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

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Chapter one

Profiles

Three late medieval law courts

One of the defining features of the late medieval legal landscape was its immense pluralism. This great diversity in legal forms found its clearest expression in the many different ways in which law courts came to be organized during this period. Drawing both on broader learned legal traditions, that is those of Roman and Romano-canonical law, and – often more locally based – customary law, these courts took many shapes. In addition, extra-legal conditions, such as political configurations, communities' social composition, existing economic relations and spatial contexts, influenced the way in which the courts were organized and functioned on a day-to-day basis.

All these factors make it necessary to elaborate in some detail on the three case studies at the heart of this thesis. In this chapter I will therefore set out to contextualize the Council of Utrecht, the Consistory Court of York and the *Parlement* of Paris from several perspectives. This first of all means a historical contextualization, asking how and why these law courts developed before and during the period treated here. Secondly, I will place them in a broader legal context, setting out the traditions of written and unwritten law on which they based themselves, the specific competences they claimed to hold, and the way in which these were subsequently translated into daily legal practice. None of the law courts considered here were purely legal institutions in the modern sense of the word. Looking beyond a modern bias, I will thus pay ample attention to the political, social and economic activities undertaken by the courts and their relation to the societies in which they operated. This also involves a consideration of the court's spatial context, as I believe this to have been an important – and often overlooked – aspect of the court's institutional identity and practice. Last but certainly not least, the internal make-up of the law courts will receive an in-depth look, both regarding their formal organization and – as far as possible – their more informal socio-political make-up.

This chapter will thus form the groundwork for the subsequent parts of the thesis. By sketching three profiles of law courts, it gathers together the basic information from which to develop my overarching thematic arguments in later chapters. It is also meant as a first exploration of the relation between the particular and the more general developments of these law courts. By providing an overview of the many features of these judicial bodies, this chapter sets out some of the major similarities and differences between the three, thus assessing the relative influence of case-

specific versus overarching factors in shaping the court – both spatially and organizationally – its legal practice and its institutional identity.

The Council of Utrecht

The history of the Council of Utrecht is strongly related to the history of the city itself.¹ Since the eighth century, the settlement that would develop into the city of Utrecht had been defined mainly by its role as an episcopal see.² In the eleventh century, the Ottonian kings made extensive donations of goods and rights to the Utrecht bishops. Consequently, the latter would for centuries form not only the most important religious leaders in the area, but also its central secular authorities.³ From the twelfth century onwards, however, the city's rapidly expanding population managed to increase its influence both in political and judicial affairs. The growing role of the Utrecht urban community in regional and superregional power struggles gave it the leeway necessary to increase its own autonomy vis-à-vis the bishops. Tied up with this increase in urban autonomy was the coming into existence of several urban institutions. A 'bench' of aldermen existed as early as 1122. To this was added an advisory organ, called the Council (*de Raad*), at the end of the twelfth century. For more than a century these two institutions were dominated by a small number of prominent families, originating in the old mercantile elite of the city. Only during the thirteenth century did other groups within the city challenge their position, as guilds of craftsmen came to play a serious – though not uncontested – political role within the city.⁴ In 1304 the aldermen and guild elders (*oudermannen*) agreed on a so-called 'Guild letter'. This document gave the guilds an important formal role in the political organization of the city at the expense of both the bishop and the old mercantile elite. Together with a confirmatory and complementary letter from 1341, this document established a system of indirect elections for the members of the Council and the aldermen.⁵ Rather than being selected by the bishop these officials would now be chosen by the members of the different guilds, to which every full Utrecht citizen was supposed to belong.⁶

¹ For a recent general history of the city of Utrecht see Renger De Bruin, et al. (eds.), *'Een paradijs vol weelde'. Geschiedenis van de stad Utrecht* (Utrecht, 2000).

² H.L. de Groot, 'Van strijdhamer tot bisschopsstaf. De vroegste geschiedenis tot circa 925', in: De Bruin, et al. (eds.), *'Paradijs'* (2000) 10-43, at 29-34, 39-43.

³ K. van Vliet, 'De stad van de bisschop. Circa 925-1122', in: De Bruin, et al. (eds.), *'Paradijs'* (2000) 44-71, at 48-50.

⁴ K. van Vliet, 'De stad van de burgers. 1122-1304', in: De Bruin et al. (eds.), *'Paradijs'* (2000) 72-111, at 73-79, 82-88, 95, 107-111; Samuel Muller (ed.), *De middeleeuwse rechtsbronnen der stad Utrecht*, Introduction (The Hague, 1885) 17-21.

⁵ Both letters have been edited in: J.C. Overvoorde and J.G.C. Joosting (eds.), *De gilden van Utrecht tot 1528* vol.1 (The Hague, 1896) 52-53 and 57.

⁶ A.J. Van den Hoven van Genderen, 'Op het toppunt van de macht. 1304-1528', in: De Bruin, et al. (eds.), *'Paradijs'* (2000) 112-189, at 113-117, 132-133.

Within this new constellation the Council, which as an institution was less closely linked to the episcopal landlord than the aldermen were, began to play a much more prominent role than before. Gradually it increased its control over political, economic and judicial matters at the expense of both the bishop and many other local authorities, like the aldermen, local ecclesiastical courts and many smaller secular courts in the vicinity of the city. During the fourteenth century the Council managed to expand its competences into many different fields, including law-making and the most important governmental functions as well as a large range of judicial tasks. Although the focus here lies on the latter, it is important to keep this multifaceted character of the Council's institutional identity in mind. Far from being only a law court, it was a governmental body in the process of establishing its authority in a variety of areas, legal as well as political.⁷ This diversity also found its reflection in the Council's textual output, the volume of which increased markedly from the fourteenth century onwards. Four subsequent books of bylaws, the *Liber Albus*, the *Liber Hirsutus Minor*, the *Roede Boeck* and *Die Roese*, collected various regulations from the early fourteenth century onwards.⁸ At about the same time that the earliest book of bylaws was put together, the Council also began to keep a register of verdicts, spanning the rest of the century.⁹ From the early fifteenth century onwards this register was then replaced by two new series of registers, the *Raads Dagelijks Boek* and the *Buurspraakboek*.¹⁰ As chapter four will show, hardly any of these records was limited to one type of activity only. Rather, they contained a whole range of rules, notifications, verdicts and other entries, showing the broad involvement of the Council in legal, political, economic and even occasionally religious matters.

In the legal field the Council's authority covered both areas of instance (*accusatio*) and *ex officio* jurisdiction, that is procedures initiated by litigants and by the court itself respectively. Concerning the latter, its authority was more or less absolute: all acts that could be considered contrary to the common good of the community – murder, violent assault, theft, prostitution, sedition, etc. – would come before the Council. Exceptions to this were the criminal jurisdiction over clergy and nobles as well as certain minor transgressions committed in one of the nearby townships.¹¹ Concerning instance jurisdiction the Council's competence was less far-reaching. Especially in the fields of immovable property, debts and damages, the aldermen still had a large jurisdictional role to play. Nonetheless, over time the Council began to encroach on many of these competences as well.¹²

⁷ Ibid. 115-121.

⁸ These books are edited in: Muller (ed.), *Rechtsbronnen*, vol.1 (1883) 3-68 (*Liber Albus*), 69-149 (*Liber Hirsutus Minor*), 151-180 (*Roede Boeck*) and 181-394 (*Die Roese*), who divides them into numbered sets of articles.

⁹ This register survives in two copies, titled *Th.1* and *Th.2*, at the Utrechts Archief (HUA): 701-1.226 and 1.227 respectively.

¹⁰ The *Raads Dagelijks Boek* is found at: HUA 701-1.13, the *Buurspraakboek* at: HUA 701-1.16.

¹¹ Van den Hoven van Genderen, 'Toppunt' (2000) 120; Muller, *Rechtsbronnen*, Introduction (1885) 126-134.

¹² Muller, *Rechtsbronnen*, Introduction (1885) 135-141.

