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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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Publication date

2017

Document Version

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Citation for published version (APA):

Camphuijsen, F. W. G. W. (2017). *Scripting justice: Legal practice and communication in the late medieval law courts of Utrecht, York and Paris*. [Thesis, fully internal, Universiteit van Amsterdam].

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Chapter two

Legal space

Between 1400 and 1416, Nicholas of Baye filled the position of civil registrar (*greffier*) of the *Parlement* of Paris. Interspersed within the court's registers for this period he made notes on many events taking place in and outside of court.¹ They often paint a very vivid picture of daily life at this court. On one occasion, for instance, he mentions a decision taken by the court on 4 June 1404 concerning the use of one of the courtrooms:

That day, because there was commotion about [the fact] that, several functionaries and strangers had seated themselves in the chambers of this present council, in order to drink in the morning in the *Chambre des Enquêtes*, and thus could perceive the secrets of the court in a manner endangering and shaming the court, and about the fact that they did this while drinking too much, at overly excessive expense, and occupied [the chamber] at the time that it was to be used for counselling. And [in addition] for other reasons which have moved the court, the latter, with the two chambers combined, has ordained that henceforth while drinking in the morning in the aforementioned *Chambre des Enquêtes* none shall spend more than eight Parisian sous. And whoever does the contrary shall suffer the indignation of this court, and will be seriously punished.²

It appears to have been common practice then to use the room where part of the court held its sessions for certain non-judicial purposes as well. From a purely practical point of view a case could certainly be made for this double use of the *Chambre des Enquêtes*. Its vicinity to the palace kitchen and storage made it a convenient gathering place at the beginning of the day (Plan 1). The passage, however, also demonstrates how the men of the court were strongly concerned with the distinction

¹ These notes are collected as the 'journal' of Nicholas of Baye in Alexandre Tuetey (ed.), *Journal de Nicolas de Baye, greffier du Parlement de Paris 1400-1417*, 2 vols. (Paris, 1885-1889). See the second volume for an extensive biographical sketch. Note that despite Tuetey's suggestion of a unified 'journal' of Nicholas of Baye, the entries constituting this 'journal' are dispersed throughout different registers, which makes it unlikely that they have originally been meant as one unified body of notes.

² AN X^{1A}1478, fol. 158r; published in Tuetey (ed.), *Journal* (1885) 90: *Cedit jour, pour ce que esclande estoit sur ce que pour boire à matin en la Chambre des Enquestes, pluseurs vallez et gens estranges se boutoient es chambres du Conseil de ceans, et povoient percevoir les secrez de la Court in periculum et scandalum Curie, et faisoit l'en trop grandes buveries, et y occupoit l'en le temps que l'en devoit employer à conseiller, et si faisoit l'en trop excessive despence, et pour autres causes qui ont meu la Court, ycelle, les ij Chambres assemblées, a ordonné que d'ores en avant pour boire à matin en la Chambre des Enquestes dessusdicte ne sera despendu plus haut de viij solz parisis, et quicunques fera le contraire encourra l'indignation d'icelle Court, et sera griefment puni.*

between the room as court space and its other possible functions, linking a breach of this distinction explicitly with encroachments on the supposed secrecy of the courtroom. There appears then to have existed a tension between the practicalities of embedding a physical court space within a multifunctional royal palace, and concerns about the status of the court and the confidentiality of its legal process.

This passage calls attention to a very central, yet often overlooked aspect of late medieval law courts, namely the physical spaces in which its officials and litigants performed the different stages of a legal process. Such spaces could vary widely, as recent literature on late medieval courtrooms attests.³ The three law courts considered in this study show a similar diversity. Whereas the *Parlement* of Paris used the royal palace for its sessions, the Consistory Court met in York's cathedral church and the Council of Utrecht employed a variety of urban structures and outdoor spaces. Yet, as I will argue, it is exactly in their relation to this physical context that these law courts showed similar concerns and practices. Discussions of the role of space, and in particular socially utilized space, often engage directly or indirectly with the work of the French sociologist Henri Lefebvre. In his elaborate *La production de l'espace*, Lefebvre takes the notion of space as an analytical instrument with which to bridge the gap between abstract theory and people's daily experiences.⁴ He argues for the writing of a 'long history of space', a history that does not necessarily distinguish between change and continuity – be it social, political, or otherwise – but incorporates both in deciphering the spaces that we inhabit by focussing on the bodily and mental processes that have shaped, and in many respects are still shaping them. That is to say that through using and mentally conceptualizing a space, people bring it into existence.⁵ These processes, so Lefebvre argues, are essentially bilateral, which means that spaces influence society as much as societies influence space.⁶ He is thus concerned with finding an alternative logic behind the spaces that surround us, a logic that challenges the consideration of space as simple background to or – at best – end result of the activities of human agents.

Lefebvre's understanding of space has not gone unchallenged. Recently Leif Jerram has criticized his work for overlooking one fundamental spatial characteristic. In his focus on the processes by which social actors produce space bodily or mentally, Lefebvre disregards the particularly material

³ Pisan communal courts were sometimes held in Camaldolese monasteries, as attested in: Cécile Caby, 'Hermits for communes. The Camaldolese in the service of the communes of central and northern Italy in the thirteenth to fifteenth centuries', in: Frances Andrews and Maria Agata Pincelli (eds.), *Churchmen and urban government in late medieval Italy c. 1200 – c. 1450. Cases and contexts* (Cambridge, 2013) 268-284, at 272. Marseillan courts convened in market stalls in front of the local church, as seen in: Smail, *Consumption* (2003) 33-34. Brundage, *Medieval origins* (2008) 421-424 shows how ecclesiastical courts all over western Europe had their seat in places as diverse as bishops' palaces and the porches and vestibules of churches.

⁴ Henri Lefebvre, *La production de l'espace* (Paris, 1974), translated as: idem., *The production of space*, trans. Donald Nicholson-Smith (Malden, etc., 1991).

⁵ Lefebvre, *Production*, trans. (1991) 113-118.

⁶ Lefebvre, *Production*, trans. (1991) 85.

character of a produced space.⁷ Instead, Jerram argues, precisely because of their material obduracy, that is the relative difficulty of changing them after they have been conceived, we cannot limit an analysis of spaces to their coming-into-being. A space, when it has come into existence, exerts a particularly strong influence on the lives of the social agents engaging with it, while its own malleability is crucially limited.⁸ In his consideration of the relation between societies and their spaces, Jerram thus reintroduces some of the fixedness of space that Lefebvre denied so vehemently. However, although Jerram makes a convincing argument for acknowledging the materiality of space, he too easily disregards the fundamental relation between this obdurate physical reality and the creative bodily and mental engagement therewith.⁹ For the one need not exclude the other. In this chapter I will therefore link Lefebvre's and Jerram's conceptions of space, to encompass both its obdurate materiality and the diverse processes of using and conceptualizing, that shaped people's experiences of it.

Two topics will be central in this chapter. The first is related to the broader development of law courts as institutions in northwestern Europe from the thirteenth century onwards. All three courts treated here developed from small groups of legal advisors into more extensive bodies of men judging various kinds of legal cases on a regular basis and producing abundant records. This development is usually traced on the basis of institutional and textual changes only, such as the influence of university trained lawyers or an increase in textual literacy. Yet together with these changes in organization and practice came another that was no less fundamental. As courts came to settle more permanently in diverse localities, the obdurate physicality of the spaces they used became a factor of particular importance.¹⁰ The first part of this chapter will therefore argue that the institutional development of the courts did not take place within a spatial vacuum. Rather, there existed a strong relationship between the way in which these courts came to use certain – pre-existing or newly built – spaces and the specific organizational form that they took over the thirteenth and fourteenth centuries. This did not only concern the buildings or outdoor spaces where sessions were held, but also the courts' relation to their broader urban context. For the fact that all three courts, at least two of which had demonstrably been itinerant up until the thirteenth century, settled in the hearts of cities, had an effect on – and was in its turn motivated by – the particular institutional form that these judicial bodies developed.

⁷ Leif Jerram, 'Space. A useless category of analysis?', *History and theory* 52 (2013) 400-419, at 411-412.

⁸ *Ibid.* 417-418.

⁹ His strict division between the terms 'space', 'place' and 'location' leaves little room for overlap between material, bodily and semantic aspects: *ibid.* 403-407.

¹⁰ Robert Jacob and Nadine Marchal-Jacob, 'Jalons pour une histoire de l'architecture judiciaire', in: Association Française pour l'histoire de la justice (ed.), *La justice* (1992) 23-68.

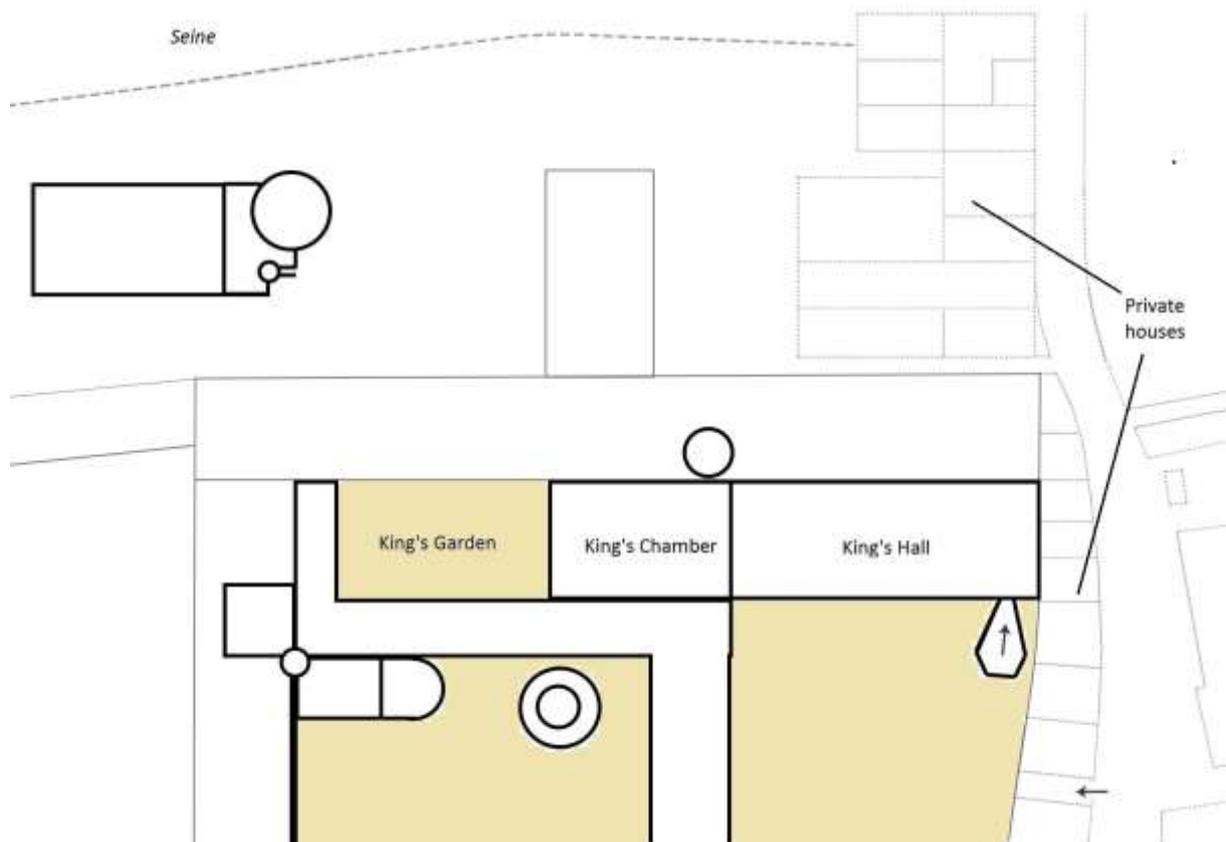
Whereas the focus of the first part of this chapter is on space as a developing material arrangement, the description of Nicholas of Baye spotlights a second matter, namely the way in which people engaged with this arrangement in daily legal practice. As the passage notes, the *Parlement* feared for an encroachment on the confidentiality of the courtroom. This contrasted markedly, however, with various other aspects of its legal procedure, which were made public very explicitly. As we will see in this and other cases treated in the second half of the chapter, the question of where people were at various stages in a legal process – that is how they used the spaces involved in the process – was of prime importance for the court. Yet a courtly engagement with the material world also encompassed the meanings that were attributed to it in the legal process. Following the consideration of people’s physical interaction with court spaces, we will therefore regard the ways in which these and other material arrangements, including such features as city walls, roads and churches, returned linguistically in the business treated in court and were thereby employed in the broader endeavour of suggesting meaning in and through the legal process. In tracing both the development of court spaces and their multifarious involvement in the daily legal practice of the courts under consideration, this chapter will trace the spatial contours of the acts, texts and human agents that form the subject of later chapters.

