected to the extremity of an irregular courtyard numbered 3, the average width of which, following on the orientation of the street, is 56 feet [*9 toises 2 pieds*], and the length of which, split in two halves by the pillars that support the *bureau de la grand chambre* [Fig. 9, location 3’], is 394 feet [*65 toises*]”. (Garipuy, *Vérification et rapport...*, 2).

hall where criminal justice was dispensed at the highest level in Languedoc. The two narrow passages leading to the *salle d'audience de Tournelle* (Illustration 12, location 72), were hidden between the protruding stalls of the shops that crammed into the very bottom of the courtyard:



**Illustration 12. The eastern courtyard surrounded by shops (all shops appear in dark grey).**

Not only the plan, but Garipuy's description indicates that these shops had grown in such a way that they "completely masked the entrances"<sup>323</sup> to the buildings of the *Palais*. As can be seen on Garipuy's plan, the double flight of steps (Illustration 10 and Illustration 13, location 4) that led to the *Salle d'audience de la Grand chambre* (Illustration 10 and Illustration 13, location 6) was no exception.

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<sup>323</sup> ADHG, C2254, fol. 28.

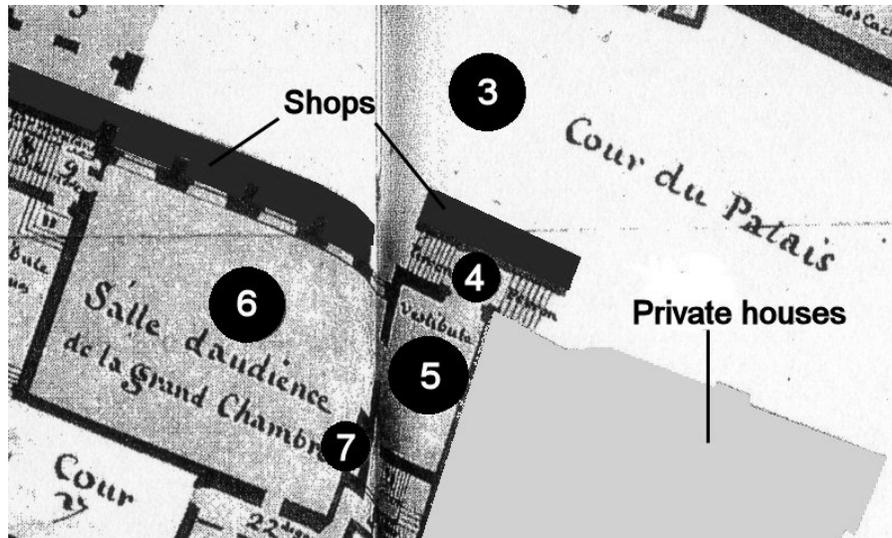


Illustration 13. Around the western courtyard.

The western courtyard (3), the perron (4) and the Salle d'audience de la Grand Chambre (6), the chapel (7).

A shop grew along the entire length of this *perron* on the side of the courtyard and thus both flights of steps were stuck between this shop and private houses on the west, between this same shop and another one on the east. The only element that could have indicated the presence of these stairs from the courtyard was the slate roofing that rose behind the shop and covered the common landing where the two flights ended:

When one turns to his left in this courtyard he can find a double flight of stairs numbered 4, one oriented toward the east, the other towards the west, both made of dressed stone. On the landing, four little columns support a slate roofing above, the steps are worn and the whole is in a bad state.<sup>324</sup>

*Stages: magistracy and justice in representation.*  
(Perron, Costumes, Salle d'audience).

<sup>324</sup> "On trouve en se tournant sur la gauche dans cette cour un perron a double rampe coté n° 4 qui est a l'aspect du midy de deux rampes de ce perron tournées l'une au levant l'autre au couchant sont en pierre de taille ainsi que quatre petites colonnes qui portent au dessus une forme de pavillon couvert d'ardoise, les marches sont usées et le tout est en mauvais état." ADHG, C2254, fol. 2.

However dilapidated and masked this *perron*, there was the genuine location of the passage from the outside world into the *Palais*. While Garipuy's description and plan suggest that this *perron*, because of its bad state and the adjoining shop that partly masked it, barely stood out in the architectural landscape of the courtyard, its symbolic function would still have been visible to the onlooker standing in the courtyard thanks to the rituals that took place on the landing above. The most significant of these rituals would have been that of the entrance of a bishop-counselor in the *Palais*:

(...) when [the archbishop of Toulouse] enters on the *perron du Palais*, his cross, which is carried before him when he gets about the city, is lowered and carried behind him. And when he enters the *grande salle du plaidoyé* [Illustration 13, location 6] his cross-bearer carries it to the chapel [Illustration 13, location 7], from where he takes it back when the said archbishop leaves. Then, the said archbishop walks before his cross until he is on the landing of the *perron du Palais*.<sup>325</sup>

The arrival of the "episcopal troop" in the courtyard could not possibly go unnoticed: the bishop—or archbishop—wearing his luxurious episcopal chasuble, preceded by his cross-bearer holding the six feet tall cross up high and surrounded by a small group of canons and secretaries, could be seen from afar pushing his way through the crowd to the *perron*. Once there, in a clear sign of submission to the majesty of royal justice, the cross that manifested up high the majesty of episcopal power until that point was lowered and moved behind the bishop who then became, for all to see, *conseiller du roi*.

Properly speaking, the bishops who were also members of the Parlement were like their lay counterparts *conseillers* at all times, but like all others magistrates, their entrance on the *perron du Palais* marked a visible transformation. It was only passed this point that the *conseillers*, whether lay or cleric, could and had to wear the attributes of their specific position in the court. The space where and moments when *parlementaire* robes could be worn was clearly demarcated by a set of strict rules and traditions that point to the importance attached to the display of insignia. The uncompromising character of these rules suggests that the wearing of *parlementaire* paraphernalia was not limited to the function of displaying

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<sup>325</sup> "et que quand [l'évêque] entrera au perron du palais, sa croix laquelle il fait porter devant lui quand il va par la ville sera portée après lui et baissée, et lorsqu'il sera entré dans la grande salle du plaidoyé son porte croix l'ira porter à la chappelle d'où à la sortie dud. Sr. archevêque il l'ira prendre, le susd. archevêque marchant devant elle jusques à ce qu'il soit sur le perron du palais." Malenfant, *Collections et remarques du Palais*, I, 319v.-20 [May 19, 1628].

social and professional status: it genuinely conveyed the authority attached to the exercise of the functions of the judicial office.

This latter function of both the sartorial and spatial regulations was clearly illustrated on the occasion of the visit of the Prince de Condé to the Parlement de Toulouse in September 1611. This visit raised questions that occupied the court for two entire mornings of debates in general assemblies. These debates and their outcome illustrate how the *parlementaires* managed to use a lackluster and impractical space such as the one offered by the *perron* to stage improvised but significant political rituals. More than a month in advance, the Parlement had received the news of the upcoming arrival of the Prince and the 13<sup>th</sup> of August 1611 the *premier président* de Clari told the court that

M. le prince de Condé was expected to arrive in Toulouse in a few days and that, as *premier prince du sang*, he deserved to be received with honor ; and in order to give this reception proper dignity it was decided by the *chambres assemblées* that M. de Lestang, third president, together with three *conseillers* of the court would go greet him in Montauban.<sup>326</sup>

More than a month later however, when Condé was finally about to arrive to Toulouse, he sent a *maître des requêtes* to let the court know that he had heard of its August 13 deliberation and

was not pleased with it. He wanted to be received as he had been in Bordeaux where the first and second presidents went to greet him together with twelve *conseillers*, the presidents wearing their red robes. He said as well that when he came back from Flandres he received the same honor in the parlement de Paris. The court, deliberating on this matter, decided that he would receive no other honor than the one that had been previously deliberated [on August 13], and that the president [de Lestang] would only wear the black robe, and in addition it was decided that those who would accompany him would not wear the hoods [*chaperons*] but the cornet and the wool robe.<sup>327</sup>

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<sup>326</sup> "M. le prince de Condé devoit arriver dans quelques jours à Toulouse et que comme premier prince du sang il meritoit d'être honorablement reçu ; pour laquelle reception faire plus dignement fut arrêté aux chambres assemblées que M. de Lestang tiers president avec trois conseillers de la Cour l'iroient saluer à Montauban." *ibid.*, I, 58v.-59.

<sup>327</sup> "qu'il n'en étoit pas content et qu'il desiroit qu'on le reçut comme il avoit été reçu à Bordeaux où les premier et second president l'étoient allés saluer avec douze conseillers, portant les présidens la robe rouge ; disoit aussi qu'à son retour de Flandres il avoit reçu meme honneur à la cour de parlement de Paris. Sur quoi deliberant la cour, elle arrêta qu'il ne lui seroit fait autre honneur que celui qui avoit été deliberé, et que le president ne prendroit que la robe noire, et encore fut il arrêté que ceux qui iroient avec lui ne porteroient point les chaperons ains les cornettes et robes de laine." *Ibid.*, I, 60.

But the Parlement could not oppose a blunt refusal to the man who was arguably the most powerful individual in the kingdom at the time,<sup>328</sup> and the court delved into a detailed justification of its decision. The fundamental reason for rejecting the prince's request was that

it is a custom of the Court to only allow M. le premier président to leave to go meet the king and that the presidents never leave the *Palais* with their red robes, and M. les conseillers wearing the black robed, all of them [i.e. the presidents and the *conseillers*] had to wear the red or the black one. Red was impossible because this honor was only granted to the king, thus all of them had to wear the black one.<sup>329</sup>

In retaliation against the court's obstinacy, the prince decided to precipitate his arrival in Toulouse in order to force the Parlement into an improvised and unexpectedly restaged greeting:

On the said 17<sup>th</sup> of September the said prince entered and precipitated his entrance so much that he arrived earlier than expected to the convent of the *pères Récollets*, in the cloister of which he was supposed to be greeted by the court. However, because he had already gone up on to the gallery, the president de Paulo, together with twenty three others—either presidents in the *Enquêtes* or *conseillers* in the court, greeted him from down below. The said prince received the court rather coolly, and manifested by his composure that he was not pleased ...<sup>330</sup>

Having failed to obtain the mark of honor he desired through the symbolic of clothing, he attempted to use the space of the *Palais* to manifest the deference he wanted the court to display towards him. Back to the *perron*, the prince “requested that a president be sent to meet him on the *perron*, that a chair be prepared for him, covered with a cloth with one cushion for the feet and one on the seat ...”<sup>331</sup>

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<sup>328</sup> Henri IV had been assassinated on the previous year and Henri, prince de Condé, was at the time the putative heir to the throne after the underage Louis XIII and his young brother Gaston. This dynastic position combined with the minority of the child king put Condé in a very influential political position.

<sup>329</sup> “*la Cour n’a pas accoutumé de permettre que M. le premier president sorte que pour aller au devant du roi et que les presidents de la Cour n’ont point accoutumé d’aller hors le Palais avec les robes rouges, M. les conseillers la portant noire, qu’il falloit qu’ils la portassent tous en rouge ou noire, rouge cela ne se pouvoit n’étant dû qu’au roi seul, il falloit donc que tous la portassent noire.*” *Ibid.*, 61.

<sup>330</sup> “*Led. jour 17<sup>e</sup> septembre led. Sr. prince entra et précipita si fort son entrée qu’il fut plutôt que la cour au couvent des peres Recollets au cloître desquels il devoit être salué par la cour, neanmoins parce qu’il étoit deja monté à la galerie, le Sr. president de Paulo avec les vingt trois ou presidents des enquêtes ou conseillers de la cour le salua en bas la galerie. L’accueil que led. Sr. prince fit à la Cour fut assés froid, et leur temoigna par sa contenance qu’il n’étoit pas content.*” *Ibid.*, 62v.

<sup>331</sup> “*il demandoit qu’on lui envoyat un president sur le perron, qu’on lui preparat une chaire, et qu’on lui mit un tapis sur lequel fussent les carreaux du siege et des pieds.*” *Ibid.*, 63.

The court deliberated on this request and agreed to it, adding however that the president and *conseillers* who would go greet him on the *perron* would remain on the landing and were not to go down the stairs.<sup>332</sup> Thus, however minuscule the space occupied by the *perron* it was re-demarcated so as to devise a unique ritual adapted to the visit of this prince who, in the specific political context of the time, was in a position of power that allowed him to expect a special deferential treatment. This particular treatment was marked by the unusual exit out of the buildings of one president and four of the oldest *conseillers* to come and greet the prince at his arrival in the courtyard. Still, the Parlement used the spatial configuration of the *Palais* to constrain the staging of this ceremony within precise limits that would manifest clearly that, however powerful and close to royal majesty by virtue of his blood, the prince could not be granted marks of honors reserved to the king only. Several measures were taken to make this fact very clear: the *premier président* would not be part of the delegation, the small deputation would exit the premises but would stop at the *perron*, which, as noted earlier, was covered by a slate roofing that could operate symbolically as a canopy over the *parlementaire* delegation so as to mark the side on which royal majesty resided in this unusual summit meeting. For this was the point at stake in this occurrence: however vain this kind of bickering over a *point d'honneur* might seem to us at first, the dispute over the few meters the deputation of the Parlement would or would not walk outside the building, was in fact a debate over the spatial representation of the relative share of royal majesty to which both the Parlement, by virtue of the exercise of sovereign justice, and the prince, by virtue of his blood and of his prominent political position at the time, were entitled. To a certain extent, the drama that was to be enacted on this improvised stage and at that particular time was that of the rivalry between two kinds of nobility, two conflicting (although not incompatible) conceptions of sovereignty.

In the end, the solution adopted was a compromise that could satisfy both parties: Condé on the one hand, forced the Parlement out of its customs and traditions into giving him a public reception that no other *prince du sang* had ever received, the court on the other hand, by a shrewd use of symbols was able

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<sup>332</sup> *Ibid.*

to maintain the superiority of its claim to a share of royal majesty and sovereignty. This superiority was made visible by the remaining of the deputation on the landing of the *perron*. To begin with, this configuration evened out the greeting the court had previously given from down below in the convent of the *pères Récollets*. More importantly, it forced the prince to climb up the stairs, for all to see in the courtyard, to meet the delegation.

In order to make the hierarchy that this ceremony was supposed to manifest even clearer, the *premier président* further commented the original question about the wearing of the red robe in his solemn harangue to the prince in the *Grand'chambre*:

M. le prince manifested, in the harangue he addressed to the court, some small resentment he had about the honor he believed was due but not given to him. However, M. le premier président answered that the court had given him everything they thought belonged to him, but that, as for the purple [i.e. the red robes] he had desired, the court of Parlement wore it in display and parade only for the service of God and for the person of the king himself.<sup>333</sup>

This observation, made solemnly in the presence of the prince in a public plenary session in the *Grande Salle*, was not innocent: it laid out the court's vision of its own position in the hierarchy of power and of the related honor and dignity attached to that position. Not surprisingly, God and the king are at the top of this hierarchy. This view is in keeping with a long tradition of political thought that considered the king as the vicar of God and viewed royal majesty as derived from divine majesty.<sup>334</sup> More unusual here is the view, manifested through the regulated wearing of red robes, that sovereign courts, as a *corps* invested with the solemn exercise of the highest form of royal authority, occupied the second position in the hierarchy, even before a *premier prince du sang* such as Condé. Of course, the view was self-serving coming from a *premier président* in the Parlement, but, as Condé's acceptance of the compromise suggests, was more than wishful thinking at this point in time. A few decades later and in a different

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<sup>333</sup> “M. le prince témoigna en la harangue qu’il fit à la Cour quelque petit ressentiment de ce que l’honneur qu’il croyoit lui être dû ne lui avoit pas été rendu, toutefois il lui fut reparti par M. le premier president que la cour s’étoit disposée de lui rendre tout ce qu’elle avoit cru lui appartenir, mais que pour la pourpre qu’il avoit désirée, la Cour de Parlement ne la mettoit en montre et en parade que pour le service de Dieu et pour la propre personne du Roi.” *Ibid.*

<sup>334</sup> See Chapter 1.

political setting that further underline the contingency of this kind of enacted debates, the balance of power would clearly tilt in favor of the prince: having become governor of Burgundy and a major political ally of the cardinal-minister Richelieu, Condé could muster enough authority in 1636 to come unannounced to the Parlement de Dijon and step right into the *Grand Chambre* to force the reception of one of his creature, Philippe Giroux, as a president of the court.<sup>335</sup>

In any case, the use of space, and in particular of the *perron du Palais* in this instance, thus functioned as a materialized representation of the political hierarchy that the magistrates envisioned as a consequence of their command over sovereign justice. When the court decided that its delegation would remain on the landing “*sans descendre les degrés*,”<sup>336</sup> this detail should be understood literally—*degré* is the old french word designating the step of a stair—and figuratively, that is, without going down the degrees of a new hierarchy of power and honor that superimposed over the old *degrés de noblesse*.

This was a pragmatic and especially ingenious use of space, for the *Palais*, because of its lack of luster and dilapidated state, did not speak by itself the haughty political and social claims of the *parlementaires*. Garipuy’s description of the *grande salle d’audience*, arguably the location for the most solemn and important rituals of the court, reveals a far less brilliant reality than that the Parlement managed to stage for the reception of Condé. It is worth reading the details of Garipuy’s account here:

This chamber ... is lit on the south by five windows with oak casements and large panes. It is tiled with dressed stones on a floor supported by stone and wood pillars. The floor of the square of the siege, also called *barreau*, is made in very old and partly defective planks. In the two angles of the *barreau* are located two lanterns *en jalousie* made of sculpted wood. The facing of the walls are decorated with plaster. These walls are defective, cracked in several parts, especially the northern wall, which is eaten so badly by saltpeter and humidity that the surface—in plaster on the side of the chamber and in mortar on the side of the courtyard of the Tournelle—cannot hold anymore, and that the wood of the paneling of the backs and chairs of the said chamber as well as the tapestries are completely rotten. There is a very important crack in this part that runs through the thickness of the wall up to the top and can only result from a construction fault. There are two other, but less serious cracks: the first one on the same wall above

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<sup>335</sup> Farr, *A tale of two murders : passion and power in seventeenth-century France*, 118.

<sup>336</sup> Malenfant, I, 63.

the little door to the *chambre des manteaux*, the second one above the main door of the chamber, both of them resulting from the building of the said doors that occurred after the walls were built.

The base of the walls of this room is lined with wood on the entire perimeter, below the plaster pilasters that decorate the said walls. In the part of the siege of the tribunal that occupies one of the angles, there is a higher wood panel that serves as the back of a chair cover with a tapestry decorated with fleurs-de-lis. The benches and chairs on both sides of this tribunal are padded and those that make up the enclosure of the *barreau* are just made of plain wood. The floor of the inside of this *barreau*—also called *parquet*—is made of large planks. ... The ceiling of this room is made of mosaic. Several of the pieces of wood that compose it are defective, the framework of the roof space *à la française* above this ceiling is equally defective in certain parts.<sup>337</sup>

As in the case of the *perron* however, one should not be misled by Garipuy's grim description of a genuinely dilapidated but artificially empty chamber. Once again, we must try and fill up this room mentally with the men and activities that surely did not mask the cracks and saltpeter, but at least diverted the eye of the onlooker. Other types of representations, not motivated by Garipuy's concern for a precise and exact description of the architecture, provide us with a very different image of the *Salle d'audience de la Grand' chambre* (see Illustration 14 below).

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<sup>337</sup> “Cette chambre (...) est éclairée par cinq ouvertures de fenetre au midy, assorties de croisées bois de chene a grands carreaux. Elle est carrelée en pierre de taille sur un plancher porté sur des pilliers de maçonnerie et de bois, le quarré du siege ou barreau est planchayé en planches fort vieilles et partie deffectueuses. Dans les deux angles du barreau sont placées deux lanternes en jalousie de bois sculpté. Les parements des murs sont decorés en platre. Ces murs sont deffectueux et lezardés en plusieurs parties, principalement dans celle du cotté du nord qui est attaquée par le selpetre et l'humidité au point que les enduits en platre du cotté de la chambre et en mortier du cotté de la cour de tournelle ne peuvent plus y tenir, et que les bois des lambris des dossiers et sieges de laditte chambre ainsi que les tapisseries sont tous pourris. Il y a une lezarde très considerabe en cette partie qui traverse l'epaisseur du mur et se continue dans toute l'elevation, on ne peut en attribuer la cause qu'au vice dudit mur. On en voit encore deux autres, mais de moindre consequence. L'une au meme mur au dessus de l'ouverture d'une petite porte qui comunique au passage de degagement de la salle des manteaux et l'autre au dessus de la principale porte d'entrée de la grand chambre, l'une et l'autre on été occasionées par les ouvertures desdites portes qui ont été faites après coup.

Le soubassement des murs de cette salle sont lambrissés en bois dans tout le pourtour jusques au dessous des bazes des pilastres en platre qui decorent les susdits murs. Il y a dans la partie du siege du tribunal qui occupe un des angles un lambris plus elevé servant de dossier couvert d'une tapisserie fleur delisée. Les bancs et sièges de deux cottés de ce tribunal sont rembourés et ceux qui forment l'enceinte du barreau sont seulement en bois. L'intérieur de ce barreau ou parquet est planchayé en grosses planches : dans l'angle opposé au siège ou tribunal est placée la chapelle cottée n° 7 ornée d'un tombeau d'autel et d'un tableau derrière, fermée d'une balustrade en fer d'hauteur d'apuy, le plancher superieur de cette chambre est en mosaique. Plusieurs des pieces de bois qui la composent sont deffectueuse, la charpente du grand comble a la françoise au dessus dudit plancher, est pareillement deffectueux en certaines parties au fonds de laditte grand chambre.” ADHG, C2254, fol. 3-6.

Magnificum Tholose Regium Parlamentum



Domini Nicolai Bertrandi vtriusq;  
iuris professoris pstantissimi parliamentalisq;  
Tholose Advocati eloquentissimi celeberrimi  
ac peditissimus quidez D pus De Tholosanoꝝ  
Gestis ab urbe condita cunctis mortalibꝝ apꝑme  
dignis cōspectibꝝ. In quo nō solus varie edicunt f  
sciteq; explicātur historie: sed multe qꝫ ssignes sē  
tēte necnō (quo oibus pꝑt) ardue ac āple. & le-  
guz & canonū disceptationes atq; intermitꝝ de  
ductiones apꝑissime depromūtur & extricātur.  
Hoc autē pclarissimus opus nuperrime & ātebae  
nūqꝫ i lucez pꝑditus tam accurato ac explicatissi-  
mo sculpsuz est cbaractere: vt facile habeāt doc-  
tissimi Tholosates ac alij qꝫ eos delectet. De  
dieo eres in quo pꝑficiāt. Infimivnde ad scientie &  
virtutis studium calcaria sumant.

Lum gratia amplissimo qꝫ  
Priui legio

Illustration 14. A sixteenth-century representation of the Salle d'audience de la Grand' Chambre of the Parlement de Toulouse.  
(Title page of Nicolas Bertrand's *Opus de Tholosanorum gestis ab urbe condita* (1515).

In the sixteenth-century representation above (Illustration 14), it seems that the artist took some liberty with the architectural set up of the Grand Chambre described by Garipuy.<sup>338</sup> Conversely however, because the artist had goals and concerns different from those of Garipuy, his representation of the Grand Chambre includes important elements that the engineer overlooked deliberately. First and foremost, the crowd, dense and numerous, is as prominent in this image as it is conspicuously absent from Garipuy's report. The artist correctly placed this crowd behind the *barreau* which, symmetrically facing the benches of the judges, delimited the square of the *parquet*. The artist also duly included the desk of the *greffier*—the scribe of the court—, as we will see shortly, a crucial element of the judicial practices that took place in all chambers of the Parlement. This desk is not any desk, it is “*le bureau*” as the professionals of the court called it, in expressions such as “*mettre sur le bureau*,” meaning literally to put the documents of a lawsuit on the desk and by extension to open the deliberation on a case. This desk was the workbench of the judicial workshop, it is the central site on which the stuff of justice is exposed, scrutinized, worked upon, and transformed. The artist did not forget either to include the *greffier* himself, an essential actor in all these operations because of his permanent control over both the space of this desk and the objects that lay on it. The representation however, is a bit misleading, for the scene it pictures was very unusual in the Parlement de Toulouse. Indeed, the presence of the king sitting in the corner, in the chair of the *premier président* indicates that the scene represents here a *lit de justice*, which had never happened in Toulouse at that point in time.<sup>339</sup> The *premier président* is sitting at the right hand of the king, and the second character sitting at the desk of the *greffier* is the chancellor, probably watching over the registration of an *ordonnance* the *greffier* is copying in the Parlement's register.

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<sup>338</sup> Admittedly, more than 250 years separate the two renditions, but as Garipuy's report indicates, the overall structure of the room was quite old and we know for facts that most of the elements he described (for instance the number and style of the windows, the location and arrangement of the benches) had been left unchanged since the late fifteenth-century.

<sup>339</sup> The first *lit de justice* in the parlement de Toulouse occurred on August 4, 1533, when Francis I visited the court. A second (and last) one occurred in 1563, when Charles IX and Queen Mother Catherine de Medici stopped in Toulouse on a tour of provincial parlements to force the registration of the Edict of Amboise (see Mack P. Holt, "The King in Parlement: The Problem of the Lit de Justice in Sixteenth-Century France," *The Historical Journal* 31-3 (1988): 519). The drawing was published as the title page of Nicolas Bertrand's *Opus de Tholosanorum gestis ab urbe condita* in 1515.

Regardless of the scene represented, what matters here is the presence of this desk, covered with parchments, papers, registers, *sacs*. Its location, in the enclosed space of the *parquet* is especially noteworthy. This empty diamond shaped space that functioned as a buffer between the judges and the densely crowded room, was the location where complaints, requests, accusations, defenses, *rappports*, were articulated. It constituted a clearly delimited and peculiar stage. No backstage here, no behind the scenes—at least that was what the spatial organization of the chamber attempted to display—but spectators on all sides, clearly divided between judges on the one hand and the crowd on the other. The isolation of the character at the center of this stage—materialized by the empty space created by the enclosure around him—both indicated clearly what was to be the center of attention and attempted to literally create objectivity by making the central object stand out, seemingly isolated from all present around. The same applied to the *bureau du greffier*: the documents supporting the case at stake as well as the act of writing that gave legal authority to documents—that made them *authentiques* in the vocabulary of the time—were put on display, for all to see. This staging did not simply seek to give something of a dramatic solemnity to the procedures of the Parlement, it was, in and of itself, a customary procedure of validation. While the signatures of the *greffier*, *président*, and *rapporteur* alone, affixed in the secret of a *conseil* session at the bottom of an *arrêt* sufficed to give an entire procedure legal validity, one should not underestimate the importance of the presence of the crowd during the *audience* sessions. Actually, while the control of the public eye was unnecessary to validate a procedure, it was indispensable to give the court's final decision legal *authority*. Although the drafting of *arrêts* was a complex process, taking place mostly in the secret of the *rapporteur*'s private study<sup>340</sup> and of *conseil* sessions,<sup>341</sup> the final document—the *arrêt grossoyé*, duly signed and sealed, only assumed its legal authority when it was pronounced—that is read—publicly in this same room.

Another important feature of this drawing is its very choice of the *Salle d'audience de la Grand'chambre* to represent the Parlement as a whole. To a certain extent, Garipuy endorsed this choice

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<sup>340</sup> See below Chapter 7.

<sup>341</sup> See below Chapter 8.

as well by going straight to this room from the gate of the *Palais*. This choice was neither random nor innocent. It resulted from and contributed to reinforce a specific representation of the court that identified the Parlement with only some of its functions and practices. This image, that of the entire *corps*, gathered in full dress to perform solemnly the tasks that manifested most clearly the sovereign attributions of the court, was the representation that the *parlementaires* sought to give of themselves and that the artists and the engineer two centuries later seemed to have readily accepted and at the same time contributed to reinforce (tellingly, this representation of the *Salle d'audience* is entitled “the magnificent Parlement of the kings in Toulouse”). It seems that the *parlementaires* have been especially successful in promoting this image, for the identification of the court with these particular functions survived the Parlement itself: modern historians as well endorsed and reproduced this representation by laying particular—and in some cases exclusive—emphasis on the activities that took place in the *Grande Salle d'Audience*.<sup>342</sup> Thus, as a result of this self-representation reified by the primary sources modern historians tend to favor, unity of place, circumscribed to that unique location, has become a tacit canon of historical narratives focusing on the court. This unity of place that constrains most historical accounts within the walls of the *Grande Salle d'Audience*, also led to the adoption—implicit as well—of a unity of action that tied historical narratives to the sovereign attributions that were manifested in that single location. The resulting storyline most often consists in pulling threads between the rare *lits de justice*, occasional *remonstrances*, plenary sessions, solemn pronunciations of *arrêts* that punctuate the three centuries and half long life of the Parlement de Toulouse.

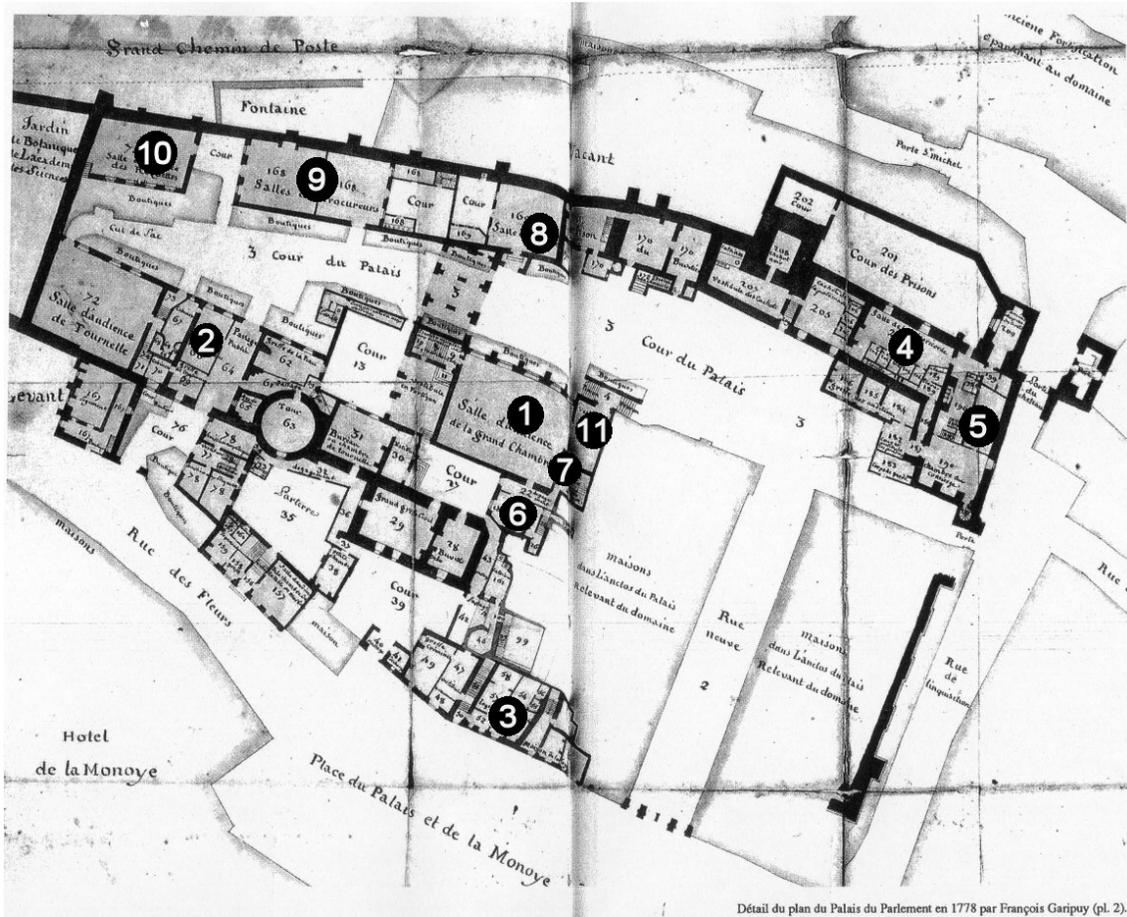
While these events should certainly constitute an integral part of any historical account of the parlements—including one focusing on judicial practices—it must be emphasized that only a small fragment of the court's *judicial* history was written—literally and figuratively—in the *Grande Salle*. The bulk of the documents that attest to the activities of the court were written in other places, behind the

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<sup>342</sup> This idealized representation also guided the architect who renovated the *Grande Salle* in the twentieth-century. The current aspect of this room that houses today's first chamber of the *Cour d'appel* mirrors this idealized representation much more than any appearance the *Grande Salle* might have had at any point in time during the Old Régime.

scenes where the bulk of these activities themselves took place. Most of the practices that took place in the *Grande Salle d'Audience* were peripheral to these activities or only intervened at the very end of a few procedures and processes thanks to which cases matured in other places.

I should make it clear that I am not trying to make here an argument purely based on quantity and frequency. The fact that the judicial practices that took place in the *Grande Salle d'Audience* were less frequent and only generated a small part of the archive of the court certainly does not mean that these practices should receive less attention. The issue here is one of itinerary in the circumnavigation of the Palais and of representation of the experience of judicial practices—from the point of view of all actors involved: magistrates, *praticiens*, litigants. Indeed, the journey of the litigants into the *Palais* began very differently from that of Garipuy: only a fraction of those who came to the Parlement walked straight to the Grande Salle, if they were to set foot in it at all (see Illustration 15 below). In other words, one should be careful not to let the *Grande Salle* and its activities be the majestic and carefully trimmed tree that hide the sprawling and luxuriant *parlementaire* forest.



Détail du plan du Palais du Parlement en 1778 par François Garipuy (pl. 2).

Illustration 15. "Where does the journey begin?"

- (1) In the *Salle d'audience de la Grand Chambre* for a visitor or spectator.
- (2) In the *Grefe des presentations* for a plaintiff in a civil lawsuit.
- (3) In the *Grefe de la Tournelle* for a plaintiff in a criminal lawsuit.
- (4) In the *Salle de la misericorde* for a male prisoner.
- (5) In the *Prisons des femmes* (upstairs) for a female prisoner.
- (6) In the *Chambre des manteaux* for a magistrate.
- (7) In the chapel for a bishop-magistrate.
- (8) In the *Grefe des requetes* (upstairs) for a plaintiff with a *committimus* privilege.
- (9) In the *Salle des procureurs* for a procurator.
- (10) In the *Salle d'audience des Requetes* for someone who committed a crime in the Palais.
- (11) In the *Vestibule de la Grand Salle* for a counsel.

*Behind the scenes: the tortuous maturation of lawsuits.*

(Hallways, stairs, *greffes*, shelves, racks, studies, papers, *sacs*, interrogation rooms, jails, *conseils*)

In order to break away from both the representation focusing on the *Grande Salle* and the resulting plot which, passing quickly on the daily judicial activities of the court, depicts the Parlement as a mainly political and legislative body, it is necessary to look behind the scenes. It is at this point that the labyrinth analogy should be resumed, for what one discovers behind the *salles d'audience* conforms to the definition of a labyrinth, “a structure consisting of a number of intercommunicating passages arranged in bewildering complexity, through which it is difficult or impossible to find one’s way without guidance.”<sup>343</sup> Garipuy expresses this sense of bewilderment at several points in his *rapport*, when he reflects for instance on the impracticality of the *salle d'audience de la Tournelle* (the room for the hearings of the criminal chamber) because of the distance and intricate path that separates it from the *chambre ordinaire de la Tournelle* (the room for the deliberation of the same criminal chamber):

The entrances of [the *salle d'audience de la Tournelle*] are completely masked by shops, and it is very impractical for the service and exposes the judges to get sick because of the distance that separates it from the *chambre ordinaire* or *bureau de la Tournelle*, following a rather long path out in the open, climbing or going down bad stairs interconnected by corridors [*dégagements*] at times on the first floor, at times of the second one.<sup>344</sup>

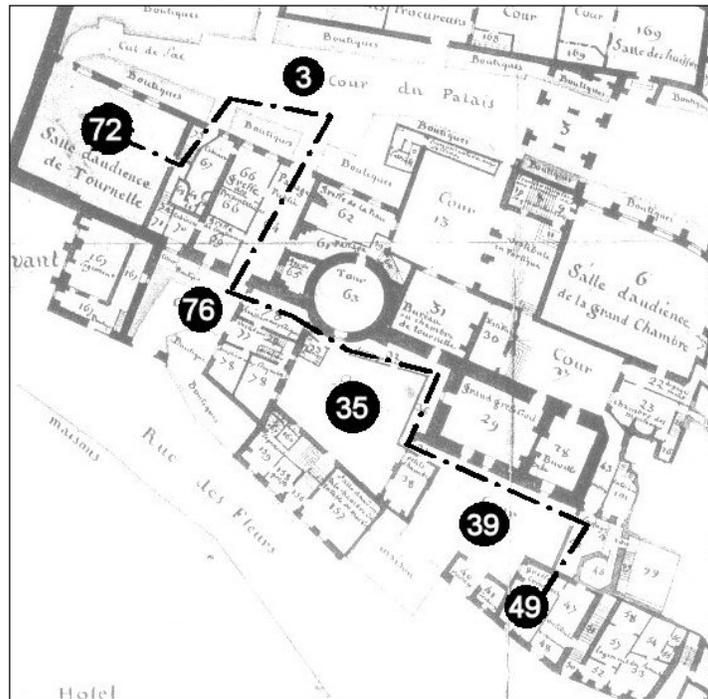
Even worse than the circulation of judges was that of papers. In this instance, Garipuy was again amazed at the length and complexity of the path (see Illustration 16), but also pointed out that the “guidance” without which it was “impossible to find one’s way” according to the definition above, was precisely practice:

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<sup>343</sup> *Oxford English Dictionary*, Second edition.

<sup>344</sup> “L’eloignement de cette salle d’audience dont les entrées sont totalement masquées par des boutiques et où l’on ne peut parvenir de la chambre ordinaire ou bureau de la Tournelle qu’en parcourant un assés long espace a decouvert, ou en montant et descendant plusieurs mauvais escaliers qui se comuniquent par des degagements tantot au rez de chaussée tantot au premier etage, la rend très incommode pour le service, et expose les juges a prendre mal dans le passage et communication de l’un a l’autre.” ADHG, C2254, fol. 28-9.

The *greffe*<sup>345</sup> of [the *Tournelle*] ... is too far away and out of reach for the service [of this chamber], as can be seen on the plan. The length of the space that one has to walk between them is so considerable that it would be impossible to figure out this path if it was not known by usage and practice.<sup>346</sup>



**Illustration 16. The tortuous pathway of papers. From the greffe de la Tournelle (49) to the salle d'audience de la Tournelle (72), the greffier or the reporting judge, most likely overburdened with sacs, papers and registers, had to cross no less than four courtyards in the open (39, 35, 76, 3).**

Before I look in more detail at these three types of interconnected spaces (*greffes, salles d'audience, bureaux*) I would like to suggest that these tortuous pathways which can only be revealed through practice as Garipuy noted, had functions overlooked by the engineer's assessment of their "impracticality." First, it should be noted that because their intricacies could only be memorized through daily practice, these pathways gave to men of justice a monopoly over the knowledge of practical judicial processes. The intimate knowledge of the judicial space acquired through daily practice functioned as a

<sup>345</sup> This is the room where the documents of the current lawsuits were temporarily stored.

<sup>346</sup> "Le greffe de cette chambre (...) est trop éloigné et hors de portée de son service, ainsi qu'on peut le voir sur le plan. Il y a un espace de terrain si considerable a parcourir qu'il est difficile de le decouvrir si on ne le connoit par usage et pratique." ADHG, C2254, fol. 29.

dividing line between the experts (judges, *greffiers*, but also *huissiers*, *secrétaires*, procurators) and the laymen (litigants, spectators, the reporting engineer). Because of his particular commission and his knowledge of the overall arrangement of the building, Garipuy saw only “impracticality.” Other laymen, in particular litigants whose knowledge of the complex was much more partial, only saw experts who could be identified not only by their robes and the papers they carried but also by the fact that they might have seemed like the only ones who knew where they were headed in this labyrinth. As opposed to the bookish knowledge of the law and of legal doctrine accessible to the wealthy and cultivated laymen, this practical knowledge of the judicial space could only remain a monopoly of the practicing expert.

I would also like to suggest, taking cues from Bruno Latour’s study of the Conseil d’Etat (to a certain extent a distant descendant of the Parlement),<sup>347</sup> that these tortuous pathways were an integral part of a process of maturation of the lawsuit as a material object (the *dossiers* of the Conseil d’Etat and the *sacs* of the Parlement). The parchments, papers, *sacs*, and registers on which judicial practice fed had to go through the long and tortuous guts of the *Palais* before they could be processed on a *bureau*. But this process of maturation, the fattening of the *sac* that manifested physically a transformation by which a lawsuit gradually became amenable to the judicial practices of the magistrates in the *bureau*, happened primarily in the *greffes*.

The modern definition of *greffe*, an office where the minutes of a trial are kept, has only retained the archival function of the place. The early modern *greffes* of the parlements already had that function, to which I will come back to conclude the first part of this chapter. But for now, I would like to consider the original function that had given its name to a place where the trials were *written*. The etymology of the word *greffe*, from the Latin *graphium* (the pen) manifests the fact that the place was originally conceived around the act of writing in its materiality. The function of the *greffe*, the place where one writes, became secondary at the end of the seventeenth century, as a result of two converging evolutions: one

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<sup>347</sup> Bruno Latour, *La fabrique du droit. Une ethnographie du Conseil d’Etat*, Paris: La Découverte, 2002. Latour retraces how the *dossiers* move in the court, observes how they are “meticulously fattened” along the way (80) and notes “Following relentlessly our hardback folders, noting how they gain weight, crease, and feed, noting the closets, offices, hallways, basements, chairs or seats where they are made to mature, we can identify the various *métiers* of the Conseil” (*ibid.*, 96-7).

within the judicial world where the constant increase in the number of lawsuits, and in particular of civil lawsuits, exacerbated the formulaic nature of judicial documents, and one outside the courts, with the progress of the printing press, which made it easier than ever to compose and mass reproduce single-sheet forms. The legal printed forms that start appearing in the *sacs* in the last quarter of the seventeenth century only left a few blanks on the page, which the *greffier* or the procurators would complete by filling them in with the relevant text. The information written by hand in those blanks became *de facto* the sole particulars of a case (dates, names, birth dates, professions, places, types of crimes and offenses). This change was not a sudden break, for the decision to use printed forms resulted from but also accentuated a shift in the way judges conceptualized conflicts, crimes and litigants. I anthropomorphize here justice to be brief, but behind this shift in judicial epistemology are of course men and their practices that I will analyze in greater detail in later chapters.

For now, I want to focus on how, even after that conceptual shift reflected in the changing layout on the material of the paper, writing practices in the *greffes* constituted an integral part of the judicial process and how the *greffe* as place played a role in that relationship. It should be noted first that while the early modern *greffe* had retained their original function as “writing places,” by the beginning of the sixteenth century most of the writing of the actual documents that composed the lawsuit was already decentralized and done in other places: in the study of lawyers, procurators, notaries, and various other experts (for instance, the surgeons and doctors who could be called upon to write autopsies and exams in criminal trials). While the *greffiers* and *secrétaires* participated directly in the production of some of the documents of the lawsuit (aptly called *productions*)—for instance the records of interrogations or the speeches of lawyers during hearing sessions—their more critical role from the point of view of the overall judicial process consisted in penning and manipulating the paratext (written words, cloth, string, and paper) that manifested physically the maturation of a lawsuit. In this role, they not only wrote but bundled the *productions* into the fundamental judicial unit that was the *sac* (see Illustration 17). Thus the clerks of the court, under the supervision of the *greffiers*, presided over the putting together of the material which all subsequent judicial practices processed and acted upon. Indeed, the judicial procedure required first

and foremost the metamorphosis of a set of subjects and objects—litigants, the crimes and offenses they had committed or had been victims of, the circumstances of these crimes, the emotions and expectations they involved—into judicial objects, that is into objects that the judicial gaze could identify, order and evaluate from within the language and practice of the law. This initial process of refinement of a raw, non-judicial material into a processed material amenable to further judicial manipulation—in the literal sense of the term—happened in the *greffes* where documents were reviewed, cataloged, and put in a *sac*.



**Illustration 17. The two sacs of a trial with their *productions*.**  
(ADHG 2B 44 & 44bis, 1608).

This *sac* transformed conflicts into manageable material units amenable to further judicial treatment in other places of the *palais* (the *salles d'audience*, *bureaux*, *chancellerie*). This physical containment of the lawsuit turned paper, was the first necessary step toward a legal comprehension of the case and it functioned as an elementary material articulation of the judicial will to establish command over the matter at stake at the very beginning of the trial. This intent to assert an initial mastery over the case was further expressed physically on the *évangile*, a piece of parchment stitched on the *sac* and on which the basic data of the case were recorded (see Illustration 18).

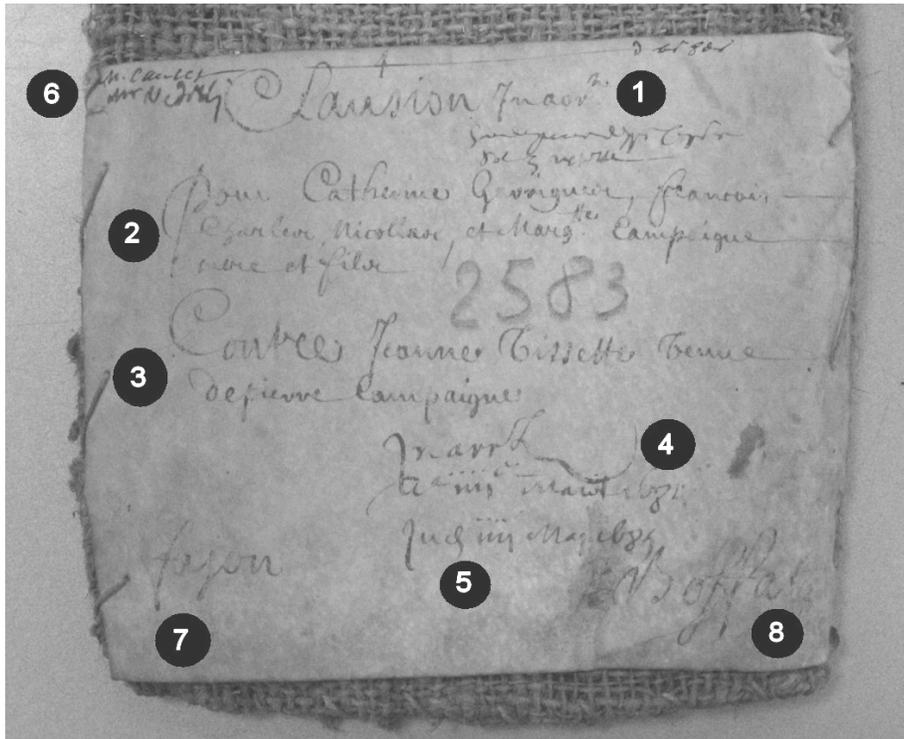


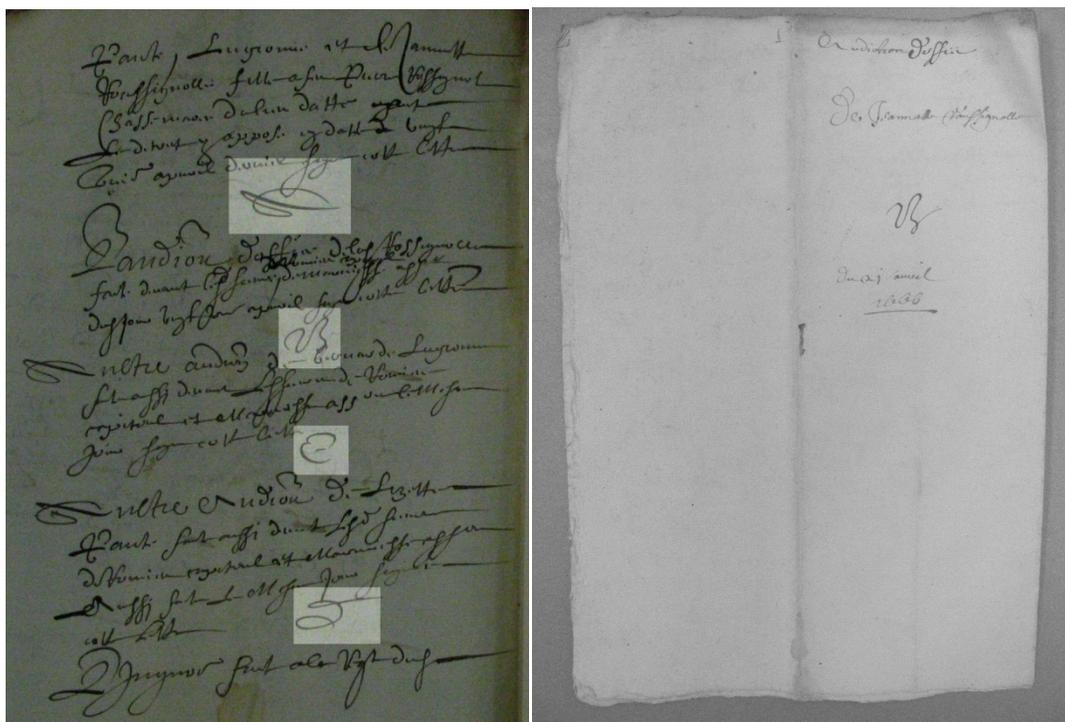
Illustration 18. The *évangile*, map of the trial.

The standardized layout of the *évangile* allows one to identify quickly the basic data of the trial: the chamber where the case was to be judged (1, here “*in arrestis*,” meaning the Grand chambre), the name of the litigant(s) whose *productions* are contained in the *sac* (2, here Catherine Garrigues, François, Charles, Nicollas and Margueritte Campaigne, “mother and sons [sic.]”), the name of the opposing party (3, here Jeanne Tissette widow of Pierre Campaigne), the date of the report to the court (4, here March 4, 1684), the date of the sentence (5, same date here), the name of the reporting judge(s) (6, here M. de Caulet and M. de Vedelli), the name of the litigant’s procurator (7, here Fajou) and of the opponent’s procurator (8, here Bossat). (ADHG 2B 2583)

The *évangile* also had a more practical function, for it was an indispensable visual aid that helped the *greffiers*, *garde-sacs*, and *secrétaires* manage the impressive mass of *sacs* in the tight space of the *greffes*.<sup>348</sup> But the writing practices of the *greffes* did not solely relate to space through the classifying function of the *évangile*. The *inventaire* written by the litigant’s procurator, was another crucial element in the paratext surrounding the *productions* of the lawsuits, for it played an essential role in asserting the control of the *greffiers* over the circulation of the *sac* and its documents within and outside the *palais*.

<sup>348</sup> Although many of these *sacs* have been lost or destroyed, more than 80,000 of them are still kept today for the Parlement de Toulouse (the sole parlement for which these documents have been preserved), occupying an entire floor of the Archives départementales de la Haute-Garonne.

This circulation was essential to the judicial process since the *contradictoire* was the fundamental principle of the procedure followed in the Parlement. This principle, still upheld today in the Conseil d’Etat,<sup>349</sup> required that the procurators for each party exchanged (the term still in use today is “communicated”) their *productions* so that each party could reply (“*répliquer*”)—with additional *productions*—to its opponent. The *inventaire* played a crucial role to control the fairness of this “ping-pong game”<sup>350</sup> as it recorded the list and short description of all the documents contained in the *sacs* (Illustration 19).



**Illustration 19. The *inventaire*, map of the productions.** On the left an *inventaire* of the documents contained in the *sac* of a 1666 trial. Each document is briefly described and given a letter (A, B, C, D, etc. highlighted here). On the right, the back of the testimony of Jeannette Roussignolle in this trial, cataloged as document B (ADHG 2B 787).

With the *inventaire* in hand, the *greffiers* could keep on the side a record of the movement of the documents that were constantly extracted and reinserted in the *sac*. When the exchange and production of new documents finally ceased, the maturation of the *sac* had reached its term, but the movement did not

<sup>349</sup> Latour, *La fabrique du droit. Une ethnographie du Conseil d'Etat*, 92.

<sup>350</sup> *Ibid.*

end for then started the circulation of the *sac* itself, a circulation that the *greffier* and his clerks recorded as well. A reporting judge now came to the *greffe*, handed the record of his assignment to the case (the *distribution* signed by the president of his chamber) and obtained in exchange the *sacs* that he now took home to dissect and scrutinize them in the secret of his private study.<sup>351</sup> Because there was the hub through which *productions* and *sacs* passed incessantly, the *greffes* rather than the *salle d'audience de la Grand Chambre* was the center around which the activity of the Parlement revolved. As Garipuy observed, "the *grand greffe civil garde sac* is without a doubt the most used [*le plus pratiqué*] in the entire *Palais*, because it is where the documents and procedures of the current and past lawsuits are kept."<sup>352</sup>

The *greffes* were also the place in the *Palais* where the engineer's bewilderment reached its peak. The *greffes* were indeed labyrinths of their own, even more tortuous and dilapidated than the *Palais* as a whole. Again, it is worth reading Garipuy's report at some length here. Describing the "*haut greffe*" he noted the ruinous state of the place:

[this room] ... is a large repository for the papers of the said *greffes*. These papers hang from wooden racks lining the walls and on other racks arranged in lines in the middle of the room from floor to ceiling. These racks have been so overloaded with paper that part of their wooden structure, old, worm-eaten and unable to sustain the weight of the bundles, have turn to dust and the papers have fallen on the floor. The rats have devoured the cloth and strings of the *sacs*, and what's left of them is scattered over the floor so that one cannot walk there without stepping on them. The room is lighted by three windows on the northern wall through which winds, rain and all sorts of bad weather have passed in the absence of window panes, thus rotting a great part of the papers.<sup>353</sup>

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<sup>351</sup> See Chapter 7.

<sup>352</sup> "Le grand greffe civil garde sac qui est sans contredit le plus pratiqué de tout le palais , parce que c'est la ou sont tous les depots des pieces et procedures tant des affaires courantes que de celles qui sont terminées (...)" ADHG, C2254, fol. 56.

<sup>353</sup> "[cette pièce] (...) est un grand depot des papiers dudit greffe suspendus et accorchés a des rateliers en bois le long des murs, et a d'autres rateliers diposés par files paralleles dans l'interieur de laditte piece depuis le carrelement jusques au plancher. Ces rateliers ont été si chargés de papiers que partie des bois vieux et vermouleurs n'ayant peu soutenir le poids des liasses ont rompu ou se sont reduits en poudre, et les papiers sont tombés à terre. D'un autre cotté les rats on devoré les sacs de toile ou leurs attaches de fissele, en sorte que le carrelement en est tout couvert, et qu'on ne peut y marcher sans les fouler aux pieds. Cette piece est éclairée par trois ouvertures de fenestres du cotté nord, par ou passent les vents la pluye et toute sorte de mauvais temps a deffaut des croisées ce qui a pourri et perdu une grand partie de papiers." *Ibid.*, fol. 50-1.

This run-down state of the *greffes* did not simply generate an apparent chaos of papers that added to the intricacy of a tortuous and narrow architecture, it exposed the place and the documents it harbored to practical dangers. Describing the *greffe civil* that housed the oldest registers of the Parlement de Toulouse, Garipuy noted that “the vaulted ceiling that covers this room, because of either a faulty construction or the insufficiency of the walls that sustain it, threatens to collapse.”<sup>354</sup> In the *greffe de la peau* (so called because it was the place where the *arrêts grossoyés* were written, originally on parchment), a room also filled with papers and parchment, with wooden floors and ceiling, “the fireplace ... does not have a chimney that communicates with the second floor, so that in order to warm up the said *greffe* they burn coal in terrines made of clay or copper, which creates a great danger of fire.”<sup>355</sup>

Despite the hazards, the chaos of papers, registers, racks, shelves, desks, the distance from the *salles d'audience* and *bureau*, the tortuous paths one had to follow to reach these other places, the *greffes* functioned. When a few *sacs* disappeared in 1555, the chief *greffier* Jean Burnet was in trouble but no one even considered that the *sacs* might be lost under some other papers or a collapsed rack. Confident in the effective recording of the circulation of the *sacs*, the court suspected instead (and the *greffier* argued himself) that some unreliable clerks in the *greffes* had “sold” the *sacs* to someone interested in their disappearance.<sup>356</sup> This confidence was probably based on the fact that practice served as a guide in the labyrinth of the *greffes*, a fact that Garipuy noted himself again:

The *greffe* and the adjoining rooms are so impractical and insufficient that all the papers, procedures, incriminating documents [*pièces de conviction*] against criminals are piled one onto the other, on stacks and shelves along the walls, on the floor so that it is impossible to walk there, and all the practice and experience of the *greffiers* is needed to

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<sup>354</sup> “La chute prochaine dont menaçoit la voute qui couvre cette piece soit par le vice de construction soit par la deffectuosité et insuffisance des murs (...)” *Ibid.*, fol. 13.

<sup>355</sup> “Le fonds de cette piece est occupé par des gros pilliers de plante, d’une grande cheminée en massonerie au premier etage, mais il n’y a pas de canon percé pour le rez de chaussée, en sorte qu’on est obligé de se chauffer dans ledit greffe avec du charbon dans des terrines de terre ou de cuivre, ce qui est très dangereux pour le feu.” *Ibid.*, fol. 23.

<sup>356</sup> “Arrêt du Parlement de Toulouse sur la requête de Jean Burnet, greffier civil de la Cour, au sujet de la perte de plusieurs sacs, procès et pièces déposés audit greffe,” March 13, 1555 (ADHG, 1B 1905, 143).

find the items they need for their current work. For the older lawsuits, it is almost impossible to find one's way back to them.<sup>357</sup>

In fact, the *greffiers* were quite successful in practice at recovering older *sacs*, documents and registers and Garipuy's amazement at the apparent chaos of the *greffes* resulted in part from his unfamiliarity with a daily practice that rendered this place if not completely functional at least manageable. But I would argue that maybe more interestingly, this amazement of the engineer also resulted from a preconceived ideal of the *greffes* which, before his plunge in the labyrinth, he might have imagined as a highly rationalized space where the documents of the court—its “monuments” in the language of the time—would be not just preserved, but enshrined. This idealization of the *greffes* resulted from a particular conception of the nature of the documents they harbored, a conception that Garipuy expressed explicitly when voicing his concerns about the solidity of the actual *greffes* he visited:

The roof space as well serves as a repository and because its floor and ceiling are in the oldest and most ruinous state one can imagine, there is a just reason to be alarmed and worried that this part of the building that should be the most solid collapse some day and see these documents that are of such a great importance to so many citizens completely lost, without any hope of putting them back in good order.<sup>358</sup>

This “roof space” and that “part of the building” was the *tour de l'aigle* also known as the *tour des archives*, because it harbored the great majority of the documents of the Parlement de Toulouse. It is unclear to what extent the “citizens,” laymen like the engineer, shared Garipuy's conception of the Parlement's archives and of the documents, but I would suggest that this *tour des archives*, the most visible part of the *Palais*, did symbolize the Parlement de Toulouse much better than the *salle d'audience de la Grand Chambre*.

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<sup>357</sup> "Le greffe et les pieces qui lui sont jointes sont si incommodes et si peu suffisantes que tous les papiers, procedures, et pieces de conviction des criminels sont entassées les unes sur les autres, sur des rayons et tablettes le long des murs, et a terre sur le carrellement, de maniere qu'on peut a peine y marcher, et il faut toute la pratique et l'experience des greffiers pour pouvoir retrouver les pieces." ADHG, C2254, fol. 49-50.

<sup>358</sup> "Ce comble qui sert pareillement de depot et qui presente ainsi que les planchers inferieurs l'etat le plus vieux et le plus ruineux, fait qu'il y a de quoy estre justement alarmé et inquiet d'une part par la crainte de voir crouler quelque jour cette partie du battiment qui devoit estre la plus solide et qui l'est si peu, de l'autre de voir des pieces d'une si grande importance pour tant des citoyens totalement perdues et sans espoir de pouvoir les remettre dans un bon ordre." *Ibid.*, 63.

Rather than the *Grande Salle*, the *tour de l'aigle* was at the center of the Parlement's judicial activities. While litigants never entered it, this construction literally towered over the *Palais*, like a visible axis around which most itineraries revolved. This tower constituted the central archive of the court: no magistrate in red robe, no fleur-de-lys patterned tapestries, no staged rituals in there, just *sacs*, papers and parchments. Thus, the tallest building of the *Palais*, the one which seen from afar could symbolize the authority of the court, did not harbor a courtroom or a prison: it was filled from the bottom to the top with the documents that resulted from decades, centuries, of judicial practices.

The two towers, the *tour de l'aigle* (or *tour des archives*) and the *tour de l'horloge* (see Illustration 22)—which I construe in this chapter and the next one as representations of, respectively, the material (the archive) and immaterial (time) aspects of judicial practice— could be seen from afar from both the inside and the outside of the city of Toulouse, since the *Palais*, built on the location of an ancient roman city-gate (*porte narbonnaise*), backed onto that symbolic and physical border that was the city wall. This metonymic representation of the Parlement by the towers of its *palais*, was not only visible in the urban landscape: it had been used over time as part of an official self-representation of the city of Toulouse that had insisted, since at least the twelfth century, on the physical duality of the toulousain urban space. This duality itself reflected the duality of local power: the *palais* stood for both the *cit * and secular power, while the Saint-Sernin basilica stood for the *bourg* and religious power (see Illustration 20), the two areas and powers being mediated by Christ, represented by the cross and the lamb (see Illustration 21).



**Illustration 20. Seal of the consuls of Toulouse.**  
 (1211, *Histoire graphique de l'ancienne province de Languedoc*, Ernest Roschach ed., Toulouse: Privat, 1905). On the left the Château Narbonnais, on the right the Saint-Sernin basilica.

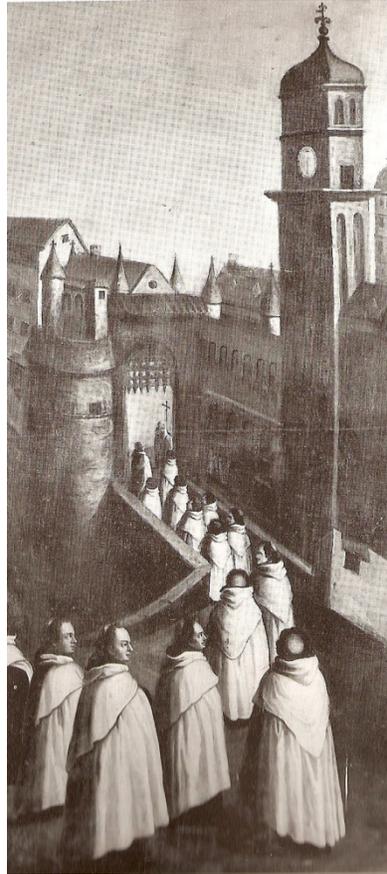


**Illustration 21. Weight of the city of Toulouse.**  
 (1506, *Histoire graphique de l'ancienne province de Languedoc*, Ernest Roschach ed., Toulouse: Privat, 1905). Here the *Château Narbonnais* appears on the right.

Thus, at the ending point of a century-old symbolic tradition<sup>359</sup> that pervaded the iconography and materialized in the frontier area of the urban space, the *tour des archives* and *tour de l'horloge* ended

<sup>359</sup> This tradition preceded the existence of the parlement de Toulouse, since the *palais* was set up in the old *château narbonnais*, the seat of the counts of Toulouse, already present on the seals of both the counts and the city.

up representing not only the *palais*, but indirectly secular power in the city, that is in the early-modern period, the Parlement, sovereignty, the king.



**Illustration 22. Detail of the *Entrée des Carmes à Toulouse*. (anonymous, Eglise de Seysses). The clock-tower of the *Palais* appears on the right on this eighteenth-century painting representing a procession of Carmes passing through the *porte du château*.**

CHAPTER 4.  
BETWEEN WORKDAY AND *LONGUE DURÉE*: THE RHYTHMS OF SOVEREIGN  
JUSTICE

The *tour de l'horloge* can be read as a symbol of the two opposite ends of the *parlementaire* temporal scales: on the smaller scale of the workday, the clock chimed out the hours that punctuated the daily sessions of the court, and on the larger scale of *longue durée*, the tower itself, a construction inscribed in a long tradition of local self-representation,<sup>360</sup> symbolized the century-old, indeed pre-royal presence of secular power in Toulouse.<sup>361</sup> Like the *tour de l'horloge*, the phrase “judicial practice” encapsulates these two temporal dimensions of sovereign justice. As we will see shortly, “practice” in the *parlement* was often synonymous to mundane, discrete activities that were thought of as, and regulated by brief periods such as the workday, the session, and even shorter time units proper to specific practices (for instance the “turn” of deliberation or the “button” of torture). “Judicial” on the other hand, relates to a notion of royal justice, which on an abstract level could be thought of as permanent, an almost timeless concept that possibly transcended the history of the monarchy itself. Thus from a temporal point of view, “judicial practice” in the parlement de Toulouse was situated between workday and *longue durée*.

Between the two ends of this temporal spectrum, a number of other judicial times and timescales—for instance, the judicial year or the time of one’s judicial career—informed judicial practice in varying and at times contradictory ways. This gradation of judicial timescales suggests that, instead of a uniform *parlementaire* time, we must consider a diversity of *parlementaire* times that I highlight in the first section of this chapter. I do so in two ways, first by shedding light on a temporal tension inherent in contemporary ideals of justice, and then by giving an overview of the various judicial timescales which, from the imagined *longue durée* history of the French monarchy down to the minutes timed by clocks and hourglasses, framed the whole range of *parlementaire* practices. In the second section of the chapter, I

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<sup>360</sup> See above p. 167-168.

<sup>361</sup> See above p. 136.

show how some of these various times were put to strategic uses in the Parlement. I suggest that time, in great part because it was integral to judicial procedure—sometimes as a mere parameter, sometimes as an instrument to achieve judicial effects, sometimes as the very object on which the procedure sought to act—, was both a constraint and a resource for the judicial practices of the magistrates. In a third and final section, I show how time was not only a procedural resource but also a literal resource, that is, a source of income for the magistrates. More specifically, I explore how the ambivalent position of the *conseillers* as both officers (*officiers*) and commissioners (*commissaires*) entailed two ways in which, from their point of view, judicial time was money.

### **The multiplicity of *parlementaire* times**

#### *Temporal ambivalence of the ideal of justice*

I have mentioned above that judicial practice was “situated” between workday and *longue durée*. To be more accurate, one should say that judicial practice was “caught” between these two timescales. Indeed, judicial practice was not simply framed by these two opposite temporal scales, it was shaped by a tension between them. The general concept of judicial practice itself—not just the early-modern notion of judicial practice—entails a basic temporal tension between the contradictory requirements of swift justice and patient deliberation. In the specific case of early-modern royal justice, this basic tension was accentuated by a temporal contradiction inherent in contemporary ideals of royal justice. As we will see throughout this chapter, judicial practices were often thought of and deployed as means to resolve, or at least alleviate, the contradiction between the demands of everyday judicial life on the one hand, and, on the other hand, the ideal of an everlasting royal justice that built its legitimacy, at least in part, by placing itself above the contingencies of daily life. Royal justice was stretched between these contrary expectations not just as a result of a problematic discrepancy between an idealized justice and its practical demands, but more fundamentally because, independently from the contingencies of daily practice, a

temporal contradiction was already contained in the idealization of royal justice as an instrument of stability.<sup>362</sup>

The goal of royal justice—whether defined as a peace-keeping mission as it was in the later Middle Ages or understood as the “maintaining [*manutention*] of public order”<sup>363</sup> in the lexicon of eighteenth-century *parlementaire* ideology—remained tied to a “conservative” ideal that placed these contradictory temporal demands on justice and its agents. Preserving order—whether social, political, or more vaguely “public”—was indeed a twofold and seemingly paradoxical task from the point of view of time management: it required swiftness, to cut short any disruption of order, but also patience, for taking one’s time to reach a judicial decision was a way of demonstrating to the disrupted community that the sentence had been carefully thought through—yet another reason for justice having “to be seen to be done.” Taking one’s time was a way of publicizing the maturation of the sentence in order to enhance its authority. Judicial patience, judicial slowness as it was more often perceived, could help create a consensual recognition of its authority which, ideally, would prevent further disruptions. This apparent paradox is reflected in the existence of two competing ideals: that of a prompt justice (the “*brieve et prompte justice*” of royal ordinances) and that of the carefully thought through sentence (the proverbial “*jugement mûrement délibéré*”<sup>364</sup>). The tension between these two ideals constitutes the overarching temporal framework within which judicial practices were thought of and deployed.

Given this framing tension, *festina lente* [“make haste slowly”] could have been the motto of royal magistrates in early-modern France. This adage aptly encapsulates the ambivalent attitude of royal judges vis-à-vis time, an ambivalence that reflected in part the magistrates’ conflicting obligations to the

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<sup>362</sup> See Chapter 1.

<sup>363</sup> This expression is found for instance in *remonstrances* to the king (e.g. *remonstrance* of November 17, 1755 on the undertakings of the *Grand Conseil*; *Remonstrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, vol. 2, p. 20 Chancellor Daguesseau also uses this same expression in his “Fragments sur l’origine et l’usage des remontrances” (Henri-François d’Aguesseau, “Fragments sur l’origine et l’usage des remontrances,” in *Oeuvres*, Paris: Libraires Associés, 1789, 536).

<sup>364</sup> As a king’s counsel (*avocat général*) in the parlement de Toulouse put it in the fifteenth century, the magistrates had to “proceed levelheaded, with temperance, and carefully” (“*ung juge doit (...) ponderate et cum temperamento et maturitate procedere*” ; quoted in Viala, *Le Parlement de Toulouse et l’administration royale laïque, 1420-1525 environ*, vol. 1, 413).

dual ideal of a swift/patient justice. To be sure, the magistrates did not always have this ideal in mind, and other considerations, often more mundane, also explain the judges' ambivalence toward the temporal dimension of their professional activities. The magistrates' conceptions and expectations of judicial practice were informed by perceptions of time that varied considerably depending on the task at hand. A *conseiller* did not experience and value the temporal dimension of judicial practice in the same way when he was being paid hourly fees to churn out sentences on minor cases in a *bureau* on a Saturday afternoon and when he contemplated sovereign justice in the *longue durée*, beyond his career and lifetime, beyond the reigns of kings.

### *The nested timescales of judicial practice*

These varying judicial perceptions of time sometimes matched and sometimes differed from a number of actual, institutionalized judicial times that were often specifically designed to govern judicial practices. Indeed, “imagined” judicial times superimposed over layers of “real” judicial times that spanned the whole range of timescales, from the short-term—e.g. the regulated paid hour of deliberation known as “*tour*” I mentioned above—to the long-term—e.g. the personal, sometimes decade-long,<sup>365</sup> reigns of kings that delimited in time the legal validity of judicial offices.<sup>366</sup> Some of those official judicial times, for instance again the “*tour*” of deliberation, or the regulated time of application of torture known as “*bouton*,” shaped very directly, in fact organized, judicial practices. Other, more flexible, official judicial times, for instance the varying time of maturation necessary before a trial was deemed

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<sup>365</sup> For instance, the famously long reign of Louis XIV (1643-1715), the longest in French history, that falls within the scope of this study.

<sup>366</sup> One of the first official acts of a new king was to confirm all royal officers in their offices. While this act had become a formality from a bureaucratic point of view, it remained an important political statement, for this confirmation amounted to a re-assertion that authority and power lie in the hands of the king and that the sharing of that authority through the granting of offices was always in theory provisional, based on a personal delegation from one mortal king to one mortal officer. Like the mystical person of the king, royal justice never died, but offices, hence royal officers in their official capacity, did die with the physical person of the king that had given or confirmed their offices.

ready to be judged [a point reached when the trial was declared “*en l’état*”], also influenced strongly, albeit more indirectly, judicial practices.

Between these two extremes, sovereign justice was regulated, practiced and thought of through a series of nested temporal scales: “*tour*,” session, workday, “*tour de role*,” judicial year, the time of kings’ reigns and magistrates’ careers, the *longue durée* of the history of the French monarchy. In this section, I shed light on how these various temporal scales shaped judicial practice and how, conversely, the practice of justice in sovereign courts contributed to shape the conception of these different timescales.

*The longue durée perspective.*

In Chapters 1 and 2, I explored the ways in which jurists and political thinkers from the Middle Ages on linked sovereign justice to the monarchy. One implication of that linkage was that sovereign justice, like the monarchy itself, was eternal. As I also pointed out, however, when early-modern thinkers looked back to a distant historical past, they found that other political systems had preceded the French monarchy and that these different regimes, pagan or Christian, monarchical or otherwise, had nonetheless some form of sovereign justice.<sup>367</sup> I have stressed in particular how an ancient, indeed pre-monarchical institution, the Roman senate, even served as a much revered ideological model and reference in *parlementaire* reflections on sovereignty. Thus, despite the many and tight links between the French monarchy and sovereign justice as it was exercised and thought of in the parlements, there existed a sense that from a historical point of view, sovereign justice possibly transcended the monarchy, or that sovereign justice—and sovereignty more generally—was “more eternal,” so to speak, than the monarchy.

This is not to suggest that *conseillers*, even at the apex of their conflict with the king during the Fronde or in the eighteenth century, ever thought that they could exercise sovereign justice outside of a monarchical political framework—one would be hard pressed to find even a remote hint of such an idea

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<sup>367</sup> See p. 79 above.

in contemporary sources—but that a number of them, quite possibly most of them, believed that sovereignty could transcend the monarchy. This belief was not revolutionary in the sense that even the most radical forms of *parlementaire* ideology remained rooted in a monarchical political framework and never posited that the monarchy itself could be an obstacle to the exercise of sovereign justice, but it was a radical belief in the sense that the primacy that it gave to justice over lawmaking could put the parlements in sharp disagreement with the king.

The idea that sovereignty transcended the monarchy not only had a temporal basis—that is, a historical justification found in pre-monarchical, in particular Roman history—it also had temporal implications, for it imbued sovereign justice and its exercise with a sense of eternity. This sense of eternity informed some of the ideas I have reviewed in Chapter 2, for instance the idea that the divine inspiration that the magistrates were supposed to call on was not mediated by the French king—the “vicar of Christ on earth”—but came directly from God himself.<sup>368</sup> Thus in this case, the idea of an eternal sovereign justice reinforced (and was reinforced by) this other notion that sovereign judges were accountable to God in a more fundamental way than they were accountable to the king. This is not to say that this imagined timelessness of justice directly shaped all judicial practices, but that it certainly informed, at least in oblique ways, those practices that seemed to cross a threshold between human and divine—for instance practices, such as judicial torture and sentencing to death or corporal punishment, that damaged the integrity of a human body, that is, of God’s creation.

*Reigns and careers: the lifetime scale.*

Despite this sense that an eternal sovereign justice could transcend a transient monarchy, no one would have questioned the fact that the judicial capacity of royal magistrates depended very strictly on the person of the reigning king. The fact that the *conseillers* exerted sovereign justice as a representation of

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<sup>368</sup> See p. 89 above.

the king rather than by delegation of the king<sup>369</sup> did not change anything from that point of view: as individuals, the *conseillers* had no judicial power or authority outside of the office that they held from the individual king and that office died together with that physical king. Thus, the lifetime of individual kings, an unpredictable temporal variable that could range from a few days<sup>370</sup> to several decades, set the chronological bounds of the magistrates' judicial power.

This idea was not confined to the theoretical reflections of jurists and political thinkers, for it manifested itself in practice at the beginning of each new reign through the official confirmation of all royal officers, a foundational administrative and political act. While this act had become a formality from a bureaucratic point of view, it remained an important political statement for both the king and his agents because this confirmation amounted to a re-assertion that authority and power lie in the hands of the king and that the sharing of that authority through the granting of offices to individuals was always in theory provisional, based on a personal delegation from one mortal king to one mortal officer.

Mortal as the king, the magistrates also considered the finitude of their own lives in ways that informed their perception of how time related to judicial practice. From this perspective too, the office remained an object of central importance, for the office was not only the exclusive source of judicial authority framed by the king's lifetime, but it was also a patrimony at the heart of interconnected *parlementaire* strategies: career strategies, matrimonial strategies, and more generally dynastic strategies. I will come back later and in more detail to some of the strictly financial implications of the "venality" of offices<sup>371</sup>—the fact that most official positions in the royal administration could be bought, sold, exchanged, bequeathed, and treated almost exactly like any other form of immovable property. In 1550, the venality of offices had been officially recognized by the king for a mere three decades (1522) but it

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<sup>369</sup> See p. 66-71.

<sup>370</sup> For example Jean I, who only reigned for the five days he lived (November 15 to 20, 1316). The shortest reign for the period studied here was that of François II, king for a little more than a year (July 10, 1559 to December 5, 1560).

<sup>371</sup> See p. 221-236 below.

had been practiced for at least a couple centuries.<sup>372</sup> The process of commodification of royal offices was not completed until 1604 however, when they officially became hereditary. This last transformation had very significant political, social, economic and ideological consequences: it changed the dynamics of the relationship between the king and his officers, provoked an explosion of the price of offices, and contributed to reinforce the dynastic character of the robe nobility that had started to self-identify around that same time.<sup>373</sup> For all these reasons, royal offices became an object of desire for those who could afford them and were connected well enough to secure them, and an object of detestation for almost all others. These contrary feelings were particularly exacerbated in the case of higher royal offices and especially offices of *conseillers* in the parlements. On the one hand, because of the ideal of rectitude expected of those in charge of maintaining justice—a mission that remained at the core of the royal function as it was still idealized in the early-modern period—<sup>374</sup> the commodification of the highest judicial offices and the abuses and corruption it could (and did) lead to, was perceived with a particular acuteness.<sup>375</sup> On the other hand, the high financial value of an office of *conseiller*, the social capital it bestowed on its owner, the symbolic capital associated with the judicial functions attached to it—as opposed for instance to offices in the tax administration—made them all the more attractive as a patrimonial core from which to build not just a fortune, but a prominent dynasty. The testament of François de Chalvet, *conseiller* (1583-1605) and later *président aux Enquêtes* (1605-1625) in Toulouse, aptly reflects the *parlementaire* awareness of the multifaceted nature of the judicial office as capital (financial, social and cultural):

I [...] pray my said only son Jacques de Chalvet et de Rainier, as well as all my said nephews, to always love virtue, *lettres*, and especially *jurisprudence* [i.e. legal studies] and to follow in the footsteps of the wisest of their predecessors [i.e. ancestors], to join, if

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<sup>372</sup> On this “proto-venality” (my phrase, not Mousnier’s) see Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 15-7. On the officialization of venality and its integration in royal revenues in 1522, *ibid.*, 37.

<sup>373</sup> See Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l’assassinat du président Brisson (15 novembre 1591)*, 172-73 ; Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 529-78.

<sup>374</sup> See Chapter 2.

<sup>375</sup> See Chapter 5.

they can, the *robe longue* because, although one can live honorably, as some in our family have done, in the military and other professions, I consider that there is more comfort, *crédit* [i.e. social capital], security [*assurance*] and commodity found in the position [tear in the document] and that families [tear in the document] maintain themselves, without [tear in the document] much more fortunate and longer than in any other condition. Because of this, they will do wisely if they hear the sound advice I give them and will never regret to have followed it.<sup>376</sup>

François de Chalvet's example and that of his son Jacques are particularly revealing of the interplay between genealogical contingencies and the transmission and/or acquisition of offices. In 1617, the fifty-eight year-old François de Chalvet, "seeing that [he] was of a weak and sickly constitution and that [he began] to near [his] end" provided this advice to his son, but Jacques was then a child and could not be received to his father's office of *conseiller*. François did not die in 1617, but when he did so in May 1622, Jacques was still too young for the office (the 1622 codicils to François's testament suggest that he was not yet fourteen year-old). The best François could do to ensure that Jacques would get an office of *conseiller* in due time was to "resign" (that is, sell) his own office and entrust the money from the sale to two guardians chosen among his colleagues in the Parlement (the *conseillers* Claret de Lafont and d'Ouvrier) with the recommendation that they "advise [his son] to be a man of letters and take some *office de robe longue*."<sup>377</sup> Despite François's efforts, Jacques never became *conseiller*: being an only son, it seems that he was quite content to buy himself a sinecure office of *gentilhomme de la chambre du roi* (1644) and live from the extensive landed property he inherited from his parents. Interestingly and ironically, however, because he himself had twelve surviving children, it appeared that a significant division of this landed patrimony was unavoidable, and Jacques turned back to the Parlement to maintain

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<sup>376</sup> "J'exhorte et conjure, tant mon dit fils unique Jaques de Chalvet et de Rainier, que toutz mes susd. nepveus, d'aimer tousjours la vertu, les letres, et singulierement la jurisprudence et suivant les vestiges des plus sages de leurs predecesseurs, se metre s'il leur est possible à la robe longue car bien qu'on puisse vivre honorablement comme ont fait plusieurs des nostres en la profession des armes et aultres j'estime neantmoins qu'il y ha plus de soulagement, de credit, d'assurance et de commodités aus estats [tear] et que les fami[tear] s'y conservent, sans di[tear] de biens plus heureusement et longuement qu'en toutes aultres conditions. A cause de quoi, ils feront fort sagement de croire le bon conseil que je leur en donne et ne se repentiront jamais de l'avoir suivi." ADHG, 3E 11821 (June 16, 1617).

