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Scripting justice

Legal practice and communication in the late medieval law courts of Utrecht, York and Paris

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Introduction

Justice can be an ambiguous concept. That much was clear to the Parisian poet François Villon (b. 1431) from his experience with law courts. In 1462 the provost of Paris sentenced him to death, following his involvement in a street brawl. Fighting the latter's decision in an appeal to the supreme royal court, the *Parlement*, Villon managed to obtain absolution from this harsh punishment. Yet, while granting the poet his life, the *Parlement* also decided to exile him from his home town, effectively sentencing him to a social death instead.¹ In the poem *Louenge a la court*, Villon underscored the irony of his situation. While his poem begins as a laudatory exposition on the goodness of the *Parlement*, by the third stanza the underlying critique becomes discernable:

And you, my teeth, each one thus loosening,
Leap forward, offer thanks of every sort,
Louder than organ, trumpet or bell
And don't worry about chewing anymore.
Consider that I could have been dead,
Liver, lungs and spleen, that breathe again.
And you, my body, that is vile and worse
Than bear, or pig who beds down in the mud,
Praise the Court before it goes badly for you,
Mother of the good, sister of blessed angels.²

In calling on his loose teeth, innards and filthy body to praise the court for letting him keep the ensemble of these parts, Villon juxtaposes, in an absurdist play on the poem's use of bodily metaphors, his own sorry state with a nearly divine *Parlement* that has decided to both pardon and punish him at the same time. Justice, the poem suggests, is something imposed by an all-powerful court, for which one is supposed to be grateful, no matter the state in which it leaves you.³

¹ On this episode in Villon's life, see: Marcel Schwob, 'Date de la condamnation à mort de Villon', in: idem., *Œuvres complètes VI* (Geneva and Paris, [1928] 1985) 201-210. Every trace of Villon is lost after his exile from Paris, thus leaving us in the dark as to his fate.

² For the Middle French original, see: François Villon, *Lais, Testament, poésies diverses, Ballades en jargon*, eds. Jean-Claude Mühlethaler and Eric Hicks (Paris, 2004) 310-313. My English translation is based on: François Villon, *Poems*, trans. Peter Dale (London, [1978] 2001) 245, but I have chosen to favor a more literal translation.

³ The poem seems to have received little attention beyond that of philologists. For the latter, see: Sarah Spilsbury, 'Villon's *Louenge a la court* reconsidered', *Neophilologus* 59.4 (1975) 482-493. Spilsbury's assertion

Villon's lambasting of the *Parlement's* justice, illustrates the ambiguous feelings that many late medieval people had towards law courts and legal practitioners. With the growing role of courts in people's daily lives came numerous reactions on what were perceived as the problematic aspects of this form of institutionalized legal practice. Such attitudes are fairly well attested for the literate echelons of later medieval society. Lawyers in particular became a common target of moral criticism by learned elites. Their perceived avarice, deceitfulness and hypocrisy led authors as diverse as Jacques de Vitry (ca.1160-1240), Dante Alighieri (1265-1321) and John Wycliffe (1330-1384) to lament the position such professional pleaders had come to take in society.⁴ But other legal practitioners could also form the subject of these accusations. Building on a tradition going back to the Old Testament, from the twelfth century onwards numerous writers began to critique judges and other judicial authorities for being venal, prejudiced or otherwise corrupt.⁵ And the same was true for scribes and notaries, who were responsible for recording cases and thus susceptible to critiques on the power of the quill.⁶ For the large number of non-literate – or at least non-text-producing – people, interpretations of justice are more difficult to trace. Where they do reach the surface, however, it is clear that law courts and their individual representatives also received negative valuations beyond the literate elites.⁷ Such reactions reflect the polyvalent character of medieval understandings of justice. The legitimacy of fixed judicial bodies meting out sentences was not a given for a late medieval public. It was one of several co-existing forms of conflict resolution.⁸ As such, people's legal literacy, that is the way they conceptualized justice and the proper ways to achieve it, extended beyond the practices and ideology of the court.⁹

that in this poem Villon is certainly not 'irreverent towards the Court' nor 'insincere in his thanks', seems to me to overlook some of the more subtle strategies of venting social critique that this poem contains. Cf. Villon's characterization of courts in one of the stanzas of his most famous poem, the *Testament*, as institutions that 'drain bones and bodies for the public good'. See: Villon, *Lais* (2004) 186: *...pour la chose publique se seichent les oz et les corps*.

⁴ James A. Brundage, *The medieval origins of the legal profession. Canonists, civilians, and courts* (Chicago and London, 2008) 477-487.

⁵ For examples of such accusations of judges' corruption from different periods, see the various contributions in: Ronald Kroeze, André Vitória and Guy Geltner (eds.), *Anticorruption in history: From Antiquity to the Modern Era* (in preparation).

⁶ Romain Telliez, '*Per potentiam officii*'. *Les officiers devant la justice dans le Royaume de France au XIV^e siècle* (Paris, 2005) 55-62.

⁷ See for example: Alan Harding, 'The revolt against the justices', in: R.H. Hilton and T.H. Aston (eds.), *The English rising of 1381* (Cambridge, 1981) 165-193.

⁸ See the examples in John Bossy (ed.), *Disputes and settlements. Law and human relations in the West*. (Cambridge, etc., 1983). Many examples of late medieval feuding practices are found in: Jeppe Büchert Netterstrøm and Bjørn Poulsen (eds.), *Feud in medieval and early modern Europe* (Aarhus, 2007). Also see: Gerd Althoff, *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt, 1997).

