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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

Other version

#### License

Other

[Link to publication](#)

#### 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 four

# Legal text and social context

He who wants to get to know the peasant of ancient and very ancient regimes lacks no grand syntheses – regional, national, occidental ... What is wanting, however, is the direct gaze: the testimony, without an intermediary, that the peasant provides about himself. ... Fortunately for us, yet unfortunately for them, a man, during the fourteenth-century demographic growth, has given speech to a group of villagers, and even to a whole village for that matter. <sup>1</sup>

With these words Emmanuel Le Roy Ladurie opened what has become one of the most widely acclaimed studies in social history in our time. He presented what was and still is a very familiar frustration for many historians: the lack of direct and reliable voices from many of the individuals from the past societies that interest us so much. For, prior to the modern era, the majority of texts were produced by, for and about a small social elite, leading to a strong evidential bias. For Le Roy Ladurie a solution to this problem came in the form of the records of the inquisitorial court of Jacques Fournier, the bishop of Pamiers, who organized a vigorous persecution of heresy in his diocese at the beginning of the fourteenth century. Basing himself on the extensive confessions and witness testimonies recorded by this court, Le Roy Ladurie wrote his famous microhistory of the small French village of Montaillou.

*Montaillou* is one of the most famous examples of the potential value of late medieval court records for those interested in past societies.<sup>2</sup> These records, so Ladurie argues, bring us as close as one can get to the daily lives of the non-literate majorities of premodernity. Both their social practices and mentalities shine through in the answers they provided the court with. Yet, at the same time, the passage cited above also signals a fundamental problem with too strong a reliance on these types of records. As Le Roy Ladurie's critics have long asked, do such popular voices really come to us 'without an intermediary'? It was the court that drew up these documents, based on predetermined sets of leading questions posed to the witnesses that appeared before it, many of whom were under physical, emotional and financial duress. Moreover, these Latin records were copies of translations and, more importantly, textual reinterpretations of the actual words spoken by contemporaries. Thus the texts themselves already form a fundamental intermediary between the experiences of the

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<sup>1</sup> Translated from: Le Roy Ladurie, *Montaillou* (Paris, [1975] 1982) 9.

<sup>2</sup> For more work in the micro-historical vein, see the introduction to this thesis.

medieval peasant and their interpretation by the modern historian.<sup>3</sup> Although the three case studies considered here concern institutions that differed significantly from Fournier's inquisitorial court, being more permanently established and having less of an ad hoc character, the matter of textual intermediacy is nevertheless crucial to take into account. This chapter will accordingly examine the role of the textual record, both for historians and for the contemporaries that produced and used them.

Contrary to the last two chapters, where I have tried to reach beyond the records in reconstructing the non-textual aspects of the communicative behaviour in and of the three courts, in what follows the texts themselves take centre stage. As historians' main source for the comings and goings at court, these documents have had a particularly dominant influence on what we think to know about late medieval law courts and the people with which they interacted. Rather than regarding texts only as sources to be used in reconstructing a social 'reality' beyond them, this chapter will approach them as objects produced and used in the socio-legal communicative context of the court. By asking how and why these texts came to play the role they did in courts' daily practice, I will connect the methodological questions as to their value as sources for historians with a consideration of their influence on the legal process as propagated by the court.

This chapter is primarily concerned with the role of texts within their contemporary communicative environment. The textual practices of the three courts did not stand on their own, but formed part of a major growth in the importance of texts in European societies during the medieval period. As such, the chapter will begin by relating the development of the courts' documentary practices to broader processes of document use. Subsequently, attention will shift to the place of the records within the court's legal practice. These documents related in a number of ways to the extra-textual practices for which they form our main source, be it by prescribing, describing or even performing specific acts. Treating this link between legal texts and acts shows the fundamental role of the former in the development of law courts as particular forms of socio-legal practice. As seen above, one of the main topics in recent scholarship on court records is the way in which they relate to the social activities and mentalities of the people represented in them. In the last part of this chapter I will therefore trace this relationship in two directions. In considering translation and other ways in which non-textual activities and ideas were reshaped by their transition to a text, the role of documents in legally framing the world outside the courtroom comes to the fore. By subsequently focusing on the courts' various attempts at publishing the physical texts as well

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<sup>3</sup> For an extensive review of *Montaillou* addressing such issues, see: Leonard E. Boyle, 'Montaillou revisited. *Mentalité* and methodology', in: J.A. Raftis (ed.), *Pathways to medieval peasants* (Toronto, 1981) 119-140. Later work on inquisitorial records, which takes account of such critiques, is: James Given, 'The inquisitors of Languedoc and the medieval technology of power', *The American historical review* 94.2 (1989) 336-359, esp. 347-351; Pegg, *Corruption* (2001), esp. 45-62.

as their contents, this chapter will also trace the process the other way round, showing how the strategies of validating the court and its text-based legal process went hand in hand.

### **Textualization**

Before considering the role of texts in late medieval law courts, it is necessary on the one hand to define what we mean when speaking of texts, and on the other to indicate why the particular period under study is so relevant from the perspective of these texts. In linguistic theory the term ‘text’ has been interpreted variously, from a focus on the written text as opposed to oral discourse, to the text as a broader catch-all term for all cultural messages.<sup>4</sup> In his work on the semiology of textualization, Roy Harris, one of the proponents of the school of integrational linguistics, argues for understanding texts primarily as combinations between linguistic utterances and material artefacts. These two aspects of the text – language and physical matter – have a different relation towards one another in every individual situation. If the exact same statement is written down in a book or spray-painted on a wall, its interpretation and valuation by various audiences will differ markedly. The one may consider the graffiti-text an illegitimate form of expression, while for the other this specific appearance makes it into a statement of resistance against the powers that be, regardless of its precise contents. The integration of language and matter is thus fundamental for the existence and implications of a text, as it is the relationship between the two that shapes the way in which it is used and interpreted in communicative practice. In such an understanding of texts, the process of textualization means the combination of two originally distinctive practices, that is the uttering of verbal signifiers and the production of material objects, creating a particularly physicalized form of communication with its own communicative dynamic.<sup>5</sup>

In considering late medieval law courts, Harris’ linguistic-materialist interpretation of texts sensitizes us to the communicative significance of one of the major changes in legal practice. For in tandem with the spatial, institutional and practical changes described in the previous chapters, the main development that characterizes the coming-into-being of law courts in the late medieval period is the survival of ever larger numbers of these ‘language-matter entities’. Even when taking into account the eventualities of survival, it is hard to deny that all the courts treated here began to produce, use and keep a growing number of textual records originating from daily legal practice. Some numbers from these courts offer an indication of the scale of these developments. When studying the penal practice of the Council of Utrecht, one register of banishments, together with occasional entries in the city’s books of bylaws, forms the main source for most of the fourteenth

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<sup>4</sup> For a general overview of linguistic theories and definitions of texts, see: P. Colilli, ‘Texts. Semiotic theory’, in: Keith Brown (ed.), *Encyclopedia of language & linguistics*, vol.12 (Amsterdam, etc., 2006) 630-642.

<sup>5</sup> Harris, ‘Semiology’ (1984).

century, averaging about two folia per annum.<sup>6</sup> From the late fourteenth century, when the *Buurspraakboek* comes into use, the number of written folia rises drastically to an average of forty per year. And this increases even further when adding the material in the volumes of the *Raads dagelijks boek* which survive from the early fifteenth century onwards.<sup>7</sup> The York cause papers show a very similar trajectory. Focusing only on the 254 dossiers surviving from the fourteenth century, we see a marked rise in their numbers. The vast majority (75%) of the dossiers comes from the second half of that century, while the last decade alone equals nearly one third of the available material.<sup>8</sup> For the *Parlement* the rise in documented material is even more striking. For the late thirteenth and the first few years of the fourteenth centuries only the four well-known *Olim* registers have survived, amounting to about nine hundred folia for a period of some 65 years. Although the entries in the *Olim* begin in 1254, almost two thirds of the material in these registers concerns the twenty years between 1298 and 1318, indicating a marked increase in documentation towards the end.<sup>9</sup> Beginning in 1312 a second register, the *Registre criminel*, splits off from the *Olim*. For the first forty years of its existence this criminal register alone covers over a thousand folia. To this is added a staggering thirty-four hundred folia from the *Registre civil*, which formed the direct continuation of the *Olim* registers from 1318 onwards. Thus whereas the last half of the thirteenth century gives us a yearly average of some six folia, for the first half of the fourteenth this has increased over fifteenfold to one hundred folia per annum. And after 1350 the numbers only rise further, as both the criminal and civil registers continued, while several new ones, like the *registre du Conseil et des Plaidoiries*, were added to the procedural output.<sup>10</sup> These staggering numbers form the most direct material evidence of the changes taking place in the courts under scrutiny.

Whereas the material reality of the increasing numbers of textual records from these courts seems thus hard to deny, the interpretation of this development, especially as related to broader processes in late medieval society, is open for discussion. Michael Clanchy connects the increasing use of texts in post-conquest England to two interrelated processes, bureaucratization and the growth of what he calls a 'literate mentality'. He sees a shift from the predominant use of oral means of communication to a reliance on the written word in many areas of daily life. Spearheading this development was the royal bureaucracy, where written documents began to play an increasingly

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<sup>6</sup> This concerns the *Th.1* and *Th.2* registers, consisting of two copies of the same register, that can be found at HUA 701-1.226 and 227 respectively.

<sup>7</sup> *Buurspraakboek*: HUA 701-1.16; *Raads Dagelijks Boek*: HUA 701-1.13. See chapter one for an overview of the Council's available sources. See Appendix 2.1 for details on the number of surviving cause papers per decade.

<sup>8</sup> The fourteenth-century cause papers can be found as the BIA CP.E series. See chapter one for an overview of the sources surviving for the Consistory Court.

<sup>9</sup> The *Olim* registers can be found at AN X<sup>1A</sup>1-4.

<sup>10</sup> The *registres civil* are kept in the AN X<sup>1A</sup> series from X<sup>1A</sup>5 onwards, while the *registres criminel* form the AN X<sup>2A</sup> series. See chapter one for an overview of the surviving records of the late medieval *Parlement*.

prominent role from the twelfth century onwards. From the royal court, Clanchy argues, this 'pragmatic literacy' trickled down along the administrative ladder of lower courts and authorities, until increasingly large numbers of people began to use and – more importantly – trust written documents in their daily lives.<sup>11</sup> Other explanations have been given for the increasing use of writing in different contexts. Jeroen Benders, in his comparison between several late medieval towns in the northeastern Low Countries, suggests a link between increasing institutional textualization – or documentalization, as he calls it – and the greater administrative and judicial liberty that these towns managed to secure from the thirteenth century onwards.<sup>12</sup> In a different context, namely late medieval Languedoc, James Given links the increase of written material in inquisitorial courts to their strategies of power. Together with courts' use of imprisonment and inquisitorial procedure, the production, archiving and referencing of documents formed an instrument both of knowledge and coercion, as people's words could now effectively be used against them.<sup>13</sup>

These approaches have several things in common. Although not limiting their discussion exclusively to the creation of documents, this coming-into-being of the texts certainly receives most attention. It is above all the explanation of the growth of the production of documentary material, rather than their consumption, that forms the thread of these author's arguments. However, in explaining the particular importance of the proliferation of texts in the late medieval period an exclusive focus on the production-side of documentary culture carries the danger of institutional bias. In the interpretation of Clanchy and others agency lies predominantly with the institutions producing the texts, be it the royal bureaucracy, urban authorities, inquisitorial courts, or others. These institutions are often presented as the ones 'leading the way' into literacy. Clanchy, for example, argues how 'lay literacy grew out of bureaucracy, rather than from any abstract desire for education or literature'.<sup>14</sup> In such views, the use of written documents is something implemented gradually but steadily from the top downwards. However, following the definition of texts as suggested by Harris – that is texts as language-objects playing a specific part in more general communicative behaviour – it becomes necessary to reassess our interpretation of them. The effective use of texts relied on their consumers' proficiency to understand and, certainly in the case

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<sup>11</sup> Clanchy, *Memory* ([1979] 2013). The exact causal relationship Clanchy sees between bureaucratization and the increase of texts is difficult to assess based on his work, as he sometimes suggests that the increase in documents caused bureaucratization (p. 329), while elsewhere bureaucratization is considered the main driving force behind the increase in documentation (p.19 and 334).

<sup>12</sup> J.F. Benders, *Bestuursstructuur en schriftcultuur. Een analyse van de bestuurlijke verschriftelijking in Deventer tot het eind van de 15e eeuw* [s.l. 2002]; Idem., 'Urban administrative literacy in the northeastern Low Countries. A comparison of Groningen, Kampen, Deventer, and Zutphen, twelfth-fifteenth centuries', in: Marco Mostert and Anna Adamska (eds.), *Writing and the administration of medieval towns* (Turnhout, 2014) 97-121, at 102-103.

<sup>13</sup> Given, 'Inquisitors' (1989).

<sup>14</sup> Clanchy, *Memory* ([1979] 2003) 19.

of legal texts, their willingness to consider as valid these specific material-linguistic objects next to, and sometimes even in place of other forms of communication. The question is therefore not just why the courts began to produce ever larger amounts of documents, but also how and why the participants in the socio-legal communicative process began to incorporate this particular physicalized form of communication as legally valid utterance. In this, texts formed part of the courts' broader claims to a prominent – if not dominant – role in society's socio-legal practice. However, as in earlier chapters, it will become clear that in order to press such claims, the courts depended on many groups and individuals from the societies with which they engaged. But before considering the role of these social actors, we will first discuss the character of the texts produced within the court, to understand what they were and what they – or at least the courts through them – tried to do.

### **Texts in court practice**

The term 'court record' as employed so far suggests a fairly uniform type of source. However, examining the surviving documents of legal practice for the respective courts, it is above all their great variety – in form and content – that strikes the eye. Differences abound between a register of public announcements, like the Council's *Buurspraakboek*, those with legal acts, such as the civil and criminal registers of the *Parlement*, and the Consistory Court's dossiers of procedural documents. Yet all of them were produced and used in the context of these courts' daily practice. In order to assess these documents' role in the legal process, I will consider their 'positioning' as texts, that is to say how their author related them vis-à-vis the many non-textual aspects of court activity. Such text-act relations are of three kinds: descriptive, prescriptive and performative. A descriptive relation places the text after the act, recording something that – according to the text – has already taken place. The York depositions, for example, claim to describe the words that were spoken during the interrogation of witnesses in a case. In the same way, the fourteenth-century register of Utrecht banishments looks back at the actual acts of exiling that have taken place. Prescriptive texts take the exact opposite position, preceding the extra-textual acts, and often instigating people to perform or abstain from those activities. Typical examples are the regulations interspersed within the Utrecht Council's registers, or in many of the royal letters transcribed by the *Parlement*, which often charge legal officials with specific judicial tasks. The third and final relation considered here relates back to my earlier discussion of Austinian performativity.<sup>15</sup> Some texts, rather than positioning themselves as preceding or following from an extra-textual act, claim to be that act. They say to actually change something in the world, thereby effectively denying any discrepancy between text and act. This relation can most clearly be seen in the written sentences found for York and Paris in particular. In

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<sup>15</sup> See the introduction to this thesis.

these cases the court presented the textual verdict through its wording as the defining act, actually changing the culprit into either a criminal or an innocent person. In what follows, I will analyse the surviving texts of the three courts from this perspective of their positioning vis-à-vis extra-textual activity. As the analysis will show, these positionings hardly ever follow the strict division as suggested above. Nevertheless, identifying such text-act relations is not only helpful to understand which role courts had in mind for these linguistic-material objects, but also reminds us of the different ways of reading that each of these texts requires from historians.