<sup>377</sup> *Ibid.* (codicil, May 11, 1622).

the status of the dynasty. He wedded his eldest daughter Diane-Marie to the *conseiller* Pierre-Antoine de Valette, and bought an office of *conseiller* for his eldest son Jacques-François.<sup>378</sup>

Thus, the connection between the contrary genealogical “accidents” of these two generations and the movement out of and back to the Parlement, François de Chalvet’s praise of the judicial career in his testament, illustrate the interplay between conceptions of the office of *conseiller* on the one hand and perceptions of the finitude of one’s own lifetime, ideas about one’s career, and hopes for one’s posthumous dynasty on the other. Conceptions of the office of *conseiller* (a multifaceted object with financial, social, cultural and symbolic dimensions), hence the judicial activity and practices it entailed, were certainly shaped by concerns proper to the subjective timescales that framed these perceptions, ideas and hopes.

#### Parlement as judicial year.

We have already seen that the word “Parlement” could refer to different objects: the judicial institution, the corps formed by the *conseillers*, the building where the court resided.<sup>379</sup> This polysemy also extended to encompass a temporal meaning in which “Parlement” designated an extended judicial session, or we could say a judicial season. Indeed, in expressions such as “*le Parlement encommençant*” or “*le prochain Parlement*,” the word referred to the judicial year. In fact, there was a polysemy within this temporal meaning, for Parlement could mean the judicial year or one of the two shorter sessions—winter Parlement and spring Parlement—into which the judicial year was broken down.

The judicial year began with the winter Parlement that started on the day after the “*Saint-Martin d’hiver*” (November 11). This day (November 12) was the “opening” (*ouverture*) of the Parlement as judicial year, and for that reason involved a series of solemn rituals (mass, oath, harangue). The spring

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<sup>378</sup> Despite putting his four younger daughters into religious orders, Jacques still had to set aside some money for the dowry of one older daughter and divide the patrimony between six surviving sons (including Jacques-François).

<sup>379</sup> See Chapter 2.

Parlement began on the day after Easter (movable feast) and lasted until an unfixed date, somewhere between mid-August and early September.<sup>380</sup> After that date and until the next Parlement took place the vacations (“*vacations*” in French) during which the activity of the court slowed down significantly. A smaller number of *conseillers* (in theory eight)<sup>381</sup> drawn from each chamber seated a few days a week to expedite the current and smaller affairs that might happen until the opening of the next judicial year (cases involving large amounts of money were delayed until then).

This division into three different sessions reveals that, overall, the *parlementaire* judicial year fit into a traditional conception of the year framed by the succession of natural seasons. The *parlementaire* yearly calendar indeed is an apt illustration of the way in which all professional activities followed the agricultural cycles. Mapped onto a calendar, the intensity of the activity of the magistrates—and for that matter of the whole judicial world—appears as an exact negative of agricultural activity.<sup>382</sup> The periods of intense judicial activity (winter and spring parlements) corresponded to the lowest points of agricultural labor and conversely, the “vacations” (roughly from mid-August to late October) corresponded to the period of intense agricultural activity (harvesting, threshing, pressing, storing, etc.).<sup>383</sup>

This correspondence can be explained in part by the fact that, for practical reasons, judicial activity was conditioned by the litigants’ availability to pursue lawsuits. In a world in which 90 to 95% of the population lived directly from agricultural production, the seasons of highest activity in the fields severely diminished the opportunities and desire of most to plead their cases in court, especially when that court was situated several days (sometimes weeks) away from the locations that required uninterrupted daily labor. Thus, most would-be litigants saved their lawsuits for the winter, that is, for a low season that was mainly occupied by indoor activities that could be interrupted with less dramatic consequences.

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<sup>380</sup> Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 1, 396.

<sup>381</sup> *Ordonnance* of July 1519, quoted in Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, vol. 1, 317.

<sup>382</sup> As Fernand Braudel noted “the succession of seasons was not simply synonymous to changes of temperature, it regulated the alternation of period of activities and of slack periods of peasant life” (Fernand Braudel, *L'identité de la France*, Paris: Arthaud-Flammarion, 1986, vol. 3, 26).

<sup>383</sup> *Ibid.*, 27.

Judges however, were not simply “following” the agricultural seasons that framed the calendar used by the population at large. The inverted correspondence between the judicial and agricultural seasons must also be explained by the fact that the magistrates, like the rest of the urban population,<sup>384</sup> were fully integrated into the agricultural economy. The “vacations” represented a low point of judicial activity not just because of the reduced availability of litigants in the summer and the early months of fall, but because the judges themselves were involved in those agricultural activities. Most of the magistrates who did not sit in the small commissions that adjudicated current affairs during these months did not stay in Toulouse: a number of them—especially the wealthiest—were “*au pays*” (in the countryside), where they oversaw the intense agricultural activity of the tenants and day-laborers who rented or worked their lands.<sup>385</sup>

This participation of the *conseillers* into the traditional approach to yearly cycles shared by the majority, is further evidenced by the *parlementaire* use of religious feasts and celebrations as milestones in the judicial calendar. I have already mentioned above how Easter, a movable feast, marked the beginning of the spring parlement. Tellingly as well, although the opening of the winter parlement occurred at a fixed date, the *conseillers* never referred to it as “the 12<sup>th</sup> of November” but always as the “day after the *Saint-Martin d’hyver*.” Originally, all *parlementaire* activities that occurred on a yearly basis were identified with reference to a religious feast on which or close to which they occurred. In the fifteenth century for instance, the pronunciation of *arrêts généraux* took place, as in Paris,<sup>386</sup> only four times a year, always two days before major religious feasts: Christmas, Easter, Pentecost, and the Nativity of the Virgin (September 8). This use of the religious calendar as a stock of temporal markers for judicial

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<sup>384</sup> “[It is the season of] full employment : townspeople rush to the countryside, leave their jobs, as was common practice across Europe” (*ibid.*).

<sup>385</sup> See p. 115 above.

<sup>386</sup> Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, vol. 1, 291. On “*prononciation*” as a practice, see Chapter 8.

events, was yet another sign that the *conseillers*' approach to the yearly timescale was similar to that of the great majority of people in pre-modern Europe.<sup>387</sup>

Thus, the *parlementaire* approach to and conception of the year as a cycle was fundamentally unoriginal, for it shared into a traditional understanding held by the majority, that is, one that was modeled after natural cycles and that made use of a liturgical calendar that had long been worked out to match the seasonal changes that governed agricultural activity.

### *Workday*

When one looks at the smaller timescales of the week, the workday and the half-day sessions however,<sup>388</sup> it appears that different and far less traditional approaches to time organized the various activities that filled the seasonal sessions of the judicial year. A combination of factors—administrative, financial and political—explains that the magistrates increasingly resorted to what I refer to as a “clock-time approach” to regulate their judicial practices on these smaller timescales.

To avoid exaggerating this claim however, we should note first that the traditional, nature-oriented approach to time also shaped, to a certain extent, the organization of judicial practices on these smaller timescales. For instance, depending on the seasonal session, the *parlementaire* workday began and ended at different times to accommodate natural changes in daylight times. Although this mobility of the working hours constitutes another example of how judicial activities were shaped by temporal standards shared within early-modern society at large, *parlementaire* activity differed in that those times were regulated by clocks. Indeed, while the workday of most early-modern subjects was delimited by the seasonal changes in actual sunrise and sunset times, in the Parlement this mobility was mediated through human measurements of time—that is, through man-made instruments such as calendars and clocks.

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<sup>387</sup> See Robert Mandrou, *Introduction à la France moderne. Essai de psychologie historique, 1500-1640*, Paris: Albin Michel, 1961, 96-7.

<sup>388</sup> The month, while used to date acts, documents and more generally all the records of the court, was completely irrelevant temporal unit in terms of regulation of *parlementaire* activities and practices.

Thus, while the *conseillers* accommodated natural cycles on a yearly timescale, they did not follow these rhythms exactly: as the royal *ordonnances* reveal, the judicial seasons dictated the use of one of three possible workday schedules (winter, spring, vacation), and the man-made clock regulated each one of those three schedules. The 1493 *Ordonnance sur l'administration de la justice* for instance, specified that during the winter session, the *conseillers* and *présidents* must assemble in their respective chambers “to work on the affairs [of the court] (...) before seven o’ clock rang”, and “immediately after six” during the spring session (from Easter to late June, early July).<sup>389</sup>

Furthermore, the workday was divided into sessions that were also regulated by clocks. A few years later, in 1510, the *Ordonnance de Lyon sur la réformation de la justice* further specified that from *Quasimodo* on (the Sunday after Easter), hearing sessions would begin at seven in the morning and last until ten, from eight to eleven during Lent.<sup>390</sup> These morning sessions—whether hearing sessions or otherwise—were called “*matinées*” by opposition to the afternoon sessions called “*après-dînées*.” Despite their name, these afternoon sessions did not begin when the *conseillers* were done lunching but were regulated as well by clock-time. The *Ordonnance de Lyon* added indeed that these afternoon sessions would start at three and end at five.<sup>391</sup>

It might seem difficult at first to ascertain whether or not those prescriptions were actually followed. On the one hand, one finds evidence that the *conseillers* were indeed at work early, as on that morning of April 1638, when the *greffier* Etienne de Malenfant noted in his *Mémoires* that “the

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<sup>389</sup> “*enjoignons à nosdits présidents et conseillers que depuis la St-Martin d’hyver jusqu’à Pasques, ils soient entrés et assemblés en toutes les chambres de nostredite cour, pour besongner aux affaires d’icelles avant les sept heures soient sonnées, et depuis Pasques jusqu’à la fin du parlement, aussitost après six heure du matin, sans en partir jusqu’à la levée d’icelle.*” *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XI, 221. On the division of the year into Winter, Spring and “vacancy” sessions, see below “‘Parlement’ and judicial year.”

<sup>390</sup> “... *depuis Quasimodo aux jours ordinaires* [the days when the court held hearing sessions, that is, on weekdays except Wednesdays] *que l’audience commence à sept heures du matin, et durera jusques à dix, et en caresme commencera à huit et durera jusques à onze...*” *Ibid.*, 589.

<sup>391</sup> “... *et aux jours qu’on a accoutumé plaider de relevée, commencera à trois heures et durera jusques à cinq...*” *Ibid.*

deliberation of *Messieurs* [the *conseillers*] had been very long, [and then] eight o' clock rang."<sup>392</sup> In the eighteenth century, the *conseiller* who owned the copy of Malenfant's *Mémoires* seemed to be surprised by how early his predecessors worked, noting in the margin that "at eight in the morning it was already late in the *Palais*,"<sup>393</sup> thereby suggesting that such was no longer the case in the eighteenth century. Similarly, Malenfant noted in 1620 that noon was an unusually late time for the court to still be sitting in session.<sup>394</sup>

On the other hand, the very repetition of these prescriptions suggests that royal concerns about punctuality and uninterrupted attendance during the sessions might have had some basis. In 1602, about a century after the *ordonnances* mentioned above, Etienne de Malenfant noted again at the beginning of his *Mémoires* the rule that the magistrates "must come early in the morning and keep working until the court gets up, for it happens often that they come too late and leave too early."<sup>395</sup> And indeed, one also finds evidence in the court's records that the *conseillers*' assiduity was not beyond questioning. In February 1627, the *conseillers* of the *Chambre des Enquêtes* embroiled in a conflict with those of the *Grand Chambre*,<sup>396</sup> took advantage of the fact that the courtroom of their colleagues was still deserted at seven in the morning on a Monday to occupy the room and thus prevent their elders' work in order to force them to compromise.<sup>397</sup> As this last example suggests and as I will explain in more detail below, the irregularity

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<sup>392</sup> "... et les opinions de MM. étant longues, et l'heure de huit étant sonnée ..." Malenfant, II, 67.

<sup>393</sup> "à huit heures du matin il étoit déjà fort tard au Palais." *Ibid.*

<sup>394</sup> "...la Cour mandoit à Carrière, chef de Consistoire, et Durand, avocat, de venir au Palais où elle étoit séante bien que l'heure fut fort tarde car il étoit près de midy." *Ibid.*, I, 207 (November 26, 1620).

<sup>395</sup> "les seigneurs doivent venir bon matin et continue tant que la Cour soit levée et souvent advient que trop tard viennent et trop tôt se partent." *Ibid.*, I, 8.

<sup>396</sup> The *Chambre des Enquêtes* argued that one of their own, not a *conseiller* from the *Tournelle* as the *Grand Chambre* had decided, should "move up" to the *Grand Chambre* to replace one of its recently deceased *conseiller*.

<sup>397</sup> "on the said day of Monday, the said President of the *Enquêtes* (...) assisted of all the *conseillers* from the *Enquêtes* went as early as seven o' clock in the morning to the courtroom [of the *Grand Chambre*] and sat on the benches on which they usually sit in general assemblies, having resolved that they would not move from there, thus preventing the hearing session [of the *Grand chambre*], until the said general assembly was granted to them." ("advenu led. Jour de lundy lesd. Sr. Presidens des enquêtes (...) assistés de tous MM. Les conseillers des Enquêtes se rendirent dès les sept heures du matin à la salle de l'audience et prirent les sièges qu'ils ont accoutumé de prendre aux chambres assemblées, résolus de ne bouger de là et d'empêcher la tenue de lad. Audience, jusques à ce que lad. assemblée des chambres leur fut accordée.") *Ibid.*, 289 (February 20, 1627).

of the *conseillers*' attendance was not entirely random and often served some personal or collective interests.

If we look further into the organization of the workday and get down to the scale of half-day sessions (*matinées* and *après-dinées*), it appears that the content of these sessions was regulated by a weekly schedule specific to the Parlement and which seemed to follow the religious calendar only in that the Sunday was, as for anyone else, a day off. The table below (Table 1) shows that this weekly schedule was different for each chamber and adapted to the specificity of its activities.

We should note first that the use of such a schedule, in which activities changed depending on the day of the week and, furthermore, were strictly regulated by clocks (at least in theory) reveals, contrary to what I noted about the traditional character of the *parlementaire* year, a certain originality. The *conseillers*' approach to these smaller timescale differed profoundly from that of the rest of the population, for whom, as Robert Mandrou noted, "precision in the measurement of the time spent on a particular job, in the evaluation of the time of the day, [was] not yet a mental requirement or a requirement of daily life."<sup>398</sup> For the *conseillers* however, it was very much a requirement of everyday judicial life, and the daily use of clock-time, and even more importantly, the use of clock-time as a basis to assess a number of judicial fees and revenues, explains that contrary to Gargantua, the *conseillers* always had to subject themselves to hours.<sup>399</sup>

Hours did more than just delimit the *parlementaire* workday. The *ordonnances* I mentioned above defined the schedule of the *conseiller* as *officier*, but outside of this schedule (for instance during the blocks of time that I have marked as "instruction" or "sabatines" in the table above), the *conseillers* were free to act as *commissaire*. The same judicial practice, for instance deliberating, had different implications for the *conseillers* depending on whether it was undertaken as *officier* (for instance, deliberating in a

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<sup>398</sup> "La précision dans l'évaluation du temps passé à un travail, et dans l'évaluation du moment de la journée n'est pas encore une exigence de l'esprit et de la vie quotidienne." Mandrou, *Introduction à la France moderne. Essai de psychologie historique, 1500-1640*, 95-96.

<sup>399</sup> Gargantua declares "I never subject myself to hours: hours are made for men, men are not made for hours." (François Rabelais, *Gargantua*, Book 1, Ch. 41).

*conseil* session on a Monday morning) or as a *commissaire* (the very same act of deliberating but in a Saturday afternoon “sabatine”). This double nature of *parlementaire* activities was fundamental, for it determined the form of authority the magistrates mobilized (officed-based or commission-based). More interestingly for the purpose of this chapter, judicial practices undertaken in the capacity of *commissaire* were not paid on the wages (*gages*) the *conseiller* earned as officers, but by fees that were indexed on some measurement of the time they spent working as *commissaires*.

Thus, it is worth looking into this dual capacity of the *conseillers* for it related to time in two main ways. First, the capacity in which the *conseillers* acted was in part based on time, for the *conseillers* could not practice as *officiers* and *commissaire* at the same time. More interestingly for my purpose, this dual capacity transformed the way in which judicial time was money, so to speak, for an increasing emphasis on commissarial activities oriented judicial practice toward productivity.

Before I explore this relationship between time, money and judicial practice however, I want to consider more generally how time was embedded in the judicial process and as such, was used as a resource (and not just a financial resource) by all the actors involved in that process.

		<b>Grand Chambre</b>	<b>Tournelle</b>	<b>Chambre(s) des enquêtes</b>
<b>Monday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Hearing Session (public)		
	Après-dinées	Instruction	Instruction	Instruction
<b>Tuesday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Hearing Session (public)		
	Après-dinées	Deliberation Hearing Session (closed)	Hearing Session (closed)	Instruction
<b>Wednesday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Assembly of chambers		
	Après-dinées	Instruction	Instruction	Instruction
<b>Thursday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Hearing Session (public)		
	Après-dinées	Instruction	Instruction	Instruction
<b>Friday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Deliberation Hearing Session (closed)		
	Après-dinées	Deliberation Hearing Session (closed)	Hearing Session (closed)	Instruction
<b>Saturday</b>	Matinées	Deliberation	Deliberation	Deliberation
		Sabatines (Saturday deliberations by commission)		
	Après-dinées			
<b>Sunday</b>				

**Table 1. Weekly schedule of the chambers of the parlement de Toulouse.** Note that “instruction”—a literal translation from French—designates the work that the conseillers did individually and most often outside of the Palais on the cases for which they were either enquêteur or rapporteur. Deliberation sessions (conseil) that took place on the same half-day as hearing sessions, occurred before those hearings (six to seven o’ clock in the morning during the Spring, seven to eight during the Winter, three to four in the afternoon). Hearing sessions in the mornings consisted mainly of lawyers’ speeches, open to the public. In the closed hearing sessions of the afternoon, only lawyers and procurators were present with the magistrates to settle more technical points of procedure.

## **On the strategic uses of *parlementaire* times**

I suggested earlier that the apparent irregularity of the *conseillers*' punctuality at the opening of daily sessions was not random. A closer look at the two examples mentioned above—one instance of *parlementaire* lateness and one of punctuality—shows that both occurrences were predicated on an intended strategic use of time on the part of one group of *conseillers* in its struggle against another group of *conseillers*. I first look at these “internal uses” of time (that is, strategic uses of time within the context of *parlementaire* internal politics) to suggest that such uses probably shaped as well the magistrates' approach to the temporal dimension of their judicial practices. As we will see, this approach that framed time as a strategic resource was not particular to the Parlement, or even to the judicial world, and the magistrates' strategic use of time within the court was certainly informed by a similar use outside the court, a practice which the magistrates, as clients, patrons, landlords, tenants, creditors, debtors, etc. shared with early-modern European society at large.

The *parlementaire* approach to time however, was also informed by strategic uses of time that were proper to judicial practices. I demonstrate that these particular judicial uses of time were predicated on the fact that time was an integral element of the judicial procedure, that is, of the formal rules that regulated judicial practice.

### *Internal uses*

We must keep in mind that the *ordonnances* that sought to regulate the work hours and more generally the attendance of the *conseillers* are normative sources and that their very existence suggests a discrepancy between the legislative ideal and the reality that these legal provisions were meant to correct. Thanks to previous studies, we do know with some statistical precision that the *conseillers*' attendance records were far from stellar from the origins of the Parlement de Toulouse and tended to worsen in the

early-modern period.<sup>400</sup> As André Viala calculated from the court's records, about two thirds of the *conseillers* on average were present on any given day circa 1475, less than half circa 1500 and that ratio fell under one third in the course of the following twenty-five years.<sup>401</sup> While these statistics are useful to uncover a general trend, and while Viala's explanation that increases in personnel generally led to decreases in attendance seems to hold true, these averages conceal the irregularity of the *conseillers'* punctuality and attendance on a daily basis and, more importantly, and mask the fact that this irregularity was not random. Indeed, when one looks more closely at the circumstances surrounding the two episodes I have mentioned above, a pattern emerges. In February 1627, the choice of a Monday was not innocent on the part of the *conseillers* of the *Chambre des Enquêtes*: their goal was to put pressure on the Grand Chambre by preventing it from starting its regular hearing session, thus leaving the litigants waiting at the door of the courtroom, to protest the interruption of the normal course of the royal justice that was due to them. The fact that Monday was a day of hearing session (“*audience*”) in the Grand Chambre was common knowledge, inside as well as outside the Parlement, but more importantly, the *conseillers* of the Chambre des Enquêtes knew that at seven in the morning, none of the *conseillers* of the Grand Chambre would be yet in *Grande Salle d'audience* as the *ordonnances* said they should. Even more significantly, the two facts were connected: the *conseillers* of the *Chambres des enquêtes* knew that their colleagues from the *Grand Chambre* would be late precisely *because* Monday was a hearing-session day.

Conversely, the *conseillers* were early at work on that morning of April 1638 and still sitting “late” on that other morning of November 1620, because they were not holding hearing but deliberative sessions in those two instances. These two assemblies of 1620 and 1638 were well attended, began early in one case and ended late in the other, because the matters at stake were of particular interest to the *conseillers*. In 1620, the court was gathering in a general assembly (“*assemblée générale des chambres*”)

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<sup>400</sup> The tendency is the same in other parlements, in particular in the parlement de Paris (see Aubert, *Histoire du Parlement de Paris de l'origine à François Ier 1250-1515*, ; Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, ).

<sup>401</sup> On a total of twenty *conseillers* circa 1475, fourteen were present, on average, on any given day, thirteen out of twenty-nine in circa 1500, eleven out of twenty-nine circa 1515, twelve out of forty-one circa 1526 (Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 1, 408).

to discuss issuing an *arrêt* to quash the recent election of the capitouls—the local municipal councilors—, a move of major political importance for it rested on the claim that the court, as a sovereign body, could oversee and override the local privileges that the king in person had granted to the municipality of Toulouse.

In 1638, the episode was of lesser political implications but more interesting for us here, because the matter at stake was precisely the modalities of the hearing sessions and the *parlementaire* debates in this instance illuminate some of the ways in which time and judicial practice related to one another. Special circumstances had called for this debate: the *premier président* had left Toulouse on an official mission to the king and all the other presidents of the *Grand Chambre* happened to be absent on that morning. While the *doyen* of the *Grand Chambre* (its most senior member) had authority, in this absence and in his quality of “born president,”<sup>402</sup> to preside over all other businesses of the chamber, he could not preside over the public hearing sessions of the *Grand Chambre*. The reason for this was simple enough: the *doyen* was not allowed to wear the red robe that was required to preside over these formal and public hearings. This rule was so unquestionably accepted by all, that none of the *conseillers* of the *Grand Chambre* present on that morning suggested that the *doyen* M. de Maussac should just either put on a presidential red robe or preside over the session in his black *conseiller* robe. All agreed that a president was needed to hold the public hearing session in the *Grand Chambre* and all agreed that that president should be M. de Ciron, president of the *Tournelle*, the second chamber of the court after the *Grand Chambre* by order of prestige and authority. The *conseillers* of the *Grand Chambre* however, were divided on two points that both related, albeit in very different ways, to time and its use in the parlement de Toulouse.

The first of those two uses of time was not, in fact, particular to the parlement de Toulouse or for that matter to the judicial world at large. It consisted in a strategic use of delays or immediate summons to manifest one’s superiority over an adversary in a power struggle—when one makes an inferior wait on a

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<sup>402</sup> “... led. Sr. doyen ... ayant l’honneur d’être président né en la grand chambre en l’absence des Srs. presidents y servant...” Malenfant, *Collections et remarques du Palais*, II, 66.

meeting request or, on the contrary, demands to meet unexpectedly and right away, in both cases for the sole purpose of asserting a hierarchical difference that will shape the outcome of the negotiation at hand. In this case, the *conseillers* in the *Grand Chambre* felt that they had to re-assert their superiority over the *Tournelle*, because the hierarchy between chambers had been troubled by an unusual situation of dependence of the *Grand Chambre* on the *Tournelle*. From the perspective of the *conseillers* in the *Grand Chambre* indeed, the normal hierarchy of power was upset not only by the prospect of having a president of the *Tournelle* act as their chief, but also by the fact that they had no choice but to initiate the request, and thus invert traditional roles by putting themselves in the lower position of a petitioner. Cornered in this uncomfortable position, the *conseillers* of the *Grand Chambre* sought to make one point very clear: “to let the said M. de Ciron [president of the *Tournelle*] know that he had no right to come and preside the said hearing session until the *Grand Chambre* had requested him to do so.”<sup>403</sup> To get their point across, the *conseillers* of the *Grand Chambre* agreed that they would send the *greffier* Malenfant rather than one of their own to go make that request. And to make that point even clearer, they sent Malenfant not to ask M. de Ciron to come preside over the hearing session, but to let him know that he should be at the disposal of the *conseillers* in the *Grand Chambre*, and wait for them to be ready to hold that session. Once the *conseillers* of the *Grand Chambre* were ready to hold the session, they disagreed about whether to make M. de Ciron wait any further or, on the contrary, to summon him immediately would better manifest the *Grand Chambre*’s authority over the *Tournelle*:

Some were of the opinion that they should not let him know so soon and wait another half an hour or fifteen minutes; others thought that they should let him know immediately so that M. le président [de Ciron] and MM. of the *Tournelle* understood that it wasn’t their place to deliberate on how the hearing sessions of the *Grand Chambre* should be held.<sup>404</sup>

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<sup>403</sup> “... faire savoir aud. Sr. de Ciron qu’il n’avoit point droit de venir presider en lad. audience qu’après y avoir été appelé par la *Grand Chambre*.” *Ibid.*, 67.

<sup>404</sup> “Les uns furent d’avis de ne leur pas faire savoir si tôt cette resolution et d’attendre une demi heure ou un quart d’heure ; les autres qu’il y falloit aller presentement à cette fin que M. le president et MM. de la *Tournelle* seussent que ce n’etoit pas à eux de deliberer sur la tenue des audiences de la *Grand Chambre*.” *Ibid.*, 67

As I noted earlier, this use of time as an instrument in power struggles is certainly not particular to the *Parlement* or to the early-modern period. The *conseillers* were familiar with this strategic use of time, both as wielders and “victims” of this weapon, both inside and outside the *Parlement*. This was certainly a common occurrence for the *conseillers*, not just in the strict context of their professional activities, but for instance in the relationships of patronage they were part of as both clients and patrons.<sup>405</sup>

### *Time as an element/object of procedure*

One should note, however, that this strategic use of time was particularly ingrained, and in a specific way, in the judicial world. This specificity is best explained by the fact that judicial approaches to time were also informed by strategic uses of time prompted by the rules of judicial practice. In this section I show that these particular judicial uses of time were predicated on the fact that time was an integral element of the judicial procedure, that is, of the formal rules that regulated judicial practices. As we will see, this specifically judicial approach to time is twofold because there are two interrelated approaches to the judicial procedure—a normative approach that conceives of the procedure as a set of rules and an instrumental approach that conceives these rules as a set of tools to maximize one’s profit.

From a normative perspective, the judicial procedure is a set of rules designed to regulate a process geared toward the resolution of conflicts. Tellingly, the manuals of judicial procedure that record and gloss the rules regulating the various operations that make up this process, follow a specific chronological order that seeks to normalize rather than reflect the temporal dimension of actual judicial proceedings. According to the idealized judicial process described in procedure manuals, a conflict had much better chances of being resolved when proper time is given to the various stages of a trial—say, gathering evidence, interrogating witnesses, or deliberating—and when these stages are followed in a certain order—with the issuing of a sentence occurring at the end rather than the beginning of the process.

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<sup>405</sup> See Kettering, *Patrons, Brokers and Clients in Seventeenth-Century France*, .

Not surprisingly then, a number of the rules that make up the judicial procedure are time-oriented, for the resolution of conflicts, like any other process, is inscribed within a certain timeframe and its success is predicated on the proper timing and chaining of each one of its successive operations.

The judicial process, however, also has a unique temporal dimension, for respecting these time-oriented rules is not only a way of ensuring that the process reaches its goal—resolving a conflict—but also a fundamental way of giving to the final product legal validity. This is true in a very general way, whether the judicial process is regulated, as it still is today, by the formal rules enacted in codes of procedure or by rituals such as the Carolingian ordeals. Time is thus, so to speak, a doubly critical dimension of the judicial process: first because it is a process and as such its success depends on the proper timing and sequencing of its various operations, and then because it is judicial and as such the validity of its “final product”—say, a sentence—is predicated on the respect of specifically legal time requirements.

For this reason, time is an integral element of the judicial procedure. Indeed, a significant number of the formal rules that make up the judicial procedure followed in the Parlement are time-oriented and can be broken down into two categories. Rules that belong to the first category were specifically designed to make sure that trials moved forward from one stage to the other, and were thus explicitly defined in temporal terms. More specifically, this first category encompasses rules that either define the time required before a certain legal operation can take place, for instance the *ajournement* procedure that establishes the time—generally fourteen days—after which a summoned litigant is to appear before the court, or the minimum and/or maximum time a certain legal operation can last.<sup>406</sup> Often, rules in this first category were designed to regulate time in order to accommodate practical and contingent requirements. For instance, the fourteen days generally granted for an *ajournement* was designed to both satisfy a judicial—almost moral—requirement (to give time to the litigant to prepare for his appearance in court) and accommodate the practical constraint of the slowness of early-modern travel (i.e. in this case, the

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<sup>406</sup> For instance, the delay to appeal a “lower” sentence to the parlement de Toulouse was ten days (*Formulaire de la chancellerie du roi sous Louis XI* ; Bibliothèque nationale de France, ms fr. 5727, fol. 16v.)

slow traveling of both the *ajournement* notification and of the litigant). In fact, the procedure for these *ajournements* could be used as an index of early-modern travel times to Toulouse, for it defined different delays based a on space-oriented taxonomy of lower jurisdictions: two weeks for a case from Toulouse and closeby regions, three weeks for more distant regions of the *ressort*, a month for even more remote corners of the *ressort* and for cases from the jurisdiction of the parlement de Bordeaux, and six weeks for cases coming from the jurisdictions of the other parlements.<sup>407</sup>

The second category comprises rules designed to specifically act *on* time. This second category encompasses rules which, in a general way, sought to either slow down or speed up the overall judicial process. For instance, the procedure defined delays to grant a litigant a *défaut* (a favorable sentence when his opponent did not appear in court after three of the *ajournements* defined above), times given to lawyers and procurators to add documents to their clients' files, it also made time-oriented distinctions such as the one between *arrêts interlocutoires* (judicial decisions that required that a case be further processed in one way or another) and *arrêts définitifs* (that marked the complete end of the processing of a case).

Judicial procedure, however, was not a simple set of rules that lawyers and judges only had to follow to make sure that conflicts were resolved properly. Moving beyond this normative conception of the judicial procedure, lies an instrumental conception in which time is equally if not more important. Indeed, because the procedure regulated a process in which all the actors involved—litigants, lawyers, procurators, judges, judicial personnel in general—had personal stakes and goals often distinct from a pure ideal of conflict resolution, all of them considered the judicial procedure not just as a set of rules, but also as a set of tools they could use to solve a particular conflict in a way that served their particular interest. In that respect, the temporal dimension of these rules-as-tools was essential, whether one sought

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<sup>407</sup> In more detail : two weeks for Toulouse, Lauragais, Albigeois, Villelong, Comminges, Foix, Rieux, Rivière Verdun, Astarac, and Gaure ; three weeks for Carcassone, Béziers, Pézenas, Montagnac, Gignac, Castres, Albi, Terrabasse, one month for Beaucaire, Montpellier, Velais, Gévaudan, Vivarais, Mercoeur and the *ressort* of the parlement de Bordeaux ; six weeks for the *ressorts* of the parlements de Paris, Rouen, Bourgogne, Provence, Dauphiné (*Ibid.*).

to speed up a trial to limit his expenses (litigant), get money quickly (winning litigant, lawyer), prevent the opposing party from gathering counter-evidence or on the contrary slow it down to increase his chances of winning (litigant, lawyer), to alleviate his doubts (judge), inflate the fees he could charge (lawyer, judge), or make the trial drag on in the hope it would die out (litigant).

It might seem at first that lawyers and litigants had more reasons to try and slow down or speed up the judicial process, for their stakes in the resolution of a conflict seem more obvious and direct. And indeed, as a number of *ordonnances* reveal, the slowness of justice was most often blamed by the king on lawyers, procurators and their clients who had become experts at manipulating procedural rules to delay or even escape unfavorable sentences. But the judges as well took advantage of the temporal aspects of these rules to reach comparable effects on the judicial process. The ambivalent ideal of justice I mentioned earlier, could prompt the magistrates to use procedure to try and meet the requirements of either a summary or a wisely slow justice, depending on circumstances and their own collective or individual interests. For instance, a few famous cases demonstrate that the magistrates were willing to use procedural tricks to speed up trials, either under popular pressure (Calas affair, 1762) or royal pressure (trial of the duke of Montmorency, 1632).

Over time, lawyers and procurators had become experts at using delays to capitalize, often literally, on specific aspects of the judicial procedure. In fact, delaying tactics (“*manoeuvres dilatoires*”) had become an integral part of the procedure for legal practitioners: they expected their opponents to use them as much as they expected them to comply with actual requirements of the judicial procedure as defined in royal legislation. The adjournments, delays, suspensive appeals, defined in the procedure were the main tools used by lawyers and procurators to prolong lawsuits, because it was the surest way to multiply and increase the fees paid by both parties, obviously a source of revenue for the practitioner but also the most common strategy used to exhaust financially one’s opponents in hope of forcing them to an advantageous settlement.

These practices are one of the main reasons for a slowness of justice often invoked in the preamble of the royal *ordonnances* that sought to reform judicial procedure. In most cases however, these

preambles did not point out directly the causes of the slowness of royal justice, but rather stated that a reformation was in order to “cut short” (“*abréger*”) trials. Often, this goal was presented as one of the main judicial duties of the king, as in the preamble to the *ordonnance* of Lyon (1510) that stated that “the greatest good and relief we can give to [our] subjects, is to end or at least cut short the trials they have.”<sup>408</sup> Thus, royal attempts to reform justice were often connected to this overall ideal that royal justice had to be “good and brief,”<sup>409</sup> an ideal most clearly expressed in the preamble to the *ordonnance* of Orléans (1560), which opened “Recognizing that the office of a good king is to have justice dispensed to his subjects, promptly and on the spot [where they live].”<sup>410</sup>

In a number of *ordonnances*, however, the preambles commented on—and in a few cases attempted to explain—the slowness of royal justice. Those preambles described the litigants’ plights that resulted from this slowness and blamed it on the way lawsuits were handled, but did not point fingers to lawyers, procurators or judges. It was the case, for instance, in the October 1535 *ordonnance* for the reformation of justice in Provence that lamented “the prolixity of trials that were so very poorly managed and handled that justice is immortal in that region, and as a result [the inhabitants of Provence] are grieved and plagued by innumerable difficulties, troubles, and expenses that they have to bear because of the length of the said trials.”<sup>411</sup> In a few cases however, *ordonnances* pointed out explicitly the cause of this slowness and its consequences and lie blame on lawyers and litigants who exploited the procedure. In this respect, the *ordonnance* of Lyon was the clearest:

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<sup>408</sup> “*considerans que le plus grand bien et soulagement que puissions faire à [nos] sujets, c’est de mettre fin ou à tout le moins d’abrèger les procès qu’ils ont.*” *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XI, 579 (June 1510).

<sup>409</sup> “(...) We desire with all our heart that our subjects be kept in peace and that good and brief justice be administered to them and maintained in our kingdom” (“(...) *Nous qui desirons de tout nostre coeur nos sujets estre entretenus en paix et que bonne et briève justice leur soit administrée et ait cours en nostre royaume...*”) *Ibid.*, XI, 220-1 (July 1493).

<sup>410</sup> “*Reconnoissant que l’office d’un bon roy est de faire rendre à ses sujets prompte justice sur les lieux (...)*” *ibid.*, XIV, 73 (Janvier 1560).

<sup>411</sup> “*la prolixité des procez qui estoient si très mal conduits et démenez, que justice y estoit immortelle, en quoy ils estoient molestez et travaillez par innumérables peines et travaux, fraiz et mises qu’ils supportoient pour la longueur desdits procez.*” *Ibid.*, XII, 424.

(...) it is impossible to draft laws, statutes, or *ordonnances* precise enough to address the diversity of the cases that happen every day and to hold in check the subtlety and shrewdness of some lawyers and other legal practitioners, and the malice of some of our subjects ; parts of our said *ordonnances* of our said predecessors, because of the diversity of the ways in which they have been interpreted, and [as a result,] the pace of our said justice has been so troubled and perverted that our poor subjects have been and are greatly afflicted and harassed today, and because of this, countless trials, questions and disagreements have arisen, which, in the long run, would bring the destruction of our said poor subjects.<sup>412</sup>

Royal efforts to “cut short” trials through partial reforms of the procedure in the sixteenth and seventeenth centuries proved unsuccessful. Indeed, the situation described in the preamble to the famous *ordonnance* of 1667, often referred to as Colbert’s “code of civil procedure,” was resembled, in its diagnosis and language, the 1510 *ordonnance*:

(...) having recognized that (...) the *ordonnances* wisely established by the kings our predecessors in order to end lawsuits are neglected or diverted [from their original purpose] by time and the malice of litigants, that they are applied differently in several of our courts, which causes the ruin of families because of the multiplicity of procedures, of legal fees and the diversity of judgments issued, and that it is necessary to address this situation and make the treatment of lawsuits faster, easier and more certain by doing away with a number of useless delays and acts and by establishing a uniform procedure in all our courts.<sup>413</sup>

Although *ordonnances* tended to point the finger at litigants and lawyers as the cause of the slowness of royal justice, royal judges were not innocent, for their attitudes vis-à-vis this question was ambivalent. On the one hand, delaying a trial might mean more fees for them as well. On the other hand, shorter trials meant more trials, hence more fees. The ability of a judge to maintain a profitable balance

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<sup>412</sup> “(...) *il est impossible faire loix, statuts ni ordonnances précises, à tous cas qui peuvent chacun jour survenir, aussi que par la subtilité et cautelle de plusieurs avocats et autres praticiens, et la malice de plusieurs nos sujets ; partie de nosdites ordonnances et de nosdits predecesseurs, par la diversité des interpretations trouvées sur icelles, le train de ladite justice a esté tellement troublé et perverti, que de present nosdits pauvres sujets on esté et sont grandement molestez et travaillez, et sur ce, sont intervenus innumerables procès, questions et differens qui, au long aller, seroient la destruction de nosdits pauvres sujets.*” *Ibid.*, XI, 579 (June 1510).

<sup>413</sup> “(...) *ayant reconnu (...) que les ordonnances sagement établies par les rois nos prédécesseurs pour terminer les procès, étoient négligées ou changées par le temps et la malice des plaideurs; que même elles étoient observées différemment en plusieurs de nos cours, ce qui causoit la ruine des familles par la multiplicité des procédures, les frais des poursuites et la variété des jugemens; et qu'il étoit nécessaire d'y pourvoir, et rendre l'expédition des affaires plus prompte, plus facile et plus sûre, par le retranchement de plusieurs délais et actes inutiles, et par l'établissement d'un style uniforme dans toutes nos cours et sièges.*” *Ibid.*, XVIII, 106-107 (April 1667).

between the two depended on a number of parameters I will explore in more detail below:<sup>414</sup> his chances of obtaining as many lawsuits as possible from the *premier président* of his chamber (and these chances often depended more on his connections within the court than on his professional aptitude), the expertise needed to get through as many of these lawsuits as possible to multiply the fees, and the different kind of talent that was required to produce the amount of work, especially the written work, on which the volume of those fees was indexed.

### *Time as constraint/resource*

It should be clear at this point that time could be both a constraint and a resource for all the parties involved in the judicial process. This was in part due to the temporal ambivalence of the ideal of justice I presented at the beginning of this chapter. Indeed, judges could either be pressed by time or take their time, depending on which side of the twofold ideal of justice they looked at: swift judging met the expectations of a summary (and mainly retributive) justice—that is, one that kept itself busy patching the social fabric everywhere and every time it was torn by conflict—on the other hand, patient judging met the expectations of a wisely slow justice—one that took the time needed to weave and sew the threads of an invisible but solid mending work.

My analysis of the temporal aspects of judicial procedure and their use by actors in the judicial process suggested that within the intellectual and ethical framework of the time, a pragmatic approach to this double ideal gave a lot of flexibility to play with temporal resources and constraints. First of all, because the judicial process was a confrontational process—that is, one in which the actors involved did not collaborate towards the same goal, for they sought above all a conflict resolution to their own advantage—the temporal constraint on one party was almost always a temporal benefit for the other. If only because, as we will see in more detail later on,<sup>415</sup> judges often sided with one party for extra-judicial

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<sup>414</sup> See Chapter 5.

<sup>415</sup> See Chapter 5.

reasons, the temporal resources and constraints of one party could also be the temporal resources and constraints of his judge. Acknowledging the personal interests of the magistrates and their collusion either with litigants, patrons, or political figures also suggests that the temporal expectations that stemmed from the ambivalent ideal of justice could be, with a bit of cynicism, turned on their head. Expectations of a prompt justice, far from being a disturbing pressure on the judge could be welcomed as a great resource when a magistrate had reasons (whether personal, political, or financial) to expedite a case.

Thus, while there is no doubt that the temporal dimension of the judicial procedure affected judicial practices in significant ways, the way in which it affected them as either a constraint or a resource depended mostly on contingent factors.

### **Judicial time is money**

I have already suggested that the personal interests of the magistrates might have shaped their perception of how time related to their professional practices. I did so by considering their personal interests broadly speaking, but it is worth further exploring how the temporal dimension of the judges' financial interests shaped more specifically their professional practices. By considering how "judicial time is money" in this section, I open up a number of important questions that I will address in subsequent chapters for they take us beyond the scope of this chapter.<sup>416</sup> For now I would like to turn to the question of the double administrative nature of the function of *conseiller* in the Parlement, for it informs the ways in which time, money and judicial practice related to one another, and thus falls within the scope of this chapter.

As is well known, *conseillers* in the parlements were officers (*officiers*) and the office of *conseiller* in a sovereign court was one of the most prestigious in the royal administration. It is a less known fact, however, that the *conseillers* also conducted part of their judicial activity in the capacity of

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<sup>416</sup> I will consider later (Chapter 5), the connection between devaluation of wages with the increasing importance of *épices*, and the very significant impact on several judicial practices, such as reporting and sentencing.

*commissaires*. In the following section, I explore some of the basic differences between those two different capacities in which the *conseillers* acted as judges, for they entailed two perceptions of judicial time—perceptions rooted in financial questions—that shaped judicial practices in two significantly different ways.

Droit annuel, *annual wages: the judicial time of the officer*

Longue durée: *the office as patrimoine*

The office was conceived by the officer—that is, its owner, or rather as we will see shortly its tenant for life (*usufruitier*)—as an object situated in the *longue durée*. Indeed, because the office was in essence a share of royal authority, it was eternal. While new offices could be created—and the kings indeed created many of them, especially at the end of the seventeenth century, when their sale appeared to be a quick and easy source of cash for the royal treasury—<sup>417</sup> the theory was that they were a *démembrement* of royal authority (much in the same way as a newly created jurisdiction was a *démembrement* of the larger and pre-existing jurisdiction it was created from).<sup>418</sup> This *longue durée* dimension was all the more perceivable when the officer inherited or bought an office whose existence could be traced several centuries back in time.<sup>419</sup> Thus, whether one held a recently created office or one that had existed for decades, it was understood that the existence of the office preceded the lifetime of its current tenant. And it was understood as well that, on the other end of one’s lifetime, the office would

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<sup>417</sup> William Doyle, *Venality : the sale of offices in eighteenth-century France*, Oxford ; New York: Clarendon Press ; Oxford University Press, 1996, 26-57.

<sup>418</sup> See above p. 106.

<sup>419</sup> In the parlement de Toulouse, a few offices of *conseillers* could thus be traced back to the creation of the court (1444). In the parlement de Paris, some could be traced back to the thirteenth century. In theory though, and as I have just suggested, the Toulousain offices were “dismemberment” of Parisian offices (for the parlement de Toulouse was a dismemberment of the parlement de Paris, itself a dismemberment of the *conseil du roi*, an institution that could be traced back in some elementary form to the origins of the monarchy). This theory was reinforced in practice by the fact that a number of *conseillers* in the 1444 parlement de Toulouse had previously been *conseillers* in the parlement de Paris.

survive its tenant. This fact was not only well understood, it was at the center of royal officers' (and would-be royal officers') patrimonial and dynastic strategies.

The office was not simply a share of royal authority, it was also a capital—both financial and symbolic—, and this feature shaped in fundamental ways the officer's perception of the temporal dimension of his office. Because it was a share of royal authority, the office was a very valuable form of social capital: it connected its holder to the figure of the king and thus bestowed on him some of the ideological clout attached to the transcendental nature of royal power—its divine origins, its inscription within a secular tradition from “time immemorial.”<sup>420</sup> More pragmatically, it was also a form of social capital because it gave to its holder powers—for instance, the power to arbitrate conflicts—valued and feared within the community. From a temporal point of view, the everyday exercise of any of the functions attached to the office was thus tantamount to a daily reassertion of this social capital.

Further, the office was also a financial capital, and as such it shaped even more profoundly the officer's perception of its temporal dimension. As is well-known,<sup>421</sup> offices were venal, and the official recognition of the venality of offices (1522) and later of their hereditary nature (1604), had a significant impact on officers' perception and management of their offices, with important consequences on their professional practices. Buying an office of *conseiller* in a parlement had always been a considerable financial expense, even for the wealthiest families. The social capital I just mentioned—the powers the office of *conseiller* gave to its owner, the social mobility it allowed because it was an ennobling office, the careers it opened—, justified this large investment. Until the royal recognition and practice of the sale of offices, however, and even more significantly until the officialization of their hereditary nature, the purchase of royal offices was not a secure investment. In fact, before the recognition of venality, the

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<sup>420</sup> See Chapter 1.

<sup>421</sup> On the venality of offices in general, see Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, and Doyle, *Venality: the sale of offices in eighteenth-century France*, .

office could be lost if it was proved that it had been purchased, and before the recognition of its hereditary nature, it could be lost in case of the sudden death of its tenant.<sup>422</sup>

Those two changes increased the security of the investment and thus caused a dramatic increase in the financial value of offices. This increase of both the security of the investment and of the value of the office as capital led to a decrease of the value of the office as a financial investment. This decrease was due to a number of factors. There were “mechanical” factors: the wages were not proportional to the financial value of the office, and the rare increases of those wages were far too modest (let alone the fact that the king paid those annual wages very irregularly) to follow the exponential increase of the value of the office. There were political factors, for the royal guarantee of the hereditary nature of the office came at a financial cost for the officers with the creation of an annual tax (“*droit annuel*” also known as “*paulette*”) they had to pay to the king, and which, contrary to the wages attached to the office, was indexed on its value (about 4% of the capital spent on the purchase). Finally, there were economic factors specific to the time-period, for the context of rising prices and inflation for most of the seventeenth century, made the wages (assessed in money-of-account rather than in actual currency) even more insignificant.<sup>423</sup>

As a result of this evolution, purchasing an office was still, at the beginning of the seventeenth century, a very lucrative investment in the long run, because of the explosion of their price, because it exempted its owner from paying the main direct tax (“*taille*”) which also exploded in the following few decades, and because of the social capital it brought to its owner. But it was an investment that came at a very high cost in the short term for there was no direct financial return unless the office was sold. It meant that the purchase of an office entailed not just a one-time expense, but also the cost of maintaining one’s

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<sup>422</sup> Before the hereditary nature of offices was officially recognized in exchange for the payment of a new tax (*droit annuel*, roughly equivalent to 4% of the value of the office), the so-called “forty days clause” was in effect. According to this clause, a sale passed within forty days before the death of the owner would be invalidated (see Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 226-32).

<sup>423</sup> This trend started early on : in 1525 the wages of the *conseillers* in Toulouse represented in relative value only half of what they had been in 1444 (Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 1, 205). The trend is similar in the parlement de Paris (see Maugis, *Histoire du Parlement de Paris de l'avènement des rois Valois à la mort d'Henri IV*, vol. 1, 445).

living afterwards, because the direct financial benefit of being an officer was close to null, in particular for those who, because they were already noble, were already exempt from paying the *taille*.

*Épices, tours, question: the judicial time of the commissaire*

In other words, from a plain financial point of view, the practice of justice as a royal officer was a waste of time that had to be compensated otherwise. A number of extra-judicial compensations—land ownership, royal and patron pensions, credit, matrimonial strategies—that were available to the magistrates but in most cases those were more readily available to *conseillers* who were already wealthy. Most *conseillers*, however, had to turn to a number of judicial activities they exerted in their quality of *commissaires*. It seemed like an appealing financial option for two main and complementary reasons. First, most commissarial activities were paid in fees that were distinct from the fixed wages that the *conseillers* received as *officers*. Further, the amount of those fees seemed conveniently expandable, for it was assessed collectively by the judges themselves and indexed on some measure of productivity—a notion that I will clarify below for it introduced a new perception of the temporal dimension of judicial activity, with significant consequences on practices.

The distinction between the two capacities of *officier* and *commissaire* was largely an administrative fiction that resulted from the exploitation of a confusion between an older, medieval *parlementaire* practice—that of calling “*commissaire*” an individual *conseiller* who was sent on a one-time, specific task—and the transformation of royal “commissions,” increasingly used by the kings in the early-modern period to circumvent traditional administrative networks (most famously the functions of the *intendants de province* were defined and delimited by a royal commission).<sup>424</sup> The court defined as a “commission” any task or activity that fell outside of the duties of the *conseiller* as officer, that is, any activity that was not encompassed by the original domestic model of the *conseiller* as member of the judicial *curia regis* in the Middle Ages. Anything beyond the basic duties of the original counselor who

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<sup>424</sup> See Anette Smedley-Weill, *Les intendants de Louis XIV*, Paris: Fayard, 1995.

originally sat with the king in his council to assist him in his judicial functions—hearing complaints and pleas, deliberating, pronouncing sentences—was the object of a particular mission. These extra-judicial missions were quite diverse and included diplomatic missions, practical tasks in other areas of the royal administration (such as tax assessment), participation in reform projects.<sup>425</sup>

The most lucrative and thus the most practiced of these activities was that of reporting (“*rapporter*”), that is, sifting through the documents and evidence of a lawsuit to write down a reasoned review of the case and an argued judicial solution to it, which the *rapporteur* later exposed orally to the fellow-members of his chamber.<sup>426</sup> I focus here on those features of the practice of *rapporter* that help explain the genealogy of the fictional distinction between *officier* and *commissaire*. From this genealogy I proceed to explain how and why the *conseillers* came to utilize this fiction to secure additional revenues. Finally, I evaluate how this administrative innovation affected the *conseillers*’ perception of the temporal dimension of the practice of *rapporter* and their judicial practices more generally. Indeed, the analysis of this “commissarial dimension” of *rapporter* illustrates most clearly how time and money related to one another and with what effects on practice itself. As we will see, there were two main effects: that of turning *rapporter* into a productivity-oriented practice, and, for that reason, that of turning the practice into an object of competition within the institution, that is, among the *conseillers*.

I focus below on the financial and temporal aspects of reporting,<sup>427</sup> two dimensions that evolved in relation to one another as the *conseillers* turned to this particular commissarial activity to make it their practice of choice to extract additional revenues from their profession. In search for these revenues that could counter-balance the financial cost of being an officer—that is, both the cost of the purchase of the

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<sup>425</sup> For instance, in the Parlement de Toulouse in the fifteenth century, the président Jean Dauvet was sent by Charles VII to the council of Basel as one of deputies, later as *commissaires* at the *Etats* of Normandie (1438) and later Languedoc (1456), as ambassador to the Duke of Burgundy in 1452. Premier Président Louis de la Vernade was sent throughout Languedoc in 1455-56 as a *commissaire* in charge of reforming the administration of the province (Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, vol. 1, 123).

<sup>426</sup> I analyze this practice in detail in Chapter 7.

<sup>427</sup> The practice of *rapporter* was also a defining element of professional identity—as it distinguished judges from other legal professionals—and a criterion of judicial expertise—in the sense that a judge’s proficiency as a *rappporteur* was one of the criteria used to evaluate his overall talent and expertise as a judge. These are essential aspects of this practice to which I will come back in Chapter 7.

office and the cost of maintaining the appearance of a livelihood in tune with the social standing implied by the position—the *conseillers* realized very early on the financial potential of this activity. This potential rested in the nature of the fee, the “*épices*” (literally “spices”) that the *conseillers* charged the litigants (“taxed” them in the language of the time) for their work as *rapporteur*. First, the *épices* were paid for an activity that could be categorized as a “commission,” then they could be arguably related to a practice that drew on a medieval ideology of gift exchange, and finally—and maybe most importantly—they were assessed arbitrarily by the magistrates themselves.

It is difficult to date precisely when the practice of reporting was introduced in the Parlement, but what is certain is that it was not originally part of the deliberating process either in the royal council or in the Parlement that was later detached from it in the 1250s. The introduction of the practice of reporting formalized *parlementaire* deliberation in significant ways that I will analyze later, but what matters here is that the practice was both an innovation and a one-time and specific task the court assigned to one of its members, and as such, it qualified as a commissarial activity distinct from the basic duties of the *conseiller-officier*. Consequently, it qualified as well to be compensated by some form of payment distinct from the officer’s wages and proportional to the task performed. By 1550, this payment took the form of a monetary fee, but its name “*épices*” was a reminder that it was originally a “free” gift in kind that litigants offered to their judge in recognition of his services.<sup>428</sup> The monetization of the *épices* is one of the factors that explain how reporting became a productivity-oriented judicial practice.

Another important related factor of this turn to productivity was the possibility, introduced together with the use of the written procedure, of quantifying the practice. Indeed, the materialization of the lawsuit into a bundle of documents made the labor of the *rapporteur* readily—if roughly—measurable with the naked eye. Not unlike today’s historian who tries to estimate the amount of research work that lay ahead by gauging the size of the registers piled on her table, the *conseillers* in the Parlement evaluated the length and difficulty of the preparatory work of a report by sizing up the pile of documents that was

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<sup>428</sup> See Chapter 5.

put on the desk at the beginning of their deliberation. And indeed, the procedure required that the oral presentation of the *rapporteur* to his colleagues began when he “put the trial on the desk” (“*mettre le procès sur le bureau*”), so that the documents were not only available for consultation during the deliberation that followed the *rapport* but also a visible index for the *épices* that were assessed at the end of the deliberation.

Finally, the *conseillers*’ need for additional revenues in the wake of the explosion of the price of offices, was the sine qua non condition to unlock the full financial potential of the practice of *rapporteur* and further its transformation into a productivity-oriented practice. Although the quantification of the practice allowed by the use of the written procedure, combined with the monetization of the *épices* had made it possible to transform reporting into a profitable judicial practice, it was not significantly driven by productivity concerns until the rising price of offices made it incumbent on the magistrates—especially the least well-off—to find new ways of extracting additional revenues from their professional activities. In fact, the partial data at our disposal indicates that the amount of *épices* charged by the parlement de Toulouse runs parallel to that of the price of offices.<sup>429</sup>

This money/time approach shaped not just the practice of *rapporteur* but more generally all commissarial practices.<sup>430</sup> It seems that an invisible moral line determined whether a commissarial practice could be charged for a fee or not. As we will see with the *épices* that were charged as a payment for the *rapport*, this was in part justified by the fact that the *épices* could still be loosely related in the late sixteenth century to an older ideology of gift exchange.<sup>431</sup> In the face of mounting criticism of the *épices* however, it seems that both the king and the *parlementaires* realized that the *conseillers* were overstepping the boundaries of this moral economy. A number of solutions were considered to rein in the

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<sup>429</sup> One should note that this transformation had consequences on internal politics within the *corps* for time constraints limited the supply of lawsuits to report on (See Chapter 5).

<sup>430</sup> It is the case in particular of the practice of inquiring, for it was undertaken for a fee by *conseillers* who had been nominated *commissaire enquêteurs* for a particular case (See Viala, *Le Parlement de Toulouse et l’administration royale laïque, 1420-1525 environ*, vol. 1, 400).

<sup>431</sup> This is also suggested by the fact that, while indexed on the “size” of the trial, the amount of *épices* also seemed to take into account the apparent fortune of the litigants.

increase of the *épices* and although their implementation met some relative success in slowing down the increase, these measures did not address its structural causes—the magistrates’ need for cash that resulted from the rising price of offices.<sup>432</sup> Thus, the capping of *épices* that took place in the first half of the seventeenth century prompted the *conseillers* to turn to other judicial activities from which they could extract additional revenues, that is, they turned to other commissarial activities that fell outside the realm of officer activities already covered by the *gages*.

The influence of the clock-time approach on those commissarial activities was the strongest on new practices, a case best illustrated by the “*tour de sabatine*.” The *sabatines* were a particular kind of deliberative sessions that took place on Saturday afternoons—hence the name *sabatine*. These were particular deliberative sessions in the sense that although deliberating was undoubtedly an original function of the medieval *parlementaire* in the *curia regis*—“*aide*” and “*conseil*” were the two duties of the vassal to his lord—, hence an activity paid for by the *gages*, the fact that these sessions took place on a day when the court was not sitting, qualified this type of deliberation as a commissarial activity that could be paid for by a fee. Further, the classification of the *sabatine* as a commissarial activity was made even clearer by other *ad hoc* institutional markers: the nomination (*commission*), the lexicon (*commissaire*), the institutional organ (a small group of *parlementaires* drawn from all chambers). In terms of fees and their indexation on productivity, the *parlementaire* design of this practice pushed a notch further the clock-time approach. Indeed, the clock regulated directly and strictly the indexation of the fee paid to the *conseillers*. The calculation of the fee was based on the number of hours the *conseillers* spent deliberating on a Saturday afternoon. Each hour, an *huissier* of the court would enter the room where the *conseillers* deliberated and would go around holding a container (itself called *sabatine*) in which the *commissaires* would drop a small piece of paper with their name signed on it.<sup>433</sup> At the end of the session, the *greffier* would add the hours and draft an allocation for each *conseiller*. Thus in the case

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<sup>432</sup> See p. 237.

<sup>433</sup> Emile Vaisse-Cibiel, “Des gages, épices et sabatines à l’ancien Parlement de Toulouse,” *Mémoires de l’Académie des Sciences Inscriptions et Belles Lettres de Toulouse* 4 (1866): 183.

of the *sabatines*, two man-made times combined to shape the practice in significant ways: the *parlementaire* weekly calendar justified that the activity could be categorized as a commissarial activity (for the court was not officially sitting on Saturday afternoons) and the clock chiming out the hours served to assess the payment for the activity.

The temporal shaping of the *sabatines* is also interesting because of its possible influence on “regular” deliberation as well. While the practice of deliberating as an *officier* retained some of the moral weight derived from the exercise of a higher and quasi-mystical function—that of judging other men in the name of God and the king—one can assume that churning out of sentences for money that happened in *sabatines* sessions, the personal experience of the deliberation as an hourly job, contributed to further undermine a transcendental dimension of the practice that was already eroded by the repetitiveness inherent with any routinized task.

This is not to say that a wholesale monetization of all judicial practices conducted in a commissarial capacity took place. A moral line was drawn: no *épices* were to be paid in criminal cases (*pro deo*, “for God,” noted in the margin instead of the amount of the fee), or when litigants were deemed too poor (*pro bono*, “for good,” in the margin), and other activities were not paid at all. This is the case for “questioning” (i.e. torture), a practice of interest here, because despite its non-payment,<sup>434</sup> it was shaped as well by a clock-time approach. While timing did not serve as a basis to calculate a fee to be paid to the magistrate who oversaw the application of judicial torture, time was an important index regulating the procedure, especially in the case of the “preparatory question.”<sup>435</sup> Indeed, criminal procedure was very strict on the fact that torture could only be applied a certain number of times, and only

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<sup>434</sup> For reasons that also explain the non-payment of *épices* in criminal cases, moral concerns barred the payment of a fee to the judge in the case of judicial torture. I will come back later to this particular point when I analyze *épicer* in detail (Chapter 5).

<sup>435</sup> *Question préparatoire*, that is, the torture that sought to establish the guilt of the accused, was distinct from the “preliminary question”—*question préalable*—that was applied to the convicted right before the carrying out of a capital sentence, in order to elicit a denunciation of his accomplice. See John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*, Chicago: University of Chicago Press, 1977, 16-7 ; Lisa Silverman, *Tortured Subjects: Pain, Truth, and the Body in Early Modern France*, Chicago, 2001, 74-5. Note that the preliminary question itself was divided into two stages: “ordinary question” (the “water question” in Toulouse, that is, the modern waterboarding) and, a few hours later, “extraordinary question” (the strappado in Toulouse). See Dubédat, *Histoire du Parlement de Toulouse*, 68-9.

for a limited duration each time. The goal of those time-based regulations was twofold: to avoid killing or severely injuring the accused, and to ensure the validity of the confession extracted (or the validity of the denial, when the accused resisted). The first goal is rather straightforward and does not need much explanation: while there was definitely a punitive and retributive aspect to the “preliminary question”—and it suffices here to turn to Foucault’s famous analysis of the torture of Damiens on the day of his execution—the “preparatory question” was not linked to a system of sanctions but to a system of proof that did not seek to punish and needed to keep the accused in relatively good health in order to extract the confession that was needed to establish his guilt.<sup>436</sup> Similarly, an accused who lost consciousness in the middle of the interrogation could not be said to have, properly-speaking, denied the crime he was questioned for. Thus, the timing of the application of pain was meant to protect, not the physical person of the accused per se, but the legal validity of the procedure.

Although in practice the magistrates did not follow all the requirements of the procedure (most notably, they rarely refrained from suggestive questioning), they seem to have followed time requirements more and more scrupulously. As Lisa Silverman noted in her study of torture in the Parlement de Toulouse, while the practice of judicial torture was supported throughout the early-modern period by a belief that “the truth was embodied and that pain might free it from its carnal location,”<sup>437</sup> there were some significant changes in the conceptualization and employment of torture itself. The strict timing of the application of pain was one of the ways in which the magistrates sought to disambiguate torture as an evidentiary procedure to take it further away from the medieval ordeal, in which indications of guilt (or innocence) were conflated with the giving of evidence.<sup>438</sup>

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<sup>436</sup> Lisa Silverman notes that, on a more symbolic level, torture as practiced in the parlement de Toulouse had lost its purgatory function by the 1620s (Silverman, *Tortured Subjects : Pain, Truth, and the Body in Early Modern France*, 71).

<sup>437</sup> *Ibid.*, 83

<sup>438</sup> On the judicial ordeal see Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal*, Oxford: Clarendon Press, 1986 ; Margaret H. Kerr, Richard D. Forsyth, and Michael J. Plyley, "Cold Water and Hot Iron: Tiral by Ordeal in England," *Journal of Interdisciplinary History* 22-4 (1992) ; and Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France*, Leiden: E. J. Brill, 1993.

The clock-time approach to professional activity was not particular to justice—the same can be observed for instance in the financial administration, in particular in financial courts, *cours des aides*, *chambres des comptes*. Nor was it particular to the royal administration more generally: a number of *métiers*, especially newer “*arts mécaniques*,” featured a similar approach, sometimes guided by productivity as was the case with some commissarial practices in the Parlement (*rapporter*, *sabatines* deliberations). There were, however, some significant bureaucratic, judicial and *parlementaire* idiosyncrasies to the *conseillers*’ approach.

Serving the goal of extending the reach and control of the monarchy over its territory and subjects, the bureaucratization of royal administrations—be they of “justice, police, [or] finance” to use a contemporary expression—created among royal agents a particular, clock-oriented approach to their professional activities. One of the main instruments of early-modern bureaucratization behind this phenomenon is an ever-expanding use of written documents that created a self-sustaining fantasy of administrative perfection that placed royal agents in a double-bind vis-à-vis time. Motivated by temporal concerns—how to treat more cases faster in order to further royal control—the use of written documents had contrary temporal consequences on royal administration. On the one hand, it did enable royal agents to treat more cases faster (especially when the use of printed forms allowed to cut significantly on writing time itself), but on the other hand it also created an administrative backlog of a new kind with new temporal constraints that could only be addressed with more bureaucratization (i.e. new institutions, more royal agents, hence more paper).

The history of the Parlement as an institution aptly illustrates this phenomenon. Before the adoption of the written procedure at some point in the thirteenth century, royal judges could only hear as many lawsuits as their time and the time for speaking allowed. There was no judicial backlog then, properly speaking, for the litigants who could not be heard were simply turned away, and whether they (and their case) would come back later to court to be treated was out of the hands of the magistrates. This was what I would call a “soft backlog,” that is, one that was perceived by judges, legal professional and litigants, but that had no visibility for it left no material traces, and was therefore hard to evaluate. The

practical solution to this somewhat still intangible problem was the one that had led to the creation of the Parlement: when the king-as-judge could not hear all the complaints of his subjects, he demultiplied himself and his time by delegating this function to some of his *conseillers*.<sup>439</sup> This solution was good enough as long as the royal domain was confined to a rather small territory around the Paris region.

The development of the appeal procedure—a central piece of the assertion of royal control over a domain that expanded dramatically in the thirteenth century—made it imperative to treat this backlog in a different manner. Indeed, the success of the appeal procedure as an administrative technology at the service of a political agenda of territorial expansion and centralization, depended on the ability of royal courts to treat an increasing number of lawsuits coming from ever more remote corners of their jurisdiction. The adoption of the written procedure—a new technology developed a few decades earlier by the papal administration to address similar concerns—was seen as the most efficient way to solidify in practice the capillary but still theoretical reach of royal justice throughout the kingdom. This adoption turned the soft backlog of oral procedure into a hard backlog of written procedure.

One should note as well that the written procedure also contributed to make justice more generally a more productivity-oriented activity. Thought of in part as a way to reduce the ever-increasing number of oral lawsuits that the Grand Chambre did not have time to hear, the adoption of the written procedure to supplement the oral procedure and the creation of the *Chambres des Enquêtes* to treat the written lawsuits, actually had the contrary consequence of increasing the overall caseload of the Parlement. Because it was not limited by the time the court could physically spend to hear barristers and procurators, because it did not require the time and expense of transporting oneself to the court, and because the (relative) geographical progress of literacy made it available to ever more litigants in the *ressort*, the use of the written procedure is at the origin of a dramatic increase of the volume of lawsuits the court had to process. In addition, the backlog that resulted from this increase that the court could not treat, materialized physically in a mass of documents and papers that could not be turned away like

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<sup>439</sup> See p. 51.

litigants and functioned as a visible and increasingly difficult to manage reminder that royal justice operated more and more under time-pressure.

The two towers of the *Palais* then, did not just help outsiders locate the Parlement de Toulouse, they were also, for those inside, a twin symbol of the changing nature of judicial practice and of its relation to space and time. The effects of the once slow bureaucratization of royal justice—a literal bureaucratization, that is, a multiplication of *bureaux* to treat and produce always more paper—materialized in those two towers: the *tour des archives* was a visible axis of stone and paper around which judicial itineraries and processes had ended up revolving ; every hour the *tour de l'horloge* reminded all that it increasingly regulated these processes and more generally the movements of men and papers to and from the *tour des archives*, in and out the *Palais*.

**PART THREE:**

**BETWEEN FACTS AND FAITH: PRACTICE, JUSTICE, AND**

**TRUTH**

## CHAPTER 5.

### “LA GRANDE EPICERIE JUDICIAIRE”: MONEY, JUDICIAL PRACTICE AND POLITICS IN THE PARLEMENT DE TOULOUSE.

I use the phrase “*grande épicerie judiciaire*” to convey the idea of the wholesale merchandization of old regime royal justice (*épicerie* literally means “grocery store,” but with a pejorative slant), while playing on the early-modern judicial meaning of the word *épices* (literally “spices”), a fee litigants were required to pay to their judges before a sentence could come into effect.<sup>440</sup>

I am not the first one to attempt a pun on this particular and now mostly forgotten meaning of *épices*: more than three centuries ago, Jean Racine made his audience laugh by playing on this same word in a passage of *Les plaideurs* (1668), his only comedy. At some point in the story, Dandin, an old magistrate and the protagonist of Racine’s comedy, has become so consumed by his professional habitus that his son had him locked up in his own house under the watch of his manservant Petit-Jean. Dandin, however, managed to escape and Petit-Jean retells:

He [Dandin] kept asking for his spices [*épices*],  
So, I rushed to fetch the pepper pot from the pantry [*offices*],  
And in the mean time, he vanished.<sup>441</sup>

The rhyme between *épices* and *offices* certainly echoed, with a comical twist, an association that was immediately clear to Racine’s audience. This audience knew all too well that as surely as the pepper pot was to be found in the pantry, *épices* were inherent with *offices*. Thus, beyond the crude farce of this situation in which an elderly magistrate tricked his servant out of a room so that he could wriggle his way

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<sup>440</sup> Although they did not elaborate specifically on the phrase, Elie Barnavi and Robert Descimon have mentioned “the forbidden fruits of the judicial spice shop” (“*fruits défendus de l’épicerie judiciaire*” Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l’assassinat du président Brisson (15 novembre 1591)*, 174) with implications similar to my use of the expression.

<sup>441</sup> *Il me redemandoit sans cesse ses épices ;  
Et j’ai tout bonnement couru dans les offices  
Chercher la boîte au poivre ; et lui, pendant cela,  
Est disparu.*

*Les plaideurs*, Act II, Scene 7.

out the window in his solemn judicial garb, lies a fairly commonplace critique of a practice—that of collecting arbitrary *épices* from litigants—that had long been considered abusive.

The loathing of *épices* and *offices* that Racine echoed in his comedy is in itself an interesting object of historical analysis, for the critique reached unprecedented levels in the second half of the sixteenth-century, at a time when the *épices* themselves remained fairly stable from a statistical point of view. In this chapter, I first look at this critique, its origins, and its transformation to try and explain this intriguing discrepancy between facts and their perceptions and what it might reveal about contemporary representations of justice. I then go beyond this commonplace—and to some extent fantasized—representation of the *épices* from outside the courts, to analyze *épices* from within the courts, that is, as an element of everyday judicial practice and revenue. The analysis of *épices* and more particularly of their repartition among the *conseillers* in the Parlement de Toulouse suggests that this parallel judicial income had become a structuring element of internal divisions within the court during that period. My analysis of a failed reform of the distribution of *épices* in the late 1630s in the Parlement de Toulouse illuminates how this mundane, day-to-day judicial practice can help us to better understand the transformation of the social identity and political role of the *parlementaire* magistracy between 1550 and 1650.

In order to shed light on those connections, it is first necessary to explain in some detail what *épices* were, how they functioned, and how they ended up playing such an important role in the administration of royal justice at the turn of the seventeenth century. In 1550, the point at which I begin my analysis, the main characteristics of the practice of “spicing a trial” (“*épicer un procès*”) were already established and would undergo only a few but important changes over the course of the following century. The practice took place in a closed-door session of the court called *conseil*<sup>442</sup> during which the judges of a chamber<sup>443</sup> gathered to make a decision (temporary or final) about a case. Only one of the

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<sup>442</sup> I do not call this session “in camera” to avoid a possible confusion: only the judges and the chamber clerk attended this session, litigants and their lawyers did not.

<sup>443</sup> On the division of the Parlement into chambers, see p. 336 below.

judges, previously designated by the first president of his chamber as the *rapporteur* of the lawsuit, had a detailed knowledge of the case and of the documents found in its file. During the *conseil* session, the *rapporteur* gave to his colleagues a summary of the case in the form of an oral presentation that pointed to the specifically legal problems of the lawsuit and afterwards recommended a legal solution in the form of a sentence.<sup>444</sup> Whether or not the chamber decided to follow the *rapporteur*'s recommendation, the president of the chamber would decide on the *épices*, that is, the money the litigants would have to pay to the judges for their work on the case.<sup>445</sup> The litigants then had to pay the *épices* to the *greffier*<sup>446</sup> before the *arrêt* could come into effect. The *greffier* would give half of the amount to the *rapporteur* of the case (again, whether or not his colleagues had decided to follow his opinion) and put the other half into the “common purse” (*bourse commune*) of the chamber. Each month, the money found in that common purse would be divided equally among the members of the chamber.<sup>447</sup>

This is a very rough summary of how the *épices* functioned around 1550 but one needs to bear in mind that these modalities were the result of a century-old transformation. The transformation of the practice from the thirteenth century on is important to note for my purpose, because the distant—and fantasized—memory of the transformation of *épices* from a voluntary gift in kind into a mandatory monetary fee, informed early-modern litigants and judges' perception of the *épices*.

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<sup>444</sup> See Chapter 7 below.

<sup>445</sup> Loyseau, *Cinq livres du droit des offices*, liv. I, chap. VIII, 96-97 ; Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 472.

<sup>446</sup> La Roche-Flavin, *Treize livres des Parlemens de France*, 194. Things were different in the Parlement de Paris : Henri III had managed to impose (with a *lit de justice* on March 7, 1583) the creation of a collector of *épices* who taxed the money paid by the litigants before putting it in the « common purse » of the various chambers. All the parlements in the provinces had successfully refused to create this office, with the notable exception of the bi-confessional chamber of Castres where the *receveur* (a “pernicious creation” in the words of La Roche-Flavin) taxed 5 *sous* per *écu* (about 9% of the *épices* decided by the president). La Roche-Flavin, *ibid*.

<sup>447</sup> Malenfant, *Collections et remarques du Palais*, II, 73.

## *Origin and transformation of the épices from 1250 to 1550.*<sup>448</sup>

In the Middle Ages, the meaning of *épices* was far less precise than the one I have just described. It could refer to any remuneration litigants gave their judge for an “extraordinary” judicial act, that is, an act that did not occur during a regular hearing. From the very inception of the Parlement de Paris in the thirteenth century, those remunerations were gifts in kind given to the judge after he had issued his sentence and, in theory, on a voluntary basis. This practice was also common at the time in guilds and universities, where gifts of this kind functioned as a substitute for wages. In the case of royal judges however, the *épices* did not compensate an absence of wages, but rather completed or replaced wages that the king often failed to pay in full and sometimes failed to pay at all. From the very beginning then, the problem of *épices* was closely linked to the question of judges’ income, and thus, to the ideal of a cost-free justice.<sup>449</sup>

The simple idea behind the *épices* was that the easiest way to compensate judges for their unpaid wages was to allow them to derive a complementary income from the exercise of justice itself. Provisions to that effect were made in the 1250s, that is, around the time the Parlement de Paris was established as a permanent court, distinct from the royal council.<sup>450</sup> From the start, provisions to ensure judges’ income, in the form of wages or otherwise, were most of the time backed with prohibitions made to judges to receive

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<sup>448</sup> The ancient origin of *épices* is often mentioned by contemporary authors (La Roche-Flavin, Loyseau, later Boucher-d’Argis for his article in the *Encyclopédie*). Those early-modern references to ancient examples are mostly valuable for what they reveal about how contemporaries attempted to justify *épices*, that is, by pointing out illustrious precedents (both in Athens and in Rome).

<sup>449</sup> While complaints about the cost of education were commonplace (on the part of students as well as parents, see Charles H. Haskins, *The Rise of Universities*, Ithaca: Great Seal Books, 1957, 76-9), there was no widely shared sense that education should be free.

<sup>450</sup> In an *ordonnance* of december 1254, Louis IX, decided that litigants would have to consign, at the beginning of a lawsuit, a tenth of the value of the object disputed in front of the court. The amount consigned would serve first to pay for the judicial expenses of the winner of the case and the remainder would go to the judges (*Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, I, 272). Félix Aubert, noted that this measure was inspired by a prescription of Diocletian (Aubert, *Histoire du Parlement de Paris de l’origine à François Ier 1250-1515*, I, 94).

gifts,<sup>451</sup> thus suggesting that judicial wages paid by the king,<sup>452</sup> were conceived as a way of preventing the use of gifts. As the medieval transformation of *épices* reveals, wages and gifts were indeed like communicating vessels and the development of the practice of collecting *épices*, its systematization indeed, was to a large extent a quasi-mechanical effect of the king's inability to regularly pay judges their wages, let alone to increase these wages to keep up with rising prices.

In 1550 the view that the existence and rise of *épices* were a symptom of the king's failure to provide his subjects with justice for free thus appealed to a three-century old tradition. With each renewal of the prohibition, sometimes accompanied by insufficient increases of wages, the king himself seemed to acknowledge this failure. This is the first aspect of the transformation of *épices*: always presented as a lesser but necessary evil that was temporarily tolerated in anticipation of better times, the *épices* were actually turned into an integral and official part of the judicial procedure, because of a lack of financial means (sometimes of political will) to insure the payment of judges' wages. Even the 1673 *édit* which, centuries later, was to definitively ratify the official recognition of the *épices* and fix their regulation until the French Revolution abolished them,<sup>453</sup> used this rhetoric in the most explicit way in its preamble:

although justice must be rendered for free, the custom of past centuries has introduced some remuneration for the judges beyond the wages we have granted to them, and *we intend to take charge of that additional remuneration ourselves in the future, when the state of our affairs will allow us to do so*, and in the meantime we have decided to act to moderate it. [my emphasis]<sup>454</sup>

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<sup>451</sup> The same *ordonnance* of 1254 for instance, sought to prevent the giving of gifts in a variety of forms: one article forbid not only judges, but also their wives and children to receive any sort of gift, except for food or drinks for a value not exceeding 10 s. per week, another article sought to prevent an indirect form of gift by putting limits on the money judges could borrow from litigants (no more than 20 l., the interest being limited by the fact that the loan had to be paid back within two months). *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, I, 267-8.

<sup>452</sup> *Histoire du Parlement de Paris de l'origine à François Ier 1250-1515*, I, 94-9.

<sup>453</sup> With the exception of the episode of the Maupeou reform (1771-1774), which briefly abolished, among other things, the venality of offices and the *épices*. This episode should be given more attention, since the reform generated some discussion of the *épices*, which, Viala argued, shaped historians' later approach to the question.

<sup>454</sup> “*La justice devant être rendue gratuitement, l'usage des siècles précédents a néanmoins introduit en faveur des juges quelque rétribution au-delà des gages que nous leur avons accordés, dont nous avons intention de nous charger à l'avenir, lorsque l'état de nos affaires le permettra ; cependant nous avons résolu d'y pourvoir par un tempérament convenable.*” *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, XIX, 86-7.

The first characteristic of the transformation of *épices* of interest to us then is their systematization, a transformation from voluntary gift into mandatory judicial fee, which, although plainly accepted by 1550, had fallen short of extinguishing the old ideal of a cost-free justice, which the opening of the 1673 *édit* did not fail to mention.

The second main aspect of the transformation of *épices* was their monetization. The transformation from a gift in kind (most often but not always spices)<sup>455</sup> into an amount of money occurred around the year 1400<sup>456</sup> and had important consequences. First, it made *épices* easier to track and manage thanks to the accounting techniques that were developing at the time, thus facilitating their systematization. Secondly, monetization entailed a devaluation of *épices* on a symbolic level. The *épices* in kind, whether spices, exotic or dry fruits, candies, marmalade, or even meat or cheese, were types of food that carried a high symbolic capital in a world where plain bread dominated the diet of most.<sup>457</sup> Currency too, was scarce for most people, but it was an item increasingly invested with negative social value in the fifteenth century, and thus the monetization of *épices* probably affected the perception of the fee. In some way, one could say that the monetization of the *épices*, in addition to a systematization that transformed them into an arbitrary tax, offered a fertile ground for the development among litigants of the idea—and stigmatization—of a merchandization of royal justice. This older idea would find a particular

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<sup>455</sup> Most of the time, gifts took the form of rare food, often spices in the modern sense (pepper, cinnamon, cloves), but also marmalade, candies of various sorts (in particular sugared almonds), exotic fruits. When local communities could not find these, they could offer local gastronomical specialties (including wine from Bas-Languedoc and cheese from Auvergne and Quercy). Other local products, such as gloves (Millau and Espalion) or knives could be offered as well. Candles, an essential but expensive commodity, could be given too. In some cases, especially when gifts were given by a local community to a visiting judge, they could be of more common nature (rabbits, partridges, oats for the horses), but still attempted to manifest the acknowledgment of higher social status of the receiver. See Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, 159-61 ; Vaisse-Cibiel, "Des gages, épices et sabatines à l'ancien Parlement de Toulouse," 178 ; *Dictionnaire du Grand Siècle*, ed. François Bluche, Paris: Fayard, 1990, 632.

