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Scripting justice

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

Camphuijsen, F.W.G.W.

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*.

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The rituality of court practice

The last chapter has shown us that, from the perspective of the development and use of spaces, law courts were intricately connected with the socio-cultural practices and discourses that surrounded them. In using their physical context, *Parlement*, Consistory Court and Council all engaged with broader ideas about what these spaces – and consequently the activities they hosted – meant. Yet this intertwinement between activities in and out of a legal setting stretches farther than the places used for their performance. Acts like pleading, testifying and judging did not form isolated instances of value-free truth-finding, but were rather influenced by the social, political and economic relations and motivations of their participants. The observation is hardly new. In his *Surveiller et punir: naissance de la prison* (1975), Michel Foucault questions the strict division between legal actions and other forms of social activity, often suggested by legal authorities themselves.¹ Treating the changes in penal practice over the last two hundred years, he situates punishment within a broader ‘scientifico-judicial complex’, a set of extra-judicial assessments that extends far beyond the simple judgement of a specific crime and involves broader ideas of normality, causality and change.² Similar ideas have been voiced in legal anthropology. Lawrence Rosen, in his study of Moroccan *qadi*-courts between the mid-60’s and mid 80’s, sees law as an integral part of broader socio-cultural systems. People’s scope of legal practice – that is, what can and cannot be done – and their interpretation of these actions is very much part of broader systems of social activity and conceptualization.³ In the same way that a consideration of court space has sensitized us to the spatial embeddedness of legal institutions, considering legal action as a form of social action emphasizes the close relationship between the law court and society. It sees the court as an integral part of society, rather than an abstract entity observing it from a distance.

However, accepting that legal action is simply a specific type of social practice, does not yet explain why people would then engage in this kind of activity. For the fact that people invested time and other resources in pursuing a legal suit, means that the legal process as a constellation of actions offered them something they did not readily find in other forms of social practice.⁴ This in turn begs the question as to what it was that made legal action an extraordinary form of social action.

¹ Michel Foucault, *Surveiller et punir. Naissance de la prison* (Paris, 1975), translated as: Michel Foucault, *Discipline and punish. The birth of the prison*, trans. Alan Sheridan (London, 1991).

² Foucault, *Discipline* trans. (1991) 16-21.

³ Lawrence Rosen, *The anthropology of justice. Law as culture in Islamic society* (Cambridge, etc., 1989) 4-5.

⁴ A similar question as to people’s motivations to use the courts is posed by: Smail, *Consumption* (2003) 4-17.

Providing an answer to this very general question is complicated. Both the entities involved in such actions – law courts, judges, litigants, etc. – and the activities themselves have varied widely over space and time. One might even argue that the attempt of trying to distinguish a specific type of activity as legal actions, forces too much of a predetermined (modern) analytical categorization on otherwise undifferentiated social practices. At the same time, the spatial analysis of three law courts has shown how certain actions performed in and by these courts were loaded with significance. To understand the specific character of these legal actions, this chapter will involve processes of ritualization. It shows how activity in and by the courts was organized in certain ways so as to suggest its importance over and above the particular instance itself. As socio-legal performances, in the sense of attempts to speak through acts, what was done in court formed as much a means of communication as did the texts produced there.

In order to analyse legal practice from the viewpoint of ritual it is imperative first to focus on the latter phenomenon itself. Decades of anthropological scholarship have considered ritual practices, drawing on fieldwork in various contemporary societies. Given anthropologists' opportunity to witness the studied practices directly, rather than through textual or visual intermediaries, makes this scholarly tradition particularly relevant here. The first part of this chapter will, therefore, consider how anthropological understandings of ritual have developed over the last century, and the consequences that this has for historicizing the notion of legal action. In the second part I will elaborate on several types of legal action encountered in the three courts under study, analysing a specific act or constellation of acts for each of them. In Utrecht I will consider a regularly recurring element of punishments, which had the culprit move through the city in a clearly recognizable attire to beg the Council for forgiveness for its deeds. For the Consistory Court the occasions of sentence reading, that is when the decision reached by the court was brought orally before audiences of varying sizes, take centre stage. In the Parisian case the organization of audience sessions will be analysed, showing the *Parlement's* attempts at stipulating time, place, participants and procedure of these occasions, as well as their translation to a different context in the form of the *Grands Jours*. Based on these three cases, I will argue that the ritualization of activities played a fundamental role in the courts' interaction with their litigants and audiences, constituting both a medium for enacted communication between the three, and a claim to socio-legal legitimacy by the institutions facilitating such communication.

Ritual and legal action

Within medieval studies, various attempts have been made to approach legal practices through the lens of ritual. Applications of this concept vary widely, according to the specific types of socio-legal action that scholars have considered. Gerd Althoff, in his analysis of dispute resolution among high

medieval German nobles, places ritual action within a broader field of public communication, encompassing all kinds of demonstrative gestures, rituals and ceremonial acts. Althoff distinguishes this public field, for which he uses the Habermasian term *Öffentlichkeit*, from a more confidential one, which was based mainly on verbal communication. In both dispute resolution and various other forms of socio-political communication these two fields complemented each other. First, nobles would negotiate their positions verbally in a confidential context, thus creating mutual willingness for a resolution. Subsequently, the decision reached in confidence would be performed in the public field in the form of – largely non-verbal – rituals. The ‘speech’ in this field was subject to mutually accepted rules and signs, so as to make the communication calculable for both parties. Through this communication on two levels, both confidentially negotiating and ritually staging the conflict, disputing parties prevented uncontrolled violence on a large scale.⁵

Claude Gauvard and Robert Jacob provide another interpretation. For them ritual has a broader social role to play. They connect ritual action, and judicial rituals in particular, to social myths, the stories societies tell themselves about themselves and about the world in which they exist. Whereas these myths were constantly subject to change and reinterpretation, rituals, by resisting substantial alterations in form, provided myths with a relatively constant and unified basis and limited the possibilities for individual divergences. In a judicial context, Gauvard and Jacob argue, rituals were primarily concerned with the foundational myths of social order. People performed legal rituals to (re)construct this ideal-typical order. At the same time, this role in constituting social myths also made ritual the medium par excellence to challenge them, as well as the established order that had put them in place.⁶ Similar interpretations are found in the work of other historians who stress the socially constructed and/or constructive character of medieval ritual. In their work Gauvard and others consider legal rituals as events that were shaped by and required the consent of authorities, the public and often even the condemned himself.⁷

Both perspectives on medieval legal ritual – the one related to practices of dispute resolution, the other in the context of broader myths of socio-legal order – stress the role of ritual in structuring legal communicative behaviour. For both, ritual constitutes a more or less fixed – or at least preliminarily agreed upon – system of verbal and/or non-verbal communicative actions that can be tapped into by social actors to achieve certain goals. Although I agree with an interpretation of ritual in terms of communicative behaviour, in this chapter I will focus on how people engaged with these

⁵ Althoff, *Spielregeln* (1997) 9-13, 255-257.

⁶ Claude Gauvard and Robert Jacob, ‘Introduction. Le rite, la justice et l’historien’, in: idem., *Les rites de la justice. Gestes et rituels judiciaires au Moyen Âge occidental* (Paris, 2000) 5-18, at 5-9.

⁷ Cohen, ‘Criminal’ (1990); Claude Gauvard, ‘Pendre et dépendre à la fin du Moyen Âge. Les exigences d’un rituel judiciaire’, in: Jacques Chiffolleau, Lauro Martines and Agostino Paravicini Bagliani (eds.), *Riti e rituali nelle società medievali* (Spoleto, 1994) 191-211.

ritual systems, rather than on the systems as such. For this I base myself on recent anthropological theories on the subject, thus sharpening the interpretation of the exact communicative functioning of ritual behaviour. One of the major theoretical turns in the anthropology of ritual that is of interest here, is that from a concept of 'ritual action' to that of 'ritualized action'. The former use, which could be found in the work of many theorists of religion and society in the early and mid-twentieth century, began from the assumption that ritual constitutes a particular type of action, differing from other actions in kind.⁸ Later scholars, however, have questioned this binary opposition between ordinary and ritual acts. Jonathan Z. Smith, for example, has argued for understanding ritual first and foremost as a means to make ordinary things significant. Ritual, he argues, places a focussing lens on certain actions by routinizing and rationalizing them, which provides these actions with a special significance.⁹ One should therefore not think of ritual as a fundamentally different type of action, but as a specific quality that ordinary actions may or may not entail. This way of looking at ritual questions the strict division between ordinary and ritual action, considering the latter primarily as a ritualized version of the former.

The shift from 'ritual' to 'ritualized action' has important consequences for our understanding of the relationship between ritual and ritual actor. The older approach considers rituality as a preliminary given to the performed act; the act is fitted within a pre-existing communicative system, that provides it with a certain significance. The approaches of both Althoff and Gauvard and Jacob to medieval legal ritual seem to follow this interpretation, considering the system formative in shaping individual actions. A Smithsonian interpretation of ritual, however, puts more focus on these individual actions, by placing the ritual element within the performance of the act itself, rather than in a pre-existing system to which individual actions are attuned. Consequently, the ritual actor receives more agency, especially as regards the influence his or her intentions have on the ritualized occasion. The question at the heart of these theoretical considerations is thus whether a ritual actor is free to use ritual as a communicative medium, or whether the medium imposes a certain structure and logic that limits his freedom of acting.