Over its long history the *Parlement* of Paris has left us an immense corpus of texts. This mass of documents regularly underwent changes, where new series of documents were begun and old ones changed form or were discontinued. Its character and internal structure was often very complex, reflecting changes in institutional practice and in the logic of recording, as well as occasional adaptations to the unpredictability of daily legal practice. For the earliest documents of legal practice, the series of civil and criminal registers (X<sup>1A</sup> and X<sup>2A</sup>), the large majority of texts concerned legal acts, that is textualized decisions taken by the court or the king. These texts purported to change something in the world by themselves, rather than simply describing or prescribing court activity. Of the three main categories of texts in these series, *Arrêts*, *Jugés* and *Lettres*, all three were to a certain extent concerned with such legal acts. *Arrêts* and *Jugés* were transcriptions of the decisions taken by the *Parlement* in the cases coming before it. The *Arrêts* were decisions – often only interlocutory – taken in cases that involved pleading sessions before the *Grande Chambre* (Figure 2). The *Jugés* on the other hand originated in cases involving mainly textual procedure, like inquiries, which were therefore handled by the *Chambre des Enquêtes*. The *Jugés* generally had a definite character, while *Arrêts* could be both definite and interlocutory. The *Lettres* section of the registers saw more variety in the types of texts included, but it also contained a large amount of interlocutory decisions, formulated in the form of – often royal – letters.<sup>16</sup>

In the context of this dominance of textualized acts, a distinction that deserves further elaboration is that between minutes and registers.<sup>17</sup> In the procedure as followed by the *Parlement* a

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<sup>16</sup> The complex character of the *Arrêts*, *Jugés* and *Lettres* is evidenced by the variety of ways in which the literature has tried to make sense of them. See, for example, the various descriptions given by Alphonse Grün, 'Notice sur les archives du Parlement de Paris', in: Edgar Boutaric (ed.), *Actes du Parlement de Paris. Première série: de l'an 1254 à l'an 1328*, vol.1 (Paris, 1863) I-CCXC, at CXXXI-CXXXIX, Monique Langlois, 'Parlement' (1958) 81-84, and Hildesheimer and Morgat-Bonnet (eds.), *État méthodique* (2011) 50-52. The *Arrêts*, *Jugés* and *Lettres* can be found together both in the series of civil registers (AN X<sup>1A</sup>5-156) and criminal registers (X<sup>2A</sup>1-900, 906), although the latter does not make the distinction between *Arrêts* and *Jugés*. The *Olim* (X<sup>1A</sup>1-4) also does not distinguish as clearly between *Arrêts* and *Jugés*, but its main division between registers of *Enquêtes* and registers of *Arrêts* is the precursor of this later distinction. See Grün, 'Notice' (1863) CXXXI-CXXXII.

<sup>17</sup> Grün, 'Notice' (1863) XII-XVIII considers the distinction between minutes and registers inconvenient as it is based solely on the material aspects of the texts. However, as the focus of this chapter is exactly on these material aspects, the distinction – and what it tells us about the production of the *Parlement's* documents – becomes particularly relevant.

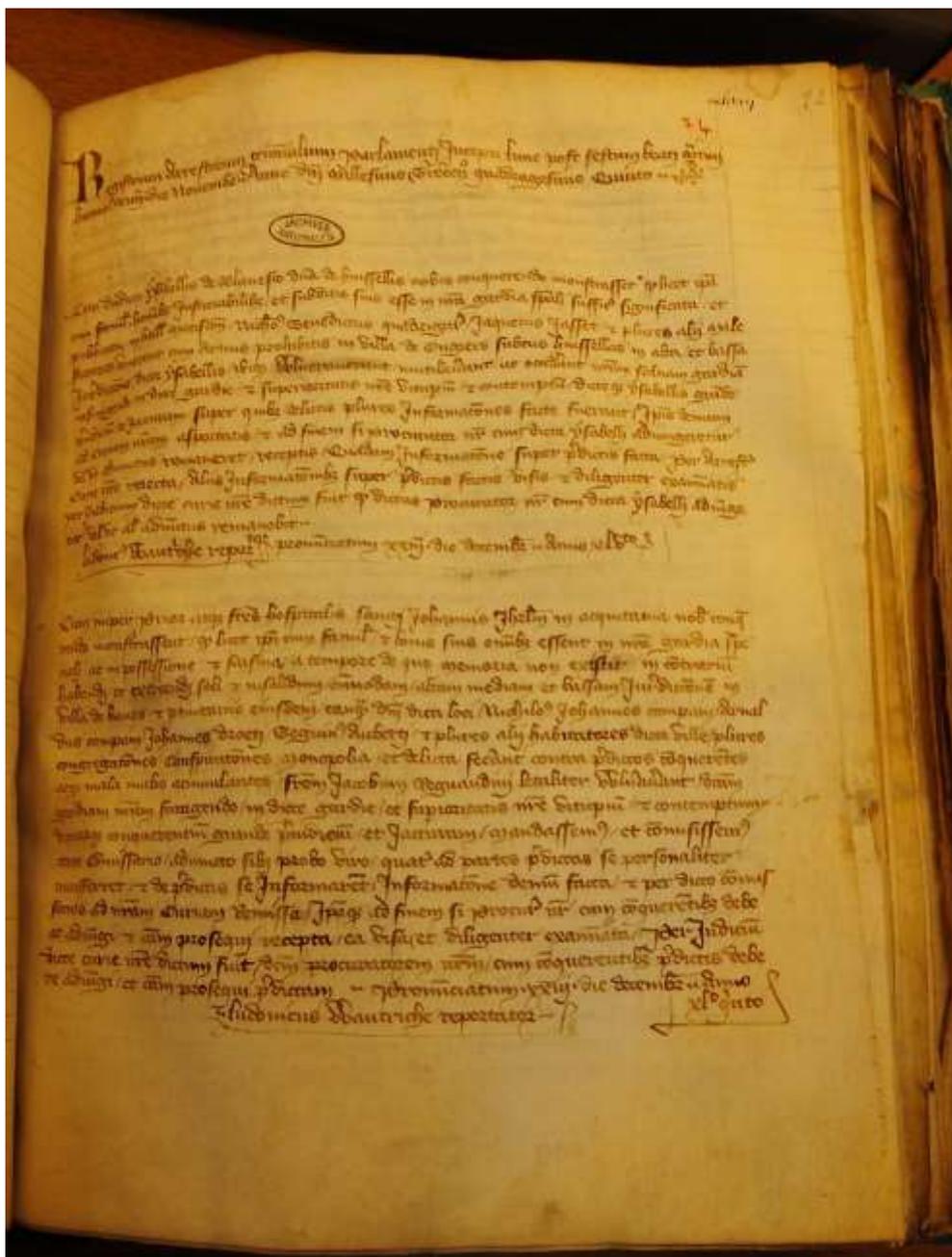


Figure 2: Arrêts in the criminal register from 1345 (X<sup>2</sup>A5, fol.74r), including an arrêt in the case of Isabelle de Blanot (see Appendix 3.2).

textual act would first be written down in the form of a freestanding original, kept by the court and possibly also copied for the parties involved. These originals would then be collectively inscribed into the *Parlement's* registers. Whereas the minutes stood close to – and even formed a fundamental part of – the legal activity performed in court, the form in which we encounter these acts in the registers could be transcribed and edited long after the fact. Although, for the fourteenth century at least, royal ordinances seem to have tried to limit the time-lapse to no more than a few days, there could be a significant delay between the moment the minute was written down and the moment of

its inscription in the registers.<sup>18</sup> Grün has furthermore argued that, at least in the case of the *Arrêts*, it is unlikely that all decisions noted down in a minute also found their way to the registers, implying that a certain selection took place.<sup>19</sup> The latter is difficult to substantiate, as almost no minutes have survived from before the sixteenth century.<sup>20</sup> But it is nevertheless important to take the possibility of selection into account, as it reminds us that the registers available for this period are basically an edited intermediary between us and the written legal acts themselves. The main source material available for the early *Parlement* can thus be characterized as texts referencing other texts, which have been used in – and often form the conclusion of – a legal process. Although these registers place us at some distance from the activity going on in the courtroom, they do offer evidence of another crucial practice of the court, namely archiving. By selecting specific texts to be transcribed in a register, the court made a conscious choice to increase their likelihood of survival, thus reflecting its ideas on the role of different kinds of texts in the legal process.

For the documents produced and used in the *Parlement* were certainly not limited to legal acts. Various other types of texts have survived, and their share significantly increases over time. For the late thirteenth and early fourteenth centuries, entries of different kinds were regularly intermingled in between the textualized acts. The *Olim*, for example, occasionally contains entries that purport to prescribe or describe court activities, including inventories of all kinds of – now lost – records from legal practice, lists of documents treated in court and transcripts of royal ordinances.<sup>21</sup> The later continuations of the *Olim*, both the X<sup>1A</sup> and X<sup>2A</sup> registers, contain a similar intertwining of text positions, sometimes incidentally, sometimes more structurally. Some particularly clear examples are provided by the fourth volume of the criminal register (X<sup>2A</sup>4), spanning the years 1339-1344. In this register, the court begins to include – for the first time in the X<sup>2A</sup> series – a record of its proceedings in criminal cases, variously called *Journaux* and *Proces-verbaux des séances* in the literature. Although this practice disappears after a few years, later in the same century it crops up again in the X<sup>2A</sup> registers, this time permanently.<sup>22</sup> At the end of the same register we find an unusual addition

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<sup>18</sup> Ibid. XII-XVIII, CXXXIV; Langlois, 'Parlement' (1958) 84; Hildesheimer and Morgat-Bonnet, *État méthodique* (2011) 23.

<sup>19</sup> Grün, 'Notice' (1863) CXXXIV, CXXXVIII. This selective character is even stronger for the four *Olim* registers, which consisted of a – predominantly later – selection and edition of parliamentary acts, assembled by a succession of royal clerks. See: Ibid. LXVI-LXXXV.

<sup>20</sup> A relevant exception is the series of *Accords*, that is settlements concluded between parties before the *Parlement*, which have only survived in the form of minutes. See: AN X<sup>1C</sup>1A-265.

<sup>21</sup> Such royal ordinances would in a later period be transcribed in a specific register of their own, kept as AN X<sup>1A</sup>8602-8843. See: Françoise Hildesheimer, 'Les deux premiers registres des «ordonnances» ou la logique floue de l'enregistrement', *Histoire et archives* 12 (2002) 79-114.

<sup>22</sup> Langlois, 'Parlement' (1958) 92-93. For an overview of the general contents of the X<sup>2A</sup> registers, see the tables in: Ibid. 139-142, and: Brigitte Labat-Poussin, Monique Langlois and Yvonne Lanhers (eds.), *Actes du Parlement de Paris. Parlement criminel, règne de Philippe VI de Valois. Inventaire analytique des registres X<sup>2A</sup> 2 à 5* (Paris, 1987) 14. Both works omit the first of the X<sup>2A</sup> registers for reasons of complexity, but see: Claudine

spanning over sixty folia. It concerns a series of records containing the confessions and judgments of a number of Parisian prisoners between 1319 and 1350, together with occasional witness statements and the report of enquiries concerning these cases.<sup>23</sup> The fourth register thus contains a number of texts that place themselves in a descriptive relation to the activity of the court, presenting both one-off and – eventually – more regular deviations from the general pattern of transcribed legal acts.

In the X<sup>2A</sup> register such alternative entries are still the exception, in others they become the rule. An early example are the registers often called *Anciens registres du greffe* in the literature, surviving from 1319 onwards.<sup>24</sup> These registers contain long lists of cases coming before the *Parlement* on the days assigned to specific bailiwicks (Figure 3).<sup>25</sup> Such entries generally consist of short notices stating some basic information about the case, like the names of the parties, as well as the procedural steps undertaken. In the first five of these registers such lists are interspersed with transcriptions of legal acts in the form of letters, as seen for the *Lettres* section of the X<sup>1A</sup> and X<sup>2A</sup> registers. When, after an intermission of several decades, this register continues in 1372, it no longer contains the transcribed letters and is limited to lists of court proceedings.<sup>26</sup> At around the same time, the new series of counsel and pleading registers appear. These written reports of the counsel and pleading sessions of the *Parlement* form a substantial addition to the civil and criminal registers, spanning hundreds of volumes for the late fourteenth and fifteenth centuries alone, and indicating a major change in text-act relations.<sup>27</sup> Whereas earlier record-keeping had predominantly focused on textualizing legal acts, that is producing texts that claimed to perform a specific aspect of the legal process, during the fourteenth century the *Parlement* began to structurally describe the extra-textual proceedings as they took place from day to day.

These developments in textual practice signalled a change in the way in which the *Parlement* regarded the role of texts within its broader communicative process. As the occasional survival of prescriptive and descriptive texts in the earliest sources of the *Parlement* testifies, these forms of text-act relations were not beyond the imagination of the court. Yet, the predominance of textualized legal acts shows a clear preference for the explicit performance of the legal process, as it was also done through non-textual means, as chapter three has shown. The court took the trouble of keeping these specific texts, by selectively copying them from minutes into registers. As objects of

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Bloch and Jean-Marie Carbasse, 'Aux origines de la série criminelle du Parlement. Le registre X<sup>2A</sup>1', *Histoire et archives* 12 (2002) 7-26, for an extensive discussion of its history and structure.

<sup>23</sup> Monique Langlois and Yvonne Lanhers (eds.), *Confessions et jugements de criminels au Parlement de Paris (1319-1350)* (Paris, 1971).

<sup>24</sup> AN X<sup>1A</sup>8844-8851<sup>bis</sup>.

<sup>25</sup> See chapter three for the organization of court sessions according to bailiwicks.

<sup>26</sup> Langlois, 'Parlement' (1958) 107.

<sup>27</sup> Up until 1395, the pleading and counsel registers were combined in: AN X<sup>1A</sup>1469-1477. After that date two separate registers record the pleading and counsel sessions. See: Hildesheimer and Morgat-Bonnet, *État méthodique* (2011) 43-49.

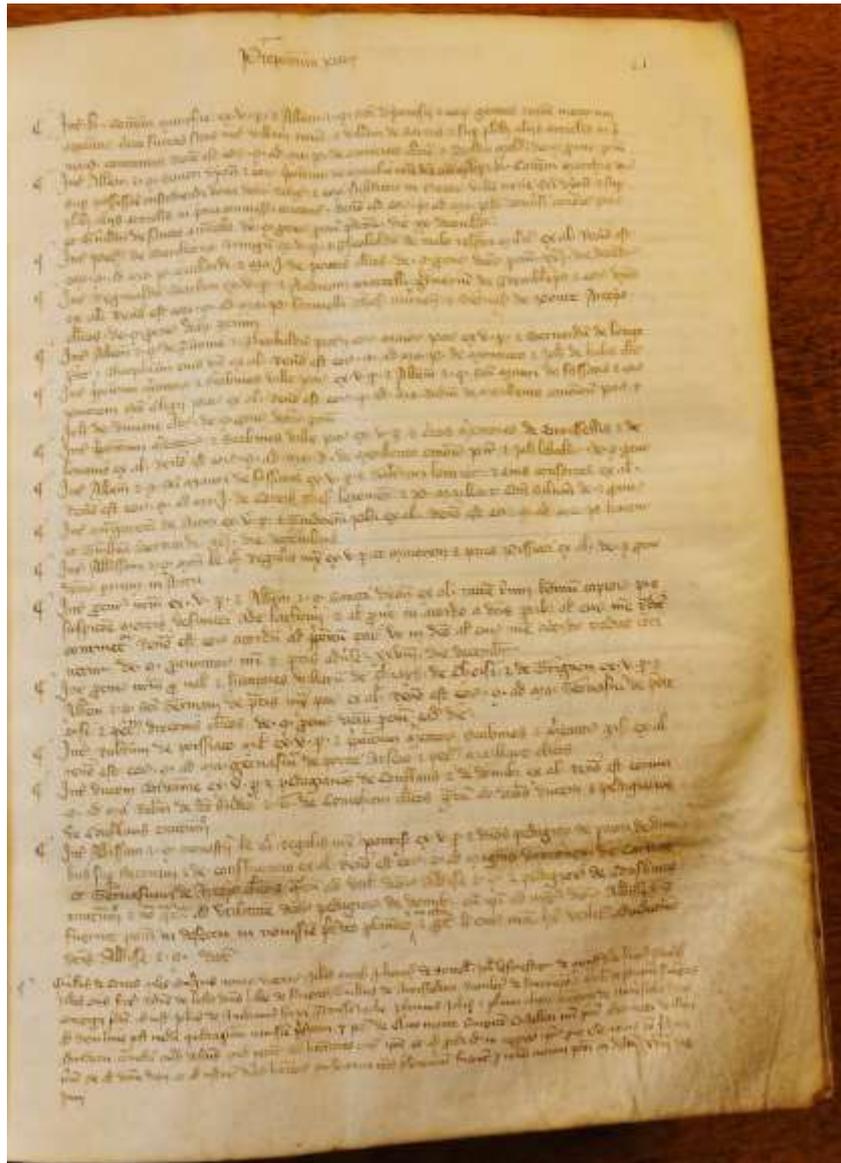


Figure 3: List of cases from the *prévôté* of Paris in the *Parlement's* registers of 1319 (AN X<sup>1</sup>8844, fol.21r).

judicial performance, that is materialized claims on a specific extra-textual state of affairs, these documents were of potential interest both to the court, supporting its own position as adjudicator and peace keeper, and to the litigants whose interests could profit from such an institutionally-backed decision. During the fourteenth century the role of texts expanded to include various descriptive – and to a lesser extent prescriptive – text-act relations. The predominantly descriptive registers appearing in this century emphasized not so much the procedural end result, that is the court's decision, but the legal process itself. In a sense they also 'performed' the legal process, but in a different way from the legal acts that had predominated until then. Rather than claiming to change something in the world by means of a linguistic utterance, that is acting by speaking, they provided the activities performed in the court with a text-based interpretation, thereby speaking through their acts.