<sup>456</sup> Viala questioned that original date but acknowledged that by 1470 the great majority of *épices* were paid for with cash in the Parlement de Toulouse. Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, 163.

<sup>457</sup> Steven L. Kaplan, *The bakers of Paris and the bread question, 1700-1775*, Durham, NC: Duke University Press, 1996, 1-3.

resonance in the second half of the sixteenth century, when the sons of merchants who had made their fortune in the first half of the century entered the elite of royal magistracy.<sup>458</sup>

One last important change occurred before 1550. When the *épices* became a mandatory judicial fee, the setting of their price shifted from the litigants to their judges. Of course, a tacit grid of prices of the *épices* had always constrained the supposedly “voluntary” gifts of litigants,<sup>459</sup> but the transfer of their assessment to the judges had significant consequences for the future. Maybe even more significant was the transfer of this assessment from the *conseiller* in charge of the case to the president of his chamber. While this change is difficult to date with precision,<sup>460</sup> there is no doubt that it was completed by 1550. At that point, the estimation of *épices* had become a powerful instrument of internal control and of pressure on the *conseillers* of a chamber at the hands of their presidents, which, as we will see, would become critical in shaping court politics in the later period, especially in the first half of the seventeenth century.

As Racine’s reference to pepper—an *épice*—indicates, the memory of those changes shaped the perception of the *épices* on both sides and played an important role in the changes that were to occur between 1550 and 1650. While this period of further transformation of the *épices* must be divided into two distinct periods (corresponding roughly to the second half of the sixteenth and the first half of the seventeenth century) the cause of both phases of the transformation was the same: the introduction of the venality of offices, a change of major consequences for both the royal administration and French society as a whole.

## ***Épices and Venality***

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<sup>458</sup> See p. 228 below.

<sup>459</sup> Litigants inferred the expected value or the proper kind of gift to offer to a magistrate from a series of variables: the litigant’s own fortune, the experience and ranking of the judge, the level of the court in the institutional hierarchy, the value of the object disputed, and, maybe most importantly, the value of the gift their opposing party was likely to make on the basis of the same information.

<sup>460</sup> It is likely that the first *ordonnance* mentioning this point (1491) simply validated an older practice, progressively established from within the courts.

The venality or sale of royal offices was introduced as a new means to overcome the chronic lack of financial resources I mentioned above. The king's need for increased resources was not primarily dictated by the problem of the payment of the wages of his agents (although this argument could be used on occasion as a rhetorical ploy to justify new taxes) but was dictated by the exponential increase of military expenditure.<sup>461</sup>

Venality, by officially turning *dignité* and *autorité* into commodities, had very important social and political consequences,<sup>462</sup> but I should focus here on its financial aspects and in particular on its consequences on the practice of collecting *épices* from litigants. The new system indeed could only have obvious consequences for the *épices*: not only were they seen as before as a necessary complement to wages that remained too low, but in addition as the easiest way to pay oneself back for the money spent on an office. While most historians considered that there was a direct link between venality and the rise of *épices*,<sup>463</sup> André Viala, who came the closest to providing a systematic study of the *épices* in a sovereign court,<sup>464</sup> argued that the sharp increase he observed<sup>464</sup> in the global value of *épices* collected in the Parlement de Toulouse between 1460 and 1525 preceded, and thus was disconnected from, the introduction of the venality of offices. Viala concluded that “the development [of *épices*] was a consequence much more of the venality of the magistrates and of their desire to get richer, than of the venality of offices or any other institution.”<sup>465</sup> A century later, and in another instance of a contemporary wordplay on the double meaning of *épices*, La Roche-Flavin gives some credit to Viala's view:

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<sup>461</sup> This increase was a result of the coming of a new kind of war, involving an unprecedented number of troops, most of which were now constituted by a professional and permanent army, using new costly techniques, and, beginning with the Italian campaigns of the late fifteenth- and early sixteenth-century, fought on unusually distant battlefields. These new wars, quickly and repeatedly depleted the royal treasury, despite the contribution of taxes (*tailles*, *aides*, etc.) that had finally been made permanent as recently as around the end of the Hundred Year war.

<sup>462</sup> I reviewed some of those consequences in Chapters 2 and 4.

<sup>463</sup> For instance Adhémair Esmein, *Cours élémentaire du droit français à l'usage des étudiants de première année*, Paris: Librairie du Recueil Sirey, 1925, 400 ; Emile Chénon, *Histoire générale du droit français public et privé des origines à 1815*, 2 vols., Paris: Sirey, 1926, 574 ; Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 75 ; *Dictionnaire du Grand Siècle*, 632.

<sup>464</sup> Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, I, 211-4.

<sup>465</sup> *Ibid.*, I, 215.

(...) in France most of the judges in the lower courts, and some in the higher ones, are infected by this disease, which seems to be akin to dropsy but is somehow its very contrary. Indeed, a thirst of spices burn them from the inside, and these spices delight them so much that the more they get some, the more they are parched and cannot get enough; thus they burn in their soul and conscience [*“en leur âme et conscience”*] and do not care about their duty, their oath, or even about justice, as long as their insatiable appetites are spiced up [*“espices”*].<sup>466</sup>

Thus, the lure of profit is certainly an element that should be taken into account when considering the rise of the global amount of *épices* collected by the court, especially during the period Viala observed when the relative value of wages was not yet as low as it would become later. I think, however, that Viala's analysis is flawed at several points. To begin with, Viala's chronology is questionable because he dates the introduction of the venality of offices after its official acknowledgment in royal legislation, that is, from the year 1521-2, when Francis I first forbid the *survivance*, that is, the bequest (most often to a son or a close parent) of offices<sup>467</sup> and then, after having “recovered” his property,<sup>468</sup> started selling them openly.<sup>469</sup> In fact, the king had been selling offices for a good while at that point. Roland Mousnier, in his still authoritative study of the venality of offices, surmised that French kings might have sold public charges as early as the fourteenth century.<sup>470</sup> Without going that far back in time, the repeated prohibitions of the sales of offices in the second half of the fifteenth century seem to offer strong evidence that the practice was already in place and that the king had not given up yet on trying to cover it up.<sup>471</sup>

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<sup>466</sup> "(...) *la plus part des juges inférieurs de France, et aucuns des supérieurs sont infectés d'este maladie qui semble tenir de l'hydropisie, et toutesfois luy est contraire. Car ils bruslent d'une soif d'espices, qui les eschauffent tellement que d'autant plus qu'ils en prennent, ils sont davantage alterez, et ne s'en peuvent aucunement ressasier, dont ils bruslent en leurs ames et consciences, ne se soucians de leur devoir et serment, ny de la justice mesme, pouveu que leurs insatiables appetits soient espices.*" La Roche-Flavin, *Treze livres des Parlemens de France*, 193.

<sup>467</sup> *Edit portant revocation des survivances des offices*, July 8, 1521 (*Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, XII, 189-90).

<sup>468</sup> Offices were considered a part of the royal domain. It is certainly no coincidence that the official introduction of the venality of offices corresponds to a period of sale of portion of the domain (in theory inalienable). See the stream of *ordonnances* regulating the sale of the royal domain in these years (*ibid.*, XII, 194, 96, 97).

<sup>469</sup> *Déclaration portant institution de vingt nouveaux offices de conseillers au parlement de Paris*, January 31, 1522 (*ibid.*, XII, 196) and, on the same year, creation of the “parties casuelles.”

<sup>470</sup> Mousnier even identified forms of what might be called a “proto-venality” as far back as the twelfth century (Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 15-7).

<sup>471</sup> *Ibid.*, 23.

More importantly, one can find evidence of an already clear sense of the existence of a link between *épices* and the sale of offices before the end of the fifteenth century. The General Estates convened by Charles VIII in Tours in 1484, complained to the king, first about the venality of offices:

(...) offices are often given to people without expertise who have bought and still try today to buy these offices. And it happened often times that when an office became available, the letter of nomination was sent to go-betweens with a blank space left for them to write down the name of the highest bidder, regardless of his qualification.<sup>472</sup>

Shortly after, the deputies made the connection with *épices* clear, voicing the complaint that “because several have been put in charge at great cost and expense, since they have bought their office, and because they are willing to reward themselves [*soy récompenser*, literally “to make it up for their expense”], they have demanded too great and excessive *épices*.”<sup>473</sup> Only a few years after he had sold his office of *conseiller* in the Parlement de Bordeaux (1570), Michel de Montaigne denounced both venality and *épices* in close proximity when he rhetorically asked in his *Essays*, “[w]hat is more uncouth than a nation where, by legal custom, the office of judge is openly venal and where verdicts are simply bought for cash? Where, quite legally, justice is denied to those who cannot pay for it (...)?”<sup>474</sup> Half a century later, La Roche-Flavin, moving from the level of anecdotal abuses to that of a more general and analytical assessment of the problem of *épices*, mentioned the same link more explicitly and connected it to the question of stagnating wages and rising prices.<sup>475</sup>

Thus, by 1550, *épices* and venality of offices were strongly connected in the minds of both judges and litigants. For judges, the *épices* appeared as the most convenient resource to turn to in order to compensate for the money they had spent to buy their office. For the litigants, *épices* and venality were linked as two important loci of a larger critique of the judicial system. This connection is at the core of the transformation of the *épices* in the course of the following century. The two phases of that

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<sup>472</sup> *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XI, 53.

<sup>473</sup> “*Et pour ce que plusieurs y ont esté préposez à grands frais et despens, pour avoir acheté leurs offices, et eulx cuidans soy récompenser, ont exigé grandes espices et trop excessives.*” *Ibid.*, XI, 55.

<sup>474</sup> Michel de Montaigne, *Essays*, trans. M.A. Screech, London: Penguin Press, 1991, 132-3. The original reads “*qu’est-il plus farouche que de voir une nation où par légitime coutume la charge de juge se vende et les jugements soient payés à purs deniers comptants et où légitimement la justice soit refusée à qui n’a de quoi payer.*”

<sup>475</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 194.

transformation—roughly 1550 to 1600 and 1600 to 1650—correspond to two different situations, articulated around the 1595-1605 decade that proved critical because of two major events: the end of the religious wars and the introduction of the *droit annuel* (1604), an annual tax office-holders had to pay in exchange for the guarantee that their office would be automatically transmitted to an heir of their choice (most often a son or a nephew).

### **1550-1600: *épices*, venality, morality.**

It would certainly be an exaggeration to talk about a “public debate about *épices*” in the second half of the sixteenth century. First, because the use of the notion of “public debate” is problematic for this era, but also because specific criticism of the *épices* did not leave any trace in the documentation beyond the complaints of the successive General Estates, which, after they had been voiced in an original manner for the first time in 1484, could well have simply become stereotyped repetitions of the same grievance.<sup>476</sup> The question of *épices* during the 1550-1600 period should be approached in the light of a larger ongoing discussion about the morality of judges, and beyond, about the ideal of justice.

The statistical study of the registers of the Parlement de Toulouse shows that the global amount of *épices* collected by the judges during the period stagnated or maybe even decreased.<sup>477</sup> The disconnect between this stagnation and the rise of accusations of corruption against the magistrates is a cue that the study of the transformation of *épices* at the time should be thought of as part of a broader approach to changing perceptions of royal officials in general and of royal judges in particular. Accusations against royal judges became more frequent and more intense between 1550 and 1600. Some went as far as

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<sup>476</sup> Mousnier noted that the 1484 complaints were “astonishingly similar to those voiced in the sixteenth and seventeenth centuries.” (Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 26).

<sup>477</sup> The total amount of *épices* collected in the Parlement de Toulouse in 1555 was of approximately 7,750 *écus*. In 1578, it was a little over 8,000 and about 7,600 in 1589.

depicting magistrates as thieves, as on this broadsheet, which Pierre de l'Estoile saw on the walls of Paris in 1576:

*Thieves in rhythm (sic), like Bretons and Gascons ;  
Thieves by reason, like millers;  
Thieves with neither rhythm nor reason, like Présidents, Conseillers, lawyers, procurators and all  
that kind of vermin.*<sup>478</sup>

As this broadsheet suggests, those extreme formulations pointed fingers at the Parlement specifically (“*présidents, conseillers*”)<sup>479</sup> but also targeted royal justice more generally (“all that kind of vermin”).<sup>480</sup> As Elie Barnavi and Robert Descimon pointed out, “the objective basis of those insulting diatribes must be sought in the high cost of justice,”<sup>481</sup> and I would add that, in the case of the *conseillers*, it should be sought more specifically in the visible face of this cost and the very real price that had to be paid on a daily basis, that is, in the *épices*.<sup>482</sup>

In order to understand the terms and implications of the ongoing critique of royal justice and the role *épices* might have played in it, this discussion must be put back into the context of specific economic, social and ideological changes at the time. First of all, a few features of the social and economic context of the time can help explain the phenomenon of a perceived, and in fact very literal, “merchandization of justice.” This perception was shaped by the cumulated effect of two different economic phases of the sixteenth century that were particularly pronounced in the Toulouse region. First, a period of economic growth had especially benefited a few merchant families in Toulouse with the development of the *pastel*

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<sup>478</sup> "*Larron en rithme (sic), comme Breton, Gascon;  
Larron par raison, comme un Musnier;  
Larron sans rithme ni raison, comme Presidens, Conseillers, Advocas, Procureurs, et toute telle autre vermine.*"

Quoted in Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l'assassinat du président Brisson (15 novembre 1591)*, 132.

<sup>479</sup> In the judicial administration, the titles of “*président*” and “*conseiller*” were only in use in the parlements.

<sup>480</sup> Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l'assassinat du président Brisson (15 novembre 1591)*, 129-77.

<sup>481</sup> *Ibid.*, 132.

<sup>482</sup> The reference to *épices* is explicit in some of the most famous and scandalous cases of corruption of the time, for instance the “Poille affair” (1582) and the “Lebreton affair” (1586). *Ibid.*, 166-8 ; 70

trade<sup>483</sup> that generated its highest profits in the years 1505 to 1530.<sup>484</sup> This phenomenon is relevant here in two respects. First because all the great names of the Toulouse *pastel* trade—ironically some of them had also practiced the *épicerie* trade—<sup>485</sup> used their newly acquired fortune to enter the Parlement between 1540 and 1560. The same men indeed—Bernuy, Assézat, Lancefoc, Boisson—who had already been sagacious enough to invest their capital into the “blue gold” trade in the first half of the century, were well-inspired again when they later reinjected most of their profits into different kinds of investments. They bought *seigneuries* and castles around Toulouse, they bought other *hôtels* in Toulouse, most importantly they bought royal offices<sup>486</sup> for their sons and constituted comfortable dowries for their daughters in order to marry them into the milieu of royal officers. Thus, even after their sons had entered the court, these families further associated with the royal magistrates by way of intermarriage.<sup>487</sup>

As Robert Schneider noted however, “the two elite milieus remained somewhat separate,”<sup>488</sup> not only in their actual dealings with one another but maybe also, and more importantly here, in the mind of the people of Toulouse who could have easily maintained the distinction between merchant and

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<sup>483</sup> *Pastel*, woad in English, is a tinctorial plant that grew in the Toulouse region (particularly in the Lauragais) and that was the only source for blue dye in Europe until indigo coming from India and China became widely available at the end of the sixteenth century. Changes in tastes and styles in the sixteenth century created a great demand for *pastel* on which a few Toulousains merchants, borrowing business techniques from Spain, built considerable fortunes in the first half of the century.

<sup>484</sup> Gilles Caster, *Le Commerce du pastel et de l'épicerie à Toulouse de 1450 environ à 1561*, Toulouse: E. Privat, 1962, 381.

<sup>485</sup> Although I have not found any explicit mention of this irony it is unlikely that it would have been lost on contemporaries who could see the father selling one kind of *épices* and the son receiving another kind.

<sup>486</sup> Barnavi and Descimon noted that “the office seemed like an interesting investment, which, in addition to fiscal and honorary privileges, yielded more than land (between 5 and 3.33% for the ground rent [*rente foncière*]) and moveable rent [*rente constituée*] (8.33%). Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l'assassinat du président Brisson (15 novembre 1591)*, 164.

<sup>487</sup> Viala, *Le Parlement de Toulouse et l'administration royale laïque, 1420-1525 environ*, I, 235-40 ; Robert A. Schneider, *Public Life in Toulouse, 1463-1789. From Municipal Republic to Cosmopolitan City*, Ithaca ; London: Cornell University Press, 1989, 54 ; Wolff, *Histoire de Toulouse*, 244. The most famous case here is that of the alliance between the Bernuy and Dufaur families, arguably the two most prominent families in Toulouse, respectively in the *pastel* trade and in the Parlement.

<sup>488</sup> Schneider, *Public Life in Toulouse, 1463-1789. From Municipal Republic to Cosmopolitan City*, 54.

*parlementaire* families. The rise of these men had been so swift<sup>489</sup> and was still so recent in the second half of the century that the solemn judicial robes they had just put on would have failed to hide their origins, social as well as geographical.<sup>490</sup> These men's fathers had been too prominent as businessmen in the recent history of the city for their quasi-simultaneous entrance in the sovereign court in the 1540s and 1550s to go unnoticed. This particular exposure made it very difficult to try and maintain the appearance of a smooth and discreet assimilation of those prominent newcomers into the court. The visibility of this social change within the judicial milieu generated resentment towards the magistracy from two bordering social fronts: that of the high bourgeoisie and of the old nobility.

Indeed, the venality of the prestigious—and ennobling—office of *conseiller* had turned the parlements into one of the most visible contact points between the bourgeoisie and the nobility. This contact, however, only involved a minority of both worlds and those who were excluded from the process, that is the majority, resented it. Most in the old nobility had failed to associate themselves with those who, at the top of the royal administration, were beginning to form a nobility of a new kind, not yet called “robe nobility,” and were highly critical and anxious about the ongoing remapping of the geography of honor, dignity and merit that resulted in large part from the generalization of the venality of offices. The decline, not yet the collapse, of the old feudal system of distribution of honors, functions and dignity, certainly encouraged them to subscribe to and promote the idea of a corruption of the new system. The belief in this corruption, although candid among *gentilhommes*, was also a powerful tool to question the “merit” of those who had managed to evict the old nobility from positions of power in the proximity of the king.

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<sup>489</sup> The most famous case here is that of Jean de Bernuy whose rise and fortune received international attention when Francis I paid him a personal visit in his Toulouse *hôtel* in 1533 as a mark of gratitude. Bernuy indeed, had used his personal fortune to stand surety for the colossal ransom paid to release Francis I from his captivity in Madrid (1526).

<sup>490</sup> It is worth noting that these were all “foreigner” families. Literally for the Bernuy and Boisson who had recently come from Burgos in Spain (Jean de Bernuy was “naturalized” in 1501). Others came from regions of the “deep South” generally looked down on as backwards by the urban people of Toulouse: Basque country for the Cheverry, Rouergue for the Assézat.

As for the bourgeoisie, its resentment focused on the successful rise of what was to remain a minority among them. Their resentment resulted from the frustration and belittlement felt at the tendency of the few newly promoted to immediately mark their difference from their recently estranged original stock. First, resentment could find its cause in the fact that, early in the second half of the sixteenth century, the doors to social mobility started to close in front of the majority of the bourgeoisie. To them, but also to the rest of the population, the success of those who had attempted, just in time, the social leap into the sovereign court, appeared to be all the more unashamed when Toulouse started suffering, as the rest of the region and most of the kingdom, from a degradation of economic conditions. The “crash of the *pastel* trade” in 1561,<sup>491</sup> that was further aggravated by the turn to indigo as the main source of blue dye in the following decades, put an abrupt end to a particular type of social rise that had been—and was to remain—an exceptional trait of the first half of the century. This “crash” did not simply put a stop to the rise of merchants, but also brought the local economic development to a general halt, even a recession,<sup>492</sup> thus taking down with it the many people who, already at a lower socio-economic level, lived directly or indirectly from the *pastel* trade.<sup>493</sup> In a crude but very real sense then, those who had managed to pass from trade to magistracy could be seen as rats who had jumped ship just in the nick of time. In a more general way, the degradation of economic conditions and the consequent increase in poverty accentuated an always latent perception that Nicole Castan described for a later period as the “firm belief, particularly among the poorest, that justice was confiscated and turned into an instrument of domination by the wealthy and powerful.”<sup>494</sup>

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<sup>491</sup> It was indeed in many respects a financial crash in the modern sense of the term, since it resulted from the combination of rash speculations on the part of *pastel* traders in Toulouse, serious financial difficulties on the Anvers market where most of the capital of the trade was located, and a turn to new, remote and cheaper sites of production in Asia. Schneider, *Public Life in Toulouse, 1463-1789. From Municipal Republic to Cosmopolitan City*, 24.

<sup>492</sup> *Ibid.*, 34.

<sup>493</sup> The trade of *pastel* employed numerous workers, some of them, such as *essayeurs*, *peseurs*, or *emballeurs*, practiced entirely new professions, thus completely dependent on *pastel*.

<sup>494</sup> Nicole Castan, *Justice et répression en Languedoc à l'époque des lumières*, Paris: Flammarion, 1980, 54-5.

All in all then, the idea of a “merchandization of justice,” with its stream of accusations of corruption, could be appealing to the major part of society—it even seems to everyone but the magistrates themselves—who could feel they had been excluded from reaping the benefits of the economic growth of the first part of the century. Understandably, the resentment focused on those who had managed, or so it seemed, to secure the greatest part of the benefits, those merchant families who had risen in a mere half a century from the market stall to the highest court benches.

To be sure, the majority of the *conseillers* in the Parlement did not come from those families, but the astonishing rise to power of a few newcomers certainly did focus popular attention. Their entrance in the court could not go unnoticed and raised questions about the connection between the world of business and that of justice. In that respect, one could say that resentment or jealousy alone could not have shaped those questions: they were informed as well by larger and more theoretical concerns and interrogations about justice and magistracy. The penetration of merchant families in the *parlementaire* milieu had been significant enough for those concerns and questions to be voiced within the court itself. For instance, while the Parlement had no apparent problem accepting in its ranks second generation members of merchant families who had been educated from their youngest age with the ambition of securing a position in the royal administration, La Roche-Flavin recounts how the court made difficulties to accept a man who had been himself a businessman before buying an office of *conseiller*. In the end, the court confirmed his nomination, considering that

he was from an honorable family, well learned, had received a literary education in the colleges, before he tried the trading profession to see if it would be more advantageous and pleasant to him [and that] his experience having demonstrated to the contrary, he had left the trade a long time ago and went back to studying, obtained his degrees, and gave public lectures at the University.<sup>495</sup>

The objections raised in the court however are worth mentioning here as they convey some of the negative stereotypes about trade. According to La Roche-Flavin, some *conseillers* had objected to his nomination because

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<sup>495</sup> “il estoit de bonne maison, bien instruit, et eslevé aux lettres ès Colleges, avant qu’il tentast si la profession de la merchandise luy seroit plus commode et agreable, que l’experience luy ayant faict reconnoistre le contraire, il l’auroit quittée puis longues années, et se seroit remis à l’estude, et passé ses degrez, et leur publiquement en l’Université.” La Roche-Flavin, *Treze livres des Parlemens de France*, 347.

[he] had often delivered merchandise to their houses when he was an apprentice (...) and there was no doubt that the Law [that is Roman Law] calls merchants “*Viles negotiatores*” and closes the doors of public offices and dignities to them (...) and Aristotle [wrote that] the goal of merchants is not public benefit, but to make money, either in a good or a bad way, whatever the price, which is confirmed by the fact that the richest among them always commands the most respect.<sup>496</sup>

To be sure, one should be wary to take those views at face value, as an accurate and unproblematic representation of *parlementaire* money ethics. What is revealing here is that these objections are not conceived simply in terms of “*dérogeance*” (the loss of one’s nobility for practicing lowly activities such as trade) but in terms of “public benefit” or common interest. These objections—as well as the reasons for finally accepting the nomination—reflected a *parlementaire* concern for the interpenetration between the world of trade and that of justice, a concern underlain by older stereotyped views of the ideal magistrate, which La Roche-Flavin merely echoed a few decades later. These views were part of a portrait of the “perfect judge” composed and promoted in great part from within royal courts, in particular the sovereign courts, to address the unprecedented accusations of corruption and venality that targeted the magistrates in the second half of the sixteenth century.

Before I turn to contemporary representations of the “perfect judge” and the place that could be left to the questionable practice of *épices* within that portrait, it should be noted that accusations of corruption were not shaped solely by a changing social and economic context but also by the particular intellectual and ideological climate of the religious conflicts in the second half of the sixteenth century. I do not mean to suggest here that accusations or physical attacks on magistrates were religiously motivated but rather that eschatological concerns, heightened at the time by the religious conflicts,<sup>497</sup> might have indirectly reshaped ethical discussions, including considerations on the necessity and urgency of a moralization of royal justice. This idea would hold particularly true for the last decade of the conflicts,

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<sup>496</sup> “*le pourveu leur avoir souvent apporté de la merchandise en leur maison en qualité d’apprentif, ou facteur et estant certain que la Loy appelée les marchands “viles negotiatores” leur fermant l’entrée et la porte à tous offices publiques et dignités (...) Et Aristote [écrit que] le but d’un marchand n’est de server ny profiter au public, ains de gagner, bien ou mal et à quel prix que ce soit, tesmoins qu’entre eux le plus riche est le plus estimé.” Ibid.*

<sup>497</sup> Denis Richet is the main proponent of the idea that “eschatological anguish” was a feature of the time, at the core of the religious conflicts. See Denis Richet, *Les guerriers de Dieu*, Seyssel: Champ Vallon, 1990.

dominated by the challenge the Catholic League presented to the monarchy.<sup>498</sup> While the popular appeal of the League can also be explained to a large extent by social change within the urban settings—exemplified in Toulouse by the penetration of *pastel* merchant families into the Parlement—we cannot dismiss the religious dimension of the League’s critique of the degeneration of the judiciary, manifest in the repertoire—lexical and ideological—used in sermons and pamphlets to denounce the corruption of judges.<sup>499</sup> But the accusations voiced by the League’s preachers and propagandists, although framed in mystical terms and subservient to a general call for redemptive regeneration, merely recycled previous accusations. In other words, the role of the League in that respect could have been limited to giving new clout and a particular religious expression to the same accusations, which, although targeting individual judges, always took aim at the magistracy as a whole.

The first part of the *parlementaire* answer to those accusations consisted in insisting on the isolated and highly individualized character of notorious cases of actual corruption. Most importantly, the second related step of the courts’ defense strategy was to push forward an ideal of the “perfect christian magistrate.” This ideal was the *conseillers*’ general answer to accusations that targeted not individuals but the parlements as a whole. Elie Barnavi and Robert Descimon demonstrated how the rising *noblesse de robe* mobilized the medieval rhetoric of *exempla* in order to compose the portrait of this professional ideal-type that filled the magistracy’s social need to “restore the imaginary legitimacy of its domination.”<sup>500</sup> Edifying eulogies, tombs, biographies of virtuous *conseillers* or *présidents*, all of them composed or sponsored by their surviving colleagues, were as many instantiations of that ideal-type,

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<sup>498</sup> One could say that, in a sense, the League turned against the parlements one of their own rhetorical and political weapons: the *conseillers* and presidents, in order to try and occupy the void left by the absence of regular representative institutions in the kingdom had presented themselves as the sole link between king and subjects within an organic representation of society, and this myth, turned on its head by the League, was now firing back at them. Following through with the logic of this representation indeed, the *parlementaires* had exposed themselves to becoming surrogate targets in the stead of a distant king: corruption could be seen as spreading like gangrene from one part of the body to another, and corruption in the sovereign courts in particular (the courts closest to the king) could be perceived as a symptom of the corruption of the head of the monarchy.

<sup>499</sup> Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l’assassinat du président Brisson (15 novembre 1591)*, 173.

<sup>500</sup> *Ibid.*, 171.

circulated as widely as possible in order to differentiate the *parlementaires* from both the bourgeoisie and the lower, non-ennobling magistracy.<sup>501</sup> This distinction was not simply promoted through the circulation of idealized example of virtuous forbearers, but also enacted through a number of new exclusive social practices: “moral isolation, cultural rupture, a unique way of life, everything combined to distinguish *robins* from the common people of the bourgeoisie.”<sup>502</sup> In the case of Toulouse, the substantial entry of both magistrates of the Parlement and members of the older sword nobility into the local *confréries de pénitents* in the 1590s constitutes a perfect albeit complex example of practices which, outside of the court, aimed at redefining the *parlementaire* ethos as visible sign of social distinction.<sup>503</sup>

How could this ideal of the perfect magistrate work in practice in the court? How in particular could this ideal-type accommodate venality and *épices*? According to Barnavi and Descimon, the point of this portrait was precisely to focus on the restoration of an older ideal of innocence and dignity of justice in order to elude the problem of venality as the cause of a new type of corruption.<sup>504</sup> Even better: “the moralization that judges pretended to impose on themselves was part of a general process, of which venality was the linchpin.”<sup>505</sup> Venality was indeed at the very center of this process of redefinition of the social identity of the royal officer because it had undergone an important transformation in the preceding decades as a result of both changing economic conditions and increasing social stigmatization of the magistracy. From an instrument of upward social mobility it changed into an instrument of exclusion from a group that was more and more thought of as a new social entity, in transit between bourgeoisie and nobility. An *ordonnance* of 1560 still distinguished *officiers de justice* from *gentilshommes* but likened the two social statuses precisely in their relation to trade: commerce was prohibited to both of them under

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<sup>501</sup> *Ibid.*

<sup>502</sup> *Ibid.*

<sup>503</sup> Pierre Gérard, "La confrérie des Pénitents Bleus," *L'Auta* 467 (1981): 130-3 ; Paul Exupère Ousset, *La confrérie des Pénitents Bleus de Toulouse*, Toulouse: Impr. Saint-Cyprien, 1927 ; J. Adher, "Les confréries de Pénitents de Toulouse avant 1789," *Bulletin de la Société Géographique de Toulouse* 16 (1897): 422-39.

<sup>504</sup> Barnavi and Descimon, *La Sainte Ligue, le juge et la potence : l'assassinat du président Brisson (15 novembre 1591)*, 171.

<sup>505</sup> *Ibid.*, 172.

the penalty of losing respectively one's office or one's nobility. Two decades later, the relation of the magistracy to trade and money was still a concern and was the main basis for resisting the ongoing process of fusion with the old sword nobility. It is worth quoting at some length Montaigne's sarcasms on that matter:

this trade [justice] is held in such high esteem that there is formed a fourth estate in the commonwealth, the Church, the Nobility and the People (...) [T]his fourth estate, having charge of the laws and sovereign authority over lives and chattels, should be quite distinct from the nobility, with the result that there are two sets of laws, the law of honour and the law of justice which are strongly opposed in many matters (the first condemns an unavenged accusation of lying: the other condemns the revenge; a gentleman who puts up with an insult is, by the laws of arms, stripped of his rank and nobility: one who avenges it incurs capital punishment; if he goes to law to redress an offence against his honour, he is dishonoured; if he acts independently he is chastised and punished by the Law ; (...) [T]hese two estates, so different from each other, both derive from a single Head, yet one is responsible for peace, the other for war; the first acquires profit, the second, honour; the first learning, the second, virtue; the first, words, the second fortitude; the first the long gown, the second the short?<sup>506</sup>

It is no coincidence that this passage immediately follows Montaigne's diatribe against venality and *épices*. These were arguably, two of the main remaining obstacles on the magistracy's way to full nobility.

Venality and *épices* could both be conceived as testimonies of the magistracy's original link to the world of merchants, bourgeois *par excellence*. Since the organization of the judicial system and the financial needs of the king made it impossible to abolish the two practices, both were in need of clear signs of a moralization lest they became indelible stains of *roture* on the purple robes of the magistrates.

This moralization took the form of selective amendments to the internal regulations already in place in the court. Although no coherent program of systematic reform of the *épices* is to be found at the

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<sup>506</sup> Montaigne, *Essays*, 132-3 (Book I, Chapter 23). The French reads: "aye cette marchandise [i.e. la justice] si grand credit, qu'il se face en une police un quatriesme estat, de gens manians les procès, pour le joindre aux trois anciens, de l'Eglise, de la Noblesse et du Peuple; lequel estat, ayant la charge des loix et souveraine autorité des biens et des vies, face un corps à part de celui de la noblesse: d'où il avienne qu'il y ayt doubles loix, celles de l'honneur, et celles de la justice, en plusieurs choses fort contraires (aussi rigoureusement condamnent celles-là un démanti souffert, comme celles icy un démanti revanché); par le devoir des armes, celui-là soit dégradé d'honneur et de noblesse qui souffre un'injure, et, par le devoir civil, celui qui s'en venge, encoure une peine capitale (qui s'adresse aux loix, pour avoir raison d'une offence faite à son honneur, il se deshonnore; et qui ne s'y adresse, il en est puny et chastié par les loix); et, de ces deux pieces si diverses se raportant toutesfois à un seul chef, ceux-là ayent la paix, ceux-cy la guerre en charge; ceux-là ayent le gaing, ceux-cy l'honneur; ceux-là le sçavoir, ceux-cy la vertu; ceux-là la parole, ceux-cy l'action; ceux-là la justice, ceux-cy la vaillance; ceux-là la raison, ceux-cy la force; ceux-là la robe longue, ceux-cy la courte en partage?"

time, a series of isolated amendments points to a general tendency, which, originating from the ranks of the *conseiller* themselves, aimed at controlling and limiting the abuses that were the most damaging to the court's public image. *Mercuriales* and *arrêts* adopted by the Parlement de Toulouse during the period effected a few changes in that direction, by enforcing a number of prohibition, forbidding for instance direct payment of the *épices* to the *rapporteur* and transferring it instead to the *greffier*.<sup>507</sup> In the same vein, an *arrêt* of 1570 forbid the *conseillers* to put litigants under arrest in order to force them to pay the *épices* of their trial.<sup>508</sup> A decade later, confiscation of the litigants' property was also forbidden,<sup>509</sup> and the amount of *épices* that could be demanded for a temporary judgment ("*arrêt interlocutoire*") was limited.

While no direct link can be firmly established between these new regulations and actual practice, the study of the court's records shows that, contrary to what accusations of corruption would lead to think, both the global amount of *épices* collected by the court, and the average amount per trial increased but followed closely the rise of prices during the period: from about 12 l. in 1555 to almost 14.5 l. in 1576, this average seems to even decrease slightly below 14 l. in 1589.

If new internal regulations were more or less respected then, the problem for the magistrates was to reconcile two potentially contradictory aspects of their new *ethos*: the promotion of the disinterested character of their work, which put serious limits on the income that could be derived from *épices*, and the necessity to maintain the outwards signs of a higher standard of living intended to manifest both the magistrates' belonging to the nobility and their authority as officers of the king, who held a share of sovereign justice in their hands. In the 1590s, some magistrates seem to have had some real trouble making those two ends meet, literally, and the only viable solution to help them conform to both necessities imposed by the new *ethos* was to try, again, to increase their officer wages rather than their *commissaire* fees. In his *lettres patentes* of the 22<sup>nd</sup> of January 1589, Henri III increased the wages of the *presidents* and *conseillers* of the Parlement de Toulouse, justifying the raise not simply with vague

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<sup>507</sup> *Mercuriale* of 1586, see Vaisse-Cibiel, "Des gages, épices et sabatines à l'ancien Parlement de Toulouse," 186 and La Roche-Flavin, *Treze livres des Parlemens de France*, 194.

<sup>508</sup> *Arrêt* of October 21, 1570. *Treze livres des Parlemens de France*, 195.

<sup>509</sup> *Arrêt* of February 4, 1580. *Ibid.*

generalities about the magistrates' poverty, but pointing out specific cases of *parlementaire* destitution, noting that

there have been the recent cases of four *conseillers* of this [court], men of honor and of great legal knowledge and erudition, who were so poor when they died that, although some of them had children, no heir could be found to accept their succession because of their extreme poverty, and these men were M<sup>e</sup> Martin Gilbert, Pierre Maynier, François de La Garde and Jean des Portes, who had served in their office honorably and for a long time, and the same could happen to many of those currently in the court if God called them back today.<sup>510</sup>

Of course, these allegations should be considered with great caution, as they were in some respect signs of the king's participation in the composition of the portrait of the "perfect Christian magistrate": qualified, virtuous, disinterested. There are two reasons, however, not to dismiss those individual cases as the mere *exempla* of a purely rhetorical construction. The first reason is that the image of the poverty of magistrates, real or not, was not an entirely positive one, for the financial destitution of the *conseillers* undermined their prestige and authority, hence that of the king they represented. The second reason is that, without ruling out the rhetorical function of those examples, there seems to have been some reality to this poverty, although it is very difficult to measure. To be sure, this was a relative poverty when compared to the rest of the population, that is, if we are to take into account some of the financial advantages (tax exemptions, greater ease to find credit) even the poorest of *conseillers* enjoyed. But it was poverty nonetheless when considered (as the magistrates and most people seem to have done) in relation to the expenses the *conseillers* had to undertake in order to maintain the standards of living that matched the *dignité* of their office. Thus, the *conseillers* who had left Rouen to follow Henri IV in 1593 complained to the king that their wages were "(...) so low that they [were] not enough to pay the rent of the houses in which they now live[d] (...)." <sup>511</sup> A few years later, the jurist Charles Loyseau would also frame the relative weakness of the wages in terms of the living standards the magistrates were expected to

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<sup>510</sup> "il s'est treuvé depuis peu de temps quatre des conseillers d'icelle personnes d'honneur de grande doctrine et erudition estre decedez si pouvres qu'ilz n'ont treuvé aucun heretier quoy que aucuns d'entre eulx eussent enfans pour leur extreme povreté, savoir Me Martin Gilbert, Pierre Maynier, François de La Garde et Jehan des Portes qui toutesfois auroient longuement et fort honorablement servy en leurs charges et en adviendroict autant a ung bon nombre de ceulx qui restent aujourd'huy s'il plaisoit a Dieu les appeler" ADHG, 1B 1910, fol. 21v.-22. *Enregistrement des actes du pouvoir royal*, January 22, 1589.

<sup>511</sup> Quoted in Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 455.

maintain, noting that “life is now so expensive and the wages of justice officers are so low that they can hardly support the magistrates in accordance with their quality.”<sup>512</sup> The 1589 *lettres patentes* mentioned above confirm this view and explained that the increase of the wages of the *conseillers* in the Parlement de Toulouse was meant to “give them some *honest* means to support themselves in accordance with the dignity of their offices and to avoid being exposed to the contempt of the common people because of their poverty [my emphasis]”.<sup>513</sup>

The 1589 increase however, did not have the expected effects, for a few years later the magistrates’ wages were situated barely above the average income of the general population: thus Roland Mousnier calculated that during the years 1593-7 the yearly wages of a *conseiller* in the Parlement de Rouen compared to 468 days of work of a journeyman in the building trade.

### **1600-1650: *épices*, *parlementaire* factions, politics.**

In his chapter about *épices*, La Roche-Flavin echoed Loyseau’s remarks with a few additional words of explanation:

now life, clothes, and everything else is so expensive, and the wages are so small that it’s impossible [for the magistrates] to live from them according to their quality; and also because the price of their offices is now six times what it used to be; and also given the hard work, the diligence that is demanded of them in the *Palais* by the function of their office. And on this point my own experience allows me to say that, truly, my wages of eight hundred *livres* a year have never been sufficient to cover a fourth of my very moderate expenses, so much so that one can

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<sup>512</sup> Loyseau, *Cinq livres du droit des offices*, liv. I, chap. VIII, 96.

<sup>513</sup> “leur donner quelque moyen honneste pour s’entretenir suyvant la dignité de leurs charges et pour n’estre exposez au mespris du peuple a cause de leur povvreté.” ADHG, 1B 1910, fol. 22.

say that sovereign magistracy is an honorable servitude and an honest poverty for those who do not have other resources (...).<sup>514</sup>

While the idea of “honorable servitude” and that of “honest poverty” certainly reinforced important features of the ideal-type of the virtuous magistrate, there had been indeed a degradation of the value of the wages in the first decades of the seventeenth century. When La Roche-Flavin published his work in 1617, the relative value of the annual wages of a *conseiller* had decreased, according to Mousnier’s count, to the equivalent of 365 days of work of a journeyman in the building trade (down from 468 days two decades earlier).<sup>515</sup> Thus, at a time when the personal fortune of the *conseillers* was increasingly seen as a fundamental basis for their authority—an element indispensable to the exercise of their office and profession—but also as a tangible sign of their assimilation into the old nobility, the decrease of the relative value of those wages forced the magistrates to turn to other sources of income that would allow them to maintain their social identity, hence their authority.

In those conditions, it comes as no surprise to see those who, as La Roche-Flavin wrote, “had no other resources,”—inherited fortune, land, ecclesiastical *benefices*, *rentes*—turn to the *épices*. Thus, the old problem of the *épices* as substitute to wages was reactivated, threatening both the recent internal reforms and the model of the perfect magistrate. As La Roche-Flavin’s remark about the price of offices suggests, this model itself had created new practical problems for the decades to come when venality reached what seemed to be the natural end of its transformation into an instrument of control of social mobility: the legalization, in fact the institutionalization, of the heredity of offices. The guarantee of the heredity of offices had an immediate consequence: that of a sudden explosion of the price of offices. This explosion, combined with the increasing cost of maintaining the appearances of the newly assumed *parlementaire* ethos, put considerable and renewed strain on the question of *épices*. The question turned

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<sup>514</sup> “*mesmes à present, que la vie, habits, et toutes choses sont si cheres, et les gages si petits, qu’il n’est pas possible, [que les juges] s’en puissent entretenir à beaucoup près, selon leur qualité ; et attendu encores l’encherissement sextuple de leurs offices, plus que le temps passé ; et eu esgard au labeur, et assiduité, qu’il leur faut rendre au Palais à la fonction de leurs charges. Sur quoi l’experience me permet asseurer avec verité, que mes gages de huict cens livres par an n’ont esté jamais suffisants, pour faire la quatriesme partie de ma despence fort moderée, si qu’on peut dire, que la Magistrature souveraine est une honorable servitude, et une honneste pauvreté, si d’ailleurs on n’a des moyens (...).*” La Roche-Flavin, *Treze livres des Parlemens de France*, 194.

<sup>515</sup> Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 455.

into a debate, a conflict even, this time confined to the bounds of the court, which could jeopardize one other important aspect of that ethos, that of the representation of the *corps* as a “hierarchy of equals.” The dispute became so serious that it threatened to reveal the fictional nature of this representation of the *corps* to the world outside the walls of the *Palais*.

For those reasons, the *parlementaire* counter-attack to accusations of corruption had led to validate the principle of venality and did not put an end to questions about the *épices* and problems of social distinction. Indeed, those questions did not disappear but were brought instead into the court, and kept within the walls of the *Palais*, thus removed from public scrutiny. The detailed study of *épices* during the first decades of the seventeenth century demonstrates the existence of mounting tensions within the court over their control and distribution and suggests as well that those tensions revealed and reinforced an ever increasing social differentiation, this time not with groups exterior to the court, but within the *corps* itself.

The statistical analysis of the records of the Parlement de Toulouse<sup>516</sup> first demonstrates a significant increase of the *épices* during that period. This observation further suggests that this regular increase resulted from both the increase of the *épices* themselves and the constant decrease of the relative value of the wages, slowly eaten away by a rising inflation. In 1555, a lay *conseiller*<sup>517</sup> serving in the Grand Chambre earned, in theory, 375 l. in annual wages and about 550 l. in *épices*. In 1638, the ratio had gone up and was now of one to two, with 500 l. in wages and about 1,000 l. in *épices*. At this date, this ratio was comparable in the two *Chambres des Enquêtes*: a *conseiller* in these chambers earned 400 l. in wages and in average, 900 l. in *épices* in the first chamber, 800 in the second. The ratio of one to two only holds true, however, if we assume that the wages were paid regularly and at their official value, which

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<sup>516</sup> This study is based on a systematic analysis of the amount of *épices* noted in the margin of the *dictum* of *arrêts* kept in the registers of the Parlement. The note also included the name of the *rapporteur* of the case to whom the *épices* were to be paid. About *rapporter* as a practice see Chapter 7, about the *dictum* and the recording of *arrêts* see Chapter 8 below.

<sup>517</sup> Historically, a number of *conseillers* were also ecclesiastics. The wages of these “*conseillers clercs*” were lower than those of the “*conseillers lais*” because it was expected that they enjoyed the parallel income of a *bénéfice ecclésiastique*. Although there would always remain a number of ecclesiastics among the members of the court (and to begin with, a number of bishop who had a right to membership), offices of *conseillers clercs* would increasingly come to be occupied by lay men.

was almost never the case. Indeed, we know that in practice wages were paid irregularly, at best with a delay, sometimes not at all, most often after deductions—actually forced and disguised loans—that the king withheld to pay for more urgent expenses, in particular during wars, civil or foreign.<sup>518</sup> In 1613, Etienne de Malenfant, *greffier* of the Parlement de Toulouse, noted with precision the wages *conseillers* actually received, and these were far below their official value—that is, the value defined in the royal *ordonnances* fixing the *gages*. In this relatively quiet year with no military front open inside or outside the kingdom, the discrepancy gives an idea of the amounts the king withheld in “normal” conditions.<sup>519</sup> The relative value of the *épices* was then far greater in that year: an average of 950 l. for a *conseiller* in the *Grand Chambre*, that is about 4.8 times his wages, 600 l. for in the *Première Chambre des Enquêtes*, that is about 4.5 times the wages, 300 l. in the *Seconde Chambre des Enquêtes*, about 2.35 the wages.

Averages, however, are very misleading here, and it is at this point that the detailed statistical study of the *épices* reveals gaps, discrepancies, divides within the court that might be overlooked otherwise. Contrary to wages indeed, *épices* were not equal for all *conseillers* and those averages mask great differences. The *conseiller* Vedelly, the most active *rapporteur* in the *Grand Chambre* in 1613, earned about 1,800 l. in *épices*, or about 9 times the wages that were actually paid to him on that year. A “*conseiller écoutant*” (“listening magistrate”), that is one that had not been *rapporteur* once during that year, only got his share of the “common purse,” about 480 l., that is about 2.5 times his wages. The discrepancy is slightly greater in the *Première Chambre des Enquêtes* where Bachelier, the most active *rapporteur* on that year, received about 1,700 l. in *épices* while a *conseiller écoutant* only received 300. But differences are significantly less pronounced in the *Seconde Chambre des Enquêtes* where Bertrand, most active *rapporteur*, received 1,200 l. in *épices*, while a *conseiller écoutant* received, as in the *Première Chambre*, 300 l. from the common purse.

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<sup>518</sup> Mousnier, *La vénalité des offices sous Henri IV et Louis XIII*, 460, 62.

<sup>519</sup> On that year, *conseillers lais* in the *Grand chambre* received 195 livres 1 denier 6 sous, *conseillers clerics* in the same chamber 163 l. 46 d. 3 s. *Conseillers* in the *Enquêtes* chamber received about a third less: 133 l. 21 d. 7 s. for a *conseiller lai*, 107 l. 10 d. 7 s. for a *conseiller cleric*. (Malenfant, *Collections et remarques du Palais*, I, 199).

An even more detailed study of earnings in *épices* at the individual level yields important results that suggest the existence of groups within the court. To summarize, the serial study reveals the existence of important differences between the various chambers of the court. The analysis of the *registres d'arrêts* for the month of December 1637 for instance, suggests a relative homogeneity in the *Grand Chambre*: during that month, all the *conseillers* of that chamber had been *rapporteur* at least once and although the most active *rapporteurs* earned about 2.7 times more in *épices* than the least active in the chamber, there was a linear progression of income between these two ends. In the *Seconde Chambre des Enquêtes* on the contrary, three groups of *conseillers* appear clearly. The majority (18 *conseillers* out of 25) had not been *rapporteur* at all (14 *conseillers*) or only once (4 *conseillers*). This group, representing 72% of the members of the chamber only received its share of the common purse, that is, about 38% of the total amount. An intermediary and smaller group of 3 *conseillers* (12% of the chamber) had received 15% of the *épices* and the group of most active *rapporteurs* (4 *conseillers*, 16% of the chamber) had managed to secure 47% of the *épices* for itself. Thus in that chamber, the average of 56.4 l. of *épices* per *conseiller* during that month masked differences between a great majority who earned an average of about 29.3 l. and a minority who received 167 l. in average.

The profile of the *Première Chambre des Enquêtes* was a mix between the two opposite models, that of the *Grand Chambre* and of the *Seconde chambre des enquêtes*. It resembled the *Seconde Chambre des Enquêtes* in that in the *Première Chambre* too a number of *conseillers* had not been *rapporteurs* at all. However, although their share of the *épices* was small, as in the *Seconde Chambre*, (18% of the total), they did not represent the largest group (36% of the members of the chamber). The *Première Chambre* resembled the *Grand Chambre* precisely in that there was no clear majority: the group of the most active *rapporteurs* had received most of the *épices* (67%) but represented 40% of the chamber (10 *conseillers* out of 25) and the “intermediary group” of *conseillers* who had been *rapporteurs* a few times represented 24% of the chamber and had received 15% of the *épices*.

These statistics suggest not only the existence of groups, more differentiated as the hierarchy of chambers went down, but also that the problem of the *épices* for the *conseillers* was not one of raising the

amount of money demanded from the litigants<sup>520</sup> but to secure as many appointments as *rapporteur* as possible. From that point of view, the different configurations of the different chambers must have translated into various attitudes towards the question of *épices* and their distribution. In the *Grand Chambre* the continuous spread of the share of *épices* received by each *conseiller* must have resulted into a relative homogeneity of the income that suggests that some sort of consensus about the *épices* (probably that of status quo) must have dominated. In the *Première Chambre des Enquêtes*, although one can identify groups of *conseillers* that corresponded to different ranges of income in *épices*, the equality in size of the groups could lead to their mutual neutralization: the group of “*conseillers écoutants*” could only oppose the group of active *rapporteurs* with the support of an “intermediary group” whose expectations of a promotion into the group of active *rapporteurs* prompted them to adopt a wait-and-see attitude. The divide in the *Seconde Chambre*, much more pronounced, created serious tensions between a majority left with a small share of the common purse and a minority who confiscated most of the *épices*.

Despite the fact that they represented the majority of that chamber, however, those *conseillers écoutants* only had a limited number of options to better their situation. The first one, was to wait for an hypothetical promotion to the *Première chambre des enquêtes*. But because this promotion was based on seniority (calculated after the dates of reception in the court), it could mean waiting many years, possibly in vain. The second option consisted in securing, one way or another, the favor of the president of the chamber, the one in charge of the “distribution” of the lawsuits to *conseillers*, that is, of the choice of the *rapporteur* for each trial. But this option was heavily dependent on previously established social networks and factions, which as we will see, although not completely fixed, were rather rigid and evolved on the impulsion not of the small *conseiller* but of the presidents themselves and even of *grandees* outside the court. The last option then, was to attempt an “institutional coup” by obtaining a reformation, not of the mode of distribution of lawsuits to *rapporteurs* by the presidents (the antiquity of this practice made the push for a major revision unlikely to succeed), but of the rules of the distribution of *épices* through the

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<sup>520</sup> As matter of fact, the average amount of *épices* per trial did not change significantly during the period: 4.37 *écus* in 1589, 4.17 in 1612, 5.23 in 1638.

common purse, a much more recent hence still flexible institutional innovation. Although the most realistic option, this last solution would still be difficult to achieve, however, because of the constraints imposed by the court's internal procedures: in order to reform the "*communauté des épices*," a general meeting of the court ("*assemblée générale des chambres*") had first to be granted. Then the divisions between chambers had to be overcome in that assembly in order to constitute a large and united front pushing for the reform and supporting it by a vote that would result in a formal decision that would finally amend the system in place.

This was a long stretch, but it was what some *conseillers* attempted in 1638 in the Parlement de Toulouse. While their attempt eventually failed, it produced, fortunately for us, some serious tensions and a heated dispute that help us to better understand the divisions suggested by the figures, averages and discrepancies of the statistics presented above. The debates not only confirm what the detailed study of the *épices* suggested, but also point to the importance of the financial, but also political and social stakes surrounding the question of *épices* in the first half of the seventeenth century.

In April 1638, some *conseillers* in the Tournelle—the criminal section of the *Grand Chambre*—required a general assembly of the chambers to try and reform the mode of redistribution of *épices*. Clearly—and as the debates would later confirm—those *conseillers* were trying to take advantage of the temporary absence of the *premier président* Gaspard de Fieubet, who had been summoned to Paris by the king to justify the court's earlier refusal to register new taxes. Their motivations were rather clear as well: the profits of criminal justice were by far inferior to those derived from civil justice and their attempt at reforming the *communauté* quite simply aimed at compensating the loss in *épices* for the years they had to take their turn to "go down" ("*descendre*") from the *Grand Chambre* to the *Tournelle*. While the *conseillers* in the Tournelle could always count on the support of a majority of *conseillers* in the two *chambres des enquêtes* (and especially in the second one), they also expected to receive the support of those in the *Grand Chambre* who benefited the less from the system (that is, those who were appointed the least often *rapporteurs*). The hope of those in the *Tournelle* was that these *conseillers* in the *Grand*

*Chambre* would dare, in the absence of their *premier président*, join their colleagues of the “lower” chambers in an attempt to reform the established system.

But in requesting a general meeting to discuss this particular question, the *conseillers* of the *Tournelle* had taken the risk of being beaten at their own game: those who benefited even far less than them from the system of distribution of the lawsuits—mainly the *conseillers écoutants* in the *Seconde Chambre des enquêtes*—seized this unexpected opportunity to put forth demands that went far beyond what the *Tournelle* had wished for. The *conseiller* Ségla, who spoke on behalf of the *Tournelle* to propose the original reform opened Pandora’s box by asking that the share of *épices* put in the common purse be raised from 50 to 75%: the *conseiller* d’Olivier speaking afterwards on behalf of the *Seconde Chambre des Enquêtes* not only asked that the totality of the *épices* taxed in each lawsuit be put into the common purse, but also that the purse became common to the Parlement as a whole, as opposed to each chamber individually.

This was in fact a revolutionary proposal with potentially far-reaching consequences. To begin with, the financial consequences would have been far more considerable in the project of the *Seconde Chambre des Enquêtes* as a simulation of the two proposals suggests.<sup>521</sup> By increasing the share of *épices* put in the common purse but maintaining separate purses for each chamber, the project of the *Tournelle* benefited more or less equally all the *conseillers écoutants* of the court and the most active *rapporteurs* would have borne the cost of this transfer. In this project, the average of *épices* per *conseiller* would have been left unchanged within each chamber. The proposal of the *Seconde Chambre des enquêtes* was radically different and could have had far more important consequences, not only on the distribution of *épices* but on the workings of politics and factions within the court. Obviously, because it abolished the income difference between *conseillers rapporteurs* and *conseillers écoutants*, their project entailed a significant financial benefit for the *conseillers* of the *chambre des enquêtes*. In effect, this change would

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<sup>521</sup> See Table 2 and Table 3 below.

have also annihilated the power that the *présidents* wielded over the *conseillers* of their chamber thanks to their monopoly over the distribution of lawsuits.

Thus, the reform of the *communauté des épices* proposed by the *Seconde Chambre des enquêtes* would have profoundly affected both the distribution of resources and the balance of power within the court, thereby demonstrating the close connection between the two. This attempt, by leaving intact the practice of the distribution of lawsuits from the point of view of the procedure but emptying it of its substance in terms of internal politics, could seriously affect the functioning of clientele networks in the court by challenging the prominence of the *Grand Chambre* and of the *présidents* in each chamber. From its origins in the middle of the fifteenth century, the *distribution* could have been conceived of as an instrument to ease the transition from an older system, in which magistrates were allowed to receive pensions from *grandeues*, to a new one, in which the service of the king became exclusive of all other fidelities.<sup>522</sup> The new system of distribution had, in effect, put the presidents in charge of rechanneling in a new form the money wealthy and powerful individuals were willing to pay to secure a favorable outcome for the many trials that both they and their clients had in the sovereign court. Pensions paid to *conseillers* had disappeared, thereby extinguishing in appearance the personal relationships that had previously existed between magistrates and *grandeues*, but new forms of patronage had been improvised and the magistrates never ceased to be attached to clientele networks. Powerful litigants were no longer allowed to grant pensions but they could (and did) seek to reach the ear of the presidents to make sure their lawsuits would be appointed to the right *conseiller*. Therefore, while the presidents were supposed to appoint a *rapporteur* “considering the nature of the lawsuit and the quality of the *rapporteur*,”<sup>523</sup> it is clear that in practice they considered first, when applicable, the interest of their own patrons and clients, and then the clientele networks to which litigants and *conseillers* belonged.

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<sup>522</sup> This tacit role of the distribution is suggested by the fact that it appeared (*Ordonnance* of Charles VII, on October 22, 1446 ; *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 154-5) precisely at the time when the law finally strictly forbid *conseillers* and *président* to receive pensions from anyone else but the king himself.

<sup>523</sup> *Ibid.*, IX, 155.

This practice was explicitly denounced in the 1638 debates. M. de Senaux, *premier président* in the *Seconde Chambre des enquêtes*—the chamber where, the statistics suggested, the greatest inequalities were to be found—spoke to the assembly to express his indignation about a proposal, which, as was clear to everyone in the court, targeted the *présidents* and more particularly himself. His strategy was to preemptively counter-attack the denunciation of the alleged abuse:<sup>524</sup>

M. de Senaus (...) took offence of the opinions he knew had been voiced by those who desired this community [of *épices*], and that this community was sought only to restore liberty in the *Palais*, a liberty that was limited because, or so they said, the presidents gave their favor to whoever they pleased when distributing the trials, and because of this did not dare to express opinions other than those of the *présidents* lest they would be mistreated during the distributions, and his opinion was that the court should wait [for the return of the *premier président*].<sup>525</sup>

But the assembly kept on going since after a few votes the court was still evenly divided on the question of whether or not to reform the *communauté*. The remarks of M. de Noel, *conseiller* in the *première chambre des enquêtes*, demonstrated the extent of the differences not only of interest but also of opinion between some *conseillers* and their *président*, when he pointed out that, contrary to what M. de Senaus seemed to imply, there was nothing insulting in the word “*liberté*”:

M. de Noel (...) was of the opinion that there was no reason to be so offended by the word “liberty” and that this word was not so badly chosen in this instance, but that, on the contrary, if it had been said indeed, it would have been well said. His opinion was to proceed [and vote to reform the community of *épices*].<sup>526</sup>

There seems to be here, both in this mention of this particular kind of “liberty” and beyond the self-serving aspect of the proposal to extend the *communauté* to the Parlement as a whole, a certain *esprit*

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<sup>524</sup> The procedure in these assemblies was that, in theory, each participant was allowed to speak each one in his turn, that is, following the order of the hierarchy, from the first president down to the youngest *conseiller* in the *Seconde chambre des enquêtes* (or of the *Chambre des requêtes* when it was invited to participate in the assembly). In fact, each speaker only had two options: either to support an opinion expressed before him or to propose a new opinion. Those at the bottom of the hierarchy saw their opportunities to speak further limited by the fact that the “vote” would stop as soon as one opinion would have received the necessary majority.

<sup>525</sup> “M. de Senaus president en la seconde chambre des enquêtes, (...) se formalisa des paroles qu’il savoit avoir été dites par ceux qui desiroient lad. communauté, qu’elle n’étoit désirée que pour remettre la liberté dans le Palais, laquelle n’y estoit pas entiere, à cause des faveurs que les Sr. presidents fesoient en leurs distributions des procès à ceux qu’il leur plaisoit, et que par ce moyen il y en avoit qui n’osoient être d’autre avis que de ceux des Sr. presidents de peur d’être maltraités par eux aux distributions, et fut d’avis d’attendre.” Malenfant, *Collections et remarques du Palais*, II, 76 (April 28, 1638).

<sup>526</sup> “M. de Noel (...) fut d’avis qu’il n’y avoit pas tant de raison de se formaliser du mot de liberté, lequel n’étoit pas couché si mal en cet endroit que M. le préopinant le trouvoit, ains au contraire que s’il avoit été dit, il avoit été bien dit, et fut d’avis de passer outre.” *Ibid.*

*de corps* that transcended traditional institutional divisions between chambers. It is difficult to evaluate how sincere and widespread this conception of the *corps* was, but it is worth noting that it did not result only from the experience of political opposition to the king and his *intendants*, but also from concerns and debates directly related to the exercise of justice. Further, it is also worth noting here that this aspiration to a certain unity of the *corps* emerged precisely at that time and principally among the members of the *chambres des enquêtes*, since some of these men would play an important role a decade later when internal dissensions, jealousies and suspicions came to be temporarily overcome at the beginning of the Fronde.

Those divisions followed the lines of client-patron relationships within and outside the court, and to a significant extent the uneven distribution of lawsuits followed these same lines as well. There was nothing new about this state of affairs in the seventeenth century<sup>527</sup> and we can already see the distribution operate in such a way at the beginning of the period considered here. In June 1556 for instance, Louis de Saint-Gelais first approached Jean de Mansencal, then *premier président* of the *Grand Chambre* in the Parlement de Toulouse, who, like himself, was a favorite of *connétable* Anne de Montmorency, to make sure that the trial of his kin Jean de Saint-Gelais, bishop of Uzès, would be distributed to an understanding *rapporteur*. He then approached several *conseillers* who were to sit at the hearing of the trial, to make sure the *rapporteur* would obtain the majority necessary for his recommendation to become *arrêt*.<sup>528</sup> The same type of practice still existed one hundred and fifty years later, and was not a prerogative of *grandeurs*. The practice had not only survived but had also spread to lower levels of society, as the correspondence of the *conseiller* Tournier in the early eighteenth century demonstrates. François Malaubère, the tutor of Tournier's two sons in Paris, liberally used his reports to the *conseiller* to relay requests for help not only in his own lawsuits in the Parlement de Toulouse but also

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<sup>527</sup> Sharon Kettering, "Clientage During the French Wars of Religion," *Sixteenth Century Journal* 20 (1989): 221-39 and "Patronage and Politics during the Fronde," *French Historical Studies* 14 (1986): 409-41.

<sup>528</sup> Mark Greengrass, "Functions and Limits of Political Clientelism in France before Cardinal Richelieu," in *L'état ou le roi: les fondations de la modernité monarchique en France (XIV<sup>e</sup>-XVII<sup>e</sup> siècles)*, ed. Neithard Bulst, Robert Descimon, and Alain Guerreau, Paris: Éditions de la maison des sciences de l'homme, 1996, 69-82.

for those of his parents and sometimes even of vague acquaintances. Thus, Malaubère wrote on the 7<sup>th</sup> of March 1701 to the *conseiller* Tournier:

(...) I forgot, Monsieur, (...) to commend to you the interests of Madame de Poypetit of whom you are the rapporteur in a lawsuit she has against M. Dorlan, her brother in law. It is an appeal of some sentence of the sénéchal in Auch, the circumstances of which I do not know. What I am asking is that you do me this favor to grant the honor of your protection to this good woman and give her all the favors that your ordinary justice will allow, either regarding the matter of the trial itself or by speeding up the preparation of the case. M. Fitte procurator of the king in our city of St Puy will tell you, if he has not done so already, about this matter.<sup>529</sup>

The passages underlined by the hand of the *conseiller* Tournier suggest that the magistrate took good note of the very unofficial requests of his sons' tutor. These sons themselves, despite their young age (one was eleven and the other thirteen years-old at the time), could serve as intermediaries in this type of petitions, as revealed in another letter of Malaubère a few month later, in which he wrote "(..) your *messieurs* [that is, his sons] have been asked a recommendation letter for some M. Balsac who has some lawsuit in your Parlement. Thus, don't be surprised when you receive it."<sup>530</sup> The first of these two examples suggests that, even after a lawsuit had been "distributed," one still could and should, as Madame de Poypetit had done, activate one's network of relationships to try and obtain the favor of the *rapporteur* that had been appointed to one's case. Maybe Madame de Poypetit had previously maneuvered so that her case would be distributed to Tournier but had failed, maybe she had waited to know the name of her *rapporteur* to figure out who would be the *gascon* in the court who could help her reach the ear of the magistrate.

In any case, Madame de Poypetit's approach, the tortuous course of her request which, from Saint-Puy to Toulouse, passing through Paris, finally reached a *conseiller* (and maybe the right one for her) illustrates how clientele networks, increasingly complex and widespread throughout society, could be

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<sup>529</sup> "J'oubliai encore, Monsieur, et c'est une chose que j'oublie il y a deja deux ordinaires, c'est de vous recommander les intherets de Madame de Poypetit dont vous etes rapporteur dans une affaire qu'elle a contre M. Dorlan son beau frere. C'est un appel de quelque sentence du senechal d'Auch dont je ne sçai point autrement les circonstances. Ce qu'il y a c'est que vous me ferés grace d'accorder l'honneur de votre protection à cette bonne dame et lui faire tous les plaisirs que votre justice ordinaire permettra soit pour le fonds, soit pour le tems necessaire à l'instruction du procès. M. Fitte procureur du roy de notre St Puy vous parlera si deja ne l'a fait de cette affaire." ADHG, 49 J 20, 7 mars 1701.

<sup>530</sup> "(...) On a demandé à vos messieurs une lettre de recommandation pour un certain M. Balsac qui a quelque affaire dans votre Parlement. Ainsi ne soiés point surpris quand vous la recevrés." *Ibid.*, July 23<sup>rd</sup>, 1701.

mobilized through a practice that had become an integral although unofficial part of the procedure. It is this system, completely embedded in the functioning of royal justice by the end of the seventeenth century, which the debate over *épices* could have transformed indirectly but significantly by reforming the *communauté des épices*.

One could say that the existence of groups or factions within the court was indispensable for this system to function: divisions, distinctions and differences of interests among *conseillers* and *présidents* allowed the perpetuation within the *corps* of rivalries between competing networks outside the court. In fact, the distinction between inside and outside of the court might not even be relevant when we consider that internal factions were simply the extension into the court of the branches of larger networks. It is not surprising that those branches would have thrust into the judicial courts, for after all, the power to affect the outcome of trials was one of the most precious social and political capital in Old Regime France.

*Conseillers* in the court were certainly aware that the judicial power vested in their office, the share of royal authority and sovereignty that was passed on to them as local embodiments of the king-as-judge, were also a share of that precious capital. We can speculate that those who pushed for a reform of the *communauté des épices*, were animated, to a certain extent, by their frustration with a system that wasted this capital for them, simple *conseillers écoutants* who sat watching others, the *rapporteurs*, handle the well-paid cases of wealthy patrons. As they probably realized then, their deprivation of *rapports* was the cause of a double loss of capital, both financial and social.

The system of distribution of lawsuits and of repartition of the *épices* would not be changed however, since the attempted reform failed. Those who opposed it—*présidents*, active *rapporteurs*, senior *conseillers* in the *Grand Chambre*, all those who increasingly formed an aristocracy within the now unquestionably noble profession—successfully diverted the debate, as any good jurists would have done, on a mere technicality: given that the *premier président* was unaware of the question at stake when he originally granted the general assembly, should the court proceed to debate the question or wait for his return from Paris? The content of the opinions expressed in the discussion of this point show that no one was fooled by the diversionary move, but opponents to the reform had managed nonetheless to limit the

damages by avoiding a full-fledged debate over the question of the distribution of lawsuits and *épices*. The court decided that it was “necessary to wait for another time to discuss this question and to postpone the debate to some other day.”<sup>531</sup> In other words, supporters of the status-quo had intimated that it was urgent to do nothing.

Although the attempted reform had failed and the system in place remained unchanged, it opened a window for us, through which we can observe how the century-long transformation of *épices* had ended up affecting the functioning of the court. This transformation had consequences on individuals within the court, as it shaped their income, fidelities, perspective of careers, and politics. It had consequences on the physiology of the *corps* of the Parlement, a body in theory united but in practice divided into organs ever more differentiated, with an all-powerfull *Grand Chambre* at its head.

Finally, it had consequences on judicial practices. Maybe primarily, it affected the practice of the *rapport*, precisely at the time when *rapporter* was becoming, as a result of a parallel transformation, a major factor of professional identity for the judges.<sup>532</sup> The transformation of the *épices* resulted in a system in which, from the point of view of the magistrate, the *rapport* was not primarily, and maybe not at all, about litigants and their disputes. To a significant extent, the *rapport* had become a very valuable and sought-for commodity that was conceived of in terms of financial resources, perspectives of career, and internal politics.

In this “spice shop,” the flow of exchange seemed to never abate: there was constant bargaining and bickering over a range of such commodities: *épices* of course, but also *rapports*, fidelities, offices. While it seemed that litigants were ever more numerous and that the universe of endless legal quibbling Racine satirized in *Les plaideurs* could generate in turn endless trials, the court was in fact a world of limited resources and competition for those resources among the *conseillers* certainly shaped their conception of their own professional practices.

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<sup>531</sup> Malenfant, *Collections et remarques du Palais*, II, 77.

<sup>532</sup> See Chapter 7.

**Table 2. Simulation of the distribution of épices for December 1637 on the basis of the reform proposed by the Tournelle in April 1638.**

		<i>Epices</i> actually received in December 1637	Reform of the <i>Tournelle</i>	
			Amount	Difference
Grand Chambre	Most active <i>rapporteur</i>	202 l.	162 l.	-20%
	<i>Conseiller "écoutant"</i>	65 l.	94 l.	+44%
	Average per <i>conseiller</i>	130 l.	130 l.	+0%
Tournelle*	Most active <i>rapporteur</i>			
	<i>Conseiller "écoutant"</i>			
	Average per <i>conseiller</i>			
1ere chambre des Enquêtes	Most active <i>rapporteur</i>	153 l.	108 l.	-29%
	<i>Conseiller "écoutant"</i>	31 l.	47 l.	+51%
	Average per <i>conseiller</i>	61 l.	61 l.	+0%
2e chambre des Enquêtes	Most active <i>rapporteur</i>	197 l.	125 l.	-37%
	<i>Conseiller "écoutant"</i>	28 l.	41 l.	+46%
	Average per <i>conseiller</i>	56 l.	56 l.	+0%

**Table 3. Simulation of the distribution of épices for December 1637 on the basis of the reform proposed by the Seconde chambre des enquêtes in April 1638**

		<i>Epices</i> actually received in December 1637	Reform of the <i>Seconde chambre des Enquêtes</i>	
			Amount	Difference
Grand Chambre	Most active <i>rapporteur</i>	202 l.	77 l.	-72%
	<i>Conseiller "écoutant"</i>	65 l.	77 l.	+18%
	Average per <i>conseiller</i>	130 l.	77 l.	-31%
Tournelle*	Most active <i>rapporteur</i>		77 l.	
	<i>Conseiller "écoutant"</i>		77 l.	
	Average per <i>conseiller</i>		77 l.	
1ere chambre des Enquêtes	Most active <i>rapporteur</i>	153 l.	77 l.	-50%
	<i>Conseiller "écoutant"</i>	31 l.	77 l.	+148%
	Average per <i>conseiller</i>	61 l.	77 l.	+26%
2e chambre des Enquêtes	Most active <i>rapporteur</i>	197 l.	77 l.	-61%
	<i>Conseiller "écoutant"</i>	28 l.	77 l.	+175%
	Average per <i>conseiller</i>	56 l.	77 l.	+37%

\*: incomplete data for the Tournelle.

## CHAPTER 6.

### SEEKING TRUTH: *INTERROGER, QUESTIONNER*

At seven in the morning on the 23<sup>rd</sup> of June 1685, Pierre Sentenac, a twenty-five year-old carder from the Vivarais region,<sup>533</sup> was ushered in the torture chamber of the Hôtel de Ville of Toulouse. As he sat on the “bouton”—a little stool on which the soon-to-be-tortured sat—the *arrêt* of the Parlement de Toulouse that had sentenced him to the “ordinary and extraordinary question” was read to him.<sup>534</sup> As the *arrêt* stated, Sentenac and his alleged accomplice Simon-Pierre Vignes would be “questioned” to “learn from their mouth the truth” of a poisoning of which both men were suspected. François d’Ambelot, the capitoul and head of the municipal criminal court who was about to preside over the torture session, added that this sentence obliged Sentenac to “tell the truth candidly” and “reveal the authors and accomplices of the crime” to “satisfy his conscience and avoid the torments of the question, which are very great.”<sup>535</sup>

D’Ambelot’s opening remarks on the *arrêt* of the Parlement were brief but ominous. They also made clear that magistrates explicitly identified judicial torture as a knowledge practice aimed at uncovering truth. As this contemporary understanding of torture and of its judicial uses suggests, the practice offers a prime site of investigation of the early-modern transformation of judicial conceptions of truth. Because my analysis of judicial torture is guided by this broader interest for the early-modern genesis of a judicial epistemology, my approach differs from that of the already numerous studies on this topic. Many of those studies are rich and valuable, but because their interests generally lie beyond or

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<sup>533</sup> The Vivarais region corresponds roughly to today’s *département* of Ardèche.

<sup>534</sup> ADHG 1B 3767, June 22, 1685.

<sup>535</sup> “Ledit sire d’Ambelot, chef du concistoire lui auroit représenté que (...) ont esté condamnés par le susd. arrest du jour d’hier a estre mis et appliqués a la question ordinaire et extraordinaire pour sçavoir la verité de tous les complices desd. empoisonnements, ce quy le doit obliger pour la descharge de sa consience de dire ingenuement la veritté, découvrir les autheurs et complices desd. crimes et par la il satisfaira a sa consiance, et esvitera le tourment de la question quy est très grand.” ADHG, 2B 2899, Verbaux de question donnée à Pierre Centenac et à Simon Pierre Vignes dit Laroche (June 23, 1685).

beside the question of the development of judicial forms of truth, they tend to strip torture from its epistemological dimension.

Working specifically on judicial torture in early-modern Toulouse, Lisa Silverman approached this question by focusing on paralegal sources that document contemporary conceptions of pain and its meaning.<sup>536</sup> Her answer was that the magistrates kept using judicial torture well into the eighteenth century because they still held the belief that truth resided in the body and could be extracted from it through pain. Silverman's argument that magistrates kept using torture because it still made cultural sense to them serves as a rejoinder to legal historians and their older interpretation of the abolition of judicial torture in the eighteenth century. John Langbein, for instance, saw the abolition of torture in the second half of the century (1788 for the *question préparatoire* in France) not as a victory of the Enlightenment but as a late legal recognition of the fact that, in practice, the use of judicial torture had long become anecdotal.<sup>537</sup> Based on a study focused almost exclusively on legislative sources, Langbein's explanation of this transformation in practice was that reforms of the criminal procedure (such as the *code criminel* of 1670) had allowed judges to circumvent the law of proof, thereby making judicial torture an obsolete truth-seeking practice. Indeed, by instituting disguised capital punishments—such as sentences to the galleys—that did not require a full proof (that is, in most cases, a confession), new laws in the second half of the seventeenth century had made torture useless.

My focus on torture as a judicial practice allows me to offer a third view that partakes of these two interpretations while questioning them both. Langbein is certainly correct to point out that the criminal reforms of the seventeenth century had largely made the law of proof irrelevant and one would be hard pressed to offer another explanation of the correlation between the surge in sentences to the galleys and the decrease in the use of judicial torture. I do not question this correlation but I further argue that the magistrates did not need the reform of 1670 to circumvent the law of proof. Magistrates had used sentences to the galley to do so long before the new *code criminel*, but that they nonetheless kept

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<sup>536</sup> Silverman, *Tortured Subjects : Pain, Truth, and the Body in Early Modern France*, .

<sup>537</sup> Langbein, *Torture and the Law of Proof : Europe and England in the Ancien Régime*, .

resorting to torture before and after the reform, because it fulfilled a specific epistemological role. On this point, my analysis is sympathetic to Lisa Silverman's question about the continued use of judicial torture after 1670 and her hunch that this declining but surviving use must be explained by the fact that torture still made "cultural sense" to the magistrates. My interpretation however, differs from Silverman's in that I argue that judges kept resorting to judicial torture in the seventeenth and eighteenth centuries, not because they still conceived it as a viable truth-seeking practice but because they had turned it into a truth-asserting practice appropriate to deal with specific cases that were statistically very rare when compared to the daunting mass of trials that did not resort to this practice.

Based on an analysis of the documents of practice rather than paralegal sources concerning pain and its meaning, my interpretation does not question that judicial torture was an instrument of state power exercised on individuals' bodies. Judicial torture *was* a technology of power worked upon the bodies of royal subjects, but as my study of the trial that led to the torture of Sentenac and Vignes demonstrates, torture was also an instrument of a subtler but equally powerful apparatus. If torture was a crude—albeit statistically anecdotic—illustration of royal attempts to monopolize violence, it was also integral to a judicial procedure and a system of practices that underlay royal attempts to monopolize truth, both in acts and in discourses.

The journey of Sentenac and Vignes to the torture chamber ("*salle de la géhenne*") of the Hotel de Ville of Toulouse had begun far away from Toulouse and long before that morning of June 1685. It had begun more than a year before and some 270 miles away, in the most remote corner of the *ressort* of the parlement de Toulouse, in the town of Baix in Vivarais. On May 15, 1684, Madeleine Dupont, wife of the lord of Massillan, captain of the town of Baix, sent an urgent request to the *sénéchal* of Nîmes, some 80 miles south. Her husband, her children, her whole household, and herself had been poisoned three times between May 8 and May 9, and her husband had died on the following day. The murder of a nobleman—moreover an officer in the king's army—was a serious matter that would have in and of itself called for a rapid answer on the part of the *sénéchal*. The royal judge was further prompted to act swiftly

because the assassination of this catholic aristocrat had taken place in a predominantly protestant region at a time of increasing hostility and suspicion toward the reformed subjects of the king.<sup>538</sup> Thus, upon receiving Dupont's request on May 15, the *sénéchal* immediately appointed and dispatched a *commissaire* who had already arrived in Baix to begin his investigation on the evening of May 16. The sire de Nouy's investigation would eventually lead to the use of judicial torture on which I focus in this section.

I use this case as a thread for my analysis of torture as a judicial knowledge practice for several reasons. First, this case seems to conform to the legal expectation that the decision to torture be dictated by the type of crime investigated: a hidden and premeditated crime that seemed to offer no absolute proof against any of the suspects. This case, however, is also particular in that it complicates this simple connection between the use of judicial torture and a lack of evidence. Although Sentenac and Vignes were the only ones tortured in the course of the trial, they were not the only suspects and they were not even the suspects against whom the judges had the strongest "presumptions"—a legal term to which I will return below. The Parlement released other suspects—all employees in the Massillan household—whereas another one, Antoine Chovin, was sentenced to death and executed without being "questioned," despite the fact that the court had no more absolute proof against him than against Sentenac and Vignes. Another valuable particularity of this case is its extensive documentation that allows me to re-investigate, not the poisoning of the lord of Massillan, but the attitude of Samuel de Fermat, the *conseiller* whom the Parlement de Toulouse had appointed *rapporteur* of the case.<sup>539</sup> In charge of reviewing the trial that had been appealed from the court of the *sénéchal* of Nîmes, Fermat based his recommendation to execute Chovin and torture Sentenac and Vignes on a dossier that is still complete in today's archive.<sup>540</sup> Produced for the most part during the trial in Nîmes, this 357 folio-long dossier includes the complaints, requests,

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<sup>538</sup> Janine Garrisson, *L'Edit de Nantes et sa Révocation. Histoire d'une intolérance*, Paris: Editions du Seuil, 1985 ; Roger Grossi, ed. *La Révocation de l'Edit de Nantes dans les Cévennes et le bas-Languedoc* (Nîmes: Editions Lacour, 1986). ; Elisabeth Labrousse, "*Une foi, une loi, un roi?*" *La Révocation de l'Edit de Nantes*, Genève and Paris: Labor and Fides Payot, 1985.