Some historians have distinguished a third judicial category, although it has a certain overlap with the Council's other two fields of jurisdiction. Samuel Muller defined this category as 'voluntary jurisdiction', which is concerned with the making of what the sources call *willekeuren* and *loften*, that is formal promises by individuals to do or abstain from doing something, like making a payment.¹³ This type of legal action, with its 'voluntary' character, seems closely linked to the more general instance type activities employed by the Council. However, seeing that *willekeuren* are often closely linked to actions which seem to echo *ex officio* activity, it is probably too simple to consider them as another type of instance activity.¹⁴ As this type of judicial activity is already present in the earliest textual sources left by the Council, it is not unlikely, as Muller suggests, to regard it as one of the fundamental functions in the Council's development from a simple advisory board to a full-fledged legal and political authority.¹⁵

The core of the Council consisted of twenty-four elected members. These were chosen annually from the twelve so-called *waken*, urban administrative units containing the members of one or more guilds that had the responsibility to guard a particular section of the city wall by night.¹⁶ The Council's basic composition could, however, expand significantly when more important decisions were to be taken. Sometimes the aldermen and elders of the guilds (*oudermannen*) were involved.¹⁷ Likewise, an appeal was sometimes made to the officials – be they Council members, aldermen or guild elders – of the previous year. All this could result in a governmental body of up to one hundred and fifty-six people.¹⁸ The Council thus formed a body of elected representatives of the community – or, more precisely, of the largest stakeholders in the community – rather than a body of legal specialists, as encountered more prominently in Paris and especially York. In order to investigate some of the more complex matters, the Council created special commissions from amongst its members, charged with investigating a specific case. Several of these commissions developed a more or less permanent character. Notably among them was the so-called *vive* ('the five'), a committee charged with investigating serious crimes and several related activities, such as advising the other Council members on verdicts and playing a role in their execution, but also the supervision of the city police.¹⁹ A second category of commissions was formed by the *keurmeesters* (literally: 'masters of

¹³ Ibid. 141-159.

¹⁴ The Th.2 register, for example, begins by stating that it will contain cases and *willekeuren* concerning the body or parts of it as well as banishments, emphasizing the close link between the 'voluntary' character of the promise made and the penal consequences of not keeping this promise. See: HUA 701-1.227, fol.1r.

¹⁵ Muller, *Rechtsbronnen*, Introduction (1885) 156-157. The Th.2 register, containing entries dated between 1315 and 1403, already contains a large amount of 'willekeuren'. See: HUA 701-1.227.

¹⁶ Van den Hoven van Genderen, 'Toppunt' (2000) 130-131.

¹⁷ This is often the case in the *Raads Dagelijks Boek*, which generally contained more cases of civil law.

¹⁸ Van den Hoven van Genderen, 'Toppunt' (2000) 115.

¹⁹ Muller, *Rechtsbronnen*, Introduction (1885) 212-220; D.A. Berents, *Misdaad in de Middeleeuwen. Een onderzoek naar de criminaliteit in het laat-middeleeuwse Utrecht* (Utrecht, 1976) 20-21.



Map 1: Sixteenth century map of the city of Utrecht (detail). With a few exceptions, the layout still follows that of the late medieval city.

bylaws'). These commissioners were charged with investigating transgressions of a range of different bylaws (*keuren*) concerning – among other things – violence, the sale of wine, pigs and gambling.²⁰ Such diversity in responsibilities can also be seen among the functionaries called *stadsknapen* ('city servants'), charged with the practical side of the matters that concerned the Council. They would summon litigants, arrest culprits, carry messages and facilitate the Council's activities in many other ways. The *stadsknapen* thus played a crucial role in putting the Council's broad power claims into concrete practice, as considered in chapter five.²¹

The Council's broad range of functions – legal as well as political and economic – gave it a particular character that had important consequences for our understanding of its development and *modus operandi* in the late Middle Ages. Contrary to a modern logic of distinguishing between a legislative, an executive and a judiciary power, the Council's functions spanned all these three areas of authority. Rather than regarding the Council's authority from a modern-day perspective, we need to understand it within its contemporary context of socio-political relations. The professed focus of the Council's activity was promoting peace and quiet in the city. This goal not only raddled several forms of power nowadays divided between different spheres of authority, but also cut across different academic subject areas: political, legal, economic and environmental history. It is thus insufficient to regard the Council's activity simply from a legal viewpoint, without involving acts of legislation, economic policy and relations to legal and political players external to the city of Utrecht.

Secondly, and on a more practical level, the Council's involvement in different theatres of power, created a range of potential conflict areas, where it was forced to negotiate its interests with others. The Council increased its range of competences at the expense of other authorities in the city and its vicinity. These included the bishop and some of the officers and institutions that formerly played an important role in the relations between the bishop and the city, like the sheriff and the bench of aldermen. But smaller players like local courts in the direct vicinity of the city (*buitengerechten*) and the many ecclesiastical immunities which dotted the legal landscape at the time were similarly relevant factors.²² Far from being on an unchallenged and unidirectional road to increasing authority, in the period under study the Council constantly negotiated its power with other larger and smaller authorities. And next to these semi-official relations, a more informal sphere needs to be taken into account as well. The individuals staffing the Council formed an unrepresentative cross section of Utrecht society. Several families, supported by large patronage networks, formed the socio-political elite from which the members of the Council were usually recruited.²³ Within this narrow socio-

²⁰ Muller, *Rechtsbronnen*, Introduction (1885) 174-195; Berents, *Misdaad* (1976) 21.

²¹ Muller, *Rechtsbronnen*, Introduction (1885) 80-81, 210, n.2; Berents, *Misdaad* (1976) 24.

²² Van den Hoven van Genderen, 'Toppunt' (2000) 120.

²³ Much is unclear about the exact socio-economic background of the Council members. But evidence from the end of the fifteenth century suggests that Council members generally belonged to the wealthier parts of

political elite, however, the new constellation of civic government as it developed during the fourteenth and fifteenth centuries, led to instances of fierce party strife. Rival factions, grouped around coalitions of important families, competed over positions of authority in the city. Sometimes these struggles even came to a head when one of the factions managed to gain the upper hand, resulting in a change of power and the exile of the most important members of the losing faction.²⁴ As chapter five will elaborate further, the Council thus formed at the same time a party in local and supra-local power struggles, and a forum on which such struggles took place.

It will be clear by now that the history of the Council was closely intertwined with that of the city of Utrecht, an interrelatedness that had a spatial dimension as well. Several locations within the city figure very prominently in the textual sources. A particularly central role is taken by the *Buurkerk*. This church, which since the eleventh century served as the main parochial church of the city, seems to have formed the focus of much of the judicial activity of the Council. The square in front of this church was most probably the location for the regular *buurspraak* assemblies during the fourteenth and fifteenth centuries.²⁵ On these occasions the Council would publicly pronounce its verdicts and it was here that people condemned to public shaming would come to openly beg the Council for forgiveness. It was probably not a coincidence then that up until the sixteenth century the residence of the Council was located opposite the *Buurkerk*, in the so-called *Schoonhuis*. Although the seat of the aldermen could also originally be found in the vicinity of the *Buurkerk*, in 1343 the expansion of this church drove them to a new residence, the *Hasenberg* house at the square called the *Plaats*, which in later centuries came to form the central governmental seat of the city.²⁶ Whether this was related to the changing relations between the Council and the aldermen is mere speculation, but it is striking to see that the Council itself made this same move after its power was broken in the early sixteenth century. A final spatial feature of interest here were the city prisons. There was apparently no specific location in the city where prisoners were kept. Rather, several existing locations doubled as prisons in this period. These included some of the city gates, most notably the *Catharijnepoort* to the west and one of the *Tolsteegpoorten* – nicknamed the ‘Red tower’ – to the south.²⁷ During the fifteenth century another multifunctional building was used to house inmates. The so-called *vleyshuis*

society. See: D.A. Berents, ‘Gegoede burgerij in Utrecht in de 15e eeuw’, *Jaarboek Oud-Utrecht* (1972) 78-92, at 90-91.

²⁴ Justine Smithuis, ‘Politiek en geweld in een laatmiddeleeuwse stad. Utrecht 1400-1430’, *Tijdschrift voor geschiedenis* 123:2 (2010) 240-253. Years in which major power changes took place were 1380, 1413-1415 and 1425-1426.