The court as space

The *Parlement* of Paris provides by far the clearest example of the interdependency of the development of court space and the court as institution. In his elaborate study of the *Palais de la Cité*, Jean Guerout gives us an idea of the major architectural changes taking place in the royal palace at the end of the thirteenth and the beginning of the fourteenth century. When, from the eleventh century onwards, the *curia regis* began to use the *Palais de la Cité* for some of its public meetings, it usually met in the *aula regis*, the King’s Hall, dating from the reign of Robert the Pious (r. 972-1031).¹¹ This hall, forming one of the central buildings of the royal palace up until the thirteenth century, seems to have had a variety of uses, also functioning, for example, as a dining hall for the servants of the palace. In the second half of the thirteenth century, however, the judicial sessions of the royal court were no longer held in the King’s Hall, but instead moved to what was called the Pleading Chamber or King’s Chamber, a separate structure on the west-side of the King’s Hall consisting of two floors (Plan 2). Both of these floors had allegedly a double function, catering for the personal needs of the king as well as for the different types of judicial sessions of his court. The lower floor was used for the sessions of public pleading, but also functioned as the king’s personal dining room. In a similar way the upper floor was not only the king’s bedroom, but also the place where the

¹¹ Guerout, ‘Première partie’ (1949) 132.

non-public counsel sessions of the court were held. The King's Hall was now used primarily as a waiting room for those summoned to court to plead their case.¹²



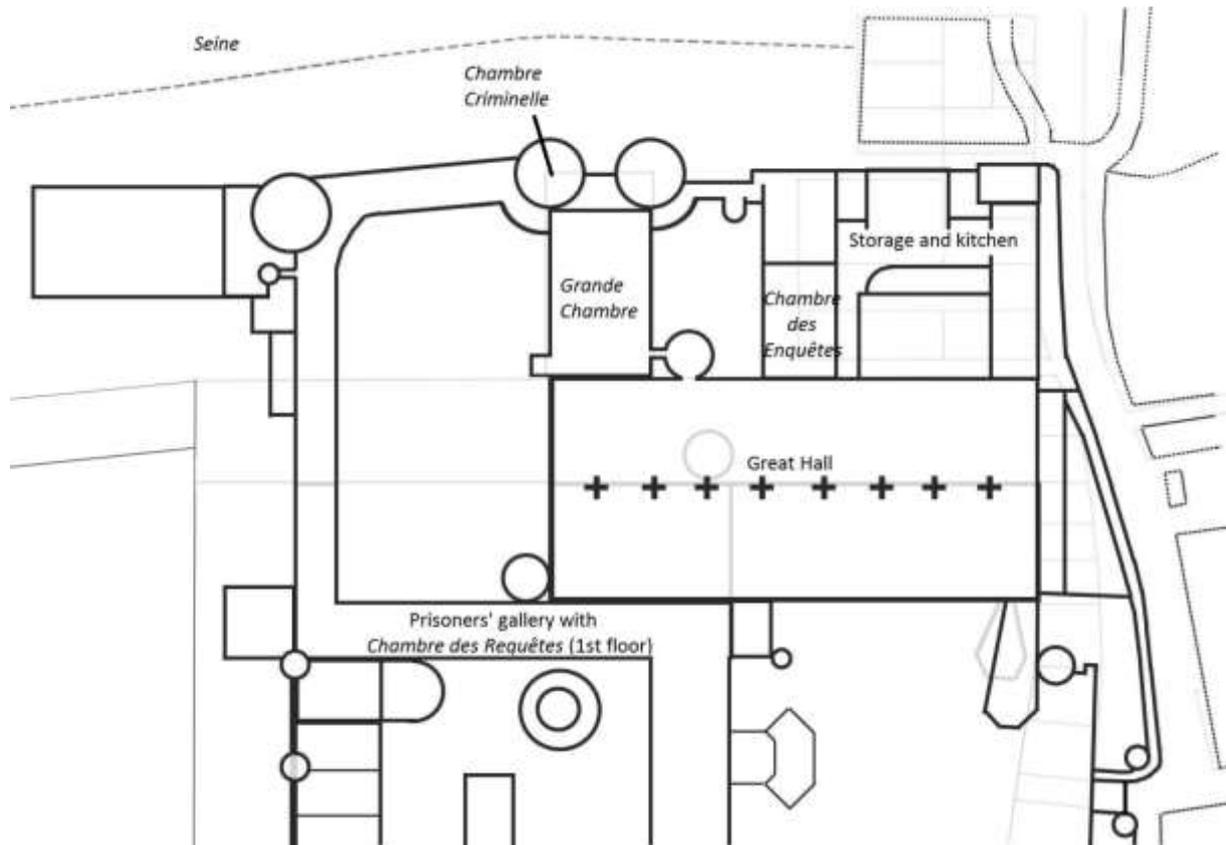
Plan 2: Northern part of the *Palais de la Cité* (ca.1292). Arrows indicate the route taken into the *Palais* by litigants whose case was heard by the *Parlement*. Light brown spaces are palace courtyards.

More fundamental changes took place at the beginning of the fourteenth century, when the large rebuilding campaign of the *Palais*, initiated by Philip the Fair (r. 1285-1314) and covering the first two-and-a-half decades of the century, changed the face of the royal palace, and especially of those parts where the *Parlement* would go about its daily business (Plan 3). First, the King's Hall was expanded to three times its original size, and was henceforth appropriately called the Great Hall. This Great Hall consisted of two floors, of which the lower one was mainly used as a dining room for the palace community. The upper floor, which could be reached directly from outside by means of a landing, was used for very diverse activities, ranging from banquets to the saying of mass. But it seems also to have kept its role as a waiting chamber for the *Parlement*, judging by the presence of royal notaries in the hall.¹³ The main activities of the *Parlement*, which were to listen to pleas and to deliberate over cases, were moved to a new location, just north of the old Pleading Chamber. This *Grande Chambre*, bordering on the Great Hall and constructed at about the same time, gave its name to the main body of judges who formed the basis of the *Parlement*. The double function of the old

¹² Ibid. 176-177.

¹³ Guerout, 'Deuxième partie' (1950) 30-31, 130-131, 138-143.

pleading and council chambers was not continued in this new layout. On the contrary, whereas in the old *Palais royal* and court spaces strongly overlapped, in the new layout the living quarters of the royal household were moved to the south of the *Palais* complex, thereby creating a separation between the activity of the *Parlement* and of the person of the king. There would remain a certain royal presence in the *Grande Chambre* through the inclusion of a throne, the *lit de justice*, but the close physical association between the king's private life and his public judicial functions was terminated (Plan 5).¹⁴



Plan 3: Northern part of the *Palais de la Cité* (ca.1360), showing *Palais* layout of ca.1292.

Another institutional division that was given physical shape in the new layout of the *Palais* was that between the main body of the court, the *Grande Chambre*, and the delegated bodies performing specific judicial functions, which eventually developed into more or less independent 'chambers' of their own. When the *Chambre des Enquêtes* was first explicitly separated from the *Grande Chambre* in 1308, this closely followed the creation of a physically separate space for the formerly delegated

¹⁴ Ibid. 31-32, 36-37, 145-152. Over the fourteenth century the term *lit de justice* came to be used for a type of special court sessions at which the king did preside the *Parlement* in person. See: Elizabeth A.R. Brown and Richard C. Famiglietti, *The lit de justice. Semantics, ceremonial, and the Parlement of Paris 1300-1600* (Sigmaringen, 1994), 11-30. This tradition of extraordinary sessions in the king's presence is in line with my argument made in chapter five, that, despite the physical and practical separation of king and *Parlement*, ideologically the link between the two remained of prime importance.

parliamentary commission treating the court's inquiries.¹⁵ And the same close relationship between court and court space can be seen in the case of what would become the *Chambre Criminelle*. Long before this special commission was formally separated from the *Grande Chambre*, it already constituted a de facto separate body because of its distinct place of operations, namely the tower that became known as the Criminal Tower.¹⁶ The *Chambre des Requêtes* also originated in a delegated commission of the *Grande Chambre*. But when a royal ordinance of 1364 formalized its status as a separate judicial body, this was combined with a move of its members to a separate location on the second floor of the *Galerie des Prisonniers*, to the south of the Great Hall.¹⁷ The major institutional changes of the *Parlement*, both in its relation to the person of the king and in its internal organization, were thus closely intertwined with the physical development of the *Palais de la Cité* in the late thirteenth and fourteenth centuries.

Whereas the *Parlement* of Paris was closely tied up with the royal palace, one of the salient features of the Consistory Court of York was its use of the northern transept of the cathedral church as a location for its sessions (Plan 4). Like numerous cathedrals and other major building projects across Europe, this church was under constant construction between the thirteenth and fifteenth centuries.¹⁸ From the 1220's onwards a large renovation campaign would change York's old Norman cathedral church into the Minster that is still visible today (Map 4, 5 and 6). Work was initially begun on the transepts, and the northern one of these was supposedly finished around 1255.¹⁹ There exists a chronological gap between the completion of the northern transept and the first recorded mention of a 'consistory place' (*locus consistorii*) in the archiepiscopal register of 1311.²⁰ However, the date, circumstances and character of the expansion of the Minster provide several arguments to consider the physical development of the cathedral church to be closely related to the institutional diversification of the archiepiscopal administration, which saw the evolution of a fixed and semi-independent law court like the Consistory Court.

¹⁵ Aubert, *Histoire* (1894) 23; Guerout, 'Deuxième partie' (1950) 31-32, 158-160.

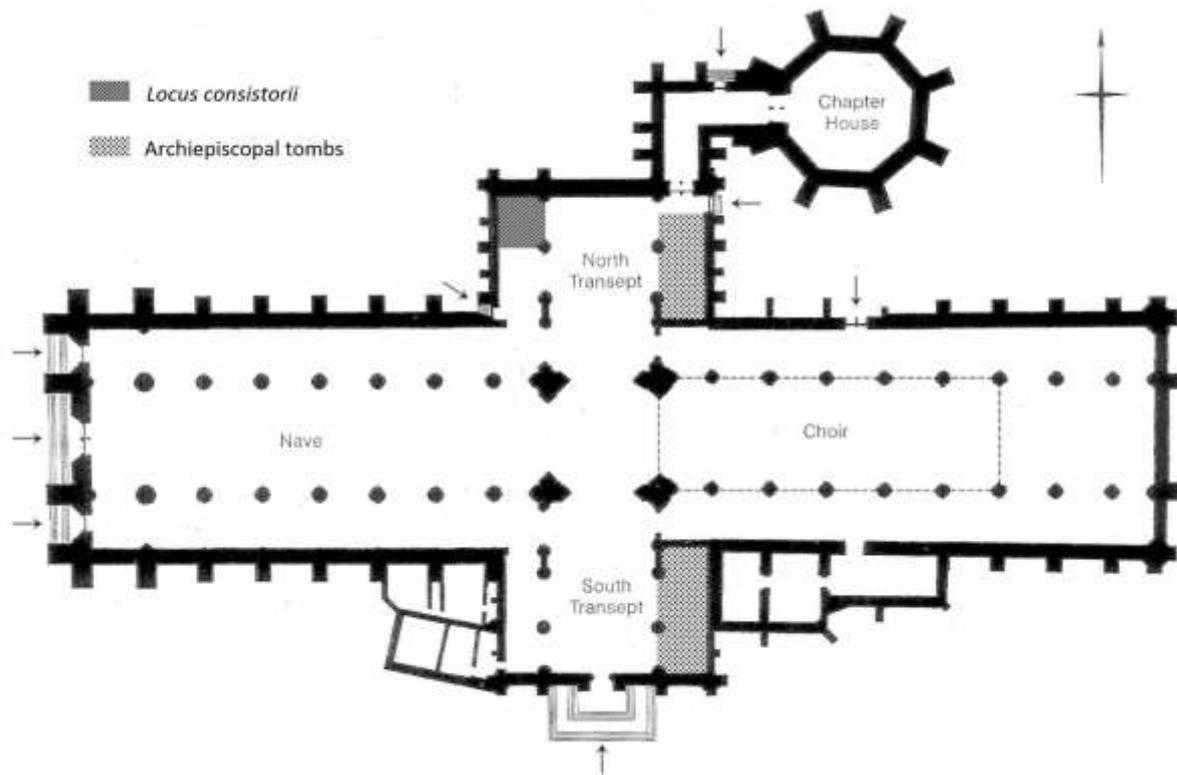
¹⁶ Aubert, *Histoire* (1894) 18-19; Guerout, 'Deuxième partie' (1950) 31-32, 154-156.