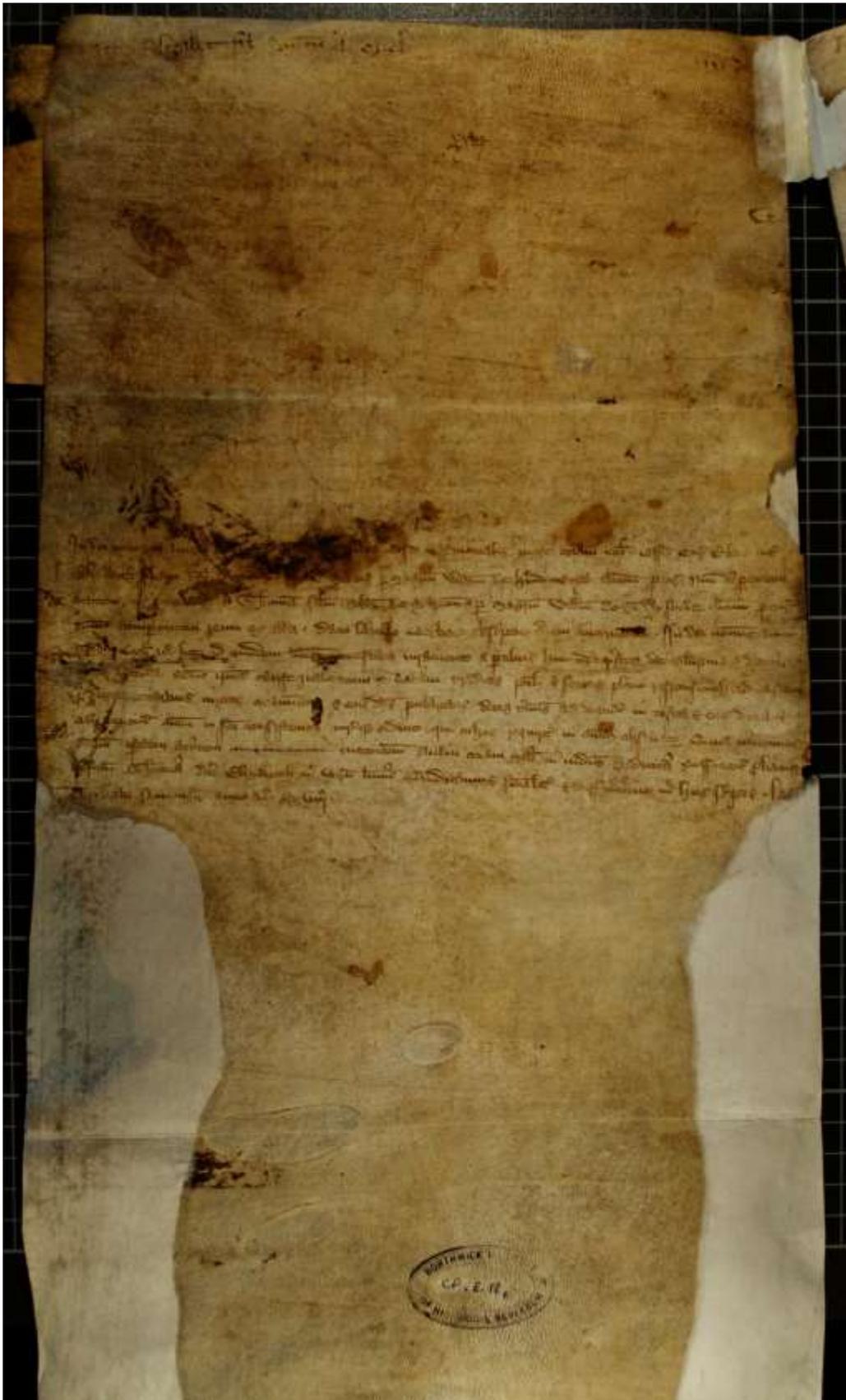


Figure 4: Consistory court sentence written on the backside of a piece of parchment containing depositions (BIA CP.E.18).



The documentary material from York contains some overlap with the types of texts surviving for the *Parlement* of Paris. Like the *Parlement*, the Consistory Court kept a variety of legal acts in written form, like sentences, (copies of) deeds, and other documents that purported to perform an action, rather than describe or prescribe it. Unlike the *Parlement* the Consistory Court did not transcribe these acts into special registers systematically.<sup>28</sup> It does, however, happen regularly that we encounter such legal acts written down together with other aspects of litigation. The sentences, for example, appear in various forms in the surviving dossiers: on their own, but also written on the same piece of parchment as the depositions, the libel, or other procedural pieces (Figure 4 and 5).<sup>29</sup> As these concern pieces stemming from different stages of a case, it is likely that in such instances the original acts were copied into a kind of case file at a later date, similar to the *Parlement's* practice of transcribing legal acts into judicial registers. Some sentences have survived in the form of letters, sent to various dignitaries in the province to notify them of the verdict decided on in a certain case.<sup>30</sup> In such letters the court stated how they had read and brought the final verdict in the case under scrutiny, followed by a full transcript of the sentence. A written original of the act supposedly formed the basis for such letters, although none survive for the dossiers concerned. In several other cases what has survived does seem to be the original written act or minute.<sup>31</sup> Contained on a single sheet of parchment or paper – often little more than a small strip – such minutes very likely stood quite close to the non-textual legal process, forming the actual documents used in this process, rather than their later transcription for purposes of preservation or long-distance communication (Figure 6).

Concerning their material characteristics the sentences also vary widely. A number of them seem to be drawn up as fair copies, as much attention has been paid to aspects of form, such as the quality of the parchment or the elaboration of its initials, as well as its legibility (Figure 7).<sup>32</sup> Other surviving pieces on the other hand give the impression of being drafts or working copies, either because the handwriting appears more sloppy, suggesting faster writing, because parts are crossed out or contain corrections, or because the quality of the parchment used appears to be inferior (Figure 8).<sup>33</sup> Such material characteristics cannot tell us conclusively which place each individual document occupied in

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<sup>28</sup> The exception was formed by the occasional transcription of verdicts in the archiepiscopal registers. See for example: Brown (ed.), *Thomas of Corbridge* (1925) 103-104.

<sup>29</sup> See BIA CP.E.3, CP.E.18, CP.E.87 and CP.E.105 for examples of sentences' combination with depositions. In CP.E.6 the sentence is found together with the libel. CP.E.170 has both the sentence from the first instance before the commissary general and of the appeal before the bishop's official written down on one folium. In CP.E.23 we even find all documents pertaining to the case copied onto one composite piece of parchment, including the libel, the depositions, the exceptions and the sentence.

<sup>30</sup> For example in BIA CP.E.158 and CP.E.178.

<sup>31</sup> For example BIA CP.E.50, CP.E.71, CP.E.263, CP.E.268.

<sup>32</sup> See for example BIA CP.E.126, CP.E.116.

<sup>33</sup> Examples: BIA CP.E.71 (various types of handwriting, corrections, parchment quality), CP.E.169 (corrections).

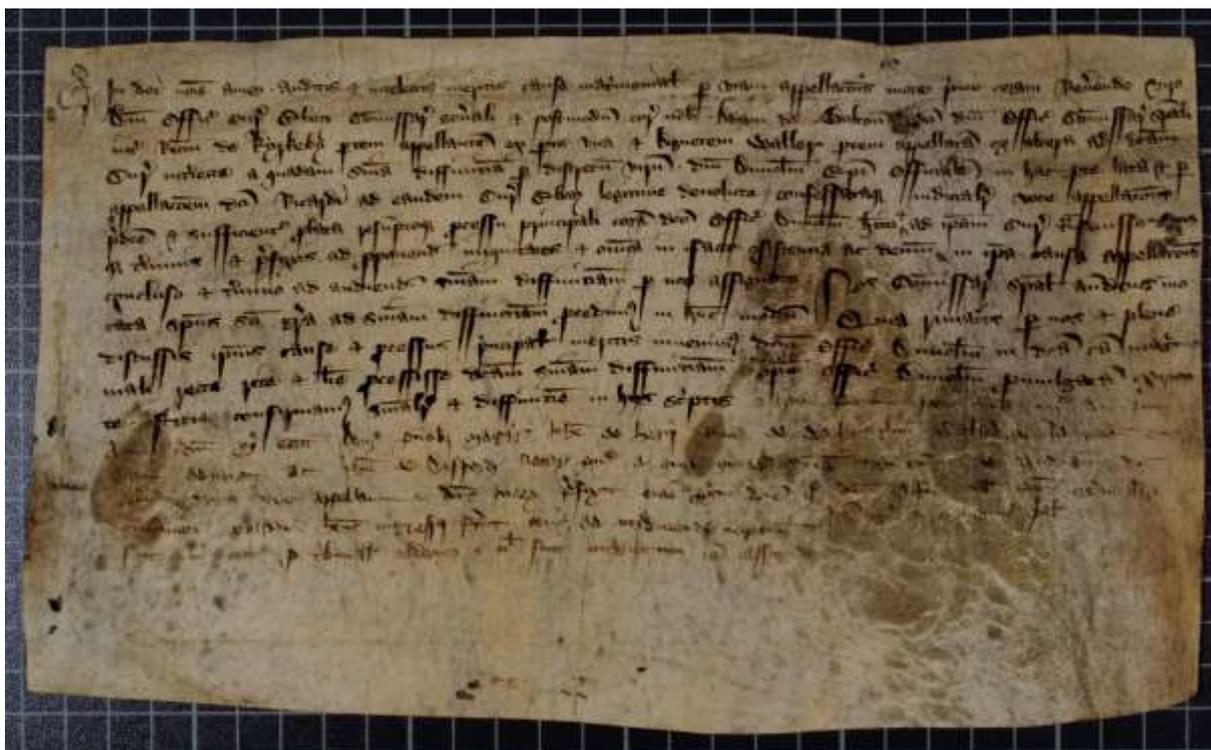


Figure 6: Consistory Court sentence on single piece of parchment, possibly a minute (BIA CP.E.263).

the legal process, if only because characteristics suggesting either a draft or fair copy often overlap.<sup>34</sup> However, these varieties do point to the wide range of different forms in which the court's legal acts could exist, hinting at a process of coming into being from first draft to fair copy to a later transcription in letters or case files, similar to that from minutes to registers in the case of the *Parlement*. Furthermore, in the specific case of the sentences this process of coming into being is clearly evidenced in the *lecta et lata*-clauses.<sup>35</sup> Regularly the main part of the sentence and the note of its reading form a stylistic unity, making it likely that they have been written down together at the same moment.<sup>36</sup> In other cases, however, there exists a marked difference in style between the main part of the sentence and the *lecta et lata*-clause, the latter being written in a quicker and more casual manner.<sup>37</sup> Such clauses give the impression of being later additions – as is the case with many of the corrections – and signal the way in which such written sentences came into being in multiple stages. A likely scenario in such cases would see a written sentence being drawn up, subsequently read in open court and then complemented with a note on the particularities of its reading and any further procedural steps undertaken by the parties. This draft sentence could then be copied in a variety of forms, be it as letters, collected case files or otherwise, as the stylistically unified versions

<sup>34</sup> See for example BIA CP.E.116, whose sentences are written in a very clear and structured hand while at the same time containing various later additions and corrections, as well as being written on pieces of lesser-quality parchment.

<sup>35</sup> See chapter three for more on these clauses.

<sup>36</sup> For example BIA CP.E.126 and CP.E.159.

<sup>37</sup> For example BIA CP.E.71 and CP.E.84.

seem to suggest. More clearly than in the case of the *Parlement*, the records from the Consistory Court show us how legal acts were textualized in subsequent stages.

Such processes, furthermore, need not be limited to texts professing a performative text-act relation. For, as hinted at before, the surviving documents from the Consistory Court concern more than just legal acts. The depositions in particular have formed a welcome source for many historians.<sup>38</sup> These represent the – often simplified – reports of witness interrogations, and are meant as descriptions of the witnesses’ answers to specific predetermined questions for the sake of the courts’ decision-making process. They were the outcome of an extensive procedure, for which an

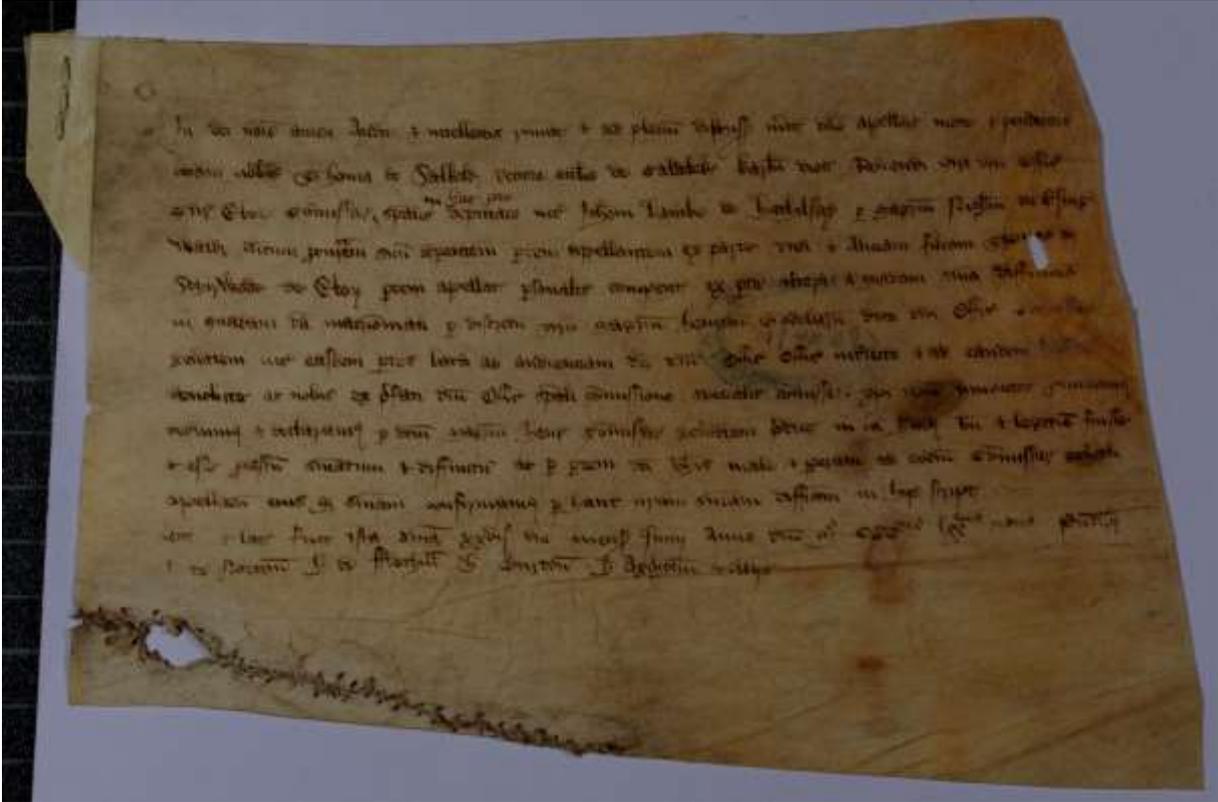


Figure 7: Fair copy of Consistory Court sentence (BIA CP.E.116).

extraordinary amount of textual material has survived. Forming one of the most important types of evidence in ecclesiastical court cases, the process of taking witness testimony was a detailed undertaking. First a series of articles would be submitted by the plaintiff, stating the arguments intended to be proven through the testimony.<sup>39</sup> Subsequently the defence could submit interrogatories, that is additional questions to be posed to the witnesses in an attempt to undermine the plaintiff’s case. On the basis of these documents the court’s examiners would formulate a set of questions to be posed to the witnesses in private. The results of these examinations were then

<sup>38</sup> See Appendix 2.1 for more details on the fourteenth-century depositions.

<sup>39</sup> For examples of articles in the fourteenth-century cause papers, see BIA CP.E.26.

reworked into written depositions and read aloud in open court.<sup>40</sup> Notwithstanding the descriptive nature of the depositions, their role in the legal process was far from purely post-hoc. On the contrary, the process of gradual text construction as seen for the sentences and other legal acts, was also clearly present in the procedure of drawing up the depositions. Despite the specific ways in which the documents presented their relationship to extra-textual court activity – be it performative, descriptive or otherwise – the physical evidence from the cause papers shows us the fundamental back-and-forth between texts and acts in the production of these documents.

