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| Ph. D Thesis |
| **The Dimensions of Truth** |
| The French National Legal Culture in the Making, c. 1200-1500 |

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| DONG Ziyun  |

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# Preface

Writing a text to satisfy the need of readers who speak different languages and think in terms of different disciplines is not easy. The most obvious challenge is the large gap between the Chinese and Western studies on the French Middle Ages. Many of the sources used in this dissertation may seem basic or even out-of-date according to the Western standard, but are, at the same time, firstly interpreted, translated and introduced to the Chinese audience. One who wishes to find in this dissertation a comprehensive, detailed overview of the legal institutions of medieval France will be disappointed, as there is none. Writing such an institutional history is neither necessary in the sense that there are many French works which are only to be translated to achieve the purpose, nor part of my main research interest. The dissertation will actually present to the readers a series of historical fragments, and the role of the current author is to find the proper arrangement of these fragments in order to expose their logic and intertextuality. The fragments organized here are all relevant to *veritas*, that is, truth. “Truth” is a highly equivocal term in Western languages whose corresponding Chinese term should be decided only according to specific contexts, and what we study in the dissertation is the various phenomena that appear in the process of implementing “the rule of truth” in secular governance. Through these fragments, we may capture the different aspects of the establishment of a “truth ideology” in medieval France and, further, make dialectic reflections on the conception of a French national legal culture in the *ius commune* Middle Ages.

 The dissertation is also the result of my critical reflections on the fundamental premises of Western modern state and its rule of justice during my Ph.D. research. In general, my thinking revolves around two aspects. First, is the “rule of truth” a historical necessity? Is it endowed with the efficiency that no other form of social governance can possibly achieve? In contrast with most of the studies imbued with the premises of legal modernity, the current author does not take for granted that “truth” is the supreme goal of justice. Or, to put it more bluntly, a statist justice that pursues “truth” is not the prerequisite of a well-ordered society. Without a doubt, “truth” provided the ideological and ethical ground for modern legal states. But in essence, it is only one of the restraining or motivating elements that regulate human social action. The evolution from the Middle Ages to modernity should not be understood as simply the victory of rational legal institutions and legal techniques. It also implies the victory of some types of political relations that are more hidden and have become part of the framework of modern minds. Different than the pre-modern relational and communitarian societies, the political relations implied by the early modern state also meant a systematic reform of man. The “man of truth” is indispensable for the “rule of truth.”

 Secondly, how should we understand the “nationality” of legal culture? An isolated, self-sufficient and endogenous legal order is essentially constructed by a nationalist view of legal history, whose existence in Western history is limited and superficial (Ancien Regime France or medieval England ruled by common law are the two most obvious examples). The communication of men and their ideas is a historical constant, so is all forms of legal culture which are constantly being transmitted, translated and reinterpreted in oral or textual forms. Under the discursive framework of the universal “ideology of truth,” the “nationality” of legal culture in the Western sense means the construction of “truth”’s nationality. Such construction may be carried out in a “global” (or commonly accepted) legal language, and may even be derived from the latter. However, the “nationality” construction is only the disguise of some practical agenda which entails, in essence, the institutional recognition of certain types of political relations and the exclusion of some other. In the French case, national legal culture is an advanced development of the “truth ideology.”

 As our study involves different topics and groups of texts, it will constantly adjust its methodology which comprises legal anthropology, history of emotions, cognitive theory, cultural studies, sociology, post-modernist literary criticism and more traditional approaches of legal historiography. The use and combination of various paradigms allow us to interpret conventional historical sources from multiple perspectives, but also make it impossible for the research to be classified into only one of the above-mentioned sections of knowledge. The current author tries his best to exploit the resources from these disciplines as accurately as he can, but does not intend to fix it into any one of them to make it subject to categorization. The purpose of writing this dissertation is achieved if its multi-dimensional description of the rise of the “truth ideology” can somehow inspire and facilitate common reflections of readers of different language and cultural backgrounds.

(It is to be noted that the current text is prepared under the request of the contract signed between Ghent University and Zhejiang University regarding a joint-PhD program. The official version for the final examination is written in Chinese. For any problems of clarity, the reader may refer to that version, but the current text may later on serve as the basis for international publications.)

# Abbreviations

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| HGL ORFTR PLRdRRGALFRHDFERHGF RSJB ST TvR  | *Histoire générale de Languedoc**Ordonnances des rois de France de la troisième race**Patrologia Latina**Roman de Renart**Recueil général des anciennes lois françaises depuis 420 jusqu'à la Révolution**Revue historique de droit français et étranger**Recueil des historiens des Gaules et de la France**Recueils de la Société Jean Bodin* Thomas Aquinas, *Summa theologica**Tijdschrift voor Rechtsgeschiedenis*  |

# Abstract

"Truth" is the founding concept in the modern legal culture of the West. According to the notions of legal modernity, all judicial activities should be based upon truth, both factual and normative. However, it takes a rather long process for such idea to take root in Western societies. The present thesis investigates the establishment of a Foucaultian judicial "truth regime" in the medieval Kingdom of France, and its relevance to the rising national legal consciousness. The starting period of the research, i.e, the end of 12th century, is characterized by the prevalence of the still strong sense of "communitarianism" in the practice of justice. But France proves to be no exception given its reception and adaptation of the "truth ideology" originated from the ecclesiastical world after the Gregorian Reform and enriched by the teaching and study of the learned law. The establishment of a “truth ideology” requires, first of all, a cognitive reform. By regulating man's proper use of his senses and modeling after the teachings of the canon law, various authors were able to define the ethics of secular practice of justice and legislation. The ideological mythification of Saint Louis went further to establish the necessary connection of the "truth" with the French King and the judicial institutions of the Kingdom, thus internalizing the imported religious ideology into an ideology of the Realm. While in the 13th century, the royal power made active use of resources from the "truth ideology" and its relevant movements (such as the persecution of heresies), it began, as the result of a series of political struggles at the end of the 13th century, to explore the ways in which it could take control of the "absolute power" by emphasizing on legal particularities.

If we distinguish three kinds of “truth” present in any legal system, namely, factual (or historical) truth, normative truth and judicial truth, a major task for the French royal power in the last two centuries of the Middle Ages is well the domestication of all the three layers of truth. It is in this process of doctrinal and political contentions that the universal "truth ideology" represented by the Church and the learned law was relativized and "nationalized". The two key concepts at play here are "history" and "custom". By claiming that the truth of history and legal customs depends on the "approbation" of the royal power and that Roman law is binding only in a relativized sense, the King managed to bring the principle *rex in suo regno imperator est* to its logical end, *i.e*. the supremacy of royal legislation in the hierarchy of norms within the Realm. To envigorate the new hierarchy which came with many Roman imperial allusions, the Realm initiated the program of systematically recognizing local legal customs. At the end of the 15th century, aided by the introduction of the local estates general, the homologation process was finally made efficient, giving birth to the texts of customary law that were later regarded by French jurists as the native foundation of "French law." But before the appearance of the concept "Fench law" in the late 16th century, we should never neglect the profound impact of the learned law on the legal practices and culture of the French Kingdom: On the one hand, the prevailing doubt amidst late medieval intellectual elites towards Joan of Arc reveals the limit of the "nationality" of justice set by the learned framework; on the other hand, the epistemological and practical basis of customary law's homologation is derived from the canonical procedure of confirmation *ex certa scientia*.

**Keywords**: truth; national legal culture; medieval canon law; Roman law; customary law.

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# Introduction

## General Background of the Research

More than twenty years ago, Esther Cohen, an Israelian historian of medieval France, published her *Crossroads of Justice: Law and Culture in Late Medieval France* in which she debunked with much force the “myth of customary law,”[[1]](#footnote-1) and discussed the working mechanism and culture of law in late medieval France through an extensive examination of writings on legal rituals. It was a bold move in a time when critical reflections on the French legal historiography were just initiated and when the conventional academic focus on the development of a national and customary legal order dominated. At the time, interdisciplinary study was gaining reluctant acceptance from faculties of literature, history, and law. In 1985, Jacques Le Goff was still lamenting on the estrangement between historians and legal historians.[[2]](#footnote-2) The situation was ameliorated under the context of a revival of interest in political and institutional history thanks largely to the lead of Bernard Guenée and the efforts of Jean-Philippe Genêt in organizing collaborative studies on the "genesis of the modern state." Then there was Jacques Krynen speaking of the *tournant étatique* (state turn) of history and its specific implication with regard to legal historiography. Together with Giordanengo and others, Krynen made the case for a critique of the former tradition which, imbued with legal nationalism inherited from the 19th century legal historians, neglected to a large extent the role medieval learned law played in the formation of institutions of the French monarchy.[[3]](#footnote-3) It is to be added that, since recent decades, there has been a growing interest of the faculties of letters in legal history. What characterizes this development is the willingness of its members to adopt, although not without criticism and doubt, conceptual tools from other disciplines such as sociology, anthropology, and linguistics. The best representative in this respect may be the LAMOP (Laboratoire de médiévistique occidentale de Paris) of Paris I with its special research group dedicated to medieval legal culture. Claude Gauvard's thesis of state[[4]](#footnote-4) is a monumental study of the practice of grace in late medieval France, a combination of archival studies with theories from social sciences. The cultural or anthropological orientation instead of a legalistic one is also manifest in Robert Jacob’s studies where he explored legal iconography[[5]](#footnote-5) and more recently the sacredness of justice.[[6]](#footnote-6)

 The reason why in France medieval history and medieval legal history had developped for a longtime in an asymmetric fashion is probably to be found in the dominance of the historical school of *Annales* which represents a certain revision of Marxist materialist view of history with particular focus on economic factors and the ordinary people, thus calling for a total rupture with the traditional way of historiography which payed almost exclusive attention to the history of the state and its institutions. The elitist orientation was overturned and the writing of institutional and doctrinal history based on legal texts and documents, an approach that legal historians had been keeping rather faithfully, was questioned. A new focus on political history, as mentioned above, is largely the result of the political extension of the cultural turn of history in the late 1980s and early 90s known as the new cultural history.[[7]](#footnote-7) The movement in historical theory considerably changed the landscape of the *Quellenkunde* and the way historians treated their textual sources. On the one hand, there is Jacques Le Goff who proposed historical anthropology as the new form of political history.[[8]](#footnote-8) On the other hand, historians began to look at their object of research as texts or narratives; they refrain from claiming their research as objective and true but think of their own work as a form of discourse just as what they think of their sources.[[9]](#footnote-9) The idea that the mission of historians who are equipped with certain sense of historical criticism lies in retrieving facts from the authoritative historical sources (itself a “legal” approach which had dominated in the early modern national histories of France[[10]](#footnote-10)) is supplemented, if not discarded entirely, by the cultural interpretation or deconstruction of the texts themselves, resulting in the increasingly blurring boundaries between the sources that we once deemed authoritative or reliable and those serious historians prohibit themselves from using. Jacques Le Goff’s studies on *exempla* made manifest this blurring boundary between the sources used to be seen as literary and those as historical.[[11]](#footnote-11) Richard Kaeuper has also defended the use of literary sources for medievalists in his studies of medieval politics and law.[[12]](#footnote-12) Marie-Bouhaïk Gironès, a historian using theater to study late medieval legal culture following the championship of Howard Graham Harvey’s study of *the Theatre of the Basoche*[[13]](#footnote-13), also extended our understanding of the materiality of literature as a form of historical document by examining the nature of registering oral literature, the material and social aspects of the registered text, and the historian’s understanding of edition of texts in contrast to that of philologists.[[14]](#footnote-14) Literary sources in their material forms are, therefore, “documents of practices,” with great value and potential for historicization. An approach which emphasizes the value of literary texts in understanding medieval legal culture is even more justified given the strong evidence of intertextuality between the legal profession and literary production in the Late Middle Ages, something still to be elaborated later in this introduction.

 Set aside the development of historical theory, the studies of law have also undergone significant changes in recent decades, characterized in part by the development of its more humanities-inclined branches, such as legal cultural studies, law and literature, and legal linguistics. “Humanizing legal education” is no longer merely a slogan[[15]](#footnote-15) and law schools have generally shown a positive attitude for welcoming researchers from other disciplines to conduct relevant studies and further our understanding of law. Such tendency brings forward the necessity of reexamining the major premises of "legal modernity," and the approach of this fundamental reflection may be summarized as "the return of rhetoric." Both historians and legal historians now pay more attention to the literary nature of legal texts and their narrative, discursive and linguistic features.

 The contemporary rediscovery of rhetorical character of law is possibly championed by J. B. White in his article published in 1985. Much to the contrary of a notion that tries to make law ever more technical and therefore scientific, the lawyers, defined by White as rhetoricians, act in terms of probability as "rhetoric is the art of establishing the probable by arguing from our sense of the probable".[[16]](#footnote-16) As a reflection of the current philosophy of science which tends to "think of rhetoric as failed science," White delineated the three aspects of lawyer's rhetorical life and stated that law, always communal, is at the same time a social activity and a cultural activity.[[17]](#footnote-17) The rhetorician, like the lawyer, is engaged in the process of meaning-making and community-building of which he or she is in part the subject.[[18]](#footnote-18) White's article, therefore, brings to the center the importance of language and discourse analysis and of contextualization both in cultural and material terms with regard to the understanding of a legal text and its role in community-building.[[19]](#footnote-19)

In 2013, a series of articles were published under the rubric "Le droit et son écriture: La médiatisation du fait judiciaire dans la littérature médiévale." The publication represents the recent orientation of studying literature in terms of law and studying law in terms of literature. As one of the authors has noted, “law as literature has come to mean not merely reading to appreciate style, but reading legal documents or opinions, analyzing metaphors as socially constructed language, with the goal of deconstructing them.”[[20]](#footnote-20) However, the deconstructivist historians have to ultimately construct their own discourse, to *say something*. The Western Middle Ages may be, in this regard, the most challenging but possibly the most rewarding object of research as it was since the 12th century that legal science began to provide the “dogmatic architecture” for perceiving men and society.[[21]](#footnote-21) It is also widely recognized that the expansion of the learned law is intimately entwined with peculiar language phenomena in the late Middle Ages, paralleled by a fundamental change in mentalities and the way Western societies were organized and functioned.

 Orientation in major disciplines being sketched, we will then ask: Are there any point of common reference, a lighthouse-like concept that will allows us to capture the rather broad phenomenon which may be termed as the interchange and intertextuality between law and other forms of written culture and to describe its role in the making of a French national legal culture? In the following sections, we will commence to discuss some major issues of academic enthusiasm, their relevance to our task, and our own adjustments in methodology so as to form a clear, cohesive and connected structure which will hold the three parts of the research together to address our theme. Our effort fundamentally is a rhetorical invention which tries to reorganize various types of sources by a concentrated theme while finding some new "truth" in furtherance of our historical knowledge *per se* is of secondary importance.

## *Veritas* and the Birth of Modern State

The notion “truth” (*veritas*) occupies a central place in the current thesis. Although it should have been more than natural to investigate the medieval legal contexts in light of “truth” given its noble status in both canon and Roman law[[22]](#footnote-22), we find only sparse literature that tries to capture and describe the process of the advent and taking-root of “truth” in late medieval law and politics.[[23]](#footnote-23) In many ways, the Middle Ages is more often regarded as a distinct and distant past, in which legal practices were connected to the divine and a less developed system for obtaining and establishing the judicial truth was predominant. It has been, however, generally acknowledged that the modern legal institutions enjoy not to a small extent the medieval legacies as a result of the 12th-century “legal revolution.”[[24]](#footnote-24) The task, then, is to reflect on the possible channels by which the revolution exerted influence and to find a way proper for historians to trace changes and conflicts which necessarily underlie such revolution both in idea and practice. Before a detailed explanation of the structure of the thesis, it is necessary, first of all, to review theories and historical studies that are directly linked with the thesis’s conception. First and foremost, the thesis tries to examine and develop the applicability of Foucault's notion of “regime of truth” in the context of medieval cultural, institutional and legal history. It is under the general framework outlined by Foucault that the thesis ventures to look at the central role played by “truth” in the birth of the French modern state.

Foucault’s elaboration on the concept “regime of truth” or “regime of veridiction” is essential to his reflection on the self and governmentality. The epistemological premise of this theoretical construction lies in its understanding of cognition (*connaissance*) not as a process of assimilation but rather, with a strong Nietzschean orientation, as “a relation of distance and of domination.”[[25]](#footnote-25) If it is so, the cognition of truth is not a gesture of submission to an objective, higher existence but of creating what is “true.” By his stress on the inventive nature of truth, Foucault is able to draw the intimate connection between truth and power. “Le pouvoir politique n’est pas absent du savoir, il est tramé avec le savoir.”[[26]](#footnote-26) Just as what he said in an interview, “truth isn't outside power, or deprived 'of power…Truth is of the world: it is produced by virtue of multiple constraints. And it induces the regular effects of power.”[[27]](#footnote-27) Such mechanism of “truth-production” within a society is called the “regime of truth”, or “its 'general politics' of truth.” Foucault then pointed out the major aspects that are necessary to explore in order to grasp the characteristics of a specific truth regime. First of all, on the level of language and discourse, “the types of discourse it harbours and causes to function as true.” Secondly, “the mechanisms and instances which enable one to distinguish true from false statements” supplemented by “the way in which each is sanctioned.” And finally, “the techniques and procedures which are valorized for obtaining truth” and “the status of those who are charged with saying what counts as true.”[[28]](#footnote-28) His succinct generalization points out the way of doing discursive, institutional and doctrinal analyses to examine any regime of truth at work. Much to the interest of medieval studies, Foucault also pointed out the role the *formes juridiques* of a society play in maintaining a regime of truth. It is by these forms that “notre société a défini des types de subjectivité, des formes de savoir et, par conséquent, des relations entre l'homme et la vérité qui méritent d'être étudiées.”[[29]](#footnote-29) For the Middle Ages specifically, it is a period of change from ordeal (*épreuve*) to inquest (*enquête*); the fact that the latter had largely overcome the former exerted a decisive influence on the way we understand the truth of the world, on both human and natural sciences. To be added is the role of Christianity in this evolution, discussed by Foucault and summarized by Nicolas Thirion who in the same article also reflected on the lessons to be learned by jurists from Foucault[[30]](#footnote-30). If Foucault's early studies focused on the "sanction" aspect of the truth regime[[31]](#footnote-31), it is at the end of 1970s that he started to explore its other expressions during his lectures at the *Collège de France*.[[32]](#footnote-32)

Foucault, therefore, has provided for medievalists, legal historians in particular, a theoretical framework and guideline for describing the construction of the truth regime in the Middle Ages, especially after the "legal revolution" of the 12th century. Under the influence of Foucault, as Lorna Hutson writes, “new historicists were suspicious of the old Whig history of evolving legal-constitutional forms: power was not to be conceived in terms of the prohibitive law-as-sovereign, but in terms of its productivity, its capacity to deploy techniques of all kinds, including those of representation, to produce the subject, the state, and the figurations of sovereignty itself."[[33]](#footnote-33) The concept of "truth" entails comprehensive research which should not only pay attention to the traditionally well discussed legal institutions and methods in proving and enforcing the truth, but also include discursive and cultural analysis of the establishment and communication of such regime of truth. Its specific implication for our present study is to be demonstrated in the section dedicated to the thesis structure. For the moment it is beneficial to review some of the most recent developments in French historiography concerning truth and its relevance to the birth of the modern state in medieval France.

Studies of literary history have for long noticed the centrality of “truth” in medieval literary production.[[34]](#footnote-34) However, when it comes to political and legal fields of research, the culture of truth is still much neglected, and the range of relevant discussions is restricted. Previous works only treated the theme in a fragmentary manner[[35]](#footnote-35), while a systematic, well-organized approach still awaits exploration. The grand and well-known project of research directed by Jean-Philippe Genêt in search of the origins of the modern state is for us an unavoidable reference.[[36]](#footnote-36) The project which seems to have ended a decade ago with ample publications reappeared in the public horizon thanks to the publication of the series “Le Pouvoir symbolique en Occident (1300-1640).” The revived project is now tackling some of the fundamental notions lying beneath the artifact of the modern state, such as truth and legitimacy.[[37]](#footnote-37) The volume dedicated to “truth” is especially interesting for our research. Commenting on the significance of Gregorian Reform, Genêt remarked that "the 'Gregorian Reform' which launched the process which was going to place the truth, not only the truth of the Christian message, but even what we may call an ‘ideology of the truth’ to the first rank of the priorities of the society. "[[38]](#footnote-38) The volume, starting from the definition of truth in scholastic philosophy, discusses the manifestation of the ideology of truth in language, art, law, and history, all as media of communicating such truth. As truth for human intelligence can only be probabilistic, it is the role of the judge, also of the historian, to “fabricate the veritable” by adopting certain rhetorical strategies. The two institutions that are most relevant to the fabrication of truth is the mode of proof and the inquest. Various authors examined medieval modes of proof in *Quête de soi, quête de vérité* (2007)[[39]](#footnote-39) while similar problematique, with a special focus on legal and administrative issues, is tackled by another collection of articles entitled *L’enquête à question: des réalités a la vérité*. “The inquest constitute, in fact, not only a tool of dialogue between the governors and the governed,but also a mode of political language common to the greatest number of people, pricisely via its ideological aims of restoring or establishing the truth.”[[40]](#footnote-40) The inquest, therefore, represents changes in the following four aspects: the space and territories; from orality to written forms; the recording and construction of information; the changing public law.[[41]](#footnote-41) Here we will not repeat Pierre Legendre’s emphasis on the significance of the learned mode of proof and the fundamental place of Roman-canonical law in the formation of the basic structure of western industrial society.[[42]](#footnote-42) Suffice to say that doctrinal, judicial and administrative movements worked together in creating and communicating the system of truth.

Contemporary scholars, in this respect, tend to emphasize the role medieval Church played as a model for building a secular regime of truth. The pioneering work of Ernst Kantorowicz has shown how, mediated by the learned law, theological themes had contributed to state-building of secular princes.[[43]](#footnote-43) Scholars since then began to see the relationship between the state and the Church as more a form of collaboration than opposition. The problematique found its synthesis most recently in, again, a collective work directed by Jean-Philippe Genêt.[[44]](#footnote-44) In another place, Florian Mazel’s article demonstrates the founding importance of Gregorian reform.[[45]](#footnote-45) Julien Théry thinks of the age of Innocent III as the start of pontifical theocracy[[46]](#footnote-46)and anchors the pontificalisation of French monarchy by Philippe le Bel’s trial of the Templars.[[47]](#footnote-47) More important than periodization is, however, the exact channels by which the medieval Church influenced secular government, a subject which has already been delineated from different perspectives. The different reception of Pepo and Irnerius in France and Italy, as Cortese has shown, is resulted from the different extent of ecclesiastical origins of legal knowledge and canonist centers were more predominant in the transmission of the newly rediscovered Roman law in the French case.[[48]](#footnote-48) Alain Boureau proposes to use the notion *État République* to denote the ideal of scholastic thoughts appeared in the second half of 13th century, for him the precursor of the nation-state.[[49]](#footnote-49) One of the most recent works on the subject is Tyler Lange’s *The First French Reformation: Church Reform and the Origins of the Old Regime* (2014), where he also made a synthesis of the problematique in question.[[50]](#footnote-50) He prefers using “ecclesiology of the kingdom” rather than “political theology” in denoting such phenomenon and finds the birth of basic pattern of French absolutism in the early 16th century.[[51]](#footnote-51) It is, however, also not to be neglected the role of Roman law in the construction of the Kingdom’s public law, a theme which has already been explored extensively in recent decades.

For our study, the creation of “ecclesiology of the kingdom” as the essential character of French truth regime and its relevance to legal culture is of utmost importance. It is necessary to bear in mind the different mechanisms proposed by these authors, while at the same time be entirely concentrated on the major aspects of a truth regime construed by Foucault as mentioned above. The structure *in utroque iure* of medieval legal knowledge poses the fundamental difficulty in attributing the innovation to any single intellectual tradition. What we may take for sure is that the notion of and the quest for “truth” originated in the ecclesiastical world, was elaborated and communicated through religious and legal discourses and was intimately connected with the idea of royal power. The transmission of ecclesiastical truth regime is by nature a European movement, and its transplantation to medieval monarchies reveals the universalism inherent in their symbolism of power. The problematique of truth, therefore, still needs to be added by a national dimension to accommodate our purpose.

Finally, it is to be made clear that we should not give the modern state certain connotation of superiority over the medieval kingdoms. In searching for an emerging truth regime in late medieval France, neither are we replacing one evolutionary point of view by another. Our writing has to be descriptive and free from evolutionist presuppositions. That is to say, we will only focus on the historical changes in the ways of thinking, elaborating and promulgating truth (with the law as the axis) and restrain ourselves as much as possible from making any claims of preference.

## The Debate on the *Droit Commun* of France and the Cultural-Discursive Approach

If the quest for a truth regime in late medieval France is only part of our problem, we have to look at the notion of the nationality of law which finds its precocious development in France, leading to the final establishment of the notion “French law” in the late 16th century. Before proposing a concrete approach to this problem, it is necessary to first of all review an academic debate of French legal historiography that took place in recent decades. The debate is what André Castaldo triggered in 2007 by his two articles (one in 2008) published in the journal *Droit[[52]](#footnote-52)*. The two articles, as an attack to what he calls the *vues nouvelles*, refuted the thesis that *droit commun* in customary texts should be understood as Roman law, a thesis promoted by Jacques Krynen and Gérard Giordanengo[[53]](#footnote-53). His target is above all Krynen's previous articles since the late 1990s which he criticized as an over-exaggeration of some of the conclusions of leading legal historians of France such as Paul Ourliac, André Gouron and Albert Rigaudière. Giordanengo’s entry of “Beaumanoir” in the *Dictionnaire des juristes français[[54]](#footnote-54)* led him to make in the second article a thorough evaluation of the place of Roman law in the major customary law books. He charged Krynen for abusively “inflating the perimeter of the private law,” to incorporate in it elements such as legal procedure, the modes of proof, the criminal law and others. [[55]](#footnote-55) As a counter-argument to Giordanengo, he pointed out that the non-existence of a *coutume générale du royaume* does not prove the exact correspondence of *droit commun* to *ius commune*.[[56]](#footnote-56) Constantly trying to prove that the *ius commune* point of view runs contrary to the findings of most of other leading legal historians, he calls for a rereading of Timbal and Petot’s works on medieval French legal customs which are only to be “completed and corrected on certain points.”[[57]](#footnote-57)

Castaldo, therefore, stands in the opposite of what we may call the *ius commune* school of legal history which prospered after the Second World War. The school, in search of a "common legal past of Europe," tends to regard Roman law as fundamental in bringing about certain unity in the European legal system.[[58]](#footnote-58) For the French academia, the relative retard in this orientation is marked by Jean-Louis Halpérin who has also pointed out its advantages and underlying pitfalls.[[59]](#footnote-59) The discussion on the learned influence in French customary law and its relationship with the construction of the modern state may have been the result of a 1987 reunion where leading French (legal) historians were invited by Jean-Philippe Genêt to discuss from different perspectives and expertise the role played by the renaissance of law in the renaissance of power.[[60]](#footnote-60) A systematic reflection and reinterpretation of the phenomenon of the custom is also inspired by Gouron's remark in one of the proceedings of the Jean Bodin Society which can well be called an adage for legal historians of the French Middle Ages: *sans renaissance des droits “universitaires”, point de coutume*[[61]](#footnote-61). However, set aside the earlier preparations, it is Krynen who made explicit the two traditions that have been existing in French legal doctrine since very early and the profound influence of "Romanist" point of view in history.[[62]](#footnote-62) The debate, therefore, might be as old as the notion of "French law" or the *droit commun coutumier* which is a late 16th-century invention based on the model of Roman law.[[63]](#footnote-63) As Yves Mausen says, the learned law in the Parliament of Paris is a tricky problem[[64]](#footnote-64), and Jean Hilaire was not so optimistic in the *droit commun* stance in his recent study of the *Olim*[[65]](#footnote-65). But the newest article of Axel Degoy proves to be another evidence for the necessary influence of the learned law on the Parlement of Paris.[[66]](#footnote-66)

If the André Castaldo – Krynen and Giordanengo altercation can be called the first stage of the debate, the Giordanengo – Robert Jacob altercation appeared in the *Revue historique du droit français et étranger* which centered on the legal knowledge of Philippe de Beaumanoir can well be called the second stage. We see in this phase of the debate the focus on the legal knowledge of the producers of customary texts instead of the exact meaning of *droit commun* that appears in texts of various types. Replying to Robert Jacob, Giordanengo made a list of 13th-century royal bailiffs and the status of their legal education.[[67]](#footnote-67) He thus defended the view that far from being a representative of pure customary legal professional, Beaumanoir is instead one of the university-trained jurist whose object was to define local legal customs by the structure offered by Roman law so as to render it more adaptive to the political needs of the king.[[68]](#footnote-68) Robert Jacob who satisfied in the first phase as a mediator now had to defend his position by another article in the same journal.[[69]](#footnote-69)

 Although the debate is received in different ways, with for example Halpérin and Warembourg by their respective comments on the one side and Kuskowski in defense of Castaldo and the customary thesis on the other[[70]](#footnote-70), it is still open and has undergone much progress after 2014. Warembourg by his two reviews of the debate (2014, 2016) proposes a pattern of de-romanization of *droit commun* in late medieval and early modern France based on his previous study on Guy Coquille.[[71]](#footnote-71) A colloquium in 2016 leads to the publication of a recent issue of *Etudes d'Histoire du Droit et des Idées Politiques* (EHDIP) under the title *Les décisionnaires et la coutume[[72]](#footnote-72)* in which the role of case law (jurisprudence) in the making of customary law was emphasized as means to get out of the quarrel. It is also in this issue that Krynen, making an overview of the recent development in French legal historiography, tries to declare the death of the “dernier râle du nationalisme juridique."[[73]](#footnote-73)

It is, however, evident that the fundamental disagreement is the result of the legal plurality prevalent in medieval texts which prohibited, at least for the moment, a clear answer to the question “what is the *droit commun* in medieval France?” We have witnessed the fact that in the later stages of the debate, the discussion on the term itself is most often avoided. A methodological problem has to be addressed to get out of the predicament, that is, how to deal with the contrast of customary law as theoretical ideal with that as textual production and representation? Reflection on such question is especially needed when finding textual proof to establish the meaning of *droit commun* in different contexts seems far from fruitful and convincible, and when the two parties of the debate seem to have different understandings of "custom", with, for instance, Krynen focusing on the textual level and Castaldo emphasizing the generative mechanism of legal custom which is for him the ideal-type of a popular order[[74]](#footnote-74).

To contribute to the understanding of the customary phenomenon, many other scholars have been working in different directions as well. Dirk Heirbaut tries to capture the mechanism of custom articulation by emphasizing the role spokesmen played in customary courts.[[75]](#footnote-75) More recently, he and Seán Patrick Donland applied the notion of “legal-hybridity” to explain the complex medieval context.[[76]](#footnote-76) Ada-Maria Kuskowski in her turn questioned the nature of modern manuscript edition and looked at the growing common legal culture in Northern France by a reexamination of the idea of space and the linguistic aspects of manuscripts of customary law.[[77]](#footnote-77) Cohen’s early contribution is not without criticism since the sources she used may not have the exact realistic value as she attributed to them, but are instead a dramatic, if not comic, representation of legal practice.[[78]](#footnote-78) Both Cohen and her critique, however, focused on finding the "truth" in texts, and were less interested in what we may call the mentalities of the law.

 Under such context, the current research proposes to add a dimension to our understanding of the relationship between a common legal culture of Europe and the national legal ideology by a cultural and discursive analysis of texts that shaped the Western mentalities of truth. Since the approach is a hybrid of methods of legal cultural studies and critical discourse analysis (CDA), it is necessary to make a brief overview of both approaches and explain how we combine them to study the formation of a national legal culture in late medieval France.

 Legal cultural studies is a subdiscipline of law which emphasizes the role of culture played in legal practice as a way of interpreting the law. It takes, however, quite some efforts for scholars to define what legal culture is and how it can be captured in its different aspects. If we do not trace its origin to Erlich or Irling, it may be Geertz who is its theoretical pioneer[[79]](#footnote-79). Rosen’s invitation[[80]](#footnote-80) brought more attention to the fact that jurisprudence is not a quest for truth independent of the living world, while Naomi Mezey’s article proposed a “law as culture as law” point of view in interpreting the mechanism of law in practice.[[81]](#footnote-81) European scholars contributed to the discussion by their reflections on concrete methodologies. By far the clearest definition of legal culture is probably given by Jørn Øyrehagen Sunde, who in a recent work defines legal culture as the “ideas of and expectations to law made operational by institutional (like) practices.”[[82]](#footnote-82) In contrast to the notion of “legal system” which naturally put more emphasis on legal institutions, legal culture focuses more on the “role of shared and more or less unconscious notions.” A legal culture is by nature communicative and “is created and upheld by communication.” Summarizing the general structure of his comparative legal cultures, Jørn Øyrehagen Sunde has also listed the major aspects to be examined: conflict resolution; norm production; the idea of justice; legal method; the degree of professionalization; and, the character of internationalization.[[83]](#footnote-83) For our medieval context, Mark Van Hoecke may have provided a more workable structure: the concept of law; legal sources; legal method; argumentation; legitimation; ideology.[[84]](#footnote-84) From his classification we can see that previous works on legal history are usually restricted to the first four aspects, leaving the last two relatively undiscussed. Moreover, it is in this respect that CDA can be introduced to form a cultural-discursive approach as the discussion of legal ideology necessarily requires contextualization and hermeneutic analysis of texts in question.

 Although the meaning of CDA is relatively vague, various theorists have, however, provided systematic frameworks in dealing with a text.[[85]](#footnote-85) Norman Fairclough and Teun Adrianus van Dijk, to name the two representative authors on the subject, are both theorists and practicians of their method.[[86]](#footnote-86) In medieval studies and political history, discourse analysis has been a fruitful tool[[87]](#footnote-87), but it is also to be supplemented by theories of orality and translation as what we encounter is a bilingual and illiterate world where literary production is more often a privilege of the few. Writing and its consumption are intimately linked with the group that produced knowledge and shaped the way to envision social realities. Due to such fundamental intertextuality, our study might be caught in a hermeneutic cycle, but it might be wise to accept Warembourg’s proposition of the concept of “compenetration” in dealing with the relationship between *ius commune* and the customary realities. If it will always be contentious to agree totally with either line of argument in the debate, it is still profitable to examine how exactly truth claims are performed in the guise of legal terminology in this double process of the socialization of legal language, and the legalization (in terms of language) of the social. As a synthesis of different frameworks of analysis, our thesis proposes to examine various specific texts with a special focus on following aspects:

Context and pragmatics of the narrative;

Choice of language(s) ;

General premises or cultural values that the narrator believed to be shared by his/her listener;

System and hierarchy of reference; and,

Truth-claims or truth-assertions.

In so doing, the current thesis intends to enrich our understanding of how, in various historical circumstances, (legal) narratives related to truth were fabricated. *Forma dat esse rei*. If the substance of *droit commun* is not obvious, it may be necessary to first investigate its narrative form, that is, the way in which truth claims related to norms were articulated and the place of *droit commun* in these claims. But as normative truth claims are only a partial constituent of a legal culture, we will need to extend our examination to historical and judicial truth claims.

## Law and Early Modern Historiography

The two sections above laid down the general descriptive framework of a French truth regime in the making. The third layer of reflection lies in the very mechanisms that are invented by late medieval and early modern French jurist-historians to justify the historicization and nationalization of truth. Conventionally, the formation of French national identity is usually traced back to the period of Hundred Years War where the prolonged conflict between the two kingdoms is said to be the critical factor in "awakening” the national consciousness of both nations. The much-worshiped heroine Joan of Arc is thought as the savior of French nation against English invaders. The national consciousness is then consolidated, as the tale goes, in a series of events and crises….. This line of historical narrative, however, is mostly a 19th-century portrayal of a somewhat romantic origin of the French nation and was exploited by both the left and the right on the French political spectrum.[[88]](#footnote-88) Moreover, after the lead of Bernard Guenée, one of the principal promoters of "new political history,” such event-based *cliché* can well be questioned. It is worthwhile here to repeat his famous dictum that the French state precedes French nation.[[89]](#footnote-89) In this sense, it is natural to examine the intellectual and cultural consequences of the institutionalization of power and the statist premises of early “nationalism”—in short, how state-building and nation-building are interconnected.

 One of the key knots in between is, in fact, the study and practice of law in the Late Middle Ages. As mentioned above, facing the multiple forms of law that preexisted, medieval learned law tradition provided for medieval governments the starting point and frame of reference. The transmission of legal ideas across Europe and its penetration in daily language by multiple means largely remodeled the way people perceived the truth, social realities and justice. The mentalities and mode of reasoning of the legists were gradually replacing the earlier tradition which relied heavily on publicity and oral performance of law. It is, in fact, part of French culture, as Emmanuel Jeuland would argue, that a primordial place is attributed to written documents as proof.[[90]](#footnote-90) The emergence of a written culture and its implications has been systematically demonstrated by Brian Stock.[[91]](#footnote-91) And legal themes account for a great proportion in French literary production since the Middle Ages.[[92]](#footnote-92)

This evolution from orality to the written also changed the nature of historical writing in the High and Late Middle Ages, to be joined by another influence, which is humanism in the 15th century. Although France seems retarded with respect to a national legal consciousness compared to England, the precocity of French national historiography is a unique feature. The outburst of a “new history” in the late 15th and early 16th-century[[93]](#footnote-93) is mostly the work of a group of jurist-historians whose view on historical truth is similar, to a certain extent, to the Rankian school, what Donald Kelley called the “foundation of modern historical scholarship.”[[94]](#footnote-94)

 The question, however, still needs to be explored: why was France the place where the prototype of “modern historiography” was first formulated and developed? Are there any continuities between medieval jurist-historians and the proponents of the “new history”? If there are, how should we capture them? The problem is in many ways similar to the interpretive circle noticed above. Recent scholarly endeavors have already been turning towards this direction. The prosopographical collective work edited by Bruno Méniel proceeds to tackle the problematique by a comprehensive examination of the *juristes-écrivains* and *écrivains-juristes* from the Middle Ages to the Enlightenment. He pointed out the social, intellectual and aesthetic life of these writers and summarized the shared concerns of literature and law.[[95]](#footnote-95) The huge book proves nothing but the fundamental intertextuality that exists between law and other fields of literary production in the Middle Ages. But as we will show also in this research, this intertextuality is regulated and coordinated by the changing notion of truth.

 Given the descriptive difficulty that prevails in a synthesis of this fundamental intertextuality that we keep emphasizing, we plan to bring forward some critical moments and aspects where a nationalized, historicized and sometimes localized truth is promoted thanks to the legal experts and the growing “legalization” of administration and government. Our intention is not to trace the origin but rather the open and representative expressions of this change and to observe their patterns of interaction. The most critical questions that are to be kept in mind may be: How the truth of history becomes documentation-based? How the new attitude toward credibility and the validity of sources helped to form a national political history? How is it linked to the penetration of legal ideas, especially that of mode of proof? How the validity of legal documents are in turn questioned in terms of objectivity that is expected to be guaranteed by one's own nation? And finally, how the truth of customary norms is established, and what is its ideological significance in building up a national legal culture? The consciousness of a national legal culture is part and parcel of the construction of a national history, and we may not overlook the truth-presumptions that helped France to get over of the universalist ideological constructions. Our specific arrangements will be explained in the following section.

## Structure of the Thesis

The current thesis covers the most crucial phase of the formation of the French modern state, that is, the last three centuries of the Middle Ages. Although its subject may be too ambitious, the thesis nevertheless tries to focus each chapter on concrete issues (or historical fragments). As the overview of methodology and the three sections of literary review of broader themes have suggested, our research will be part of the trend that does not regard law as a purely professional and technical discipline and tries to explore possible means of combining legal cultural studies with socio-historical linguistics and also with the orientations of cultural history. In so doing, we may be able to achieve law's contextualization and provoke reflections on many of the premises that we are used to taking for granted. The research will center on the notion of truth, and is divided into three parts according to the three dimensions of the construction of a national legal truth regime, namely, the cognitive dimension, the communicative dimension and the national dimension. We embrace a realistic and relational[[96]](#footnote-96) point of view which sees truth as fundamentally embodied in social communication and enforcement. The process of communicating and enforcing truth is in turn embodied by various texutal forms which we generalize as three types of “truth claims”: historical (or factual), judicial and normative.

### Part I

In the first part, we will present the omnipresence of legal themes in some widely circulated non-legal texts and bring the history of languages and that of emotions into cultural legal studies. The principal task of this part is to see the taking root of the "legal revolution" as a process of cultural transformation. The ultimate challenge for the newly risen legal science (and also the centralizing secular monarchies who regarded the Church as their model) is the existence of a relationist perception of social realities, its corollary in justice, and its various ritual and lingual disguises. The first chapter, therefore, takes advantage of the well known Old French *Roman de Renart* by analyzing the legal discourses of different groups of animals. It is possible, through such analysis, to discover underlying relationist perception of truth, and rethink about the use of ordeal as a mode of proof in late 12th and early 13th-century court. As we shall see, medieval minds are not so superstitious or irrational as we might have imagined, and the logic of ordeal is to be understood in a relational context while its abolishment in relation to the evolution of the truth regime. The "feudal" way is, however, neither absolute nor inflexible. That is why Musart the Camel, jurist and papal legate, and Baucent the boar, chancellor of the King, represent two channels that are inducing the change towards a more “rational” and legalistic judicial system.

 As the primary medium of truth is language, we naturally draw our attention to the changes in language as a result of the legal revolution and the subsequent ideological policies of language control. If Camel Musart, as a jurist, represents the phase of "inverse translation," that is, substituting French vocabulary by words of learned implications either in Latin or Italian, the process of naturalization of the learned law is largely accomplished by Baucent the Boar who might well be a cleric. The rigid language of justice, however, is suggested to be restrained by *misericordia* and truth in reference to the biblical teaching *misericordia et veritas obviaverunt sibi, iustitia et pax osculatae sunt*. The ideal judge, therefore, should beware of the limit of judicial truth and should not be duped by all kinds of language tricks of the lawyers. The moral and social concerns of late medieval theologians bring about the rise of misogyny, while the lawyers are even more apt in ruse than women. The late medieval rise of misogyny is to better to be understood as a political agenda which calls for removing cognitive obstacles of truth. Various aspects of this combat of language are also represented in theatrical plays which have a close connection with the legal culture of the time.

The reformed conception of truth led to a large-scale reform of men's demeanor. As the “founding texts” (the term of Pierre Legendre) gains more dominance, the paradigm of truth-seeking becomes ever more assertive, and the role violent emotions play in both governance and the court is restricted to its minimum. Such tendency can be supported by a comparison of texts of the category *processus sathanae* both in Latin and Middle French which leads to the general observation that emotions weigh much heavier in earlier (French) texts while later texts are describing a procedure which is dominated by legal documents and leave little space for emotional performances. Writers of the mirror of princes try to put forward a code for king's proper passion while in the meantime proper behaviors and emotions of lawyers are defined by styles and royal ordinances concerning the profession. The pursuit of truth in justice is therefore based on a total reformation of personality whose impact is not restricted to the legal profession.

### Part II

The second part examines the religious origin of the truth regime in France and its different modes of application and communication in the Languedoc and Flanders. The first chapter of Part II analyzes the discursive construction of Saint Louis's sanctity which lays down the fundamental connection between "truth" and the King of France. Saint Louis's truth is manifested in at least three aspects: language, personality, and justice. The critical institutional developments during his reign should also be examined in the light of the growing truth regime, and Saint Louis as a symbol is much exploited by his successors.

 The truth regime, however, is not invented by Saint Louis. It is a natural extension of the active reforming practices of the Church to secular governance. It is therefore interesting to see how systematic measures of reform are taken according to ecclesiastical ideals and provisions in the early 13th century Languedoc after the Albigensian Crusade. In many ways, the Languedoc is the place where the perfect society is experimented and where the ecclesiastical truth regime was thoroughly implemented. Although the French South was characterized by a different language, legal culture, attitude towards Gallicanism and regional identity, the distant rule by seneschals somehow successfully avoided centrifugal forces.

 To the northernmost fief of the Kingdom, the landscape is much more different. In a place typically "customary" as the County of Flanders, however, “truth” is still being imported in one way or another. The most eye-catching are the judicial institutions that usually bear the name of "truth." The right to implement without interference these "truth" institutions is to become one of the major quarrels between the powerful city aldermen eager to establish their autonomy and the Count who, since the 12th century, has been using the law to maintain control over the cities. To be added is what we may call the "King's truth" introduced to establish municipal customary law and receive cases of appeal – a part of Philip the Fair's strategy in consolidating and taming the county. Flanders, therefore, presents us with complicated revolts on different levels between different layers of power. The notion of truth and right largely regulates their expressions of contention. However, depending on the audience, these texts reveal differences in their modes of truth assertion and reference—a point that reveals the consciousness of plurality of norms at the beginning of the 14th century.

### Part III

If the European process of transmission of “truth” is dominant in former two parts, it is necessary for us to ask since when and by what means was the truth transformed into a “French” one. This transformation is the result of developments in theology and legal studies, which worked together to shape our modern way of perceiving historical truth. The tendency of historicization appeared already in the Orleans school of law and was brought to the forefront in the battle of the Crown against papal and imperial claims on universal power. The early stage of historicism is backed up by its archival, documentary bases which later on formed the cornerstone of humanist historiography. It is in the late Middle Ages that the universal truth of Roman law is historicized and we found the embryo of *mos gallicus*.

 Continuing the line of thinking, we found in the two great trials of Joan of Arc a magnificent demonstration of the force of a political, "national" truth against an equally political but "universal" and "rational" truth meticulously constructed through textbook-like procedural norms. The condemnation trial cannot be just as long as it is conducted by the enemy, and the narratives of fact relating to this theme constitute the proof of error, leading to the nullification of the former trials. Such "judicial nationalism," however, was not something to be proud of, as our history writers trained in law, in many ways, shared the truth concerns of the posthumously excommunicated "national traitor" Pierre Cauchon. The trials of Joan of Arc are therefore at the same time a reflection over the objectivity of judicial trial and a challenge to some of the basic premises of the learned doctrine. The early expansion of “legal nationalism” was difficult.

 The cognition of normative truth is also the fundamental concern of the royal power which tries to establish a unified norm for the Kingdom. If embracing Roman law is neither an ideological nor a practical solution, it is, however, a fundamental reality that the former, along with canon law, provided major concepts and means necessary for incorporating diversified legal customs into more general bodies of law. Starting in the 14th century, the *certa scientia* of the king started to form the objective basis for royal legislative actions. The redaction or homologation of local legal customs represents the masterful use of legislation *ex certa scientia*, which now also presupposes popular consent by means of the Estates General. Such unifying character finally led to the exaltation of custom to a prominent place in French legal culture and facilitated the formation of the notion "French law" based on French “nature” and the ideal of the mixed constitution.

# Part I

# Chapter 1: The Language of the Law in the *Roman de Renart*

The Old French *Roman de Renart* (RdR) is a widely circulated medieval animal epic whose value as a non-conventional source for studying the legal culture of the 12th and the 13th century is much appreciated by medievalists.[[97]](#footnote-97) The production of its texts, usually arranged into a series of branches, is attributed to different authors and is generally believed to belong to the clerical world[[98]](#footnote-98). Anchored in the late 12th century background of “legal revolution” and with its marvelous representation of the feudal court of King Noble and various judicial rituals as means of settlement of dispute, RdR fits naturally the theme of our first part which tries to describe the cultural evolution of a society that is gradually dominated by a centralized power structure with the aid of the learned legal discourse and framed by the theoretical constructions of “truth”. In this chapter, we will examine the different legal discourses that can be characterized roughly by the dichotomy of relation and truth. The first section discusses the relational considerations that implicitly regulate the course of justice. The second section sees the Branch *Duel judiciaire* as a model of the ritual of judicial combat and, supported by other relevant findings, tries to further our understanding of judicial rituals in terms of relationalism, i.e., not as a mode of proof but as a whole process where complex relational interactions occur. The third section offers a comparison of the discourses of the two representatives of learned influence in the RdR: Musart, the papal legate; and Baucent, the Chancellor of the King. Their view on truth, procedure, and criminal justice differs significantly from that of other animal nobles, and is the natural witness of the early reception of learned law in a feudal court.

As the corpus of manuscripts of RdR is large and modern editions are normally based on one class of manuscripts, it is necessary to limit our study to some branches which concern directly the proceeding of justice. The texts, preferably, should also be produced in a relatively identical period. In this light, we have chosen three branches that provide a vivid description of the working of the court and the mechanism of judicial rituals such as judicial combat and arbitration-reconciliation. Here we follow the chronology and classification established by Armand Strubel et al. (1997)[[99]](#footnote-99):

1174-1177 L'Escondit (Branch Vc)

1179 Le Jugement de Renart (Branch Ia)

1190 Le Duel judiciaire (Branch II)

Although we will use mainly this edition (which offers more branches and often more details) as our source text, the composite nature of its base manuscripts also leads to difficulties in reading as noted by Naoyuki Fukumoto.[[100]](#footnote-100) We will, therefore, keep the Gallimard edition as the text of reference while constantly referring to other two editions of Jean Dufournet and Naoyuki Fukumoto when interpretive difficulties occur.

## The Relational Language

Relations, instead of the truth of a particular case and the ways to establish such truth, are the fundamental determinant of the course of justice throughout the branches of the *Roman de Renart*. The several trials of Reynard, as portrayed by the narrator, proceeded not in accordance of a predetermined procedural rule (although sometimes it was emphasized by Brichemer the Deer) but were constantly influenced by relational concerns and calculations. An open-end (as opposed to closed-end) public trial with many customary characteristics is more a public performance whose aim is to reestablish relational balance while finding the truth is only of secondary importance. The narrator cleverly posed an obscure case and in so doing presented to the readers the precariousness inherent in any system and procedure of justice that is based upon truth.

### The Feudal Relations

In the RdR, the narrators of the branches created a complete feudal political world and assigned each function of King Noble’s government to a certain animal. The system, remolded in the vein of the Charlemagne mythology, has the king’s court as the stage, on which there are a Seneschal, a Constable, a Chancellor, and a Chamberlain. Reynard is also one of the barons of the king, who has Maupertuis as his base fortress. An interesting coincidence might be that the judgments in the stories seem to be carried out in the context of a “court of peers”[[101]](#footnote-101), as Reynard is only summoned by his peer and tried by a court presided by his peers.

 The king, staying on the top of the pyramid, does not himself intervene in the various lawsuits against Reynard. In the three branches that we study, his role is more about assuring that the proper convention of his court is observed, even if Kawa-Topor Xavier has demonstrated the tendency of centralization in different branches across the 12th and 13th centuries.[[102]](#footnote-102) Generally, the King exercised his rule mainly by the notion of “peace” and feudal relations. King’s peace and reciprocal feudal relations are the objective arguments for or against political and legal actions. In many ways, king's peace is an extension of the ecclesiastical discourse which possesses more often a normative and reformative character in the face of the relational world of the animals.[[103]](#footnote-103) It is, therefore, more appropriate to first describe the relation network between the animal nobles who are the vassals and subjects of the king to see how these relations worked to influence justice, before examining how the relational mode of justice is restrained by the ideal kingship based on the idea of peace.

 Among all kinds of relations, feudal relation is the most obvious and fundamental framework. Characterized by the idea of reciprocity, it poses some restraints on the King whose primary charge is to render justice. The King, although more often reluctant to interfere into the conflicts of his barons, remains a fearful figure.[[104]](#footnote-104) Both Isengrin and Reynard resort to their past friendship (amitié) with the King to either demand a lawsuit or receive the King’s favor and mercy. While Reynard would demand king’s mercy by invoking reciprocity of feudal responsibility and his contribution to the King both political and personal, Isengrin would also advocate his case by stating his greater contribution in defense of King’s honor.[[105]](#footnote-105) The consideration of the feudal relationship between the vassal and the King flows continuously in the speeches of either accusation or defense. These speeches, by their invocation of feudal values, would often go as far as to hint upon a rebellion if the King should perform badly.[[106]](#footnote-106)

 When it comes to private relationship, relational calculation and the zest for vengeance are the two dominating themes. If the King is expected to be obliged by his relationship with his vassals, the animal judges are constantly calculating, and the judgment is seen by many animals as another form of revenge. The most important is not to find out the truth and determine proportional punishment but rather retaliate private damages of honor through the process of judgment. The judgment is, in this sense, a social-political event. The personal relationships between the animals are described in Branch Vc (vv. 1232-1239):[[107]](#footnote-107) Both Brichemer and Brun wants to see Isengrin compensated, and Brun the Bear has always detested Reynard. Brun, in his turn, is disliked by Grimbert, the cousin of Reynard.[[108]](#footnote-108) It was in defense of his honor that Isengrin pleaded against Reynard. Honor, as Claude Gauvard has shown, was at first not a concept which only belonged to the nobility.[[109]](#footnote-109) In this case, honor is more a moderator of relations. The constant calculation of the gain and the loss of honor determines the solution for restoring the general harmony of the community.[[110]](#footnote-110) The judgment as a collective performance is, in fact, an aggregation and reconciliation of vengeful wills, where we see, for instance, Belin revenging Isengrin[[111]](#footnote-111), and Tiecelin and Chantecler revenging Reynard[[112]](#footnote-112).

Despite the fact that honor determines one’s status and existence in a community, the stories in question also indicate a new meaning of honor which is linked to the notion of justiciability. One with a certain degree of honor should not be tried or put through certain circumstances which themselves would constitute a loss of honor. This is what we see in Grimbert’s argument for saving Reynard in the ritual of reconciliation when Reynard has to take an oath before the “relic” which is, in fact, Ronnel the Dog playing dead.[[113]](#footnote-113) Honor reserved for the nobility is probably the result of the judicialisation and the promotion of peace in the feudal society. The more restricted notion of honor implies that a manifest social hierarchy has been formed. Those of lower status should be tried by their lord while those owing loyalty directly to the King began to demand to be judged by their peers. The feudal relation in transition: this is the setting of King Noble’s court we encounter in the RdR.

The other most manifest relationship at work is without doubt kinship. Grimbert is the loyal kin of Reynard and did everything to save his cousin from dangerous trials. The supplication of the chickens who brought their dead relatives to court is both a visual and emotional hit for the audience.[[114]](#footnote-114) In Branch Vc, the ritual is performed in the witness of the kinsmen of both parties. They are present in the crucial stages of the trial and are also expected to be present. However, the relational aspect of judicial rituals will be discussed later.

### The Relational Rhetoric

In the court debates, notions such as truth, right and peace are repeatedly referred to. Peace entails the necessity of King’s justice, while truth and right are mere rhetoric that does not lead to legal repercussions on most occasions.

Firstly, the truth claims. The general rule of discrediting others is to emphasize the veracity of one's speech and at the same time accuse the opponent as either telling a lie, or oppressing the truth, just as what Reynard said in his speech:

Fols est qui dist mais verité.

Pluisor en sont desherité

Et de terre jeté a tort.

Li vanteour sont li plus fort.[[115]](#footnote-115)

Isengrin also highlighted Reynard’s renowned wickedness: as Reynard is of bad authority (*autorité*), he will never speak truth (*verité*).[[116]](#footnote-116) Brun, in support of Isengrin’s case, believes that the noble status of Isengrin makes his statement veritable. Although apparently they are talking about the truth, what they really concerned about is the status and credibility of the “truth-sayer” within the community. Truth and falsity appear necessarily in pairs and the invocation of truth does not lead to its legal substance, that is, the ordeal. Truth is, in fact, a rhetoric device whose substance is, if not avoided to be mentioned at all, not so important compared to how and by whom it is asserted.

The other key concept is “right” (*droit*). Possibly echoing the principle *suum cuique tribuere*, the enforcement of everyone's right is believed to be a fundamental responsibility of the King as emphasized in various occasions. The arbitration, for example, is expected to be carried out according to the principle *cascuns d’iaus son droit euïst* (Branch II, v. 1117). *Faire droit* is an expression that can be used not only to designate the King’s action of rendering justice (as Isengrin asked for the King’s justice by saying *faites moi droit*), but also for Reynard to render himself to justice as in the King’s letter of summons sent to Reynard: terrible consequences will come *s’il ne li vient orendroit faire/ Droit et raison devant sa gent*…(Branch Ia, 1003-1004) The word *droit* that appears alone stands for a certain objective truth to be established by certain procedures, most likely an ordeal. Isengrin, for example, has confidence in God for revealing the *droit* by combat: *Se nous somes a droit tenu, De toi avrai encor venjance, Bien en ai en Dieu ma fiance*.[[117]](#footnote-117) In preparation for the combat, Isengrin stays calm as he *en son droit molt se fie* (Branch II, v. 967). Reynard, in opposition, sets up a truly divine God who will reveal what right he has: *Cils Diex qui est verai devin/ Set bien quel droit vers moi avés.*[[118]](#footnote-118) Of course, Brichemer, the character with more or less knowledge of the learned law, also demands that the *droit* should be proved by a suitable third party witness.[[119]](#footnote-119)

From above, we see that both truth and right are conceived in terms of one’s status, one’s reputation and the God. Even if both of the two words have legal implications, they are turned into an ordinary rhetoric that covers the relational concerns. However, it seems that the notion of “peace” does provide certain impetus for the institutionalization of the King’s court. King’s peace, as a secular extension of God’s peace, is a quite recent invention in relation to the year of production of the RdR. In France, Louis VII convoked an assembly at Soissons in 1155 and ordered a “general peace” of his Kingdom in 10 years.[[120]](#footnote-120) In the RdR, peace is the constant consideration of the King and justice is a way of avoiding war and thus facilitating peace. It is a prohibitive measure against relational chains of vendetta. At the beginning of Branch II, Isingrin's proposal of waging war on Reynard is rejected by the King and Brun the Bear, as a military action will benefit neither the wolf nor the King who has made his barons take oath to guarantee peace: *D’autre part la pais est juree/ et en ma terre est afiee. Cui le fraindra, s’il est tenus, molt sera malement venus*.[[121]](#footnote-121) Almost constantly, the King demands peace when there’s a threat of private warfare. As the institutional substitute for warfare, King's court seems to have a relatively fixed procedural rule which reveals already a certain degree of learned influence. Branch Vc provides us with a more courtly but also more rule-based court and a more rational king. The King tries sternly to persuade Isengrin not to opt for judicial combat, not to mention a war on Reynard. His consultation with the Papal legate Musart is preceded by a statement of his position: the case has to be treated *selon l’esgart de ma maison/ Par jugement et par raison/ Bien en ferés prendre conroi*.[[122]](#footnote-122) Peace and reason, therefore, are intended to curb the "relational chaos." But peace remains an ideal just as most of the animals will not think of truth and right in strictly legal terms.

1. The Obscure Truth

For modern readers like us, the determinant for the judgment should have been the truth about whether Reynard raped Hersent in any sense. Much to our dismay, the narrator never presented enough proof for us to establish the crime of Reynard. Reynard is a courtly lover, and Hersent is in many ways his complicit. The two branches (Ia and II) present Hersent swearing differently concerning the fact. In the Branch Ia, after being doubted and derided by Grimbert, Hersent promised to undergo an ordeal to prove that nothing happened between Reynard and herself by stating that: *Car onques, voir, n'ot en moi part, en tel maniere ne en tel guise, si que j'en feroie une guisse en iauve froide u en feu chaut* (Ia, vv. 140-143). To be added is another statement: *Mais par tous les saints c'on aeure, ne se Damrediex me sousceure, onques Renars de moi ne fist que faire se mere ne peuïst* (Ia, vv. 148-150). Here we should not take her words at face value, however, as Reynard may well do to her mother such awful conduct, and the invocation of nuns can only incite one's imagination.[[123]](#footnote-123) The notion of shame is central to her arguments and litigation was seen as a form of public humiliation to both the woman and the family. Consequently, In Branch II, the affection of Hersent towards Reynard is manifested by the fact that she prayed for Isengrin’s loss (II, vv. 111-112). In Branch Vc, it was Hersent in appeasing Isengrin's anger, suggested him to accuse Reynard in the court of the king[[124]](#footnote-124), but she might well have known that this would be an inimical court for Isengrin given its respect for courtly love and proper form of justice.

From a literary point of view, Hersent’s attitude may be interpreted as a satire against courtly love. From a legal perspective, however, the narrator’s design demonstrates the complexity of a suspected crime up to multiple interpretations. As we will still discuss in the third section of the chapter, the obscurity of the case stands as evident contrast with the arguments of Musart and Baucent, the former asking for merciless punishment if the truth should be established while the latter calling for strict observation of judicial procedure as a universal way of finding the truth. For other animals, the case of Hersent is only a cause for initiating their own cause, and the king’s court works not on an orderly sequence but always in a “holistic” or chaotic (not in a pejorative sense) fashion. That is to say, the trial is not dealt with on an *ad hoc* basis, and any additional information irrelevant to the case (another criminal accusation, for example) may change its course. The problem, therefore, lies not in the truth of the case itself, but rather in the repercussions that are expected to follow after bringing it to the king's court. Isengrin’s litigations are thus more a provocation of relational reactions instead of a legal action in a modern sense which tries to retaliate for his violated rights. A public trial is much regarded as a form of collective revenge. In this sense, the court procedure, public and open-ended in nature, does not mean to establish the fact and the truth concerning the case. Going to the court is more likely seen as a systematic calculation and clearance of relations. It is also under such context that we may reconsider the nature of various judicial rituals at work in the RdR. These rituals, although different in form with modern legal procedures, claim to be sufficient proof of truth by the revelation of God’s will.

## Reconsidering the Nature of Judicial Rituals

The most important judicial ritual in the RdR is without doubt the various forms of ordeal. In contrast to the open-end public trial, the ordeal is by nature close-end, irreversible and irrevocable, its goal being to establish the truth about the case. In this sense, the procedure of ordeal presented in the stories is not so much different than the more “scientific” modes of proof which we normally term as "modern" since both kinds of procedure aim at truth. It is to be always bore in mind that medieval actors were not simpletons who believed in "superstitions" that we tend to ridicule. The only difference between “them” and “us” is perhaps the different values accorded to relational balance and the truth.[[125]](#footnote-125) As we shall see, in the relational logic, truth is better to be avoided. The general attitude toward judicial truth can also explain the early reception of learned procedure in France since the 12th century. The *Roman de Renart*, in this case, offers us a more complex and realistic understanding of judicial rituals, the ordeal in particular. The ultimate truth is not the legal agents’ primary concern but appears more often as a part of their deterring rhetoric. Their pragmatism determines that they try through all relational means to exert influence on the direction of justice, and it is their maneuvers surrounding these seemingly irrational modes of proof that are to our peculiar interest.