¹⁷ Aubert, 'Nouvelles recherches', pt.2 (1917) 185-187; Guerout, 'Deuxième partie' (1950) 161-162.

¹⁸ For an excellent analysis of this practice of 'building-in-time', see: Marvin Trachtenberg, *Building-in-time. From Giotto to Alberti and modern oblivion* (New Haven and London, 2010) esp. 103-283.

¹⁹ Brown, *York Minster* (2003) 13-16.

²⁰ Noted in the records of a case regarding the election of a prior for Hexham in the register of archbishop Greenfield, published as entry 565 in: Brown and Hamilton Thompson, *William Greenfield* (1931) 239-244, at 240. The oldest mention of a *locus consistorii* explicitly located in *maiori ecclesia Eboracensis* (that is York minster) dates only to 1326, and is contained in a cause paper from 1328: BIA CP.E.18. The latter is also partly published in: Richard Helmholz, *Marriage litigation in medieval England* (Cambridge, 1974) 191-195. See p. 195 for the reference to York Minster. Unfortunately no medieval plans exist to confirm the position of the Consistory Court in the Minster's northern transept. However, surviving plans from the seventeenth and eighteenth century clearly situate the Consistory Court in that place. Only in the nineteenth century did the court move to another location, namely the former treasury built against the south side of the western choir. For reproductions of these plans, see Brown, *York Minster* (2003) 271-274.



Plan 4: York Minster (late fifteenth century). Arrows indicate entrances into the Minster from outside.

Explanations for the major building works on the Minster, initiated under archbishop Walter de Gray (r. 1216-1255), usually focus on its function as a religious centre. The many archiepiscopal tombs that came to occupy the eastern aisles of both transepts, have been read as evidence for the liturgical, memorial and propagandistic motivation behind this early expansion of the old Norman cathedral. Following a peak in the popularity of saints' cults in the late twelfth and early thirteenth century, the archbishop decided to expand the cathedral's transepts to promote the Minster as a prominent place for pilgrimage.²¹ However, the western aisles, lacking any tombs or other signs of pilgrimage activity, play a less evident role in this explanation. At the same time, the general rarity of double-aisled transepts in churches of this period does suggest a specific idea behind their construction.²² Several elements, such as the integral wall benches running along their walls, make it feasible that they were meant to be places of assembly. More specifically for the northern transept, a small door, giving easy access from the archiepiscopal palace in the Minster close, confirms the idea that this part of the church was constructed with the idea of catering for assemblies that required the presence of the archbishop or his officials.²³ Given the expansion, diversification and establishment of the archiepiscopal administration that took place in this same period, the specific architectural development of this part of the cathedral therefore seems to point at a role in

²¹ Brown, *York Minster* (2003) 11-13.

²² *Ibid.* 34-43.

²³ *Ibid.* 35.

facilitating the establishment of administrative bodies like the Consistory Court, by providing them with a permanent space to congregate in. Although it is hard to prove that the construction of the new transepts was done with its specific use by the Consistory Court in mind, the character and context of this initial expansion of the Minster does suggest an intricate link between the changes that took place in the built environment and developments in the archiepiscopal administrative system more broadly.

The Council of Utrecht for its part held many of its regular sessions in the building called the *Schoonhuis*. Information on this building is unfortunately very scarce.²⁴ Constructed in the second half of the thirteenth century, it had a variety of functions, which were facilitated by its division into two floors. The ground floor served as market hall for cloth merchants from early on, while the second floor was used by the Council for its sessions. This combination of functions was not unusual in medieval Utrecht, as the use of city gates and guild houses as city prisons attests.²⁵ Nor should it surprise us to find economic and legal-political functions combined, seeing that the members of the Council originally came from the old mercantile elite of the city. What remains unclear, however, is in how far the construction of the *Schoonhuis* already took into account its use by the Council. The interdependency, seen for the *Parlement* and the Consistory Court, between the development of a judicial institution and the physical conception of the spaces it used as courtroom, is largely absent in the case of Utrecht. Rather, the appropriation of existing structures – from market halls and guild houses to city gates – seems to have been a more common practice for the Council and related administrative bodies.

The picture sketched so far is varied. In some cases, like the early fourteenth-century *Grande Chambre*, the court's spaces were specifically constructed with their judicial function in mind. In others, they appeared as part of broader building activities, such as the western aisles of the new transepts of York Minster. But often courts would also appropriate existing spaces. This was true for many of the structures used by the Council of Utrecht, but can also be seen in the case of the *Parlement* before the major building campaign under Philip the Fair. There is thus not one ready-made explanation or trajectory for the physical development of courtrooms, as each situation was shaped by particular factors. Social or political circumstances influenced the possibilities for the construction of a specific physical environment, as the major works in Paris and York have shown. Yet, at the same time, such factors were not the only – nor necessarily the decisive – influence on the

²⁴ The little that there is can be gathered from: Tarquinus J. Hoekstra and A.F.E. Kipp, 'Archeologische en bouwhistorische kroniek van de gemeente Utrecht over 1984', in: *Maandblad Oud-Utrecht* 58.4 (1985) 41-191, at 174-175; Martin De Bruijn, *Husinghe ende hofstede. Een institutioneel-geografische studie van de rechtspraak over onroerend goed in de stad Utrecht in de Middeleeuwen* (Utrecht, 1994) 279, 349; Van Vliet, 'Burgers' (2000) 91, 147.

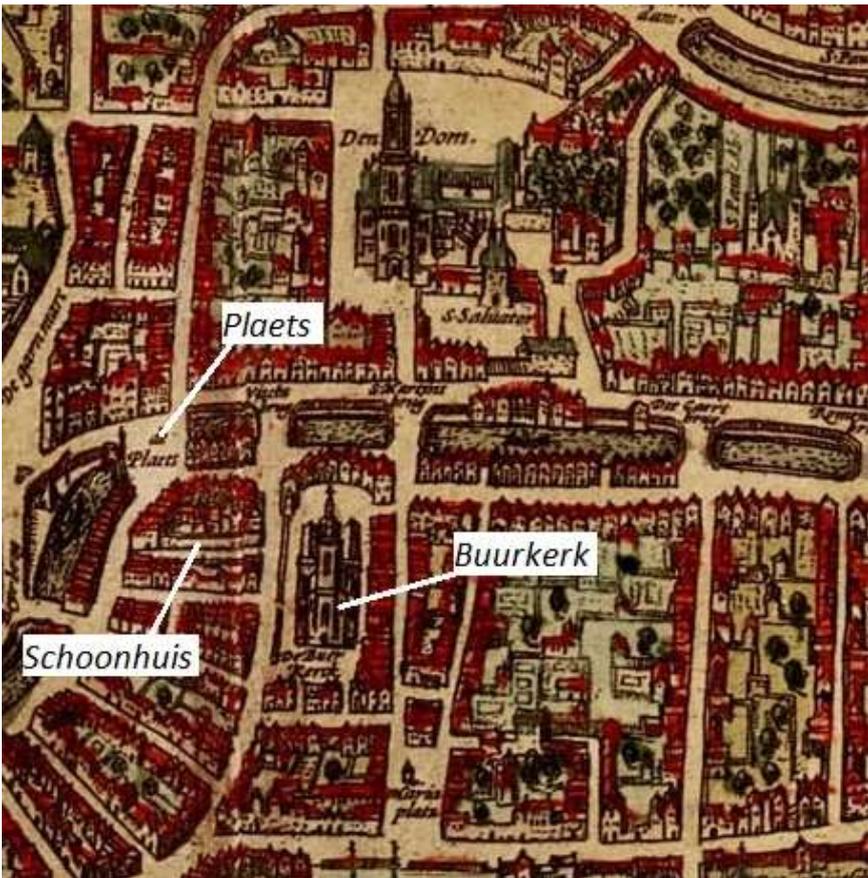
²⁵ Van den Hoven van Genderen, 'Toppunt' (2000) 130.

constitution of the court. Spaces themselves, through their obdurate physical character, could not be adapted at will. The large spatial reconstructions in Paris and York, were only possible through large amounts of resources and time. Often appropriation of an existing space was the more feasible option. Thus the obdurate physical context within which courts came to operate had an influence on their organization and daily practice that was just as defining as social, political or other factors may have been. This becomes even clearer when zooming out to consider the physical context beyond the courtroom itself.

Courts and urban space

The courts’ relation to their spatial environment entailed more than the construction or appropriation of a specific building or room where people gathered in session. All three courts, regardless of the scale of their jurisdiction, functioned in an urban context, which had a particular influence on their development and daily practice. This was most prominently so for the Council of Utrecht. Its legal activity was far from limited to its sessions in the *Schoonhuis*. Instead, it involved

many different structures and spaces within the city, especially in the governmental hub in the north-eastern corner of the old trade settlement, the *Stathe*. Here one could find central communal buildings like the *Buurkerk*, the *Schoonhuis* and the *Hasenberg* house, as well as central open spaces, like the *Plaets* and the churchyard in front of the *Buurkerk* (Map 3). Other spatial features of late medieval Utrecht, like its walls, roads, stairs and canal, were also linked to



Map 3: Detail of sixteenth century map of Utrecht, showing locations of Council activity.

the Council’s legal activity. Taking into account that the Council formed Utrecht’s central political and legal authority between the thirteenth and fifteenth centuries a spatial history of the Council is thus very much concerned with the relationship between the growth of an independent, guild-based,

urban government and the development of the city space as a whole. Broadening our view to incorporate this urban context also leads us to consider more than just the physically built space. The relationship between law court and city involved many abstract forms of spatial division, such as jurisdictional boundaries, although these could be and often were linked to concrete physical structures.

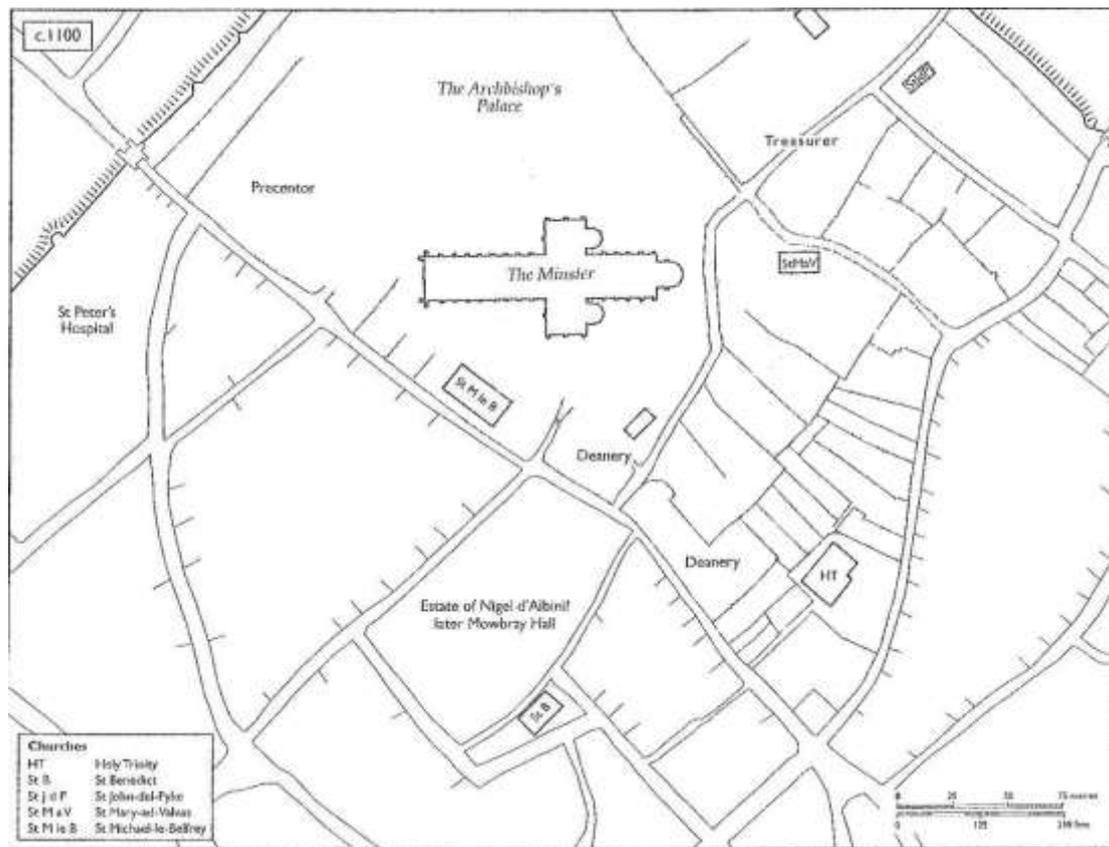
In 1122 Emperor Henry V issued two charters to confirm and expand on several earlier privileges granted to the city of Utrecht by its bishop. These charters, limited as they are in information about the exact privileges, already show a clear link between the community's political, economic and legal privileges and its urban environment. Central in these documents was the city wall, which began being built around the same time. The charters granted freedom of toll to those who would contribute to building the city wall and submitted those who would come to trade within the city limits to the jurisdiction of the aldermen. Later additions to these privileges, like the *ius de non evocando* of 1252, that is the right of citizens to be judged only in their own court, also stressed the physical space of the city, and especially the city wall, as a main reference point for the legal framework of the urban community's powers of self-governance.²⁶ These powers, however, did not stop at the city wall. In an increasingly large area outside the wall, called the city's 'liberty' (*stadsvrijheid*), the urban government began to claim a degree of jurisdiction. Measures like the freedom of toll and the responsibility to work on the city wall concerned people living both within the city itself and within this liberty. And at some point its boundaries were even physically delineated by means of free-standing gatehouses like the *Gildpoort* or the *Pellecussenpoort*.²⁷ Both inside the city wall and outside in the liberty, physical and legal delineation went hand in hand. As the Council came to constitute the main urban authority in Utrecht, many of its power claims were articulated spatially. The most important exceptions to the Council's jurisdiction, the spiritual immunities within the walls and the extra-mural *buitengerechten*, were based on geographically defined areas, demarcated by specific streets and other geographical features.²⁸ Furthermore, the guild-based character of the Council's authority also found its spatial reflection in the city. The sources draw explicit links between the legal status of citizens, their guild membership and the caretaking of important urban locations. This took different forms, like the guild-based patrolling of parts of the city walls or the phenomenon that in many cases people received citizenship on the basis of their promise to take care of the maintenance of a certain bridge or public stairway in the city.²⁹ Thus the city's morphology – both in a concrete physical and more abstract organizational sense – attested to the changing role of this legal and political authority vis-à-vis the urban community.