⁹ Cf. the term 'legal consciousness' as proposed by Anthony Musson, *Medieval law in context. The growth of legal consciousness from Magna Carta to the Peasant's Revolt* (Manchester, 2001) 7-9. However, Musson's legal consciousness is strongly related to the forms of legal reasoning as practiced in law courts, and is therefore also seen to 'grow' during the late medieval period. I interpret legal literacy as referring to people's ideas and emotions about proper judicial practice more in general, regardless of the form that this idealized

Notwithstanding such diverging interpretations as to the nature of justice, courts eventually managed to find a place in late medieval societies as prominent dispute settlers and political legitimators, forming crucial fora for individuals to make social, political and legal claims. It is this development of the judicial format of the law court that stands at the center of this thesis. Explanations of this change in judicial practice tend to relate it to processes of state building, the growth of bureaucracies or the professionalization of a social class of lawyers.¹⁰ However, such approaches face a number of common pitfalls. Developments are often explained with a specific destination in mind, like the nation state or the modern legal profession. The present-day state of affairs thus provides the primary logic for the long-term historical processes taking place. Moreover, the forces that shape developments work mainly 'from above', by political and economic elites implementing specific ideas and practices among other social actors lower down the hierarchy. Even in cases where other historical actors, such as representative assemblies or populations more in general, are considered, their role is at best one facilitating specific forms of state organization that are in many ways beyond them.¹¹

Microhistory has famously reacted to such overarching and top-down historical narratives. Classic works like Emmanuel Le Roy Ladurie's *Montaillou*, Carlo Ginzburg's *The Cheese and the Worms*, and Natalie Zemon Davis' *The Return of Martin Guerre* and *Fiction in the Archives*, have extensively drawn on the records of various courts in order to reconstruct the daily lives and experiences of people living centuries ago.¹² Rather than attempting to trace broad institutional developments, these authors presented an image of people's social interactions and mentalities in a court setting. However, placing the individual historical actor prominently in the foreground, created new methodological problems. For in focusing strongly on a spatially and temporally narrow aspect of

system takes, and thus as a constant human factor whose substance changes over time and varies between individuals and societies.

¹⁰ Norbert Elias, *Über den Prozess der Zivilisation* (Basel, 1939); Richard W. Kaeuper, *War, justice, and public order. England and France in the Later Middle Ages* (Oxford, 1988); Brundage, *Medieval origins* (2008). Many of these interpretations go back in some way or another to the Weberian model of the development of rational-bureaucratic European states: Max Weber, *Economy and Society. An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley, Los Angeles and London, 1968) esp. 641-900, 956-1005.

¹¹ See for example the various contributions to Wim Blockmans, André Holenstein and Jon Mathieu, *Empowering interactions. Political cultures and the emergence of the state in Europe 1300-1900* (Farnham and Burlington, 2009). Although the volume attempts explicitly to present state building 'from below', in taking the process itself as a given it actually leaves individual historical actors with a very limited agency.

¹² Emmanuel Le Roy Ladurie, *Montaillou, village occitan de 1294 à 1324* (Paris, [1975] 1982); Carlo Ginzburg, *Il formaggio e i vermi. Il cosmo di un mugnaio del '500* (Turin, 1976), translated as: idem., *The cheese and the worms. The cosmos of a sixteenth-century miller*, trans. John and Anne Tedeschi (Baltimore, 1980); Natalie Zemon Davis, *The return of Martin Guerre* (Cambridge, USA and London, 1983); idem., *Fiction in the archives. Pardon tales and their tellers in sixteenth-century France* (Stanford, 1987). Also see more recently: Thomas N. Bisson, *Tormented voices. Power, crisis, and humanity in Rural Catalonia 1140-1200* (Cambridge, MA and London, 1998); Mark G. Pegg, *The corruption of angels. The great inquisition of 1245-1246* (Princeton and Oxford, 2001); Michael Goodich (ed.), *Voices from the bench. Narratives of lesser folk in medieval trials* (New York, 2006)

history, such as one town, individual or event, the relative weight of the studied phenomenon in relation to others is often assumed or otherwise unclear. Furthermore, by shifting attention explicitly away from the large machinations of power, some of these works overlook the influence that law courts and other authorities have on historians' conception of people's lives in a period when a great number of texts was produced by such institutions.¹³

Building on and reacting to both historiographical trends, this thesis will offer an alternative approach to explaining the advent of law courts in the late medieval period. Instead of tracing the development of formal institutional characteristics, it will focus on the interaction – and more specifically communication – between courts and the societies in which they operated. It considers law courts as parts of broader multimedial constellations, involving texts, speech, activities and spaces, in and through which a large variety of social actors negotiated, debated and struggled over concepts of justice, as well as the proper ways of achieving it.¹⁴ Courts took an active part in these communicative processes, attempting to influence people's legal literacy by propagating particular scripts of logic and practice. Accordingly, this thesis combines tracing the activities of individual historical agents, be they court officials, litigants or others, with a broader explanatory framework for the changes that took place in this period, taking into account both major cross-regional developments and the influence of specific local contexts.

To do so, I have selected three case studies from diverse geographic, social, political and institutional backgrounds. Next to the royal *Parlement* of Paris, encountered in Villon's poem, I will consider the archiepiscopal Consistory Court of York and the urban Council of Utrecht in the northern Low Countries. This selection has been made primarily on the basis of the availability of a specific type of written source material, namely court records. The appearance of such records from the thirteenth century onwards forms a relevant development in its own right, related to that of law courts as institutions. My selection of case studies is furthermore explicitly meant to cross various geographical, institutional, linguistic and historiographical boundaries that have implicitly shaped much of the scholarship on the phenomenon of the late medieval law court. In taking the communicative behaviour surrounding these courts as point of departure, I argue that another logic – one looking beyond many of these traditional boundaries and involving both 'producers' and

¹³ See in particular the methodological discussion on Le Roy Ladurie's *Montaillou* in chapter four.