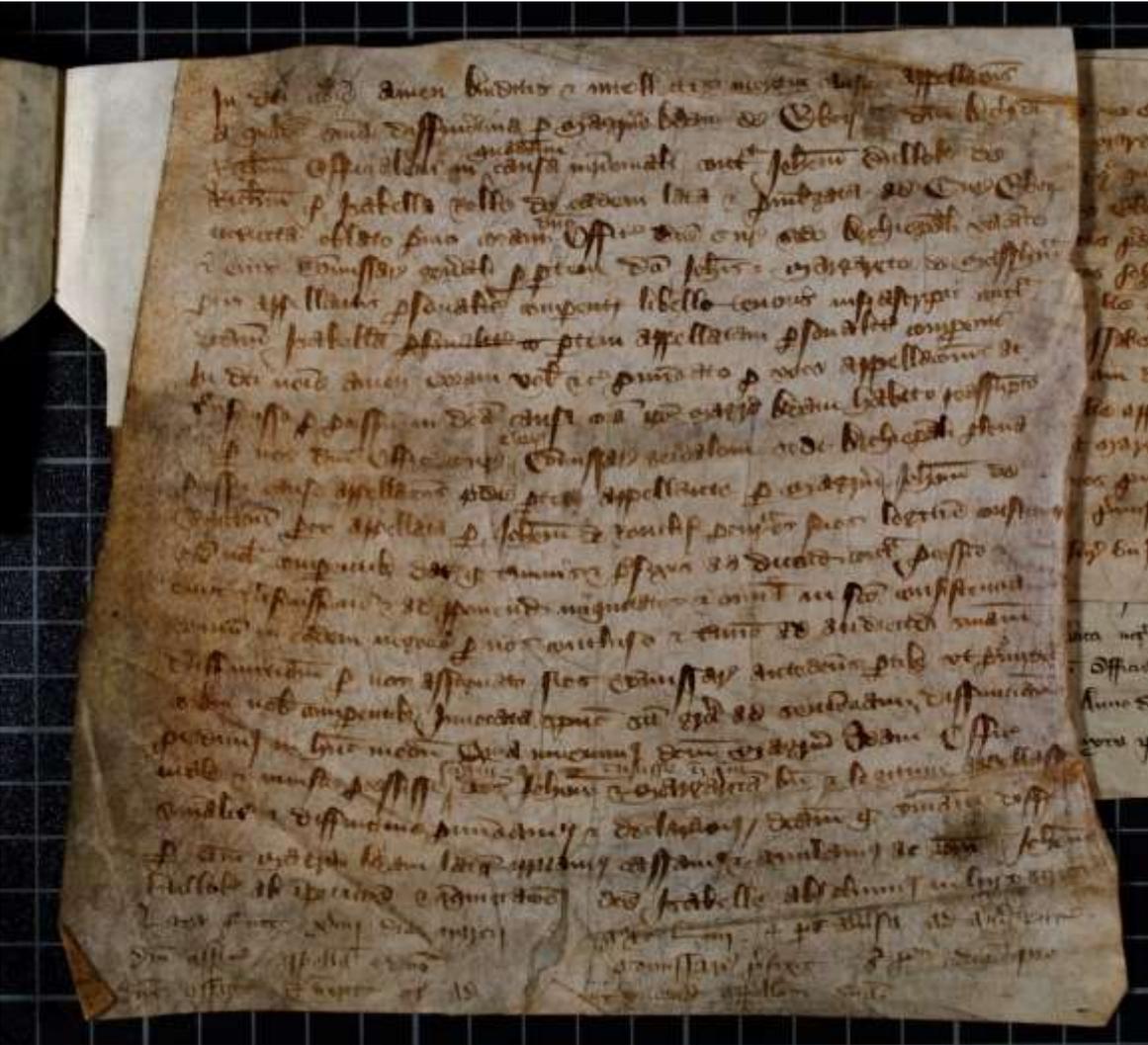


Figure 8: Draft of Consistory Court sentence (CP.E.71).

Some texts from the Consistory Court did have a more remote position from daily court practice. The Act Books, for example, being a fragmentarily surviving register of the courts’ day-to-day activities, presented only a later summary of the legal actions that had taken place in court. These exceptions notwithstanding, what makes many of the surviving records of the Consistory Court particularly important, especially in comparison with the material from the *Parlement*, is their visible

<sup>40</sup> Helmholz, *Marriage litigation* (1974) 17-20.

vicinity to the extra-textual legal process. Contrary to the Parisian registers, which comprise by and large – supposedly edited – later copies of the documents originally used in court, the various types of texts surviving for the Consistory Court often participated in the legal process itself. Libels, positions and articles formed the basis for the examination of witnesses, while depositions and sentences were read out in court. These were concrete text-objects with recognized functions in court practice. Only later would they be turned to textual depositories by means of their collection into case-specific dossiers. Furthermore, the particularly varied character of the cause papers accentuates the difference between how a text professed to be related to extra-textual activity, and how it actually seems to have been used as part of this activity. Strengthening the impression gained from the case of the *Parlement*, these documents again show how texts performed the legal process. They could do so in an Austinian sense, by claiming to change an extra-textual reality, or they could suggest a specific interpretation of certain acts that lay beyond them, thus providing court actions with a certain significance.

Some of the oldest surviving materials related to the administrative and judicial activities of the Council of Utrecht were its books of bylaws. Four in number and spanning a period of nearly a century and a half, these books were essentially expanding collections of regulations intended to govern a variety of sectors of Utrecht society: political, legal, economic, and more.<sup>41</sup> Although the majority of texts contained in these books was of a prescriptive nature, their flexible and multifarious character makes it difficult to consider them as law codes in a strict sense. The first of these books, the *Liber Albus*, usually considered as the most ‘law code-like’ of the four, already records a number of verdicts pronounced by the Council and the bishop against specific people.<sup>42</sup> The slightly later *Liber Hirsutus Minor* also contains various case-specific entries, often describing people who had formally sworn before the Council to keep the peace or to abstain from further transgressive behaviour.<sup>43</sup> Presumably, such descriptions of individual verdicts and legal acts were considered as judicial examples on the basis of which to make later decisions. Nevertheless, it added a fundamentally descriptive element to an otherwise prescriptive selection of texts, and suggests a relatively high

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<sup>41</sup> The four books identified by Muller are the *Liber Albus*, the *Liber Hirsutus Minor*, the *Roede Boek* and the book called *Die Roese*; despite the catch-all term of ‘books of bylaws’ often used for these four documents, Muller clearly shows that each book had a fundamentally different character, springing from a perceived practical need to organize the expanding amount of Council decisions and bylaws at different points in time. See: Muller, *Rechtsbronnen*, Introduction (1885) 353-388.

<sup>42</sup> Muller, *Rechtsbronnen*, vol.1 (1883) 39-40, 57-63.; also see: *Ibid.*, *Rechtsbronnen*, Introduction (1885) 358-359.

<sup>43</sup> For example a peace made between Baudekiin van Rutenberch and Ghisebrecht the baker in 1367. See: Muller, *Rechtsbronnen*, vol.1 (1883) 87. Also see *Ibid.*, *Rechtsbronnen*, Introduction (1885) 365, n.2, for other examples of verdicts copied into the *Liber Hirsutus Minor*.

degree of interaction between these 'law codes' and the legal process for which they formed the basis.

Just as the books of bylaws could contain specific descriptions of individual cases, so the surviving court registers regularly comprised prescriptive measures. At about the same time as the codification of the Council's bylaws in the *Liber Albus* appeared, a separate register of verdicts began to be kept, surviving in two copies, titled *Th.1* and *Th.2*. This register at first contained only verdicts in some of the more serious cases, which would lead to far-reaching punishments like long-lasting banishment or the loss of citizenship, and notifications of the formal pledges (*willekeuren*) made by culprits not to repeat a specific transgression. Over time the selective character of this register decreased, as more moderate verdicts, such as shorter banishments, came to be included

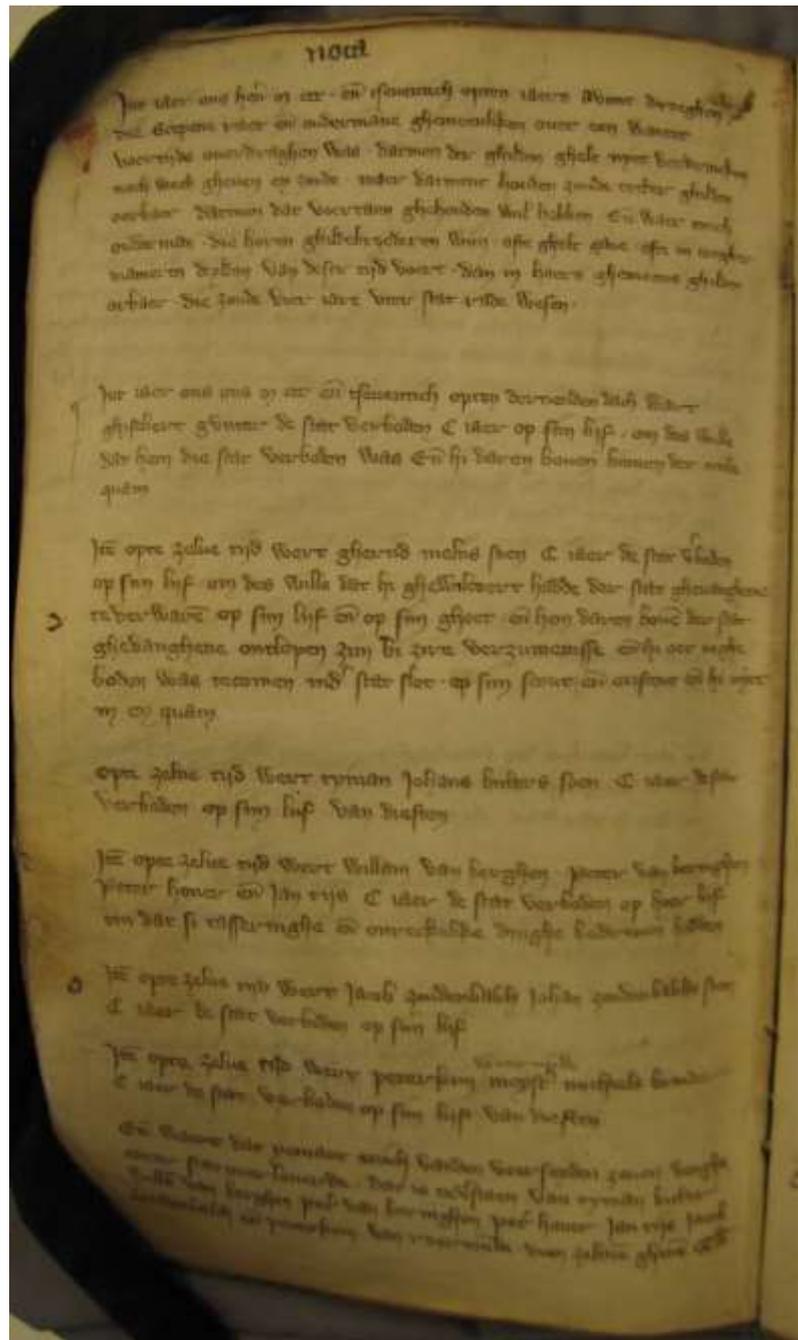


Figure 9: Page from the Council's *Th.2* register of 1370 (HUA 701-1.227, fol.41v). This page contains mostly verdicts of banishment, but the first entry concerns a measure decided upon by the aldermen, Council and guild elders.

as well.<sup>44</sup> But the register would also increasingly contain more general regulations decided upon by the Council, adding a certain prescriptive element to this otherwise descriptive text (Figure 9). That there was a close relationship between this oldest register of punishments and the books of bylaws is

<sup>44</sup> HUA 701-1.226 and 1.227. Also see: Muller, *Rechtsbronnen*, Introduction (1885) 363-364.

furthermore evidenced by the fact that the *Liber Hirsutus Minor* is basically a collection of the most important regulations written down in the register between 1361 and 1392.<sup>45</sup>

The registers and books described above were predominantly written in the fourteenth century. By the beginning of the fifteenth century most of these series of documents ceased to be in active use. That is to say, no new additions were made to them, while new series and books built upon or even completely replaced

those of the fourteenth century.<sup>46</sup> Most important in this respect were the *Raads Dagelijks Boek* and the *Buurspraakboek* (Figure 10 and 11). Both are first attested in the late fourteenth century, but only survive in consecutive volumes from the beginning of the fifteenth century.<sup>47</sup> The relation between these two registers is particularly important to take into account. Not only do both sources appear in about the same period, but the overlap between the two suggests an internal cohesion central to the

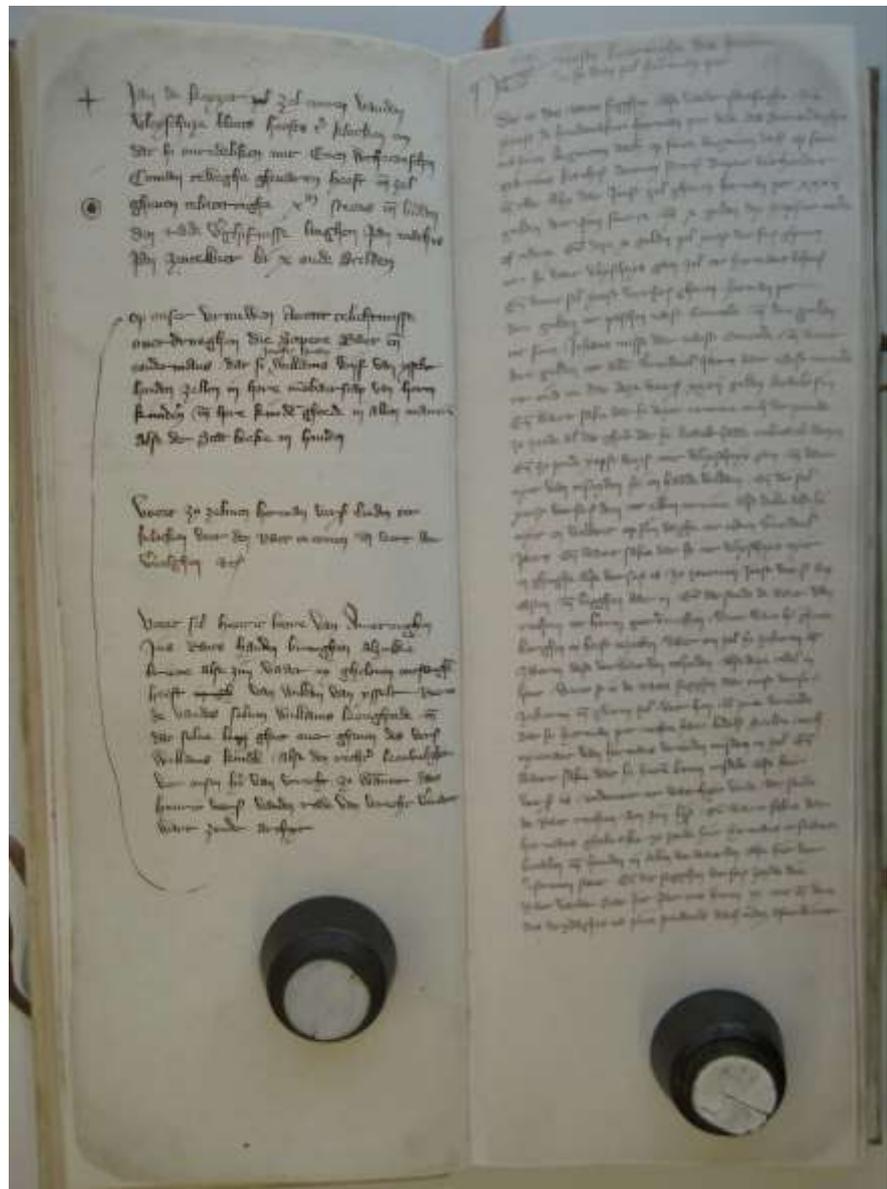


Figure 10: Pages from the *Raads Dagelijks Boek* of 1403 (HUA: 701-1.13: RDB 1402-1408, fol. 18v-19r). The case of Jan de Keyzer is the first entry on fol. 18v.

<sup>45</sup> Muller, *Rechtsbronnen*, Introduction (1885) 364-365.

<sup>46</sup> The only exception is the book of bylaws called *Die Roese*, which saw major additions in the early and late fifteenth century. See: Muller, *Rechtsbronnen*, vol.1 (1883) pp. 181-394.