²⁶ Van Vliet, 'Burgers' (2000) 75-79.

²⁷ René de Kam, *Dwars door Utrecht. Opgravingen langs de HOV-busbaan* (Utrecht, 2003) 144-145.

²⁸ Van den Hoven van Genderen, 'Toppunt' (2000) 119-120.

²⁹ *Ibid.* 127-132.



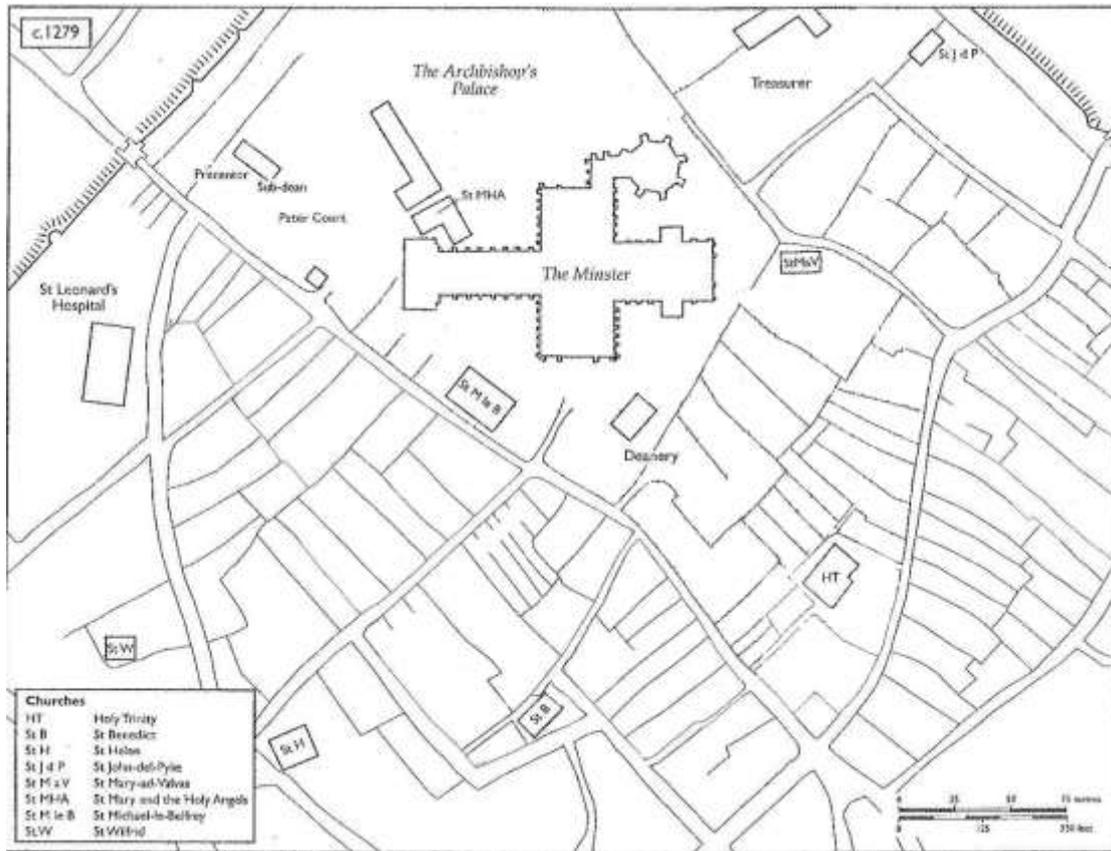
Map 4: York Minster and its direct surroundings ca. 1100.

Such mutual influence between administrative changes and the physical and abstracted urban context can also be seen in the other two cases. In her recent study of land ownership and urban development in medieval York, Sarah Rees Jones stresses the important role played by what she calls the ‘Minster community’ in shaping and defining the face of the city in the period up to 1350. Between the twelfth and fourteenth centuries, the York Minster came to form the focal point of a community of – self-proclaimed – religious specialists, who represented the archiepiscopal authority in the city. Through the delegation of administrative, religious and judicial competences, the archbishops transferred much of the growing burden of responsibilities that their position had come to entail to such functionaries and bodies as the dean and chapter of York or the official and his Consistory Court, all situated in or around the Minster.³⁰ During the thirteenth and fourteenth centuries, the Minster community attempted to maintain or even increase its role in the city, in which other authorities – the king, but also the civic government – contested its position.³¹ Such power conflicts were concerned with urban space both in an organizational and directly physical way. For example, in order to promote the Minster’s presence, many smaller churches were incorporated

³⁰ Sarah Rees Jones, *York. The making of a city 1068-1350* (New York and Oxford, 2013) 140-142.

³¹ Palliser, ‘Civic liberties’ (1997) 98-100; Rees Jones, ‘Civic administration’ (1997) 120-121.

within a developing parochial system, subordinating them to the courts of the archbishop and other ecclesiastical authorities.³² And in a more directly physical way, the reconstruction campaign of the cathedral and its direct surroundings also showed the attempt at defining and spatially visualizing the Minster community within the city. The cathedral formed the cornerstone of what was in a way the physicalization of its community within York's urban landscape. At the same time that the Minster

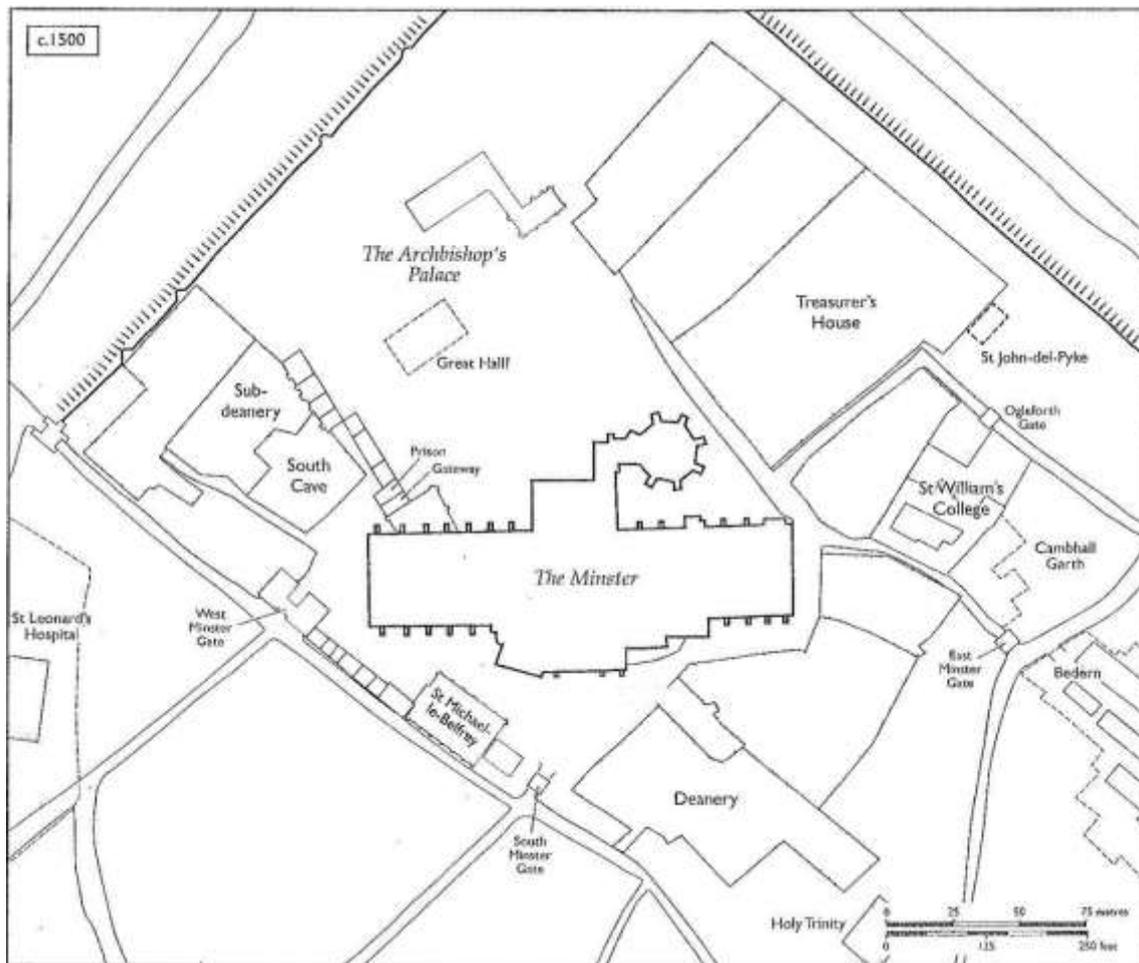


Map 5: York Minster and its direct surroundings (ca.1279). showing the beginnings of an enclosed area to the north of the cathedral church.

was being rebuilt, the precinct around it also went through fundamental spatial changes, forming a more strictly demarcated area within the city walls. This precinct, which from the late thirteenth century onwards became known as the Minster Close, was separated from the surrounding city by means of blocks of houses, with access limited to several gateways (Maps 4, 5 and 6). Within, one could find many of the central residential and administrative buildings of the Minster community, like the archiepiscopal palace, the deanery, the treasurer's house and of course the cathedral itself, thereby forming a distinctive and demarcated ecclesiastical hub in the midst of the city.³³ The Minster community, including the resident Consistory Court, thus made a clear mark on the face of the city, both by building, rebuilding and reorganizing the spaces in which it operated.

³² Rees Jones, *York* (2013) 152-153.

³³ *Ibid.* 143-145.



Map 6: York Minster and its direct surroundings (ca.1500), showing the Minster close as separated area, including several gateways.

Turning our attention to Paris, we can see that the extension of the *Palais de la Cité* also had a very direct influence on its spatial surroundings. In order to be able to enlarge the *Palais*, more space was needed in an area that had over the years become clogged with houses and stores. The first step in the project of extending the *Palais* therefore consisted of the expropriation and razing of many privately-owned buildings in its direct surroundings (Plan 2 and 3). This required making some major financial arrangements with expropriated house owners, the records of which still survive.³⁴ In addition, the main road in front of the *Palais* was narrowed, to allow for larger palace buildings.³⁵ With the major rebuilding project begun under Philip the Fair, the king and his court thus intervened in a very direct way in the surrounding urban space. But it was not just the *Île de la Cité* where the permanent presence of the royal court could be felt. At least since Philip Augustus (r. 1180-1223), the kings' focus on Paris as their capital meant that they were particularly concerned with its built environment. The erection of the first city wall by Philip Augustus in the decades around 1200 is a case in point. The influence of this wall on the built space in the city – creating for example a clear

³⁴ Guerout, 'Première partie' (1949) 185-212.