¹⁴ Cf. Marco Mostert and P.S. Barnwell (eds.), *Medieval legal process. Physical, spoken and written performance in the Middle Ages* (Turnhout, 2011). Also see: Marco Mostert, *A bibliography of works on medieval communication* (Turnhout, 2012) for a sense of the range of media and forms of communication that have received the attention of medievalists in recent years.

'consumers' of socio-legal messaging – is fundamental to understanding the proliferation of this particular form of judicial activity in many European societies.¹⁵

This thesis thus tells three stories at once: one about sources, one about methodology, and one about how to explain historical change as regards people's concepts and practices of justice. The stories are inseparable and form three threads that can be traced throughout the thesis, cutting across the different thematic chapters. Court records form our main documentary basis, and as such they are present at every turn. But using records from three very different courts involves a comparative methodology. And to make sense of the structures and developments suggested by a comparison of these courts and their records, people's communicative behaviour will form the main *explanandum*. As each of these threads engages partly unique and partly overlapping historiographies and theoretical frameworks, in what follows I will introduce them one by one, before giving an overview of the structure of the thesis as a whole.

Court records

In the thirteenth century, courts in northwestern Europe began leaving large numbers of written reports of the cases appearing before them. This was neither exclusively nor even primarily a regional phenomenon. Northern and Central Italy, for instance, had seen a very similar development during the twelfth century, when communal courts began producing more and more records.¹⁶ Nor was this development necessarily linear and evenly spread within northwestern Europe. Where some courts already produced records around 1200, others have left nothing earlier than the late fourteenth century.¹⁷ But overall a parallel practice became commonplace in courts from different legal traditions, which saw them committing more and more to writing. This broader change is in itself relevant to explore, if only because its chronology overlaps so strongly with the institutional developments that saw the establishment of law courts in these regions. Far from forming a uniform program implemented from the top – wherever that may be – downwards, keeping court records came to be a varied and multidirectional practice, shared among many different courts from various jurisdictional hierarchies and localities.¹⁸ The how's and why's of courts' participation in such broader trends stands at the center of this story.

¹⁵ Cf. the consumerist model proposed by Daniel Lord Smail, in: *idem.*, *The consumption of justice. Emotions, publicity, and legal culture in Marseille, 1264-1423* (Ithaca and London, 2003), and discussed extensively in chapter five of this thesis.

¹⁶ Chris Wickham, *Courts and conflict in twelfth-century Tuscany* (Oxford, 2003) 8-9. Note furthermore that Italy had seen earlier phases of intense court record production: *ibid.*, 8.

¹⁷ For the English royal court, for example, rolls of pleas are extant as early as 1194: Michael Clanchy, *From memory to written record. England 1066-1307*, 3rd ed. (Chichester and Malden, 2013) 98-99.

¹⁸ For important reflections on the production, use and logic of late medieval court records, see: Daniel Lord Smail, 'Aspects of procedural documentation in Marseille (14th-15th Centuries)', in: Susanne Lepsius and

The proliferation of court recordings did not necessarily lead to any uniformity of documentation. Differences between how courts produced and used written materials could be great, from the written acts composed by the *Parlement*, to the Utrecht Council's registers of verdicts, to records of witness testimony in York. Why then consider them as one category of documents, distinct from other categories? Part of the answer has to do with understanding the role of the document as an object, rather than just a text. As chapter four will show, building on an interpretation of texts that has become commonplace in integrationist linguistics, court documents combined linguistic utterances and material artifacts. These language-objects, through their association of two distinct practices, form particularly tactile forms of communication with their own communicative dynamic.¹⁹ The language-objects dealt with in this context had one locus of use, namely the courtroom. Contrary to other legal texts, like law codes and other regulations, court records had a very physical relation to the courtroom, because they were frequently produced and often also physically used there. They thus stood closer to the daily comings-and-goings at court than most other documents broadly called legal. In addition, from a linguistic point of view, their relation to the legal process as such was diverse, in that they prescribed, described, but also often performed this process itself.

The physical records themselves are thus very much part of this history. Moreover, involving them in such a way makes it possible to connect them more fundamentally to the many non-textual forms of communication that comprised the legal process. Since one of the intentions of this thesis is to reconstruct late medieval courts as multimedial constellations, it is paramount to place these text-objects within a broader context of the speech, spaces and activities involved in the daily activity of the courts. This thesis will therefore consider court records next to and in relation to the court as space, the – often ritualized – activity taking place there, and the people participating in such legal performances. This approach thus furthers our understanding of these documents and the cultures in which they were used, confronting us with the defining, albeit heavily biased, view that such records promote. Historians depend on them for much of their understanding of people's legal practices and experiences, but have to be careful not to lose sight of the logic and ideology of their production and maintenance.²⁰ The relation that is important to consider is thus not just between these records and the world in which they were made and used, but also between us historians, these documents of social practice, and the world for which it forms one of our richest sources.

Thomas Wetzstein (eds.), *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter* (Frankfurt am Main, 2008) 139-169.

¹⁹ Roy Harris, 'The semiology of textualization', *Language Sciences* 6.2 (1984) 271-286.

²⁰ For a similar approach to modern court records, see: Bruno Latour, *La fabrique du droit* (Paris, 2002), translated as: idem., *The making of law. An Ethnography of the Conseil d'état*, trans. Marina Brilman and Alain Pottage (Cambridge and Malden, 2010).