²⁵ N. van der Monde, *Geschied- en oudheidkundige beschrijving van de pleinen, straten, stegen, waterleidingen, wedden, putten en pompen der stad Utrecht*, vol.3 (Utrecht, 1846) 176, suggests that this practice was already in existence before its use by the Council, but he unfortunately provides no source for this claim.

²⁶ Van den Hoven van Genderen, ‘Toppunt’ (2000) 147.

²⁷ *Ibid.* 130.

(‘meathouse’), named after its contemporaneous use by the butchers’ guild, served as a primary location for imprisonment purposes – both pre- and post-trial – after 1410 (Map 1).²⁸

The Council would, for most of its history, be susceptible to broader power struggles at a regional and superregional level. Especially during the fifteenth and early sixteenth century, involvement in larger political conflicts led to periods of major political – and related to that juridical – changes within the city. During the fifteenth century, the growing influence of the Burgundian dynasty strengthened the internal divisions within the city and between the city and the bishop, as the latter’s position was heavily contested between Burgundian and non-Burgundian candidates. The takeover of the episcopal see by David of Burgundy in 1449, for instance, resulted in fundamental changes within the city, as the position of the guilds was seriously contested by the bishop. Despite a relative weakening of the role of the landlord after the death of the Burgundian duke Charles the Good, the succeeding Habsburg dynasty continued to infringe on the guild-dominated system of urban government. In 1528 the guild-led government finally came to an end, basically meaning a reversal to the power relations as they had been before the fourteenth century. The Council lost all its judicial authority to the landlord-dominated bench of aldermen and the sheriff, and reverted back to the role of advisory board that it served up until the fourteenth century.

The first court profile thus sketched is that of a multifaceted urban authority, holding extensive legal as well as a variety of other powers. Its fate was closely tied up with the guild-led governance of late medieval Utrecht, and during its bicentennial dominance in the city it formed the nucleus of both internal and external struggles for socio-political authority. Considering the legal activities of the Council thus means looking at one aspect of a broader pallet of power claims. Furthermore, compared to the other two courts studied here these claims were concerned with a geographically limited area, namely the city and its surrounding lands. The impact of such differences in scale and political involvement will become clearer as we take a closer look at the other courts.

The Consistory Court of York

The thirteenth century was the main formative period for the archiepiscopal Consistory Court of York. In line with broader European developments, which saw a growing demand for the ecclesiastical legal process, the case load of the York archbishops began to increase markedly from the late twelfth century onwards.²⁹ To address this pressure, the York archbishops made a move to

²⁸ Berents, *Misdaad* (1976) 44.

²⁹ K.F. Burns, *The administrative system of the ecclesiastical courts in the diocese and province of York. Part I: The medieval courts* [s.l., 1962] 3- 8. For the broader European developments, see: Brundage, *Medieval origins* (2008) 126-163. Brundage follows: Martin Brett, ‘Canon law and litigation. The century before Gratian’, in: Michael Franklin and Christopher Harper-Brill (eds.), *Medieval ecclesiastical studies in honour of Dorothy M. Owen* (Woodbridge and Rochester, 1995) 21-40, in stressing litigants’ demands for the legal process as primary

delegate their competences, creating three distinct law courts covering different aspects of their jurisdiction: the Court of Audience, the Exchequer court and the Consistory Court. In relation to the latter, the functionary of primary importance was the so-called bishop's official. Whereas up until the twelfth century the different archdeacons in the Northern province would form the most important judicial aides to the archbishop, from the end of the century their role was gradually taken over by specialised episcopal functionaries. While at first applied in the sense of an episcopal agent in general, the term 'official' came during the thirteenth century to indicate the specific functionary charged with the execution of the bishop's instance jurisdiction.³⁰ As the bishop's vicar, he would be the presiding judge of the episcopal court when gathered *in consistorio*, that is in judicial session.

From the later thirteenth century onwards the further delegation and subdivision of judicial tasks from the official downwards created an increasingly independent law court in which the official, as the bishop's vicar, operated as presiding judge. What had originally been the judicial activity of the archbishop and his direct advisers, gradually developed into a semi-independent body staffed by legal professionals, holding multiple fixed sessions a week.³¹ The functionaries operating in what would become known as the Consistory Court are first explicitly defined in the statutes drawn up under archbishop William Greenfield (1306-1315). In his *Concilium provinciale Eboracensis* (1311) Greenfield distinguishes between several categories of functionaries. Next to the bishop's official the court would consist of two examiners, the judges charged specifically with the examination of witnesses. One of them was supposed to double as registrar, who oversaw the production and custody of all the relevant documents as performed by an unspecified number of notaries. In addition, twelve advocates and eight proctors were to be connected to the court, the first group fulfilling basically a legal advisory function, and the second group constituted to speak on behalf of the litigating parties.³² Despite their convenient clarity, in the end Greenfield's statutes are little more than a temporary glimpse of idealised court practice. What the statute gives us is basically the codification of a practice that had been developing for several decades at the least. And although it did serve as a clear guideline for later court practice, the actual character of the different functions described in the statute underwent several major changes over the fourteenth and fifteenth

cause for these growing caseloads. Although I agree that it is crucial to consider the fundamental role of the law's consumers in its production, Brundage's subsequent contention that these increasing demands '...reflected the litigants' desire to settle their differences through legal processes, rather than a scheme by church authorities to attract more business into their courts and thus to increase their power.' (pp.126-127) underscores the role of the courts, by reducing them to a merely reactive role, while assuming that the development of a complex and far-reaching system of canon law was received unproblematically by everyone making use of it.

³⁰ Burns, *Medieval courts* [1962] 60-67.

³¹ *Ibid.* 6-7, 70-83, 122-124.

³² Greenfield's statutes are published in: David Wilkins (ed.), *Consilia magnae britanniae et hiberniae ab anno MDXLVI ad annum MDCCXVII*, vol.2 (1737) 409-415. See also Burns, *Medieval courts* [1962] 98-116.

centuries.³³ Moreover, a group of functionaries that does not appear in Greenfield's statutes – except maybe implicitly – is that of the apparitors or summoners. These functionaries, charged with bringing the court's summons to all those required in a session, formed from an organizational perspective a crucial factor in day-to-day court practice.³⁴

The Consistory Court operated within a variety of social and judicial contexts. As an archiepiscopal court it formed part of a broader ecclesiastical juridical hierarchy. Within the Northern English church province, the Consistory Court was – theoretically at least – the supreme ecclesiastical court. Yet actual jurisdiction was limited in many ways. The archbishop only had first instance jurisdiction within his own diocese, which constituted only a small part of the entire ecclesiastical province. Within the diocese, a large number of exceptions, formed by the peculiar jurisdictions of several religious houses, (groups of) parishes and even the whole archdeaconry of Richmond limited the actual judicial authority. Also, lower courts were sometimes able to bypass the archiepiscopal claim to hear appeals from all over the province. However, given all these limitations, under normal circumstances supreme jurisdiction lay with the archbishop and his Consistory Court, leading to a steady flow of cases from all over the northern church province.³⁵ At the same time, the Consistory Court did not form the absolute pinnacle of ecclesiastical jurisdiction. There was always the possibility that a case concluded in the archiepiscopal court would be appealed to the papal *curia*. In practice this was a rather elaborate undertaking for litigants wanting to pursue their case further.³⁶ Nonetheless, the possibility to appeal a case at the papal curia, be it in theory or in practice, was an option available to litigants of the Consistory Court. Despite its increasing independence as court of law, the Consistory Court remained part of a broader archiepiscopal administration. Though the archbishops themselves were increasingly absent from York, they did keep the right to withdraw certain cases from the Consistory Court. Both in the treatment of these cases and in that of the archiepiscopal criminal jurisdiction, which as a rule was not treated in the Consistory Court, the archbishops were supported by a permanent court of legal professionals, the Court of Audience or Chancery. Although not functioning as a court of appeal in the strict sense, the Court of Audience was superior to the Consistory Court. It formed a means for the archbishops – or, in their absence,

³³ Burns, *Medieval courts* [1962] 127-161.

³⁴ *Ibid.* 152-155.