<sup>539</sup> For a detailed analysis of the *rapport* and the role of the *rapporteur*, see Chapter 7.

<sup>540</sup> ADHG, 2B 2899 (*sac-à-procès*, 1684-1685).

autopsy, medical reports, interrogations, sentences of the first instance as well as a detailed record of the torture of Sentenac and Vignes during the appeal trial in Toulouse.

One of the most intriguing documents in this dossier is the “conclusions” of the *procureur du roi* (the public prosecutor) in the court of the *sénéchal* in Nîmes. One of the duties of this magistrate was to review the documents produced in the course of the *commissaire*’s investigation in Baix to recommend a sentence to the *sénéchal*. This recommendation is particularly precious because, unlike the later *rapport* of Samuel de Fermat to the Parlement de Toulouse, it has left a documentary trace that reveals the details of a judicial reasoning behind the decision to torture (or not to torture) suspects. The *procureur*’s reasoning demonstrates that, as previous studies of judicial torture have suggested, this decision was informed by a specific “law of proof” that subjected the use of torture to legal requirements derived from Roman law. The basic requirement of this law of proof was that a criminal conviction could only be established on the basis of a confession of the accused or the testimony of two eyewitnesses. These were demanding requirements, designed to protect innocents from harsh criminal punishments by eliminating as much as possible the arbitrary of the judge from judicial decisions. As John Langbein noted, these very constraining standards of proof were effective in most criminal cases for the great majority of crimes were committed in anger and in public and thus often led to confessions and/or the testimony of at least two eyewitnesses.<sup>541</sup> The most serious and obvious difficulty was raised when judges had to deal with the small number of crimes that had been premeditated and committed in secret. Following the Roman example, judicial torture was the legal solution adopted to deal with those few criminal cases that were deemed especially vicious but which the standards of proof made almost impossible to prove. Thus, when a “full proof” (confession or testimony of two eyewitnesses) was lacking, a suspect could be tortured if two conditions were fulfilled: that the crime could carry a blood sentence (the death penalty or a mutilation) and that at least a “half proof” could be gathered against him or her. This “half proof” could be literally half of a “full proof” (i.e. one out of two eyewitnesses) or a collection of indirect evidence that

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<sup>541</sup> Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*, .

amounted to “strong presumptions” against the suspect. In theory, this law of proof was rather constraining for the judge, who was left some discretion in the evaluation of how strong presumptions were and whether they amounted to a “half proof.”

The recommendation of the *procureur* in Nîmes largely confirms that magistrates were keenly aware of the practical implications of this constraining law of proof and of the connection between its requirements and the use of judicial torture. As the *procureur* pointed out in his conclusions to the *sénéchal*, “it is not easy on the basis of this dossier to discover who the real authors of the crime are, for this crime of poisoning is usually committed with much premeditation and its proof is very difficult to bring about, for it can only be extracted from clues and presumptions because this crime is made without noise and without the help of anyone.”<sup>542</sup> The *procureur* went on to illustrate this general difficulty with the specific circumstances of the case under review, framing his conclusions in terms of the presumptions that weighed against the suspects. The most elementary presumption was against all the domestics of the house, for the lord of Massillan, his wife and their children had been poisoned by three meals that had been prepared in their house. This presumption however was merely “a suspicion that obliged the *commissaire* to arrest them all” but that “was not sufficient to bring about the slightest condemnation against them.”<sup>543</sup> As the *procureur* noted, this presumption was further weakened by the fact that “all the said domestics have been sick from the poison because they ate either the meat or the broth.”<sup>544</sup> There were “violent presumptions” against one of them however, for Antoine Chovin had made the second and third broth in which a doctor had found arsenic. In addition, Chovin’s “answers [to the commissaire’s questions] seem[ed] to make him look guilty”:<sup>545</sup> he confessed that he got sick only two days after all the

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<sup>542</sup> “(...) *il est mal aisé de développer dans ceste procédure quelz sont les véritable auteurs de ce crime neanmoins comme led. empoisonnement se cometoit d’ordinaire avec beaucoup de premeditation la preuve (...) ne se peut tirer que par des indices et des presomptions par ce que le crime se fait sans bruict et sans secours d’autruy.*” ADHG, 2B 2899, Document SS (January 25, 1685).

<sup>543</sup> “(...) *ce soubson quy a obligé le comissaire a les arrester et les faire respondre n’est pas suffisant pour operer la moindre condempnacion contre eux (...)*” *Ibid.*

<sup>544</sup> “(...) *d’autant mieux que tous les susd. domestiques ont esté mallades dud. poizon pour avoir mangé de viande ou bien du bouillon (...)*” *Ibid.*

<sup>545</sup> “*Ses responcez mesmes semblent le rendre coupable (...)*” *Ibid.*

others, that he refused to taste the second broth “under the pretext that it was a day of prayers and abstinence,”<sup>546</sup> and he admitted to taking *orvietan*—an herb that alleviated the effect of arsenic—while he was still in good health, thereby suggesting that he knew that the broth he had made and had to taste on Monday morning was poisoned. The *procureur*’s review of Chovin’s case thus seems to be a perfect illustration of the judicial arithmetic that the law of proof required in theory. It clearly shows how suspicions and clues were added to form presumptions which were accordingly categorized and labeled with a gradation of adjectives: “feeble,” “strong,” “vehement,” “violent.”

The *procureur*’s opinion, however, also illustrates how other, less formal considerations and more generally the arbitrariness (“*arbitraire*”) of justice officials informed their decision to torture or not to torture a suspect. Typically, those extra-legal elements came into play when added presumptions reached the critical threshold at which they could turn into the “half proof” required to sentence a suspect to torture. The *procureur* reminded the judge that the first half of the requirement to torture was already fulfilled in this case, for poisoning, “because of its enormity,” was a capital crime and as such justified the use of torture. The *procureur*’s reference to the Digest on this point (“*et quia aliter veritas haberi non potest nisi per tormenta*”)<sup>547</sup> reveals that magistrates were not only aware of the Roman origins of this criminal epistemology, but also consciously utilized the authoritative weight of this legal monument of antiquity to justify torture. As for the second half of the requirement to torture, however—the need for presumptions that amounted to “half proof”—, the *procureur* introduced unexpected considerations. Indeed, the *procureur* undermined the factual content of the incriminating evidence against Chovin by situating it on the background of an extenuating psychological portrait of the suspect. This psychological sketch was not produced through a specific evaluation conducted by an independent expert—if such an expertise had existed then—, but by the magistrate himself, based on the legal instruments of the case. Thus, the magistrate used documents that were geared toward the establishment of facts, not an

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<sup>546</sup> “(...) *il ne fit que gouter le bouillon soubz pretetexte que c’estoit un jour de rogations et d’abstinence (...)*” *Ibid.*

<sup>547</sup> *Ibid.* The actual phrase in the Digest (48.18.9, *De quaestionibus*) reads “*sed si aliter veritas inveniri non possit nisi per tormenta, licet habere quaestionem*” (“but if the truth cannot be discovered otherwise than by torment, it is permissible to use the question”), which suggests that the *procureur du roi* cited from memory.

assessment of psychological portraits. Having detailed how Chovin's "very answers make him look guilty," the *procureur* observed, however, that "Chovin speaks with so much naiveté in all his answers and expresses such surprise at the unfortunate accident that befell to this whole family, that it is impossible that he had any part in this crime."<sup>548</sup> Despite the violent presumptions against Chovin then, the *procureur* concluded that "there was no reason to condemn him to any punishment, not even to the question."<sup>549</sup> Thus, the opinion of the *procureur* was that, in this case, the naivety of the suspect canceled the strength of presumptions which, despite having been deemed "violent," did not amount to a half proof. He made this point clear when he concluded that torture could not be imposed because "there must be a half proof, which cannot be found in the inquests performed against this suspect."<sup>550</sup>

The *procureur* also described the presumptions against Pierre de Sentenac, servant of the Sire de Verclouses, as "violent presumptions." Similarly as well, his analysis of the suspect's attitude in the course of his interrogations served as the litmus test to decide whether or not those "violent presumptions" amounted to the half proof necessary to torture him. In the case of Sentenac however, the *procureur's* interpretation of the form of his answers (as opposed to their content) led him to conclude that the presumptions against him amounted to a half proof. The incriminating elements against Sentenac were very different from those against Chovin. Jean Aulion, a merchant of Baix had testified that in 1683, about a year before the poisoning, as he was traveling back to Baix with Sentenac from the fair in Beaucaire, Sentenac had showed him a little package "folded in a roll of paper" and had told him that "if he ate what was inside he would soon be dead."<sup>551</sup> Aulion further testified that when he asked him if it was arsenic, Sentenac answered that "there existed other things, finer than arsenic."<sup>552</sup> Finally, when

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<sup>548</sup> "*Chovin parle avec tant de naiveté dans toutes ses responcez et tesmoigne tant de surprize dans le facheux accident ou estoit tombée toute ceste famille qu'il n'est pas possible qu'il aye aucune part aud. crime (...)*" *Ibid.*

<sup>549</sup> *Ibid.*

<sup>550</sup> "*(...) il faut qu'il y aye une demy preuve ce quy ne se trouve pas dans les procedures faictes contre le prevenu.*" *Ibid.*

<sup>551</sup> "[Sentenac] *sortit de sa poche un paquet plié dans un rouleau de papier et dit a l'accuzé [i.e. Aulion] de deviner ce que s'estoit, lequele luy dit qu'il n'en sçavoit rien et pour lors led. valet lui respondit que s'il en mangeoit il l'auroit bien tot fait mourir.*" *Ibid.*, Document CC (May 30, 1684).

<sup>552</sup> *Ibid.*

Aulion asked Sentenac if he was carrying this poison on behalf of his master, the Sire de Vercloses, Sentenac had answered that he was not. This testimony was enough to arrest Sentenac but it was, on its own, a very weak presumption: the episode took place a long time before the poisoning, Aulion had actually not seen any poison, and Sentenac was nowhere near the house of the sire de Massillan when the poisoning was committed. Two other elements, however, made this testimony much more incriminating. First of all, while Sentenac was being held prisoner in the castle of La Voulte near Baix, his father came to see him. Denied entrance, he asked the gatekeeper Jacques Methon to give a message to his son. Methon passed on the message to Sentenac: the sire de Vercloses, his master, had written to the *intendant* of Languedoc to ask for his release and in the meantime he should acknowledge that he had brought a package from Beaucaire, but that it only contained tobacco. Finally, Sentenac's master, the Sire de Vercloses, was the one who could have benefited from the crime. Indeed, and as the *procureur* pointed out, if the whole family had died from the poisoning, Vercloses would have inherited all their property for he was Madeleine Dupont's son from a previous marriage.

Interestingly, however, this last element was technically not a presumption against either Sentenac or his master—for this genealogy did not appear anywhere in the legal documents produced during the investigation. Even more interestingly, it appears that the *procureur* felt bound by this technicality, for he did not treat the genealogy of Vercloses as a presumption against Sentenac in his conclusions. Instead, he strictly circumscribed the factual basis of his legal reasoning to the elements contained in the judicial dossier. It is as if this genealogy that made Vercloses sole heir to the family's entire succession was an obvious incriminating fact that had no actual evidentiary force because judicial proceedings—that is, the lawyers acting for the litigants—had failed to turn it into a legal statement of fact. By the time the *procureur* mentioned the relation between Vercloses and Dupont in his conclusions, he had already argued—based on a psychological reading of Sentenac's answers—that his interrogations

were “a proof that is not strong enough to absolutely prove him guilty of the poisoning, but powerful enough to apply him to the question [i.e. have him tortured].”<sup>553</sup>

As in the case of Chovin, what seemed to matter most in the *procureur*'s reasoning was not so much the content of the suspect's answers as the context and modalities of their utterance. Commenting on Sentenac's answer that he had carried a package of tobacco, the *procureur* wrote that “the way in which he remembered it, reveals that he is guilty and that he disguises the truth.”<sup>554</sup> In addition, the *procureur* pointed how Sentenac's answers became convoluted when further asked about this package of tobacco. Instead of declaring plainly that the package contained tobacco, Sentenac said that his master had told him to put it “in his office, in the bag in which he kept his tobacco.”<sup>555</sup> Sentenac added that “he believed that it was tobacco because he found a little bit of it in his pocket, but that there could have been tobacco at both ends of the package and poison in the middle.”<sup>556</sup> In the *procureur*'s opinion, those convoluted answers “reveal[ed] that he ha[d] brought poison from the fair in Beaucaire by order of his master.”<sup>557</sup> When one goes back to the record of Sentenac's interrogations, however,—the same record the *procureur* used to draft his conclusions—nowhere did the suspect actually confess to carrying poison nor to having received an order to do so from his master. The *procureur*, however, not only presented this as truth, but added to hammer this point that “he confessed it when he realized that he could no longer avoid it and that he had believed he could protect himself by saying that it was tobacco as his father had suggested while he was in jail.”<sup>558</sup> Thus, the *procureur* had transformed Sentenac's answers into a confession that the suspect never gave.

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<sup>553</sup> “(...) ceste preuve quy n'est pas assez forte pour le convaincre absolument de cest empoisonnement est assez puissante pour le faire appliquer a la question (...)” *Ibid.*, Document SS (January 25, 1685).

<sup>554</sup> “[i]l confesse d'avoir porté un paquet de tabac d'une mémoire quy faict connoistre qu'il est coupable et qu'il deguize la verité (...)” *Ibid.*

<sup>555</sup> *Ibid.*

<sup>556</sup> “(...) il croit que c'estoit du tabac par ce qu'il s'en respandit un peu dans sa poche mais qu'il y auroit peu avoir du tabac aux extremités du paquet et au milieu du poizon.” *Ibid.*

<sup>557</sup> *Ibid.*

<sup>558</sup> “(...) il ne l'a advoué que lhors qu'il a veu qu'il ne pouvoit l'esviter et qu'il a creu se mettre a couvert en disant que c'estoit du tabac comme son pere luy avoict inspiré dans la prison.” *Ibid.*

There is nothing shockingly surprising in this kind of judicial (re)framing, but there is an intriguing paradox in the *procureur*'s review of both Chovin's and Sentenac's cases. In both cases indeed, the *procureur* resorted to a legal requirement of the procedure (the requirement to base one's conclusions solely on the documents of the case) to overcome a difficulty raised by another legal requirement of the procedure (to follow a strict law of proof that was meant to keep the "intimate conviction"—"*conviction intime*"—of the magistrate in check). John Langbein suggested that the high standards of proof of the inquisitorial procedure adopted in the twelfth century to replace the ordeals and judicial duels of the accusatorial procedure, were meant to absorb the cultural shock that came with the substitution of men to God as judge of human conflicts.<sup>559</sup> The requirement of either a confession or two eyewitnesses to condemn a criminal to a capital sentence was meant to eliminate the discretion of judges from the conviction of criminals and thus deny that magistrates had appropriated the divine power to judge. Similarly, but more problematically, the requirement of a half proof to sentence a suspect to torture was meant to protect innocents from the arbitrary proclivities of judges. Obviously—and as the differences between the review of Chovin's and Sentenac's cases highlight—judges' discretion could creep back in, through the gray area offered by the evaluation of what constituted a half proof.

The study of practice, however, reveals that magistrates seemed to have felt obligated to give a legal form and content to their inner and subjective convictions—a point that eludes studies of legal theories and normative sources. The *procureur* in Nîmes did not simply write to the judge that Chovin should be spared because he was too simple-minded to be guilty and Sentenac should be tortured because he might have transported poison by order of a master who happened to be the sole heir of those poisoned. Or rather, the *procureur* did write this, but framed his reasoning not on the basis of common lay knowledge—"Chovin is a simpleton," "the sire de Vercloses could have inherited the whole thing,"—but on the sole legal basis of the documents contained in the judicial dossier. Why did the *procureur* feel compelled to do so when his "conclusions," a secret and non-binding opinion, did not need to be cloaked

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<sup>559</sup> Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*, .

with the appearance of a strict compliance to procedure? I argue that the *procureur* did not actually struggle to “legalize” an inner conviction that he knew to be problematically subjective, but that his inner conviction was “legal” all along, for it was matured through the filter of a judicial epistemology acquired by practice.

If we subject the final product of the *procureur*'s reasoning—his official conclusions to the *sénéchal*—to a reverse-engineering of sorts, we can work our way back to the epistemology that molded this formal document. This, in turn, can help us elucidate some of the traits of the epistemology that informed torture as a judicial knowledge practice. While legal requirements did shape this epistemology, other non-legal standards and ways of knowing came into play. As I suggested above, although the *procureur* based his reasoning on elements strictly drawn from documents that had legal validity in this case (i.e., documents that had been added to the dossier), the interpretive method of a rudimentary psychological analysis rather than the deductive method advocated by legal treatises informed the logic of his conclusions. The goal of those rudimentary psychological portraits is akin to that of judicial torture itself: to try and discover truth by supplementing a lack of absolute proof (confession and/or eyewitnesses). Those psychological analyses attempted to displace the area of investigation from an inner subject—a location where truth resided but eluded the judicial gaze—to the outside of this subject—the visible envelope that was immediately accessible and could be read directly for signs of the truth it hid. The methodology employed was that of observation: magistrates scrutinized external signs, not for themselves, but in order to reveal what lay beneath their surface and would otherwise remain invisible or inaudible. Thus, the content of the suspects' answers is less relevant than their form: Chovin might be saying that he prepared the broth where arsenic was later found, but what mattered most, according to the *procureur*'s reading, was what the statement revealed about a suspect who was so candidly confused that he did not seem to realize that he was incriminating himself. Likewise, Sentenac might be saying that he transported tobacco from Beaucaire to Baix. What mattered, however, was that his answers appeared to vary, an instability that could be interpreted as an outward and uncontrolled manifestation of a guilty

conscience. Thus, psychological analyses could serve to either incriminate or clear: it could reveal a crime that the suspect either ignored because he was innocent or tried to hide because he was guilty.

This judicial strategy that consisted in displacing the area of inquiry onto the individual was not new at all at the end of the seventeenth century. Resorting to interpretations of rudimentary psychological portraits to operate this displacement, however, was an early-modern development. The use of this particular interpretive methodology was indeed a substitute to an ethics-based methodology that had broken down at the end of the Middle Ages. How can we explain this shift from reputation-based moral portraits to observation-based psychological portraits? In her study of eyewitnessing in sixteenth-century France, Andrea Frisch proposed that the disintegration of a medieval communal model explains why the ethics-based methodology broke down.<sup>560</sup> According to Frisch, as geographical and social mobility increased in the fifteenth and sixteenth century and the development of the appeal procedure extended royal judges' control over communities that were always more distant and unknown, local, community-based, moral assessments appeared more and more to the magistrates as an untrustworthy basis to establish truth. This explanatory model probably holds some validity on a general level, but I would argue that the breakdown of this medieval complex of moral and communal values affected the knowledge practices of the judges in a more indirect way. Rather than a conscious concern over the reliability of the ethical assessments of communities that seemed increasingly distant from the judges—both spatially and culturally—the cause of the epistemological shift is to be found in the way in which early-modern “limits to the social invention of identity”<sup>561</sup> affected conceptions of truth, and more particularly judicial conceptions of truth.

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<sup>560</sup> Andrea Frisch, *The invention of the eyewitness : witnessing and testimony in early modern France*, Chapel Hill: University of North Carolina Press, 2004, 82.

<sup>561</sup> Zemon-Davis, "'On the Lame'," 602 ; "Boundaries and the Sense of Self in Sixteenth-Century France," in *Reconstructing Individualism: Autonomy, Individuality, and the Self in Western Thought*, ed. Thomas Heller, Morton Sosna, and David E. Wellbery, Stanford: Stanford University Press, 1986. For an analysis congenial to that of Zemon-Davis but with a focus on literary manifestation of Renaissance anxiety over shifting social identities see Stephen Greenblatt, "Psychoanalysis and Renaissance Culture," in *Literary Theory/Renaissance Texts*, ed. Patricia Parker and David Quint, Baltimore: Johns Hopkins University Press, 1986.

This shift may be best understood by a comparison between the 1685 case and an early fifteenth-century trial, also for poisoning, also judged in appeal by a provincial parlement. The comparison between the two cases, very similar despite the two centuries and half that separate them, illuminates both the change in the nature of the portrayals of suspects in judicial proceedings—from moral to psychological portraits—and the changing judicial uses to which those portraits were put to—from ethical to epistemological function. The 1423 case judged in appeal by the Parlement de Poitiers was similar to the 1685 case in many respects: the poisoning was performed during a dinner in the house of noble victim, consequently servants were suspected, and the motivation behind the assassination seemed to be linked to a question of inheritance.<sup>562</sup> Similarly as well, there were “strong presumptions” against some of the suspects but no eyewitness and no confession. And similarly again, the judges sought to supplement this lack of absolute proof by displacing their inquiry onto the persons of the suspects. But the 1423 *conseillers* in Poitiers did so in a way that differed significantly from that used by the *procureur* in Nîmes in 1684: instead of scrutinizing the suspect himself for external signs or attitudes that might reveal his hidden guilt or innocence, they sought to establish a moral portrait based on the testimonies of worthy members of the local community to which the suspect belonged. Thus, fifteenth-century judges already invoked something external to the suspect to uncover a truth supposedly hidden within him or her. The displacement from this elusive inner subject to a more apprehensible outside, however, was performed in a way that differed significantly from that revealed in the conclusions of the *procureur* in 1684. In 1423, the magistrates focused on a different aspect of the suspect’s individuality—on his reputation in a very general sense rather than on his particular attitude in the specific case at stake—and maybe more importantly, it limited the role of the judges themselves in establishing the portrait of the suspect.

Indeed, the moral portrayal of the suspect was not established by the magistrates; it was brought forth by the lawyers on the basis of testimonies collected within the local community. This moral, incriminating portrayal of the suspect only gathered its full judicial weight when presented in a dyptic

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<sup>562</sup> Guillaume Ratel, ““Que le droit du roi soit gardé.” Les plaidoiries des gens du roi aux parlements de Paris et Poitiers de 1418 à 1436” (Thèse pour le diplôme d’archiviste paléographe, Ecole nationale des chartes, 2001), II, 13-44.

with the opposite portrayal of the victim. Lawyers on both ends of the lawsuit would adopt this same strategy—angelism toward the client, stigmatization of the opponent—for judicial truth appeared to reside in the imbalance between the moral capital of the litigants: the wider the reputation gap, the more evident the truth of the case. Thus, according to Guillaume Le Tur, counsel for the widower and *avocat du roi*—that is, like the 1685 *procureur* in Nîmes, one of the *gens du roi*, a representant of the public prosecution—Jean Le Chat, the principal suspect in the poisoning, was “tricky and shrewd” (“*caut et subtil*”),<sup>563</sup> “shrewd and mischievous,” “blinded by covetousness.”<sup>564</sup> In addition to the fact that this portrayal appears to be moral rather than psychological, maybe the most interesting difference between this assessment and that of Chovin or Sentenac in 1685, was that this representation was not based on the magistrate’s interpretation of the suspect’s behavior within the strictly delimited context of the proceedings, but appeared to echo a community-based assessment of the general character of the suspect.

This difference between the 1423 and the 1685 cases is even starker when one considers that neither the accusation or the defense in 1423 seemed to be too preoccupied with what would later appear as elementary factual elements. The fact that the 1423 victim was pregnant at the time of the poisoning was critical to establish the motivation behind the crime—the point of the poisoning was to get rid of a potential, soon-to-be-born heir—but neither Le Tur nor his opponent Jovenel appeared to be overly disturbed by the floating chronology of the crime in that respect. Both parties agreed on the basic fact that Perrette Audiguelle and her son both died on February 17, 1423 the day she gave birth, but beyond this, it is not even possible to learn with certainty from either counsel when the dinner at which Perrette was supposedly poisoned occurred, although this point would appear crucial to us to establish the truth of the crime. Not only did the two counsels disagree on the dates, but even within their own argumentation, the chronology of events was not consistent. Le Tur said that the poisoning “happened in July” and Perrette “gave birth in January,” but then surprisingly added that “there are only five months between the two,” though he had said previously that “on (...) the day of Lent [February 17 in 1423], [she] gave birth to a

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<sup>563</sup> AN, X 2a 18, fol. 11v. (November 18, 1423).

<sup>564</sup> “(...) *il est subtil et malicieux et par convoitise peut avoir esté aveullé.*” *Ibid.*, fol. 13v. (November 22, 1423).

child and died.”<sup>565</sup> Jouvenel's statement, though different, is no more consistent. According to him “she lived about XI months after the said dinner” but, he added in his following sentence, “if the said lady was expecting when the said dinner occurred, it was only since about one month before.”<sup>566</sup>

This imprecision on both sides cannot be merely the result of a hazy memory of distant events, since Le Tur and Jouvenel's conclusions were pronounced on November 18 and 22, 1423 respectively, that is, less than eight months after Perrette's death. Tellingly again, common knowledge and public *fama* seem to matter more than what we would consider facts here, for Le Tur in attempting to establish that Le Chat knew that Perrette was expecting at the time of the dinner, does not even try to provide a coherent chronology in support of the idea that Perrette must have “showed” at the time of the dinner. Instead, Le Tur preferred the argument that Le Chat “could not ignore” that “the lady was very big at the time of the dinner” because that fact “was of very common knowledge.”<sup>567</sup> Moral portraits of the kind established in the Parlement de Poitiers in 1423 slowly disappeared from judicial records not because their informants—the litigants' local communities of origin—had become suspicious or at the very least untrustworthy to the judges, but because ethics itself was being superseded by knowledge as the foundation of the truth-seeking method of the *conseillers*. In the seventeenth century, the reputation of suspects and victims still played an important role in the judicial process, most notably when it came to decide on the punishment of the guilty, but its role in establishing truth had become minimal.

The changing role of the moral assessment of the suspects in the judicial process, the replacement of moral portraits by observations of the suspects' behavior in the course of the proceedings, appears maybe most clearly in a 1628 case. While this was not a case of poisoning it does show particularly well the slowly dwindling relevance of reputation to judicial truth-seeking practices between the 1423 and the 1685 cases. On November 13, 1628 a general assembly of the chambers of the Parlement de Toulouse

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<sup>565</sup> *Ibid.*

<sup>566</sup> “(...) elle vescu XI mois ou environ depuis le disner dessusd. et n'eust peu porter les poisons si longtemps. Dit que, se au temps du disner la dame estoit grosse, se n'estoit que d'un mois ou environ” *Ibid.*, fol. 12v.

<sup>567</sup> “estoit la dame fort grosse au temps du disner et ne le pouvoient ygnorer Anne et Le Chat car il estoit tout notoire” *Ibid.*

(*assemblée générale des chambres*)<sup>568</sup> reviewed the case of the *conseiller* Guillermin who was accused of having forged a number of official documents to have two men released from the *conciergerie* (the prison) of the *Palais*.<sup>569</sup> In this particular case, we have no reason to think that the judges would doubt the reliability of a community-based assessment of the moral worthiness of the suspect, for that suspect was one of their own—their colleague, brother, nephew, son—and they themselves were the local community in charge of providing this assessment. Even in this case, however, the magistrates did not rely on their own assessment of the reputation of the suspect to establish his guilt or innocence. This is not to say that reputation and moral worthiness had become completely irrelevant to the whole judicial process in the early-modern period, for, as this case also illustrates, reputation did matter a great deal in the formulation of sentences. Indeed, while Guillermin’s reputation did not help him clear his name from the crime investigated, it certainly helped reduce his punishment as the magistrates acknowledged candidly. As Malenfant noted, while Guillermin was originally suspended for six months for what the court deemed to be a very serious breach,<sup>570</sup> just a month later his colleagues reinstated him purely as favor to his parents and allies within the court, all “persons loved and respected in the *Palais*.”<sup>571</sup> Thus, reputation did not dramatically change in nature between 1423 and 1628: in seventeenth-century Toulouse as in the fifteenth-century Poitou countryside, reputation was a social good that could be shared with and transferred to parents, allies and clients, a precious good that could still be used to receive special

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<sup>568</sup> For more details about deliberation in those assemblies, see Chapter 7.

<sup>569</sup> Malenfant, I, fol. 199-204. For more detail about Guillermin’s case and more generally about the attitude of the Parlement de Toulouse vis-à-vis the crime of forgery see Guillaume Ratel, “Les conseillers au Parlement de Toulouse, juges et coupables de faux,” in *Juger le faux (Moyen Âge – Temps Modernes), Etudes et rencontres de l’Ecole des chartes*, Paris: Ecole nationale des chartes, forthcoming.

<sup>570</sup> “[they] deemed it very foolhardy on the part of a *conseiller* who knows the secrets of the court to try and overturn an *arrêt* (...) with an interlocutory sentence not deliberated in the chamber but ordered of his own interested authority” (“*l’entreprise fut jugée très hardie qu’un conseiller qui sait les secrets de la cour veuille renverser un arrêt (...) par un appointment de requête non délibéré en chambre, mais commandée d’être appointée de son autorité intéressée.*”) *Ibid.*

<sup>571</sup> “[Guillermin] demandoit à la Cour qu’il lui plût de le rétablir en sa charge, ce que la Cour fit, non pas en vertu de sa requête, mais elle donna cela à ceux à qui led. Sr. de Guillermin attouche de parenté du côté de sa femme, petite fille de M. de Rudelle sous doyen de la Cour, de M. de Vedelli conseiller en la cour, personnes aimées et estimées dans le Palais” *Ibid.*, fol. 203.

treatment—whether exceptionally lenient or exceptionally harsh depending on the reputation ascribed to one’s community of origin.

The main change since 1423 was that, as far as establishing guilt or innocence was concerned, reputation no longer seemed to play the central role it once did. In 1628 indeed, in order to establish the guilt or innocence of their colleagues, the *conseillers* relied instead on the kind of psychological analysis used by the *procureur* in Nîmes. When the *conseillers* summoned Guillermin to answer their questions, their opinion seem to have been mostly shaped by their observation and interpretation of their colleague’s behavior and demeanor as he answered. As Malenfant noted indeed, “the Sire de Guillermin said what he had previously said in the Grand Chambre, but with so much confusion and with so little self-confidence to make the court believe what he wanted it to believe, that the court remained in its opinion and it appeared certain that he had [committed the forgery].”<sup>572</sup> As in the *procureur*’s interpretation of Chovin’s interrogations in 1685, those peripheral signs of truth and lie (here “confusion,” the lack of “*assurance*”) seemed to matter more than the actual content of the answers (which, in the case of Guillermin, the *greffier* Malenfant did not even bother writing down).

To come back to the case of poisoning in Baix then, it appears that by 1685 the focus of an inquiry on an unmediated observation of the suspects—unmediated in the sense that it was performed by justice officials alone, exclusively through judicial instruments—had become the norm. More than a judicial distrust of a distant community, it translated an epistemological displacement that can be illustrated by other cases much closer to the Parlement and even by cases within the Parlement as the 1628 example of the *conseiller* Guillermin reveals. I want to focus now on a significant aspect of this epistemological displacement: as I suggested before, the shift from reputation-based to behavior-based judicial portraits of suspects entailed a transfer of the control over the portrayal from the local community to the magistrates. This substitution reflects another important dimension of the epistemological shift: the

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<sup>572</sup> “[Guillermin] dit ce qu’il avoit dit en la grand chambre, mais avec tant de confusion et avec si peu d’assurance pour faire croire à la Cour ce qu’il vouloit qu’elle crût de lui, que la Cour demeura en cette opinion et lui parut certainement qu’il avoit fait appointer lad. requête pour eluder l’arrêt de la cour.” *Ibid.*, fol. 202.

monopolization of judicial knowledge practices by experts. This particular shift had two main foundations: the magistrates' participation in the rise of expertise as an ideology and their related efforts to reframe their own practices as expert practices. Again, the observation of concrete judicial practices will serve as our entry into an intellectual change that is otherwise difficult to pinpoint. The "expertization" of judicial practices can be observed in the methodology the *procureur* used to establish his quasi-psychological analysis of the suspects. My later analysis of the torture of Sentenac in Toulouse will help to further specify this other epistemological transformation.

One of the intriguing features of the *procureur*'s portrayal of Chovin and Sentenac was that it was composed exclusively of elements drawn from the legal documents of the case. Further, none of those legal instruments were designed to help establish such portraits. The interrogations in particular, the main source of the *procureur*'s psychological analysis, were intended to establish a number of facts and circumstances. This was achieved through a cross-reading of all the witnesses' and suspects' interrogations that either confirmed or invalidated those facts and circumstances. The primary goal of those documents then, was to allow the magistrates to weave those facts and circumstances together to establish a synopsis of the case. This factual synopsis then served as a basis to formulate presumptions against possible suspects. The *procureur*'s conclusions confirm that those documents were used precisely to that end: regardless of their identity as either family-members or servants, of their particular role in the house, of the answers of other witnesses interrogated before them, of whether they were catholic or protestant, all those present in the house of the sire de Massillan at the time of the poisoning were asked the exact same sequence of factual questions: Who fell ill? When? Who prepared the food? Who served it? Did you have some of it? Did you, yourself, fall ill? Those interrogations fulfilled their primary goal of helping the magistrates to establish a synopsis: Durand, the cook, prepared the Sunday dinner, all those who ate it, including Durand himself, fell ill. Chovin prepared two broths on Monday, all those who ate them fell even more ill. Chovin himself did not eat the broths he had prepared. This synopsis based on the cross-reading of the interrogations of distinct witnesses, not on the analysis of how individual suspects had answered, led, as the *procureur* noted, to violent presumptions against Chovin.

The *procureur*, however, did not just cross-read the interrogations of witnesses and suspects to establish a factual synopsis. He also proceeded to cross-read the answers within the interrogations of those individuals whom the factual synopsis seemed to incriminate. This secondary reading had a different object—the suspects instead of the circumstances of the crime—but replicated the main features of the fact-driven cross-reading of the whole corpus of interrogations. Indeed, the psychological interpretation that motivated this secondary reading of individual interrogations functioned according to the same epistemological assumptions and methodologies as the fact-oriented cross-reading of interrogations. The central and common epistemological assumption was that coherence was a marker of truth and that, conversely, contradictions revealed the untrue. Thus, to the *procureur* in Nîmes, the coherence of Chovin's answers, despite their self-incriminating content, revealed the simple character of an innocent man who spoke the truth. Conversely, the instability of Sentenac's answers, the blanks that they left, were as many cracks on the surface of his persona, cracks that revealed the intricate and truly suspect character within.

This particular approach to truth underlay the fabrication of the psychological portraits of the suspects. This fabrication, because it aimed at uncovering the true character of the suspect hence his guilt or innocence, was a judicial knowledge practice. It was also a judicial discursive practice in the sense that its methodology not only suited the magistrates' conception of truth but also served to cast the portrayal of suspects as an exclusively judicial expert practice. This assertion of expertise was first achieved through a strict delimitation of the stock of elements that could be used to portray the suspects: only judicial data—that is, data recorded in the legal documents contained in the proceedings of the case—could serve to draw a suspect's portrait. For instance, the *procureur* in Nîmes established Sentenac's duplicitous character solely through an observation of his shifting answers in the course of his interrogation in this trial. Of course, it would be naive to think that nothing external to the proceedings actually influenced the magistrate's representation of the suspect. Beyond the particulars of each individual case, elements such as social and cultural prejudice were likely to affect's the magistrate representation of a suspect. But regardless of the extent to which non-judicial elements shaped the

*procureur*'s portrayal of the suspects, the larger and more interesting point here from the point of view of judicial practice is that his conclusions strived to—and succeeded—to present the portraits of Chovin and Sentenac as composed exclusively from elements drawn from the proceedings.

By strictly limiting their sources to the legal documents produced in the case, magistrates effectively excluded others from participating in or appropriating this knowledge practice. One could say that this delimitation of the sources to the documents of the proceedings put a double lock, so to speak on the practice. The first “lock” consisted in making sure never to invite non-experts to offer their own assessment of the suspects' character. For instance, while the assessment of the characters of Chovin and Sentenac appears to be the foundation of the *procureur*'s recommended resolution of the case, none of the witnesses interrogated in the course of the trial was ever asked explicitly about the character of the suspects or even implicitly invited to offer an assessment of their reputation. In addition to making sure that they did not open the door to competing assessments of the suspects' character, the magistrates further established their monopoly over the suspects' portrayal by turning this knowledge practice into an expert practice. Put simply, the expertise required to combine elements of judicial data into portraits of the suspects was what made this practice an expert practice. In this instance, being an expert meant possessing two things that non-experts lacked to engage in or appropriate the practice: physical access to the proceedings and intellectual access to its content. This point becomes clear when we try to work our way back from the *procureur*'s conclusions to the documents he used to compose them. It then becomes evident that the portraits of suspects he offers could only be achieved thanks to his position of magistrate: unlike non-expert contemporaries, the historian today has access to the exact same set of records used by the magistrate, and is thus allowed a privileged bird's eye view of the proceedings. As becomes clear when one goes back and forth between the *procureur*'s conclusions and the corpus of judicial documents he reviewed, this bird's eye view of the proceedings is the sine qua non condition of the judicial portrayal of suspects. Both the consistency of Chovin's answers and the instability of Sentenac's character can only be supported by a cross-reading of an extensive range of documents contained in the *sac*. Only the magistrates—and the historian—enjoyed the complete panoramic view of the case which essentially gave

them a monopoly over the construction and deconstruction of judicial portraits. Litigants only had a partial view of the case because their knowledge was exclusively confined to the small corner of proceedings in which they had been directly and personally involved. Thus, the first privilege of judicial expertise was full access to judicial sources which alone allowed one to construct and challenge judicial portraits.

The magistrates' epistemological monopoly was further asserted thanks to their actual judicial expertise. Indeed, having access to the documents is of no use for one who cannot understand their content. Some elements such as the answers of witnesses were fairly straightforward and would have been comprehensible to most literate non-experts. As any historian opening his first *sac-à-procès* could attest, however, literacy and paleographic proficiency do not suffice to make sense of most of the proceedings. Most of those documents are far from self-evident and a young, recently appointed *conseiller*—like the inexperienced historian—would have found it difficult to unlock those judicial documents. What was needed to open those documents—to extract meaningful elements that could serve, for instance, to draw a psychological portrait of suspects—was an understanding of procedure. By procedure I do not mean simply the judicial procedure that was defined by law, described and commented on in legal treatises, and which both the inexperienced *conseiller* and the historian could learn through reading. I mean, more importantly, the practical knowledge which, acquired through experience, enables the reader to separate the formulaic from the specific. In that respect, the key feature of the judges' expertise was—to use a phrase popularized by Carlo Ginzburg—their ability to identify the “exceptional normal” in judicial proceedings. Day after day, through their repeated encounters with dozens and dozens of trials, the magistrates developed a familiarity with the “normal normal” of routinized proceedings. It is this acquired sense of the stereotypical that made the exceptional normal stand out. In the 1685 poisoning case studied here, most non-experts in search of the truth would look to the facts that could be established through testimonies and medical expertises. A professional magistrate such as the *procureur* in Nîmes, however, saw judicial value not in the factual but in the procedural: variation between the testimonies of the same suspect. Such variations were rare—although not exceptional—and to someone who had reviewed many

cases and had sentenced in many other, they were cues that marked the sites of proceedings where truth could be produced.

Despite their judicial expertise, however, magistrates sometimes found themselves in situations in which judicial truth— not factual truth—could not be produced. In those few cases, the more truth seemed to remain hidden, the more judges seemed to be intent on making use of a regulatory expert apparatus to organize and frame the knowledge practices they resorted to. This phenomenon is especially visible in the practice of judicial torture. The *procès verbal* of Sentenac’s “questioning” suggests that the magistrate who led his torture was more interested in the rules and methodology of the practice than in the truth it was supposed to reveal. For the most part, the account of Sentenac’s torture in the archive of the Parlement is focused on the recording of procedural steps that both regulated the practice and displayed its expert nature. In a way, what seemed to matter most was not the content of Sentenac’s answers—what could reveal the truth of the case—but the form of his judge’s questions—what I would call the truth of the practice.

This truth of the practice depended on strictly following steps that were duly noted in the records. In this way, judicial torture appears as a practice, which, above all, sought to assert itself as a valid knowledge practice. This validation of the practice through its own deployment was achieved thanks to a number of strict requirements. The first requirement can be called the judicial quorum of torture. Most analyses of interrogations and torture have emphasized the dialogical dimension of those practices by focusing on the exchange between two individuals: the judge and the suspect.<sup>573</sup> As we will later see, this approach allows us to gain insight into the participatory role that the tortured played, paradoxically, in a practice that seemed bent on destroying his very subjectivity. By casting torture as a one-on-one exchange between tormenter and tormented however, this approach tends to mask the fact that judicial torture involved other actors whose presence and participation was an absolute legal requirement. When Pierre Sentenac entered the torture chamber on that morning of June 1685, it was a rather crowded room. In

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<sup>573</sup> This is most famously the case in Carlo Ginzburg’s study of the trial of Menocchio (Carlo Ginzburg, *The cheese and the worms : the cosmos of a sixteenth-century miller*, New York: Penguin Books, 1982).

addition to d'Ambelet, the magistrate who would eventually ask him questions, eight other individuals were present in the room: five other capitouls (municipal magistrates), their scribe and two assistants (“*assesseurs*”). Although those officials did not play a direct role in the questioning itself, their presence was essential to the validity of the interrogation. Those men participated in a triple validation of the procedure. The capitouls’ presence ensured the collegiality that was fundamental to judicial decision-making.<sup>574</sup> The *assesseurs*’ role—as their title suggests—consisted in being witnesses to the practice. By simply being there, uninvolved in the interrogation, they objectified the practice and became, through their eyes and ears, living records of the torture session. Like the two eyewitnesses required in order to prove a crime, the two *assesseurs* could provide through their testimony a full proof of the truth of the practice they had witnessed. Like the *assesseurs*, the scribe recorded the interrogation, albeit not with his eyes and ears, but with his hands, producing a material rather than a living testimony that fixed the interrogation in writing—a material proof that corroborated the *assesseurs*’ testimony. But the scribe also performed what I would call a meta-validation of judicial torture, for the material testimony he produced also recorded the validations others provided by their physical presence. In other words, the scribe’s written record attested that others could attest to the validity of the practice they had witnessed. Thus, the presence of the *capitouls* and *assesseurs* was itself validated through its recording in writing by the official city scribe. By recording the number of *capitouls* present, their names, the identity of the *assesseurs*, and thereafter every single action of the interrogation, the scribe validated through writing all the validation procedures performed by others in the torture chamber.

Before more participants entered the room—the executioner and his assistants—and before the actual physical torment could start, the first step of the torture session consisted in a repetition of the judicial process that had led the judges and the suspect to the torture chamber. As I mentioned above, the first thing that happened when Sentenac entered the room was the reading of the *arrêt* that had sentenced him to the “ordinary and extraordinary question.” Instead of proceeding to torture him immediately,

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<sup>574</sup> See Chapter 7 below.

however, the judges first re-validated this decision by re-enacting the judicial journey that had led to the judicial deadlock that torture was meant to break. The suspect was first required to swear again a sacred oath to tell the truth—either on God or on the gospels depending on whether he was Protestant or Catholic—and to state his identity, as if going through the same liminary procedures of validation that preceded his previous interrogations. However, not all the questions previously asked were repeated. D’Ambelot only reiterated those questions that had prompted the answers that founded the presumptions against Sentenac. Then, in the second part of the interrogation, Sentenac was asked questions of an entirely new kind. I argue that despite their interrogative form those were not in fact questions but articulations of the truth that the judges had reconstituted and that the suspect had denied. The goal of this second category of questions was twofold. First, it completed the re-enactment of the judicial dead-end to which the absence of confession had led—thereby revalidating the decision to resort to physical torture to hopefully evade that dead-end. It also uncovered for the first time and in a particular narrative form, the judicial truth of the case. In other words, it provided the suspect with a template for the confession that was expected of him and that could put an end to the torture session. The moment when the interrogator shifted from presumption-oriented questions to assertion-oriented questions was pivotal: it fused into one instant the double dimension of judicial torture as both a truth-seeking and a truth-speaking practice.

This twofold, preliminary interrogation embedded in the practice of judicial torture closely paralleled another particular type of interrogation that immediately preceded the execution of a convict.<sup>575</sup> I argue that the practical similarities between those two types of interrogations reveal a connection between the two judicial practices—torturing and executing—under which they were subsumed. The trial of Chovin, Sentenac and Vignes provides an ideal documentary basis to further draw this parallel. Indeed, contrary to Sentenac and Vignes who were sentenced to torture in appeal, Antoine Chovin was directly sentenced to death. Unlike the *procureur* in Nîmes, Samuel de Fermat—the Toulousain *conseiller* who reviewed the case in appeal—did not see Chovin as an innocent simpleton. Fermat read the *procureur*’s

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<sup>575</sup> For more detail about this other judicial practice, see Chapter 8.

conclusions but must have been left absolutely unconvinced by the extenuating psychological portrait of Chovin that the Nîmois magistrate had drawn. So much so that Fermat advised his colleagues of the *Chambre Tournelle*—on what ground, we will never know since the *conseillers*' reports to their chamber were not recorded—<sup>576</sup> that torture was unnecessary and that Chovin should be sent to the gallows directly. This decision went down very quickly: the case was received in Toulouse on the 15<sup>th</sup> of May 1685, and on June 7 already, without further interrogation of any of the suspects or production of any new document, Fermat reported the case to the *Chambre Tournelle*, where he and his colleagues sentenced Chovin to death by hanging on the place Saint Georges.<sup>577</sup>

While it was impossible to appeal, overturn or reform this decision, Chovin was interrogated again, twice, on June 8, the day of his execution. Why interrogate Chovin if the procedure against him was definitely closed? What could his interrogation add to the case? The judges could hope that, with the certainty of his imminent death, Chovin would give up the names of his accomplices if he had any. And indeed, this was one of the questions that were asked to him on June 8. But this was only one among many other questions and I would argue that it was asked mainly as a matter of form. The judges had in fact probably little hope that Chovin would confess the crime or denounce anyone.<sup>578</sup> More importantly, the judges had no legal use for either a confession or a denunciation. A confession was useless because

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<sup>576</sup> For more detail about this absence of record and more generally about the *rapport*, see Chapter 7 below.

<sup>577</sup> ADHG, 1B 3767 (June 8, 1685).

<sup>578</sup> On this point, see the skepticism or outright criticism of torture expressed by a number of *conseillers* more than a century before: Montaigne, Coras. Montaigne famously wrote: “Putting men to the rack is a dangerous invention, and seems to be rather a trial of patience than of truth. Both he who has the fortitude to endure it conceals the truth, and he who has not: for why should pain sooner make me confess what really is, than force me to say what is not? And, on the contrary, if he who is not guilty of that whereof he is accused, has the courage to undergo those torments, why should not he who is guilty have the same, so fair a reward as life being in his prospect?” (“*C'est une dangereuse invention que celle des gehenes, et semble que ce soit plustost un essay de patience que de verité. Et celuy qui les peut souffrir, cache la verité, et celuy qui ne les peut souffrir. Car pourquoy la douleur me fera elle plustost confesser ce qui en est, qu'elle ne me forcera de dire ce qui n'est pas? Et, au rebours, si celuy qui n'a pas fait ce dequoy on l'accuse, est assez patient pour supporter ces tourments, pourquoy ne le sera celuy qui l'a fait, un si beau guerdon que de la vie luy estant proposé?*” Montaigne, *Essays*, II, 5). This skepticism can also be found in later times, expressed by less famous *conseiller*. For instance Guillaume de Ségla, who wrote that the “question is a dubious, hazardous, and uncertain thing” (“*la question estoit une chose douteuse, hazardeuse, et incertaine*” Guillaume de Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, Paris: Nicolas La Caille, 1613, 24 ).

Chovin was no longer a suspect, he was a convict, in fact a dead man already, as the magistrates' sentence of the day before had established. From a legal point of view, a denunciation of Sentenac, Vignes or anyone else was of little use at this point in the procedure: whatever Chovin knew or had seen, he was only one eyewitness who could thus only provide at best a half-proof against those who remained suspects. The judges had already determined that their presumptions against Sentenac and Vignes amounted to a half-proof, for this calculation was the basis of their decision to torture the two men. An incriminating testimony from Chovin was of little use because it could not be added to this existing half proof to make a full one. The obvious paradox here is that this legalistic arithmetic did not seem to apply to Chovin himself, for there was not a full proof against him either: he had not confessed to poisoning the food and no one had testified to seeing him do so. In fact, not a single person who had been interrogated in the course of the inquiry had even suggested that Chovin had poisoned the food.

I argue that the function of Chovin's interrogation between his sentencing and his execution was precisely to help the judges overcome that difficulty. In that sense, this final interrogation is comparable to that of Sentenac and Vignes in the torture chamber before their physical torment began: it primarily articulated the truth of the judicial practices—executing, torturing—devised to move the case forward. Thus, both types of interrogation sought to validate another judicial practice—torture or execution—within which they were embedded. In that sense, those knowledge practices were also discursive practices of a reflexive kind: the judges used them as statements about their own practices. The interrogation of Chovin on the day of his execution was in that respect similar to that of Sentenac and Vignes before their torture: first the *arrêt* that had already sentenced him was read to him as a prelude to an interrogation that reenacted his judicial journey up to that fateful point. Again, this interrogation summarized the particular points on which the sentence was based. Like Sentenac and Vignes in the torture chamber, Chovin was first asked to take a sacred oath to tell the truth and to state his identity. He was then subjected to the same kind of twofold interrogation as Sentenac and Vignes. A first series of questions was meant to have Chovin repeat those answers—and only those answers—that grounded the judges' presumptions against

him. The second set of questions, even more clearly than in the case of Sentenac and Vignes, was not primarily designed to obtain a confession in the nick of time.

In the secret of the chapel of the Capitoulat where Chovin was interrogated for the first time on that day, it did not really matter to his case whether or not he would confess to the poisoning: as far as his judges were concerned Chovin was guilty since they had already declared him so in their *arrêt*. Rather, the function of this interrogation was to assert—and no longer to discuss—the judicial narrative of Chovin’s guilt. The two parts of the interrogation articulated this definitive narrative. The elements on which Chovin agreed and which served as the basis of the presumptions against him composed the first half of this narrative. In the second half of the interrogation the judges alone assumed the role of narrators. At that point indeed, their questions started to function as assertions despite their interrogative form. For instance, Chovin was no longer asked fully interrogative questions as in the first half of the interrogation (“at what time did you make the broth? Did you give it to those who were ill? Who were those people?”).<sup>579</sup> Rather, this second set of questions already held its own answers that Chovin was expected to merely confirm or, more realistically, deny. The answers implied by this second series of questions were the building blocks of the second half of a narrative that the judges completed on their own. The first of those questions, the one that signaled that the interrogation had entered its assertive second half, could not be clearer and more upfront: “are you not the one who poisoned the sire de Marseillan and the others with those two broths?”<sup>580</sup> From that point on, Chovin’s recorded answers were limited to a simple “he denied the interrogation” repeated over and over. Thus, Chovin had stopped playing an active role in the elaboration of the judicial narrative of a guilt that he kept denying.

The irrelevance of Chovin’s answers is made clear by the fact that, despite his denying, his interrogator kept moving to the next element of his own narrative. While Chovin had just denied poisoning anyone, d’Ambelot disregarded the answer and went on to ask “who gave you the poison? did you commit the poisoning on your own out of revenge or were you prompted to do it by enemies of the

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<sup>579</sup> ADHG, 2B 2899, Verbal d’execution a mort d’Antoine Chauvin, cuisinier (June 8, 1685).

<sup>580</sup> *Ibid.*

sire de Marseillan and his family?”<sup>581</sup> Chovin denied again, and, again, d’Ambelot kept following his script: “What did they promise or give you? What are the names of those people who forced you to commit the poisoning?” Chovin denied again but d’Ambelot kept developing what clearly appears as the ready-made narrative that chained together a series of questions that were only interrogative in form. Indeed, to further explicit who those enemies were and point in the direction of Sentenac and Vignes, d’Ambelot asked: “don’t you know who are the servants or other persons, your accomplices, who bought and sent you the poison? What are their names and residence?”<sup>582</sup> D’Ambelot did not go on to name Sentenac and Vignes lest he further crossed the legal requirement that forbade magistrates to ask suggestive questions. Clearly, d’Ambelot more than flirted with that line during this second half of the interrogation, not so much because he sought to elicit a particular confession that had become legally irrelevant but rather in order to make the judicial narrative of Chovin’s guilt—whether Chovin confirmed it or not—as clear as possible. To whom then did this narrative need to be made clear? To some extent, it needed to be made clear to those whom we can call—to make it short for now—“the public.”<sup>583</sup> Indeed, the first interrogation of Chovin on the day of his execution took place in private, in the the chapel of the Capitoulat, but functioned as an exact rehearsal of the interrogation that would take place in public, on the scaffold where he was to be hanged later on that day. I will come back to this second and public iteration of Chovin’s questioning when I analyze execution as a judicial practice.<sup>584</sup>

For now, I would like to argue that the first iteration of Chovin’s questioning on that day was not simply a rehearsal of the judicial narrative that would later function as an explanatory prologue to the execution that “the public” was about to witness. More interestingly and in ways that are more difficult to grasp, this first utterance of the judicial narrative of Chovin’s guilt was directed at the judges themselves. Spoken out loud by the questioning judge, in the secret of a room where only justice officials and agents

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<sup>581</sup> *Ibid.*

<sup>582</sup> *Ibid.*

<sup>583</sup> I will further elucidate this question of intended “audience” and publicity of the practice in Chapter 8.

<sup>584</sup> See Chapter 8 below.

were present besides the convict, the narrative of Chovin's guilt was to a certain extent a self-intended demonstration, meant to address and overcome the positivistic anxiety of a disempowered judicial power. That this judicial anxiety would surface precisely at moments such as these, when magistrates made a show of their power by using physical force to either execute or torture individuals, is not surprising. In fact, I would argue that those demonstrations of force were often designed to alleviate or even sublimate the judges' anxiety over the imperfections and weaknesses of their own knowledge practices. The judges' anxiety was caused by a failure of their own epistemology that could remain hidden from those exterior to the judicial process but that the magistrates themselves could not ignore. Having gone through the whole paraphernalia of knowledge practices available to them, the magistrates had gathered data, analyzed it, drawn hypotheses—which they called “presumptions”—, but they had failed to secure any conclusive evidence to a truth that remained based on their intuitions and framed by their prejudices. The magistrates' reaction in the face of this failure was to resort to practices such as torture and execution that functioned as reassertions of their epistemology. This reassertion was achieved in part through a tautological demonstration: the imposition of a sentence in the flesh of convicts (execution) and suspects (torture) functioned in a way as a physical sanction of the truth that the magistrates claimed to have reached: Chovin was guilty because he was hanged, Sentenac and Vignes were his accomplices because they were tortured.

In a subtler way, the reassertion of judicial epistemology was achieved through the modalities of the practices—torture and execution—deployed in the immediate aftermath of, and I would argue as a reaction to, the failure of other truth-seeking practices. Judicial torture was a practice regulated by strict requirements and procedures that were meant to distance the magistrate from the object upon which he acted—the body of the tortured—and reduce as much as possible his latitude of action, as if to assert his accessory and neutral role in an objective process.

Paradoxically then, or so it would seem to a modern sensibility, the “physical stage” of a torture session was designed to display the features of a model knowledge practice. Although it probably seemed

to last for an eternity to the tortured, this stage appears to be relatively brief in the records of the court: on the eighty-three folios recording the two torture sessions of Sentenac and Vignes, only eleven folios record their actual physical torture. As the records also suggest indirectly however, this brevity of the sources does not necessarily reflect the brevity of the actual practice. Indeed, while both Sentenac and Vignes were subjected to the “ordinary” and the “extraordinary question,” those two very different kinds of physical torture left an equally brief trace in the records. The “ordinary question” applied to male suspects in Toulouse consisted in a rather complicated set up that necessitated the participation of four men. Two men pulled on ropes which, passed through a pulley attached to the ceiling, were tied around the suspect’s wrists, another man turned a wheel to which the suspect’s ankles were tied by another rope, and finally, once the suspect was stretched in that way, a fourth man trampled on a metal device that was fastened to his shins. The pain was thus incremental, produced by the combination of a slow stretching of the body and repeated blows on the suspect’s constricted legs. This description alone seems to suggest that with this “ordinary question” applications of pain were rather lengthy, a fact that appears to be corroborated by the number of applications the tortured could bear in the course of one session. Both Sentenac and Vignes could only stand being subjected twice to this “ordinary question” during their first session—I will come back soon to how the judges assessed that this physical limit was reached.

As numbers suggest, the “extraordinary question” was an entirely different type of torture that produced a different kind of pain: Sentenac could withstand seven applications of it, and Vignes eight applications before the session had to be brought to an end. Sadly, we know a lot more about this second type of torment, because the “water question” used by the parlement de Toulouse as its extraordinary form of torture, has been used in a number of modern contexts—Algeria, Vietnam, Cambodia, Chile—in an almost identical form, and most recently at Guantanamo Bay and other U.S. detention facilities around the globe under the name “waterboarding.”<sup>585</sup> These modern uses of the “water question” have produced a number of testimonies from both tortured and torturers that are lacking for other kinds of early-modern

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<sup>585</sup> Other modern uses include that by Japanese troops and the Gestapo during World War II, French troops during the Algerian War, U.S. troops in Vietnam, and by the Khmer Rouge against political prisoners in Cambodia.

judicial tortures and allow us to better grasp the practice and how it was experienced on both sides. Sentenac and Vignes were laid down on a tilted bench, their body stretched, their mouth kept open with two sticks, their face covered with a cloth through which water was poured down their throat. Their experience of this torture must have been very close to that described by journalist Henri Alleg who was tortured in the exact same way by French troops during the Algerian War:

The rag was soaked rapidly. Water flowed everywhere: in my mouth, in my nose, all over my face. But for a while I could still breathe in some small gulps of air. I tried, by contracting my throat, to take in as little water as possible and to resist suffocation by keeping air in my lungs for as long as I could. But I couldn't hold on for more than a few moments. I had the impression of drowning, and a terrible agony, that of death itself, took possession of me. In spite of myself, all the muscles of my body struggled uselessly to save me from suffocation. In spite of myself, the fingers of both my hands shook uncontrollably. "That's it! He's going to talk", said a voice.

The water stopped running and they took away the rag. I was able to breathe. In the gloom, I saw the lieutenants and the captain, who, with a cigarette between his lips, was hitting my stomach with his fist to make me throw up the water I had swallowed.<sup>586</sup>

This “for a while,” those “few moments,” the detailed description that Alleg gave us, represent the tortured’s perception of a time that was in fact probably very short. Commenting on the waterboarding of Khalid Sheik Mohammed at Guantanamo Bay, a CIA official interviewed by ABC News reported that Mohammed “had won the admiration of his interrogators because it took him two-and-half minutes to start confessing—well beyond the average of fourteen seconds observed in others.”<sup>587</sup> While other CIA interrogators denied that Khalid Sheik Mohammed had lasted that long,<sup>588</sup> there seemed to be no question about the brevity of the average application of waterboarding, a fact corroborated by another testimony about the thirty-five seconds it took before Abu Zubaida—another Guantanamo Bay detainee—“broke down.”<sup>589</sup> The memorandum written in 2002 by the Assistant Attorney General Jay S. Bebee for John

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<sup>586</sup> Henri Alleg, *La Question*, Lincoln, NE: University of Nebraska, 2006 [1958], 49.

<sup>587</sup> Andrew Gumbel, "Confession of 9/11 backfires on U.S.," *The Independent*, 18 March 2007.

<sup>588</sup> Jane Mayer, "The Black Sites," *The New Yorker*, 13 August 2007.

<sup>589</sup> Dan Eggen and Walter Pincus, "FBI, CIA debate significance of terror suspect," *The Washington Post*, 18 December 2007.

Rizzo, then Acting General Counsel of the Central Intelligence Agency, confirms this estimate and specified:

Once the cloth is saturated and completely covers the mouth and nose, air flow is slightly restricted for 20 to 40 seconds due to the presence of the cloth. (...) During those 20 to 40 seconds, water is continuously applied from a height of twelve to twenty-four inches. After this period, the cloth is lifted, and the individual is allowed to breathe unimpeded for three or four full breaths. (...) The procedure may then be repeated. (...) it is likely that this procedure would not last more than twenty minutes in any one application.<sup>590</sup>

A later memorandum further specified the timing of each application and of an overall waterboarding session:

We further understand that in any 24-hour period, interrogators may use no more than two “sessions” of the waterboard on a subject—with a “session” defined to mean the time that the detainee is strapped to the waterboard—and that no session may last more than two hours. Moreover, during any session, the number of individual applications of water lasting 10 seconds or longer may not exceed six. The maximum length of any application of water is 40 seconds (you have informed us that this maximum has rarely been reached). Finally, the total cumulative time of all applications of whatever length in a 24-hour period may not exceed 12 minutes.<sup>591</sup>

The seven and eight applications that Sentenac and Vignes, respectively, could withstand seem to be in line with those modern observations, and more generally, it seems that the timings and numbers given by CIA officials can be applied to the early-modern practice of the “water question” in Toulouse.

The point to note here is that the recording of the “physical part” of a torture session is always brief regardless of the time the application of pain actually took, whether lengthy (ordinary question) or shorter (extraordinary question). This brevity of the recording of physical torture is not due to some kind of judicial disgust or guilt toward the application of pain. Rather, the brevity of the recording is better—and more simply—explained by the fact that there was actually very little to record. This in turn, can only be explained if we do not focus exclusively on the question of pain but try to remember instead that physical torture was an integral part of a larger practice—judicial torture—made up of interconnected

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<sup>590</sup> Jay S. Bybee, "Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency," ed. Office of the Assistant Attorney General 2002, 3-4.

<sup>591</sup> Steven G. Bradbury, "Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, Re: Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees," ed. Office of the Principal Deputy Assistant General 10 May 2005, 8.

stages and practices. As I have already explained above, this larger practice began with a particular kind of interrogation that effectively took “questioning” out of the equation of physical torture. I mentioned before that this interrogation functioned as a rehearsal, but in fact it did more than give a preview of a later verbal exchange. The interrogation pre-empted this verbal exchange that the pain experienced by the tortured made virtually impossible, it evacuated most of the verbal from physical torture. The verbal “exchange” that took place during the physical torture of the suspect was necessarily minimal because of the physical and mental distress of the tortured, and the preceding interrogation was meant to make the most out of this minimum. Thanks to that earlier interrogation, the judge did not have to utter many elaborate questions during the application of pain: he merely had to refer back to the questions already asked before the suspect was tied up. The suspect too could—or so the judge hoped—refer back to this earlier stage: the judicial narrative previously unfolded before him despite his denials contained the ready-made answers that could put an immediate end to his pain. Therefore, the goal of physical torture was not so much, as the magistrates put it in their judgments, “to extract the truth from [the suspect’s] mouth” or, as some have argued by extension, to extract a truth that judges believed to be hidden in his body.<sup>592</sup> Rather, the goal was to bend the suspect’s body as close as possible to a breaking point at which his mouth would accept to repeat a truth that was already out, for it had already been spoken by the judge a few minutes earlier.

This approach reduced physical torture to the bare essentials, so to speak: each application of pain was followed by a short question and a short answer, which is probably all that the suspect could take and give because of the physical and mental distress caused by pain. For instance, after Vignes underwent the first application of the “water question,” d’Ambelot simply “exhorted him to declare whether he was guilty of the poisoning and who his accomplices were.” This was a clear reference to, in fact an exact repetition of the interrogation that had immediately preceded Vignes’ physical torment. It was an obvious invitation to repeat the judicial narrative previously denied in order to avoid a second application of pain.

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<sup>592</sup> Silverman, *Tortured Subjects : Pain, Truth, and the Body in Early Modern France*, 81.

Instead, Vignes answered “no, and that he had said the whole truth, that he had not put the poison in the broth and did not know who had done it.”<sup>593</sup> This refusal to adopt the judge’s narrative led to a second application of the water question, followed by the exact same question and an even shorter answer: “he said he had told the truth.”<sup>594</sup> The judge then adapted his short questions to the accumulated exhaustion and distress Vignes had already experienced at that point and which, hopefully, would bring him closer to providing the answer that was expected of him. D’Ambelot’s reference to the earlier interrogation remained short but became even clearer as he “exhorted [Vignes] to tell if it wasn’t true that Sentenac had sent the poison.” Vignes’ answer was equally short for he replied that “he only knew it by hearsay and that he didn’t suspect anyone.”<sup>595</sup> With the fifth application of the water question that followed this denial, the limit recommended today by CIA interrogators was reached, but the early-modern judge kept going. From that point on however, the application of pain was not any longer followed by pointed questions but by the simple exhortations “to tell the truth,” and the sequence was repeated until it was recognized that the suspect had been pushed to his physical limit.

While the decision to put an end to the torture session rested with the judge, the magistrate was not the one evaluating the physical state of the suspect. This evaluation was left to the executioner and his team—his servant and two guards—who informed the judge that “the water question was complete.”<sup>596</sup> This division of labor allowed the judge to operate within a purely judicial sphere, as removed as possible from the body of the suspect and the pain that was applied to it. The physical dimension of torture, its application, the scrutinizing of its effects on the body of the suspect, were left to a team of experts who specialized in pain. Conversely, those experts of pain were kept within a purely physical sphere, disconnected from the judicial aspect of torture, seemingly unconcerned with and unaware of the ins and

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<sup>593</sup> “*descouvert* [i.e. from the cloth that had covered his face] *et exhorté de déclarer s’il n’est coupable dud. empoisonnement et quelz sont ses complices, a dit que non et avoir ditte la verité, n’avoir mis led. poison ny ne sçait quy l’a mis dans lesd. Bouillons.*” ADHG, 2B 2899, Verbaux de question donnée à Pierre Centenac et à Simon Pierre Vignes dit Laroche (June 23, 1685).

<sup>594</sup> *Ibid.*

<sup>595</sup> “*descouvert et exorté de dire la verité sy se n’est Centenac quy a baillé led. poison, a dit ne le sçavoir que par ouy dire et qu’il ne soubçonne personne.*” *Ibid.*

<sup>596</sup> “*ayant apareu lad. question de l’eau estre complaite ainsy que led. executeur et gardes ont dit.*” *Ibid.*

outs of the trial, deaf to both the questions asked and the answers provided. In the records of the court, the role of those men appears to be limited to applying pain when the judge required it and to repeat the process independently from the direction the questioning took and until they recognized that the suspect's body could not withstand any more pain.

A number of modalities and requirements were specifically designed to enforce this separation between experts of pain and experts of truth, thus allowing the torturer and questioner to act separately, as if blind to one another's presence and practices. First, the modalities of the torture session attempted to limit as much as possible the amount of time the executioner's team spent in the room together with justice officials. In a clear assertion of their separation from the judicial dimension of the practice, the executioner and his team were kept out of the room during the whole interrogation process that preceded the physical stage of torture. Their entrance in the room, summoned by the judge, was the sign that this previous stage was over and that the re-enactment of the judicial dead-end that justified the use of force was complete: "having seen that the said Sentenac persisted in his denial, ordered the executioner and the guards to enter."<sup>597</sup> This exclusion from the recounting of the factual elements on which the judicial narrative rested, was meant to ensure that the executioner and his men would remain as foreign as possible to the cognitive dimension of judicial torture as a practice. Of course, this exclusion was to remain fictional to a certain extent, for the questions asked by the judge during the physical torment of the suspect—despite their brevity and the ellipses that the preceding interrogation allowed—were bound to expose at least some specific elements of the judicial narrative that torture sought to seal. As if to both acknowledge and overcome this difficulty, the first thing that was asked of the executioner and his team upon their entrance was to swear an oath, "their hand raised to the image of the passion of Christ," to "do their duty and not to reveal the secrets of justice."<sup>598</sup> Thus, the torture team was to act on the body of the suspect and remain deaf to anything but the requests of the judge to proceed or stop physical torture.

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<sup>597</sup> *"Et voyant que led. Sentenac percistoit dans sa negative auroit esté commandé a l'executeur et gardes d'entrée [sic.]" Ibid.*

<sup>598</sup> *"après le serement par eux presté la main levée a la passion figurée notre seigneur auroient promis de faire leur devoir et ne point reveler les secrets de justice." Ibid.*

Conversely, the judge limited his involvement in the physical torture of the suspect to his communication with the executioner. This communication between judge and executioner was itself extremely limited and sought to maintain a strict division of the torture labor between the two men. The goal of this division was to help the question/answer/torment cycle move along. Although the judge and the executioner worked toward this common goal, their respective contribution to this collaborative process was strictly limited to their own sphere of expertise. Thanks to a euphemism (“apply the first two buttons of torture”)<sup>599</sup> the judge was able to order the executioner to begin the torture without referring to the specificity of the physical torment. I argue that this avoidance of specific references to the physical modalities of torture was not a reflection of the judge’s moral reluctance to speak of bodily torments. Rather, it was a manifestation of an overall attempt to maintain a separation between the cognitive and physical dimensions of torture in order to cast the two areas as the separate objects of two distinct fields of expertise. As an expert of the production and assessment of bodily pain, the executioner proceeded to translate the euphemistic order of the judge into physical acts: he “duly prepared Sentenac, attached him and elevated him” and, together with his team, began to apply the ordinary question for the first time.<sup>600</sup> From that point on, verbal communication between the judge and the executioner temporarily disappeared from the records. It did so because the verbal exchange between them was in fact suspended as it became unnecessary. As the executioner beat the legs of Sentenac while his valet and the guards stretched him, the judge could see for himself, hear for himself, that the physical torture he had not named was under way and that the time had come to ask his question. When Sentenac denied the guilt that was proposed to him in this interrogative form, a simple gesture from the judge—a nod, a movement from the hand (see Illustration 23 and Illustration 24)—sufficed to let the executioner know that the question/answer sequence was over and to proceed with the next application of pain.

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<sup>599</sup> "*appliquer led. Sentenac aux deux premiers boutons de question*" *Ibid.* The origin and exact meaning of the word "button" is uncertain. It is best translated by "application."

<sup>600</sup> "*led. executeur ayant mis led. Centenac en estat, attaché et eslevé*" *Ibid.*



**Illustration 23: The Question (1531)<sup>601</sup>**

**The judge (sitting at the table next to the scribe) appears to be gesturing to the executioner across the room.**

<sup>601</sup> Facsimile of a 1531 engraving in the "Bamberg Penal Code." (New York Public Library, Mid-Manhattan Picture Collection/Punishment Torture).



**Illustration 24: Torturae Gallicae Ordinariae (1541)<sup>602</sup>**  
The judge sits in the back of the room and, as in Illustration 23, appears to gesture. This gesture is intended for the executioner in the lower right corner, the only person in the room who is looking at the judge at that moment.

As I explained above, this cycle was repeated until the suspect had reached his physical limits.

The judge, however, was not in charge of evaluating the physical state of the suspect, and the way in

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<sup>602</sup> Jean de Milles de Souvigny, *Praxis criminis persequendi, elegantibus aliquot figuris illustrata*, Paris: apud A. et C. les Angeliers, 1541, 61.

which the decision to stop the questioning session was reached is another illustration of the division of the torture labor between judge and executioner. During the second application of the ordinary question, Sentenac did not utter a single word because—as the judge could surely see for himself—he had fainted. In a rare recording of a statement from the judge on the physical state of a suspect, the scribe wrote down—note the direct voice—that “he did not answer anything, as it appeared to *us* [my emphasis] that he had fallen into weakness [i.e. fainted].”<sup>603</sup> As other scribal slips of this kind in this record indicates, this “us” is the judge addressing the scribe, who eventually failed to systematically translate the direct voice of the magistrate from the rough notes taken during the torture session into the indirect voice of the final judicial record.<sup>604</sup> This “we” then is d’Ambelot, and maybe by extension his fellow capitouls present in the room.

Despite the judge(s) realization that Sentenac had lost consciousness, the torture session did not end immediately. Instead, in order to remain within their knowledge-oriented field of expertise, they declared out loud what everyone present already knew because the cries had stopped and the torture chamber was suddenly silent: that the suspect had not answered. This observation, uttered out loud and formally intended for the scribe, was not meant for the record only, it was also directed at the executioner to let him know that this question/answer sequence was complete. This was the sign that the torture session was moving again from an interrogation sequence to a pain sequence, in other words was passed from the hands of the judge to the hands of the executioner. Only then did the executioner offer his assessment of the physical state of suspect—an assessment that any non-expert could have made—Sentenac had fainted—and reported to the judge that “the first two buttons of question” had been completed. This in turn, sent the torture process back to the judge who made the judicial decision that rested with him only: to end the torture session, untie Sentenac, send him back to jail and resume the torture on the following Monday (June 25, that is, two days later) at the same hour.

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<sup>603</sup> *"il n'aurait rien répondu, nous ayant apareu qu'il estoit tombé en foiblesse." (Ibid.)*

<sup>604</sup> The best illustration of those slips is when the scribe wrote “our scribe,” obviously an exact transcription of the judge’s words that should have been altered into an indirect voice in the final record.

Thus, the judge and the executioner kept resorting to a regulatory template of judicial torture that divided the session into clearly separated sequences of questions and applications of pain. Each type of sequence was the exclusive territory of one expert—the judge or the executioner—who, alone, was allowed to make assessments and decisions—, even when these assessments were plainly obvious and did not seem to require any expertise (for instance when Sentenac had fainted and the torture session had to end). The most powerful illustration of the absolute respect for this alternation of sequences in the torture chamber is found in this quasi-Kafkaesque moment, when next to the body they had just tormented into unconsciousness, judge and executioner kept following a regulatory template to assess the self-evident fact that the session had ended.

I argue that this stringent compliance with the rules of judicial torture was aimed at demonstrating the objectivity of the practice and that this demonstration was primarily directed at the judges themselves. This was a diversion of the original purpose of those rules which, in an earlier time, had been meant primarily to ensure that judicial torture functioned as an effective truth-seeking practice.<sup>605</sup> I argue that by the end of the seventeenth century, while judges had come to doubt the effectiveness of judicial torture as a truth-seeking practice, those rules had been maintained because they ideally served the new truth-asserting purpose of the practice. These rules indeed had the potential to manifest the objectivity of a new way of producing truth, not through its extraction from the body of the suspect, but through the articulation of an already established narrative of the guilt of the suspect.

Maybe more fundamentally, what made the rules of judicial torture amenable to this epistemological repurposing—from truth-seeking to truth-asserting—was what appeared, on a quasi-aesthetic level, as the “scientific” quality of the procedure that those rules organized. From this point of view, what mattered was the form of the rules of judicial torture, not their purpose. Whether the magistrates imagined that the rules of torture were intended to ensure the legal validity of the interrogation, extract truth from the body of the suspect, or assert a pre-established judicial narrative, their

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<sup>605</sup> Claude Gauvard, *"De Grace especial" : crime, état et société en France à la fin du Moyen Age*, Publications de la Sorbonne. Histoire ancienne et médiévale, 24, Paris: Publications de la Sorbonne, 1991, I, 153-63.

high degree of respect for the strict template of judicial torture gave to the practice the features of a careful, repeatable procedure. This empiricist cachet was furthered by the strict division of labor between experts that those rules produced, and by the exclusively knowledge-oriented work that this division entailed for the magistrate. My analysis of the torture of Sentenac and Vignes illuminated this division of labor between executioner and interrogator and I have further suggested that the effect of this division was the drawing of a clear delimitation between fields of expertise. I would argue here that this effect had become the main goal of torture, and explains, at least in part, that torture was maintained as a judicial practice after it had become clear to everyone—and primarily to the magistrates—that it was an unreliable truth-seeking practice. The judges' relative lack of interest for the answers of the tortured can be explained by the fact that what was at stake in the torture chamber was not the truth of the case, but the knowledge-practices of the judges and more generally judicial epistemology. In that sense, judicial torture remained a truth-oriented practice for it was a self-directed discursive practice, one could almost say a narcissistic judicial practice, that aimed to reassert the ability of judges to discover and state the truth.

The tortured, who, at first sight, seems to occupy center-stage, was in fact irrelevant. The truth of the particular case investigated did not matter much either when considered from the perspective of sovereign justice. Cases such as the one analyzed above were problematic, however, because they could suggest that, despite the *conseillers'* claim about the divine origins of sovereign justice and of their judgment,<sup>606</sup> truth eluded them. This was a far more serious issue than the guilt or innocence of Sentenac and Vignes, for it challenged very directly the absolutist ideology that underlay the theory of sovereign justice. Judicial torture addressed this problem for it allowed the magistrates to re-assert their epistemology. The strict compliance with a template that made the practice a repeatable procedure, and the division of labor that asserted the magistrates' monopoly over truth-related practices, combined to make torture an epistemologically reassuring practice. As a truth-asserting practice judicial torture could not fail: in some sense, the tortured was an object, a mere accessory to the deployment of the judges'

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<sup>606</sup> See Chapter 2, p. 89.

narrative of truth. His answers were irrelevant to the unfolding of that narrative that had been constructed in the private study of the judge, on the basis of a solitary review of the proceedings. The judge remained in control of this narrative from the beginning to the end of the torture session: what validated this narrative in the torture chamber was not the confession of the tortured but compliance with the rules of torture, the strict following of the template that the *assesseur* witnessed and which the scribe seemed to record more precisely than the words of the suspect.

Thus, torture was still used at the end of the seventeenth century because it did make cultural sense to the judges as Silverman argued. It did make cultural sense, however, not primarily as a truth-seeking practice congenial with the magistrates' culture of pain, as Silverman argued, but as a truth-producing practice that fit the judges' evolving professional epistemology. As the study of practice reveals, judicial torture related to truth in more than one way. At the end of the seventeenth century, it remained in theory and on the surface a truth-seeking practice. Its organization around sequences of questions and answers made it seem like a practice geared toward the discovery of truth, a discovery founded upon extraction from the suspect. Several elements in the case reviewed here, however, suggest that this truth-seeking dimension of the practice was—or had become—secondary at the very least. My analysis of the interrogations under torture of Sentenac and Vignes showed indeed that the suspects' answers were secondary, if relevant at all to the progress of the torture session. The answers of the tortured did not seem to bear in any way on the course of a questioning that remained focused on developing a particular narrative of Sentenac and Vignes' guilt.

In that respect, the questioning of Sentenac and Vignes under torture is similar to the interrogation which Chovin underwent twice on the day of his execution. This similarity is the first sign that all three men were in fact treated as convicts at the moment of an interrogation that functioned as a truth-articulating rather than a truth-seeking practice. This is the key to understanding why Chovin was sentenced to death and Sentenac and Vignes were tortured despite the fact that there was no fundamental difference—from a strictly legal point of view—in the “amount of proof” gathered against them. Sentenac and Vignes were not tortured because the *conseiller* Fermat was less sure of their guilt than that of Chovin

and needed to further seek the truth. Chovin was executed and Sentenac and Vignes were tortured because in accordance with the judicial narrative exposed during their interrogations, they had assumed different roles in the crime. The respective interrogations of the three men functioned as three different vantage points on the same judicial narrative: Chovin was guiltier because he had committed the crime by pouring the poison in the broth, Sentenac and Vignes were accessories to the crime because they had provided the poison but had not committed the crime with their own hands. The decision to torture Sentenac and Vignes is best explained if we consider that their physical torment was not meant to help the judge find truth but because judicial torture fulfilled other important functions.

One of those functions was undoubtedly punitive: judicial torture allowed the judges to carry out a corporal punishment that matched the suspect's criminal responsibility according to a truth which was already reached albeit not fully supported from a legal point of view. The 1685 case reviewed above illustrates plainly that the *conseillers* did not actually seem to need a disguised death sentence to condemn suspects to capital punishment when they did not have a full proof: Chovin, like many others before and after him, was hanged without a confession nor even one eyewitness. We will never know for sure why the Parlement's attitude toward Chovin was so radically different from that of the *procureur* in Nîmes who had recommended a complete acquittal. Maybe the *conseillers* had a contrary interpretation of Chovin's self-incriminating answers, maybe they were not even convinced of his guilt but pronounced a death sentence because he had become an obvious and convenient scapegoat as the proceedings started to suggest that a client of the *intendant* of Languedoc—the sire de Vercloses—might be the prime suspect behind the crime. More interestingly and despite this difference between their respective conclusions, the *procureur* in Nîmes and the *conseillers* in Toulouse shared in a similar attitude toward the law of proof. In both cases, the magistrates had either bent or ignored the law of proof to reach their conclusions. The *procureur* had used his psychological portrait of Chovin to circumvent the requirement that he be tortured ; the *conseillers*, possibly thanks to their status of supreme judges whose sentences could not be reviewed

and did not even need to be motivated,<sup>607</sup> went further and simply disregarded the law of proof which, in the absence of a full proof, should have barred a death sentence.