Comparing courts

If offering a broader understanding of medieval court records and their uses is a major goal of this thesis, no less important is to explore the possibilities of a comparative approach towards late medieval law courts. In 1928, Marc Bloch announced that the time had come to break down ‘the outmoded topographical compartments within which we seek to confine social realities’.²¹ Given the legal pluralism of late medieval Europe, this call for comparative history seems all the more important. The socio-legal reality of late medieval Europe was after all one where different types of courts operated next to, together with or in competition with each other.²² Among scholars of late medieval law courts topographical compartmentalization in itself is occasionally challenged.²³ But it is not done so extensively or regularly. Nor do most studies try to bridge other forms of classification, like that between different legal traditions or types of courts. It is possible to construct an increasingly complete image of urban authorities’ legal activities in highly urbanized areas like the Low Countries or northern Italy.²⁴ Likewise, the royal courts of, for example, France and England, have a rich historiography, covering decades, if not centuries, of scholarship.²⁵ And the courts from the canon law tradition are similarly well researched.²⁶ But these formal boundaries need not have influenced contemporaries as much as one might assume based on modern experiences. They constituted claims to a certain power and conceptualizations of an ideal legal order, but do not directly tell us everything about how contemporaries actually operated in navigating the legal pluralism that surrounded them. By sticking too strongly to these formal jurisdictional separations, we lose sight of developments in broader socio-legal practice.

²¹ Marc Bloch, ‘Pour une histoire comparée des sociétés Européennes’, in: idem., *Mélanges historiques* (Paris, 1963) 16-40, at 36, translated as: Marc Bloch, ‘A contribution towards a comparative history of European societies’, in: idem., *Land and work in mediaeval Europe. Selected papers by Marc Bloch*, trans. J.E. Anderson (London, 1967) 44-81, at 70.

²² Musson (2001) 9-18.

²³ See for example: Trevor Dean, *Crime and justice in late medieval Italy* (Cambridge, 2007), who compares the judicial activities of a large number of urban authorities in Italy; and Charles Donahue, *Law, marriage, and society in the later Middle Ages: arguments about marriage in five courts* (Cambridge, 2007), who makes a comparison between five ecclesiastical courts from England, France and the Low Countries.

²⁴ Wim Blockmans, ‘Les pouvoirs publics dans des régions de haute urbanisation. ‘Flandre’ et ‘Italie’ aux XIV^e-XVI^e siècles’, in: Élisabeth Crouzet-Pavan and Élodie Lecuppre-Desjardin (eds.), *Villes de Flandre et d’Italie (XIII^e-XVI^e siècle). Les enseignements d’une comparaison* (Turnhout, 2008) 65-74; Élodie Lecuppre-Desjardin, ‘The space of punishments. Reflections on the expression and perception of judgment and punishment in the cities of the Low Countries in the Late Middle Ages’, in: Marc Boone and Martha Howell (eds.), *The power of space in late medieval and early modern Europe. The cities of Italy, Northern France and the Low Countries* (Turnhout, 2013) 139-151.

²⁵ Malcolm Vale, ‘Courts’, in: Christopher Fletcher, Jean-Philippe Genet and John Watts (eds.), *Government and political life in England and France, c.1300-c.1500* (Cambridge, 2015) 24-40; Michelle Bubenicek and Richard Partington, ‘Justice, law and lawyers’, in: *ibid.* 150-182.

²⁶ Donahue, *Law* (2007); Brundage, *Medieval origins* (2008); Mia Korpiola (ed.), *Regional variations in matrimonial law and custom in Europe, 1150-1600* (Leiden, 2011).

The comparison that this thesis thus intends to make goes beyond the purely geographical – York, Paris, Utrecht – but involves more extensive differences between the three cases under scrutiny. As the first chapter shows, institutionally, all three courts found themselves in very different positions within a (theoretical) jurisdictional hierarchy, from the highest court in the Capetian realm, to the governing board of one, albeit prestigious, urban center in the Low Countries. All three worked within different legal traditions – be it canon law, Roman law or something else altogether – that overlapped only partially. To complicate matters even more, their individual competences differed strongly, some being clearly limited to what from a modern western viewpoint would be considered judicial activities, others claiming executive powers that had a much broader, and more strongly political character. And even between their ‘purely’ legal activities there were major differences. Some courts focused on accusational dispute resolution, letting litigants take the initiative to begin a legal process, while others primarily operated *ex officio*, by initiating these processes themselves. Considering such broad differences between these three courts, and thus between what is generally identified as late medieval law courts, we might rightly ask whether a comparison between entities so different is possible at all? Is it even feasible to define anything like a late medieval law court? Or are they simply a category too diverse to allow any kind of overarching characteristic to be identified?

In answering these questions we turn to one of the basic activities underlying the social role of law courts, namely the resolution of disputes. The attempt to resolve a conflict of some sort is fundamental to most types of legal procedure that were and are practiced in the courtroom, be they accusatory or inquisitorial.²⁷ Yet systems of dispute resolution themselves are far from dependent on the institutionalized form of the law court. As anthropologists and social historians have come to recognize, neither the presence of central government agencies, nor even of a judging third party is a necessary condition for such a system to be in place.²⁸ Considering societies that are chronologically and geographically close to the ones considered here, reveals a variety of mechanisms for dispute resolution, many of which did not involve formal courts, or attributed them with a minor role in the peacemaking process.²⁹ Nor is this form of social interaction exclusively limited to human groups and

²⁷ See furthermore: Massimo Vallerani, *Medieval public justice*, transl. Sarah Rubin Blanshei (Washington, D.C., 2012), who argues that both types of legal procedure often overlapped, and cannot be strictly separated.

²⁸ Simon Roberts, ‘The study of dispute. Anthropological perspectives’, in: Bossy (ed.), *Disputes* (1983) 1-24, at 10-11.

²⁹ Hanna Vollrath, ‘Rebels and rituals. From demonstrations of enmity to criminal justice’, in: Gerd Althoff, Johannes Fried and Patrick Geary (eds.), *Medieval concepts of the past. Ritual, memory, historiography* (Washington, DC and Cambridge, 2002) 89-110. See the contributions in: Netterstrøm and Poulsen, *Feud* (2007) for various examples of late medieval feuding systems in northern and southern Europe.

societies, as primatologist Frans de Waal has extensively shown.³⁰ The form mechanisms of dispute resolution take thus differs greatly between various times, places, societies and even species.