Several scholars have elaborated on this tension between ritual structures and individual agency. Catherine Bell sees the ritualization of acts primarily as a culturally strategic way of social acting. This cultural strategy consists of the construction and reconstruction of a specific communicative

⁸ Most notably: Arnold van Gennep, *Les rites de passage* (Paris, 1909); Émile Durkheim, *Les formes élémentaires de la vie religieuse. Le système totémique en Australie* (Paris, 1912); Edmund Leach, *Political systems of highland Burma. A study of Kachin social structure* (London, 1954); John Beattie, 'Ritual and social change', *Man. New series*, 1 (1966) 60-74; Victor Turner, *The forest of symbols: aspects of Ndembu ritual* (Ithaca, 1967); for a general overview of the broad range of applications of the concept of ritual, also see: D. Parkin, 'Ritual', in: Neil J. Smelser and Paul B. Baltes (eds.), *International encyclopedia of the social & behavioral sciences* (Oxford, etc., 2001) 13368-13371.

⁹ Jonathan Z. Smith, 'The bare facts of ritual', *History of religions* 20 (1980) 112-127, at 112-117.

environment through the production of ritual schemata. Social agents perform acts that are ritualized into schemes, thereby privileging certain oppositions and values. These in turn structure the communicative environment within which the schemata of ritualized acts are performed and interpreted. The communicative environment that is created by specific acts, is therefore at the same time the context within which these acts are interpreted. The suggestion of an overarching communicative order created by specific social acts provides these acts with the values – and effective power – that distinguishes them from other social acts. Neither agent nor structure are fully dominant, both forming part of a circular process of ritualization.¹⁰ Set in a court context, Bell's theory thus suggests a model for the relation between individual judicial acts and the legal order to which they appeal. By repeatedly staging a court session in a particular manner – situated in a specific location, using particular words and gestures, and involving certain individuals – the legal actors do not necessarily follow a pre-determined, legal way of doing things, but bring it into existence. At the same time, the suggestion that something like an overarching system of legal practice exists separately from other forms of social action, provides the things done during a court session – acts like pleading, testifying and judging – with the extraordinary character that makes them legal acts.

The role of ritual actors and their intentions receives even more emphasis in the interpretation offered by Caroline Humphrey and James Laidlaw. For them the fundamental qualitative difference between ritual action and other forms of social action, is based on the link between an actor's intentions and the act that he or she performs. Whereas actions in general are inseparable from the purpose of the agent performing them – inherently containing a degree of directedness and awareness on the part of the agent – what ritualization does is exactly to sever this link between action and intention. Ritualized acts, so Humphrey and Laidlaw argue, appear to be pre-existing entities through the performance of which the actor conforms to a socially stipulated order. This does not mean that authorial intentions are truly absent from such a ritual act, but rather that the identity of the act – that is the way in which actor and spectators consider and therefore react to the action – appears external from these authorial intentions.¹¹ Thus, to return to a judicial context, regardless of the social, political, economic or other motivations that legal actors may have for appearing in court, by acting in specific ways they suggest a detachment from these intentions. A witness, for example, can have a range of motivations for testifying against a culprit, from personal enmity to socio-political prejudice. However, in giving legal testimony, he or she detaches this action

¹⁰ Catherine Bell, *Ritual theory, ritual practice* (Oxford, etc., 1992) 1-9, 140-142.

¹¹ Caroline Humphrey and James Laidlaw, *The archetypal actions of ritual. A theory of ritual illustrated by the Jain rite worship* (Oxford, 1994) 1-5.

from any possible intentions that underlie it, instead seeming to follow the overarching logic of the legal procedure.

This brief discussion of anthropological theories of ritual action provides us with a number of insights with which to approach the many forms of legal action found for the three courts studied here. First, it emphasized the processual character of ritual action. Rather than considering a ritual as a pre-determined entity that is provided with concrete shape in the form of actions, these theories take the ritual act itself as a point of departure. They focus on the way in which an otherwise ordinary act is provided with special significance by relating it to other practices in – what is suggested to be – an overarching constellation of activities. Echoing the theory of performative action as set out by Austin and others, this interpretation of ritual thus sees the performance of the act as constitutive of the ritual itself.¹² As a consequence of this performative interpretation, the setting in which an act is ritualized gains more emphasis. The specific ritual actors, but also their audiences, gain a leading role in the construction of the ritual structure of which their activity appears to be simply a manifestation. Considering legal practices from the perspective of ritualized action thus brings to the fore specific aspects of this practice, further elucidating the interaction between social agents and the communicative structures with which they engage in a court setting.

Utrecht: forgiveness rituals

In January 1387 Jan de Rode was convicted of killing a man in the city of Utrecht. The Council ordered him to come from the city prison in the Red Tower, where he was kept for the time being, to the bell tower of the *Buurkerk*, dressed only in a simple shirt and pants. There he was expected to publicly beg the Council for forgiveness and pay the city a fine of 50,000 ‘stones’.¹³ This description of a specific sequence of actions presumably undertaken by Jan de Rode and the Council by no means presents an isolated case. For the period under study, some 220 mentions of this kind of procedure survive in the *Buurspraakboek*, an average of about six per year.¹⁴ Not every description contains exactly the same elements. When Snellaert the sawyer was subjected to the procedure in 1401 as a result of his public nightly misbehaviour (*ondafte bi nachte*), he had to make a formal promise (*willekeur*) not to behave in like manner, rather than pay a stone fine.¹⁵ And in a case from 1402, in which Lambert of Zulen and his wife Enghel were convicted of ordering a woman to be beaten up, both were subjected to the forgiveness procedure, but only Lambert was told to do so in a simple

¹² See the introduction to this thesis for a discussion of performance theory.

¹³ HUA 701-1.16: *BSB* 1385-1391, fol. 56r.

¹⁴ Equalling about 28% of all entries concerned with punishment for this period. Some 174 mentions of this kind of procedure can be found in the *Raads Dagelijks Boek* (52% of punishment-related entries), but these often overlap with the entries in the *Buurspraakboek*. See chapter four for an extensive discussion of the relation between these two sources.

¹⁵ HUA 701-1.16: *BSB* 1396-1402, fol. 308v.

shirt and pants.¹⁶ In several cases the procedure was given an extra edge. When Jorden Walmer was convicted of attacking a city official in 1416, he appeared before the Council not only in a simple garb, but also carrying a bare sword, proclaiming his life forfeit.¹⁷ Despite this variety, a certain core procedure consisting of the elements of ‘appearing before the Council bareheaded or in shirt and pants’ and/or ‘begging the Council for forgiveness’ is ordained in all cases.¹⁸ In the literature, this sequence of actions is often interpreted as no more than an aggravating element of other punishments.¹⁹ Here, however, I will take the forgiveness procedure itself as point of departure, as the suggested repetition and explicit performance of certain actions gave it a particularly ritualized character. By contextualizing the various elements constituting these ritual occasions, I will try to reconstruct the sphere of possible meanings of which they took part.

A first element to single out is the movement undertaken from the prison-space to the square in front of the *Buurkerk* tower (coming ‘ter clocken’ as it is called in the sources). Several buildings in Utrecht were used as prisons during the fourteenth and fifteenth centuries: the meat house (*vleyshuis*), which was also used by the butchers guild, the *Plompetoren* to the north of the city, the tower of the southern gate called the Red Tower, and the prison in the western Catharijne gate.²⁰ With the exception of the meat house, all these buildings were located on the edges of the city (Map 1). This meant, as noted in chapter two, that the prescribed movement of the culprit to the place where his sentence would be proclaimed, took him through much of the city, guaranteeing a high degree of exposure. And even in case of imprisonment in the meat house, the one prison not located on the town’s edges, the culprit’s route passed through a central place like the square in front of the aldermen’s house, called the *Plaets*, making his movements visible to many. Such visualization of punishment within the urban landscape was a common feature in many other late medieval cities as well, strengthening the impression from chapter two that space was actively and strategically used by authorities and others in Utrecht to communicate their socio-political messages.²¹ This judicial performance involved not only the court or the culprit, but also the audience witnessing the latter move through the city on its way to beg the former for forgiveness. In their role as interpreters of the ritual messaging, these audiences thus had a very real influence on the form such occasions took.

¹⁶ HUA 701-1.16: *BSB* 1402-1405, fol. 10r. This may be an indication of the role of gender differences in the execution of the procedure, as this is also one of the few cases in which a woman is subjected to the forgiveness ritual.

¹⁷ HUA 701-1.16: *BSB* 1414-1418, fol. 126v; HUA 701-1.13: *RDB* 1414-1425, fol. 50r.

¹⁸ See Appendix 1.3 for a full overview of the core procedure and its many variants. This specific sequence of events also forms the subject of: Camphuijsen, ‘Performance’ [forthcoming, 2016].

¹⁹ Berents, *Misdaad* (1976) 41.

²⁰ *Ibid.* 44.

²¹ See for example the ritualized ‘running’ of offenders in Toulouse, as evidenced in: Patricia Turning, *Municipal officials, their public, and the negotiation of justice in medieval Languedoc. “Fear not the madness of the raging mob”* (Leiden and Boston, 2013) 149-153.