³⁵ *Ibid.* 8-27, 37-43; Robert N. Swanson, *Church and society in late medieval England* (Oxford and New York, 1989) 160-161.

³⁶ In the twelfth century a system of papal judges-delegate developed, as local churchmen were appointed to represent the pope, increasing the availability of papal jurisdiction and unburdening the papal *curia* itself. By the fourteenth century, however, this system was already in decline. See: W. Pantin, 'The fourteenth century', in: C.H. Lawrence (ed.), *The english church and the papacy in the Middle Ages* (London, 1965) 157-194, at 175-178; Charles Donahue, 'Roman canon law in the medieval english church. Stubbs vs. Maitland re-examined after 75 years in the light of some records from the church courts', *Michigan law review* 72:4 (1974) 647-716, at 670-671; James A. Brundage, *Medieval canon law* (London and New York, 1995) 123-129.

their vicars-general – to involve themselves more directly in cases that they considered as having an extraordinary character.³⁷

Next to, but hardly ever entirely disconnected from, the jurisdictional hierarchy of ecclesiastical courts, the Consistory Court also had to relate itself to a number of other judicial entities in local, regional and supra regional contexts. To begin with the latter, the king and his system of royal justice formed an important jurisdictional peer to take into account. With the development of both extensive common law and canon law systems from the twelfth century onwards, the English legal landscape was effectively split between two major legal constellations operating next to each other, which could result both in situations of conflict and cooperation. Where many subjects were regarded as clearly belonging to one or the other of these two systems, certain types of cases were regularly the cause of jurisdictional controversy or conflict between ecclesiastical and royal courts.³⁸ On a more local level as well, the Consistory Court had to deal with numerous non-ecclesiastical courts and legal officials. Given the extensive territory over which the archbishops claimed supreme spiritual jurisdiction, it is not feasible to give anything near a complete overview of the many secular courts operating in England at the time. What may be directly relevant, however, is to give a sense of the most pertinent judicial context of the Consistory Court, namely that of the city of York itself. Similar to that other city doubling as an episcopal see, Utrecht, the jurisdictional landscape of York's municipal area was severely fragmented. Initially the fragmentation would be between those areas falling under royal and those falling under diverse religious jurisdictions and liberties. During the thirteenth and fourteenth centuries, however, the strengthened position of local civic officials and institutions, like the mayor and aldermen, put a heavy strain on the existing power relations. Whereas the thirteenth century saw several major conflicts between the city and the many ecclesiastical landholders in and in the vicinity of the city, in the fourteenth century the urban officials' success in marginalizing royal influence in the city also stimulated a narrower confinement of the ecclesiastical liberties. The direct involvement of the archbishop in these conflicts, as well as the fact that they took place in the court's direct physical vicinity, makes it a socio-judicial context not to be ignored.³⁹

It was also in this context that the physical spaces used by the Consistory Court were most directly involved. As chapter two will show, as early as the first quarter of the fourteenth century the Consistory Court held many of its sessions in the cathedral church of York, which at the time was

³⁷ Burns, *Medieval courts* [1962] 201-228.

³⁸ Swanson, *Church and society* (1989) 140-158; W.R. Jones, 'Relations of the two jurisdictions. Conflict and cooperation in England during the thirteenth and fourteenth centuries', *Studies in medieval and renaissance history* 7 (1970), 77-210.

³⁹ David M. Palliser, 'The birth of York's civic liberties, c. 1200-1354', in: Sarah Rees Jones (ed.), *The government of medieval York. Essays in commemoration of the 1396 royal charter* (York, 1997) 88-107; Sarah Rees Jones, 'York's civic administration, 1354-1464' in: *ibid.* 108-140.

undergoing an elaborate extension and structural renewal.⁴⁰ Choosing such a place to perform the legal process had important practical and symbolic implications, which will become clearer when analysing the court's communicative strategies in the following chapters. Next to this space in the York Minster, several other locations played a role in the administration and judicial practice of the Consistory Court. From the late thirteenth century onwards, the area surrounding the Minster, the so-called Minster close, began to constitute a walled precinct separated both physically and jurisdictionally from the surrounding city (Map 4, 5 and 6).⁴¹ Much of the administration of the court took place in the different scriptoria forming part of this walled precinct. It is also likely that parts of the legal process itself, like the examination of witnesses, which according to canon law was supposed to take place in a private setting, were not performed in public sessions in the consistorial place in the Minster but in one of these scriptoria. And at least from the late fourteenth century onwards evidence can also be found of the court conducting parts of the legal process in people's houses or local parish churches.⁴²

The formal status of the Consistory Court as the highest court of appeal of the ecclesiastical province had a major influence on the character of its jurisdiction. Among the cases recorded by the court, matrimonial cases form the largest minority of about one-third. Other cases frequently treated by the Consistory Court concerned benefices, tithes, church rights, testamentary matters, defamation and breach of faith.⁴³ Such litigation predominantly concerned instance jurisdiction, either coming before the court as first instance or as appeal from a lower court.⁴⁴ Yet the court's jurisdiction was not limited to instance cases. It treated a number of disciplinary offences, ranging from attacks on clergy and violation of church property to clandestine marriages. Whereas such litigation had an *ex officio* character from the beginning, many of the cases initially entering the court through the initiative of a plaintiff also led to interventions by the judge, for example when parties did not follow correct court procedure – which was treated as contempt of court or contumacy – or when the court considered the matter to be concerned with public morals more generally. Especially

⁴⁰ Burns, *Medieval courts* [1962] 124-125; Sarah Brown, *'Our magnificent fabrick' York Minster. An architectural history c. 1220-1500* (Swindon, 2003) 11-16, 35.

⁴¹ R.M. Butler, 'Notes on the Minster close at York', *York historian* 14 (1997) 10-25, at 10-18.

⁴² Burns, *Medieval courts* [1962] 125-126; see for example BIA CP.E.138 (1387), where the sentence in a case is read in the consistorial place of the collegiate church of Beverley: '*...in ecclesia collegiis beati Johannis Beverlac' Eboracensis diocesis loco consistorii eiusdem*'.

⁴³ See Burns, *Medieval courts* [1962] 162-189, who mainly concentrates on the fifteenth century. Of the fourteenth century cases recorded in the cause papers some 35% (88 out of 254) concern matrimonial disputes. The share of other types of cases for this century is as follows: 14% benefices (35), 13% tithes (34), 12% church rights (30), 9% testamentary matters (23), 8% defamation (20) and 6% breach of faith (14). See Appendix 2.1 for a detailed overview of the fourteenth century cause papers.

⁴⁴ 45% of the cases recorded in fourteenth century cause papers, that is 115 of 254, concerned appeals.

in matrimonial cases, interventions of this kind often blurred any clear distinction between instance and *ex officio* jurisdiction.⁴⁵

Our main source for the legal activity of the Consistory Court are its cause papers. This series of documents has survived in the form of countless dossiers, each related to one particular case, which contain a broad variety of texts used in litigation, including complaints, plaintiff and defendant statements, witness testimony and verdicts.⁴⁶ The oldest surviving cause papers date to 1301, increasing in number as the century progresses. Of the 254 fourteenth-century cause papers still found in the archive, one third (77 dossiers) was produced between 1390 and 1400.⁴⁷ The Consistory Court also kept a series of registers called act books, briefly recording the cases appearing in court on a day-to-day basis. Unfortunately the fourteenth-century act books have largely been lost. Only two remain, containing records for the years 1371-1375.⁴⁸ Further evidence on the legal activities of the Consistory Court can be found in the general registers of the archbishops of York.⁴⁹ However, as these records were primarily concerned with the activities of the archbishops themselves, the Consistory Court only makes an appearance in them when they were involved in a case that directly concerned the archbishop.

The second profile thus brings us a different kind of court in several respects. There is first of all the matter of scale. Whereas the Utrecht Council was directly concerned only with a small area of jurisdiction, the Consistory Court could be involved in law suits from all over the northern English church province. Its character as a judicial body was also fundamentally different, standing much closer to a modern western understanding of a law court. The Consistory Court was primarily concerned with providing verdicts in the disputes that were brought before it, and was not as directly

⁴⁵ Burns, *Medieval courts* [1962] 176-177, 189-193. Unfortunately, for the fourteenth century, the nature of the source material – only cause papers, almost no act books – hides much of the *ex officio* activity of the court from view. However, the two act books that do survive show a picture of the court's day to day business similar to that which Burns presents based on the fifteenth century act books.