What connects the specific forms that emerged in the three societies treated here, and which convinces us to identify them as law courts, is based on the specific role they claimed in the resolution of disputes. For the roles third parties can take in such processes of mitigation, anthropologist Philip Gulliver has proposed to distinguish between those of negotiators and adjudicators.³¹ The fundamental difference between the two lies in the place where the power of decision is located. In case of a negotiation the parties themselves hold the competence to decide, while the third party mainly acts as a facilitating agency. In case of adjudication, however, this power is claimed the third party.³² In medieval practice, the distinction between these two categories as suggested by Gulliver was far from absolute. The courts treated here all accepted some forms of extra-curial negotiation, regularly taking a facilitating role in processes of peacemaking. However, as chapter five will show, the social claim that these courts posed did present them primarily in an adjudicatory role. And in this they differed markedly from earlier judicial bodies.³³ Where early medieval royal and seigneurial courts provided provisional fora for arbitration, the later courts studied here presented themselves explicitly as third parties that held the power to judge. Thus, although in practice the facilitating and adjudicatory roles worked in tandem, ideologically the emphasis shifted to the latter.

At the same time, the documentary evidence plays an important role in distinguishing these courts from other forms of judicial activity. As mentioned, one of the main selection criteria for the three cases was the availability of court records. The appearance of such documents between the thirteenth and fifteenth centuries is an important factor linking the different courts considered here. Such an increase in the use of written texts in the activities of the court is not an isolated development, but is, as I will show, closely related to other organizational changes in these adjudicative bodies. As suggested by Michael Clanchy in his coupling of developments in literacy to those in the royal bureaucracy, the increasing use of texts formed part of the advent of particular bureaucratic ways of working and thus of a particular style of dealing with disputes or potential disputes arising from interactions in society.³⁴ However, as Simon Roberts has stressed, the use of texts is not a necessary characteristic of any adjudicative body, and the distinction between negotiation and adjudication cannot be paired automatically with one between formal state-directed

³⁰ Frans de Waal, *Peacemaking among primates* (Harvard, 1990).

³¹ Philip Gulliver, *Disputes and negotiations. A cross-cultural perspective* (New York and London, 1979) 3-7.

³² Roberts (1983) 13-15.

³³ Vollrath (2002) 89-110, at 92-94.

³⁴ Clanchy (2013) 18-19, 64-70.

judicial processes and informal practices of negotiation.³⁵ The fact that certain bureaucratic modalities, including a relatively strong reliance on texts, did form part of the bodies under scrutiny, is something to be explained rather than an inevitable consequence of their role in dispute resolution processes.

Related to these first two features, various other characteristics can be unearthed that were held in common by all three courts. One important similarity was their fixed location. Although many law courts developed out of the itinerant courts of secular or ecclesiastical magnates, by the time they took the shape of a text-producing adjudicative body, they had fixed their place of operations in one locality. And in this state they managed to survive major political upheavals and intellectual transformations, showing a strong socially embedded logic of connecting particular places with judicial activities.³⁶ This has important implications for the exact understanding of the entity ‘law court’. For, apart from its institutional sense, a law court can also readily be understood as a spatial phenomenon. The fact that we begin to see such a unity of place for these bodies suggests that institutional and documentary developments were somehow related to the use of place and space in legal practice. The same goes for the legal practice proper. The attitudes and practices of these courts as regards the course of the legal process – including the use of space, the management of time and the relation towards potential audiences – often show a remarkably similar logic.

It is thus possible from the outset to point out both strong similarities and marked contrasts between the three case studies. The question that follows, however, is what value such similarities and contrasts hold. Do they show that these courts are mere variations on a common theme, or are they, on the contrary, locally embedded forms that happen to share one or two characteristics? Are they, in other words, defined by certain overarching structural developments, or primarily by their individual contexts? Such considerations have been famously put forward by David Nirenberg, who, in his *Communities of Violence*, argued for a context-driven approach to the interpretation of violence against religious and social minorities. According to Nirenberg, historians tended to overemphasize the continuity of collective discourses on minorities, while downplaying local particularities. In such approaches individual instances of violence are strung together in a long

³⁵ Roberts (1983) 14.

³⁶ The most striking example is probably the seat of the Parisian *Parlement*, the *Palais de la cité*. Despite major socio-political upheavals since the end of the Middle Ages, most notable of which was the French revolution, the modern *Palais de justice*, which houses some of the highest courts in France, is still situated at the same site, thus continuing its explicit association with legal practice for over seven centuries. Also see: Katherine Fischer Taylor, ‘Le code et l’équité. La transformation du palais de justice de Paris au XIX^e siècle’, in: Association Française pour l’histoire de la justice (ed.), *La justice en ses temples. Regards sur l’architecture judiciaire en France* (Paris and Poitiers, 1992) 81-128.

narrative from medieval to modern times, often obfuscating the particular meanings such occasions had for contemporaries.³⁷

The same critique may well be targeted at much of the historiography on law courts. In line with broader narratives on the rise of the state, law courts are often presented as paragons of a process of bureaucratic centralization and rationalization eventually resulting in the modern nation state. The tendency is particularly strong among historians of royal courts.³⁸ But the state-building narrative is present in other historiographies as well. Cities and their politico-legal institutions, such as law courts, are often regarded within the context of the appearance of large political constellations, either as a fundamental basis of or, to the contrary, as independent bodies resisting state-based centralization.³⁹ The narrative can even be found underlying work on ecclesiastical law courts. Although separate from the process of nation building, there exists a tendency to read many of the developments in late medieval church courts, such as the codification of law or the professionalization of its personnel, as constituting the institutional origins of the later secular state apparatus.⁴⁰ Like the historiography with which Nirenberg is concerned, such perspectives on the role of premodern law courts follow a very teleological interpretation of history, stressing the institutional continuities that would underlie the 'birth' of the modern nation state. Or, as Norbert Elias, a well-known spokesman of this approach, has formulated it, 'the compelling forces of social interweaving have led the transformation of Western society in one and the same direction from the time of utmost feudal disintegration to the present'.⁴¹ I agree with Nirenberg that such approaches, in replacing a contextual analysis with a strongly directional historical narrative, can tell us very little about the activities and concerns of historical actors.