³⁵ Guerout, 'Deuxième partie' (1950) 41-42.

physical distinction between the city and its numerous suburbs – represented a strong royal power claim vis-à-vis other urban authorities, like the Parisian archbishops. Later kings would continue to be actively involved in shaping and maintaining their urban environment, for example by stimulating settlement within the walls and reorganizing the city’s administrative structure.³⁶ When, from the late thirteenth century onwards, the *Parlement* as a semi-independent body came to exercise a portion of the king’s competences, many of these directly concerned the city. One important role of the *Parlement* was to oversee the guarding and maintenance of several city roads, bridges, fountains and public monuments. Other space-related matters in which the *Parlement* was involved concerned public health – like prohibitions on the free movement of sick individuals – or the movements of social marginals, like prostitutes and vagabonds.³⁷ Furthermore, at least from the end of the thirteenth century, the sources show us how conflicts concerning real estate in the city of Paris would, in some instances at least, be brought before the *Parlement*.³⁸ The influence of the king and his *Parlement* on the built environment was not only the result of their active involvement in the affairs of the city. As the royal court settled more permanently on the *Île de la Cité*, its presence felt throughout the city. An administrative body of this size attracted many individuals, both members of the institution itself and people who were in some way or another connected to its activities, from people whose case was appearing in court to artisans selling their wares to the royal household and its visitors. Much of the intensive building activity that can be witnessed during the thirteenth and early fourteenth century in the city was connected to the presence of a large royal administration that gradually made Paris its permanent place of residence.³⁹ Notably, the available evidence of the houses that were built in Paris by members of the royal administration does not limit them to one specific area.⁴⁰ This may indicate that, from a spatial point of view, the community of administrative specialists in Paris settled in many different areas within the city and was less separated from its surrounding urban community than the settlement pattern in the York case suggests.

To recap, zooming out from the development of the courtroom itself, it becomes clear that in all three cases considered here the groups and institutions that brought forth the courts – be it a royal administration, an ecclesiastical community or an urban elite – had a longstanding relation to and

³⁶ Cazelles, *Nouvelle histoire* (1972) 13-19.

³⁷ Aubert, *Histoire* (1894) 298-301.

³⁸ See for example a case from 1287, noted down in the second volume of the *Olim* register, where the conflict between a canon from Noyon and a citizen of Paris over possession of several houses in Paris is arbitrated by the *Parlement*; AN X^{1A}2, fol. 78v. Also see: Edgar Boutaric (ed.), *Actes du Parlement de Paris. Première série: de l’an 1254 à l’an 1328*, vol.1 (1863) 255. Another example can be found in a royal letter contained in the criminal register of the *Parlement*, which is concerned with the construction of a house by the physician Pierre de Narbonne, that extended too far up the street and therefore needed to be taken down: AN X^{2A}3, fol.141v.

³⁹ Cazelles, *Nouvelle histoire* (1972) 19-23, 33-39.

⁴⁰ *Ibid.* 19-23.

interest in the urban context. Both in an abstract jurisdictional and concrete physical sense, the interests of these groups were promoted throughout the city, be it by engaging with the affairs of its inhabitants or constructing and appropriating visible landmarks. Consequently, when the courts developed into more-or-less independently operating bodies during the thirteenth and fourteenth centuries, they framed their interventions with the urban environment. At the same time, the logic behind the coming-into-being of the courts themselves was also strongly related to this same environment, even when they were not primarily concerned with the urban community, as was the case in Utrecht. Both in York and Paris an originally itinerant body eventually fixed its place of residence in one city. These moves can be explained by the locational permanency that growing textualized caseloads required. Yet cities proper, as entities that for several centuries had seen a significant population increase, also formed the stage par excellence where legal authorities could showcase their claim to a specific role in the socio-legal constellation. It is against this background, that is courts' concern for people's experience of the legal process, that we now move from the spatial history of these institutions' advent, to the role of space in their daily practice.

Spatial practice and accessibility

In the foregoing we have considered the court space and its broader urban context primarily in relation to the institutional formation of law courts. In this view, space remains by and large a passive background against which social actors perform their daily activities. However, the physical environment in which these law courts operated was also integral to their legal activities. Drawing on Lefebvre's terminology, the law court can be seen as a 'social space', inherently linked with social relations and their development. Social space is not to be seen as an empty container of social actions, but rather as something shaped by – and in its turn shaping and defining – social relations.⁴¹ In what follows, I will argue that the spaces related to late medieval law courts formed an integral part of the activities – and in particular the communicative activities – of the courts. As seen in the passage by Nicholas of Baye at the beginning of this chapter, a major concern of the *Parlement* centred on the tension between the publicity and confidentiality of different parts of its legal process. The fear expressed in this passage for an encroachment on the 'secrets of the court' signals a more fundamental issue of accessibility, attested for all three courts. Accessibility in this sense comprised the different ways in which the legal process could be experienced, be it visibly, audibly, or otherwise. As will become clear, these concerns of the courts were often strongly connected to their spaces of operation, and as such shaped the way in which the courts involved their spatial contexts in daily practice and used them to define people's legal competence.

⁴¹ Lefebvre, *Production*, trans. 85.

A very explicit discussion of the uses made of the space of York Minster is found in a mandate from archbishop Zouche from 13 February 1349. In it Zouche reacts to an incident of several days earlier in which a group of people had entered the cathedral church behaving in a noisy and disrespectful manner. This leads the archbishop not only to summon the rabble-rousers before him under threat of excommunication, but also to proclaim explicitly the way in which the Minster space ought to be used. In turning vehemently against any kind of disturbance of the divine office, be it through noise or other forms of contempt for the solemnity of the place, he defines several forms of speech that should not be performed in the church, that is *contumeliae* (disrespectful speech), *contentiones* (disputes), *publica parlamenta* (public assemblies) and *profana colloquia confabulationis* (profane speech assemblies).⁴² Zouche's reaction spotlights the problem of a space where solemnity was supposed to reign, but that had a large variety of practical functions, including catering for the sessions of the Consistory court. The Minster thus formed the locus of a variety of partly interlocking, partly incompatible practices.⁴³

In considering the legal practice of the Consistory court within the Minster, the spatial practices within the cathedral as a whole take centre stage. With its gradual (re)construction over nearly three centuries, the late medieval Minster came to encompass different types of interconnected spaces, with different degrees of public accessibility (Plan 4). On the one hand there were those like the late thirteenth-century Chapter House, the octagonal building to the north of the main cathedral building. This structure was used primarily for meetings of the cathedral chapter, although it also occasionally housed other assemblies. The Chapter House was connected to the north transept of the Minster by means of an L-shaped passage, separated from the main building by means of a double door.⁴⁴ This area of the Minster, physically separated and predominantly used for non-public gatherings, offered very limited accessibility to most people. Other parts of the Minster were, on the contrary, more accessible. Areas like the southern transept, containing the main entrance to the cathedral, and the nave, used as it was for religious services, had on many occasions a more open character. On most occasions people could – and were perhaps even expected to – freely access these spaces from outside the cathedral. Unsurprisingly, most of these areas were located on the south side of the Minster, which faced the city, while the north side was oriented towards the Minster close. These areas of the church saw major public activity, like the performance of religious

⁴² Published in: James Raine (ed.), *Historical papers and letters from the northern registers* (London, etc., 1873) 397-399. Also see: Barrie Dobson, 'The later Middle Ages 1215-1500', in: G.E. Aylmer and Reginald Cant, *A history of York Minster* (1977) 44-109, at 44, for an extensive treatment of this episode.

⁴³ Dobson, 'Later Middle Ages' (1977) 84-86, lists a variety of uses to which the minster space could be put, including the paying of rents, the deposition of valuables for safekeeping, and various kinds of political assemblies.

⁴⁴ Brown, *York Minster* (2003) 46-85, esp. 58.

ceremonies and the movement of large numbers of pilgrims, attracted as they were by the chapels of various saints and the remains of several notable archbishops.⁴⁵

Of particular interest here is a third category of spaces, which had a semi-public character. The northern transept fell – at least partially – within this category, as did the choir. The physical separation of such spaces from the freely accessible areas of the cathedral was less absolute than in the case of the chapter house. Essentially, they formed part of the same physical space, located under the same roof and without thick stone walls separating them from other parts of the minster. But they could on occasion be divorced physically from the surrounding church space. The choir, for example, could be closed off by means of a portal.⁴⁶ As regards the *locus consistorii*, for the seventeenth century there is evidence of wooden screens used to separate this area from the surrounding church and create a semi-secluded space.⁴⁷ Even when we assume that such screens were already in use in the medieval period, it is unlikely that such a separation of the *locus consistorii* was very absolute. Although the screens may have reduced visibility, sound could pass from the outside to the inside and vice versa, creating a partly separated, partly accessible area dedicated to the legal process.

In attempting to grasp the logic behind such a semi-secluded space, it is helpful to briefly return to the role of the Minster within its broader urban context. The Minster formed the physical centrepiece of the so-called Minster close, where a religious community had its base of operations. Where the close as a whole served to distinguish between the spheres of lay and spiritual activity, the Minster seems to have functioned as intermediary space between both worlds. It was here that ordinary believers met and interacted with diverse religious specialists, be it in the context of a religious service, or other social activities. Within these spatial economies of the Minster as a whole, the north transept above all had a role as intermediary space. This is, for example, evidenced by the many small entrances leading from the Minster close into the north transept.⁴⁸ Whereas a lay public would enter the cathedral from the south, the religious residing in the Minster Close had their own entrances from the north, turning the Minster's northern transept into the logical meeting point of two separate but also inherently intertwined and co-dependent worlds. That the Consistory Court held its sessions in such a place therefore highlights its concerns over controlling the accessibility of the legal process.

⁴⁵ Dobson, 'Later Middle Ages' (1977) 85-86; Brown, *York Minster* (2003) 36-43.

⁴⁶ Archbishop Zouche's mandate mentions *ostia chori* (the choir's doorways), which were closed after the divine office was finished *ut moris est*. See Raine (ed.), *Historical papers* (1873) 398. The current enclosed choir was only finished in the fifteenth century. See Brown, *York Minster* (2003) 168-215.

⁴⁷ As shown on the map in: Brown, *York Minster* (2003) 274.

⁴⁸ That is the door on the westside of the transept, leading to the *locus consistorii*, a door on the eastside, and the double doors between the main cathedral and the vestibule of the chapter house. See: *ibid.* 274.