This can also be seen in the specific outfit of the forgiveness-seeking culprits, as they made their way through the city. There are basically two variants in the descriptions of the culprit's appearance during these occasions: either they would go bareheaded or in 'shirt and pants' (*in hemde ende in broeck*). Prescribing this attire was in fact common penal practice, in both a regional and trans-regional context. The legal records of several other cities in the late medieval Low Countries show similar cases of bareheaded or austere dressed culprits. For example, the *Correctieboeken* of Leiden, which have survived from the fifteenth century onwards, include on several occasions bareheaded movement from one location to another as part of the punishment for an offence.²² But the same dress appears in quite different contexts. In northern France, for example, thirteenth- and fourteenth-century descriptions of both penal and diplomatic occasions regularly contained elements of bareheaded, barefooted or otherwise markedly dressed movement. This could concern poor women found to have carried a bastard child as well as a lord losing a suit over a parcel of land to an abbey.²³ Nor was this attire necessarily a late medieval phenomenon. In Pope Gregory VII's description of his reconciliation with – or, depending on one's perspective, humiliation of – the German king Henry IV at Canossa in 1077, he famously described the latter as having appeared barefoot and dressed in woollen clothes.²⁴ And these same elements can even be found in non-legal contexts. Richard Trexler, for example, describes a prayer ritual undertaken by a fifteenth-century Florentine attempting to reconcile himself with his recently deceased son. On this occasion the father was dressed in 'a nightgown with knees bare, nothing on his head, and around his neck a *corregia* or halter'.²⁵ The descriptions of bareheaded or austere dressed culprits in the Utrecht records thus seem to fit within a much larger complex – both geographically and chronologically – of similarly ritualized attire.

In her work on public penance in thirteenth-century France, Mary C. Mansfield suggests an important broader context for the forgiveness procedures as described in the Utrecht records, namely religious penance. Questioning the strong divide that is often suggested between theologically grounded ecclesiastical penances and the public shaming punishments of secular authorities, she regards public penance as a particularly adaptable form of punishment, which gave it

²² Gemeentearchief Leiden (GAL), Oud rechterlijk archief (ORA) 4-4P: *Correctieboeken, 1392-1778*. For example: GAL ORA 4A, fol. 233 (1447): '[Gerrit Willemsz] will come before the court at the city hall before tomorrow's sunrise, bareheaded and ungirded, and beg the court to forgive him, for God's sake, anything else in which he has wronged the city'. I am grateful to Janna Coomans for drawing my attention to these instances of bareheaded movement in the Leiden archives.

²³ Mary C. Mansfield, *The humiliation of sinners. Public penance in thirteenth-century France* (Ithaca and London, 1995) 113, 264. Mansfield names many similar examples in her book, for example at pp. 127, 268, 274 and 279.

²⁴ Ephraim Emerton (ed.), *The correspondence of Pope Gregory VII. Selected letters from the Registrum* (New York, [1932] 1979) 112. Also see: Vollrath, 'Rebels' (2002) 97.

²⁵ Richard C. Trexler, *Public life in renaissance Florence* (New York, etc., 1980) 176-179.

an important role to play in the grey area that existed between spiritual and secular justice.²⁶ While most famously theorized in theological and liturgical works, in practice the political and social context of thirteenth-century public penances was predominantly urban. There both bishops in their function as secular lords and non-ecclesiastical authorities borrowing a certain spiritual gesture language, used these types of public penance in penal practice.²⁷ The specific attire encountered in the descriptions of Utrecht's forgiveness procedures thus hint at the ritualization of these events in two related ways. By visualizing the extraordinary status of the culprit, his outfit contributed to the public performance of the legal process. Engaging the socio-cultural knowledge and expectations of an urban audience, this appearance suggested a specific penance-related meaning for the event as a whole. Furthermore, the procedure drew upon a long tradition of occasions where a similar attire was used in relation to spiritual penitence. In this way, the ritual actors – both Council and culprit – related their activity to many other situations that had gone before, thus suggesting its inclusion in a broader constellation of spiritual and legal practices.

The suggested link between Utrecht's forgiveness rituals and broader practices of public penance, is further strengthened when focusing on a third element of these penal occasions. After having visibly and recognizably moved through the city, the culprit would beg the Council for forgiveness for his deeds. More often than not this was followed by the payment of a stone-fine.²⁸ Begging for forgiveness in combination with an explicitly signified fine strongly echoed the common penitential scheme of public submission and public satisfaction.²⁹ In penitential theory, when an individual had violated the established cosmic order by sinning, he or she would have to re-establish this order through submission to a spiritual authority, like the bishop, and to satisfy it in one way or another, for example by undertaking a pilgrimage. Likewise, in begging the Council for forgiveness, the culprit in Utrecht was forced to acknowledge this body's authority as a representative of the urban community. And by paying a fine that was explicitly presented as a contribution to something as communal as urban space, he would furthermore have to satisfy his violation of the social order.

²⁶ Mansfield, *Humiliation* (1995) 128. Mansfield reacts to authors like: Paul de Win, *De schandstraffen in het wereldlijk strafrecht in de Zuidelijke Nederlanden van de Middeleeuwen tot de Franse Tijd bestudeerd in Europees perspectief* (Brussel, 1991) 35, who suggests a strong distinction between secular shaming processions (*schandtochten*) and ecclesiastical penance processions (*boetetocht*). A similar overlap between penitential and legal practices in the context of imprisonment is evidenced in: Guy Geltner, 'Detrusio. Penal cloistering in the Middle Ages', *Revue Bénédictine* 118 (2008) 89-108; *Ibid.*, *The medieval prison. A social history* (Princeton and Oxford, 2008) 77-80. That the linking of penitential and politico-legal practices had a much longer history is evidenced in: Mayke de Jong, *The penitential state. Authority and atonement in the age of Louis the Pious, 814-840* (Cambridge, 2009); Rob Meens, 'Penitential varieties', in: John Arnold (ed.), *The Oxford handbook of medieval christianity* (Oxford, 2014).

²⁷ Mansfield, *Humiliation* (1995) 248-287.

²⁸ See Chapter two for an extensive analysis of these stone fines.

²⁹ Mansfield, *Humiliation* (1995) 124.

Collectively then, the elements of Utrecht forgiveness rituals contain ample references to a much larger penance-related ritual scheme. Although originally stemming from theology and liturgical theory, its strategic use by ecclesiastical authorities had brought these ritual forms within the scope of many secular authorities.³⁰ Elements stemming from this ideal scheme, like exposed movement, recognizable clothing, and the act of begging for forgiveness, could be and were applied in various urban settings.³¹ At the same time, there were important local differences in the application of such penitence-related punishment. Compared to the available evidence for such instances of public penance in other urban communities in the late medieval Low Countries, the frequency and apparent standardization of a specific sequence of actions in the Utrecht source material is uncommon. Notwithstanding our still very limited view of the role of these penitential elements in the penal practice of many urban communities, the general impression that arises from the literature and available sources is that of a rather fragmented and varied procedure, often forming only a minor part of other penal occasions.³² A much more common form in which we encounter penitence-related punishment in the southern and northern Low Countries are pilgrimages.³³ Although often combined with occasions of publicly witnessed penance, pilgrimages, by taking the penitent away from home, were more concerned with a culprit's spiritual wellbeing, than with his relation to society. Instead of the local audience engaged in the forgiveness procedures, pilgrimages entailed first and foremost a performance before God. In this context, it is striking how rare mentions of the imposition of pilgrimages are in the Council's sources.³⁴ A choice was evidently made between various penitential activities regularly applied in secular penal practice. In Utrecht certain elements were singled out and frequently combined in a set sequence of actions, while others were not. Thus, while hinting at a broader constellation of penitential practices, the forgiveness procedure essentially constituted a unique local form of legal practice.

³⁰ Ibid. 127-128. For broader ideas on the influence of theology and ecclesiastical law on European practices of penal shaming, see: Jörg Wettlaufer and Yasuhiro Nishimura, 'The history of shaming punishments and public exposure in penal law (1200-1800). A comparative perspective (Western Europe and East Asia)', in: Bénédicte Sère and Jörg Wettlaufer (eds.), *Shame between punishment and penance. The social usages of shame in the Middle Ages and early modern times* (Florence, 2013) 197-228, esp. 202-209.

³¹ No definite overview of the practice of public penances in the Low Countries is available to my knowledge, but a first general impression can be gained from Jan van Herwaarden's doctoral thesis on the related theme of obligatory pilgrimages: Van Herwaarden, *Bedevaarten* (1978), which shows various elements to have existed in the penal practice of Antwerp (p.196), Leuven (p.242, 247), Brielle (p.279, 283), Delft (p.285), Haarlem (p.290), Leiden (p.325) and Schiedam (p.347). For evidence of such practices in fifteenth-century Malines, see: Louis Th. Maes, *Vijf eeuwen stedelijk strafrecht. Bijdrage tot de rechts- en cultuurgeschiedenis der Nederlanden* (Antwerp and The Hague, 1947) 433-435.

³² In the examples provided by Van Herwaarden, *Bedevaarten* (1978), forgiveness rituals generally form part of the broader punishment of obligatory pilgrimage.

³³ Mansfield, *Humiliation* (1995) 282-287; Herwaarden, *Bedevaarten* (1978).

³⁴ Berents, *Misdaad* (1976) 50.