On the other hand, more than is the case for Nirenberg, whose work is largely concerned with individual instances of violence and people's interpretations of these events, the study of law courts fundamentally involves structural patterns of thought and behaviour. Such broader patterns – or at least their suggestion – were part of how these courts legitimized their own existence. It was thus partly a discursive strategy utilized by successive generations of court operatives to position

³⁷ David Nirenberg, *Communities of violence* (Princeton, 1996) 3-7.

³⁸ Kaeuper, *War* (1988); Bubenicek and Partington, 'Justice' (2015).

³⁹ Neithard Bulst and Jean-Philippe Genet (eds.), *La ville, la bourgeoisie et la genèse de l'état moderne (XII^e-XVIII^e siècles). Actes du colloque de Bielefeld (29 novembre – 1^{er} décembre 1985)* (Paris, 1988); Wim Blockmans, 'Voracious states and obstructing cities. An aspect of state formation in preindustrial Europe', *Theory and Society* 18.5 (1989) 733-755; Charles Tilly and Wim Blockmans (eds.), *Cities and the rise of states in Europe, A.D. 1000 to 1800* (Boulder, etc., 1994).

⁴⁰ Brundage, *Medieval origins* (2008).

⁴¹ Norbert Elias, *Über den Prozess der Zivilisation* (Basel, 1939) 438: 'Hier führt das Hebelwerk der Verflechtungsmechanismen in der Tat von der Zeit der äußersten feudalen Desintegration bis zur Gegenwart hin die Veränderung des abendländischen Menschengeflechts in ein und derselben Richtung weiter.' For the English translation, see: Norbert Elias, *The civilizing process. The history of manners and state formation and civilization*, trans. Edmund Jephcott (Oxford and Cambridge, MA, 1994) 515.

themselves against potential resistance to their alleged role in society. Even beyond purely discursive strategies, however, these courts displayed very tangible structural developments. As has been argued, their places of operation were often fixed for several centuries, in some cases surviving momentous political events that rocked the institution itself or at least its political underpinnings. Moreover, strong continuities can be found in the documentary material. To be sure, one needs to be careful not to project later archivists' attempts at serialization back on the institutions producing the texts. But such later attempts at standardization notwithstanding, these courts did continue to produce specific types of texts over long spans of time. Considering these late medieval law courts thus often means having to negotiate between broader trends and local contexts. This is true in a geographic sense, given the broader changes that took place in judicial ideas and practices in northwestern Europe. Do explanations for these changes lie in the transregional development of socio-legal practices and mentalities, or should we give pride of place to social, political, economic and other factors in a specific locality? But it likewise concerns a diachronic perspective. The question whether the developments witnessed over time signal continuities or changes, also involves zooming in and out of overarching structures and local contexts.

Legal practice as communicative scripting

The approach I will follow in answering such questions looks for explanations where law courts and their respective societies interact. It regards the legal process before all else as a communicative process, a constellation of words, signs, spaces and actions through which various groups and individuals were making sense of the world around them and made claims about their interpretation thereof. Such a perspective has found an increasing group of adherents among cultural and social historians. Some focus on the role of publicity and theatricality in the cases conducted in court.⁴² Others emphasize the way in which participants in the legal process constructed legal narratives.⁴³ Giving communication a central role in the understanding of legal practice has in fact a long history in academia. In his *De la division du travail social*, Émile Durkheim argued for a discursive interpretation of penal activity. Punishment, according to Durkheim, was essentially a show of concerted aversion by a society whose collective conscience had been infringed by a particular act. It was a means by which society told itself what it thought and valued.⁴⁴ Drawing on this interpretation of judicial activity as communal discourse, sociologists have come to emphasize the cultural and discursive

⁴² Esther Cohen, 'To die a criminal for the public good. The execution ritual in late medieval Paris' in: Bernard S. Bachrach and David Nicholas (eds.), *Law, custom, and the social fabric in medieval Europe. Essays in honour of Bryce Lyon* (Kalamazoo, 1990) 280-304; Smail, *Consumption* (2003).

⁴³ Claude Gauvard, '*De grace especial*'. *Crime, état et société en France à la fin du Moyen Âge* (Paris, 1991); Pegg, *Corruption* (2001); Dean, *Crime* (2007).

⁴⁴ Émile Durkheim, *De la division du travail social* (Paris, [1893] 1926) 76-77, translated as: Émile Durkheim, *The division of labor in society*, trans. George Simpson (Glencoe, 1960) 108-109.

elements in law. Philip Smith, for example, sees the creation of meaning as one of the central aspects of penalizing behaviour. Punishment constitutes a communicative act by which people speak about contrasting pairs of concepts, like order versus disorder and purity versus pollution, in discussing their society's moral identity.⁴⁵

In this communicative approach to law, legal acts are essentially interpreted as speech acts, a term strongly associated with the English philosopher of language John Austin. Austin distinguished a particular type of speech, so-called performative utterances. This category constituted all those statements that do not simply describe a given action, but in effect perform the act itself, thereby bringing about an actual change in the world. Thus, when a court pronounces a verdict it is not just giving an account of the decision taken in a specific case, but brings the decision into existence. Whereas the accused has until then resided in limbo between guilt and innocence, through this linguistic utterance he becomes either an offender or an innocent man. For Austin, however, the utterance of a certain type of statement by itself was not sufficient for it to count as performative. He drew up several prerequisites for what he called a 'felicitous' – we may also say 'effective' – performance. One of these was the condition of 'appropriate circumstances'. If a verdict is not pronounced by a judge in a court setting, it fails as a performative utterance, since people are unlikely to acknowledge the speaker as an authoritative performer or the context as one in which verdicts can be pronounced. For Austin there thus had to exist a certain convention between speech participants in order to make a performative utterance work.⁴⁶