### The Ordeal as Mode of Proof

The ordeal as mode of proof has been thoroughly discussed in the 1960s by the publication of a volume in the *Recueils* of the Jean Bodin Society dedicated to the Western Middle Ages[[126]](#footnote-126). Raoul van Caenegem, in his critical reflection based on a review of newer discussions of the 1980s (especially those of Robert Bartlett and Peter Brown), brought into question the previous academic discourse dominated by the dichotomy of "rational" and "irrational."[[127]](#footnote-127) In a more recent collective work of legal history and anthropology, Gérard Courtois has generalized the prototype of ordeal: above all, the oath-ordeal model implies that the oath-taker goes into certain engagement by a certain form of ritual, and accept the danger of not obeying the oath. The oath is also connected with punishment or curse and usually relies upon some objects of sanctity. The oath can be collective, and such solidarity can imply that the collectivity may also be punished. Finally, the ordeal intended to prove the veracity of the oath usually inflicts some suffering to the oath-taker, so that the punishment may finally drop down on one of the parties.[[128]](#footnote-128)

 However, the technical procedure of the ordeal and its typology are not so important when we face the texts of practical nature, and reflect only a partial image of the whole context of rituals described in the RdR. Following Bruno Lemesle, it is crucial and necessary here to distinguish between the act of oath-taking and what he calls the promise of the oath[[129]](#footnote-129) as we can find corresponding situations in the branches we study. Hersent's speech in proving that she has no affection toward Reynard belongs to the latter category which normally serves as a rhetoric device to increase one's credibility[[130]](#footnote-130). It depends on the specific situation whether the promise to take an oath will be followed by a real act of oath-taking and an ordeal which is the proof of the truth of the oath taken. In one way or another, the taking of an oath is more often to be avoided than preferred[[131]](#footnote-131) and the ordeal since the 12th century is more often reserved to great crimes, such as violation of the peace of God and heresy.[[132]](#footnote-132)

 The ordeal, therefore, means ultimately the revelation of truth, a proof of the authenticity of the oath already taken. It is also rightly perceived as such in the Branches we examine. In contrast to the truth claims that are always present in the pleading speeches, the resort to ordeal as the revelation of truth is of different nature. We may notice a certain fear for such ultimate resort, the reason of which lies more in the fear of being excluded from a community rather than the truth of God *per se* as oath-taking normally has its collective and communitarian dimension. In this sense, the general attitude is constantly challenged by Reynard and Isengrin who are both experts on perjury.[[133]](#footnote-133)

If we generally accept the distinction of oath and its promise, we are now able to review systematically the scenes related to the oath in the three branches. There are at least three most obvious examples.

Hersent’s promise of oath is already discussed above. The Branch Ia reveals also the tendency to avoid litigation in order to save face. Grimbert made fun of Hersent by saying that her complaint would harm the honor of her husband: *Hay! Quel honor de tel plait/ Vostres maris vous a ci fait,/ A tantes bestes regarder!* (Branch Ia, vv. 127-129) The oath she promised to take is intended to prove her innocent status of mind, but it was not actually taken and therefore no ordeal was necessary. As a convincing tactic, her promise succeeded in winning the support of Bernard the Donkey, the incarnation of an uncritical mind.[[134]](#footnote-134)

In Branch II, Reynard, in order to avoid the possibility of being condemned to death directly after the court discussion which was much to his disadvantage, promised to take an oath. It was actually an initiation of the process of judicial combat which Isengrin would accept happily:

Renars respont : je vous plevis

Que au mesfait ne me recort,

Que envers iaux euisse tort... (Branch II, vv. 660-662)

Je m’en sui tous prés de deffendre,

Si vous m’en volés entreprendre,

U par juise u par bataille. (Branch II, vv. 677-679)

This is the invitation that Isengrin had been expecting for a long time, since for him the combat is the best way for getting rid of Reynard’s lies.[[135]](#footnote-135)

In addition to several cases of promise, we encounter a real oath right before the judicial combat. Its formality is described in a most exemplary manner by the narrator through the mouth of Brichemer, the president of the court:

Baron, fait il, or m’escoutés!

Si ne di bien, si m’amendés.

Renars jurra premierement

Et si fera le sairement

Qu’a Ysengrin n’a rien meffait,

N’a Tiebert le cat nul tort fait,

N’a Tiecelin n’a la masange,

N’a Roenel, conment qu’il prengne,

Ne a Brun ne a Cantecler :

Tout çou li covient il jurer. (Branch II, vv. 1181-1190)

Then Brichemer turned to Isengrin :

Dist Brichemers : Vés, amis!

Vous jurés que Renars est faus

Del sairement et vous loiaus.

Dist Ysengrins : Je le creant. (Branch II, vv. 1204-1207)

Reynard had to take an oath that would purge his suspicion of crime and Isengrin’s oath aimed at proving the perjury of Reynard. Both oaths were followed by the ritual of kissing the relics. It is after these formalities that the judicial combat actually took place. Reynard’s loss in the combat proved that he had taken a *malvais sairement*[[136]](#footnote-136), and his parents and allies were humiliated and would no longer support his case.

From above we may infer that the authentic oath does not appear as often as we might have imagined. On most occasions, taking oath was a rhetoric to make one’s statements more credible. In many ways, modern authors inherited the view of the 12th and 13th-century theologians who regarded the ordeal as testing God. In other words, we tend to regard the ordeal as a tool to find out the truth. But the cultural value of the ordeal and its place in the mentalities of medieval legal actors are seldom raised as a problem. We shall, however, proceed to emphasize, following Bruno Lemesle, the social aspect of these seemingly superstitious rituals. Its prevailing negligence, as we shall see, is caused by a reevaluation of the importance of truth, the result of the legal revolution of the 12th century which has been exerting continuous influence until our age. Other studies have also shown that the oath and the ordeal is not the ordinary procedure for all crimes.[[137]](#footnote-137) The expression of truth means necessarily a breakdown of relational chains and the very notion of justice is under attack as most of the animals believe it to be a communal collaboration rather than a solid technique, more so when their proper vices are also to blame, at least partly, in their complaints against the Fox, and Reynard's use of ruse is not equivalent to evident crime.

Reynard, however, is the fox whose faith is often doubted. He was constantly charged of treason and felony against the king, his peers and his oath taken. Since the High Middle Ages, various delinquent acts are classified as treason or felony. Reynard's copulation with Hersent constitutes a *petite traison*. As Maïté Billoré generalizes, treason touches various aspects of medieval socio-political life: la famille, l’amitié, la relation à plus puissant que soi, au souverain et même la relation à Dieu.[[138]](#footnote-138) The word felony is possibly originated from *fillo*, meaning one who maltreats (*maltraite*), and one who commits felony is assimilated to animals such as wolf and enraged dogs.[[139]](#footnote-139) It is under such accusation that Isengrin was asking for Reynard's condemnation which would mean the exclusion and annihilation of Reynard from the community. As for the truth, there’s, for them, no fundamental difference whether it is established by a “scienfic” mode of proof, or by an ordeal.[[140]](#footnote-140) What makes a difference is their respective social aspect. The truth of the case is the topic for endless disputations, but its revelation is only required in extreme circumstances. As readers, we tend to have sympathy for Reynard, as the cases he was accused of are hardly the fault of his own, and the obscurity of truth brings us to a field where hardly any mode of justice has a sufficient answer, including that of learned law which will be discussed in the final section. The result of each story may be reflecting the narrator’s own expectation of the law: given a system where the proceeding of justice was under constant socio-political influences, Reynard who knew well the art of litigation would never be destroyed. Besides, the fortress of Maupertuis was always the last resort for his security and comfort.

### The Relational Nature of Judicial Combat

Normally the judicial combat is regarded as one form of the ordeal.[[141]](#footnote-141) Its ultimate aim is the manifestation of God’s will through the single combat between two parties in conflict. As another mode of proof often regarded as pre-modern or irrational, the social nature of the combat is largely neglected. The RdR, however, presents to us a detailed context and steps entailed in this kind of ritual.

 First and foremost, the combat is intimately linked to the notion of truth and the intervention of God, as Isengrin, in inciting the combat, would say: *Par la verité m’en irai* (Branch II, v. 701). For a judicial combat to take place, it takes a rather long process of negotiation whose purpose is to prevent the combat from happening. That is why both parties are given two weeks to “prepare” for the battle and this delay was received by Isengrin with great impatience.[[142]](#footnote-142) The King tends to be reluctant in seeing a combat to actually take place, as it is another form of war according to the peace theory, and appreciated the repeated initiatives of the animals to induce reconciliation. The King was content with Brichemer's advice to seek reconciliation again before the combat[[143]](#footnote-143), but Isengrin refused by resorting to his *droit*: *Je verrai bien qui avra droit* (Branch II, v. 1111).

The combat concerns not only the two parties but also the whole community. Above all, the wolf claims to be pleading for the whole community and has been emphasizing his impartiality. He thus offers a holistic view of justice which is shared by most of the animals against Reynard and is much in opposition to Baucent's approach which emphasized the good order of proceeding (to render justice one by one). His intention is nothing but to manipulate the decision of the court by bringing into his arguments the considerations of opinions, relations and forces of other community members.

After the King has received the gage of battle (*gage de bataille*)[[144]](#footnote-144) from both sides, the two parties are to prepare for the combat with their respective supporters. On Isengrin’s side, there are Brun, Tibert, Chantecler, Tiecelin, and Couard, while for Reynard, Baucent, Espinard, and Belin. Grimbert swore to guarantee Reynard's appearance on the day of the combat.[[145]](#footnote-145) The performance of the combat was also surrounded by their respective families and allies, a fact that might have increased the fearfulness of this form of truth. The truth, as represented by the judicial combat, is fearful and to be avoided enough not because it is the manifestation of the will of God, but rather because it is the final sign that the relationship is no longer reparable. It is also the reason why the King was generally not in favor of judicial combat but continuously asked for arbitration. But Isengrin expected it to be the most effective way to curb Reynard's lies.

 Lastly, the scene of the combat itself. Of course, the description is vivid and exciting. The nasty and bloody side of the battle is vividly demonstrated. There’s nothing heroic, nothing romantic. But this is only the apparent side of the combat, as by combat we think directly of the scene of two people fighting to death instead of the social and cultural context that is hidden underneath. It is, therefore, interesting to comment on Fukumoto’s comparison of the RdR with a 15th-century chronicle description of a duel from which he infers certain similarities.[[146]](#footnote-146) From our perspective, the scene of a duel in the 15th century might be more a romantic (but also nasty in reality) recast of the duel scenes in the Romances, rather than a faithful copy of the whole context. It is more in line with a literary convention rather than a simple record of the event.

 To conclude, the ordeal is one of the many options available for litigants in the king’s court. Its relation to truth means that its invocation leads to a substitution of the relational logic to one based on truth. The reason why nobility later tends to resist inquisitional procedure is not that they resist the truth totally. The problem, for them, is probably who, other than God, is competent in finding out the truth. Given the often inherent obscurity of facts and a court still deeply engaged in the relational politics, it may be more unjust and unacceptable to have someone lead an inquest whose aim is allegedly to find out the truth. Everywhere we see that the significance of an ordeal is enormous, and is preceded by efforts of social self-regulation. The Middle Ages as an age of ordeal or combat is only a romantic portrayal which neglected the context of such dramatic event. However, we are going to encounter, in the RdR, another discourse about the judicial truth as a result of the gradual expansion of the 12th century "legal revolution."

## Musart and Baucent: The Two Faces of the Learned Law

The two characters, Musart and Baucent, in the RdR represent the influence of the learned law in King Noble’s court. They are also the key figures in evaluating the channel and reception of such influence. Musart is the papal legate in service of the king as his legal counsellor whose peculiar language, incomprehensible and tortuous, reveals the foreign aspect of the transmission of the learned law, while Baucent's stubborn insistence on procedure in his native French language contradicts the running logic of the fundamentally relational world as we discussed above. By a transposition of symbolism of the two animals, the narrator reveals the potential of abuses inherent in the practice of the learned law.

### Musart: the Translator

Musart's speech delivered in a peculiar *lingua franca* is possibly one of the most impressive episodes within Branch Vc. Jean Deroy has amply and brilliantly discussed the cultural meaning beneath the speech based on Dufournet’s edition of the RdR (based on the manuscript Fr. 20043 of BNF). Compared to the much more readable content of the Dufournet edition, the Gallimard edition we use presents a speech even more incomprehensible. For Deroy, the manuscript used by Dufournet must has been produced earlier as it contains the precious formalistic characteristics of an *acrostiche*. Moreover, the *quare me audite* opening establish the link of the text with the clerical culture.[[147]](#footnote-147) However, from a linguistic perspective, the less readable manuscript used by the the Gallimard edition carries richer information. It is, therefore, suitable to start with Gallimard version while bearing in mind the clerical culture that is central to the early formation of the stories.

 The speech runs as follows:

La misère de lui as dite/ nous trovons en decres escrite/en la pepris publitate/de matremoine violate: / premier on doit examinar/ et s’il ne se puet espurgar/ grever le pues si con toi place/ car molt grande coze faiche; ver est en la moie sentence, S’estre ne voet en amendance, Destipe parmane conmune/ universe seue pecune, u lapidar le cors u ardre/ de l’avresier de la renarde. Et vous fui molt tres bone rege/ si est qui destuit sa lege/ et qui la voet vituperar, il le doit molt fort conparar! Maistre, par le coupee sainte/ se li jugemens si a fainte/ et tu voes ester bon signor, fai droit, mais par teue amor, par la sainte croisse de dé! Que tu no soies bone ré, se raison et droit ne voes far/ ausi con Juliens Cesar/ Et en cause volles droit di/ Se tu voes estre bone sir. Et de toi bone favelar/ par la foi bene tiegnes ar/ se ne tiens la tarte amie/ rendar por amender ta vie. N’aies cure de roi autar/ se tu ne juges par bontar/ et se tu ne faces droit tort/ tu ne soies bone signor! Favelar çou que bon te sache, plus ne te di, plus ne te saiche! (Branche Vc, vv. 1180-1217).[[148]](#footnote-148)

At first glance, it is indeed a twisted discourse, an amalgamation of different languages and must have been difficult for the medieval audience to understand at once. Of course, the peculiar speech helped to win the laughter of the medieval audience. Unlike precedent studies that elaborate on the level of semantics, we propose to start by looking at its most elementary linguistic features.

 Most apparently, the infinitive verbs (from the Latin first declension) in the Camel’s speech reveal a certain characteristic of Old Occitan language with an ending of "ar" which can also be interpreted as Latin or Italian infinitive system dropping the final "e." [[149]](#footnote-149) The nouns usually conform to Old French lexicology but with some exceptions, most remarkably: *rege*, *lege*, *ré*, *dé*. Past participles reveal Latin or Italian influence: *escrite*, *publitate*, *violate*. The possessive stay close to vernacular language as in *seue pecune*, *teue amor*, *sa lege*, *moie sentence*. But disorder can be found in the adjectives: such as *bone rege*, *bone sir*, *bone re*, but *bon signor*. Despite the pidgin language, Musart the Camel, unlike what we might have expected from a medieval theologian or jurist, tends to use simple sentences. The use of conditional conjunction is a striking characteristic in the speech. Among 38 verses, ten verses in the Strubel edition contain this syntactic structure (9 in the other edition). As Deroy has already pointed out, the abundant usage of “si” had its origin in the Biblical tradition (especially in the book of Deuteronomy) and was echoed in Gratian's *Decretum* and other religious and philosophical texts.[[150]](#footnote-150) Besides, it was also the most elementary form of legal reasoning.

The content of the speech can be divided into roughly three parts. The first part goes from the beginning to *car molt grande coze faiche* while the second ends with *il le doit molt fort conparar*, leaving the rest of the sentences as the third part. Each of the three parts contains respectively 8, 10 and 20 verses. In the first part, Musart refers to canonical sources and procedure. In the second part, he pronounces his "sentence" concerning the punishment in the case that Reynard evades lawful procedure. The third part is his instruction and advice to the king about the ways of doing justice and the responsibilities of the King. We find relative balance in the structure between procedure and punishment, and also between his legal expertise and his role as king's counselor. To be also added is the emotional element underlying the speech. The addition of many exclamation marks by the editor is not totally incontestable, but generally, we have to admit that his reconstruction of emotion is plausible and reasonable. Musart maintains relative calm when speaking of legal issues, but begins to agitate when he was suggesting the King how to punish Reynard by utmost severity. Such agitation of emotion has the effect of instigation and should therefore be seen as indirectly pointed against Reynard.

 An overall examination gives rise to several points to be explained: (1) the narrator's intentional choice of language and vocabulary, (2) the camel’s attitude towards procedure and judicial truth, and (3) the reception of learned law’s influence as mirrored by Musart.

 At the level of language and verbal morphology, it is clear that the Camel tends to use Italian or Latin words when he is designating concepts of authority such as the King and the Law. If the opening of the speech (*Quare, mesire, me audite*) of the Dufournet edition is also taken into consideration, we can infer that Latin or Italian is intentionally or habitually used by the camel to induce from his audience certain respect for him both as an erudite of authority, more so if we bear in mind the Biblical significance of the Latin formula itself. Another foreign (or non-French) element, as mentioned above, lies in the form of verbs. The use is not entirely arbitrary in the sense that the use of those nouns represents a replacement of feudal concepts by new ones nourished in a developing *culture savante*, while that of the verbs represents a certain normative perception of the actions in question as regulated by authoritative (and foreign) sources. Such choice enables the Camel to evade from the complex realities expressed in Old French as we discussed above and to create an objectivized vision of a regulated power structure. It is also to be noted that the speech somehow managed to maintain the linguistic basis of Old French by preserving the grammar structure, nouns that designate concrete realities and personal pronouns, a reflection of the concrete world in author's mind which he didn't totally get rid of when producing the text, even if most of his sources came from Latin[[151]](#footnote-151).

From such features we may speculate that the narrator's writing process was, in fact, quite simple: he thought and wrote firstly in French before substituting the keywords into foreign forms that he knew.[[152]](#footnote-152) In this sense, Musart's role is better described as one of the legal translators who is bringing new concepts into the vernacular world and, in so doing, reforming the realities. He thus serves as an example of the learned law's influence on the lexical structure of vernacular langauge[[153]](#footnote-153) and represents a somewhat similar process of either Latinization or Frenchisazation manifest in the ordinances of secular princes.[[154]](#footnote-154) The language Musart used is probably not totally an imaginary setting but rather a concrete linguistic reality before the courts between late 12th and mid-13th century. The Franco-Italian linguistic feature attests the cultural connection between Northern France and Italy, channeled perhaps in one way through the Occitan region with its first institutions of legal education.[[155]](#footnote-155) While even in the second half of the 13th century, a Beaumanoir would still lament the Latinized speech of clerics which is almost incomprehensible to the lay lawyers (avocat laïc).[[156]](#footnote-156)

 Set aside the discussion of language, we may further ask, what constitutes the “truth” according to Musart who has in his language substituted normative concepts for relational realities? First and foremost, the king, the God and the law are construed as a true concept in a foreign form and are supposed to exert authority over the Fox who has "no faith and no law." The consecutive past perfect form *escrite*, *publitate*, *violate* reveals both the source of authority and the normative understanding of these actions. The law is well written and made public, and the crime in question is “the violation of marriage.” The establishment of judicial truth relies on the examination of the case on the King’s side and the expurgatory moves on Reynard’s side. Hence, in a few words, Camel explained his vision of what the applicable law is, to what category the case belongs and what kind of procedures to be taken to establish the fact.

 What constitutes the larger part of his speech is, however, his advice on punishment and ideal kingship. The Camel, by his discourse, tries to remodel this ideal image of kingship which is formerly based on moderation and virtue. According to him, the King must do justice, and the punishment should be extremely severe if Reynard should be proved guilty. For Musart, the crime is by nature a personal matter, meaning that the case concerned exclusively Reynard and it was Reynard himself who should be punished if he was proved guilty.[[157]](#footnote-157) His qualifications or limitations of king's ideal justice by charity, the Holy Cross and even feudal responsibilities towards barons appear to be awkward, or an equation of heavy penalty to an act of goodness as Deroy put it.[[158]](#footnote-158) His discourse is self-contradictory as the only way of being a good king is to implement the law while the law asks for a death penalty instead of mercy. This peculiarity, on the one hand, reveals the incompatibility of the Camel's image with the feudal tradition. On the other hand, it constitutes part of the twisted (*tortueux*) image of Musart, which will be discussed below. For the moment it is sufficient to bear in mind that Camel demands enforcement of the law without moderation as the ultimate mission of the king. The king should even withdraw himself from power if he doesn't carry out such requirement. In this way, the reference to Ceasar is to be read negatively as, although generally portrayed as the model king, his thirst for absolute power leads inevitably to the tyranny of Nero and Tiberius.[[159]](#footnote-159)

 Finally, we have to analyze the feature of learned law's influence at this end of 12th century and its reception as represented by the image of Musart, the "molt saiges et molt bon legistres." In various scriptural writings and Jacques de Vitry's exempla analyzed by Larissa Birrer, the camel has its symbolic meaning of being pious and humble. We may here also add the moralistic story which recommends its reader to learn from the camel instead of the dog, as the camels are “de plus grant mesure” while the dogs eat up their own food but still covet the food of others.[[160]](#footnote-160) However, as Larissa Birrer has also pointed out, the camel's image also has its tortuous aspect as it is also related to insatiable sexual desire. Besides, the word *musart* is an adjective in Old French standing for "stupidity" or "laziness." The excessive cruelty of Musart, therefore, betrays his piety and moderation, and his name reveals that he's fundamentally a stupid jurist who is much ignorant of the feudal political mechanisms. Backed up by the written Latin authorities and the power of his patron, this group was perceived as the foreign and tortuous element in the court. Tortuous also in the sense that its legalism, concepts, and prescriptions were causing a genuine crisis of what is true and what is false.

To conclude, if we characterize the role of Musart as the translator and acknowledge that the narrator links the humble and pious animal to the cruelty of justice, the details discussed above well demonstrate the medieval perception of the dangerous, at the same time ridiculous, reforming power of the learned legal language. The transposition of symbolism is, however, to be fully demonstrated by the analysis of another agent in court.

### Baucent: the Naturalizer

In the three branches under discussion, Baucent the Boar is the most impressive after the Camel if we are trying to find the influence of the learned law and its representation in the Reynard stories. Descriptions about Baucent are dispersed in the branches, but we are, nevertheless, able to make a portrait for this peculiar figure. We find in Branch Ia Baucent writing for King Noble the summoning letter of Reynard: *Il li devise la matere, Bauchans li senglers li escrit/ et saiela quanques il dist, puis bailla Grimbert le saiel*. (Ia, vv. 945-948) Baucent is, therefore, the Chancellor of the King whose major responsibility is to put the king's order to draft with fidelity and guard the usage of the seal. A notice on his shape is in Branch II where it is said that Baucent is one *qui a grant le cors* (II, v. 1055). Possibly a university graduate, his religious identity is also betrayed by this description of the corpulence of his body, an allusion of his insatiable desire for food.[[161]](#footnote-161) If he should be the Chancellor of the King, his training in the learned law, especially in the Canon law, is something reasonable.[[162]](#footnote-162) As one of the judges in King's court, he is known for his meticulosity in procedural affairs, a stance best described as de *droit en nul sens guencir ne vorroit*. But before our analysis of his role and speeches, we need to ask, why Baucent is the boar?

In medieval animal symbolism, the boar is initially the symbol of valiancy, as inherited from the Roman tradition where hunting boars used to be a heroic deed. But since the 12th century, the boar's positive image was gradually substituted by a more pejorative one which tends to connect boar with recklessness and blindness of force.[[163]](#footnote-163) Specifically to a legal context, the image of the boar coincides with the notion of *iustitia* which is the coercive and oppressive force of the law, and the boar’s tucks may also have been assimilated by the horn of Moses, the symbol of repressive justice.[[164]](#footnote-164) The evolution of symbolism may be the result of the monastic ideology which despises the sheer usage of violence. If the stories have conformed to the symbolism current in the 12th century, then Baucent should have been the blind enforcer of justice. But as we will see, the symbolism and the roles of the pious camel and the violent boar are somehow interchanged. Whether this exchange is solely for an ironic purpose exceeds our concern here. What we still have to analyze is the influence of the learned law incarnated by Baucent’s figure and its concrete expression through his speech acts.

Baucent’s most spectacular show can be found in Branch Vc when animals were discussing the possibility of sentencing Reynard to death based on his bad reputation and notoriety of his crime without a trial where Reynard could speak in his own defense. Brun the Bear, a victim of Reynard's ruses, was much determined to undermine Reynard and naturally the problem of the witness is proposed for discussion as in this case only Hersent underwent the whole incident and only Isengrin happened to see Reynard’s doing on her. Someone among the judges, based on Baucent's argument, demands a third witness to be offered, and the witness of a woman is not to be believed (Vc, vv. 1255-1258).[[165]](#footnote-165) The non-validity of women’s witness is inherited by medieval Canon law from Roman law and imbued with misogynist thinking—a subject to be examined in the next chapter. Here we are content to say that the pursuit of truth and the establishment of a fact by sufficient evidence is the ultimate concern for the “Baucentists.” The method of inducing truth consists of, on the one hand, an evaluation of evidences and, on the other hand, legal reasoning which examines the logical validity of one’s arguments. His conflict with Brun the Bear is non-remediable. The Bear argued that Isengrin's high status should be considered a proof of his credibility and accused Reynard for all kinds of crimes in a lengthy but emotional speech. However, Baucent’s position is too firm to be moved. Totally to the contrary of the Bear’s rhetoric which was trying to influence the public and direct the course of the discussion, Baucent seems to be only concerned with the proper form of justice:

Messire Brun, fait il, cils plais/ N’iert pas finés as premiers trais. /Encor voi ge n’est conseüe/La clamor qui ja est venue./Molt seroit saiges qui sauroit/Jugier d’un conte, et il n’auroit/L’autre partie encore atainte./Nous avons oïe la conplainte/Renart devons le conplaint rendre/Et l’un droit aprés l’autre rendre,/Tant que on viegne a la parsome,/En un jor ne fist on pas Rome!/Nel di pas por Renart tenser/Mais nuls ne doit a çou penser,/Que nous le mellomes a cort,/Que pechiés seroit et grant tort;/Je ne sai que dire en doions/Tant que ensamble les aions./Quant Renars est a cort venus/Icius clains sera retenus/Que Ysengrins a esmené./Lors primes sera ordené/Conment sera de l’amendise:/ Par jugement i aura mise. (Brun my Sire, he says, this litigation should not be finished quickly. I see that the plaint that came to us has not yet been conceived. It will be too clever for us to judge by the story of only one party while leaving the other party unheard. We have listened to the complaint and Reynard should come to our court to defend himself of each accusation, until we come to the conclusion. Rome is not built in a day! I'm not saying this to be in Reynard's favor, but we should not let anyone think that we are doing this impertinently, as that will be great sin and great mistake. I know nothing to say if we don't bring them both together to the court. Only after the appearance of Reynard can we recognize the complaint of Isengrin. Then we can judge what the amend will be: This should be determined by judgement. Vc, vv. 1496-1519.)

Baucent’s speech concerns mainly (1) the conception of the case (*Encor voi ge n’est conseüe,*

*la clamor qui ja est venue*), (2) the good order of proceeding (*Renart devons le conplaint rendre*

*Et l’un droit aprés l’autre rendre*), and (3) the merit of a proper procedure (*Mais nuls ne doit a çou penser*, *Que nous le mellomes a cort*, *Que pechiés seroit et grant tort*). It reveals his ideal vision of justice and his belief in due procedure for producing a legitimate judgment. The core notion in his vision is the proportionality of crime and punishment, as added by Cointerel the Monkey, another foreign animal as Musart the Camel: *Mal dehé ait cils hateriaus se on en dist plus qu’il n’i a*! (Let curse fall on the one who accuses more than the fact)—perhaps another adaptation of *suum cuique* in the vernacular but somehow intimately connected to the old accusatory procedure. Baucent is apparently imbued with the tradition of *ordo judiciarius* which gained much popularity since the 12th century. As Baucent is only concerned with the compliance of proper procedure, all reports on other crimes of Reynard are, to him, irrelevant. That is why Baucent rejected very "briefly" the seditious speech of the Bear who regarded the practice of justice as essentially convincing the community. While in contrast, Baucent, in the vein of canon law, insisted on the principle that everyone has the right to defend himself in a fair trial.[[166]](#footnote-166) The stress on the public and divine nature of the trial de-relationalize, theoretically, the court activities, and provides unquestionable legitimacy for justice. Baucent, therefore, is proposing an "objective" view of justice based on the notion of proportionality of punishment and the responsibility of the judge. Judge is representing God in his judgment. He has to make use of his senses and wisdom to find the correct measure, aided by procedural norms. A punishment which exceeds the right extent permitted in proportion to the fact of a crime is a sin of the judge while seeking for mercy (*misericorde*) and reconciliation (*acorde*) are to be preferred since the violence of justice alone is not sufficient: ...*Ci a descorde/ De pecheor misericorde!/ Por Dieu, se Renars a mesfait,/ Il n’i a pas si grant forfait/ Que bien n’i puis avoir acorde!/ De grant guerre vient grande acorde*. [[167]](#footnote-167)

 From the linguistic perspective, his vernacular legal language is easily comprehensible, and the most abstract notions are no more than those about the act of pleading itself. It is fundamentally an action-oriented language with its apparent suggestions of what to do while any reference to abstract values are avoided. Just as what we encounter in the early translation of the Justinian *Institute*[[168]](#footnote-168), Baucent is not translating literally the teaching of the learned law. In contrast to the Camel’s Latinism and practice of inverse translation, the translation of Baucent is more naturalization. His fundamental contribution lies in a redefinition of the normative implications of the words such as *clamor*, *complainte*, and *jugement*, aided by Christian concepts such as *péché* and *misericorde*.

Thus we may call Baucent, sometimes Brichemer as well, the naturalizer of the learned legal language. If Ivo de Chartres, along with other authors of the *ordo judiciarius* at the beginning of the century, was emphasizing the importance of mercy and equity in judgment, the second half of the 12th century saw the rise of “Baucentism,” of the concern for the due procedure. It remains, however, in its primitive status as the natural limit of vernacular language would allow. The Bear’s accusation of Baucent helping Reynard by posing procedural obstacles stems from a typical relational logic which focuses on the direct effects of actions taken, while for Beaucent, justice is a divine mission which has to be dealt with seriously and carefully. This mentality of Baucent, somewhat shared but also moderated by Brichemer who often chaired the group of judges[[169]](#footnote-169), parallels the canonical development which is ever more attentive to the implementation of the procedure. This emphasis of *ordo judiciarius*, however, was accompanied by challenges on the customary and non-written court procedures whose course was largely determined by the community.[[170]](#footnote-170) The brocard-like sayings in Baucent’s speech also reveal the form of transmission of legal ideas[[171]](#footnote-171): *En un jor ne fist on pas Rome; De grant guerre vient grande acorde and cascuns d’iaus son droit euïst*. This may have been the way the learned law truly influenced secular practices, in a language as naturalized and vivid as possible. But Baucent’s rational argument is not accepted by most of the animals who found in the lengthy procedure the shadow of another *mauvais plait* in which Reynard could again find a way to save himself.

## Conclusion

The three branches we examined in the RdR represent with exceptional vividness a period characterized by the confusion of the feudal customs (the publicity of trial, the judicial rituals and the flexibility of procedures) with the rising legal science. It is, however, also a portrayal of a court where procedural stability is sought, seated by a King who has far from absolute power but is still fearful enough to enforce peace. Although truth and right are the two keywords in the judicial rhetoric of the animals, the substantial judicial truth as revealed by an ordeal is reluctantly invoked (there's no mention of inquisitional procedure throughout the stories), as this kind of truth was considered as a fearsome sign of the ultimate rupture of social relations and implies possible collective punishments. Through the foreign language of Musart and the naturalized language of Baucent, the relational crisis, fueled by the relational rearrangements called "centralization" and the penetration of the learned law, is perceived justly in two distinctive paths. Moreover, we should always not forget that the call for due procedure could be criticized as *forsené* by a relational mind such as Brun the Bear.

# Chapter 2: Overcoming Cognitive Distortion: Women and Lawyers in Comparison

In the previous chapter, we see that the *Roman de Renart* depicts a relationist world where justice was seldom seen as something constant, where truth did not often belong to the highest rank of the preferable and where rituals and ceremonies that we deem irrational and superstitious can be explained in a more humane and realistic light. For the High Middle Ages when the “legal revolution” had just begun to take root, a public trial was nothing more peculiar than other public events and was deeply influenced by personal and collective politics— the reason why we may find the learned ideal was under constant assault and disturbance.

If the ideal of rule of justice is not self-evident for the relational mind, the problem then will be how this form of rule can be accepted by them. As we shall see below, in this process, Christian moralistic teachings and the medieval cognitive theory played an important role. Christian moralistic teachings primarily concern the truth and its communication, and the cognitive theory defines the epistemological foundation of truth. The essential premise is that a stable social order requires the well-ordered senses of individuals. In this sense, social groups that hinder the proper functioning of the senses are seen as elements of cognitive distortion that have to be corrected and controlled. It is in this process of overcoming cognitive distortions that the divine and, presumably, neutral nature of human justice is confirmed.

 In this chapter, we propose to put late medieval concepts of woman and lawyer into comparison. There are, in fact, close connections and evident similarities between the two themes of literary production. Women in the medieval intellectual setting are characterized by Shulamith Shahar as the "fourth estate"[[172]](#footnote-172) while the judges and lawyers constitute the two parts of the third of the four orders in the Kingdom according to Philippe de Mezières (c. 1327-1405) who, in the same “dream”, also criticized the lawyers for breaking silence and instigating quarrels.[[173]](#footnote-173) In moralistic teachings, the fundamental similarity of the two social groups lies in their distorting power, especially embodied by their abuse of language. To protect the stable and natural social order from cognitive distortions, medieval authors found the way in subjecting woman to man, lawyer to the judge, therefore, turning both into instruments or mouthpiece of truth.

Following our reasoning, we will first discuss the political ideology underlying medieval discussion of women and point out its direct linkage to regulations concerning the profession of the lawyer (Section 1). Then we will examine in detail the manipulative language techniques current in various representations of women and lawyers (Section 2). Finally, we will examine some of the "vectors of the ideal" that serve the purpose of combating the cognitive distortion in social order and justice.

## Woman and Lawyer Confronting the Truth

In this section, we will demonstrate the fundamental connection between medieval misogyny and the criticism of lawyers. Already analyzed thoroughly by Howard Bloch, medieval misogyny, as manifested both in the condemnation and idealization of women, is a phenomenon that has social, economic and legal reasons.[[174]](#footnote-174) Discussions on women and marriage lay down the metaphorical basis for a more general discussion of the social order, and the proper role of the lawyer is often part of such discussion. The critical attitudes toward women and lawyers stem from a shared concern of truth, as both groups are characterized by their malicious use of language, disobedience, distortion of senses and truth, and subversion of a rightful order. If previous studies more preoccupied by problems of “gender” failed to draw the connection, it is for us necessary to highlight such connection as it makes evident the scope and extension of the truth ideology.

### The Political Implications of Medieval Misogyny

The medieval doctrinal construction of misogyny is today not unfamiliar to us, especially thanks to R. Howard Bloch’s work which demonstrated the misogynist foundation of Western romantic love. As he points out, the misogynist writers focus on woman’s distortion of vision and language impulses. Women’s tongue as the source of their subversive power is also recently suggested by Bodden, whose analysis of the late medieval and early modern English case re-proves Bloch’s thesis in respect of women and their language capabilities.[[175]](#footnote-175) The revival of the misogynist *topos* is to be found in the 12th century. Again, that the rise of writing, misogyny, and legal education appeared at virtually the same moment is something curious. If we are still not able to describe the process of this synchronous development today, we can nonetheless discuss what we already know for sure concerning the concept of women after the age of "legal revolution."

There are three major intellectual traditions that defined women and their status by the 13th century, namely, the Scriptural and patristic tradition, the Christianized Aristotelianism, and the Roman-canonical law. Bloch has discussed the first tradition in detail.[[176]](#footnote-176) Sister Prudence Allen has examined the role of Aristotelianism in the formation of the concept of gender polarization in her *Concept of Woman*. Aristotelianism, as channeled by Giles of Rome, regards woman as *mas occasionatus* (imperfect man) inherently weak in reasoning and thus should be subject to man.[[177]](#footnote-177) While for the last source, that is Roman-canonical law, René Metz and Suzanne Dixon[[178]](#footnote-178) have provided useful overviews based on original texts. Our task in this subsection is to examine the role that the truth ideology plays in the production of the medieval misogynist thinking based on their findings.

For Giles of Rome, the primary concern is the establishment of a "natural rule," and to achieve so, it requires the respect for the nature of things. Here we encounter the Aristotelian concept of truth, best characterized by the initial chapter of the first book of Giles of Rome’s *De regimine principum*, that is, the coincidence of language and the thing.[[179]](#footnote-179) The nature is therefore no more than another way of expressing truth, and without devotion and love of God the prince will never access to truth. Human intelligence and knowledge (sens et entendement) are placed highly to become the source of a legitimate rule[[180]](#footnote-180) and women, therefore, by their natural weakness in reasoning, should submit to men who have better constitution of the body (which means naturally their greater capacity to attain truth and reason and to give good advice). Woman’s language and counsel should not be taken as seriously as that from a man.

The precariousness of woman’s sense is also a tradition inherited by the Canon law from the early Fathers, and leads to canonical limitation on the validity of woman’s testimony and other judicial activities: *Mulierem constat, subiectam dominio viri esse et nullam auctoritatem habere; nec docere potest, nec testis esse, neque fidem dare, nec iudicare* (C. 33, q. 5, c. 17).[[181]](#footnote-181) The ordinary gloss limited the incapacity of woman's testimony to criminal cases, but the principle is also valid in some important civil cases.[[182]](#footnote-182)

 The contradictory conception of early fathers on women was also inherited by medieval Canon law, with its emphasis on paternal power on the one hand, and women's consent as the necessary condition of a valid marriage on the other. The prejudiced definition of women contradicts a large part of medieval reality where women *were* allowed to carry out certain public activities, especially noble women. However, medieval Canon law relies on the Scriptures to define woman as a legal concept: *Propter conditionem servitutis, qua (mulier) viro in omnibus debet subesse* (C. 33, q. 5, c. 11).[[183]](#footnote-183) Hence we see that Gratian's *Decretum* and its ordinary gloss has already constructed a complete hierarchy of dignity based on Saint Augustine of Hippos for whom woman’s submission to man is supported by three reasons: *Prima, quia vir ad imaginem Dei formatus est, & non mulier: & vicarius eius est: quia unius Dei habet imaginem. Secunda, quia in signum subiectionis mulier habet caput velatum, & non vir: quia imago est & gloria Dei. Tertia est, qua vir sine metu talionis secundum legem poterat mulierem de adulterio accusare, & non econuerso: secus in aliis casibus*.[[184]](#footnote-184) For the canonists, women are excluded from public activities especially the activity of judgment, initiating a cause, and serving as an arbitrator.[[185]](#footnote-185)

The arguments based on the Holy Scriptures and patristic literature are enriched due to the teaching of Roman law on the *infirmitas sexus*. As Suzanne Dixon has pointed out, the Roman law construction of women does not correspond to the historical reality of late imperial Roman society. However, it proves to be a powerful tool for thinking of social order and politics. The ultimate reason for women’s incompetence lies in her physical weakness, emotion, and gullibility, which rules out the possibility for them to perform public offices that are reserved for men.[[186]](#footnote-186) The infirmities inherent in woman's nature make her not capable of saying the truth.

In this way, women are portrayed either as actively deceptive (best represented perhaps by Chaucer’s Wife of Bath) or as the passive victim of deception in a “dialectic” fashion. They pose an epistemological problem of truth, and their ornament and language are the most to blame because of their potential of subverting the senses and the reason. As R. Howard Bloch puts it, “woman is portrayed as a kind of false logic, a sophism, which vanquishes both grammar and dialectics, the sciences of the true.”[[187]](#footnote-187) It is not equally correct, however, when he questioned: ”If woman is presented as infinitely garrulous, how is it that the male misogynist can speak at such length about her loquacity?” This is because medieval writers were well aware that loquaciousness or lengthy speech does not rule out the possibility for one to say something true. The fundamental issue, as we shall see, is not loquacity itself, but rather a manipulation of language that may distort the true and natural order, and, therefore, the truth itself.

Through analogy, the submission of women to men is turned into a tool of thinking the social order. (But as Giles of Rome would put it, such subjection means the rule of law and reason, and the aim is to achieve salvation through a collaboration of both.[[188]](#footnote-188) So we need to be aware of the nuance when speaking of the “absolutism” of men over women.) The need for such subjection is felt since the 13th century when economic prosperity brought about more social dynamics and, especially, during the calamitous 14th century where the ideal order was very much destroyed. In the succession quarrels between France and England, the problem of woman and the exclusion of female heirs from royal succession was the most important legal issue of the day. The jurists of the time, referring to various authoritative sources, elaborated various concepts such as *dignitas* and the role of custom[[189]](#footnote-189) in rejecting the claim of the English.

Woman’s image and her submission to her husband hence fit perfectly the 14th-century theoretical construction of the body politic while the teaching of the Bible inherited by the Canon law (C. 33, q. 5, c. 11: *Quia vero in ceteris vir est caput mulieris, & mulier corpus viri*) coincidently becomes a classical reference. As women's existence and their decoration are fundamentally deceptive, that is to say, against the correct perception of truth[[190]](#footnote-190), their role in the mystical body should be restrained.

Jean de Terrevermeille (c. 1370-1430), writing during the French civil war between the Armagnacs and the Burgundians, systematically constructed the relationship between the concept of woman and truth in his *Tractatus tertius* or *Contra rebelles suorum regum* (1419). Above all, woman represents obedience and should submit to her husband who is the head of the body. *Uxoris caput est vir, sicut et Christus caput est ecclesie*.[[191]](#footnote-191) Possibly a development of Aristotelian thought that regards family as the natural model of social order in general (but also with reference to Paul’s metaphor of marriage in the Epistles to Ephesians[[192]](#footnote-192)), Jean frequently compared the *corpus mysticum* with the marital relation. Husband has the rightful power over his wife and is the unique head, the *unica voluntas*,just as the king is to his kingdom. Besides, a kingdom should only have one head, and a kingdom endowed with two heads could only be monstrous.[[193]](#footnote-193) Trying to convict the Burgundian faction on a legal basis, Jean then put forward the concept of infidelity and lese-majesty. One who serves a master who does not have the legitimate power commits *de facto* infidelity and lese-majesty just as a woman who *amat carnaliter alium cum viro suo* (3.6.1.8). While the *caput mysticum*, be it God, king or husband, is for Jean the container of *veritas*. [[194]](#footnote-194)

 The discussion of woman's infirmities and viciousness, combined with the gender hierarchy proposed by the early Fathers, lays the foundation of medieval intellectual thinking of woman. Above all, women, due to their inherent weakness, are not suitable to rule and should be excluded from the succession. The argumentation for such position is carried forward through resort to both custom of the kingdom and the religious sources. Women’s garrulousness is a threat to the natural order according to which the husband should rule, and women as the "body" instead of the "head" are as incompetent as the populace in finding truth and salvation.[[195]](#footnote-195) Women’s distorting propensity, therefore, is to be controlled and submission and fidelity are to be expected.

### The Rebellious Lawyers

Already in the *Roman de Renart*, we see in Reynard the precursor of the infamous *avant-parlier*. In the French Middle Ages, the lawyer’s profession is devided into two: the proctor (*procureur*) who functions as the litigation agent, and the advocate (*avocat*) who normally stay behind the bar and elaborate on points of law. As Brundage has explained, this distinction is of Roman origin, and regained popularity in the procedural treatises after the mid-12th century.[[196]](#footnote-196) But it is not until the late 15th century that the two roles are firmly separated. It is, therefore, appropriate for us to make distinctions of them in specific contexts, and to use the word “lawyer” when the distinction is not so clear in a text.

 Some of the most influential texts against woman and marriage contains at the same time criticism directed to the lawyers. The medieval portrayal of lawyers shares the image of a riotous and garrulous woman and stems from the same concern about truth. As Brundage has pointed out in his article on the medieval critique of lawyer's profession: “Lawyers were not infrequently men who came from families of middling or lower social status. They often made their way upward in the social hierarchy through education and much striving, rather than by inherited wealth, rank, and familiy connections. They might well seem to pose a threat to members of the established elite…”[[197]](#footnote-197) Such disordered reality lamentably felt by the advocates of idealistic chivalric order and the proper role of the legal profession is apparently linked with the riotous wife in marriage.

Mathieu of Boulogne's *Liber lamentationum Matheoluli* and the *Miroir de mariage* of Eustache Deschamps are the two best known texts in the misogynist tradition. They both extended their misogyny to social affairs and made acute criticism of lawyers. Explicitly, Mathieu maked the point that lawyers are the vender of their tongue, therefore similar to or even worse than a prostitute.[[198]](#footnote-198) For Eustache Deschamps, marriage is well a mirror from which we also see the society and its governing forces. He lamented the reality that women were ruling over men while initially women should be subject to men's rule. Much a defender of chivalric, masculine values, Deschamps did not hide his contempt for those lawyers who sell their tongue. Ideally, he believes, *étude* and *chevalerie* should be united together so that justice would rule. But in reality, it is the rule by lawyers, who are usually of base origin[[199]](#footnote-199) but good flatterers of their lord.[[200]](#footnote-200)

However, it may be Philippe de Mézières who, describing a pilgrimage journey of the Queen Truth and the three Virtues, made a comprehensive summary of lawyers’ tricks that distort the truth. In Chapter 88 of his *Songe*, we see through the mouth of Braveness (*Hardiesse*) how lawyers are counterfeiters who forge false money against that of Truth.[[201]](#footnote-201) In line with Bernard of Clairvaux, Philippe de Mézières points out the four kinds of money forged, each representing a deficiency in the system of justice caused by their ruses.[[202]](#footnote-202) First of all, it’s the sophisms, subtle arguments and abusive references to legal sources that often prevent the judges from judging in accordance with truth. Lawyers thus installed a bridle over the mouth of the judge like that on a horse which impedes him from approaching the truth of the cause. The second vice of the lawyer is his litigiousness and pleading for a case against his conscience. This leads to the multiplication and prolongation of lawsuits, causing misery to those who lavish all their money on nourishing the lawyer. The third problem is that litigiousness causes cognitive barriers as when quarrels multiply, people “lose their common sense and become blind.” The profit that lawyers take from their Christian fellows resembles usury and their tongue the *fausse monnaie*. Finally, the avarice of the lawyer also means deprivation of the right to justice of the poor, a conduct which runs against the principle of mercy. In creating the myth of a golden age of justice in the past, the author portrays the idealized image of a lawyer who is neither a discordant voice in the social order nor a disturbance of judge’s cognition. In fact, lawyers of the past used to be very humble, who wore clothes no different and no more luxurious than others. They were instituted to help the oppressed against the tyrants, that is, those who rule not according to truth[[203]](#footnote-203). They worked not for their own profit but were in service of God. Their role was to facilitate reconciliation, and when it was necessary to go to the court, their function was to reduce cognitive barriers so that judges might render judgments easily and efficiently. As they didn’t sell their tongue nor their legal expertise, “at that era, the Parlement, the assistants, the other judges, the officials of the prelates had little work and can well repose… ”[[204]](#footnote-204) The Truth for Philippe is, of course, the God, while its allegorical form, the Queen Truth is the daughter of God. The purpose of the pilgrimage is to multiply the *besants de l’âme*, and to achieve this, all merchants (*i.e.* rulers) loyal to God should be pious, saying the truth and live according to justice. There are three dames accompanying the Queen: *Allegresse*, *Amoureuse* and *Bonne Aventure* who actually guarantee the communication and realization of truth in justice.[[205]](#footnote-205) Philippe’s ideal lawyer, therefore, should be the pious defender of truth and facilitator for judge to find the truth.

To conclude, both woman and lawyer are considered as the saboteurs of truth (the concept here also implies a rigid social hierarchy constructed by theologians and jurists). Criticism of woman is often accompanied by that of the lawyer as they both are the threat to the head or the legitimate ruler of the community. The analogy of marriage and social order offers medieval authors the way of thinking the legal profession. But before examining the remedies proposed by various authors for controlling the rampant distortions, it is first of all necessary to make a cross-examination of one of the most important elements of distortion, that is, their tongue.

## Masters of Language

Wicked women and lawyers are the prototype of masters of deception apt at exploiting human weaknesses. Both women and lawyers are seen as garrulous, their language dangerous and hideous. Their tongue is the weapon for them to exercise tyrannical rule of their natural ruler and the major threat to efficient communication and social cognition. We will first examine the oppressive side of their language before looking at their language techniques that distort men’s perception and senses.

### The Oppressive Language

Language is the tool for women and lawyers to exert oppressive rule over the husband and the judge. With Philippe de Mézières’ description of lawyers’ tricks, we have seen the typical ways that bad lawyers conduct their business. By their language, lawyers transgressed their status as the servant of the judge. It is an abuse of their science out of avarice and greed. Lawyers, like women, also have to decorate their appearance to attract more customers. The motive of greed leads to their intentional deception by visual ornament and the rule of the body over the head. We find exactly the similar pattern of reasoning in describing woman’s deception and their oppressive language which rules over man. Their rule by oppressive language is nothing less than a tyranny.

 In the misogynist tradition, women's language is stereotyped as uncontrollable and quarrelsome. The Ovidian link between women and the overflowing language is inherited by Andrew the Chaplain (c. 1150-1220), the author of the *Art of Courtly Love*.[[206]](#footnote-206) Women tend to abuse their language ability. It is hard for them to keep a secret. Their words are usually frivolous. They swear an oath but never fulfill their promise. The garrulous woman always urges her husband to fight with others in order to satisfy her pride. Women’s oppressive language is also manifest in their constant tricks and contention to man. In familial affairs, an arrogant woman is portrayed as ruling over the husband by her tongue, and that is why in a late medieval play, one male protagonist actually wanted to learn Latin just to be able to curse his wife who was apparently better at arguing and threatening. He then found a way to protect himself from the oppression by singing songs all the time and refusing all kinds of communication.[[207]](#footnote-207) In another play, the husband had to always have a *rouleau* by his hand on which the wife’s demands were written. Exactly the same as one of Aesop’s fables, he was able to outwit his wife by doing only what he was told and written down.[[208]](#footnote-208)

Apart from their language oppression, women are good at pleading by using all means they have, especially their emotions. Not only does Eustache Deschamps compare marriage as judicial combat for life, he also stresses that women are very good at pleading:

Tant se scet de sa langue aidier

qu'elle ara dorit par son plaidier

encontre cellui qui l'accuse

il n'est riens que femme ne ruse,

et se par plaidier ne l'avoit,

par pleurs et larmes l'obtendroit,

par baisiers, par embracemens,

par regars, par acolemens. (*Miroir*, vv. 2951-2958)

As we shall still discuss in the next chapter, the emotional performance is also a part of medieval courtroom culture. Ruse, tears, flattery, and anger are the most common aids for a lawyer who use their tongue and expertise of the law to achieve greedy ends (which are not necessarily about winning a case).

### The Barrier of Perception and Communication

If the abuse of language constitutes one form of cognitive distortion that enables the serfs to rule over their natural master, another form of distortion to achieve the same end is the aphasic strategy, by which we mean the strategies intended to hinder the normal performance of language by, for instance, the feint loss of language capability. It is often prohibitive in the sense that it tries to impose a situation which will prohibit any more meaningful discussion by intentional usage of the seemingly irrational behavior of the tongue. The major medieval aphasic strategies may include behaviors such as showing non-response, mimicking animal sounds, and pretending to be crazy. In essence, these are the arrangement of one's practical reason to achieve certain ends. Woman and lawyer differ in the sense that If woman's irrationality derives from her natural weakness, lawyer's art consists of their ability to make use of irrational speech behavior and even madness. Besides, it is on a different level of human activities that they perform their aphasic plays: women mostly on the domestic level while lawyers in the public place of the court. They, however, both know how to pose an obstacle to human perception and communication so as to make a profit for themselves.

 In case of women, the aphasic strategy mainly consists of tears and tenderness which are derived from the nature of their sex. However, women’s competence, in this respect, is only infantile when compared to lawyer’s masterly play. Late medieval comic stories (fabliaux) and theatrical plays did not hesitate to make fun of lawyers who spoke in order not to be understood.

 The lawyer’s art finds a rather comprehensive summary in the monumental *Farce de maître Pathelin*, a late 15th century play which tells the story of Pathelin, the wicked lawyer, defending a shepherd against a draper. The play is almost a textbook of what lawyer is capable of. A product of the clerks of the Basoche, it is a condensed schematization of various litigation techniques.[[209]](#footnote-209) For our purpose here, we would like to highlight the three most striking points related to the aphasic language strategy: the switch of different languages and dialects, the collaboration between the lawyer and his wife, and his feint madness.

 Multilingualism seems to be an essential property of the legal profession. Already we see in the *Roman de Renart* that the capability of speaking multiple languages is common among the men of law. The camel Musart, as a papal legate, speaks perhaps Latin, Italian, an Occitan language and some French. Reynard the fox can also speak a mixed language of French and English.[[210]](#footnote-210) But nothing may be even more dramatic when Pathelin spoke a chain of French dialects in the feint state of insanity, ending with a moribund monologue in Latin.[[211]](#footnote-211) In fact, the mastering of multiple languages and dialects contribute to the success of a lawyer as he normally had to deal with issues not restricted to one region. The traits of lingua franca are also found in the manuscript tradition of the early customary law books as noticed by Kuskowski, which can also be explained by the authors’ intention for the book to be read by a wider audience.[[212]](#footnote-212) Lawyers may well have exploited the lingual diversity to confuse the judge, and the standardization of courtroom language is only achieved in 1539 by the ordinance of Villers-Cotterêts.[[213]](#footnote-213) The incomprehensive language, however, was perceived as something wicked by the draper who thought that Pathelin was not speaking a Christian language (which indicated his lack of Christian faith)[[214]](#footnote-214).

 Language choice, therefore, is often a problem faced by the medieval lawyers. Latin is the language of truth, but seldom understood by ordinary people. We have already remarked that Beaumanoir lamented the incomprehensible Latinized language of clerical lawyers.[[215]](#footnote-215) But in the vernacular, he will have multiple choices and pleading in an official language is not yet required. His fluency in Latin and all the dialects actually makes him a diabolic figure for both the ordinary people and the learned intellectuals. For the authors who claim to be on the side of Latin authorities, popular languages are as incomprehensible as the noise of animals. The subversive discourse in the high and Late Middle Ages is always characterized as incomprehensible according to observers such as the chroniclers. The latter perceived the rebellious group as making outcries that were at the same time irrational and bestial. For them, the rebellious are those who murmurs, who shout like beasts, whose speech cannot be accurately captured and understood by their lord and government.[[216]](#footnote-216)

Apart from the setting of multi-lingual performance, Pathelin’s aphasic strategies and collaboration of his wife are also worth-noting. For a prohibitive language strategy to work, it entails two steps: plot in advance and carrying out the lawyer's order in a mechanic manner. Woman, in this case, is especially reminded by the lawyer, as woman is thought to lose control of her emotions easily. In the farce the *Pet*, the woman, accused by her husband of farting, was advised by the lawyer to say nothing before the judge so that the lawyer might implement his strategy.[[217]](#footnote-217) The control of language behavior is also accompanied by the control of emotion which is the key to the success of the trick. Pathelin told his wife not to laugh when telling the draper his “miserable” condition of madness. Not without the risk that the lie is exposed as the draper once noticed her high voice and delighted behavior which contradicted what she told him, the wife somehow fulfilled the missions, partly out of the deceiving nature of woman. The prohibitive language strategy saw its most dramatic effect, however, in the lawsuit between the draper and a shepherd who went to Pathelin for counsel. Pathelin asked the shepherd, often associated with simpleton of mind, only to answer "bee" to whatever the judge might ask him. As Hannah Skoda remarks, “Not only a clever legalistic use of language, but actually a dismantlement of the function of language (‘bée’/‘baa’) wins the case. The connection between law and reason is undone by the demonstration that reason is something which can be further manipulated, and that the law can most effectively be swayed by using rationality only selectively.”[[218]](#footnote-218) Folly or lingual incompetence, therefore, left room for the advocate to maneuver with full control of the course. The natural weakness in language and reasoning of women and the non-educated is turned into part of the strategy, but the ultimate motive of the lawyer to put on such performance in court is, still, his insatiable greed.[[219]](#footnote-219)

To sum up, both kinds of language strategies we discussed are a symbol of rebellion. Woman’s language ignites man’s anger and revenge and, therefore, controls man both physically and mentally. The lawyer’s language and tricks make fool of the judge who is the "priest of the justice."[[220]](#footnote-220) They both make use of human weakness of the senses and reason. By deception of vision and language, and by handicapping effective communication of truth, their avarice leads them to rule over their natural master. It is the remedies for fallible cognition proposed by the medieval authors that we are going to discuss in the following section.

## Breaking the Cognitive Barriers

In this section, we will examine the remedies provided by medieval authors with regard to three kinds of barriers of cognition in justice. First of all, the relational or communitarian logic that is often linked to the culture of revenge and private remedy. The second aspect is the distortion of justice by wealth. And thirdly, the wrongly employed legal techniques, or legalism in a pejorative sense. The language-detesting tendency within Christian theology gives rise to a notion of truth which also means the dissolution of the discrepancy between saying and doing, as *dixit, et facta sunt* (Psalm 33:9) Isn't it such discrepancy that leads to falsity and lies? It is, therefore, quite understandable that late medieval discourse of political dissent usually has corruption of justice and the debasement of money together, as *nolite facere iniquum aliquid in iudicio in regula in pondere in mensura* (Leviticus 19:35-36), both phenomena proves that the kingdom is not being governed by truth. The neo-Platonist conception of the truth of being (ens) was modified by the introduction of Aristotelianism in the 13th century, channeled by Aquinas, which emphasized truth as the equivalence of the intellect with the existence (esse).[[221]](#footnote-221) This modification implied a rising concern of the discrepancy between knowledge and practical realities.

However, how to adjust the system of justice which can often be led by wicked lawyers to the wrong direction? Two concepts are proposed to cope with the inherent weakness of legalism, namely, prudence and equity. As we shall see, the elaboration on the two concepts provides the guideline of the practical reason in the justice. While at the same time, it is also interesting to note that it is often through an allegorical female character that the authors indicate the right way to recognize truth and remedy social disorder.

### Dame Prudence and the Cognitive Stability

Dame Prudence, in the *Livre de Melibee* (a French translation of Albertus of Brescia's *Liber consolationis et consilii*) is a sage woman who gave good advice to her husband Melibee, dissuaded him from revenging his enemies, and managed to win the peace by clever efforts of reconciliation. We know not much about the early life of the original author Albertus of Brescia (c. 1195- c. 1251). He is thought to be a jurist trained in Bologna and wrote mainly on theological issues. His *exemplum* on Melibee and his wife Prudence is translated into many vernacular languages and has more than 300 copies of manuscripts.[[222]](#footnote-222) A popular story, it is translated into French by Renaud de Louens and reproduced by many French authors to serve their different purposes.[[223]](#footnote-223) It provokes multiple readings, and has been occupying the attention of literary historians.[[224]](#footnote-224) However, from the perspective of legal history, the story of Melibee and his wife Prudence is also a monumental piece of work in the transmission of Christian legal ideal. It is actually the author's synthesis of main bodies of knowledge in the Middle Ages and his reflection on conflict resolution, justice and social order.

What interests us the most is the connection between medieval theories of the “five senses” with social order in this *exemplum*. But before looking at how specifically the author establish the link, we have to suggest that the significance of the story is above all political, given the historical context of its production.[[225]](#footnote-225) It can well be classified as a political exemplum or even a mirror of princes. It is, however, unique compared to other mirrors in the sense that the author constantly refers to Pierre Alphonse (1062-1140), the 12th-century physician and philosopher (while citations of legal sources are scant).[[226]](#footnote-226) Such peculiarity made the story to be also a treatise on human cognition and emotions, and on how social order is best maintained by the correct use of men`s sensual properties.

The primary purpose of the text is to provide suggestions on issues such as vengeance and taking counsels. Melibee, after convoking an assembly of counsels mainly constituted by his neighbors, friends, and various professionals including doctors and lawyers, was about to organize a revenge when Dame Prudence tried to dissuade him from doing so. To achieve her purpose, she firstly demonstrated why woman’s advice might be beneficial and why taking her advice did not entail his submission to her. Then she moved on to comment on the various propositions Melibee received from the assembly and the harmfulness of vengeance. The ultimate concern of Dame Prudence is stability. The classical theme of fortune is used to dissuade Melibee from being too confident of his power and wealth. For Dame Prudence, only the convergence of power and *droit*, i.e., the enforcement of justice, can guarantee a stable social order, but as Melibee did not like going to court, the case should only be left to the true judge, that is God.[[227]](#footnote-227) Also, she stressed the lack of legitimacy of a revenge:

Car à parler proprement, nous ne povons riens fors ce que nous povons faire deuement et selon droit; et pour ce que selon droit tu ne dois prendre vengence de ta propre auctorité, l'en puet dire que ton povoir ne se consent point à ta voulenté. [[228]](#footnote-228)

Vengeance should be managed by a competent judge who has jurisdiction, while private *vendetta* is unstable as the *fortuna* and causes only misery. Private forms of vengeance should be replaced by a public one, by rendering the parties to a competent jurisdiction where a neutral judge would, out of his office, take in charge of vengeance for the victim. However, to achieve a stable order and perpetual reconciliation, the ruler should know how to control his senses. The three enemies of Melibee, are the worldliness, flesh and the Devil, which are said to have entered Melibee's heart through the window of the body. Melibee's daughter is the allegory of his own soul which is wounded by mortal sins through the five natural senses, namely, feet, hands, ears, nose, and mouth.[[229]](#footnote-229)

In the tale, physicians and lawyers consulted by Melibee represent two different logics of action. The physicians proposed that *selon l'art de medicine les maladies se doivent garir par contraires, ainsi doit-l'en garir guerre par vengence*. His argument was supported by the youth at the assembly and reconciled enemies of Melibee who are impatient to take profit from war. The advice of the lawyers is rather different as they proposed of preparing spies (espies) and snares (guettes) to improve security of the castle and *bonne garnison et fort* for the defense of his person and family. He hesitated to judge whether it is profitable to wage war in such a short time and asked for deliberation as *le juge est bon qui tost entent et tart juge*[[230]](#footnote-230). Both arguments are either bad or not perfect as Dame Prudence would say, whose strategy for reconciliation proves the wisdom that the virtue of prudence would lead to. The author, therefore, delineates a line of reasoning starting from the instability of force and violence, to the regulation of five senses of man by prudence and to finally the establishment of a stable social order.[[231]](#footnote-231) The opinion presented by lawyers is too passive and dogmatic which cannot solve the fundamental problem.