⁴⁶ The cause papers can be found at the Borthwick Institute for Archives (BIA): CP series, where CP.E represents the fourteenth century, CP.F the fifteenth century, etc. An extensive catalogue of the cause papers is available at <http://www.hrionline.ac.uk/causepapers/>. The cause papers have also recently been digitized at <http://dlibcausepapers.york.ac.uk/yodl/app/home/index>. Oddly enough the database and images are not yet linked to each other. Note also that, at the time of writing, the catalogue contains some peculiar hiatus and errors. For example, seven fourteenth century cause papers are missing from the database, namely CP.E.49, 72, 79, 135, 182, 188 and 235. For the fourteenth century cause papers, also see: D.M. Smith, *Ecclesiastical Cause Papers at York. The Court of York 1301-1399* (York, 1988).

⁴⁷ Smith, *Cause Papers* (1988) vi.

⁴⁸ York Minster Library (YML): M 2(1)b and M 2(1)c.

⁴⁹ Many of these registers have been edited: William Brown (ed.), *The register of William Wickwane, lord archbishop of York, 1279-1285* (Durham, etc., 1907); idem. (ed.), *The register of John le Romeyn, lord archbishop of York, 1286-1296*, 2 vols. (Durham, etc., 1913-1917); idem. (ed.), *The register of Thomas of Corbridge, lord archbishop of York, 1300-1304*, 2 vols. (Durham, etc., 1925-1928); William Brown and A. Hamilton Thompson (eds.), *The register of William Greenfield, lord archbishop of York, 1306-1315*, 5 vols. (Durham, etc., 1931-1934); Rosalind Hill, et al. (eds.), *The register of William Melton, archbishop of York, 1317-1340*, 6 vols. (Torquay and Woodbridge, 1977-2011).

involved in political struggles as was the Council of Utrecht. Its members, furthermore, were by and large trained and specialized in legal matters, rather than elected officials. At the same time, however, the situations of both courts also show remarkable similarities. Each was busy with relating itself to a variety of other legal authorities in its direct vicinity and further away. And the same can be said of their physical surroundings, as each established itself not only jurisdictionally, but also physically in an urban context.

The *Parlement* of Paris

The *Parlement* of Paris is often used as typical model for the development of royal institutions during the later medieval period.⁵⁰ Originally an itinerant royal court, the *curia regis* of the French kings began gradually both to diversify its functions and to establish itself more permanently in Paris. As early as the eleventh century the *curia regis* held its sessions in the royal palace on the *Île de la Cité*.⁵¹ The judicial sessions of the court in particular took place in this *Palais de la Cité*, which over time became both the permanent seat and symbol of the highest jurisdiction in the French kingdom.⁵² It is always tricky to give an absolute starting date for the development of a legal institution like the *Parlement*. What we can say, however, is that in the hundred years between 1239, when Louis IX first spoke about holding a *parlement* of justice, and 1345, when a royal ordinance by Philip VI formally ended the annual renewal of its members and fixed their number to eighty-two, the *Parlement* of Paris transitioned from an occasion on which the *curia regis* would hold its judicial sessions into a highly diversified and permanent law court.⁵³

As was the case in the Consistory Court, this process of diversification of an originally unified court was related to a sharp increase in its case load. But whereas in York changes within the legal system itself form an important explanation for this increase, in the case of the *Parlement* of Paris the physical expansion of royal jurisdiction must also be taken into account. From the late twelfth

⁵⁰ See the contributions to: Fletcher, Genet and Watts (eds.), *Government* (2015).

⁵¹ Jean Guerout, 'Le palais de la cité à Paris des origines à 1417. Essai topographique et archéologique. Première partie: des origines à 1285', in: *Mémoires de la fédération des sociétés historiques et archéologiques de Paris et de l'Île-de-France*, vol. 1 (1949) 57-212, at 132.

⁵² Félix Aubert, 'Nouvelles recherches sur le Parlement de Paris. Période d'organisation', pt.1, *Nouvelle revue historique de droit Français et étranger* 40 (1916) 62-109 and 229-290, at 62-67; Guerout, 'Première partie' (1949) 154-155.

⁵³ Aubert, 'Nouvelles recherches', pt.1 (1916) 67, 277; Françoise Autrand, *Naissance d'un grand corps de l'Etat. Les gens du Parlement de Paris, 1345-1454* (Paris, 1981) 16. For a list of court members as envisioned by the 1345 ordinance, see: Félix Aubert, 'Nouvelles recherches sur le Parlement de Paris. Période d'organisation', pt.2, *Nouvelle revue historique de droit Français et étranger* 41 (1917) 48-72 and 181-208, at 57-61. Contrary to Aubert's contention, the actual number of court members would not stay fixed for long but fluctuated from anything between seventy and a hundred and forty-two over the next century, as shown by: Autrand, *Naissance* (1981) 411. In this it echoed the fluctuating numbers from before 1350, which could be anything from three to thirty-seven for the late thirteenth, and varied between forty-one and a hundred and four for the early fourteenth century. For lists of members for this period, see: Aubert, 'Nouvelles recherches', pt.1 (1916) 75-77, 79-80, 86-88, 94-95, 98-100, 238-242, 262-265, 268-272.

century onwards, the Capetian kings began gradually – although certainly not linearly – to expand the royal demesne into areas that had previously been held in fief by prominent vassals. This expansion of the royal demesne resulted in an increasingly large area where the king claimed direct jurisdiction. Combined with the extensive procedural reforms that took place during the reign of Louis IX (r.1226-1270), creating a very accessible system of appeal to the royal court from the entire kingdom, this expansion of direct royal power claims markedly grew the number of cases appearing before the *curia regis*.⁵⁴

In thinking about the role of the *Parlement* of Paris within the French kingdom, we are again severely limited by modern western notions of what a law court is supposed to be. Although it is feasible to speak of a diversification of functions of the original *curia regis*, this did certainly not follow a post-Enlightenment logic of the threefold division of powers. The majority of tasks performed by the *Parlement* was connected to the judgement of legal cases, but it also had many other competences covering areas today considered as being more administrative, legislative or outright political in nature. These mostly stemmed from the broad range of powers claimed by the French kings during the later medieval period. Similar to the Council of Utrecht, the exercise of justice by the *Parlement* of Paris was closely linked to an understanding of a more general keeping of the peace in the kingdom. It thereby extended its tasks from simply judging legal cases to all kinds of policing activity, road maintenance, economic regulations and even university business, in particular in the city of Paris.⁵⁵ It would stretch too far to consider every area of intervention by the *Parlement* independently. But it is important to acknowledge the many and diverse areas of daily life in which the *Parlement* claimed some kind of authority and the large number of other legal and non-legal authorities it had to deal with as a result.