It was in further elaborating on the Austinian condition of conventionality, that the French sociologist Pierre Bourdieu developed his own theory of linguistic practice. For Bourdieu, linguistic conventions were above all socially constructed phenomena, which involved the relations between different actors in a particular linguistic arena. Following from his more general theory of practice, Bourdieu saw language use as springing from a combination of people's linguistic 'habitus' and the specific 'field' in which they operated. In this model, the habitus encapsulated all those pre-given socially-determined factors that shape the way someone perceives, thinks of and acts in the world at a given moment, that is to say people's historically developed frame of reference. With these preconceived notions and habits in mind, actors then engage in a 'field', a socio-spatial arena with its own rules where they encounter and interact with other social agents. In these linguistic fields – often also indicated as 'markets' – agents possess varying amounts of symbolic capital, which entails the recognition by other participants in the field of the legitimacy of the speaker's use of language. Performative utterances, Bourdieu emphasized, could only be effective in so far as their speaker

⁴⁵ Philip Smith, *Punishment and culture* (Chicago and London, 2008) 13-15.

⁴⁶ John Austin, *How to do things with words* ed. J.O. Urmson (Oxford, etc., 1962) 1-38. For a recent introduction into Austinian theories of performativity, see: James Loxley, *Performativity* (London and New York, 2007).

possessed a form of legitimacy that was external to the utterance itself.⁴⁷ Thus, in Bourdieu's understanding, the reason that a court's verdict can actually be considered a performative statement is because its speaker is recognized by others – who have learned to rely on the court in certain cases – as a legitimate pronouncer of verdicts.

In emphasizing the social embeddedness of language, Bourdieu crucially broadens our understanding of performative speech. Whereas Austin limited his understanding of performativity primarily to spoken language, Bourdieu's integration of linguistic activity in a broader theory of practice seeks to sensitize us to the performative qualities of the many non-linguistic types of activity. Acts like looking, dressing, moving about and positioning oneself in space, all have the potential to change the perceived reality of the people involved in them, and are in that sense acts of performative communication.⁴⁸ In the same way that the pronunciation of a verdict can turn a defendant into a culprit, the public enactment of a penal measure can make the law effective for those witnessing the event. Consequently, in this thesis we will encounter the term performance in two understandings, both concerned with the link between speech and practice. The first, working in the Austinian line of reasoning as set out above, considers as a performance those instances where an individual performs an act by speaking. In the second sense, which is closer to the understanding of the term among students of theatre, to perform is to say something by means of an act, not necessarily an oral one. Essentially then, performance is concerned with a two-sided relation between speaking and acting. Furthermore, as this thesis, and in particular its third and fourth chapters, will show, this relationship between the two modalities of performance is not mutually exclusive. Rather, both aspects of the relationship – acting through speech and speaking in acts – form an essential means for speakers to claim legitimacy.

While firmly suggesting the interrelationship between speech and action, in another respect Bourdieu is less outspoken. In his attempt at social contextualization, he tends to underscore the way in which performative utterances – in both of the above senses – may themselves contribute to creating the conditions under which a group deems them legitimate, not regardless of, but also not completely dependent on pre-given external factors. What I will argue in this thesis, however, is that the way in which speech acts can be used to claim the legitimacy of the speaker is fundamental in understanding the behaviour of participants in a linguistic field. On the one hand, it explains speakers' motivations for trying their hand at performative utterances in situations where the relative symbolic capital is not clearly recognizable for or accepted by everyone. This would be the

⁴⁷ Pierre Bourdieu, *Language and symbolic power*, ed. John Thompson, transl. Gino Raymond and Matthew Adamson (Cambridge and Malden, 1991) 37-89; also see Thompson's clarifying editor's introduction in the same volume.

⁴⁸ On the role of non-linguistic forms of performance, also see: Judith Butler, *Notes toward a performative theory of assembly* (Cambridge, MA and London, 2015).

case, for example, if a court pronounces a verdict in a situation where its legitimacy is disputed by other authorities or in light of a certain socio-legal tradition. The verdict itself may well fail as a performative utterance in a direct sense if those involved in the case do not recognize the court as a legitimate speaker. Yet considering the court's pronouncement primarily as a linguistic claim for the legitimacy to utter this particular type of performative statements, we can understand why the judge still takes the trouble of uttering the statement, despite its uncertain conditions of success. Furthermore, this understanding of speech acts allows for an interpretation of historical changes as being not merely socially, economically or politically driven, but also the result of the performance strategies of speakers in a field. When a court at some point successfully manages to claim jurisdiction over a particular type of case, this need not only signal developments in the social, economic or political constellations surrounding it. We can also explain this change in judicial legitimacy by considering the court's and others' previous activities in the linguistic field, that is as an effect of the posing and counter-posing of claims to legitimate speech.

The posing of claims to legitimate and authoritative speech will form the central process on the basis of which this thesis explains the historical development of law courts. In order to cover both linguistic and non-linguistic means of posing such claims, I will consider these attempts as forms of scripting. That is to say that, by making performative utterances, be they bodily, vocally, textually or otherwise, one or more actors in a communicative field may suggest a specific script according to which all participants in the said field are supposed to operate in order to become legitimate speakers. Thus, to draw once more on our previous example, the judge's verdict is more than a single vocalized utterance to claim legitimacy for its speaker. Rather, it presents those witnessing the event with a constellation of spaces, acts, words and symbols, constituting what is claimed to be the proper way to do justice. Such processes of scripting explicitly extend the socio-legal communicative activity beyond the officials operating the court. Although the latter's voice is often heard most prominently, the communicative activity surrounding these courts was largely given form and meaning by the many non-officials who were in some way or another involved, be it as active participants, ostensibly passive audiences, or a combination of both. Like language in general, socio-legal performance was not only shaped by its most obvious producers, but just as much by those traditionally considered as its passive consumers.⁴⁹ By taking the communicative activity between court and broader society as the main *explanandum* for these bodies' historical development, this study thus critically involves the roles of all these historical agents in an understanding of the court.