We can assume then that if the *conseillers* wanted to execute Sentenac and Vignes, they could have just sentenced them to death like they had done for Chovin. They did not, and I have suggested above that they decided not to, not because they had doubts about the two men's guilt, but because what they understood to be the role of those two suspects in the crime did not to deserve death. Why sentence them to judicial torture and not to the galleys then? My analysis of their torture as a judicial practice—that is, as one link in a longer chain of a judicial proceeding—suggested that one aspect of the answer to that question is that while the judges used torture as a form of punishment they did not consider it an exact equivalent to a sentence to the galleys.

The analysis I have just offered corroborates John Langbein's view that a long time before judicial torture was abolished in France (1788), royal magistrates had already ceased to think of it as an effective truth-seeking practice.<sup>608</sup> My analysis, however, is also sympathetic to Lisa Silverman's challenge to Langbein's argument: while the new *code criminel* of 1670 made the old law of proof irrelevant, magistrates kept resorting to torture and they did so because it made cultural sense to them. My disagreement with Silverman's argument is about how judicial torture still made cultural sense to royal magistrates after, and possibly before the 1670 reform. In fact, this is where my analysis of torture as a practice leads me to disagree with a view that both Silverman and Langbein share: that judicial torture was and remained primarily a truth-seeking practice. Langbein thinks as I do that magistrates started doubting the effectiveness of judicial torture early on—I would argue maybe as early as the second half of the sixteenth-century. Silverman does not depart from this view of judicial torture as a truth-seeking practice, for she argues that magistrates kept using torture even after new laws allowed them to circumvent the old law of proof because they still believed that inflicting pain was an efficient way of

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<sup>607</sup> See Chapter 8.

<sup>608</sup> Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime*, .

extracting a truth that resided in the body of the suspect. On the basis of the analysis I have offered above, I think that Silverman is mistaken on this point: the magistrates who tortured Sentenac and Vignes in 1685 did not seem to believe that they would extract truth from the two men's body, they did not even seem to think that their answers were relevant, for they had already decided what the truth of the case was. The magistrates however, did resort to judicial torture because, as Silverman posited, it made cultural sense to them, and as Silverman posited as well, it made sense to them because judicial torture retained an epistemological dimension. But to the 1685 magistrates, the function of judicial torture was not to help discover truth, but to help assert a truth that had already been discovered and to stabilize a judicial epistemology that had been shaken by its failure to produce absolute evidence of the truth it put forth.

In other words, the physical torture of the suspect was a statement about the objectivity of judicial practice. This assertion of judicial objectivity occurred precisely at a moment when it had been jeopardized by a tension between the judges' conviction and the failure of their knowledge practices to secure positive evidence of the validity of that conviction. In that sense, judicial torture was a routinized practice that was not principally aimed at the extraction of truth from the body of the suspect but at the demonstration of the objectivity of judicial epistemology. This demonstration was the judges' practical attempt to sublimate the imperfection of their own knowledge practices in the face of a truth that they failed to grasp positively.

Thus, I argue that in the seventeenth and eighteenth centuries judicial torture was still used to deal with rare criminal cases in which truth appeared to be elusive, but that a shift in the judicial conception of truth led to changes in the purpose of the practice and to the decline of its use. As judges no longer felt bound by the requirement of the law of proof that a full proof was needed to condemn suspects in capital cases (a change in attitude that the 1670 *code criminel* simply ratified), obtaining a confession became a

secondary goal of judicial torture. The already very low rate of confessions in the mid-sixteenth century<sup>609</sup> suggests that this shift occurred early: those numbers indicate that either obtaining confessions had already become a secondary goal of judicial torture or that it remained its main goal but that the judges were highly ineffective in reaching that goal. The latter case seems unlikely: in the face of extremely low confession rates that they could not ignore, it is difficult to imagine that the magistrates would keep sentencing suspects to torture simply motivated by the naive hope that they might be lucky for once and secure one of those rare confessions. It seems more likely that the magistrates knew that judicial torture was an ineffective truth-seeking practice but kept resorting to it because it fulfilled other purposes in a small number of criminal cases. I have argued that there were at least two connected purposes: to assert the judicial narrative of a guilt that could not be proven and to carry out a corporal punishment that was proportional to that guilt. The judges' first goal was to overcome a moment of epistemological instability provoked by their failure to secure positive evidence of guilt. In that sense, torture was a judicial practice that allowed the judges to redeem the failures of judicial practices deployed earlier in the case. Torture could help perform this epistemological redemption because its specific modalities gave to the judges a legal framework to validate a judicial truth which facts had pointed to but refused to prove.

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<sup>609</sup> Alfred Soman argued that between 1565 and 1640 the confession rate under torture in the Parlement de Paris was inferior to 1% (Alfred Soman, "The Parlement of Paris and the Great Witch Hunt (1565-1640)," *The Sixteenth Century Journal* 9-2 (1978): 41).

## CHAPTER 7.

### ARTICULATING TRUTH: *RAPPORTER*, *DÉLIBÉRER*

*Conseillers* in the Parlement reached and formed their judicial sentences through the articulation of two interdependent practices: that of reporting (*rapporter*) and that of deliberating (*délibérer*). Those two practices were strictly interdependent because they were always performed in tandem. The *rapport* of a *conseiller* always led to a deliberation, and, conversely, *conseillers* never made a decision without a preceding *rapport* that served as the beginning point of their deliberation. As we will see below, *parlementaire* deliberation was a particular judicial practice designed to create—one could even say force—the unanimity of the judges on one specific judicial truth, supported by one specific judicial narrative, exclusive of all other alternative narratives. *Rapporter* was inseparable from *délibérer*, because the *rapport* provided the court with a foundational judicial narrative from which the selective process of deliberation started, leading to the singling out of an exclusive judicial truth.

#### *Le métier de rapporteur*

This initial judicial narrative, the *rapport*, was produced by the *conseiller* who had been appointed *rappporteur* of the lawsuit on which the court deliberated.<sup>610</sup> The importance of the *rapport* was such that the central government considered the *conseillers*' ability to report an essential yardstick to evaluate their overall professional capacity as judges. Beyond the idealized figure of the perfect magistrate often conveyed and developed in normative sources—and particularly in the preambles of the *grandes ordonnances* for the reformation of justice—the king and his council considered from a much more pragmatic perspective that the good judge was first and foremost a *bon rapporteur*. This view is aptly illustrated by a series of reports that *intendants* wrote in 1663-1664 to Jean-Baptiste Colbert, then

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<sup>610</sup> About this appointment, called "distribution," see Chapter 5.

principal member of the *Conseil royal des finances*. In 1663, Colbert required all *intendants* in the provinces to secretly inquire about all the magistrates (*presidents, conseillers, gens du roi*) of the “*cours supérieures*” (that is, *Parlements, Chambres des comptes, Cour des aides, Cour des monnaies*) and report back to him. While Colbert’s questionnaire is now lost, the reports have been preserved and edited<sup>611</sup> and the *intendants*’ answers allow us to infer the kind of information the minister was eager to obtain. While Colbert and the king were—not surprisingly—interested in assessing the political loyalty of the magistrates,<sup>612</sup> they were also genuinely concerned with the ability of the magistrates to properly administer justice. In their answers to Colbert, the *intendants* used two main criteria to assess the judges’ professional aptitudes. The first criterion relied on the admittedly vague concept of “*métier*” that we can loosely translate by “experience in the trade [of justice].” In the case of the Parlement de Toulouse, Claude Bazin de Bezons, the *intendant* for the province of Languedoc at the time, wrote for instance that the president Caulet “understand the trade” (“*entend le métier*”), the president Puget “doesn’t understand it very well” (“*ne l’entend pas des mieux*”) because “he entered it late [in life]” (“*il [y] est venu tard*”), the conseiller de Puymisson “is not meticulous in the trade” (“*[n’est] pas appliqué à son métier*”), on a somewhat different note the conseiller Cambolas, although “well-read in the [legal] doctrine” (“*de grande doctrine*”), “is not, however, the most skillful in the trade” (“*n’est pas pourtant des plus habiles dans le métier*”), as opposed to the conseiller Frezal “skilled in the trade” (“*habile dans son mestier*”). This hint that legal erudition was not necessarily synonymous to judicial aptitude is interesting,<sup>613</sup> but the notion of *métier*, which could encompass the whole range of *parlementaire* judicial practices, is admittedly too

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<sup>611</sup> Georges-Bernard Depping, *Les Parlements à l’avènement de Louis XIV*, 4 vols., vol. 2, Correspondance administrative sous le règne de Louis XIV, Paris: Imprimerie nationale, 1850-1855, 111-7.

<sup>612</sup> These questions asked by Colbert can be broken down into two broad categories that reflect the central government’s two main concerns with the court. The first category of questions that we can deduce from the answers provided by the *intendants* highlight the political concerns of the central government for they mainly sought to establish the kind of leverage the king could exert on the magistrates: were they devoted to the service of the king? What *clientèle* network did they belong to? Who had influence on them? What was the basis and level of their fortune? One can only guess that these questions were all meant to identify the magistrates who were most likely to be pressured, one way or another, to muster a group of supporters in case the courts decided to oppose the king’s decisions and policies. This first category of questions is obviously subservient to the central government’s concern with the sovereign courts’ potential to political obstruction, a concern that would lead eventually to the reformation, in effect the cancellation, of the *droit de remontrance* (1673).

<sup>613</sup> It confirms the insider view of La Roche-Flavin on this particular question. See Chapter 2.

vague on its own to be helpful to us here. Tellingly, however, the *intendants* brought up only one judicial practice encompassed by this notion of *métier*, that of *rapporter*. We cannot know for sure whether Colbert had specifically asked the *intendants* to report specifically about this practice, but at the very least we can be certain that *rapporter* was the only judicial practice the *intendants* deemed worthy of attention. *Intendant* de Bezons' occasional elaborations on his basic assessment of *conseillers* as *bon* or *mauvais rapporteurs* are more particularly interesting to us here. While de Bezons wrote, for instance, that the *conseiller* Lestang “reports badly” (“*rapporte mal*”), he added, in the case of the *conseiller* Viguerie that “he knows the law but is confused” (“*[il] sçait le droit, mais [est] confus*”). Likewise, the mathematician Pierre de Fermat, who was then *conseiller* in the *Grand Chambre* in Toulouse and whose intellectual aptitude cannot be called into question, was indeed “very erudite” (“*a beaucoup d’érudition*”) but “[was] not a very good *rappporteur* and [was] confused” (“*n’est pas trop bon rapporteur et est confus*”).

What did *rapporter* consist in? Why would it require more clarity than erudition? And why did it seem to be such a key practice in the eyes of the central government? *Rapporter* was a two –stage process, divided between the preparation and the presentation of the *rapport*. The longer, preparatory stage took place in the private study of the *rappporteur*, where the *conseiller* would review the documents contained in the *sacs* that had been entrusted to him by the *greffier*.<sup>614</sup> This review had several goals, set by the requirements of the presentation the *rappporteur* would have to make to his chamber in the *Palais*. While this presentation was oral, it necessitated the drafting of three documents that constituted the basis of the *conseiller’s rapport*: a summary of the case known as the “extract” (“*extrait*,” also called “*bref*”), a reasoned analysis of the legal points around which the case revolved, and a draft of the sentence that the *rappporteur* would personally recommend on the basis of that analysis. The legal issues the *rappporteur* researched and formulated in his analysis, as well as the legal decision he proposed to the court to resolve the case under review constituted his *rapport*. Thus, the role of the *rappporteur* was a pivotal one in the overall judging process: as the magistrate with the most detailed knowledge of the case and of the

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<sup>614</sup> About the *sacs* see Chapter 3, p. 160 above.

documents produced upstream of the proceedings, the reporting judge mediated between the case and the court, he personally selected the facts of the case that he deemed worthy of judicial attention, and translated them into legal statements that served as the basis for his recommendation of a specific sentence to his colleagues.

Thus, *rapporter* was a key judicial practice because it operated at the junction between inquiring and decision-making. It was a key practice from the point of view of the procedure for no sentence could be reached and issued without it. It was also a key practice in relation to judicial epistemology for it operated at the intersection between the truth-seeking and the truth-speaking practices of the *conseillers*. Despite this key role from both a procedural and epistemological point of view, however, the practice of *rapporter* has received very little scholarly attention thus far. This lack of attention can be explained first by the fact that no *rapport* has survived in the archives and that the practice is barely visible in the other official documents left to us. The main reason for this absence in the courts' records is also very simple: *rapports* never made it to the archive because they were not official documents: they remained the private property of the *conseillers* who drafted them. This almost complete invisibility of the *rapport* reveals something about the nature of the practice: *rapporter* was purportedly excluded from the records of the court. This intended erasure was not meant to keep *rapporter* hidden from outsiders to the court. In fact, the only reference to the practice systematically found in the documents of the court—the recording of the *épices* in the margin of the registers of *arrêts*—indicates that litigants were fully aware—and often painfully aware since they had to pay those *épices*—that a *conseiller* had been appointed *rapporteur* of their lawsuits and played a key role in the resolution of the case. As I mentioned before, litigants were so keenly aware of the existence of the *rapporteur* and of the importance of his role that they did not hesitate to mobilize their clientele networks to lobby the judges (and more particularly the presidents who oversaw the distribution of the cases) so that a favorable *conseiller* would be appointed to their case.<sup>615</sup>

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<sup>615</sup> See Chapter 5, p. 247 above.

If *rapporter* was a well-known practice within and outside the court, why then was it virtually invisible in the documents of the court? I would suggest for now—and will further argue later—that *rapporter* was erased from official documents because the authority of the particular kind of truth it helped articulate, the revealed truth of the *arrêt*, was dependent on a masking, almost a denial, of the truth-seeking practices (what we can call doubting procedures) on which it was based.<sup>616</sup> Although this absence in the documents prevents us from studying directly *rapporter* as a practice, it does reveal important features of the practice: its individual, quasi-private character and its problematic relationship to the particular truth-speaking practices of the Parlement.

In addition, a number of other sources, produced outside the court, allow us to go beyond those preliminary observations and further analyze the practice. First of all, as in the case of *distribuer* and *épicer*, a number of royal laws that sought to regulate or reform *rapporter*, allow us to describe the practice in simple terms. Again as well, Bernard de La Roche-Flavin's *Treize livres* is a very valuable complement to this description of the practice drawn from *édits* and *ordonnances*. This normative representation of *rapporter* can be further completed thanks to dictionaries, glossaries, and *répertoires* that shed light on the modalities of *rapporter* and its conception as an important element of the judges' professional identity. Finally, two documents authored by *conseillers* in the Parlement de Toulouse, Jean de Coras's *Arrêt mémorable* (1562) and Guillaume de Ségla's *Histoire tragique* (1613),<sup>617</sup> open two unique and complementary windows on a number of otherwise invisible judicial practices, including and especially that of reporting. Those two texts, exposing two different criminal trials, serve as my basis to both further specify the modalities of *rapporter* as a practice and demonstrate how it worked as a pivot between the truth-seeking and the truth-speaking practices of the *conseillers*.

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<sup>616</sup> See “*Délibérer*” below in this chapter.

<sup>617</sup> Coras, *Arrest memorable du Parlement de Tholose contenant une histoire d'un supposé mary, advenüe de nostre temps: enrichie de cent et onze belles annotations. Par M. Jean de Coras, Conseiller en la Cour, & rapporteur du procès. Prononcé ès arrests généraux, le XII septembre 1560* ; Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose.*

*Ordonnance, édits, and mercuriales* that sought to regulate or reform *rapporter* do not give us a complete picture of the practice and its modalities. They do give us, however, some valuable information on those aspects of the practice that were of concern to the central government. A number of royal laws from the mid-fifteenth century on allow us to further specify what the *intendants* meant in 1663-4 when they described a *conseiller* as *bon* or *mauvais rapporteur*. Royal attempts to regulate *rapporter* reflected two main concerns: the first one was relative to the material aspect of the production of the *rapport* and the second one was relative to the quality of its presentation to the chamber. Concerns over the material production of the *rapport* focused on two points: the requirement that the *rappporteur* personally produce his report and the transformation of the litigants' "productions" (the documents they included in their *sac*) into legal statement of facts at the hand of the *rappporteur*. The requirement that the *rappporteur* was to personally draft his report was repeated over and over from the mid-fifteenth century to the famous *ordonnance* known as "Colbert's Code of Civil Procedure" (1667), that remained in effect without any major change, at least on this point, until the Revolution. Articles concerning this question always emphasized the requirement that the *rappporteur* write his "extract" (*extrait*, also called *brevet*), that is the summary of the proceedings contained in the *sac*, "with his own hand."<sup>618</sup> The courts themselves repeatedly issued *mercuriales* to assert this requirement that the *rappporteurs* "summarize ("brevetter") with their own hand."<sup>619</sup> To ensure that this requirement would be met, the Parlement de Toulouse instituted new rules, using the leverage of the *épices* to force the *rappporteurs* to comply: the presidents would not award the *épices* "without seeing the *brevet*." As the *mercuriale* made clear, the *brevet* had to be written in the *rappporteur*'s own hand and dispensations would only be granted if this hand could not physically hold the pen because of the *conseiller*'s "great age or indisposition."<sup>620</sup> The repetition of the royal concern on this point reflected what must have had become a very common abuse among

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<sup>618</sup> This requirement is repeated in most *ordonnances* regulating the procedure of the Parlement, from Charles VII (1446, art. 13) to Louis XII (1507, art. 53), François Ier (1535, Chap. 1, art. 44) and Henri III (1586).

<sup>619</sup> 1582 *mercuriale* in the parlement de Toulouse, quoted in La Roche-Flavin, *Treze livres des Parlemens de France*, 571.

<sup>620</sup> *Ibid.*

*conseillers* who increasingly used their personal clerks to draft documents that they alone, because they personally held a share of royal sovereignty, were supposed to draft.

While the king could have frowned upon this symbolic usurpation of sovereign authority, the royal concern was mostly pragmatic. It was not a concern over secrecy, for the king knew very well that *rapporter* had to be a collective practice that the *conseillers* could not perform without the help of clerical auxiliaries to manage and navigate the mass of paperwork included in the sack. Therefore, it was accepted as a necessary evil that the “secrets of the court” had to be shared with a number of individuals who, although associated with members of the court, were not part of the *corps*. In fact, the requirement that the *rapporteurs* wrote their *brevet* in their own hand sought to prevent those auxiliaries from becoming the only ones with a detailed knowledge of the case the *conseillers* had to treat. Thus, the requirement was meant to limit the use of otherwise necessary research-assistants, to make sure that the *rapporteur* had a first-hand knowledge of the proceedings on which his presentation to the court was supposed to be based. This first-hand knowledge of the litigants’ “productions” was absolutely necessary because the *rapport* and its recommended sentence—that is, the foundation of the court’s deliberation and decision—had to be based on the legal points made by the litigants themselves.

This concern was also reflected in repeated royal regulations not just on the authorship of the *brevet* but also of its content. The *brevet* was a legal summary of the case, that is, according to the *ordonnance* of 1446, a digest that eliminated “the substance of the acts and documents” and only retained “in suitable words and terms the clauses and points of the acts that can serve the decision and judgment of the trials.”<sup>621</sup> As opposed to the *rapport* itself, the *brevet* was not to be interpretive in any way but on the contrary should allow each one of the *rapporteur*’s colleagues to “draw the substance, understanding and consequence that he will see fit, without being tied by that of the *rapporteur*.”<sup>622</sup> In addition to this form of objectivity, royal regulations concerning the content of the *brevet* promoted the twin ideals of accuracy

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<sup>621</sup> *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 149-65 (Charles VII, 1446, art. 126).

<sup>622</sup> *Ibid.*

and exhaustiveness. According to the ideal defined by the *ordonnances*, the *brevet* was to be so accurate that it could be used as a substitute for the original documents in case the *sacs* were lost.<sup>623</sup> The courts accepted this substitution because the *brevet* had to summarize all the documents and only the documents contained in the *sac*.

Several regulations had been devised to try and make sure that all the documents were included in the *brevet*. One of the requirements of *rapporteur* was that, on the day of his report, the *rapporteur* would bring back the *sacs* containing the original proceedings and put them on the desk (“*mettre sur le bureau*”) around which his colleagues sat. Thus, at any moment during the following deliberation each and any one of them could check any of the documents mentioned by the *rapporteur*. To ensure that the *rapporteur* had considered all the documents, two *conseillers* would, before the *rapporteur*’s presentation, read aloud the *inventaires* which, drafted by the litigants’ lawyers, plainly listed all the documents they had included in their productions.<sup>624</sup> Thus, the *brevet* could be matched to those *inventaires* but also, if need be, to any of the documents the *rapporteur* would refer to and that the same two *conseillers* in charge of the *inventaires* could read on request during the deliberation.<sup>625</sup> These regulations and procedures were obviously meant to prevent any omission on the part of the *rapporteur*, but the ideals of accuracy and exhaustiveness also demanded that the *rapporteur* did not add anything to what was contained in the *sacs*. Indeed, the judges were forbidden to “propose any fact, whether extolling or castigating either parties or the matter judged, nor any additional facts, other than those proposed by the parties in their proceedings.”<sup>626</sup> Thus, the *brevet* was a specific type of summary, one that reduced the documents

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<sup>623</sup> “*Quand les procès sont perdus, on adjoute autant de foy aux brevets écrits de la main des Rapporteurs, comme aux pieces*” (*ibid.*)

<sup>624</sup> “*Ordonnons qu’en jugant les procès, en chacune des chambres, et en la tournelle criminelle, les inventaires des parties soient veus et leus tout au long afin que rien ne soit omis qui face à la decision du procès qu’on jugera.*” (*ibid.*, art. 13).

<sup>625</sup> “*Ordonnons que les inventaires des parties ester feuement et entierement leus apr autre que le Rapporteur ; auquel deux de nos Conseillers assisteront, pour faire lecture des pieces et productions, et icelles verifier avec l’extraict.*” (*ibid.*, art. 126).

reviewed to the “facts” they contained, and those “facts” were to constitute the sole basis of the *rapport*, hence of the deliberation of the *conseillers*.

The word “fact,” however, is very misleading in this instance, for it suggests to the modern reader that *parlementaire* judicial epistemology was, or pretended to be, akin to a scientific epistemology because it operated on an exclusively “factual” basis. Before the middle of the eighteenth century, however, the word “*fait*,” had a specific and now lost meaning that indicated that the deliberative practices of the *conseillers*, far from being exclusively fact-based, were primarily argumentative. The “facts” that the *rapporteur* had to summarize in his *brevet*, are what modern French legal language calls “means” (*moyens*). Both the terms “facts” and “means” are best translated as “grounds” or “legal arguments,” that is, legal points that the litigants or their lawyers made intentionally and explicitly to prove their cause—or what by metonymy was called “their fact” (*leur fait*). In the same way the *rapporteur* in the Parlement was forbidden to “propose facts” not contained in the proceedings, the *rapporteur* in today’s Conseil d’Etat is not allowed to “raise means” (“*soulever des moyens*”) that lawyers had not included in their dossiers.<sup>627</sup>

This normative delimitation of the field of action of *rapporter* and *délibérer* illuminates two aspects of judicial epistemology as it was idealized in royal legislation at the end of the medieval period: royal judges’ knowledge practices were to be subservient to lay standards of conflict resolution and their function was to discriminate between opinions, not to deduce truth from an objective assessment of facts (this time in the modern sense of the word). The interdiction made to a *rapporteur* in today’s Conseil d’Etat to reason on “legal grounds” not previously “raised” by lawyers is justified by the requirement that judges operate within the rules and spirit of the adversarial system (“*le contradictoire*”). Despite fundamental changes in the French legal system since the fifteenth century, the guiding principle of this

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<sup>626</sup> “Deffendons à tous les Presidens & Conseillers de nos Cours, qu’en jugeant aucun procès ils ne dient, ny proposent aucuns faicts, soit à loüange ou vitupere des parties, ou de l’une d’icelles, ou de la matiere qu’on traicte ; ny autres faicts, que les faicts proposés par les parties au procès (...)” *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 248 (Charles VII, 1453, art. 115).

<sup>627</sup> Latour, *La fabrique du droit. Une ethnographie du Conseil d'Etat*, 35-6, n. 28.

adversarial system was already at the core of Old Regime law and procedure. The adversary system not only guided the interactions of lawyers (regulating the ways in which they responded to one another),<sup>628</sup> it also justified—as in today’s Conseil d’Etat—the confinement of the judges’ knowledge practices to a limited field of action. As the 1453 *ordonnance* explained in clear and simple terms indeed, the *conseillers* were not allowed to deliberate on “facts” ignored (intentionally or not) by the litigants because “the parties know or should know better than the judges the facts that they have to propose.”<sup>629</sup> In other words, if a litigant—or more likely his lawyer—had forgotten to propose a “fact” that could serve his client’s cause—for instance a legal irregularity in his opponent’s brief—the *rapporteur* and his colleagues were not at liberty to consider that “fact” to help him win his case. The interdiction made to the *conseillers* to identify their own “facts” in a trial meant that, despite the increased control and autonomy over the proceedings that the inquisitorial procedure gave them, they were still expected to act as arbiters between the parties, not as investigators in search of objective truth.

The other significant dimension of royal regulation on this point is that those “*faits*,” as I have suggested above, were expressions of subjective opinions rather than representations of objective facts. Contemporary definitions of the word “*fait*” and of the increasingly preferred term “*moyen*,”<sup>630</sup> as well as their older, non-judicial lexicographic origin shed light on the argumentative nature of this object on which the *conseillers* were supposed to exert their knowledge practices. In the medieval lexicon, *faits* were not any kind of opinions, they were the openly subjective and purposefully argumentative opinions found in an adversarial situation. In his *Dictionnaire de l’Ancienne Langue Française*,<sup>631</sup> Frédéric Godefroy translated the medieval word “*fait*” by the modern word “*parti*” used in expressions such as

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<sup>628</sup> See Chapter 3, p. 163 above.

<sup>629</sup> “*car les parties savent ou doivent mieux savoir les faicts qu’ils ont à proposer que les juges*” (*Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 248).

<sup>630</sup> The term “*moyen*” has definitely replaced “*fait*” by the end of the eighteenth century. The legal meaning of the term does not appear in the *Dictionnaire de l’Académie Française* until its 4<sup>th</sup> edition (1762). Even at a later date, one of the main legal dictionaries of the time, Guyot’s *Répertoire* (Joseph-Nicolas Guyot, *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale*, Paris: Visse, 1784-5), did not list “*moyen*” but retained “*fait*” in its entries.

<sup>631</sup> Frédéric Godefroy, *Dictionnaire de l’ancienne langue française et de tous ses dialectes du IX<sup>e</sup> au XV<sup>e</sup> siècle*, Paris: F. Vieweg libraire-editeur, 1881-1902.

“*hésiter entre deux partis*” (“to hesitate between two options”) or “*prendre parti pour quelqu’un*” (“to take somebody’s side”). Further underlining that the term designated opinions rather than facts, Godefroy noted as well that in the Middle Ages “*fait*” was synonymous with “faith” and “belief.”<sup>632</sup> It is from this original and general sense that a particular judicial meaning started to develop and was established well enough by the mid-fifteenth century to appear in an *ordonnance*. Around the same time, the word “*moyen*” had started to be used concurrently with this same meaning of a legal argument formulated in support of a specific judicial claim.<sup>633</sup> As the modern meaning of “*fait*” as objective fact increasingly imposed itself in the general language in the course of the next three centuries—no doubt as a result of the development of natural philosophy—the word “*moyen*” was used ever more frequently in the legal context, most likely to work around the contradiction between the old judicial meaning of “*fait*” as opinion and the more recent and more widely used meaning of “*fait*” as fact. This increasing preference for the word “*moyen*,” combined with the persistence of its original meaning in today’s legal language, indicates that throughout the early-modern period and up to the present the idea subsisted that sovereign judges—that is, magistrates in a court of final appeal, Parlement then, Conseil d’Etat today—are expected to report and deliberate on the compared legal merits of litigants’ arguments, not on the objective merit of their claims.

Those royal regulations concerning the *brevet* meant that, in practice, an important preliminary phase preceded the presentation of the *rapport*. This phase was crucial for *rapporter* and *délibérer*, for it established the parameters and limitations of the two practices, both in terms of their function and their object. To summarize in epistemological terms, royal regulations on the *brevet* indicated that the knowledge practices of the *conseillers* were originally understood as serving a comparative rather than deductive methodology and as processing objects that were argumentative rather than factual in nature.

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<sup>632</sup> The example given by Godefroy is drawn from Jean Froissart’s fourteenth century *Chronicle*: “The duke could well add faith, fact and belief to it” (“*Le duc y pooit bien adjouster foy, faict et creance*”).

<sup>633</sup> See note 630 above.

Royal regulations concerning the *rapport* itself corroborate this royal—and again normative—representation of the goal and object of the *conseillers*' knowledge practices. An article of an *ordonnance* of 1507, repeated in article 46 of the first chapter of the *ordonnance* of Villers-Cotterêts, recommended that “*rapporteurs* be keen to see, touch and open the points and difficulties of their trials, without omitting anything, without superfluity or repetition.”<sup>634</sup> Maybe more valuable for our purpose than brief definitions of the ideal *rapport*, are the underlying royal criticisms of the bad *rapport*. A number of other royal laws indeed pointed out what appeared to be, in practice, the most common faults of a mediocre *rapport*. Those specific critiques allow us to infer what intendant de Bezons' meant when he denounced *conseillers* as “*mauvais rapporteur*.” As Bezons himself suggested here and there in his inquiry, the bad *rapporteur* was above all a “confused” *rapporteur*. Royal laws that sought to curb faults commonly found in the *rapports* allow us first to further specify what the *intendant* meant by this term “confused” and then to infer a *contrario*, what was the ideal of clarity that made the “*bon rapporteur*.” Royal legislation suggests that the revealing trait of a confused *rapport* was its excessive length, a length that could be due to one or more of three possible faults. Article 42 of a 1535 *ordonnance* described quite clearly those three main faults that could lengthen—hence in the legislator's mind obfuscate—the *rapport*: “invoking *faits* or things not invoked and contained in the proceedings,” “repeating often things (...) already said,” and “the excessive use of irrelevant and superfluous language.”<sup>635</sup>

The royal regulations surrounding the *brevet* I have just mentioned were clearly meant to curb the first fault. The two other faults, however, point out that a good *brevet* did not necessarily entail a good *rapport* and that *rapporter* necessitated more than the ability to identify and summarize legal points. While we can call the repetitiveness and superfluity denounced by the *ordonnance* stylistic faults, they

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<sup>634</sup> “*Voulons que nos conseillers rapporteurs soient bien curieux de voir, toucher et ouvrir les points et difficultés de leurs procès, sans rien obmettre et sans superfluité ou redite.*” *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la révolution de 1789*, XI, 480 (1507, art. 55). The exact same point is repeated about three decades later in the *ordonnance* of Villers-Cotterêts (*ibid.*, XII, 434 ; 1535, chap. 1, art. 46).

<sup>635</sup> “*conseillers qui (...) réitérassent souvent les choses ja auparavant dites par eux*” ; “*(...) allegassent faits, ou choses non alleguées et contenues au procès*” ; “*usassent de trop grand superfluité de langage impertinant.*” (*ibid.*, XII, 433).

were criticized for reasons that had to do with more than aesthetics. From a very pragmatic point of view, both repetitions and digressions led to a lengthening of the judicial process that royal legislation often stigmatized to justify regulations. Royal regulations on the *rapport* too were justified by the ideal of a brief justice for they explained that repetitions and digressions were to be avoided because they “delayed and prevented the expedition of matters.”<sup>636</sup> The two faults were condemned not just in the name of the ideal of a justice delivered without delay,<sup>637</sup> but more fundamentally because brevity was perceived as quasi synonymous with clarity.

In book IX of his *Treize Livres*, La Roche-Flavin made this connection between brevity and clarity explicit. La Roche-Flavin intimated that a good *rapport* is “a well done narration,” and he further explained that “a narration is well done when it is laconic” and that terseness consisted in “omitting nothing from what need to be said and saying nothing of what can be omitted.”<sup>638</sup> To demonstrate how this general view held true in the specific case of the *rapport*, La Roche-Flavin resorted to an illustration by the negative, describing how “*rapporteurs* who acted almost completely to the contrary” failed in their task. As in the case of the *ordonnances*, the use of the bad *rapporteur* as a counter-example to be avoided allow us to further specify what *intendant* de Bezons meant by “confused.” In addition, because La Roche-Flavin was more specific in his critique than the *ordonnances*, his critique of the *mauvais rapporteur* can help us understand not just why terseness was seen as a quality of the good *rapport* in a general sense but more specifically what were the things that “need[ed] to be said” and those that “can be omitted.”

The *rapporteurs* who lack terseness, “say a lot, but say nothing,” they “mix the useless and the useful,” and the resulting confusion is condemnable because it is contagious, for it spreads to the audience. As La Roche-Flavin puts it, those *rapporteurs* “burden themselves so much that (...) the minds

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<sup>636</sup> “donnent retardation et empeschement a l’expedition des matieres” *Ibid.*

<sup>637</sup> About that ideal of a prompt justice, see Chapter 4.

<sup>638</sup> “On appelle une narration bien faicte, quand elle est laconique, quae non pauca, sed quae paucis multa dicat, qui n’obmette rien de ce qui se doit dire, et ne dise rien de ce qui se peut obmettre.” La Roche-Flavin, *Treze livres des Parlemens de France*, 574.

of the other judges are kept in suspense and obfuscated.”<sup>639</sup> But what was “the useless” and what was “the useful” that the terse *rapporteur* knew how to discriminate and keep apart? La Roche-Flavin clarified this point in another passage in which he explained that the *conseillers* “while reporting, must not mix the *fait* and the law, but should content themselves with going in depth into the legal disputes that are relevant to their opinion.”<sup>640</sup> Thus, the terseness advocated by La Roche-Flavin entailed abilities and operations specific to the *rapport*: the aptitude to select, within the exhaustive list of *faits* drafted in the *brevet*, only those *faits* that revolved around legal points that justified the sentence recommended by the *rapporteur*. In addition, the ability to limit the discussion to the legal points invoked by those *faits* and not of the *faits* themselves, was deemed critical. In this respect, legal knowledge could be of great help, for it was necessary to “go in depth into the legal disputes” as La Roche-Flavin put it, but “great doctrine” could also be a hindrance if it distracted the *rapporteur* into an erudite discussion of legal points that did not underlay the opinion—that is, the sentence—that they would propose in the end.

As in the case of the ideal *brevet*, the ideal *rapport* ought to focus on *faits* only. Unlike the *brevet*, however, the *rapport* needed not be an exhaustive list of those *faits*. In fact, one of the main qualities of the good *rapporteur* was his ability to focus only on those *faits* that were relevant to the legal crux of the case. This selectivity alone was not enough, for the *rapporteur* also had to demonstrate to his colleague why and how the *faits* he chose to include in his *rapport* were relevant to the case and most importantly to its resolution. The qualities that were thought most necessary for this demonstration were clarity and brevity.

The importance of clarity was noted explicitly in contemporary definitions of the *rapport* and the *rapporteur*. Jaucourt, in his definition of the *rapport* for the *Encyclopédie* insisted and elaborated on the importance of clarity for the good *rapport*, noting that “this kind of discourse (...) consists in speaking

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<sup>639</sup> “Aucuns rapporteurs font Presque tout le contraire, ils dissent beaucoup et si ne dissent rien, ils s'embarassent tellement et meslent l'inutile parmi l'utile, que l'estprit des autres juges en demeure suspend et offusqué.” *ibid.*

<sup>640</sup> “Et ne doivent en rapportant mesler le faict avec le droit, ains reserver a approfonder les disputes du droit, si elles y escheoient à leur opinion.” *Ibid.*

clearly, with precision and elegance.”<sup>641</sup> Clarity was needed, Jaucourt added, because “the methodical distribution of the matter [that the *rapporteur*] seeks to treat, and the way in which he orders the facts and evidence, must display such a clarity that all [judges] can understand the affair reported to them without difficulty and without effort.”<sup>642</sup> Jaucourt’s definition is of interest to us not only because it confirms the idea, suggested a century earlier in the reports the *intendants* wrote to Colbert, that clarity was an essential quality of the good *rapporteur*, but also because it points out that this quality was an important element of distinction for the magistrates in the judicial milieu and that the practice of *rapporter* constituted a prominent feature of professional identity for the *conseillers*. In his definition of the *rapporteur* indeed, Jaucourt added that “the function of the *rapporteur* demands that he order proofs, present the proceedings with clarity, summarize with precision, motivate his recommendation ; anything beyond that would smack of affectation, of a desire to shine, of levity, of haste, of vain glory”<sup>643</sup> and that “the oral presentation [...] must be distinct, quiet, without agitation.”<sup>644</sup> Lawyers and their speeches—widely criticized for their confusion, abusive prolixity and lack of substance—are the target here, as Jaucourt confirms explicitly noting that “the *rapporteur* does not speak like a barrister, but like a judge: in this quality, he holds something of the law, which, quiet and calm only demonstrate rules and duties, and since he is himself expected to be free from passions, he is not allowed to think of exciting those of others.”<sup>645</sup>

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<sup>641</sup> “*ce genre de discours, (...) consiste à parler avec clarté, avec précision, et avec elegance.*”

<sup>642</sup> “*il faut que la distribution méthodique de la matiere [que le rapporteur] entreprend de traiter, et l'ordre qu'il mettra dans les faits et dans les preuves, y répandent une si grande netteté, que tous puissent sans peine et sans effort, entendre l'affaire qu'on leur rapporte.* »

<sup>643</sup> “*l'office d'un rapporteur exige qu'il mette de l'ordre dans les preuves, de la clarté dans les informations, de la précision dans la récapitulation, et des motifs dans son avis; tout le reste auroit un air d'affectation, d'envie de briller, de légèreté, d'inattention, de précipitation, ou de vaine gloire*” Entry “*rapport*” in *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, ed. Denis Diderot and Jean le Rond D'Alembert, Paris: Chez Birasson, David, Le Breton, Durand, 1751-1772.

<sup>644</sup> “*la maniere de prononcer, [...] doit être distincte, tranquille et sans agitation.*” (*ibid.*)

<sup>645</sup> “[l]e rapporteur ne parle pas comme avocat, mais comme juge: en cette qualité, il tient quelque chose de la loi, qui tranquille et paisible se contente de démontrer la regle et le devoir; et comme il lui est commandé d'être lui-même sans passions, il ne lui est pas permis non plus de songer à exciter celles des autres.” (*ibid.*)

Jean de Coras's *Arrêt mémorable* and Guillaume de Ségla's *Histoire tragique*, can function as correctives to those late, normative representations of the practice of *rapporter*. Those two texts open two different windows on *rapporter* as it was practiced, its modalities, its goals and its results. Before I highlight the complementarity of those two texts, I should insist on one important similarity that makes them so valuable within the context of this analysis: both authors were *conseillers* in the Parlement de Toulouse and both of them had been *rappporteur* of the case they decided to publicize. In the more famous of those two texts, Jean de Coras presents the case of the faux Martin Guerre, Arnaud du Tilh, which he had reported to the *Chambre Tournelle* of the Parlement de Toulouse in 1560. This case, already famous throughout the early-modern period thanks in great part to Coras's text,<sup>646</sup> has received renewed attention with the 1982 release of a movie and the publication on the following year of Natalie Davis's *The Return of Martin Guerre*, a provocative book which in turn generated significant scholarly attention for this *affaire*.<sup>647</sup> What made this case seem "prodigious" to Coras was not only the talents of con-man Arnaud du Tilh, but also the providential return of Martin Guerre, the man he had impersonated for several years, that uncovered the truth of a case that had hitherto eluded him and the other *conseillers* of the Tournelle to whom he reported.

Guillaume de Ségla's *Histoire tragique* was certainly less of a publishing success in its own time and has received considerably less scholarly attention than Coras's *Arrêt mémorable* since then.<sup>648</sup> The case did nonetheless attract a fair amount of popular attention in Toulouse and its region at the time, for it

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<sup>646</sup> Coras' book alone was edited six times in as many decades (1561, 1565, 1572, 1579, 1596, and 1618). In addition to the play, two novels, and operetta that it inspired in France, Coras' text also served as a basis for published accounts in Italy (1591), the Netherlands (1594), and England (1763) (see Zemon-Davis, "'On the Lame'," 572).

<sup>647</sup> *The Return of Martin Guerre*, .

<sup>648</sup> The *Mercure François* published a first and short narrative of this affair in 1611 that preceded Ségla's work. His book was not re-edited and the story was not retold in print again until 1687, when Germain de La Faille mentioned it in his *Annales de la Ville de Toulouse* (Germain de La Faille, *Annales de la ville de Toulouse depuis la reunion de [la] Comte de Toulouse a la Couronne : avec un abrege de l'ancienne histoire de cette ville et un recueil de divers titres et actes pour servir de preuves ou d'eclaircissement a ces Annales*, Toulouse: chez G.L. Colomiez, 1687) and again 1771 when Barnabé de Rosoy included it in his own *Annales de la Ville de Toulouse* (Barnabé Farmian de Rosoy, *Annales de la ville de Toulouse*, Paris: chez la veuve Duchesne, 1771-4). Both those later accounts are clearly inspired from Ségla's work. See Jacques Poumarède, "De l'*Arrêt mémorable* de Coras (1561) à l'*Histoire tragique* (1613) de Ségla. L'invention de la chronique criminelle," *Annales du Midi* 120-264 (2008): 506.

too had the elements of a good sensational story: sex scandal, conspiracy, murder, flight. The trial for the murder of a barrister, Pierre Romain, assassinated on July 8, 1608, led to the execution of his widow Violante de Batz du Château, a young and attractive woman from Portugal, and of four of her lovers, who had conspired to eliminate the cumbersome husband who kept his wife in Gimont,<sup>649</sup> away from Toulouse where they all lived.<sup>650</sup> The identity of the four lovers involved in this scandalous conspiracy certainly explains the notoriety of the case as it unfolded at the time: Pierre Gairaud, a sixty-six year old *conseiller* in the court of the *sénéchal* of Toulouse, Pierre Arrias Burdeus, an Augustinian friar and *docteur régent* at the faculty of theology of Toulouse, his student Antoine Candolas, and François Esbaldit, leaseholder (*fermier*) of one of the *greffes* at the *sénéchal*'s court.<sup>651</sup>

Despite the sensational appeal of a case that might well compare to that of the Martin Guerre affair, the publishing goals of the *conseiller* Ségla were different from those of Jean de Coras. While both men used their unique vantage point as *rapporteur* of the case and based their account on the same type of documents they had access to in that position (the legal proceedings they had reviewed to prepare their *rapport*), their different objectives led to different choices in the composition of their respective work. As a result, although *rapporteur* is key to the composition of both works, the practice is refracted in two distinct and complementary lights. Jean de Coras's explicit goal was to offer the case of Arnaud du Thil as a moralizing and didactic example to a wide audience. Coras wanted to urge his contemporaries to guard themselves against the "*faux-semblant*" that Arnaud du Thil embodied and Natalie Zemon-Davis described as a new source of anxiety in what many contemporaries perceived as the fast-changing world of the second half of the sixteenth-century.<sup>652</sup>

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<sup>649</sup> Gimont is located about thirty miles West of Toulouse.

<sup>650</sup> Poumarède, "De l'*Arrêt mémorable* de Coras (1561) à l'*Histoire tragique* (1613) de Ségla. L'invention de la chronique criminelle," .

<sup>651</sup> *Ibid.*

<sup>652</sup> The preface to the second edition (1572) states that Coras's offers to the reader "a singular example of the just revenge of God against villains who, ultimately, do not go unpunished for their treachery and misdeeds." Davis' view (Zemon-Davis, "'On the Lame'," 601-3) is sympathetic to a point to Stephen Greenblatt's argument about the significance of external attributes, social roles, and contractual places in determining identity in the sixteenth century (Greenblatt, "Psychoanalysis and Renaissance Culture," 210-24).

To that end, Coras used his position as *rapporteur* to draw elements from the proceedings and use them as the building blocks of a narrative that uncovered Arnaud du Thil’s methods, stigmatized his duplicity, and pointed out the weakness of those who had fallen for his lies. Likewise, the text of the *arrêt* inserted in Coras’s work, together with his commentary on the sentence, functioned as a warning to would-be Arnaud du Thil—forgers, impersonators, charlatans and con-men of all kinds—and to their potential victims. Guillaume de Ségla invoked similar goals for his publication that he presented in his dedication to *premier président* de Verdun as “a great lesson for people of all sorts and qualities.”<sup>653</sup> It seems, however, when one reads Ségla’s text that the lesson was not a warning against treachery for everyone, but rather a warning to judges against their certainties. Unlike Jean de Coras with the Martin Guerre affair, what seems to have most impressed the *rapporteur* Ségla, what appeared “prodigious” to him, was not the case itself, but the way in which that case was suddenly reversed when it was about to be closed. Thus, Ségla seemed primarily concerned with the role and responsibilities of the judges, and in particular his own, as a *rapporteur*. Although Ségla used his position of *rapporteur* to inform a publicized stigmatization of the condemned, he also uncovered a number of elements of the judicial process to justify his actions to the wider public as well as to himself. Indeed, Ségla’s text is far from a self-serving account of how the sagacious *rapporteur* confounded the guilty. On the contrary, Ségla candidly acknowledged that at several critical turns in this trial he stood on the wrong side of judgment, so to speak.<sup>654</sup> In fact, based on the difficulties Ségla encountered in this affair, his mention in the dedication of the book that “[he] was so tired and worn-out by the work [he] had done on this case that [he] sought to

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<sup>653</sup> “Voicy une belle leçon pout toute sorte et qualité de personnes, la lecture de laquelle seroit non moins agreeable qu’utile.” Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, ii.

<sup>654</sup> When the court gathered to deliberate on the case of Burdeus, Ségla had some doubts about his guilt and wanted to proceed further, but the contrary opinion to execute Burdeus won the majority of the votes (for more detail about this voting process, see “*Délibérer*” below). Burdeus’s spontaneous confession later on revealed that Ségla’s doubt while tenable from a legal point of view, could have led to clear a criminal. Later on, when François Gairaud resisted torture, Ségla took it as a confirmation of his initial view that Gairaud was guilty of “malversation” with Violante (i.e. having sexual relations with her) but innocent of her husband’s murder. Unexpectedly, however, Gairaud confessed to his involvement in the crime.

avoid remembering or talking about it” might have been more than rhetorical.<sup>655</sup> To be sure, Ségla was not, in this trial, the only *conseiller* who supported opinions later proven to be mistaken, but as the *rapporteur* of the case, Ségla had been the one who proposed those opinions, based on a more intimate knowledge of the case than the other judges in the chamber. Ségla was interested not just in the case then, but also in the difficulties the court, and particularly himself, encountered. Furthermore, Ségla was interested not simply in the difficulties of this specific case but more generally in the questions it raised about the judicial practices of the magistrates and their ability to uncover truth.

Guillaume de Ségla was a seasoned *conseiller*, who had sat and reported on many trials over the years and this was certainly not the first time he found himself on the losing, and as it turned out wrong side of deliberation in a capital case. Thus, while it would be exaggerated to ascribe a cathartic function to the *Histoire Tragique*, I think that the work did seek to address the *conseiller*'s concern over judicial practice triggered by his personal involvement, doubts and failures in the case. From a legal standpoint, the doubts that grounded Ségla's differing opinions remained perfectly tenable, thus raising epistemological questions about judicial practice with implications for the capacity of judges to uncover truth. Because of this different concern, Ségla's narrative was the “tragic story” of both the litigants and the judges, when Coras's text was a “tragic-comedy”<sup>656</sup> whose protagonists were primarily du Thil and his victims. Where Coras was mainly astonished by the duplicity and extraordinary talent of Arnaud du Thil, Ségla marveled at the uncertainties of the judicial process. Thus, in Ségla's text, *rapporteur* is one of

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<sup>655</sup> “j'estois tellement lassé et recréu du travail que j'avois prins en cest affaire, que j'en fuyois la mémoire et le discours” Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, ii v.

<sup>656</sup> This is a contemporary phrase, used in the printer's preface to the 1572 edition : “un cas autant estrange et memorable qu'il en advent jamais, contenant Presque une tragicomedie, car la protease, ou entrée d'icelle, est fort joyeuse, plaisante et recréative, contenant les ruezes, finesses et tromperie d'un faux et supposé mary. L'épitase, ou entresuite incertaine et douteuse pour les debats et differents survenuz pendant le proces. La catastrophe et issue de la moralité triste, piteuse et misérable pour le regard de l'hypocrisie et simulation descouverte, ensemble de la punition exemplaire qui s'en est ensuyvie.” (Jean de Coras, *Arrest memorable du Parlement de Tholose contenant une Historie prodigieuse d'un supposé mary, advenue de nostre temps, enrichie de cent et onze belles et doctes annotations*, Paris: Gallior du Pré, 1572, *Advertissement de l'imprimeur aux lecteurs*).

the practices that helps uncover the reprehensible actions of the accused but also an object of analysis within a larger reflection on the truth-seeking practices of the judges.

In other words, Coras' and Ségla's texts are complementary for our analysis of *rapporter*. Coras's *Arrêt mémorable* gets us close to the product of the practice, for his text—like his *rapport* to his colleagues—sought to ascertain du Thil's guilt and justify a matching sentence. The text of Ségla's *rapport* is far less visible in his *Histoire tragique*, but because of his different agenda, it opens a unique window on the practice itself and its modalities.

In addition to offering us a unique view into the workings of *rapporter*, Ségla's text also gives us a dual perspective on the practice because the twists and turns of this particular trial led him to assume two different judicial positions in the case, both of them related to the practice. Indeed, Guillaume de Ségla was not originally the *rapporteur* of the affair and was only appointed to this position after Jean de Mansencal, the initial *rapporteur*, was removed from the case. As Ségla explains, the change was decided by the court when the interrogation of one of the witnesses revealed that Bertrand Mealhe—Mansencal's clerk—was present at the murder scene.<sup>657</sup> This unexpected and very unusual replacement of an acting *rapporteur* confirms that *rapporter* was officially an individualized practice, and necessarily a collaborative practice. On the one hand, Mansencal's removal was akin to a *récusation* (the formal exclusion of a judge from the deliberation because of his personal connection to the matter at stake), thus confirming the personal nature of *rapporter* I have already observed. On the other hand, however, a possible reason for the substitution in this specific case reminds us that *rapporter* was also a collaborative practice, performed with the assistance of unofficial auxiliaries—such as the clerk Bertrand Mealhe. While it is conceivable that the court removed Mansencal for fear that he might be challenged later on not as *rapporter* but as judge because of his personal connection to a potential suspect,<sup>658</sup> I would argue that

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<sup>657</sup> Poumarède, "De l'*Arrêt mémorable* de Coras (1561) à l'*Histoire tragique* (1613) de Ségla. L'invention de la chronique criminelle," 521.

<sup>658</sup> This is the explanation offered by Jacques Poumarède in his analysis of Ségla's text (*ibid.*).

he was removed primarily because of the court's concern over the fact that Mealhe, as his clerk, had access to the proceedings that he helped review in preparation of the *rapport*.<sup>659</sup>

Ségla was chosen as the new *rapporteur* almost certainly because he was, after Mansencal, the *conseiller* who was most familiar with the case. Before the substitution indeed, Ségla had assumed two roles which, as his text suggests, were possibly connected to one another and certainly related to the practice of *rapporteur*. Those two roles, that of *assesseur* (assistant) and that of *contretenant* (“responder”) to the *rapporteur*, shed light on an essential trait of *rapporteur*, for they confirm that, in practice, *rapporteur* was organized by an adversary principle akin to the one that regulated the interaction of lawyers in civil procedure.<sup>660</sup> We know virtually nothing of the role of *assesseur* beside what Ségla's text suggests. It is likely, however, that the *assesseur*, while less directly involved in the proceedings than the *rapporteur*, had a much better knowledge of the case than the other judges of the chamber who discovered the proceedings when the report was presented to them. We know from Ségla's text that, as an *assesseur*, he was present when Mansencal conducted interrogations in preparation of his *rapport* and he attended the torture of Burdeus ordered by the court following Mansencal's report. On those two occasions, Ségla observed carefully, as his text reflects, but did not intervene or act in any way. Although his role was thus limited to a passive act of presence during proceedings that the *rapporteur* Mansencal led, Ségla certainly was, as his *assesseur*, the second best informed *conseiller* in the chamber when the deliberation began. This position explains that, on that day, the *assesseur* often (and possibly systematically) became *contretenant* to the *rapporteur*. During the deliberation that sentenced Burdeus to death—that is, while Mansencal was still *rapporteur* of the case—Ségla acted as *contretenant* (or “*compartiteur*”) to the

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<sup>659</sup> Indeed, while the court removed Mansencal as a *rapporteur*, it did not exclude him altogether from the proceedings as it would have done if it was mainly concerned over a possible *récusation*. On the contrary, the court kept Mansencal close to the case, for he simply switched roles with his *assesseur* Ségla: the *président* de Verdun “ordered [Ségla] to take the trial and do the report concerning the other defendants” but also ordered that “[Ségla] would continue with [Mansencal] the additional interrogations, *accaramens*, and other preparatory proceedings [*instructives*] left to do” (Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, 33, *ibid.*).

<sup>660</sup> See “*Délibérer*” below.

*rapporteur*. The role of *contretenant* (a position better known than that of *assesseur* for it appears sporadically in the records of the court) consisted in offering a rejoinder to the *rapport* presented to the chamber.

### ***Délibérer***

Once the *rapporteur* finished his oral presentation the deliberation began. As I show in this section, the particular mode of deliberation used in the Parlement was a decision-making process that did not seek to establish a middle ground between a diversity of opinions but attempted, through a particular voting system, to single out one opinion and force unanimity around it. The practice of deliberating on lawsuits, however, like that of *rapporteur*, has left very little trace in the records of the Parlement. In the great majority of cases indeed, the *registres d'arrêts* only recorded the result of deliberations, that is, the final decision made by the court. The records do not indicate how individual judges voted, the overall number of votes the prevailing opinion received, or even whether this prevailing opinion was that of the *rapporteur* or that of another *conseiller*. The records only indicated the name of the *rapporteur*, those of the *presidents* and *conseillers* present at the deliberation, the *épices* awarded to the *rapporteur*,<sup>661</sup> and the decision itself—without spelling out a motive.

As in the case of *rapporteur*, however, there are ways to work around the silence of the official records of the Parlement de Toulouse. Once again, insiders—Malenfant, La Roche-Flavin, Ségla, and Coras—who wrote directly or indirectly about *délibérer*, give us a number of elements that help reconstitute the main traits of this practice. Their testimony is especially valuable when it comes to those few cases in which the deliberation failed to give a majority to the opinion of either the *rapporteur* or of his counterpart (another *conseiller* called *contretenant*), a situation that the *conseillers* called “division” (“*partage*”). Indirectly, those cases give us information on the procedure that normally led to the securing of a majority. Yet another fruitful way of reconstructing the modalities of *délibérer* as a judicial practice

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<sup>661</sup> See Chapter 5.

consists in examining *parlementaire* decision-making in matters that our modern categories would have us label as “non-judicial.” Indeed, the procedure followed by the *conseillers* in all decisional matters<sup>662</sup>—most famously in their deliberations on the registration of new royal laws—was virtually identical to their mode of deliberation on lawsuits. Thus, the analysis of *parlementaire* deliberation in “general assemblies of the court” (“*assemblées générale des chambres*”) allows us to further infer the modalities of the *conseillers*’ deliberations on lawsuits in individual chambers (“*séances de conseil*”), that have left virtually no trace in the records of the court.

Following this reconstitution of the practical modalities of *parlementaire* deliberation, I reflect, in a second part, on the intriguing uniqueness and cohesion of *parlementaire* deliberation in the face of the broad range of decisional matters a French *parlement* had to deal with. Starting from a sense that the consistency of this mode of deliberation reflects an overall *parlementaire* approach to truth, my analysis in that second section seeks to uncover the epistemological underpinnings of this particular practice. This reflection will eventually allow me to identify practice—not just this particular practice, but judicial practice more generally conceived—as the keystone of a *parlementaire* judicial ideology, that is, the *conseillers*’ conception of their particular role in the body politic and social justified by their identity as sovereign judges.

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<sup>662</sup> The only other decisional mode I have encountered in the Parlement de Toulouse is when the court had to nominate candidates for the position of *premier président* to the king. These nominations were decided by secret ballot (“*par voie de scrutin*”), as on the 16<sup>th</sup> of October 1631, when the parlement de Toulouse gathered to decide on three names to propose to the king to replace *premier président* Gilles Le Mazuyer who had just died from the plague. Chief scribe Etienne de Malenfant described the procedure in detail: “MM. took an oath to proceed to the said nomination duly, honestly and in conscience. In order to proceed by ballot each one of them received a piece of paper signed by the chief scribe, on which they had to write down in their own hand the names of the three [*conseillers*] that they wanted to choose. Once filled, the said pieces of paper were put in a silver bowl covered with a white cloth that had been placed on the desk. MM. de Caumels, *conseiller cleric*, de Rabaudy, de Josse, and d’Auterive were nominated to verify the said papers. This was done in the following way: the said Sr. de Rabaudy read the names written on the papers, the said de Josse, d’Auterive and Caumels wrote the names read by the said Rabaudy in rows and marked the votes in their favor in this row (...) And thus was decided that MM. the presidents de Caminade, de Bertier and M. de Camboulas, president in the *Enquêtes*, were the three that had received the most votes. Once this election was pronounced, the pieces of papers together with the votes written down by the said de Josse, d’Auterive and Caumels were burnt by the chief scribe in the presence of all [the *conseillers*].” Malenfant, *Collections et remarques du Palais*, I, 333-4.

*Parlementaire* deliberation can be described most simply as the collective practice which the *conseillers* used to reach the decisions penned in their *arrêts*, whether those *arrêts* intervened in lawsuits or otherwise. Despite the great diversity of decisional matters the court had to deal with, the *conseillers* deliberated in only two possible institutional settings. On the one hand, they deliberated in smaller groups, mostly on the lawsuits which had been assigned<sup>663</sup> to the particular chamber they sat in. On the other hand, they deliberated less frequently as a full *corps* in general assemblies of all the chambers (“*assemblées générales des chambres*”) on all other affairs. Those “other affairs” included the verification of royal edicts on which the historiography of the sovereign courts has concentrated,<sup>664</sup> but also a great diversity of other matters. First of all, the court could deliberate on any matter that the *premier président* had put on the daily agenda, whether of his own decision or upon request from a member of the court. This was the case in particular for any question relating to internal regulations of the court, whether it had to do with wages, “*épices*,”<sup>665</sup> transfers of *conseillers* from one chamber to another (“*remuements*”), etc. Even if we consider deliberations on royal letters only, the court’s deliberations were not limited to royal laws (*édits* and *ordonnances*) but encompassed all documents written on parchment and that bore the royal “great seal.”<sup>666</sup> Whether it took place in an individual chamber or in a general assembly, a deliberation would necessarily end with the passing of a specific type of ruling that corresponded to the object of the deliberation: “*arrêts définitifs*” to close a lawsuit, “*arrêts interlocutoires*” to require further

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<sup>663</sup> This assignment was done at the beginning of each judicial year through a procedure called “*distribution*.” See Chapter 4, Part 1: “*Distribuer*,” “*épicer*”: the great judicial spice shop.

<sup>664</sup> See Introduction.

<sup>665</sup> About *épices*, see Chapter 5 above.

<sup>666</sup> In March 1634, the parlement de Toulouse refused to let the marquis d’Ambres attend its session because this prerogative had only been conferred to him with a *lettre de cachet* from the king. The procurator of the king refused to present this letter to the court for verification because, he argued, the Parlement should only consider “open letters sealed with the great seal,” that is, the procurator added with a nice formula, “declarations of the will of the king made out of parchment and wax.” When the royal will took that material form, the court very rarely refused to deliberate on it. This refusal only happened in exceptional circumstances, as in August 1636 when the court refused to deliberate on so-called “letters of injunction” [*lettres de jussion*], which dated May 2, 1636, pre-emptively quashed a ruling the court had passed three days later. Thus, when there was no technicality or legal irregularity in the text presented to the court, whether it was an edict or a letter of appointment, the *conseillers* would hold a deliberation. (Malenfant, *Collections et remarques du Palais*, II, 12-7).

inquiry, “*arrêt d’enregistrement*” to register a new royal law, “*arrêt de règlement*” to clarify the functioning of the court, “*arrêt de réception*” to install a new *conseiller*, etc.

If we consider deliberations on lawsuits only, it is difficult to know the exact details of what happened between the end of the *rapporteur*’s presentation—the foundation of the deliberation—and the passing of a ruling. In the great majority of cases, the records of the chamber only registered the decision adopted, without much additional information. As in the case of the *rapport*, this silence of the records was not intended to keep the existence of the practice a secret. Again, litigants were fully aware of the existence of deliberations and, as their attempts to bribe not just their *rapporteur* but also the other judges of the same chamber attest, they also knew very well that it was an electoral process in which each vote counted.<sup>667</sup> As I noted before, however, the records of the court themselves do not allow us to grasp the mechanisms of this voting procedure, for they only registered the names of the *conseillers* present at the deliberation and their decision, masking the details of the deliberative process to insist instead on its final, seemingly unanimous result.

### *Aller aux opinions*

Thanks to other sources, however, we can reconstitute this voting system as follows. In most cases, the deliberation would begin immediately after the *rapporteur*’s presentation.<sup>668</sup> The president of the chamber would then “go to the opinions” (“*aller aux opinions*”), that is, he would ask in turn each

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<sup>667</sup>In fact, public knowledge of the practice was so widespread that La Roche-Flavin seemed to have had no qualms about devoting one of his thirteen books on the Parlements to the practice. La Roche-Flavin, *Treze livres des Parlemens de France*, Livre IX: “*Des opinions et comme il faut opiner en un Sénat, Conseils, ou deliberations publiques*” (Of opinions and how one must vote in a Senate, Councils, or public deliberations). The great majority of the thirty-six sections of this book however, are devoted to the moral considerations that ought to guide the magistrates in their votes (for instance, section 29, “the opinions of judges must be free of vengeance,” or section 33, “when voting, one must prefer the public good to private and particular interests”). The few chapters that appear, by their title, to deal with the actual voting procedure are in fact very vague.

<sup>668</sup>In complex cases, however, La Roche-Flavin notes that either the *conseillers* or the *rapporteur* himself could request that the deliberation be delayed to the following day, “so that the judges could think about it and leaf through their books to give a more careful and solid opinion [*pour opiner plus meurement et solidement*] on the following day.” *Ibid.*, 562.

*conseiller* sitting<sup>669</sup> around the *bureau* what his “opinion” (“*opinion*” or “*avis*”) was. What would follow then, at least in theory, was not a discussion of the *rapport* or more generally of the case, but a series of discrete individual interventions from each “*opinant*”—each judge giving his opinion. Those interventions were kept separate from one another because *opiner*—the practice of expressing one’s opinion—could have only one of two possible outcomes: a *conseiller* could either side with an opinion already expressed by another *conseiller*—including that of the *rapporteur*—or voice a new opinion, seemingly disconnected from the opinions already expressed. In both cases, the interactions between the *conseillers* were minimal. If an *opinant* had decided to side with an opinion that had been already expressed, he would do so without further comment when the president turned to him, simply answering “I am of the opinion [*avis*] of such.” In fact, La Roche-Flavin indicates that the *conseillers* had developed customary practices to further minimize the intervention of an agreeing *opinant*. If he was of the same opinion as the *opinant* who immediately preceded him, he would just say “*idem*,” or “and me,” or “same.” The *conseillers* had even developed a custom called “to give one’s opinion with one’s hat” (“*opiner du bonnet*”) that eliminated speaking altogether, especially for the larger deliberations of general assemblies of the court: the *opinant* would just stand up and take off his hat to indicate that he sided with the opinion of the *opinant* that had preceded him.<sup>670</sup>

When, on the contrary, a *conseiller* wanted to disagree with the opinions expressed before him, he could not just express this disagreement with a “nay” or even simply criticize the previous opinions: he had to offer an entirely new opinion. Offering a new opinion required not only proposing a different sentence but also offering a new interpretative reasoning of the legal difficulties of the case in support of this new sentence. In other words, an *opinant* who wanted to disagree had to propose some sort of *rapport*

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<sup>669</sup> La Roche-Flavin gives a great deal of importance to the fact that judges had to deliberate and issue sentences while sitting and that judicial procedures performed while standing could be declared null (*ibid.*, 563-4). According to him, “*opiner*” while standing was only permissible in situations in which spatial restrictions prevent the judges from sitting (for instance in a general assembly of the *parlement* in the Grand Chambre where “*conseillers* who are at the third and last bench are forced to stand to give their opinion [*pour opiner*], otherwise the other judges would not be able to see them.” (*ibid.*, 564).

<sup>670</sup> *Ibid.*, 552.

of his own. An opinion then, was a counter-*rapport* of sort, for it adopted a form similar to that of the *rapport*, but contradicted the content of the *rapport*—both in the sentence it proposed and in the legal reasoning it followed. The parallel between *rapport* and *opinion* is corroborated by their association in contemporary sources. As in the case of the *rapport*, La Roche-Flavin warned against the use of eloquence to express one’s opinion,<sup>671</sup> and stressed that legal doctrine was of relatively little use and could even be detrimental to the *opinant*.<sup>672</sup> As in the case of the *rapport*, the *opinion* had to be brief, that is, it had “come to the point and touch its goal forthwith”<sup>673</sup> and avoid repetitions, superfluity and digressions. Those were common faults of both the *rapport* and the *opinion*, and the 1446 *ordonnance* for instance noted that the *conseillers* “in their opinions often repeat things that they or others have said before and bring up *faits* or things not mentioned or contained in the trial[’s documents].”<sup>674</sup> This observation suggests what a later ordinance confirmed: that, like the *rapport*, the *opinion* should be based only on “the facts proposed by the litigants.”<sup>675</sup> The reading of the *rapporteur*’s brevet and of the lawyer’s *inventaires* at the beginning of the deliberation then, was not just meant to allow the *conseillers* to evaluate the soundness of the *rapport* but to give them the elements they needed to construct and formulate a differing opinion if they wished to do so. Other regulations show that, like the *rapport*, *opinions* were intended to solve the legal difficulties of the case by interpreting legal points contained in the documents. At the center of the *bureau* around which the *conseillers* deliberated were the *sacs* that

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<sup>671</sup> He notes that “eloquent *conseillers* (...) often abuse their subtle mind and their voluble tongue to do wrongs under the color of rights and hide their treachery by interweaving things that resemble virtue and public utility” (“*car abusans de la subtilité de leur esprit et volubilité de leur langues, ils savent faire injustice, sous couleur de justice et savent cacher leurs tromperies par entrelasseures de choses ressemblantes à vertu et utiles au bien public.*” *Ibid.*, 560)

<sup>672</sup> La Roche-Flavin observed that “to express one’s opinion well” in a general assembly of the court “require[d] not only the *Théorique* and the art and science of civil and canon law and of the ordinances but also the use, experience, knowledge and handling of state and public affairs” (“*pour bien opiner en iceux, n’est pas seulement requise la Théorique, et l’art et science du droict civil et canon et des ordonnances, mais aussi de l’usage, experience, et de la cognoissance et maniemet des affaires d’Estat et publiques*” *ibid.*, 565) and added that “magistrates must avoid scholastic quibbles and subtleties” (“*les arguties et subtilitez scholastiques doivent ester esvitées par les magistrats*” *ibid.* 580)

<sup>673</sup> *Ibid.*, 574.

<sup>674</sup> *Ibid.*, 573.

<sup>675</sup> *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 247-8 (Charles VII, 1453, art. 115).

contained those documents and, as the 1446 *ordonnance* made clear, this central presence did more than symbolically represent the judges' access to the proceedings of the trial, for "upon the presentation of opinions, the *rapporteur* [was] obligated to give whatever *pièce* [of the proceedings] to the *opinants* who want[ed] to have them."<sup>676</sup> In terms that are clearer than his comments on the *rapport*, La Roche-Flavin explains what the *opinants* were supposed to do with those documents: they were to leave aside "words" and "grammar" to "extract the juice and the marrow of the acts put in front of them."<sup>677</sup> The marrow here is the *faits* of the litigants, the legal grounds of their claims, considered independently from circumstances, rhetorical arguments and "scholastic (...) subtleties."

Autonomy was another common feature that the *rapport* and the opinions of the deliberating judges shared. Both the *rapport* and the opinion are in theory self-contained: the *rapport* does not preempt differing opinions and an *opinion* does not criticize, at least explicitly, the *rapport* or other opinions. The *opinion*, like the *rapport*, proposes a single sentence—not a number of possible sentences—rooted in a particular reasoning, itself based on specific legal interpretations, not on the evaluation of the compared merits of possible interpretations of the same point. Obviously, a differing opinion was indirectly a critique of the *rapport* and of preceding opinions, but *parlementaire* practice sought to maintain the illusion of the autonomy of those various sentences and of the reasoning on which they were based. This apparent autonomy was maintained by preventing opinions from referring to one another and by a mode of deliberation that limited interactions between the *conseillers*. The *conseiller* who spoke did not ask the *rapporteur* or the preceding *opinants* to clarify their interpretations, he offered his own differing interpretation instead, seemingly oblivious to anything that had been said before or could be said after. And when he offered this autonomous opinion, no one—not even the president who had invited him to speak—could interrupt him to ask questions or object to his reasoning. Thus, *parlementaire* deliberation began not as a discussion but as a series of discrete monologues.

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<sup>676</sup> *Ibid.*, IX, 166.

<sup>677</sup> "*Aussi les arguties et subtilitez scholastiques doivent estre esvitées par les magistrats, lesquels doivent prendre pour leur partage le suc et la moüelle des actes qui sont produits devant eux, et non s'adonner ny atacher par trop aux paroles, ny à la grammaire ou grammairiens (...).*" *Treze livres des Parlemens de France*, 580-1.

In addition, this peculiar mode of deliberation created what I would call a burden of disagreement. The form and requirements I have just detailed, must have deterred *conseillers* from presenting a differing opinion, unless they had a solid legal reasoning and/or a good reason to do so. I will later look in more detail at the epistemological underpinnings of this burden of disagreement—as well as its political and judicial consequences—but I want to observe already that this burden was not just dictated by the rules of *opiner* but was also dependent on the moment at which one was offered a chance to voice his opinion. It certainly became more difficult to offer a differing opinion later in the deliberation, that is, after most of the other *conseillers* had sided with an existing opinion or offered one of their own. For this reason, the order in which the *conseillers* presented their opinions had serious consequences on the deliberative process, for it created a hierarchy within the chamber, giving the *conseillers* who spoke first—a greater deliberative margin than those who spoke last. The *conseiller* who received the greatest deliberative margin in the chamber was the *rapporteur*, since his familiarity with the case, its documents and the opportunity to express himself first and at length, put him in the most advantageous position. I have already noted that the president of the chamber was the one in charge of the distribution of the trials, thus holding this power of making *rapporteurs*. As we can see now, this power was not simply about the distribution of *épices* but also a decisional power because the *rapporteur* was at an advantage in the deliberative process. The president's latitude in this matter went further since, in addition to choosing the *rapporteur* at the beginning of the proceedings, he also had control over the speaking order of the *opinants* at the end of the trial. The president of the chamber was the one who “went to the opinions” as I noted earlier, and, as La Roche-Flavin observed, when the *rapporteur* was done speaking, “no one dare[d] to give his opinion unless it ha[d] been asked by the one who preside[d].”<sup>678</sup> The president was absolutely free to decide of the order of the *opinants*, for “the opinions are asked by the presidents after [that of] the *rapporteur*, without regard for age, seniority, or rank, as it pleases the

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<sup>678</sup> “... *en nos parlemens aucun ne s’ingere d’opiner que l’avis ne luy soit demandé par celui qui preside*” (*ibid.*, 559).

president.”<sup>679</sup> The only rule the president had to follow was that, as the *ordonnance* of 1446 stipulated,<sup>680</sup> they themselves could only give their opinion last, lest it influenced the *conseillers* who would have to speak after them.

My earlier observation about the existence of a burden of disagreement that stemmed from the mode of deliberation would suggest that not many opinions would be expressed in the course of a deliberation. The official records of the Parlement cannot help us establish an average number of opinions per deliberation, for they only registered the sentence on which the judges had agreed in the end. Other documents, however, confirm that, in the great majority of cases, the diversity of opinions was minimal and that rarely more than two were expressed. An *ordonnance* from 1510 indicated that, “when judging trials, if it happens that there are three opinions, the smallest one [i.e. the one of the three that had been endorsed by the smallest number of *conseiller*] has to join either of the bigger ones.”<sup>681</sup> I will come back shortly to this process of “reducing the opinions,” as the *conseillers* called it, and simply note for now that, while the Parlement de Paris accepted to register this *ordonnance* in 1512, it took fifteen years before a trial produced a situation in which three opinions remained at the end of a deliberation. Thus, it took fifteen years and thousands of trials in front of the Parisian court before the situation presented itself, thereby indicating that the great majority of deliberations—in fact almost all of them—produced less than three differing opinions.<sup>682</sup>

Despite a lack of statistical evidence, I would argue that a great number of cases produced only one opinion, that of the *rapporteur* and that the *conseillers* approved it unanimously. I would also argue

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<sup>679</sup> “... aux bureaux ordinaires des chambres, pour le jugement et expedition des procez civils ou criminels, les advis sont demandez par les presidens a ceux qui sont les plus près du rapporteur à rang et suite, sans observer aage, ordre, ny rang, comme il plaist au president.” (*ibid.*, 556)

<sup>680</sup> *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, IX, 155 (Charles VII, 1446, art. 13).

<sup>681</sup> “S’il advient trois opinions en jugement, la moindre devra se réduire à l’une des deux autres.” *Ibid.*, XI, 576 (Louis XII, 1510, art. 32). This article was repeated later in the *ordonnance* of Villers-Cotterets (1539).

<sup>682</sup> *Treze livres des Parlemens de France*, 576-7. La Roche-Flavin does not tell us what the case was about, or in what chamber the 1527 deliberation took place but he indicates that eight *conseillers* had been of one opinion, seven of another one, and four of a third one. He added that it was following this particular case that the parlement de Paris issued an *arrêt* on April 21, 1527 to confirm that the 1510 *ordonnance* would be followed to resolve situations of this kind.

that this outcome must have occurred in two different types of case. The first type is that of civil lawsuits with very low financial and political stakes. When this type of case came up for a deliberation it is difficult to see what incentive the *conseillers* might have had to go through the trouble of developing a differing opinion and legal reasoning, and thus, the “burden of disagreement” was at its fullest. A personal enmity for the *rapporteur* or an *esprit de contradiction*<sup>683</sup> could still prompt a *conseiller* to formulate a new opinion, but there were plenty of more lucrative and more significant cases to shine or hurt one’s enemies.

The second type of cases that produced a single opinion—that of criminal trials in which the deed seemed particularly abject and the guilt obvious—is better known. The deliberation on the case of Jean Lastaing who in 1612 had snatched a consecrated host from the hands of a priest during mass, illustrate this second kind of judicial unanimity. Caught six weeks after he bolted out of church in front of a flabbergasted congregation, Lastaing explained his deed by the lure of profit, for he had heard in Spain that a gambler with a consecrated host in his pocket would always win. While the court agreed that Lastaing was a simpleton, the twenty-two *conseillers* who judged him condemned him unanimously to be burned alive on *place du salin*. The particularly horrendous nature of his crime—the stealing of the body of Christ, a crime of “*lèse-majesté divine*”—is attested by the fact that Lastaing was judged by the joint chambers of the Tournelle and Grand Chambre (a procedure reserved for important and notorious cases)<sup>684</sup> and confirmed by the organization on the Sunday following Lastaing’s execution of a general procession in which the whole court participated as a *corps* and of particular processions in each parish of Toulouse to expiate his crime.<sup>685</sup> Likewise, once Arnaud du Tilh was unmasked by the providential return of Martin Guerre, the *conseillers* were unanimous in their support of Jean de Coras’s *rapport* and its

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<sup>683</sup> La Roche-Flavin notes that a number of *conseillers* were animated by such a spirit that led them to disagree, by character rather than by conviction: “Parce qu’il en y a certains, qui naturellement ont un esprit de contradiction, *et sunt natura ita pugnaces, ut tantum sententiis aliorum contradicant et qui consilii quamvis egregii, quo non ipsi afferent, sunt inimici, et adversus doctos pernitates.*” *Ibid.*, 578.

<sup>684</sup> Ségla’s *Histoire Tragique* was judged by the same joint chamber.

<sup>685</sup> Malenfant, I, 68-71 (February 11, 1612).

proposed sentence. Specific examples of unanimous condemnations in criminal trials could be multiplied,<sup>686</sup> thereby attesting to the existence and maybe the frequency of this outcome of deliberations.

Without any statistical confirmation either, it seems likely as well that deliberations that produced two opinions were very frequent, and, I would argue, the most frequent outcome in a *parlementaire* deliberation. It seems indeed that situations in which the *rapporteur* had a *contretenant*—also called sometimes *compartiteur*—, were the norm and, as we will see later, were considered an ideal deliberative outcome. One *conseiller* then, would propose a sentence and a legal reasoning that differed from that offered by the *rapporteur*. This deliberative configuration was dualistic but did not have to be Manichean: the *contretenant*'s opinion did not have to be strictly opposite to that of the *rapporteur*, that is, the *contretenant* did not have to side with the litigant that the *rapporteur* had chosen to condemn, and conversely, he did not have to ask for a condemnation where the *rapporteur* had asked for an acquittal.

Ségla's text gives us a practical example of the rules the *conseillers* followed to decide which one of two opinions they would transform into their collective decision. It seems normal to us that the judges would follow an electoral procedure to determine which opinion garnered the most votes. As my critical analysis of the practice reveals, however, it was a far less obvious choice at the time and the *conseillers* themselves questioned the efficiency of this rudimentary democratic process. This different approach to the voting process is also visible in the technical peculiarities of this procedure on which I want to focus now.

The *Histoire Tragique* can help us to uncover some of those technical details, first because Ségla mentions the number of votes each opinion received—which the records of the Parlement never do—, but also because this trial led to a number of electoral deadlocks. Each time, Ségla described the procedure the *conseillers* followed to overcome situations in which that majority remained elusive. The first deliberation that Ségla mentions, that on the case of Burdeus, clearly shows that *parlementaire* majority is not the simple majority used in today's jury—whether popular or professional jury. Eleven *conseillers*,

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<sup>686</sup> This was notably the case for cases of infanticide, in which the *conseillers* tended to unanimously confirm up to 70% of the death sentences that had been appealed to them (Soman, "The Parlement of Paris and the Great Witch Hunt (1565-1640)," 36).

including the *rapporteur*, supported a death sentence against Burdeus and ten others, including Ségla himself, wanted to subject his supposed accomplices, Candolas and Esbaldit, to torture. Despite this result that gave one more vote to one of the two opinions, Ségla describes this situation by telling us that it was a “division” (“*partage*”), meaning that no opinion had prevailed. The standards to establish a majority in a *parlementaire* deliberation were indeed peculiar and varied depending on the matter at stake. An absolute majority (half of the votes plus one) sufficed in a deliberation to register a new law in a general assembly, a majority of two thirds was necessary to approve the installation of a new *conseiller*, a two vote difference was required in both civil and criminal trial. In criminal trials that could carry a corporal punishment, however, the rule was that there could be no *partage*: in cases of deadlock—that is, if neither opinion had two more votes than the other—the chamber had to adopt the more lenient of the two sentences, even if that sentence had received less votes than the harsher one. In the deliberation on the case of Burdeus then, the more lenient sentence—that of torture advocated by Ségla—should have passed. It did not, for the parlement de Toulouse followed in this situation a unique rule that might explain in part this court’s reputation of severity. In Toulouse indeed, the custom was that there could be *partage* in a criminal trial carrying a corporal punishment if the more lenient sentence had received one less vote than the harsher one—in other cases, that is equality of votes or one less vote for the harsher sentence, the more lenient sentence would pass like in Paris. Before I explain how those *partages* were solved—how they were “reduced” as the *conseillers* said—another difference between Paris and Toulouse should be noted: nine *conseillers* were to be present “to make an *arrêt*” in the Parlement de Paris, seven in the smaller Parlement de Toulouse. Whenever this quorum was reached and the appropriate majority was secured—depending on the matter deliberated on—, the deliberation was over, it was stopped—*arrêtée*—like the trial itself, and the sentence—the *arrêt*—had to be made.<sup>687</sup>

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<sup>687</sup> See “Arrêter” in Chapter 8 below.