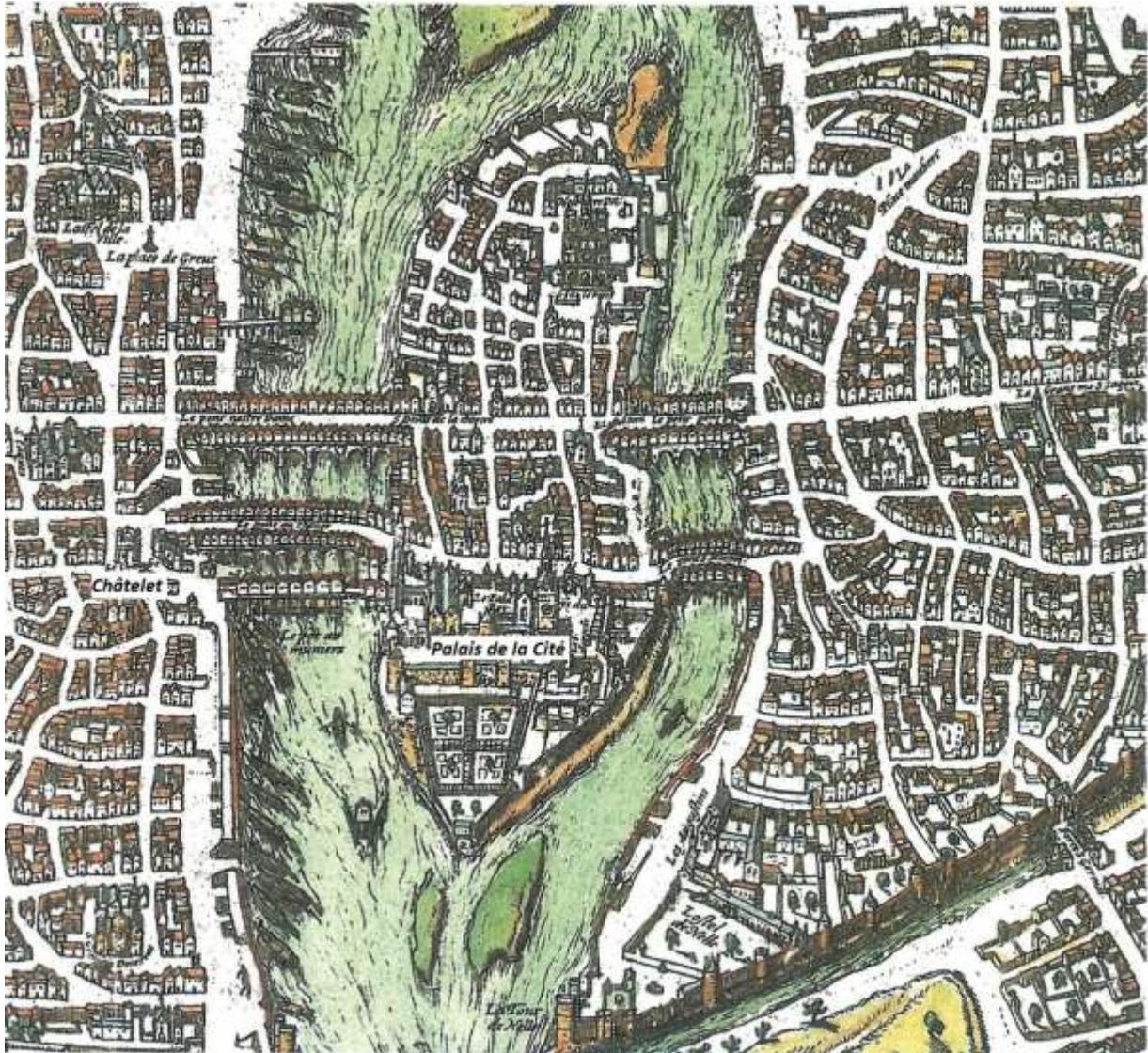
In the judicial sphere the *Parlement* interacted with other authorities on several levels. Its origins in the *curia regis* meant that the extent of its judicial authority strongly depended on the king's success in substantiating anti-seigneurial power claims in the different parts of the kingdom. The crucial role of the *Parlement* in this royal vis-à-vis seigneurial power play can most clearly be seen in the development of a new appeal procedure and the introduction of the category of 'royal cases'.⁵⁶ While forms of appeal had existed earlier, from the middle of the thirteenth century, the French kings actively promoted a strictly hierarchical system of romano-canonical based appeal procedure,

⁵⁴ For an elaborate overview of the history of the Capetian dynasty, see: François Menant, Hervé Martin, Bernard Merdrignac and Monique Chauvin, *Les Capétiens. Histoire et dictionnaire, 987-1328* (Paris, 1999). On the procedural changes during the reign of Louis IX see: Jean Hilaire, *La construction de l'état de droit dans les archives judiciaires de la cour de France au XIII^e siècle* (Paris, 2011).

⁵⁵ Françoise Hildesheimer and Monique Morgat-Bonnet (eds.), *État méthodique des archives du Parlement de Paris* (Paris, 2011) 17; for a more extensive overview see: Félix Aubert, *Histoire du Parlement de Paris de l'origine à François I^{er}. 1250-1515* (Paris, 1894) 290-320.

⁵⁶ Aubert, 'Nouvelles recherches', pt.1 (1916) 70-71.

which recognized the *Parlement* as its supreme court.⁵⁷ Furthermore, by claiming that certain types of cases directly touched upon the king as guarantor of public order, the judgement of such affairs was disputed with other potential judicial stakeholders.⁵⁸ These developments strongly shaped the interaction between the *Parlement* and the various regional law courts in the kingdom, leading to



Map 2: Sixteenth century map of Paris (detail), showing the position of the *Châtelet* and *Palais de la Cité*.

situations of both judicial cooperation and conflict. The same is true for the court's relation to the many ecclesiastical jurisdictions scattered across the kingdom. At least from the thirteenth century onwards secular and ecclesiastical authorities were locked in a continuous jurisdictional struggle over subjects like usury, marriage and testamentary matters. With its increasing claims in the realm of secular jurisdiction, the *Parlement* began to play a major role in this struggle, increasingly encroaching not just on the jurisdiction of the many royal vassals, but also on that of spiritual

⁵⁷ Hilaire, *Construction* (2011) 37-65.

⁵⁸ Ernest Perrot, *Les cas royaux. Origine et développement de la théorie aux XIIIe et XIVe siècles* (Paris, 1910).

authorities within the kingdom.⁵⁹ In none of these cases was the expansion of royal jurisdiction a unidirectional process. The broad geographical area in which this process took place, as well as the many different local and regional authorities involved, make an explanation along the lines of a simple unopposed centralisation – which still seems to underlie much of the historiography on the *Parlement* – highly unsatisfactory.

In this light it may be revealing to zoom in on what was both the political centre of the Capetian dynasty and the most direct social and jurisdictional context of the *Parlement*, that is the city of Paris. In its development into a semi-independent law court, the *Parlement* continued to use the royal *Palais de la Cité* as a location for most of its regular business. When the kings gradually moved their main residence to the Louvre palace during the fourteenth and early fifteenth century, the *Parlement* remained behind.⁶⁰ For a long time then, the royal court had a very direct presence in the city, which, as seen above, found its reflection in the many ways in which its representatives were judicially, administratively and economically involved in the business of the city.⁶¹ Accordingly it closely cooperated with numerous other authorities claiming jurisdiction in parts of the city. Central among these were the many religious institutions, of whom the bishop of Paris was the most prominent. Although the advent of royal claims reduced these authorities' secular powers, their spiritual jurisdiction still gave them a serious influence in day-to-day practice for the inhabitants of the city.⁶²

Next to these ecclesiastical seigneurial authorities, the citizens of Paris themselves were also a party to be reckoned with. Originating in attempts by merchants to regulate commerce on the Seine as early as the twelfth century, an urban mercantile elite began to organise itself in the city during the thirteenth century and acquired competences not only in the commercial, but also more general urban administrative spheres. This municipal authority was headed by the provost of merchants (*prévôt des marchands*) and a bench of four aldermen, which also functioned as a tribunal. Based as it was in a mercantile elite, its primary jurisdiction involved commerce, but from this often followed instances of dispute resolution.⁶³ The royal administration, although gradually overshadowing the competences of these other urban authorities, seems to have preferred cooperation to outright competition over jurisdictional issues appearing in a city of this size.⁶⁴ The main royal functionary in

⁵⁹ Aubert, *Histoire* (1894) 321-346; Paul Fournier, *Les Officialités au Moyen-Age : étude sur l'organisation, la compétence et la procédure des tribunaux ecclésiastiques ordinaires en France de 1180 à 1328* (Paris, 1880) 94-127.

⁶⁰ Jean Guerout, 'Le palais de la cité à Paris des origines à 1417. Essai topographique et archéologique. Troisième et dernier article', in: *Mémoires de la fédération des sociétés historiques et archéologiques de Paris et de l'Île-de-France*, vol. 3 (1951) 7-101, at 29-30.