In this context it is relevant to take into account several specific characteristics of Utrecht as an urban community. In contrast to most neighbouring cities, Utrecht was – and had for centuries been – the seat of a bishop, who was the community’s most direct ecclesiastical and secular authority. Over the thirteenth and fourteenth centuries this second aspect of the bishop’s authority in particular was seriously challenged by different groups and individuals in society, first by an increasingly influential merchant elite and from the late thirteenth century onwards by the guild-based government that made the Council such a prominent institution. As seen in chapter one, these two elements – the important role of an ecclesiastical landlord and the internal power struggles that spanned most of the period under consideration – formed the background for the political development of the city in the late medieval period. In this respect the situation in Utrecht strongly echoes the situation that Mansfield describes in the northern-French cities where public penance became an important part of urban penal procedure in the thirteenth century. In these places, she argues, urban penances ‘characteristically arose from divisions within cities and especially from divisions between bourgeois and clerics or among bourgeois families.’³⁵ In her view the use of public penances in northern France was therefore strongly related to struggles for legitimacy between different stakeholders in the cities. Based as it was on a common gesture language, these urban penances emphasized the spiritual legitimacy of the party applying it.³⁶

There is, however, also a marked difference between the situation in Utrecht and the northern-French towns. In the latter case, the party imposing the penance was generally a bishop or another ecclesiastical authority, whose influence in this region was fairly strong. Public penance was therefore a particular weapon for ecclesiastical authorities, who used it to legitimize the specifically spiritual type of power they claimed.³⁷ Although the Utrecht sources do occasionally mention the bishop as overlord, the penitentiary language of the forgiveness procedure almost exclusively emphasizes the city and its Council – not the bishop – as authorities to be re-acknowledged.³⁸ Adding to Mansfield’s suggestion that such public penances were related to authorities’ struggles for legitimacy, the case of Utrecht thus shows that in the late fourteenth century the legitimizing potential of such acts was actively and consistently incorporated by a secular authority as well.

The uncommon frequency of the forgiveness procedure in Utrecht begs the question as to why this specific ritual language became so popular in legal practice. Again the socio-political context of late medieval Utrecht provides part of the explanation. One of the entries in the *Liber Albus*, the

³⁵ Mansfield, *Humiliation* (1995) 251.

³⁶ *Ibid.* 248-252, 262-269.

³⁷ *Ibid.* 267.

³⁸ See Appendix 1.3. Only on three occasions is the bishop named as recipient of a compensation in such a forgiveness procedure: HUA 701-1.16: *BSB* 1385-1391, fol. 207r (1391); HUA 701-1.13: *RDB* 1402-1408, fol. 108r (1407); HUA 701-1.13: *RDB* 1408-1414, fol. 104r (1412).

oldest of the Council's surviving books of bylaws, records a verdict given by the bishop of Utrecht in 1346 regarding an attack on the Council and its functionaries by a group of men. The bishop, who was called upon by the citizens and guilds to judge the case, gave his decisions on the resolution of a variety of issues: punishments to be meted out, damages to be paid, and peace treaties to be concluded. One of the punishments handed out consisted of the decision that a group of offenders would come before both the bishop and the Council in a simple garb of linen clothing, bareheaded and barefooted, with a bare sword in hand, and begging, first the bishop and then the Council, for mercy.³⁹ This is as far as I know the earliest recorded example for Utrecht of the by now familiar movement in a humble garb to beg an authority for forgiveness for serious misdemeanour, which is here, as in several other cases, underlined symbolically by carrying a sword. In contrast to the many later cases encountered in the *Buurspraakboek*, here the episcopal landlord drew on this sequence of actions in his attempt at resolving an internal struggle within the Utrecht community.

Considering this instance in the light of the regularity with which the same pattern of actions reappears in the Council's sources from the later fourteenth century onwards, suggest two observations. First, that in 1346 the bishop, after the Guild letter of 1304 and the complementary ruling of 1341 had markedly decreased his actual power in the city, seems to have used this penitence-related punishment to claim an authority that he was rapidly losing. Here we discern an echo of the situation in thirteenth-century northern France as described by Mansfield, where such penance-related punishment was a much-used means of legitimization for bishops and other ecclesiastical authorities.⁴⁰ It is thus a concrete indication of the way in which Utrecht was part of a broader religious semantic network, where a specific kind of ritual language was commonplace.

Secondly, focussing on the penal occasions themselves, such instances also point at the role such broader semantic schemes could play for ritual actors in reaching specific socio-legal goals. For the Council, these occasions formed part of its claim for legitimacy. Tapping into a ritual grammar predominantly familiar from a spiritual context, suggested the continuity of the bishop's legal authority by the Council; the position of forgiveness-granter that had previously been taken by the bishop, was now explicitly and structurally claimed by the Council. By appropriating the spiritual legitimacy of these penance-related practices, the Council attempted to recreate the link between secular and ecclesiastical authority that had for long been combined in the person of the bishop. For the culprit it could also be profitable to suggest a link between his individual passage through the city

³⁹ Muller, *Rechtsbronnen* vol.1 (1883) 57-60: 'Voert segghe wi, dat Louwe Stommekeiin, ..., binnen dreen daghen na desen daghe comen sellen, ten ersten voer ons ende na voer den ghemenen raet vander stat ende voer die clocke, horeliic in enen bloten paer linnen cleder bloetshoefts ende barvoet, ende yeghelic van hem sel een baer swaert in siin hant hebben ende sellen bidden ons voer ende den rade na, also also gheseghet is, dat wi hoers lijfs ghenade hebben willen;...'

⁴⁰ Mansfield, *Humiliation* (1995) 267.

and penitential practices. Given the nature of some of the offenses for which this procedure was imposed, varying from the public misbehaviour of Snellaert the sawyer to Jan de Rode's act of manslaughter, one can imagine the sticky situation in which some of these culprits found themselves. An offense like manslaughter could just as well lead to permanent exile from the city, thus not only separating the offender from his social and economic means of existence, but also presenting him as a communal pariah. In this light a spiritually sanctioned reconciliation, suggesting both a personal and communal appeasement, may well have been a more inviting option, facilitating – formally at least – the offender's social reintegration.

The procedures of forgiveness provide a particularly clear example of the ritualization of legal practices in late medieval Utrecht. These locally specific penal occasions referred to a broader constellation of mainly penitential acts. As frequently reappearing sequence of actions, these procedures' explicit references to broader systems of practice provided the things that were done with a certain significance. By referencing, rather than simply following a predetermined ritual scheme, actors could appropriate such broader implications, while still keeping a degree of freedom in performing the acts themselves. These occasions were thus a particularly embodied means of legal communication, partly shaped by the ritual language that was used – that is the penitential references in dress and action – yet also dependent on the interaction between ritual actors and their direct audiences. The legal actors – both Council and culprit – strategically drew on larger communicative structures – in this case penitential practices – to suggest a link between individual penal occasions and broader schemes of ritualized action, in an attempt to legitimize both action (the punishment) and the actors themselves.

York: the performance of judgment

With the foregone in mind, it is not surprising to encounter the language of penitence also in the legal proceedings of York's Consistory Court. In one of the court's few surviving fourteenth-century act books, a scribe noted how the official convicted a certain Thomas Candeler for contumacy, that is for not appearing in court when summoned, and some other unspecified offenses. Thomas was ordered to walk at the head of the procession in York Minster for twelve days, and around the local market square for six days. He would do this *more penitentis*, in the manner of a penitent, thereby emphasizing the spiritual character of the occasions.⁴¹ Thus, a similar language of ritualization as seen in Utrecht, northern France and elsewhere, was available in York too. However, despite some evidence for these practices in the Consistory and several related courts, they are not as extensively

⁴¹ YML M 2(1)b, fol. 2v.

documented as is the case in Utrecht.⁴² This is primarily an issue of sources. The court's act books survive only fragmentarily for the fourteenth and fifteenth centuries, while the much more numerous cause papers concern mainly instance jurisdiction, which did not – or only secondarily – involve penitence-related punishment.⁴³ With such limited information, it is difficult to gain a proper impression of the role of such practices in the Consistory Court. There was, however, another much better documented practice that illustrates some of the ways in which specific actions in court were ritualized to provide them with a broader relevance. These were the sentence readings, that is to say occasions on which a court official would read out the judgment reached in a case.

For some 34% of the fourteenth-century cause paper dossiers the court's sentences have survived.⁴⁴ As this includes some cases, predominantly appeals, with multiple verdicts from the different stages the case went through, the total number of individual sentences noted down in the cause papers for this century amounts to 118. Of these some 36% (42 sentences) date to the last decade of the century. Individual sentences generally consist of two parts: one detailing the case, the verdict and the process leading up to the verdict, the other noting the day and place on which the aforementioned was read and brought (*lecta et lata*), possible further steps taken by one of the parties and the people present at the reading of the sentence (Figure 12). There is thus textual evidence of a fairly consistent practice of oral pronouncements as part of the legal process before the Consistory Court. As in the case of Utrecht it is crucial to realize that we are looking here at a biased textual account of these legal performances, that is the court summarizing its own sentence reading. Thus these descriptions can never provide us with a full account of the interpretations and experiences of all people witnessing or participating in such occasions. But even if they show the

⁴² Similar cases of penitence-related punishment are found in the courts of the dean and chapter of York Minster: Sandra Brown, *The medieval courts of the York Minster Peculiar* (York, 1984) 25-26. For other ecclesiastical jurisdictions, like Canterbury, Rochester and Lincoln there is also ample evidence of such punishments in the late medieval period: Helmholz, *Marriage Litigation* (1974) 182; Dave Postles, 'Penance and the market place. A reformation dialogue with the medieval church (c. 1250-c. 1600)' *The Journal of Ecclesiastical History* 54.3 (2003) 441-468, at 443-447. Also see: R.H. Helmholz, *The Oxford history of the laws of England. The canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford, 2004) 622-624.