<sup>47</sup> The earliest surviving register from the *Buurspraakboek* begins in 1385; in the case of the *Raads Dagelijks Boek* this is 1402, but the book of bylaws *Die Roese* contains evidence that a *Raads Dagelijks Boek* was in existence as early as 1369, see: Muller, *Rechtsbronnen*, Introduction (1885) 375-377.

role of daily register for the Council, describes a variety of actions performed by or before the court. This included regulations on various topics, *willekeuren* taken by people, names of guarantors, a variety of verdicts, and more. Some entries in the *Raads Dagelijks Boek* also appear in the *Buurspraakboek*. This was the register in which the Council would write ‘all *buurspraken* ... which are pronounced at the clock’.<sup>48</sup> It was thus closely involved in the public *buurspraak* occasions.<sup>49</sup>

The exact position of the *Buurspraakboek* and *Raads Dagelijks Boek* vis-à-vis the extra-textual events they mention is particularly relevant, as it leads us to question the strict distinction between the different text positions distinguished earlier in this chapter. Reading these registers, one’s first impression is that we are dealing here with purely descriptive texts, recording events that have already happened. Although for many entries this may be the case, counter-examples are also abundant. This is especially true for the many verdicts contained in both registers. So a verdict in the *Raads Dagelijks Boek* from 1403 reads:

Jan de Keyzer shall come bareheaded from the meat house to the clock, because he has illegally taken off with a foreign merchant and shall give a compensation of 10,000 stones and beg the Council for forgiveness.<sup>50</sup>

The *Buurspraakboek*, which contains an entry on the same case, states:

Because Jan de Keyzer has taken off illegally with a foreign merchant, he has lain in the tower and has come here bareheaded at the clock and shall [beg] the Council for forgiveness and give a compensation of 10,000 stones.<sup>51</sup>

Apart from the curious fact that the place of safekeeping of Jan seems to have changed, there is a clear difference in the way in which both texts position themselves vis-à-vis the activity taking place. In neither case they suggest a purely descriptive relation. The *Raads Dagelijks Boek* places itself in a position preceding the events related to the resolution of the case, thus making it more akin to a

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<sup>48</sup> HUA 701-1.16: *Buurspraakboek* 1396-1402, fol. 3r: ‘Dit is der stat buerspraec boec daermen al die buerspraken in scrijft diemen ter kloeken uut kundicht...’.

<sup>49</sup> See chapter three for more on the *buurspraak* occasions.

<sup>50</sup> HUA: 701-1.13: *Raads Dagelijks Boek* 1402-1408, fol. 18v: ‘Jan de Keyzer zel comen vanden vleyschuze bloots hoofts ter kloeken om dat hi onredeliken mit enen uutheemschen coman teweghe ghevaren heeft ende zel gheven tebeteringhe X<sup>M</sup> steens ende bidden den rade verghifnisse...’. The entry is followed by the names of his guarantors. It is unclear what the curious expression *te weghe varen* (litt.: ‘taking off’) means exactly. It may well have stood for an attempt to avoid toll in trading with a foreign merchant. As the exact meaning of the expression is uncertain, I have chosen here for a literal translation.

<sup>51</sup> HUA: 701-1.16: *Buurspraakboek* 1402-1405, fol. 34v: ‘Want Jan de Keyzer onredeliken teweghe ghevaren heeft mit enen uutheemschen coopman daer om heeft hi ghelegghen inden toorn ende is hier ghecomen blootsh[oof]ts ter kloeken ende zel den rade verghifnisse [bidden] ende gheven tebeteringhe X<sup>M</sup> steens’.

prescriptive relation, while the *Buurspraakboek* even suggests to be situated in the midst of the proceedings, somewhere between the moment when Jan has arrived at the clock and the moment that he would beg the Council for forgiveness. That we are not just dealing with administrative

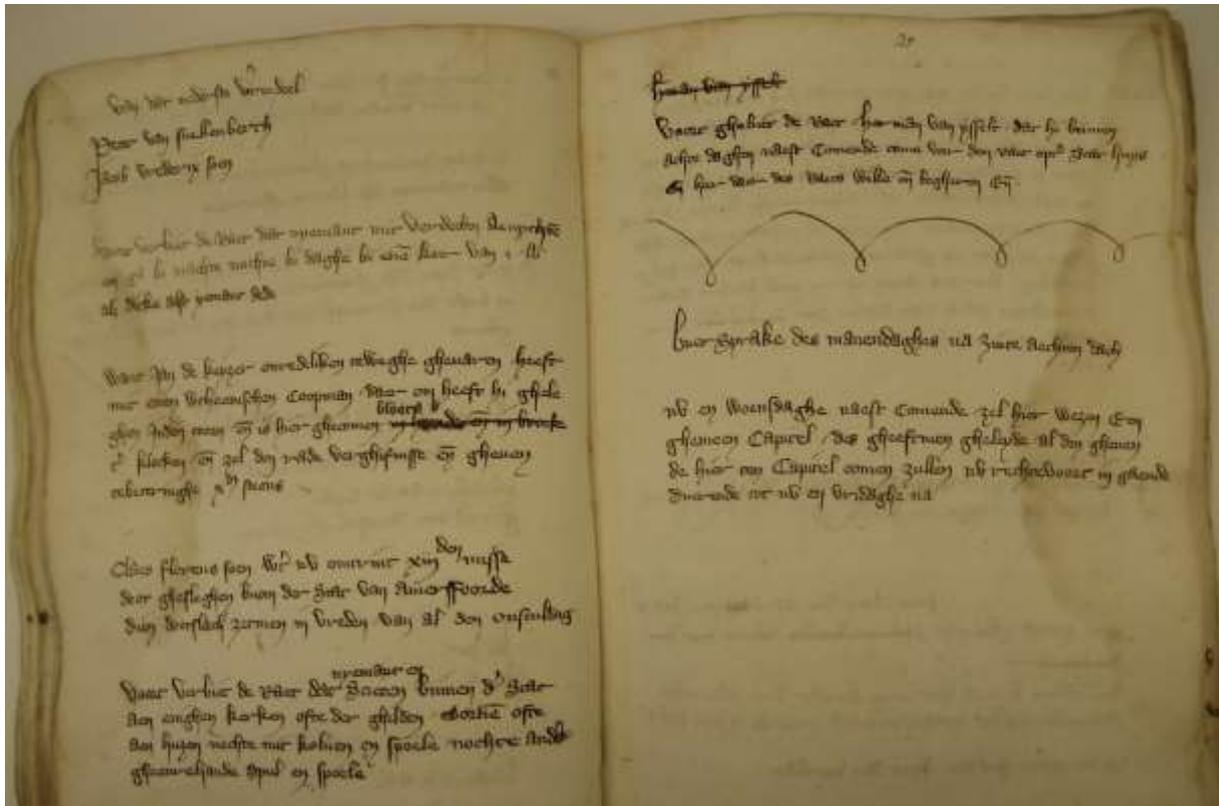


Figure 11: Pages from the *Buurspraakboek* of 1403 (HUA: 701-1.16: BSB 1402-1405, fol. 34v-35r). The case of Jan de Keyzer is the third entry on fol. 34v.

standardization, but that such wordings were a conscious choice, is suggested by a case from 1408, in which Koenkijn van Damassche is punished for defaming two other men. Originally the *Buurspraakboek* notes how he ‘shall come to the clock’ and ‘shall beg the Council for forgiveness’.<sup>52</sup> The phrasing stems from the way in which the *Raads Dagelijks Boek* structured its entries, namely by placing the punishment completely in the future tense. The scribe, however, appears to have noted his mistake, as the first ‘shall’ is corrected to ‘is’, thereby placing the text itself after the act of coming to the clock and before the act of begging forgiveness, as was customary for the *Buurspraakboek*. The character of such entries therefore hovers between the purely prescriptive bylaws, stating what has to happen in a given occasion, and the descriptions of punishments meted out in the fourteenth-century register. In this sense, they provided both a script, that is how the occasion was supposed to progress, and a textual interpretation thereof in the scope of one entry.<sup>53</sup>

<sup>52</sup> HUA: 701-1.16: *Buurspraakboek* 1405-1409, fol. 100r: ‘...daer om sel hi comen in hemde ende in broec ter cloc ende sel den Rade verghiffenisse bidden...’

<sup>53</sup> Also see: Camphuijsen, ‘Performance’ [forthcoming, 2016].

Surveying the source material available for the Council illustrates how, as in Paris, the text-act relations as suggested by the texts themselves changed over time. Whereas the *Parlement* saw the shift from a predominance of legal acts to which were increasingly added more descriptive texts, the textual record of the Council moved from a general – though far from absolute – separation of prescriptive and descriptive relations, to registers that combined both elements. Although the separation had never been absolute, the strong intermingling of these positions in the latter registers in particular shows the limits of applicability of our initial terminology. Between and even within individual entries, the text could be situated before, after or in the process of the extra-textual activity that it was referring to, often making it impossible to attribute one specific type of text-act relation to a given entry. The Utrecht material is often many things in one, forming a suggested script for the course of events, while likewise providing them with a specific interpretation. In this way, these documents thus try to perform the legal process both by propounding extra-textual activity and influencing its interpretation.

What this analysis of the documents of the three courts has shown, is that there often existed a fundamental gap between the position a text claimed to take vis-à-vis the non-textual activities to which it referred, and the manner in which it was produced by and functioned in the court. Both the multi-staged processes of their coming-into-being, and the implications of their involvement in a legal process, far outstripped these documents' purported relation to the extra-textually performed legal acts. Assuming a simple threefold division into descriptive, prescriptive and performative text-act relations, we have seen how all three were strongly intermingled in the courts' textual practice. Sometimes these relations shaped the boundaries between different corpora, as the *Parlement's* distinction between registers of legal acts, such as the civil and criminal registers, and those containing session records, that is the pleading and counsel registers, demonstrates. In other cases, notably the Council's *Buurspraakboek* and *Raads Dagelijks Boek*, the boundaries between such relation types themselves became obscure. Notwithstanding these varieties, there existed a strong common factor between the documents of these courts, in that they all in some way or another physically and linguistically participated in performing the legal process. Regardless of the precise text-act relation that it claimed, each text was involved in giving shape to the things done in court, be it by posing itself performatively as speech act with extra-textual consequences, be it by prescribing a course of events or describing their significance. The specific material-linguistic combinations that these texts formed, furthermore, made them a direct physical performance of the court and its socio-legal activities. The implications of this will become clearer as we move on to consider the documents in their broader socio-legal communicative context.

### From society to text: varieties of translation

Having gained an impression of the ways in which the texts stemming from the courts could relate to the non-textual activities taking place in them, it is time to situate these documents more conclusively within the socio-legal communicative activity surrounding late medieval courts. As the use of texts in large numbers was a relatively new phenomenon, strongly related to the specific format for legal practice as propagated by the court, their involvement in such communicative activity formed a major part of courts' claim to socio-legal authority. A study of late medieval court documents thus concerns both the influence of broader communicative processes on the formation of these language-objects, as well as their role in shaping what people considered to be legally valid speech. To illustrate both claims, I will first consider the ways in which – mostly oral – messages and information from broader society found its way into the textual sources of these courts, as well as the processes of translation inherent to moving from the spoken to the written word. Secondly, I will trace these processes the other way round, by asking if and in which form various groups and individuals encountered the messages and information noted down in these language-objects, by considering courts' strategies for publicizing them. In both cases the texts will be considered in light of the interaction between courts and the groups and individuals in society with which they were concerned, either as active participants in the legal process or as its audience.

For the first part of this analysis of the courts' textual material, the element of translation takes centre stage. Underlying the already huge basis of textual materials surviving for these three courts is an even broader font of oral communication, that is people talking about other people and their social activities. When the examiners of York's Consistory Court drew up depositions based on their witnesses' statements, they formed the last link in a chain of orally transmitted social and individual knowledge about specific people and events.<sup>54</sup> In the same way, the information that the *Parlement* received through its *enquêtes*, and on which it based many of its decisions, was the result of predominantly oral enquiries in the concerned locality.<sup>55</sup> Finally, when considering the Council of Utrecht's many brief written notices that resulted from its supervision of peace agreements established between individuals, it is crucial to realize how much non-textual interaction and negotiation they involved.<sup>56</sup> The textual material presented by the courts therefore forms only the small tip of an immense iceberg of communicative activities. Moreover, in putting down late

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<sup>54</sup> Cf. Ian Forrest, 'Trust and doubt. The late medieval bishop and local knowledge', *Studies in church history* 52 (2016) 152-174.

<sup>55</sup> For more on the role of *enquêtes* in shaping the judicial power claims of the royal court, see: Hilaire, *Construction* (2011) 50-57.

<sup>56</sup> Examples of such peace agreements can be found all over the *Raads Dagelijks Boek* and *Buurspraakboek*, such as: HUA 701-1.16: *Buurspraakboek* 1418-1425, fol. 14v (1418) and: HUA 701-1.13: *Raads Dagelijks Boek* 1414-1425, fol. 127v (1421). See chapter five for more on the Council's role in concluding these peace agreements.

medieval experiences in written form, the authors of these texts also translated such experiences, according both to their direct goals in drawing up the texts, and to their own underlying frames of reference.

Linguistic pluralism played a role in some way or another for all three courts. Not only were there several pan-European prestige languages in use, most prominently Latin, but the local variety of languages and dialects was so immense that most, if not all areas of medieval Europe could rightly be called multilingual.<sup>57</sup> In the case of the *Parlement* this linguistic variety comes to the fore most prominently. In the thirteenth century the expansion of the Capetian kingdom brought an increasing number of areas in the south of France under royal jurisdiction, areas where written Roman law took a more central place than in the north. This led the king to institute a new specialized commission to treat cases coming from these lands in 1271, which was appropriately called the *auditoire du droit écrit*.<sup>58</sup> Although this body was defined foremostly according to a legal difference, the distinction between the northern and southern areas of the kingdom also had a strong linguistic component. When Philip the Fair, in an ordinance usually dated to 1310, transferred the treatment of petitions coming from the south of France from the *auditoire* to his recently installed *Chambre des requêtes*, these linguistic considerations came to the fore very explicitly. Philip divided the chamber's members into two groups, one for petitions in the *Langue françoise* and one for petitions in the *Langue d'oc*, that is the group of languages spoken in the south of France.<sup>59</sup> It is unclear how long this linguistic division remained in place exactly, as it is last mentioned in a royal ordinance from 1318.<sup>60</sup> But it does provide a very concrete example of how linguistic concerns could influence legal practice and organization.

In the context of this linguistic diversity, the courts' relationship vis-à-vis Latin is of particular relevance. Latin played a very central role in much of the legal practice of late medieval Europe. The major sources of learned law, both from the Roman and canon law traditions, were composed in Latin, and legal theorists would for centuries to come keep writing and theorizing in Latin. However, the Latinity of this learned legal tradition contrasted sharply with the vernacular multilingualism of most societies. Latin was certainly not beyond people's reach. Besides its use by ecclesiastical elites, who were professionally trained to write and speak Latin, this language was present on many occasions in ordinary people's daily lives, from the hearing of mass to the signing of contracts over land. People from a variety of social strata had what Michael Clanchy calls 'an acquaintance with

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<sup>57</sup> Ad Putter and Keith Busby, 'Introduction. Medieval francophonia', in: Christopher Kleinhenz and Keith Busby (eds.), *Medieval multilingualism. The francophone world and its neighbours* (Turnhout, 2010) 1-13.

<sup>58</sup> Aubert, *Histoire* (1894) 6-7, 35.

<sup>59</sup> For a modern edition of this ordinance, see Langlois, *Textes* (1888) 178-181. The exact dating of the ordinance is uncertain, as evidenced in Aubert, 'Nouvelles recherches', pt.1 (1916) 97, n.4.

<sup>60</sup> See: De Laurière, et al. (eds.), *Ordonnances*, vol. 1 (1723) 673-677, art.7.

Latin'.<sup>61</sup> Nevertheless, such a general acquaintance is not the same as a proficiently spoken language. It says more about the ability of people to receive information in Latin than about their day-to-day use of the language. The existence of Latin court documents therefore implies the translation of words, ideas and activities originally presented in a vernacular.

Surveying the three cases we see basically three variants of the use of Latin in court texts. York's Consistory Court used Latin exclusively at least up to the end of the fifteenth century. After that time, there is a gradual shift from predominantly Latin to mainly English documents.<sup>62</sup> In the records of the Council of Utrecht, on the other hand, (Middle) Dutch is used almost exclusively, the only exception being pieces from other institutions that would occasionally be copied into the Council's registers in their original Latin form.<sup>63</sup> The *Parlement* was the most multilingual of the three courts – at least from a documentary perspective – as here both Latin and (Middle) French were intermingled in the records from an early date on. This often depended on the type of text, although particularly for the earlier fourteenth century Latin seems to predominate. Most of the formal legal acts contained in the registers – *arrêts, jugés* – were stated in Latin. At the same time, many – though certainly not the majority – of registered letters were copied in French, which may well have been their original language of composition.<sup>64</sup> Other texts surviving for the early fourteenth-century *Parlement* provide a similarly diverse picture, ranging from the predominantly Latin *registres du greffe*, to the partly French *journaux* that survive in a few of the criminal registers, to the even completely French prisoners' confessions and judgements at the end of the X<sup>2A</sup>4 register.<sup>65</sup> A change took place during the later fourteenth and early fifteenth centuries, as many of the new series of records that began to appear around that time – most prominently the series of *Conseil* and *Plaidoiries* – were written in French.<sup>66</sup>

As important intermediaries between the worlds of legal theory and judicial practice, law courts were thus very much concerned with translating information from broader society. The implications of such translation for the way in which the information was received could be far-reaching. Mark

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<sup>61</sup> Clanchy, *Memory* ([1979]2013) 237.