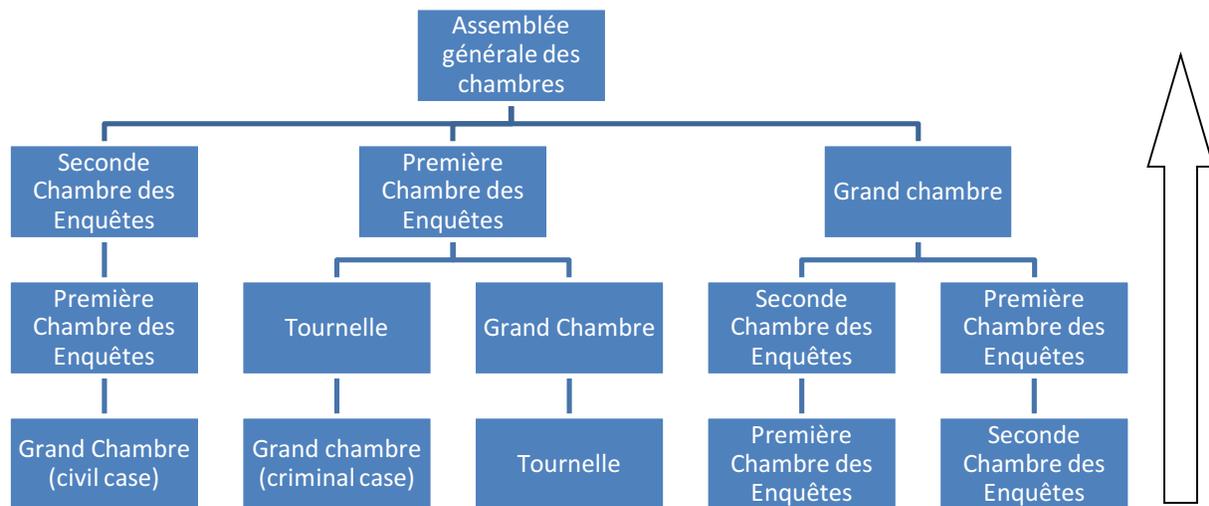
## *Partage*

When the majority was not reached however, as it happened in the deliberation on the case of Burdeus, a situation of “*partage*” was declared. To deal with those situations, the court resorted to a specific procedure called “emptying a divide” (“*videment de partage*”) that consisted in transferring the deliberation to another chamber. “*Videments de partage*” did not leave more traces than regular deliberations in the records of the court,<sup>688</sup> but because they occurred in contested, sometimes confrontational situations between the *conseillers*, they generated more interest and attracted more attention than unproblematic deliberations.

In the deliberation on the case of Burdeus, many elements made the *partage* noteworthy: the stature of the accused, the application of the uniquely Toulousain rule that led to pronounce *partages* in serious criminal cases of this kind, and—most intriguingly to Ségla as we will later see—the fact that the *partage* was solved by a very close margin in support of a condemnation later confirmed by divine providence. As I just mentioned above, the “emptying” (“*videment*”) of the divide that had occurred in the joint chambers of Tournelle and Grand Chambre, meant sending the case to another chamber. The choice of this other chamber was not random but obeyed precisely defined institutional rules represented below (Figure 1).

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<sup>688</sup> As in the case of “regular” deliberations, the registers only noted the final decision and the names of the *conseillers* present, without mentioning the situation of *partage*, thus making it virtually impossible to give a statistical representation of their frequency.



**Figure 1: Transfer of “partages” from chamber to chamber**

In this particular trial, since the Grand Chambre had already deliberated jointly with the Tournelle, the *partage* had to be “carried” (“*porté*”) to the Première Chambre des Enquêtes. To “carry the divide” there did not simply mean to transfer the *sacs* and their documents from one *bureau* to another. It meant, more importantly, that the *rapporteur* and *contretenant* from the chamber where the divide occurred would bring those *sacs*—and their opinions—to the new chamber. This was a critical point, because it meant that this second deliberation was not a new deliberation on the trial but a deliberation on the *partage* itself. The idea was that all the “opinions” that needed to be formulated in the case had been already formulated in the first deliberation, that only two opinions remained, and that the function of the “*videment de partage*” was to decide which one of those two would “make the *arrêt*.” Another clear sign that the object of this second deliberation was the divide and not the trial itself was that only those points on which the *conseillers* had been divided were “carried” to the new chamber. As La Roche-Flavin explained, “when a trial consists in several points and incidents and that the difficulty to solve it [*la difficulté de le vider*] is only on one or two points and not the other ones, it is divided [*il est parti*]” for this difficulty and not for the rest (...). And thus, the chamber to which it is transferred will only dispute

and examine those points that are divided and not the others.”<sup>689</sup> The two *conseillers* who “carried the divide” were the *rapporteur* and his *contretenant*. Ségla then, as the *contretenant* to *rapporteur* Mansencal at this stage in the trial, was a first-hand witness to what happened in the Première Chambre des Enquêtes. A number of significant differences between this new deliberation on the divide and the earlier deliberation on the case stand out in his account. The *videment* began with a repetition of what had already happened in the chamber of origin: Mansencal presented his *rapport* and recommended that Burdeus be beheaded and Ségla presented his opinion to support his recommendation that Candolas and Esbaldit be tortured first. What followed, however, was a different mode of deliberation: like in the earlier deliberation, each *conseiller* of the Première Chambre des Enquêtes was asked to give his opinion, but in this situation of *partage* he could only side with either Mansencal or Ségla and was not allowed to propose a new opinion. He was allowed to do something new, however: ask questions to both the *rapporteur* and his *contretenant*, object to their reasoning, and the *rapporteur* and *contretenant* could criticize one another directly in their answers. Hence, the resulting deliberation involved a good deal of interaction between the *conseillers* and resembled a discussion much more than the series of monologues observed in the original deliberation.

While more open and more developed, the interactions that took place between the *conseillers* at this stage were not meant to devise a consensual solution that could reconcile the two confronted opinions. On the contrary, the goal of the deliberation was still to decide in favor of one of the original and unchanged opinions, exclusively of the other. In fact, the rules to count the votes in this situation of “*videment de partage*” reveal that this second deliberation was not a repetition but an extension of the first one: the threshold to reach a majority remained the same (an opinion needed two more votes than the other to become decision), but the votes of the two deliberations were cumulated.<sup>690</sup> According to those

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<sup>689</sup> “*Quand un procès consiste en plusieurs points et incidens, et que la difficulté de le vuider est seulement en un point ou deux, et non es autres, il est party pour la difficulté et non pour le reste dont l’on s’accorde par la pluralité des voix. Et par ainsi ne sera en la chambre ou il est remis disputé ny veu autre chose que les points qui sont partis, et les autres non.*” (La Roche-Flavin, *Treze livres des Parlemens de France*, 585).

<sup>690</sup> “*on combine les vois d’une chambre à celles de l’autre*” says La Roche-Flavin (*ibid.*, 584).

rules of cumulation, both Ségla and Mansencal needed one more vote than the other to see their opinion adopted.<sup>691</sup> Unfortunately, Ségla does not reveal the tally of votes in this second deliberation for he only tells us that “following the opinion of the *rapporteur*, the sentence to death passed on the fifth of February 1609 and [Burdeus] was executed on that same day.”<sup>692</sup>

Whatever the actual vote, it is also certain that if the two opinions had received the same number of votes overall or if Ségla’s opinion had still been trailing by one vote after this *videment*, the *partage* would have been maintained and would have had to be “carried” somewhere else. In this particular case, it would have gone to the general assembly of all chambers, where the exact same introductory presentations from the *rapporteur* and the *contretenant* as in the Première Chambre des Enquêtes would have been repeated. All the *conseillers* from the Grand Chambre, Tournelle and Première Chambre des Enquêtes would have voted again, the *conseillers* of the Second Chambre des Enquêtes who would have joined them for this general assembly would have voted as well. In those assemblies, much larger than in individual chambers,<sup>693</sup> the *premier président* would write down the votes by drawing short lines or dots

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<sup>691</sup> While Mansencal had obtained one more vote in the original deliberation, Ségla was still supporting the more lenient of the two sentences. The rule in criminal trials was that votes could not be combined in support of the harsher sentence, and thus, Mansencal needed two more votes than Ségla in the Première Chambre des Enquêtes. As for Ségla, because the combination of votes was allowed in support of the more lenient sentence (*ibid.*) he only needed one more vote than Mansencal. Assuming that there were seven *conseillers* present for the *videment* in the Première Chambre des Enquêtes (the quorum), four votes to Ségla and three to Mansencal would have meant a total of fourteen for each, in which case the lenient sentence would pass. Four votes to Mansencal and three to Ségla would have meant that the divide was maintained for Mansencal, as supporter of the harsher sentence, was not allowed to combine his one vote advantage from the original deliberation. The only way Mansencal won as he did was with a larger margin of two votes in the *videment* deliberation: five votes for his *rapport* against two votes for Ségla’s opinion.

<sup>692</sup> “suivant l’avis du sieur rapporteur, il passa à le condamner à mort le cinquième Fevrier mil six cens neuf, et il fut exécuté le mesme jour.” (Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, 32).

<sup>693</sup> The deliberation of the joint Tournelle and Grand Chambre that involved twenty-one *conseillers* in the case of Burdeus’s trial was already much larger than in less notorious trials. The quorum of seven *conseillers* is indicative of a number that was frequently not met because of the *conseillers*’ absenteeism.

on a “divide sheet” (“*feuille de partage*”) to make the final tally easier.<sup>694</sup> As in the previous attempt at *videment*, the only two options available were the two opinions from the original divide. In order to reduce the likelihood of another *partage*, the *videment* was pronounced if one of the two opinions led the other by only one vote.<sup>695</sup> If in the end however, the two opinions still garnered an equal number of votes, the *partage* would be sent to the king and his council. Although in such rare occurrences of an unsolved *partage* the trial would leave the court, the two original opinions remained and the king himself could only choose one of those two, that is, rule on the divide and not on the case itself. For that purpose the *sacs* containing the proceedings as well as the *rapporteur*’s and the *contretenant*’s written opinions and the “divide sheet” would be sent to the chancellor but the king himself would rule. An eighteenth century case mentioned by Michel Antoine in his study of the royal council illustrates this process well: a divide that could not be solved in a general assembly of the parlement de Besançon on December 1, 1762 was sent to the king, who ordered in his *arrêt* of January 28, 1763 that “the scribe [*greffier*] of his said court of Parlement de Besançon would draft, in front of a general assembly of the chambers, an *arrêt* of the court conformed to the opinion [*avis*] of the *sieur* Petit-Benoist de Chaffois, *compartiteur* [i.e. *contretenant*].”<sup>696</sup>

### *Assemblées Générales des Chambres*

The rules followed in a general assembly of the chambers to “undivide” (“*départir*”) a trial that came from a particular chamber, were the same as those followed by the general assembly of the chambers in any other deliberations. It is worth pausing on those rules and customs of deliberation in

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<sup>694</sup> "In the general assemblies of chambers, the one who presides marks the diversity of opinions with dots or a line on a blank sheet of paper" (“*Et aux chambres assemblées, celui qui preside marque la diversité des opinions par des poicts ou traicts de plume sur une feuille de papier blanche.*” La Roche-Flavin, *Treze livres des Parlemens de France*, 576).

<sup>695</sup> *Ibid.*, 24.

<sup>696</sup> Michel Antoine, *Le conseil du roi sous le règne de Louis XV*, Mémoires et documents publiés par la Société de l’Ecole des chartes, 19, Genève, (Paris.): Droz, 1970, 285-6.

general assemblies, for they constituted the original template after which deliberation in individual chambers had been modeled. Indeed, the original Parlement, that of Paris detached from the *curia regis* in the middle of the thirteenth century, was constituted of only one chamber that always deliberated as a whole on all “judicial” matters.<sup>697</sup> As both the number of *conseillers* and the caseload grew in the course of the fourteenth and fifteenth century, the court was formally divided into chambers. Although this transformation certainly related to changing conceptions about law, justice and professionalization, those institutional divisions and the specializations they entailed (for instance between civil and criminal) were mainly dictated by practical concerns. The goal was to better handle a caseload that had kept increasing as a result of the aggrandizement of the kingdom, the advance of royal administration that furthered the royal reach in the provinces, and the progress of royal authority that supported the development of procedures such as appeal and *évocation*. Likewise, the procedures adopted in those individual chambers, while derived from those followed by the original one-chamber-court, were meant to help keep pace with the increasing caseload. Thus, by the sixteenth-century, deliberation in individual chambers was both different from and reminiscent of deliberation in general assemblies of the chamber. The deliberative mode followed in those general assemblies was itself most likely reminiscent of the modalities in use in the original parlement.

One of the main differences between deliberations in those two institutional settings was that in a general assembly a one vote difference—instead of a two-vote difference in a chamber—was enough to secure a majority. Thus, it might seem that the general assembly followed a strict model of relative majority, thus indicating that deliberations might have been easier to settle in general assemblies. This is true of deliberations in which only two opinions were produced, that is, as we have already seen, in the great majority of cases. In general assemblies, however, the existence of three or more opinions was a common occurrence. In fact, deliberations in general assemblies were limited to only two opinions in

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<sup>697</sup> As we will later see, the distinction between judicial and extra-judicial was still unclear at the end of the seventeenth century. A fortiori, it was even less clear in the thirteenth century. One could actually say that it is not that distinction that dictated the detachment of a particular section of the *curia regis* that became the parlement, but that on the contrary, the detachment itself is at the origin of the distinction.

cases of *partage* coming from an individual chamber. In those cases, the one-vote difference helped to avoid perpetuating a *partage* that had already survived deliberations in three different chambers. In most other situations, deliberations in general assemblies frequently produced more than two opinions.

I want to describe now the procedure known as “reducing opinions” used to deal with those deliberations in general assemblies in which more than two opinions were expressed. This description will serve as my basis for a later demonstration of the ways in which the *conseillers*’ self-conception as members of a sovereign *corps* shaped their understanding of the nature of judicial truth. Before I explain how the diversity of opinions was “reduced” it is necessary to note that this diversity (more than two opinions) was an exclusive feature of deliberations in general assemblies. The greater number of opinions expressed was not a simple function of the greater attendance in general assemblies.<sup>698</sup> The diversity of opinions in general assemblies seems to have resulted from a different approach to deliberation in this particular institutional context. Even in deliberations on trials with an unusually large attendance—say, in the trial reported by Ségla where the *conseillers* of the joint Tournelle and Grand Chambre totaled twenty-one rather than the average seven to ten—the *conseillers* seem to have done their best to limit the number of their opinions to two. In general assemblies, on the contrary, the expression of three opinions or more seems to have been the rule. “Reducing” those opinions, meant that when more than two opinions had been produced in a round of votes, those who had supported the opinion that ended up receiving the least votes were forced to endorse one of the opinions that had received more vote. Thus, deliberations in general assemblies could be very long depending on the number of opinions expressed in the first round of voting, for the number of rounds of votes would equal this initial number of opinions minus one. In an assembly that had about seventy voters, would did not vote simultaneously but each one in turn, and who could speak—in theory—as long as they wanted when their turn came, those deliberations could be very

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<sup>698</sup> In the first half of the century a deliberation in a general assembly in the parlement de Toulouse would involve about seventy *conseillers*. This figure is very approximate. It is based solely on my count of votes for the very rare instances in which they were recorded. La Roche-Flavin indicates that there were 100 *conseillers* in Toulouse at his time, but this perfect, round number of “senators” is not very accurate. Whatever the exact figure, it is definitely much higher than the number of *conseillers* who, on average, would attend a regular deliberation on a trial in an individual chamber.

long. Etienne de Malenfant has recorded numerous cases of deliberations in general assemblies that lasted for several sessions (sessions of general assemblies of the chambers would typically take place on Wednesday mornings and would last for three to five hours). Thus each round of voting would eliminate an opinion until only two of them remained. Interestingly, even after one of those two opinions had surpassed the other by one vote or more, a last round of voting took place. As in previous rounds, the minority opinion would have to side with the only majority opinion left, thereby resulting in a final vote that could only be unanimous.

### Délibération *and* parlementaire *politics*

This last round of voting was largely symbolic and was the clearest illustration that “reducing opinions” was a procedure designed for ideological rather than pragmatic purposes. Indeed, the *conseillers* were most probably aware that there existed other, faster and simpler ways of counting votes to determine a majority. “Reducing opinions” produced unanimity, and with each deliberation the procedure forced the *conseillers* to come together and reassert the unity of the *corps* they composed.

To some extent, both this unanimity in deliberation and the unity it was supposed to reflect were a façade. As the last round of unanimous voting masked the diversity of opinions that had preceded it, the idea of the unity of the *corps* masked profound divisions among members of the court—divisions in *parlementaire* factions, clientele networks, age groups, religious groups, chambers, etc. Those divisions certainly emerged in the course of deliberations, both in general assemblies and in individual chambers as a few examples I have already mentioned reveal. In the 1638 deliberation on the “community of spices” (“*communauté des épices*”), the divisions were so profound and the polarization so clear-cut that all the rules of deliberation I have just mentioned broke down. In fact, it was not just the rules of deliberation that could break down in case of serious internal divisions, but the most elementary sense of decorum: in the 1627 confrontation between the two Chambres des Enquêtes and the Grand Chambre over the

replacement of a recently deceased *conseiller*,<sup>699</sup> the *conseillers* from the lower chambers not only occupied the Grande Salle to prevent their colleagues from holding their deliberation, they also stood on the higher benches, and screamed, clapped and laughed so that the deafening noise would render the deliberation properly impossible when the *Président* of the Grand Chambre decided to proceed despite their presence.<sup>700</sup> In that same session, some of the fundamental principles of the *parlementaire corps* were questioned as well when the *conseillers* threatened the *greffier*—a member of the *corps* under the authority of the *premier président*—if he recorded any of the events unfolding in front him in the Grand Chambre.<sup>701</sup> This case of a heated deliberation—and many others mentioned by Malenfant—serves as a reminder that the modalities of deliberation I have described are theoretical and normative, and project a skewed image of *délibérer*, one that probably reflects idealization more than reality.

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<sup>699</sup> This is the same conflict I have already mentioned in Chapter 4 (see p. 184, 189 above).

<sup>700</sup> “[*conseillers* of the *Enquêtes*] raised their voice so loud, clapping their hand and with extraordinary movements of their bodies, leaving their seat to go up onto the higher benches, so much so that those voiced prevented the *arrêt* [that is, the result of the deliberation that had just taken place] from being heard, even though M. de Caminade, president had raised his voice as much as he could so that he would be heard. But the cries were so loud and the disorder so great that only those who were nearest to him could hear.” (“[*messieurs des Enquêtes*] ont tellement élevé leurs voix avec batemens de mains et des gestes du corps extraordinaires quittant leurs places et montant aux hauts sieges que ces voix ont empêché que l’arrêt ne peut être oui, quoique led. Sr. president de Caminade haussat sa voix autant qu’il lui étoit possible pour se faire entendre. Mais les huées étoient si fortes et le desordre si grand que sa voix ne pouvoit être ouïe que de ceux qui étoient plus proches de lui”). Malenfant, *Collections et remarques du Palais*, I, 291 (February 20, 1627).

<sup>701</sup> “M. de Caminade president [of the Grand’ Chambre] ordered the *greffier* of the court to write down an official record of what had happened to show to the king. To which M. Fresals, president [in the Seconde Chambre des Enquêtes] replied that he forbid the *greffier* to write what M. de Caminade president had ordered him, and calling him by his name of “Pressac” and not by the rank and honor he holds in the *Palais* [i.e. “M. le Greffier”] and told him that he should think carefully about what he was doing and that the Chambres des Enquêtes were powerful enough to relieve him of his office and replace him with someone else, that what he ordered him was order by two thirds of the *compagnie* [i.e. the court] he was bound to obey and that if he wrote anything he would regret it” (“le Sr. president de Caminade a enjoint au greffier de la cour de retenir acte pour être vû par le roi. A quoi a été reparti par le Sr. president Fresals qu’il defendoit au greffier d’ecrire ce qui lui étoit commandé par led. Sr. president de Caminade, et l’appellant par son nom de Pressac, non par celui du rang qu’il a l’honneur de tenir dans le Palais, lui a dit qu’il avisait bien à ce qu’il fesoit et que la cour aux chambres des enquêtes étoit assés puissante pour le destituer de sa charge, et en metre un autre à sa place ; que ce qu’il lui commandoit, lui étoit commandé par les deux tiers de la compagnie à laquelle il étoit tenu d’obéir, et que s’il lui venoit de rien ecrire qu’il s’en repentiroit”) *ibid.* This mission of the *greffier* was deemed so sacred that it was not even clear whether the king himself had control over this act of writing, which, in theory, was done in his name. When Louis XV ordered the *greffier* of the Parlement de Paris to turn over the registers of the court to him, he created such an uproar in the sovereign court that the confrontation ended with the *conseillers* going on strike. In a *remontrance* of November 27, 1755, the premier president described Louis XV’s demand as “unusual, irregular, dangerous, and contrary to the *ordonnances*” (*Remonstrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, II, 67).

Thus, before I make larger claims about the “meaning” of the standard rules of *délibérer* as a practice, I would like to acknowledge first that there were a number of situations and occurrences that demonstrate that the *conseillers* routinely bent some of the fundamental rules of the practice, and more generally some of the epistemological foundations of *parlementaire* knowledge practices. Etienne de Malenfant, always interested in noting the unusual and the unexpected in his *Remarques et collections du Palais*, thus recorded difficult, tense and even frankly hostile deliberations in sufficient numbers to suggest that *délibérer* was not simply a judicial practice but also a *parlementaire* political practice.

This political—one is tempted to say factional—dimension of the practice, appears to be in conflict with the assertion of a unified and absolute “sovereign truth.” “Going to the opinions,” while designed to establish unanimity in support of a final decision, also revealed divisions among judges that were not limited to their differing judicial opinions, but reflected as well institutional and social solidarities. In theory, the control over this practice of “going to the opinions,” gave the presidents of chamber a great deal of political power. Indeed, the ability to decide the order of consultation of the *conseillers* meant that the presidents could influence the result of deliberations. The power derived from this control was so obvious and could be so clearly abused that a number of customary rules—that is, rules not defined by royal law but acknowledged and applied in practice by the *conseillers*—had been devised to limit the ways in which the presidents could utilize this prerogative. One of those rules was that the magistrate who presided over a deliberation—that is, the *premier président* in general assemblies, the older president of the chamber in regular deliberations—would give his opinion last. This rule was specifically designed to prevent one president from influencing the outcome of deliberations. It was not meant, however, to limit the use of political power in the deliberative process, but only to prevent the monopolization of this power by one faction alone. In fact, other customary rules of deliberation demonstrate that the main *parlementaire* concern was not to prevent factionalism in decision-making but to make sure that factions—and as we are going to see, factions of a particular type—could weigh fairly on the deliberative process.

Rules concerning the order of consultation best reflect those concerns and the political mechanisms vested in the deliberative process. Indeed, the theoretical control of the presidents over this order was mitigated by the custom that one had to “go to the opinions” down the ladder of *parlementaire* hierarchy. Although the *premier président* spoke, he would turn first to the second president of the Grand Chambre, then the third and so on. He would then turn to the *doyen* of the *conseillers* of the Grand chambre and then followed the order of decreasing seniority until the most junior member of the Grand Chambre gave his opinion. This process was then repeated for the Première Chambre des Enquêtes, then the Seconde Chambre des Enquêtes, and finally the Chambre des Requêtes. This order of consultation that combined the hierarchy of offices—president superior to conseiller—, the hierarchy of chambers—from Grand Chambre to Chambre des Requêtes—and seniority—the most junior member of a chamber had the least authority, was an exact reflection of *parlementaire* hierarchy also known as “order of the board” (“*ordre du tableau*”).<sup>702</sup> It made the physical operation of “going to the opinions” very easy, for this “order of the board” was reflected—and enforced very jealously—by the seating order of the *presidents* and *conseiller* on the benches of the Grande Salle d’Audience where the general assemblies of the court took place.

Following this order to “go to the opinions” was an absolute rule in general assemblies of the chambers. Malenfant never took the pain to record the order of opinions *per se*, but when he gives an indication of it, it always conformed to that order. La Roche-Flavin, confirmed this order while making clear what its consequence on the deliberative process was when he indicates that “in the Parlements of Paris (...) and Toulouse (...) it is the rule that, after the older and ancient *conseillers* who sit on the first benches have given their opinions, the others who sit on the last benches very rarely give a reasoned opinion—and I have often found that it is better when they don’t—but content themselves with choosing

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<sup>702</sup> The “*tableau*” was originally a board, later a broad sheet of paper, on which was printed each year the full list of *présidents* and *conseillers* in the Parlement, arranged by chamber and in chronological order of their date of “reception” in the court.

one of the opinions of the elders.”<sup>703</sup> While this order of seniority might have been applied less strictly on a daily basis in the course of the deliberations on trials of individual chambers, it seems to have remained the norm in those smaller assemblies as La Roche-Flavin also indicates.<sup>704</sup>

This order of consultation from senior to junior functioned as a political mechanism that allowed, with each deliberation, the reproduction or renegotiation of the distribution of power in the court. Indeed, elder members, because they could intervene early in the deliberation, when the field of opinions was still clear, possessed a greater deliberative weight that reflected their position in the *parlementaire* hierarchy. The younger *conseillers*, especially those in the lower Chambres des Enquêtes, frequently found themselves in the delicate position of having to choose between respectfully supporting the opinion of one of the elders or articulating a disagreement that had to be supported by a reasoning exposed to the scrutiny—and possibly the mockery—of more experienced *conseillers*. Thus, all *conseillers* were equal in that they all shared the fundamental *parlementaire* right of having “deliberative voice,” but the practical value of this prerogative varied depending mostly on their seniority, for the very simple reason that junior members were far less likely than their elders to fully express an original opinion.

This unequal repartition of deliberative power was not only a reflection of a linear *parlementaire* hierarchy—from *premier président* to the most junior *conseiller* in the Chambre des Requêtes—, it also allowed for the manifestation and testing the strength of factions within this institutional hierarchy. Structurally, those factions reproduced within themselves the *parlementaire* hierarchy: led by a *président* of the Grand Chambre, they extended their branches throughout all chambers of the court and their hierarchy would be virtually identical to that of the institution. Those factions are precisely of the kind I have mentioned in Chapter 5, and it is very clear that the fidelities that were cemented and motivated by the search for favors, money, promotions, matrimonial alliances were echoed in the deliberations of the

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<sup>703</sup> 552: “aux Parlements de Paris (...) et de Tholose (...) s’observe qu’après que les vieux et anciens conseillers assis aux premiers bancs ont opiné, les autres, qui sont aux derniers bancs, ne raisonnent leurs opinions que fort peu souvent et ay veu souvent trouver mauvais qu’ils le fissent, ains se contentent de choisir quelque’une des opinions des anciens.” (La Roche-Flavin, *Treze livres des Parlemens de France*, 552).

<sup>704</sup> *Ibid.*, 554.

court. It appears for instance that siding with the opinion of those who belonged to the faction of a president of a chamber was seen as a means to secure a favorable distribution of trials, hence of *épices*. For instance, *intendant* de Bezons noted in his report to Colbert that *conseiller* Olivier, who belonged to the faction of *premier président* de Fieubet, “love[d] the *sac*,”<sup>705</sup> that is, was avid for trials to report. The connection between the lure of profit and belonging to a *parlementaire* faction was even clearer in the case of *conseiller* Aymable-Castellan who, *intendant* de Bezons noted, “[was] of the friends of the *premier président* because of the *sac*.”<sup>706</sup> Among other things, being “of the friends of the *premier président*,” entailed expressing that “friendship”—that is, a form of fidelity—in *parlementaire* deliberations, through the support of the faction’s opinion.

The very procedure of “going to the opinions” was particularly helpful in that respect for it allowed the *conseillers* to align their opinion with that of their faction leaders. In the case of the faction of *premier président* de Fieubet, while the *parlementaire* custom obliged him to express his opinion last, the most prominent figures within his network of allies would speak early on. Among those were *conseiller* de Papus, *doyen* of the court, that is, the first to give his opinion after the presidents, and *conseiller* de Frézal, who was two ranks below Papus in the “order of the board,” hence in the order of opinions. Of those two, *intendant* de Bezons noted that they were not just “of the friends of the *premier président*” but that the *premier président* “ha[d] power over [them]” (“*a pouvoir sur lui*”). Leading figures such as Papus and Frézal who were close enough to the *premier président* to know what the opinion of the faction should be, indicated to others in the faction the way to follow. Indeed, those leading figures themselves exerted their influence on others, for instance *conseiller* Chastanet about whom de Bezons noted that “the sieur de Frézal is very much of his friends and has power over him.”<sup>707</sup> And as de Bezons noted as well,

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<sup>705</sup> Depping, *Les Parlements à l'avènement de Louis XIV*, II, 112.

<sup>706</sup> *Ibid.*

<sup>707</sup> “le sieur de Frézal est fort de ses amys et a pouvoir sur lui.” (*ibid.*, II, 111).

to “have power over” another *conseiller* meant to have their vote, as in the case of *conseiller* Lenoir who “[was] always of the opinion of the sieur de Frézal.”<sup>708</sup>

It is clear then that in a number of cases, one’s support for a particular opinion could be a pure and simple expression of his belonging to a particular patronage network. On occasion, however, the deliberative process allowed and even encouraged challenges to the traditional *parlementaire* alignment along patronage lines. The very tense 1638 debate on the “community of spices” I have already mentioned,<sup>709</sup> is a perfect example of this rare type of deliberation in which solidarities of other kinds could supersede the fidelities traditionally organized by the search for profit, services, favors and honors. In the case of that particular deliberation and as I have already argued, the deterioration of the socio-economic conditions of the *conseillers* at the bottom of the *parlementaire* hierarchy, led them to align their opinions along the horizontal lines of a sort of class solidarity rather than the vertical lines of fidelities that linked them back to the presidents of the Grand Chambre.<sup>710</sup> In this particular case, one could not only say that deliberation was used to challenge the traditional structures of *parlementaire* factions but that the strain which those structures had put on the *conseillers*’ resources in the specific socio-economic conditions of the time had led those who felt wronged to use *deliberation* as a bargaining tool.

The overall point is that the practice of deliberation and the norms and customs that regulated it to turn it into a “unanimizing” process, was also a powerful tool for the expression, cementing and reshaping of divisions within the court. Should we conclude, however, that the deliberative process was primarily shaped by the *conseiller*’s fidelities—social, professional, religious, or otherwise—? First of all, it should be noted that some of the alignments I have just mentioned happened in particular circumstances that should caution against generalization. As I have already noted, the alignment along “class” lines within

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<sup>708</sup> “*est toujours de l’avis du sieur de Frézal*” (*ibid.*, II, 112).

<sup>709</sup> See Chapter 5.

<sup>710</sup> Due in great part to the explosion of the price of offices in the first decades of the seventeenth century, the increase of the proportional value of *épices* in the revenues of the least wealthy *parlementaire* created a resentment and even an open hostility vis-à-vis the *présidents* who had control over the distribution of this increasingly scarce resource.

the *parlementaire* hierarchy, happened in a very particular historical context at the end of the three to four decade-long readjustment of *parlementaire* sociology and practices that had resulted from the officialization of the venality of offices. Horizontal alignments of opinions of this kind became less frequent after 1640 and extremely rare after the *parlementaire* Fronde at the turn of the 1650s—another particular moment that could be perceived, retrospectively, as an illustration of the dangerous influence of the factionalism of younger *conseillers*. Likewise, alignment along religious lines was much more common in periods of acute crises: in the 1560s and 1570s the fault line between Catholicism and Calvinism could also divide opinions, and to a lesser degree because the polarization was neither as marked or as tense, the individual affinities with the Jesuits or the Jansenists could shape deliberations as well. In addition, the religious opinions of the *conseillers* could on the contrary be a factor of unity and even unanimity when a deliberation triggered *parlementaire* Gallicanism.

Further, the impact of pre-existing *parlementaire* divisions on deliberations should not be exaggerated, because the existence of networks, groups and factions did not extinguish individual agency. Looking again at *intendant* de Bezons' report to Colbert, it appears that for each example of slavish fidelity to a patron within the court one can find an example of independent *conseiller*. Not surprisingly, those independent individuals were, from the perspective of the *intendant* and the central government, potentially dangerous and accordingly, de Bezons often labeled them as “*frondeur*.”<sup>711</sup> Tellingly, however, this negative label was often associated with personal traits and qualities that one might look for in a judge. Thus *conseiller* Delon, deserved his label of “*frondeur*” not just for his independent spirit but because he had been actually involved in the Fronde “and had even been exiled” for it. His independence, although perceived negatively by the *intendant*, stemmed from a number of qualities, for, as de Bezons also noted, Delon was “very knowledgeable, [had] fortitude, determination and integrity.” As a result—and this was the point that probably worried *intendant* de Bezons the most—Delon “[didn't] let himself

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<sup>711</sup> Overall, *intendant* de Bezons' report seem to suggest that the central government was more at ease with *conseillers* whose slavish servility to their faction or network made them predictable. The *intendant*—and one would assume, Colbert, the royal council and the king—seemed to be far more suspicious of those *conseillers* whose attitude—support or opposition—appeared to be an unknown variable.

be governed,” a characteristic which in deliberative terms translated by the fact that he “[was] peculiar in his opinions.”<sup>712</sup> Likewise, *conseiller* Boisset, whom Bezons also labeled a “*frondeur*,” “[had] wits, integrity and capacity” and—this trait might have made him look even more dangerous—“spoke well.”<sup>713</sup> *Conseiller* Masnau further illustrated the association, in *intendant* de Bezons’ report, between independence and those qualities, for he too was described as someone who “[was] believed not to let himself be governed” and was “a man of capacity, integrity and determination.”<sup>714</sup>

Thus, while groups and networks of *conseillers* could provide a general framework for the outcome of deliberations, differences between *conseillers* at the individual level—differences of character, talent, ambition—allowed for a degree of flexibility in the ways in which opinions aligned with one another. This flexibility was greater in deliberations on trials than in general assemblies of chambers in which a number of matters debated—acceptance of new *conseillers*, matters of local politics, registration of royal laws, reform of *parlementaire* discipline—tended to mobilize *parlementaire* fidelities more readily than discussions over the claims of litigants. This is not to say that patronage and fidelities had no bearing on the judgment of trials but that in this different deliberative context they influenced the opinions of the *conseillers* in different and more limited ways. The already mentioned example of Madame de Poypetit who from her relatively forsaken St. Puy managed to mobilize her Gascon connections to reach her rapporteur Tournier in Toulouse,<sup>715</sup> illuminates the way in which litigants from regions far from the regional centers of patronage could use local acquaintances and solidarities to construct ad hoc chains of relations to reach *conseillers* at the very top of the provincial elite of Languedoc. Those attempts were so common that, instead of trying to prevent them by keeping the names of *rapporteurs* secret—a medieval *parlementaire* rule that had proved impossible to enforce—the

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<sup>712</sup> "Delon, homme très sçavant, a du cœur, de la fermeté et intégrité, et ne se laisse gouverner ; mais singulier dans ses avis, et a esté frondeur, et mesme a esté exilé." (Depping, *Les Parlements à l'avènement de Louis XIV*, vol. 2, 112).

<sup>713</sup> "Boisset, a de l'esprit, de l'intégrité et capacité, parle assez bien, mais frondeur" (*ibid.*).

<sup>714</sup> "Masenau, homme de capacité, d'intégrité et ferme, et que l'on croit ne se laisser guères gouverner." (*ibid.*)

<sup>715</sup> See Chapter 5.

parlement changed its rules and made those names officially public, so that litigants could recuse a *rapporteur* that was too obviously connected to their opposing party.

The pertinent distinction seems to be not between deliberations in general assemblies and those in individual chambers, but between matters that interested patrons of *conseillers* and matters that interested more or less distant clients of the *conseillers*, or litigants that had no connections at all. Patrons of the *conseillers*—other *conseillers* and presidents in the court, prominent members of the provincial aristocracy, ministers, princes—could have an interest in deliberations in general assemblies—for instance the prince de Condé when the court debated the way in which he should be honored upon his visit to the Palais—<sup>716</sup> but also in deliberations on their own trials and that of their “creatures.” This pressure of patronage “from the top” had a lot more potential to inflect the outcome of deliberations than requests “from below” that came from clients, sometimes very indirect and hitherto unknown clients such as Madame de Poypetit, an acquaintance of an employee of a *conseiller*. Serving as a broker for Madame de Poypetit, François Malaubert, the tutor of *conseiller* Tournier’s children, was asking his employer to favor her or, at least, speed up the proceedings.<sup>717</sup>

There is no reason to believe that, in the context of the private, often casual and at times familiar correspondence between the two men, Malaubert would ask for less than what he expected. His request reflects the relatively limited impact of this type of clientelism “from below” on the deliberative process. Tournier could prioritize his *rapport* of this case over others so that Madame de Poypetit would not have to endure the cost of additional procedures. He could also favor her “regarding the matter of the trial” but there is reason to doubt that his support would have extended, as Malaubert put it, beyond what “ordinary justice [would] allow.” The two men must have shared a common understanding of what this phrase meant. What was that understanding or to put the question in a more direct way, what did ordinary justice in fact allow? The theory and practice of justice I have presented give us some elements of answer. In theory, “ordinary justice” as it was regulated by royal laws, did not even allow the request of Madame

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<sup>716</sup> See Chapter 3, p. 145.

<sup>717</sup> See Chapter 5, p. 246.

Poypetit. In practice, “ordinary justice,” that is literally day-to-day justice, was limited by the modalities of *rapporter* and *délibérer* I have described above. The *brevet* Tournier would have to present to his colleagues had to match the *faits* contained in the documents exposed on the *bureau*. Tournier’s recommended sentence had to be supported by the *faits* Madame de Poypetit had proposed in those documents. Those *faits* had to be strong enough to either prevent another *conseiller* from offering a differing opinion or to resist the “counter-*rapport*” of a possible *contretenant*. If Madame de Poypetit’s case was not very strong, Tournier could always hope to mobilize the friendly, possibly interested support of fellow *conseillers* in his chamber. But was Tournier’s favoring of Madame de Poypetit’s claims worth the legal work and the political investment? What if Madame de Poypetit’s brother-in-law—her opponent in the trial—had reached out to another *conseiller* in the chamber who was ready to scrutinize and mobilize in his favor as well?

Those questions and the uncertainties they raised, suggest that *rapporter* and *delibérer* were practical solutions devised for a two-tiered judicial system, adapted to the two-tiered society it served. Litigants who had the financial, social or political capital to raise the stakes of their trials, made it worth—and often quasi-mandatory—for the *conseillers* to engage in a deliberative process influenced and sometimes governed by partisan alignments. The same deliberative framework however, could also be used to adjudicate the trials of those litigants whose claims, means, and influence were too insignificant to spring *parlementaire* factions into action.

### Délibération *and* parlementaire justice

To illuminate the ideological and epistemological underpinnings of *parlementaire* deliberation in the sixteenth and seventeenth centuries, my analysis now focuses on two connected aspects of the practice: its genealogy and its core principles. The genealogy of *parlementaire* deliberation—that is, the retracing of its slow transformation from an advising practice in the thirteenth century into a polyvalent decision-making practice—is essential to understand the core principles of the early-modern practice.

Those principles—autonomy of the proposed resolutions, secrecy of the deliberation, and unanimity of the decision—were practical reflections of the *conseillers*’ conception of judicial truth and of their own role in bringing about this truth.

The origins of the early-modern deliberation I have described predate the creation of the Parlement and explain important aspects of the practice. Deliberations in general assemblies of the court resemble most closely what *parlementaire* deliberation had been originally, that is in the thirteenth century, at a time when the court had not been divided into chambers yet. The *conseillers* of the original Parlement, a court which was neither very large nor very busy yet, most likely deliberated in the same way they had previously used in the *curia regis*. This point is important because it suggests that *parlementaire* deliberation—a decision-making practice—was originally an advising practice. The title of *conseiller* was a reminder of this original function of the Parlement: to advise the king on the resolution of his subjects’ conflicts. The practice of “going to the opinions” in a general assembly of the court was a remnant of this original function in a number of ways. The plurality of opinions that emerged from this practice—a plurality encouraged both by the modalities of the practice itself and by the existence of factions of *conseillers* within the court—is consistent with the advising function of the judicial section of the *curia regis*. As the king did in the medieval *curia* and as he still did in the early-modern royal council, the *premier président* sitting on a chair reminiscent of the royal throne would ask the opinions of whoever he saw fit—generally beginning with the oldest, most experienced and most trusted advisors. Those opinions, or *avis*—a term derived from the same etymological root as the English word “advice”—, were originally and simply put, advices from counselors to decision-maker. Listening to advice (“*prendre conseil*”) was a requirement of medieval government—*gouvernement par conseil*—and a plurality and diversity of advices was necessary to meet this requirement. The transfer of judicial decision-making from the king to the parlement through the theory of representation I have already described,<sup>718</sup> entailed changes in the practice of deliberation. Indeed, now acting in the absence of the king, the *conseillers*

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<sup>718</sup> See Chapters 1 and 2.

retained their original function and duty—to propose resolutions to the conflicts of the royal subjects—but had to devise practical ways of replacing the absent king to decide which opinion to choose in the diversity produced. The practice of “reducing the opinions”—the solution devised to achieve this substitution—was, as I noted above, neither the most obvious nor the most practical way of achieving collective decision-making. It was adopted nonetheless because it satisfied the *conseillers*’ self-conception of the corps they formed and their understanding of the implications of the theory of representation for their decision-making.

The conception of the court as a part of the body of the king and as a body of its own, created specific requirements for *parlementaire* decision-making. As I pointed out in Chapter 2, *parlementaire* theory conceived of the court as the soul—that is the organ of deliberation—of the body politic, a soul that deliberated for the salvation of the whole body. This very abstract conception of *parlementaire* deliberation had practical consequences on actual deliberations. It created a number of deliberative requirements that the modalities I have described above sought to satisfy. One of the main characteristics of the soul as it was conceived at the time, was its indivisible nature. The unicity of the Parlement as soul of the prince, created the requirement of the unicity of its decisions. The Parlement, however, was a *corps* of its own, composed of multiple members, and this fact imposed on the *conseillers* to find practical solutions to create a unicity of decision out of a diversity of opinions produced by this plurality of members. In practical terms, it meant that the *conseillers* had to adapt the advice-oriented deliberative practice of the *curia regis* to produce decisions that were at once unanimous and autonomous.

The practice of “going to the opinions” preserved the autonomy—or self-sufficiency—of the distinct opinions the counselors of the *curia regis* offered to the king. The practice was congruent with the notion of unicity of the *corps*: the time-consuming procedure that consisted in asking the *conseillers* one by one to express their opinions served to ensure that each decision was made by the whole *corps*. This *corps* was not conceived as an aggregate of indistinct elements, that is, a more or less shapeless body such as a *corps de ville* that could reach decisions with a show of hands. Rather, the *parlementaire* corps was conceived as the complete collection of the distinct individuals who composed it, it only had existence

and authority through the complete recomposition of the royal power that was dispersed among its members. “Going to the opinions” was a way of achieving this complete recomposition in practice, for the procedure demanded that each single member voice his opinion, that is, manifest the share of royal authority he held by virtue of his office. As we saw, even when the *conseillers* expressed their opinion without a voice, they did not resort to a simultaneous and anonymizing show of hands but took of their hat in turn, one by one, and down to the last one of them.

Thus, “going to the opinions” achieved no small feat: it preserved the ideal of plurality of opinions inherited from the *curia regis* origins of the court, and it maintained the ideal of unicity that was the by-product of this theory of representation that justified the transfer of judicial authority from king to *conseillers*. In other words, the procedure addressed a number of issues, both theoretical and practical, raised by the double nature of the court—part of the body of the king and body of its own—and by its transformation from an advisory into a decision-making organ. In addressing those questions, however, the procedure also created new issues. The first one was situated at a theoretical level: in order to be fully maintained, the ideal of unicity demanded that the plurality of opinions be reduced to one. The second issue was more practical and stemmed from the institutional evolution of the court: how could the unicity of the *corps* and of its decision be preserved when the court started to split into chambers that sat and deliberated independently from one another?

The practice of “reducing opinions” I have described above addressed the first issue. Like the practice of “going to the opinions” this procedure brought together the ideal of plurality of opinions and that of unicity of the *corps*. The practice did accommodate the plurality of opinions thanks to the system of multiple rounds of voting that would focus each time on the minority opinion. No matter how few *conseillers*—it could be just one—had supported the opinion that received the least votes, it focused the attention of the whole *corps* at the end of the round. At the same time that this procedure allowed the *corps* to acknowledge its smallest fraction, however, it also forced this minority back into unicity by demanding that it joined one of the larger fractions of the *corps* that had emerged from the deliberation. The way in which “reducing the opinions” forced members of the *corps* back into a complete unicity is

most visible in the last and mostly symbolic round of votes, when all the *conseillers* without exception were asked to join the majority opinion in the final show of unanimity that closed the deliberation.

Thus, “going to the opinions” and “reducing the opinions” were the two stages of a deliberative practice that achieved a swinging movement from unicity, to desagregation and back to unicity. When the president went to the opinions, the unified whole that had listened to the *rapport* a minute before, instantly split into two or more fractions. Although this decomposition of the *parlementaire* corps satisfied the ideal of multiplicity of opinions inherited from the advisory function of the proto-parlement that was the *curia regis*, it could only be temporary because it jeopardized the unicity that founded the authority of the court. “Reducing the opinions,” as a procedure that necessarily ended the deliberation in unanimity, forced the *conseillers* back into recomposing the wholeness of the corps that was absolutely necessary to restore the authority without which the decision produced by the deliberation had no authority. In other words, the tandem practice of going to and reducing the opinions achieved a movement of decomposition/recomposition of the corps that reflected the paradoxical nature of *parlementaire* decision-making: in order to produce an authoritative decision the court had to suspend—briefly and behind closed doors—its own authority.

Cast on this theoretical background, *délibérer* seems like a dramatic practice that jeopardized the very foundation of the court’s authority. In practice, however, it was a mundane and routine process, repeated matter-of-factly with each one of the dozens deliberations the court held every day. This process of desagregation and recomposition of the *parlementaire* corps was further dedramatized by the fact that the court had been formally split into chambers since at least the fourteenth century. This more permanent kind of challenge to the unicity of the court raised questions about the authority behind the court’s decisions. If the court only had authority as a whole, how could a fraction of it—a chamber—claim the sovereign authority necessary to back an *arrêt*? This issue applied, in fact, to the court as a whole: how could a fraction of the body of the king—the Parlement—claim to hold the sovereign authority of the whole—the king—? The theory of representation that justified the peculiar transfer of royal authority from king to court was replicated to justify that a chamber could hold the authority of the court it

composed. This cascading representation of royal authority justified the idea that sovereign authority could be transferred from king to parlement and from parlement to chambers without being denatured or diminished. This abstract multilayering of a specific theory and transfer of royal power was clearly illustrated in practice by the procedure used to solve *partages* that I have described above.

This way of voting did not simply eliminate the minority opinions, it erased them completely, at least symbolically, by forcing the *conseillers* who had supported them to rally the majority opinion. All of this took place behind closed doors, and the imposed silence on the content of the deliberation as well as the fact the scribe did not write down a transcript of the deliberation were conceived as means to erase the existence of differing opinions. The denial of these differences prefigured the result of the deliberation, the *arrêt*, in which the court, or rather the king as we will see shortly, spoke with one voice, and which, because it was not motivated, reinforced this idea that the judgment found its force not in a particular legal reasoning but in the unity of the sovereign court that had issued it and framed it as the sole possible reasoning.

*Délibération* was not a dialog that sought to synthesize the diversity of opinions expressed by the *conseillers*, it consisted in a series of monologues, independent from one another, each presenting a different opinion on the same matter. Furthermore, instead of attempting to achieve a synthesis of these opinions, the goal of the deliberation was to create unanimity around one opinion that seemed the best. The only difference between a deliberation on a trial and one on a royal law was that, in the context of a trial, only two opinions were expressed: that of the reporting judge and that of his designated “rejoining judge,” thus seemingly following the same “contradictory principle” that regulated the exchanges between the opposing lawyers in the course of the trial. The main consequence of the adoption of this principle to regulate as well the deliberation was that the opinions of the two opposing judges could only be based on the legal points made by the lawyers.

The guiding principle of the deliberation then was not to find a middle way between these two possible decisions but to go along with one of them, to unanimously accept its specific logic, thereby rejecting any other logic. All parlementaire deliberations followed this principle that led to the

establishment of an absolute and exclusive truth. Indeed, even when there were more than two opinions expressed, as was the case with most deliberations in general sessions of the court, the procedure adopted always had as its goal to reduce a diversity of independent opinions to just one.

## CHAPTER 8.

### ASSERTING TRUTH: *ARRÊTER*, *PRONONCER*, *EXÉCUTER*

*Arrêt* is the particular name and form given to the sentences of sovereign courts. *Arrêter* as practice, however, is not best translated by “sentencing.” As we have just seen, most of the “sentencing,” in the general sense of reaching a formal judicial decision, was accomplished through the practices of *rapporter* and *délibérer*. Thus, what I call *arrêter* was a practice that consisted in giving a final, written, official, and public form to a sentence that had already been established by means of other practices. This act of material production and formation of the *arrêt* was critical, however, for it fully participated in the specifically sovereign nature of *parlementaire* justice. *Arrêter* was the first of three practices that aimed to assert the judicial truth that we have already seen being searched and produced in the preceding two chapters. Those three interconnected practices—*arrêter*, *prononcer*, *exécuter*—correspond to the three stages of this assertion of judicial truth: materialization, publication, reification.

#### **Materializing Truth: “Arrêter”**

*Arrêter* was both a routine and an exceptional *parlementaire* writing practice. As the tens of thousands of *arrêts* that line up kilometers of shelves in today’s archives attest, *arrêter* was a routinized writing practice of day-to-day sovereign justice. It was also a unique writing practice, however, because, unlike the great majority of *parlementaire* documents, *arrêts* were not supposed to be written by judicial auxiliaries—scribes, lawyers, notaries—but by the *conseillers* themselves. More precisely, and as requirements in royal *ordonnances* had made clear early on in the Middle Ages,<sup>719</sup> the *rappporteur* of a case was also in charge of writing the *arrêt* that concluded that case.

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<sup>719</sup> For instance, a 1344 *ordonnance* of Philip VI stipulates : “The *arrêts* must be written in the hand of the *rappporteur*, who must then give them to his president for him to sign” (“*Les arrests doivent ester escrits de la main du rapporteur, lequel les doit apporter au premier president pour les signer*” La Roche-Flavin, *Treze livres des Parlemens de France*, 524).

We have already encountered similar regulations concerning the *rapport* and saw that the requirement that the *rapporteur* write the *rapport* himself was meant to avoid disclosure of the “the secrets of the court.”<sup>720</sup> Unlike the *rapport*, however, the *arrêt* was a document that was meant to become public, thus, the requirement that it be written by the *rapporteur* must have been guided by different concerns. One explicit concern in the *ordonnances* that regulated the drafting of the *arrêt* was to prevent any change to the terms of the sentence that had been defined during the deliberation. As we will soon see, the court had more efficient procedures at its disposal to make sure that the final *arrêt* matched the decision reached during the deliberation session. The main concern behind the requirement that the *rapporteur* write the *arrêt* in his own hand had to do with the source and nature of the power that gave the written sentence its authority. Because the authority of the *arrêt* was fully contained in its written form, it was indispensable that it be written and signed by men who “represented” the king, in the precise meaning of “representation” I have already explained.<sup>721</sup> The *arrêt*-as-decision established by a deliberation in a *conseil* session, had no authority until it was transcribed in a specific form and became an *arrêt*-as-document, validated by a number of procedures conducted by those royal officers—the *conseillers*—who had received a share of sovereignty from the king. Furthermore, a written *arrêt* had full legal force and took effect as soon as it was signed by the *rapporteur* and president, its “pronunciation” did not technically validate it or add anything to it.<sup>722</sup>

Thus, the *arrêt*-as-document was in and of itself a materialization of sovereignty, the expression of a sovereign will made of parchment and wax, as a *procureur général* once put it à propos *lettres patentes*.<sup>723</sup> For this reason, the process of production of this document—the practices by which parchment, ink, and wax were infused with sovereignty—were critical. Behind this process we find once more the replication of the theory of representation into a multilayered structure of transfer of power from

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<sup>720</sup> See p. 304 above.

<sup>721</sup> See p. 66-71 above.

<sup>722</sup> About the “pronunciation” of *arrêts*, see below p. 367-380.

<sup>723</sup> See n. 666 above.

king to *conseiller*.<sup>724</sup> The regulations of the drafting of *arrêts* show that the theory of representation of the king by his agents, despite its abstract nature, revolved on a simple bodily imagery that was to be understood in a quasi-literal way. Indeed, the normative conception of the *arrêt* mobilized straightforward bodily analogies: the hand of the *conseiller*—a hand that “represented” the hand of the king—produced the material *arrêt*, in which the mouth of the king was made to speak. Those two body parts, and the actions they were respectively associated with, correspond to the two main and interconnected dimensions of *arrêter* I examine below: *arrêter* as a manufacturing practice, that is, as an act of material production, and *arrêter* as discursive practice, that is, as an utterance.

*Arrêter* was a manufacturing practice in the sense that producing a material *arrêt* meant, literally, to make it with one’s hands. I must explain a few terms before I can describe this process of material production. Contemporaries indeed, used different words to designate the *arrêt* at different stages of its production and we need to add our own terms to further clarify this process of production. Two types of draft corresponded to the first two stages of this process. We have already encountered the document that I will simply call here “the first draft.” This draft was the document that the *rapporteur* prepared in advance of his presentation of the case to his colleagues in a *conseil* session.<sup>725</sup> When the chamber decided to side with the *rapporteur* at the end of their deliberation, the *rapporteur* could use this first draft as the basis for the second draft. When the *conseillers* decided to side with the *contretenant*,<sup>726</sup> or if they required important changes to the *rapporteur*’s proposed resolution, the *rapporteur* had to start his second draft more or less from scratch.

This second draft of the *arrêt* was thus based on the chamber’s decision and the *rapporteur* was, again, in charge of drafting it, regardless of whether or not his colleagues had decided to side with his opinion or that of his *contretenant*. The *rapporteur* had—in theory—six days to produce this second draft, and when the new draft was ready, the *rapporteur* presented it to his chamber once more. This time,

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<sup>724</sup> See Chapter 7, p. 352 above.

<sup>725</sup> See p. 298-319 above.

<sup>726</sup> See p. 329-335 above.

however, the *conseillers* reviewed it together, debating its formulation rather than the particulars of the case and of its resolution—since at that point, the case was closed and it was now purely a matter of giving a proper form to a decision that was already final.

Once that process was completed, the *rapporteur* would write a third and final draft called *dictum* (or “*dicton*,” or “*diction*”). The *rapporteur* then presented this final copy to the president of the chamber, who would ask the *greffier* to write in the margin the amount of *épices* awarded to the *rapporteur*.<sup>727</sup> Then, both the *rapporteur* and the president put their signature at the bottom of the *dictum*. The *greffier* kept the signed *dictum* and eventually bound it together with all the other *dictums* of the day. Those smaller, daily fascicles were in turn bound together to form the large registers of *arrêts* preserved in the archives to this day.

Thus, the registers we see in the archives today are, properly speaking, registers of *dictums*, not registers of *arrêts*. What the litigants and everyone else at the time called “*arrêt*” was the copy, also called “extract” (“*extrait*”), of the original *dictum* which could be obtained from the *greffier* for a fee. This final version that could circulate outside of the court—although not in printed form until the eighteenth century—<sup>728</sup> was identical to the *dictum*, except for a few parts that the *greffier* omitted: the marginal notes regarding the *épices* and the introductory paragraph that recorded the date of the deliberation, the chamber in which it was held, and the names of the *conseillers* who attended it.

The *rapporteur* was thus in charge of both the composition and the material production of the *arrêt* at all the critical stages of this process. The choice of producing the *arrêt* manually (rather than in print) was due only in part to the technological constraints of a pre-mass-printing world. Even when printed forms and documents started to be used on a daily basis in the Parlement de Toulouse at some point in the last quarter of the seventeenth century, the requirement that *rapporteurs* handwrite the *arrêts* remained. Given how short and stereotypical the great majority of *arrêts* were, the court could have

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<sup>727</sup> See p. 301 above.

<sup>728</sup> Pascal Bastien, “Les arrêts criminels et leurs enjeux sur l’opinion publique à Paris au XVIII<sup>e</sup> siècle,” *Revue d’histoire moderne et contemporaine* 53 (2006): 34-57.

certainly turned them into printed forms, leaving blanks to fill in by hand the few specifics typical of those sentences: names of the litigants, royal court the case was appealed from, important dates of the procedure, party condemned, penalties and punishments imposed. Even after printed forms had made their appearance in daily *parlementaire* uses, the *conseillers* kept drafting their entire *arrêts* by hand, until the court disappeared at the beginning of the Revolution.

The preservation of this original requirement when the most formulaic parts of the *arrêt*—that is, most of the *arrêt*—could easily have been printed, suggests the peculiar nature of this type of sovereign sentences. The *arrêt* derived its authority from its material form, this material form was determined by a particular mode of production, and this mode of production was closely tied to the identity of the producer, who, in theory, must be *conseiller*. In fact, even before printing became a realistic alternative to handwriting *arrêts*, there was something unusual about the requirement that the *conseillers* wrote the *arrêts* in their own hand, for the *greffier* produced the great majority of *parlementaire* acts.

Like the *conseillers*, the *greffier* was a royal office-holder. Like them, he held a share of sovereign power by virtue of his office, and he used this peculiar power for the specific purpose of manufacturing a myriad of official acts that carried significant legal and symbolic force—for instance the *décrets de prise de corps*, that gave the power to arrest, seize and imprison anyone, even a peer such as the Duke of Montmorency in 1632. Furthermore, the *greffier* was without a doubt a member of the *parlementaire* corps—as his inclusion in the group formed by the *conseillers* during public procession attested— and the oath he took each year, like the *conseillers*, “not to reveal the secrets of the court,”<sup>729</sup> points to the fact that he was privy to all those secrets for he was the memory of the court and his presence was thus indispensable at all times, even during the most sensitive sessions of the court.<sup>730</sup> In addition and from a more practical perspective, unlike the *conseillers*, the *greffier* was a professional writer of official documents: his calligraphic proficiency and efficiency put him at an advantage to meet

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<sup>729</sup> Malenfant, *Collections et remarques du Palais*, I, 9.

<sup>730</sup> Even the *gens du roi*, that is the magistrates who represented the interests of the king in the court, could not claim such privileges: their walking after the *conseillers* in the public processions and their exclusion from *conseil* sessions manifested clearly that, contrary to the *greffier*, they were not part of the *parlementaire* corps.

the quality standards of the *arrêt* set by royal laws.<sup>731</sup> Thus, the *greffier* should have appeared to be, in all respects, the ideal manufacturer of *arrêts*. As matter of fact, if we look at royal jurisdictions below the Parlement—*sièges royaux, bailliages, sénéchaussées, présidiaux*—or any non-royal jurisdiction—seigneurial or ecclesiastical jurisdictions—<sup>732</sup> court scribes, not judges, were always in charge of drafting sentences.

Royal laws concerning the Parlements, however, were very clear: they repeated consistently the original requirement that the *rapporteurs* write the *arrêts* “in their own hand,” and explicitly banned the *greffiers* from doing so. The *ordonnance* of Lyon (1510) and that for the reform of the administration of justice in Provence (1535) pointed out that a number of *conseillers* “ha[d] [the *arrêt*] made by the *greffier*,”<sup>733</sup> and presented the renewal of the requirement that *rapporteurs* write the *arrêts* in their own hand as a way to prevent this abuse. Other elements in royal legislation further confirm that what mattered most was that the manufacturer of the *arrêt* be a *conseiller*, not just a member of the *corps*, even if that member specialized in the writing of official documents. Indeed, while the *greffier*, as well as the *conseillers*’ clerks were strictly banned from drafting the *arrêt*, the *ordonnances* were more flexible when it came to what *conseiller* should write the *arrêt*. If, ideally, the drafter should be the *rapporteur* of the case for which the *arrêt* was produced, it seemed acceptable that another *conseiller* wrote the *arrêt*. As the *Ordonnance de Lyon* stated (and as the *Ordonnance sur l’administration de la justice en Provence* repeated verbatim), the *rapporteurs* had to have their *arrêt* “written in their own hand or in that of one of their colleagues [“*compagnons*”].”<sup>734</sup> The *ordonnance* specified that this “*compagnon*” was to be

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<sup>731</sup> About those standards, see below.

<sup>732</sup> See for instance articles 68 and 101 of the *Ordonnance de Blois* (1498) that made it clear that *greffiers* wrote sentences in *bailliages* and *sénéchaussées* (*Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XI, 353).

<sup>733</sup> *Ordonnance de Lyon*, art. 28 (*ibid.*, XI, 590) ; *Ordonnance sur l’administration de la justice en Provence*, art. 76 (*ibid.*, XII, 441).

<sup>734</sup> *Ibid.*

preferably “of the [same] chamber”<sup>735</sup> but the article did not go any further and did not even require that that other *conseiller* had been present during the *rapport* or the deliberation on the case.

Thus, it was crucial that the person who held the pen be a *conseiller* in the Parlement, and I argue that this absolute requirement was dictated, to some extent, by the perception that sovereign power almost materialized in the *arrêt* as physical object. Indeed, the “*dictum*” handwritten by a *conseiller* (*rapporteur* or “*compagnon*” of his chamber) and signed by the *rapporteur* and *président*, contained and carried the full legal force of the court’s decision. The particular resolution adopted at the end of the deliberation had no legal force whatsoever until it materialized as an *arrêt*-as-document. La Roche-Flavin made this point clear when he wrote that “the *arrêts* cannot be pronounced [“*prononcés*,” that is publicized]<sup>736</sup> or expedited [“*expédiés*,” that is carried out]<sup>737</sup> event though they have been decided [“*arrêtés*”].”<sup>738</sup>

Thus, it is the writing down of the *arrêt* that formally gave the decision its force, and the choice of a *conseiller* rather than the *greffier* to carry out this writing highlights important aspects of the nature of both the *arrêt* and of the office of *conseiller* in a sovereign court. The key difference between *greffier* and *conseillers* on this point was that the *greffier* wrote *for* the king while the *conseillers* wrote *instead of* the king, that is—to draw again on the theory of representation of the king—<sup>739</sup> literally *in the stead of* the king. In other words, the *greffier* was *amanuensis* of the king, he was like a *secrétaire de la main*, his hand was a substitute, a hand without volition, that could only write under the dictation of the king, via the *conseillers*. The *conseillers* as for them, did not simply act as the hand of the king, they represented his whole spiritual body, they were—collectively—a representation of his soul.<sup>740</sup>

In fact, if we further explore bodily analogies in relation to the production of the *arrêt*-as-document, it appears that the *greffier* was excluded from this process because the manufacturing of the

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<sup>735</sup> *Ibid.*

<sup>736</sup> See my analysis of “*prononcer*,” p. 367-380 below.

<sup>737</sup> See my analysis of “*exécuter*” p. 380-401 below.

<sup>738</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 120.

<sup>739</sup> See p. 66-71.

<sup>740</sup> See Chapter 1, p. 80.

*arrêt* necessitated not only a representation of the king's hand, but also and more importantly a representation of the king's mouth. Justifying why the *conseillers* in the *présidiaux*—the royal jurisdiction immediately below the Parlements—could not call their sentences “*arrêts*,” Bernard de La Roche-Flavin explained that only the Conseil du roi and the Parlements were allowed to call their sentences *arrêts* because “the king spoke in [them].”<sup>741</sup> According to La Roche-Flavin, this was not primarily because those sentences could not be appealed, but because of the quality of the officers who issued them. As he put it, “when Henri II created the *présidial* jurisdiction,<sup>742</sup> he called its officers *conseillers* with the added quality of “*présidiaux* magistrates,” to mark their difference with those in the parlements, the *conseil privé* and the *grand conseil*, to whom the quality [of *conseillers*] belong, exclusively of all other justice officers.”<sup>743</sup> If we follow this logic then, we can say that the nature of judicial sentences depended primarily not on the jurisdiction that issued them but on the quality of the officers who produced them. The *arrêt* was a sovereign utterance because it was produced by true *conseillers*, that is, by men who represented the king directly by virtue of their office, and whose voice and words were deemed to be those of the king himself. This point is illustrated very clearly by the fact that in the presence of the king the representation lost its purpose and the *conseillers* lost their voice. Indeed, when the king came to a Parlement in person to hold a *lit de justice*,<sup>744</sup> the court lost its deliberative voice (“*voix délibérative*”), and the *conseillers* literally lost their voice during the deliberation: when the chancellor—instead of the *premier président*—“passed in front of [them] to ask

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<sup>741</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 80.

<sup>742</sup> *Présidiaux* were a new royal jurisdiction created in 1552 and inserted in the judicial hierarchy between the *bailliages/sénéchaussées* and the *parlements*.

<sup>743</sup> “(...) le Roy Henry 2 en erigeant la jurisdiction presidiale, attiltré les officiers, ses Conseillers, avec la qualité jointe de Magistrats Presidiaus, pour faire la difference des Conseillers aux Parlements, privé et grand Conseil, ausquels vrayement ladite qualité appartient privativement à tous autres officiers de la justice.” La Roche-Flavin, *Treze livres des Parlemens de France*, 80.

<sup>744</sup> Brown, *The Lit de justice : semantics, ceremonial, and the Parlement of Paris, 1300-1600*, ; Hanley, *Le lit de justice des rois de France. L'idéologie constitutionnelle dans la légende, le rituel et le discours*, ; Holt, “The King in Parlement: The Problem of the Lit de Justice in Sixteenth-Century France,” .

their opinion, [they] only nodded, without opening their mouth.”<sup>745</sup> Most simply put then, “sovereign courts make the king speak in their *arrêts*,” and those *arrêts* are “as if uttered by the mouth of the king himself.”<sup>746</sup>

But what was, in practice, the actual process by which sovereignty was made to flow from the hand of the *conseiller* into the *arrêt*-as-document? Despite lofty theories of representation justifying the requirement that the *conseillers* write the *arrêts* in their own hand, the magistrates seemed to have looked down on this activity, maybe because they considered it a menial task, and most probably because it was a time-consuming practice that could be made much more profitable by cutting some corners. Because of this reluctance, royal laws made sure once again that a *conseiller* did not just “made” (“*faire*”) the *arrêt*—a term that could be interpreted as a simple work of composition that would result in a template or script that someone else could execute in writing—but were always careful to add “and write in their own hands” (“*faire et écrire de leurs mains*”).<sup>747</sup> To do so, a *conseiller* was given six days “after the conclusion of the trial,”<sup>748</sup> that is, after the deliberation on the case had ended with a unanimous vote. We can safely assume that *conseillers* did not particularly enjoy this task, for they often took longer, sometimes much longer, than those expected six days to draft their *arrêt*. The fact that this requirement found in royal law was explicitly repeated in the oath the magistrates took each year—while it could have been considered as encompassed by their promise “to respect the *ordonnances*”—suggests that much. The institution of financial penalties for those *conseillers* who took too long to write their *arrêts* indicates even more clearly that for all the grand theory of sovereignty that underlie the *arrêt* and its making, the *conseillers* did not consider this part of their duties as the most ennobling or stimulating. Thus, on the model of “what had become the custom in [the Parlement of] Paris,” the *Ordonnance de Lyon* (1510)

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<sup>745</sup> *Remonstrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, vol. 1, XXXVIII. On the practice of “*aller aux opinions*,” see p. 322-327 above.

<sup>746</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 824.

<sup>747</sup> *Ordonnance de Lyon*, art. 28 (Isambert XI, 590) ; *Ordonnance sur l’administration de la justice en Provence*, art. 76 (Isambert XII, 441).

<sup>748</sup> *Ibid.*

extended to all sovereign courts the rule that for each day late past the six days the *conseillers* had to write their *arrêt*, they would forfeit their wage.

The lack of *parlementaire* enthusiasm for this writing practice is also illustrated by the requirement that the *conseillers* draft the *arrêts* in their homes. The reason behind this requirement was yet another illustration of the *conseillers*' balking at the handwriting of *arrêts*: it was meant to prevent *rapporteurs* from starting to draft the *arrêt* on the *bureau* of the chamber, right after it had been concluded in deliberation. Indeed, the requirement that the *conseillers* draft the *arrêts* "in their house, after lunch or at night"<sup>749</sup> was meant to maintain a strict division between the time magistrates worked as officers in the chamber and the time they worked as *commissaires* on a particular mission.<sup>750</sup> For their financial benefit and to avoid spending their time at home writing *arrêt*, the *conseillers* tended to confuse those two types of time and activity. The king could not condone this confusion, not because it undermined some fundamental administrative law, but because it disrupted the judgment of trials and cost him—and litigants—a significant amount of money. Indeed, when a *rapporteur* started to draft his *arrêt* on the *bureau* immediately after the deliberation had ended, not only was he no longer available to "help judge other [trials]," but he was still being paid his regular wages as an officer for the time he spent sitting in a *conseil* session while drafting his *arrêt*. The issue here was that the drafting of *arrêts* was deemed a commissarial activity, that is, a one-time and individualized service, performed to deal with a specific task. As such, the drafting of *arrêts* was to be compensated by a one-time, individualized fee, the *épices*,<sup>751</sup> that was distinct and by nature different from the wages. It seemed morally questionable—at least, this was how the requirement to draft *arrêts* at home framed it—and it was undoubtedly costly to let the *conseillers* be paid twice because of this abusive confusion. This type of moral/financial concern was another royal motivation behind the interdiction made to the *greffiers* to draft the original *arrêt*. Indeed, when a *conseiller* had "[the *arrêt*] made by the *greffier*, he use[d] this pretext to take higher wages" while

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<sup>749</sup> Malenfant, *Collections et remarques du Palais*, I, 11 (1602).

<sup>750</sup> On this distinction between *officier* and *commissaire* see p. 203-205 above.

<sup>751</sup> See Chapter 5.

the *rapporteur* “still demanded to be paid the whole *épices*,”<sup>752</sup> that is, including a fee for the drafting of the *arrêt*.

The *conseillers* also balked at a writing process that they perceived as painstaking not because of the physical act of writing—although this might have contributed to the *conseillers*’ reluctance—but because of the tediousness of the review process they had to go through to finalize their *dictum*. I will first describe this collective review in some detail and then speculate on the practical reasons that justified this rebarbative process. The requirement that the *rapporteur* produced the second draft of the *arrêt* within six days after the deliberation and that this work took place at his home rather than in the *Palais*, gives us some information about this initial and solitary stage of the process. In fact, despite another requirement that the *rapporteur* wrote this second draft in his own hand—and to some extent, *because* of this requirement—we have reason to think that the *rapporteur* often delegated at least part of this process to a personal clerk. In that case, it is possible that an intermediary draft written by this clerk served as the basis for the second draft, which the *rapporteur* eventually presented to the court. We know nothing about those intermediary drafts beyond the fact that they did exist, since they were explicitly targeted by the provisions that reiterated the requirement that *conseillers* wrote those drafts in their own hand. Whatever the case may be, the six days requirement was meant to strike a balance between the time actually needed to produce this second draft and an effort to avoid delaying too much the issuing of the *arrêt* after the case had been concluded.

Six days might have been a bit short for longer *arrêts*, especially for those few *conseillers* who had several *arrêts* to draft at the same time because they were appointed *rapporteur* for most of the cases received by their chamber (although it should be noted that, thanks to the extra income they received in *épices*, and despite the interdiction I mentioned above, they were also the most likely to pay clerks to do this work for them). For most *arrêts*, however, six days seems like plenty of time. *Rapporteurs* were given this much time, first to make sure that they would be less tempted to do this drafting during their

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<sup>752</sup> *Ordonnance de Lyon*, art. 28 (*Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XI, 590) ; *Ordonnance sur l’administration de la justice en Provence*, art. 76 (*ibid.*, XII, 441).

time in the *Palais*.<sup>753</sup> The six days deadline was also meant to give the *rapporteurs* the time needed for what was a meticulous drafting process. Indeed, the purpose of this second draft was to be dissected almost word for word by the whole chamber during a session that can be best described as a “writing workshop.” The expression “*atelier d’écriture*” is also the one Bruno Latour uses to describe a very similar—possibly identical—process in the *Conseil d’Etat* today.<sup>754</sup> As in the *Conseil d’Etat* today, the *rapporteur* in the Parlement would read the draft of his *arrêt*, sentence by sentence, to the whole chamber. The *conseillers* collectively approved each phrase, one by one, and would stop the reading each time they thought a change, no matter how minute, was needed. The change would then be discussed immediately and until the *conseillers* agreed on a new term or approved the *rapporteur*’s original choice. If they decided of a change, the *rapporteur* was required to write it down immediately, on his own draft. As the oath the *conseillers* swore every year stipulated: “they [read] their *arrêts* to have them corrected on the spot, and whenever they are told a correction, they [make] it, write it down, and read it again.”<sup>755</sup> As I noted above, it was only after this review process was completed that the *rapporteur* had the basis to write the final version of the *dictum*.

Overall, this process of maturation of the *arrêt* was rather long and painstaking, and, it seems to me, there was more to the requirements that regulated this process than a concern for the symbols of sovereignty and how it flowed from the king to the *arrêt* via the hand of a *conseiller*. The efforts, meticulousness, and control that went into the wording of the document reveal more prosaic concerns about the nature and practical functions of the *arrêt* itself. The main concern was that the *arrêt* and each one of its words should be absolutely clear and unambiguous. This goal of absolute clarity was very difficult to reach because the *conseillers* were forbidden to lay out the motives of their *arrêts*, and they were not allowed either to publish majority or dissenting opinions that could have made explicit the

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<sup>753</sup> On this point, the *ordonnances* targeted precisely the practice of drafting one’s *arrêts* “*sur le bureau*,” that is, instead of paying attention to another *conseiller*’s *rapport* during a deliberation session.

<sup>754</sup> Latour, *La fabrique du droit. Une ethnographie du Conseil d’Etat*, 69-79.

<sup>755</sup> “*Item, qu’ils lisent leur arrêt pour corriger en séant, et que tantôt que on leur dira la correction ils la fassent et ecripvent et relisent.*” Malenfant, *Collections et remarques du Palais*, I, fol. 11.

details of the *arrêt*. In fact, as I have showed above, the deliberation process itself was designed to eliminate, at least symbolically, all dissenting opinions.

In those conditions, the operative part (“*dispositif*”) of the *arrêt* had to be limpid. It is this same concern for clarity that had led to the requirement formulated in the famous edict of Villers-Cotterêts (1539) that *arrêts*, and more generally public acts, be written in French rather than Latin.<sup>756</sup> This point is interesting in the case of provincial Parlements, because in most regions, French was not—and would not be for several centuries—the dominant language. It certainly was not in the jurisdiction of the Parlement de Toulouse, where the great majority of the population spoke some form of Occitan (Languedocien, Gascon, Limousin, Auvergnat, or Provençal). This suggests that the goal of the edict, and likewise the goal of the regulations of the production of *arrêts*, was not clarity strictly speaking. It did not really matter whether every single word of a sentence of the Parlement de Toulouse was limpid to the Occitan-speaking litigants of the *ressort*, but it was important that the philological arguments among specialists (lawyers and jurists) that Latin terms often provoked did not open up the *arrêt* to interpretation. Indeed, I will argue in more detail below when I analyze the “*prononciation*” of the *arrêt* that the goal of this requirement of absolute clarity was to leave no room for interpretation among experts, not to make the text limpid to a lay readership.<sup>757</sup>

As soon as the president had affixed his signature to the *dictum*, the terms of the *arrêt* were in full legal force. This was not, however, the endpoint for either the *arrêt*-as-document or the *arrêt*-as-decision. The *arrêt* still had to be publicized, that is, the litigants had to be notified of its completion and of its substance, a process that was accomplished through the “*prononciation*” of the *arrêt*. Maybe more

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<sup>756</sup> “And because [doubts] have often been raised about the meaning of Latin words in those *arrêts*, we want that from now on all the *arrêts*, as well as all the other legal documents produced by our sovereign courts and other subaltern and inferior courts, whether record, inquest, contracts, commissions, sentences, testaments and whatever other legal or judicial document, be pronounced, registered and delivered to the litigants in the French mother tongue and not otherwise” (“*Et pour ce que telles choses sont souvent advenues sur l’intelligence des mots latins contenus esdits arrests, nous voulons d’oresnavant que tous arrests, ensemble toutes autres procédures soient de nos cours souveraine et autres subalternes et inférieures, soient de registres, enquestes, contrats, commissions, sentences, testaments, et autres quelconques actes et exploits de justice, ou qui en dépendent, soient prononcés, enregistrés et délivrés aux parties en langage maternel françois et non autrement.*”) *Recueil général des anciennes lois françaises, depuis l’an 420 jusqu’à la révolution de 1789*, XII, 622.

<sup>757</sup> See p. 367-380 below.

importantly, the *arrêt*-as-decision—that is, the operative part of the *arrêt*-as-document—had to be carried out, it needed “execution,” a term that applied not just to capital and corporal punishments but to the whole range of *parlementaire* sentences, civil and criminal alike.

### **Publicizing judicial truth: “Prononcer”**

“*Prononciation*” and “*prononcer*,” the official terms used by contemporaries to name the practice by which *arrêts* were publicized, are misleading words. Indeed, for the great majority of *arrêts*, the publicization of the sentence did not entail a public reading. The term “*prononcer*” was a remnant of an earlier, medieval time when the caseload of the court was so modest that there was enough time to read aloud the text of all the *arrêts*. In the sixteenth and seventeenth centuries, a public reading of the *arrêt* still happened in two particular—and statistically rare—types of cases: when the *premier président* read “*arrêts généraux*” in the Grande Salle and when the *greffier* of the court read the *arrêt* at the public executions of criminal sentences that carried a corporal punishment.

Those two particular types of cases are interesting in their own right but they also shed some valuable light on the *prononciation* of the vast majority of *arrêts* that were issued in civil cases and “lower” criminal cases. From a strictly procedural point of view, the *prononciations* of civil and criminal *arrêts* were identical. In both cases, *arrêts* were “pronounced in writing,” that is, copied by a *registreur*—the *greffier*—in the official records of the Parlement. At this point, the *arrêt*—which, as I noted above, already had full legal force since the the president and *rapporteur* had signed the *dictum*—<sup>758</sup> became “public,” in the sense that it became accessible for the the first time to individuals who did not belong to the sovereign *corps*. Contrary to what “*prononcer*” seems to imply in modern French, however, this publicization was not oral, but consisted in the deployment of routine archival and documentary practices. In that respect, this type of *prononciation* prefigured what is called today the “reading” (“*lecture*”) of the

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<sup>758</sup> See p. 355 above.

*arrêts* issued by the *Conseil d'Etat*, which, as Bruno Latour noted, consists in pinning a printed copy of the sentence on a wall of the Palais Royal.<sup>759</sup>

The description of those routine archival and documentary practices helps understand this type of intentionally limited publicization. In fact, the publicization of sentences was so limited that the Parlement had no official process to notify litigants that an *arrêt* had put an end to their lawsuit.<sup>760</sup> Instead, the lawyers and procurators of the litigants, who were in the Palais every day, were the ones who notified their clients that an *arrêt* had been issued. A few days after a case had been “put on the *bureau*,” lawyers simply visited the office of the *greffier* from time to time to inquire whether the court had issued a *dictum* for their clients and whether it had been copied in the registers yet. The *prononciation* could then happen, and in practice, it consisted in requesting that the *greffier* write down—for a fee—a copy of this *dictum*. In theory at least, the *prononciation* could always be oral: the litigants could go in person to the *greffier*'s office and request that the *arrêt* be read to them. In such cases, the rule was that the *greffier* would read from, but not show, the register of *dictum*. The *greffier* was forbidden to show the register because the *arrêt* he read aloud had to correspond to what a written copy would have looked like, that is, omitting some of the information contained in the *dictum*.