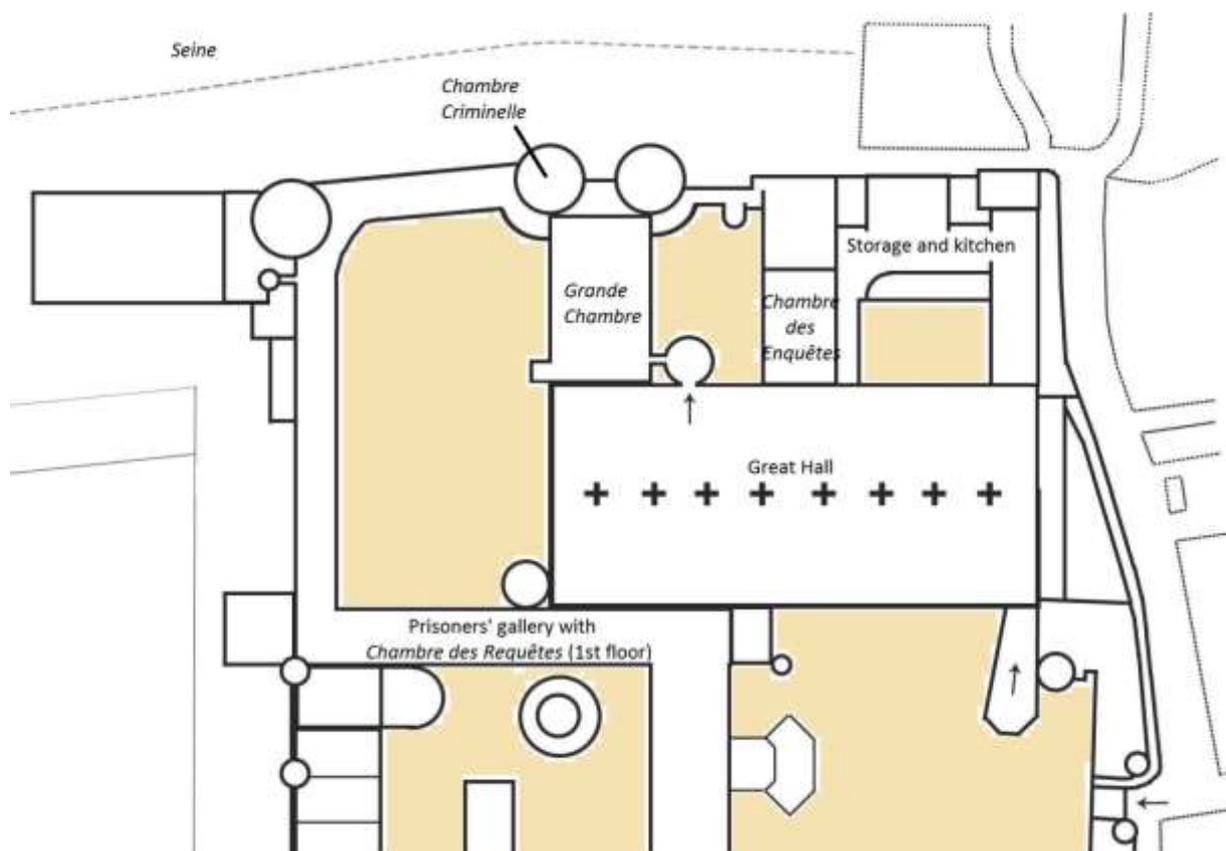
⁶¹ Aubert, *Histoire* (1894) 298-315.

⁶² Raymond Cazelles, *Nouvelle histoire de Paris. De la fin du règne de Philippe Auguste à la mort de Charles V, 1223-1380* (Paris, 1972) 225-247.

⁶³ *Ibid.* 197-218.

⁶⁴ *Ibid.* 249-250.

Paris was the provost, who seated in the *Châtelet*, which directly faced the *Palais de la Cité* on the other side of the Seine (Map 2). It was the provost who was most directly involved in the king's business in the city. But the *Parlement*, as the highest royal court and administrative body, was – both literally and figuratively – never far away. The relation between *prévôt* and *Parlement* were very close, evidenced, for example, by the latter's use of the prison of the *Châtelet*. But the *Parlement* also seems to have played a large role in supervising the functioning of the *Châtelet*.⁶⁵ So even though the judicial role of the *Parlement* in Paris itself was often an indirect one, both its physical presence and its indirect influence on royal jurisdiction in the capital make this a relevant context to consider.



Plan 1: Northern part of the *Palais de la Cité* (ca.1360). Arrows indicate the route taken into the *Palais* by litigants whose case was heard by the *Parlement*. Light brown spaces are palace courtyards.

In turning again from the *Parlement's* jurisdictional contexts to the institution itself, we see how the diversification of the royal court concretely took shape during the late thirteenth and early fourteenth centuries. Perhaps the most visible sign of the gradual institutionalization of the royal court's judicial meetings was the appearance of judicial 'chambers', individual legal bodies fulfilling a specific function within the *Parlement*, and often holding their sessions at different locations within the *Palais de la Cité*. The largest and most general of these was the *Grande Chambre*, which formed

⁶⁵ Gustave Ducoudray, *Les origines du Parlement de Paris et la justice aux XIIIe et XIVe siècles* (Paris, 1902) 703-710; Gauvard, 'Grace especial' (1991) 35.

the basis of the *Parlement*, and from which the other chambers formed mere delegations of specific functions. It was here that most cases brought before the *Parlement* were treated, in first instance as well as appeals from lower royal jurisdictions, like the bailiffs and seneschals.⁶⁶ In the thirteenth century special commissions were set up to deal with specific elements of the *Parlement's* legal process. One of these found its origins in a particular aspect of the legal process, the *enquête*, which entailed an investigation by the court in the locality where a law case originated. Although the actual investigation was often performed by local officials, the increase in case load during the thirteenth century led the royal court to appoint special commissions to hear, and also often to actively gather the local information that was required for a case, not unlike the *vive* and *keurmeesters* did in Utrecht. Around the turn of the century, these originally ad hoc commissions developed into a more permanent body, called the *Chambre des Enquêtes*. At about the same time a special room was built for this commission, making it both in a physical and organizational sense a separate body.⁶⁷ A similar development can be seen in the case of what would become the *Chambre des Requêtes*. This body received the requests for royal justice from all over the kingdom, assessing them and redirecting them to the proper judge, be it the king himself, the *Grande Chambre* or one of the bailiffs or seneschals. Again, originating in ad hoc delegations of members of the *Grande Chambre*, the *Chambre des Requêtes* developed into a permanent body, eventually also receiving its own room in the royal palace.⁶⁸ A slightly different route was taken by the body that came to be known as the *Chambre Criminelle* or *Chambre de la Tournelle*. Only in the sixteenth century does an official chamber treating criminal cases distinguish itself from the more general *Grande Chambre*. However, as early as 1312 the *Parlement's* registers make a distinction between criminal and non-criminal cases. The first were treated by a delegation from the *Grande Chambre*, which, because of the nature of its case load, was entirely made up of lay members. These would, from 1340 at the latest, gather in one of the towers of the *Palais*, close to, but separated from the *Grande Chambre* (Plan 1).⁶⁹

The diversification of the legal business of the *Parlement* was not only reflected in its formal and physical organization, but also in the production of its records. An uninterrupted series of registers survives from 1254 onwards, containing records on various aspects of the legal process, including

⁶⁶ Aubert, *Histoire* (1894) 11-18.

⁶⁷ Aubert, *Histoire* (1894) 21-33; Jean Guerout, 'Le palais de la cité à Paris des origines à 1417. Essai topographique et archéologique. Deuxième partie: de 1285 à 1350', in: *Mémoires de la fédération des sociétés historiques et archéologiques de Paris et de l'Île-de-France*, vol. 2 (1950) 21-204, at 31-32, 158-160.

⁶⁸ The *Chambre des Requêtes* was situated on the first floor of the prisoners' gallery, to the southwest of the Great Hall. Aubert, *Histoire* (1894) 34-43; Guerout, 'Deuxième partie' (1950) 161-162; Hildesheimer and Morgat-Bonnet (eds.), *État méthodique* (2011) 103.