The tale sets up a besieged self symbolized by the isolated castle prone to be attacked by the vices coming into the castle through the window of five senses. It also defines men’s social action by this isolated self. One is in constant communication with the others, and always has to rely on his exterior five senses to receive these information. The practice of counsel, as explicated by Amanda Walling, is the engine by which Melibee’s interiority and autonomy are defined, explored, and constituted. While Melibee himself is ultimately responsible for his self-formation, the process is understood to be accomplished dialectically in exchanges with Prudence and other counselors.[[232]](#footnote-232) The same author also noted that Chaucer’s Merchant Tale, a translation of Albertus of Brescia’s *Liber de amore et dilectione Dei*, also dicussed how counsels could be corrupt because of vices. For Hugh of St. Victor, the order of human interior (that is the soul) is maintained by the collaboration of Prudence who guards the entrance, Fortitude who drives away the enemy and Justice who render each his due.[[233]](#footnote-233) The tale thus, should be anchored in the process of the rise of the self, a founding concept for the maturing Christian philosophy.

But what is prudence? Here we need to take caution as Medieval Latin definition of *prudentia* is somehow different than what our modern readers understand. Thomas Aquinas, in fact, defined prudence as *recta ratio agibilium* translated by Daniel Westberg as the "right practical reason" which has strong teleological implication meaning that “the agent carries through from intention to finished action"[[234]](#footnote-234). What Dame Prudence did in the story largely reflects such definition. She believes in the fundamental value of law and justice, but disregarded lawyer's advice and substituted it by the active implementation of the reconciliatory strategy that is non-legalistic and more efficient. Prudence is also the most important virtue for Jean de Terremerveille. If Dame Prudence is overtly an idealistic construction of a practical jurist who believes in the supremacy of divine and human justice, Jean, again, encourages ruler’s reform of senses. Virtues, headed by prudence, along with science, bring the ruler who possesses power closer to truth. Just as Jean Barbey remarks: “Posséder la vraie puissance c’est cultiver la prudence, sagesse, science en sorte que les détenteurs d'une puissance adornée de vertus, tels les sages et les vertueux, puissent être la verité.”[[235]](#footnote-235)

### The Divine Wisdom

If the theme of prudence is more considerably a development carried out under the premise of a justice which is divine and neutral in nature, theologians have long been reflecting upon the proper way to conduct justice by stressing on its non-neutral propensity. In this subsection, we will still use some popular medieval moralistic stories as the object of analysis. The texts in question are picked from the collection of Fabliaux and Stories edited by Etienne Barbazan. Here we also see how discussions on woman actually put moral and political teachings together: A father is teaching his son some lessons of life which include a discussion on the wicked woman. A series of stories against women were preached to the son, only to prove that no man can prevent a woman to turn to the evil.[[236]](#footnote-236) If a man should always be cautious in his judgment, the son asked his father to show if there is any good woman in the world and to tell more about the way philosophers would deal with a similar situation.[[237]](#footnote-237) Then follow two stories which discuss how a philosopher would judge cases which both involve a victim who is not good at pleading and a more powerful, wealthier plaintiff. The name of the sage man is *Aide a besoignox*, that is, “Aid to those in need." As a protector of the poor, this sage philosopher was somehow able to penetrate the tricks of the rich which are often in the guise of legal language. His mechanism of judgment, however, is somewhat naïve: for both cases, much is depended on physiognomy, that is the judgment from one's face and demeanor whether he or she is good or not. When the philosopher decided to help the defender, it is because he seemed to be a good man.[[238]](#footnote-238) The philosopher possesses the mystical ability of pre-judgment, and the king should better take counsel and listen to him instead of the plaintiff who is more apt at litigation. The speechless poor good man and the garrulous and litigious rich is a classic Christian theme which reveals the injustice of a legalistic system of justice, a theme to be encountered again in Chapter IV.

These stories, usually known in French as the *Castoiement d'un père à son fils*, are translated from Pierre Alphonse’s *Disciplina Clericalis* which collects many fables from Arabia, Persia and India. The stories enjoyed great popularity and became the source of various *fabliaux* and *exempla*, hence part and parcel of the recognized Christian communication of truth.[[239]](#footnote-239) In this sense, they may be regarded as the vernacular and popular version of the Christian vision of ideal justice. Here, the potential of legal techniques and legal language to distort the truth is well shown and this kind of distortion is often intimately tied to wealth. The tales somehow share the same contempt of the legal profession with John of Salisbury[[240]](#footnote-240) and, as many mirrors of princes, rely on virtue and good sense in correcting such distortion.

 The wisdom of the philosopher, however, merits critical examination. It is indeed an idealistic vision of a judge who is almost omniscient and capable of finding evidences with his admirable perception and logic. To some extent, he incarnates the medieval notion of divine justice which is to be approached by human judges who should constantly achieve cognitive and moral perfection.[[241]](#footnote-241) The philosopher also represents a Solomonian figure which emphasizes judge’s wisdom and sense of equity. The mode of proof involved in such case has nothing similar to the learned procedure and relies mostly on the omniscient wisdom of the judge. Given the divine nature of justice which is, in fact, an activity for the revelation of truth, the role of the lawyer in the court is correspondingly "instrumentalized,” as he is only supposed to postulate the facts clearly.[[242]](#footnote-242) The ideal, however, remains an ideal. The way of the philosopher is hardly repeatable by ordinary judges. Concrete principles are yet to be found. How to integrate the ideal into the legal science?

### Virgin Mary and the Trinity of Justice

The way by which Christian-philosophical ideals and legalistic system of justice are reconciled can be found in the understanding of judgment practice in terms of trinity or even quadrinity conceptual models. The quadrinitarian model is found in Psalm 84:11: *misericordia et veritas obviaverunt sibi; iustitia et pax osculatae sunt*, a constant theme in Western legal iconography and has been discussed in detail by French researchers[[243]](#footnote-243). We shall here throw some light on the trinity model provided by the *Advocacie Notre-Dame* (again, a text which spent not few verses in defense of woman's truthfulness and reliability), an early 14th-century narrative poem[[244]](#footnote-244). The poem belongs to the genre of *processus sathanae*, which will still be discussed in the next chapter[[245]](#footnote-245). For the moment we will only focus on its theoretical structure.

The scene essentially is a lawsuit between the Devil as the plaintiff and the Humanity as the defendant, for whom Virgin Marie serves as the proctor. In his writing, the author reveals much knowledge of legal process, along with religious and canonical doctrines. What he has created is indeed a piece of literature of great importance to our understanding of the ideal justice in the Middle Ages whose influence may well have entered into the modern age given its popularity and the plenty of early modern editions. Legal historians in recent year began to accord increasing attention to this sort of texts.[[246]](#footnote-246) It is also much worthy to note the work of Gerard Gros which discusses the influence of Marial poetry in French royal court[[247]](#footnote-247) and that of Louis de Carbonnières who mentions briefly of the similarity of introductory procedure as described in the *Advocacie* with Parliamentary practice.[[248]](#footnote-248) For our purpose, however, we will focus on equity, another cherished concept that guides the judge to truth apart from prudence. For the author, the Devil’s abuse of legal science should be overcome by the consideration of equity.

The fundamental theoretical proposal of the *Advocacie* is what we call the “trinity of justice” consisting of equity, rigor, and justice.

 The lawsuit before the Trinitarian Judge consisted of the Father, the Son and the Spirit, developed around the question whether, because of the Fall after the seduction of the snake, human lineage has to be condemned to hell forever. Changing resort to the Son, the Father and the Spirit is a constant motivating force for the case to proceed. The poem evolves largely along the line of debates with the Devil on the one side who resorts to the Father and the Spirit, and Mary on the other who threw constant regard towards her Son. The apparent link made between the Christian Trinity to the author's trinity of justice appeared recurrently in the narrative. The Devil appeals to the Father and the Spirit who represent truth, rigor and merciless justice, while Mary made the case for the humane aspect of justice. The Devil’s stance echoes that of Musart and Baucent, that is, a legalistic view of law and justice which demands strict enforcement of procedural and legal rules. Specific attention was given to Satan’s language ability, a tireless pleader who know well how to *jargonner* in the legal language:

La vint sathan tres bien matin,

qui bien sceit franchoiz et latin

et sceit respondre et opposer

et toute Escripture gloser,

Et fallaces plus de cent a.[[249]](#footnote-249)

His way of pleading is demonstrated from the very beginning of the court procedure concerning giving adjournment for the appearance of the Humanity in court, and is to be repeated until the end of the story. Seeing the absence of the Humanity, he keeps stressing that God is justice and has full knowledge of things as means to urge the Judge to render judgment. The request was rejected by the God on the ground of equity, and it is where we first see the combination of equity, rigor and justice: *Tout juge, se tu t'en recordes, / a bien en son arc ces .iii. cordes*… [[250]](#footnote-250) Seeing that the humanity fails to appear in the court, Sathan refuses to state his complaint on the ground of proper procedure, evoking Saint Father as both the truth and equity:

Père saint, tu es vérité

et es en touz lieuz équité.

tu dis que je die ma cause;

non ferey; là n'en direy clause,

non pas une soule parole.

tu scéz qu'avoir doit vraiement

.III. persones en jugement;

l'auctour faut, et le deffendant,

et le juge, qui entendant

doit est a jugier par rèson,

quant il en est tens et sèson.

Le deffendant ne voy je pas. (vv. 809-821)[[251]](#footnote-251)

Insisting upon the sin of disobedience that human ancestors committed against God, the Devil asked the Father and Spirit to *droit fere*, which is their responsibility while leaving the *mauz impunis* cannot be called equity.[[252]](#footnote-252) Protesting against the emotional statements of Virgin Mary who led Jesus Christ to render a judgment in her favor, he turned to father and spirit for revision, invoking divine science which should leave no room for emotion and emotional behaviors:

Or regardez; beau jugement

Chescun peut bien avoir véu,

que sanc et char l'ont si méu,

non pas la devine science,

a pronuncier teile sentence.

c'est sa mère qui, par plourer,

a fet justice demourer,

et par crier et par tencier.[[253]](#footnote-253)

For the author, the Devil’s fault lies in demanding conviction and punishment based on the superficial fact of sinful actions, while not going to its deeper reason of occurrence, in this case, the solicitation of Eve by the Devil. He bases his argument on legal texts, facts, and rigorous, emotionless reasoning, starting from a bad intention against the Humanity. Combination of masculinity and garrulousness, the Devil, while stressing on woman’s irrational language, also denies the *dignitas* of women to practice offices that are only reserved to man:

Ta mère ne doit estre oye

en fèt qui soit d'advocacie.

adverti toy que Droit commande

fame ne peut fère demande

n'estre pour autre; c'est la somme;

tel office apartient à homme.[[254]](#footnote-254)

Adding to the first reason against Virgin Mary as the advocate for human lineage, he also emphasized that *le soupechon est tout voiable* (v. 865) when the judge is actually her son.

Through the speech of Mary, however, the author reveals his definition of the Devil: Advocat mauvèz, deputaire.[[255]](#footnote-255) The Devil is the bad advocate who argues *ex nihil*o in other’s disadvantage and should better be shut up. Indeed, if God knows everything good and evil, so does the demon who knows for certainty evil but was bound by its nature not to do the good. In defense of the Humanity who should not be all sent to hell due to the sin of Adam and Eve, Mary specified the distinguishing feature between the Humanity and the Devil after summarizing the latter’s mode of reasoning:

Fragilité Homme blècha;

mès, quant le Déable pécha

ce fut de sa mauvestié pure,

en venant contre sa nature…[[256]](#footnote-256)

While God is omniscient, man is bound to err because of humanly flesh:

Quer le cors l'ame décevoit.

mès Sathan doit bien avoir peine,

qui avoit science certeine

de mal fuyre et de bien eslire.[[257]](#footnote-257)

Equity is the bridge that connects human to God, the means by which humans imitate God. If the divine justice which punishes all the deserved is only an ideal, one could not expect the ideal to be implemented wholly in humanly kingdoms. The Holy Son, in his human flesh, provides for human beings the chance and medium to understand God.[[258]](#footnote-258) And it is here the most controversial part of justice. If the Holy Scriptures and the compilations of laws are to be regarded as infallible in nature and all truth is contained therein, why aren’t hermeneutic and rational measures sufficient for all legal reasoning? If human emotion should be allowed to exist, what is the difference between the human body and the divine? To answer these questions, an examination of the image and acts of Virgin Mary meticulously set by the author is necessary.

If Gerard Gros is right, we may well think of Saint Louis as the primary promoter of the official cult of Virgin Mary in France. The officialization of the cult has much influence on the course of French political and legal thought. As the *Advocacie* shows, if it is man’s conceit to covet God’s power, it is through Virgin Mary, by empathy, that men can render fair justice. Mary uses her tears and sorrow to fight the *faus monde*.[[259]](#footnote-259) She is above all a sorrowful woman, and this fundamental character of hers made her a *douce advocate, misericorde advocate* implicating perhaps also the notion of *douce France*.[[260]](#footnote-260) Although a competent advocate with enough knowledge of legal texts, she tends to oppose to a certain extent the study of law to good judgment when she describes the Devil:

Il sceit assez Canon et Loy

Pour troubler .I. bon jugement. [[261]](#footnote-261)

Demonstrating why the man should not be condemned as the property of the Devil, she also proved her competency in reasoning based on normative authorities:

...c'est texte et glose.

quanque je di est vérité;

je ne di fors auctorité...[[262]](#footnote-262)

Her arguments bring to light the problem of normative texts and their interpretation. If the Roman imperial setting of the monopoly of interpretation[[263]](#footnote-263) was very much a fantasy in the Middle Ages of legal plurality, equity became the point of debate on which much ink has been poured. The Roman Law texts such as C. 3, 1, 8 (*Placuit in omnibus rebus praecipuam esse justitiae aequitatisque quam stricti iuris rationem*) and D. 50, 17, 90 (*In omnibus quidem, maxime tamen in jure, aequitas spectanda sit*) seem to emphasize the importance of equity, but Ulpian also stated that *hoc quidem perquam durum est, sed ita lex scripta est* (D. 40, 9, 12, 1). Conflicting schools of doctrine were formed due to different interpretations and emphases of these texts.[[264]](#footnote-264) The French jurists favored the more flexible model. As Louis de Carbonnière puts it, the *justice miséricorde* is well a notion that the Parliamentarians developed, constituting the essential element of *procédure gallicane* which is to qualify the procedure of the Parlement’s criminal chamber. In addition, he observed that: “Cette volonté d’une conception française du droit et de la justice touche aussi la justice retenue et la grâce royale.” In fact, in the second half of the 14th century, *miséricorde* became the standard formula of motivation in letters of remission written in French as a substitute for the formula *ex certa sciencia* which "renvoyait a un modèle romaniste.”[[265]](#footnote-265) It is, therefore, not a coincidence that the popularization of Marial cult and the production of the *Advocacie* text paralleled such development.

To sum up, the author of the poem may well be one among the parliamentarians, who intended to give, at the same time, theological and legal instructions in a performative, vernacular manner. He set up two kinds of view regarding justice: one which found equity and reason in fundamental opposition while the other which emphasized the trinitarian nature of equity, rigor, and justice. How this trinity is maintained, or put it otherwise, how it is put into practice is not systematically elaborated, as the boundary between equity and leniency is always hard to find. In the poem, we see the almost overwhelming victory of Mary over the Devil because of her emotional gestures and her sound theological and legal background which allows her to make learned counter-arguments to conform to court's procedure. (As we shall see in the next chapter, the discrepancy of emotional patterns between the French versed translation and its original Latin prose is what reveals its “French” character.) It is a literary attempt to set up a rule for the judges: judges should, in performing their duty, imitate the trinity of God by laying their judgment on the foundation of all three aspects of justice, and should not let technicality overcome humane reasoning. It is also a call for the advocate to discipline themselves through devotion, tame the urge of litigiousness and bad language and become the *avocat miséricorde*.

## Conclusion

Both woman and lawyer are perceived as cognitive distortions that hinder the finding of truth. They, therefore, subvert the order of society and exert tyrannical rule over their natural rulers. If woman is the constant threat to the well-ordered society whose basic unit is the family where the husband is supposed to rule over his wife, the lawyer's scope of activity is restricted to legal issues, to the public space of court where they achieve fame and success by challenging the values of the chivalric order. The *topos* of woman as an element of cognitive interference is paralleled by the portrayal of diabolic lawyers who make use of the apparent or "literary" contradiction of the legal system, rendering it paralyzed in the face of its inherent cognitive weakness. Both know what is "good," but it seems to be their nature to choose the evil, which is a fatal sin.

The remedy for overcoming distortions lies primarily in *prudentia*, the right practical reason, aided by equity and wisdom. The supremacy of truth is for most of the authors self-evident, and the law and justice with the aim of finding judicial truth are naturally construed as neutral. But the fundamental precariousness in the earthly judicial system is also admitted. In adjusting it to the correct path of truth, medieval theologians and jurists emphasize the divine nature of human justice and build up a deontology of justice based upon this premise. In this light, lawyers, as women, are instrumentalized and deprived, in theory, of most of the space for their performance. If woman concerns the social order in general, lawyers' existence is all too relevant to the functioning of an ordered legal system in which they perform as tools of testing, revealing the instability within this self-styled divine institution and the fallibility of judges by complicating realities, producing wrong impressions of reality and inducing judges to make logical conclusions to form false presumptions of reality. Apart from the language, however, the emotions of the lawyer are also an influential factor in the courtroom. As we shall see further, the standard and control of these emotions reveal the changing legal procedures and vision of the ideal lawyer. It is the changing patterns of emotion in the courtroom that we will discuss in the next chapter.

# Chapter 3: Emotional Control in the Courtroom

In this chapter, we propose to capture the cultural and cognitive reforms brought about by the rising legal truth regime from the perspective of emotional history. For medieval author of the period that we study, emotion is tied to the cognitive stability of truth, therefore an object to be controled and regulated. But before we go into detailed analysis, we may first of all explain briefly the method and the state of the art of emotional history.

Emotional history, or history of emotions, is an emerging field of contemporary historical scholarship. Preluded by Lucien Febvre’s discussion of the notion *l’histoire des sensibilités*[[266]](#footnote-266), history of emotions joined forces later on with the history of body in a Foucaultian paradigm to become one of the pillars of new cultural history. Although remaining a relatively less elaborated field as compared to the history of body or sensibilities, it has begun to bear fruit in recent decades in French historiography especially by the publication of *Histoire des émotions* thanks to the promotion and organization of the cultural historian Alain Corbin. Also, we can find the result of the research project EMMA (Emotion au Moyen Age) represented by the *Sensible Moyen Age: Une Histoire des émotions dans l'Occident médiéval* coauthored by Damien Boquet and Piroska Nagy.

Already in the 1980s, Peter and Carol Stearns have published a concrete methodology for studying the history of emotions. The term emotionology is coined to refer to the standard of emotions across time. In their own words, emotionology stands for” the attitudes or standards that a society, or a definable group within a society, maintains toward basic emotions and their appropriate expression; ways that institutions reflect and encourage these attitudes in human conduct, e.g., courtship practices as expressing the valuation of affect in marriage, or personnel workshops as reflecting the valuation of anger in job relationships."[[267]](#footnote-267) A history of the history of emotions and its relationship with other fields of study is more recently explored by Peter Stearns in detail which permits him to announce it as a maturing field.[[268]](#footnote-268) The development in both historical theory and historiography turns into an apparent contrast when we look at the rarity of studies that directly concern how emotion was employed, manifested, recorded and codified in the medieval French court. The Marseille case nicely studied by Daniel Lord Smail does not fall into the territory of French Kingdom but does provide many pioneering insights, especially the court as a way to broadcast hatred and publicize emotion.[[269]](#footnote-269) Smail’s finding must possess certain universality prevalent in other parts of Europe, since the effectiveness of emotional action and performance is only guaranteed by a corresponding pattern of social expectation, while to exert control over emotions implies the modification of the power structure itself. For us, emotions in the courtrooms and their constraints are another essential aspect in medieval French legal culture which, under the European transmission of the learned legal doctrines, is gradually reorienting itself towards “truth.” Unfortunately, none of the two recent syntheses on medieval emotions mentioned above provides a separate discussion of emotions in justice although the theologians’ advice for the proper emotional demeanor of the king is discussed in detail.[[270]](#footnote-270) The subject is, however, a rather important clue for us to reexamine what Norbert Elias found as the turning point for western civilization, i.e., the 17th-century when it began to constrain emotional expressions.[[271]](#footnote-271) Of course, the Protestant movement in the 16th-century changed the landscape of Western mentalities significantly. It is, however, to be noted that this development is more or less linked to legal training (take Calvin as an example). The exact mechanism of the influence of university legal training on emotions is yet to be explored. For the sake of our study, we will only argue that historians should take the medieval standard of emotions, especially in the field of justice seriously so as to grasp the general picture of the change in the *longue durée*.

How shall we trace the emotionology of the courtroom in the late Middle Ages? If we look at the epic poems, there's an abundance of emotions in the legal scenes. The integration of the law and the Christian ideals in the revolution of Romano-canonical law, however, tend to undervalue the emotions which has always been the essential aspect of a communitarian life. A thorough rebuilding of the appropriate emotions is put in motion, giving rise to various sources that possess instructive and regulatory effect over courtroom emotions. It is, therefore, necessary to examine some major types of these texts so as to draw any line of development in the emotionology of the court: Treatises on the procedure, royal ordinances, court *stilus[[272]](#footnote-272)*, and texts of most vividness and detail, that is, the lawsuit of Satan and that of Belial. For the sake of briefness, our main focus will be on the emotion of anger whose constraint is an indispensable element in this grand project of emotional reform.

## Lawyer’s Proper Emotions in Procedural Treatises and Royal Ordinances

The attention to emotional aspects of the court varies in the texts on canonical procedure. Drawing on classical, biblical and canonical sources, however, authors of Church law concretized the professional ethics of lawyers, including their proper use of language and emotion in either courtroom or their *libellus*. Although many earlier procedural writings, such as the famed *Ordo judiciarius* of Tancred of Bologna, says little about emotion, and are more focused on the nature of each phase of procedure and the qualification of its participants, most of the emotional aspects of the legal profession are examined in detail since the second half of 13th century, by authors such as William Durand. As we shall see, the canonical influence is only partially manifest in the writing of royal ordinances. It is, therefore, necessary to take into consideration other types of texts in order to trace the changing "emotionology" in court.

### Emotions in the Canonical Procedure: Tancred of Bologna and William Durand

The Romano-canonical law since its very beginning provides specific regulations on the passions of legal professionals, and its influence on secular courts adopting Romano-canonical procedure has been well discussed.[[273]](#footnote-273) We may also find crystallization of professional ethics of lawyer in Brundage's overview of the medieval legal profession under the rubric of "Professional etiquette”[[274]](#footnote-274), a presentation based upon Bonaguida’s *Summa introductoria*, William Durand's *Speculum iudiciale* and William of Drogheda's *Summa aurea*. For our purpose here we shall first examine the emotional aspect in the procedural treatise of Tancred of Bologna, the synthesizer of canonical procedure in the early 13th century, and, then, in the encyclopedic mirror of William Durand.

Generally speaking, the canonical tradition of *ordo judiciarius* represented by Tancred mentions little of the emotions that may appear in the courtroom. This characteristic is determined by its purpose and structure of writing which is primarily about determining the nature of the case and the qualification of persons involved in an action. It is therefore hard to find detailed descriptions on how to deal with emotions in court and the job of an advocate is put rather simply as *advocare vel postulare*, added by a list of groups excluded from the practice such as a man of physical or mental illness, but also woman, serf, and heretics. One of the vocations of the judge is to appease the fear in the witness.[[275]](#footnote-275) Unfortunately, there is hardly any more explicit mention of emotions to be found.

The encyclopedia of William Durand is much more concrete and goes far in detail in discussing the proper behavior of lawyer. Starting from the point that lawyer is at the same time *milites* and *sacerdotes*, lawyer’s outer characteristics, according to Durand, ought to reflect their status, competence, and status of mind.[[276]](#footnote-276) Durand, therefore, took caution in discussing lawyer's proper behavior toward different types of agents in his business. Especially he focused on the virtue of advocate whose garrulous tongue needs to be restrained, while humility is the brilliant light that helps to find the truth[[277]](#footnote-277). The eloquence of the advocate should be *dulcis*, and *furor autem et ira seu indignacio non tractantur humili sermone*[[278]](#footnote-278). The enraged are prone to commit sins and impairs the cognition process of truth which is rather a collaboration between the three parties in the court. Referring to several articles in Gratian’s *Decretum*[[279]](#footnote-279), Durand used a motto-like Latin verse drawn from *Dicta Catonis*[[280]](#footnote-280)when pointing out the harm of anger to the lawyer: *Impedit ira animum, ne possis cernere verum*. Control of language and passion, therefore, reflects the degree of lawyer's dignity and mental maturity.

As Brundage puts it, later French procedural writings, along with many customary law books, closely resemble canonist writers such as Johannes de Deo (*Cauillationes*) and Bonaguida de Arezzo (*Summa introductoria*).[[281]](#footnote-281) Durand is, of course, also an important author dealing with the subject who proposes a systematic look at the nature, demeanor, and appearance of the lawyer. [[282]](#footnote-282)However, to what extent are emotional regulations reflected in royal legislation?

### Anger in Royal Ordinances

Since the second half of the 13th century, the influence of the learned procedure on the legal practice of the French Kingdom becomes more explicit. The first royal ordinance to regulate the behavior of lawyers is that of Philippe the Bold promulgated on 23 October 1274 whose purpose was that *ius suum in causis et negociis facilius et liberius prosequantur*[[283]](#footnote-283). The ordinance stipulated lawyers’ obligation of oath-taking and limited their salary. Another ordinance of Philip the Fair in 1291 renewed the ordinance of his father and added some new elements. In this ordinance, *verba rixosa seu contumeliosa* are explicitly prohibited, along with knowingly proposing *falsum factum, vel quid aliud falsum* and introducing frustratory delays. The duty of lawyers, according to the ordinance, is that they factum *proponant plane et simpliciter, et rationes suas, verba sua Curie dirigendo*.[[284]](#footnote-284) The Ordinance of February 13, 1327 seen as one of the fundamental texts regulating the lawyers’ profession hardly mentions emotion, nor does the ordinance of 1344 which prohibits lawyers from proposing not only customs that they themselves do not believe to be true but also their allegation of Roman law make any hint of it. If we turn to 1454 ordinance on the reformation of justice, we can still only find the repeated regulation on the injurious word of lawyers in their pleading.[[285]](#footnote-285) Specific cases can also be found in the *Questiones* of Jean de Coq who recorded several cases where honorary fines were imposed on lawyers who uttered injurious words at the Parlement.[[286]](#footnote-286)

 The tradition of royal ordinances, therefore, aims mostly at the expedition and enhancement of justice, with particular attention to the appropriate language, reasonable use of procedure and argumentation of lawyers while leaving the details of lawyer's conduct mostly unmentioned. It is, as shown by Krynen, in the early modern age when specific rituals of “harangue” were designed to recall the lawyers of their duty before the proceeding of the court. Partly the result of humanism's emphasis on the lawyer as an ideal rhetorician, the speeches often prescribed truth as the ultimate concern of lawyers and passions are regarded as its obstacle.[[287]](#footnote-287) Although it may be reckless to draw a direct connection between the 16th century and the late Middle Ages, we still see “truth” being the vector of discourse.

To sum up, the learned procedure of canon law, although at the beginning quite far from the secular practice characterized by performative and emotional behavior, was gradually adopted in secular courts. Various sections of legislation absorbed elaborations of canonical authors on the proper language, dress, and emotions in an ecclesiastical court. If in the royal ordinances that are generally applicable in the Kingdom we tend to find little mention of emotions, it is more often because of its typological restriction. There are, however, several means which help to realize the transplantation of the ideal lawyer as *sacerdotes justitiae* to the secular scenario. In the following sections, we shall first make a cross-comparison of texts of the Devil’s lawsuit before moving on to discuss a well typical passage on the proper demeanor and emotions of lawyers in the *Stilus curie parlamenti* of Guillaume Du Breuil.

## Changing Emotional Norms in the Courtroom

The genre *processus sathanae* as briefly introduced in the earlier chapter is not only a procedural manual for starters but also the indicator of authors’ attitudes toward emotions in the courtroom. Within the genre, we have *Processus sathanae contra genus humanum*, the Latin text attributed (almost mistakenly[[288]](#footnote-288)) to Bartolus, along with many other similar versions under different titles.[[289]](#footnote-289) There’s also the *Advocacie Notre-Dame*, a rhymed French verse adaptation produced probably in the 1320s and attributed, not with much persuasive evidence, to Jean de Justice, *conseil* of the Parlement de Paris. The texts, aiming at providing instructive insights (at the same time theological and legal), offer a detailed and rather complete description of steps to follow in an action. The existence of a verse translation of the original text makes it especially interesting for us to compare the emotional patterns in the two texts, and the comparison may well provide us with some insights on the question of medieval legal translation and transmission of legal ideas. Another pair of texts that we are going to compare is the *Litigatio Christi cum Belial* written by Jacobus de Theramo (1349-1417) in 1382. Its French translation appeared almost a century later giving the text a concise designation: the *procès Belial*. The four texts together form a group which allows us to make inter-temporal comparisons. Moreover, as we shall see, the contrast is manifest between the earlier and later texts with respect to emotionology, the reason of which is to be explained. As we shall argue, the translation and transmission of the texts witness changing emotional norms in the courtroom. Here we shall first discuss the more “literary” text of the *Advocacie*, which is rich in its emotional content, before proceeding to the comparisons of later Belial texts.

### Emotions in the Devil’s Lawsuit against Mary

Here we will not repeat the plot of the Devil’s lawsuit. The versed French translation, used to be attributed to Jean de Justice, is the center of our discussion. We shall first see how and to what extent, in the Latin text, emotions are involved before making a comparison to see the unique emotional features of the French text.

 The single dimensional description of emotions as a property of its main characters is the general feature of the Latin text. By “single dimensional” we mean that the author attributes a different emotional pattern to each of the party in the court, namely the Virgin, the Devil and the Trinitarian Judge. The emotionology of the Latin text is, therefore, rather manifest. However, as we shall see, the French adaptation poses a more difficult situation for interpretation.

 The Latin text, *Processus satanae contra Mariam*, portrays at the very beginning a vociferous Devil, the *procurator nequitie infernalis* who because of the absence of the Humanity, *cepit vociferare*.[[290]](#footnote-290) The demand of the Devil to judge human race as contumacious is rejected by the judge *qui novit abscondita cordis*. The judge invoked the importance of equity over rigor of rules. To this the Devil *exclamavit voce magna: ... ubi est iustitia vestra*![[291]](#footnote-291) The appearance of Mary, the proctor of Humanity accompanied by a large multitude of angels, was a shock on the Devil, who, seeing her entrance, *elevatis oculis non audebat eam aspicere*.[[292]](#footnote-292) Mary verbally “shined” over the Devil because *qui male agit odit lucem*.[[293]](#footnote-293) This description points to the medieval regulation on the case that lawyer was supposed to receive and the confidence of a lawyer should have in the justness and truth of the case and in its presentation. The author, by portraying such reaction of the darkness facing clarity, links moral rigidity to a transparent, non-obscured capacity of perception (vision in this case). The reaction of the Devil who knows all good and evil but intentionally chooses the evil comes, therefore, quite as one would expect. In the ongoing debate of the trial, the Devil responded constantly with anger to Mary’s arguments. When Mary made the case that human race was not to be restituted to the Devil, the Devil *stridens dentibus missa manu ad marsubium extraxit foras librum et cepit legere in genesi…[[294]](#footnote-294)*Gritting the teeth is a sign of great anger under difficult control and the Devil’s reading of authoritarian texts points to the central theme of the superiority of non-verbal equity over rigid interpretation of texts. When he is blamed for the Fall of Adam and Eve, and, therefore, *a limine iuditiorum et ab actione sua totaliter exclusus est*, the Devil is “inflamed” (*inflammatus*). In contrast to the angry Devil-lawyer, Mary’s reaction is often peaceful. Repeatedly she uses phrases of persuasion recalling the affection between a mother and son, such as: *Attendite fili mi carissime ad verba mea et non consideretis parabolas demonis*[[295]](#footnote-295) or *Audite fili mi benedicte vos estis rigor iustitie, necnon summa equitas et plenus dulcedine et misericordie*.[[296]](#footnote-296)

The mother-son relation is a part of arguments based on the notions of *equitas*, *dulcedo* and *misericordia*. This relational consideration is, in turn, linked to the relatively peaceful language and reactions of the *advocata mundi*. Hence, the Latin text, as we have seen, portrays a charitable lawyer who, well supported and counseled at the court, confidently and peacefully defeated the accusation of a demonic lawyer who, knowing the injustice of the case, was all the time overcome by anger despite his seemingly rational recourse to authoritative texts.

 The French text, as an adaptation and extension of the shorter Latin text, actually differs in its emotional patterns from the Latin idealization. Here we see a greater abundance of emotions and the connection of many emotions with different parties contributes to the interpretive difficulties presented to us. The richness of emotional descriptions of the court and the form of versed poetry possibly bring it to a longer tradition of French literature, especially to the *chanson de geste* and the romances. Whether this emotion-full feature makes the text a more realistic reflection of the early 14th-century French court is still to be doubted and discussed. The text, however, is much to our interest, in the sense that it is a piece of “literature” which witnesses the transmission of learned legal culture into vernacular language while a comparison of emotions would also constitute an essential aspect of this transmission.

 If the abundance of emotions is what characterizes the vernacular descriptions of courts, it is also to be admitted that emotional flows are the fundamental reality in one’s engagement in a medieval court. In the *Advocacie*, we find mainly three kinds of emotional behavior worth noting: laughter, anger, and tears. Generally, the richness in the description of emotions is more than evident when the vernacular text is compared to the Latin one. We may well say that this should be self-evident given the much greater length of the *Advocacie*, but the emotional patterns actually differ from its Latin original. In contrast to the setting of the “inflamed” Devil, here, anger is the emotion being exploited by both parties. In one place, Mary responded the anger of the Devil by her anger.[[297]](#footnote-297) And in another place, Mary turned to the Devil and dist par très grant ire…[[298]](#footnote-298)

The attribution of ire to Mary who is supposed to be *douce* is an invention of the vernacular author. Its explanation lies perhaps in the realistic aspect of vernacular writing which is often influenced by existent literary conventions.

As in the Latin text, Mary here also resorts to motherly love and judge’s favorable consideration is equaled to the act of *amer*. On many occasions, Mary turned to Jesus to emphasize that she is his mother, and it is natural for Jesus to love his mother more than the Devil:

Se sathan miex que moy amoies,

ce seroit bien contre nature.[[299]](#footnote-299)

The Devil, turning to the Judge, declares that divine science is disregarded and Mary’s emotional stratagem has succeeded (vv. 1532-1539 cited in Chapter II). The opposition of the “devine science” to the emotions conceals the argument that a judge should not be “meu” by “sanc et char” but solely render the judgment by his reason. The Devil, however, turned irrational in his protestation when he found that his trick of legal reasoning did not work. Thus we see further that the Devil, protesting desperately against the judgment which is not in his favor:

Mès, plein de rage et de grant ire,

Prist à tencier et a mesdire.[[300]](#footnote-300)

The position of the Trinitarian Judges lies somewhere in between, as they are “moved” by Mary’s emotions but at the same time distinguish the valid and invalid legal argumentation. Mary’s repeated account of the Passion of Jesus in response to the Devil’s accusation of human sins and disobedience to God was rejected by the Holy Father and the Spirit since:

Rayne des cyex, ce n'est mie

response qui doie souffire;

autre chose te convient dire.

c'est drois que chescun soit blechié

du fortèt, selon le péchié.[[301]](#footnote-301)

For the Father and the Spirit, the problem is to establish the sin and punish accordingly—the shared concern of Musart and Baucent. In contrast, the Holy Son is all the time empathetic, especially when he saw Mary’s *angoisse*[[302]](#footnote-302). The different roles assigned to the Father, the Son, and the Spirit, may, therefore, correspond to the trinity of justice, equity, and rigor. It is especially interesting to note at the beginning when Mary entered the courtroom:

Quant Dieu vit sa mère venir,

De rire ne se pout tenir...[[303]](#footnote-303)

What does his laughter toward Mary mean? How does he actually laugh? Is it a smile or laughter? The laugh of women is commonly found in misogynist writings, a feminine emotional expression which is often regarded as a way of visual deception as Matheolus would lament. Medieval theologians believed in the evilness of laugh. The monastic tradition regarded laugh as the "most horrible and obscene" way of breaking the silence.[[304]](#footnote-304) Laughter is on the top of the list of prohibitions in various monastic rules. However, Laurence Molinier’s study of *Causae et curae,* a medical text attributed to Hildegard of Bingen,reveals that there’s a distinction between *inepta laetitia* and *honesta laetitia*[[305]](#footnote-305). While just as Albrecht Classen puts it, “ancient and medieval thinkers normally attributed laughter only to the lower ranks of people and to simple, rural life, hence to the world of comedy, viewing it primarily negatively and as something condemnable,”[[306]](#footnote-306) it is the heavenly and honest laughter that the author has assigned to Jesus, a laughter of love (not without apparent contradiction between the two notions).

 In the end, the author remarks that Mary used her tears and sorrow to combat against the *faus monde*. She is a *douce advocate*, and her sorrowful emotion helped her make a stronger case for truth[[307]](#footnote-307)—a theme that finds its exact equivalent in the Latin text.

 For the moment, what we may say about the result of the comparison is that the vernacular translation and adaptation enriched the emotional pattern of the concise Latin text, possibly as a result of the vernacular narrative convention. However, even if the author was truly restricted by a longer tradition of emotional descriptions of the court, the currents of emotions may well be the reality in most of the courtroom even when it is in the early 14th century. For the Latin author, anger is largely something diabolic, to be avoided by the *dulcis* lawyer who breeds *dulcis* words and affections as suggested by Guillaume Durand, defends a just cause, and reminds the judge of the principle of equity. Similar restriction on anger is not to be found in the vernacular text where anger is a normal emotional expression in the courtroom. Even the *douce avocate* of Mary did not hesitate to show her anger, and she was far from polite in refuting the Devil. The more "sentimental" French text may, therefore, be the witness of the different visions of courtly emotions in convergence at a moment when the influence of learned procedural writings is growingly felt.

### Emotions in the tradition of the *Procès de Belial*

Having made the comparison of different versions of the Devil’s lawsuit, we should proceed to compare another pair of texts, also written in Latin, known as *Consolatio pauperum peccatorum sive Processus Luciferi contra Jesum Christum* or *Litigatio Christi cum Belial*, and translated into French, under the title *Procès de Belial*. The original Latin text is attributed to Jacques de Theramo (1349-1417), more than half century after the texts of *processus sathanae*. The French text is produced by Pierre Ferget in the second half of the 15th century. The court setting in this pair of texts differs from the Satan’s lawsuit: here Belial is the proctor for the Hell and Moses for Jesus. The case is about the Hell reclaiming ownership of the Humanity which they thought to be despoiled unlawfully from them by Jesus. The pair of texts is also much more extended compared to the Satan’s lawsuit, as it intends to introduce all possible steps in a litigation, including even the appeal which turns out to be also a philosophical reflection on human moralities and emotions. As the Satan texts, the Belial texts also enjoyed wide circulation, and are regarded as “a *vademecum* for the Roman-canonical procedure in Europe” whose value to the study of legal history should not be neglected.[[308]](#footnote-308) The French translation in prose of Ferget is virtually a literal translation. The two texts, therefore, largely share the same emotional properties.

Just about half a century after the appearance of Satan’s lawsuit, the text of Jacques de Theramo provides a quite different pattern of emotions. The Devil, in this case, becomes a matured and confident rhetorician, who *parla ce procureur moult hardiment hault et cler*.[[309]](#footnote-309) He is a prideful proctor and well familiar with textual authorities. However, unlike the Devil above, he has masterful control over his emotion and embodies judicial reason perfectly. In contrast, his adversary, Moses, is much more emotionalized, especially as revealed by his language. Unlike the rhymed version which is more suitable for public performance and by its nature more dynamic in content, the Belial’s lawsuit is full of citations and insertion of well-formatted *libelli*[[310]](#footnote-310). Reasoning constitutes most of its content, most evidently demonstrated by the all current appearance of *adoncques* and *doncques* which indicate the connection between authoritative texts and the arguments presented in pleading documents or contradictory debates. The French translation this time is more faithful to the original and didn’t make much change in its procedural details. The indicator of agitated emotion is most often the "O" employed by both Belial and Moses, and it often initiates the persuading counter-argument consisted, first of all, of a denigration of the opponent’s argument as either rebellious to truth or out of mal-conscience. Taking up the French translation, we might sum up the emotional pattern of both Belial and Moses, and find out the author’s attitude toward each of the emotions present in the case.

The emotional control of Belial in pleading under the disguise of legal reasoning can well be perceived by Moses and Solomon as a form of injury. In the very beginning of the scene, Belial demanded the judge to refuse the admission of Moses to the court as the proctor of Jesus. After hearing Moses’ self-defense without much patience, he responded by launching a chain of attacks: *o Moyses toy qui est si grant iuriste*; *tu es déceu*; …*erreur*; *verité est opprimée*…up to a point to accuse Moses as a criminal, therefore, not a qualified proctor. [[311]](#footnote-311)

As we see from the text, the direct effect of this passage is that Moses was shocked and did not know how to respond: *Lesquelles parolles estre dictez moyse comme sil fust esbahy se teust*.[[312]](#footnote-312) In consequence, Solomon performed one of the duties of the judge, i.e., to appease the litigating parties: *Voyant accroistre iniures et parolles entre ces deux parties: voulut user de son office et reduyre les parties a concorde*.[[313]](#footnote-313) Belial's excitement in language is regarded as interference to judge's job and has to be restrained.

In most of other episodes as the episode above, Belial is always impatient to use literal legal arguments to reclaim human souls against Jesus’ appropriation, and his impatience is also remarked by Moses: *Je te prye que tu me ouyes paciemment; Belial se cuidant truffer de moyse dist: Mon seigneur parlez vostre serviteur vous escoute*. [[314]](#footnote-314)

The response betrays Belial’s feigned humility, highlighted by the fact that he styles himself as the *serviteur*. His hypocrisy is, in turn, derived from his pride that made him so confident in his arguments. In fact, this is a Devil who not only knows the law but also faces God without fear (*sans paour*[[315]](#footnote-315)). His humility which is, of course, feigned also appears later when Solomon’s ruling was not in his favor: *Et belial a genoulz les mians ioinctes a grandes larmes se recommande a salomon en son droit*.[[316]](#footnote-316)

His gesture here merits some discussion. The expression *les mains ioinctes* stands for a typical gesture in feudal homage. Here it shows Belial’s (feigned) submission to Solomon the judge. Here it is only employed as a strategy for winning the pity of the judge, and Belial was prepared for an appeal if Solomon should not revise his judgment. Belial’s hypocrisy with feigned emotions and attitudes leads to author’s criticism of lawyer’s flattery. Hence Moses accused Belial after reading his *libellus*:

[Moise] se inclina humblement et dist

decevables parolles, flateries du decevable belial

dehors il porte miel en parolles, et dedens il est plein & venin...

ta bouche et ta langue est comme une fornaise embrasee[[317]](#footnote-317)

In the appeal, Belial’s flattery is also noted (*A david lequel il pria et flata moult doulcement*).[[318]](#footnote-318) The pride-driven confident, fearless lawyer Belial pretends to be humble and miserable whenever necessary in order to influence the judgment. And it is often in reaction to unfavorable rulings that Belial showed some excitement of emotions. He expresses his emotions of protest by screaming: *comme desepere sescria*[[319]](#footnote-319). Screaming is also part of the ritual to initiate an appeal. After hearing the sentence of Solomon,

Belial a haulte voix commenca a crier et rugir comme lion desespere et parla en la maniere que sensuit contre salomon…[[320]](#footnote-320)

This vivid description of Belial “rugir comme lion” connected to his action of “crier” may be an allusion to the general perception of such action in the later Middle Ages, even though at the time emotional judicial rituals were in decline. But the constant reappearance of the *cri* may also allude to the same *cri* which is often the characteristic behavior of revolting populace, as we may often encounter in the *Grande Chronique de France*.[[321]](#footnote-321)

Based on Solomon's bad reputation with women[[322]](#footnote-322), Belial determined to appeal to a higher court and declared that it was Solomon’s blood and body[[323]](#footnote-323) that had led to his error judgment: *Tu na pas voulu ne peu recondre ta voulante car tu as gecte la sentence pour ton sang, et maintenant ie congnoys que ton sang et ta chaire te ont seduit*.[[324]](#footnote-324)

His accusation is no more than an accusation of the Judge’s morality, and such outrageous accusation runs entirely against the courtly etiquette as Solomon responded: *Tu dis mal et nous imposes faulcement et sans cause crime et villanie. toutefois si tu se sens greve, appelle au souverain car tu le peulz faire*.[[325]](#footnote-325)

It follows that in the next day of the court, *le dit belial mit son appelacion en escript et sen vint a salomon avecques ung notaire et evecques tesmoings et mist et gecta son appellacion devant icelluy en la forme qui sensuit*… an impressive gesture.[[326]](#footnote-326) Together with the cry, the two emotional gestures may represent the remnant of the *faussement de jugement*.

The cry of contestation and the gesture of *gecter* form the set of emotionalized behavior which accompanied the initiation of an appeal. As rationalized and documentalized a text the *Procès Belial* is, this kind of detail might be the few remnants of emotional and ritual expression in the mind of a jurist of the learned law and was captured rather pejoratively. It is however hardly resolvable a question whether Belial really feels *desespere*. He may have been only reacting according to the court convention in order to show that he is not treated fairly, and he must believe in the efficiency of his reaction. The author, in this sense, reveals his critical attitude toward the performative gestures that were still influential on the judgment.

In sharp contrast to Belial’s fake emotional control during the debate, Moses is more emotionalized and agitated. Moses has a simple and honest character, although also with adequate degree of legal training. The author tries to make him a bearer of honest emotions. As a contrast to the prideful diabolic lawyer, Moses is, in turn, the model lawyer whose emotional patterns reveal the code of ethics for lawyers. To our surprise, more often it is Moses who manifest his anger after hearing his opponent's arguments, and sometimes his counter-arguments can well be called vituperative. However, the anger of Moses is derived from his humility which is his constant demeanor suggested by the author from the very beginning of the litigation. Through his humility towards the judge who is the representative of God delegated with divine power, Moses is capable of producing an argument which runs in the spirit of truth and his anger is nothing but the imitation of God’s anger.

There are several scenes where Moses revealed his anger by speaking *vitupereusement*, an aspect made use of by Belial when Belial refused to acknowledge the God's judgment according to the Bible and Moses was asked to provide acts of the court as proof.

…Adoncques dist moyses a belial, O treffeaulx et mauvais dis moy. Dist belial, O moyse soyes sage et dys ce que tu vouldras, mais devant le juge ne parle pas vitupereusement, car je suys delibere de te ouyr pacientement.[[327]](#footnote-327)

Belial tries to connect Moses’ reaction with impatience and bad-speaking (therefore injurious language in the courtroom), so as to discredit his personality in front of the judge. But Moses seems to keep his way in refuting Belial. Responding to Belial stating that God's judgment is only aimed at King of Egypt and others, rather than Satan and the hell, Moses said with anger: *meschant paillart remply de mauvaitie*![[328]](#footnote-328) In another place, Moses attacked Belial: *O belial comment follement et temerieusement tu as parle, et comment tant temerellement as tu ose mectre ta bouche au ciel en parlant contre l’oeuure de dieu ineffable*! [[329]](#footnote-329)

While Belial usually bases his arguments on the literal meaning of authoritative texts and constantly asks Moses to give definite proof of God's work, Moses here often loses himself to anger (*ira*), and denounces Belial by words which are not expected from a well-trained and fully- experienced proctor. However, for the author, Moses’ anger is a reaction to the insanity of Belial’s words (*que tu es fol en tes paroles*[[330]](#footnote-330)). By pointing out Belial's obsession with the superficial which diverted him to the way of truth, Moses defends the ineffable work of God. *O belial tu te esmeus fort subtillement en tes paroles*.[[331]](#footnote-331) The use of word *esmeus* and its connection to paroles is worth noting. The formulation *estres esmus* which came into common usage in the 13th century is more often, in the 14th century, an expression of a status which concerns more about “a person and his intimity.”[[332]](#footnote-332) If one is *esmus* by his language, it means that the language has entered into one’s interior. And in Belial's case, the pride of his language constitutes the cause for his mind to be deprived of senses.

From the discussion above, we find a different emotional pattern in the Belial's lawsuit as compared to Satan’s lawsuit. Here the written documents prevail, and the space for both proctors’ performance is rather limited. The author tends to stress the false emotion and demeanor of Belial while Moses, who often seems to be not as lingually competent as Belial, expresses his rightful, honest anger. From the Devil *inflammatus*, to the both agitated Devil and Mary, and to finally a mature proctor Belial with an angry Moses: An evolution of emotionology can be delineated according to authors’ different concerns—firstly of restraining emotional expressions deemed irrational, then the necessity of love and equity in court and finally the warning of the perfect disguise of malignity. The evolution may well be a witness of the evolving ethical narrative adjusting to different situations faced by the penetration of the learned law into judicial practices. To be added is the fact that, mirroring the different emotional patterns of lawyers, the two groups of texts also present different judges. Instead of a rather simplistic process consisted of a debate and a judgment, the Belial text follows an extremely realistic path of pleading, from the court of the first instance to the court of appeal, thus making the piece of work extremely tedious to readers. We find very rare descriptions of the emotions of the judge in the Belial’s lawsuit, while plenty (or even part of the requirements for an ideal judge) as we have mentioned above in the *Advocacie*.

## Creating Man for Truth

By sketching in the second chapter the sensory reform, and in this chapter the emotional reform, we have already delineated the two great aspects of the grand reform program that comes alongside with the fall of a “truth regime.” The two aspects are interconnected and lay the foundation of secular legal systems in formation. These reforms also exert direct influence on the professional identity of legal practitioners (i) and indirect influence on the society in general (ii).

### *Curialiter*: According to the Norm of the Court

How do the emotional patterns as we discussed above compare to traditional sources for court procedure such as the *Stilus curie parlamenti* of Guillaume du Breuil? As Paschel has well analyzed, the stylus is organized in a manner for the reader to be able to catch up with all the steps of the court. The text, contrary to the earlier belief of its customary nature, is actually also under the profound influence of the learned law, especially the *ordo iudiciarius*.[[333]](#footnote-333) The text, published around 1330, that is, some years after the texts of the Satan’s lawsuit, shares possibly the same practical interest with the latter. The most striking statement on the proper emotion of lawyers in court can be found in its very beginning:

Habeas, advocatus modum et gestum maturos cum vultu leto moderate; sis humilis et curialis secundum statum tuum, retenta tamen auctoritate status tui, refrenans motum animi sui ab ira. Cum partes tediabunt te prenimio eloquio vel alias, instrue partes ne te onerent supervacuis et quod inspiciant locum et tempus loqundi tibi.[[334]](#footnote-334)

For Marc Fumaroli, this passage in the *stilus* represents the origin of judicial eloquence and the fundamental code of behavior for the advocates of the Parlement in the next three centuries. [[335]](#footnote-335) The short opening passage of Du Breuil hinted upon several points which are the causes for the refrain of anger. Firstly, a lawyer has to possess a *modum et gestum maturum, cum vultu leto moderate*. His humility and curiality mean that any violent, rebellious act should be avoided. He should always keep in mind his status before the judge. The passage, much reminiscent of Guillaume Durand, finds its vernacular translation about half a century later in the third book of the *Grand Coutumier de France* of Jacques d’Ableiges:

Advocat doibt avoir port et manière, viaire lie, riant et attrempé, estre humble et humain, toutesfois en gardant l’auctorité de son estat, refraindre le mouvement et challeur de son couraige, qu’il ne s’esmeuve à ire, mesmement quand les parties l’esmeuvent et eschauffent par discordantes ou desraisonnables parolles...[[336]](#footnote-336)

*Vultu leto moderate* is translated as v*iaire lie, riant et attrempé*, with the word *riant* especially strange for modern readers. *Attremper* may signify the action that brings something to the status of harmony. The moderate physiognomy is the best revelation of a balanced body where four elements achieve balance. In contrast to the general impression of the Middle Ages as an age of sadness, it is actually a joyfully, peaceful appearance that is thought to be proper for the lawyer, echoing the theme of the "sweet lawyer." *Refrenans motum animi sui ab ira* is translated into *refraindre le mouvement et challeur de son couraige*. Here we see the exact discrepancy between the Latin-Christian notion of *ira* as vengeful urge and the vernacular *ire* which is semantically more related to pain. The vernacular translation thus takes into consideration the active, motivating side of anger by choosing the word *mouvement*, and defines the irrational, vengeful behavior under the semantic field of *couraige*, that is, the heart. And the heart is something that can be heated (*eschauffer*).[[337]](#footnote-337)

What also attracts our interest is the word *curialis*, translated as *humain* (instead of *courtois* as one might have guessed) in the vernacular. Of course, *humain* is among one of the word's definitions.[[338]](#footnote-338) It is, however, necessary to point out that the medieval Latin terms derived from *curia* actually came into wide usage since the 12th century. Among the words derived from *curia*, there are *curialis*, *curialiter*, and *curialitas*. It is in the Latin text of the Satan's lawsuit that we find the expression *agere curialiter*. The adjective form of c*urialiter*, i.e., *curialis*, means "pertaining to the same court." The word *curialis* is linked to a certain status of nobility in the Late Roman Empire, while it usage became ever more heterogeneous after the 7th century. It turns to mean "notary" in 10th century Italy,[[339]](#footnote-339) before designating a form of writing commonly used by the papal *curia* until the 10th century, also known as the *littera Romana*. The reappearance of the word *curialis* in the 11th century refers firstly to the notary of papal government, but also a written guide to the *instrumenta* in the court.[[340]](#footnote-340) The word only takes another non-documentary meaning with the rise of courtly ideals and the *curia regis*. It can then be found in various legal records, although, in the *Olim*, the Parlement always satisfied to speak of *curia Nostra*. Boniface VIII was said to be imprisoned *curialiter*[[341]](#footnote-341), and the word often appears in records related to torture. In the 15th century, it evolved to be a qualification for good diplomats.[[342]](#footnote-342) The notion, therefore, is ambiguous in nature and has a broader semantic scope that is hardly covered by *humain*. Above all, it also represents a consciousness of man in the *curia*, and the very word *curialis* or *curialiter*, depending on the different *curia* setting, can imply different codes of behavior.

### The Birth of *Homo Veritatis*?

The different meanings of *curialis* and *curialiter* and their usage in legal texts hint upon the rising consciousness of a group of man of law who are expected, due to their function and status, to act in a confident, cheerful and courtly manner so as to facilitate the establishment of fact and the attainment of judicial truth. If the court used to be a public place in front of the king where all kinds of public activities (including those related to justice) were performed, the establishment of a *curia nostra* like the Parlement of Paris endowed with delegated power from the king means the professionalization of such “court” and enables the men of law to think and act *curialiter*. Instead of a product of modern capitalism, the ideal of the smiling “salesman” is actually what has been envisioned by medieval jurists well in the 14th century. Such idealist construction, however, is not without inner-tensions, just as what we have seen in our comparisons above the different attitudes toward the rightful use of anger in the court.

 How do we make sense of medieval regulations of emotions by means of constructing a group self-consciousness? Again, we shall, first of all, look at its connection with regard to truth. Just as the theory of five senses, the regulation of passion is fundamentally a limitation imposed upon human senses. Senses are in turn related to one’s social actions. The wrongful actions out of distorted senses (such as vengeance) are to be curtailed by law and reason. The normative truth of law and reason is embodied in the judicial truth produced by the activity of judgment. For a trial to be in line with truth, one’s proper behavior must be equivalent to his status and role in the court, as the judicial truth has to rely on the factual truth presented and debated by the *actor* and *reus* of the litigation. While the judge should continuously have God before his eyes, the lawyer has to rely on their honesty and the self-consciousness of his role before the judge.

Scholarship has long established the connection between emotion and cognition. Our story then is also about transforming sensual cognition into social cognition. For Magda Arnold, emotions are the result of cognitive evaluation of a situation.[[343]](#footnote-343) Her approach to understanding emotions is in turn possibly influenced by Aquinas' distinction of a cognitive soul and an appetitive soul.[[344]](#footnote-344) Also, it is by here that we may conjecture the fundamental link between medieval epistemology and substantial construction of ideal functioning of justice. Isn’t William Durand also a liturgical writer who also wrote about the five senses in his *Rationale divinorum officiorum*?[[345]](#footnote-345)

Emotion, with its sensual basis, also reveals the mode the self and the community is construed. As Barbara H. Rosenwein writes in the introduction of her *Emotional Communities in the Early Middle Ages*: “I postulate the existence of ‘emotional communities’: groups in which people adhere to the same norms of emotional expression and value-- or devalue-- the same or related emotions.”[[346]](#footnote-346) A redefinition of emotion and its regulation, therefore, entails also a redefinition of self and community. The case of anger (*ire*) is telling in the sense that it represents a semantic change (as mentioned above) which should not be neglected in our understanding of the court culture in the making. In Old French, the semantic field and network of the word *ire* are, as analyzed by Georges Kleiber as early as in the 1970s, actually immense and the word often appears together with *dolor* or *torment*.[[347]](#footnote-347) Bruno Méniel has also pointed out the intimate connection of anger and pain.[[348]](#footnote-348) The later Old French expression *emeu par ire* in *Advocacie* is somehow not included in Kleiber’s network. The Latin-Christian writers, however, give *ira* a definition closer to the modern one. Saint Augustine defined *ira* as *voluntas irrefrenata semper ulciscendi et numquam miserendi*, laying the leitmotif of Christian teaching of restraining anger which leaves only a little space for rightful ira such as *ira per zelum*[[349]](#footnote-349) and *ira regis* modeled by *ira Dei*. In the legal texts examined above, it is, therefore, the Christian notion of *ira* that is more prevalent.

Religious foundation of law and the law as the *lien social* join together to contribute to the creation of *homo juridicus*.[[350]](#footnote-350) But a *homo juridicus* is equally a *homo veritatis*. If the regime of truth shall be constructed through a reformation of personality which presumes the creation of an ideal man independent and surpassing the relational world around him, it is primarily in the Church, in the political arena, and in the courtroom where truth is constantly sought that we find the first reformation of pre-modern minds. The *curia* of law constitutes a supposedly neutral arena where lawyers are supposed to compete against their opponent by self-perfection. It is, first of all, a heavenly model which disengages man from their communal links and performative urges, resulting in a new identity of the man of law who acts accordingly to the courtly behavioral norm.

## Conclusion

As an extension of the grand theological project of stabilizing senses, the regulation of language and emotion is especially felt in the judicial world. Beyond the fundamental discourse of God’s peace which lays down the basis for thinking social order, there’s always the “truth” that shapes one’s behavior. It is noticeable, across the centuries of the Late Middle Ages, that the emotionology of people in and rendering justice underwent a process of evolution which is consisted in many steps. In the epic tradition, emotions are rather what define one’s personality and social existence. It is one’s emotional action that makes man man, while the self-standing notion of the self has not yet so clearly emerged.[[351]](#footnote-351) The various currents in Christianity such as monasticism and scholasticism also put into motion a thorough rebuilding of appropriate emotions. This development led to the reframing of the education of princes and was especially present in the field of justice where God's will was supposed to be manifested, and the truth revealed. The stipulations on the proper attitude of judge performing his office and the proper emotions of the pleading lawyers are no less a reflection of the "rationalization" or "civilization" process, which, in the long run, turns out to be the cutting edge of reforming "societies" to subject them into the common textual framework. Especially at work were many of the Christian values such as mercy and humility which sets the limit of justice and serves as the moral requirement for the discretion of the judge. As for proper emotions of the lawyer, medieval authors could not put forward a clear-cut proposal for the code of behavior (possibly due to the complexity of practice) even though the concern for truth is omnipresent. Simple constraint on anger is complemented by a more transcending notion of goodness that would justify such emotion. Argumentation is based on a trinitarian or quadritarian model as the criterion of judgment which helps to subject the law to theology and form a deontology for the legal practitioners prevalent even well beyond the Middle Ages. The late medieval story of emotions in the courtroom, therefore, may point out some of the most important vehicles which function in the establishment of the truth regime.

# Part II

# Chapter 4: *En sa bouche l’en ne pooit apercevoir fors verité*: Saint Louis, Truth, and the Law

Louis IX hearing complaints under a large oak tree in the Vincennes Forest is an important iconographic element of French legal culture. Although Colette Beaune has pointed out in her *Naissance de la Nation France* that the Vincennes scene only turned popular after the mid-17th century, the Saintly King is never a symbol that we can easily avoid for the study of late medieval legal culture. Historians have examined his life from various angles and tried meticulously to reconstruct an authentic Louis.[[352]](#footnote-352) But the difficulty is manifest. Just as Jacques Le Goff said, different traditions of writing tended to construct a different image of this Saintly king.[[353]](#footnote-353) How is it possible to get over with the mist of historiography surrounding him?

 Jean-Philippe Genêt who once discussed with Le Goff about whether Saint Louis is a traditional or a modern prince[[354]](#footnote-354) now turns to the “Ideal vectors” in the genesis of the modern state, such as “legitimacy” and “truth” (as we have mentioned in the introduction). His organizational efforts bring to our attention the communication of “truth” discourses across different fields as an important research topic. Something omitted in those collective studies is, however, the role of Saint Louis in the building of French “truth regime.” In fact, reading through the biographies of Saint Louis, we are quick to realize the fundamental connection those biographers made between the King and truth. Saint Louis, as we shall argue, stands as the central figure for the construction of the ecclesiology of the French Monarchy, and he as a symbol of justice also leads to the adoption of Christian ethical norms by French practices of power and justice. It is through Saint Louis that law began to be governed entirely and legitimately by the discourse of truth.

 In this chapter, our discussion will be centered on "the pursuit of truth" by analyzing truth's different faces as demonstrated by various biographical and ideological constructions of Saint Louis, with a special focus on his symbolic impact on the secular practice of justice. At a time when the notion of sanctity was undergoing immense change, Saint Louis’ 13th-century biographers standardized to a great extent his life and established the fundamental link between him and truth. (Section 1). Based on his personal virtue of "truth," he is also the model judge and legislator (Section 2). His virtues and care of the poor enable him to find the truth and prevent it from distortion (Section 3). The French king, as *rex christianissimus*, is obliged to suppress bad custom by reason and find out truth by diligent inquiry (Section 4). Finally, we try to make the point that Saint Louis, at the turn of the professionalization of law (best represented by the institutionalization of the king’s court), he represents a perfect union of the Christian ideal with judicial practice, rather than merely a golden age lost (Conclusion).