In most cases, however, litigants demanded a copy of the *arrêt*. The *greffier* then delivered what I would call a “*prononciation* in writing.” When La Roche-Flavin mentioned *prononcer*—and he did so very rarely—it was to insist on its written dimension, by opposition to the public reading of *arrêts* in the Grand Chambre. In fact, to mark the difference between those two situations, La Roche-Flavin did not use the term “*prononciation*” for the writing practice, but used the phrase “filing at the *greffe*” (“*enregistrement au greffe*”) instead. This filing was definitely a routine and mundane bureaucratic practice that did not involved any ritualized display of symbols of sovereignty. Obtaining a certified copy

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<sup>759</sup> Latour, *La fabrique du droit. Une ethnographie du Conseil d'Etat*, 30.

<sup>760</sup> The lack of official notification opened the door to all sorts of abuses, including cases in which a litigant who learned first that he had lost a lawsuit could try to settle before the opposing party became aware that the Parlement had ruled in their favor. See Guillaume Ratel, “Le parlement de Toulouse saisi par le faux (XVI<sup>e</sup>-XVII<sup>e</sup> siècles),” in *Juger le faux, Etudes et rencontres de l'Ecole des chartes*, Paris: Ecole nationale des chartes, 2011, 143-54.

of the judgment was precisely the kind of chore for which litigants paid procurators and lawyers, and in most cases, those legal practitioners were the ones interacting with the *greffier*—or even more likely a *greffier* assistant—to make this “*prononciation*” happen. Thus, the involvement of the litigants in the *prononciation* was limited to paying their procurator or the fee that the *greffier* charged to produce a copy of the *dictum*.

*Prononciation* was a publicization in the most restrictive sense possible. Indeed, while the *prononciation* did mark the release of the *arrêt* to individuals outside the court, in the great majority of cases this release was limited to the sole litigants. Thus, in most cases, “the public” at large was only represented metonymically by the litigants. In fact, one could say that even the criminal *arrêts* that were read at public executions, had already been “pronounced” in this same way when the *greffier* wrote down the copy of the *dictum* that he, himself, would later read in public. In that sense, those criminal *arrêts* were already “pronounced” by the time they were read on the scaffold and—as we will see shortly and in more detail—this public reading of the *arrêt* is to be understood as part of the execution process, not of the *prononciation*.<sup>761</sup>

For this reason, the only *prononciation* which, strictly speaking, occurred orally and publicly, was that of *arrêts de règlement*, and of *arrêts généraux*. Although those *arrêts* were, relatively speaking, very rare<sup>762</sup>—especially in the case of the *arrêts généraux*, a subtype of *arrêts de règlements*—, the study of their *prononciation* is of great interest here. First, the analysis helps specify the nature of this very particular type of *arrêt* that required a public and solemn manifestation of *parlementaire* sovereignty. More importantly for my purpose, the analysis of those literal but unusual *prononciations* suggests why, *a contrario*, the great majority of *arrêts* did not require and even thwarted such grandiose mobilizations of sovereignty.

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<sup>761</sup> See my analysis of “*exécuter*” below, p. 380-401.

<sup>762</sup> I do not know of a statistical study of those *arrêts généraux* and I did not attempt one myself, but my sense is that a court such as the Parlement de Toulouse did not issue more than a couple each month, at best, for the period I have studied. Whatever the actual number, it is certainly dwarfed by the hundreds of *arrêts* that the court issued each year.

In stark contrast to simple *arrêts* “pronounced in writing,” *arrêts de règlements* and *arrêts généraux* were literally “*prononcés*,” that is, read aloud and in public. Like the royal ordinances and edicts indeed, *arrêts de règlements* were read aloud publicly in all the inferior royal courts within the jurisdiction of a Parlement.<sup>763</sup> An *arrêt général* was an *arrêt de règlement* that the *conseillers* deemed important enough to be read publicly, not simply by royal agents in lower jurisdictions, but at the seat of the sovereign court itself, by the *premier président*. This literal *prononciation* was staged as part of a grand ritual that mobilized the clearest and strongest symbols of *parlementaire* sovereignty available to the *conseillers*. Indeed, *arrêts généraux* were read by the *premier président*, in the Grande Salle, in an open-door session that took place immediately after Mass and that all the *conseillers* attended, dressed in their solemn red robes. We have encountered all those elements before: the identity of the reader,<sup>764</sup> the location,<sup>765</sup> the choice of the time after Mass,<sup>766</sup> the costume donned,<sup>767</sup> the whole repertoire of *parlementaire* references to the sovereignty of the court was mobilized to manifest clearly the importance and solemn character of the *prononciation* of *arrêts généraux*.

This mobilization was all the more necessary because nothing in the text of the *arrêt général* itself seemed to bespeak or justify this unique ritual. Indeed, when one reads an *arrêt general*, nothing seems to set it apart from what I would call by opposition the *arrêt simple*. *Arrêts généraux* could be civil or criminal, they were not issued in response to any particular type of crime or offense, they did not have to involve prominent rather than modest subjects of the king, clerics rather than lay people, royal officials rather than private individuals. They resulted from the typical *rappports* and *délibérations* I have described in the previous chapter. In fact, it is precisely the mode of *prononciation* that, alone, distinguished the *arrêt général* from the other types of *arrêt*. The choice of this specific mode of *prononciation*—a solemn

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<sup>763</sup> Philippe Payen, *Les arrêts de règlement du parlement de Paris au XVIII<sup>e</sup> siècle. Dimension et Doctrine*, Paris: PUF, 1997 ; *La physiologie de l'arrêt de règlement du Parlement de Paris au XVIII<sup>e</sup> siècle*, Paris: PUF, 1999.

<sup>764</sup> The *premier président* “head” of the *corps parlementaire*.

<sup>765</sup> The Grande Salle, favorite stage of *parlementaire* representations. See above p. 149-155.

<sup>766</sup> A moment that underlined the spiritual and religious dimension of sovereign justice and was, quite possibly as well, a reference to the figure of Saint Louis. See above p. 53-54.

<sup>767</sup> The red robes that the *conseillers* only wore in the presence of God or the king. See above p. 94.

reading aloud by the *premier président*—however, was dictated by the peculiar nature of those *arrêts*, a peculiarity not reflected in the substance of the written *arrêt*, but which was certainly reflected in practice by the procedures and processes that led to the decision to resort to this rare type of *prononciation*.

Those *arrêts* were labeled “general,” by opposition to the vast majority of *arrêts* that I have called “simple,” but that could also be called *arrêts particuliers*, because they were perceived as adjudicating conflicts between “*particuliers*,” that is, between private individuals. This conception of the simple *arrêt*, to which I will come back later, entailed that the scope of its operative part was seen as strictly limited to a particular object disputed between specific litigants. In a number of cases, however, the *conseillers* wanted to mark that the scope of the sentence they issued went beyond the particulars of the case at hand. In those few cases, the *conseillers* wanted to manifest that the resolution contained in their *arrêt* was meant to serve as a template for the resolution of similar cases in the future. *Arrêts* of this kind were called *arrêts de règlement*, a phrase that can be loosely translated as “regulatory sentences.”

The institutional processes that led to the making of an *arrêt général* entailed a twofold recognition on the part of the *conseillers*: first the recognition that a particular *arrêt* had or ought to have a regulatory (*réglementaire*) dimension, and then the recognition that the legislative scope of this *arrêt de règlement* was significant enough to turn it into an *arrêt général*. This treading of the legislative area explains that the issuing of an *arrêt de règlement* required a clear activation of *parlementaire* sovereignty. As we have seen before, manifestations and mobilizations of *parlementaire* sovereignty tended to resort to the same institutional procedure: the gathering of the court as a *corps*. This was the case, for instance, of the procedure used to solve the *partages* that could occur in the course of deliberations.<sup>768</sup> And it is precisely this procedure of *partage* that the *conseillers* utilized in order to gather the *corps*, which, alone, could produce the manifestation of sovereignty necessary to back an *arrêt* with a general legislative scope.

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<sup>768</sup> See Chapter 7 above, p. 331-335.

Indeed, on a number of occasions the *conseillers* “provoked” *partages*, that is, intentionally split their votes evenly, so that the case would be “divided” (“*parti*”) and transferred to an *assemblée générale* where the *arrêt* would be decided by the *corps* as a whole and thus could qualify as an *arrêt général*. This was the case for instance in a March 1602 trial concerning the exclusion of a mother from the inheritance of her child who had died while underage.<sup>769</sup> I use this case here to illustrate more generally the processes and intents that led the *conseillers* to decide that their *arrêt* ought to be *général*. The rule traditionally followed in cases such as this one in which the dead father had explicitly substituted another heir to the underage child, was that the mother could not lay any claim to the inheritance of her late husband if the child died while underage. Some *conseillers* felt that they needed to issue an *arrêt général*—or as they called it in that instance, “a notable *arrêt*”—because that informal rule that came from a particular interpretation of a passage of Justinian’s *Institutes* on this point (*substitutio expressa pupillaris excludit matrem*),<sup>770</sup> was not unanimously approved and had increasingly come under fire at the turn of the seventeenth century. The disagreement between *conseillers* on this point was reflected in the *partage* that resulted from the original deliberation in the *Seconde Chambre des Enquêtes*. The *conseillers* split their votes evenly between the *rapporteur* and his *contretenant*. The *rapporteur* M. de Roux wanted to uphold the old rule and give the child’s inheritance to the tutor appointed by his dead father (in this case, his uncle, brother of the father). The *contretenant* M. de Vesian advised on the contrary that the whole of the inheritance should go to the mother.

Without entering the details of each legal reasoning, two points mainly interest us here. The first one is that Vesian’s challenge to the traditional rule, and the support he received from half of his colleagues, were motivated by a sense that the old rule derived from Roman law was out of tune with a contemporaneous conception of equity. Indeed, Vesian resorted to a number of legal technicalities to argue that the mother should receive the inheritance, but the fundamental reason behind the challenge was that “equity seemed to desire that the mother having just lost a child, should not lose everything that

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<sup>769</sup> Malenfant, *Collections et remarques du Palais*, I, fol. 14-16.

<sup>770</sup> Book II, Title XVI, Of Pupillary Substitutions.

belonged to him as well, which would just be adding affliction to affliction.”<sup>771</sup> The point here is that, while the *conseillers* seemed to be evenly divided on the question of whether or not the old rule needed to be done away with, they agreed that this lack of clarity had to be addressed with a decision that would resolve future occurrences. It is at this point, and precisely for that reason, that we see the *conseillers* intentionally provoke a *partage* so that the case would “go up” to an *assemblée générale des chambres*. The *greffier* Malenfant tells us that when the *rapporteur* and *contretenant* brought their *partage* to the Première Chambre des Enquêtes, a majority in that new chamber initially seemed to support Vesian’s opinion. The *conseillers* decided, however, that one *conseiller* in support of Vesian should “reduce his opinion to that of the *rapporteur* so that the deliberation could be sent to the Grand Chambre.”<sup>772</sup> This was done, Malenfant tells us as well, “expressly so that it would result in a notable *arrêt* that would serve as a law in similar occurrences.”<sup>773</sup>

Once an *arrêt* deliberated in a general assembly of chambers was issued, the choice of how it would be pronounced indicated whether it would remain a “simple” *arrêt*, or become an *arrêt de règlement* or an *arrêt général*. Indeed, not all *arrêts* decided in a general assembly became *arrêts de règlements*. In fact, most of them remained “simple,” in the sense that they ended up being pronounced in the same way as *arrêts* deliberated in individual chambers. The mode of *prononciation* was precisely what determined the nature of the *arrêt* and this point was decided during the deliberation on the case itself. While the succession case above clearly shows that the *conseillers* brought a deliberation to the general assembly of chambers with the intention of producing an *arrêt de règlement*, it is unclear at what point during that final deliberation this decision was made. It is certain, however, that by the end of the debate the decision about the mode of *prononciation* of the *arrêt* had been made. This fact suggests that this decision was made collectively—and unanimously, given the mode of deliberation I described

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<sup>771</sup> “(...) fondoit son avis (...) sur l’équité qui sembloit desirer que la mere perdant son fils, ne perdit pas tout ce qui lui appartenoit, afin qu’affliction ne fut point mise sur affliction.” Malenfant, *Collections et remarques du Palais*, *ibid.*, fol. 15

<sup>772</sup> “un de Messieurs qui se reduisit à l’opinion du rapporteur pour renvoyer le jugement du procès à la grand chambre” *ibid.*, fol. 16.

<sup>773</sup> “expressément afin qu’il en fut fait un arrêt notable pour servir de loi à pareille question.” *Ibid.*

earlier—<sup>774</sup> rather than by the *premier président* alone. The decision was not simply about discriminating between those *arrêts* that had or were meant to have a regulatory scope and those that did not—in fact, we will later see that this distinction is questionable, for “simple” *arrêts* had a regulatory dimension of another kind—, it was also about deciding whether an *arrêt* with a regulatory scope should be an *arrêt de règlement* or an *arrêt général*. Again, it was the mode of *prononciation* that underlie that distinction: the choice of the place, of the reader, of the circumstances of the *prononciation* was meant to mark the legal significance of the regulatory *arrêt*. *Arrêts de règlement* were to be read by the lower *greffiers* in each inferior jurisdiction of the *ressort*, while *arrêts généraux* were to be read aloud by the *premier président*, in public, in the Grand Salle, in the presence of the whole court.

Following the deliberation of the *arrêt* in a general assembly, this *prononciation* “in red robes” (“*en robes rouges*”) was a second and even stronger manifestation of the sovereign status of the court in relation to *arrêts généraux*. This heavy-handed mobilization of *parlementaire* sovereignty was achieved through a manipulation of symbols that I have already described but that I would like to connect now to the specific nature, and in particular the legislative dimension, of the *arrêt général*. Indeed, the court combined those symbols—red robes, Grande Salle, etc.—to indicate that *arrêts généraux* were *arrêts de règlement* of a special kind, that they required a more solemn publicization because they heralded not just a change or clarification of a point of procedure, but also manifested a new sovereign position vis-à-vis broader social, political, economic, or religious themes. Typically, the changes in legislation effected by *arrêts de règlement* concerned a precise and in general rather technical point of law or procedure. *Arrêts de règlements* could also be dealing with adjustments in matters of day-to-day policy, for, the Parlement de Paris had been issuing rulings concerning fountains, bread, *poids et mesures*, since the Middle Ages.<sup>775</sup> Those decisions are very interesting because those *arrêts*, that are among the very few that did not intervene in the course of a trial, operated openly and directly within the legislative domain—*arrêts de*

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<sup>774</sup> See “*Délibérer*” in Chapter 7 above, p. 319-353.

<sup>775</sup> Aubert, *Histoire du Parlement de Paris de l'origine à François Ier 1250-1515*, I, 298-310.

*règlements* belonging to that category look in their form and substance more like an ordinance than a judicial *arrêt*.

The legislative change operated by an *arrêt général* went beyond the legal field strictly conceived: it often reflected a change in perception or approach to the general matter at stake in the trial it concluded. For instance, the *arrêt général* that concluded the 1602 trial over the substitution of a legal guardian as heir to the deceased father of a deceased child, did not simply concern the narrow legal point of pupillary substitutions. Much more generally, and as was made clear by the *contretenant* Vesian who wanted to “bring down this rule [*abattre cette règle*] that ‘express pupillary substitution excludes the mother,’”<sup>776</sup> the issue was one of equity toward widows at risk of losing their assets. Although the Parlement de Toulouse upheld the old rule in its *arrêt général*, it is clear that this particular socio-economic question—the protection of the assets of widows— was on the mind of the *conseillers* at the time, for, a month later—on April 2, 1602—another *arrêt général* was issued to deal with another aspect of this question.

This other trial interests us here first, because it involved two generations of women and appears to confirm that the *conseillers* in Toulouse, in the early seventeenth century were specifically interested in “legislating” in relation to the socio-economic conditions of widows. In this trial, the question of dowry was at the core of a dispute between a mother and her daughter after the death of the husband/father: both women sought to have priority securing their respective dowry from the succession of the deceased. The mother wanted to reclaim the dowry she had brought to the marriage and the daughter wanted to obtain the dowry that would allow her to marry. In a way, both women were hoping to secure a share of the succession that would allow them to survive the disintegration of the household on which their livelihood had hitherto depended. In his will, the father had set aside an amount of money to constitute his daughter’s dowry and the lawsuit reveals that this dowry, once added to the dowry that should be returned to the widow, exceeded the value of the succession. The question then was whether or not part of the

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<sup>776</sup> “(...) *alleguoit plusieurs autres raisons pour abattre cette susd. règle que substitutio expressa pupillaris excludit matrem* (...)” Malenfant, *Collections et remarques du Palais*, *ibid.*, fol. 15.

mother's dowry—that had been fused into the household's assets—could be detracted to constitute the daughter's dowry, as it was established in the father's will. Put in the legal language of the time, the debate was about whether or not a dowry (in this instance, that of the widow) could be “obliged,” that is, could be allocated to honoring a clause of a contract (in this instance, the will of the husband). Until that point in time the rule generally followed by the court was to consider that the contract made by the husband should have precedence over the restitution of the integral dowry to the widow.

Strikingly, the *conseillers* in the Première Chambre des Enquêtes who received the case, just as in the trial a month earlier over the question of pupillary substitution, were evenly split over whether or not to follow the recommendation of the *rapporteur* Rességuier to follow the current rule and take away from the mother to give to the daughter. Strikingly too, the *conseiller* Claret who spoke in favor of not only disregarding this rule, but of issuing an *arrêt général* that would serve as a landmark decision to overturn this rule as well, did so in the name of equity—just as Vesian had tried to do a month earlier in the trial over the question of pupillary substitution. In this trial, however, those who supported a legislative change to better protect the assets of widows in the name of “equity” won their case, for the *arrêt général* “pronounced in red robes” on April 2, 1602 decided that the mother should be given priority and that the dowry of the daughter should be constituted with what would be left after the whole of the mother's dowry had been detracted from the succession. As Malenfant indicated, “it seemed more reasonable to the court to give preference to the mother over the daughter *nixa aequitatis ratione*,” that is, literally, “supported by the reason of equity.”<sup>777</sup>

While the magistrates' interest for this question of the assets of widows at the turn of the seventeenth century is certainly fascinating,<sup>778</sup> my main point is about the *conseillers*' decision to issue a *général arrêt*, and what this decision reveals, *a contrario*, about simple *arrêts*. Indeed, what is most

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<sup>777</sup> "(...) il a semblé à la Cour être plus raisonnable que la mere fut preferée à la fille nixa aequitatis ratione." *ibid.*, fol. 17.

<sup>778</sup> Further inquiry might suggest, I think, that the *conseillers*' interest in the topic was informed, at least in part, by a range of personal concerns, concerns for their own wives and daughters, but also—and maybe more importantly—for their estate and fortune.

interesting about those *arrêts généraux* and their *prononciation* for my purpose, is precisely the way in which they differ from the mass of simple *arrêts* that did not have such an explicit legislative scope.

Perhaps the greatest difference between those two types of *arrêt*, albeit not the most obvious one, is that the *arrêt général*, read aloud in the Grande Salle, was publicized in this particular way because, contrary to the simple *arrêt*, it was meant to be interpreted. What the substance and wording of the *arrêt* “pronounced in red robes” on April 2, 1602 tell us is the particulars (the *particulier*) of the court’s decision, that is in this instance that “the mother obtained her full dowry from the assets of the husband and the daughter took from what was left after that to constitute hers.”<sup>779</sup> What the wording of this *arrêt*—that resembles any other simple *arrêt* of the court—does not tell us, but that Malenfant reveals, is that the *prononciation* in red robes was done “so that one must infer and learn from this *arrêt* that women cannot in any way oblige their dowry [my emphasis].”<sup>780</sup> “Women cannot oblige in any way their dowry” is the new rule, the new law, the legislative dimension that makes this *arrêt* general. The “*prononciation en robes rouges*” is the very peculiar judicial practice, a rare mode of publicization, intended to signal that, contrary to most *arrêts*, there was something that could be and even should be inferred from the content of this *arrêt*, and that what was to be inferred was of a general and legal nature: something which, as Vesian had hoped in the other trial debated a month earlier, “would serve as a law in similar occurrences.”<sup>781</sup>

The publicization of this invitation to interpret and to “learn” something from the *arrêt*, the acknowledgment of its broad scope, the revelation of the intent of the court in its decision, made the *arrêt général* not just different from the simple *arrêt*, it made it its antithesis in some important respects. The invitation to interpret was a far cry from the *prononciation* of the “simple” *arrêt*, that is, from the limited release of a sentence that was designed to offer no discursive asperities, so as to render any interpretation

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<sup>779</sup> “(...) *par arrêt de la Cour, la mere a eu son dot entier sur les biens de son mari, et la fille a pris le reste des biens pour le sien* (...)” *Ibid.*, fol. 16.

<sup>780</sup> “(...) *de sorte qu’il faut inférer de cet arrêt, et apprendre que les femmes ne peuvent en aucune façon obliger leur dot* (...)” *Ibid.*, fol. 16-17.

<sup>781</sup> “*pour servir de loi à pareille question.*” *Ibid.*, fol. 15.

of its text virtually impossible. Was Arnaud du Thil sentenced to hanging because he had committed a “prodigious crime”? Coras the published author says that much, but Coras the *rapporteur* does not: no matter how hard one tries to twist and bend the text of the *arrêt* he wrote, it does not reveal anything other than the particulars of the lawsuit (who sued who and for what) and of the sentence (who is sentenced to what). As we have already seen, a number of judicial practices analyzed earlier—in particular *rapporter* and *délibérer*—were designed specifically to force unanimity, produce brevity, and erase motives. In light of the analysis of *arrêts généraux* I have just offered, brevity, unanimity and absence of motives can be understood as the key features that ensured that a “simple” *arrêt* would offer as few interpretive handles as possible.

In contrast to the *arrêt général*, the openness of which was proclaimed out loud and staged through a grandiose *parlementaire* ritual, the closeness and self-contained nature of the “simple” *arrêt* was reinforced through the bureaucratic *prononciation*—the “*prononciation* in writing” I have described earlier. Contrary to the *arrêt général* indeed, the simple *arrêt* strived to be a finished and closed product, because its sole scope was to end a specific dispute between specific individuals. It did not cite any Roman law, it did not refer to royal ordinances, it mentioned the king only when he was deemed to be a victim that must be compensated. Accordingly, the silent *prononciation* of the simple *arrêt* through a bureaucratic practice—the written “extraction” of the *arrêt* from the official registers—participated in the assertion that the court sought to remain at a distance from those cases.

Thus, based on an analysis *a contrario* of the broad and clear publicization of *arrêt généraux*, I argue that the limited form of publicization of the simple *arrêt*—one that did not seek to advertise the *arrêt* to a larger public—befit what I would call the ideology of the *arrêt*, that is, the rhetorical representation of the simple *arrêts*’ judicial function that was contained in the act itself, in its substance, its form and its intended circulation outside the court. This ideology—to which I will come back in the conclusion—can be summarized as follow: *arrêts* are quasi-private constitutional acts, overseen by a sovereign arbiter. In keeping with this ideology of the *arrêt*, the *conseillers* kept at a distance from the *prononciation* of their own sentences. This intentional distancing is also congruent with a view of the

simple *arrêt* as a “silent *arrêt*.” In a passage worth quoting in its entirety, La Roche-Flavin uses this exact expression, “silent *arrêt*” (“*arrêt muet*”) precisely to describe the simple *arrêt*, by opposition to the “speaking *arrêt*” (“*arrêt parlant*”) pronounced in the Grand Salle:

The *arrêts* given and pronounced at the hearings [i.e. Grande Salle] have much more splendor, efficiency, example and benefit for the public than those given over the *bureau* and registered in the *greffe* only. Because not only the lawyers and procurators but also the litigants attend and hear (...) the motives of the said *arrêts*, to serve has a reference for similar cases, and they register and perpetuate them in their memory to that effect, or even repeat and pass them on to their children and those to their own children and nephews, so that they can use them when they, or others, need them. Instead, the motives of those [*arrêts*] given over the *bureau* [i.e. “pronounced” at the *greffe*] are unknown, and only the litigants with an interest in them are notified and then they are locked in the *greffe*, which very few people can access, where they are exposed to dust, mold, moth and other threats. The latter can be called silent *arrêts*, the former speaking *arrêt*.<sup>782</sup>

Although La Roche-Flavin’s implicit preference for the “speaking *arrêt*” seems rather clear in this passage, it is most likely because of this “splendor” (“*éclat*”) that the pronunciation of those didactic *arrêt* (cf. Malenfant’s note that there was something to “infer and learn” from the *arrêt général*) entailed. Indeed, La Roche-Flavin does not say that, contrary to the *arrêt général*, the simple *arrêt* does not have a legislative dimension. In fact, another passage of the *Treize Livres* reveals that La Roche-Flavin’s view was that all *arrêts* had a legislative dimension.

*Arrêts*, simple or general, were meant to serve indeed “as laws between litigants.” This conception of the sovereign sentence helps us to better understand two elements I have observed that began to emerge from my analysis of judicial practices in the previous chapter. The first of those two elements is the question of the particular nature of the truth produced by the *conseillers*, that is, an absolute truth that hides the mechanisms and rationale that underlay its production. This specific type of

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<sup>782</sup> “Les arrests donnez et prononcez en l’audience ont beaucoup plus d’esclat, d’efficace, d’exemple et de profit pour le public que ceux qui se donnent au Bureau et s’enregistrent au greffe seulement. Par ce que non seulement les advocats et procureurs, mais aussi les parties et tous les assistans entendent la plaidoyerie des advocats, et les motifs desdits arrests, pour s’en servir de prejuges aux faicts et cas semblables, et les enregistrent et perpetuent en leurs memoires audit effect, voire les redisent et transmettent à leurs enfans, et iceux a leurs enfant et neveux pour s’en aider, quand ils en auront besoing pour eux, ou pour autrui. Là où les motifs des autres donnez sur bureau est incognu, et n’y a que les parties plaidantes et interessées, qui en soient adverties et est enfermé dans un greffe, auquel fort peu de personnes ont l’entrée, non exempt de la poussiere et de la pourriture, et des teignes et autres accidens. Lesquels peuvent estre nommez arrest muets, les autres Arrest parlans.” La Roche-Flavin, *Treize livres des Parlemens de France*, 824.

truth was certainly guided, at least in part, by concerns over how the laying out of motives could potentially undermine this absolute truth. This prevention against revealing judicial practices must also be thought of, I think, as congenial to a particular conception of justice and its role that the conception of *arrêts* as “laws between litigants” illuminates. I will come back to the question of the political and legal dimension of sovereign judicial truth in the general conclusion.

Before that, and for the rest of this chapter, I want to explore the second and more practical element which the idea of *arrêts* as laws between litigants can help us understand. It is the question of the apparent distancing of the judges from the handling of judicial truth once the *président* and *rapporteur* had signed the *arrêt*. The analysis of the silent, bureaucratic mode of “*prononciation*” of the great majority of *arrêts* suggests that once the *arrêt* as document was complete, the *conseillers*’ involvement in the future of the sentence became increasingly indirect. I want to suggest here that this lack of involvement was intentional and that it did not reflect a lack of interest but a purposeful distancing dictated by the ideology of the *arrêt* I have identified above.

### **Enforcing Truth: “Exécuter”**

Admittedly, this suggestion appears to be at odds with one of the main contentions of the historiography of the last few decades on early-modern executions. Indeed, my view that sovereign judges “disengaged” from their own sentences after they were issued seems to clash with the idea that the execution of those sentences—at least in capital criminal cases—were designed to summon the “unrestrained presence of the sovereign” (“*la présence du souverain déchaîné*”).<sup>783</sup> In this last section, however, my analysis of *exécuter* as a judicial practice shows that those two views are not incompatible. In fact, in this section I show how the distancing of the *conseillers* from the execution of their own sentences might have been a critical condition of the demonstration of absolute violence that was integral

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<sup>783</sup> Michel Foucault, *Discipline and Punish: the Birth of the Prison*, New York: Pantheon Books, 1977, 49.

to capital punishments. Further, I show that this mechanism did not just apply to the execution of capital criminal sentences but more generally to all *arrêts* issued by the sovereign courts. Finally, I illuminate the ways in which this distancing from the execution of sentences participated in the ideology of the *arrêt* that I have begun to sketch in the two first sections of this chapter.

When mentioned in relation to early-modern justice, the word “execution” immediately conjures up images of capital punishment—hangings, beheadings, condemned being broken on the wheel. Strictly speaking, however, capital punishment was only one particular form of judicial execution among others, and one that was applied far less frequently than modern stereotypes would lead us to expect. In this last section, I approach “*exécuter*” as a judicial practice from this plainly legal perspective. That is, I consider the whole range of judicial practices used by the sovereign court to enforce its own sentences, regardless of the nature and importance of those sentences. From this point of view, capital punishments—and more generally corporal punishments that were performed in public—are a statistically negligible form of judicial execution. Yet, because capital punishment was fraught with highly charged symbolic elements—honor, publicity, violence, pain, tortured bodies, death—examining execution generally conceived through the prism of capital punishment is of great interest for an analysis that seeks to interrogate the underpinnings and implications—epistemological, ideological, political—of this judicial practice. The expression of the judicial and political theories that underlay execution was much clearer in the case of capital punishment than for the great majority of *arrêts* that often only required a private transaction, and in some cases no action at all—for instance when the case was dismissed at the *greffe* or dropped because it was settled outside the court. Of course, and precisely because of the peculiar nature of capital punishment and the highly charged elements it manipulated, capital punishment presents a number of characteristics that do not apply to other forms of judicial execution. There were, however, a number of elements that capital punishment shared with the whole range of judicial executions but that remained much more elusive in the cases that had a less dramatic outcome. Even more clearly than in the case of *prononciation*, the common and general feature is the almost complete lack of direct involvement of the

*conseillers* in the execution of their own sentences, a feature that appears most glaringly in executions of death sentences.

Here, I pay particular attention to two aspects of the performing of capital punishment that illuminate the way in which sovereign judges sought to represent themselves and their practices through execution. The first aspect is the question of the representation of the judges themselves through their physical absence at the scene of the execution. This absence raises a number of intriguing questions: if the *conseillers* were absent, who or what represented sovereign justice at the execution? Did this absence seek to convey a particular statement about the goals of sovereign justice and the kind of authority that supported it? The second aspect is that of the representation of judicial practice at the execution: how were the professional practices of the judges represented on the site and at the moment of the execution? Were the truth-seeking practices that had led to the *arrêt*—that justified the *arrêt* from the internal point of view of judicial practice—revealed, ignored, masked? What became of the *arrêt* itself at the execution? Did it play a particular and/or necessary role? Was it further validated by the enforcing of the sentence it contained?

Before I examine those questions, a couple caveats are in order. The first one has to do with the position of my analysis vis-à-vis the rich historiography of capital punishment in pre-modern Europe. In the last few decades indeed, capital and corporal punishment, and more particularly the discursive dimension of those ritualized judicial acts, have received substantial scholarly attention. While I am interested as well in the discursive aspects of capital punishment, my approach is somewhat different from other accounts because I focus on representations of objects that have not interested very much previous analyses of judicial executions. My own analysis focuses much less on the king and the condemned and much more on justice officials and the practice of sovereign justice. This focus does not seek to invalidate in any way previous studies of early-modern capital punishment. If anything, my approach further highlights the richness of capital punishment as a powerful discursive practice. In addition, the analysis of representations of sovereign justice and judicial practice that focus my attention here, corroborates some aspects of what has now become the dominant interpretation of early-modern

capital punishment as a core feature of the retributive justice inherent with monarchical forms of sovereignty.

The second caveat concerns more generally hermeneutical readings of capital punishment as a discursive practice. I myself adopt this approach because it presents great heuristic potential for an analysis primarily interested in the epistemological dimension of judicial practice. It does very little, however, to address directly the practical aspects of judicial practice, so to speak. From that point of view too, capital punishment is a fascinating object of analysis for it raises the question of the enforcement of judicial decisions with a particular acuity: how much force is actually required to enforce a sentence? What role does judicial practice and its representation play in the minimizing of the actual physical force needed to capture bodies, extract and isolate them from the community of subjects, maim them and destroy them in the open, in front of that community? With this second caveat, I want to point out that, while I do not directly address those questions, they certainly are germane to my own analysis of capital punishment.

Capital punishment is a practice primarily geared toward killing individuals, it aims at their physical elimination, an obvious fact that seems to be lost, however, in many accounts that sometimes focus more on words, symbols and their supposed meaning, than on the practical reality that discourse reflects and affects. What intrigues me here is the way in which the discursive aspects of capital punishment are integral to fulfilling the primary, physical function of execution. In other words, my analysis ultimately seeks to highlight how discourse creates force, or rather how the manipulation of words and symbols can help to minimize the amount of force necessary to achieve actual practical results. In other words, I do approach the early-modern scaffold as a stage, but I try to do so without losing sight of the fact that the killings that took place on it were primarily a physical operation.

Probably inspired, like many others, by Michel Foucault's seminal account of the execution of François Damiens that opens *Discipline and Punish*, John McManners described capital punishment as "a real-life theatre production with the gallows as the stage set, and the executioner, the condemned man, the

confessor, and the escort as the *dramatis personae*.<sup>784</sup> The idea that the scaffold is a stage predates post-modern analyses of capital punishment by a few centuries, for early-modern contemporaries themselves were keenly aware of that dimension of judicial execution. Philippe Giroux, a *président* in the Parlement de Dijon who was tried for the murder of his cousin, was said to have confided to a fellow inmate that dying in a jailbreak attempt would be “preferable to being executed ‘in a theater.’”<sup>785</sup> Thus, we are not doing too much violence to historical actors’ own understanding of capital punishment when we approach it as a spectacle of sorts. What the goal of this spectacle might have been, how the performers, the condemned, the “audience” might have perceived it, is another matter. It is safe to assume, however, that contemporaries shared an understanding that capital punishment involved a number of actors, who had to fulfill precise roles in order to dutifully perform this act, that is, to both make it happen and at the same time represent it to those in attendance, to the condemned, and to themselves.

My analysis of this spectacle focuses on the absence of the *conseillers*, arguably the principal actors in the judicial drama that had led to the final act to be performed on the scaffold. The sovereign judges who had inquired, interrogated, reported, deliberated, and sentenced, were indeed absent from the stage. While it is obvious that this absence was deliberate, it is less readily clear what it sought to achieve or manifest. Despite the physical absence of the *conseillers*, was sovereign justice represented in any way on the scaffold? Was the trial, the judicial work that had led to its maturation referred to in any way? Did it even seem relevant to the performance of the highly ritualized execution? To answer those questions, we need to take a closer look at what happened in the absence of the *conseillers*, with an eye to how they, their practice, and more generally sovereign justice might have been indirectly represented in the performance of capital punishment, and with what intended effect.

The first point of interest is the systematic absence of the *conseillers*. There was an exception to this informal rule in only one specific type of case: the execution of those sentenced for crimes “against

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<sup>784</sup> John McManners, *Death and the Enlightenment. Changing Attitudes to Death in Eighteenth-Century France*, New York: Oxford University Press, 1981, 387.

<sup>785</sup> Farr, *A tale of two murders : passion and power in seventeenth-century France*, 108.

divine majesty” (“*lèse-majesté divine*”). Gramond, the main source on Cesare Vanini’s trial and execution for blasphemy and atheism (February 19, 1619), was a *conseiller* in the Parlement de Toulouse at the time (he would later become its *premier président*) and was undoubtedly an eyewitness present at Vanini’s atrocious execution.<sup>786</sup> Likewise, *conseillers* could be present at the execution of less high profile cases of *lèse-majesté divine*, such as the execution of the corpses of suicides.<sup>787</sup> But only in those cases of executions that were deemed to function as reparations of offenses committed against God did the *conseillers* attend. Despite the theory of representation, they did not attend the execution of criminals of *lèse-majesté humaine*, that is, regicides. *Conseillers* are absent from all accounts of the most two famous cases, Ravailac (1610) and Damiens (1757), and they are nowhere to be found either in the accounts of executions of their highest profile case (for instance, du Thil, Gairaud, and Calas in Toulouse). Thus, their absence at executions in less sensational cases, such as the execution of Antoine Chovin I now turn to, cannot be explained away by the lesser importance of the crime or of the criminal, but is a reflection of a general and absolute rule.

The analysis of the execution of Antoine Chovin, sentenced to death by the Parlement de Toulouse for poisoning,<sup>788</sup> will help us approach the epistemological underpinnings and discursive implications of capital punishment as a form of judicial execution. My account and analysis of this execution is based on the minutes (“*procès-verbal d’exécution*”) written down by the greffier, direct eyewitness and, as we will soon see, one of the main actors of the execution that took place on the Place Saint Georges, on June 8, 1685. Unlike most accounts used by historians, *procès-verbaux d’exécution* were not meant to become published account of the execution, and maybe more importantly here, their

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<sup>786</sup> The executioner tore off Vanini’s tongue with pincers before strangling him. According to Gramont, “there never was a more terrifying cry, it sounded like the bellowing of an ox being put to death” (“*il fallut employer des tenailles pour la lui tirer, et quand le fer du bourreau la saisit et la coupa, jamais on entendit un cri plus horrible ; on auroit cru entendre le mugissement d’un boeuf qu’on tue.*”). Cited in Victor Cousin, “Vanini,” *Revue des Deux Mondes* 4 (1843): 725

<sup>787</sup> Robert A. Schneider, “Rites de mort à Toulouse: les exécutions publiques (1738-1780),” in *L’exécution capitale. Une mort donnée en spectacle, XVI<sup>e</sup>-XX<sup>e</sup> siècle*, ed. Régis Bertrand and Anne Carol, Aix-en-Provence: Publications de l’Université de Provence, 2003, 134.

<sup>788</sup> I have reviewed this case extensively in Chapter 6.

sole function was to record the execution. In that respect, the *procès-verbal d'exécution* gives us the best sense of the practice as seen from a judicial point of view, it allows us to see what *exécuter* included from this point of view, where and when the practice began and ended, what elements seemed relevant for a record that was solely meant to be filed in the judicial memory.

*Exécuter* began away from the crowd, at a distance from both the time and place of the actual execution. For Antoine Chovin, as for most of those sentenced by the Parlement de Toulouse, the execution began in his cell where the greffier read the *arrêt* to him. This first of several readings on that day, it was the equivalent in a criminal case of the *prononciation* that took place at the *greffes* in the vast majority of civil cases.<sup>789</sup> In cases of capital sentences, this was the moment when the judgment was signified to the condemned, but because of the outcome of those criminal trials, this *prononciation* was stripped of all its bureaucratic aspects. As we will see, at the very instant the death sentence was read to Chovin, his status changed and he became already legally dead. Having suddenly lost all his rights, there was no point in issuing a written copy of the *arrêt* to him. The *arrêt* only had use for those who would request its execution, in this case, and because it was his duty, the *greffier* himself. The sole copy of the *arrêt* that was needed then, did not require the payment of a fee to be issued and was to remain in the hands of the *greffier* from the beginning to the end of the execution.

The change of status of Chovin from accused to convict that the *prononciation* operated was manifested as well by the transfer of Chovin to the hands of the “executioner of high justice” (“*exécuteur de la haute justice*”) of the city of Toulouse. Indeed, although the *greffier*—and as we will see shortly other justice officials—were to be present during the whole execution, the handing of Chovin to the executioner, demonstrated this change of status, which also signified that from this very point on, Chovin was literally out of the hands of his judges. This transfer was demonstrated visually by the passing around

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<sup>789</sup> See p. 369 above.

Chovin's neck of a noose that the executioner would hold on to from that point on and until they reached the scaffold.<sup>790</sup>

The passing of this noose around Chovin's neck was just the beginning of the preparation of Chovin for his execution. Two main preparations took place before the public part of the execution began: a physical preparation of the body of the sentenced—initiated by the passing of the noose around the condemned's neck—and a preparation of the words that framed his execution. Those two preparations worked toward the same goal: to isolate Chovin, undermine his character, and pre-emptively destroy any alternate narrative he might oppose to the judicial truth, which, uttered via the reading of the *arrêt*, underlay his execution.

The physical preparation of Chovin consisted in stripping him from any visible sign that could still connect him to any part of the community of the living he had just left when the *arrêt* was read to him. In a world where “dress served to express not only the gender, the estate, and the occupation of the wearer but also occasioned opportunities for honor and insult,”<sup>791</sup> it meant a literal stripping of Chovin's clothes: Chovin was undressed and then required to wear only a white shirt. This dress was undoubtedly part of a ritual of public shaming that began before Chovin reached the scaffold. Indeed, Chovin was not brought directly from his cell to place St. Georges, but, as the *arrêt* stated, he was “put in a tumbrel or cart, the noose around his neck, [...] taken on the usual tour, by the streets and intersections of the city.”<sup>792</sup> During this tour, Chovin was exposed to the crowd, wearing around his neck the instrument of his upcoming execution. In this early-modern society in which one's social role and position was

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<sup>790</sup> The function of this noose was purely symbolic, for it was used regardless of the mode of execution—not just for hangings. In cases of hangings such as Chovin's, this noose was not the one used on the scaffold. The clearest sign of the purely symbolic value of this noose is that it was also worn by those who had been sentenced to die not only by hanging, or on the wheel or by beheading. See Bastien, *L'exécution publique à Paris au XVIII<sup>e</sup> siècle*, 121.

<sup>791</sup> Silverman, *Tortured Subjects : Pain, Truth, and the Body in Early Modern France*, 27. On the importance of the social function of dress in early-modern France see Norbert Elias, *The History of Manners*, New York: Pantheon Books, 1978, 143-52, 60-8; James Richard Farr, *Hands of honor : artisans and their world in Dijon, 1550-1650*, Ithaca: Cornell University Press, 1988, 183, 248-9.

<sup>792</sup> “*luy monté sur un tumbereau ou charrette ayant la harde au col luy faire faire le tour acoustumé par les rues et carrefours de la presente ville.*” ADHG, 1B 3767, June 8, 1685.

manifested by dress, the stripping of Chovin's clothes was a stripping of his identity, a visual representation of his being cast out from the community.

The social meaning of this nakedness, readily understandable to anyone in attendance at the execution, was made even clearer on the scaffold by the stark contrast between Chovin and the officials who surrounded him. The outfits of the officials present on and around the scaffold indicated clearly who they were, in what capacity they were there, and for what purpose. Azémar and Bailo, the two capitouls present wore their luxurious ermine-trimmed black and red satin robes, their first *assesseur* Pradines, who was also their *greffier*, wore the official costume of his municipal office, also in the color of the city. Monsieur Morel, vicar general to the archbishop of Toulouse wore his priest robe, and the *greffier criminel* of the Parlement wore his ceremonial scarlet robe. Beyond the splendor of this sartorial display, the solemnity of what was about to happen on the scaffold and the strength of the authority mobilized in this event, was further underlined, not only by the presence of those local powers but by their coming together in a rare show of unanimity. On a day-to-day basis indeed, the capitouls, the archbishop and the Parlement were the best jurisdictional enemies. They fought each other over privileges and *point d'honneur*, and only collaborated on very rare occasions such as religious events or royal entrances in the city. Tellingly, those were also some of the rare moments when they wore the same ceremonial robes they wore at public executions.<sup>793</sup> The show of unanimity was even stronger in the case of executions, for the officials present did not bicker over their place or role as they often did for other official events, arguing over who should march first in processions or who should sit closest to the choir in the St. Etienne cathedral.

Thus, on the scaffold, Chovin would be visually isolated by this sartorial contrast, his plain and blank shirt clashing against the lavish display of brightly-colored, elaborate and luxurious robes of the officials who surrounded him. This isolation thus functioned as a stigmatization through dress that was

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<sup>793</sup> The *greffiers* of the Parlement for instance, only used their scarlet robe for the opening sessions of the court, the reading of *arrêt généraux*, funerals of members of the *parlementaire* corps, processions for major religious celebrations, and the entrance of a prince, king, queen or newly appointed bishop or *premier président* in the city of Toulouse. On a daily basis however, *greffiers* of the Parlement wore a far less luxurious but more comfortable black robe to fulfill their duties at court.

clearly meant to undermine the character of Chovin. A similar isolation/stigmatization mechanism targeted Chovin's words. The reading of the *arrêt* was to Chovin's words what the robes of the justice official were to his white shirt: it dressed Chovin's words in rags and tore large holes in his narrative. This contrast between the polished narrative of judicial truth and the disjointed bits Chovin could utter on the scaffold, was prepared carefully prior to the public part of the execution process. This preparation was recorded in detail in the *procès-verbal* and reveals an interrogation process that was almost identical in its substance and structure to the "questioning" of a torture session. In fact, because others were later tortured in this same trial, we can say that the two interrogations were exactly the same in their substance and structure. Like the questioning of Vignes and Sentenac in the torture chamber indeed, Chovin's interrogation moments away from his execution, consisted in spelling out in the form of rhetorical questions a logical and well-organized judicial narrative that forced the accused to offer fragmentary answers that could not form a coherent narrative.<sup>794</sup> Like the later questioning of Vignes and Sentenac, Chovin's interrogation had two radically different stages, separated by a sudden turning point. The first part of his interrogation was made up of factual questions on largely consensual points ("Asked his name, surname, age, birthplace and whether he has wife and children," "Asked for how long he has been a servant in the house of the late Sieur de Marseillan, and what was his current function there" "Asked whether he had prepared the soup..." etc.),<sup>795</sup> but ended abruptly when the questions turned to offering an indirect account of the scenario of Chovin's guilt. After Chovin had answered positively that he had heard that the Sieur de Marseillan had been poisoned, a clear change in the nature of the questions opened this second stage: "Asked whether he is not the one who poisoned the said sieur de Marseillan and the others with the said broths."<sup>796</sup> From that point on, all the questions were of the same nature and, as in the case of the questioning in torture sessions, those questions were only interrogative in form. While Chovin

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<sup>794</sup> See Chapter 6.

<sup>795</sup> "*Interrogé de son nom, surnom, age, lieu de naissance, s'il est marié et s'il a des enfans,*" "*Interrogé combien de temps il a resté domestique dans la maison du feu sieur de Marseillan, et a quoy il servoit presentement dans lad. maison,*" "*Interrogé (...) si se feut luy quy respond quy avoit fait lad. soupe ou sy s'estoit quelque autre*" ADHG, 2B 2899, June 8, 1685.

<sup>796</sup> "*Interrogé sy ce n'est luy quy a empoisonné led. sieur de Marseillan et les autres avec lesd. bouillons.*" *Ibid.*

“denied the said question,” the capitoul ignored the denial and kept going forward with his account of judicial truth, as if Chovin had admitted to the poisoning. Indeed the capitoul went on and asked “who had sent him the said poison, whether he decided on his own to commit the said poisoning out of revenge, or whether he was prompted or obliged to do so by enemies of the sieur de Massillan and his family, what they had promised or given to him, and the name of the said enemies who forced him to commit the said poisoning.”<sup>797</sup>

As in the later questioning of Vignes and Sentenac, the result was the production of a great imbalance between a well articulated truth and fragments of what was made to be perceived as an incoherent denial. Unlike Sentenac and Vignes, Chovin was not tortured, for he had already been sentenced to death on the sole basis of the documents reviewed by the *conseillers* who decided not to subject him to the “preliminary torture (*question préalable*”), but the similarity in the dynamic of this “preliminary interrogation,” indicates that this exchange was meant to address similar judicial concerns over the production of judicial truth and the possibility of epistemological instability on the scaffold. Despite the very similar structure, strategy, and overall concerns between this interrogation and the questioning of Vignes and Sentenac in the torture chamber, its immediate goals were different, for the judge was acting here within the execution process and he did not use force to try and coerce Chovin to adhere to the judicial truth that the *conseillers* in the Parlement had established. Rather, this interrogation functioned as a rehearsal to the same interrogation that was to happen in public on the scaffold later on that day. It enabled the small prep team gathered around Chovin in the *salle d’audience du consistoire* to do two things: to reveal to Chovin the narrative that they were going to give him a chance to adhere to in his last instants, and to gauge whether Chovin was likely to seize or not this opportunity. Either way, this preparation was meant to give an additional discursive edge to justice officials—this is the exact same group who would be with Chovin on the scaffold—during the public part of the execution.

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<sup>797</sup> “Interrogé quy luy avoit baillé led. poison, sy c’est de son mouvement et par vengeance qu’il a fait led. empoisonnement, s’il a esté sussité ou obligé de ce faire par des ennemis dud. sieur de Marseillan et de sa famille, qu’est ce qu’ils luy ont promis ou donné, le nom desd. ennemis quy l’ont obligé a commettre led. empoisonnement.” *Ibid.*

On the scaffold indeed, the repetition of Chovin's interrogation took an even more assertive turn: the same questions were asked as in the secret of the chapel of the *capitoulat* but Chovin was not given a chance to answer them one by one. Instead, all the questions were asked in one go, without a pause to answer, and only in the end was Chovin allowed to address them in a very brief statement: "He answered that he had said all he knew and the truth, that he was innocent of the said crime, that he did not know who threw the poison in the pot nor the name of any accomplice."<sup>798</sup> Thus, the modalities of this particular interrogation forced Chovin's last utterance into brief and disjointed statements. This lack of detail and cohesion was accentuated by the contrast with the judicial narrative that had just been articulated, the coherence of which was even clearer than earlier in the privacy of chapel, for this time it was not interrupted by Chovin's denials. Thus, although in the interrogative form, this judicial narrative asserted a truth that appeared much more robust and cogent than that offered by the convict. It was more detailed, it flowed logically from one "question" to the next, pre-empted the upcoming denial of the convict. Of course, this discursive imbalance was made possible by the fact that justice officials monopolized words and swords on the *place St. Georges*. In complete control of this stage, the capitouls, their *assesseur*, their *greffier*, and the *greffier* of the Parlement isolated Chovin in a number of ways that undermined whatever brief statement he was allowed to make. On the scaffold, Chovin was outnumbered by the officials who were involved in one way or another in the public uttering of the judicial narrative of his guilt. Indeed, all the local authorities were present: two capitouls, their scribe, their executioner and his assistant, two *assesseurs* represented the municipal power, the scribe of the parlement—the hand of the king—represented royal power, the vicar general of the archbishop of Toulouse represented ecclesiastical power. What is especially intriguing about this show of unanimity is the way in which the Parlement—the *corps* behind the sentence being executed—was represented.

The *conseillers'* absence at the execution of death sentences they had themselves issued is particularly glaring because this type of execution was public and involved a number of other prominent

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<sup>798</sup> "a respondu qu'il a dit tout ce qu'il sçavoit et la verité, estre innocent dud. crime, ny ne sçait ceux quy jetterent dans le pot led. poison, ny le nom d'aucun complices." *Ibid.*

officials. The gruesome capital punishments of early-modern royal justice should not mislead us into an anachronistic misrepresentation of the *conseillers*' sensitivity and interpreting their absence as a manifestation of their revulsion against the barbaric and degrading handling of bodies, blood, and pain. Nor should we misinterpret the *conseillers*' absence as an illustration of an assumed cultural divide between the elite, whose quasi-modern sensitivity would keep away from gruesome executions, and "the mob," who gathered around the scaffold, driven by its morbid, medieval pulsions. A quick glance at the men who stood on the scaffold beside the condemned suffices to reject this interpretation. Indeed, the representants of other local authorities—the capitouls, the vicar general of the archbishop—who were certainly intent on arguing that their nobility and respectability was as good as that of the *conseillers*, apparently did not feel out of place at a public execution. The capitouls and vicar general were important figures of social and political power and there is no sign that they attended executions reluctantly or that they felt that their social status or moral authority was undermined by their association with pain, cries and blood. In fact, there is evidence to the contrary that, in some instances at least, officials and more generally members of the social elite wanted to be present at those grisly executions. One can still find examples of this in the second half of the eighteenth century, for instance at the execution of Jean Calas (March 10, 1762), which capitoul David de Beaudrigue—who had led the inquiry against Calas—insisted on attending even though he had not been appointed one of the two capitouls in charge of attending this particular execution.<sup>799</sup> It was also the case of those *grande*es who made a point of being present at the gut-wrenching execution of Damiens, precisely motivated by their expectation that their presence might increase their credit with the king.

The *conseillers* of the Parlement however,—that is, the men who could take credit for the sentence—were absent. My earlier analysis of judicial torture has already showed that the judges of the Parlement did not seem to harbor—at least not any more than the capitouls or the vicar general—an

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<sup>799</sup> Voltaire, *Original pieces relative to the trial and execution of Mr. John Calas, merchant at Toulouse, who was broke on the wheel in that city, pursuant to his Sentence by the Parliament of Languedoc, for the supposed murder of his eldest son, to prevent his turning Roman Catholick. With a preface, and remarks on the whole, by M. de Voltaire.*, London: printed for T. Becket and P. A. de Hondt, in the Strand, 1762, 90.

insurmountable aversion for the application of pain, screams and blood. When a *conseiller* like Guillaume de Ségla was reluctant to resort to judicial torture, it was primarily because of doubts over the reliability of the question as a knowledge practice: as Guillaume Ségla put it, “the question is a dubious, hazardous, and uncertain thing.”<sup>800</sup> My analysis of judicial torture also revealed, however, that the *conseillers* were very careful to leave the handling of bodies and pain outside of their field of expertise. In the torture chamber, this delimitation was achieved through a strict separation between the physical practices of the executioner and the knowledge practices of the magistrates. As we saw, this division of labor that gave complete control over bodies and pain to the executioner was not meant to alleviate the qualms of the magistrates, but to fulfill an important rhetorical function: it allowed the judges to assert their absolute monopoly over the truth-seeking dimension of torture as a judicial practice.

Likewise, the *conseillers*' absence at the public executions they had ordered should be explained by the function this absence fulfilled. As in the case of torture, this function was mainly discursive, and its object was judicial practice itself. The *conseillers*' absence near the scaffold underlay a representation of the sovereign court and of its role in relation to the execution, it was not meant to dissociate the *parlementaire* corps from the capital punishment, but, on the contrary, to clearly assert its relation to it. Although the *conseillers* were absent, the sovereign court was in fact present at the execution, but it was represented by only one man who was not a judge—its *greffier*—and one document—its *arrêt*. The choice of the *greffier* as the court representative was meaningful. The *greffier* was a full member of the *parlementaire* corps: he was privy to its secrets, he played a crucial role in its truth-seeking and decision-making practices. In public sessions, he performed his task of writing down the court's memory in the view of all, a crucial act that guaranteed the validity of the court's action in the public eye.<sup>801</sup>

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<sup>800</sup> " la question estoit une chose douteuse, hazardeuse, et incertaine" Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, 24.

<sup>801</sup> See Chapter 3, p. 153.

Three particular features of the office of *greffier* can help us explain his presence as the lone representative of the court at public executions: the fact that he was a member of the *parlementaire* corps, the fact that he was not, however, a magistrate, and the fact that his official capacity within the corps was related to recording, not decision-making. His presence is an indication that the *conseillers* did not seek to absolutely dissociate themselves from executions but that they sought to represent their relation to executions in a precise way, achieved through the presence of the *greffier*. Indeed, if the *conseillers* had wanted to dissociate the court more clearly from executions they could have sent either one of the *greffier* assistants or one of the *gens du roi* in the court. Or they could even have let the *greffier* of the capitouls in the case of Chovin, the *greffier* criminel of the Châtelet in the case of Damiens, read the *arrêt*. This was in fact what those *greffier* of lower jurisdictions did with *arrêts de règlement* issued by the sovereign courts.<sup>802</sup> We know with certainty that the *conseillers* were adamant that the *greffier* assistants could not replace the chief *greffier* at public executions because they were not members of the *parlementaire* corps. In an odd 1626 case in which three young men who, having fled Toulouse, were sentenced in absentia to be hanged “in effigy” for having given away in the streets pornographic images disguised as religious items,<sup>803</sup> the *greffier* civil Malenfant expressed his reluctance to attend the execution instead of the criminal *greffier* who happened to be indisposed on that day. It seems that Malenfant did not want to be associated with the carnivalesque aspects of both the crime—the young men had done their deed disguised as ermits on “Fat Tuesday”—and of its execution—for mannequins were to be used in the absence of the sentenced. Malenfant suggested that an assistant of the *greffier* criminel could go, but the refusal of the court was very clear and reveals that the presence of the *greffier* as a member of the corps

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<sup>802</sup> See p. 370 above.

<sup>803</sup> “Le 24 février 1626 jour de mardy de carême prenant, fut faite une mascarade de trois jeun’hommes habillés en ermites qui donnoient par la ville aux dames des cartels imprimés sous le nom d’hermites amoureux, et donnoient de plus des chapelets aux uns desquels estoient attachées des médailles d’argent qu’ils avoient fait graver à une orphevre contenant des saletés d’un homme et d’une femme neus, comme malversant ensemble par posture extraordinaire et gravée sur une de celles de l’Aretin, les sales peintures duquelles taillées en taille douce ils donnoient aussi en guise d’images de sainteté.” Malenfant, *Collections et remarques du Palais*, I, 279.

was deemed indispensable to the image of the court that the *conseillers* wanted to project at the executions:

On this same day April 29, this figurative execution was done with great solemnity, which, in the absence of *M. le greffier criminel*, I attended dressed in my red robe. I had pleaded greatly not to go, however, but the court, having heard my objections, ordered that I, not one of assistant-greffier [*secrétaire évangélistes*] who usually does so when the *greffiers* [i.e. both the civil and criminal *greffiers*] who do this execution are absent, because of how important the case was. This great pomp [i.e. the presence of the *greffier* in his red robe] was needed to show to the people how dedicated the Parlement was to repairing the insult that those hermits had done to God and his Holy Mother by giving away those abominable gifts on Fat Tuesday.<sup>804</sup>

The symbolic of dress is again crucial here. The *greffier* was the only member of the Parlement, who could, like the *conseillers*, wear the red robe that represented sovereign justice. This robe indicated clearly that the *greffier*, while not a magistrate, was a member of the *parlementaire corps*. Although the *procureur général du roi* and the two *avocats généraux* arguably occupied a higher position than the *greffier* both in the judicial hierarchy and the hierarchy of dignities, they were not a viable option to represent the court at public executions precisely because, contrary to the *greffiers*, they were not members of the *parlementaire corps* either.

There was another reason to choose the *greffier* over the *gens du roi*—and for that matter, over the *conseillers*—to represent the court: he was not a magistrate. This point is essential, I think, to understand the meaning of the *conseillers*' absence: the court was represented at executions by the sole member of the corps who was not a *conseiller*, that is, the only person who was an integral part of the sovereign body but was not actively involved in the truth-seeking and decision-making practices of the court. Thus, the presence of the *greffier* asserted that the execution of sentences fell within the realm of sovereign justice but outside of the domain of sovereign judges. The specific functions that the *greffier* performed for the rest of the *corps*, further highlight what his presence next to the scaffold meant to

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<sup>804</sup> “*Ce même jour 29 avril cette execution figurative fut fait avec grande solemnité, à laquelle je me trouvai avec la robe rouge en l’absence de M. le greffier criminel. Je fis toutefois grande instance pour ne m’y trouver pas ; mais la cour après m’avoir oui en mes remontrances ordonna que cette execution seroit faite par moi non par un secretaire evangeliste qui a accoutumé de faire les executions en défaut des greffiers de la cour, attendu l’importance du fait, et qu’il falloit que par ce grand eclat le peuple reconnut le devoir auquel le parlement se mettoit pour reparer l’injure faite à Dieu et à sa Sainte Mere, par les abominables presens faits par ces hermites le jour du mardy gras.*” *Ibid*, 281.

express about the *conseillers*' relation, not just to capital punishment as a judicial practice, but to executions of *arrêts* more generally. The *greffier* performed practices related to the memory of the court and his presence at the execution signified that the *conseillers*' spatial distancing from the scaffold reflected a temporal distancing from executions. The presence of the *greffier* indicated that, from the point of view of the Parlement, what was to happen on the scaffold already belonged to the realm of judicial memory.

From that particular perspective then, if the scaffold was indeed a stage as historians and contemporaries seemed to have understood, what was performed on that stage was not the final act of the judicial drama, but rather an epilogue to it. From the point of view of the *conseillers*, the drama was already over. It had already taken place, in part on an open stage—the courtroom—, but mostly behind the scenes, in *greffes* and *bureaux*.<sup>805</sup> Thus, if we were to keep the drama analogy at all, one could say that, from the point of view of the *conseillers*, the final act of the trial was the writing down of the *arrêt*, and more precisely the instant when the *rapporteur* and president affixed their signature to the draft. This is not to say that the execution was irrelevant to the judges, but that their absence must be interpreted as an assertion of their particular position vis-à-vis executions. This position was determined by their unique relationship to the judicial truth that underlie the execution and set the judges apart from those in attendance near the scaffold. As I noted before, there was no radical cultural difference between the *conseillers* and their contemporaries that could explain that the judges shun capital execution out of an anachronistic disgust for violence. It is not as if, for the *conseillers*, “punishment had ceased to be a spectacle”<sup>806</sup> earlier than for everyone else, but rather, punishment had never been a stage at all within the perspective of the truth-seeking practices of sovereign judges. Their shunning of executions—as we will see shortly, not just of capital executions but of execution in general—was indeed, an assertion regarding

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<sup>805</sup> See Chapter 3.

<sup>806</sup> Foucault, *Discipline and Punish: the Birth of the Prison*, 9.

truth and justice: *conseillers* did not concern themselves with the enforcement of truth, they concerned themselves solely with revealing what truth was.

Thus, the execution was not and should not be perceived a validation of the truth articulated in the *arrêt*. Judicial truth was already established, and it was unquestionable, the execution could not add to or withdraw anything from the *conseillers*' sentence. In that respect, the study of failed executions and the way in which they were handled in the early-modern period is telling. Neither botched executions—those were frequent in cases of executions by beheading—or miraculous survivals—those were rare and only occurred in cases of hanging—could change anything to the sentence. The judges never perceived those occurrences as a divine contradiction to their judgments, but, in the case of miraculous survivals, as a sign that God wanted the justice of men to forgive the guilty in this world.<sup>807</sup> In fact, *conseillers* had no role in the aftermath of miraculous survivals, for those rare occurrences never led to a revision of the trial that would have then been sent back to the judges, but they could only lead to a royal pardon that still maintained the guilt that the court had established: the guilty was forgiven but remained guilty and the absolute truth produced by the court remained intact.

Thus, according to this judicial ideology, once the *arrêt* was signed, the *conseillers* had no further dealings with the condemned man or woman. In a way then, the *conseillers* did not need to be at the executions, because the subject was already dead to them. In fact, attending the execution could have been considered an admission on the part of the *conseillers* that an execution was needed to validate and finalize their work. Tellingly, at the moment when Chovin was executed on that morning of June 8, 1685, his judges were not just absent at his execution, they were sitting around the *bureau* of the Chambre Tournelle, deliberating on the trials of others, busy issuing other *arrêts* that would lead to other executions, capital or not. Judicial practice kept running its course, uninterrupted by the executions it ordered, Chovin had been dead to his judges since the day before, when they issued their *arrêt*.

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<sup>807</sup> Bastien, *L'exécution publique à Paris au XVIII<sup>e</sup> siècle*, 218-20.

The overall judicial statement then was that execution as practice was not just outside of the judges' area of expertise, it was absolutely distinct from it. This view resembles the one that underlies the strict separation of truth-related practices and body-related practices in judicial torture. As in the case of torture, maintaining a strict separation from executions was a way for the judges to both assert and strengthen their monopolistic claims over the production of judicial truth. The *conseillers* of the Parlement de Toulouse demonstrated this separation in a number of ways. The separation was marked most clearly by their absence at the execution, and was further accentuated by an increasing physical distancing from the scaffold. Originally, executions had taken place in the *Palais*, and the first measure taken to hide the proximity between the scaffold and the *bureau* had been to close the gates of the *Palais* when executions took place.<sup>808</sup> As I mentioned above, however, the judges never questioned that executions were an edifying spectacle for the subjects of the king, thus this solution was seen as unsatisfactory. The natural solution to maintaining publicity while displacing executions away from the judges was to simply move the scaffold away from the *Palais*, a move that occurred at the end of the seventeenth century.<sup>809</sup> This chronology of an increasing distancing between judges and executions runs parallel to that of the assertion of the infallibility of sovereign justice, manifested by the role of the king's pardon.<sup>810</sup> Thus, the *conseillers* of the Parlement seemed to have increasingly distanced themselves from both punishment and pardon, and thus were ever more removed from the ritual complicity of the crowd Foucault described.<sup>811</sup> The theory of representation that placed the *conseillers* somewhere in between the king and his subjects, barred them from attending executions, for those were moments in which the sovereign was figured to his subject solely through the unleashing of massive violence.

As I have already pointed out, however, capital executions represent a very small fraction of the overall number of executions of *arrêts*, both criminal and civil, issued by the Parlement. The great

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<sup>808</sup> Schneider, "Rites de mort à Toulouse: les exécutions publiques (1738-1780)," 135.

<sup>809</sup> *Ibid.*

<sup>810</sup> Bastien, *L'exécution publique à Paris au XVIII<sup>e</sup> siècle*, 215-25.

<sup>811</sup> Foucault, *Discipline and Punish: the Birth of the Prison*, 58-9.

majority of executions—for instance the execution of a civil *arrêt* concerning the payment of debts—did not require the conjuring up of “the unrestrained presence of the sovereign”<sup>812</sup> and, in most cases, were not witnessed by anyone else beside the litigants. Yet, despite those differences, the analysis of how the *conseillers* related to the execution of their capital sentences has highlighted a distancing that is less visible but equally critical to the execution of all *arrêts*. Those executions are far less visible because they are not documented directly and must have never seemed worthy of recording. The main source for the study of those executions then is the text of the *arrêt* itself. As it turns out, however, the text of the *arrêt* reflected and participated in the assertion of a specific relation of the *conseillers* to the execution of their sentences. Indeed, while the text of the *arrêt* was always brief, its wording and syntax represented the judges in a unique position vis-à-vis the execution of the sentence and, relatedly, situated this execution within the judicial realm but on the margins of judicial practice. As we have just observed with the execution of capital sentences, the result was the assertion of a distancing of the judges from the execution process.<sup>813</sup>

The text of the *arrêt*, like the staging of capital executions, sought to convey a representation of sovereign justice that sidestepped the *conseillers* and erased their judicial practices. First, a number of standardized elements in the text of the *arrêt* combined to “depersonalify” judicial practice, by turning the judges into an impersonal and seemingly detached collective. The use of the passive voice in the opening of the *arrêt*, “*Vu le procès entre...*,” literally “Having seen the trial between...,” but maybe better translated by “Given the trial between...,” begins this process of depersonification of the judicial process from the outset of the *arrêt*. This use of the passive voice seeks to suggest that there once was a trial, and there is now a sentence, while obfuscating both the practices and the practitioners that made that transition happen. This absence of verb was a way of masking the range of actions that the *conseillers* had applied to this trial. The trial was simply “given.” At best, it had been “viewed” if we want to adopt a literal

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<sup>812</sup> *Ibid.*, 49.

<sup>813</sup> In fact, the reflection of this distancing in the text of the *arrêt* also played a role in executions of capital sentences, for the criminal *arrêt* that the greffier read out loud at several points between the prison and scaffold was identical in its form and structure and used the same formulas and language as any other *arrêt*.

translation of “vu.” It was as if there never was any interaction and exchange leading to the decision: no documents written, read, analyzed, copied, sealed, discussed, no *sacs* moved around from archives, to private studies, to *bureau*, no witnesses nor litigants interrogated, “confronted,” *collationés*, sometimes jailed, sometimes tortured, no fees assessed, paid, distributed. All of those actions which, as I have showed, were very necessary for the *arrêt* to be produced were erased by this simple, barebones opening of the judgment. What was left were just the names of the litigants and the mention of a trial that had been “viewed,” and the use of the passive voice took care here of sidestepping the question of who might be the agent who had “viewed” all of this. Thus “*Vu le procès entre...*” was the standard opening ellipse of the *arrêt*, it erased the principal actors of the truth-seeking and decision-making processes and it reduced the profusion of practices, tools and items produced in this process to the bare minimum: litigants and their trial.

This deletion of practice resulted in an alternative representation of the genesis of the *arrêt*, one that was in keeping with a particular theory of the nature and function of the sovereign sentence. In addition to the elliptic opening and its use of the passive voice, other elements in the *arrêt* further promoted the view that the operative part (“*dispositif*”) of the judgment was a natural counterpart to the “*procès*”—that is, the documentary materialization of a conflict between litigants—on which the preamble to the sentence focused exclusively. The lack of transition between those two halves of the *arrêt*—the preamble and the operative part—created an effect of simple juxtaposition, that sought to cast the conflict and its resolution as naturally joined by an unproblematic correspondence.

There was one immediate and practical purpose to this elision of intervening judicial practices: it made it much more difficult to interpret *arrêts*, and was thus a way of preventing contestations and additional procedures—*requêtes civiles* and *propositions d’erreurs*. This juxtaposition also had a less directly practical goal, as it participated in the rhetorical assertion of an unproblematic correspondence between the two parts of the *arrêt*. Royal *ordonnances* and *édits* that were also always divided into those two parts—the preamble, that described a situation that the law aimed to change or redress, and articles,

which constituted the operative part of the law—<sup>814</sup> structured with the same intent of erasing mundane production practices that could undermine the absolute authority of the product.

### **Judicial practice, epistemology, and truth**

Thus, this particular practice, *arrêter*, was designed to give a specific form to its product, the *arrêt*, with goals that were both practical—prevent appeals and contestations—and in keeping with a certain theory of sovereign justice. I have made similar observations on other judicial practices I analyzed in the course of this study—and more particularly interrogating, reporting, deliberating. In conclusion to this third part of my study, I would like to bring those observations together to examine the relationship between judicial practices, judicial epistemology, and judicial truth in the Parlement de Toulouse. This reflection will serve as the basis for a general conclusion, in which I will revisit the main questions I began this study with: questions on the relationship between law and society, the historiography and history of early-modern France, and broad methodological issues.

I noted at the end of my analysis of *arrêter*, that the very form of the *arrêt* as document—that is, the form of the product that resulted from the practices I have described above—fulfilled a rhetorical function, seeking to validate a specific theory of sovereign justice. I would like to expand on this point here, and argue that this practice was, on a more general level, in keeping with a specific judicial epistemology and a corresponding judicial truth. Indeed, the artificial but apparently neutral juxtaposition of the basic facts of the trial in the *arrêt*—who was opposed to whom, over what type of conflict—and of the resolution—who was sentenced to what—was an intentional elision of all the judicial practices that sidestepped the epistemic uncertainties and the subjective negotiations I have observed more than once in the third part of this research.<sup>815</sup> In the case of *arrêter*, this went beyond the practical, procedural goal of

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<sup>814</sup> In most cases, nothing was to be found between those two parts, and in the few cases where they existed, transitions between the two were very brief and somewhat cryptic formulas: “Which having seen, we have decided to...,” or “Thus, for reasons that have prompted us to do so...,” or “Of certain knowledge...”

<sup>815</sup> For instance, and most clearly, in the course of my analysis of “*questionner*,” see p. 296 above.

preventing judicial appeals and contestations. It had to do with the nature of the truth the *conseillers* aimed to uncover and the rationale that underlie the methods they deployed to do so.

Before presenting the main characteristics of the judicial epistemology that emerged from my study of practices, we should recognize that, not surprisingly, judges had views of their own on the nature of judicial truth, as well as their own understanding of why their practices were appropriate to reveal this specific type of truth. In other words, there was a contemporary judicial epistemology that I would like to consider first, as it will serve as a fruitful comparative backdrop for the definition I propose.

While the *conseillers* obviously did not reflect in modern terms of “epistemology,” some of them offered fascinating analogies that I want to approach as refraction of a shared, in-house contemporary epistemology. In his *Histoire Tragique*, Guillaume de Ségla offered a mathematical analogy to explain how judges transformed the circumstances of a crime into a sentence—the unproblematic “correspondence” between conflict and resolution that the form of the *arrêt* projected. Reflecting on what should guide judges when deciding on the severity of their sentences, Ségla likened sentencing to a geometry of sorts: “Thus, the punishment for murder, although it must be capital, must be ordained by geometrical proportion rather than by arithmetical operation, because, as geometricians measure their proportions after the equality or inequality of figures, based on their quality and not quantity as arithmeticians do, so the do judges and jurists who must measure the quality of the guilty when assessing the punishment.”<sup>816</sup> Bernard de La Roche-Flavin described judicial practice generally speaking as “the true science of law,”<sup>817</sup> and in another passage of his *Treize Livres*, compared the deliberation practices of

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<sup>816</sup> “Donc la peine de l’homicide encore qu’elle soit capital doit ester ordonnée par la proportion geometrique et non par l’arithmetique, car tout ainsi que les geometres mesurent leurs proportions par l’egalité ou inegalité des figures sans s’arrester à la quantité comme les arithmeticiens, mais à la qualité, ainsi les jurisconsultes et les juges en la distribution des peines doivent considerer la qualité de celui qui a failly.” Ségla, *Histoire tragique et arrêts de la cour de parlement de Tholose contre Pierre Arrias Burdeus religieux Augustin, maistre François Gairaud Conseiller au Seneschal de Tholose, damoiselle Violante de Bats du Chasteau et autres. Avec cent trente une Annotations sur ce sujet Par Guillaume de Ségla sieur de Cairas, Conseiller du Roy en sa cour de Parlement de Tholose*, 267.

<sup>817</sup> La Roche-Flavin, *Treze livres des Parlemens de France*, 579.

the magistrate to a distillation process, in which opinions passed through “the still of the court” (*l’alambic de la cour*), that slowly reduced them to one.<sup>818</sup>

I take those analogies as refractions of a judicial epistemology, not because of their scientific flavor—although that is a fascinating dimension that I will come back to shortly—, but because they provide short, direct answers to the question I began this study with: what do judges do? Ségla and La Roche-Flavin’s respective answers vary, but I want to insist here on what those two analogies have in common, and then proceed to question this shared representation of judicial epistemology against the definition I can offer on the basis of my own study of the magistrates’ everyday practices.

Both Ségla and La Roche-Flavin held the view that judging was done by subjecting the stuff of a legal case—identity of the litigants, nature of the offense or crime, circumstances, etc.—to the application of a “science” that the magistrates possessed exclusively. “Science” is the word that La Roche-Flavin actually used, and it should be understood not just in its older and general meaning of knowledge—as, for instance, in the phrase “*de certaine science*” often found in the preamble of royal edicts and ordinances—, but in the more specific meaning of a specialized body of knowledge that the term had begun to take at the time. In Ségla’s view, this was a science of proportions analogous to geometry, and in the case of La Roche-Flavin it was analogous to alchemy, to a certain extent another science of proportions.<sup>819</sup> What I find significant beyond this shared idea that justice was, at its core, the science of adjusting sentences in proportion to the circumstances of crimes and offenses, is the fact that, in the epistemology that those analogies entail, laws do not appear to play any role as either an instrument or an auxiliary body of knowledge of its own. In fact, La Roche-Flavin is very clear about the fact that doctrine—the study of legal theories, jurisprudence and legislative texts—is of little use to operate “*l’alambic de la cour*” (“the

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<sup>818</sup> *Ibid.*, XIII, 17, 702.

<sup>819</sup> It is important to replace alchemy in a historical context in which it was considered as serious a scientific endeavor as geometry. The famous reference here would be that of Isaac Newton, an avid alchemist—and also, as it were, a magistrate at the Mint—who went on to formulate the laws of motion and gravitation.

still of the court”) and complete the process of distillation that drives his analogy.<sup>820</sup> He argues instead that judicial practice was “the true science of law,” while the knowledge of legal texts and commentaries were accessory to judicial practice.<sup>821</sup> Guillaume de Ségla’s analogy adopts a very similar view, for, a few pages before making the case that judging was akin to geometry by opposition to “*arithmétique*,” Ségla had suggested that another judicial practice—the evaluation of witnesses and presumptions regulated by royal laws—was an algebra of sorts. That evaluation, which I covered in Chapter 6 above, is the closest I have come in the course of this research to identifying a practice that consisted in a straightforward application of the letter of the law. Even in that case, as I have showed as well, magistrates demonstrated varying degrees of flexibility in their adherence to the text of the law.<sup>822</sup> The larger point here is that my analysis of practices corroborates the hierarchy between law and justice implied by the contemporary judicial epistemology reflected in those analogies: as algebra was subservient to geometry, so was the “*arithmétique*” of adding together witnesses and presumptions to the “*géométrie*” that guided deliberating and sentencing. I will return, in the general conclusion, to the broader social and political implications of this hierarchy, in which law was subservient to justice. For now, I will simply note that the contemporary judicial epistemology that those analogies reflect shares a number of features with the epistemology I can sketch on the basis of my observation and analysis of everyday practices.

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<sup>820</sup> Interestingly, to make this point he calls on another scientific analogy, borrowed from Galen, comparing judges whose sole knowledge of laws and jurisprudence is deemed as useless and in fact dangerous as that of those doctors who “because they do not know anatomy, tend to wounds haphazardly and randomly, often mistaking a bone, a nerve, or a sinew for another one.” (“*certaines médecins (...) lesquels sans être versés au fait de l’anatomie, pensaient les plaies, plus par rencontres et à l’aventure, pregnant bien souvent un ossement, nerf, ou tendon au lieu d’un autre*”) La Roche-Flavin, *Treize livres des Parlemens de France*, 307.

<sup>821</sup> “*La vraie science du droit.*” The full passage reads “The true science of law is to be learned in the Palace [of justice], and more particularly at hearings. The science of law, without the experience acquired in the Palace, more particularly at hearings, resembles (...) those who, without having seen what the enemy looks like, have trained for imaginary battles. That is where true science is learned, which, as Aristotle puts it, can only be made solid through experience.” (“*La vraie science du droit s’apprend au Palais, même es audiences. La science du droit, sans l’expérience qui s’acquiert au Palais, même ès audiences, ressemblerait (...) à ceux qui sans avoir vu l’ennemi, se sont exercités en des combats imaginaires. C’est là où s’apprend la vraie science, laquelle, comme dit Aristote, ne se peut rendre solide que par expérience.*”) *Ibid.*

<sup>822</sup> See p. 255-258 on the deployment of a judicial algebra that divided proof, into halves, quarters, that could be added and subtracted.

In order to reflect on those similarities, it is necessary first to acknowledge and problematize the fact that, because Ségla and La Roche-Flavin’s analogies were publicized accounts with a didactic purpose, produced by members of the court, they also carry an obvious element of ethos, for what judges do, how they do it, and with what purpose, had political and social implications for the representation of the profession that certainly mattered to the two authors.<sup>823</sup> I would like to consider that this idealized role of the judge is an integral aspect of the epistemology those analogies convey, and I would argue, based on the mutual constitutive relationship between normative ideas and everyday practices I have observed time and again in this study,<sup>824</sup> that this portrait shaped the practices I have observed.

The role of the judge in the analogies proposed by Ségla and La Roche-Flavin—as well as the ethos and social and political position it enabled them to claim—is that of an expert whose “science” remains inaccessible and relatively mysterious to the non-expert. Possession of this “science” is clearly a critical requirement in the process of revelation of the judicial sentence—whether that revelation results from a proper adjustment of geometrical or chemical proportions, according to the two analogies. Neither analogy, however, says much about concrete processes: what mental operations are involved in the geometrical adjustment of proportion? How does the “still of the court” function? What does the alchemist add to the components of the trial to trigger the proper reaction? We are not told. Thus, the analogies have two, I would argue intentional results: first, they equate justice with a specialized field of knowledge, and in doing so they say something about what judges do while eschewing the details of what it is that they actually do. Secondly and relatedly, because the analogies do not dwell on actual processes, the operators—the judges—appear not as passive, but as agents who play a critical but not fully disclosed role in those undefined operations.

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<sup>823</sup> As I showed in Chapter 1, judicial self-representations—priest of the law or knight of a legal militia in the Middle Ages—typically has social and political implications and is always meant to support claims to a particular role and position of judges within both the body social and the body politic.

<sup>824</sup> One example would be the way in which the refitting of legal concept “representation” used on a regular basis in the adjudication of conflicts related to inheritance was used to shape and justify a theory of the origins of the authority of the judges—the theory of representation—which, in turn, justified a number of “sovereign” judicial practices—most clearly *délibérer* and *arrêter*. But the best illustration of this phenomenon is the way in which judicial practice itself became a major component of the portrait of the ideal judge, see p. 96.

The self-representation of the judge in those analogies is not fundamentally different from that of the medieval portrait of the priest of law or the modern representation of judges as “oracles of the law.”<sup>825</sup> As my study of practices has demonstrated, in particular my analysis of *délibérer* and *arrêter*, and as the analogy of alchemy and even more so that of geometry seems to allow, this representation of judging as a process of revelation through an exclusive type of knowledge—exclusive either by virtue of an expertise that can only be acquired by practitioners or the mystical power of priesthood—masks a regulated sequence of meticulous, often formal, sometime painstaking knowledge practices, applied to distinct, identifiable objects.