<sup>62</sup> Robert N. Swanson, "'...Et examinatus dicit...'" Oral and personal history in the records of English ecclesiastical courts', in: Goodich (ed.), *Voices* (2006) 203-225, at 206.

<sup>63</sup> See for example the *Th.2* register for 1370, where a Latin letter of hereditary lease written by the dean and chapel of the St. John's church in Utrecht is copied in full as part of an otherwise Middle Dutch entry: HUA 701 - 1.227, fol. 53v-54r.

<sup>64</sup> Grün, 'Notice' (1863) XXIV.

<sup>65</sup> For the *anciens registres du greffe*, see: AN X<sup>1A</sup>8844-8851<sup>bis</sup>. The *journaux* can be found in registers X<sup>2A</sup>4, fol. 1r-135v and X<sup>2A</sup>5, fol. 1r-40v and 144r-154r, and are inventoried in: Labat-Poussin, Langlois and Lanhers (eds.), *Actes* (1987) 126-212, 228-252, 314-327. The prisoners' confessions and judgments are edited in Langlois and Lanhers, *Confessions* (1971).

<sup>66</sup> For a clear example of the relation between the new – *Plaidoiries, Conseil* – and old types of records – *Arrêts, Jugés* – see the dossier of transcribed procedural pieces in: Hildesheimer and Morgat-Bonnet (eds.), *État méthodique* (2011) XXI-XXVII, which contains examples of both regarding one case from 1427-1428.

Pegg has argued, for example, how, in the context of thirteenth-century inquisition records, a variety of vernacular words to characterize people would often simply be translated as 'heretics'. This showed, according to Pegg, the combination of recording practicalities – that is conflating a range of vernacular concepts into one term for the sake of rapid recording – and the influence of preconceived notions about the nature of the people interrogated on the part of the examiners.<sup>67</sup> A similar standardization of translated terms can be seen in the material from York and Paris. As Claude Gauvard has noted, the documents stemming from the *Parlement* contain several fixed Latin terms for criminal acts, like *crimen* or *maleficium*, connected to their implications in the legal process rather than the exact details of the act as such.<sup>68</sup> In a similar way, the York depositions in marriage cases contain numerous stock phrases for sexual acts, for example stating that a couple was seen 'alone and naked together' (*solus cum sola, nudus cum nuda*).<sup>69</sup> Rather than supposing that every witness used the exact same phraseology, we may interpret this standardization as a consequence of the act of translation from the vernacular to Latin. A variety of words and descriptions would be transposed by one or several fixed Latin equivalents. In this way, the court did not just capture the voices of witnesses on parchment, but also tried to control the sense in which they were used and the possible implications they had within the legal process and beyond. In translating from a vernacular – and presumably spoken – language into a language predominantly used for recording statements, descriptions and ideas were thus fit into a specific register, ultimately determined by the interpretation and purposes of the writer.

But the impact of the transition of information from a – largely oral – social context to the written records of the court extended far beyond a translation from one language to another. Not only did the court often use a fixed court language to record its cases, but the information reaching it was also fitted within a specific court discourse. The surviving depositions from the Consistory Court of York are again a case in point. They offer some of the most detailed images of late medieval social life, yet are at the same time all the more problematic in the details they provide. Jeremy Goldberg explicitly warns against reading the York depositions as 'simple mirrors of daily life'.<sup>70</sup> In the context of the numerous cases regarding the validity of marriage Goldberg shows how certain social occasions are described in remarkable detail in the statements of the court's witnesses. It is, for example, striking how many witnesses in such cases allegedly observed the supposed spouses lying together in bed or even having sex.<sup>71</sup> Notwithstanding the possibly different norms as to the privacy

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<sup>67</sup> Pegg, *Corruption* (2001) 57-60.

<sup>68</sup> Gauvard, 'Grace especial' (1991) 111-122. See chapter five for more on the implications of such terminology.

<sup>69</sup> Jeremy Goldberg, 'John Skatelok's dick. Voyeurism and 'pornography' in late medieval England', in: Nicola McDonald (ed.) *Medieval obscenities* (Woodbridge, 2006) 105-123, at 108-109.

<sup>70</sup> *Ibid.* 106.

<sup>71</sup> *Ibid.* 109.

of living spaces in medieval society, the ability of deponents to recall such personal details, sometimes many years later, needs to be regarded within a litigation context. For unlike the modern historian, who may be interested in the depositions in order to learn more about the lives of medieval people, those involved in the compilation of the depositions, that is the witnesses and the court's examiners, had their own specific interests in the stories as represented in the cause papers. For the witnesses, calling upon their memory of events that may have seemed of little concern at the time, an unavoidable process of selection took place, as the specific occasion was reconstituted and reinterpreted in their mind. Furthermore, a certain bias for one of the parties was also likely, as the witnesses were in the end presented to the court by the parties in a dispute.<sup>72</sup> What mattered to the examiners was foremostly the usefulness of the provided answers from a legal perspective. Working from a set of questions that were compiled to argue specific legal points, what the examiners focused on was to record the answers provided in a way that allowed the judges to base their legal verdicts on them. As the depositions themselves were written after the interrogation took place, based on notes taken during the interrogation, the examiners had ample time to select those aspects of the interrogations that had a bearing on the case from a purely legal perspective.<sup>73</sup> It was thus from the interaction – or negotiation – between questioner and questioned, both bringing their own interests and frames of reference to the table, that the depositions as they survive took shape. The legal logic that was required to prove or disprove a case led the selection and description of the details involved.

A similar interaction between social informants and the court took place in the case of the *Parlement*. The sources for this interaction are, however, often much less direct, as few texts similar to the York depositions survive. An exception is formed by the confessions and testimonies collected at the end of the fourth criminal register, and spanning the years 1319-1350.<sup>74</sup> These nearly sixty folia, probably attached to the register at a later date, contain small dossiers of individual cases, including transcripts of the culprits' confessions, witness testimony, and occasionally also the judges' decisions in the case. The exceptional source gives us a view of some of the machinations of narrative construction that took place in day-to-day legal practice. A first layer was formed by the story of the procedure itself. As most of these entries concerned situations in which a culprit had confessed his crime to the court, we often find a description of the circumstances of the confession. Usually such entries consist of the names of various officials, followed by a mention that the culprit has made a confession 'of his own free will' (*de sa bonne volonté*) or 'without constraint' (*sanz contrainte*). The court then contrasts this with situations where confessions – usually before other authorities – were

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<sup>72</sup> Helmholz, *Marriage litigation* (1974) 127-128.

<sup>73</sup> For an overview of the process of recording the witness statements, see: Helmholz, *Marriage litigation* (1974) 17-20.

<sup>74</sup> AN X<sup>2A</sup>4, fols. 174r-232v. Published in: Langlois and Lanhers, *Confessions* (1971).

perceived as involuntary, as when Guillaume de Léans accused various officials of having questioned him under torture.<sup>75</sup>

The same theme of proper versus improper legal procedure can also be found in the subjects of the confessions themselves. For example, in the complex case of Guiart de Noireterre, treated in 1332, the alleged danger of extra-curial dispute settlement comes to the fore.<sup>76</sup> Guiart, himself involved in various law suits on the accusation of theft, pillage and murder, was mortally wounded in Paris by a group of contract killers. His murder, so we learn from various witness statements in the case, was supposedly ordered by one of his enemies, a knight called Jean de la Forêt, who said on several occasions he had been gravely damaged by Guiart. Instead of pursuing his grievances in court, like others appear to have done, Jean preferred to resort to private vengeance. The court's disapproval of this course of action becomes clear in several ways. In the verdicts that survive in the case, some of the conspirators and killers are sentenced to death, clearly indicating the serious nature of the case. But in more subtle ways as well, the records of the case emphasize an order-disorder dichotomy. One of the main perpetrators, Jean's squire Pierre le Vicomte, had challenged Guiart to a duel prior to the murder itself, not because the latter had done him any harm, but on his master's orders.<sup>77</sup> Likewise, another accomplice, Bouchard d'Azai, manipulated the court of the Parisian official, requesting a summons for Guiart, in order to be able to show one of the assassins his face.<sup>78</sup> The documents in this case present an ingenious plot, not just to murder a rival, but above all to pursue one's justice outside of, and sometimes even by illegitimately using the proper channels, that is the royal court's legal process. At the same time, through their incorporation into a legal procedure, the events' disordering effect is contravened. As in the case of the York depositions, information coming from various social informants, each with their own motivations, is reworked into a broader narrative of legal order versus disorder.<sup>79</sup>

Whereas the witness testimonies and confessions suggest a particular proximity to the negotiation between social informant and court, other types of documents, like the criminal and civil registers, were no less subject to processes of narrativization. One long case from the 1340's provides a number of good examples. It concerns Jean de Dinteville, member of the *Parlement*, who together with the proctor of the king acted against a group of nobles and sergeants, including the bailiff of Vitry. The latter, according to Jean, illegally captured the fortress of Fontaine and pillaged a house belonging to him, as well as abducted several of his people. The result was a legal process

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<sup>75</sup> Langlois and Lanhers, *Confessions* (1971) 41.

<sup>76</sup> *Ibid.* 51-75.

<sup>77</sup> *Ibid.* 61-62.

<sup>78</sup> *Ibid.* 57-58.

<sup>79</sup> See chapter five, p... for a more extensive treatment of this socio-legal narrative as presented in the Council's documents and practices.

covering the years 1340-1343, involving both civil claims for the personal damages of Jean, and criminal legal proceedings.<sup>80</sup> One of the reasons for the case to be drawn out so long in the first instance was strictly procedural. The first few entries that survive are mainly concerned with allegations by Jean and the royal proctor that several of the defendants are to be declared in default for not showing up in court at the right time and place. These claims are initially sustained by the court.<sup>81</sup> Shortly thereafter, however, word reaches the court through different channels – including the defendants themselves – that the king intends to quash these initial verdicts, as the reason for the defendants' absence was that they had been serving the king in his war.<sup>82</sup> As in other cases, the records stress the necessity of people's presence in the courtroom, excusing their absence only in extraordinary cases.

The Dinteville case only really seems to get traction in the first half of 1341, but it remains the subject of a score of procedural decisions and orders from the *Parlement* or sometimes even from the king. *Enquêtes* are called for, people are – yet again – declared to have been in default, and the king at some point even orders the proceedings to take place on a specific day and in his presence.<sup>83</sup> No clear final judgement of the case has survived, the last entries being a declaration of default and mention that Dinteville's side of the case will be continued in civil proceedings.<sup>84</sup> But the intermediary verdicts – *arrêts* – that do survive stress familiar matters, like the crime of breaching a royal safeguard and royal service as a legitimate excuse for courtroom absence. The descriptions of the case emerging from the *Parlement's* registers present us with a limited picture of the conflict. We receive only hints of the actual politico-legal strategies and negotiations taking place between the many different parties involved, including Jean, the accused nobles, the king, and the court. But in providing us with so little information, the case does show how potentially very complex social disputes were integrated into specific legal narratives – both by the litigants, in bringing particular arguments to the fore, and by the court itself – which stressed a certain social order based on royal power and justice, awarding loyalty to the king, while punishing a breaking of the king's peace. In addition to the more detailed narratives from the registers of confessions and witness testimony, cases such as this attest a much broader textual practice whereby social information was reworked

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<sup>80</sup> The case is spread out over the *Parlement's* fourth criminal register, covering many entries in the register's *Journal* and two of its *Arrêts*. See AN X<sup>2A</sup>4, fols. 8v, 10v, 21r, 23r, 23v, 27v, 30v, 34r, 36v, 43v, 58v, 61r, 61v, 86v, 106r, 106v, 139v-141r.

<sup>81</sup> *Ibid.* fols. 8v, 10v, 21r, 23r.

<sup>82</sup> *Ibid.* fols. 23v, 30v

<sup>83</sup> *Ibid.* fols. 58r, 86v, 106v and 43v respectively.

<sup>84</sup> *Ibid.* 106v. There is one last mention of the case in the civil register dated to the fifth of July 1343, which delegates it to a royal sergent in the vicinity of the alleged crime: AN X<sup>1A</sup>9, fol. 471. Also see: Henri Furgeot, et al. (eds.), *Actes du Parlement de Paris. Deuxième série: de l'an 1328 à l'an 1350*, vol. 2 (Paris, 1960) 34, nr. 5090.

into narratives of justice, which provided individual cases with much broader implications by discursively linking them to broader systems of signification.

A similar narrative logic seems to underlie the court documents of the Council of Utrecht. Again the lack of written witness testimonies means that few direct voices – or at least texts claiming to represent such direct voices – survive. But the way in which social information is reworked in the court documents is nevertheless extensive. Two aspects clearly illustrate such processes. First there is the use of specific words. In the verdicts contained in the Council's *Buurspraakboek* the actions or general behaviour of the culprit leading to the sentence are usually specified.<sup>85</sup> Sometimes such descriptions are very case-specific, but often certain standardized words are used to describe the activity, like *onredelik* (unreasonable), *onstantelik* (improper) and *onsedich* (immoral). These terms sometimes appear on their own, as a description of more general intolerable behaviour that is being punished.<sup>86</sup> In many other cases, however, they are added as adjective to a specified other crime. So when, for example, Koenkiin van Damassche was punished for slander in 1408, the words he had spoken were recorded as being *onredelike woirde* (unreasonable words).<sup>87</sup> And in a case from 1418, a certain master Reyner is banished from the city for ten years, because he has committed theft and *onstantelike saeken* (improper things).<sup>88</sup> It is not easy to find a clear definition of these terms, or to connect them to one specific action. Berents has argued that most of them are simply indicators for more general misbehaviour, often of a violent nature.<sup>89</sup> Strikingly, most of these words are antonyms, as evidenced by the prefix *on-*, emphasizing that they are the opposite of generally desired forms of behaviour. A potentially large variety of acts is thus contained within several very general categories, indicated by words that already stress the transgressive character of the act.

This narrative of the transgression of a desired order also appears in the records' presentation of the victims of transgressive behaviour. Sometimes the victim of the crime is simply the individual directly damaged by the action, as in a case from 1386 where Wouter son of Jan stabbed Jacob son

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<sup>85</sup> As can be gathered from Berents, *Misdaad* (1976) 130, only about 10% of the recorded verdicts up to 1455 – that is 53% of Berents' 'other crimes' category, which constituted 18% of the total verdicts for this period – did not name the crime.

<sup>86</sup> This is Berents' category of 'unreasonable behaviour', constituting the alleged crime for about 8% of all recorded verdicts up to 1455. See: *Ibid.* 127-129.

<sup>87</sup> HUA 701-1.16: *Buurspraakboek* 1405-1409, 100r: 'Want Koenkiin van Damassche Jan Koeken ende Gherijt van Braclede onredelike woirde opheseit heeft die grotelic aen hoer eer dragen, die niet waer en siin, daer om is hi comen in hemde ende in broec ter cloc ende sel den Rade verghiffenisse bidden. Ende hi sel seggen wes hij hem Jan ende Gherijt voirseit geseit heeft dan van gueden luden dat hi daer aen geloghen heeft.' (1408)

<sup>88</sup> HUA 701-1.16: *Buurspraakboek* 1418-1425, 31r: 'Want Reyner, die men meyster Reyner mitten kreyen heet, gestolen ende onstantelike saeken bedreven heeft, daerom verbiet men hem de stat tyen jaer lang ende een mile van der stat te wesen van dieften.' (1418)

<sup>89</sup> Berents, *Misdaad* (1976) 127-129.

of Steffaen.<sup>90</sup> Not all crimes were conceptualized so clearly as victimizing private individuals. In a series of entries from 1414 five men are punished for counterfeiting. The alleged victim in this case is not so much any private individual aggrieved in a specific transaction. Instead the activities of the five men are said to have caused ‘grave damage and hindrance to our communal city’.<sup>91</sup> Here the community as a whole is held to have been the victim of the counterfeiting. It does not need to be such a potentially extensive crime like counterfeiting for the records to extend victimhood beyond private individuals. In many subtle ways the potential harm done to the urban community is integrated into a legal narrative of disordering crime followed by just punishment. Many entries related to manslaughter describe for example whether the incident took place in the city or its spatial liberty, and whether the perpetrator or the victim were citizens of Utrecht. There are procedural reasons that may have required such distinctions to be made explicit, but considering their frequent occurrence in the *Buurspraakboek* – which was not necessarily the place to develop legal argumentation – such entries shore up a broader socio-legal narrative. The alleged disorder caused by the violent death of an individual involved the urban community as a whole: both spatially through the occurrence of the crime in the city or its liberty, as well as socially through the victim’s or perpetrator’s status as citizen, which formalized community membership. From the many social facts involved in such potentially harmful social activities a limited selection was included in the records, emphasizing certain damaging aspects and thereby relating the occasion to a broader socio-legal discourse on order and disorder in the urban community of Utrecht.