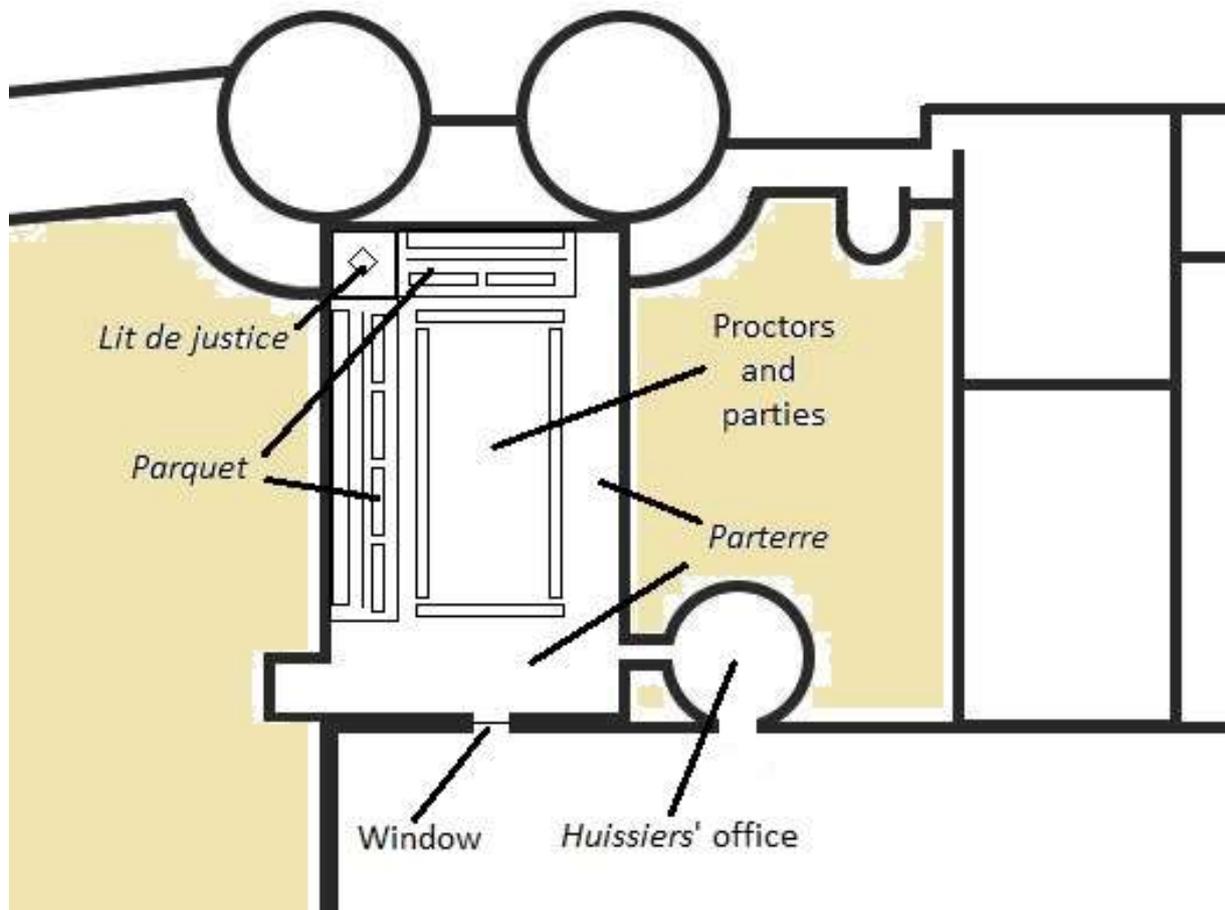
In its layout York Minster echoed many of the spatial practices also seen for the *Palais de la Cité*. Before the large rebuilding campaign at the beginning of the fourteenth century, the *Palais* already encompassed spaces with different levels of accessibility. The two floors that made up the King's Chamber created a physical distinction as regards the accessibility of different parts of the legal process. The lower chamber, being the place where people would come to plead their case, posed obstacles to the free coming and going of individuals, as entry was restricted to people involved in a certain case. The upper or council chamber was even more limited in its accessibility, as it was intended for the non-public sessions of the royal court. The King's Hall on the contrary had a much more public character, functioning not only as a waiting room for litigants, but also catering for a variety of other uses.⁴⁹ Between the King's Hall, the pleading chamber and the council chamber, an increasingly limited accessibility reflected the court's concerns over the opacity and publicity of specific parts of the legal process.

The large rebuilding campaign of the early fourteenth century rearranged the spatial economy of the *Palais de la Cité*, but did not fundamentally change the general concern for the division into and management of public, non-public and semi-public spaces. As described earlier, the layout of the new *Palais* created a strong physical separation between the king's personal and public personae, situating the royal household in the southern part of the *Palais* and making the *Grande Chambre* the workspace of the *Parlement*. Although the latter move meant combining two formerly separated aspects of the legal process – that is pleading and counsel – in one space, a concern for demarcating the two types of legal practice – with their different levels of accessibility – remained the same. Rather, where formerly the separation between the public, semi-public and non-public aspects of the legal process was achieved by situating the pleading- and counsel-parts of the legal process on different floors, now other means were used to bring the distinction into practice. The most important method was temporal demarcation. The *Parlement* set specific days in the week for public audiences, during which litigants or their proctors could come before the court to plead their case. On other days, and sometimes immediately before or after the public pleadings, the *Grande Chambre* would be used for non-public counsel regarding the cases under scrutiny.⁵⁰ In its spatial layout as well, the *Grande Chambre* divided court practice and participants by means of visible boundaries. The court itself, consisting of the king, if he was present, and his ecclesiastical and lay councillors, occupied an area called the *parquet*, which bordered on the north and west walls of the *Grande Chambre*. This *parquet* was separated from the rest of the room both in height – by being partly raised above ground level – and by means of an enclosure, which could be accessed through two small doors. Outside of this enclosure were placed the benches for the advocates, proctors and

⁴⁹ Guerout, 'Première partie' (1949) 176-177.

⁵⁰ Aubert, *Histoire* (1894) 180-187.

parties engaged in the lawsuit. And beyond those, in the so-called *parterre*, there even appears to have been room for a broader public to witness the legal procedures (Plan 5).⁵¹ Later evidence suggests that these spatial divisions had certain effects on the visibility, if not necessarily the audibility, of the process for the large majority of those present in the *Grande Chambre*. Thus both through temporal barriers and the internal layout of the *Grande Chambre* the different parts of the legal process as well as the different categories of participants were spatially separated.



Plan 5: Detail of the northern part of the *Palais de la Cité* (ca.1360), showing the *Grande Chambre* and its direct surroundings.

A strong physical distinction did continue to exist between the Great Hall and the *Grande Chambre*, echoing that between the former King's Hall and the King's Chamber. The upper floor of the Great Hall, catering as it did for a wide range of activities, was one of the most accessible spaces in the *Palais*, probably rivalled only by the ground floor of the *Sainte Chapelle*. It could be entered directly from the *Palais* courtyard, and is likely to have been the place where people with court-related business were received by the court's notaries. The distinction between this public Great Hall

⁵¹ Guerout, 'Deuxième partie' (1950) 145-152. For more on the role of audiences during sessions, see chapter three.

and the multifunctional *Grande Chambre* was physically emphasized by the lack of any direct connection between the two spaces. The only way from the Great Hall into the *Grande Chambre* led through a tower in the small courtyard to the north of the Great Hall, called the antechamber of the *Parlement* and later the office of the *huissiers* (see below). Here, as evidenced from the late fourteenth century onwards, two officials held guard, managing the human traffic according to the type of session that was held, either a secluded counsel or a public audience. Ordinarily the doors of this antechamber were closed, turning the *Grande Chambre* into a secluded space fit for the private deliberations of the court. During times of pleading, however, the doors were opened, turning the *Grande Chambre* into the semi-public space discussed above, still separated from the Great Hall, but more easily accessible for a larger public.⁵² At least from the end of the fourteenth century, a small window also connected the *Grande Chambre* to the Great hall, which was used for making public announcements from the former into the latter.⁵³

A central role in the spatial economy of the *Palais* was played by the court officials called *huissiers*. As chapter five will show, the *huissiers* of the *Parlement* were concerned with many of the more practical aspects of its daily business. However, judging by their name (*huissier* meaning ‘doorkeeper’) and a royal ordinance of 1345 which laid out the rules of their functioning, their main role entailed the management of the spatial practices and divisions within the *Palais*.⁵⁴ The six *huissiers* named in the ordinance were all assigned specific tasks related to the spatial practices surrounding the *Grande Chambre*: two for guarding the entrance to the Great Hall, two for guarding the doors of the *parquet* in the *Grande Chambre* and two for ensuring order within the *Grande Chambre* itself, especially in the publicly accessible *parterre*. Significantly, this role involved more than just guarding the ideal typical division between the non- or semi-public court space and the public world outside the courtroom, by refusing entry to those who had no business in the *Grande Chambre*, but also comprised the communication between both spaces. The *huissiers*, so the ordinance tells us, were responsible both for publishing proclamations coming from the *Grande Chambre*, as well as calling out the cases that were to be treated in court. In this way the *huissiers* took on a role as spatial intermediaries, managing both the accessibility of and the interaction between the spaces used in the legal process of the *Parlement*.⁵⁵

Like York Minster, the *Palais de la Cité* was many spaces in one, catering for a large variety of activities related to the functioning of the royal court. A discussion of the spatial practices in and

⁵² Ibid. 143-144.

⁵³ Ibid. 151-152.

⁵⁴ The royal ordinance of 11 March 1344 was published in: Eusèbe Jacques de Laurière, et al. (eds.), *Ordonnances des roys de France de la troisième race, recueillies par ordre chronologique, avec des renvois des unes aux autres, des sommaires, & des observations sur le Texte*, vol. 2 (1729) 219-228; the articles concerning the *huissiers* are to be found on p. 225.

⁵⁵ Guerout, ‘Deuxième partie’ (1950) 144, 151-152.

around the *Grande Chambre* only sheds light on a small part of the spatial divisions and overlaps contained within the overarching context of the *Palais* as a whole. The description of Nicholas of Baye at the beginning of this chapter, which highlights some tensions surrounding the *Chambre des Enquêtes*, has shown another example of the extensive spatial dynamics of the place where the *Parlement* of Paris went about its daily business. What is especially relevant to note here – both for the Consistory Court and for the *Parlement* – is the way in which these spatial divisions did not necessarily lead to any kind of strict compartmentalization of legal activities. The presence of intermediary spaces, where different socio-legal groups and levels of publicity intermingled, as well as spatial intermediaries, who attended to the accessibility of and communication between separated spaces, shows how the spatial practices of these courts knew many grey areas, where any division between secrecy and publicity was far from absolute.

Information on the Council of Utrecht's spatial practices as related to the *Schoonhuis* is again comparatively scarce. What is there, however, seems to point to its use as a secluded or at most semi-public meeting place, where, ideally, council members, aldermen and guild elders convened in a respectful and – above all – peaceful manner. Judging by the predominantly fourteenth-century books of bylaws the meetings in the *Schoonhuis* – called *stat huys* or simply *huys* in the sources – were subject to strict rules concerning the behaviour of the councillors and – to a lesser extent – its accessibility to outsiders. Several articles speak, for example, of punishments – both monetary and other – for fighting, shouting, insulting and carrying weapons during council meetings.⁵⁶ Regardless of the actual behaviour of the councillors, what these prescriptions suggest is a distinction made between behaviour inside and outside the courtroom, creating a boundary of tolerated social practice. Limits to the accessibility of the courtroom were also implemented to distinguish it spatially from the world outside. In an article in the *Liber Albus*, which was repeated in the *Roede Boeck* at the end of the century, the legislator prescribed that no more than four people could accompany anyone coming before the aldermen, the Council or the *oudermannen* at the *Schoonhuis*. The *stadsknapen* – taking on a role similar to the *huissiers* of the *Parlement* – were responsible for making sure that this measure was enforced and could themselves be fined if they allowed more people entry than was prescribed.⁵⁷ There was thus a very real concern to distinguish the court space and the practices carried out there physically from other spaces and practices.

At the same time, public space could also play a fundamental role in the Council's legal – as well as politico-economic – practice. The urban environment was actively involved in the messaging inherent to the legal process. A case in point are the public rituals regularly performed as part of the

⁵⁶ Muller, *Rechtsbronnen*, vol.1 (1883) 5-6 (*Liber Albus* I.10-12), 94-96 (*Liber Hirsutus Minor* XLIII.1-6), 154 (*Roede Boeck* II.1-9). The entries in the *Roede Boeck* are copied from the first two books, showing their continued relevance in the later part of the fourteenth century.

⁵⁷ *Ibid.* 19 (*Liber Albus* XXVIII.1).

punishment of certain offenders, which Dirk Berents called the ‘procedure of forgiveness’.⁵⁸ In a typical performance of this kind, the offender would be ordered to come from one location in the city – usually one of the prisons – to the *banklok*, the clock of the *Buurkerk* which was used as a means of public communication by the urban authorities. Here he would have to publicly beg forgiveness for his deeds, wearing no more than a simple shirt and pants, the typical garb of a penitent.⁵⁹ These rituals formed part of the broader practice of holding a regular *buurspraak*, public sessions of the Council supposedly open to all citizens and held in front of the *Buurkerk*. On such occasions the Council would publicly proclaim verdicts it had reached as well as more general measures and regulations that were of interest to the urban population at large. The *buurspraak* occasions, and more in particular the penal rituals that often formed part of them, show a clear consideration of the effectiveness of public space in communicating socio-legal messages. The functioning of the legal process was visualized within an area as public as open urban space. Sight, sound and movement through space were all mobilized to make a large public experience this particular aspect of the legal process.

The three cases studied here show that, although these were very different law courts inhabiting a diversity of spaces, in their spatial practices and considerations these courts often echoed similar concerns. The spaces used by these courts reflect how the matter of the accessibility of – meaning the ability to view, hear, physically participate in or otherwise approach – certain parts of the legal process were of central importance in their relation to society at large. Who could and who could not experience specific parts of the legal process and how was something that these courts actively tried to manage – sometimes successfully, sometimes unsuccessfully – through the employment of a variety of physical and non-physical spatial separations. In these attempts, court space and the courts’ spatial practices mutually influenced each other to a large degree. Court spaces were constructed or arranged with a certain legal practice in mind, comprising public, semi-public and non-public areas and thus giving physical shape to abstract ideas about the accessibility of different parts of the legal process. At the same time, however, existing spaces and the uses made of them fundamentally shaped the way in which people experienced the legal process. Physical limits to sight, hearing and the more general experience of parts of the legal process had a crucial influence on the ways in which people could and did interact with the court. The fact that these spatial boundaries were deployed not only to make certain parts of the legal process explicitly public or non-public, but that there were often many layers of accessibility between and within physically demarcated spaces,

⁵⁸ Berents, *Misdaad* (1976) 41.