In that sense, I would argue that those analogies accomplish something similar to what the *arrêt* achieved: an intentional obfuscation of judicial practices that seeks to not only validate a specific representation of practice, but also to participate in its enactment. As in the *arrêt*, the elision of a wide range of practices, or at the very least their blurring into the complex and somewhat mysterious shape of, say, the still of the alchemist, does not make the judges disappear, but it creates the illusion that they revealed judicial truth from a simple review of the circumstances of a crime or offense, and this illusion participated in the validation, hence authority, of this truth.

In other words, in both the *arrêt* and contemporary representations of judicial practice, judges as appear as holders of an exclusive, hence somewhat mysterious, knowledge that contemporary ideals of justice and magistracy required, rather than as the technicians of justice that the study of practice helped identify. The *arrêt* indeed, far from being either a pure decision descended from some immanent and disembodied ideal of sovereign justice or the result of some mysterious process of distillation or the outcome of the application of a matrix of proportions—a black box of sorts—was the result of a patient construction, achieved through a sequence of specific, identifiable, and often mundane knowledge

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<sup>825</sup> John Philip Dawson, *The oracles of the law*, Ann Arbor: University of Michigan Law School, 1968. I would like to note as well, that while the content of those self-representations do change over time, there seems to be a constant in the method employed to justify those analogies: in the case of “priests of justice,” and as I have showed in Chapter 1, medieval jurists based their claim on a number of ideas and passages drawn from Roman law, in the case of Ségla, the ideas are drawn from Aristotelian traditions, in the case of La Roche-Flavin, the reference is less explicit, but in all cases the methodology is a similar combination of loose analogies and lexical interpretations (e.g. jurists were knights because laws were swords, they were priests because laws were “things holy,” etc.).

practices. There was indeed nothing mysterious behind the process of reduction, of “distillation” as La Roche-Flavin would say: it was the result of the practices of a small committee of men who had transformed a great mass of papers, words, movements, questions, answers, and silences, into two alternative resolutions, that had been reduced to one thanks to a highly regulated procedure, and then turned into a short text penned on small piece of parchment. Thus, justice itself, like the material “*arrêt* as document” without which the “*arrêt* as decision” did not exist, emerged from a painstaking process of repeated drafting and proofreading, finalized by one last material act: the signature of a president.

Yet, for all the practices those analogies obfuscated, this mystification tells us something about the nature of judicial truth. That truth and the judicial epistemology that regulated the practices aimed at uncovering and asserting it, are not fundamentally different from the judicial truth and epistemology that emerge from the study of practices that often occurred behind closed-door—as opposed to representations for public consumption in didactic treaties such as Ségla’s or La Roche-Flavin. The account of judicial truth I offer below focuses on its relation to objectivity, the formalism of the practices that served it, and its unanimous and absolute nature. The goal of this account is twofold: it is meant to function as a synthesis of the somewhat scattered observations and conclusions of my study of individual practices, and it will serve as my basis to reflect on the existence and nature of a judicial ideology.

The relationship of judicial truth to objectivity is intriguing and challenging to observe in historical context. This is where one should be wary of the misleading “scientific” flavor of the analogies mentioned above. First, the notion of scientific objectivity is anachronistic for this time period, but more importantly in my view and based on the study of judicial practices, it does not appear that objectivity *per se* was either a critical tool of truth-seeking practices or a value invoked through truth-asserting practices to solidify the authority of judicial decisions.

A fruitful site of investigation of the relevance of objectivity to judicial truth, is the relationship of judicial practices to facts. “Between facts and faith” is the subtitle of this research in part because this idea tied the different parts of the study together. On a first level, the phrase reflects the conclusions of the

first two parts: judicial practice was situated between ideas (Part I) and less fluid material constraints (Part II). In Part III, I showed that, on another level, judicial practices operated between “*faits*” and “*présomptions*.” Both of those contemporary terms had a meaning, precisely in terms of objectivity, that differ noticeably from our understanding of those terms today. In fact, as I had observed in my study of *rapporter* above,<sup>826</sup> the meaning of those terms was not fix even during the period considered here, for it is at the turn of the early-modern period—very roughly—that the transition of those terms toward the lexical set of objectivity began. As the general meaning of *faits* slowly moved from its medieval meaning of “belief” or “faith” toward the modern, positivistic meaning of “facts,” its legal meaning of “legal argument” (the “*moyens*” of modern French legal language)<sup>827</sup> remained unchanged. In parallel, the general meaning of *présomption* followed a route in the opposing direction, from an original legal meaning that indicated a degree of proof corresponding to a specific evidentiary basis (e.g. the testimonials of two witnesses) to a more general meaning akin to “conjecture.”

I view this evolution as a reflection not so much of a radical transformation of the nature of judicial truth—from from “faith-based” to “fact-based”—but of an adjustment of the principles that governed the adjudication of conflicts in royal courts. Indeed, while judges seem to have relied more frequently on ascertaining facts instead of community-based assessments, the fundamental principle of adjudication were unchanged, the system was still adversarial and the “*faits*” invoked by the opposing litigants do not appear to be more objective at the end of the period considered here.<sup>828</sup> This adjustment was in part an adaptation to social and cultural changes, possibly due to a loss of trust in social relations

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<sup>826</sup> See p. 257-261 above.

<sup>827</sup> See p. 307 above.

<sup>828</sup> See my analysis above of the evolution of the judicial portraits used to charge or exonerate: while there is an observable change since the Middle-Ages, from reputation-based portraits to psychological portraits constructed from a synthesis of legal testimonials, the method remained interpretive rather than deductive, and the portraits were still subjective constructions (see p. 257-264). In one telling example in my study of *rapporter*, we saw a public prosecutor not using facts supporting his case because the litigants had not included them in their *faits*, that is, they had failed to turn them into legal statement of facts (see p. 259 above for an example, in practice, of the reluctance to resort to *faits* the litigants did not invoke).

in the face of increased social and spatial mobility,<sup>829</sup> and a reflection of relatively modest changes in the nature of judicial epistemology to incorporate new and external forms of knowledge—e.g. medical reports—in its evidentiary system.

Again, the extent and implications of those changes should not be exaggerated and while the respective meaning of *fait* and *présomption* in relation to objectivity evolved during the period, the *conseillers* remained comfortable operating in that in-between. As my study of *interroger*, *questionner*, and *rapporter* showed, while the magistrates certainly attempted to ascertain facts, they did not chide away from relying on faith—mostly in a non-religious meaning of the term—as well. My argument is that they practiced in that in-between area, not because they were forced to rely on faith whenever facts eluded them, but because the truth they strove to produce was, ideally, a hybrid of facts and faith. The study of *questionner* is especially telling on this point: while the *conseillers* appear to be fully aware that judicial torture was not a reliable producer of objective facts, and yet they kept resorting to it. My argument is that they did so because *questionner* was, under specific circumstances, an efficient truth-asserting rather than truth-seeking practice, for the practice was congenial to a type of truth that needed not to be “objective.” Those specific circumstances were not moments or situations of epistemic uncertainties in the sense that “objective facts” were elusive, but that the facts of the case resisted the articulation of judicial truth. In other words, torture was not applied because or when the *conseillers* failed to ascertain facts, but when judicial truth could not be asserted on the basis of *présomptions*, in the specific legal meaning of that term.

One intriguing irony here, is that in order to overcome this type of procedural dead-end, the *conseillers* resorted to a practice—*questionner*—which, because it was formalized in the slightest details of its procedures, and because those procedures aimed to maintain a certain distance and a mediated relationship between judge and tortured, has the outward appearance of a modern, scientific procedure geared toward the discovery of objective facts. Because the practice, as I argue, aimed not at discovering

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<sup>829</sup> On this question, see view the exchange between Natalie Zemon-Davis and Stephen Greenblatt about the significance of external attributes, social roles, and contractual places in determining identity in the sixteenth century (Greenblatt, "Psychoanalysis and Renaissance Culture," 210-24 ; Zemon-Davis "'On the Lame'," 601-3).

the truth of the matter but at asserting the truth of a judgment, the distancing of the judge fulfilled a different purpose: it sought to guarantee not that guilt was an objective fact, but that the punishment was an objective sentence.

The study of *délibérer*, another practice geared toward the establishment of the sentence, has showed a similar relationship to objectivity. The procedure to validate the outcome of the deliberation did rely on a collaborative, peer-reviewed construction of a solution that would bring together the best evidentiary basis for the decision, but it was achieved through a peculiar voting procedure, which driven by the same adversarial principle I mentioned above, was designed to rally votes behind one proposed sentence, exclusive of all other possible sentences, regardless of the potential merits of the rejected alternative solutions. In that sense, the rules of the practice and the formalistic adherence those rules, validated, as in the case of torture, the practice itself rather than its outcome. As in the case of torture as well, this strict adherence to procedures of validation, despite the “scientific” sound of this phrase, did not entail that it was governed by objectivity, and, I would argue that, in the case of deliberation, the rules of the practice were even designed to leverage a form of subjectivity through the mobilization of *parlementaire* factions behind opposing sentences.

As I mentioned above, *questionner* did not seem particularly concerned with objective facts, as it was geared toward the establishment not of factual truth but of judicial truth. Yet, it entailed very specific, highly regulated procedures, with rules that were not simply prescriptive but, as the study of practice has showed, strictly adhered to.<sup>830</sup> For, as I have argued those practices were deployed in the face of epistemic uncertainty, they are fruitful sites for an exploration of the nature of judicial truth. As I have already suggested, practices such as torture, sentencing, deliberation, produced tautological demonstrations that functioned as blanket refutations of the epistemic uncertainties that triggered them: the imposition of a sentence in the flesh of convicts (execution) and suspects (torture) was a visible, manifest sanction of the

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<sup>830</sup> See p. 292 above.

truth that the magistrates claimed to have reached, the guilty was guilty because he was hanged, his accomplices were accessory to his crime because they were tortured. This (re)assertion of judicial epistemology is most intriguing in the case of deliberation and *question préparatoire*, which, because they were secret—as opposed to executions and *question préparatoire* performed in public—entail that the assertion was to an extent self-directed. The judges’ relative lack of interest for the answers of the tortured when following the script of their interrogation, their refusal to consider elements not included in the *faits* of the litigants when deliberating, seem to confirm that the formalist adherence to the rules of those practices participated in the construction of a self-intended narrative.

Although those narratives were critical to the articulation of judicial truth among the judges, not all of them ended up being publicized to assert that truth. The judicial narrative validated by the application of the *question préparatoire* or that on public display through the multiple readings of the *arrêt* before the execution, appeared to be exclusive, unanimous, and indivisible. The same goal justified that other self-intended narratives, those developed in the course of judicial deliberation, remained secret. This is where the form of the *arrêt* comes into play, for the elision of knowledge practices from the text of the sentence ensured that the judicial truth articulated in the *arrêt*—univocal and exclusive—was in keeping with a specific theory of justice. Within that theory, the authority of the sentence was derived from the “representation” of the *roi justicier* in the unified *corps* of the Parlement. Each *arrêt* recreated this authority by denying, through its form, that the unicity of the *corps* had to be temporarily suspended to reveal judicial truth.

## CONCLUSION

Judicial truth was absolute, exclusive, and expressed in a single, unanimous, and authoritative voice. This is the most concise definition I can give of judicial truth as it emerged from the study of judicial practices in the Parlement de Toulouse between 1550 and 1700. This study showed that the judicial epistemology of the *conseillers*—that is the set of norms and beliefs that organized and regulated their practices, and geared them toward the discovery and assertion of this particular judicial truth—helped maintain a mutually constitutive relationship between a specific socio-political theory and the adjudication of everyday conflicts. In this conclusion, I want to further explore the implications of this insight to revisit and address the main questions raised at the beginning of this study: questions about the relationship between law and society and questions related to the history and historiography of early-modern France.

The invocation of E.P. Thompson’s name to begin this conclusion might seem odd, for this is a study that focused on a classic institution of power and the practices of what is unquestionably an elite group in seventeenth-century Languedoc society. Yet, the key word that explains this nod to Thompson is “practice,” a seminal site of investigation for the kind of “history from below” that Thompson advocated. The association between lower classes—most famously the English working class—and the study of practices was motivated, in part, by an effort to work around the limitations of the classic sources of a dominant political history—memoires, narratives, treatises, etc.—that made it challenging to apprehend “commoners” on their own terms. More fundamentally however, I think that Thompson’s focus on practice had to do with a more general view of the importance of agency and the idea that historical actors are defined and best apprehended, both as individuals and members of a group or class, through their actions. This tautological and powerful idea inspired a number of studies that have profoundly

undermined the Namierist approach to history that had been especially dominant among early-modernists on both sides of the Atlantic and of the English Channel.

My rejection of a history of great men which, as I noted in my introduction, has been particularly influential in the historiography of the Parlements, as well as my focus on everyday practices entail a sympathy and a double kinship with Thompson's approach that was not obvious to me at first—and thus did not guide the problematization or methodology of this study—but that I would like to acknowledge now and use as a starting point for this conclusion. My focus on practice had goals very different from Thompson's—for instance, I do not think that the *conseillers* of the Parlement de Toulouse need saving from the condescension of posterity—and I would also readily acknowledge that the practices I have studied are not marginal in the same sense as those of shoemakers for instance. For those reasons, I originally underestimated the connections between my project and Thompson's approach, and I began from a partial view of my object as the under-studied professional practices of an elite group. My study of those practices however, did more than fill a blank in the history of an elite group, as I would argue that it has yielded three significant and connected insights: the first one with implications for our approach to “law and society,” the second one regarding the autonomy of law, and the third one for the historiography of the Parlements and beyond the history of early-modern France.

While I would reject the idea that I have offered a “history from the top,” I would like to begin by acknowledging and reflecting on the fact that this study did not integrate the broad social perspective that my initial adoption of a “law and society” framework seemed to entail. In the introduction, I argued that judicial practices operated at one important point of contact between law and society, suggesting that judicial practices mediated between law and society, with transformative effects on both. This was, admittedly, a simplification meant to help me lay out the stakes of this research and problematize its object. At the term of this research I think this idea holds true, but that both terms, law and society, as well as the nature of their relationship needed to be qualified for the purpose of this specific research.

First, “society” has proved elusive. Although there is clearly a significant social dimension to the particular theory of justice that grounded the *conseillers*’ epistemology, hence their practices, the men and women of seventeenth-century Languedoc and their relation to royal justice are difficult to apprehend in the documents I have studied. This is due in part to a judicial procedure that has produced a disjointed archive that gives a partial view of the relationship of judges to litigants—for instance, the representation of litigants and the relationship of judges to them vary depending on whether they are apprehended through the speeches of their lawyers, their interrogation, or their sentencing.<sup>831</sup> This however, is a “simple” practical challenge that could potentially be solved through patient team research, and supplementing court records with a wide range of external sources. A more fundamental issue with representations of society as refracted through the records of the Parlement is that it is skewed by a focus on conflict. This certainly opens a fascinating window on the attitude of magistrates toward the social phenomena and conflicts that emerge from the sources, but this leads to a distorted and reductive representation of “society.”<sup>832</sup> In part because of a lingering uneasiness with this issue of the partial refraction of society in *parlementaire* sources, and in part because the sources made it more time-consuming than anticipated to properly reconstruct and study the practices that remained central to this study, I eventually decided to stay away from this type of interpretation.

The “law” component of “law and society” also needs to be qualified in light of this research. The combination of a modern, anachronistic understanding of law and of an exaggerated historiographical focus on royal legislative activity and accomplishments, creates an expectation that laws (“*les lois*”) would stand for law (“*le droit*”) when considering the relationship between “law and society.” It turns out that laws have been conspicuously, and at first, surprisingly absent from the documents of practice I studied. Indeed, beyond the oath that the *conseillers* sworn every year to uphold royal laws, the existing

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<sup>831</sup> See Appendix 2 below for a more detailed account of those archival challenges.

<sup>832</sup> There is definitely value in studies that have used *parlementaire* and more generally judicial records in that way, but I would argue that, for instance, studying “*honnêteté*” and social relations through those records—including *sacs-à-procès*, see Yves Castan, *Honnêteté et relations sociales en Languedoc, 1715-1780*, Paris: Plon, 1974—entails approaching them through episodes of breakdown and infer a normal state of things through the normative views of judges and the rhetorical representations of lawyers, which I find problematic.

legal corpus—and one needs to include not just royal laws but also customs and jurisprudence in that category—never seemed to be the primary guide, if a guide at all, of judicial practices. To break down this point into the analytical categories I have used in my study, we could say that laws always seem to be tangential to the discovery of judicial truth, to its articulation, and to its assertion. At the stage of discovery, a limited set of laws provide a framework to evaluate “*faits*,” and jurisprudence—that is, in most cases, the court’s own sentences—appears to play a greater role than royal legislation, Roman law, or customs (in that order) in this evaluation. At the sentencing stage, the use of laws appears to be very flexible, a variable but certainly not an absolute principle in the geometry, to use *conseiller* Ségla’s analogy, that helped determine the proportion between sentences and circumstances. At the deliberation stage, laws are almost completely absent, unless one wants to count the use of Roman law that seem to have informed the *conseillers*’ reasoning in specific areas such as inheritance, which, interestingly, can be construed as a form of social intervention.<sup>833</sup> Further, references to laws in the judges’ deliberations are often made not to invoke the authority of royal laws in support of a resolution, but to justify a judicial decision that could create a jurisprudence superseding royal law.<sup>834</sup> Thus, the “law” that emerged from this study has not turned out to be an authoritative royal legislation that regulated judicial activity, but on the contrary and for the most part a system in which laws are accessory to justice.

Thus, this research did not—and retrospectively could not—uncover a generalizable theory of how law and society related in seventeenth-century Languedoc, but it did identify significant points of contact between samples of seventeenth-century Languedoc society and the practical application of a particular, contemporary theory of law that posited that justice trumped laws.

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<sup>833</sup> See, for instance, p. 373.

<sup>834</sup> As I will explain in more detail later in this conclusion, the idea that justice trumped law did not mean that judges stayed cleared from legislating, but that they conceived of adjudication as a way to regulation. Tellingly, when they wanted to regulate by issuing a normative text, they did so via judicial practice, that is, resorting to a form—the *arrêt*—and procedures—*partage* and *deliberation*—that were in essence judicial. On this point, see my analysis of *arrêts de règlement* p. 375-379.

I take those qualifications of law, society, and of the relationship between the two that this research had set out to uncover, not as signs of a methodological failure, but on the contrary as a manifestation of a reasonable and ultimately productive reorientation of my approach in the face of sources that resisted the original analytical framework—whether because of the partial nature of those sources or, more importantly, because the critical assessment of their content did not warrant the approach initially adopted. As it turned out, this reorientation has yielded a number of unexpected but fruitful insights, with broad implications, I would argue, for the way in which we ought to think about the place of law and justice in early-modern French history. The combination of my long-range analysis of a *parlementaire* theory of justice with my study of the details of individual practices has shed a unique light on the idea that justice trumped laws I just mentioned, suggesting that it was not circumscribed to the realm of self-serving theories, but was corroborated by the everyday adjudication of conflicts and was also at the core of a political agenda, which, I think, we should take seriously, with significant implications for the historiography of the parlements, but also for our understanding of the nature of political culture in early-modern France.

The third part of this study focused on judicial practices and concluded with a demonstration that the contention that justice trumped laws was not solely rooted in the discourses of the magistrates—for example in the form of treatises—<sup>835</sup> but also reflected and enacted in their day-to-day professional practices—for instance, via the rules of deliberation, similarly applied to the resolution of trials, the registration of new laws, or more generally any matter the court debated as a *corps*. In fact, discourses themselves—for instance the analogies between the practice of justice and geometry or alchemy I discussed at the end of Part III—readily acknowledged and stressed the central and critical role of a practical rather than bookish knowledge, that is, quite literally, a knowledge acquired through the experience of practice in the court of law rather than the knowledge of legal texts and commentaries acquired in law schools. Authors, including *conseillers* from the court, did not reject laws as irrelevant but

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<sup>835</sup> Well-known works of doctrine and political theory, such as those of Loyseau, Pasquier, but also didactic works intended for a larger audience, such as Ségla's *Histoire tragique* or La Roche-Flavin's *Treize livres*.

they clearly affirmed that their role was marginal, and auxiliary or even subservient to justice. I do not need to come back here on the details of the intellectual genealogy of the *parlementaire* theory of justice,<sup>836</sup> but I would like to insist on its political dimension to argue that the corroboration and enactment of this idea in everyday judicial practice suggests that we should not dismiss the medieval idea that justice is the *raison d'être* of political power as the stale, self-serving rhetorical tool of a conservative elite group of magistrates, but that we ought to consider it as a defining feature of a political agenda rooted in a specific judicial ideology—by which I mean how judges formulated their imaginary and imagined relation to both their own conditions of existence and that of the litigants.

Before I get to this political agenda, I want to acknowledge first that, as the mention of ideology suggests, there was indeed a self-serving—or at least self-centered—dimension to this political vision, and that taking it seriously does not necessarily entail adopting a naïve and angelic view of *parlementaire* theory and actions. In fact, a number of practices I studied in this research demonstrate that the *conseillers* utilized their monopoly over sovereign justice to their own collective and personal advantage on a regular basis. Sovereign justice was a critical instrument for their dynastic and career strategies, it was the keystone of their social capital and it constituted the core of their political power. Chapter 5 also shed light on the fact that this instrumental conception of the exercise of sovereign justice certainly had an impact on how the business of justice was conducted on a day-to-day basis in the parlement de Toulouse. The analysis of how the *conseillers* distributed lawsuits among themselves and charged fees for their

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<sup>836</sup> To summarize the conclusion of the first part of my research on this point, the idea that justice trumps law took shape in the Middle Ages, under the influence of royal jurists who reformulated the position and role of the king-as-judge within an anthropomorphized conception of the body social and, on that basis, revived the legislative power of the kings.

work,<sup>837</sup> largely confirmed that the financial, social, and political ambitions of the magistrates shaped the trade of justice, including judicial practices.<sup>838</sup>

It would be misguided, however, to conclude that the practice of sovereign justice was a purely cynical enterprise, solely conditioned by the financial needs and ambitions of the *conseillers*. This view bespeaks a reductionist assimilation of ideology to personal interests, and more significantly for my purpose, it is not warranted by the study of judicial practices. While the analysis of *distribution* and *épices* showed that the financial motivations of the judges certainly had a significant impact on the way in which the flow of lawsuits was channeled through the court, the analysis of other judicial practices in the following chapters showed that the practice of sovereign justice was also guided by genuine concerns and expectations about truth. More specifically, the analysis of the magistrates' knowledge practices—especially practices that occurred behind closed doors and were geared toward the discovery, articulation, and publicization of judicial truth—demonstrated that the exercise of sovereign justice was also genuine concerns about how to establish, and impose judicial truth. Those practices were not just vaguely related to an idealized and purely rhetorical theory of justice, but appeared to be very directly organized by procedures specifically designed to produce concrete enactments of those theories.<sup>839</sup> Because those theories of justice were intimately linked to a specific view of the body social and of the body politic, I

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<sup>837</sup> See Chapter 5 above: “*La grande épicerie judiciaire: money, judicial practice and politics in the Parlement de Toulouse.*”

<sup>838</sup> The century-long transformation of *épices* I analyzed in Chapter 5, had consequences on individuals within the court, as it shaped their income, fidelities, perspective of careers, and politics. It also had consequences on the physiology of the *corps* of the Parlement, a body in theory united but in practice divided into organs ever more differentiated, with an all-powerful *Grand Chambre* at its head. Finally, it had consequences on judicial practices. Maybe primarily, it affected the practice of the rapport, precisely at the time when rapporter was becoming, as a result of a parallel transformation, a major factor of professional identity for the judges (see Chapter 7 on that last point).

<sup>839</sup> The best example of this is the way in which the theory of representation, a core intellectual foundation of the authority of the *conseillers*, was enacted via the rules of practices such as deliberation that ensured that decisions were made as a *corps*. As I have already suggested in Chapter 2, one of the main characteristics of the transformation of the medieval theory of representation into the early-modern period was its adaptation to an organicist view of the monarchical regime. As I have showed too in Chapter 2, within this organicist view, the corps of the Parlement represented the soul of the king, that is, the instrument of both salvation and deliberation. In practice, and as I have already explained as well, the *conseillers* could not claim to represent the soul of the king unless they were gathered as a corps of their own, that is, unless they were like the soul, one and indivisible.

argue that everyday judicial practices functioned as concrete illustrations of the existence of an operative judicial political agenda, which ought to inflect, I would argue, our understanding of the role and place of the courts and of the nature of politics in early-modern France.

My analysis of judicial practices does not profoundly change the main lines of the traditional historical narrative of the political history of France for the 1550 to 1700 period considered in this study. Overall, my analysis does not undermine the account of an expansive monarchy increasingly asserting its hold over the provinces in the course of the seventeenth century, nor does it question the idea that, as a consequence, popular participation in traditional political institutions receded sharply during that time period. In fact, I would say that my study of practices is certainly compatible with the idea that, to a large extent, those changes had to do with rights, liberties, and participation in government. However, because my approach is not concerned with the causes of the French Revolution but with questions about the relatively successful functioning of monarchical institutions for the period that interests me, the focus on practices leads me to suggest a more complicated view of the relation between rights, justice, and politics in seventeenth-century France.

I would like to do so first by providing a fuller, and I think more satisfying account of the assertion of an absolutist monarchy in the seventeenth century. This study demonstrated on the basis of an empirical study of mundane, routine practices, that absolutism and sovereignty were different in form and nature from the notion elaborated by contemporary royal eulogists—from Bodin, to Bossuet, via Richelieu and Loyseau—that has driven so much of the older historiography. Those thinkers and policy-makers had a partial approach to the genealogy of the notions of kingship and sovereignty that grounded their advocacy of absolutism. Their defense of absolutism emphasized the legislative, military, and fiscal dimensions of royal power at the expense of judicial attributions that had originally constituted the core of

the revived notion of kingship from which those regalian powers had been derived.<sup>840</sup> To be sure, justice remained an important component of contemporary absolutist theories, but the emphasis was clearly on notions of appeal and its pyramidal hierarchy that served as a validation of critical concept of *justice retenue* and the royal practices it entailed (for instance the *évocation* of judicial affairs).

I am not concerned here with the explanation for this partial construction of absolutist theory and the selective genealogy that supported it. I am even less interested in vindicating the court by repudiating absolutist theory on the ground that it would have somehow “betrayed” its medieval judicial origins. Instead, my interest lies in the way in which the judicial practices I have studied participated—or not—in the assertion of absolutism. *Arrêter* provides an apt illustration of the role everyday practices played in the routine concretization of the absolutist theory of power. The process designed to eradicate truth-seeking practices from the *arrêt* did not aim solely at upholding a certain theory of judicial truth, it also functioned as a reification of this related theory of power. It ensured that the *arrêt* was a direct, unfiltered expression of a pure and absolute will, that is, a will that commands without justification or explanation. Within an absolutist ideology, sovereign justice, like royal authority itself, had to appear, even in those smaller, day-to-day instantiations of sovereignty that were the *arrêts*—Parlements produced thousands of them throughout the kingdom every month—, not as the result of a logical reasoning or any other sort of intellectual construction.

Thus, the analysis of the day-to-day functioning of a sovereign court, at the intersection of theory and practice, suggests the importance of the wide in-between space that separates normative political discourses that theorized absolutism and the extremely brutal but relatively rare—especially after the 1640s and 1650s—episodes of violent repression of resistance to absolutist policies. In my view, the day-to-day reification of political theory through the mostly bureaucratic adjudication of conflicts that touched all levels of society, an adjudication that embeds participation and a somewhat voluntary endorsement from all “classes,” is the bedrock of the expansion of royal power in the early-modern period. This view

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<sup>840</sup> This is particularly clear for authors such as Loyseau, whose legal training meant that they were certainly aware of the feudal origins of the concepts they manipulated, but skipped over the medieval theoretical corpus to reach out for Roman theories that were much more amenable to their argument. On this point, see p. 31 above.

does not entail a romanticized account of a more “gentle” version of absolutist expansion, for royal justice did unleash a great deal of violence of its own, but a more complicated one, in which the intimate link between the use of authoritarian but mostly normative discourses and the use of physical force—from jails, to torture chambers, to scaffolds—can be problematized and observed through the repeated occurrences of practice.

Thus, despite the historiographical emphasis on the resistance of the sovereign courts to the king—and, leaving aside the eighteenth century, the Fronde and the Jansenist questions constitute two significant episodes for the seventeenth century—the study of practices functions not just as a reminder but as concrete illustration of the cooperation between the central government and the parlements in maintaining and furthering royal authority. Parlements, which in many ways embodied the social order the monarchy stood for, were unsurprisingly monarchist in their ideas and their practices.

This convergence of vision and interest between the monarch and its sovereign courts does not entail, however, a shared and monolithical view of monarchical rule, of the respective roles and duties of the king and the courts. This is a second area where the analysis of judicial practices complicates the traditional narrative of the expansion of absolutism: it shows that the century-long intellectual genealogy of the political view of the courts was not confined to a theoretical and rhetorically normative level, but was operative throughout this period in the everyday practices that regulated the adjudication of conflicts of all classes of men and women.

I would define this alternative monarchical vision as “judicial politics,” and it should be clear at this point that my understanding of this phrase is quite different from that Julian Swan proposed.<sup>841</sup> His is a traditional “high” politics—intrigues, factions, negotiations—that is judicial only in that sense that it is practiced by judges through the politicization of judicial matters. Within that understanding, the interest for the institutional practices of the sovereign court is very partial and remains focused on the same

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<sup>841</sup> Swann, Julian. *Politics and the Parlement of Paris under Louis XV, 1754-1774*. Cambridge: Cambridge University Press, 1995.

classical sources—*lits de justice* and *lettres de remontrances*—that are viewed as a simple façade for traditional games of court politics. The “judicial politics” I suggest we should consider as one of the foundations of a *parlementaire* political vision is an almost exact opposite, as it proposes to take a longer and broader view of the court’s actions, one that encourages us to consider the judicial dimension of political affairs rather than that politicization of judicial affairs.

One admittedly ironical illustration of the implications of this view of “judicial politics” is that it can be mobilized to re-examine the “constitutional question” that has obsessed much of the historiography that has been dismissive of the court’s judicial activities. Such a re-examination does not take at face-value the *parlementaire* argument that justice, not legislation, is at the heart of law (“*le droit*”) but acknowledges that this idea had enough relevance to regulate judicial practices and, possibly, resonated with a political culture shared beyond the ranks of the *conseillers*. Once we set aside our post-Montesquieuan lenses to consider the constitutional question from a perspective in which justice trumps laws and privilege is not an exception but a norm, it appears that the actions of the Parlement—well before the eighteenth century and outside of the context of resistance to the legislative agenda of the crown—had very much to do with a constitution, not the type of constitution dictated by teleological concerns over the debates that preceded the Revolution, but one that makes sense within a political imagination in which justice still was indeed the *raison d’être* of political power.

This view does not entail adopting *parlementaire* arguments about their supposed guardianship of the fundamental laws of the realm (“*lois fondamentales du royaume*”) — a largely rhetorical and historically inaccurate argument—or the view that, because the *conseillers* were in charge of the “*manutention* of public order,” as an eighteenth-century president would put it—<sup>842</sup> only they had the practical experience required to recognize the viability of new laws—one would say their constitutionality, if the kingdom of France had had such a written document. Based on evidence found in the observation of everyday practice however, I think we can consider seriously the implications of the

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<sup>842</sup> See n. 199. *Remontrances du Parlement de Paris au XVIII<sup>e</sup> siècle*, II, 20

*conseillers*' view that the routine adjudication of conflicts, not doctrine, was "the true legal science"<sup>843</sup> and that this "science" not only gave them the authority to deliberate on the registration of new laws, but imposed on them to do so.

My argument is that the study of judicial practices suggests the existence of an early-modern form of "*état de droit*," one in which, as I previously suggested, *droit* meant justice more than it meant laws—a notion that is not readily palatable to a modern mind to begin with, but that is rendered even more difficult to apprehend in an Old Regime context in which most individuals had no rights. Yet, I want to suggest that in the absence of a constitution that guaranteed individual rights, rights that could serve as a basis for their judgment in courts of laws, the sentences of those tribunals—especially final, written sentences such as the *arrêts*—functioned as rights of sorts. In other words, written rights were found *post facto* in the judgment rather than *ex ante* in a constitution. It is easy, from our distant perspective, to denounce the inconsistencies and outright aberrations of this legal regime—this is in essence what authors like Voltaire or Beccaria did in the eighteenth century at a time when it was far more challenging to do so—but it does not help us much addressing a challenging historical question: how this different type of regime, the judicial system it entailed, the judicial practices it set into action, and the judicial truth it produced came to be an acceptable or even desirable norms for those who were subjected to it.

The practices studied in this research are part of the equation: they are sometimes the tools that litigants themselves adopted to advance their interests, validating and perpetuating in the process their own legal subjugation. In fact, the very procedure used by the courts re-enacted with each lawsuit that the litigants themselves triggered the core judicial concept of "*à chacun son droit*," this fundamental Old Regime principle that judgments are not based on equal individual rights—which did not exist—but on a case by case evaluation of respective individual's rights—whether those are derived from personal status ("*privilège*") or belonging to a group ("*libertés*"). Thus, judging could not be about maintaining rights inscribed in a constitution—for they did not exist—but about recreating them over and over again on an

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<sup>843</sup> *Treze livres des Parlemens de France*, IV, 38, 307.

individual basis. *Arrêts* then, were “monuments” “so important to so many citizens” as the engineer François Garipuy, an outsider of the court, put it, because they materialized what I would call private constitutional moments, overseen by the courts and guaranteed by the king.

Thus, my study of judicial practices in the Parlement de Toulouse confirmed a twofold issue within an older historiography of the courts: first that its teleological obsession with the French Revolution entailed a narrow focus on the political crises of the eighteenth century that led it to miss or downplay an important aspects of the sovereign courts’ activity—including its role in advancing absolutism via the adjudication of everyday conflicts—and secondly, and more importantly in my view, that in doing so, it has adopted a narrow view of politics in general, obfuscating in the process a contemporary understanding of justice and the central role it played in the political culture of the *conseillers*. This study does not support the view that those courts were apolitical and thus should be rehabilitated because they met our modern expectation of a clear separation between justice and politics—this would be a historical *contresens*—but that, quite on the contrary, those courts were highly political institutions, precisely because the concept of justice and its implementation in practice were a significant dimension of early-modern politics. By restituting this aspect of the courts’ activity through an examination of the *conseillers*’ everyday practices, this research highlighted concretely what I think is a major dimension of the *outillage mental* that shaped the magistrates’ thinking and actions, including their attitude vis-à-vis the king and his legislative agenda.

This is not to say that *parlementaire* opposition to royal reforms—whether in the seventeenth or the eighteenth century—was justified, but that it should be approached as a piece of a coherent rationale that underlay a specific political agenda. In turn, the coherence of this agenda certainly does not entail that it was desirable or that we, from our distant historical perspective, should subscribe to it. The

question of the merits and faults of this *parlementaire* agenda is—to borrow a phrase from Lucien Febvre—“*une question mal posée.*”<sup>844</sup>

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<sup>844</sup> Lucien Febvre, "Une question mal posée: les origines de la réforme française et les causes de la réforme," *Revue Historique* 161 (1929): 1-73.

## APPENDICES

## Appendix 1: Royal courts in the *ressort* of the parlement de Toulouse (1715)

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❖ *Sénéchaussées* (pays/province - date of creation of *présidial* court, if any).

- *Sièges royaux* within the *sénéchaussée*.
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❖ **Annonay** (Vivarais)

- Boulieu-le-Roi

❖ **Auch** (Gascogne - 1639)

- Arreau
- Sarrancolin
- Vignec
- Gembrie
- Barran
- Castelnau-de-Magnoac
- Monléon
- Fleurance
- Saint-Puy
- Castéra
- Jegun
- Mauvezin
- Vic-Fezensac
- Lanepax
- Villecomtal
- Montréjeau

❖ **Béziers** (Languedoc - 1551)

- Agel
- Aiguesvives
- Autignac
- Autignanet
- Bassan
- Boujan
- Cers
- Colombiers

- Corneilhan
- Cruzy
- Fraisse
- Gignac
- Maraussan
- Montady
- Puisserguier
- Rieussec
- Sabazan
- Saint-Nazaire
- Thézan

❖ **Cahors** (Quercy - 1551)

- Duravel
- Montcabrier

❖ **Carcassonne** (Languedoc - 1551)

- Viguerie d'Albi
- Anglès
- Le Soulié
- Lamontélarié
- Cité de Carcassonne
- Coursan
- Cuxac
- Ouveillan
- Montoulieu
- Montréal
- Narbonne
- Réalmont

❖ **Castelnaudary** (Languedoc - 1551)

- Avignonet
- Autive
- Cintegabelle
- Cuq-Toulza
- Laurac
- Montgiscard
- Revel

❖ **Castres** (Languedoc)

- Cadalen
- Castelviel
- Curvale
- Lomers
- Saint-Juéry

❖ **Figeac** (Quercy)

- Gagnac
- Lamilières

❖ **Gourdon** (Guyenne)

- Cazals
- Calès
- Carluçet
- Couzou
- Dégagnac
- Montfaucon
- Mont-Sainte-Marie
- Saint-Romain
- Soullaguet

❖ **Lauzerte** (Guyenne)

- Moissac
- Montcup
- Saint-Daunes

❖ **Lectoure** (Gascogne - 1621)

- Auvillars
- Bretagne
- Castelnau
- Caudecoste
- Eauze
- Houga
- Ladevèze
- Laplume
- Lavit de Lomagne

- Manciet
- Maubourguet
- Miradoux
- Nogaro
- Saint-Clar
- Tasque

❖ **Limoux** (Languedoc - 1642)

- Caudiès
- Fanjeaux
- Félines
- Termes

❖ **L'Isle-en-Jourdain** (Guyenne)

❖ **Martel** (Guyenne)

- Alix
- Gagnac

❖ **Montauban** (Guyenne - 1630)

- Beauregard
- Caussade
- Caylux
- Lavaurette
- Lespare
- Mirabel
- Moissac
- Molières
- Montalzat
- Monfermier
- Promilhanes
- Saint-Caprais
- Septfonds
- Villemade

❖ **Montpellier** (Languedoc - 1552)

- Aigues-mortes
- Frontignan
- Lunel

❖ **Nîmes** (Languedoc - 1551)

- Beaucaire
- Maruejols
- Mende (*bailliage royal*)
- Le Vigan
- Roquemaure

- Saint-Esprit
  - Valleraugue
  - Villeneuve-lès-Avignon
- ❖ **Pamiers** (Pays de Foix - 1646)
- Aspet
  - Castillon
  - Fronsac
  - Frontignan
  - Mazères
- ❖ **Le Puy-en-Velay** (Velay - 1549)
- Monfaucon
- ❖ **Rodez** (Rouergue - 1635)
- Casagnes
  - Laguiole
  - Lavernehe
  - Saint-Geniez
- ❖ **Tarbes** (Bigorre)
- Bagnères
  - Vic-Bigorre
  - Goudon
  - Rabastens
- ❖ **Toulouse** (Languedoc - 1551)
- Aurignac
  - Beaumont-de-Lomagne
  - Boulogne
  - Castelsarrasin et Montech
  - Cordes
  - Estampures
  - Frontignan
  - Gaillac
  - Gaillac-Toulza
  - Galan
  - Gimont
  - Grenade
  - Huos
  - L'Isle-d'Albi
  - L'Isle-en-Dodon
  - Lavour
  - Marciac et Beaumarchés
  - Muret
- Mas-Grenier
  - Rabastens
  - Rieumes
  - Rieux
  - Samatan
  - Saint-Béat
  - Saint-Gaudens
  - Saint-Lys
  - Sainte-Foy-Peyrolières
  - Saint-Porquier
  - Saint-Sulpice-de-Lézat
  - Saint-Sulpice-de-la-Pointe
  - Simorre, Tournay
  - Trie
  - Valcabrère
  - Valence-d'Albi
  - Verdun
- ❖ **Uzès** (Languedoc)
- ❖ **Villefranche-de-Rouergue** (Rouergue - 1552)
- Albin
  - Auzits et Clausevignes
  - Lavinzelle
  - Mur-de-Barrez et Labastice
  - Millau
  - Najac
  - Maussac
  - Peyrusse
  - Pont-de-Camarès
  - Rieupeyroux
  - Rignac
  - Roqueserièrre et Montfranc
  - Sauveterre
  - Saint-Affrique
  - Saint-Antonin et Verfeil
  - Saint-Rome
  - Saint-Sernin et Valaguièr
  - Silvanès
  - Villeneuve
- ❖ **Villeneuve-de-Berg** (Vivarais)
- Borne

## Appendix 2: A note on sources

As noted in the introduction, the exceptional archive of the Parlement de Toulouse played a critical role in this research. For methodological reasons, however, the preceding chapters do not always reflect adequately the wealth of documents that served as a basis for my analyses. One of the drawbacks of my effort to synthesize extensive judicial cases is that trials and their particulars end up disappearing in an analytical account that seeks to generalize. In this note on sources, I would like to do justice to the exceptional primary sources that form the bedrock of this study, and use the opportunity of this presentation to explain the approach I adopted to make the most out of this daunting archival mass and the incredible wealth of information it contains.

Much of my focus here will be on the *sac-à-procès* of the Parlement de Toulouse, because they form the bulk of the documentary basis for my study of practices, but also because they are a truly unique documentary type, with no equivalent in other early-modern archives in France, and possibly beyond. But first, I would like to give a more general overview of the other primary sources used for this research, which will give a more accurate sense of the range and type of documents used for this research and will also help put in perspective the exceptional nature—and potential for research—of the *sac-à-procès*.

While this research is based on sources found in various archives,<sup>845</sup> the archives of the Parlement de Toulouse in the Archives départementales de la Haute-Garonne constitute the bulk of the primary sources for this study. Filed under the *Série B*, the archives of the court—the second oldest Parlement in

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<sup>845</sup> See Archival sources listed in the References on p. 450 below. Most of the sources outside of the B series of Archives départementales de la Haute-Garonne have been used punctually, to complement the systematic study of sections of the archive of the court, although a few deserved a special mention here, as I studied them extensively and systematically as well: François Garipuy's *Plan général au rez-de-chaussée du palais et prisons du Parlement de Toulouse* [C 2254], and the manuscript memoirs of the greffier Étienne de Malenfant, *Mémoires et collections du Palais* (1602-1647) [MS 147-149].

the kingdom—occupy an impressive 2,036 linear meters of shelves in the stacks of the Archives départementales. As a comparison, this volume far outstrips that of other provincial parlements (975 linear meters for the Parlement de Bretagne, one of the oldest in the kingdom, 493 meters in Grenoble, 500 meters in Rouen).<sup>846</sup> In fact, in simple terms of volume, the Toulouse archive compares to the archive of the Parlement de Paris and the nearly two linear kilometers of the “*galerie du Parlement*” in the Palais de Soubise, one of the focal points of any visit of the Archives nationales de France (Illustration 25 below).



**Illustration 25: *Galerie du Parlement* at the Archives nationales de France (photo credit LP/Arnaud Dumontier)**

The volume of the series of the *sac-à-procès* singlehandedly explains why the archive of the Parlement de Toulouse compares to that of a court that operated for an additional two centuries, over a territorial jurisdiction twice as big, and probably more populated by an even wider margin. While the collection of the Parisian court include about 26,800 items, among which about 11,000 registers of

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<sup>846</sup> Reydelllet Chantal. “Les archives du parlement de Bretagne.” *La Gazette des archives*, 158-159 (1992), 203.

*arrêts*,<sup>847</sup> the archive of the Parlement de Toulouse include three times as many items in total (87,154) but barely more than 15% of the number of registers of *arrêts* found in Paris (1,898).<sup>848</sup> The explanation for this discrepancy between the overall volume of archive and the number of registers in the two courts is found in the fact that the two linear kilometers of the archive of the Parlement de Toulouse are made up of the *sacs-à-procès*, that made up the quasi-totality of the “87,154 items” included in the index of the *Série B* in the archives départementales de la Haute-Garonne.<sup>849</sup> The difference between the archives of the two courts is aptly summarized by another picture of stacks, this time from the Archives départementales de la Haute-Garonne (Illustration 26).



**Illustration 26: Jean Le Pottier, former director of the Archives départementales de la Haute-Garonne, standing in the stacks of *sacs-à-procès* (photo credit: Dépêche du Midi).**

<sup>847</sup> 9,811 registers of civil *arrêts* in the X1A series, 1,399 registers of criminal *arrêts* in the X2A series (Émile Campardon, *Répertoire numérique des archives du Parlement de Paris*, Paris: Archives nationales de France, 1889.

<sup>848</sup> Geneviève Douillard, *Inventaire Série B*, Toulouse : Archives départementales de la Haute-Garonne, 2000.

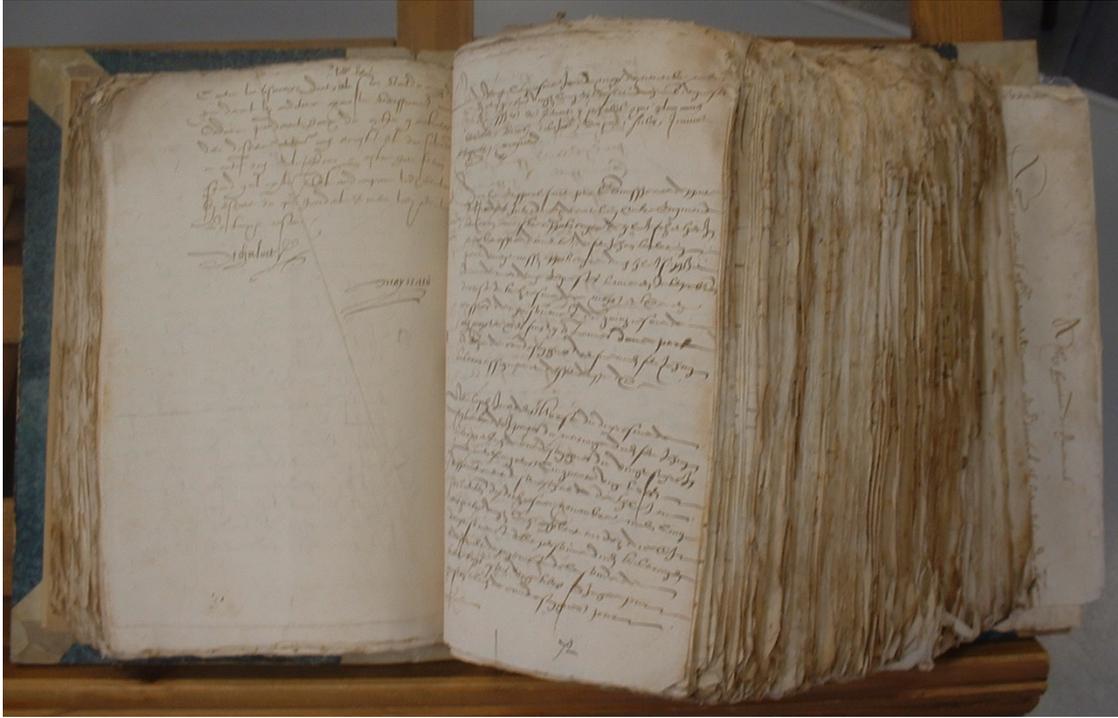
<sup>849</sup> *Ibid.*, p. 1.

Before I present in more detail this unique sub-series of the archive of the Parlement de Toulouse, its potential for research, but also the daunting methodological challenges it presents, I would like to say a few words about the other, “classic” parlementaire sources found in Toulouse, which also served as an important source for my analysis of judicial practices. While the volume of the *sacs-à-procès* dwarfs that of other documents in the archive of the court, those other documentary types are by no means insignificant, neither in terms of volume or of historical value for a study of practice. I have indeed made use of a range of documents that are very familiar to historians of the sovereign courts, regardless of the *parlement* and the time period they work on: *enregistrement des actes du pouvoir royal* (record of royal letters—mainly ordinances and edicts sent to the court for registration), civil and criminal *audiences* (record of lawyers’ speeches), and, of course the civil and criminal *arrêts* that ground a significant part of my study of *arrêter* as a practice and of my reflection on the assertion of judicial truth. A simple look at the size of one of those registers of *arrêt* (see Illustrations 27 and 28 below), combined with the often challenging script of some of those documents (see Illustrations 29 and 30 below), readily explains that a single researcher can only approach a collection of this type by sample.



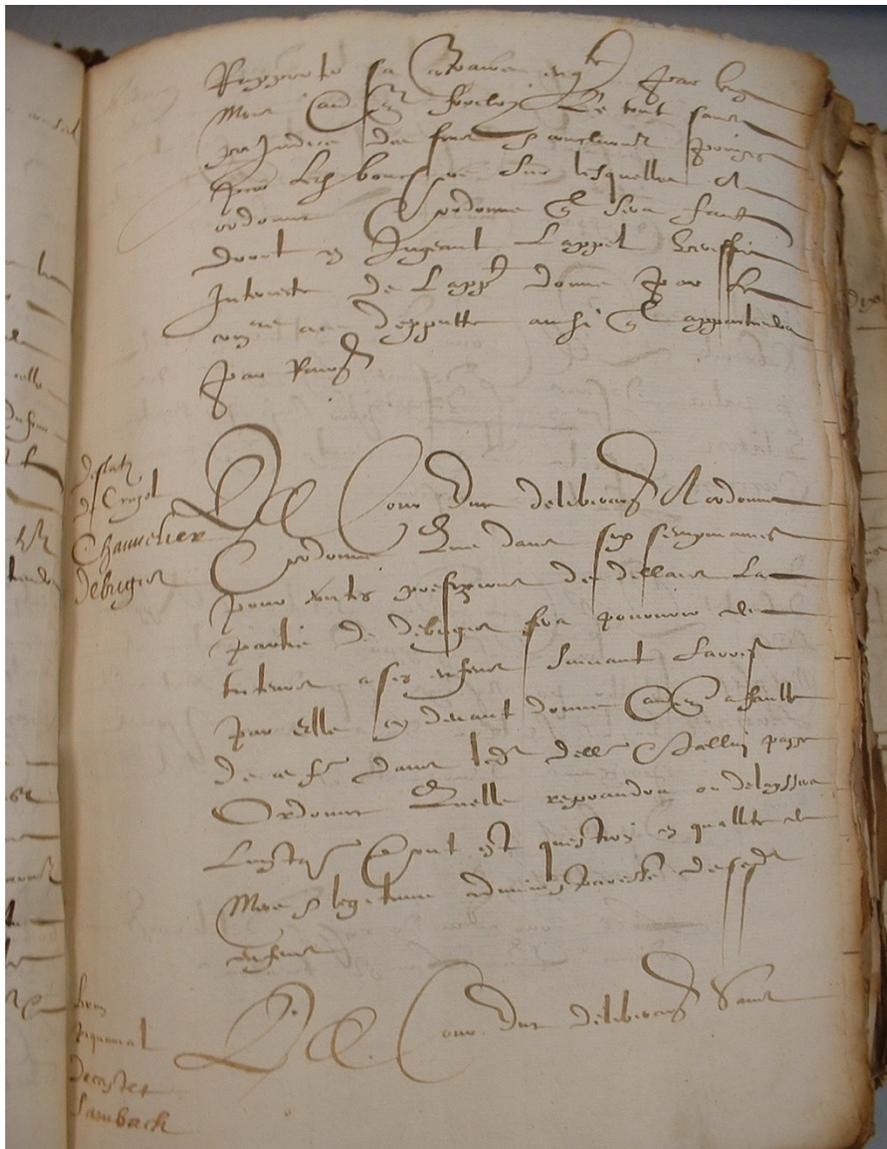
**Illustration 27: *Registre d'arrêts d'audience* for the 1609-1610 session (AD31 1B 2478)**

When the yearly session of the Parlement ended, the *greffier* would divide his stack of *cahiers* (ordered chronologically), in as many piles as could be bound and hold together. Typically, these registers are always around 500 folios long. Depending on the activity of the court on a particular year, these *cahiers* could end up constituting from one to six registers a year. In this example, all the *arrêts d'audience* for the session from November 1609 to October 1610 fit into one register as the *greffier* noted on the cover: “1609, Novembre Décembre. 1610, dix premiers mois.” There were far less *arrêts d'audience* as there were *arrêts* of other kinds as it appears from a comparison to the various registers: in general one or two months of *arrêts* (*arrêts interlocutoires* and *arrêts définitifs* that were not *arrêts d'audience*) from the *Grand Chambre* and the *Chambres des Enquêtes* (these were bound together) were enough to make up one register.



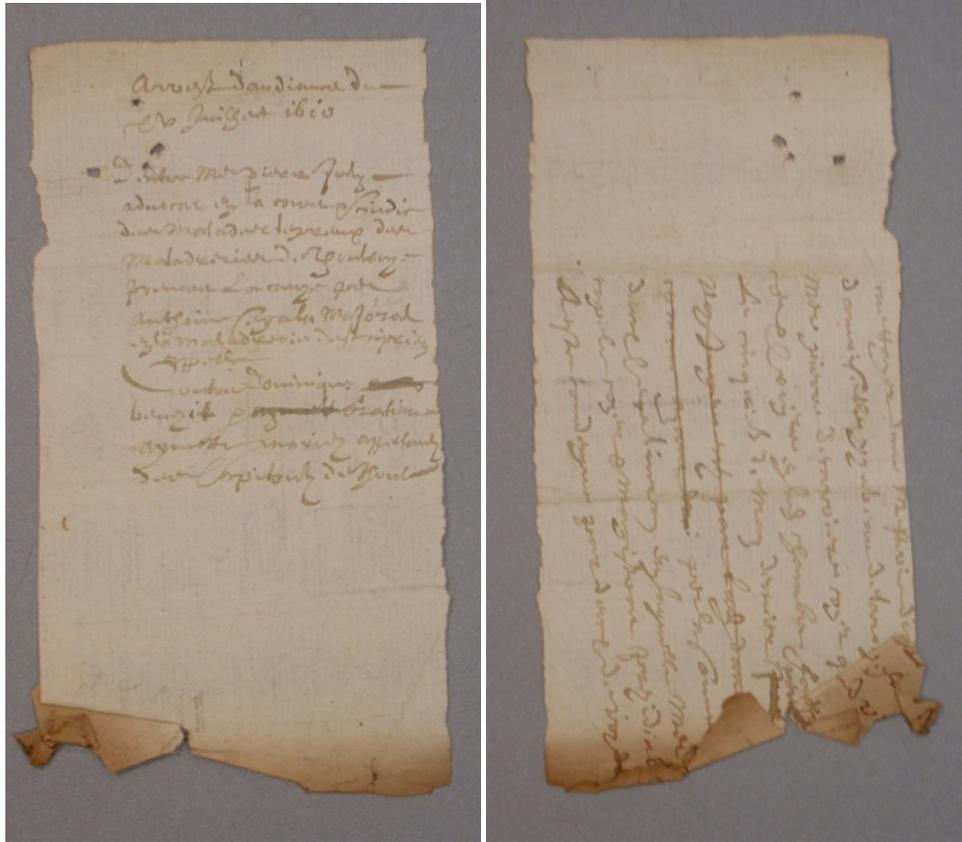
**Illustration 28: *Registre d'arrêts* of the *Grand Chambre* and *Chambres des Enquêtes* for the period Nov.-Dec. 1585 (AD31 1B 93)**

As this register shows, even during troubled periods when the activity of the court reached a low point (this is the period when, following the assassination of the *premier président* Duranti, many members of the Parlement had to leave Toulouse in fear of the threat of the *Ligue*), two months of *arrêts* for the *Grand Chambre* and the *Chambres des Enquêtes* would still make up a rather thick register.



**Illustration 29: minute d'arrêt d'audience** (AD31 1B 2478)

This is a 1609 *arrêt* of the *Grand Chambre* in a case revolving around the appointment of a tutor for a minor in an inheritance affair. A draft of the kind seen in Illustration 29 below, was eventually written down as a *minute*. These *minutes* served as the court records and as the model after which parties could request (for a fee) that an *expedition* of the *arrêt* be issued to them so that they could have the decision of the court executed. The way the *greffier* bound these *minutes* together let us know how he proceeded to transcribe his drafts. These registers are made of a series of *cahiers* bound together. Each *cahier* corresponds to one day of hearing at the *Grand Chambre*. Most often the last pages of the *cahier* are left blank. One can guess that the *greffier* took his pile of drafts (as seen in Illustration 29) for the day, and went on copying them in a *cahier*. One must assume that these *cahiers* were not bound together in a register before the yearly session of the Parlement ended.



**Illustration 30: Draft of an *Arrêt d'audience* [front and back] (AD31 1B 2478)**

This draft was found by chance, unbound in a register of *arrêts civils* for the year 1610. One can tell this is a draft because it is heavily abbreviated, words are crossed out, and the format (about 3x6 cm), is much smaller than that of the *arrêts d'audience* it was inserted in. This draft gives insight into some of the writing practices of the *greffier*: he worked on his *bureau*, writing not directly on one of those big registers found today in the archive of the Parlement but with a stack of smaller pieces of paper of this kind. The back of this draft shows that this paper came from other discarded documents cut into pieces (apparently, the document reused in this instance were notes taken from the speech of a counsel in front of the *Grand Chambre*).

Fortunately, those series have been indexed rigorously, which makes the chronological sampling a simple matter—as we will see shortly, this was not the case for the *sac-à-procès*. This type of sampling allows for statistical studies, which, albeit time-consuming, are relatively straightforward to conduct. This methodological approach to what I would call the “classic” archive of the parlements has been used

fruitfully before, both for the medieval and early-modern periods,<sup>850</sup> and I have also used those sources in this traditional way.<sup>851</sup>

On the other hand, the lack of indexes referencing specific trials—e.g. via the name of litigants, their lawyers, jurisdictions of first instance, types of crimes and offenses—makes it extremely difficult, given the mass of documents, to conduct thematic studies based on those traditional types of sources. The methodological challenge raised by the insufficiencies of indexes, compounded by the fact that the documents themselves are often cryptic and sometimes silent about the specifics of the legal cases they recorded, explains that, despite their best efforts, accomplished historian who know those archives better than I do, have stalled in the face of the massive and often complex nature of those collections.<sup>852</sup> In many cases, when a researcher intends to use the court’s archive to shed light on a particular theme—for instance a specific type of crime or offense, or a specific group of litigants—or even to analyze the court’s attitude towards those objects, she is presented with a poor alternative. The first option is to persist in a systematic reading of the collections that might not prove fruitful and will in any case call into question any attempt at generalization from a very narrow sample. The alternative is to supplement the court’s archive with external sources of a different nature that will allow the researcher to zero in on her object of inquiry, but also undermine the potential to generalize because external sources tend to emphasize the

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<sup>850</sup> For instance, among many monographies, Claude Gauvard’s “*De grace especial*” : *crime, État et société en France à la fin du Moyen Âge* (Histoire ancienne et médiévale, 24. Paris: Publications de la Sorbonne, 1991) for the medieval period, and Alfred Soman’s *Sorcellerie et justice criminelle : le Parlement de Paris (16<sup>e</sup>-18<sup>e</sup> siècles)*, (Aldershot: Variorum, 1992) for the early-modern period.

<sup>851</sup> For instance, the systematic study of 67 registers of *arrêts* across the period considered in this research served as the basis for the point I made in Part II about *parlementaire* time and the annual judicial cycle (registers of civil *arrêts* for the years 1612-1613, 1637-1638, 1662-1663, 1665-1666, 1687-1688, 1699-1700). The analysis clearly showed the stability of a judicial calendar over a century, with the peak of activity occurring in August-September, followed by a sudden drop in October, from there a slow, regular increase until the end of the summer. That same statistical study also showed a relative stability in the volume of *arrêts* the court delivered from the 1600s to the 1680s (between 6,400 and 6,700 folios of *arrêts* per year), and then a clear drop in the 1690s and early 1700s (reaching around 5,400 folios) which corresponded to the begin of the use of printed forms in the court, which reflected changes in practice I discussed in Part III of this research.

<sup>852</sup> The example of Robert Mandrou, cited by Alfred Soman, will suffice here: for his thesis *Magistrats et sorciers en France au XVII<sup>e</sup> siècle* (1958), Mandrou had originally hoped, as his title implied, to make use of the criminal records of he Parlement de Paris for the whole seventeenth century, but after he had managed to fully process only sixteen “boxes” of *arrêts* representing a mere two judicial years, he decided to change his approach and to focus instead on those *arrêts* that ended up being printed, and on collections of handwritten copies that jurists had compiled for their personal use.

exceptional rather than the routine.<sup>853</sup> To some extent, my object of study allowed me to work around this challenge, since, as I noted in the introduction, a focus on the “normal normal” of judicial procedure—as opposed to Carlo Ginzburg’s “exceptional normal,” meant that the massive character of the archive, the repetitiveness of the documents, the stability of their form, including the absence of information in the sources about the specifics of the legal cases, became an object of study in its own right rather than a methodological obstacle. This is most visible in my study of *arrêter* as a practice, in which my systematic study of the form of the *arrêts*, blissfully oblivious to their content, allowed me to demonstrate and problematize their intentional elision of specific elements of the judicial practices that preceded and grounded the *arrêt*.

This type of analysis of traditional *parlementaire* sources served as my basis to offer more general arguments on the nature of judicial practices and the broader implications of those arguments. I have already offered some thoughts on this point in the conclusion of this study, but I would like to point out here that this original approach to “classic” sources would have been impossible without the *sacs-à-procès* preserved in the 2B sub-series. While the preservation of this source certainly is exceptional, the document itself was anything but rare. As François de Garipuy’s report shows, the *sacs-à-procès* were found everywhere in the physical archive of the court, on racks, on tables, on the floor, they overflowed all levels of the *tour de l’aigle*, outnumbering by far all other types of documents in the archive of the court.<sup>854</sup> This ubiquity was such that the *sac* became the metonymical representation of the whole judicial archive and, as it were, of procedure itself.<sup>855</sup>

I would like first to put the volume of the Toulousain collection in perspective, relative to other sovereign courts and relative to other documentary types within the archive of the Parlement de Toulouse.

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<sup>853</sup> This is very much the kind of reproach that can be addressed to Mandrou’s study mentioned in the previous footnote, precisely because of the choice of supplemental primary sources he was forced into.

<sup>854</sup> See Chapter 3, esp. p. 164-165.

<sup>855</sup> For instance in the opening of Racine’s play *Les Plaideurs*, in a stage direction that features a *sac*, the accessory chosen to make the theme of the play—the protagonist is a judge consumed by his professional habitus—clear: “Acte I, Scène I : *Petit-Jean, traînant un gros sac de procès.*”

To extrapolate the overall numbers I mentioned above for Paris and Toulouse, and based on the ratio of registers to *sacs* in Toulouse, if the *sacs-à-procès* of the Parlement de Paris had been preserved in the same proportion as in Toulouse, they would represent an estimated total of 800,000 *sacs*, for a volume of 20 linear kilometers, which would be comparable to the (in)famous series of the records of Parisian notaries for the whole pre-modern period (*minutier central des notaires parisiens*) at the Archives nationales. Considering that, despite the uniqueness of the 2B sub-series of the Archives départementales de la Haute-Garonne, not all the *sacs-à-procès* were saved from loss and destruction in Toulouse, this would be a low estimate for the Parisian court. The sheer volume and the difficulty of transferring this massive collection from the Palais de Justice to the Hôtel de Soubise, would suffice to explain the intentional destruction of those *sacs* in Paris during the Revolution.<sup>856</sup> The combination of those logistical difficulties, documentary challenges, and negative symbolic value, made it very hard to justify the preservation of those *sacs*. In the provinces, despite a difference of scale and different local political climates, the justification for preservation, as well as the challenges it presented, were fairly similar for all sovereign courts, including Toulouse's. In fact, it seems that a certain bureaucratic apathy is the sole explanation for the preservation of the *sacs-à-procès* in Toulouse, as the transfer of the archive from the Palais de justice stalled throughout the revolutionary period because of political inaction, with the unintended and fortunate side-effect that the collection was preserved.

To conclude about the size of this collection, it should be noted that, while exceptional in its volume, it hardly represents the totality of the *sacs-à-procès* that were once preserved in the archive of the court. For one thing, as I just mentioned, it is worth remembering that, although some losses are likely to have occurred during the transfer of the *sacs* from the Château Narbonnais to the Archives départementales de la Haute-Garonne, those modern losses pale in comparison to the pre-Revolutionary

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<sup>856</sup> Other reasons for this voluntary destruction include the challenges of understanding or simply reading the documents those *sacs* contained, and the negative symbolic value they carried at the time of this transfer (1790-1792) because of their connection to a despotic judicial regime. Alfred Soman and Yves-Marie Bercé even noted that the *sacs-à-procès* had been the documentary type of choice to be destroyed in occasional revolutionary auto-da-fé, as a “symbolic sacrifice” destined to appease public opinion (Yves-Marie Bercé and Alfred Soman, “Les archives du Parlement dans l’histoire,” *Bibliothèque de l’école des chartes*, 153 (1995), p. 256.

losses and accidental destructions that François de Garipuy's report attest (weather, fire, rat-related).<sup>857</sup> In addition, those losses and destructions only apply to those *sacs* that had been preserved in the archive of the court in the first place. Indeed, once an *arrêt* concluded a case, litigants could get their productions back from the *greffe* for an additional fee. Thus, it should be noted that the tens of thousands of *sacs-à-procès* and millions of documents they contained that can still be found in the 2B sub-series, were preserved in the Parlement's records in part because the existence of this fee deterred litigants to get their "productions" back. We must assume that in a number of cases which is impossible to estimate, litigants paid the fee to recover documents that might have cost them or could be re-used in future cases.

Regardless of losses and destructions, the preservation is exceptional and the collection is massive. This unique preservation however, does not mean that the *sacs-à-procès* are readily available for us to use. While the number of 87,154 items in the whole archive of the Parlement de Toulouse mentioned at the beginning of the *inventaire* of the Série B of the Archives départementales de la Haute-Garonne gives a good sense of the volume of this unique collection—especially compared to the 26,800 items for the archive of the Parlement de Paris at the Archives nationales (Série X)—the precision of this number is misleading because it adds fully indexed subseries—such as that of the Parlement itself (4,570 items), but also of those for other related jurisdictions—<sup>858</sup> to a round number of 80,000 which is a very rough estimation of the number of *sacs-à-procès*. Indeed, estimates of the number of items within the 2B sub-series vary widely, from this low estimate of 80,000 to an upper estimate of over 100,000.<sup>859</sup> This 25% variance reflects the second main characteristic of this collection after its volume: its internal chaos. The picture above (Illustration 25) reflects both the size of the sub-series and its lack of order: there are no call numbers on most of the shelves, even less on the *sacs* themselves.

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<sup>857</sup> See p. 165 above.

<sup>858</sup> Chambre de l'Edit de Castres (3B) ; Conseil supérieur de Nîmes (4B) ; Sénéchal de Toulouse et d'Albi (5B) ; Sénéchal – Présidial de Toulouse (6B) ; Viguier de Toulouse (7 B) ; Eaux-et-Forêts (8B) ; Cour des monnaies (9B) ; Maîtrise des ports (10B) ; Juridiction des gabelles (51B) ; Juridiction criminelle des capitouls de Toulouse (101B) ; and a number of other, smaller royal, municipal and seigneurial jurisdictions.

<sup>859</sup> This is the number given by Jean Le Pottier, director of the Archives départementales de la Haute-Garonne at the time of my research. The website of the Archives départementales de la Haute-Garonne today even mention "more than 100,000" ([http://archives.haute-garonne.fr/recherche\\_inventaires/sacs\\_proces.html](http://archives.haute-garonne.fr/recherche_inventaires/sacs_proces.html)).

Of the 80,000 to over 100,000 *sacs* preserved in the stacks of the Archives départementales de la Haute-Garonne, only about 12,000—so between 10% and 15% of the total, depending on estimates—have a call number and can be ordered for consultation today. This is one limitation that is worth mentioning, but it should be added that 12,000 still represents a volume that, in and of itself, would make an exhaustive and systematic study impossible even for a team of skilled researchers. That is, notwithstanding much greater challenges related to indexation, judicial procedure, paleography that I would like to present now.

Indeed, the main issue with the index of 2B subseries is not so much that it is partial, but that it deals with a chaotic series of documents. The state of chaos that Garipuy described in the court before the Revolution, compounded by a transfer to the Archives départementales that not only had to manage a completely haphazard organization of the collection in the space of the Palais de justice, but also had to grapple with the physical format of the *sacs*, that made it especially challenging—as compared to, say, the bound register of *arrêts*—to preserve the original arrangement of the *sacs* on the shelves of the modern archive. The result is an almost absolute lack of logical sequence between the *sacs* found in today's stack, an over-representation of certain decades (1660s and 1680s for the period considered in this study) and of criminal cases, at least for those *sacs* that are currently indexed and can be ordered today.<sup>860</sup> There are, in extremely rare instances, a hint of an original order, which, in most cases, was already long lost at the end of the Old Regime. The *sacs* found under the call numbers 44 and 44bis (see Illustration 17), that belonged to the litigants of both opposing parties in a 1608 trial, provide a rare glimpse of what was the original and probably very ephemeral order in the collection, when the two *sacs* of each trial concluded in the same deliberation session, made it back to the *greffes*. For a brief moment then, the date of the

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<sup>860</sup> The over-emphasis on criminal cases could either be due to the fact that the archives from the Tournelle remained together and somehow ended up constituting the beginning of the subseries on the shelves that archivists began indexing, or to the fact that litigants were far less likely to try and recover their productions in criminal cases for a variety of reasons (the documents they contained had less value, “criminals” were less likely to afford the fee to get the productions back, a number of litigants had been executed, banished, or sent to the galleys). It is, in my opinion, a combination of both factors.

conclusion of trials provided some sort of organizing principle to small batches of *sacs*. Until a litigant decided to pay the fee to reclaim his *productions*, thus splitting the original documentary binom, or until the *greffier* or his clerks needed to clear some space in the room, and started moving *sacs* selected at random to other parts of the *greffes*.

The result is an almost complete lack of order in which sequences of coherent batches of *sacs* on the shelves—a coherence most often due to the fact that those *sacs* had been kept together because they had gone through the same chamber, at around the same time—are very short. One finds for instance a sequence of *sacs* (2B 1573 to 1599) that are related to criminal cases, mostly from Toulouse, and judged in the year 1639, but this batch is interspersed with individual *sacs* that seem completely disconnected chronologically, thematically, and legally (for instance, 2B 1589, for a civil case from 1658 that went through the *Chambre des requêtes*), then it is suddenly stops and a new short sequence begins, skipping a number of years (2B 1600 to 1617, that are mostly criminal cases from the Castres and Rodez regions, judged in 1642). In addition, the chronological order is not just interrupted by breaks of a few years, as it sometimes skip back a few decades and then forward again.

When I conducted my research in the Archives départementales de la Haute-Garonne—between 2004 and 2006—the only index at my disposal was a series of index cards that followed the order of the call numbers of the 10,000 *sacs* or so that had received one at the time,<sup>861</sup> thus reflecting exactly the complete lack of chronological order on the shelves where the *sacs* were stored. I will say more shortly about the possibilities that are now available to researchers with the release, in March 2017, of an electronic and expanded index on the website of the Archives départementales.<sup>862</sup> But for now, I want to say more about the limitations of the index I used, for it dictated the methodological approach to this collection, and thus the selection of *sacs* that were used for this study. The paper index was the result of a relatively recent effort of a team of Masters students at the Université de Toulouse, who had been put to

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<sup>861</sup> It appears from the new online index that about 2,000 additional *sacs* have been added to the index since then.

<sup>862</sup> [http://archives.haute-garonne.fr/recherche\\_inventaires/sacs\\_proces.html](http://archives.haute-garonne.fr/recherche_inventaires/sacs_proces.html). I should also note that it appears that, with the introduction of this index, the BSP sub-series has now become a series of its own (with call number beginning in 2 B).

the task of going through the *sacs* stored in the stacks of the Archives départementales that had received a call number, and to do so systematically. The result was an index of about 10,000 *sacs*, each entry recording the same information: the call number, the jurisdiction of first instance, the beginning and end dates of the procedure, the crime or offense, unusual documents included in the *sac*, the names, profession, family relationship of the litigants, and, a brief note describing the case.

For the most part, this information was reliable because it was mostly drawn from the *évangile*, the small piece of parchment that I have analyzed in my study of *rapporter*,<sup>863</sup> and which, itself, functioned as an index of sort for what was to be found in the *sac*. In addition, certain types of information included in the index was less reliable: the recording of unusual documents—what is still called in the new online index “*pièces particulières*”—mostly depended on whether or not the indexer had found an *inventaire* in the *sac* and recognized something out of the ordinary in the list of documents.<sup>864</sup> In some exceptional cases, unusual documents could be obvious and just stand out when opening the *sac*, either because of their different format: a *lettre de cachet* signed in Louis XIII’s hand in a 1642 trial for a poison sale (2B 1697), a printed poem in Occitan in a 1702 trial for defamation (2B 6925), or because they were material objects, such as a leather purse in a theft trial from 1688 (2B 5568), or the tip of a sword sheath in a 1683 trial for assault and battery (2B 5676). The brief descriptive notes are, overall, inconsistent: in some long sequences of *sacs* they are inexistent (for instance from 2B 5170 to 5270), in other batches they are detailed and informative about the trial (for instance 2B 912 to 1092), yet in others they are limited to notes about a peculiarity of the trial (for instance 2B 1293 “interrogation regarding a theft of pigeons,” or even 2B 1747 “very amusing read”). This inconsistency is mostly due to the varying degrees of paleographic proficiency and dedication to the task of the indexers. Unfortunately, and more regrettably for my purpose, some of the information contained in the *évangile* and that would

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<sup>863</sup> See my analysis of the *évangile* on p. 162.

<sup>864</sup> On the *inventaire*, see my detailed analysis on p.164

have been most useful for this research was not recorded at all in the index: the name of the *rapporteur* and of his *contrenant*, as well as the chamber where the trial was judged.<sup>865</sup>

The chronological disorder of the 2B sub-series meant going through the whole index systematically, excluding *sacs* outside of the scope of this study—my rough estimate is that about half of the *sacs* are from the 18<sup>th</sup> century—and creating my own database to reorder *sacs* chronologically so that I could create coherent samples, as I had done with much greater ease for the *arrêts*—sampling is indeed simpler when documents are not only already ordered chronologically, but bound together in a register. This database,<sup>866</sup> has now been rendered redundant, if not obsolete, by the online index of *sacs-à-procès* of the Archives départementales de la Haute-Garonne. It essentially performed the same functions and made it possible to overcome the limitations of the paper index to sample *sac-à-procès* by cross-referencing the information recorded on each paper index card.

This database however—and this would be true of the current online index as well—, only solved part of the challenge that the collection of the *sacs-à-procès* still presents today. The ability to use an advanced search function to narrow down the indexed *sacs* to coherent subsets—for instance, the *sacs-à-procès* relative to crime of poisoning between 1680 and 1700 for a specific part of the territorial jurisdiction of the Parlement de Toulouse—does not solve greater challenges that have to do with the nature of the document.

Thus, I would like to present briefly the *sac* as documentary type to explain those challenges and the method I adopted to work around them. I have already described the *sacs* as a material unit, the function of some critical elements of the physical object—the *évangile*, the *inventaire*—that help navigate the *sac* and the documents it contains. What I mentioned above about the “*pièces particulières*”—the unusual documents that are in fact common enough that the indexers felt the need to create a category for

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<sup>865</sup> About those particular indications on the *évangile*, see p. 163.

<sup>866</sup> It is a relational database, originally built with Filemaker Pro 11 but converted since then to function with the latest version of the software. The relational nature of the database means that it is connected to other tables I created in the course of this research: tables recording information about individual magistrates in the court, table indexing research topics (e.g. particular crimes). In that sense, this database is more extensive than the online index of the Archives départementales, but with a narrower purpose, related to the topic of this research.

them—underscores the wealth of information and incredible potential for research in this collection. Here I want to insist instead on documentary and procedural aspects that create a number of serious challenges for systematic research.

The first challenge is paleographical, it is due in part to the relative difficulty of reading the script depending on the time period considered—1550 to 1700 is a long timespan in paleographical terms, and, not surprisingly, the late sixteenth to early seventeenth century, from roughly 1590 to 1630, is noticeably more difficult to read than the periods before and after. Regardless of the time period, the script is objectively not much harder to read than that of contemporary legal documents, for instance the *arrêts*, with this difference that, in the case of the *sacs-à-procès*, the difficulty is compounded by conservation and procedural elements. In terms of conservation, it is a simple issue of physical state of some of those documents, due in great part to the history of the funds I have outlined above and the kind of treatment those documents—which, left loose in a bag made of hemp, did not benefit from the protection of a bound register—were exposed to, first in the Old Regime *greffes* that Garipuy described, and then during their successive transfers to and within the Archives départementales de la Haute Garonne—which relocated a number of times since the Revolution.

Another factor has to do with procedure, and the fact that, because the great majority of *productions* were drafted in jurisdiction of first instance before they were sent to Toulouse, the documents inside the *sacs* were written by many different hands, some of them in remote corners of the jurisdiction of the Parlement de Toulouse where standards of penmanship could be relatively loose, not to mention varying levels of literacy and the fascinating but challenging use of local the Occitan language in some of the documents.

All of those difficulties combined together meant that the sheer volume and internal complexities of the documents contained in the *sacs* make the simple reading and putting back together of the crux and chronology of one single lawsuit an extremely time-consuming endeavor. The *inventaire* contained in the *sacs*—and it should be noted here that not all *sacs* contain an *inventaire*—can help, to a certain extent,

map the documents in the *sac*,<sup>867</sup> but it does not function as a summary or a narrative that can only be reconstituted through patient, painstaking reading.

My method to minimize those difficulties was to create small subsets of *sacs* to study systematically, with a unifying theme—type of offense or crime, combined with a certain time period or a certain location—, and then order all the *sacs* in the subset, proceed to read systematically the documents they contained, to finally identify one trial that appeared especially rich in terms of documenting the practices I had set out to study (*interroger*, *questionner*, *rapporter*, etc.).

To use the example mentioned above, and that led me to pick the trial for the poisoning of the sire of Marseillan I referred to in my study of *interroger*, *questionner* and *executer*, here is what the subset of *sacs*—crimes of poisoning (actual poisoning, suicided by poison, sale of poison) between 1680 and 1700—look like:

<b>Call number</b>	<b>Dates of trial</b>	<b>Number of folios</b>
B2 1697	1684-5	140
B2 2741	1685	210
B2 2794	1684-5	87
B2 2899	1685	362
B2 5067	1691	165
B2 5269	1697	47
B2 5379	1687	47
B2 5962	1687	117
B2 7787	1686	89

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<sup>867</sup> See p. 164 above.

All in all, 83 *sacs*, representing thirteen subsets of *sacs* comparable to the one above have been read systematically, and while some of their documents have been used to ground my analysis, they were not reconstituted into fully coherent judicial narratives. For each subset however, one trial was chosen and reconstituted through exhaustive reading and research of related documents in other series (e.g. *arrêts*), and those documents relevant to the judicial practices studied above were subjected to the systematic close reading that grounded my study or practices. Here is a summary overview of those thirteen *sacs* studied exhaustively:

<b>Call number</b>	<b>Date</b>	<b>Location (<i>Département</i>)</b>	<b>Type of crime/offense</b>	<b>Number of folios</b>
2B 1182	1666	Auterive (31)	Abortion	102
2B 1300	1666	Barèges (65)	Witchcraft	126
2B 1764	1640	Boulogne-sur-Gesse (31)	Sedition	135
2B 2584	1684-5	St Ambroix (30)	Teenage suicide	131
2B 2736	1685	Ste Colombe (47)	Theft	91
2B 2853	1699	Encausse (31)	Uxoricide	177
2B 2899	1684	Baix (07)	Poisoning	362
2B 5522	1687	Gourdon (46)	Theft of sacred items	158
2B 5676	1683	Albi (81)	Blows and wounds	100
2B 6110	1668	Mondonville (31)	Teenage murder	78
2B 6176	1681	Plégades (81)	Infanticide and parricide	94
2B 6204	1683	Escatalens (82)	Murder of a priest	83
2B 7595	1688	Borne (43)	Bestiality	74

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