Chapter three has shown how court activity – or at least the traces of this activity that are still in some way visible to us – was ritualized into chains of actions that suggested a link with previous activities in different contexts. A similar sequencing took place in the act of textually recording information from society. On the one hand, this was part of a translation between languages, as for many courts the language in which the documents were drawn up differed from the languages spoken by a majority of the people with which these records were concerned. More generally, however, in these documents information was selectively integrated into socio-legal narratives that echoed certain ideas about social order and disorder. Here a linguistic endeavour, related to the ritualization of actions took place. Discrete social events were taken together and logically connected within specific discursive schemata – ‘sexual intercourse is the defining confirmation of marriage’, ‘the king represents and guarantees social order in the kingdom’, ‘a crime against an individual disrupts peace in the whole community’ – which hinted at previous similar chains of logic

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<sup>90</sup> HUA 701-1.16: *Buurspraakboek* 1385-1391, 34r: ‘Want Wouter Jans soen onredeliken ghesteken heft Jacob Steffaens soen daer omme heeft hi gheleghen inden toorn ende is hier ghecomen in hemde ende in broeke ter kloeken ende zel den rade bidden verghifnisse ende gheven der stat tebeteringe v<sup>m</sup> steens.’ (1386)

<sup>91</sup> HUA 701-1.16: *Buurspraakboek* 1410-1414, 183r-v: ‘...groten schade ende hinder onser gemeenre stat...’ (1414)

constructed in the court context. The court itself, as author of the documents, was the major force behind the form and contents of this textual schematization. Nevertheless, other social parties also had a role to play in the construction of the written material. In some cases – most prominently witness testimony – this influence was exerted in providing the court with specific information, modified by the interests of the party as such. More in general, however, it was often people's role as receivers of information, that is as audiences, which strongly influenced the way in which the court conceived its documents. In order to analyse the influence of such audiences, the last part of this chapter will be concerned with the flow of information from the court documents back to society.

### **From text to society: publishing practices**

On 21 September 1341 the *Parlement* discussed the case of Pierre Brun. In an appeal case stemming from the town of Nonette in Auvergne, Pierre was accused of manipulating a royal letter. The court ruled that Pierre would be put in the pillory twice: once on a Saturday in Paris, and once in Nonette. On this second occasion he would have a sign above his head, stating in large lettering:

This is Pierre Brun of Lorlange in Auvergne, who has made forgery, wrongful erasure and additions to our lord the King's letters, obtained by him for an adjournment in an appeal case lodged by him and William of Lafons following a sentence given against them by the bailiff of Auvergne for Jean Aurozler, administrator of the provost of Brioude, and for said provost, and [who] has also forged in the *executoire* of the said adjournment. And [he] has confessed this, and is therefore condemned by the court of the Parlement to be put in the pillory, once in Paris and another time in the town of Nonette in Auvergne, and he will be sent to the bailiff of Auvergne to [be] put in said pillory in Nonette for the forgery.<sup>92</sup>

The case of Pierre signals two fundamental aspects of the role of texts for late medieval law courts. On the one hand, the court emphasized the importance of the reliability of the information it received. Changing a validated – that is, sealed – text was considered a serious crime, judging by the extensive punishment that Pierre received. More importantly, from my perspective, this case also clearly shows – in a rather concrete way – the importance attributed by the court to communicating

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<sup>92</sup> AN X<sup>2A</sup>4, fol. 50r-v: *Cest Pierre Bruy de Leulanges en Auvergne qui auoit fait farce, faussete rasure et addicion es lettres du Roy nostresire, empetre par luj sur un adiornement en cause dappel fait par luj et Guillaume de la fons dune sentence donnee contre euls par le baille dauvergne pour Jehan Aurozler baille du preuost de Bride et pour ledit preuost et aussi lauoit fait farce en l'executoire dudit adiornement. Et ce a confesse et pour ce est condempnez par la court du Parlement a estre mis une foiz ou pilory a Paris et une autre foiz en la ville de Nonnaite en Auvergne et sera envoyez au baille dauvergne pour lefarce mettre ou dit pilory a Nonnaite.*

information from the text back to society. It was apparently deemed desirable that people witnessing the execution of Pierre's punishment had a clear idea what it was that he was punished for. Accordingly, his crime and its consequences as narrated in the court case were broadcast physically and linguistically to all passers-by.

Pierre's case is exceptional in the registers of the *Parlement* in its explicit emphasis on the physical publication of court texts for a broader public. Few other cases place the physical text-objects used in court so crucially in the public view. But in other, more subtle ways we also see the *Parlement's* consideration of the flow of information in both directions, to and from the court record, as part of the regular legal process. The *arrêts* that the *Parlement* decided on in specific cases would, for example, be proclaimed in open court. As early as 1296 a royal ordinance stated how a named royal official, Renaut Barbou, was supposed to 'speak and bring the arrests'.<sup>93</sup> From 1349 onwards, the *arrêts* contained in the registers bear the date of their pronouncement, leading to a clustering of *arrêts* on particular days in the registers.<sup>94</sup> Given the regular presence of audiences in the *Grande Chambre*, as seen in previous chapters, such readings played an important role in publishing the legal narratives beyond the physical confines of the text.<sup>95</sup> While these regular pronouncements were done primarily in the courtroom itself, there is evidence of a variety of court-related documents being published before potentially much larger audiences. In 1404, for example, Nicholas of Baye noted how a royal document was brought to court, forbidding two conflicting parties – one of which was the university – to publish slanderous texts in various public places. The text in its turn, so Nicholas tells us, was read aloud in the Great Hall of the *Palais de la Cité* through a window in the side of the *Grande Chambre*, which was also used for announcing the end of the *Parlement's* pleading season.<sup>96</sup> In another *arrêt* from 1356, Godefroi d'Harcourt, lord of Saint-Sauveur-de-Vicomte (Normandy), and several of his accomplices, all accused of treason, were banished from the kingdom. The *arrêt* itself was said to be published in public places around the kingdom 'where it was necessary, useful or advantageous'.<sup>97</sup> As this last phrase reminds us, the publication of – parts of – the written text was often deemed crucial from a judicio-political viewpoint. For in order to make sure that Godefroid did not return unnoticed, it was important to inform large numbers of people of his banishment. But such practices could also take place closer to the courtroom itself. Jean

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<sup>93</sup> Langlois (ed.), *Textes* (1888) 163: '...il est ordené que lidiz Renaut Barbou, se il est presens, ..., parleront et rendront les arrez'. Also see Aubert, 'Nouvelles recherches' pt.1 (1916) 88.

<sup>94</sup> The first *arrêts* dated like this can be found in: AN X<sup>1A</sup>12, fol. 409v. Also see: Grün, 'Notice' (1863) CXXXIX; Aubert, *Histoire* (1894) 134-136.

<sup>95</sup> See chapter two and chapter three.

<sup>96</sup> AN X<sup>1A</sup>4786, fol.359r. Edited in: Tuetey (ed.), *Journal* (1885) 94-95. Also see chapter two.

<sup>97</sup> AN X<sup>2A</sup>6, fol.299v-304r: '... Publicabitur itaque hujusmodi bannum in locis publicis in predicto regno nostro, ubi ipsum bannum necessarium, utile aut expediens fuerit publicari.' The *arrêt* is edited in: Léopold Delisle (ed.), *Histoire du château et des sires de Saint-Sauveur-le-Vicomte* (Valonges, 1867) 121-141.

Guerout, for example, has argued how a marble stone that stood at the entrance to the royal castle was used for a variety of proclamations, from official summons to certain *arrêts*, like that of Godefroid d’Harcourt.<sup>98</sup> None of this is to say that each and every record produced by the *Parlement* received the same degree of publicity. But it does show us that several systems were in place for bringing the written text to a larger public.

What is true for the *Parlement* also holds for the other two courts considered here. The Council of Utrecht’s *Buurspraakboek* offers a striking illustration of the interaction between textual and oral-performative modes of communication. The logic underlying this textual record was that it contained those matters that were to be publicly announced during the *buurspraak* occasions, thereby incorporating the public presentation of the textual record as a fundamental reason for its existence. Forming a kind of script for the *buurspraak* occasions, this record purports to bring us exceptionally close to the public oral practices of the Council, as well as to its own publication.<sup>99</sup> Whereas the *Buurspraakboek* formed only the basis of an otherwise oral publication, the direct physical presence of texts in the public arena was also a common phenomenon in late medieval Utrecht. The *Buurspraakboek* regularly mentions occasions on which the text of a specific decision or regulation was physically posted in a public space, usually in front of the aldermen’s house on the *Plaets*. In many cases these physically published documents concerned the sale of immovable property.<sup>100</sup> But they could also be concerned with other matters. In 1417, for example, the Council stated how a group of former exiles had been formally reconciled with the urban authorities and that anyone who would from now on harass them extra-legally would be punished. The entry in the *Buurspraakboek* mentioned that a written document (*cedel*) on the matter had been posted at the aldermen’s house to make sure ‘that everyone could know it and no one would violate it’.<sup>101</sup> The Council seems thus to have been very concerned with the exchange of information between itself and the inhabitants of the city. As in the previous entry, it often made this communicative goal explicit. Thus when it turned out in 1406 that many people had not had the chance to see a public notice concerning the sale of houses because they had been on a military campaign at the time of its publication, the Council posted the notice again ‘in order that everyone whom it concerns and who needs to know it may

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<sup>98</sup> Guerout, ‘Deuxième partie’ (1950) 87.

<sup>99</sup> See chapter three for more on the *buurspraak* occasions. Also see: Camphuijsen, ‘Performance’ [forthcoming, 2016].

<sup>100</sup> For example HUA 701-1.16: *Buurspraakboek* 1414-1418, fol. 114r: ‘Van den husingen, hofsteden ende eygendomme die vercoft ende voer den scouten ende scepen van onser stat in gerechte overgegeven sijn, daer sall men een cedel off uuthanghen opter Plaetsen voer der scepen huys achte dage lang zo dattet een ygelic weten mach dient aendraech ende noot is te weten.’ (1416). The same announcement can be found very often in the *Buurspraakboek*, and seems to have formed part of a standardized series of announcements made several times each year.

<sup>101</sup> HUA 701-1.16: *Buurspraakboek* 1414-1418, fol. 142r: ‘...dattet een ygelic weten mach ende hem daer aen niemant en versume.’ (1417)

know it.<sup>102</sup> The practice of bringing legal and other records to a larger public was thus very much part of broader communicative concerns on the part of the Council. Such concerns should not surprise us, considering the many instances of political instability in fourteenth- and fifteenth-century Utrecht.<sup>103</sup> Yet at the same time they also echoed more constant and long-term practices of informing – and being informed by – the town’s inhabitants.

Unlike the *Buurspraakboek*, the documents of York’s Consistory Court do not foreground further communication of textual information. Nevertheless these documents also formed part of broader communicative practices, through which the court published what had been written down in its records. Two such instances emerge from the cause paper of a case from 1394, for which only the sentence has survived.<sup>104</sup> The sentence forms part of a letter, addressed to ‘all sons of the holy mother church whom the present letter might reach’.<sup>105</sup> Subsequently, the letter announces how, on 9 February that year, the court’s commissary general had, in the consistorial place in York’s cathedral church, read and brought the definite sentence in a case, which is then followed by its transcription. The document thus describes an occasion – the sentence reading – where the text is explicitly communicated beyond its physical, written form. As the previous chapter argued, such sentence readings formed an important ritualized aspect of court procedure, involving audiences of different sizes. Furthermore, since such readings could also take place in local parish churches, their role in publishing court texts seems even more crucial.<sup>106</sup> The second piece of evidence this cause paper provides of the court’s communicative practices is in the form of the document. It was not unusual for surviving sentences to be contained within the context of a letter sent to local church officials.<sup>107</sup> Within the large area in which the archbishop of York held the highest jurisdiction, cases regularly moved from one court to the other as part of an appeal or in reference to a lower court. This meant that crucial information concerning a case – like the verdict reached at an earlier stage – would have to move between these courts as well. And this was where a second means of communicating information and messages outward from the court came in. Together with its sentence readings, this practice of transmitting certain aspects of the legal procedure – and most prominently the sentences

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<sup>102</sup> HUA 701-1.16: *Buurspraakboek* 1405-1409, fol. 25v-26r: ‘...zodattet een ygelic weten mach dien ’t aendraget ende noot is te weten.’ (1406)

<sup>103</sup> Nor were they exceptional as compared to other reactions of premodern urban authorities on periods of social and political tension. See for example the communicative concerns of the Amsterdam authorities during the sixteenth-century Dutch revolt, as described in: Femke Deen, *Publiek debat en propaganda in Amsterdam tijdens de Nederlandse Opstand. Amsterdam ‘Moorddam’ (1566-1578)* (Amsterdam, 2015).

<sup>104</sup> BIA CP.E.158.

<sup>105</sup> *Ibid.*: ‘Universis sancte matris ecclesie filiis ad quos presentes littere pervenerint...’

<sup>106</sup> See for example: BIA CP.E.138 (1387), where the sentence in a case is read in the consistorial place of the collegiate church of Beverley: ‘...in ecclesia collegiis beati Johannis Beverlac’ Eboracencis diocesis loco consistorii eiusdem...’.

<sup>107</sup> Also see: BIA CP.E.178

– by letter to local courts, formed the most important way in which the Consistory Court presented its textualized legal narratives to a variety of local and regional audiences.

In retrospect, it is clear that in all three cases the court called on various means for bringing the information from the written text to a broader audience. Many of the legal narratives formed in the process of transitioning non-textual social information to a written document were subsequently returned to society. Yet these publication practices were not just concerned with bringing the content of the texts to a broader audience. In many cases, as when documents were posted in certain places, the physical presence of the texts was also at stake. Such published texts formed both a linguistic and physical performance of the court and its legal process. They contributed to a suggested schematization of legal proceedings, in the same way that the ritualization of these activities themselves did. Moreover, by forming a physical representative of the court-based legal process, their presence supported the court's attempt at validating a specific, text-based, format for legal practice.

With these practices of publishing documents, we touch again upon one of the fundamental, yet often overlooked participants in the socio-legal communicative process of the court. Notwithstanding the way in which social information was reworked in the material according to linguistic and narrative schemes as negotiated between the court and various legal parties, one of the crucial contributors to the whole communicative process surrounding these documents were its various audiences. As is often the case in reception studies of medieval texts, direct evidence of a reading or listening public is hard to come by. Much depends on reconstructions of the intended audience of a text, complemented every now and then with scarce mentions of actual audiences. Nonetheless, both types of audiences – intended and actual – can give us some insight into the logic shaping these documents, as both influenced the court in the way in which it conceived its written material.

The impression gained from the texts themselves and the available evidence on their socio-legal context actually suggests quite varied audiences for all three cases. The groups addressed in the Utrecht *Buurspraakboek*, for example, are very diverse. The Council may have presented citizenship as an advantageous status, but it certainly did not limit its texts to this one group. Many regulations written down in the book explicitly address the citizens and 'ondersaten' of Utrecht, that is to say both those who had acquired citizenship and those who had not.<sup>108</sup> The latter category could also

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<sup>108</sup> For example: HUA 701-1.16: *Buurspraakboek* 1405-1409, fol. 80v: 'Voert gebied die raet dat nyemant van onsen borgeren ofte ondersaten...' (1407). Muller, in: Muller, *Rechtsbronnen*, Introduction (1885) 313, limits the term 'ondersaten' to those people who did not have citizenship because they did not live within the walls, but rather in the city's liberty. This seems too limited an interpretation of this term, judging by the

include people living in the Utrecht liberty, rather than within the city walls. Likewise, both men and women appear as intended audiences of the Council's pronouncements.<sup>109</sup> And the audience need not be limited to inhabitants of the city. Foreigners could also be explicitly addressed by the Council, as when it opened a measure pronounced in 1425 by addressing it to 'all guests and foreigners, who have come from any other land [to] live or stay in our city or liberty'.<sup>110</sup> Other groups encountered as intended audience include prostitutes and beggars, groups that are often seen as standing on the margins of medieval society.<sup>111</sup> Measures explicitly addressed to prostitutes actually abound in the sources, like in a regulation from 1403 where the Council forbade 'the easy women to go into any graveyard in the city by evening or by night there to commit indecent activities'.<sup>112</sup> Likewise, in an extensive regulation on the begging practices of the poor and leprous, agreed upon in 1413, the Council again explicitly addressed the subjects of the regulation – 'all poor people' (*allen armen luden*) and 'all leprous people' (*allen besuycten luden*) – in addition to 'ordinary' inhabitants who could be confronted with these groups' begging practices.<sup>113</sup> Admittedly, the naming of such groups in the sources does not suffice to say who was actually listening to the Council's pronouncements on every occasion. But even as potential audience they already had an influence on the way in which the Council shaped its socio-legal discourse and communication practices.<sup>114</sup> The fact that it made its pronouncements during the *buurspraak* sessions, potentially open and freely accessible events, further supports the latter.