⁶⁹ Aubert, *Histoire* (1894) 18-21; Guerout, 'Deuxième partie' (1950) 154-156; Hildesheimer and Morgat-Bonnet (eds.), *État méthodique* (2011) 19.

verdicts, inventories of legal documents and transcriptions of important letters.⁷⁰ In 1312 a separate register concerning criminal cases splits off from the first one, thus creating a tangible distinction between civil and criminal justice.⁷¹ Over the fourteenth century many new series of registers began to be produced, containing among others records of the counsel and pleading sessions.⁷² As chapter four will show in more detail, the voluminous and immensely varied documentary material surviving for the late medieval *Parlement*, highlights the latter's size and diversified character.

As the above developments suggest, the *Parlement* was operated by a large variety of functionaries, executing the many different tasks of this legal body. A few words on the types of functionaries are therefore in order. First, the basis of the *Parlement* was formed by the *gens du Parlement* themselves, the councillors connected to the different chambers that would judge the cases coming to court. These councilmen were headed by one or more presidents, among whom the presidents of the *Grande Chambre* in particular held competences that extended far beyond simply presiding over sessions.⁷³ Circling around these bodies of judges were many other functionaries with crucial roles to play in the settlement, execution and subsequent administration of legal cases. As in York, the advocates and proctors of the parties pleading their case before the court again took a prominent role. The exact distinction between them is not always clear, as the two functions were often performed by the same individuals.⁷⁴ In general, however, whereas the advocate was primarily a legal adviser, proctors functioned as actual representatives of their clients in the courtroom. Also, parties were required to make a formal request to be represented by a proctor, while advocates seem to have been considered a necessary element to any process, as they were even especially appointed by the court in cases where one was lacking for either of the parties.⁷⁵ A special category of functionaries was formed by the so-called *gens du roi*, officials who were formally linked to the king and his business, and who began to play a more important role as the person of the king became further removed from the business of the *Parlement*. These *gens du roi* consisted of the royal proctor and one or two royal advocates, who were not only the king's representatives in cases that involved

⁷⁰ These can be found as the X^{1A} series at the *Archives Nationales* (AN). The first four volumes of this series (AN X^{1A} 1-4) are often considered as a separate entity, titled the *Olim* registers. A far from perfect edition of the *Olim* was published in the nineteenth century: Arthur Auguste Beugnot (ed.), *Les Olim ou registres des arrêts rendus par la cour du roi sous les règnes de Saint Louis, de Philippe le Hardi, de Philippe le Bel, de Louis le Hutin et de Philippe le Long*, 4 vols. (Paris, 1839-1848). For a general overview of the surviving documentary material of the *Parlement*, see: Monique Langlois, 'Parlement de Paris', in: Antoine, et al., *Guide des recherches dans les fonds judiciaires de l'ancien régime* (Paris; Imprimerie Nationale, 1958) 65-160.

⁷¹ The earliest register from the AN X^{2A} series, constituting an independent series of criminal registers, begins in 1312. Before that, criminal cases were included in the more general AN X^{1A} series. Even after 1312, however, the division is not absolute.

⁷² AN X^{1A}1469-8287 and X^{1A}8300A-8386.

⁷³ Aubert (1894), *Histoire* 135-140.

⁷⁴ Telliez, *Officiers* (2005) 264-265.

⁷⁵ Aubert, *Histoire* (1894) 205-228.

royal interests, but had, especially in the case of the royal proctor, much broader competences in the area of the protection of public order.⁷⁶ In order to function properly, a law court the size of the *Parlement* required the support of a body of auxiliary staff. This included three registrars, that is the heads of the registry, one for civil cases, one for criminal cases and one for the presentations brought by the parties. These registrars were aided in their business both by paid clerks, who did not form an intricate part of the *Parlement*, and from the fourteenth century onwards by a number of notaries from the general royal registry who were specifically assigned to the *Parlement*.⁷⁷ In day-to-day practice a crucial role was also played by the so-called *huissiers*, officials who performed various tasks related to the practicalities involved in the legal process, like policing the courtroom, executing decisions by the court, summoning parties in a case, but also more mundane matters, such as making sure the court was heated sufficiently.⁷⁸

Next to these formal organizational structures the character and social background of the members of the *Parlement* also underwent a notable change. Because of its origins in the *curia regis*, the thirteenth-century *Parlement* was still very much a gathering of nobles advising the king on myriad aspects of his reign. For every session its members would be selected by the king from among the many secular and ecclesiastical dignitaries in the kingdom, including archbishops, counts and dukes. Of course actual presence in the vicinity of the *Palais* was often a criterion for selection, and there was a fairly stable basis of members who regularly acted as judges in the sessions of the *Parlement*. But in essence it was a flexible body of secular and ecclesiastical dignitaries.⁷⁹ In line with the changing character of the *Parlement* from an occasional judicial meeting of the royal court into a full-fledged institution, the character of its members also underwent a marked change. Next to the more eminent members of the *Parlement*, professional lawyers gradually took over much of the day-to-day business in court, leading to a shift of power both within the *Parlement* and within the royal administration more broadly. In a process that spanned the fourteenth and fifteenth centuries these professional administrators developed from a group of individually appointed regional representatives into a milieu of powerful recently ennobled families, hereditarily transferring the *Parlement's* legal offices to its own members.⁸⁰

Taking another step in jurisdictional size, this third profile provides us with a court that claimed to oversee the legal order of a whole kingdom. As element of the royal administration, the *Parlement* was strongly involved in the political ambitions and ideology of the French kings, providing the main

⁷⁶ Ibid. 141-175; Félix Aubert, 'Nouvelles recherches', pt.2 (1917) 58.

⁷⁷ Aubert, *Histoire* (1894) 229-248.

⁷⁸ Aubert, *Histoire* (1894) 249-260; Aubert, 'Nouvelles recherches', pt.1 (1916) 279-282.

⁷⁹ Aubert, *Histoire* (1894) 8. For edited lists of members, also see: Aubert, 'Nouvelles recherches', pt.1 (1916) 75-78, 80, 86-88, 94-95, 98-100, 107-108, 238-242, 262-265.

⁸⁰ Aubert, 'Nouvelles recherches', pt.2 (1917) 199; Autrand, *Naissance* (1981) 108, 264.

jurisdictional ground for a broader royal power claim. Like York's Consistory Court, the *Parlement* was concerned with judicial business in first instance and appeal from an immense area. At the same time, the focus of its activities lay in the city of Paris, where it echoed the Utrecht case in its large variety of extra-judicial interferences. The composition of its staff also places it somewhere between the other two courts, containing both lay and religious, and legally trained next to untrained members.

A comparative study of late medieval law courts involves recognizing both major differences and similarities among the case studies. In some respects the courts under study were very much alike. All established themselves in an urban context, usually during the thirteenth century. Each of them furthermore grew out of the judicial council of a secular or ecclesiastical ruler, which increasingly came to function independently in legal matters. In other respects, differences abound. The composition of the court, for example, differed markedly from case to case, both in its members' training, in their socio-political background and in their numbers. Whereas the Consistory Court of York was made up predominantly of university trained clergymen, the *Parlement* showed a much more varied picture, and the Council of Utrecht had no university trained nor clerical members to speak of. The same variety can be found in the specific spaces built or selected for the different courts to perform their legal business. A major difference exists between the purpose-built rooms in the royal palace where the *Parlement* held its sessions, the Consistory Court's use of a dedicated space in York's cathedral, and the various locations in Utrecht utilised by the Council to perform different parts of its legal process.

The coming-into-being and functioning of each court was shaped by a unique combination of internal and external factors. Different social, political, economic and jurisdictional contexts provided each body with specific communicative challenges. The scale of a court's jurisdiction could be a major factor. Whereas the Council of Utrecht was mostly concerned with the inhabitants of a minor settlement, York's Consistory Court and the Parisian *Parlement* dealt with an immense area containing a multitude of potential litigants and audiences. But an equally important influence was the court's relation to the broader socio-political and administrative constellation of which it was part. Forming the judicial branch of a broader episcopal administration, like the Consistory Court did, created very different circumstances from a body like the Utrecht Council, which had competences spanning the judicial, political and economic fields. Yet, as the following chapters will show, although the conditions under which each court operated were unique, their response to the communicative challenges they faced, showed striking similarities.