⁴³ For the fourteenth century only the act books for the years 1371-1375 have survived: YML M 2(1) b and c. For the fifteenth century the years 1417-1420, 1424-1427, 1428-1430 and 1484-1489 are covered: BIA Cons. AB 1, 2, 3 and 4 respectively.

⁴⁴ In absolute numbers, it concerns 87 out of 254 cases. The fourteenth-century cases with surviving verdicts are (in non-chronological order): BIA CP.E.1, 2, 3, 6, 15, 17, 18, 23, 24, 26, 28, 37, 46, 50, 71, 72, 76, 77, 79, 80, 82, 84, 85, 87, 89, 92, 95, 98, 102, 103, 105, 106, 107, 111, 112, 113, 114, 116, 117, 118, 124, 126, 130, 135, 138, 155, 157, 158, 159, 161, 169, 170, 171, 177, 178, 185, 188, 191, 193, 194, 196, 198, 201, 202, 203, 204, 208, 211, 214, 221, 224, 226, 228, 231, 233, 235, 238, 239, 242, 245, 251, 253, 255, 259, 263, 268, 270, 274 and 275. Whether the survival of sentences should be considered incidental is unclear, as cases could supposedly be settled out of court before a verdict was given. See: Frederik Pedersen, *Marriage disputes in medieval England* (London and New York, 2000) 105-118 for evidence on extra-curial legal procedures. There is likely to be a relation between appeal cases and the survival of sentences. While only 115 (45%) of all fourteenth-century cases concern appeals, of all cases with sentences 53 (60%) are appeals. For precise numbers of sentences per type of case (e.g. matrimonial, related to tithes, etc.) see Appendix 2.1.

court's own interpretation of these events, this in itself provides us with some sense of the way in which it tried to conceptualize actions in court as part of larger communicative schemes. The aspects of these readings that it recorded were the ones that mattered, as they formed part of the attempt at ritualization. It is thus again worthwhile to examine these descriptions in more detail.

Some indication of the physical location of the sentence readings is given in 42% (50 out of 118) of the sentences. The wording for this location varies. In some cases the entry notes only that the sentence was read in the court of York (*in curia Eboracensis*) or in the consistory of York (*in consistorio Eboracensis*).⁴⁵ This gives only a very limited indication of the actual place, as the terms *curia* and *consistorium* could hint both at a physical location and at the court as a jurisdictional body. In other cases the entries are less ambiguous, stating that the reading took place 'in the place of the consistory' (*in loco consistorii*) or, even more explicitly, 'in the place of the consistory in the cathedral church of York' (*in loco consistorii in ecclesia cathedrali Eboracensis*).⁴⁶ In addition, a few cases that do not name the location of the sentence reading itself, do however specify that the appeal that followed on the reading of the sentence – and which is for that reason also noted down – will be received in the *locus consistorii*. This makes the sentence readings the part of the Consistory Court's legal activity that can most clearly be situated within the cathedral church. As seen in chapter two, the Minster was a multifunctional and multi-signifying place, catering for a whole range of social activities and representations. To have the sentence readings take place within the cathedral church – and furthermore to note this down explicitly in the records – was more than simple convenience. Visibility and more general accessibility of these occasions were heightened compared to many other parts of the legal process, like the hearing of a testimony that took place behind closed doors. And in a similar vein, the location of the cathedral church placed a Smithsonian 'focussing lens' on the sentence readings taking place within it. A judgment orally performed in the house of God likely shared in the religious significance of many of the other activities taking place there, most notably the saying of mass. In the emphasis on the location of the readings we thus discern, like in Utrecht, both the role of a witnessing audience and of the suggestion of broader structures of practice in this particular place.

Another element that provides us with some information on the setting of these sentence readings are the so-called *presentibus*-clauses. In 83 (70%) of the individual sentences preserved for this period such a clause is present, making it the most regularly noted practical information apart from the date of the reading. *Presentibus*-clauses are usually contained as a last element of the *lecta et lata* entries, and specify the names and often also the function of some of the people who were present at the reading. The named people encountered in these entries vary from court officials like

⁴⁵ Like in BIA CP.E.226 and BIA CP.E.275.

⁴⁶ See for example BIA CP.E.126 and BIA CP.E.80.

advocates, proctors, apparitors, examiners and public notaries, to more general *magisters*, lords and clerics. But many entries end by stating that others (*alii*) were present as well. The number or character of these *alii* remains guesswork, but it does show the presence of more than just the named attendants. In a few cases the scribe identifies an even larger audience, noting how the reading took place among a great crowd (*in multitudine copiosa*).⁴⁷ *Presentibus*-clauses therefore suggest two related aspects of ritualized action. First, they record how in most cases audiences of various sizes were present to witness the sentence readings. Even in the most conservative estimation of the numbers of unmentioned *alii*, a sizeable audience beyond the court and litigants was present. These were events to be witnessed, even if they weren't entirely open. In addition, by explicitly recording the presence of audiences and by highlighting some of their members, the entries suggest the importance of audiences in legitimizing the occasion.⁴⁸ The presence of these people – and most prominently the legal specialists and clerics – made the performance into a valid sentence reading, earning thereby an explicit notification by the scribe. Once again, the circumstances under which the judgment was brought formed an intricate part of the significance of the sentence itself.

Moving from the setting of the readings to the sentences themselves, their extreme focus on the legal procedure itself is striking. A typical sentence begins by noting how the court has 'heard and understood' (*auditis et intellectis*) the case before it, naming the judge, both parties and the proctors involved in the case by name. It continues by elaborating on the many procedural steps taken in the case, from the plaintiff's bringing of his formal complaint or libel, the production, swearing and hearing of witnesses, to the conclusion of the case and the setting of a date for pronouncing the final sentence.⁴⁹ The sentence itself is usually limited to mentioning that the plaintiff did or did not sufficiently prove his complaint in court and what the consequences of this verdict are for the defendant. As was common practice in medieval law courts, the legal reasoning underlying the sentence is always absent.⁵⁰ This formulaic and content-wise very limited character of the sentences has led many scholars to disregard them in favour of other parts of the legal procedure that are richer in detailed information, like the witness depositions. However, the sentences also form that part of the case where the judicial role of the court – and thus its legitimacy as adjudicator – is most explicitly involved. To encounter here such a focus not on the legal argumentation underlying the verdict, but on the procedural steps that have preceded it, highlights which aspects of the whole procedure, and the judges' role therein, the court wanted to bring to the fore.

⁴⁷ BIA CP.E.107 and BIA CP.E.124. See Helmholtz, *Marriage litigation* (1974) 119, n.16 for examples from York and several other English church courts.

⁴⁸ See for a similar argument: Clanchy, *Memory* ([1979] 2013) 298, who interprets these *et aliis* clauses as recording first and foremost 'the impressiveness of the occasion at the time'.

⁴⁹ See Brundage, *Canon law* (1995) 129-134 for an introductory overview of the different steps of formal procedure in canon law.

⁵⁰ *Ibid.* 134.

In his discussion of marriage cases before the ecclesiastical courts of late medieval England, Richard Helmholz notes how legal procedure was very flexible in practice. Although learned canon law prescribed a strict procedural pattern in ecclesiastical courts, on the basis of the evidence gathered from different English church courts Helmholz argues that in reality the wishes and judgment of the parties and judge involved in a case had a much larger influence on the actual procedure that was followed. By compressing or outright renouncing certain procedural steps, the process as a whole was often shortened significantly in favour of a quick resolution of the case.⁵¹ Formal steps were simply skipped if informal oral negotiations made them superfluous: 'What mattered to [the parties and their lawyers] was reaching an acceptable result, not following a fixed procedural pattern.'⁵² Although I would agree with Helmholz that in day-to-day practice the formal canonical procedure formed no more than a general framework within which legal actors sought out a practical and satisfactory way to resolve their disputes, the sentences suggest that in the valuation – or one might say narrativization – of this daily practice formal canonical procedure did have an additional importance. By explicitly referencing this procedure in its sentences, the court provided its verdict with a much stronger legitimacy than the elaboration on legal argumentation would have done. Like the forgiveness rituals in the case of Utrecht, the Consistory Court's sentences drew a link between the actions that had been performed in actual practice and the idealized scheme of actions that was formal canon law procedure. In this they were relevant both for the court pronouncing them and for the parties involved. For it was this ritualization of the different actions undertaken in the context of the case that gave them their significance as extraordinary – that is legal – actions. Thus for the litigant pursuing a canonically-sanctioned decision in a dispute, both the suggestion that the actions performed in the legal process formed part of a broader ritual whole, and the confirmation thereof in the explicitly staged performance of a judgment, were of the utmost importance.

The role of such a ritualization of actions in court is made even clearer when considering the broader context of dispute resolution within which much of the legal activity before the Consistory Court was taking place. As in most medieval societies, so in York, asking for the formal sentence of an ecclesiastical judge was only one of several options available for the settlement of a dispute.⁵³ Many cases were settled largely out of court. Since such out-of-court settlements did not ordinarily produce any records, it is impossible to assess in any way how common this practice was. What may, however, give us some indication of the commonality of such practices is the large amount of cause papers that lack a sentence. Survival rates aside, the fact that only 34% of the fourteenth-century

⁵¹ Helmholz, *Marriage litigation* (1974) 112-123.