⁴⁹ Bourdieu, *Language* (1991) 38-39. Important to note in this context is furthermore: Michel de Certeau, *The practice of everyday life*, trans. Steven Rendall (Berkeley, etc. 1984), whose ideas also concern the way in which cultural products – like language – are essentially produced by their consumers. Cf. Smail, *Consumption* (2003).

Structure of the thesis

The three main threads of this thesis – the role of court records, the possibilities of comparison and the legal process as communicative process – will be integrated into four thematic chapters, treating various aspects of the socio-communicative constellations surrounding late medieval law courts. However, since the thesis also encapsulates three different case studies, the Council of Utrecht, the Consistory Court of York and the *Parlement* of Paris, it seemed sensible first to ground these cases within their respective historical contexts. Chapter one, “Profiles: three late medieval law courts”, thus considers the social, political and legal environment of the three courts, presenting a case-by-case overview of developments before, during and after the period on which the focus of this thesis lies. This chapter provides a first consideration of many of the practical aspects of the courts, like personnel and location, as well as sets out their formal organization, judicial competences and the records they produced. Mapping the historical context in this way is crucial for understanding the historical particularities of each of the courts, and forms a necessary counterweight to the broader developments that I trace in the subsequent chapters.

Chapter two, “Legal space”, provides a first thematic exploration. It proceeds from the idea that a law court, next to its character as an institutional body, is primarily a place where specific activities take place. Drawing on the work of Henri Lefebvre, it offers a spatial analysis of the law courts under scrutiny, asking how judicial activities related to the spaces in which they were performed. The chapter is first of all concerned with the choice, construction or reconstruction of places to be used in the legal process. As the three cases studied here illustrate, such spaces could vary widely, from churches to royal palaces to market squares and guild houses. At the same time, however, they exhibit remarkable similarities as regards the way in which people used and adapted them to accommodate both public and non-public aspects of the court’s daily business. Furthermore, the court’s relation to its spatial context also had a more discursive side. In speaking about aspects of space, from the stones used to repair the city wall to the boundaries of areas of jurisdiction, people used their built and delineated environment to generate meaning in the context of the legal process. As such, space – and particularly urban space – both influenced and was influenced by the legal activities taking place within it.

From a consideration of the role of space vis-à-vis legal activity, chapter three, “The rituality of court practice”, shifts focus to the character of the court practices themselves. Building on anthropological theories of ritual, it considers legal acts as ritualized acts, forms of activity that are given meaning in relation to perceived broader structures of meaningful activity. By analyzing particular instances of legal practice for each of the three courts under consideration, this chapter illustrates how actors in these courts linked the things they did to such broader structures of meaning. Ritualizing court activity in this way thus became a means to claim legitimacy for these

practices, their actors, and the institution catering to them. Although the forms these activities could take varied greatly between the different courts, their role in performing and thus validating the court can be seen in each instance. In this we see again how considerations of the audiences to be reached with such communicative activity, shaped much of what took place in court.

Chapter four, “Legal text and social context”, zooms in on the court records that underlie much of this thesis. It considers the role of texts in the legal process and their complex relation to other forms of communication that took place in law courts. The creation and use of a text, here interpreted in the integrationist sense as language-objects, had a particular influence on the nature and content of the communicative activity thereby performed. The translation of socio-legal messages to the text reshaped their contents in various ways, for example by mediating between languages and by standardizing the spoken word within written legal and narrative frames. Their subsequent presentation to various – partly non-literate – audiences in turn involved retranslation through a number of non-textual media, again influencing form and content of these socio-legal messages. That such language-objects became increasingly common in the courts’ legal process is thus a particularly relevant development from a communicative perspective, fundamentally shaping the way these judicial bodies worked. In this, the chapter also engages with the social historian’s challenge of searching for authentic voices ‘from below’ in a period when texts as a medium, despite the marked increase in their production, were used, and certainly written, by a very small section of society.

Chapter five, “Court and society: the production and consumption of justice”, moves beyond the media used in communicating to discuss the historical actors using them and their strategies of communication. Keeping Bourdieu’s theory of social interaction in mind, it attempts to contextualize the different court communities within their broader society. This is done on the one hand by tracing the habitus of the various court officials, considering social background, training and other relevant elements influencing these people’s frames of reference. In addition, the chapter regards these actors’ position in their communicative fields, the speech arenas in which various groups and individuals negotiated socio-legal meaning. Here it draws upon the conclusions of the previous chapters to argue where, when and through which media the courts interacted with various elements in their surrounding societies. Finally, and related to this last point, the chapter considers how the respective courts then claimed a specific position for themselves within these communicative ‘fields’. Through the use of various media, and by constructing specific socio-legal narratives, these courts put forward claims about the ordering of society and their own role therein.

The conclusion will bring these different elements together in presenting a final analysis of the development of the considered courts as communicators and communicative environments. By relating court-specific changes to more overarching processes in socio-legal practice, I will argue that the courts scripted particular forms of judicial practice and logic, thereby attempting to influence

people's conception of legitimate speech and activity. In linking the various media of the court to each other in this way, I show how a consideration of communicative processes can not only elucidate the historical development of law courts, but is also crucial to understanding their surviving documents, which purport to tell us so much about medieval society.