## Saint Louis and Truth

The Gregorian reform made “truth” the central concept to lead the Christendom to Salvation. Theologians, in service of the Pope, who is the earthly summit of truth, reframed their discussion and thinking of "truth" in the process of reform and invented multiple mechanisms for communicating the “truth.”[[355]](#footnote-355) This movement of “ideology of truth” defined the identity and function of the clergy: Guiding the soul and bringing it to salvation. From a retrospective, the ecclesiastical “ideology of truth” penetrated successfully into the discourse of princes, nobles and even the common people, making truth one of the most often invoked concepts in political and judicial activities. In France, this process was undertaken by theologians, canonists and mendicant friars around the king who at the same time redefined the relationship between the king and legal norms.[[356]](#footnote-356) The unique relation of Saint Louis with truth constitutes not only the reason for his sanctification but also the framework of his image related to law and justice. Starting from his virtues, his biographers portrayed an almost perfect Christian king who did not commit any sin. His virtues even became more perfect as he grew older. The core element of his sanctity was his love for truth. Such love is not only demonstrated in his zest for the Christian doctrine but also in his daily conduct and administration. We find, therefore, mainly two aspects of his virtue of "truth," one in his governance of himself, the other in his governance of his subjects.

 Firstly we will examine how biographical writers made truth an integral part of Saint Louis. Possibly echoing Saint Bernard, they found humility (*humilitas*) the virtue that connected Saint Louis and truth. As what Bernard of Clairvaux said in his *Traité de l'Humilité et de l'orgueil*, one of utmost humility is able to see truth. Humility means self-restraint and denial in various aspects which prevents man from deadly sins. By practicing charity, one's wisdom would not be blinded by vices, and would be able to reach “truth”, as "perfect humility entails knowledge of truth".[[357]](#footnote-357) Humility is, in fact, the first virtue listed by Geoffroy de Beaulieu in his biography of Saint Louis. It is a virtue that requires one's *contemptus mundi* (asceticism, and the will of even abandoning the throne to become a priest), and constant practice of helping the poor. *Omnium virtutum decor humilitas*.[[358]](#footnote-358) Beyond the ordinary practice of religion and charity, Saint Louis’ humility is implemented throughout his personal conduct. He spoke little and seldom laughed, and was cautious enough to say only the truth. On this point, Guillaume de Saint-Pathus, the confessor of Queen Marguerite (Saint Louis’ wife), provides us with a more vivid description. In chapter 15 of his biography, for example, he praised the Saintly King for having led a life of goodness, and for speaking honestly. Saint Louis never took an oath in the name of God, and when he needed to emphasize the veracity of a thing, he would only say "it is so." The king is *un homme de si grant verité*, that *en sa bouche len ne pooit apercevoir fors verité*.[[359]](#footnote-359) The integrity of Saint Louis’ honesty was even not impaired in dealing with pagan enemies, when his insisted on paying his ransom honestly to the Saracens. This story was commented by Guillaume de Saint-Pathus as demonstrating his *grant verité et estabilité*.

 Humility leads to charity and mercy. Saint Louis’ care of the poor was thought to be the guarantee that truth is not distorted by greed and forms part of his policy of justice. As he wrote in the “teachings” for his son, a king has to treat his subjects equally, especially in justice: *Si quis autem contra te querelam habuerit, stes potius pro causa adversarii tui, donec constet tibi de veritate.*[[360]](#footnote-360) Here truth is of the highest priority surpassing one's social status and even the king's own interest. It is judicial inquiry that is used to make sure that judicial practice serves the truth: *Si res obscura est, veritatem inquiri facias per discretos*. Saint Louis’ mercy towards the poor and his introduction of an all-encompassing system of the inquest was believed to be the concrete realization of Psalm 20:28: *Misericordia et veritas custodiunt regem, et firmatur clementia thronus eius*.[[361]](#footnote-361)

 The connection of the king with the truth is not an original invention of the friar-biographers. In fact, during the reign of Saint Louis, Guibert de Tournai, one of the Franciscan friars much favored by the King, has already attempted to incorporate the Christian values systematically with the rules of the king's governance. In his *Eruditio regum et principum*, he qualified the king as i*n terris quamdam esse divinae ymaginem veritatis*.[[362]](#footnote-362) The king's duty is, therefore, purifying the Christian community and lead his kingdom to salvation. Giles of Rome, in his *De regimine principum*, followed the same reasoning in his moral teaching by starting from regulating one's personality to royal officials and finally to the kingdom and its subjects.[[363]](#footnote-363) This structure, aiming at teaching the king how to better approach truth, is no more than an elaboration of John 14 :6 : *Ego sum via, et veritas et vita, nemo venit ad Patrem nisi per me*. Through his humility Saint Louis is the model king who brought truth with his rule and was thought to pass this quality to his successors by his education of his children.

 Boniface VIII preached two sermons at the sanctification ceremony of Saint Louis. The two speeches may well be regarded as a summary of the life of Saint Louis as the king of truth. His two sermons emphasized the “true” aspect of the saintly king : Saint Louis existed in truth as he governed truly (*vere*), justly (*iuste*) and sanctly (*sancte*). As a Christian, he led a life of truth by overcoming worldly temptations and subjecting flesh to spirit, desire to reason. As a king of truth, he was good enough to govern his subjects and protect their rights. As a true Christian king, he even directed Church affairs and protected its liberties and rights in France.[[364]](#footnote-364) The two speeches of Boniface VIII also served as an admonition to Saint Louis' grandson, Philip IV as most of the latter's policies went to the opposite side of truth: favoring the legists, intruding upon Church interests, debasement and alteration of currency, etc. The image of Saint Louis, just like the common discourse of truth, was to be exploited by various factions of political struggles.

## Saint Louis as Judge and Legislator

With regard to law and justice, Saint Louis' truth is embodied in his role as both a judge and a legislator. In justice, he demonstrated the *potentia* of enforcement and punishment, while at the same time made every effort to avoid the abuse of legal institutions. As for his legislative activities, the aim is well the salvation of the political community, and Saint Louis renders the practice of "reform" legislation that has already been current in Normandy and Flanders truly “national”.

Going through various biographies, one may find that the justice of Saint Louis has two impressive aspects: its severity and its egalitarian nature. Especially, Saint Louis devoted his justice to defend the authority of Christian doctrine. Not only did he refrain from verbal sins himself, but he also imposed severe penalties on those who blaspheme the God. The most impressive case is his punishment of a Parisian bourgeois who blasphemed God. The case took place in 1255, one year after the great 1254 ordinance on the reform of the Kingdom. The Grandes Chroniques recorded the event as follows:

Igitur post edictum huiusmodi publicatum, quidam civis Parisiensis conditionis mediocris inhoneste valde iurando blasphemavit in Deum; quem rex iustus absque misericordia cauterizari praecepit in labiis ferro candenti, in peccati sui memoriam sempiternam, et ad aliorum exemplum. [[365]](#footnote-365)

This brief but vivid record is more a propagandist description of Saint Louis’ justice by proposing a dramatic treatment to the reader. The punishment imposed is by nature deterring. By the mutilation of the physical body of the bourgeois, the Saintly King not only had imposed a direct memory on the blaspheming bourgeois but also created an atmosphere of fear (especially towards his determination of enforcing the law) the through the circulation of such story. As we have mentioned in earlier chapters, this is the typical medieval understanding of justice in its purest sense, and the chronicler described him as *rex iustus absque misericordia*. This is the strong and merciless side of his justice. [[366]](#footnote-366)

Another story of Saint Louis’ justice promoted by his biographers is the case of Enguerrand IV, lord of Coucy who was prosecuted for having putting to death three Flemish youth studying in France who wrongly entered into a forest. The event is often regarded as a proof of Saint Louis’ pursuit of equality in justice out of his *zelus iustitiae*, an inherent quality of a *rex Christianissimus*. It sets royal justice in exact opposition to the feudal notion of justice by insisting upon an inquest to find the truth. Enguerrand, being summoned to the *curia regis*, made a demand that is natural for a nobleman: a court constituted of his peers to "judge according to the custom of judging nobles."[[367]](#footnote-367) However, the judicial officer of Saint Louis found out that the forest where Lord of Coucy hung the three youths was not his property. Saint Louis immediately ordered his judicial officers (instead of Enguerrand’s peers) to execute death penalty.[[368]](#footnote-368) He was so determined that Guillaume de Nangis used three words starting with “iu” in a row to describe his firmness of will: *Erat regis intentio iustum iudicium iudicare inflexibiliter*. It was only after long and hard persuasion of his counselors and nobles that a fine and pilgrimage was substituted by the death penalty. The fine was used to construct a chapel to pray for the three young men. On this Guillaume de Nangis remarked that Saint Louis set a model for king's justice. Even a lord of such high status as Enguerrand de Coucy would almost lose his life when accused by the poor.[[369]](#footnote-369) Although it is possible that three young men did belong to the Flemish nobility, it is, however, a popular story which represents the egalitarian nature of Saint Louis' justice while judicial inquest meant to find out the truth is the vital tool in the process.

For the ecclesiastical writers, justice is a burden laid on the prince, and this duty was idealistically carried out by Saint Louis, the ideal judge. Joinville also added to the justice of the Saintly King the scene in Vincennes Forest under the oak tree: *Maintes foiz avint que en esté il aloit seoir au bois de Vinciennes, après sa messe, et se acostoioit a i. chesne et nous fesoit seoir entour li*...[[370]](#footnote-370) The schematization and officialization of this iconography were achieved perhaps by Boniface VIII some years before Joinville's writing. In the same sermon we mentioned above, Boniface VIII praised: *Sedebat enim quasi continue in terra super lectum, ut audiret causas, maxime pauperum et orphanorum, et eis faciebat exhiberi iustitiae complementum. Unicuique etiam reddebat quod suum est*. As Cheyette has long ago noted, render everyone his due is an essential ideal that regulated political and legal practice.[[371]](#footnote-371) This ideal however necessarily comes along with the problem of finding out the right for each. It is on this problem that opinions about Saint Louis differ. His popular image comprehends two ways of conceiving ideal justice. The one of lesser ideological importance was his construction of major institutions of justice, while the one of greater importance and popularity was his powerful, simple but sage justice. In the several centuries after Saint Louis, chroniclers, political and legal theorists, and the authors of "mirror of princes” praised “this sovereign and paternal manner of solving litigations, far from any formalism and procedure.”[[372]](#footnote-372) Saint Louis, therefore, serves to some extent as a model for resisting the penetration and abuse of learned law. *Mediante iusticia et plerumque misericordia faciebat celeriter expediri*.[[373]](#footnote-373) He was determined enough to enforce the law (the aspect of his strong justice), but the allocation of judicial resources is in principle in favor of the poor (the aspect of his mercy and charity). His justice cared about truth, but it somehow managed to keep a rather rapid pace. The glorification praise we cited above is perhaps the most succinct summary for Saint Louis’ justice, taken from the royal *Hours* compiled by Pierre de la Croix.

Now we turn to his legislative activities. In December 1254, Saint Louis, on returning to France from the Seventh Crusade, issued the famous ordinance of reform, known as the *Grande Ordonnance* of 1254. In the beginning, the ordinance was only intended for the Languedoc newly annexed by the Kingdom. It soon became effective on a national level.[[374]](#footnote-374) Administrative and judicial reform and its anti-corruption measures are only the superficial concern of the ordinance. In essence, it is a "purgatory" ordinance meant to purge the mores and morals of the Kingdom. Saint Louis transplanted the Christian ideals of justice through his active legislative activities, witnessed by the number of royal ordinances issued during his reign which well surpassed all those of his predecessors. Enforcing the conclusion of the Lateran IV, his ordinance of 1258 abolished judicial combat as a mode of proof and laid down the principle that a royal judicial officer's activity may surpass feudal relations and aristocratic status.[[375]](#footnote-375) As part of the preparation for his second Crusading campaign (which ended up with his death in Tunisia), he again issued an ordinance to purify the kingdom by strictly prohibiting any blasphemous language against God, Mary, and the Apostles. Saint Louis' strict enforcement of the law was therefore mainly directed against sinners against faith and morals, and corrupt officials in royal administration. Besides, another important aspect of his legislation is his protection of the Church. He practiced himself what he taught in his instructions for his son. But he might not have anticipated that in later conflicts between the King and the Pope, the parliamentarians forged an ordinance of 1268 in support of the Gallican claims of the monarchy. This forged ordinance was also part of the earliest compilations of royal ordinances in the 15th century.[[376]](#footnote-376) The deeds of Saint Louis, therefore, were bound to be interpreted differently according to the need of different political factions.

In addition to creating a compelling and egalitarian image of justice, Saint Louis's legislative activities were also incarnated by his reform of legal customs. From the beginning, reforming customs is a major concern of the Church in its struggle for centralization. "I'm truth, not custom." Local legal customs should, therefore, be inquired and examined in light of truth while the learned law and reason served as major vehicles for its attainment. Custom (*coutume*) means, on the one hand, all kinds of seigneurial dues, and on the other hand, legal custom. The detailed means of custom cognition and reformation is to be examined in the fourth section. Here we shall only mention the characteristics of two *coutumiers*, that is, private compilations of legal customs. The *Conseil à un ami* (c. 1253) of Pierre de Fontaines and the anonymous *Etablissements de Saint Louis* (c. 1272) represent two obvious attempts of understanding legal customs under the Roman law framework. Pierre de Fontaines was a trusted counselor of the king who was familiar with both learned law and customs. His redaction of the *Conseil* was the result of a suggestion from the Queen, the reason why it was also named the *Livre de la reine* (*Book of the Queen*).[[377]](#footnote-377) The *Etablissements*, as a compilation of legal customs of Anjou, Maine and Orleans, were not an official code of law promulgated by Saint Louis according to modern scholarship. But for the medieval mind, Saint Louis’s promulgation of this custumal was taken as a historical fact, leading to its inclusion even in the modern collections of royal ordinances. The *Etablissements* cited the 1258 ordinance abolishing judicial combat, and this abolition was also perceived by later commentators as the best example of abolishing bad customs. [[378]](#footnote-378)

In short, Saint Louis' image as a determined, sage and just judge was quite appealing to a medieval audience. The criticism that arose with the professionalization of law which took place in Saint Louis' reign was mainly directed against the lengthiness of litigation, the corruption of judges and the ruses of lawyers. Later ordinances of reform often mention Saint Louis as their model, as in the case of 1303 and 1353 ordinances. The piety of the King demanded him to legislate actively, and realization of “the city of God” through his judicial system becomes all legitimate and necessary. Further, it fell within the King's duty to systematically reform the mores and customs of France, including various legal customs. Apparently, the religious purpose (that is the pursuit and defense of truth and its terrestrial realization) helped to build up the superficial neutrality of legislation and justice. One may think of Philippe de Beaumanoir’s chapter on judicial combat: it is actually a lucrative activity[[379]](#footnote-379), a common characteristic of the earlier system of justice. In contrast, Saint Louis not only tried to cut off such practices but also spent the fines derived from his justice on the Church and the poor. The egalitarian and non-profitable nature of his justice, along with the establishment of the Parlement of Paris out of the *curia regis*, proved to be the core elements in building a "modern" and "neutral" system of justice. Of course, at the time of Saint Louis, these principles were only the derivative of religious concerns and were very much regulated by Christian theological and ethical discourses. If Saint Louis initiated a "rule of justice," he also launched at the same time a vast program of remodeling man’s social existence and identity. However, for his religious biographers, the institutional developments under his reign were overshadowed by the myth of the "Golden Age of Justice". But examined in detail, this myth is only the surface of a broader attempt of constructing a legal deontology based on Christian doctrine. And the ultimate goal of such attempt is to find out the way that can lead the earthly ruler to truth.

## The Ideal Judge and the Feeble Truth

The opposition of "truth" and "falsity" frames to a large extent the discussions on ideal justice in the High and Late Middle Ages. Equipped with divine wisdom, Saint Louis was able to balance power and prudence in justice, and to render simple, quick and equitable judgments. As we have discussed in the previous section, his frightening punishment of criminals without regard to one's status had effects of creating respect and fear of the king's justice. However, theologians and jurists also developed the requirement of equity in justice, partially discussed in previous chapters. For them, the violence of justice was not in itself sufficient to attain truth. It is necessary to add equity and mercy to balance its blind force. The image of Saint Louis as ideal judge and his enforcement to the process of “pontificalisation” of the Crown largely determined these discussions.

In an early 14th century sermon in praise of Saint Louis, the Dominican friar Jacob de Lausanne used water as metaphor to explain how relying on justice alone would distort truth: Just as the most straight stick would seem to be bent when put into water, and a thing put in water would weigh differently, the case of the poor, no matter how just it is, would necessarily become tortuous (*tortuosa*) because of false advocates (*falsi advocati*) and false judges (*falsi consiliari*). *Revelabitur iudicium in aqua et iusticia quasi torrens fortis* (Amos 5:24): justice bears resemblance to torrents, it might not be able to flood away high and strong towers but would nevertheless carry all tiny stuff with it. Therefore, it has the natural tendency to be in favor of the rich while much less so for the poor and people of minor status.[[380]](#footnote-380) This sermon also implies a critique of the reign of Philip the Fair which relied much on the legists. Now in his reign, the interest of the poor is being wronged, while in sharp contrast, under the reign of Saint Louis, the King *faciebat iudicium et iusticiam omni populo* (Samuel II 8:15). Jacob de Lausanne’s sermon must have impressed the audience by its visional allegory of comparing justice to a flood, a combination of medieval perception of the non-neutrality of justice and its violent nature. To curb this inner tendency of justice, the king has to keep himself humble and pious, and allocate the resources of the judicial system according to the principles laid down by Saint Louis.

Besides, the officialization of the Marial cult under the promotion of Saint Louis would also contribute to the taming of justice running wild. The saintly king revealed much zest in supporting the cult and practiced it himself. In a Dominican *Rosarius* (BNF. Manuscrit Fr. 12483) intended for the education of Philippe de Valois, the first Valois king crowned in 1328, we find consecutively two rubrics “De la devocion saint loys a nostre dame” and “Dit de l'instrucion du roy de France”. The inclusion of Marial cult into the education of royal children by Saint Louis is well observed by the bibliographers of the saintly king: especially, he taught his sons and daughters to read the *Hours* of Mary and chant anthems of the Virgin.[[381]](#footnote-381) As we have seen, Virgin Mary will also become the medium of thinking the dialect relations between justice and mercy in law, a current of thought that served as a conciliatory force in the age where the Church was ever increasingly ruled by canon law. For Saint Augustine, justice used to be the fire and mercy the water. But Innocent III somehow modified the nature of both: Justice is the wine and mercy the oil; the peaceful mixture of the two elements is therefore possible.[[382]](#footnote-382) How the application and enforcement of norms can be coordinated and balanced through mercy was the shared concern for theologians and jurists. Just as the classical quadritarian model proposed in Psalm 84:11 (*Misericordia et veritas obviaverunt sibi, iustitia et pax osculatae sunt*), we can also find the allegorical creation of the four elements in Bernard of Clairvaux’s debate between God’s four daughters. In this *litigatio Sororum*, Mercy stood with Truth, and Justice allied with Peace.[[383]](#footnote-383) God as the perfect, omniscient judge must be equipped with all virtues, while earthly princes should always strive for perfection so as to carry out their obligation of justice. Furtherore, all judges, delegated with the king’s power to render justice, by their judgment, *prae oculis habeant solum Deum* and should also bear in mind the teaching of Gospel: *In quo enim iudicio iudicaveritis iudicabimini et in qua mensura mensi fueritis metietur vobis* (Mathew 7:2). The quadritarian model is somehow reframed into a trinitarian model alluding to God’s trinity in the *Advocacie Nostre-Dame* that we have discussed in detail, a text that is conjectured to have parliamentarian origin. Justice, rigor, and equity are the three bowstrings of the judge, and Mary's teaching is to always put equity before justice.[[384]](#footnote-384) Possibly reflecting Thomist ideas that value *equitas* higher than *iustitia legalis* while not totally in contradiction with *severitia*[[385]](#footnote-385), the text made Mary the *douce* female advocate for humanity, making her figure a channel for instructing judges by her anti-legalism and ethical rigidness. A similar trinitarian model is also to be found in Philippe de Mézières who in his *Songe du vieil pelerin* made the three elements the horses which pull the chariot of the Kingdom. Any king who wishes to lead the Kingdom smoothly forward to salvation needs to first and foremost learn how to ride it, and he thought in a much nostalgic fashion that Saint Louis and the Kings before him all practiced model justice.

The symbolic and iconographic constructions around the life and deeds of Saint Louis actually directed much of the developments of judicial deontology in Late Medieval France. The Saintly King in this respect has nothing to do with a Golden Age, but instead represents the initiation of a discursive and iconographical tradition that would dominate in the next 5 to 6 centuries. By the 15th century we see for example in instructional writings for judges the imitation of Saint Louis’ justice. The text in question is written by Jean Juvénal des Ursins, doctor of both laws and the trusted counselor of Charles VII. With rich citations from the Scripture and both laws, he summarized necessary qualities for a judge:

1. ung bon juge doit avoir pureté et innocence;
2. il faut qu'il soit veritable et avoir et enquerir verité en soy;
3. il doit avoir en soy vigueur, vertus et voulenté de faire justice;
4. il faut qu'il ait verité en parolles et que il ne baille aucunes parolles frivoles ou debourdes;
5. qu'en conduisant justice il ait toute sincerité et netteté; qu'il ne tache point a avoir dons ou proffis et en nettoye ses mains;
6. qu'il ne soit point mobile, et que ceulx qui auront a faire de justice le treuvent;
7. qu’ilz ayent grant equité sans faveur ou accepcion de personnes.[[386]](#footnote-386)

By a comparison of the features of Saint Louis’ justice with the design of Jean Juvénal des Ursins, we can almost find exact correspondence. Saint Louis is of a personality extremely faithful and honest. He enforced the law with determination and force but at the same time put equity into practice. He also heard and judged cases regularly in the Vincennes Forest. As Jacob of Lausanne would also have put it, the basis of Saint Louis’ justice was his divine wisdom; his rule is not one of a legist-king, but rather a theologian or philosopher-king. The later “division of labor” in the royal symbolism is also quite revealing, just as we may observe from the *Retable de Parlement de Paris* commissioned by Charles VII in 1454. Here one may find nothing of Saint Louis’ severity, as his clerical clothing contrasts greatly to Charlemagne who is wearing armor and holding an impressive sword. Facing toward Jesus in Passion, Saint Louis is the leader of the Gallican church, the incarnation of mercy, while Charlemagne, who faces the court and this world, is justice *par excellence*.

Although Saint Louis has everything to do with justice, he somehow defined it in an ecclesiastical manner. Even given the crucial institutional developments under his reign that laid the foundation for the modern legal system of France, he was cautious enough to keep a distance from legal science and the legists. Saint Louis' idealistic figure to a large extent represents Giles of Rome's ideal king who must possess *perfectio scientiae*; while in the hierarchy of the king's knowledge, legal science is of secondary importance. The separation of king and legist (who are called by Giles "political idiots"[[387]](#footnote-387)) made Saint Louis appealing to those who sought refuge from the ever tedious, expensive and oppressive legal regime. His role in the history of ideas is therefore manifold: as a promoter of the concretization of legal institutions, he anticipated the deeds of his grandson; as a Saint King of perfect virtue and wisdom, he was well aware of the distortive nature of the justice and served as the model for an ethical, equitable judge who directs justice to truth, its ultimate end.

## The Reconstruction of the Legal Order

For the art of judging, equity and mercy are the necessary complements for justice, which by itself alone, is not sufficient to resist the cunning lawyers, relieve the poor and attain truth. However, a more significant problem for the French king was the construction of a legal order that conforms to reason and truth. A great diversity of local customs was the fundamental social reality in High and Late Medieval France. The customary resolution of conflict, a result of an ever-changing local power structure, is regarded by learned authors as fundamentally *incertus*. The Kingdom, therefore, has a thirst to know, to recognize, and, in order to perform its duty to lead subjects to salvation, to reform these customs according to truth and reason. In this aspect, Saint Louis is constructed as a reformer of bad customs. Abolishing bad customs is an acknowledged task of the king since at least the reign of Philip Augustus. Originally referring to feudal dues and seigneurial levies, by the 11th century, the term coutume comes to mean the unwritten law for a locality.

The abolition of bad customs presumes necessarily a layer of the norm placed higher in the hierarchy of legal order. Well before the 13th century, canonists had already struggled to construct a clear hierarchy of legal norms. Jesus says I’m truth but *non dixit: Ego sum consuetudo*. (Cyprien, Bishop of Carthage, D. 8, c. 5). Uncertain customs should never overcome truth and canons (*Itaque veritate manifestata cedat consuetudo veritati*). For a custom to be legally and legitimately binding, it must conform to reason and enjoy observance for a rather long time. Innocent IV demonstrated a sterner attitude toward legal customs when he said that the institution of a custom requires the knowledge of the legislator whose tolerance only would not suffice.[[388]](#footnote-388) Possibly through the canonists around the king, the disfavor towards customs is transmitted to the king’s governance. Vincent de Beauvais, citing Augustine and Gregory VII, pointed out that *veritate manifestata, cedat consuetudo veritati*, while in the 58th chapter of his *Speculum doctrinale*, he discussed good and bad customs.[[389]](#footnote-389) To know and to reform the customs becomes one of the duties of the king while the growing authority of Parlement of Paris over appeals allowed king’s jurists to manipulate the cognition and interpretation of customs.

 Before the 13th century, the appeal was often directed to the wrongdoing of the judge (or the "falsity" of the judge). The popular mode of recourse is the *faussement de jugement*, by which the party in contention to the judgment demands judicial combat with the judge.[[390]](#footnote-390) It is therefore different with our modern sense of appeal. But as part of the spiritual reform of the Kingdom, Saint Louis also continued the Church's combat against violence. The notion of a supreme court of the Kingdom was emerging, and the appeal is received and judged by legal reasoning instead of "testing God."[[391]](#footnote-391) The expanding scope of the competence of the Parlement of Paris made it also a political instrument that continuously reminded the nobles of the hierarchy of power in the Kingdom.

In this process of hierarchy building, Saint Louis took an active part. The demonstration of this fact may be found in the *Olim*, the four earliest records of Parlement de Paris. Here we saw vividly his personal attendance in the freshly institutionalized court as we often encounter expressions such as *audita relatione baillivi* and *audita et intellecta carta*. Saint Louis, therefore, was eager to perform the duty of king’s justice and exert his influence in the court.[[392]](#footnote-392) While at the time when the Parlement faced the allegation of customs from litigating parties, it must possess certain means to establish the truth of the legal customs allegated. Much of the task is performed under the form of inquest (*enquête*).

 The inquest of customs is a secondary part in Saint Louis' governance by inquest, but it nevertheless achieved crucial developments at the end of his reign. The vast project of inquests by Saint Louis received much praise from the biographical and hagiographical writings. The primary goal of an inquest is to find out the truth, *ad informandum conscienciam domini regis*. There are mainly two types of inquest: administrative and judicial. In contrast to the “truth" of the ordeal, the truth derived from a judicial inquest was influenced by the Romano-canonical tradition and relies highly on secret interrogations and written records. While the administrative inquest can be used to defend the right of the king, and intends to purify the realm by detecting corrupted officials. Sometimes, the inquest could trace cases up to more than 40 years earlier. But inquest was also employed in determining legal customs. For legal customs, the mode of proof at first had no fixed pattern, possibly reflecting the doctrinal concerns of whether custom falls in the category of law or fact. In its earliest cases, the Parlement of Paris faced almost exclusively allegations of legal customs.[[393]](#footnote-393) The way to establish a custom was somehow vacillating between the judge's inquiry and the proof of custom by the pleader. The tendency of undervaluing custom in canon law made civilians the first to elaborate on the legal status of custom and its mode of proof.[[394]](#footnote-394) While at the very end of Saint Louis’s reign, *enquête par turbe* was introduced on the day of the Chandeleur (2 February) of 1270 as a mode of proof for legal customs. The *enquête par turbe*, possibly of Roman law origin[[395]](#footnote-395), was basically a mode of proof based on the organization of a *turbe* of 12 persons designated by the pleaders to confirm whether a custom is truly valid, a mode that is highly flexible but may imply the *scientia populi* in the establishment of the norm. Although all these tools were still highly uncertain with regard to the cognition of customs, we may still refer to Krynen’s remark of the legal system of Saint Louis: “Dès le temps de Saint Louis, la justice du roi dispose d’assez de ressources techniques, forgées par le droit romano-canonique, pour s’assurer le complet contrôle des normes juridiques devant régir les sujets. Par le jeu de l’appel, tout particulièrement, « le Parlement a véritablement le droit coutumier sous la main ». Soit il autorise les plaideurs à prouver la coutume, soit au contraire il les en empêche, soit enfin il déclare qu’aucune preuve n’est nécessaire, admettant sans autre formalité son existence.”[[396]](#footnote-396) The rise of *coutume* in the normative hierarchy being a subject to be discussed in later chapters, here it suffices to point out that it is not until the end of 13th century when Jacques de Révigny distinguished clearly custom from mores and usages and made custom part of *ius*. We should not forget that it is during the long reign of the Saint King that the principle *rex est imperator in regno suo* was formulated[[397]](#footnote-397) and as the gloss of D. 1, 3, 32, 1 goes, the legislative power has long been transferred to the emperor.[[398]](#footnote-398)

Although Saint Louis had prepared every means for the king to dominate and reconstruct the legal order, he was still ideologically regarded as the protector of the Church and the nobility against the rising legists. Such is probably a great myth and a myth that went into circulation mainly through the schematic and iconographic depictions of the Church. Philip the Fair would not hesitate to refer to Saint Louis in his reform ordinance of 1303 with a goal of enquiring the customs of the time of Saint Louis. The reform ordinances of 1314 and 1316 promised to return the fiscal system back to the status under Saint Louis' rule. In contrast to his grandfather the protector of good customs, Philip the Fair was all along being accused of destroying good customs. But in fact, there seems to be no reason to believe that the time of Saint Louis was truly a golden age. Saint Louis' legislative and judicial activities well surpassed any of his successors. While it is beyond doubt that the two crusades consumed significant financial and human resources. From the perspective of institutional history, there is more continuity than rupture between Saint Louis and Philip the Fair. The regularization of inquiry as an essential tool of governance marks the launch of the cognitive apparatus of a rule of justice. Apart from theologians, Saint Louis also found himself being surrounded by jurists, who concretized his project of reform through magnificent legislative works. The dominant position of the king over the norms during the reign of Philip the Fair only carried the policies of his grandfather to their logical conclusion: as long as there’s sufficient *causa*, *ex certa scientia* and based on the public good, the king holds in hand all tools to abrogate existing norms, especially the clause *nonobstante* borrowed from pontifical government, while the validity of legal customs rely ultimately on *permissio principis*. [[399]](#footnote-399)

## Conclusion

Hence, we have seen how “truth” dominated the formation and communication of Saint Louis’ legal symbolism. Jacques Le Goff commenting on Saint Louis’ image in his conclusion, writes that: “Mais il est vrai que l’idéal qu’il a incarné, même s’il est marqué par l’évolution de structures politiques et des valeurs de son temps, est situé sur le versant du passé plutôt que sur celui de l’avenir… Le temps vas venir des rois du droit, de la politique et de l’économie, des rois des légistes, d’Aristote et de la crise. Saint Louis a été le roi d’un idéal politique qui est venu mourir au bord de cet autre âge. ”[[400]](#footnote-400). When we talk about the saintly king’s in the legal culture and legal deontology of medieval France, Le Goff’s remark should, however, be modified. Indeed, part of Saint Louis' legal symbolism lies in his simple, equitable justice which made him the representative of a golden age of justice when the king's divine wisdom led the way. Such myth, although widely circulated, especially among the criticizers of learned legal institutions, should not overshadow another aspect of his symbolic values, that is, as the ideal judge and legislator who realized the transplantation of ecclesiastical discourse to secular governance. His model justice was concretized into a code of ethics to be inherited for centuries, and related themes were to be represented various forms of iconography. Added to his symbolic values is his contribution in institutionalizing the "truth regime": inquest on a national level and a Parlement that would “dictate the norm”. Saint Louis therefore only partly represents an idyllic past. What is more important is his opening up of a new age[[401]](#footnote-401), an age when the king began to legislate actively, to find out the truth and enforce the law, and construct a modern state backed up by its justice. Saint Louis’ model has always been a reminder of later kings and judges of the sacred nature of the system and its ultimate purpose which is the pursuit of truth.

# Chapter 5: Languedoc after the Albigensian Crusade: The Establishment of a Truth Regime

In the previous chapter, we discussed how the ecclesiastical ideology of truth was integrated into the ideology of secular government through the promulgation of the image of a saintly king. By a deontological definition of the king’s role as both a judge and a legislator, this ideological construct implies at the same time the king’s source of legitimacy and authority as well as limitations on his way of governance. If the idealistic construction of a saintly king is mostly a product of the late 13th century, the great reforms of Saint Louis actually find their prelude in the Languedoc in the first half of the 13th century. Especially during the reign of Louis VIII and the early reign of Louis IX, the region was the experimental ground for wide-scale social reform in the name of the eradication of heresies. It is also a region where the forms of governance later on also applied within the whole Kingdom such as that by inquest were first practiced by royal officials systematically. For a subject on which scholars have poured too much ink, we intend here only to find out some clues that may deepen our understanding of the truth regime under construction.

As we have been arguing, any ideology has its social goals, and it is by looking at the social actions in the name of the ideology that we understand better how ideas and social relations interact. In a collaborative movement of the secular and the clergy like the persecution of heretics, the way heresy was construed socially may reveal some fundamental premises about power, crime, and truth. Without following the conventional approach which tends to focus on the content of Catharist faith and the historical impact of the Inquisition, we here regard the Inquisition as a redefining process of the individual and its social relations in terms of various layers of truth. The persecution of heretics as part of the purgatory program of social diseases is to be followed by social measures that destroy and rebuild specific relations seen as pernicious (Section 1). Such policies of "social engineering" have to be explained by the redefinition of individual and its social existence in terms of inquisitional truth which tries to establish the *probatio plenissima* by exacting confessions (Section 2). Finally, we will examine how secular rulers, paralleling the ecclesiastical movements, had attempted to establish themselves within this newly conquered territory, primarily by a comparison of Simon de Montfort and Alphonse de Poitiers (Section III).

## The Pathology of Heresy

The historical significance of the Albigensian Crusade and the rise of inquisitional culture in the Languedoc and Europe in general has fascinated generations of scholars. Their conclusions differ according to their theoretical, religious and political positions.[[402]](#footnote-402) Was it the evidence of the dark side of a religious rule, or a rational movement?[[403]](#footnote-403) Was it a mass massacre or a moderate way of social correction?[[404]](#footnote-404) Scholars have long been connecting the persecution by means of the Inquisition with the theme of modern totalitarian state.[[405]](#footnote-405) The most recent studies, especially Anglo-American ones, usually reflect revisionist and post-modernist tendencies. Specifically, the construction of truth through interrogation was regarded as an issue of great significance. Usually adopting the method of discourse analysis, these studies try hard to decipher the hidden information of the Inquisition records. To be added, however, is a sociological perspective that focuses more on the relational significance of the Inquisition. That is to say, eradicating heresies is not only a process of producing a confessing individual but also redefinition of one's relationship with the living world since it is also accompanied by attempts of social reconstruction.[[406]](#footnote-406) Based on the pathology of heresy, the social concern of the Inquisition is well manifest at the very beginning, in the detection of heretics, as they are fundamentally defined by their meetings, contacts and "abnormal" religious practices (i). The Church regards the communicative nature of heresy as filth, and to eradicate such filth a procedure of social coercion was necessary (ii).

### Defining Heresy as a Contagious Relation

The Languedoc before the Crusade is often portrayed as a region dominated by a liberal cultural atmosphere. By the early 13th century, the region was in some sense more “advanced” or “modern” given its higher rate of literacy and urbanization and its institutions that favor individualism. At the point of convergence between various cultures (most significantly Italian and Islamic), Languedoc was the home of the troubadour and the place where early learned law education flourished. As for the legal system of Languedoc, scholars generally admit the pervasive legacy of Roman law. It is also the first region of the Kingdom to receive new legal science from Italy since the age of “legal revolution.”[[407]](#footnote-407) In contrast to the northern legal framework of land and persons, the principal characteristics of law in the Toulousian region, in words of Firmin Laferrière, was manifest in the aspects of succession law, land ownership, and personal liberty. Liberty of succession was maintained conforming to Roman law; the rule of *franc-alleu* (*i.e.*, a property free of any obligation of the lord), constraint the legitimate ownership of feudal lords, while the cities, enjoying more substantial autonomy, tended to protect the personal liberty of those who abandoned their lord and land.[[408]](#footnote-408) The ruling nobilities of Languedoc were patrons of troubadours and were thought to be generally permissive for the dissemination of heretic beliefs. The commonly accepted designation today for the Languedocian heresy is Catharism. The word, however, is not to be found in historical documents of that age and largely undermined the more diversified reality.[[409]](#footnote-409) As the medieval characterization of the group was either simply "heretics" or "Manicheans" (indicating their belief in the existence of two Gods). The ministers of the sect are called “good men,” around whom various rituals were practiced.

 As Karen Sullivan would say, the fundamental criterion that distinguishes the orthodox believer from the heretics lies in the way of reading the Scripture. Although much blame is on heretics who interpreted the holy texts according to their own fantasy, even a reputed theologian can slide into heresy if he is not cautious enough. The problem of heresy is to some extent an inherent feature in a system where sound knowledge is only conceivable through the interpretation of a sacred text. The heretic, “by its very bifurcation of Christian identity into opposing camps, resists assimilation into an imagined unity”[[410]](#footnote-410), and constantly warns the system about its “crisis of knowledge”. But it is interesting to note that a recently edited and published medieval Occitan Bible offers no clue of any unfaithfulness of translation.[[411]](#footnote-411) The question seems to stem, therefore, not primarily from the text.

As many scholars have argued, the most dangerous aspect for the Church is the organizing potential of the heretic groups that will generally depart from standard religious practice and evade its categorization. In fact, heretics are sometimes hardly distinguishable from orthodox believers if there is no deepened contact with them. They challenge the Church’s authority and the validity of its sacraments. They are only to be detected by observing their way of religious practice which is actually a social action of community building. But institutional “making” and persecution of heretics is only possible after the Gregorian reform. The Church after the reform constructed a clearly defined teleological system that revolves around religious rituals such as the communion.[[412]](#footnote-412) Under this system, the communication of Christian “truth” was much valued, and the problem with heretics is that these people are eroding the legitimate ways of truth communication. Therefore, for the Church, heretics represent “unhealthy” and “ineffective” means of communication that should be detected and eradicated.

 Heresy is a direct threat to religious truth. Gratian, citing Augustine, defined heretics as *qui alicuius temporalis commodi et maxime gloriae principatusque sui gratia falsas ac novas oppiniones vel gignit vel sequitur. Ille autem, qui huiusmodi hominibus credit, est imaginatione quadam veritatis illusus* (C. 24, q. 3,c. 28). While those who break the peace of the Catholic Church are called schismatics, heretics are those who pervert Catholic truth. Seen as a dangerous and contagious relation, the heretic relation is the source of contamination to be kicked out from the community.[[413]](#footnote-413) The alimentary metaphor that *modicum fermentum totam massam corrumpit* (Epistula Ad Corinthios I 5:6) was exacerbated by later authors and heresy was compared to something even more ugly and disgusting. The Church, in its reference to heretics, used the word *foeditas* for its qualification. The third canon of the Fourth General Council of Lateran (X. 5, 7, 13) expressed the demand of the Church for secular rulers to participate in the cleansing of heretics. It first explained that there’s one thing in common for all heretic organizations, that is, *vanitas*.[[414]](#footnote-414) The word is more than demonstrative concerning the teleological conception of religious practices and the truth claim for the cause-and-effect. Semantically linked with *luxuria* and *superbia*, *vanitas* refers to a status of mind that rejects truth (knowingly) out of one’s fancy. *Vanitas* and *luxuria* is the accusation from ascetic monks towards bishops of the early Church.[[415]](#footnote-415) Sometimes also translated as “emptiness,” the word appeared in the book on heresies of Saint Philastrius (bishop of Brescia in the late 4th century): *Quae est haec vanitas Galatarum, Seleuci & Hermiae haereticorum*?[[416]](#footnote-416) By vanity he is saying that these heresies do not have the salvational effect they claimed and their idolatry is the primary target of his criticism in this context. Another common description for the sin of the heretics is *superbia*. Knowing well the Scriptural teachings, it is their pride that leads to their misinterpretation of the Holy Text as Peter Abelard put it.[[417]](#footnote-417) Vanity kills humility and it is only through the latter that Catholic truth is attainable, as we have seen in the previous chapter.

The word *vanitas* can be more readily understood if we take into consideration the notion of sacrament after the Gregorian reform and the pathology of heresy by which heresy is defined as a contagious disease in a Christian community. The notion of sin as disease naturally led to finding its cure. In fact, all kinds of sacraments prescribed by the Church are thought to possess curative effects. Guillaume d’Auvergne (c. 1190-1249) even talked about the Church as *apotheca medicamentorum spiritualium*[[418]](#footnote-418)*,* while the 21st Canon of Lateran IV reasoned by an analogy of the confessor as the doctor.[[419]](#footnote-419) Belief out of *vanitas*, which is heresy, is hence invalid and malicious, as it sells false medicine and contradicts the truth as defined by Church authority.

The canon then moves on to talk about the duty of collaboration expected from secular rulers, whose negligence would lead to their excommunication, preluding to the later excommunication of Raymond VII, the Count of Toulouse: "But if a temporal ruler, after having been requested and admonished by the Church, should neglect to cleanse his territory of this heretical foulness (*suam terram purgare neglexerit ab haeretica foeditate*), let him be excommunicated by the metropolitan and the other bishops of the province.” (X. 5, 38, 12)[[420]](#footnote-420) It is in this canon that we see the connection of *foeditas* with the heretics. *Foeditas*, as the noun form of *foedus*, stands for things foul and filthy.[[421]](#footnote-421) The pair of filth and its purgation points to an intuitive understanding of social activities and relations running as a theoretical premise with regard to the heresy’s eradication. *Foeditas*, its usage not restricted to heretics, often appears together with other words such as *obscenitas* and *luxuria*, what medieval theologians also used to describe the place of drama[[422]](#footnote-422). Here in the case of heretics, it is their vanity that is connected to their filthy nature, while their organizational efforts and non-orthodox mode of religious practice endows them with a pestilential nature that is explicitly put in the later part of the text: “Clerics shall not give the sacraments of the Church to such pestilential people” (*Clerici non exhibeant huiusmodi pestilentibus ecclesiastica sacramenta*).

If heretic relations are regarded as pestilence, we find social measures to curb the heresy analogous to that of preventing contamination. The pathological definition of heresy is perhaps the result of medieval medical theory which believed the plague to be the result of collective sin.[[423]](#footnote-423) It is an accurate description in the sense that heresy does transmit and it’s often hard to find its root, but it also presumes that actions of deviation are a form of disease, therefore to be cured and purged. By acting correctly and conformingly, one gets cured; by acting out of pride and vanity towards the problem of faith, one becomes the disease within society. The reasoning based on medical analogy may be strange for modern minds but it was much cherished at the age when the bodies of knowledge were believed to be fundamentally interconnected. Now the question is: how exactly did the Church with its secular arm, attempt to eradicate the pestilence?

### Measures for Re-establishing the Christian Community

Among the many instruments in the hand of inquisitors, the two most important ones are documentation management (construction of files of inquisition) and coercive social policy. Researchers in recent decades have been discussing extensively the place of writing for the Inquisition. The preserved manuscripts of inquisitional registers are clear proof of their ability to manage a "heretic database". The one century after the Albigensian Crusade marks the development of the database-building techniques of the inquisitors, leading to the very detailed instructions in Bernard Gui’s *Practica*.[[424]](#footnote-424) With an extreme zest for precision and truth, the inquisitors not only registered files for every suspect and heretic, but also tirelessly searched in the “database” to detect any relapsed heretics whose first appearance in the register may be some decades ago.[[425]](#footnote-425) In *Doctrina de modo procedendi contra hereticos* (produced between 1270-1280), we find the formulae for redaction of a whole set of documents for different stages of inquisition (from interrogation to penance, reconciliation, and relapse) and types of cases: almost a toolkit for inquisitors.[[426]](#footnote-426)

 The documentation system is furthermore put into enforcement by measures that involved local communities. Name lists of heretics were repeatedly read aloud in a public space to make sure that no one would be hiding them. The organization of the Inquisition is based on territorial divisions, and relies primarily on collective action in detecting heresy:

We add, moreover, that every archbishop or bishop should himself or through his archdeacon or some other suitable persons, twice or at least once a year make the rounds of his diocese in which report has it that heretics dwell, and there compel three or more men of good character or, if it should be deemed advisable, the entire neighborhood, to swear that if anyone knows of the presence there of heretics or others holding secret assemblies, or differing from the common way of the faithful in faith and morals, they will make them known to the bishop.(Canon III, Lateran IV, X. 5, 7, 13)

This collective procedure of detection reminds us of the *testis synodalis*, in which criminals were denounced by a group of oath-taking persons.[[427]](#footnote-427) In an extreme case, more than 5000 habitants were enclosed and interrogated in the courtyard of Saint Sernin.[[428]](#footnote-428) The punishment of heretics already passed away could also be very public and dramatic.[[429]](#footnote-429) While collective accusation in order to find suspected people of bad fame is the most common and direct method of detection, it is less apparent for us to know how to deal with the reconciliated heretics.

In fact, another text which has attracted less attention as it merits, explains in detail the way suggested by the Church to purge the contaminated territory by coercive relational measures. The text concerned is the set of canons given by a 1229 Council held in Toulouse. The Council, with the aim of laying down a guideline for the organization of inquisitional activities in the diocese, reveals the social policies of the Church that intend to “cleanse” the contaminating heretics. After repeating on the strict prohibition of local lords to hide heretics, its sixth article stipulated the measure to be taken with regard to the property of heretics, reiterating previous stipulations: *Illam autem domum, in qua fuerit inventus haereticus, diruendam decernimus: & locus ipse sive fundus confiscetur*.[[430]](#footnote-430)

This practice is the direct result of the belief that heretics are the equivalent of filth. The destruction of the house where heretics were discovered is a symbolic move that is also found in other cultures that regarded criminal activities as in essence dirty[[431]](#footnote-431). From the article, we may not know exactly how the house was destructed, but a more plausible conjecture may well be that it was put to fire and burned down. Houses were the principal places for the meetings and activities of heretics. For the theologians, the destroyed heretic house is the *receptaculum sordium*, the refuge of filth (Lucy Sackville), or, to use Reima Välimäki’s term, the “waste-heap” used by dwellers nearby as waste deposits or public latrines.[[432]](#footnote-432) While burning down houses (that is, arson) is one of the most severe crimes in the Middle Ages, it is appropriate when it is used for cleasing purposes.

The repentent person who confessed and returned to the Catholic faith is not allowed to stay where he initially stayed, but must be sent to a *villa catholica*, that is, a village in which no heresy has been detected: *non remaneant in villa in qua fuerant antea conversati, si villa suspecta de haeresi habeatur; sed collocentur in villa catholica, quae nulla fit haeresis suspicione notata*. Certain measures of quarantine are also prescribed by the council, pointing at those who only return to Catholic faith because of fear or any other reasons:

Haeretici autem qui timore mortis vel aliqua quacumque causa, dummodo non sponte, redierint ad catholicam unitatem, ad agendam poenitentiam per episcopum loci in muro tali includantur cautela quod facultatem non habeant alios corrumpendi.[[433]](#footnote-433)

It is noticeable that in contrast to other measures of punishment left to the secular arm, bishops in this case are supposed to supervise the "quarantine" and penitence of those who were reconciled *non sponte*. At this stage, the pathology of heresy is complete with its steps such as detection, diagnosis, cure, and prevention. The connection of crime with a contagious disease is perhaps not a 12th-century invention, and many procedures may be classified as “Germanic.” But through the Inquisition and the ideology of purifying Christendom, this pathology gained wide acceptance and constituted the framework for men in the late Middle Ages to think of crime.[[434]](#footnote-434) This pathology is in its nature the characterization of a certain form of organization and social action as evil. As possibly an example of what Foucault called “dividing practices,”[[435]](#footnote-435) it is also accompanied by corresponding social actions which aim at the breaking down of these relations. Possibly due to the expansion of the detection of heretics as a result of the Albigensian Crusade, the Church proposed detailed suggestions for secular rulers to deal with the contagious elements in their territory. As statistical studies have shown, the execution of heretics only occupies a humble place while a significant proportion of former heretics are reconciled to the Christian community. The question of cleansing should, therefore, attract more interest from historians, but the lack of records may well have contributed to the penury of literature in this respect.

## The Inquisitional Truth and the Self

Although collective deposition is the introductory phase of an inquisitional procedure, the interrogation phase of the Inquisition is secret and directed towards individuals. In convicting a heretic, the inquisitor has to find sufficient evidence. If we may call the truth about one’s faith as revealed by the Inquisition as “inquisitional truth,” then the confession of the heretic, the queen of the proof, constitutes the best evidence for the “inquisitional truth.” In their extortion of the confession, inquisitors adopted various interrogation techniques which include torture and were aided by written documentation. These judicial tools were received differently by inquisitors and common people, reflecting the conflict between two sets of notions concerning the self, writing, and truth. It is the task of this section to sketch the inquisitional truth and its rupture with popular mentality.

### Inquisitor and the Truth

In the ordinary judicial practice of the 12th and 13th centuries, the truth of a crime was not often of the utmost concern. Not to mention that *crimen* at the time meant "to accuse."[[436]](#footnote-436) In our discussion of the *Roman de Renart*,we have already shown that truth as a rhetoric device is current in the discourses of justice, while truth as something substantial causes fear on the side of the litigants as it often means the breakdown of social relations. Justice was a matter of form instead of content in the accusatory procedure, as ritual formality can well cause a case to fail and the truth is manifested under great uncertainty in the name of the omniscient God. However, with the inquisition, the truth, based on the so-called rational modes of proof, becomes essential. As definition par excellence of the inquisitional procedure, the Inquisition relies on written documents and proceeds in secret. The new procedure puts forward three major features that are revealing of a reformed notion of truth: confession, torture, and reliance on written documents. As all three aspects have been the subject of voluminous academic discussion, we will here only make some point on how these notions, put in practice, have been in company with the “concretization” of truth in justice, or put it another way, the banalization of the substantial truth in justice.

 As Pierre Legendre says it, the culture of confession is the result of the convergence of Roman law with the ongoing Gregorian reform[[437]](#footnote-437). Confession is above all a matter of faith, and is officially a duty for all believers, as the Canon 21 of Lateran IV (*Omnis utriusque sexus*, X. 5, 38, 12) made annual communion and confession obligatory. It is, however, also the ultimate goal for the Inquisition procedure. While in previous ages, the judicial confession may be a declaration of one’s honesty and innocence, it is transformed into a more personal action by which one admits one’s own actions and thoughts.[[438]](#footnote-438) While the earlier prevalent purgatory (or compurgatory) procedure for one to “purge himself from the guilt by an oath” and "produce a certain number of honorable witnesses to act as compurgators and testify to the individual's good reputation”[[439]](#footnote-439) was usually satisfied by a communal remedy to a conflict without necessarily the recourse to finding the ultimate truth. The Inquisition, with a substantialist understanding of truth, believes that truth is provable and it is worth it to do so. One’s guilt or innocence has to be proven, and the most convenient and sufficient proof is the confession of the suspect. Interrogation is the most common means in an inquisition to establish the facts and induce a confession. Scholars have long been arguing the constructive nature in the interrogations of the inquisition. We may even say that it is through the interrogative design of the inquisitors that one’s consciousness of self emerged and one’s contact with heretics were categorized and judged. Confession is fundamentally a communication with God, as Gratian would say in C. 33, q. 3, d. 1:…*absque oris confessione quisque possit Deo satisfacere*.... Supported also by Roman law where *confessus pro iudicato est* (D. 42, 2, 1). The importance of this “fullest proof” was reaffirmed by the Council of Narbonne of 1243-4 which is directly relevant to the Inquisition affairs in the Languedoc.

 The interrogation is supplemented by another tool meant to facilitate confession: torture. Appearing in Latin primarily as *quaestio* and in the vernacular *gehine*[[440]](#footnote-440), torture is not the result of the rise of the Inquisition but in fact, a practice recognized by Gratian for both criminal and civil cases[[441]](#footnote-441), and suggested by civilians whose influence is evident in the redaction of customary law in Southern France.[[442]](#footnote-442) The fundamental link between torture and truth is established by its Roman definition: *"Quaestionem" intellegere debemus tormenta et corporis dolorem ad eruendam veritatem* (D. 47, 10, 15, 41).  The Roman torture was only applied to slaves. But in the Middle Ages, it was often confused with the trial by fire and water, and therefore proved to be a powerful deterrence. The pain entailed by torture is believed to be beneficial for its victim as sufferance was indeed the *flagella Dei* which has a lifting effect on one’s soul. In this context, torture becomes intimately tied with confession, so intimate that few people questioned the validity of truth produced by torture[[443]](#footnote-443), even more so given the penitentiary movements that characterized these centuries. Torture, however, is above all an extraordinary procedure whose use is quite limited. The great ordinance of 1254 was cautious of the potential abuse of torture. The Papal bulls such as *Multorum querela* and *Nolentes* (Clem. 5, 3, 1-2) are also regulations on the power of inquisitors. The manuals for inquisitors reflected on the effectiveness of torture.

 In this complex of interrogation, torture, and confession, the self in the face of the Inquisition becomes the machine of truth production, or in Foucault's word *bête de l'aveu*. The substantialist understanding of truth aided by the inquisitional procedure leads to the individualization of the justiciable, as a result of the dominance of truth and the disengagement of the justiciable from any social relations that may cause the failure of this dominance. By resorting to *fama* and collective testimony, the Inquisition still left some room for communitarian mechanisms to work. But now the ultimate purpose (i.e. finding the truth about one’s faith) is not to be doubted and to achieve the purpose, a conscious self was necessary.

### Recording the Heretic Relations

The process of truth’s “banalization”, often portrayed as the replacement of the ordeal by more “rational” modes of proof, is of course not a homogeneous process across Europe as Raoul van Caenegem remarked long time ago.[[444]](#footnote-444) The inquisition relies heavily on the action of telling the truth, either of the suspected or the witness. The end is, of course, to obtain the confession of the heretic, and towards this end, various interrogation techniques have to be used. In an opening of the inquisition, the suspected (denoted as *suspectus, notatus, diffamatus* or *accusatus*) has to swear to *plenam et meram dicere veritatem*.[[445]](#footnote-445) Above all, an instant response (*sine dilatione*) was expected, except for occasions that the suspected can take some time to make reflections out of good intention. Bernard Gui also provides practical suggestions for the inquisitor-judge facing the heretics who have developed ways to avoid detection.

 How is an individual convicted as a heretic? John H. Arnold has already pointed out that earlier depositions were less individualized than those in the 14th century. At first most of the inquisitions’ questions concerned one's action as a believer instead of one’s "inner" beliefs.[[446]](#footnote-446) While in the fourteenth century, “the confessing subject…was allowed—or rather, required—to speak of many things other than the simple fact of contact with Cathars.”[[447]](#footnote-447) Earlier depositions focused almost exclusively on whether the suspect had meals with heretics or received “blessed” bread from them. The manual of Bernard Gui also made a list of questions for the inquisitor to ask in the second chapter of his *Practica*: *de modo et ritu vivendi ipsorum manicheorum*…

 Finding evidence means that the dynamic, contextualized and flexible concept of relation has to be established as a fact. It is in this sense that the depositions are “constructed” artificially as the suspect may not have been aware of the meaning of the questions. A similar mechanism will be shown in our discussion of Joan of Arc. Here we are content to see how this "factualization" of relation, as embodied by the written document, was questioned and attacked.

 In fact, the Dominican friars who led the first phase of the Inquisition were deeply entangled in the city politics and were often attacked. The complicity of local powers with heretics often posed obstacles for their activities. They themselves were of course not angel-like creatures, and the abuses and luxury of Dominican inquisitors were criticized by Innocent IV and Alphonse de Poitier. The crisis period from 1233 to 1273[[448]](#footnote-448) was characterized by the temporary retreat of Dominican inquisitors from Toulouse before finally receiving the full support from the Pope. The way of expressing discontent, for the affected local subjects, can also be buying, stealing and destroying documents. The substantialist conception of truth and the documentation of social actions and relations does not seem to be perceived as something neutral. The crisis, then, reveals the realistic aspect of every kind of judicial procedure, that is, its necessary entanglement with the local power structure. In factualizing the heretic relation, the inquisitors were also dragging themselves into an endless struggle.

## Building the Secular World in Mirror of the Church

In this final section of the chapter, we will have to ask: “How did secular rulers, in their collaboration in the efforts of the Inquisition, secure their rule despite much of their status as ‘invaders’?”[[449]](#footnote-449) To pose such a question would also mean to investigate the communication of the Church’s truth regime to secular governance, the central theme of Part Two. Here we try to compare two different modes of governance represented by Simon de Montfort and Alphonse de Poitiers. Simon, a baron originating from the Île de France, was found entangled in the regional politics of the Languedoc the mechanism of which seemed quite different from his origin given the social-cultural differences. His adventure of rule backed up by the support of the Church was as unsuccessful, as his fate would tell. Alphonse de Poitiers, however, maintained a relatively stable rule without even his personal presence in the county. What’s the reason for such contrast?

### Faith and Custom: The Failed Adventure of Simon de Montfort

The two keywords for Simon de Montfort's rule may be faith and custom. By faith we intend to mean the connection of his military activities with the quest for *salus anime*, while by custom, we refer to his attempt of maintaining the northern, more feudalized relations in Southern circumstances. By nature a military government backed up by the Church, Simon de Montfort’s rule always emphasized its foundation as a religious mission aiming at purging the territory and obtaining *salus anime* for Simon. Under the disguise of concerns of faith, a set of socio-political measures were taken for the purpose of establishing a stable rule.

The social policy of Simon de Montfort is embodied in the *Statutes of Pamiers* (1212), with its noticeable insistence on the Parisian customs. As the “constitutional” document of his reign, the content of the Statute can be generally divided into four parts: (1) Religious organizations; (2) Feudal relations and military policies; (3) Property and fief; (4) Adminsitration of justice. His support for the church is placed at the head of the articles. But most articles intend to regulate the interaction of northern *milites* with southern social groups. Most evidently, article 46 prohibits, in a decade, marriage between those of northern origin with local women.[[450]](#footnote-450) Such prescriptions can be seen as the natural consequence of the massive distribution of fiefs to his barons and knights after the victorious Crusade, a scenario perhaps similar to post-conquest England and the Crusader states.[[451]](#footnote-451)

Pierre Timbal delimited the realm of application of the Parisian custom: “L’application de la coutume de Paris se trouve ainsi restreinte aux pays situés entre les possessions de Raymond VII et la sénéchaussée de Beaucaire, pays qui constituent les partes albigenses, et forment la sénéchaussée de Carcassonne et Béziers. “[[452]](#footnote-452) The Parisian customs as partly depicted by the Statutes of Pamiers maintained to a large extent the characteristics of personal law that tries to establish the conquering side as a special and separated social group. Simon de Montfort, the Crusader who had been to the Holy Land and at the same time belonged to the English nobility, should not be unfamiliar with the practice of legal transplantation of the early 13th century. The old practice, however, seemed to be far from sufficient in the Midi.

 If we are not able to judge the efficiency of his strategy solely by the Statute and his tragic death, his letters and ordinances nevertheless provide more hints on how his program of rule worked. Simon distributed the newly conquered territories from Trencavel nobility to northern knights in exchange for their homage, and insisted on feudal obligations (military especially) that were not so developed in the South. He also convoked the Pamiers parliament, and his son, Simon de Montfort VI would later become the pioneer of the English parliament. Although the measures taken by Simon with regard to feuds and feudal relations were similar to those taken by the Normans in the post-conquest England, Simon did not intend to dominate the Languedocian Church (nor did his successor rulers of the Languedoc) and made concessions apart from the apparently violent persecution of heretics. [[453]](#footnote-453)

Even backed up by the Church, Simon de Montfort and his cherished Parisian customs failed irredeemably. The death of Simon in 1219 is followed by Arnaud-Amaury’s voluntary dispossession of his rights within the county of Toulouse. Timbal attributed the failure to contemporary developments that ran against personal law in favor of territoriality. But we may also say that the land of salvation of Simon de Montfort turned out to be his place of death because he relied on a discriminative relational policy. The Languedoc before the Crusade has already laid the ground for the advent of a truth regime.[[454]](#footnote-454)

### Surpassing the Relational World: Alphonse de Poitiers

As Simon died finding himself deeply entangled in a revengeful relational web around him, the new rulers now had to be more careful. The death of Raymond VII means also the transfer of the county to the couple of Alphonse de Poitiers, the brother of Louis IX. The prince, for most of the time, ruled from a distance, staying mostly in the Parisian region and leaving ordinary administration to his officers. His rule, however, proved to be efficient and served even as the model for policies to be implemented in the whole Realm. Once believed to be a faithful and loyal follower of Saint Louis, his rule has now been revised from a less royalist view.[[455]](#footnote-455) Here we are going to examine the three major aspects that may have contributed to the success, namely, reform legislation, governing by inquest and the building of new political spaces and relations. As we shall see, the French practice was different from the model of Common Law intended to be common for the whole kingdom, and the coexistence of two generally different legal cultures went largely unharmful for the unity of the Kingdom.

Alphonse's legislative activities can well be seen as a secular extension of the social programs of the inquisition, accompanied by a fundamental reform in the idea of crime and justice. Part of the main purpose of his legislation lies precisely in the "concretization" of crime, that is to say, to render justice that is equivalent to one's crime (somehow echoing the Boar and the Monkey). In July of 1251, Alphonse issued an act that tries to define the duty and responsibility of *senechaux*, *baile*s and judges within the county of Toulouse, in which there’s a noticeable prohibition of converting a corporeal punishment to a pecuniary one: *ut pene corporales in pecuniarias non facile convertantur vel commutentur.*[[456]](#footnote-456) Non-convertibility of punishment marks the shared belief of religious and secular authorities, and it is the latter who have imported this notion. In this fashion, crime is regarded as a form of sacrilege, which concerns primarily not the community but sacredness and salvation—thus to be recognized and punished with precision. If we supplement to our topic by the Enguerrand's case discussed in the previous chapter, we may well say that this idea of crime and its practice has generally set up an authority that lies above both the one who renders justice and those who are hence affected. The pecuniary or other commutation measures of punishment for the settlement of dispute were a long-lasting tradition before the 13th century and were naturally a preferred solution. The rise of the ideology of truth and the centralization of power in its name, however, made the coexistence of two different notions of crime and justice impossible. For the learned governors of Alphonse de Poitiers, crime has to be punished in accordance with its extent, after, ideally, an inquiry that would lead to the truth of the affair. The notion of crime and its punishment is therefore by nature intimately linked to the inquest. Another ordinance of 1254-55 again prohibited the practice of accepting “compositions” (that is the money paid as satisfaction to the victim’s family) without the consent of the count. It reiterated its prohibition of converting a corporal punishment to a pecuniary one and stipulated that the plaintiff should not adopt conciliation and give up pursuit without the permission of the judge.[[457]](#footnote-457) These prohibitions seemed to be an innovation and hard to implement even in the more “modern” or “individualized” south. However, they did represent the effort of the ruler to be in line with ecclesiastical ideals.