There is a tendency in the historiography on the *Parlement* to consider the texts produced by this body as directed solely at an internal public of legally trained specialists, the *Parlement* being inherently secretive about its legal decisions.<sup>115</sup> Some evidence suggests otherwise. That is not to say that the *Parlement* was not the primary consumer of the texts it produced; most texts that survive functioned primarily as referential material for past cases that regained relevance in later

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*Buurspraakboek* and *Raads Dagelijks Boek*, and I here follow Berents in extending an understanding of the term to all inhabitants of the city and the liberty without citizenship. See: Berents, *Misdaad* (1976) 18.

<sup>109</sup> An example of the inclusion of inhabitants of the city and liberty as well as the inclusion of both men and women, can be found in: HUA 701-1.16: *Buurspraakboek* 1414-1418, fol. 120r: 'Die raet van onser stat out ende nywe waernen ende laten enen ijgeliken weten mannen ende wiven die in onser stat of in onser stat vriheit woenaftich sijn...' (1416)

<sup>110</sup> HUA 701-1.16: *Buurspraakboek* 1418-1425, fol. 237v: '...allen gasten ende vreemden luden die uut enigen anderen landen binnen onser stat ofte vrijheit woenen ofte leggen...' (1425).

<sup>111</sup> Cf. Bronislaw Geremek, *Les marginaux parisiens aux XIV<sup>e</sup> et XV<sup>e</sup> siècles*, transl. Daniel Beauvois (Paris, 1976), for the relation between economic and social marginality in late medieval Paris.

<sup>112</sup> HUA 701-1.16: *Buurspraakboek* 1402-1405, fol. 29v: 'Voert verbiet de raet den lichten wiven dat si savonts ende snachts nyet en gaen op enighen kerchoven binnen der stat ende onreynlicheyt daer driven.' (1403). This measure is repeated in the *Buurspraakboek* on a regular basis.

<sup>113</sup> HUA 701-1.16: *Buurspraakboek* 1410-1414, fol. 156r-157r.

<sup>114</sup> Cf. Carol Symes,

<sup>115</sup> Hildesheimer and Morgat-Bonnet (eds.), *État méthodique* (2011) 22; Serge Dauchy, 'Les recueils privés de "jurisprudence" aux temps modernes', in: Alain Wijffels (ed.), *Case Law in the Making. The Techniques and Methods of Judicial Records and Law Reports*, vol. 1 (Berlin, 1997) 237-247, at 238.

proceedings. In such cases, only those directly involved in the proceedings took note of the contents of the records.<sup>116</sup> But very often other groups were involved in the initial stages of the formation and reception of the textual record. As chapter two has shown, the spatial practices in the *Palais de la Cité* facilitated access to some parts of the legal process in the *Grande Chambre* itself, in particular to the audience sessions. Those sessions where certain parts of the court's records were pronounced would thus often be attended by more than just the directly involved parties. Furthermore, there were physical structures in place, like the window between *Grande Chambre* and Great Hall, for the communication of text-based pronouncements beyond the walls of the courtroom. Thus in and near the courtroom, various potential audiences – the court and the involved parties, but also others with business in the *Palais*, and supposedly even interested parties in general – had access to those texts that the court deemed necessary to pronounce in open court.

The reach of many records went far beyond the direct context of the court. Since the texts produced by the *Parlement* – the highest appellate court in the kingdom, after all – often concerned cases geographically far removed, it is possible to discern various more-or-less conscious attempts by the *Parlement* to involve audiences beyond the *Palais*. A case from 1346 illustrates two such practices.<sup>117</sup> The case under scrutiny concerned the false testimony of Hugues Belin of Mussy-l'Évêque, close to Metz. Hugues had given two divergent testimonies in a case against Wiard Mignot, where the second testimony – as it turned out later – had been influenced by threats made by the son of Wiard against Hugues. The latter was punished for providing false testimony, but – as the record states – with leniency because of Hugues' 'impotence and simplicity' and because of the forceful circumstances.<sup>118</sup> In an act remarkably similar to the penal rituals in Utrecht, he was supposed to hold a procession in the church of Mussy-l'Évêque, barefoot, without chaperon, in shirt and pants, and with a candle in his hands.<sup>119</sup> As the penal occasion was to take place in Mussy-l'Évêque, the local provost had to arrange the proceedings. For this he received a letter – which was also copied into the criminal register – specifying the case, the court's considerations for leniency and the punishment to be meted out. Such letters to officials abound in the sources, and give us a first indication of the way in which the *Parlement* tried to make sure that its vision on aspects of social behaviour and morality found a broader audience beyond the Parisian courtroom. For although such letters were addressed at a local official, the fact that the sources make an explicit distinction between ordinary letters and so-called 'closed' letters, makes it reasonably likely that

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<sup>116</sup> For an example of cross-referencing in the registers, see two mentions in the X<sup>2A</sup>3 register, explicitly relating one entry to two earlier cases included earlier: AN X<sup>2A</sup>3, fol. 99r.

<sup>117</sup> The case is treated in two entries in the *Parlement's* criminal register: AN X<sup>2A</sup>5, fol. 8r-8v.

<sup>118</sup> AN X<sup>2A</sup>5, fol. 8v: '... bene sa impotente et sa simplece et consideranz les choses dessus dites.'

<sup>119</sup> Idem.: '...miz piez senz chaperon en chemise et en braies tenent en sa main un cierge dun livre...'

open letters found an even broader audience.<sup>120</sup> In the case of the letter to the provost of Mussy-l'Évêque this potentially broader audience is involved in an exceptionally explicit way. After instructing the provost to administer Hugues' ritualized punishment, the *Parlement* also ordered him to 'be present there to tell people the things above', that is to say the many details of the case just mentioned in the letter.<sup>121</sup> In addition it then asked the provost to return a sealed letter as quickly as possible, describing the things that had happened on the occasion.<sup>122</sup> The *Parlement*, concerned with communicating a specific penal narrative – that of the condemnation of procedural transgression and the ability of the court to show a lenient face – seems on occasion to have taken great pains to make sure that texts professing its socio-legal narrative were received by a geographically broad and diverse audience. Adding this case to the aforementioned evidence for the *Parlement's* broader practices of publishing texts, it seems problematic to consider this court as one that was primarily concerned with the secrecy of all of its legal process. In a manner similar to other aspects of its legal practice, the *Parlement's* concern vis-à-vis the textual record was rather for the general control of access to its documents, involving the limited accessibility of some and the explicit publicity of others.

Compared to the records from Paris and Utrecht, the York court material seems to have known a much more limited audience. Being exclusively written in Latin and concerned with legal arguments before all else, the full accessibility of such texts was by definition limited to a group of legally trained specialists. But there were occasions on which the texts would reach an audience beyond these specialists, several of which have been encountered before. Forming part of a broader ecclesiastical hierarchy, the archbishop and its Consistory Court regularly communicated with officials all over the church province and beyond. At least some of this communication was intended to be made public on a local level. In 1293, for example, the archbishop ordered his official to publish a papal bull, issued in 1286 by Honorius IV, 'in our synod and consistory as well as elsewhere throughout our diocese'.<sup>123</sup> The same was occasionally done with verdicts, particularly if they concerned the integrity of the religious community. For example, one entry in the archiepiscopal registers concerning the excommunication of a certain Custance de Daneport shows the archbishop ordering his official to proclaim the excommunication publicly 'in our consistory of York as well as in every archdeaconry of

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<sup>120</sup> For examples of closed letters, see: AN X<sup>2A</sup>4, fol. 45r, and X<sup>2A</sup>5, fol. 66r.

<sup>121</sup> AN X<sup>2A</sup>5, fol. 8v: '...y soiez presenz en disant au peuple les causes dessus dites...'

<sup>122</sup> Idem.: '...et ce que fait en sera nous rescrivez souz vostre seel le plus hastivement que vous pourrez.'

<sup>123</sup> Brown (ed.), *John le Romeyn*, vol. 1 (1913) 38-39: 'Quocirca devocioni vestre mandamus quatinus dictas litteras faciatis tam in sinodis et consistoriis nostris, quam alibi per nostram diocesim, ubi expedire videritis, publicari, ut ipsarum series nostris subditis [sic] innotescat.' (1293)

our diocese and [in] their deaneries'.<sup>124</sup> We lack the evidence to link the cause paper verdicts specifically to such diocese-wide publication practices. What is clear, however, is the existence of a perceived need to bring certain regulations and decisions to a broader public than just the legal specialists forming part of the court community. In this we recognize a similar logic of bringing the text to society as seen for Utrecht and Paris, as well as the existence of systems to bring such a logic into practice.

But the communicative occasions most prominent in this respect were still the court's sentence readings, during which a broader audience was more or less explicitly involved in witnessing the texts and their contents. As noted before, such occasions usually took place in the cathedral church of York, although they could also be performed elsewhere.<sup>125</sup> At these occasions, as the *presentibus*-clauses tell us, a variety of people are said to have been present, partly identifiable and partly contained within the broad and very vague mentions of 'others' (*aliis*). In a few cases the scribe even identifies a larger audience, noting how the reading took place *in multitudine copiosa* (in a great crowd), but again without giving us any further details on the individuals involved.<sup>126</sup> Such mentions of the presence of identified witnesses and unidentified 'others' provide us no more than a vague glimpse of the actual audience of such readings. But they nevertheless played a fairly important role for the court. As Clanchy has argued for medieval charters, which also often contain such mentions, they formed part of a system of validating the written word in a strongly oral cultural context. Together with specific written signs, seals and other extra-textual objects, these lists of known and unknown witnesses were intended to inspire trust of the text-object into its potential audience.<sup>127</sup> The presence of a broader audience taking note of a document and an act was deemed fundamental for the legitimate existence of the written act itself. The ritualized sentence readings of the Consistory Court focused attention above all on the transmission of a judicial message from the written record to a listening public, which occasion was then noted down explicitly, in order to validate the written sentence itself.

Here we find a more general logic governing many of the publication practices of the three courts. The reading out of *arrêts* by officials of the *Parlement* formed a crucial part of the decision-taking process. Both when the *arrêt* came out of a pleading session, and when it was taken in counsel, the *Parlement* felt the need to formally confirm the decision it had taken by reading it out in open court. The practice, from 1349 onwards, to date and order arrests according to the day of their

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<sup>124</sup> Brown (ed.), *Thomas of Corbridge*, vol. 1 (1925) 105-106: '*...vobis mandamus quatinus tam in nostro consistorio Ebor. quam in singulis archidiaconatibus nostre diocesis eorumque decanatibus eam sic excommunicatam denunciari puplice faciatis...*'.

<sup>125</sup> See chapter three for more on the sentence readings.

<sup>126</sup> BIA CP.E.107 and CP.E.124. Also see: Helmholz, *Marriage litigation* (1974) 119, n.16 for examples from York and several other English church courts.

<sup>127</sup> Clanchy, *Memory* ([1979] 2003) 298.

pronunciation, clearly shows the logic behind and importance of this moment of publication.<sup>128</sup> For Utrecht as well, the pronunciation of various verdicts, measures and other announcements, both through the reading and physical presence of texts, made up a crucial part of its public presence in the city. As Clanchy has noted for twelfth- and thirteenth-century England, trusting or even accepting writing in the context of the legal process did not come about automatically. The fundamental role of oaths and witness statements in legal procedure before the twelfth century, made the process of accepting written modes of proof long and difficult.<sup>129</sup> Clanchy remains slightly ambiguous as to whether he considers this process of acceptance of written proof to have worked out in favour of the latter by the end of the thirteenth century. However, the impression gained from the three law courts studied here is one where many documents do still require such extra-textual validation. The practice of these courts thus shows how, long beyond the centuries deemed pivotal by Clanchy, writing was strongly dependent on its linguistic and physical validation through non-textual means. For this the expectations of its audience, as well as the courts' expectations of who constituted the latter, were crucial.<sup>130</sup>

### **Courts and court records**

The generation, between the late thirteenth and early fifteenth centuries, of numerous court documents forms one of the main connecting threads between the three courts selected here as case studies. Such texts play a double role for us as historians in understanding medieval – or other historical – societies. The first is concerned with the text as a historical object and its role in the development of the particular socio-legal communicative constellation of the law court. The logic – or maybe perceived necessity – of committing to writing aspects of legal practice that had previously been confined to the realms of orality and performance, brought a new type of communication to the fore that influenced the way in which people spoke to each other about issues of social behaviour and justice with which the legal process was generally concerned. By materializing linguistic information in this way, the legal process – and through it the law court itself – became present in new ways. Texts could be sent over long distances to let far flung communities and individuals know about certain legal events. They could be hung in public places, to inform people of the verdicts reached by a court without its officials necessarily being present. And they could be kept in unmodified form over long spans of time, allowing later users to delve into them. What is more,

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<sup>128</sup> Grün, *Notice* (1863) CXXXIX, CLX.

<sup>129</sup> Clanchy, *Memory* ([1979] 2013) 295-328.

<sup>130</sup> Cf. Carol Symes, 'Out in the open, in Arras. Sightlines, soundscapes, and the shaping of a medieval public sphere', in: Caroline Goodson, Anne E. Lester, Carol Symes (eds.), *Cities, texts and social networks 400-1500. Experiences and perceptions of medieval urban space* (Aldershot, 2010) 279-302, who interprets similar publication practices in thirteenth-century Arras in the context of the Habermasian concept of *Öffentlichkeit*.

texts supported the construction and preservation of legal narratives. Put in written form, a specific court-authorized interpretation of socio-legal information gained a degree of permanence similar to that seen in chapter two for the construction of legal spaces. The development of a particularly institutionalized form of legal practice, as represented by late medieval law courts, thus was closely linked to the increasing use of these language-objects, that allowed for – or possibly even stimulated – a certain degree of distance between legal parties and judges, be it geographical, temporal, or otherwise, while further substantiating the latter’s claim on an authoritative interpretation of justice.

None of this is to say, however, that this development entailed a simple historical process from textless to text-based practices, implemented by legal authorities on a passive society. As this chapter has shown, the documents used in and by the three law courts all functioned in the context of a much broader communicative practice, involving oral, performative and spatial elements. The text as medium was regularly combined with other types of communication, be it through reading them, through the way in which they took part in a broader judicial performance, or through the use of urban space – like a public square – in transmitting them to a specific audience. Written documents were not the dominant, let alone the only form through which most participants experienced the legal process. On the contrary, the evidence of the three cases suggests a certain sense of necessity on the part of the court to validate the use of the text-object itself as part of its broader attempt to legitimize the legal narrative it presented in it. Furthermore, many individuals and groups beyond the court were involved in the formation of these written records. Both in the production of these texts – that is the reshaping of social information into written form – as in their subsequent consumption, documents were shaped by the interaction between the court and various other social agents, from witnesses and culprits to different types of audiences.

And this is where the second role of court records emerges. In their quest for the voice of ‘ordinary’ people, historians have gratefully drawn on law courts’ surviving texts, through which one appears to come deceptively close to the voices of many people that are completely absent elsewhere. This sense of vicinity, however, is problematic. We have encountered many different ways in which the text could relate to legal activity, be it by suggesting to be a description of things that had happened, a prescriptive road map of what was supposed to happen, or even a constitutive act with extra-textual consequences. Yet what a text purports to do is not necessarily how the historian working with it can interpret the document. Not only does the process of coming-into-being of the text present particular filters of translation and editing, such as the step from minutes to registers; but the actual role of the text in the legal process need not be limited nor correspond to what it initially claims to be doing, seeing, for example, descriptions that try to prescribe specific behaviour. Significantly, in the context of the broader communicative practices of the court as

treated in earlier chapters, all of these records formed part of the physical and linguistic performance of the court and its legal process.

It is by taking such documentary specificities in mind that historians interested in the daily lives and experiences of people in past societies, may profit most from the courts' documents. These texts do not form a direct record of socio-legal practice, but are rather attempts to script activities and the discourses about them. Many layers of translation and narrativization separate us from the experiences of medieval people as reflected in these texts. Yet, the same processes that brought the documents into being involved a plethora of social actors, influencing the material-linguistic objects still encountered in the archives. In this sense, we are able to gain an idea of many medieval experiences through court records, although maybe not in the direct manner often envisaged. Even though events, statements and experiences found in the records are obscured by the strategic considerations of a few contemporaries, most prominently those of the court itself, their origin in the socio-legal negotiation over practices and interpretations, means that the documents provide us with at least indirect reflections of many of the voices and experiences that interest us so much. Thus, rather than considering such records in the Ladurian vein as 'testimony without intermediary', it should be the intermediary itself that receives attention. For it is through a better understanding of the court as actor in late medieval communicative processes that historians can really begin to understand the full scale of historical testimony that it provides us with.