⁵² *Ibid.* 113.

⁵³ *Ibid.* 135-138; Brundage, *Canon law* (1995) 134. See the introduction to this thesis for more on traditions of extra-curial dispute resolution.

cause papers contain sentences as against for example 60% in the case of depositions, suggests a fair amount of initiated but not formally finished cases. Add to this the many invisible disputes that were not brought to court at all, and one gains an impression of the peculiar position of the formal sentences and their reading within the much broader economy of dispute resolution. Parties involved in a dispute had several choices of how to resolve it, only one of which was the 'way of the court'. In this context the legalization of actions, and in particular the court's sentence reading action, explicitly propagated the 'way of the court' as against other means of resolution that could be followed by the disputants. The actions that constituted a court case were situated within an overarching procedural framework that could in the eyes of the litigants make them a particularly valid and effective strategy for dispute resolution, backed up as it was by the social, political and cultural power claim of the institutionalized church. At the same time, for the court this procedural ritualization functioned to concretize the ideal legal order that it represented, thereby supporting its claim as authority in the resolution of people's disputes.

In 1311, archbishop Greenfield ordered every official who would from then on preside over the court to read out its statutes annually at the first session after Michaelmas.⁵⁴ This attempt to legitimize the court, while suggesting its integrity to potential litigants, worded in an explicit manner what the sentence readings performed on a day-to-day basis. Through the ritualization of court activity, referring back to the overarching scheme of acts that was formal canon law procedure, the court performed its position as authoritative settler of disputes in society. The significance of these occasions was emphasized through their setting and audience. Located as they often were within the cathedral church, the sentence readings profited from the multifarious functions and denotations that people attributed to this place. In the same way, their extraordinary character was emphasized by the presence of an audience of varying sizes, among whom several notable figures, like legal specialists and clerics. As climax of many legal cases, sentences in the Consistory Court were not just written down. They also formed the nucleus of the occasions on which the court could make its voice heard most explicitly, through the visible and oral performance of its judgment.

Paris: performance and presence

Judicial performance was also at the heart of the activities of the Parisian *Parlement*. As in York, a fair amount of its daily activities involved holding audiences, during which the different parties – sometimes through their proctors – would argue their case. In the earliest surviving royal ordinance concerning the *Parlement* (1278) the king spent many articles stipulating the details of these

⁵⁴ Wilkins, *Consilia* vol.2 (1737) 409-415, at 413; Burns, *Medieval courts* [1962] 113-116.

occasions, concerning time, place, participants and procedure.⁵⁵ The parties involved, so the ordinance tells us, would come to the royal palace during the time set for the treatment of cases coming from their bailiwick.⁵⁶ For this the *Parlement* set a strict order, dividing each legal year into eleven timeslots of different lengths, each reserved for one or several bailiwicks or other jurisdictional entities (Figure 1).⁵⁷ Parties presenting themselves on one of the days of their bailiwick's timeslot were supposed to wait in the *Salle du Roi*, which would in the early fourteenth century be turned into the *Grande Salle*, until they were called into the chamber where the pleading took place, at first the *Chambre des Plaiz* and later the *Grande Chambre*. They – and only they, so the ordinance states – would enter the chamber through the door leading to the *Salle du Roi*, the accuser briefly presenting his case and the defendant his response. These would be written down and sent to the auditors judging the case. The parties were then supposed to leave the chamber through the door leading to the palace garden, which was opposite the one they entered through.⁵⁸

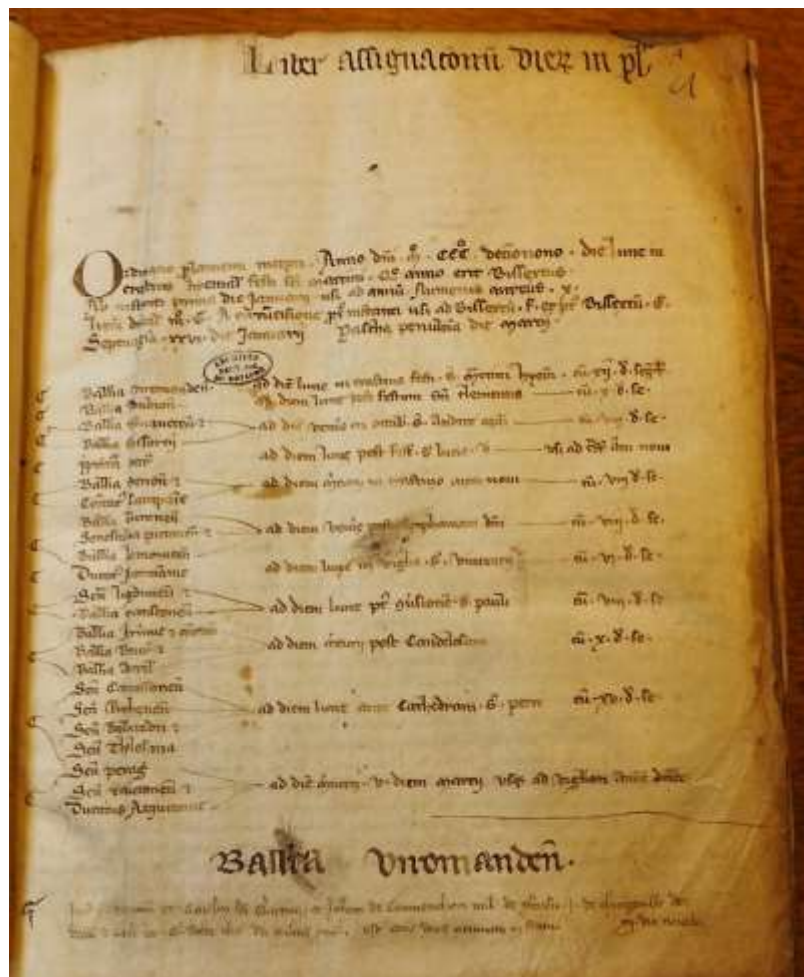


Figure 1: List of bailiwicks and other jurisdictional entities in the *Parlement's* register for 1319 (AN X^{1A}8844, fol.4r). Each entry indicates the period during which the *Parlement* will receive cases originating in the concerned area.

Several decades later, another royal ordinance – variously dated

⁵⁵ The originally Latin ordinance has only survived in various middle-French translations, edited in: P. Guilhaumez, *Enquêtes et procès. Étude sur la procédure et le fonctionnement du Parlement au XIV^e siècle* (Paris, 1892) 600-610, and in: Ch. V. Langlois (ed.), *Textes relatifs à l'histoire du Parlement depuis les origines jusqu'en 1314* (Paris, 1888) 95-99.

⁵⁶ Guilhaumez, *Enquêtes* (1892) 604, art. II.

⁵⁷ This division of the legal year according to the bailiwicks and other jurisdictional entities constituting the French kingdom can also clearly be seen in the registers of the *Parlement's* registry (*registres du greffe*), which have been kept from 1319 onwards to note down the activity taking place in the *Parlement*. The register for every new year begins by prescribing the different time frames for the reception of cases from the various bailiwicks.

⁵⁸ Guilhaumez, *Enquêtes* (1892) 604, art. III-VIII.

to 1296 or 1302 – further expanded these instructions.⁵⁹ It put even more emphasis on the temporal aspects of court ritual, stressing the importance of strictly following the order of days set for the various bailiwicks, without intermingling them.⁶⁰ Whoever failed to appear on the days assigned to his bailiwick, would be considered to be in default.⁶¹ The ordinance further determined that the assemblies in the pleading chamber would take place in the morning and last until mid-day.⁶² Much attention was also paid to the people supposed to be present in the pleading chamber, including at least one baron and one prelate and a number of explicitly named laymen and clerics.⁶³ At the same time, others were excluded from being present at said occasions, like seneschals and bailiffs, that is the intermediary legal officials of the kingdom.⁶⁴ These ordinances, in presenting an idealized setting and procedure for the business of the court, link individual audience sessions to the idea of a broader structure of activities. This ritualization took place on several levels. By framing sessions as events structured according to timing, space, persons present and activity, the ordinances give participants a fixed role and limit their agency to a set of standardized actions. At the same time, at the level of the judicial year, these individual sessions were clustered according to the judicio-political logic of the bailiwicks, again suggesting a broader framework of practices of which these activity sequences formed part. That the legal organization of the kingdom as a whole was taken as basis for the legal year, furthermore implied the geographical comprehensiveness of this system of activities. The judicio-political entity of the kingdom was presented as an interconnected whole of legal practices. The *Parlement* thus presented the activities taking place before it as parts of a larger entity of practice, both on the level of the individual sessions and in the relation between sessions.

It was more than interconnectedness that concerned the *Parlement* as regards the audience sessions. An aspect that recurs time and again is the physical presence and participation of court members, parties and audiences. The two ordinances cited above pay much attention to the presence and roles of the different actors – litigants and their proctors as well as court members – on these occasions. As seen above, they sometimes specify in particular detail who was supposed to be present at the audience sessions. The registers of the *Parlement* also emphasize the importance of participation in court sessions. They regularly mention how the court declared people to have been in default, even though they provided an excuse for their absence. For example, when Pierre de La Vaunage from Nîmes failed to turn up on 4 May 1330 on account of illness, the court did not consider

⁵⁹ This ordinance has been published in Langlois, *Textes* (1888) 161-167.