If the crime should be punished according to its nature and extent, the most critical premise was that certain knowledge of the crime is possible. The religious Inquisition provides a model for secular inquisitorial justice. The evolution of criminal justice in the South did not see much real resistance, given that previous rulers in the Languedoc before the Crusade had already been initiating *ex officio* inquests and tried to base their rule upon written documents. Alphonse de Poitiers' administrative inquests, as another form of rule by knowledge, claimed its purpose as saving the soul of himself and also of former Count Raymond VII[[458]](#footnote-458). In contrast to religious inquisitions, these inquests aimed at correcting the abuses of government officials and local lords. The inquest as an administrative practice found its precedents in Normandy and, closer in time, in the government of Henry III of the Plantagenet. [[459]](#footnote-459) The reform ordinance of the Agenais region of March 6, 1253 provides a typical definition of the role of royal inquisitors: *ad statum terre sue videndum et ea que reformanda viderimus reformandum…correctionis remedio plurimum indigebant, ad honorem Dei et ipsius domini nostri comitis et terre sue comodum et quietem*.[[460]](#footnote-460) The obsession with truth is to be found everywhere in the records, in expressions such as *inquirere diligenter veritatem* and *inquirere plenius veritatem*. Aimed mainly at the maintenance of royal rights and the correction of regional officials[[461]](#footnote-461), the inquest also represents the program of salvation. It is a procedure of interrogating witnesses and places testimony under oath in an eminent position. Preceding Saint Louis’ systematic formulation, Alphonse also emphasized the poor’s right to justice according to Christian teachings.

The final element that may have led to the success of Alphonse de Poitiers may be his active building of new socio-political relations. His move can subsequently be divided into two aspects, the reconstruction of physical public space and the control over the interpretation of norms. We will start from the first aspect, best represented by the institution of various *bastides* also called villes neuves. *Bastide*, probably derived from the medieval Latin word *bastire* (cf. *bâtir* in French) was defined by Curie Seimbre as “toutes fondées *a novo*, d'un seul jet, a une date fixe, sur un plan préconçu, généralement uniforme, et cela dans la période d'une centaine d'années 1250-1350”. Another feature of the *bastide* is that it is often the result of the contract between the public power with secular or ecclesiastical lords which is called the *paréage*. [[462]](#footnote-462)

Although Florence Pujol’s reflection on the historiographical tradition of the *bastide* made the point that popular notions of *bastide* in the 20th century, such as its orderly planning, the existence of a bourgeois class and its democracy and liberty, cannot hold in front of a comprehensive survey[[463]](#footnote-463), we still have to recognize the social and mental significance of massive “bastidization” that took place not only in towns that were built totally anew, but also in some older and more important towns, such as Carcassone, the center of inquisition and the seat of the seneschal. *Bastide* was also used as a stronghold for establishing the territory in the border regions between French and English Kingdoms. In this sense, the new towns contribute to the formation of territoriality and even constitute a competition in prejudice of other lords, as it attracts subjects to leave their lord and dwell in these settlements. An act of Alphonse in 1254 prohibited local lords to build *bastides* without his permission. Given the predominance of the Count's power in the building of a new town, the charters given to these bastides can, therefore, be seen as a pure form of the way a norm is conceived. The basic economic and judicial framework is laid down while almost no political freedom is given to the dwellers. Hence we may infer that even if the physical plan of the bastides is not as uniform as we once imagined, their legal status, however, was almost identical.

As for norms, Alphonse set up the precedent of preventing multiple interpretations and crystallizing the emerging system of written law as against multiple voice represented by local customs.[[464]](#footnote-464) In one sense, the charters granted to the bastides already revealed the ideal model for the royal control of a norm and the physical space to which it is applicable. It can also be understood as a continuation of the movement of granting charters of customs initiated in the 12th century.[[465]](#footnote-465) In the South, the meaning of *consuetudo* changed by the second half of the century where we find consecutive redactions of the customs of Perpignan (1162), Montpellier (1204) and Narbonne (1232)[[466]](#footnote-466). These cities, however, fall mostly in the realm of the Crown of Aragon and the Languedocian region was to some extent retarded in such development. The struggle for autonomy[[467]](#footnote-467) and the vacillating political position of southern cities made it particularly challenging to establish a predominant normative framework. The extreme case may be that of Agen discussed by Paul Ourliac, where the demand for a local customary law is strongly felt.[[468]](#footnote-468) In 1249, Toulouse citizens asked the officers named by Alphonse to swear an oath to guarantee their customs and rights.[[469]](#footnote-469) Again in 1270, the barons of Agenais in a case of appeal demanded to apply local custom instead of the written law, only to be rejected by the Parlement of Paris on the ground of legal certainty: the application of the written law conforms to the public utility, and has long been observed; its fairness and notoriety is well acknowledged and proved by inquests; it is a custom that has been witnessed by many…[[470]](#footnote-470)

Alphonse’s occasional concessions to local interests[[471]](#footnote-471), however, were limited by constant desire to protect Count’s rights and to maintain certainty with regard to both the norms and their interpretation. Much of the institutional developments revolved around the *droit écrit*, such as the reformation of *conseil de regent* in 1270 and the evocation of the yet temporary Parlement of Toulouse which produced many relevant acts. Paralleling the crystallization of a *pays de droit écrit*, the Parlement of Paris also set up a hearing chamber of the written law (auditorium) whose aim was to find out applicable laws by inquest.[[472]](#footnote-472) The process of *encadrement paroissial* (parochial framing) found its counterpart in the South, i.e., the establishment of local judicatures. In principle, a judicature was the court of the first instance that dealt with civil issues involving the Count and the King. However, it soon turned into an administrative and military framework that, by the age of Philippe III, covering most of the Southern territory.[[473]](#footnote-473)

If we regard the granting of *bastide* charters as revealing the ruler’s fundamental perception of social categorization and the institution of new towns as a creative process, the case of redaction of customs of existent local communities differs given its dialogic nature, but redaction as a form of written knowledge has necessarily reforming power that legitimizes and intends to maintain a certain power structure. For our discussion here, Alphonse de Poitiers' rule was not yet the time where the *certa scientia* (a theme to be discussed in the final chapter) of the ruler was cast upon customs. However, the development of judicial institutions and interpretive principles with regard to norms was largely fixed. In contrast to Simon de Montfort who imagined a rule based on different personal legal customs but neglected the earlier centralization process of the region, Alphonse de Poitiers’ rule, paralleled by the institutional developments of Saint Louis, may have been the pushing force for the “Romanization” of Languedoc. The process to establish the primacy of written law and divine purposes of government is realized by a ruler in a transcendent position. Just like the Church that prohibits the circulation of vernacular Scriptures, permitting only Psalms and Hours to be in possession of laymen, the royal government was reluctant to give up Latin in favor of the local language, Occitan. Lusignan’s study has shown that with few exceptions, most of the royal ordinances concerning the Languedoc were written in Latin, making it necessary for bishops and officials to translate them by themselves into Occitan.[[474]](#footnote-474) The long-lasting conservative attitude regarding language policy is exactly another reflection of the attitude of the Northern Kingdom toward the Southern otherness.

## Conclusion

From the discussions above, we first see how the persecution of heresies was also a program of social reform. The Inquisition, therefore, should not be solely considered as a matter of faith and belief, given the fact that the social measures taken against heretics were the integral part of the definition of religious inquisition. The Inquisition, with its aim of finding the truth about the faith, also led to the “banalization” of truth, *i.e.*, the total legitimization of all techniques in producing the judicial truth, especially the confession. The social reform with the purpose of purging the kingdom is then taken up in secular governance, with a Count, later the King, who was generally capable of avoiding pernicious reactions and revolts by controlling the interpretation of norms and building up new political spaces.

Here again, we find remarkable transplantation of the ecclesiastical agenda. Isn’t it the Church that had been practicing effective distant governance for almost two centuries? Shouldn’t the relative success of Alphonse de Poitiers be partly attributed to the success of the transplantation? But now, he has more weapons in his hand. The Midi was a constant training place of jurists who were often characterized by their ultramontanism in Church affairs but also by extreme loyalty to the King’s cause.[[475]](#footnote-475) The royal government, as the "secular arm" of the Church, collaborated closely with the latter, resulting in the high mobility of persons between ecclesiastical and secular power. Such mobility, regularized by the 13th century, has its best representative Guy Foucois, reformer and inquisitor of Languedoc who later became Pope Clement IV (1265-1268).[[476]](#footnote-476)

In the 13th century, the King had no concern for the maintenance of customary law. What determined his policy was the practical reason, and legal unification was not yet regarded as a problem as most of the observers of the age were happy to say that France had two linguistically and legally different parts.[[477]](#footnote-477) The pragmatism is even more evident when we think of Alphonse’s meticulous efforts of protecting his seigniorial interest. In this sense, we may still say that, in the case of Languedoc of the 13th century, the successive French rulers were content to maintain the universalist discourses as long as they would not disturb their efficient rule. In this sense, the success of annexation may better be explained as a good mixture of pragmatism and universalism. Where, however, reside the elements of particularism that are going to constitute the national legal ideology of France?

# Chapter 6: Communicating Truth in Flanders around 1300

In the previous chapter, we brought forward the link between the communication of religious truth and the secular rule of justice. Specifically, we examined the coercive social reform program that comes alongside the Inquisition. By defining heresy as false and contagious, the Church established itself everywhere as the “drugstore” which sells the authentic medicine. Although its historical significance is often exaggerated, the Inquisition does represent efforts of categorizing and controlling relations, a discriminative action based on the premise of the evilness of specific relations as revealed by corresponding actions. The institutionalized Inquisition in the 13th century helps to discover the self which is now defined by its conscience and relation to truth instead of the communitarian code of behavior. The setting of Languedoc is, to a large extent, a field of various experiments of distant governance, while the language difference between the South and the North did not turn out to be a serious problem given the prevailing Latinism in administration and the gradual success of French among Southern urban elites. From this point of view, the case of Languedoc may well be regarded as an exploration of the application of the framework of universal truth, a part of the program of governing the souls.

 The circumstances of royal power in Languedoc after the death of Raymond VII are quite simple and clear when compared to that in the North. In the North, the King is much more entangled in feudal relations and found himself more restrained by feudal codes of conduct even though well at the start of 13th century, royal power had already expanded significantly. At the end of the 13th century, Count of Flanders was probably the greatest threat to the power and authority of French kingship. Notwithstanding the “not so honorable” access to prominence (by eloping with the daughter of West Frankish King Charles the Bald)[[478]](#footnote-478), the 12th-century political mythology attributed to the Count a very important role in the King’s coronation and the political affairs of the Kingdom given his status of being the first among the *douze pairs* of France and the Constable of the King. Since the 12th century, Flanders prospered to become the economic center of Northern Europe, its unique geographical location making it the place where various lines of international trade join. The County, therefore, is more sensitive to diplomatic policies while its bilingualism of Flemish and French distinguishes it from other northern regions (except for Brittany, perheaps). Therefore, Flanders might represent the most complicated situation in the Northern part of the Kingdom, best characterized by the descriptions of medieval French chroniclers who remarked that the Flemish people liked to rebel and were prone to change.[[479]](#footnote-479) The immense body of customary laws promoted by different powers reflects the complex, ever-changing socio-political relations in the region. In the period under study, the rate of urbanization in Flanders reached 30%.[[480]](#footnote-480) With the five largest urban areas as its center, the Flemish system of customary law is the best recorded comparing to other principalities that fall within the Belgian territory of today, such as the County of Hainaut and the Duchy of Brabant.[[481]](#footnote-481)

 The complexities and political struggles, however, did not hinder the growth and consolidation of a truth-regime in Flanders. In this chapter, we intend to capture this truth-regime from two aspects, both of which concern directly with the communication of truth. One is embodied by the establishment of a normative hierarchy and the judicial institutions named as “truth,” the other concerns how, in their political struggles, the people, the Count and the King claimed normative truth. For its analysis, we will mainly look at the discourse of the communicative texts produced on various occasions of struggle, the way truth claims related to norms are constituted and the basic premises underlying the discourses. We are going to compare how different groups spoke out the truth, in what circumstance and by what kind of intellectual backing. If we follow Jan Dumolyn to argue that there is a shared discourse between both the rebels and rulers as manifested in the conflicts of the 15th century[[482]](#footnote-482), we may further proceed to say that truth, as the crucial part of this common discourse, has well been concretized at the end of 13th century. The exact mechanism at work is what we may call the “composite normative claim”, which is a religious and learned reaction with regard to plurality of norms. However, before proceeding to the discourse analysis of some most the representative and dramatic texts, we should firstly make a brief discussion of the legal system of medieval Flanders around 1300, with a particular focus on the judicial institutional settings evolving around the notion "truth."

## The Construction of a Hierarchy of Truth

It is an interesting coincidence that the two keywords that began to dominate the Flemish legal framework since the 12th century, the *sens* and the *verité*, correspond to our study of “senses” (in Part I) and “truth.” The *chef de sens* system is a quasi-hierarchy of norms among Flemish towns[[483]](#footnote-483), while *verité* conducted by different powers puts in motion the cognitive and judicial state building. The hierarchization of norms and the battle for the right to “recognize the truth” through the institutions of *verité* constituted the institutional background of the late 13th-century conflict. In this section, we will first discuss the concept of *sens* for which it is hard to find an exact Latin equivalent, before moving on to the *verité* that is more current in Latin writings.

### The Making of “Sens”

In Flemish towns, a network of sens is established through the general practice by which smaller towns seek for legal counsel or judgment from the aldermen[[484]](#footnote-484) of, especially, the major cities such as Arras[[485]](#footnote-485), Saint-Omer[[486]](#footnote-486), Douai, Lille, Ghent, Ypres, and Bruges. The action is called *aller au sens* in French or *ten hoofde gaan* in Flemish and the more prestigious city being consulted is called the *chef de sens* (or *Kievetain*). Although the origin of the institution is still disputed, it should be admitted that it was partly promoted by the count and the recourse to *chef de sens* often meant a relation of affiliation between the charter of customs of the city and its *chef* (as in the case of Boulogne-sur-Mer with Tournai and Saint-Dizier with Ypres[[487]](#footnote-487)). The system of *chef de sens* is originally of non-obligatory nature and can in no way resemble the ordinary system of appeal but instead allows a form of preliminary ruling on a point of law [[488]](#footnote-488). Besides, the position of the head (*chef*) is not restricted to large cities but can also be any bench of aldermen of lesser importance depending on particular cases. While the reason for the appearance of *chef de sens* is attributed, by Monier to the lack of legal expertise in smaller courts that naturally led them to seek a solution from their colleagues in the principal cities[[489]](#footnote-489), the political motive of this institution is evident from the very beginning and is especially contested since the late 13th century, making it sometimes necessary for the Count to intervene.

*Sens* is derived from the Latin word *sensus* but is endowed with legal meaning in the 13th-century Flemish context. Unlike *cognaissance* whose Latin form *cognitio* has been added a legal meaning in Roman law, *sensus* in Latin was seldom used in the judicial sense of *sens*. In the Latin charters, the word *caput* is the standard designation for the *chef de sens*. In the Old Picardian French text of legal customs of the 13th century, chef is written as *kief*, and *Kievetein* (*chevetain*) stands for the city that serves as the *chef de sens* and to which lower towns have to go for *sens*. *Avis*, *deliberacion*, *conseil* are the words to designate concrete actions taken in the recourse to the *chef de sens*. Although the *chef de sens* is recognized by the Count and its scope often expanded when the Count gave charters to smaller towns in the model of that of major cities, these "highest" chieftains, however, have no higher authority to resort to. In the case when the Count has a dispute with any of the five cities, it is the other four cities that *en auroient la cognissance*.[[490]](#footnote-490) Fundamentally a system based on case law, the recourse to the *chef de sens* can be seen as the first step towards hierarchization. Its growing binding force marks the evolution of a hierarchy, since the *consilium* that the smaller courts first accepted was later on substituted often by *iudicium*.[[491]](#footnote-491)

With the increasing binding force, the procedure was conceived as a form of pre-judgment appeal (*apiel devant jugement*)[[492]](#footnote-492). Unlike our modern conception of an appeal, medieval sources of the time seem to be happy with this definitional self-contradiction. To a certain extent, it is a way to protect local judges, as it lowers the possibility of *faussement de jugement*, that is, the early form of post-judgment appeal.[[493]](#footnote-493) The conceptual ambiguity, of course, was evident as the 13th and 14th century was a period where different forms of appeal were in effect. As Phillipe Godding has pointed out, "appeal" to *chef de sens* in the 14th century can mean either a recourse to the *chef de sens*, a recourse to *faussement de jugement*, or an ordinary appeal.[[494]](#footnote-494) In this sense, the period around 1300 is a period of evolution toward centralization, and, perhaps the equivocal term sens itself has determined that the institution was prone to be manipulated in complex political struggles.

### The Layers of Truth

If on the level of the *sens* of the law, there is a quasi-hierarchy recognized by the Count, the reality can often be hard for us to generalize. But apart from the issues concerning the clarification and interpretation of norms, the Count of Flanders, since the late 12th century, also attempted to institute a hierarchy of jurisdiction based on the institutionalization of "truth," that is, a certain form of judicial information. The reason for this dualist movement is evident as finding laws applicable is one matter while cognition of cases is another. Getting to know about crimes necessarily presumes the will to impose a direction on justice and, therefore, to control the judicial system. As we have seen in the first chapter, the word *verité* in the vernacular usage of the late 12th century had already certain connotations of the judicial procedure of finding the truth, perhaps a derivative of its result, that is, the truth of the case itself.

 There are many forms of truth instituted in Flanders, among others, the *franches verités*, the *veritas scabinorum* and the *coie verité*. Originated perhaps in the Carolingian institutions of *inquisitio*, “truth” became regularized in the great political reform of Philip of Alsace[[495]](#footnote-495). The Count, declaring general peace in the County, was a tireless reformer of procedures, and most of his attempts, at the end of the 12th century, were characterized by originality. In the case of *verité*, it is the vernacular usage that seems to be translated into Latin as *veritas*. And the usage of calling most of the forms of criminal process as “truth” seems to be a phenomenon geographically concentrated in Flanders.[[496]](#footnote-496) Ducange defined *veritas* as *depositio testis*, a definition which is neither exact nor all-inclusive. But the examples he gave all relate to 12 and 13th century Flanders.[[497]](#footnote-497) A surprise may be the appearance of the Champagne city Saint-Dizier. However, it was also a fief of the Count of Flanders due to the marriage of Guillaume de Dampierre with Marguerite of Flanders, with Ypres as its *chef de sens*.

Set aside the insolvable problem of the origin of the *veritas*, we may take a closer look at the forms of truth mentioned above in order to grasp the key evolutions of institution and attitudes in the 12-14th century Flanders. First of all, it is the “Great Charter” of Philip of Alsace, the witness of his imposition of rule of justice on the cities, that defined the urban aldermen’s role of inquiring truth: *Quod si alii assultui interfuerint, de quibus clamor factus non sit, si comes super hoc veritatem requisierit, scabini veritatem inquirere debent*.[[498]](#footnote-498) The bench of aldermen of the city, often regarded as the creation of Philip of Alsace, was meant to be an instrument of the count. Although the nomination of aldermen falls within the power of the count, the group, however, soon gained relative independence, especially after the first half of the 13th century when the count’s power was weakened. Held by urban elites, the office permitted them to negotiate with the count and enjoy autonomy in urban diplomacy and justice.[[499]](#footnote-499) The aldermen’s power to conduct an inquiry is the main constituent element of *veritas scabinorum.[[500]](#footnote-500)*

 In defense of the Count’s interest and to help him exert influence over the large cities, Philippe of Alsace also instituted the Flemish bailiff. These comital bailiffs (*baillis comtaux*), as agents of the Count, are in charge of the Count’s feudal affairs with also prosecuting and policing functions. They often went to counteract the power of the aldermen as their duty was to determine which cases are justiciable by the aldermen, and which should belong to the Count. Although never a judge himself, a bailiff has the function of introducing causes to the aldermen by hearing deposition and “recevoir plaintes et denonciations et de mettre ensuite la justice en mouvement.”[[501]](#footnote-501) Bailiff’s judiciary role was limited, as he was supposed neither to judge nor to arrest the habitants of the city without the permission of the aldermen. In the heyday of conflict between the Count and the large cities, i.e., the late 13th century, some of the charters of the cities also required the bailiff to pledge his commitment to obey the customs, as in the 1304 keure of Bruges.[[502]](#footnote-502) Bailiffs are, therefore, another group of agents intended for the cognition of truth. While the aldermen were charged by the task of producing normative and judicial truth, the bailiff serves more as the informant of the truth of facts as the franchise of the city of Lille put it, *faire venir as eschevins le veritet dou fait et del avenue*.[[503]](#footnote-503) Once believed to be originated from the earlier notaries, the hypothesis has been reputed by De Gryse who traced the various functions and activities of the bailiff back to the offices that he calls the “pre-bailiff” and pointed out that the Flemish bailiff is the result of the great evolution of indirect rule in the 12th century.[[504]](#footnote-504)

Faced with the increasingly independent urban aldermen, the Count was forced to charge his bailiffs with another task, i.e., to ensure the functioning of the *franches verités* (*durghinga*). These truths are of general competence and serve to investigate and prosecute a very broad scope of crimes.[[505]](#footnote-505) The remnant of the accusatory procedure is evident as in their early form, the *franches verités* were meant to collect complaint so that the criminal won’t be left unpunished because of the absence of an accusator. The accuatory nature means that at first one accused by the local jury was able to defend himself either by ordeal or conjuration. But the nature of the testimony of the jury was changed in the second half of the 12th century when “de gegevens van de jury als bewijsmateriaal gebruikt geworden, op basis waarvan men het vonnis velde.”[[506]](#footnote-506) Possibly a heritage and transformation of the Carolingian *placita*[[507]](#footnote-507), the *franches verités* are common in the sense that all people were required to testify. Originally intended only for *magna facta*, the *communes verités* in the 13th century gradually extended over *facta minora*. The tendency of its multiplication by the Count or seigniorial lord is marked by Lameere.[[508]](#footnote-508) It is by nature a form of inquest under the supervision of the bailiff who will later also formulate actions based on its findings. According to Lameere, the typical procedure of the *communes verités* can be roughly summarized as follows: initiation by the bailiff, reports, and depositions in secret, one testimony suffices for judicial action, and the possibility of recourse to *chef de sens* despite the secret nature of the inquest.[[509]](#footnote-509) This "commun truth," well contested by the cities such as Bruges and Ghent, was later on adopted by the cities themselves and became an inherent part of the Flemish judicial system before the French revolution.

The truths imposed by the count through his agents, however, were never welcomed by the large cities, and they tried every means to exempt their citizens from being tried in these truths. The procedural revolution in the 12th and 13th century also brought forward another form of truth around the year 1240, i.e., the *stille waarheid* or the *coie verite*. Also known as the blind (*ceca veritas*) or occult truth (*occulata veritas*), the silent truth according to Van Caenegem, “is de benaming door de tijdgenoten gegeven aan het geheim onderzoek. Het is essentieel een bewijsprocedure, een vorm van onderzoek naar de schuld van een verdacte (en vaak metten tot opsporing van de onbekende dader).”[[510]](#footnote-510) Possibly designed to restrain the communitarian influence on the witnesses that is bound to exist in a public inquest, the *coie verite* is secret and carried out separately in private by the bailiff. It is this form of truth that was the most resisted by the urban population.

As Van Caenegem has remarked, there’s no large principles or doctrines that helped the design of the various forms of truth. It is, indeed, hard to define any one of them as typically accusatory or inquisitorial as well. The truths themselves were evolving all along the 13th century. But for us, this concentration of truth in Flanders may well reflect the concern of Philip of Alsace and his successors in institutionalizing the detection of crimes, a “truth-embracing” strategy (instead of a “truth-avoiding” one) aiming at having all crimes punished. The truths, of course, are not neutral judicial institutions, and bound to cause resistance and various political struggles.

Finally, we may say that the growing tendency of the King and his court to exercise authority over the county well constitutes a certain kind of *veritas regis*. The system of *bonnes villes* that covered the whole Kingdom made the King theoretically the protector of the most important cities of his Kingdom.[[511]](#footnote-511) It was, therefore, natural on many occasions for the city patricians to ally with the King whereas the commoners allied with the Count. Political tensions were in turn reflected by the appeal to Parlement of Paris from the side of the aldermen. As Ganshof noted for the case of Flanders, the earliest case of an *appel flamand* appeared in 1224. While the Count of Flanders always emphasized the exclusive competence of the court of peers in cases that might jeopardize his interests, he was forced to admit that the King has a say over the composition of such a court[[512]](#footnote-512). The resolution of the conflict in favor of the King led to the regularity of the appeal to Parlement of Paris in the 14th century.[[513]](#footnote-513)

With the culmination of the conflict between the King and the Count in the late 13th century, the King made his role of protector more evident by supporting the large cities, such as Bruges and Ghent, to abandon the charter of the Count and make their own laws. In reaction to Guy’s institution of a new customary law in Bruges which was harmful to the rights of the city, the King demanded his guardians in the city to bring 4 to 5 citizens to Paris and these citizens were supposed to be those *qui mielx sachent parler des loys et des costumes de la ville, viez et nouvelles, et qui il veignent garni de procuracion et de procureurs soffizant pour soustenir et monstrer, conre le conte dessusdit, l'ancienne loy de la ville, et de monstrer*.[[514]](#footnote-514) This act can well be seen as an example of proving the custom at the end of 13th century, and, in its acknowledgement of the custom so-made which meant to be the recovery of the charter before the fire of 1280[[515]](#footnote-515), and of the absolute jurisdiction of the aldermen[[516]](#footnote-516), the King’s court also declared the invalidity of the *coie verite* base on its rupture with due procedure, its inefficiency, and the risk of condemning the innocent by insufficient proof:

Inter alia inconveniencia contineat hunc errorem, videlicet que in criminibus, ubi maius versatur periculum, absque citationis edicto nec partis defensione audita, indifferenter processum intollerabilem coye verite vulgaliter nuncupatum, recipit et admittit, hujiusmodi autem processus frequenter talis est exitus, quod innocens qui nihil mali meruit condempnatur, qui foret potius absolvendus; cum esset longe satius nocentem impunitum relinquere, quam innocentem dampnare.[[517]](#footnote-517)

A concern which reminds us of Baucent! The Parlement, by rendering such sentence, was, in fact, acting coherently with its concern for impartiality and properness of procedure.[[518]](#footnote-518) Such is perhaps the disguise of the *veritas regis*.

## The Discourses of Protest

In this section, we are going to summarize the major patterns of legal discourse that justifies the protest of the subordinate parties. The first case is the arguments of the echevins of Ghent directed against the Count in protest of his abuse of power, and seeking for arbitration from the echevins of Saint-Omer. The second case, far more dramatic, is the protest from Count Guy de Dampierre and his declaration of breaking the feudal relationship between him and the King. What interests us most is the formulation and expression of normative truth used by these subordinate parties to defend their right to revolt.

### Vox Populi

Late 13th century Flanders saw a series of turbulence, with the 1280 *Klacht van Damme* and the Bruges *Moerlemaye* preluding a troubled end of the century.[[519]](#footnote-519) In this plague of insurrections, the common people of the cities fought hard to make their voice heard and were ever more intolerant of the abuses of urban elites. Their discourse, as analyzed recently by Jan Dumolyn, relies greatly on the notion of *meentucht*. Also written as *ghemeen* or *meente*, the Dutch word *meentucht* is the equivalent of Latin *communitas* with two meanings: “*Meentucht* can mean both the "commoners" and "the authority of the commons in their meeting." These mean: first, the body of citizens of the poert (the *portus* of the city) apart from its rulers (the aldermen); and secondly, the age-old idea of the popular meeting, the coniuratio of sworn men so central to the beginning of communal politics.”[[520]](#footnote-520) It is, therefore, a notion with concrete social implications and represents specific forms of association between its constituent participants.

 The sense of community is in turn connected with collective and sometimes violent social performances. In fact, the idea of revenge survived to some extent in the public law of the county even at the end of the 13th century. Even in the charters that aim at restricting private violence and maintaining peace, we still find the retaliatory prescriptions which regards public justice just as another form of vengeance. In his suppression of the Bruges revolt in 1280, the eldest son of Guy de Dampierre, Robert threatened that *nous le vengerons a no pooir*.[[521]](#footnote-521)

 The strong communitarianism and the perception of justice as another form of vengeance (thus non-objective in nature) necessarily led to the revolts and resistances against any attempt of monopolization of violence and justice.[[522]](#footnote-522) The problem of “truth” on multiple levels of jurisdiction is, therefore, welcomed more often by anger and resentment. The truth of the urban elites was often the cause for popular revolt, and the demands of the common people were resisted by the urban elites as an encroachment on their power. The legal discourse of the commoners in revolts and their repression has been analyzed in great detail by Jan Dumolyn[[523]](#footnote-523). Here we will turn to the latter topic and see how the urban elites, the self-proclaimed representatives of the community, formulated arguments against the interference of the Count.

 The text in question is the sentence of arbitration between the Count of Flanders and the XXXIX of Ghent produced by the bench of aldermen of Saint-Omer in 1290. Here the aldermen of Ghent, claiming to be pleading *pour leur communité*, listed the major abuses of the Count's bailiffs. Among the dozens of articles stating the major points of conflict, we find allegations that the Count was not respecting rightful jurisdiction, due procedure, laws, customs, privilege, and usage: "sans jugement deskevins” (Art. 1), “encontre le coustume de le vile de Gant” (Art. 2), “sans loy et sans jugement” (Art. 5), ”encontre ches loys et coustumes” (Art. 6), “encontre le coustume de Gant” (Art. 8), “encontre les privileges et les usages de Gant” (Art. 9). The most remarkable, of course, is the case against the *coie verité* conducted by the bailiff and other agents of the Count which went so far to say that the truthest *encontre Dieu et encontre droit commun et encontre les usages de le vile*. The complaint from the side of city aldermen focused on the extraordinary procedure as embodied by the *coie verité*:

…est teile li coie veriteis ke se li tesmoignage sevient ou truevent ou fame en est ou kil tiegnent sour leur mieus ke chil encontre qui on le fait sont soupechoneus de chou ke li baillieus leur met seure la quele coie verite est encontre Dieu...et de perdre toute le vile et en peril de leur cors et de leur avoirs et chele coie veritei fait on sans apeler partie...[[524]](#footnote-524)

The political interest for the bourgeois of Ghent to be against this form of inquisition is obvious. The sentence of arbitration on this point regards it as a question of personality or territoriality of the law. The citizens of Ghent, as represented by the aldermen, demanded that they should be tried only by the aldermen of the city even if the offense is committed outside the city, a claim that would be put into the Charter of the city in 1297.[[525]](#footnote-525) The sentence here, however, adopted a moderated approach by distinguishing two situations: being caught in place (flagrant délit) or not. While those citizens of Ghent caught in lace should be tried according to the law of the place, those who were arrested later could choose the law under which they could be tried.[[526]](#footnote-526) But for us, a more interesting question may be: why the coie verite was believed to be *encontre Dieu et encontre droit commun*?

 The sentence of the Parlement of Paris cited above gives us some hints. *In criminibus, ubi maius versatur periculum, absque citationis edicto nec partis defensione audita*… The concerns of the procedural writers since the 12th century is apparent. The third point in the complaint corresponds to this concern of procedural abnormality. The underlying reasoning is based on the Scriptural description of God’s trial of Adam and Eve, and it soon became the fundamental argument for due procedure. To be also added is the fact that the *coie verité* even recognizes the testimony of single witness, a practice that goes against the adage *testis unus, testis nullus* (C. 4, 20, 9, probably what the *droit commun* referred to) and against John 5:32. In making normative claims, the pleaders of both sides seem to be cautious to make the fact and allegation of norms concordant. If at this end of 13th century, the urban elites, in the name of the community of Ghent, were invoking laws, customs, usages, *droit commun* and even God, the practice makes it clear that there is certain order and combinations with regard to norms. In fact, as we shall also see in the text to be analyzed in the next subsection, such discursive mechanism is also manifest when the Count claimed his rights against the King.

### The Voice of a Vassal

If the “public good” stands at the core of the truth-claims of the urban population, the Count, in defense of his interests against the King, put more emphasis on *droit*. The deteriorating relationship between the King and the Count culminated in January of 1297 when Guy de Dampierre, through two abbots, sent a letter to the King declaring the breakdown of the feudal relation between them. Like most of the complaints of the cities and the commoners, the text is written in the vernacular (namely, the Picard French). It is a letter where the Count enlisted all kinds of injustice he suffered due to the mal-advised king, the main reason for this breakup. Dirk Heirbaut remarks that this memorandum can well be called a letter of declaration from Guy de Dampierre, its richness in content and style making it close to a pleading letter of an advocate.[[527]](#footnote-527) The most striking characteristic of the letter is its emphasis on all kinds of *droits* being jeopardized by the king. The text proceeds in a sequence starting from economic affairs, then jurisdictional conflicts and finally feudal affairs. Droit is above all a concrete notion: the king hampered the commercial activities of the County and manipulated coinage, which has done much harm to the count’s economic rights; his institution of guardians in the city of Ghent turned out to be a source of instigation of the conflict between the city and the count, which disturbed the count’s peaceful exercise of jurisdiction; and finally, by forged documents, the king dispossessed the count with great injustice and refused the convention of a court of peers, thereby damaging the feudal rights of the count. Repeatedly the letter accused the king of acting *encontre droit*. The king's court, for the count, is bound to be inimical for him, a court that would offer him neither right nor reason. *Droit* and *reson* here seem to be, again, a pair of synonyms, like *droit* and *verité*. These interchangeable notions represent the ambiguity and hybridity of norms, a fundamental character of the ordinary and practical legal reasoning of medieval minds.

However, a mere infringement upon rights solely would not constitute sufficient cause for rebellion. The count also made an effort in making clear that his move was motivated by a constant denial of his informative actions. The count, as the text said, had for many times reported that he was being treated wrongly, while the King never wanted to listen: *vous ne l’en vousistes onques oir, or, onques ne l'en vousistes oir*. Addressing the king (vous) directly, the count chose “wanted” instead of “didn’t”, emphasizing the arbitrariness of king's judgment, therefore hinting on his tyranny. On this ground, the count declared the dissolution of all feudal relations (*deslié, assouz et délivré de touz lienz, de toutes aliances, de toutes obligations, de toutes convenances, de toutes obéissances, de touz services et de toutes redevances en quoi il a esté obligiez ou tenuz envers vous*) and added that he was ready to use the power of his own to pursuit his *reson* (again, it is almost the synonym of *droit* and *verité*):

Se tenra li quens, à l'aide de Dieu, de ses amis es des siens, à l'éritage et au droit qui li est venuz de ses ancheseurs, et qu:il a et poursieuvra sa reson à son pooir.[[528]](#footnote-528)

The most remarkable part of this memorandum for us, however, is the way the count argued why a court of peers was the only just solution for the conflict between him and the king. First and foremost, it is the *droit commun*: *Nul n’est juge en sa cause*. The vernacular expression of the principle of *nemo judex in causa sua*, a revised and more explicit version of C. 3, 5: *Ne quis in sua causa judicet, vel jus sibi dicat*. The same principle is also to be found in the second book of the *Etablissements de Saint Louis* under the rubric “D’estre juge en sa propre querele” (XXVIII)[[529]](#footnote-529) which made explicit reference to Roman law. As we have noticed before, the learned law often penetrated into the North in the form of proverbs of law or *brocardicae* that are easy to be memorized and circulated. Here we see further the importance accorded to such proverbs while direct reference to the original text of the Roman law is absent. This phenomenon may well be the result of ideological struggles revolving around Roman law, but may also reflect a process of interiorization of Roman legal precepts into the customary legal order that sometimes goes unnoticed by the author himself -- even though in customary practice the principle was not always observed. Besides, the Count did not hesitate to point out its concordance with customary and feudal law: *comme par la coustume de France et par convenances qui estoient entre vous et lui.*[[530]](#footnote-530) Of course, his argument somehow contradicts his own policy within his own lands by which he used every means to establish the superior authority of his own truth.

 The court of peers, then, is primarily the consequence of droit commun principle: *si ceste querele est entre le seigneur et le vassal dou fyé, li per de la court en doivent estre juges, einsi comme la querele fust de la dessaisine de tout le fyé*.[[531]](#footnote-531) The elaboration on the necessity of the court of peers as the only legitimate means dealing with a case of dessaisine (depossession) like this does not stop here. The author continues to demonstrate its legitimacy in other frameworks of norms, that is, the custom and the feudal covenance: *par coustume en devoient li per estre juge*. As for the ancient covenant that defined the feudal relationship between the king and the count, possibly referring to the Treaty of Melun of 1226[[532]](#footnote-532): *par convenance, car ancienement, il fu acordé et convenancé entre le roy de France et le conte de Flandre*. The content of this covenance is nothing other than that: *si débaz ou contenz mouvoit entre les roys et les contes, li roys en devoit faire droit et penre droit par les piers de France*. While the covenance is renewed and upheld by every generation of King and Count: *lesqueles convenances ont esté continuées et renovelées de roy en roy et de conte en conte*...[[533]](#footnote-533)

The three elements, put together, constitute a complete normative claim which also reveals the medieval consciousness of multiple sources of law. Moreover, as we shall see later, different combinations of normative sources can actually reveal the relative importance attributed to each of the sources and therefore present different legal discourses from different political and ideological stances. In fact, coordinating different and conflicting norms may well have been the basic skill of a medieval customary lawyer, and the necessity of making such normative truth claim reveals the dialogic nature of his work since each invocation of the source of law points to certain social powers to be persuaded and put into concord. The Decretum of Gratian is also entitled as *Concordantia discordantium canonum*; and it was very common for medieval people to think of legislation of many years earlier as custom.[[534]](#footnote-534) This interchangeability of norms reveals the fundamental way of reasoning with regard to different sources of law.

But here we would better tackle some fundamental questions firstly before venturing to the study of the "discourse of legal customs", a theme of the final part of the dissertation: (1) Why the Count addressed the King in French instead of Latin, especially given the fact that the text was handed in to the King by two abbots? (2) Is the court of peers so ancient an institution as claimed by the Count?

 The first question first. Philip of Alsace’s reform in the 12th century gave rise to numerous normative texts that are generally categorized as charters (or keures in Flemish). These charters, as legislation of the Count, were at first written almost exclusively in Latin. Writing documents of public nature in French is an innovation carried out by the northern towns of the Kingdom in the 13th century. It was adopted later by the Count (c. 1250) and much later by the royal chancellery. For Brigitte Bedos-Rezac, the prevalence of Latin in royal chancellery is to be explained by the sacralizing effect of the language.[[535]](#footnote-535) While in Flanders, different sources of power coexisted. One the one hand, the urban elites were happy to announce their decisions in French and the commoners in their native language Flemish. On the other hand, personal feudalism was the tool for the centralization attempts of the Count[[536]](#footnote-536) and the best reason for resisting the increasingly strong royal intervention. For the Count, French is at the same time the language of secular authority in his county, and the language of a vassal whose rights and interests were guaranteed by personal commitments between him and the king vowed in the vernacular.

Now we turn to the problem of the court of peers. Although it is common for ordinary nobles and knights to be tried by peers of their own rank, in case of the Count of Flanders, the court will be the one constituted by the 12 peers of France. But if we suppose, on this ground, that Guy is the representative of the feudal past is something superficial. In fact, the 12 peers of France appears only as late as the second half the 12th-century[[537]](#footnote-537), meaning that Guy's claim of the continuity and antiquity of the custom can be nothing other than a myth. (The "old custom" which is actually new is something common as Esther Cohen has pointed out.[[538]](#footnote-538) But of course 70 years’ span has well passed the normal standard for establishing a custom.) The central point of his discourse lies therefore in the *droit commun*, and the court of peers is the most convenient alternative if he should not be tried in the king's court Parlement of Paris which is apparently hostile to him. But we may not suppose that he really expected this court to protect his interest, as already in 1297, Philip the Fair had already made an adjustment to the composition of the 12 peers, making it more realistic by deleting Champagne, Normandy and Toulouse and adding Duke of Anjou, Count of Artois and Duke of Brittany to the list.[[539]](#footnote-539) The once dubious and hardly organizable court now gained practicality only because of Philip the Fair! The Count’s demand is, in this sense, more a cause for his rebellion, and the invocation of the court can only be seen as a rhetorical device to make a complete denunciation of Philip the Fair on the pluralistic normative scale. Even if he were really tried in the court of peers, the chance for him to evade the King’s manipulation would have been small. Guy’s resistance to King’s jurisdictional hierarchy is understandable as even in the early 14th century, there was no clear conclusion on this problem. Although the Parlement of Paris had in practice often “usurped” the rights of nobility, Guy’s memorandum reflects a point of view that believes in the limitation of the “King’s truth” and it was first and foremost the commonly applicable principle that should serve as the “constitutional”(in our modern sense) restraint on the King’s power. The tension of King’s absolute power of justice and the common legal precept that no one can be the judge of his own case can hardly be relieved, but the Parliamentarians, in elaborating their function and delegated power, made the case for King’s law to surpass general principle. The theory is already put forward in the *Etablissements de Saint Louis* and is best summarized by the 16th century jurist Antoine Loysel who states at the very beginning of his *Institutes* that the law of the King differs from common rule as with regard to cases related to the King, he is legitimate to be the judge for his own case and “l’assistance ordinaire qu’il a de conseil, et conseil choisi, sont causes suffisantes pour croire qu’il ne jugera rien que justement“, that is to say, we have to presume that he will render judgment justly as long as he has the Parlement working for him. [[540]](#footnote-540)

Read aloud in public space in Bruges, Courtrai, Audenarde, Gand, Lille and Douai, this letter intended to break up the feudal relationship presents us a remarkable case of how facts about impaired rights are stated and how different sources of norms are invoked. As King’s vassal, the Count, appearing as “he” in the text, is trying to exhaust all kinds of norms, be it feudal, customary or that of *droit commun*. Conscious of the plurality of norms, such discourse meant to establish the legitimacy of Count's rebellious move on a basis as objective as possible. This objectiveness or “truth” is the result of putting different norms into concordance. However, we should not neglect that this combination of the allegation of norms, or normative truth claims as we may say it, also comes with a sequence, with God and the *droit commun* of prior concern, exactly as the pattern we see above in the case of arbitration. The normative truth in both cases, as we should say, starts from its universal premises. But for both writers, they believe that the success of a normative argument depends on how well various norms are coordinated. Now, despite the emergence of the principle that *rex in suo regno imperator est* and that the French King has no secular superior, the Count plans to appeal to the Papal court. This time, what kind of discourse will he present?

## Addressing to the Pope: the Count and His Legal Experts

The establishment of a “truth-embracing” judicial system in Flanders in the 12th and 13th century is effectuated on a pragmatic basis. Different legal discourses stemmed from the Count also reflect this pragmatism. He needed the legal experts for various reasons and on various occasions who helped him to produce normative truth claims that serve as the essential part of his diplomacy. In a day when the law began to dominate in any form of governance, the Count made careful and pragmatic employment of legal experts.

### The Idyllic Guy de Dampierre

A myth whose origin may well date back to the Late Middle Ages portrays the conflict between Guy de Dampierre and Philip the Fair as essentially between feudalism and the malicious legists around the King. At the same time, the myth may be accompanied, not without any contradiction, by a fact in military history that the Battle of the Golden Spurs of 1302 symbolizes the fall of chivalry in front of the civil militia. The Count seemingly represents a feudal past, a past where good old customs ruled. The Count himself may have been the promoter of the myth of Saint Louis as a restraint on Philip the Fair.[[541]](#footnote-541) However, a change from feudal idealism to the malicious rule by legists is too simplistic a vision of history and may be the sign that one has fallen victim to the rhetoric of medieval legal disputation. In fact, it is not various sources of law that are in conflict here, not even jurisdictions as the Count is no less fond of establishing a hierarchy in his favor. Wouldn’t the Count do the same as what the King has done on him should any of his vassals run into conflict against him?

 As a matter of fact, the customary Flanders was not singular enough to avoid the influence of the common legal culture of Europe. But the channel of influence did not work on a regular basis. Just as most of the Flemish judicial institutions before 1300 were combinations of different institutional legacies, Guy de Dampierre also made use of the combination of university graduates, of legists and canonists. Gillissen remarked that *legum professores* played important role as counselors of Guy de Dampiere[[542]](#footnote-542), and Ganshof also noted that the conceil of the count since Guy’s time was often constituted of those who are trained in law in a foreign country, and many were even foreigners such as French and Italian.[[543]](#footnote-543) But as the research of Dirk Heirbaut shows, these legists mainly stationed and were paid in Paris to deal with Count’s affairs. These legists therefore are more often the *porte-parole* of the Count and are in charge of stating the stances of the Count in commonly accepted language and style.

 If the Count also made use of legists, how could they be such gloomy figures in front of the legists of Philippe le Bel? The problem should probably be explained by the literary tradition revolving around this “diabolic” King who actually won the conflict. His success was explained by his tricks, carried out by a group of counsels who were too far stereotyped and idealized. The prosopographical examination of Lalou reveals that jurists accounted for only a small proportion of the men surrounding the King. The bad reputation of the legists is hence more arguably a biased portrayal of contemporary writers and their successors.[[544]](#footnote-544) Judging from the retrospect, the end of 13th century was far from an age of centralized judicial system which rendered learned influence systematic.

 Dirk Heirbaut discussed Guy de Dampierre’s letter of 13th January 1297 which stopped the functioning of his legists in Paris. These legists, not engaging themselves directly in the administration of the County, stationed in Paris as Count’s proctors to help with his case in the Parlement.[[545]](#footnote-545) Soon after his break-up with the King, the Count also ceased the activity of his legal representatives officially.[[546]](#footnote-546) However, the retreat from Parlement of Paris does not mean that the Count has no men of law working for him. In fact, his employment of these people was as pragmatic as his internal policy. To see how a legal discourse different than the above two texts was proposed, we shall turn to a text dated 1299 in which the Count's legist solicited Papal intervention in the form of an appeal. If the earlier “declaration of war” may be read as a text produced by a legist with customary experience, the 1299 text shows that the Count’s canonists is equally capable of writing in a pure learned law discourse.

### In Front of the Pope: The Canonist’s Discourse

As we shall see, the cease of activities in Paris would not mean that Count will not employ any men of law. His canonists, for example, were not dismissed, and the memorandum of the Count addressed to the Pope on December 29, 1299, may be the witness that the Count was still employing them to plead for his case. The text, with the aim of soliciting the reception of his appeal by the Pope Boniface VIII, proves to be written in a learned language of law (although we may find traces of pattern of vernacular language) with plentiful references to Canon law and Roman law in its demonstration on the jurisdiction of the Pope over this case. As Dirk Heirbaut has revealed, it might be redacted by the Roman notaries that Jan Calward hired.[[547]](#footnote-547) After a succinct statement of the tenor and the undue treatment of the Count, the Count asks the Pope *contra dictum regem Francie sibi judicium et misericordiam exhiberi*. The king has done on his vassal innumerable *gravamina*, and *misericordia* was sought from the Pope as a correction of King's vice. The text then proceeds to discuss why the Pope should be the judex competens. There are six reasons in total:

Firstly, the Pope is the highest judge in both religious and secular affairs;

Secondly, the Pope can judge and depose the Emperor who ranks the highest among secular lords;

Thirdly, Any oppressed Christians have the right to appeal freely to the Roman pontiff;

Fourthly, What the French King did in the County of Flanders intruded upon Church interest;

Fifthly, the French King killed clerics and clergymen, thus committing sacrilege;

Sixthly, the French King refuses the organization of a judgment by peers, leading to the default of secular courts and making the ecclesiastical justice competent.

The Latin complaint made a rather peaceful account of King’s sinful acts, mainly for the purpose of constituting a *ratio fidei* for the Pope to intervene. The Latin description stands in sharp contrast to the sufferance of the Count vividly recounted in the French text addressed to the King. Instead, it tries to make connections of this conflict with the interest and concerns of the Church, and concludes by invoking Pope’s supreme authority and duty of maintaining peace. The most striking difference, however, lies in the way truth claims about the norms are formulated. In contrast to the vernacular *droit* that tends to refer to concrete liberties and privileges, here we find that the writer was actually resorting to only one norm instead of multiple norms. In the vernacular text, *droit* has at least three layers of meaning: the right that is concrete and specific, right as the synonym of reason, and the normative "right" as in *droit commun*. The Count's concern is, in that text, to prove his right to be tried in a court of peers by coordinating the norms. There his demonstration is more historical than doctrinal, since, in addition to the *droit commun* argument that failed to cite explicitly the Roman law source, he also found it necessary to supplement it by the record of practice, that is, the inherited and renovated covenant between the King and the Count of Flanders. Reference to learned legal texts in that text is not necessary as it also has the purpose of being disseminated to a wider audience, namely the Count's subjects, so as to communicate to them the fact that he was fighting for a just cause. That is the reason why in the vernacular text the Count was emphasizing his sufferance and pain while in the Latin text, much effort was spent on the elaboration of the hierarchy of jurisdiction (with reference to the power and its limit of the Pope, the Emperor and the King). Referring to C. 15, q. 2, alius and the dictum of Jeremiah 1:10 (*Constitui te super gentes et regna*)[[548]](#footnote-548), the author found arguments to avoid the application of the Bull *Per Venerabilem* which prescribes that the French King *nullum superiorem recognoscit*. It is the demerits of the King that made the supreme judge, the Pope, competent of receiving the appeal. The problem was then defined as one when *deficit judex*, the X. 2, 2, 10 (*de foro competenti. c. licet*，which stipulates that lay civil litigation should not be received by ecclesiastical courts, unless there is default in secular justice or applicable customs) making the count’s appellation especially reasonable, even more so when trial by the court of peers is denied by the King. Everywhere *ius* stands for the two corpora of Canon law and Roman law. *Ut dicunt jura*, *de jure quod*, *cui favent jura*: What *ius* stands for here is exclusively the “sacred” texts of law which is the only source for any legal argumentation, ruling out, therefore, the necessity of bringing custom into the scene. The iura themselves guarantees the authenticity and legitimacy, making it useless to add any supplementary argument in favor of a court of peers. Here, Count’s canonist cautiously portrayed an oppressed Christian who was trying to appeal in the Papal court against the rulings of a sinful King.

## Conclusion

In this chapter, we examined two aspects, one institutional the other discursive, of the Flemish legal system of the late 13th century. From an institutional point of view, there had been an evident tendency of the establishment of a hierarchy of norms and jurisdiction in Flanders since the 12th century. The authority of "saying" or “making sense of” the norms fell to the larger cities whose basic power structure was in turn defined by their charters. The Count, in his main efforts of ruling the cities effectively through justice, instituted the *veritas scabinorum* the power of which was later on usurped by the city aldermen. Another inquisitorial procedure was introduced to curb the independence of the aldermen, the *coie verite*. The medieval Flemish political actors, in our story, clearly see the link between *veritas* and power.

 In defense of one's interest, a demonstration of the verity of one's rights is necessary. Communicating truth in the vernacular, the Count relied on a composite argument about norms that is suitable for both his status as an angry vassal and as the ruler of his subjects. The *droits* of the Count are, therefore, a synthesis of realities and doctrine, reflecting his discursive strategy in the face of the plurality of norms. Finally, in his address to the pope, we found his legal experts at work. In this Latin text, we found no mention of customary and feudal sources of law, for ius here is the equivalent of authoritative legal texts. The truth about his *ius* is, in this case, a textual and doctrinal production without any realistic reference.

Although the pragmatism is strongly felt in the discourses we examined, the historical development, from a retrospective, goes to the contrary of such reality. It is a paradox to note that the political conflict around 1300 and the final failure of Guy de Dampierre actually facilitated the establishment of a hierarchical legal order. In this sense, the episode examined in this chapter is the epilogue for the long power struggle between the King and his barons in the context of centralization of power. The King is facing a composite normative truth claim which places Christian authorities and the *droit commun* above the status of the King as the universal norms. What kind of discursive device should be adopted if he should claim his superiority and absolute authority over the plurality of norms as the “Emperor in his kingdom”? Such is the question for the third part.

# Part III

# Chapter 7: The Common Basis of Historical and Normative Truth

In the previous two parts, we examined the construction of the “truth regime” as a European movement together with its representations and communication. The movement starts from the reform of man's senses and social existence, and enforces a set of "true" causes-and-effects with regard to man's social interaction. From the perspective of intellectual history, theology and law are without doubt the two pillars of this movement. In the previous chapter, we noticed that in his quarrel with the French King in the late 13th century, the Count of Flanders proposed a composite claim of rights in the defense of his interest, in which the God and the *ius commune* served as the fundamental restraint over the royal power. In the later quarrel between the King and the Pope, the King also finds it necessary to construct his own composite of normative claims with a hierarchy that prioritizes his own legislative authority and denigrates universal normative claims. It is exactly in this constructive process that customs rose to an important status in royal ideology and became a source that the Realm would not hesitate to exploit.

 This chapter will discuss the truth-conferring property of royal power, especially with regard to historical truth and normative truth. It is in fact in the last two century of the Middle Ages that the King began to claim absolute control over the validity of history and norms. Above all, the growth of the rule of justice implied the growing dependence of the royal governance on archives and legists, which led to a redefinition of history. While in a process of demarcation of the interior and the exterior, mainly in the form of political struggles, the propagandists of the Kingdom found history the key concept for the consolidation and expansion of King's power. This history, contrary to the traditional view inherited from Antiquity, is essentially a history of the state and its institutions, whose narrative framework is laid down by normative documents and the judicial archives of the Kingdom. As we shall see, this redefinition of history brings about the "historicization" of truth. It is at the same time a process of selective conferment of “truth” to certain types of documents: those “approved” by the royal power are regarded as true and therefore eligible for making historical arguments. The historiography of 16th century French jurists is seen as the pioneer of modern historical criticism. But we may trace the origin to the late medieval context where power and truth embraced each other.

 Then we will proceed to demonstrate that the rise of customs as an ideological device should be understood in this larger process of historicization in the realm of normative truths. Generally, in the Late Middle Ages, the place of custom was contested, but the propagandists of the Kingdom found out early that custom approved by the King is a useful theoretical weapon for the justification of royal power. The discovery made it necessary to figure out a way to establish authoritatively the customs, a question to be fully exposed in our last chapter. The rise of customs also implies the relativization and historicization of Roman law, a marvelous attempt if we consider the intellectual atmosphere of the time. In this respect, we would suggest that the rise of customs as an ideology is likely a result of the primacy of *historia* and the union of historical truth with royal power as mentioned in the earlier paragraph.

 Finally, we will examine a rather complicated case, that is, the discussions on the nature and origin of the Salic law in late medieval France, to demonstrate how the notions of historical truth, royal constitution (in its Roman law sense of *constitutio*) and customs were interconnected and interacted. An important rediscovery during the process of the Hundred Years War, the Salic law posed nevertheless a cognitive and descriptive challenge for French propagandists, especially with regard to its origin and nature. The different lines of thoughts in this respect represent multiple attempts at reestablishing the normative order in the wave of “anti-universalism.” By finding out the “orthodox” recognized by the state, we may also find out the guiding principle of normative reconstruction of the Realm.

## The Notion of *Historia*: A Fundamental Change

*Historin, id est video*. This is the mainstream belief about history in the Middle Ages, and the reason why in this long period most of the historical writings were narratives in first person singular. But at the same time, history incarnates the most elementary level of the sense of Holy Scriptures in Biblical exegesis. In the medieval conception, the Bible is, above all, the most authoritative history book, and the ideal history is *gesta Dei*. For a rather long period of time, the two meanings of history, as personal witness and as the literal meaning of a text, went along with each other well and theologians were cautious to maintain a relative equilibrium between the historical and spiritual interpretations (i). However, in the conflict between Philip the Fair and Boniface VIII, French jurists enhanced significantly the role of history by seeing it as the sole valid material for argumentation. A certain sense of historical criticism is born with the accordance of primacy to history, while such historical criticism is based on the presumption that a document gains the status of truth after being approved by royal power (ii).

### Historia: its Traditional Sense and Status

That history should be the faithful account of the witness is a concept inherited from Antiquity. As always, we find Isidore of Seville as the bridge of idea transmission:

Dicta autem graece historia… id est, a videre et cognoscere; apud veteres enim nemo conscribebat historiam, nisi is qui interfuisset… melius enim oculis quae fiunt deprehendimus, quam quae auditione colligimus[[549]](#footnote-549)

In this sense, Isidore not only defined history, but also proposed a rather simple vision of historical criticism, that is, seeing is more trustworthy than hearing. Most historians in the High Middle Ages were all too familiar with this principle. 12th century historian Guibert de Nogent emphasized the primary value of personal witness.[[550]](#footnote-550) We may also recall Joinville, the author of a biography of Saint Louis, who kept emphasizing his personal witness of what he wrote. When he only got the information from hearsay, he would also make his source clear.

 However, Christianity put forward its own notion of history too. For the Church, the Bible is a sacred history and the history *per se*.[[551]](#footnote-551) But history, as the equivalent of the literary (*literaria*), is also one of the four senses of holy scriptures in the tradition of exegesis, along with *allegoria*, *tropologica* and *anagogia*. It is, therefore, not hard to see that in the medieval discussion of history, the meanings switch from one to the other easily, making the topic highly malleable and extensive. The hermeneutic nature of history also implies the lack of historicity in a modern sense, as history is inseparable from other senses and is a tool for accessing to the spirit of texts. In the search for the spiritual meaning of the Holy Scriptures, theologians acknowledged the fundamental role of history as Saint Jerome would say in one of his epistles: *historiae veritas, fundamentum intelligentiae spiritualis*. [[552]](#footnote-552) It is impossible for one to talk about spiritual truth without knowing the historical truth. As Saint Gregory: *qui verba accipere historiae juxta litteram negligit, ablatum sibi veritatis lumen abscondit*[[553]](#footnote-553), Abelard would prefer the metaphor of history as the root: *primo…rei gestae veritatem quasi historicam figamus radicem*.[[554]](#footnote-554) But the role of history as *fundamentum* should only be understood relatively as theologians seldom accorded to it superior status over the spiritual. In fact, the exegesis of the Bible should be carried out and comprehended as a whole, and the inquiry of history must lead to reflections on other levels of interpretation.

 In fact, before the maturation of scholasticism in the 13th century, the relationship between the literal sense and the spiritual sense are more often understood as the humanity and divinity of Christ, the former being the visible humanity and the latter representing the invisible divinity.[[555]](#footnote-555) This Paulian dichotomy is also manifest in Bede the Venerable who qualified the way of literal exegesis as interpreting “fleshly” (*carnaliter*) or “according to bodily sense” (*secundum sensus corporeos*) in contrast to the spiritual way. This binary understanding may explain why early attempts of exegesis were obsessed with finding the spiritual meaning to each phrase of the Scriptures, a tendency to be corrected by the more philologist stance generally adopted by the scholastic scholars (see the next subsection).

 Given the considerations above, we may better understand why the authors of historical writings in the High Middle Ages were not often satisfied by giving their work only a historical meaning. According to Guibert de Nogent, a perfect history has to be revealing with regard to the *gesta Dei*, and the model of the exegesis is adopted in interpreting historical events (in his case, the Crusade) in terms of universal history.[[556]](#footnote-556) In contrast to the modernist notion that we are able to approach the truth of history by a reasonable and adequate use of historical sources, the hermeneutic history of the Christian Middle Ages is dependent upon the absolute truth of the Bible. Of course, this truth has more to do with acknowledged authorities, and in the 13th century, the Church was more than ever concerned with its use to support its claims.[[557]](#footnote-557) The extended use of spiritual senses is to be countered by historical arguments.

### The Primacy of History and the Approbation of History

Provoked by the conflict between the King and the Pope, the French propagandists (mostly King’s legists) significantly lifted the place of history as they tend to find most of the arguments in favor of the royal power by a historical interpretation of authoritative texts. The conflict helped to lay down the core topics of political writings in late medieval France. Judging from its textual form, the debate between the King and the Pope is a real exercise of medieval university training, most evidently manifested in the mass production of argumentative texts written in the formula of *questiones disputatae*[[558]](#footnote-558), reflecting the common intellectual framework and reasoning technique used by both parties in the conflict. The most well-known texts are perhaps the *Quaestio de potestate papae* of John of Paris, the anonymous *Disputatio inter clericum et militem*, the *Quaestio in utramque partem*, and, some decades later, the *Songe du vergier*, the conclusive and synthetic text of Evrart de Trémaugon commissioned by Charles V. The mutual influence between medieval theology and law is manifest in these texts[[559]](#footnote-559) and the French theorists, mostly theologians and canonists from the University of Paris, were making their case for a correct interpretation of authoritative texts by insisting upon the importance of history. But how was this primacy of history demonstrated?