⁵⁹ Frans Camphuijsen, “*In hemde ende in broeck*”. The performance of justice in late medieval Utrecht’, in: Katell Lavéant and Marie Bouhaïk-Gironès (eds.), *La permission et la sanction. Théories légales et pratiques du théâtre* [forthcoming, 2016]. See chapter 3 for a more extensive treatment of these forgiveness rituals.

supports the Lefebvrian idea of the intertwinement of social spaces, overlapping, coexisting and occasionally colliding with each other, and often extending beyond purely visible boundaries.⁶⁰

Space and socio-legal messaging

As I have argued above, the legal process was inherently a communicative process in which different social actors posed their claims to a specific understanding of legal truth. This also meant that, while courts' engagement with their spatial environment often took the form of physical activity, it could also involve verbal interaction. References to various spatial entities were used to suggest meaning for certain decisions reached or punishments meted out. This could involve concrete objects, such as the attribution of a specific relevance to certain buildings or parts of them. But the legal process also engaged more abstractly with geographical boundaries, by means of the inclusion or exclusion of individuals. In what follows I will trace these two types of linguistic manifestations in the legal process where we encounter space and spatiality as meaning-giver.

Archbishop Greenfield's statutes of 1311 contain several regulations regarding the behaviour expected of the staff of the Consistory Court, and in particular of its proctors. One of the regulations runs as follows:

On the penalty for refusing to contest the suit.

If indeed, postponements being quashed and notwithstanding them, the official or his commissioner determines that the suit must be contested and any proctor under the president's orders refuses to contest the suit, let him be suspended from the proctor's office until he pays half a Mark, to be used for the fabric of our church of York.⁶¹

Procedural complexities aside, the entry allocates a fine imposed on an unwilling legal functionary to the building activities of York Minster. In a sense this should not surprise us, as this same period saw major construction works on the nave of the Minster.⁶² From a very practical point of view, any money that could contribute to the costly undertaking of the cathedral works, was more than welcome. Similar measures appear around the same time, both in Greenfield's statutes and elsewhere, for instance in the series of archiepiscopal registers that were being kept since the

⁶⁰ Lefebvre, *Production*, trans. (1991) 86-87.

⁶¹ Wilkins (ed.), *Consilia*, vol.2 (1737) 411, article 19: *De poena recusantis litis contestationem. Si vero cassatis dilatoriis, et eis non obstantibus, officialis, vel ejus commissarius litem forte decreverit contestandum, ac procurator quicumque ad jussum praesidentis litem recusaverit contestari, a procuratoris officio suspendatur, quousque dimidiam marcam solverit, fabricae nostrae Eborum ecclesiae applicandam.*

⁶² Brown, *York Minster* (2003) 86-136.

thirteenth century.⁶³ But the explicitness with which such regulations state the intended goal of the monetary fine suggests that this can be read as more than a measure of convenience. It is unlikely that such a fine, based as it was on the violation of a specific procedural rule by unwilling legal functionaries, guaranteed a reliable flow of money for the construction works of the church. In considering these fabric-related penalties, it is therefore also relevant to take note of the implications that the explicit spatial dimension of the fine had for the character of the measure as a whole.

To grasp the signifying context of these fines it may be fruitful to connect them to another means by which funds were frequently gathered for the (re)building of the Minster, namely indulgences. Archiepiscopal registers, for instance, contain proclamations of indulgences for monetary contributions to specific ecclesiastical – but also non-ecclesiastical – structures.⁶⁴ Several of them, especially from the early fourteenth century onwards, are explicitly meant for the fabric of York Minster.⁶⁵ However, regarding such space-related indulgences only as parts of the financial strategy of the church, we overlook the central religious significance that they incorporated. The connection that is suggested in these indulgences between the physical structure of the cathedral church and the spiritual wellbeing of individual believers, is part and parcel of a broader connection between the religious community as such and its physical representation through church buildings. A contribution to the building and maintenance of a church – and certainly one as central as the York Minster – was not only an act of individual piety, but also contributed to the wellbeing of the religious community.

With this socio-cultural context in mind, the explicit connection between procedural offense and Minster space takes on an extra layer of meaning. The symbolic compensation implicit in the fine could be directed at the presiding judge who the unwilling proctor does not obey. Or it could be for the archbishop himself, whose authority is damaged indirectly by the proctor's refusal. However, in light of the socio-cultural context sketched above, the party that can be considered to have been damaged foremostly is the religious community as a whole. This also accords with Greenfield's stated intention in drawing up the statutes in the first place, namely to prevent 'fraud and obstruction, unnecessary delays and any other impediments', for all those coming to the court from the city, the diocese or the province.⁶⁶ Notwithstanding further possible motivations behind the statutes, a key

⁶³ Brown (ed.), *John le Romeyn*, vol.1 (1913) 367-368 (13 August 1287); Brown and Thompson (eds.), *William Greenfield*, vol.2 (1934) 42-44 (20 September 1307).

⁶⁴ See the list of indulgences contained at the beginning of the register of John le Romeyn: Brown (ed.), *John le Romeyn*, vol.1 (1913) 1-15.

⁶⁵ Brown (ed.), *Thomas of Corbridge*, vol.2 (1928) 30 (3 June 1304); Brown and Thompson (eds.), *William Greenfield*, vol.1 (1931) 4-5 (21 May 1306). See also: James Raine (ed.), *The fabric rolls of York Minster* (London and Edinburgh, 1859).

⁶⁶ Wilkins, *Consilia*, vol.2 (1737) 409: '*fraudibus et cautelis, dilationibus supervacuis, et aliis quibuslibet impedimentis*'. Also see Burns, *Medieval courts* [1962] 100.

message that the text seems to propagate is the importance of an accessible and well-functioning court to the benefit of the religious community. Within this context, the emphasis on spatially signified means of punishment underscores this broader message, linking the legal process before the Consistory Court through the maintenance of a representative cathedral church with the wellbeing of the religious community.

Whereas the space-signified punishments in the Consistory Court still have a rather limited character, mainly relating to the internal functioning of the group of legal specialists that made up this court, in Utrecht the sources of legal practice show a similar kind of space-signification playing a much more prominent and far-reaching role in the legal process. Returning once again to the penal rituals treated earlier in this chapter, we see how not only in a practical sense – that is through the active involvement of physical space in the ritual process – but also in a much more symbolic sense, space took on a very central role in the legal messaging of the Council. Crucial here is the oft-repeated notion of a fine being levied in an amount of ‘stones’. For example, after two brothers, Gherit and Eerst, had been arrested in 1398 for fighting on a Saturday, they were sentenced to appear publicly before the Council to beg it for forgiveness, and pay the city a compensation of ten-thousand ‘stones’ each.⁶⁷ This seemingly puzzling wording is clarified in several entries in the books of bylaws. A regulation from 1444 contained in *Die Roese* states how all fines that had so far been levied in stones were now to be levied in lengths of wall, meant as they were to repair the city wall.⁶⁸ In an earlier entry from the same book, the Council stated how offenders confronted with a fine in stones were supposed to pay the city an amount of money with which it would be able to buy the stated number of stones from the city’s brick makers.⁶⁹ And even the *Buurspraakboek* itself, which is usually silent about the intended goal of the stone fines, on one occasion in 1424 mentions how part of the stone fine levied for damaging a certain sluice is to be used for its repair.⁷⁰ The money received through stone fines seems in short to have had an explicit built-in purpose for the construction and repair of the city wall and other urban structures.⁷¹

⁶⁷ HUA 701-1.16: BSB 1396-1402, fol.191v. There was a more general connection between the occasions of ritualized punishment and the naming of such stone fines. For the period under study only two occasions mentioned in the *Buurspraakboek*, one in 1411 and one in 1412, show a stone fine being levied outside of a ritualized context: HUA 701-1.16: BSB 1410-1414, 73r and 87v. Likewise, only 7 of the 135 (5%) mentions of fines in such a ritualized context concern a directly worded monetary fine rather than a stone fine.

⁶⁸ Muller, *Rechtsbronnen*, vol.1 (1883) 352-353 (*Die Roese* CCXL.11). Also see: Muller, *Rechtsbronnen*, Introduction (1885) 76.

⁶⁹ *Ibid.* 200 (*Die Roese* XLVIII.1).

⁷⁰ HUA 701-1.16: BSB 1418-1425, 212v.

⁷¹ These stone-fines were not unique to Utrecht but can be found all over the Low Countries during the late Middle Ages. For examples from Antwerp, Brussels, Louvain, Nivelles, Amsterdam, Brielle, Delft, Haarlem, Dordrecht, Gouda, Leiden and Schiedam, see: Jan van Herwaarden, *Opgelegde bedevaarten. Een studie over de praktijk van opleggen van bedevaarten (met name in de stedelijke rechtspraak) in de Nederlanden gedurende de late middeleeuwen (ca 1300-1550)* (Assen and Amsterdam, 1978) 187, 232, 245, 256, 275, 279, 284, 287,

We can of course interpret these fines in a purely practical way. The city wall – and supposedly other urban structures as well – required regular maintenance, which would explain the need for considerable numbers of ‘stones’. However, there is more to these fines than a purely practical interpretation would exhaust. As they are almost exclusively found in relation to the broader forgiveness ritual, it would have been a very irregular and unreliable source of income for construction works.⁷² Furthermore, if the intended goal of these fines was clearly fixed, it seems redundant to state its purpose so explicitly over and over again. As in the case of the space-related fines in York, tracing a broader signifying context may help us understand the role of these stone fines within the legal process in Utrecht. The relation between the development of an autonomous urban community and the physical space of the city has been pointed out earlier in this chapter. This relationship is also very marked in the many ordinances pronounced in the *Buurspraakboek*. Numerous regulations are concerned with the maintenance of urban space, like regulations against free-roaming pigs in the streets.⁷³ Others make an explicit connection between urban maintenance and an individual’s social status within the city, for example by relating the granting of citizenship to the maintenance of public stairways or bridges. In 1313 the *Buurspraakboek* notes a decision by the Council to grant Aernt Mugge citizenship on the condition that he will maintain and regularly clean a particular stairway on the Lijn-market. The close relation between Aernt’s citizenship and this communal duty is confirmed by the directly preceding entry. It notes how the old shoemaker Peter, son of Vrederik, has just lost his status as citizen on account of his failure to perform this same stairway duty.⁷⁴ Central in all such measures is the idea of communal responsibility for the urban surroundings: free-roaming pigs and badly maintained structures are considered an impediment both to the ‘flow’ of daily business in the city and to the prestige of the urban community as such.⁷⁵ The stone fines seem to reflect these same ideals of shared responsibility for the maintenance of the city space. The offender, having violated certain social norms, is called upon to contribute to the communal project of maintaining the built environment. Although he is not expected personally to take care of specific maintenance activities, the explicit semiotic link between his fine and such activities gives the punishment an extra layer of meaning, contributing to the changing web of possible meanings that these public rituals entailed. The explicit inclusion of such a spatial signifier

301, 309, 321, 342. Although Van Herwaarden treats these fines primarily in the context of imposed pilgrimages, he also shows that there exists no necessary link between these two forms of penal practice.

⁷² As Appendix 1.1 shows, the total amount of money received yearly through stone fines varied heavily.

⁷³ For regulations on pigs, see for example: HUA 701-1.16: BSB 1418-1425, 11v. Also see: Frans Camphuijsen and Janna Coomans, ‘De middeleeuwse stad en zijn varkens’, *Madoc* 28.3 (2014) 140-148, for recent work on pig regulations in the medieval Low Countries.

⁷⁴ HUA 701-1.16: BSB 1410-1414, 168r.

⁷⁵ Camphuijsen and Coomans, ‘Varkens’ (2014).

within the context of these public rituals thus significantly increases their potential reach by embedding them more strongly in a broader communal discourse.

Inclusion and exclusion

Whereas the stone fines can be said to have had a socially inclusive character, emphasizing social reintegration through a spatially-signified contribution to communal welfare, another common punishment in Utrecht was based rather on spatially-signified exclusion. One of the most frequent punishments in the sources of legal practice in Utrecht were banishments. Both in the *Th.2* register and in the *Buurspraakboek*, banishments form the majority of punishments meted out.⁷⁶ Many things can and have been said about the role of banishments in late medieval urban societies.⁷⁷ The social consequences of banishment could be very serious in such societies, based as they were on ties of kinship and patronage. Banishment, especially for longer spans of time, meant cutting someone loose from many crucial social resources, condemning the individual to a socially marginal position, at least for the duration of the exile. From an authority's point of view, deciding on banishment could also have very practical reasons. In order to remove a serious offender from public sight, exile was a much more effective and cheaper means than any kind of prolonged imprisonment.