⁶⁰ *Ibid.* 165 (§16).

⁶¹ *Ibid.* (§19).

⁶² *Ibid.* (§18). During the fourteenth century the increase in case load led the *Parlement* to hold several afternoon sessions each week as well: Hildesheimer and Morgat-Bonnet, *État méthodique* (2011) 43.

⁶³ Langlois, *Textes* (1888) 162-163 (§7-§9).

⁶⁴ *Ibid.* 163-164 (§11).

this a sufficient excuse for his absence.⁶⁵ The same is true for the measure of *élargissement*.⁶⁶ Grants of *élargissement*, by precluding movement outside of a certain area, were meant to assure that their receiver would be able to appear in court personally on the day that his or her case would be heard. It was also deemed important that certain actions would not be performed at any other time than during a court session. Another royal ordinance, originally published in 1310 by Philip the Fair and reproduced in 1318 under Philip the Tall, stipulated that members of the *Parlement* should not receive any information or ‘private words’ (*paroles priveez*) from parties except in pleading during a court session.⁶⁷ This provision can be interpreted in several ways. It is clearly meant as a way to discourage practices perceived as corrupt, like making external agreements between one party and individual members of the *Parlement*. At the same time, however, it also shows us the idealized function of the court sessions as perceived by the king and his advisers. What made an action – like receiving information in a case – a valid action, was its performance in person in the setting of the pleading chamber.

The importance of physical presence for the performance of legitimate legal actions also emerges from the stipulations regarding proctors. In contrast to the almost self-evident role that proctors seem to have played in the Consistory Court of York, the *Parlement* placed limits on the use of such functionaries by the parties appearing before it.⁶⁸ As Aubert has shown, from the beginning of the fourteenth century onwards various treatises set out the – theoretical – rules concerning the representation of parties by proctors. Central in these stipulations was the parties’ – or at least the accusers’ – obligation to request a royal letter of pardon in order to be allowed to plead a case by means of a proctor. Notwithstanding the many exceptions that the authors of these tracts allow for – such as those for the proctors of certain ecclesiastical and secular dignitaries – their writings point at the court’s efforts to preclude parties’ personal absence during the pleading sessions, unless explicitly approved by the royal administration.⁶⁹ These theoretical considerations closely echo what we can grasp from daily court practice in the early fourteenth century. Both the X^{1A} and X^{2A} registers for this period regularly contain items concerned with the question of appearing in person or by proctor. This could for example be in the form of a penalty for only sending one’s proctor. On 14 March 1330, the day assigned to cases from the bailiwick of Sens, a certain Jean Bruiant was supposed to appear in *Parlement*. Since only his proctor showed up, the court decided to consider

⁶⁵ AN X^{2A}3, fol.114r. For a similar case see: AN X^{2A}4, fol.47v.

⁶⁶ See chapter two for more on the *élargissement*.

⁶⁷ This ordinance has been published in Langlois, *Textes* (1888) 183-186. The stipulation referred to here is §11 at p.186.

⁶⁸ For the role of proctors in the Consistory Court of York, see chapter one and chapter five.

⁶⁹ Aubert, *Nouvelles recherches* pt.1 (1916) 282-284. Aubert’s main source on this matter are several stipulations in the *Stilus curie Parlamenti* by the early fourteenth century advocate Guillaume du Breuil, edited as: Guillaume du Breuil, *Stilus curie parlamenti*, ed. Félix Aubert (Paris, 1909), at 81-84.

him to be in default.⁷⁰ At the same time the registers also contain mentions of royal letters of grace accorded to specific litigants for reception through proctor. So for 12 December 1330, the register mentions how the king has given Jean de Culhem, citizen of Saint-Omer, permission to be represented by his proctor in the case in which he is involved.⁷¹ And in a case from 1341, a certain Tristan de Maignelay was allowed to be represented by a proctor up until the specific procedural step of responding to the articles in the case.⁷² Although representation by proctors was certainly not forbidden on a major scale, with such measures the court encouraged litigants to appear in person before the court, thus taking an active part in performing the legal process.

The role of a witnessing public is less directly evidenced in the sources for the *Parlement*. However, looking at the spatial layout of the *Grande Chambre* in particular, there are clear indications of the presence of variously sized audiences playing an active part in at least some of the sessions taking place there. Chapter two has shown how one area of the *Grande Chambre*, called the *parterre*, was available during certain sessions for a larger public to witness the proceedings.⁷³ Although visual evidence of these audiences lacks for the medieval period, textual sources attest the active presence of these groups as early as the first half of the fourteenth century. An ordonnance by Philip VI from 1344 provided several guidelines for the functioning of the court officials called the *huissiers*.⁷⁴ Two of them, so the provision reads, were supposed to ‘remove and prevent the noise from behind the benches and from everywhere in the Chamber of the *Parlement*’.⁷⁵ Anyone making noise or otherwise hindering an audience session was to be imprisoned.⁷⁶ These provisions hint at the essential role of the public during audience sessions, while at the same time showing the *Parlement*’s attempt to let this audience play the role it had envisioned for it. Rather than precluding anyone from witnessing these sessions, as was done when the *Parlement* sat for counsel in the same chamber, the court explicitly recognized the audience as part of the ideal setting for these occasions, appointing two *huissiers* for this purpose. At the same time, the public was given a specific role, that is to witness the session, and not to impede its progress.

Like the sentence readings in York and the occasions of public penance in Utrecht, the *Parlement*’s audience sessions allowed the court’s socio-legal claim to be physically and orally performed. By drawing a link between the things done in the courtroom and a broader context of

⁷⁰ AN X^{2A}3, f.105r. For a similar case see: AN X^{2A}4, f.32v.

⁷¹ AN X^{2A}4, fol.22r. For similar cases see: AN X^{2A}3, f.117r. For similar cases from the late fourteenth century, see: Carbonnières, *Procédure* (2004) 168-176.

⁷² AN X^{2A}, fol.42r. On the procedure of drawing up the articles in a case, see: Carbonnières, *Procédure* (2004) 434-440.

⁷³ Guerout, ‘Deuxième partie’ (1950) 145-152.

⁷⁴ De Laurière et al. (eds.), *Ordonnances*, vol. 2 (1729) 225. Also see chapter two, p. ...

⁷⁵ Ibid. (§1): ‘...oster et garder la noisse de derriere les bancs et de toute la Chambre du Parlement.’

⁷⁶ Ibid. (§3).

legal activity, the former were provided with a specific relevance. Furthermore, through its attempts to manage the physical presence of court members, litigants and audiences, the *Parlement* showed a desire to make the audience sessions into legal performances that validated the acts that took place there. At the same time, however, the effectiveness of such place-bound ritualizing efforts will in many cases have been incompatible with the reality of a central royal court like the *Parlement*, which engaged with litigants and culprits from all over the kingdom. In part, the impediment of distance between court and litigants was dealt with through the use of proctors, allowing litigants residing far from the capital to be represented by a legal specialist nearer the court. However, as seen concretely in the restrictions set for the use of proctors, the royal court objected to this form of absenteeism in the cases appearing before it.

It is in this context that a special type of court session comes to the fore. For if the litigants did not come to court, the court could always come to the litigants in the form of so-called *Grands Jours*.⁷⁷ The precursor of these special parliamentary sessions seems to be the royal practice of occasionally upgrading ducal or comital legal assemblies to the level of a supreme court of law, something which was done every now and then from the thirteenth century onwards.⁷⁸ This was especially true for the highest judicial assemblies in the county of Champagne, regularly held in the city of Troyes and therefore known as the *dies Trecentis* or *Jours de Troyes*. In 1284 Philip the Fair married the heiress of Champagne, Jeanne of Navarre, initiating a period of direct royal control over the county, Philip acting both as King of France and Count of Champagne. One of the areas where this control became most clearly visible was in the organisation of the *Jours de Troyes*. These provincial judicial assemblies were turned into a sort of delegated branch of the Parisian *Parlement*: many of its judges now came from Paris and also had a seat in the *Parlement*, and its procedure and session schedule came to mirror those at the *Palais de la cité*.⁷⁹

Since royal control over the provincial *Jours de Troyes* was initially based on dynastic manoeuvring, personal eventualities – like the death of Jeanne of Navarre in 1305 and that of Philip the Fair in 1314 – led to serious reconfigurations of the relationship between the *Parlement* and the *Jours de Troyes*.⁸⁰ In line with broader struggles between the centralizing tendencies of the last Capetian kings and baronial resistance, the royal grip on the provincial assemblies at Troyes seems to

⁷⁷ The *Grands Jours* as a subject have been curiously understudied. To my knowledge, the most up to date work on them is Elisabeth Schmit's excellent, though unfortunately unpublished MA thesis: Elisabeth Schmitt, *Les Grands Jours du Parlement de Paris, 1367-1459* [s.l., 2012].

⁷⁸ Schmit, *Grands Jours* [2012] 43-44.

⁷⁹ John F. Benton, 'Philip the Fair and the Jours of Troyes', *Studies in medieval and renaissance history* 6 (1969) 279-344, at 281-292.