 John of Paris’ demonstration of the invalidity of one papal argument is straightforward in expressing the primacy of the historical sense over other senses in argumentation. In *De potestate papae* (also known as *Rex pacificus*) now attributed to him[[560]](#footnote-560), he reasoned against the papal bull Solita (X 1.33.6) according to which the Pope is the sun that gives the light and the King is the moon whose light is only derived from the light of the sun, therefore, inferior to the sun. The text, as an early version of his treatise on royal and papal power[[561]](#footnote-561), lays down the guiding principle for exegesis and argumentation. Jean argued with force that:

...assumunt Theologi Doctores, quod duplex est sensus sacrae Scriptuae, scilicet, historicus, qui dicitur literalis : & mysticus, qui dicitur spiritualis : qui dividitur in tres, scilicet, anagogicum, allegoricum, &moralem... Sed inter omnes praedictos sacrae Scripturae sensus, non est nisi unus argumentativus, scilicet, historicus vel literalis, ex quo posset trahi argumentum, sicut dicit Augustinus in Epistola *contra Vincentium Donatistum etc*. Dico ergo, quod illa expositio duorum luminarium, quae ponitur in Decretali, *Solita*, non est expositio tangens sensum historicum, sive literalem, sed solummodo mysticum, & spiritualem, videlicet, allegoricum. Unde ex hoc non debet trahi aliquod argumentum. Quia ad destructionem errorum non proceditur, nisi per sensum literalem : eo quod alii sensus sunt per similitudines accepti : et ex similitudinariis locutionibus non potest sumi argumentatio. Unde etiam Dionysius dicit in Epistola *ad Titum*, quod symbolica Theologia non est argumentativa.[[562]](#footnote-562)

By stating that only the historical or literal sense is valid in argumentation, Jean is able to simply ignore the symbolical theology and to make the whole dispute a matter of history. Possibly an application of Aristotelian syllogism, Jean almost ruled out any practical usage of the other three senses by rejecting them as merely accepted by similitude. But it was a widely accepted way of reasoning in the Middle Ages for one to argue by metaphor and analogy, just as we have seen in the second chapter. Jean’s stance, if taken to its logical conclusion, would deprive a large proportion of medieval intellectual activities of validity and meaning. Neither did he solve another problem that necessarily follows: if arguments based on similitude should be totally abandoned in argumentation, how can we access to the historical truth so as to make meaningful arguments? Jean actually provided his own working model in the following section of the text. In the third question of Jean’s disputation, Jean de Paris commented on whether it was Pope Zacharias who had deposed the French King Childeric III. Gratian’s discussion is found in C. 15, q. 6 c. 3 and as Magnus Ryan has explained, "Gratian's indirect source for this canon was Gregory VII's letter to Hermann of Metz of 1081, and therefore presents Childeric's political demise as an example of papal superiority over secular rulers."[[563]](#footnote-563) Jean, however, following some of the glossators, denounced the historical narrative as *non verum*, because *nunquam enim permisissent Barones regni Franciae*. Citing the gloss of Joannes Teutonicus who interpreted the word *deposuit* as *id est, deponentibus consensit*, Jean further provided his version of history and went on to elaborate on the problem of consent. Based on a common sense interpretation that the barons of France would not have agreed with the Pope’s deposition of their King, and also based on the ordinary gloss of C. 15, q. 6 c. 3, Jean proposed his historical truth that the Pope in this case was more being consulted by Pepin given his high status and credibility.[[564]](#footnote-564) While not without sarcasm, in emphasizing that the French King never conceded to the Pope’s claim, he made no similar effort in denying Pope’s deposition of Frederick II to be true.

Although he is referring to Augustine of Hippo and Pseudo-Dionysus in the text, it is not to be believed that it is John’s own invention to reject “spiritual” interpretations as valid materials for argumentation. As Spicq has already pointed out, the advent of scholasticism in the 12th-century led to a growing consensus on the necessity of “les limites et les conditions de cette interpretation spirituelle.”[[565]](#footnote-565) John’s stance is no more than a representation of the university intellectual atmosphere in Paris where theologians were beginning to break off the traditional quatre sens exegesis and introduce more logic and philology into the study of the Holy Scriptures. This tendency of eliminating spiritual interpretations now deemed as irrelevant or ridiculous is best represented by Thomas Aquinas who rejected the validity of arguments based on the spiritual sense.[[566]](#footnote-566) And as previous studies have shown, Thomist and Aristotelian influence is evident in Jean’s writing.

 From the two places in the text of Jean as discussed above, we may find his effort to direct the quarrel to a historical one. But we also find that he was not imaginative enough to bring forward a systematic working method for historical interpretation. What he relied on was his common sense and his demonstration of why the King was not deposed by the Pope was far from convincing. As Brian Tierney remarks, Jean’s contribution is that he put together many formerly unrelated texts to form a brave synthesis.[[567]](#footnote-567) His emphasis on the historical sense, however, served as the ground for the emerging “royal particularism”. This “particularism” is, one the one hand, a by-product of the notion that the King is the Emperor in his own Realm (a theme that has been well elaborated), and, one the other hand, a combination of some inner tendencies within the Romano-canonical tradition with Aristotelian political philosophy. The Aristotelian influence is omnipresent in his Treatise where he advocated a particularist rule and regarded the Kingdom as a self-sufficient community instituted according to the natural law. This logic works in tandem with the exegetical orientation towards history, but how to establish the truth of history?

### The Source of Historical Truth

In fact, Jean’s contribution in the debate should also be regarded as a development of certain tendencies within the Canonical tradition whose methodology, as Donald Kelley has pointed out, emphasized the value of first-hand and written testimonies, the argumentation and evaluation of textual authorities based on historical sources, and the grammatical and literal interpretation of texts (*grammaticaliter et ad literam*). Besides, canonists also recognized human law as fundamentally changing according to geographical and historical diversities-- a stance that may also have influenced civilians like Accursius. [[568]](#footnote-568) As for the School of Orleans, part of its uniqueness lies in its usage of logics and philology to study law.

 The great debate between the French King and the pope in the early 14th century, in this sense, may have boosted the need for producing historical arguments, and John of Paris’ historical argumentation may be representative in this regard. The question, now, would be the production of the materials of history and their interpretation. For generally accepted authoritative texts, there was less worry about history’s authentification, although contrary interpretations might still exist. But how non-sacred and non-authoritative texts can be accorded a certain degree of truth?

This question has to be answered by the truth-conferring effect of royal power with regard to written documents. What directly comes to our mind is the notary public whose function was to authenticate and keep documents. Widely-employed in the Roman Empire (Nov. 44, 73; D. 22, 5, 11; C. 6, 33, 3), it dwindled, however, during the early Middle Ages, only to become ever more dominant in 12th century Italy.[[569]](#footnote-569) Its resurgence is not a historical coincidence, but rather the result of the “legal revolution” by which the late Roman preference for the written records was revived.

The rise of written culture added a new dimension to the perception of historical truth, that is, the publicly certified documents. Following ecclesiastical practices, the fundamental link between the approbation of royal power and the truth of a text was gradually established in the last three centuries of the Middle Ages. The myth of the creation of the Royal Archive after Philip Augustus’s defeat in Fréteval (1194) and his loss of records can only be seen as an exaggeration but nevertheless highlights the concern of systematically preserving documents in defense of the interests of the realm since the 13th century. [[570]](#footnote-570) Guillaume de Nogaret demanded that the papal revocation of Boniface VIII’s excommunication of Philippe the Fair should be well preserved in the papal archives and be seen and verified by the representatives of the French King.[[571]](#footnote-571) The practice became wide-spread and not restricted to royal government, as Bernard Guenée has given many examples of preserving documents and history for settling potential conflicts. Aimoin de Fleury prepared a history in the canonist fashion by “faire des fiches, agence et citer ses sources”[[572]](#footnote-572); The Cisterian monk Peregrin wished the history of his abbey to be continued so that its property could be better protected.[[573]](#footnote-573) In the centuries in which all kinds of guilds (confréries) were created and became active in all domains of social and political life, these corporations often preserved their founding charters and acts relevant to their association.[[574]](#footnote-574) Written records had now become indispensable for the proof of one’s rights and it was, again, during the reign of Philip the Fair that notaries public became an institution which covered the whole Realm.[[575]](#footnote-575)

 Increasingly, the truth of a record or a private compilation of history is connected with the notion of “approbation.” By the 15th century, the idea of history’s approbation is almost taken for granted, and the dispute in 1410 between Saint-Denis and Notre Dame of Paris over the possession of a holy relic serves as a perfect example. What is remarkable is the insistence of Saint Denis on the truth of its Chronicles doubted by the party of Notre Dame on the ground that Rigord, its compiler, had a vested interest in his writing. As the party of Saint-Denis said, the Chronicles were read by the King and high nobility of the Kingdom, and therefore should be seen as “approved”. The link between power and historical truth is more than intimate. It is exactly through the movement of approbation and confirmation from the side of royal and state power that a historical text raises from a mere narrative to the status of being true, thus appropriate for historical argumentation. This link is also a logical extension of the supremacy and sanctity of the King’s *majestas* incarnated by the King’s *jurisdictio* and his conduct of *cautionner et confirmer*[[576]](#footnote-576). The King, out of his *majestas*, has the right to decide the truth while any rejection of *regis imperium* would amount to the crime of *lèse-majesté*.[[577]](#footnote-577) In the *Songe du vergier,* the knight reproaches the priest for having neglected the true and approved history of France:

Vous ignorés lez vraies et plaines histoires du royaume de France, ou vous avés envie de sa puissance et de sa tres grant et tres excellent majesté; “Avant, donques, que vous mettés la bouche es cieux, regardés les Registre et lez Hystoires tres apprové de saint Charlemaigne”[[578]](#footnote-578)

The realm of history touches upon the very foundation of royal power, and one’s argument has to be based upon the *Registre et lez Hystoires tres apprové*.

 The role of establishing such approved registers and histories, however, does not necessarily belong to the King himself. In fact, the King’s Parlement was most active in this respect. And it is these men of law in the Parlement that first began to sort out systematically royal legislation and to fabricate an “authentic” history of the Kingdom. In the quarrel between the King and the Pope, this gradual but systematic organization of legislative documents was possibly underway although its result would only appear in the 15th century in the form of collections of ordinances.[[579]](#footnote-579) The underlying belief, however, is the historical truth contained in royal legislation. The use of this kind of truth is especially evident in the Parlement’s support of Gallican claims.[[580]](#footnote-580) Its cornerstone, however, is the legislative history of the Realm that is constructed according to a series of ordinances. The remonstrance of Parlement of Paris in 1461 against Louis XI’s abolition of the *Pragmatique Sanction* of 1438[[581]](#footnote-581) is, in this case, a conclusive work which reveals the concept of history of the King’s men of law at the Parlement. The remonstrance, compiled later into Pithou’s *Traitez[[582]](#footnote-582)* as the first piece of proof, is representative enough to be called the common reference of 16th century Gallican lawyers of the King. How, actually, is this standardized vision of history of the French state elaborated in this text?

 At first, the text stresses the long history of French protection of the Church. With its pious king and people, it is in France that so many monumental abbeys and cathedrals were built. It moves on to say that the French King is the founder and guardian of the Gallican Church, who possesses the right to convoke congregations so as to remedy the violation by the Roman Church of the Gallican liberties and franchises, and instituted many *belles et notables ordonnances de grande authorité, qui ont esté le temps passé gardées et observées le plus qu'on a peu*.[[583]](#footnote-583) It then proceeds to list the major legislative monuments, including the *Pragmatique Sanction* of Saint Louis of 1268-69, Ordinance of 1407 of Charles VI and the *Pragmatique Sanction* of Charles VII of 1438. For the parliamentarians, these ordinances were of a sacred nature whose revocation would lead to four major vices (not to be repeated here). After this, the text made much effort in presenting a succinct version of the history of the French state characterized by its continuity: Charlemagne’s Church policy is inherited by Philip Augustus, Philip the Fair and Louis the Quareller and the use of those ordinances by those pious predecessors of the King helped France to prosper, a good reason for the King not to concede to the Church on this point (i.e. the King as the head of the Gallican church). For the parliamentarians, legal continuity is perfectly incorporated into the more general institutional continuity of the French *state*, which is the result of the separation of King’s two bodies.

 Although the parliamentarians were fond of exploiting legal historical documents to make up a framework for the French history of a new style, their work remained ultimately practical. The *Pragmatique Sanction* of Saint Louis which they did not hesitate to cite is a good example of forging documents for political purposes, as studies have indicated.[[584]](#footnote-584) But their belief that royal legislation possessed a certain sort of truth, so that by putting them together one would be able to write a history is indeed an innovation. As Donald Kelley has commented,

The Gallican tradition involved a rudimentary kind of historicism which, reinforced by humanism, was to become the basis for a distinctive and comprehensive interpretation of European history. The 16th century national historiography dominated by humanist jurists is, if anything, a more sophisticated successor of this parliamentarian view of history.[[585]](#footnote-585)

To sum up, the liberation of history from or even its domination over the spirit is a major innovation realized in late medieval France. The historical turn did not solve by itself the question of truth and authenticity for which the truth-conferring power of the King is the remedy. This new sort of historical writing is hence more subject than ever to monarchical power. Just as Laurent Avezou noticed, the general tendency of French historiography in the Late Middle Ages runs contrary to diversification.[[586]](#footnote-586) The notion of approved history framed to a large extent the modern belief of historical criticism that is still influential even until this day.[[587]](#footnote-587)

## Political Conflicts and the Rise of Customary Ideology

In this section we are going to examine another concept whose development is similar to that of history. As we shall see, it is also around the year 1300 that the concept of custom began to be admitted as an inherent part of royal legal ideology. Custom, like history, needs proof and approval to become true. At the same time, custom must be historical because it is the repeated practice over a long period of time whose proof requires the work of collective memory. The royalist propaganda, influenced by Classical authors, emphasized the proper nature of each nation and the diversity of forms of government. Custom, in this respect, is a convenient tool. But the King’s jurists were careful enough to put custom under control by subjecting it to the royal law so that the intricate problem of people’s will could be avoided. In this sense, the rise of custom merely transfers the mastership of normative truth to the hands of the King of France (i). The King’s approval has become the source of truth, which at the same time means that the pretentious secular legal truth, Roman law, also needs to be placed on the scale of a national history centered on the King (ii).

### Custom and Truth in the Conflict between Philip the Fair and Boniface VIII

Reevaluating the place of custom in normative hierarchy means the latter’s restructuring. Although Louis IX used historical arguments and *longaevus usus et prisca consuetudo* during the dispute with the Pope in 1245 to defend the Church policy of the Kingdom, his era was still more an era of the *ius commune*.[[588]](#footnote-588) As also discussed in Chapter 4, religious ideals shaped the kingdom’s policy with regard to customary law. Reforming and approving customs was a movement that had begun in various regions of Western Europe in the 12th century.[[589]](#footnote-589) The key to this process, as many scholars have pointed out, was the theory of notoriety in canon law[[590]](#footnote-590). Its influence is further reflected in the kingdom's legal policy, as reflected in Alphonse de Poitiers' requirement in 1255 to respect the *consuedtudines bonae et approbatae*. [[591]](#footnote-591) The "good customs" were constantly sought by Saint Louis. His inquests, together with the reform of the proof of customs before his second Crusade, all reflect his enthusiasm for the cognition and reform of the customary legal order.

By the end of the 13th century, however, there is a tendency for customs to be incorporated into the ideology of truth, instead of being an object waiting for critical examination and reform by this ideology. For Jacques de Revigny, when a conflict between the law and the custom should occur, it is more appropriate to choose the most reasonable norm.[[592]](#footnote-592) In this sense, custom can also be a self-standing source of law. And as early as in the 12th century, we can find in the ordinance of Philip August expression such as *consuetudo constituta a domino rege*.[[593]](#footnote-593)

In the beginning of the 14th century, custom made its way in the royal normative truth claims that are to be communicated within the western Christendom. The Languedocian legist Guillaume de Nogaret, along with Guillaume du Plessis, pressured the new Pope Clement V on behalf of France to convict the dead Boniface VIII as a heretic. At the time, this text may have been the most comprehensive statement of the French King’s rights with regard to the Gallican Church and to the secular affairs in which he recognizes no superior. Each item in the statement is highly formal. In demonstrating the authoritativeness or validity of each statement, two combinations appear most frequently: *certum est, notorium, et indubitatum*, and *de cuius contrario memoria non existit*. In addition, there are expressions such as *de consuetudine notoria*, *usi sunt tanto tempore*, *quo sui progenitores & antecessores usi fuerun*t.[[594]](#footnote-594) By these causes, Nogaret was repeatedly claiming, that it was the collective memory and the certainty and notoriety of customs and usages that served to defend the King’s rights. In contrast to what Guy de Dampierre’s canonist wrote to the Pope, here the Languedocian legist feels comfortable to make claims almost exclusively on the basis of customs, and the certain, notorious and age-old customs was for him as binding and authoritative as other sources of law. The autonomous status of custom, however, is only conceivable if it can be recognized and fixed. And it is through this angle that we see how the incorporation of custom to the royal truth regime worked.

 Nogaret’s personality is perhaps revealing. His view of truth has been analyzed in detail by Elizabeth A. R. Brown who points out that Nogaret had a strong sense of "assurance de connaître la vérité," believed himself to be inspired by the truth, and is good at using *veritas* to attack political opponents of the King.[[595]](#footnote-595) Boniface VIII's scandal jeopardizes the *negocium christi*, and what Nogaret was doing against the Pope was precisely helping the King to fulfill his duty to carry out the truth. He would thus condemn Boniface VIII as the blasphemer of the way of truth. Krynen believes that this southern-born legist, trained in Montpellier, with his strong sense of Christian orthodoxy, and the simultaneous reference to multiple legal norms, can be described as to incarnate “une conscience étatique typique des dirigeants lettrés des derniers siècles du Moyen Age.”[[596]](#footnote-596)

 How does the consciousness of being the spokesman of truth relate to the development of the customary ideology? We may wish to have another look at the famous ordinance of July 1312. The Scripture expressions cited in the preamble of the ordinance might be an indication of the personal influence of Guillaume de Nogaret, then the royal chancellor, who died one year later: *Nos Progenitorum nostrorum sequentes vestigia, fidem catholicam, per quam in Domino Jesu Christo, qui via, veritas est, et vita, vivimus, ex toto corde faventes, justiciam per quam regnamus in Domino*...[[597]](#footnote-597). After explaining that the King created the university *studium* to protect the way of truth, the ordinance defines the status of Roman law in the hierarchy of norms as follows:

Ceterum super negotiis, et causis forensibus que spiritualitatem, et fidei sacramenta non tangunt, regnum nostrum consuetudine moribusque praecipue, non jure scripto regitur, licet in partibus ipsius regni quibusdam, subjecti, ex permissione nostrorum progenitorum & nostra, juribus scriptis utantur in pluribus, non ut juribus scriptis ligentur, sed consuetudine, juxta scripti juris exemplar moribus introducta...[[598]](#footnote-598)

In this ordinance which emphasizes the fundamental relativity of legal phenomena and the key role of the permission of the King in their validation, the Roman law commonly used in the South is defined as a form of custom. Its application there is only *ex permissione nostrorum progenitorum & nostra*. Roman law is not universally applicable and is only binding in some regions of the Kingdom as a custom with explicit permission of the King. This claim greatly challenged the normative complex that we encountered in Chapter VI. Instead of a dialogic concordance of norms, what the ordinance is proposing is the supremacy of the King to say the norm, and the concordance now only concerns the King’s knowledge and the varieties of norms. This structure, at the time, is innovative and much in need of perfection, especially since the unwritten feature of customs forced the ordinance to add an extra explanation when defining Roman law as custom (*iuxta scripti iuris exemplar moribus introducta*). As we will still discuss in the third section of this chapter, it took a rather long time for this structure to gain general acceptance, and the theorists of the 14th and 15th century had trouble constructing and adjusting new normative complexes that fit the need of political struggles in the age of the “crisis of truth.” Here we just need to point out that the King’s men of law of Nogaret’s generation promoted the position of custom in the hierarchy of norms. For them, custom is a natural and universal phenomenon which adjusts itself according to the public interest of the community. At the same time, they also affirmed the principle of the King’s monopoly with regard to the declaration of normative truth in the domestic secular legal order. To further support the idea, the royal propagandists also proceeded to historicize Roman law.

### Relativization of Roman Law in the *Songe du vergier*

Now that Roman law was accepted as only a custom in France and denied universal effect there, it could not be used as an argument to support any claim of superiority of the Pope or the Emperor over the King of France. But how can we prove the relativity and historicity of Roman law to better support this argument? In the anonymous text *Quaestio in utramque partem*, there is a commentary on the Bull *Per Venerabilem* and its ordinary gloss. The ordinary gloss, in the interpretation of the text, points out that the King of France does not recognize any superior only by fact rather than by right, as the law required him to recognize the Emperor.[[599]](#footnote-599) The author's response to this is: "This fact has become a custom... and this custom has been approved and has so far been respected in peace; the pope and the emperor have no objections to this. It also has been consolidated by vows and agreements, and observed for a rather long time.”[[600]](#footnote-600) The reason why the quarrel between the king and the pope would involve the emperor was that the pope claimed that he had the right to depose the emperor, who was also the king's secular superior. In this regard, the bull S*uper specula* (X. 5, 33, 28) was the easiest weapon for French propagandists to think of.[[601]](#footnote-601) But at the same time, they also had to make the unquestionable case that France was independent of the universal order of Roman law.

The direct historical source is the Bible. In addition, Roman law and the Canon law were also quoted as historical sources of supreme authority. The most basic historical narrative was nothing more than D. 1, 2, *de origine iuris*. Under this title, the glossators elaborated the old laws of Rome, the laws of the Roman Republic and the Empire, and their difference with the contemporary laws. The French jurists of the Orleans school also to some extent recognized the historicity of Roman law.[[602]](#footnote-602) In the late 13th and early 14th century, the Emperor and his universal power were questioned indirectly because of the dispute between the King and the Pope[[603]](#footnote-603), and also violently attacked by the emerging consciousness of a French nation-state. Under this framework, French jurists have brought history and customary laws to a much higher level of authority. If the 13th-century Vincent de Beauvais was still writing a universal history, Jean de Saint-Victor of the following generation believed that the Empire had little significance for world order and that historians should not pursue universal history[[604]](#footnote-604). Changes in the concept of history have also led French jurists in charge of political propaganda to find new concepts in support of legal relativism. The *Songe du vergier* by Evrart de Trémaugon may well be the masterpiece and synthesizer of political propaganda written by French jurists of earlier generations.

 The tendency to relativize Roman law is manifest in Trémaugon’s *Songe*. How exactly he made it is what interests us here. In Chapter X, in the mouth of the knight, the author managed to put forward a jurist’s view of history. There is no lack of sarcasm in the knight’s saying that kings had existed very long time ago when, at the time, no one had even heard of the Roman Emperor. [[605]](#footnote-605) What is even more remarkable is that Roman law also does not appear to be eternal in Evrart de Trémaugon: In the knight discussed the four forms of *Droit humain*, that is, natural law, law of peoples, civil law, and canon law. He then pointed out that the Emperor has the title on civil law, that is, the law that emerged after the establishment of the law of the Kings. Civil law is changeable. It cannot be said that the King has lordship over the whole world. The civil law is the law of each city-state. Therefore, every king and every city-state has laws at odds with the Emperor’s. The example of the King of Aragon prohibiting the application of Roman civil law is a typical example. Secondly, the so-called civil law is the law of the Romans in the imperial era. It is already *une vois morte*, a dead voice. Even if the Roman jurists said that the emperor was the master of the world, they cannot be credited because what they did is equivalent to testifying for their own lawsuits. The knight citing Roman law, argued that, historically, the Roman Emperor was not the superior of the French King.[[606]](#footnote-606)

This kind of view is a political necessity and may also be related to the deeper understanding of the classical era in the 14th century. In addition, the Emperor may be the vassal of the Pope, but the King of France and the Kings of Spain[[607]](#footnote-607), most apparently, were not. As for why the king of France did not call himself emperor, Trémaugon’s knight answered: The appellation of “king” could be found in the Old Testament, therefore more ancient than “emperor”. The King of France could be called the emperor, but he was called the king out of old custom, and the title of the King is nobler than that of the Emperor because of its seniority over the latter.[[608]](#footnote-608) This set of arguments starting from a classification of different laws has a clear time component. As in previous quarels, emphasizing the king’s ancient and natural rule is a prominent feature. It is however not to be argued that it is a totally French creation. The time sequence of the laws, and the evolution of the Roman system, were not ignored by the commentators—even though Pomponus, their base text, does not seem to find much acceptance today. Although the arguments of the knight are crude and simplistic, they somehow represented the historical interpretation of the framework of the Roman law and give an excellent example of how to use this framework to serve the cause of the King. History had defeated the supremacy of mere textuality, and historicity became the basis of the meanings of texts. In this historical structure, the long practice and reality forms into a unity: The rule of the king is the will of God, and for now, the law of the Roman Emperor has already been outdated. Of course, the learned law was not totally abandoned, and the argumentations proceeded in a learnred discursive framework, a fact also made manifest by the frequent use of phrases such as *selon droit* et *selon raison*, *selon droit*, or *selon raison escripte*.

If the secular legal order is variable and relative, then it necessarily depends on the historical conditions of a country. It is in this line of thinking that the Aristotelian concept of "nature" has become increasingly important. Proving the continuous and natural rule of the French King is also what occupied Trémaugon’s concern. Great attention is paid to the difference between natural rule and violent rule. The most remarkable is his demonstration that after the division of the Charlemagne’s empire, the French King has the power of the Emperor, and of the unfair nature of the Treaty of Calais. Although the origin of the Kingdom of France was violent conquest[[609]](#footnote-609), the violence and tyranny, *par laps de temps, a esté purgiee*. Specifically, the cleansing was realized by the time the French people deposed Childeric III, and replaced him with Pepin. Therefore, the rulers after Pepin were *vraye, selon Dieu et lez Sainctes Escriptures establie*, and there was even a Saint in the royal lineage (namely Saint Louis; we have to also take into consideration of Charlemagne, canonized by Antipope Paschal III in 1165 and popularly called Saint Charlemagne[[610]](#footnote-610)). France today is *vray et naturel royaume, sanz violance, sanz force et sanz tyrannie, et de la volanté de Dieu establi*. As for *imperium*, it has already been transferred to France.[[611]](#footnote-611) France was the result of the division of the Carolingian Empire. Just as in civil law, a house is split into two parts, and each part is called a house, France can also be called an empire. It is called Kingdom by custom, and according to the New Testament *Deum timete, regem honorificate*, *le nom de Roy est plus encien et plus honorable, car il est apprové en l'ancienne et en la Loy novelle, et le nom de l'Ympereur est plus de novel trouvé*.[[612]](#footnote-612) Like Rome, France can be called an empire, and the French King can be called “emperor” because *le royaume de France est une partie issue de l'ampire, par division faitte par saint Charlemaigne, qui vout et establi que de si noble dignité et condiction fust le royaume de France, et de Celle auctorité et priviliege, conme estoit l'Ampire*.[[613]](#footnote-613) Charlemagne’s division was effectuated by his plenitude of power: *Charlemaigne, en tant que il fust Impereur, ot si plaine aministracion ez choses de l’Empyre que il povet non mie seulement ce qui estoit profitable a la chose publique, mez povet aussi tout ce qui ne tournet mie en prejudice de la chose publique*.[[614]](#footnote-614)

The same logic, however, can be exploited by the political opponents of France in order to justify the alienation of Guyenne from the Kingdom. Since Charlemagne was able to split the country, why is it not possible for Guyenne to be alienated according to the Treaty of Calais?[[615]](#footnote-615) This poses a rather tricky question: If one should insist that Guyenne is an integral part of France, then the sovereignty of France and the right to appeal, as a result of the division of the empire by Charlemagne, should also reside in the Empire (and, in addition, one of the major theoretical contributions of the Parlement of Paris was the inalienability of the Kingdom’s territory, which seems to be applicable in case of the division of the empire). In this regard, the knight proposed two methods of refutation, namely, that France had never been affiliated with the empire, or that even if it had been subordinate to the empire, it was because of the orders and powers of Charlemagne; and “based on the written reason” (*selon rayson escripte*), he could separate France from the empire, restore its original privileges and freedom, and make it into an empire (D. 50. 17, according to which this is the most natural thing). This is totally different from the case of Treaty of Calais which was concluded against the consent of the people and was not known to the King and constituted a form of violent and tyrannical rule that runs contrary to “nature”.

 The relativity of civil law, the natural rule, and the role of the people in the making of it are some of the most remarkable points in Trémaugon’s arguments. It is only after the establishment of Roman law as a relativized civil law that the birth of the notion of a natural civil law of France was possible, the customs being the main component. Trémaugon, in his argumentation, almost exhausted the historical sources available at the time. Compared to the writing of a half century earlier, his work can well be called rich in historical citations. As an encyclopedic compilation to facilitate the King’s understanding of major issues in dispute, he not only copied a large part of contents from William of Ockham, Marsilius of Padoua, Thomas Aquinas and his own master Jean de Legnano, but also enlisted as many historical sources as one can possibly expect from a 14th century scholar. Trémaugon was familiar with all the popular chronicles, including the more recent works of Vincent de Beauvais and the *Historia scolastica* of Petrus Comestor. His familiarity with classical texts is also impressive, such as his mention of Titus-Livy, Valerius-Maximus, Cicero, Plutarch, Suetonius, and *Noctes atticae* of Aulus Gellius. His interest may even cover the *historiae animalium*. Trémaugon used customs to defend the major political lines of the Kingdom, and recognize to some extent the role of people in the making of customs. But it will be too hasty to say that, at the end of 14th century, custom has already become the undisputable legal ideology of the French nation-state in formation. As we will see in the next section, with regard to the origin and nature of the Salic law, multiple forms of definition indicate the dynamic relationship between historical criticism, political standpoints and the construction of a legal ideology that emphasizes the supremacy of royal legislation as ultimate normative truth in the Kingdom.

## The Salic Law’s Many Origins

In this section, we will focus on Jean de Montreuil’s exploration of the origin and nature of the Salic law which for us represents the evolution of the normative complex at a time when different legal ideologies were in competition. In fact, influenced by the greater tradition of learned law, French jurists were still very cautious in explaining the new role of customs in the normative hierarchy. Even for Jean de Termerveille, it seemed necessary to make custom the equivalent to *lex*: *quia quod potest lex potest et consuetudo; enim parem vim obtinent*.[[616]](#footnote-616) Trémaugon appears to be somewhat special in this tradition. When stating the principle of male succession to the throne, Trémaugon did not explicitly mention Salic law, but pointed out that the source of law for this principle is customs. His negligence may be attributed to the fact that no manuscripts of Salic law were known to the public at the time. However, French theorists have never given up in their search for the written form of this custom, and their mentalities are most likely to be reflected in Jean de Montreuil’s exploration of the origin of the Salic law.

Although Jean de Montreuil (1354-1418) belonged to the earliest French humanists, there are not so many writings of him left. The most commonly used (and the only) modern edition of his works is the four-volume *Oeuvres* published by Ezio Ornato et al. from 1963 to 1986. The driving force behind the edition and publication of Jean de Montreuil's work turned out to be the scholarly study of Jean Gerson. In 1942, André Combes, in his book *Jean de Montreuil et le chancelier Gerson*, called his fellow academicians not to ignore Jean’s correspondence with Jean Gerson. [[617]](#footnote-617) The Italian Ezio Ornato fulfilled part of his expectations when in 1963 he published the first volume of the "Collection." The initial orientation of literature and theology was later turned to Jean’s historical and political ideas with the addition of French scholars into the edition team. With the joint funding of research institutes in France and Italy, the second volume was published in 1975, including the “The Book against the English” that we will make use of below.

The *Book against the English* was written in 1409-1413 as propaganda against the English claim to the throne. There were three stages in the formation of its text, written respectively in Middle French, Latin, and Middle French. The texts deal with three aspects of the dispute: That King Edward III could not inherit the throne of France through his mother; feudal relations and land disputes between King of England and King of France; the effectiveness of certain treaties. Prior to this text, the chronicler Richard Lescot of Saint Denis had written a text under the same title. Between 1406 and the appearance of the Book against the English, Jean de Montreuil also wrote another summary text of the French-English dispute, which was attached to his *To All French Knights*. Of course, as a medieval author, a large part of his writing involved compiling what the previous authors had written. Before he wrote *To All Knights* and *The Book against the English*, the Royal Chancellery had already produced a document on the development of the dispute between the English and French (listed in Appendix 3 of his *Oeuvres*). The facts set out in this document were used in both of two texts of political propaganda mentioned above which may also have been influenced by the chronicles of Saint-Denis.

As the secretary of the King, Jean de Montreuil participated in the work of the Chancellery and in many complicated diplomatic negotiations. His merits led him to receive the benefit of the Prevost of Saint Peters chapter house in Lille. Although he was a humanist who admired the classical Latin tradition, his Latin writing still reflected the chancellery style.[[618]](#footnote-618) The work in the chancellery may have brought him into contact with a large number of records in the *Trésor des Chartes* and helped him to form the habit and skill of using them for writing and argumentation. [[619]](#footnote-619)In this sense, he was much in line with the intellectual change which we have sketched above, which is further revealed by his concern for the written proof of the Salic law. It is because of his profound knowledge of the documents, manuscripts, and diplomatic practice that he was able to declare, on the basis of a series of officially approved objective facts backed up by written documents of credibility and authority, what he has described in the Book Against the English as "a testimony of the truth" (*témoignage de vérité*).[[620]](#footnote-620) Also, as a humanist, Jean de Montreuil in his writings often encouraged and praised the developments of French poetry and oratory. He was a participant in the *querelle du Roman de la rose*, opposing Christine de Pisan and Jean Gerson, the major criticizers of Jean de Meun.[[621]](#footnote-621) Jean de Montreuil believed in the superiority of nature in comparison with Gerson's religious rationalism. As we shall see, his concern for the harmony between reason and nature may have been an important reason why he was hesitant in his definition of the nature and origin of Salic Law.

### The Texts under Revision

Previous scholars have noted how the original text of Salic law was “rewritten” into a royalist version.[[622]](#footnote-622) The rewriting consists mainly of the substitution of *terra* by *regnum* in the original text. The case of Jean de Montreuil, however, is somewhat different, as he was probably the first higher functionary who personally saw a manuscript of the Salic law while in earlier times the content of this law only circulated in inexact citation which changes the original *terra into regnum*.[[623]](#footnote-623) As the process of revision is made clear by the three stages of writing of the *Book against the English*, we will firstly look at the evolution of these texts. For the sake of briefty we will only cite the two earlier texts’ descriptions of the nature and origin of Salic Law integrally.

Stage I:

Combien que nous (avons) sceu et veu par tres anciens livres que ladite constitution et ordonnance qui est appellee la loy salique, qui vint jadiz des Ronmains, fu faite et constituee en France des devant qu'il y eust roy crestien et confermee par Charlemaigne. Laquelle loy salique contient en latin cestre propre forme de parole: Nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terre hereditas perveniat, qui exclut et forclot femmes de tout en tout de pouoir succeder a la couronne de France, comme icelle loy et decret die absolument que femme n'ait quelconque portion ou royaume, c'est a entendre a la couronne de France.[[624]](#footnote-624)

Stage II:

Estque verum, et in antiquissimis libris ac regestris reperitur, dictam constitutionem seu legem factam fuisse priusquam Francia regem haberet christianum, et Karoli magni imperatoris et regis Francie auctoritate firmatam; quequidem lex salica nominata, a Romanis trahens ortum, cum plerisque non parum ad hec facientibus, determinative hoc modo concludit: Nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terre hereditas perveniat.[[625]](#footnote-625)

Comparing the two texts we may find that the citation of Salic law, *nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terre hereditas perveniat* is surprisingly accurate. There’s no trace of distortion, and the word *terra* is not replaced by *regnum*. The only thing that distinguishes the two versions is that the Latin one is concise and does not include an explanation on the implication of the article.

To complicate the matter, it was in a summary he wrote some years earlier that we find his “rewriting” of the article. The summary covers most of the arguments in the *Book against the English* and explains the author’s personal witness of the law:

Combien que j'ay oy dire au chantre et croniqueur de Saint Denis, personne de grant religion et reverence, qu'il a trouvé par tres anciens livres que ladicte coustume et ordonnance, qu'il appelle la loy *Salica*, fu faicte et constituee devant qu'il eust oncques roy chrestien en France. Et je mesmes l'ay veu, et leu ycelle loy en un ancien livre, renouvelee et confermee par Charlemaingne empereur et roy de France. Laquelle loy, entre plusieurs autres (choses) qui sont tres grandement a nostre propos, dit ainsy et conclut en ceste propre forme: mulier vero nullam in regno habeat portionem.

 In this paragraph, the article was cited in an extremely simple and inaccurate form. But the author emphasized his personal witness of the existence of such a law book and the credibility of the Saint Denis chroniclers. It is possible to construct a table to see more clearly the nature and origin of the Salic law in the three texts:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Text | Designation | Nature | Origin | Citation |
| Summary Text | loy *Salica* | coustume et ordonnance | faicte et constituee devant qu'il eust oncques roy chrestien en France | mulier vero nullam in regno habeat portionem |
| Stage I | la loy salique | constitution et ordonnance | qui vint jadiz des Ronmains, fu faite et constituee en France des devant qu'il y eust roy crestien  | Nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terre hereditas perveniat |
| Stage II | lex salica | constitutionem seu legem | factam fuisse priusquam Francia regem haberet christianum; a Romanis trahens ortum | Nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terre hereditas perveniat |
|  |  |  |  |  |

The table shows clearly the points of revision in the three texts. The customary nature of the Salic law was lost as later Jean preferred *constitutio* over *consuetudo*. Moreover, the Roman origin of the law was added later, but there was no apparent connection drawn between Salic law and Roman law. Interestingly, the later texts intended for readers outside France was more accurate in citation, while the more concise summary, whose readership might have been French nobles, stated the principle almost in the form of a legal maxim.

 The question will be, then, why Jean de Montreuil did not maintain the inaccurate citation of the law which would actually make a stronger case for the French King, and why, after seeing the original manuscript, custom was substituted by constitution? According to Colette Beaune’s study of the manuscript of the Salic law, it is very likely that Jean de Montreuil first quoted the inaccurate text *mulier vero nullam in regno habeat portionem* from Lescot’s *Book against the English*. Later, perhaps with the assistance of Michel Pintoin, the chronicler of the Saint Denis, Jean de Montreuil consulted the original copy and corrected Lescot's mistake. [[626]](#footnote-626) In this sense, Jean de Montreuil was the corrector of a well popular myth. Before tackling the historical significance of the Roman origin of the Salic law in the next subsection, we will here only try to find some clue for the second question, namely, why substitute constitution for custom? Perhaps Jean felt the incompatibility of custom and law after he saw the manuscript? The 13th century *Conseil à un ami* makes it clear that “ those customs which are written are called lois or constitutions, while those non-written should preserve their name costume”[[627]](#footnote-627) As the Salic law is a written law that conforms to the Kingdom’s long customary practice, he might find it more appropriate to write the customary claims elsewhere in the text and define the nature of the Salic law as purely *constitutio regia*, despite the fact that the civilians had already started to attribute less importance to the non-writte nature when talking about customs[[628]](#footnote-628). This change of the normative complex, however, has departed from, in some way, the conventional discourse which often tries to embrace all the norms available, such as the case of Count of Flanders’ letter mentioned in Chapter VI. *Constitutio*, *lex* and *ordinance* all refer to the law of the King, and this definition of the nature of the Salic law may well have implied the supremacy of royal legislation. Trémaugon’s ordering of norms as in the phrase *en Droit canon et en Droit cyvil et ez coutumes et es constitucions et loys royaux*[[629]](#footnote-629) was only partially accepted and Jean de Moutreuil may have been satisfied with this partial acceptance. The only thing at odds with his “royalist” view on the nature of the Salic law is his belief that the Salic law originated from the Romans, a belief that should not have been compatible with the royalist view.[[630]](#footnote-630) To illustrate the point, we would better examine the situation of Jean de Montreuil in the major opinions on the origin of the Salic law.

### The Salic Law’s Many Origins, or, after Jean de Montreuil

We see first of all that Jean de Montreuil does not explicitly state the Roman law origin of the Salic law since he only mentioned Romans and did not mention the Roman law when talking about its origin (*qui vint jadiz des Roumain*s and *a Romanis trahens ortum*). However, a comparison of the early summary text with the first-stage manuscript shows that the Roman element was only added later. This change definitely reflects the author's changing understanding of the Salic law. As Krynen has noted, the French jurists, in their debate with their English counterparts, received contempt from the latter as they were essentially depending on a custom to defend the French King instead of a written statute.[[631]](#footnote-631) Already, Jean defined the nature of the Salic law as exclusively royal. It would be more likely to shut the English up if the Salic law could be associated to the well-respected Roman law which was the common language of legal communication. In fact, for Jean de Montreuil who belonged to the core of political and intellectual circles in Paris, even if he did not have a fully systematic legal education, it should not have been difficult to find legal advisers around the King to comment on this clause. *Lex voconia* is probably the most appropriate and evident reference; and before that, Trémaugon had already used the other provisions of the Roman Law to argue that women's nature prevented them from performing King’s duties (D. 5, 1, 12, D. 50, 17, 2). But Jean de Montreuil never made them explicit and was hesitant to subject the Salic law wholly to Roman law. Excluding the qualification “custom” for the Salic law, highlighting the royalist nature of the law and emphasizing its Roman connection reveals his delicate (or even awkward) position: firstly, he absorbed most of the texts that used the customary argument to exclude women from the succession to the throne; secondly, he was all too anxious to have the Salic law considered as a royal legislation; in the end, he preferred to trace the origin of the Salic law to an age as early as possible, something that would curtail the royalist view of this law.

The historical position of his efforts can be determined more clearly by a vertical comparison. In 1459, Noël de Fribois in his *Abridged History of France* developed the framework given by Jean de Montreuil. Secretary of the King as Jean de Montreuil before him, Noel explained the connection of the Salic law with Rome in the following manner: *comme l'en treuve par les histoires anciennes, la Loy salique est l'ancien et vray droit des François, et est fondé pour la pluspart sur le livre de Tulles, qui se intitule* De re publica*; et avecques ce en droit divin et humain*.[[632]](#footnote-632) There were 12 reasons why French people accepted the law from the Romans: *les causes qui jadiz meurent les anciens François a prandre et accepter des anciens Rommains la constitucion appellee la Loy salique sont douze, fondees es droiz naturelz civilz et canoniques*.[[633]](#footnote-633) He therefore developped the thesis of Roman origin of the Salic law by defining it as a Roman constitution backed up by Cicero, and later on raised the law to the status of *droit des François*. In the conventional fashion, Noël cited divine law and learned law. His modification of Jean de Montreuil’s story, however, is less evident in another Latin text: it is a law *a Romanis quondam emanatam, a primis Francis acceptatam et actenus observatam*, existing long before the Christian Kings of France and was approved and confirmed by Charlemagne and his successors. [[634]](#footnote-634)

However, the nationalism inherent in the royalist view seems to have impeded the circulation of Salic Law’s Roman origin. The “pure” royalist view tried by every means to portray the Salic law as the constitution made by the early Kings of France. Richard Lescot who may have changed terra by *regnum* detested Roman law as for him its study often reduced men’s religious faith.[[635]](#footnote-635) In constructing the image of the French King who recognizes no superior and is a *rex christianissimus*, Roman law could and should be totally avoided. After Jean de Montreuil’s final definition of the Salic law as *constitutio regis*, Jean-Juvénal des Ursins tried to ameliorate the French position by looking for an exact copy of the Salic law that used *regnum* instead of *terra* in that article. His contribution to the royalist view of Salic law is crucial. In his *Audite Celi* written in 1435, he definitively placed the origin of the Salic law in the year 422 when the Trojans entered France, and the inaccurate quotation corrected by Jean de Montreuil was restored: *Mulier vero in regno nullam habeat porcionem*.[[636]](#footnote-636) In the 1460s, the *Grand traité de la loy salique* elaborated on the myth promoted by Jean-Juvénal des Ursins and the more serious Noël de Fribois was unable to put the myth off. [[637]](#footnote-637) This “great treatise” called the Salic law the “oldest law of French people”, and the story of Pharamond sending four wise men (Usogast, Visogat, Sadagast, Wuisogast) to make the law was admitted. [[638]](#footnote-638) Salic law’s nature as *constitutio regia* is also made clear. What’s more, the anonymous author even invented a debate that took place in 1328 in which the King’s counselors sorted out three approaches to prove the royal succession principle, namely, “the law and custom of France”, “Salic law” and “imperial constitution on the fief” (presumably the Libri feudis that is part of the medieval corpus of Roman law). [[639]](#footnote-639) As French King is not subordinate to the Emperor, the third approach is to be avoided. Robert Gaguin at the end of the 15th century continued the creation myth, saying that Pharamond ordered the four wise men to “bring the law to the people”[[640]](#footnote-640). The royalist view somehow avoided any mention of the “people’s will” or “election of the King”, and emphasized the King’s authority in making this law which turned out to be the oldest royal ordinance and the “constitutional” law of the Realm.

There’s also the “customary” or “naturalist” view of the Salic law which Jean de Montreuil shared to some extent. Although possibly the creator of the “Romanist” view and the definitive contributor to the “royalist” view, he also emphasized the relativism of law by resorting to the fact that different countries have different constitutions, laws and manners of life, [[641]](#footnote-641) and defending customs is also defending the honor of the French people. In the early summary text, he pointed out two considerations for excluding women from inheritance: *le royaume seroit plus content and the consentement des subgiéz.* [[642]](#footnote-642) A century later, Claude de Seyssel would also explain: *celuy qui vient d’esgrange nation, est d’autre nourriture & condition, & a aultres meurs, autre langage, & autre facon de vivre, que ceulx du pais ou il vient dominer*. [[643]](#footnote-643) Nature is the concept closely linked to “nation”, and the most natural legal order is necessarily a customary one.[[644]](#footnote-644)

Of course, we should not neglect the 16th century criticism of the royalist view by François Hotman from a totally customary and even popularist view. Criticizing Gaguin and other *vulgaires historiens François* who attributed the creation of the Salic law to the Frankish King Pharamond[[645]](#footnote-645), he meant to provide a better version of history. He started by saying that there were two Frankish Kingdoms, one east and one west, which used two laws. The Salic law was that used in the Eastern Kingdom while the Franks settled down in Gaul used the *Loy Francique*.[[646]](#footnote-646) He thought that the chroniclers and the jurists misunderstood the legal text since neither the Salic Law nor the Francique law excluded women from succession.[[647]](#footnote-647) Somehow believing that the deliberation of Philip VI’s consultants truly took place, he pointed out that it was mostly out of political motivations that the Salic law became the sacred law of the Realm, and this was not a wise thing to do. For him, the better way is to resort to the feudal law[[648]](#footnote-648), and a custom observed in a long period of time should by itself possess the force of law. [[649]](#footnote-649) (Was he aware of the Roman origin of Salic law?) Hotman’s criticism of the myth of Salic law is based upon his democratic political ideal. For him, custom is the incarnation of the people’s will and the superior to royal legislation, not to mention the imported Roman law which was the root of all evil. Bernard de Girard du Haillan, another 16th century jurist whose political and religious position was almost the exact opposite to that of Hotman, similarly believed the Salic law to be an invention of the 14th century.[[650]](#footnote-650) But the skepticism of the 16th century jurist-historians did not last long since the status of Salic law as the *constitutio regia* was part of the state orthodoxy that hardly anyone dared to question publicly. [[651]](#footnote-651)

The vertical comparison reveals the distinctive place of Jean de Montreuil in various views on the origins and nature of the Salic law that appeared in the Late Middle Ages. He was at the same time “Romanist”, “royalist” and “customary”. The cognitive disorder of the Salic law is the result of his time when the conflicts within the pluralist system of norms were felt ever more strongly. The Roman origin of the Salic law proved to be unsuccessful in retrospective, but it does reveal Jean’s effort in putting all authorities in order.

## Conclusion

In his article, Emmanuel Jeuland elaborated the superstition of written texts as an important feature in French legal culture.[[652]](#footnote-652) Similarly, it was in France that a precocious national historiography was produced. This history assumes the authenticity of texts that had been certified or approved by royal power. Based on a wider range of “authoritative” texts, the history of political relationships in the past was reconstructed. In a sense, modernist historical criticism still believes in the transubstantiation effect of political power that turns written words into (presumed) truth. However, the concept of the king's power to confer truth may already have been established around 1400 and was part of the "ponticifalisation" process of the kingdom of France. In a series of political struggles, history and custom had become key concepts in defending the rights of the king and the kingdom. History and custom were the ground of natural rule, and the authenticity (or credibility) of history and custom depended to a large extent on the monarch's approval. This development did not go beyond the framework of the scholastic philosophy and the learned law, and should be seen as an extension of it in a certain direction. The 14 and 15th centuries were the centuries of “knowledge explosion”. Both royal and private libraries had increased significantly. Charles V loved history and his library constituted the cornerstone of the future royal library. In the era of the *ménagier* of Paris, less wealthy urban residents could also own a complete version of the Bible. The abundance of texts triggered a redefinition of authority. The exploration of the origin and nature of the Salic law eventually resulted in the victory of *constitutio regia*. This bold movement stated that the King is the ultimate truth giver within his Kingdom and constituted the primary move towards the modern theories of sovereignty and absolutism. The ultimate goal of the French propagandists in the dispute between the King and the Pope (and the Emperor) was to defend the King’s power to confer truth against the intrusion of the universalist ideology. Once the principle established, the attention was turned to nature, which was another way of designating the proper relationship between the Kingdom and the people. This would further imply the translation into practice of the customary ideology born in earlier political conflicts, best represented by various attempts of fixing customary laws at the end of the 15th century. Establishing history and custom was in essence establishing the truth of texts and the truth of norms. But in between, we have to make a discussion on the extent to which the rising national consciousness affected the judicial truth.

# Chapter 8: The Inimical Trial of the *Pucelle*

The trials of Joan of Arc have been so far examined mainly in the perspective of the burgeoning national identity of France. The unfair trial is regarded as a result of English political pressuring as part of the strategy to curb the counteroffensive of the French King Charles VII. It is not surprising therefore that a large part of the literature tends to rely heavily on the trial of rehabilitation (or nullification[[653]](#footnote-653)) when it comes to the evaluation of the trial of condemnation, even though for a long time the trial of rehabilitation is considered as equally biased and political as the first one.

 If the nationalist portrayal of Joan of Arc focused exclusively on her contribution to the French nation, the recent tendency of Joan scholarship is to promote a more contextualized understanding of the *Pucelle*, the popular designation of Joan. In *De l’hérétique à la sainte*, a collection of articles of French Joan researchers, a comparison of the procedure in Joan’s trial with the Inquisition procedure in general led one author to conclude that “les vices de procédure retenus pour invalider le jugement de condamnation paraissent bien peu pertinents au regard des règles inquisitoriales et de la souplesse laisse aux juges par les textes généraux qui règlementent cette procédure”.[[654]](#footnote-654) Philippe Contamine, in his article on the memoirs and consultations of the nullification trial, believes that they reflect late scholastic thoughts on some crucial issues of the faith and the law.[[655]](#footnote-655) The two trials of Joan of Arc, separated by a span of 20 years, are situated in a context which we may well call the "European crisis of truth." The most evident concern behind both trials is the great Schism in both religious and royal affairs: a schism of the Church which seemed to have just ended (in 1417) and a schism of the French Kingdom. The Council of Basel began its sessions (in July 1431) shortly after the execution of the *Pucelle* (30 May, 1431). The Council was a European event where France and England both had their representatives and where critical concepts of demonology were developed and exchanged amongst clergymen of all the kingdoms in Western Christendom.[[656]](#footnote-656) It is also during this council that theologians and jurists decided to put Joan’s memory into oblivion to focus solely on the title of Henry VI over the French crown.[[657]](#footnote-657) Colette Beaune and Philippe Contamine respectively expanded the horizon of how we can understand the two trials, the former by providing a pre-history of the *Pucelle* and the latter by anchoring the two trials in the council of Basel which took place in between the two trials. [[658]](#footnote-658)

In this chapter, following our plan, we are going to contrast the conventional construction of judicial truth with its nationalistic refutation. This would imply a rereading of legal instruments produced by the trials. For those in search of a rising French nation, texts that help them to construct a national heroine weigh much more than those dealing with technical theological and legal issues. Such was the fate of the memoirs and consultations of a dozen of important theologians and canonists of the time which were initially omitted by Quicherat in his publications, only to be compensated by Pierre Lanéry d'Arc's efforts to compile them into the complementary 6th volume of Quicherat's work.[[659]](#footnote-659) Joseph Fabre's remarks on these texts largely reveal the mentality shared by many other 19th century scholars who were trying to build up a vivid and heroic image of Joan of Arc which is still popular today: “On s'étonne, en lisant leurs consultations indigestes, d'y trouver une si extrême sécheresse. Point de détails sur la vie de Jeanne, sur ses vertus, sur ses patriotiques élans, sur son œuvre héroïque.”[[660]](#footnote-660)

However, if we are somehow bored by the nationalist historical narrative today, we still need to propose something to be its substitute. What if we are to believe in Bernard Guenée’s famous dictum that without the French state there would be no French nation? Some implications may emerge: Firstly, the whole event is not as simple as a conflict between two rising nations. If we step over the nationalist historical discourse, the landscape changes dramatically. A common European intellectual tradition begins to occupy a more significant place: The fundamental structure of knowledge was virtually the same for the clerics, theologians and jurists on both sides. They received almost the same university training, understood and wrote in one common language, and were of similar attitudes regarding truth and superstitions. This self-conscious group of elites held almost the same skeptical attitude toward Joan's claim, with only a few exceptions such as Jean Gerson and Jacques Gélu. Secondly, the two trials are, above all, an episode of legal history, or more precisely, of the history of ecclesiastical justice. They were nevertheless an integral part of political history, a reflection of the French state in crisis which would later on reclaim itself to be the master of truth. The three trials, with a span of 20 years in between are not only revealing with respect to the canonical procedure of heresy trials, but also representative of a broader cultural aspect of law in so far as they concerned two kingdoms and the Church, took place in France, were undertaken mostly by French-speaking people (even on the English side), and produced a figure who enjoyed renown on a European scale. As we are going to demonstrate in this chapter, the key word here is still "truth." The *Pucelle* is the challenge to the perception of truth that had been cherished by theologians and jurists alike. While her trial was even more challenging in the sense that these people of almost the same intellectual background, had to produce some reasonable ground for the phenomenon of Joan, pressured by the King but also restrained by discursive resources that were available to them. It is *vis-à-vis* these limitations that the nullification was carried out and national causes were introduced to deconstruct the carefully constructed judicial truth.

In this chapter, we propose to compare the views of judicial truth in Joan's condemnation and nullification trial, with particular attention on how the former trial was constructed as an inimical trial by the latter. The condemnation trial, although not without procedural abnormalities, represents high mastery of the art of interrogation. Gradually, a heretic Joan was constructed in her own words. The records and instruments were well kept, and hardly any political influence could be found if we only read the texts literally (1). If the well-designed judicial truth of the condemnation trial intended to convince the European readership by its logic and carefulness, the nullification trial questioned the very foundation of this truth-construction by introducing evident political context into consideration. The nullification trial tends to be more emotionalized and elaborated on the just and national grounds that guarantee the truth in addition to conventional arguments on competence and jurisdiction (2). The impact and the scope of this nationalization of truth, however, is to be restricted, as the case of the Pucelle is rather extraordinary and international. Turning their eyes back to the national level, the intellectual elites of the time seemed to be reluctant to welcome Joan whole-heartedly into their creation of the national mythology (3).

## Producing Judicial Truth: The Condemnation Trial

Before our discussion, we need to make a brief explanation on what we mean by “judicial truth.” In the previous chapter, we examined how historical and normative truth gained common ground in the late medieval Kingdom of France. The two layers of truth provide for judgment activities the basic materials. The role of the judge is to find out appropriate normative truth based on specific factual truth guided by proper procedure. Here we do not intend to go into the inquiry on whether it is the judge’s judgment action itself or the accumulative factors prior to an official judgment that constitutes the judicial truth.[[661]](#footnote-661) *Res iudicata pro veritate habetur* (D. 50, 17, 207): Roman law tradition emphasized more the authoritativeness of a judicial decision. But before reaching the judicial truth, Joan’s judges were meticulous in every intermediate steps, the length of the trial and the minuteness of its record was something remarkable of the age. As a case of religious Inquisition, the essence of the condemnation trial was a dialogue with the heretic suspect on concrete factual truth related to faith before confronting the final consensus to the normative truth to finally produce the judicial truth. Joan was first incorporated into a “self-referential” network of factual truth (i), before being rationalized, subjectivized to become part of the factual truth up to the test of religious norms (ii).

### Accusations and Interrogations

In the spring of 1430, Joan of Arc fell into the hand of the Burgundians. Afterward, she was sent to Rouen as a result of negotiation between the Duke of Burgundy and Henry VI the “King of the Two Kingdoms." The task of giving her a “fair trial” and put her into shame is left to Pierre Cauchon, the bishop of Beauvais deprived of his diocese, aided by Jean le Maistre, the vice-inquisitor of France. A political trial like this is not without precedence. In fact, the trial of the Knights Templar, urged by the French King, was something very similar to Joan’s trial. For some political reason, the King had the power to instigate a religious trial and put his enemies to a dreadful death. The trial of the Knights Templar under the reign of Philip the Fair, as Théry argued, is a milestone during the process of pontificalisation of the French monarchy.[[662]](#footnote-662) That is to say, the crown tried to gain possession of the absolute power the church once claimed to be the exclusive owner of. It is also partly a symbol of the king who exerted power over the recognition of crimes of faith.

 The King of England who also claimed the French throne was also ready to exercise such power (or more precisely, by his uncle regent John, Duke of Bedford). The judges of Joan were almost all conciliarists and gallicanists as represented by Pierre Cauchon.[[663]](#footnote-663) For these men, truth ultimately resided in the general Council of the Church and much room is left for the autonomy of the Bishops.[[664]](#footnote-664) The judicial inquiry started on January 9, 1431, and public interrogation February 20. The ordinary trial began on March 26. And a set of 70 articles of accusations were prepared for the trial, later refined into 12 articles, to which Joan had to answer. What interest us here is the step by step encoding of Joan’s non-categorical visions of truth and the establishment of her heresy. The 70 Articles of accusation and the refined 12 Articles, therefore, merit careful examination.

 The formulation of the 70 Articles is based upon preliminary inquiries and interrogations conducted by the judges. It is a document produced by the prosecutor to solicit the bishop of Beauvais’ recognition *ex officio* of the case as stated at the end of the text.[[665]](#footnote-665) The initiation of a trial is conceived as a reforming project, the truth is to be found by interrogation, and the trial should proceed in accordance with law and reason. Within the 70 articles, accusations of Joan can be classified into following categories: Church authority, theology, and superstitious actions. Like most of the other prophets, Joan claimed to have direct contact with God even though she recognized the status of the Church and its clergy (Art. 1). She promised to tell Count of Armagnac who the real pope was (Art. 26-29). She said to obey the triumphant church but not the militant one, and claimed to be obedient directly to God (Art. 61). Her beliefs run *contra jurius dominico, evangelico, canonico et civili deviantia, contra ea et statuta in Conciliis generalibus approbata* (Art. 66). Joan, by claiming her direct link to God and capability of recognizing the real pope, is thus a challenger both to the councilliarists who claimed that the general council has the ultimate power and is representative of the church, and to the pope. It is understandable that Jean d’Estivet, the prosecutor, intentionally picked these questions which were the heated issues of the day. And it was in fact under the protection of the English King that the trial could be thoroughly conducted against any interventions coming from the pope, while Joan’s demand for being tried by the pope or by the council of Basel received no response.

 However, despite its fundamental bias, the interrogative questions based on the 70 articles appeared to be thorough, tactful and neutral. Karen Sullivan and François Neveux have both discussed how under the guidance of questions, Joan made up her own narrative about the voices she heard.[[666]](#footnote-666) A process of interrogation is not neutral in nature. It normally presumes the suspicion of the interrogated and is often perceived as a form of mental torture. [[667]](#footnote-667) Joan, facing the trial, showed much resistance. There were many things that she could not understand, and the interrogation experience was often connected with pain, even though a proposal for physical torture of her was rejected.[[668]](#footnote-668) Nevertheless, given its constructivist nature, the interrogation was actually meant to retrieve from Joan’s own mouth the truth about her faith and deeds. To achieve this, the judges carefully guaranteed the following three elements: (1) A faithful minute, (2) The construction of a self-referential system and (3) The Processing of her responses.

As many scholars have pointed out, the minute is a fastidious piece of work prepared by cautious notaries. Pierre Cauchon believed it to be the essential starting point for the *beau procès*, and the jurists and clerics involved in the nullification more or less agreed that it was a faithful account. It is nevertheless naïve to believe that we can use the source uncritically, due to the inductive nature of interrogation. However, it was Joan who confirmed the validity of the trial record personally and by this way, somewhat unconsciously, ran into what we may call the self-reference system of the trial. The result of each day’s interrogation was carefully recorded and became the source of reference when Joan had to make responses to each of the charges. It was also possible to connect the record to the Poitiers record which Joan invoked several times. From Joan’s perspective, these records and interrogation results were interrelated, and she accepted them just as the clerics although sometimes she asked to check the fidelity of the minutes. Such behavior of self-reference gave the record credibility and objectivity as reference requires confirmation in the first place. Among the 70 Articles, Joan referred to her previous answer in more than half of the questions, the rest of which she negated or referred to God.

If Joan in this process didn't know much of the course she was undertaking and only followed, with discretion, the interrogative process, the judges in contrast were trying with their experience and professionalism to understand Joan’s responses and codify it into some facts that could be used as basis for both logical reasoning and argumentation. Adopting various fragments of Joan’s childhood, the judges made a connection between Joan’s unorthodox religious education with the superstition about the fairy and the tree, and her separation from the community in her adolescence was thought to have drawn her more to the diabolic side. [[669]](#footnote-669)

 The other significant question is about the sign, the proof of the truth of one’s prophecy. The Poitiers judges who examined Joan under the request of the French King somehow conceded to allow Joan to deliver the sign later by lifting the siege of Orleans. But at Rouen, they were more focused on bringing concrete facts to prove Joan’s heresy. As Sullivan has well summarized, for Joan, the sign was subjective and intuitive, while the clerics kept asking her to perform a sign, to give a proof that was objective, something like an irrefutable fact. They relied on reason to find from Joan’s personal, mystical testimonies the legally binding statements they needed to construct the judicial truth.

 If the jurists and theologians of the French King in Poitiers somehow adopted a relaxed attitude toward Joan, leaving a significant place for the King’s political maneuver, now the inquisition judges have to restrict the definition of prophecy by adopting most typical and traditional way of testing a visionary or prophet, and, in so doing, to assure a rigorous procedure while also meeting the political pressure. But judging by the act itself or by its purpose or intention is something up to the judge. And the safest way of making a judgment is, of course, the stricter one.

 As we will still discuss in Section 3, Joan's acceptance at the French court was not something late medieval intellectuals could be proud of. It actually forced them to admit the insecurity within the learned system and give the control to the volatile political wills against their rational conscience. The lost Poitiers record may contain very similar questions, yet may not be so organized as to convict Joan. If it was really destroyed by someone, it might be some relevant clerics who, after reading the condemnation trial record, decided to destroy the Poitiers one as it was connected and referred to by Joan to the trial and can be seen as either proof of their incompetence or their negligence.

 The 70Articles are the first step towards the textual construction of the judicial truth. Based on factual claims, the articles posed the first challenge to Joan’s subjective perceptions and initiated the first step of objectivization. They may not be totally intelligible for Joan, but knowingly or not, by her own confirmation and reference, Joan had entered in to this process of truth-making.