However, in light of the communicative potential of punishment, another aspect of banishment is also relevant. Seen within a broader discursive context, banishments contained a multiplicity of implicit messages, relating the punishment of an offender to the boundaries of the urban community and its physical surroundings. The definition and demarcation of different spatial boundaries, that played a central role in the development of an autonomous urban community, was also reflected in the banishments. Considering the wording of the sentences as presented in the *Buurspraakboek* shows two basic variants: one which defines the area from which the offender is exiled as the city borders, and one which concerns exile from the city plus a certain extra distance from it, usually called 'the mile'. It appears that there was little difference in actual practice. A pronouncement from 1364, contained within the *Th.2* register, states that any banishment from the city automatically included the city's mile.⁷⁸ However, the entries in the *Buurspraakboek* do make the distinction, and

⁷⁶ For the first forty years of the *Buurspraakboek* (1385-1425), among the 786 entries concerned with punishment of some sort, we encounter 518 verdicts of banishment, often concerning multiple individuals at once. Taking account of the missing register for the years 1392-1395, this makes an average of fourteen verdicts of banishment per year. See Appendix 1.2 for details.

⁷⁷ William Chester Jordan, *From England to France. Felony and Exile in the High Middle Ages* (Princeton, 2015); Alison Brown, 'Insiders and outsiders. The changing boundaries of exile', in: William Connell (ed.), *Society and individual in Renaissance Florence* (Berkeley, 2001) 337-383; Christine Shaw, *The politics of exile in renaissance Italy* (Cambridge, 2000); Hanna Zaremska, *Les bannis au Moyen Âge*, trans. Thérèse Douchy (Paris, 1996); Peter Raymond Pazzolini, *The criminal ban of the Sienese commune, 1225-1310* (Milan, 1979).

⁷⁸ HUA 701-1.227: *Th.2* register, fol. 29v.

increasingly so.⁷⁹ Furthermore, the area around the city that was included in the banishment could also be described differently. Definitions sometimes speak of the area outside the city ‘as far as the city takes its excise’ (*zo verre alse de stat horen sijs neempt*), or the ‘land’ of Utrecht.⁸⁰ Although these variations may well have indicated the same area around the city, the wording distinguishes between different criteria on which the Council based the reach of its authority. Beyond specific developments in the wording over time or their relation to actual practice, what these sentences show us is how the removal of an offender from the community was related to the explicit definition of spatial limits, based on economic, legal or political power claims. Such banishments, therefore, essentially confirm the spatial boundaries relevant to the Utrecht community, or are at least presented as such. And these spatial signifiers operated in line with, but were not exclusively limited to real physical features, such as the city walls.

Spatial restriction as an element in penal practice is not limited to the case of Utrecht. In the records of the *Parlement* of Paris we encounter numerous restrictions to the comings and goings of people condemned for a certain crime. Some of these restrictive measures concern banishments, as in Utrecht. However, another type of restriction is much more common, namely the *élargissement*.⁸¹ Usually forming the intermediary stage in a legal process rather than a final sentence, the *élargissement* was – in a spatial sense – the complete opposite of exile. Whereas banishment denied an individual entry into a certain spatial entity, like a city or kingdom, the *élargissement* precluded movement outside of a specific area. The sources often present such *élargissements* as a type of ‘open’ prison sentence, that is the mitigation of imprisonment to an area beyond the strict confines of the prison cell. This area could vary widely, from the direct surroundings of the prison, to the whole city of Paris or even the whole kingdom.⁸² The spatial limitations could also change during a case. On 28 September 1340, Guillaume of Moreauville and his wife were granted *élargissement* ‘between the four gates of Paris’ (*intra quatuor portas parisiensis*). Only a few days later their *élargissement* was extended to the whole viscounty of Paris.⁸³ Temporary exceptions could also be made to the limits set in an *élargissement*. In a case spanning the years 1345 and 1346, Pierre le Large, granted *élargissement* in Paris, was allowed to dine outside of the city one evening, given that he would be escorted there and back again by one of the *Parlement’s huissiers*.⁸⁴ Another noticeable

⁷⁹ See Appendix 1.2.

⁸⁰ As Appendix 1.2 shows, the area around the city is included in 182 verdicts (35%) which is indicated as ‘mile’ in 125 cases (24%), the reach of the city’s excise in 32 cases (6%) and its ‘land’ in 25 cases (5%).

⁸¹ See: Louis de Carbonnières, *La procédure devant la chambre criminelle du Parlement de Paris au XIVe siècle* (Paris, 2004) 255-299, for an extensive treatment of the *élargissement*, based mostly on late fourteenth-century material.

⁸² *Ibid.* 263-265.

⁸³ AN X^{2A}4, fol. 11 (28 September, 1340); *ibid.*, fol. 12 (2 October, 1340).

⁸⁴ Entries regarding this case can be found spread throughout the X^{2A}5 register: see AN X^{2A}5, fols. 3v, 4v and 47v.

arrangement is found in a case from 1341, where Barthélemy of Vaux is granted *élargissement* in the city of Paris, with the added stipulation that he may leave the city during the day, but has to return *intra portas* by night. The *élargissement* was usually granted on the condition that the accused would reappear in court on the day that his case continued. If this promise was broken the offender could be punished in several ways. In 1331, a certain Henry the Monk is ordered to be returned to prison for breaking his *élargissement*.⁸⁵ A decade later, the *Parlement* grants another litigant *élargissement* ‘so he may better pursue the process and his case’ (*ut negocia et causam suam melius prosequi valeat*). However, if he does not live up to the court’s expectations, he will – in a somewhat ironic fashion – be banished from the French kingdom.⁸⁶

Both in the granting of legal privileges, like the mitigation of imprisonment through *élargissement*, and in penalizing the violation of these privileges, the *Parlement* made prominent use of spatial limitations. In this it clearly showed the important role of space and spatial boundaries for its legal messageing, as well as the importance of the legal process – and its inherent rituality – for assigning specific meanings to different spaces. The limits of the kingdom became more than an abstract entity. For those under *élargissement* it could be a very real border, not to be passed if one ever wanted to return. And for the *Parlement*, representing after all broader claims of royal authority, it was a concrete way of demarcating an ideal legal and political unity. Considering the fairly recent political annexation of many territories under the Paris-based royal government, as well as the tense times in which many of these political constructions were again called into question, the spatial claims inherent in such legal measures as *élargissements* and banishments gain an extra layer of meaning. On a smaller scale, the practice of granting *élargissements* also shows the strong symbolic connection the *Parlement* made to its urban context. In the legal process, Paris became much more than a simple piece of built land surrounded by a stone wall. For those involved in a specific case the city and its gateways were a limit to their freedom of movement. And in a related fashion, the *Parlement* thereby used the city space to pose its power claims. The ability to limit one’s movement, as well as the ability to subsequently restore some of this freedom, formed a spatially-signified way of claiming such power. Many of these measures furthermore implied a specific conceptualization of the role of this space called Paris vis-à-vis the rest of the kingdom. In occasionally extending the area of *élargissement* from the surroundings of the prison to the city, and from the city to ever larger spatial entities, the *Parlement* suggested a certain spatial hierarchy within the kingdom – that is from Paris outwards – as well as its proper claim to controlling all of it. As was the case for Utrecht, in the legal process of the *Parlement* the physical environment and mental conceptualizations were

⁸⁵ AN X^{2A}3, fol. 119 (24 April, 1331).

⁸⁶ AN X^{2A}4, fol. 37-37v (23 april, 1341). De Carbonnières, *Procédure* (2004) 291-294 only names exile as punishment for breaking an *élargissement*.

combined in giving the city space a certain unity filled with meanings related to social, legal and political power claims.

The examples from York, Utrecht and Paris underscore the central importance of space as meaning-giver in the late medieval legal process. In similar ways, these courts explicitly engaged their spatial context in suggesting a specific meaning for certain legal actions undertaken in court. Conversely, the involvement of such spaces in the legal process contributed to shaping the urban environment semantically. For the litigant involved in a process before York's Consistory Court, the space of operations, York Minster, was more than simply a large building. It could become – or so the court suggested – a physical representation of the religious community, combining within its walls multiple aspects of the life of this community, including religious service, church administration, and the legal process. Using specific spatial references in the legal process created a link between the legal case under scrutiny and the role – or rather roles – that the Minster space was supposed to fulfil in society. In a similar way, the built space in Utrecht was linguistically involved in the legal process. By making explicit references in its legal process both to physical structures and to less physical spatial limits, the Council reinscribed the social, political and legal unity of the city of Utrecht and its community, as well as its own role in preserving it. And the same process of demarcating social and political space is found in the records of the *Parlement* of Paris, reflecting different power claims and ideal hierarchies in a period when many political boundaries were in flux. By using spatial references in the legal process, these courts did not only try to suggest certain meanings for the actions performed in this process, but also attempted to influence the communal discourses that made the denoted spaces into what they were perceived to be by contemporaries.

Legal space and the legalization of space

With a subject that has predominantly been regarded from a formal institutional or textual perspective, the first goal of this chapter has been to place late medieval law courts back in space. For although their ways of working and means of writing were unique and game-changing, the fact that these courts were also fundamentally places of assembly, makes a consideration of their physical environment, as well as the variety of ways in which they and others engaged with this environment, crucial for understanding both their advent and daily practice. In courts' development from royal, episcopal or seigneurial advisory bodies to semi-independent legal authorities, changes in court space both echoed and influenced changes in institutional structures and legal practices. While buildings and rooms were sometimes purpose-built according to the needs of the court, the obdurate physicality of existing spaces – meaning the large investment in time and money required to fundamentally alter them – could well limit this constructional freedom. Often courts adapted to their physical environment instead of the other way round. This mutual influence between institution

and space was not limited to the courtroom itself, but also involved the cities and areas where they settled permanently from the thirteenth century onwards. Although all three courts were legally concerned with areas of very different sizes, their day-to-day reality took shape within an urban context. This positioned them before very similar issues as well as gave them opportunities to use the city space to their own socio-political advantage.

In daily practice, the courts' engagement with their spaces formed part of broader communicative concerns and strategies. The matter of the accessibility of the courts and their legal process was of paramount importance for their relation with society. In their spatial practices, that is the ways in which they made use of their physical surroundings, they strongly echoed this concern for the management of accessibility. The question as to which parts of the process were to be visible, audible or otherwise available for people to experience, and which parts should on the other hand remain opaque, was at the heart of these practices. By attempting to regulate the sight, hearing and physical presence of different publics, these courts tried to script people's experiences of the legal process. In addition to physical practices, space had an important role to play in providing – or at least suggesting – meaning to legal communicative actions in and by the law courts. By referencing specific structures or geographical boundaries, entities that carried a variety of implicit meanings through their integration within broader communal discourses, the court was provided with a means to suggest certain meanings for the penal acts it performed. Considering the multifarious ways in which communicative acts in general, and legal acts more specifically, can and often are interpreted by individuals in a society, this spatial referencing can be seen as an attempt to control the variety of possible interpretations of these acts to a higher degree. In its turn – and here the Lefebvrian interpretation of space as both precondition and result of social structures becomes all the more relevant – this referencing within the legal process provided the physical environment itself with possible meanings it did not necessarily entail beforehand. In this sense late medieval law courts did not simply operate in space, but were actively involved in legally scripting the spaces they used, which in their turn influenced these courts' socio-legal practices.

A spatial analysis thus lays a significant basis for a broader consideration of the communicative logic and practice of late medieval law courts. It first of all provides a concrete stage on which to analyse these bodies' legal practices and discourses, showing the physical environment where people involved in a legal process – be it officials, litigants or audiences – went about their business. But it also shows us some of the ways in which the courts engaged with the world around them. As the following chapters will show, questions concerning the accessibility of the legal process, or the uses made of referential systems to suggest particular meanings for words or deeds, were at the heart of the many forms of communicative action that took place in these courts. What is more, in analysing both the courts' spatial context and their linguistic and performative engagement with it, this

chapter has provided a first example of the fundamental relation between the physical and non-physical aspects of the particular communicative process of the late medieval law court. In what follows, the suggested dichotomy between materiality, activity and language will turn out to be false not only in a spatial sense, but from a whole range of perspectives.