⁸⁰ *Ibid.* 294-296.

have dwindled after the death of Philip the Fair.⁸¹ Only under the first Valois king, Philip VI (r. 1328-1350), do we pick up the trail again, and between 1331 and 1409 there is evidence for the organisation of *Grands Jours* in Troyes every several years.⁸² These special judicial occasions, as far as we can grasp from the sources, seem to have shared several common characteristics. Like the *Jours* under Philip the Fair, they were held by the king in his capacity as Count of Champagne, even after the county officially became part of the royal demesne in 1361. A small number of local dignitaries would therefore always be present, and the costs of the undertaking were shared between the bailiwicks forming part of the county. However, apart from these provincial ingredients, the *Grands Jours* of Troyes were in many respects a local manifestation of the Parisian *Parlement*. A fixed place was used to hold the sessions of the *Grands jours* in Troyes, giving a sense of platial continuity similar to that provided by the *Grande Chambre* of the royal palace. Like the *Jours* held under Philip the Fair, most of the men participating in the later assemblies were selected from amongst the regular Parisian court members. Furthermore, the legal activity employed in Troyes also closely resembled that in the Parisian context, consisting of alternating pleading and counsel sessions. And even in the registers of these sessions themselves the material seems to be ordered according to a more general parliamentary logic.⁸³ The fourteenth-century *Grands Jours* of Troyes thus in a way transported the court activity of the *Parlement* to a different time and place.

This occasional translation of the *Parlement* may have had some basis in practical considerations. First and most obviously, it made it easier and cheaper for people living close to Troyes to bring their case to the royal court directly. But the fact that such *Grands Jours* up until the late fifteenth century were always held in the same place, and only for some six to eight weeks every several years, makes it highly unlikely that this was the only, let alone the most important consideration to organise them. Rather we may seek such motivations in the area of judicio-political communication. The French kings, having acquired the title of Count of Champagne, had a very real interest in tying this region – not only officially, but also ideologically – to the royal demesne. In a late medieval context the physical presence of the monarch or his representatives in a locality were a common way of claiming such an ideological link between ruler and ruled, as the tradition of Joyous Entries – comprising the festive entrance of a ruler in a city – in this same period professes.⁸⁴ That such a show of presence

⁸¹ For a concise history of the later Capetian kings, see: Menant, Martin, Merdrignac and Chauvin, *Capétiens* (Paris, 1999) 429-446.

⁸² Schmit, *Grands Jours* [2012] 6-7, gives a total of eighteen *Grands Jours* for this period, grouped in several 'clusters' of closely successive years: 1331, 1333, 1334, 1336, 1343, 1344, 1345, 1353, 1354, 1367, 1374, 1376, 1381, 1391, 1395, 1398, 1402 and 1409; the only evidence for the sessions before 1367 is an inventory of the pieces concerning these earlier *Jours*, which is inserted in the register for this later year.

⁸³ See: *Ibid.* 44-56, 131, who, though focussing on the late fifteenth-century *Grands Jours*, gives ample information on the fourteenth century ones too.

⁸⁴ For more on the practice of Joyous Entries, see: H. Soly, 'Plechtige intochten in de steden van de Zuidelijke Nederlanden tijdens de overgang van Middeleeuwen naar Nieuwe Tijd: communicatie, propaganda, spektakel'

was in the case of the *Grands Jours* modelled along the lines of an extraordinary session of the *Parlement* implies not only the importance of this institution, but above all of its judicial activities in suggesting a certain idealized image of royal governance.

Considering the broader development of the *Parlement* of Paris from the late thirteenth to the early fifteenth century, exposes the importance attached to the ritualization of court activity, that is attempts at suggesting a broader structure for people's movements and actions during court sessions. As in the cases of Utrecht and York, the explanation for ritualization is two-sided. The setting of the court as a validating context for specific social actions could make it an attractive option for people seeking an institutionally backed resolution for disputes. The *Parlement* formed one avenue – though, again, not the only one – that people could take in pursuing their interests in a dispute, thereby seeking resolution validated in relation to this specific authority. At the same time, the royal court, as a potentially validating authority, also had interests in ritualizing the activities taking place in the *Palais* and beyond. The actions themselves functioned as a medium through which the *Parlement* posed specific claims on the socio-political order of the kingdom. By ordering the session days per bailiwick and requiring the presence or absence of specific judicial stakeholders in the kingdom (barons, prelates, seneschals, bailiffs) an ideal legal order and its connected power relations were physically performed. Physical presence was therefore particularly relevant, setting limits to the allowed absenteeism of those involved in court cases and attempts to involve and manage a witnessing public. The same role of court action as a medium in and of itself can furthermore be seen in the way in which the *Parlement* tried to transport its activities to other places in the kingdom in the form of the *Grands Jours*. By explicitly modelling the sessions of these *Jours* on the Parisian context, the court used references to an idealized system of practices to press its claims on the political and jurisdictional integration of different parts of the French kingdom. Again the ritualized performance of justice in the vicinity of – and therefore witnessed by – a specific local audience, took centre stage in the communicative activity of the *Parlement*.

The language of legal acts

It has been the contention of this chapter that socio-legal messaging of and before late medieval law courts was not limited to the voluminous texts that these institutions have left behind. The activities taking place in and around the courtroom formed a prominent aspect of the communicative practices that linked these bodies to the societies in which they participated. Through the ritualization of activities, that is the suggestion of their inclusion in broader networks of linked practices, this language of acts obtained a specific grammar. The alleged connection between what

Tijdschrift voor Geschiedenis 97 (1984) 341-361; Elodie Lecuppre-Desjardin, *La ville des cérémonies. Essai sur la communication politique dans les anciens Pays-Bas bourguignons* (Turnhout, 2004).

happened in the here and now and what had taken or would take place in other contexts, gave these acts a range of possible denotations. In all three cases considered here, legal actors related their activity more or less explicitly to broader constellations of practices, thereby suggesting a particular relevance for what they were doing and legitimizing their own role in doing so. The Utrecht forgiveness rituals saw the linking of a local penal procedure to broader penitential practices, both within and beyond a legal setting. In York the reading of the court's sentences referenced the legal and non-legal activities of the religious community, encompassing aspects as diverse as the saying of mass and the idealized practice of canon law. And for Paris we have seen similar references to kingdom-wide structures of legal activity, incorporating the ideal of this judicio-political construct in the organization of daily practice.

The ritualization of practices was never a matter of the court alone. In each of the three cases considered here, various legal actors and audiences played a role in shaping these events. The attempt by the Council of Utrecht to stake its claim to justicial authority in occasions echoing spiritual penitence, depended on the willingness of culprits to follow the script as envisioned for them. In the same way, the Consistory Court's sentence readings ultimately relied on people bringing their disputes to this particular court and following the process all the way through, rather than seeking other or extra-curial solutions. And the stress put by the *Parlement* on the personal presence of litigants in the courtroom, also signals the latter's role in validating the court's audience sessions. People's own interests in engaging in particular instances of judicial ritualization, therefore, had an impact on the orchestration of these events. Whereas these examples mainly show that the category of ritual actors can be interpreted more broadly than just the courts' officials, considering audiences brings a whole different kind of participation into view. Although the public witnessing the performance of legal acts did not have an explicit role in their progression, their influence on such occasions was nevertheless substantial. As aspects of communicative practice the courts' legal activities relied both on their senders and receivers in order to become a felicitous speech act. Thus, for the legal actors to successfully transmit the desired semantic implications of their legal performance, they depended on their audiences' ability to interpret it 'correctly'. Because, in order to achieve this effect, they took account of the horizon – to use the Bourdieuan term – of their public, seeking a recognizable and clearly understandable act language, the latter had a no less significant effect on the form and suggested content of these legal performances than the actors themselves did.

Legal activity was a ritualized form of social activity. Yet, as the extensive anthropological literature on ritual suggests, this category of ritualized action is still immensely broad. I would therefore like to end by briefly reconsidering what legal action means. In the interpretations of legal ritual as encountered in this chapter the emphasis generally lies on their public aspect, either as

enacted confirmations of negotiated resolutions in disputes (Althoff) or as affirmations or challenges of a broadly recognized myth of social order (Gauvard and Jacob). Such rituals are thus in the first place concerned with a public performance of social norms and values. However, these views leave very little room for the agency of individual ritual actors, assuming occasions of ritual activity to be uncomplicated adoptions of a pre-existing grammar of acts. Based on the discussion of three cases in light of the anthropological concept of ritualization, this reading seems limiting. Although these occasions were certainly public performances concerned with social norms and values, they were shaped by a multiplicity of ritual actors and audiences. Each occasion was the result of a unique combination of specific performers and publics, which attempted to legitimize their individually motivated acts by reference to supposed broader constellations of practice. Thus in our interpretation of what legal action entailed we need to involve both its public and private aspects. It was in these actions that individual socio-legal strategies encountered the public discussion of norms. Courts and litigants pursued specific goals in engaging in this sort of activity, and in the process of doing so became involved in the public defining and redefining of broader socio-legal values. While legal ritualization could validate an individual's action by suggesting a link with other meaningful activities, the action itself contributed to scripting proper socio-legal action, that is suggesting legitimate practices of achieving justice. As an activity related to the spatio-organizational entity of the law court, such legal acts thus not only strengthened the latter's position directly, by contributing to its various power claims, but also indirectly by suggesting the intricate link between valid socio-legal activity and the things going on in court.