### From the 70 Articles to the 12 Articles

It is now the time to consider the transition from the 70 Articles to the 12 Articles. It is also a process of further encoding Joan along with the progress of the trial. The 70 Articles represent a complete compilation of suspicions related to Joan, a summary of the primary inquiry. The 12 articles are a refined version after a cautious process of selection by theologian Nicolas Midi and one of the *assesseurs* of the trial. A comparison of the two will give us a clear picture of how the theologians concretized the factual truth about faith in the process of interrogation and how they chose their language to frame it.

It is apparent that a large part of anecdotes collected from witnesses was dismissed in the 12 articles. There was no more accusation of her bad morals but more focus on her revelation, her schismatic and aggressive side and her disobedience to the church. It is roughly a refinement, to restrict the case to solely a matter of faith, and all points were related tightly to her major charges. The language of the 12 articles is factual, and all claims are based on what was approved by Joan (as *dicit et affirmat*) who was always referred to as the woman (*foemina*). The 12 articles are a result of filtration which eliminated most of the irrational aspects of the testimonies. They directly confronted Joan to the core creeds of the Church, just as in the public admonition when she was read the text of Holy Scriptures concerning the role of the Church in Christian faith.

 The compilation of the 12Articles is the result of the consensus between the judges and Joan with regard to the core factual issues related to faith—although these facts were induced and rationalized rather than personal expressions. The reasons that lead to the condemnation sentence are revealing of the productive process of the judicial truth. Reading through the consultations of various theologians and jurists, there’s still something interesting to note. A licentiate in both laws, Master Denis Gastinel, who at the time was a canon of the churches of Paris and Rouen, wrote his opinion in a fashion which echoes the speech of camel Musart. After some formality of humbleness, he made harsh accusations to Joan, followed by a series of “si”: if she would abjure, she should make penitence, to cry about her sin, if not, she should be rendered to the secular judge and get deserved punishment.[[670]](#footnote-670) The order of the opinion might indicate that his expertise was valued relatively higher than others and that is why his way of writing was singular, different from others who are more willing to say that they agree with the findings of the doctors. Most of the opinions are centered on the question of authority. The virtue of humility as related to one’s reception of Gods’ grace brought many of Joan’s actions into question: her actions against the will of her parents, her pride in front of knowledgeable persons, the clergy and the Church. These authors asked her not to trust too much her own sentiment but listen to the wise people who understand the divine and human law. Her dramatic reaction to their dogmatic preaching even makes her pride more apparent. If we find it hard to determine the truth of her sign and mystical experience (as many of the consultation papers admitted, and the Poitiers conclusion is another manifestation that one cannot be judged as heretics only because she didn't perform a sign), the case was now finally directed to the question whether the church was erring or not. And by the church, the judges meant themselves who made up the organs of meaning construction. Just as she was warned in the public admonition, the church could not err, and its judgment always just; whoever did not believe in this violated *unam sanctam*. [[671]](#footnote-671)

 Up to the moment, the interaction between fact and norm is finished. By asking Joan to "speak for herself," the judges built up an extensive dossier about Joan and made quite a rational and concise refinement of all kinds of charges. Their motive seemed to be straightforward: maintaining peace in the two kingdoms, deter superstitious populations, and exercising their authority as university trained experts. They might not have imagined, that some 20 years later, some of their successors had to turn over their work. But here we shall only glance at the sentence of the nullification trial that attacks directly the production of factual truth of the Twelve Articles:

After having, with great matureness, weighed, examined, all and each one of the aforesaid things, as well as certain Articles beginning with these words "A certain Woman, &c.," (the Twelve Articles.) which the Judges in the first Process did pretend to have extracted from the confessions of the said Deceased, and which have been submitted by us to a great number of staid persons for their opinion; Articles which our Promoter, as well as the Plaintiffs aforesaid, attacked as iniquitous, false, prepared without reference to the confessions of Jeanne, and in a lying manner.[[672]](#footnote-672)

The judges highlighted the selective nature of the interrogation and attributed it to unfaithful translation of her confession and the intentional omission or misrepresentation of some of her sayings that led to her conviction. The previous sentence therefore betrayed truth, and it was “full of cozonage, iniquity, inconsequences, and manifest errors, in fact as well as in law.”[[673]](#footnote-673)

## Truth Nationalized

*Res judicata pro veritate habetur*. This is the teaching of Roman law, and also a precept cherished by canonists in building up their ecclesiastical legal state. In the words of Antonella Bettoni, “the presumption, which links the *res judicata* to the truth, creates a virtuous circle in which every single judgment is a reassertion of the legitimacy, validity, and effectiveness of the whole juridical system.”[[674]](#footnote-674) In fact, “erreur est contraire à toute idée de justice," and as Kiesow would also say, the notion of judicial error exists if only in the rhetoric of social imagination.[[675]](#footnote-675) A contemporary observer, Jean Chartier, lamented Joan's condemnation *sans procès*, a claim that is entirely unfounded.[[676]](#footnote-676) In contrast, most of the readers of both trials would agree with Quicherat that the text of the condemnation trial was rapid, lucid and smooth while that of the nullification trial was disordered and confused.

 The criticism of the quality of the nullification trial is only a reflection of the unease of its participants. If from a textual point of view, the condemnation text is a delicate and highly qualified work of art in the medieval trial of heresy, it is only possible to restore Joan’s innocence by resorting to extra-textual means, that is to say, by questioning the whole legitimate basis of text production. The new judges now had to venture into the field of uncertainty, of hidden intention and motives behind apparent facts and actions. For these men who were well trained in hermeneutics and dialectic, this sort of work might well be unfounded. However, against the *res judicata*, they carefully constructed arguments to prove that Joan was mistreated in a court hostile to her while not disturbing the legitimate basis of justice. These arguments, first suggested in various consultations and memories of leading theologians, canonists, and jurists were concretized by the 101 Articles redacted by the promoter of the nullification trial. It is by this process of evolution and textual-formation that we may observe how these elites of the Kingdom, active after the "crisis of truth," managed to discredit Cauchon's *beau procès* without questioning the premises and techniques of the learned law.

### The Political and National Considerations in Consultations and Memoires

Hatred played a remarkable role in both trials. In the condemnation trial, Joan’s hatred contributed to the proof of her heresy since her hatred toward the English was the cause of a war which was never supposed to be led by a woman and would worsen the “royal schism.” Grown up in pro-Armagnac Domrémy, Joan held a comprehensive but superficial understanding of royal power and the politics of love and hate. Her hatred toward the Burgundians may well have been a general attitude in her hometown which she could only justify by the voice of Saint Michael, as the record of February 24, 1431 would show. But she would never have known that this hatred would be politically out-of-date soon after her death as a result of the Treaty of Arras between Philip the Good, Duke of Burgundy, and Charles VII.

 The theme of hatred, however, was not lost in the nullification trial some twenty years after her death. If Joan’s recklessness in talking about her hatred contributed partly to her condemnation, the theme was taken up again by the prosecutor of her rehabilitation. If in the 1431 trial, no one knew for sure the future of the two kingdoms, in 1455, history turned out to be on the side of Charles VII. The English could now be rightly called foreign invaders and the Treaty of Troyes signed by Charles VI could now be buried entirely. The intellectual elites involved in the nullification trial took many advantages of this retrospective and were then able to argue that Joan was put to trial only because she wanted to “liberate her kingdom legitimately acquired from the enemies who have injustly taken it.”[[677]](#footnote-677) A trial by the enemy could not be just.

 A useful corpus that first comes to our mind are the memoirs and consultations written by experts in theology and law with regard to the invalidity of her condemnation. Something general can be said about these memoirs and consultations. They are characterized by their concern of procedural compliance, their demonstration of the political nature of the trial, and their definition of Joan as part of God’s design. In the conclusion of his study on these texts, Philippe Contamine writes that:

Les mémoires admettent donc qu’on ne puisse comprendre Jeanne d’Arc hors du contexte politique où elle se situe. Ce faisant, ils sont plus « honnêtes » que le procès de condamnation, où la dimension politique n’apparaît au mieux que de façon épisodique, discrète, oblique (à travers par exemple le grief de sédition).[[678]](#footnote-678)

Indeed, from the very beginning, these texts are produced under the solicitation of the King and the Pope. The King who had recently re-conquered most of the territory of the Kingdom was anxious to reclaim his status as a pious King ruling by the will of the God. In this sense, he had to correct the condemnation trial whose primary aim was to allude to the impiety of the Dauphin who had let himself be manipulated by the Devil. The Pope also has an incentive to take the chance to assert his absolute authority in matters of faith, and seek for the revocation of the *Pragmatiques Sanction*s of Bourges. With regard to Joan’s secret inspirations claimed to stem from God, Paulus Pontanus, one of the most prominent jurists of the time being consulted, argued that only the pope is the *secretorum cognitor*, and *in his enim Ecclesiae iudicium saepe fallere et falli potest* (X 5, 39, 28).[[679]](#footnote-679) Later he also emphasized the competence of the Pope: *Quia judicio papae et Concilii se submisit, ergo inferior non potuit judicare post hujusmodi provocationem*.[[680]](#footnote-680)

While the verification of divine signs and inspirations should be left ultimately to the Pope, the significance and nature of Joan's mission are defined according to the royal interest. As attested by Pierre Cusquel, a bourgeois of Rouen, and Friar Ysambard de la Pierre, it was publicly known in the city of Rouen that the aim of organizing such a trial was to hamper the reputation of King Charles.[[681]](#footnote-681) The experts now have to prove that Joan’s military activities were just. This was not a difficult thing to do. They can simply rely on the succession principle to make de jure explanations, and on the fact of the French victory against the English to make the de facto case. The war is just since the English had no right over the Kingdom of France.[[682]](#footnote-682) *Et non ad honorem mundanum, quod sonat ad fastum, sed ad sua repetenda pro quibus justum ex divinae legis sententia bellum geritur*.[[683]](#footnote-683)

The political nature of the condemnation trial is demonstrated mainly by the procedural errors pointed out by the experts. These errors, in turn, were attributed to the hostile nature of the trial as it was conducted by a court pressured by the invader and enemy of France. Rouen, above all, was not the proper location for the trial, as Cauchon was the Bishop of Beauvais. Moreover, Joan should not have been imprisoned in the secular prison, but sent to the Episcopal prison. These elements made the poor Joan extraordinarily vulnerable in the hostile trial. These procedural abnormalities, however, can easily be justified on the ground of exceptions.[[684]](#footnote-684) But they did contribute to prove that it was a trial conducted by the traitor of the nation, Pierre Cauchon: Such bias and enmity was bound to exist from the very beginning as Cauchon, in his living time, was more inclined to the English and was the enemy of the French King, *i.e.*, his natural lord. This was a notorious fact and he was only able to be in charge of the trial by moving his bishopric seat to the English occupied Lisieux instead of Beauvais which had submitted to the French King. [[685]](#footnote-685)

These considerations, altogether, lead to a portrayal of the *Pucelle* as a naïve innocent young peasant girl in front of an inimical trial chaired by doctrinal experts. The infirmities of women are used to demonstrate Joan's weak position, and Joan's brilliant responses can only be the result of supernatural inspiration.[[686]](#footnote-686) There was an episode in Joan's interrogation when she was asked whether she would submit to the Church. She answered: *Quid est Ecclesia? Quantum est de vobis, nolo me vobis submittere, quia estis inimicus meus capitalis*. Helie de Bourdeilles, in his “beatification” construction of Joan, commented that *haec verba, si intelligantur passive in ipsa Johanna et non active, non male sonant*…[[687]](#footnote-687) Joan's refusal should be heard and admitted since it is an ethical requirement for a judge to be benevolent.[[688]](#footnote-688) The contrast between Joan's innocence and weakness to the trial's prejudice hints upon the *douce France* where subjects were led by a humble and divine figure to liberate it from the oppressive, merciless rule of the English. The criticism against the condemnation trial, therefore, brings the deontology of justice discussed in Chapter 2 and 4 and the justness of a national justice together.

### The 101 Articles and the Odious Trial

Based on the consultations and primary inquest, the promoter produced 101 articles to attack the unjust trial. The whole nullification process was initiated in fact by a very emotional scene where Joan’s mother cried in public for her daughter’s innocence.[[689]](#footnote-689) Compared to the consultation texts, the 101 articles summarized the emotional themes and systematically demonstrated that Joan was put through an inimical trial. Apart from emotional features, the articles were constructed differently in form and discourse than their counterparts in the condemnation trial.

It is not surprising to find that these articles are full of adjectives related to the notion of hostility. The 12 Articles of the Condemnation trial *falso extracti sunt et inique composite*(Art. 21); she face the *odio, vexatione et turbatione* of the accusers (Art. 15) A trial conducted by the enemy can only be *inique* and false from its very beginning. The promoter took well into consideration the major points formulated by the theologians and jurists consulted. Among many, there are some points that best reveal the adversary nature of the trial. As the trial itself is politicized, all steps can be seen as intentional tricks that misled the “simpleton” Joan and deprived her due rights. The hard interrogation is the best evidence. *Puella etatis prefate juvenilis, ymo et hostilis presentie et carceris duri terroribus, metu et violentia sic afflicta, dicti rei ad interrogatoria multa, etiam difficilia, valde seditiosa, captiosa, perniciosa et impertinentia, contra ipsam Johannam non erubuerunt procedure* (Art. 11).[[690]](#footnote-690) A gradual "seduction" from Joan her own account, in painful detail, of the voices and saints was also something recognized by the consulted jurists and was mentioned in the final sentence of nullification. As noted above, improper imprisonment is another evidence to prove that she was put under bad and hostile environment as in Article 9: *Ac eam in manus laicorum armatorum et hostium sibi capitalium deposuerunt conservandam, armatorum silicet Anglicorum, capitali odio, assidue verbis, comminationibus, terroribus et derisionibus ipsam prosequentium*.[[691]](#footnote-691) She was intentionally deprived of the right to be tried in front of the pope or the general council, while the warring situation implied the suspension of jurisdiction: *Quoniam judices tanquam sibi inimicos capitales recusavit expresse, et ex ista legitima recusatione sua, notissimo jure, omnis est sua suspensa juridictio, in qua, si ulterius processerunt, presertim recusationis articulo indiscusso, nulliter incedunt manifeste* (Art. 15). The judges of the condemnation trial not only deprived Joan of the right to appeal, but also the right to get advice—an evidence of their *sinister affectus* (Art. 18).

The nullification trial made meticulous arrangements to make sure that it appears to be a sharp contrast to the former trial. The person who initiated the trial was not the King himself but rather the family of Joan, whose mother’s sentimental appearance was extremely impressive. Jean de Montigny suggested the trial take place in Rome, a neutral court. There was also careful selection of witnesses, to make sure that all parties were represented in the trial. And inquests were organized according to the chronology of her activity.

 In contrast to the charges in the condemnation trial which are based almost exclusively on Joan’s own words, the 101 articles are full of descriptions and citations. They first of all created an image of Joan as an innocent, simple, young girl and tackled directly the reference "the woman" in former records. Many adjectives were used to hint on the prejudices of the condemnation trial. *Multaque difficilia ab ea petierunt, de et super quibus fideliter, catholice et competenter, responsa dedit honesta et congrua, sua presertim juvenili etate, conditione sexus et ignorantia ponderatis et attentis* (Art. 14); Joan had good reputation and performed regularly religious duties (Art. 58). As an 18-year-old who never learnt how to lead an army but was able to regain the cities lost to the enemy, *id factum esse divino miraculo, et vera prenuntiatione, et bono Spiritu, et non maligno, estimandum est* (Art. 52). As a poor little girl, her deeds surpassed her age, her sex, and her social status, and led France to the victory. The promoter, however, did not go so far as to follow completely Helie Bourdeilles’s laudation. But young Joan put to death really reflected the cruelty of the “English” trial, and her being sent to secular arms is noted as *quod pia, lamentabili et dolentissima compassione, eterna memoria deflendum erit*! (Art. 31) The representation of the trial in literature even amplified this feeling. As Villon in his *ballade des dames des temps jadis*: *Jeanne la bonne Lorraine,/ Qu'Anglais brulerent a Rouen*.[[692]](#footnote-692)

 Apart from a well-built image of Joan, how the promoter made use of the previous trial records is also worth noting. In the condemnation trial, the typical form is “she said”; but in the 101 Articles, there was some special formula to emphasize the true nature of the author’s characterization of Joan (instead of factual description) of each article. Therefore we see most of the articles ended with *et sic fuit, et est verum*, sometimes added by a claim that the content of the article was also widely known to the public. The first 30 or so articles bring out a version of the unfair judgment of Joan, and the next 60 or so articles launched a chain of reasoning which seldom have anything to do with facts (last 10 for general conclusion). But these articles are a result of legal erudition as manifested by its intensive citation of canon law. The redactor apparently tried to prove that all the articles are logically connected, by frequent use of causative conjunctions. It doesn't go directly to the record itself but tries to give a better explanation of Joan’s behavior. Instead, it made a theological and canonical defense of her behavior. The odious, adversary, captious interrogation record is thus avoided.

 In turn, by recourse to the proper procedure as the fundamental source of legitimacy for any trial, the articles denounced the condemnation trial altogether without much regard to the material it produced. Regarding the reason why the *res iudicata* in Joan’s case is invalid, Article 36-38 provide arguments from the perspective of canon law. Firstly, the form and substance (*materia*) of the trial should be “ordered by truth.” With regard to the substance, Joan’s trial and judgment is full of falsity and errors, leading to evident injustice. With regard to the form, the problem with jurisdiction and procedure can invalidate the judgment—as *forma dat esse rei*, and according to the 52th *Regula iuris*, *Non praestat impedimentum quod de iure non sortitur effectum* (Article 37). In Article 38, the prosecutor further explained his reasons by citing authorities such as Hostiensis and Guillaume Durand.

As we have seen above, part of these allegations were taken up by the judges in the final sentence. But it is also to be noted that the rehabilitation for Joan did not establish the principle of mercy in heresy and witchcraft trials. The end of the great schisms and the conciliarist movement led the Church to require more cohesion among clerics. It is therefore a remarkable change that by 1455/56 those who treated the question were rather reluctant to cite non-authoritative sources but were content with citing sources strictly belonging to the Christian tradition.[[693]](#footnote-693) Even though the authors used words similar to “cruel” or “hostile” to describe the execution of such a simple and weak peasant girl, a hardened definition of truth only led to more rigorous treatment of deviations in other heresy cases of the age.

The theme of benevolence is hence more an expedient rhetoric, the result of the interaction of the royal and papal power each having their own purpose. It was under Charles VII’s ordinance that the first inquest is carried out. It was the pope who truly authorized to initiate the trial. It was the vindication for a decision that Charles VII was deeply involved and also a re-assertion of papal authority by classifying Cauchon as an example of corrupted bishop by Calixt III and a manifestation of Church's will to reform itself. [[694]](#footnote-694) Joan the *Pucelle* in this sense was the puppet of the political forces. And the nullification is the collaboration between spiritual and temporal powers both eager to reassert supremacy.

## Joan of Arc and the Evolving Truth Regime

By far the production and destruction of the judicial truth received our exclusive attention. But Joan, the self-claimed divine savior of France, posed more challenges than the judicial one. The cognitive problem of divine truth was felt in her first appearance before the royal court, and her place in the coming age of witch-hunt is to be evaluated.

As we have mentioned above, the success of Joan’s rehabilitation relied much on the historical result in favor of the Valois. Her truth was far from clear at the time when she was meeting the Dauphin. The age of Joan of Arc was an age of chaos. The good order of knowledge was of superior concern for the educated elites given the context of ceaseless resurgence of prophets and superstitions.[[695]](#footnote-695) The tendency of "knowledge explosion" and the effort to direct and regulate it was already manifest during the reign of Charles V. The other target is judicial astrology, of which Nicolas Oresmes wrote a harsh critique[[696]](#footnote-696), and Philippe de Mezières in the *Songe du vieil pelerin* set up a Queen of Truth against the *ville superstitieuse*. Truth, the keyword which laid the basis of intertextuality of theology and law, is supplemented by scholastic and rationalist tools, under the name of which a process of social recognition and relation adjustment was carried out. Joan of Arc's appearance on the scene might just have been another fake prophet who would have disappaered in the mist of history if she was not lucky enough.[[697]](#footnote-697) But somehow she succeeded in her endeavor to meet the King and won, at least partly, the trust of some in the ruling class. It is, therefore, an important question: how did she get admitted, at the very beginning of the story, into the circle of power and knowledge?

In 1429, the *Pucelle* was put under interrogation by theologians and jurists of the Dauphin. Among the historical narratives of the 15th century collected in Quicherat's fourth volume, there are four texts that provide extensive descriptions of her interrogation in Chinon and then in Poitiers. The *Journal du siège d'Orléans* is a text commissioned by the Orleans city in memory of the *Pucelle*. The *Anonyme Chronique de la Pucelle* takes up much content from Jean Chartier and provides a detailed description of the interrogation. *Le miroir des femme vertueuses* is a text popular under Louis XI but “full of errors”[[698]](#footnote-698). And Enguerran de Monstrelet with his preference of the Burgundians, had less motivation to praise Joan. The four sources, as we shall see, have a quite standard narrative on her arrival and interrogation but disagree with respect to details.

It is noticeable that the four narratives do not reveal a high degree of conformity, in the sense that each weighs differently the factor which led to her success in finding support for her mission. Each provides different aspects of her interrogation and explanation of why the king and his council decided to believe in her. The *Journal* insists on the rational basis which led to her success: her countenance and sage language, and the fact that she answered well the difficult questions posed by theologians and jurists. The *Chronique de la pucelle* is quite frank on the skepticism among court elites even Joan, described as a simple *bergère*, answered the questions. But for the author, her final success is to be attributed to her talent in moving the higher nobility. The emotional element is reiterated in the *Miroir des femmes* where the king *larmoyoit moult tendrement*. And finally, Enguerran emphasized the doubts of the Dauphin and other noblemen before believing her predictions and explained her success by her obstinate insistence.

Another poem, written after the event, largely described this pattern, not without attributing Joan's success to her capability to make the doctors *esmerveiller*:

Le feu roy sans soy esmouvoir,

Clercs et docteurs si fist eslire,

Pour l’interroguer et savoir

Qui la mouvoit de cela dire.

A Chynon fut questionnée

D'ungs et d'autres bien grandement,

Ausquels, par raison assignée,

Elle respondit saigement.

Chascun d'elle s'esmerveilla,

Et pour à vérité venir,

De plusieurs grans choses parla

Qu'on a veues depuis advenir.[[699]](#footnote-699)

Joan's charisma, however, did not change the attitudes of the King's theologians and jurists. As a self-claimed female prophet, she still had to perform a sign. The theological background can either be in favor or against her. In general, French theologians, when looking at the problem, tended to focus more on the public utility when determining whether such kind of person was trustable. And the dialectic mode of reasoning permitted one to switch his stance easily, as an analysis of Gerson's *Super facto puellae et credulitate sibi praestanda* will show[[700]](#footnote-700).

As we have said, the record of Poitiers interrogation is now nowhere to be found. It possibly consisted of two major tasks, one is to make an inquiry *de sa vie, de ses meurs, de son entention*, and the other to ask her to provide a sign. The interrogation lasted for six weeks in total during which she met all kinds of people including the public figures and the commoners. From the condemnation trial, we may get an idea of what kind of questions she was asked. As she could recall, she was interrogated, in three weeks, on the following issues: the voice of the Angels, the dress of the Saints, their sequence of appearance, what Saint Michael told her, the revelations about the King and the reason for wearing male clothes. The fact that these are written in the Poitiers record was repeated by Joan in various occasions, a manifestation of her approval to it. The questions asked seem to be generally what she was asked in the condemnation trial, though probably without going too much into detail.

The conclusion of the interrogation only provided ambiguous support for Joan. Just as Charles T. Wood points out, "the extent to which Joan's judges at Poitiers arrived at conclusions that were cunningly evasive, not to say hopelessly mealy-mouthed." They tended to avoid all personal responsibility and attributed the decision to Charles VII himself.[[701]](#footnote-701) It is, therefore, Joan who succeeded in finding a fissure in this elite-ridden state apparatus, a result to be explained both by her personal charisma and also the King and some notables' plan to make use of a figure like her. At a moment when Charles VII had almost lost hope, Joan proved to be some sort of last resort. Her way of winning support could hardly be appealing to the intellectuals, but those theologians and canonists, facing a difficult political situation, could only acquiesce, put aside their expertise and authority, and left the politicians, the King, and the nobles to decide. In this way, Joan at the time was able to avoid being completely instrumentalized by the learned culture. Much room is left for her to exert influence and get support from the political decision makers (either out of their compassion to Joan's words or as something planned). However, she would not be so lucky in front of the Rouen judges.

The success of the *Pucelle*, in this sense, should be explained by the “reason of the state” overcoming the reason of theology and law. This is the prelude for the prevailing skepticism about the truth of her mission among the learned elites. If Joan had not been a welcomed figure for these elites at the beginning, neither was she after her rehabilitation despite the eloquence of Helie Bourdeilles. As also noted by George Huppert in the appendix of *The Idea of Perfect History*, the memory of Joan is intentionally restrained by the monarchy and skepticism on the *Pucelle* was something wide-spread among intellectuals of later ages.[[702]](#footnote-702) The controlling policy starts since her execution. At the Council of Basel, both sides, the English and the French, decided not to quarrel about her trial. Instead, some important documents of the history of witch-hunt were passed by the council…. The “reason of the state” had also ceased. After 1435, the re-found friendship with the Burgundians of the monarchy made Joan something of the past. Many chronicles in the 1430s suddenly stopped to mention Joan when it came to her trial. Herault Berry's abrupt avoidance is usually read as royal embarrassment on how to deal with Joan.[[703]](#footnote-703) There’s no incentive on the French side to reuse her in the official propaganda after her immediate death. Her task was ended the day she was captured.

However, Joan passively became the mark of another age, an age when the Church was looking for the new momentum to reform itself and a dissenting society which protests constantly against the corruption of the Church. Although most of the sorcery accusations were cut off at the final stage of her trial, there was often the popular rumor and false belief that Joan was burnt as a witch. The reserve of her judges can be explained on the one hand by Joan's good fame and clever responses, and on the other hand, by their own skepticism of witchcraft, an attitude conventionally held by the Church before the 15th century.[[704]](#footnote-704)

Put into a broader context of persecution of heresy and witchcraft in the 15th century, Joan's case is both a beginning and a stereotype. As we see from the 70 Articles of the condemnation trial, what the clerics would call superstition is rooted in the communitarian life. What they defined as sorcery thus had its popular root as Claude Gauvard has argued from the perspective of sociology and anthropology. The medieval community was organized and maintained to some extent through the so-called diabolic practices, and the heresy and sorcery accusations from medieval people do not necessarily imply that they *do* believe in the real effect of them. Instead, they would better be explained by a series of coincidences during local power struggles and communal conflicts. At the beginning of the 15th century, the age of witch-hunt is yet to come. In the case of France, sorcery accounts for only 0.6 percent of crime in the reign of Charles VI, turning into 2% under Louis XI with women constituting only the minority. [[705]](#footnote-705)

 From a retrospective and from the point of view of her contemporaries, Joan of Arc is part of the start of an age of witch persecution. Chronologically, her execution before the council of Basel also marks a critical moment in forming the conciliarist idea of the council. The judges of Joan were proponents of the conciliarist movement. It was also on this council that some of the early witch-hunt guidelines were formed, such as Johannes Nider's *Formicarius[[706]](#footnote-706)*. A close parallel can be found in the case of Waldensian heretics turning into witches from the 1430s as discussed by Wolfgang Behringer. In his discussion, until 1400, witchcraft has not yet been described in concrete detail. Exactly how these heretics adored devil is at most fragmentary. It is only after the 1430s that occurred a "pragmatic turn" as a result of elaborations of Basel popes, and typical description of sorcery only exists from then on.[[707]](#footnote-707) In this sense, Joan’s condemnation preluded the advent of this age, and its political nature also suggested how secular rulers were willing to support and make use of the persecution practice.

 By her contemporary, Joan was primarily seen as part of the heretic, prophetic activity of the time. Jean Graverent saw the matter as solely spiritual and claimed that she was among those manipulated by Brother Richard.[[708]](#footnote-708) Supporters of the English-Burgundian camp saw her death as a warning against those of the future who dare to disturb the peace. The university-trained representatives of both countries attended the Basel Council and found no real conflict between their views on heresy, witchcraft and truth. It is only her later connection with papal authority and reestablishment of papal power that made her rehabilitation theoretically possible.[[709]](#footnote-709)

Witch cases in the 14th century were always connected to heresy. While heresy is purely about faith, witchcraft usually entailed other typical behaviors that were said to be practiced in order to worship the Devil.[[710]](#footnote-710) Joan possessed many aspects that characterize typical witches: her separation from the community and church service in adolescence, her prophecy, her battles… But she was also chaste; she did not have the lustful aspect of the witches. Her male dress was meant to extinguish rather than to arouse sexual desire. Joan is complicated, her "real" nature flexible, to be determined by her political user.

But the persecution of heretics and witches can be more complicated than a matter of centralization of power. At least, the level of centralization determines partly how the state reacted to the perceived threat of heresy and witchcraft and to the popular hysteria followed by that perception. Alfred Soman in his two articles based on the study of archives of the Parlement of Paris has already shown that three states in western Europe, England, Spain and France, evidently showed a different pattern in this respect than their counterparts in central Europe. Official persecution lasted relatively short time and an "inertie de l’institution judiciare" prevailed against the frustration of the population looking for security.[[711]](#footnote-711) He also highlighted the gender aspect of these appeals in front of the Parlement of Paris by stating that males are up to severer and more numerous punishments than women.[[712]](#footnote-712) The precocious process of decriminalization of witchcraft in France reveals the reluctance of the secular higher court in engaging in a religious-turned-popular movement. The retrospective, however, does not imply that France was somewhat more lenient in punishing heresy and witchcraft. Statistically speaking, the witch trials started to increase right at the time when Joan was tried. As Kieckhefer pointed out, there are roughly 4 phases of persecution starting from the year 1300, and the French cases accounted for half of the cases in the first phase.[[713]](#footnote-713) Given these considerations, the witch as a threat is recognized by royal justice, but the legal elites in France were careful enough, after the first phase, not to turn witch-hunt into popular hysteria.

 Considering the uneasy feelings of her learned contemporaries towards her trials, and her special place with regard to the rising movement of the witch-hunt, we may well say that Joan represents the battlefield where national and international truths clashed. The implications of a national judicial truth were balanced by skepticism both about the divinity of her deeds and the quality of her nullification trial that derived from European intellectual training. This European character, however, also determined the French practice of witch-hunt, and the rehabilitation of the *Pucelle* is, in this sense, a propagandistic and coordinated reassertion of the King, the Pope and the learned elites.

## Conclusion

If we are to discuss the relationship between the modern nation-state and its legal superstructure, the case of late medieval France provides us a counter-intuitive answer. National memory does not count much in the story and what holds a nation-state together is nothing other than its military force, its practice of justice, and the "empire of truth" which serves as the backing for such practice. When producing trial texts, Cauchon’s team saw Joan as a dissenter of church authority who possibly had a compact with the Devil and made vows of loyalty to the false appearance of saints. The latter group was no more believers in Joan: what they did is only to construct a rhetoric that served their purpose for refuting the validity of the procedure of the condemnation trial. Their work is cooperative but ordinary, and they tried to prevent Joan’s image from being interpreted as something supernatural. They distanced themselves from popular beliefs and miracles and were much alerted to the ideological use of history that broke up the normal procedure for establishing the truth.

 What we have from the trials of Joan is an ecclesiastical power intermingled with other sources of power in society preserving its authority by encoding, remodeling Joan to their way of reasoning, and the same power which claimed to reform itself against its past by ways of invocation of an even more rigorous way of justice. Neither the anti-cleric model portraying her as murdered by the church, nor the nationalist version making her a martyr for the nation, nor the Catholic version of Joan which condemns Cauchon and the university as bad revolutionaries in her canonization offers a better truth about Joan.

Joan of Arc represents a fundamental challenge, a challenge to both religious truth and judicial truth. Her holy mission was discussed with some doubt by her contemporaries, while the judges of her nullification trial had to avoid as much as possible the artfully prepared interrogation records of Cauchon. As a national hero, Joan was much better known for her contribution to the construction of the French nation. However, it is still worth emphasizing that this image was mostly a 19th century reconstruct. Her situation and experience vis-à-vis these interrogations and trials inspired not so much sympathy from the university trained theologians and jurists. In the construction of a neutral and objective narrative of truth, her challenge can only be taken negatively. For those trained in theology and law, the embarrassment provoked by Joan was a cruel demonstration of the instability within their system of social cognition and the fact that the pursuit of judicial truth was far from autonomous. What the jurists and judges in the 1450s did was to make apparent the fundamental political bias that existed inherently in her condemnation trial despite the however well-kept instruments and records of their predecessors. However, since they were also biased, the judicial truth they fabricated that allegedly corrected the previous ruling on the ground of an inimical procedure and a prejudiced court can always be read with a certain sense of irony. Joan thus proved to be a challenge to the whole regime of truth that was being built and her memory have to be controlled, channelized and put into oblivion so that the whole system would not be put under similar and repeated challenge.

It might not be wise to restart the quarrel about whether ordinary people or the elite are the major makers of history. An answer for such question can only be partial and prejudiced, leading to a deterministic explanation of history. For the moment, what we can conclude is that Joan ceased to become part of official ideology after her execution. She was instrumentalized, trimmed and made fit for a glorious history of the recovery of France. The French state continued (at least seemingly) without resorting to her story, the national heroine of the nineteenth-century historiography did not overcome the overwhelming learned culture during the 400 years after her death. Huppert’s remarks serve our purpose well. As he would conclude, before the revival of a patriotic Joan in the 19th century[[714]](#footnote-714), she remained "a pious legend to the devout, a scandal to the skeptics, and an embarrassment to the official historians."[[715]](#footnote-715)

# Chapter 9: The *Certa Scientia* and the Homologation of Customs

In the previous chapters of Part III, we examined how a national discourse of truth was produced. In this final chapter, our thinking is naturally led to the subject of legal customs, whose homologation was a spectacular event at the end of the 15th century. Customary law, as many generations of jurists-historians starting from the 16th century have said, constitutes the body and main character of French law. However, here we intend to make use of the case only as a demonstration of the limit and reality of the national discourse on law. By an examination of the procedural implications of the clause *ex certa scientia* (*de nostre certaine science* in French) in ordinance preambles, we argue that in actual practice, the homologation of customs was significantly influenced by the learned law tradition while the introduction of the estates general in the homologation process may have contributed to its ideological success as part of the grand project in quest of the true national law of France.

 *Ex certa scientia*, as a fixed expression, often appeared in combination with *plena potestas*, *ex proprio motu* and *auctoritas regis* in the preamble of French royal legislation in the Late Middle Ages. These expressions serve as the qualification of the King's legislative actions and the reason for King's exercise of legislative power. While historians have well elaborated on the concept of *plena potestas*, the concurrent *ex certa scientia* often received less attention than it merits. This situation is perhaps the direct result of the research orientation that tends to focus on the origins of absolutism in the Late Middle Ages. However, as we will point out, the birth of absolutism is not a simple story about the conquest made by "absolute power." Although it is often effortless to find arguments in medieval theologians and jurists in favor of what modern minds would understand as absolutism, the ecclesiastical concern of "truth" actually limited their scope and effectiveness. Just as in a preamble there are many clauses and combinations of them, the King's power is also qualified by various dimensions. If *plena potestas* represents the aspect of legislative action and enforcement, *certa scientia* in its turn represents the aspect of knowledge in the royal exercise of power. One has to know something before taking an action.

 There is, therefore, a sharp contrast between the importance of the certain knowledge in royal legislation and the scant and fragmentary nature of existent research. Jacques Krynen connected the expression *ex certa scientia* in royal ordinances with the "legislative absolutism" of the French King. As he points out, *ex certa scientia* first appeared in royal ordinances in the early 14th century under the reign of Philippe the Fair (1303 to be accurate). In the same article, he collected and listed the *ex certa scientia* ordinances in the 14th century, and made general remarks. The concept *scientia* and its relationship with *potestas* and *voluntas* in the learned law tradition have been amply studied by Ennio Cortese in his masterly *Norma giuridica: Spunti teorici nel diritto comune classico*.[[716]](#footnote-716) Othmar Hageneder in his article discussed the origin of *ex certa scientia* in Papal legislation, its development, and its legal forces.[[717]](#footnote-717) Some years earlier, Spanish scholar Valentin Gomez-Iglesias has already offered a comprehensive review of confirmation *ex certa scientia* in Canon law. Apart from these concentrated discussions, recent French studies that touch upon the expression are often content with quoting Jacques Krynen.

 It is probable that the "absolutist" orientation of previous studies have misled the scholars in their interpretation of this important expression in the legislative preamble. Kirshna believes that this expression means that the Pope or the Emperor possessed absolute knowledge of the law, so that his new legislation had to override previous laws; at the same time, it also means that the Pope or the Emperor should have known absolutely the conflict between the new law being introduced and the old ones.[[718]](#footnote-718) Quite to the contrary, Arndt Bendecke in his *The Empirical Empire: Spanish Colonial Rule and the Politics of Knowledge* remarked that the clause *ex certa scientia* tells us that "the pope has no complete knowledge…" Rather counter-intuitively, he explained further that although the clause seems to be saying that the Prince's decision is related to existent knowledge, it in fact means that the Prince surpasses existent knowledge and all legislation; it is, therefore, another aspect of king's absolute will.[[719]](#footnote-719) The two opinions seem to expose contradictory interpretations on the clause, but in essence, they both understand the term in a formalistic fashion, the result, as we shall see, of exaggerating the dimension of power and will in prejudice of knowledge. In fact, just as François Seignalet-Mauhourat said, even if we find absolutist arguments in favor of the unlimited will and power of the king in the discussions of learned law, the legislation of the Capetians and the Valois reveals more the other side of learned influence which emphasized the elaboration of the *causa* of legislation.[[720]](#footnote-720) However, in addition to such diplomatic framing over legislative texts, the procedural dimension of *ex certa scientia* should also be examined.

 The task of this final chapter is therefore to establish the link between the practice of legislation *ex certa scientia* and the homologation of customs. We will first point out that there are three dimensions of *certa scientia* as elaborated by medieval jurists. The absolutist interpretation is only one of these dimensions and therefore should not be overly emphasized so as to omit the more important procedural dimension (Section 1). Through a re-classification of legislation *ex certa scientia* in the 14th century, it is clear that, only with a few exceptions, most of the legislation followed the canonical pattern and presumed a procedure consisting of inquiry and written record; the procedural implications, in turn, are manifested in the legislative texts (Section 2). Finally, confirmation *ex certa scientia* of customs is standardized in the 14th century, and the homologation of customs in the 15th and 16th century should also be seen as a continued practice of legislation *ex certa scientia* but idealized by the introduction of the estates general into the process of legislation (Section 3).

## The Three Dimensions of *ex certa scientia*

### The Procedural Dimension

The clause *ex certa scientia* used in the preamble of secular legislation stems from the practice of papal government. The expression is hardly separable from the "confirmation" activities of the Pope. The original and most basic meaning of confirmation is to verify the authenticity of a document. Initially, most of the objects being confirmed were documents related to prebends, benefices, and privileges. Hostiensis, possibly based on the component feature of the verb con-firmare, rephrased it as *corroboratio*, and defined *confirmatio* as *iuris prius habiti seu quaesiti per legitimum superiorem facta corroboratio*. It is exactly due to the nature of corroboratio, that *id quod nihil est, non potuit confirmari*.[[721]](#footnote-721) In the *Decretum* of Gratian, *ex certa scientia* is nowhere to be found. It was at the end of 12th century and at the beginning of the 13th century that Pope Innocent III regularly used the expression in his documents.[[722]](#footnote-722) Some two decades later, the expression didn’t appear clearly in the *Decretals* of Gregory IX. It is only at the end of the second book, preceded by some bulls concerning the appeal that the title *De confirmatione utili* (X. 2,30) appeared, essentially a collection of papal edicts on procedural and validity problems of papal confirmation. The rubric, made up of 9 bulls, made no clear mention of *certa scientia* but hinted rather vaguely at different types of confirmation. It is the canonists who, based on the daily diplomatic practice of the Church, clarified the distinction of "confirmation in the common form" and "confirmation in the special form" (or "confirmation *ex certa scientia*"). Bernard of Parma, the author of the *glossa ordinaria* for the *Decretals*, took for granted the distinction between two types of confirmation and pointed out that the key difference lies in whether a *causa* is acknowledged. While *sine cognitione causae* is often the qualification for confirmation in the common form, confirmation in the special form is marked by *causa cognita* or *cum cognitione causae*. For some specific cases mentioned in the bulls, Bernard also pointed out the type of confirmation involved. This clear distinction, of course, is of great practical significance and helps to eliminate contradictory interpretations. Commonly speaking, confirmation is conditional, *i.e.*, its validity and effectiveness depend on the condition that the object being confirmed is true. But the confirmation made after an inquest (that is, with the knowledge of the Pope) is different in its force than conditional confirmation and does not yield to the recognition of lower judges.

In essence, confirmation does not create right. Before the mid-13th century, the formal difference between the two types of confirmation was not so apparent. *Venerabilis* (X. 2,30,8) mentioned that it was conventional for the papal chancellery to add the clause *sicut sine pravitate provide facta est* in confirmation letters, regardless of any cognition of *causa*. This would imply that most of the letters should be interpreted as confirmation in the common form due to the insertion of this phrase. The question then would be how to distinguish, formally, whether a confirmation is common or special. Bernard of Parma tried to avoid this contradiction by arguing from two angles: procedure and formality. Firstly, from the point view of procedure, if the pope knows the composition of the document, and has seen the object confirmed, then the letter should be understood causatively (or definitely) instead of conditionally, even if there is the *sicut* clause.[[723]](#footnote-723) At the same time, with regard to the formality of the confirmation letter, the knowledge of the pope should also be represented in the text, by inserting the *tenor compositionis* in the letter. In other words, for a confirmation to be special, the key point is for the pope to have "seen" the rights that he was confirming, and any form of expression that indicates his action of cognition should lead to, presumably, a confirmation in the special form.

Based on this framework, the glossators of canon law continued to develop the difference between the two kinds of confirmation with regard to their respective legal effectiveness. Confirmation in the common form does not create new rights but that in the special form can surpass the original meaning of confirmation, which is, *colloboratio*. The former point is emphasized by the glossa ordinaria: X. 3,8,5, gl. in forma: *No (ta), quod per confirmation in forma communi nihil iuris acquiritur*. A point taken by all successive jurists such as Baldus and Panormitanus. To the contrary, confirmation *ex certa scientia* implies that the prince gives a new confirmation that could possibly contradict earlier confirmations, thereby abrogating these earlier confirmations.[[724]](#footnote-724) If the second letter of confirmation made no mention of the prior one, then the first one should be presumed as obtained wrongly.[[725]](#footnote-725) Hence the abrogatory and exceptional power of confirmation *ex certa scientia*. And it is precisely in this sense that commentators could draw a natural connection between this type of confirmation and the *plenitudo potestatis*.

However, here we should set aside temporarily the discussion of the different legal effects of the two kinds of confirmation. Rather, we would return to their procedural and diplomatic differences. Apparently, confirmation *ex certa scientia* was not to be issued by the pope arbitrarily, neither was it a simple examination of the written text. Instead, this sort of confirmation conforms to a certain procedure to establish the truth of the statements of the *impetrant*. The procedure in question is an inquiry commissioned by the pope. *Quum dilecta* (X. 2, 30, 4) involves the renovation of privileges. In this case, the pope commissioned four bishops and abbots *ut ea inspicerent diligenter, & tenorem ipsorum fideliter transcribentes sub sigillis suis nobis remitterent, duximus iniungendum.* Bernard’s gloss, in its explanation of the case, summarized the steps to be followed: *ponitur fororum petitio, & Papae commissio; inquisitorum relatio, & canonicorum obiectio; iudicum datio, & ab ipsis appellatio; fororum iterata petitio, & earum condictio; Papae interlocutio, & priuilegii innouatio; Papa abbatissam constituit procuratricem; commitit principale diffiniendum.* A certain form of inquiry was therefore present in the confirmation *ex certa scientia* of the pope, while further details about the inquiry were not elaborated.

Consequently, the information procedure should also be represented in the text. As mentioned above, the "sicut" phrase is more a diplomatic convention than a criterion for identifying the type of confirmation. Hostiensis remarked that as long as the tenor of the confirmed is inserted in the confirmation, it should always be regarded as *ex certa scientia*. [[726]](#footnote-726) Panormitanus commentating on X. 2,30,7 repeated this point.[[727]](#footnote-727) That is to say, the way to find out whether the prince possesses *certa scientia* over the issue confirmed is to see if the tenor of the law or the rights is cited, or if the letter mentions causatively or conditionally the law or the rights. [[728]](#footnote-728) A more explicit commentary can be found in 16th-century jurist Charles Dumoulin, who, in his *Commentary on the Custom of Paris*, spent some sections discussing the different types of confirmation: Above all, *cognitio causae* is the ultimate criterion of distinction. If such knowledge is present, the confirmation should be understood as causative instead of conditional.[[729]](#footnote-729) In addition, *confirmatio facta in forma speciali & dispositiua, quando enarrato toto tenore confirmati, approbatur, recognoscitur, & confirmatur, a postetatem habente*. His reasoning proceeds: *Tunc enim ex quo fuit plene informatus de facto, & facti veritate & circunstantiis per instrumentum originale confirmati narratum in confirmatione, non intelligitur confirmans conditionaliter & praesuppositiue loqui, sed pure simpliciter & praecise*. Put together, Dumoulin's arguments can be seen as a synthesis of all aspects related to confirmation *ex certa scientia*. Such confirmation requires sufficient knowledge of the Pope, while the records of the inquest and the recount of things being confirmed in the confirmation serve as a certain sort of testimony of Pope's act of "seeing." After these steps of cognition, the confirmation should be seen as *ex certa scientia* even if *sicut* is present in its text.

To sum up, both the Gratian *Decretum* and the Gregorian *Decretals* made no mention of the exact nomination of the two types of confirmation. It is probably in doctrinal discussions that confirmation *ex certa scientia* as confirmation in the special form found its primary elaboration. Although confirmation *ex certa scientia* possesses abrogatory power, it was not mixed up with the pope's absolute power. Medieval jurists generally admit that for a confirmation *ex certa scientia* to hold, it should be preceded by an inquest and should conform to formality requirements. The distinction between two types of confirmation based on the knowledge of truth is one aspect of the construction of a truth regime in the Church administration. While in the late 13th century under the background of Papal absolutism, the Pope, in claiming more forcefully his control over the truth, helped to generate a formalized interpretation of the clause *ex certa scientia* (3). But in between, there's an evolution from the original procedural implication of the clause to its absolutist interpretation (2).

### *Certa Scientia…* of What?

From the discussion above, we may infer that confirmation *ex certa scientia* requires the knowledge of the veracity of the things being confirmed. However, just as Gérard Giordanengo has remarked, the origin of the clause is Roman contract law[[730]](#footnote-730) in which the pair *scientia* and *causa* makes the contract valid. The medieval canon law’s emphasis on consensualism of contracting parties (X. 1, 35, 1: *Pacta quantumcumque nuda servanda sunt*[[731]](#footnote-731)) contradicts the more formal Roman legal culture. Roman law point view of the contract is perhaps to be summarized as *ex nudo pacto non nascitur actio* (D. 2, 14, 7, 4:). *Causa*, in fact, is the theoretical point that helped medieval jurists to reconcile the two laws. [[732]](#footnote-732) While in the practice of contract since the 12th century, contracting parties would use the clause *ex certa scientia* to indicate the cognition of cause and therefore the binding force of the contract.

However, just as in canon law texts, the clause is nowhere to be found in the *Corpus juris civilis*. More probably it was at first adopted in the legal practices of the Church, through which a leap from private law to public law was made possible. It was then elaborated by generations of canonists and was finally borrowed by secular governments in their legislation. Up to the moment, there’s yet a definite conclusion on when and where the clause was firstly used in papal documents. Here it is safe to say, however, that *ex certa scientia* (with its variant *ex certa conscientia*) was used by secular nobility well at the beginning of the 13th century (to be discussed in detail in Section II) and was generally in use in royal chancellery only sometime later.

The leap from private to public law is accompanied by the development of some new implications of the clause, especially with the advent of Papal absolutism. Boniface VIII would claim that *Romanus Pontifex, qui iura omnia in scrinio pectoris sui censetur habere* (VI. 1, 2, 1). That is to say, the knowledge of the pope is not to be restrained by causes and facts, but actually covers *a priori* the whole realm of rights. His *ignorantia iuris* is therefore impossible. The adage *iura omnia in scrinio pectoris sui* also allows the jurists to presume that the king is in possession of all knowledge about "rights." Placentinus has put it quite early that *Princeps enim romanus nihil...ignorare quod ad ius pertineat extimandus est*. [[733]](#footnote-733) Accursius in his gloss also made it evident that *magna et iusta causa est eius voluntas*. The reasoning is actually based on the theological argument which regards the Emperor as the imitation of God. For Lucas de Penna, the Emperor, imitating God, is the *ius aequum* in this world.[[734]](#footnote-734) As *Vicarius Dei*, the Pope and the Emperor are omniscient of rights. Thus the certain knowledge evolved from that of cause to that of right, just as Francisco Suarez would say later in the 16th century: *scientia iuris semper praesumitur in confirmatione, quae fit ex certa scientia, quia Princeps habet ius in pectore, et illud ignorare non praesumitur.*[[735]](#footnote-735) The change of content is exactly the result of confusing the will of the prince with the cause and the reasoning based on the principle of *iura omnia in scrinio pectoris*. This process leads to what we may call the formalization of the clause, as in the absolutist orientation, the objectivity of *causa* is swallowed by the subjectivity of *voluntas*. Hence, in theory, the importance of the clause *ex certa scientia* tends to be affiliated with other clauses and therefore, marginalized. However, it is useful to point out here that the absolutist orientation is not manifested in the legislative practice of the French Kingdom. Just as Seignalet-Mohourat points out, although the *voluntas principis* gained a high status in Accursius and Baldus, the royal chancellery in practice was meticulous in exhibiting and explaining the motives and causes of legislation, perhaps a manifestation of Aquinas' teaching of *voluntas ratione regulata*.

### The Formalization of the Clause and its Place in the Hierarchy of Potency

As demonstrated above, canonists have long established the special force of confirmation *ex certa scientia*. Bernard of Parma’s gloss made it clear that *Si ex certa scientia Papa aliquid approbet…quod de iure non valet firmum erit*. Guillaume Durand’s remark is even more schematic: *ipse confirmando ex certa scientia firmat et sanat infirmum*.[[736]](#footnote-736) It is precisely due to the almost absolute potency of the clause to create exceptions that jurists began to discuss its relationship with other clauses such as *voluntas principis*, *non obstantibus* and *plena potestas*, and the hierarchy of their respective potency.

 We shall first examine the condition of truth presumed by the clause *ex certa scientia* in this light. As we have seen, the conquest of subjectivity over objectivity must lead to the formalization of the clause and to cause, further, changes in its condition. For Bartolus, *quando imperator statuit aliquid ex certa scientia credendum est hoc esse verum*. But he also added certain restraint for the argument to be true: *quando dispositio est certa, de causa non curatur*.[[737]](#footnote-737) Bartolus, therefore, stands in the traditional line, while we may also find in Bernardo of Pavia that confirmation *ex certa scientia* can create something from nothing, turning illegitimate to legitimate.[[738]](#footnote-738) Both Baldus and Panormitanus tended to assimilate the clause with others. Baldus wrote that *in principe certa scientia pro iusta causa habetur*[[739]](#footnote-739), and *princeps Romanus ex certa scientia omnia potest*.[[740]](#footnote-740) If the emperor does something *ex certa scientia*, no one is supposed to ask him why.[[741]](#footnote-741) In other words, *quod princeps facit ex certa scientia videtur facere et de plenitudine potestatis*.[[742]](#footnote-742) Also for Panormitanus: in cases that require the plena potestas of the emperor, he can do it by simply saying that he does it *ex certa scientia*.[[743]](#footnote-743) Etienne Bertrand made the clause equivalent in potency with *non obstantibus*.[[744]](#footnote-744) If it is so, the clause *ex certa scientia* in legislative texts will degenerate into a mere formality. Its procedural requirements are overlooked.

 However, we must point out that the "absolutism" of medieval jurists is inherently limited. Panormitanus, for instance, would believe that the King cannot make a donation in prejudice of his realm *ex certa scientia* when talking about King's *domaine publique*.[[745]](#footnote-745) The King's decisions *ex certa scientia* are restrained by the public good and the dignitas of the King. Besides, Kenneth Pennington's study of the revision traces of Baldus' manuscripts shows that Baldus is far from an "absolutist." Some of the absolutist implications in his writings were probably the result of the fact that he was working for Giangaleazzo Visconti, the Duke of Milan.[[746]](#footnote-746) Another comment from Baldus may also reveal his true position: *Iudicium: scilicet scientia, potestas et voluntas quia ista tria integrant actus humanos, secundum Aristotelem…quia velle et posse sine scientia nihil operantur in his quae dependent ex animo, ubi requiritur certitudo: et ista est veritas.* [[747]](#footnote-747) The king's will is not the equivalent to truth. In the vein of Aristotelianism and Thomism, he was arguing for the triple instead of the double composition of a legitimate power. For our theme, the word veritas in the passage is to be noted: As we have seen, in the medieval context, veritas means basically the Christian truth (or i*us naturalis*); it can also mean the truth of facts and even the procedure of inquest. From this perspective, Baldus' formalization of the clause could not be whole-hearted, while the theological-philosophical framework in his mind has predetermined the relativity and limit of his "absolutism"—a point that may be added to Pennington’s finding. The prince may abrogate the law, but *ius naturalis* is always the ultimate restraint. Hugolino in recounting the teaching of his master Albericus wrote: *Dominus Albericus aliter distinguit: utrum ex certa scientia imperator rescriptum dedit, an per ignorantiam vel obreptionem; ut si ex certa scientia valeant, nisi sint iuri naturali contraria*; And we find Azo saying earlier that substituting one civil law by another is tolerable but legislating against natural right will be a mortal sin.[[748]](#footnote-748)

## *Ex certa scientia* in the 14th Century Legislative Practice

After our discussion of the three dimensions of *ex certa scientia* in medieval learned law, in this section, we are going to compare it with the legislative practice of secular government. While the King's barons have been using the clause since the 13th century in their letters patent, it only appears in royal legislation as late as the early 14th century. It is not surprising to find that these ordinances *ex certa scientia* were made in accordance with the procedural implications of the clause, without a hint of absolutism that accords primary importance to royal power and will. Finally, the relationship between *certa scientia* and the 14th-century invention of the estates general is to be noted. As we will see, the introduction of the estates general not only made the legislation that directly concerns the people more or less contractual, but also constitutes an essential part of the standard procedure for the late 15th-century homologation of customs.

### *Ex certa scientia* and Secular Rulers in the 13th Century

The tragic rule of Simon de Montfort in the Languedoc which we discussed in Chapter V is actually provides us with certain delight because it is possible to find from his rule the early use of the clause among secular rulers. His feudal strategy and struggle with local lords meant that he had to make concessions constantly. That is why in his letters patent it is easy to find those belonging to the category of letters of donation (lettres de don). It is in these letters that his *certa scientia* constitutes the precondition of the validity of the letter and the additional clauses that come along with it. A letter of donation on March 12, 1212, indicates that he made the decision *sciens de jure & certus de facto & condicion*[[749]](#footnote-749). While textually, *ex certa scientia* is proved *cum promissione sollempniter interposita*. [[750]](#footnote-750) Another letter in July 12, 1215 contains a phrase as *Predicta omnia approbamus & concedimus, & nos ea inconcussa in perpetuum observaturos promittimus, renunciantes ex certa scientia moni auxilio juris & consuetudinis, quo possemus adversus praescripta vel praedictorum aliquod adjuvari*. [[751]](#footnote-751) In addition, out of *certa scientia*, *renunciaverunt insuper ex certa scientia omnibus exeptionibus, defensionibus & appellationibus, que possent eis competere*. [[752]](#footnote-752) In his rule that lasted no more than two decades, many similar letters can be found. These precocious examples of the usage of the clause in secular governance merit further research but here we are not able to go into too much detail. A search in the database *Diplomata Belgica* reveals that before 1250, the occurrence of *ex certa scientia* amounts to 6 times in Flemish documents, not including one occurrence of *certa conscientia*. But it is noticeable that these examples mostly come from ecclesiastical documents, in contrast to Simon de Montfort who is a secular ruler. Is it possible that the Northern baron Simon de Montfort employed some Southern clerics in his chancellery, and it was through these clerics that the ecclesiastical practice was introduced? A point that awaits proof.

The earliest royal usage, currently known, of *certa scientia* is also found in the 13th century, involving the treaty between Louis IX and the Duke of Britagny in 1231 which states: *…lesquels aussi nous de ceste authorité royale et de certaine science, au dit duc et à ses successeurs ducs de Bretagne par la teneur de ces présentes, en tant comme besoing serait, nous reservons.* [[753]](#footnote-753) An act of Parlement of Paris at the end of 13th century during the conflict between Philip the Fair and Guy de Dampierre also made use of the clause.[[754]](#footnote-754) Unfortunately, the clause cannot be found in any ordinance for the period in discussion. Taking a general look, we may infer that the letters patent containing the clause *ex certa scientia* in the 13th century involved more often the donation of seigniorial rights, usually as the conclusion of some negotiations. It is therefore not hard to attribute its usage to their private and contractarian nature, something that reminds us of the practice of private law. By the insertion of the clause *ex certa scientia*, the parties are able to eliminate possible complaints in the future because of the ambiguity of the text and guarantee that the contract will be interpreted with rigor in favor of the beneficiary party. The official *mis-en-scène* of *ex certa scientia* in royal ordinances is, however, the probable result of the Philip the Fair-Boniface VIII conflict at the turn of 13 and 14th century which stimulated the "pontificalisation" of the kingdom at all levels. But as we shall see, the absolutist tendency did not render the clause merely a formality. Quite to the contrary, the legislative practice of 14th century onwards observes certain rules, and the combination of clauses in the preamble is far from an arbitrary decision.

### The Procedural Premises of Legislation *ex certa scientia*

Despite the frequent occurrence of *ex certa scientia* in the royal ordinances since the 14th century, the legislative practice of the realm did not follow the absolutist line. *Cessante causa, cessare debet effectus* is an adage often commented and cited by the jurists of Orleans.[[755]](#footnote-755) Compared to the clause *de metu proprio* that often appeared in the English royal ordinances, among the 1685 ordinances of the 14th century France, only ten claim themselves to be promulgated *metu proprio*.[[756]](#footnote-756) The theme of the "will regulated by reason" holds an important place in the activities of the royal chancellery. From the 14th century onwards, the royal chancellery became even more fastidious in stating the causes of legislation, so as to make clear the reason of new legislation. The chancellery of Philip the Fair began to include statements on the motive of legislation since 1302, and the statements often go more in detail for some of the most important ordinances. [[757]](#footnote-757) The time coincides with the earliest Estates General and the first usage of *ex certa scientia* in royal ordinances. The “pontificalisation” of the royal government and the rise of Gallicanism did not lead immediately to absolutism. Above all, it is a process of total integration of practices of the ecclesiastical way of governance. The usage of the clause *ex certa scientia*, in the same vein, should meet certain procedural prerequisites. But unlike private contracting or ordinary letters of confirmation, royal legislation presumes the condition of solemnity[[758]](#footnote-758), and its *scientia* has to be established by a certain authoritative form of *informatio*. Depending on the context, information can take several forms such as deliberation of the king's barons, the estates general, an investigation by the judges, the counsel from corporate bodies, etc. Only after an explanation of how this *informatio* was carried out and registered was the King able to claim in his legislation his *certa scientia*.

In the 14th-century royal ordinances, there is often the mention of groups being consulted before the clause *ex certa scientia*. The earliest legislation *ex certa scientia* of the year 1303 prohibiting private warfare puts it this way: *de praelatorum et baronum consilio et certa scientia et auctoritate, et de plenitudine regiae potestatis omnino tollimus, annullamus, cassamus, irritamus et penitus abolemus*…[[759]](#footnote-759) In ordinances redacted in the vernacular language, *de conseil et de nostre certaine science* is a frequent combination. Hageneder's example of the imperial edicts of the Holy Roman Empire in 13 and 14th century even made more evident the importance of the information and counseling process to the construction of *certa scientia*. A typical formulation can be: *non per errorem aut improvide, sed (animo deliberato propriique nostri motus instinctu, sano ac maturo etiam principum, comitum, baronum, procerum et nobilium ac aliorum sacri imperii fidelium nostrorum accedente consilio) de certa nostra scientia*.[[760]](#footnote-760) After obtaining the counsels, errors and improvisations are excluded from the Emperor's decision. Claude Gauvard also pointed out the deliberation process before the issuance of a letter of remission *ex certa scientia*. A letter of remission of October 8, 1342, is preceded by a discussion of judges which is luckily conserved in the archives. In a letter of remission, *ex certa scientia* often follows expressions such as *ces choses considerees*, or in Latin *premissis consideratis et attentis*. While the original petition is to be part of the letter: *nos autem omnia et singula in suprascripturis litteris contenta rata habentes*. [[761]](#footnote-761) Besides, the enforcement of King’s ordinance is also refrained by the “cause”: whenever it conflicts with a just cause, it is the duty of the bailiff to stop enforcement and inform the King. [[762]](#footnote-762)

Therefore, in the face of the petition of his subjects, the King only makes a decision for the common good after conducting a certain form of *informatio*, preferably a deliberation with the representative and authoritative groups concerned. The legislation *ex certa scientia* usually observes the original procedural premises of the clause in Canon law and cites directly or indirectly the content of the petition that led to the legislation. The final decision of the King after the *informatio* surpasses existing laws and puts in force the particular norms in conflict with the general norms. For such an extraordinary new law to be truly legitimate, the reason for the legislation must be sufficient, and adequate expression of solemnity is expected with regard to the *informatio* and promulgation. The second half of the 14th century saw a Kingdom struggling in the Hundred Years War. With the aim of increasing taxation for military purposes, the King convoked several estates general, and we may well expect that the ordinances after the assembly would have the most complicated combination of clauses. The Sens Estates in 1367 leads to an ordinance promulgated *de nostre certaine science et grace especial, plaine puissance et auctorité royaulx, et par bonne et meure déliberacion de nostre grant conseil*.[[763]](#footnote-763) Now that, much conforming to the canon law, the legislation *ex certa scientia* necessarily implies a procedure for establishing the *certa scientia* and its proof and indication in written documents, what about the specific content of these ordinances?

### The Content of Legislation *ex certa scientia*

Jacques Krynen has made a list of the royal ordinances of the 14th century that contains the clause *ex certa scientia* and classified them into different categories. Here we will go further by examining these ordinances in light of the procedural implications of the clause as discussed above. As we shall see, these seemingly far-reaching ordinances present certain coherence with regard to their content and should be considered as falling into the applicable realm of the clause. That is to say, the royal chancellery did not choose the clauses at will.

According to Krynen, the ordinances can be classified as ordinary ordinances, extraordinary ordinances (including letters of donation, commission, confirmation or command) and judicial ordinances (letter of revocation or remission). For our purpose here a reclassification in light of their confirmation nature is perhaps necessary. The first category is confirmatory ordinances, including those pertaining to feudal relations (letters of donation) and the (re)confirmation of privileges and customs. The second category consists of judicial letters with confirmatory nature. The third involves regulations of royal domains and the royal house that may be termed as "constitutional" in the modern sense. The ordinances resulting from an Estates general often have a larger scope and can be put at the same time into the first and third category. The reason for using the clause *ex certa scientia* is no other than the fact that these ordinances share some similar content with a letter of confirmation in the special form, and there is a rigorous process of information in the making of the ordinance. There are a few exceptions, however, such as those ordinances dealing with the management of the royal domain and the royal house which don’t make explanations on its preceding procedure.[[764]](#footnote-764) The reason is perhaps that only in this field the King’s *scientia* coincides with his *voluntas* and *potestas*, making such procedure unnecessary. But normally, the certain knowledge of the King is derived from inquiries commissioned to King’s men of law. These people are charged with the task of processing, interpreting and revising the information collected. The transmission of information observes the general pattern of “petition—inquest and consultation—legislation—promulgation”. Royal legislation can only be valid if there’s consensus on relevant texts (the procès-verbal of the reunion and the textual form of the legislation itself). Some ordinance would specially mention the abrogatory power of the new legislation, such as the reconfirmation of privileges and jurisdiction of Champagne and Brie which also indicates the repeal of all previous ordinances relevant: …*en adnullant et rappellant toutes autres ordenances, qui n'aguieres avoient esté faites et publiées sur ce*…

It is worth looking at the ordinances published after the estates general, as it has much to do with the rise of the "customary ideology" that we are going to discuss in the next section. As a 14th century invention, the estates made significant contributions to the royal government. Already at the beginning of the 14th century, Philip the Fair and his legists were eager to make the Gallican claims notorious customs in the Kingdom. After his death, the estates general of 1317 helped to confirm the rule of primogeniture. In the Hundred Years War, the estates were an effective means to mobilize financial resources. The fifth volume of Isambert’s *Recueil* includes the ordinances after the estates of Compiegne (1358), Chartres (1367) and Sens (1367). In addition to fiscal issues, these ordinances *ex certa scientia* also contain the confirmation and conferment of rights, making the clause applicable. The ordinance after the estates of 1358 depicted the relationship between the King and the participants in the following manner: …*considerans la tres bonne amour et affection que nous avons touzjours eu, avons et aurons audit royaume, et au peulple d'iceli gouverner doucement et amiablement, et la tres bonne subjeccion et parfaite amour que nous avons trouvé ès prelaz et autres genz d'eglise, nobles et bonnes villes et à tout ledit peuple*…The rule of the King is a tender and amiable rule. These phrases of affection such as *amour* or *amitié* were first used and popularized by 12th century monasterian theologians[[765]](#footnote-765) which soon became the key notion in feudalism and a reflection of communal and contractarian consciousness. [[766]](#footnote-766) As the King is the only source of legislation, such discourse actually made it meaningful for the king to contract politically with the people, as the estates general is the concretization of the *corpus mysticum regni*[[767]](#footnote-767), by which the King was able to assert his role as the “father of his subjects” [[768]](#footnote-768). The introduction of the estates general is therefore bound to have great relevance with the establishment of King's *certa scientia* and the solemnity required for important legislative activities.

Finally, we still have to acknowledge that both the *Recueil général des anciennes lois françaises* and the *Recueil des Ordonnances des rois de France de la troisième race* are the results of selection of later day lawyers. That is to say, the modern vision of medieval legislation based on these collections may not be the way how medieval practitioners looked at the problem. Reorganization of seemingly "chaotic" archives and their selection would also entail the loss of some key information. A study based on the two *Recueils* is therefore far from sufficient, and a treatment of archives that takes their historical condition into primary consideration is needed in enriching our understanding of the practical status of *ex certa scientia*.

## The *Certa Scientia* over Customs: the 14-16th Centuries

The 14th-century experience of legislation and estates general paved the way for the extension of the concept of the King’s certain knowledge to other aspects. The next question would be, facing the all too diversified customary system of the North, in what way would the King extend his certain knowledge to the “local knowledge”?

### (Re)confirmation of Customs and the Certain Knowledge

In fact, well at the beginning of the 13th century can we find examples of royal (but non French) confirmation of customs *ex certa scientia*. A 1204 ordinance of Peter II, King of Aragon, confirmed the Customs of Montpellier. It states in Occitan that the king *de certa scientia promet e coferme*.[[769]](#footnote-769) The newly compiled customary law text was attached after the first part of the ordinance, a trait of the canonical practice that we discussed above. However, a complete survey is to be done in order to give a larger picture of confirmation of customs *ex certa scientia* in the 13th century. Textually speaking, the variety of municipal charters as a result of the movement of communes since the late 12th century seems to be disconnected with our clause in question.

 As we have mentioned in Chapter V, in Languedoc, there were the royal efforts in controlling the interpretation of norms. Nevertheless, the homologation of customs in Languedoc has long been practicing in the canonical fashion while the clause was not systematically in use for unknown reasons. The confirmation of the Customs of Toulouse by Philip III only used *grace especial*[[770]](#footnote-770), but did refer explicitly to the investigation and registration procedure.[[771]](#footnote-771) To increase the certainty of customary law and avoid the loss of the original text by accident, this letter of confirmation emphasized the importance of the conservation of the document by prescribing two transcriptions of the customary law text, held respectively by the consulate of Toulouse and the Vicarium Tolosae in the castle of Narbonne. [[772]](#footnote-772) Another important point is that in the case of the Toulousian Customs, the text of the customary law is attached to the record of the redaction assembly. [[773]](#footnote-773) Rather simplified as compared to the late 15th century *procès-verbaux*, it nevertheless indicates that the process of homologation of customs may well have been standardized at the end of 13th century.

Based on the experience of confirmation of customs in major cities, *certa scientia* and customs found their explicit union in the Languedoc of 1320s. Following the lead of the major cities, the minor towns also began their own homologation supervised by the seneschal of Languedoc. The customs homologated should be confirmed by the King or his delegation. These confirmations often belong to the type of *vidimus*, with a format as follows:

Statements on authority;

The original text of customs homologated;

Clauses on revision, *ex certa scientia* and others (e.g., *rata et grata*, *ex certa scientia auctoriate Nostra Regia confirmamus*)

Seal Clause

This type of confirmation letter is common in the towns of Lauragais region, in Languedoc, a witness of how confirmation worked. [[774]](#footnote-774)The Latin word *vidimus* means literally "we see." It is above all a certifying document on the verity of an existent document. Specifically, it means a public power seals to verify the authenticity of a previous document and copy the whole document; the external traits of the document will be described when necessary.[[775]](#footnote-775) The *vidimus* issued for the customs is a form of confirmatory *vidimus*. It not only verified the authenticity of the document but also included additional clauses to suggest that the authorities have confirmed and revised its content.[[776]](#footnote-776) In this sense, the two types of *vidimus* are almost the equivalent of the two types of confirmation in ecclesiastical practice. Even though initially the *vidimus* intended to give certification to the diplomatic characters of a document, the two practices seem to be integrated into one during the confirmation of customs in Languedoc.

 Compared to the stronger culture of writing in the South, the customary North proved to be a more difficult region for the concept of the King’s certain knowledge of the law to take root. The common practice in the 13-15th century was the private compilation of customary law books whose authors were often royal officials with some training in the learned law.[[777]](#footnote-777) Their concern was to bring dispersed legal customs in order, but their works had a somewhat restricted circulation given the paucity of preserved manuscripts as compared to the major learned law texts. In judicial practice, the judge has to face more often the allegation of customs from both parties. Aided, not perfectly, by case law, the proof of customs is a constant practice in the judicial activities. The uncertainty of customs usually made the process of litigation extraordinarily lengthy and prone to be exploited by some immoral lawyers. Neither did the *enquête par turbe* introduced in 1270 help to fix the customs. The problem is, then, the establishment of King's *certa scientia* in the customary North.

### The Road to the 1454 Ordinance of Montil-lès-Tours

As demonstrated above, the Realm already had many experiences in the fixation of urban customary law since the 13th century. But as those customary laws were more often statutes regarding public administration than a codification of private law, much room was left for local customs. For the King’s court, the Roman law may have been the recourse for the South. But in the North, the diverse legal customs made it necessary for repeated proof, and on many occasions, contrary customs can be proven.[[778]](#footnote-778) For the homologation of customs in the second half of 15th century to be possible, a theoretical and practical basis has to be laid. The bridge in between is the theory that judge represents the *voluntas populi* and that customs can be written.

*Quod omnes tangit, ab omnibus tractari et approbari debet*: this is the fundamental reason for including the "people" in the making of customary law. However, it is controversial in medieval learned law whether the "people" have legislative power. Roman law texts can be easily used to prove that their legislative power had been transferred to the Emperor (D. 1, 3, 32, 1 and C. 8, 52, 2). The extent and nature of the transfer is therefore much commented and debated.[[779]](#footnote-779) The school of Placentinus believes in a total transfer of the power to the Emperor as *populus, in principem transferendo communem potestatem, nullam sibi reservavit, ergo potestatem leges scriptas condendi, interpretandi et abrogandi*…[[780]](#footnote-780) Although the influence of Placentinus on French jurists is great, the theory somehow had to accommodate to the customary reality and face another line of reasoning represented by Bulgarus who believed that common custom abrogated the law, while special custom should be distinguished as either "introduced by error" or "introduced *ex certa scientia*". The *certa scientia populi* enables the people to give themselves special customs which may even conflict the written law as long as the people do so knowingly. At the end of 13th century, the Orleans jurists raised the status of custom significantly. *Consuetudo* for them surpasses *usus* in the normative hierarchy.[[781]](#footnote-781) These jurists are often close to the King, and their influence culminated perhaps in the Ordinance of July 1312 which declares the King's superiority over the customs, the *permissio principis* as the ground for the validity of customs, and the role of Roman law as a recognized custom.[[782]](#footnote-782)

However, the uncertainty of customs has always been a problem. For Azo, written law is more certain while customs make the prince more vulnerable to fraud.[[783]](#footnote-783) How to establish a custom? By whom? The Southern customs were often compilations of the consulate and bourgeois representatives, with supervision and confirmation of the royal delegates and the Parlement of Paris. But traditionally, the custom was the non-written law par excellence, making the term incompatible with the urban practice. The commentator of the *Coutumes de Toulouse*, therefore, attempted to explain why this customary law could be written. The author classified the *Coutumes* as a sort of *statutum*, whose legal force laid ultimately in the patent letter of confirmation from the *princeps philosophie plenus*.[[784]](#footnote-784) In the North, the non-interventionism of the King with regard to customs is to be doubted as the Judges of the King by the second half of 13th century had already controlled the customs.[[785]](#footnote-785) Jacques de Revigny developed the judge’s role in elaborating customs. Bartolus went even further. His theory is based upon the presumption that *quod facit judex, populus videtur facere*. It in turn has two aspects: *permissio principis patiendo*[[786]](#footnote-786) that is, the principle *scientia cum patientia pro consensu accipienda*; and that *sententia judicis* is equivalent to the expression of people’s will.[[787]](#footnote-787) Bartolus literally legitimized all customs (even including those in conflict with the learned law) and the judges are charged with the monopolistic power of their recognition.[[788]](#footnote-788) This way, the King’s men of law now have sufficient justifications for supervising and directing the fixation and expression of customs, and the task was separated from King’s personal obligation to render justice. The King has the law “in his chest” because he is surrounded by all the *doctores iuris* in his court through whom the law of the prince is articulated. [[789]](#footnote-789) As in fact, *raro princeps jurista invenitur*.[[790]](#footnote-790)

Thus in the realm of customary law, we saw the activities of judges and other judicial practitioners from the very beginning. But before we arrive at the 1453-1454 Ordinance of Montils-lès-Tours, another theoretical problem has to be solved, i.e., can the customary law be written? Jacques de Revigny’s dichotomy of law (customs) and fact (mores, usages) defines customs as pertaining to *ius*. Bartolus' discussion of the multiple meanings of customs is concluded by a reference to the definition of Gratian, that is, *consuetudo est jus quoddam moribus institutum, quod pro lege suscipitur*…[[791]](#footnote-791) He praised it as "good definition," and explained further that this definition distinguishes custom as fact and custom as law, while the expression "constitution according to mores" makes the custom a distinctive part of the law. The written or unwritten nature of customary law is no longer essential. [[792]](#footnote-792)

Now, everything was ready for an Ordinance initiating official redaction of customs. The Montils-lès-Tours ordinance of 1453-1454 on judicial reform is part of the scheme of rebuilding France which just came out of the Hundred Years War. The chaotic judicial system received constant complaints, and King Charles VII decided to shorten the legal procedures and reduce the cost of litigation. Apart from the discipline of judges and lawyers, he also asked for the homologation of all local customs so as to enhance the certainty of sentences and clear up the contradictions in the customary legal order. The Ordinance, though thought of as an age-breaking event, was vague on the procedure of homologation by simply saying that customs *soyent rédigez & mis en escrit, accordez par les coustumiers, praticiens & gens de chascun desdiz pays de nostre royaume, lesquelz coustumes, usages & stiles ainsi accordez seront mis & escritz en livres, lesquelz seront apportez par-devers Nous, pour les faire veoir & visiter par les Gens de nostre Grand Conseil, ou de nostre Court de Parlement, & par Nous les décréter & confermer*...[[793]](#footnote-793) The article of writing down the customs is found only at the very end of the Ordinance, and from a retrospective, the ordinance did not contribute to the acceleration of the homologation movement. The value of this Ordinance is, therefore, more symbolical than practical. However, just as royal efforts were usually preceded by other principalities of the Kingdom, this time it is the Duchy of Burgundy that took the lead to promulgate the *Coutumes de Bourgogne* in 1460, an example followed some years later by Touraine. It is generally admitted that it is only after 1497 that the homologation movement is on its track. The change should be attributed to the introduction of *certa scientia* and the local estates general.

### The Birth of Customary Law

The well famous ordinance of Montils-lès-Tours hardly produced an immediate effect. Louis XI's dream that France should use “one law” (*une loi*) was never achieved. Two letters patent (September 2, 1497, and March 15, 1498) of his successor, Charles VIII, modified the compilation procedure and such modification was proved to be highly remunerative, within only two decades (we have to consider the interval of 6 or 7 years of postponing due to the death of the King). But the model of homologation is very similar to the Burgundian one (especially if we look at the second letter patent). In the Burgundian case, after the petition of estates general, 6 counsels of the Duke hear the customs and homologate them into text.[[794]](#footnote-794) The text is debated and revised in the estates general and is thought to be *true* customs after eliminating all controversies.[[795]](#footnote-795) Finally, after the examination conducted by the Court of the Duke, the customary law is promulgated by the Duke out of his certain knowledge and plenitude of power. [[796]](#footnote-796)

The fundamental concern in the homologation of customs was how to make sure that the customs were true. The truth of customs is often controversial. In 1493, Charles VIII was still citing the procedure established by Charles VII but added some more specifications. The persons in charge of homologation are a sufficient number of lawyers, prosecutors, notaries and other seigneurial officers. Were also to be added the clergy, nobility, bourgeois and well reputed experts in customs. After taking a sollemn oath to tell the truth, they should carry out the *informatio* by reason and justice without intermingling personal interest. The fundamental goal is to find out the “truth and effect” of the customs of this region. The text has to be reconciled and interpreted, compiled into a book, and signed and sealed. [[797]](#footnote-797) Here the estates general were yet to be introduced, but we can already find a more specified identity of participants. The letter patent of March 15, 1497 established the steps of homologation definitively, stipulating that the homologation in the royal domain should be carried out at the level of the *bailliages*. The basic procedure can be summarized as: petition—King's letter—estates general under the supervision of King’s commissioners—formulation of text and registration of procès-verbal—official publication. [[798]](#footnote-798) The discussion in the estates general and its record constitutes the proof of the truth of customary law. The procès-verbaux listed controversial points and their solution in the assembly. Obscure points were presented to the Parlement of Paris. [[799]](#footnote-799) After all these steps, the letter also emphasized the necessary “formality and solemnity” of redaction and publication of customary law, and prescribed that the customary law so accorded (*accordez*) could be confirmed for promulgation *de nostre certaine science et propre mouvement, plaine puissance et auctorité royale*, and the customary law promulgated should be regarded as *loy perpetuelle*. [[800]](#footnote-800)

In fifty years, the King’s attitude toward customs had changed significantly. In 1454, there was no evident intention to make the homologated customs *loy perpetuelle*. By that time the purpose was more likely to speed up the administration of justice. In contrast, the official introduction of solemn procedures such as the estates general by the 1498 letter brought about what we may call the “transubstantiation of customs”. The estates general under the supervision of the king represents the integration of *certa scientia populi* and *principis*, thus solving the problem of learned law in the French customary context. The homologation is by nature obligatory: nominated representatives of the estates general must attend the assembly. If a representative should be proved to be avoiding attendance consciously, his property could be ceased.[[801]](#footnote-801) The solemnity of the homologation procedure guarantees the condition of *consensus populi* and therefore the *scientia iuris* of the people. [[802]](#footnote-802) The written customary law text and the procès-verbal of the estates general had to be well conserved as an essential part of King's *certa scientia*. Besides, there's certain flexibility in this *certa scientia* as the procès-verbaux also left room for the future reformation of customary law. The combination *de nostre certaine science et propre mouvement, plaine puissance et auctorité royale* signifies not only the fundamental change of the nature of customary law being homologated but also the full acceptance of the earlier practice of legislation *ex certa scientia*. The model of homologation of customs in the late 15th century should be considered as a development of previous models rather than a total innovation.

## Conclusion

After the 14th century, the clause *ex certa scientia* and its procedural implications borrowed from the papal government are internalized by royal legislative practices. Through confirmation in the special form, the King (by his judicial agents) extended his *certa scientia* over the stabilized urban customary law in the 14th century. The ideal of unification of law and the practical goal of expediting justice urged the King to search for a path to fix the customary law. For this purpose, a procedure of homologation characterized by the important role of the estates general gradually emerged as the standard. A perfect answer to the deliberative, written and solemnity requirements of legislation, the model managed to integrate King's *certa scientia* as the prerequisite for confirmation and legislation with the *certa scientia populi* which is the essence of customs.

Therefore, it is no wonder that the model is often commented and proven to be a rich source for ideological imagination. Jurists of the 16th century would speak highly of the homologation procedure. At the very beginning of his *Institution au droict des françois*, Guy Coquille wrote that the customary legal order of France is actually quite compatible with the ideal of a mixed constitution: First of all, the ancestors of French people never surrendered their power entirely to the King; The estates general in this sense represents the remnant of people's power; Conventionally, French King often resorted to the estates in solving some of the most significant issues of the Kingdom, and people in every province have the right to institute customs or unwritten law. But Charles VII, knowing the inconvenience of the *enquête par turbe*, decided to convoke provincial estates general to homologate customs. Although directed by the King, homologation is, in essence, the law-making by the people, a well ancient constitution of the French *res publica* that concentrated democracy, aristocracy and monarchy in one. [[803]](#footnote-803) Also as the estates general were convoked under the authority of the King and supervised by the King's delegates, the customary law so homologated can well be called the "true civil law" of France which reflected mores and usages of every province but at the same time recognized King's sovereignty. René Chopin would even regard the procès-verbaux of the estates general as the soul of the customary law, as they says the things that are not said in the customary law text itself; added to the law text, they are the witness of remonstrances, negotiations, and consensus of all estates and the recognition of particular rights. [[804]](#footnote-804) The 16th-century French jurists fond of the search for "true and native law of French people" (a term used by Etienne Pasquier) had perhaps neglected the profound and fundamental influence of the learned law on the diplomatic and legislative practices of the medieval Kingdom of France. But as we have shown in this chapter, it is by the clause *ex certa scientia* and the development of the learned theories on customary law, combined with previous political experiences that the French Kingdom was able to establish its unique model of recognizing (at the same time fixing, controlling and recreating) the customary legal order.

# Final Conclusion

After a long journey that took us from the southernmost territories of the French Kingdom to its northern fiefs, from the world of Reynard and his fellow beasts to the arena of the Estates general where legal customs were put under deliberation, we may finally return to the title of our study, that is, the dimensions of truth. As we have stated in the introduction, the main purpose of our research is to propose a way of elucidating the birth of French national legal culture in the late Middle Ages. The way we found is to describe the process of the installation of a truth regime in the legal ideology and legal institutions of the late medieval Kingdom of France. Just as we have divided the chapters into three parts, in this conclusion, we will also try to make conclusive remarks on the three dimensions of this process, namely, the cognitive, the communicative and the seemingly “national” dimension. However, before moving on to each dimension, we will first draw some general impressions and conclusions for our intellectual journey.

The first impression is the overall ambiguity and malleability of the notion “truth” in late medieval writings. Starting from the religious truth which, once thought inaccessible to human beings, can now be approached and imitated by the employment of reason, medieval theorists since the late 11th century accorded to truth the primary importance in a well-ordered Christian society. *Quandoque iustitia veritas vocatur*[[805]](#footnote-805): second to the religious truth, there’s the judicial truth. A certain degree of truth’s divinity was inherited by the judicial truth, probabilistic or fictional in nature but enthroned as the pillar of a stable and legitimate judicial system by the dictum *res judicata pro veritate habetur*. Beyond judicial truth, there’s the normative truth which either implied the concordance of plural norms or universal normative claims depending on different pleading contexts. Finally, this movement of truth also touched upon men’s perception of the factual and historical truth, leading to the intermingling of the historical, the normative, and the judicial. For medieval minds, there was no absolute demarcation between these truths, and it was easy to find the same concern of truth in religious, legal, and practical writings.

Our second impression concerns the various mechanisms for communicating all these truths. The period of our research witnesses the victory of scholasticism over mysticism, and universities became the main organ for truth’s communication. In practice, various forms of inquiries were in force, be it contemplative, religious, judicial or administrative. The generalization of truth’s communication was accompanied by the reform of the agents who carry out the communication. When truth became increasingly institutional, we see the gradual emergence of an idealized *homo veritatis*.

The third general impression is that the root of a national ideology of French law can be found, but only to a not so significant extent, in the last centuries of the Middle Ages. Above all, France is constantly under the European legal culture whose pillar was, of course, the learned law. The tendency of medieval minds to understand theology, law, and perhaps medicine, as an integral body of knowledge also gives rise to the prevailing intertextuality between the medieval study of law and other disciplines. Especially, the purpose and proper way of studying and practicing law were intimately connected to the ideals promoted by theologians, who also laid down its epistemological ground. Their concern was well the establishment of a rule based on truth in its multiple senses, be it religious, judicial or normative. The parallels of religious reform and secular reform are too evident in the French case, and the early establishment of French state of justice is nothing other than a full-hearted (at least as it appears in various narrative constructions) embrace of Christian teachings with regard to legal deontology. The Christian legal ideals, with truth at its center, were communicated, coordinated and realized in almost all parts of the Kingdom, fueled by either the learned law or other judicial forms that seem to be inherited from the past. From this dimension, we have to say that French legal culture and legal ideology was modeled and influenced heavily by Christian precepts and symbolism which made it subject to a universal truth regime. However, as the borrowing of truth ideology was so intense and pervasive, the French monarchy would even build its own secular ecclesiology after the process of "pontificalisation." This would mean that the King would become the conferrer of both historical and normative truth. The customary system that the “judicial nationalism” of early modern France was well proud of was initially built up by the modes of social cognition of the learned law. If the consciousness of customary law as the fundamental trait of French legal culture can be found in the Late Middle Ages, it should nevertheless be a restrained and limited version which, with much Roman illusions, was attached to the concept of “custom constituted by the King.”

If one should ask whether French national legal culture was born in the period we investigated, we, therefore, would prefer to answer "yes and no." Yes, in the sense that we do find traces that indicate the emerging judicial nationalism despite the fact that the term French law was only invented in the 16th century; No, in the sense that still it was a period where legal writing conformed to conventions and the legal ideal was identical and part of the religious ideal. If the conflict of the 14th century between the King and the Pope set up the first stage of the consciousness of judicial nationalism, we have to wait until the 16th century for it to develop, based on the late medieval emphasis on “nature”, a legal ideology that claims customs to be the native constituent of French law. Now that any clear-cut answer to the question will appear arbitrary, it will be perhaps more plausible and safe to answer the question from the three dimensions as we have proposed. For us, the three dimensions are the key to understand the French national legal culture in conception. To develop our conclusions in further detail, we will summarize each dimension of truth discussed and its relevance to our general conclusion.

1. The Premises of a Legal State, or the Cognitive Dimension

The “rule of law” is not taken as granted in most of the cultures other than modern Europe, and is, therefore, culturally relative. It has to struggle in order to become the dominant legal ideology. A state ruled by law books and courts, with its monopoly over violence, was far from natural to the pre-modern world where a collective and relational logic were at work. It is the case even of the late 12th century people in the medieval West when they found that those trained in the learned law were gradually taking control of their public life. It was the Church, rediscovering and exploiting the Roman law sources that first put the rule of law in practice during its phase of centralization. Its practice soon found followers in the secular realms.

In the advent of the rule of law and justice, the Church advocated truth in justifying its reforms. Especially, judicial truth should be established by rational modes of proof, and conflicts solved within the hierarchy of jurisdiction. However, how could the ruler convince his subjects, that such reform was necessary, well-founded and beneficial? Truth has to justify itself if it should be placed as the supreme value. On the individual level, the solution of medieval Western Europe lies in a vast program of reform of man's cognitive and performative properties. A well functioning five senses of man is thought as the prerequisite of the obtainment or realization of truth, while their abnormalities lead to cognitive disorder and social disorder, such as private warfare, revenge, and other measures of private remedy. Similarly, the respective roles of the three parties in a trial are defined in light of truth. Especially under scrutiny is the behavior of the lawyer. The lawyer, supposedly the facilitator of truth, should not sell his tongue and science by distorting cognition, hence, the truth, while the judge should always have God before his eyes. It is by instrumentalizing the lawyer and neutralization or sanctifying of the judge (embodied by Saint Louis) that some modernist perception of justice is born.

 In this dimension, France is not so special as to form a strand of its own. The royal ideology of peace was nothing but borrowed from the Church. The higher courts in the Kingdom were happy to adopt learned influences, especially with regard to procedure and legal deontology, and the King’s Parlement became ever more exemplary in this respect. Even the idea of *doux advocat*, perhaps the counterpart of *douce France* in the court, was imported from the procedural treatises of the canon law. The legal revolution is above all a cognitive revolution, and the mission of justice has as its mission cognition. The French state, in this sense, was influenced by European intellectual movements which also shaped general legal landscape in other nations, and transformed itself, through its institutional evolutions, into a cognitive machine.

1. The Building of the Secular Ecclesiology, or the Communicative Dimension

The second step in the early conception of “French legal culture” is the construction of a secular ecclesiology of the French Kingdom. In this process, a fundamental link between the King and the religious truth has to be drawn. Saint Louis’ sanctity proved to be successful in this respect as he embodied at the same time both the King who renders justice according to truth and the King who lives in the Christian virtue of truth, the *rex christianissimus*. Saint Louis was the model king, his justice model justice. The Kingdom, therefore, would be better if it is ruled by ecclesiastical ideals, and the Kingdom’s keeping pace with religious reform programs is to some extent a royal responsibility.

In fulfilling the religious duty of cleansing the Kingdom of heresy, the secular arm is able to centralize itself in this formative process of a “persecuting society" (to borrow the term of R. I. Moore). However, for our study, persecuting society is also a truth-saying (veridiction) society. The purge of heresy means the institution of forced veridiction by individuals, sometimes aided by torture. Truth, or more precisely, the act of speaking out the truth, becomes banalized in this context, and the religious discourse joined the legal one to frame the prescriptive fundamentals of the Western state of justice.

In the age of Saint Louis, the King, even with his increasing control of the legal order, was still restrained by the truth of God and by the *droit commun*, a phenomenon that is still to be observed at the turn of the 14th century during the crisis of Flanders. Even if the royal ideological construction of Saint Louis tends to confuse the French King with the religious truth by regarding the latter as an inherited quality of every successor of the Saintly King in the 13th century, France was more imbued with a common legal culture of Europe and a significant part of its legal policy aimed at recognizing and reforming customs. The religious dimension of truth, therefore, provided the basic discursive framework for legal institutions and legal reforms, but we are still far from a French legal culture, even though the secularization of the religious truth embodied by the image construction of Saint Louis has provided us some hint of how to proceed.

1. The Ascension of a Truth-conferring King or the “National” Dimension

If the cognitive dimension and the communicative dimension of a French truth regime under construction represent the European (or universalist) nature of the medieval French legal system, they are nevertheless adapted to a certain extent and become the intellectual and institutional resources for a “national” dimension to grow. But the crucial step is to empower the King to be the truth-giver in his Realm. Already we have seen that the crucial equivalence of the King and the truth can be interpreted and used in both ways, i.e., either subjecting the King to a universal discourse whose interpretation relies on the Papacy or making the King himself the incarnation of truth. Of course, it is the latter orientation that suits more often the interest of the King, as, in this sense, the King could ultimately claim his full independence, even in matters of the Church. In this way, the King exerts his full control over both the cognitive truth (as the fountain of justice) and the religious truth (as the head of the Church in his Realm).

Historiography is the most noteworthy product during the construction of a “national” truth. It reflects the search of the King’s legists for a new system of reference for truth whose source is no other than the power of the King and his court. The "national" dimension is, therefore, the puppet of the King’s unquestionable power in his Realm. The unification (or nationalization) of historiography, law and language moved on hand in hand. Armed with the cognitive machine operated by his men of the law and disguised in religious sanctity, the French King at the end of the Middle Ages, was finally able to put various dimensions of truth in his Kingdom under control. But we cannot carry this “absolutist” thesis too far. As we have seen, the promoters of the “national” dimension of truth have never put forward a nationalistic discourse which is brand new but are satisfied in exploiting the framework, both theoretical and practical, available to them. We should therefore discuss this “national” dimension in the late Middle Age with some reserve, and its learned basis should not be overlooked.

1. Further Remarks

As our study intends to give a general picture of the building of a national legal culture in late medieval France (mainly by looking at its legal ideology and institutions), what we have done is essentially drawing connections between fragments of history which were previously studied more often separately. If we have demonstrated the fact that truth, borrowed from ecclesiastical discourse, is the essence of the ideology of rule of justice in late medieval France, it will also be necessary to point out some points relevant to our study and worth further study in light of the problematique of truth. For the cognitive dimension, a fundamental point still awaits elaboration, i.e., the medieval theory of senses and the sensory premises of medieval learned law. By nature an inter-disciplinary subject that requires erudition in medieval philosophy, medical theory and law, it will help us to draw clearly the cognitive and epistemological basis of the truth regime established through the rule of justice. For the communicative dimension, it is still worthwhile to carry out a systematic study on the expanded impact of the Gregorian Reform and its relevance with the law[[806]](#footnote-806). The “continuity or rupture” problem of this Reform should be answered systematically. While for the “national” dimension, further research is needed to throw light on the transmission of legal and historical consciousness from the Late Middle Ages to the early modern age. In other words, a pre-history of the national historiography of the humanist-jurists is necessary. This will also imply investigations on the continuity of writing culture between late medieval French jurists and their early modern successors. Finally, if our study also proves the non-universality of the modern legal system of the West which relies on the faith of truth, a cross-comparison of the role and representation of truth in various legal cultures may be a rewarding task.

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15. Martha C. Nussbaum, "Cultivating Humanity in Legal Education," *The University of Chicago Law Review* 70, no. 1 (2003), pp. 265-280. [↑](#footnote-ref-15)
16. James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life," *The University of Chicago Law Review* 52, no. 3 (1985), p. 687. [↑](#footnote-ref-16)
17. *Ibid.*, p. 691. [↑](#footnote-ref-17)
18. *Ibid.*, p. 695. [↑](#footnote-ref-18)
19. It should however not be so surprised for medievalists who are more easily freed from modernist cliché as medieval philosophers and jurists were well familiar with the probabilistic and rhetorical nature of law. See for example Alessandro Giuliani, “L'Élément «juridique» dans la logique médiévale,” *Logique et Analyse*, Nouvelle Série, Vol. 6, No. 21/24 (Décembre 1963), pp. 540-570. [↑](#footnote-ref-19)
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21. Pierre Legendre, *Leçons IX: L'Autre Bible de l'Occident: Le Monument romano-canonique: Étude sur l'architecture dogmatique des sociétés* (Paris, 2009). [↑](#footnote-ref-21)
22. Canonists tend to give veritas a nobler status than justice, and regard truth as the mater iustitiae. See for example Baldus de Ubaldis, *In primam Digesti Veteris partem commentaria* (Venice, 1577), lib. 1, tit. 5 *De statu hominum*, lex 6 *Libertini sunt qui*.Laurent Waelkens noted its importance in medieval Roman law. See his *Amne Adverso: Roman Legal Heritage in European Culture* (Leuven, 2005), p. 161 and pp. 177-178. [↑](#footnote-ref-22)
23. The most recent contribution that deals extensively the concept of truth in the medieval practice of justice is perhaps Robert Jacob’s *La Grâce des juges*. [↑](#footnote-ref-23)
24. Harold J. Berman, "The Origins of Western Legal Science," *Harvard Law Review* 90, no. 5 (March 1977), pp. 894-943; Stephan Kuttner, “The Revival of Jurisprudence,” in *Renaissance and Renewal in the Twelfth Century*, eds. R. L. Benson and G. Constable (Cambridge, 1982), pp. 299-323. [↑](#footnote-ref-24)
25. Michel Foucault, *Dits et écrits 1954–1988: II 1970–1975* (Paris, 1994), p. 549. [↑](#footnote-ref-25)
26. *Ibid.*, p. 570. [↑](#footnote-ref-26)
27. Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York, 1980), p. 38. For an elaboration, see Charles Taylor, “Foucault on Freedom and Truth,” *Political Theory*, vol. 12, no. 2, 1984, pp. 152–183. [↑](#footnote-ref-27)
28. For the English translation, see C. Gordon, trans., “The political function of the intellectual,” in *Radical Philosophy* 17 (Summer 1977), pp. 12–14, here p. 13. A more recent summary can be found in

**Daniele Lorenzini,** “What is a ‘Regime of Truth’?” in *Le foucaldien*, *1*(1), 1, 2015. [↑](#footnote-ref-28)
29. Michel Foucault, *Dits et écrits 1954–1988: II 1970–1975*, p. 541. [↑](#footnote-ref-29)
30. Nicolas Thirion, "Des rapports entre droit et vérité selon Foucault: une illustration des interactions entre les pratiques juridiques et leur environnement," *Revue interdisciplinaire d'études juridiques*, vol. volume 70, no. 1, 2013, pp. 180-188. [↑](#footnote-ref-30)
31. Michel Foucault, *Surveiller et punir: naissance de la prison* (Paris, 1975). [↑](#footnote-ref-31)
32. Michel Foucault, *Du gouvernement des vivants: cours au Collège de France (1979-1980)* (Paris, 2012); *Subjectivity and Truth: Lectures at the Collège de France, 1980-1981* (London, 2017). [↑](#footnote-ref-32)
33. Lorna Hutson, ed., *The Oxford Handbook of English Law and Literature, 1500-1700* (Oxford, 2017), p. 4. [↑](#footnote-ref-33)
34. Jeanette M. A. Beer, *Narrative Convention of Thruth in the Middle Ages* (Genève, 1981); Serge Lusignan, "Énoncer la vérité en français : les villes de communes et la naissance de l’écrit juridique vernaculaire ," Corpus Eve [Online], Critical or Bibliographical Studies of the Vernacular, Online since 18 October 2013, connection on 08 July 2018. URL : http://journals.openedition.org/eve/379. [↑](#footnote-ref-34)
35. See for example Lusignan, *Vérité garde le roy: la construction d'une identité universitaire en France (XIIIe-XVe siècle)* (Paris, 1999) and Pierre Legendre, *Leçons II. L'Empire de la vérité. Introduction aux espaces dogmatiques industriels* (Paris, 2001). [↑](#footnote-ref-35)
36. Together with Wim Blockmans, Genêt also edited the series of “The Origin of the Modern State in Europe: 13th to 18th Centuries” published by Oxford University Press. [↑](#footnote-ref-36)
37. Jean-Philippe Genêt, ed., *La légitimité implicite: Actes des conférences organisées à Rome en 2010 et en 2011 par SAS en collaboration avec l’École française de Rome* (Paris-Rome, 2015); *La vérité: Vérité et crédibilité : construire la vérité dans le système de communication de l’Occident (XIIIe-XVIIe siècle)* (Paris-Rome, 2015). [↑](#footnote-ref-37)
38. Genêt, *La vérité*, p. 11. For a brief summary of the political and legal impact of the Gregorian reform on Europe, see Randall Lesaffer and Jan Arriens, *European Legal History: A Political and Cultural Perspective* (Cambridge, 2009), pp. 212-214. [↑](#footnote-ref-38)
39. Lucien Faggion and Laure Verdon, eds., *Quête de soi, quête de vérité: Du Moyen Âge à l'époque moderne* (Aix-en-Provence, 2007). [↑](#footnote-ref-39)
40. Anne Mailloux et Laure Verdon, eds., *L'enquête en questions: De la réalité à la "vérité" dans les modes de gouvernement* (Paris, 2014), p. 10. [↑](#footnote-ref-40)
41. *Ibid.*, p. 1. [↑](#footnote-ref-41)
42. Pierre Legendre, *Leçons II: L’Empire de la vérité*. [↑](#footnote-ref-42)
43. Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, 1997). [↑](#footnote-ref-43)
44. Christine Barralis et al., eds., *Église et État, Église ou État? Les clercs et la genèse de l’État moderne* (Rome, 2014). [↑](#footnote-ref-44)
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46. Julien Théry, “Innocent III et les débuts de la théocratie pontificale: Le gouvernement romain de la

Chrétienté autour de 1206,” *Mémoire dominicaine* 21, 2007, pp.33-37. [↑](#footnote-ref-46)
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50. Tyler Lange, *The First French Reformation: Church Reform and the Origins of the Old Regime* (Cambridge, 2014). [↑](#footnote-ref-50)
51. For his discussion of the notion “royal ecclesiology”, see *The First French Reformation*, pp. 12-18. The finalization of this process took place during the reign of Francis I, see Tyler Lange, “L’ecclésiologie du royaume de France : l’hérésie devant le parlement de Paris dans les années 1520,” *Bulletin du centre d’études médiévales d’Auxerre*, Hors-série n°7, 2013. Another work that may supplement the subject is Bernard Bourdin, *La genèse théologico-politique de l'État moderne: La controverse de Jacques Ier d'Angleterre avec le cardinal Bellarmin* (Paris, 2004). [↑](#footnote-ref-51)
52. André Castaldo, "Pouvoir royal, droit savant et droit commun coutumier dans la France du Moyen Age: à propos de vues nouvelles," *Droits*, 46, 2007, p. 117-158 and 47, 2008, pp. 173-247. [↑](#footnote-ref-52)
53. Jacques Krynen, “Voluntas domini regis in suo regno facit ius. Le roi de France et la coutume,” *El dret comu i Catalunya*, 15 (Barcelone, 1998), p. 59; " Le droit romain ‘droit commun de la France‘", *Droits*, 38, 2003, pp. 21-36. [↑](#footnote-ref-53)
54. Giordanengo, “BEAUMANOIR Philippe de,” in Patrick Arabeyre et al., eds., *Dictionnaire historique des juristes français XIIe-XXe siècle* (Paris, 2015), pp. 74-75. [↑](#footnote-ref-54)
55. Castaldo "Pouvoir royal, droit savant et droit commun coutumier dans la France du Moyen Age: À propos de vues nouvelles (I)," p. 142. [↑](#footnote-ref-55)
56. Castaldo "Pouvoir royal, droit savant et droit commun coutumier dans la France du Moyen Age. à propos de vues nouvelles (II)," p. 189. [↑](#footnote-ref-56)
57. Castaldo "Pouvoir royal, droit savant et droit commun coutumier dans la France du Moyen Age. à propos de vues nouvelles (I)," p. 120. [↑](#footnote-ref-57)
58. Manlio Bellom, *The Common Legal Past of Europe, 1000-1800* (Washington, 1995). [↑](#footnote-ref-58)
59. Jean-Louis Halpérin, “L'Approche historique et la problématique du jus commune,” in Revue internationale de droit comparé, Vol. 52, N°4, Octobre-décembre 2000, pp. 717-731. [↑](#footnote-ref-59)
60. Albert Rigaudière, André Gouron, eds., *Renaissance du pouvoir legislatif et genèse de l'état* (Montpellier, 1988). [↑](#footnote-ref-60)
61. André Gouron, “La coutume en France au Moyen Âge,” *RSJB*, t. LII, p. 205. [↑](#footnote-ref-61)
62. Jacques Krynen, “Le droit romain ' droit commun de la France '," *Droits*, vol. 38, no. 2, 2003, pp. 21-36. [↑](#footnote-ref-62)
63. For the decline of Roman law and the rise of customary law in late medieval and early modern France, see Jean-Louis Thireau, *Introduction historique au droit* (Paris, 2001), pp. 212-268. [↑](#footnote-ref-63)
64. Yves Mausen, “A demonio merediano? Le droit savant au Parlement de Paris,”*Droits*, vol. 48, no. 2, 2008, pp. 159-178. [↑](#footnote-ref-64)
65. Jean Hilaire, *La construction de l'état de droit dans les archives judiciaires de la cour de France au XIIIe siècle* (Paris, 2011). [↑](#footnote-ref-65)
66. Axel Degoy, “Lumineux Moyen Âge: Les avocats au parlement de Paris et la légalité pénale à l'époque de Charles VI et d'Henri VI de Lancastre (1380-1436),” *RHDFE*, no. 1, 2018, pp. 1-70. [↑](#footnote-ref-66)
67. Gérard Giordanengo, “'Noble homme Maistre Phelippe de Biaumanoir chevaillier baillif de Vermandois ' ou des Baillis Et d'un Bailli,” *RHDFE*, vol. 92, no. 1, 2014, pp. 15–36. [↑](#footnote-ref-67)
68. Yves Jeanclos, “La coutume française, une illusion romaine? Beaumanoir et la romanité de la coutume au XIIIe siècle,” in V. Lemonnier-Lesage et F. Lormant, eds., *Droit, Histoire et société. Mélanges en l’honneur de Christian Dugas de la Boissonny* (Nantes, 2008), pp. 35-54. [↑](#footnote-ref-68)
69. Robert Jacob, "Philippe de Beaumanoir et le savoir du juge (Réponse à M. Giordanengo)," *RHDFE*, vol. 92, no. 4, 2014, pp. 577–588. [↑](#footnote-ref-69)
70. Ada-Maria Kuskowski, “The Development of Written Custom in England and in France: A Comparative Perspective,” in Richard Kaeuper, ed., *Law, Justice, and Governance, New Views on Medieval English Constitutionalism* (Brill, 2013), p. 110. [↑](#footnote-ref-70)
71. Nicolas Warembourg, "Romanisation du droit privé français (xiie-xviiie siècle)," in *L'Histoire du droit en France : Nouvelles tendances, nouveaux territoires* (Paris, 2014), pp. 45-67; "La notion de ‘droit commun' dans l'Ancienne France coutumière: Point d'étape," *GLOSSAE : European Journal of Legal History* 13 (2016), pp. 670-684. [↑](#footnote-ref-71)
72. Géraldine Cazals and Florent Garnier,eds., *Les décisionnaires et la coutume : contribution à la fabrique de la norme* (Toulouse, 2017) [↑](#footnote-ref-72)
73. Jacques Krynen, “Dix ans de travaux français d'histoire du droit intéressant la coutume. Bref commentaire en quatre points,” in *Les décisionnaires et la coutume*, p. 19. [↑](#footnote-ref-73)
74. “…[L]e génie propre du Moyen Age français.” [↑](#footnote-ref-74)
75. Dirk Heirbaut, “Who Were the Makers of Customary Law in Medieval Europe? Some Answers Based on Sources About the Spokesmen of Flemish Feudal Courts,” *TvR*, 75.3 (2007), pp. 257–274. [↑](#footnote-ref-75)
76. Seán Patrick Donlan and Dirk Heirbaut, eds., "The Law's Many Bodies: Studies in Legal Hybridity and Jurisdictional Complexity, c. 1600–1900,” *Comparative Studies in Continental and Anglo-American Legal History* (Berlin, 2015). [↑](#footnote-ref-76)
77. Kuskowski, "Inventing Legal Space: From Regional Custom to Common Law in the Coutumiers of Medieval France," in Meredith Cohen and Fanny Madeleine, eds., *Medieval Constructions of Space: Practice, Place, and Territory from the 9th to the 15th Century* (Ashgate, 2014), pp. 133-155. [↑](#footnote-ref-77)
78. Especially William Chester Jordan questioned the representativeness of the cases taken from the consilia, see William Chester Jordan, “Cohen Esther. The Crossroads of Justice: Law and Culture in Late Medieval France. (Brill's Studies in Intellectual History, number 36.) New York: E. J. Brill. 1992. Pp. x, 132. $65.71,” *The American Historical Review*, vol. 98, no. 4, 1993, pp. 1226–1227.  [↑](#footnote-ref-78)
79. In his *Interpretation of Cultures*, Geertz described culture as "a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life." See Clifford Geertz, *The Interpretation of Cultures: Selected Essays by Clifford Geertz* (New York, 1973), p. 89. [↑](#footnote-ref-79)
80. Lawrence Rosen, *Law as Culture: An Invitation* (Princeton, 2006). [↑](#footnote-ref-80)
81. Naomi Mezey, "Law as Culture," *Yale Journal of Law & the Humanities*, Vol. 13, 2001, pp. 35-67. [↑](#footnote-ref-81)
82. Jørn Øyrehagen Sunde et al., eds., *Comparing Legal Cultures* (Bergen, 2017), p. 16; An earlier article: “Champagne at the Funeral: An Introduction to Legal Culture,” in Jørn Øyrehagen Sunde and Knut Einar Skodvin, eds., *Rendezvous of European legal cultures* (Bergen, 2010), pp. 11-28. [↑](#footnote-ref-82)
83. Jørn Øyrehagen Sunde et al., eds., *Comparing Legal Cultures*, p. 23. [↑](#footnote-ref-83)
84. Mark Van Hoecke and Mark Warrington, “Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law,” *The International and Comparative Law Quarterly*, vol. 47, no. 3, 1998, pp. 495–536. [↑](#footnote-ref-84)
85. Norman Fairclough, *Analysing Discourse: Textual Analysis for Social Research* (London, 2003), p. 3. [↑](#footnote-ref-85)
86. See van Dijk’s recent publications: *Discourse and Context: A Sociocognitive Approach* (Cambridge, 2008); *Society and Discourse: How Social Contexts Control Text and Talk* (Cambridge, 2009); *Discourse and Power: Contributions to Critical Discourse Studies* (Houndsmills, 2008); *Discourse and Knowledge: A Sociocognitive Approach* (Cambridge, 2014). His use of discourse analysis to analyze political ideologies: *Elite Discourse and Racism* (Newbury Park, 1993); *Ideology: A Multidisciplinary Approac*h (London, 1998). [↑](#footnote-ref-86)
87. Jan Dumolyn, "’Criers and Shouters’: The Discourse on Radical Urban Rebels in Late Medieval Flanders,” *Journal of Social History*, Vol. 42, No. 1 (Fall, 2008), pp. 111-135; Jan Dumolyn and Jelle Haemers, “‘A Bad Chicken Was Brooding’: Subversive Speech in Late Medieval Flanders," *PAST & PRESENT* 214 (2012), pp. 45–86. [↑](#footnote-ref-87)
88. Michel Winock, "Jeanne d’Arc," *Les lieux de mémoire* (Paris, 1997), t. 3, pp. 4427-4473. [↑](#footnote-ref-88)
89. Bernard Guenée, "État et nation en France au moyen âge," *Revue Historique* 237, no. 1 (1967) pp. 17-30.  [↑](#footnote-ref-89)
90. Emmanuel Jeuland, “Preuve judiciaire et culture française,” *Droit et cultures*, 50, 2005, pp. 149-170. [↑](#footnote-ref-90)
91. Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton, 1983). [↑](#footnote-ref-91)
92. Recent studies on this theme can be found in the series “Esprit de lois, esprit des lettres” published by Garnier. [↑](#footnote-ref-92)
93. George Huppert, *The Idea of Perfect History: Historical Erudition and Historical Philosophy in Renaissance France* (Urbana, 1970). [↑](#footnote-ref-93)
94. Kelley, Foundations. See also Kelley, "The Rise of Legal History in the Renaissance," *History and Theory,* 9:2 (1970), pp. 174–194. [↑](#footnote-ref-94)
95. Bruno Méniel, ed., *Écrivains juristes et juristes écrivains du Moyen Âge au siècle des Lumières* (Paris, 2015), pp. 8-10. [↑](#footnote-ref-95)
96. Relationism is an approach to understand legal and social concepts proposed by several jurists. See Gidon A. G. Gottlieb, "Relationism: Legal Theory for a Relational Society," *University of Chicago Law Review*,50, 567 (1983), pp. 567-612. In this study, we will adopt relationism as the foundation of social epistemology, and presumes that every social concept points toward and is based on specific social relations. [↑](#footnote-ref-96)
97. To name some of the studies that related the RdR to legal history: Jean Graven, *Le procès criminel du Roman de Renart: étude du droit criminel féodal au XIIe siècle* (Genève, 1950); G. Van Dievoet, “Le Roman de Renart et Van den Vos Reynaerde, témoins fidèles de la procédure pénale aux XIIe et XIIIe siècles?” in Rombauts and Welkenhuysen, eds., *Aspects of the Medieval Animal Epic* (Leuven, 1979), pp. 43-52; Franck Rainer Jacoby, *Van den Vos Reinaerde: Legal Elements in a Netherlands Epic of the Thirteenth Century* (München, 1970); Richard W. Kaeuper, "Debating Law, Justice and Constitutionalism," in Richard W. Kaeuper, ed., *Law, Governance and Justice: New Views on Medieval Constitutionalism* (Boston, 2013), p. 5; Sigrid Krause, "Le droit dans le Roman de Renart et dans le Reinhart Fuchs," in Alessandro Vitale-Brovarone et Gianni Mombello eds., *Atti del V Colloquio della International Beast Epic, Fable and Fabliau Society, Torino–St-Vincent, 5-9 settembre 1983* (Alessandria, 1987), pp. 57-69; Jean Subrenat, "Rape and adultery: reflected facets of feudal justice in the Roman de Renart," in Kenneth Varty ed., *Reynard the Fox: Social Engagement and Cultural Metamorphoses in the Beast Epic from the Middle Ages to the Present* (Oxford, 2000), pp. 17-36; , p. 5; Jérôme Devard, *Parenté et pouvoir(s) dans la Matière de France et le Roman de Renart. Approche socio-juridique de la représentation familiale aux XIIe-XIIIe siècles*, thèse de doctorat, Université de Poitiers, 2014. [↑](#footnote-ref-97)
98. Jean Dufournet, *Le Roman de Renart* (Paris, 1985), t. 1, pp. 1-14. [↑](#footnote-ref-98)
99. Armand Strubel et al., eds, *Le Roman de Renart* (Paris, 1997). [↑](#footnote-ref-99)
100. Fukumoto Naoyuki, “Les manuscrits du ‘Roman de Renart’” in Fukumoto et al., eds., *Le Roman de Renart* (Paris, 2005), p. 65. [↑](#footnote-ref-100)
101. Of course to use this word may be an anachronism here but it is still to be noted that the myth of “trial by peers” was created almost at the same age. See B.C. Keeney, *Judgment by peers* (Cambridge, Mass., 1952), pp. 5-34. [↑](#footnote-ref-101)
102. Kawa-Topor Xavier, “L'image du roi dans le Roman de Renart,” in *Cahiers de civilisation médiévale*, 36e année (n°143), Juillet-septembre 1993, pp. 263-280. [↑](#footnote-ref-102)
103. The peace of God movement is well known. For the peace of the king and its practice in France, see Vincent Martin, *LA PAIX DU ROI : paix publique, idéologie, législation et pratique judiciaire de la royauté capétienne de Philippe Auguste à Charles le Bel (1180-1328)*(Clermont-Ferrand, 2015). [↑](#footnote-ref-103)
104. The fear of the king, especially of his anger, is a constant theme in medieval literature. See also Bernier and his mother’s fear towards the king in *Raoul de Cambrai*. [↑](#footnote-ref-104)
105. See for example Branch II, vv. 252-254; Branch Vc, vv 1137-1151. [↑](#footnote-ref-105)
106. The feudal political ideal and the legitimacy of rebellion have already been discussed in detail. See for example Claire Valente’s discussion on the case of medieval England in which she also emphasized the role of threatened revolt, *The Theory and Practice of Revolt in Medieval England* (Aldershot, 2003). Isengrin’s words cited above can well be seen as a threat. [↑](#footnote-ref-106)
107. RdR, p. 198. [↑](#footnote-ref-107)
108. Branch Vc, vv. 1802-1803 in RdR, p. 213. [↑](#footnote-ref-108)
109. Claude Gauvard, *De grace especial*, p. 728. Why honor became the privilege of the nobility is a question that still needs to be answered. This chapter may be able to throw some light on the question. [↑](#footnote-ref-109)
110. For the medieval notions of honor, revenge and community, see William Ian Miller, *Blood taking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago, 1990), and Dominique Barthélemy et al., eds., *La vengeance, 400-1200* (Rome, 2006). [↑](#footnote-ref-110)
111. Branch Ia, vv. 1347-1350. [↑](#footnote-ref-111)
112. Branch II, 117-120. [↑](#footnote-ref-112)
113. Branch Vc, vv. 1884-1895. [↑](#footnote-ref-113)
114. Kaeuper also mentioned the role of kinship in royal justice, see Kaeuper, “The Role of Kingship in Tales of Reynard the Fox,” in Anthony Musson, ed., *Expectations of the Law in the Middle Ages* (Woodbridge, 2001), p. 13. See also Jérôme Devard, *Le Roman de Renart: Le reflet critique de la société féodale* (Paris, 2010), pp. 104-123. [↑](#footnote-ref-114)
115. Branch II, vv. 239-242, RdR, p. 93. [↑](#footnote-ref-115)
116. Branch II, vv. 771-774, RdR, p. 105. [↑](#footnote-ref-116)
117. Branch II, vv. 896-898, RdR, p. 108. [↑](#footnote-ref-117)
118. Branch II, vv. 1316-1319, RdR, pp. 118-119. [↑](#footnote-ref-118)
119. Branch Vc, vv. 1636-1639, RdR, p. 209 [↑](#footnote-ref-119)
120. RHGF, t. XIV, pp. 387-388. [↑](#footnote-ref-120)
121. Branch Ia, vv. 280-3, RdR, p. 10. [↑](#footnote-ref-121)
122. Branch Vc, vv. 1164-1166. [↑](#footnote-ref-122)
123. Onques puis, se Diex me doinst joie, qui m'en voet croire si m'en croie, me fis de mon cors licherie, ne malvaistié, ne puterie, ne nesun vilain afaire c'une nonains ne peust faire. (Branch Ia, vv. 173-178) [↑](#footnote-ref-123)
124. Branch Vc, vv. 975-978. [↑](#footnote-ref-124)
125. In fact, the relational logic of medieval minds might have been much developed than ours as they were living in a highly contextualized social environment. [↑](#footnote-ref-125)
126. See his summary in “La preuve dans le droit du Moyen Âge occidental, rapport de synthèse,” in *RSJB*, XVII, *La Preuve* (Bruxelles, 1965), pp. 691-753. [↑](#footnote-ref-126)
127. R.C. van Caenegem "Reflexions on Rational and Irrational Modes of Proof in Medieval Europe", *TvR*, vol. 58, 1990, pp. 263-279. [↑](#footnote-ref-127)
128. See Gérard Courtois, “La peine du parjure entre magie et religion,” in Jacqueline Hoareau-Dodinau ed., *La peine: discours, pratiques, représentations* (Limoges, 2005), pp. 227-238. [↑](#footnote-ref-128)
129. Bruno Lemesle, “Le serment promis. Le serment judiciaire à partir de quelques documents angevins des XIe et XIIe siècles,” *Crime, Histoire & Sociétés / Crime, History & Societies*, Vol. 6, n°2, 2002, pp. 5-28. [↑](#footnote-ref-129)
130. It therefore serves directly the function of the oath as technically speaking, the oath that helps one to se purgare purges the accusation instead of the guilt. Oath is intended to repair one’s fama so as to prove his or her innocence. See Antonia Fiori, “Inchiesta e purgazione canonica in epoca gregoriana,” in G. Gauvard, ed., *L'enquête au Moyen Age*, p. 131. [↑](#footnote-ref-130)
131. Lemesle also pointed out the final attempt of reconcilliation before judicial combat, a process similar to the description in the RdR. See Lemesle Bruno, “La pratique du duel judiciaire au XIe siècle, à partir de quelques notices de l'abbaye Saint-Aubin d'Angers,” in *Actes des congrès de la Société des historiens médiévistes de l'enseignement supérieur public, 31ᵉ congrès, Angers, 2000: Le règlement des conflits au Moyen Âge*. pp. 149-168; Here, pp. 159-160. [↑](#footnote-ref-131)
132. J. Gaudemet, “Les ordalies au Moyen Age : doctrine, législation et pratique canoniques,” in *RSJB*, t. 17, p. 117. [↑](#footnote-ref-132)
133. It is perhaps also in this sense that the newest introduction of the “serment bolonais” is welcomed by a strong sense of hostility, as it made oath-taking less burdensome. See Paul Ourliac, “Troubadours et juristes,” in *Cahiers de civilisation médiévale*, 8e année (n°30), Avril-juin 1965, pp. 159-177, especially p. 165. [↑](#footnote-ref-133)
134. In the courtlier branch Vc, Hersent instigated Isengrin to go to King Noble’s court, as “En la cort Noble le lion/ Tient on les plais et les oiances/ De mortels guerres et de tences” (Branch Vc, vv. 975-977). For her, then, the court is the best way to force Reynard to fight with Isengrin. [↑](#footnote-ref-134)
135. “…[S]ans mençoigne controver,” Branch II, v.684. [↑](#footnote-ref-135)
136. Branch II, v. 1451,RdR, p. 122. [↑](#footnote-ref-136)
137. R. C. van Caenegem, *Geschiedenis van het strafrecht in Vlaanderen van de XIe tot de XIVe eeuw* (Brussels, 1954). [↑](#footnote-ref-137)
138. Maïté Billore and Myriam Soria, eds., *La trahison au Moyen Âge: De la monstruosité au crime politique (Ve-XVe siècle)* (Rennes, 2009), p. 20. [↑](#footnote-ref-138)
139. *Idem*. [↑](#footnote-ref-139)
140. In fact they will prefer the ordeal given the generally bad perception of jurists and legal practitioners. See our discussion of Musart and Baucent below. [↑](#footnote-ref-140)
141. A typical definition of ordeal see Jean-Philippe Lévy, “L'Evolution de la preuve, des origines à nos jours: Synthese générale,” in *RSJB*, t. 17, pp. 13-15。 [↑](#footnote-ref-141)
142. Branch II, vv. 937-938. [↑](#footnote-ref-142)
143. Branch II, v. 1095, RdR, p. 113 : Miex voel la pais que la guerre... [↑](#footnote-ref-143)
144. For the ceremony of the *gage de bataille*, see the *Livre de Geoffroy Le Tort*, XXIII, Le Comte Beugnot, *Assises de Jérusalem*, t. 1 (Paris, 1841), p. 441. [↑](#footnote-ref-144)
145. RdR, p. 109. [↑](#footnote-ref-145)
146. Naoyuki Fukumoto, “Remarques sur une description du duel judiciaire dans la Br. VI du Roman de Renart,”《一般教育部論集（創価大学）》23, 2 (1999), pp. 1-17. [↑](#footnote-ref-146)
147. Jean Deroy, “Les discours du chameau, légat papal, dans le *Roman de Renard* (Branche Va),” in Jan Goossens and Timothy Sodmann, eds., *Third International Beast Epic, Fable and Fabliau Colloquium, Münster 1979*, pp.102-110; Larissa Birrer, “Quare, messire, me audite!” Le choix du chameau comme légat papal dans le Roman de Renart, *Reinardus. Yearbook of the International Reynard Society* 26 (2014), pp. 14-32. [↑](#footnote-ref-147)
148. Trial translation with the aid of Dufournet version: Her [Hersent] misery being told, we find written in Decretum, published in rubrics about violated marriage: First we have to examine the case, and if he can’t expurgate himself from the charge, you can punish him as you wish, since he has committed a very large crime; here is my sentence, if he does not obey, confiscate all his money, and burn or stone this diabolic Reynard. And if you should be a very good king, whenever there is someone who destroys your law or goes against it, he should pay heavily for it! Master, by holy sword, unless the judgement is false, and if you want to be a good lord, do justice, but by your love, by the holy cross of God! You are not a good king, if you don’t want to do justice according to reason and law as Julius Caesar, and you will say the law if you wish to be a good sire. You have to speak with caution, perform your responsibility faithfully. If not, go and atone for your life. Don’t think of being king if you don’t judge by goodwill, and if you do the law wrong, you are not a good lord! I say this so that you can understand, and I should say and teach no more! [↑](#footnote-ref-148)
149. It will not be surprising if Musart should have been intentionally set by the narrator as coming from the southern part of France where appeared the first systematic teaching of learned law in the Kingdom and was starting to be subjected to a system of written law. However, there is yet not enough proof to support the hypothesis. See André Gouron, “Les étapes de la pénétration du droit romain au XIIe siècle dans l'ancienne Septimanie,” *Annales du Midi: revue archéologique, historique et philologique de la France méridionale*, Tome 69, N°38, 1957, pp. 103-120. [↑](#footnote-ref-149)
150. Deroy, *op. cit.*, p. 107. [↑](#footnote-ref-150)
151. See *Ysengrimus: Herausgegeben und erklärt von Ernst Voigt* (Halle, 1884); Léopold Sudre, *Les sources du Roman de Renart* (Paris, 1893) for other sources. [↑](#footnote-ref-151)
152. We may call this practice “inverse translation.” For legal translation in the 12-14th centuries, and the production and development of vernacular legal texts, see Ada-Maria Kuskowski, "Translating Justinian: Transmitting and Transforming Roman Law in the Middle Ages," in Matthew W. McHaffie, Jenny Benham and Helle Vogt, eds., *Law and Language in the Middle Ages* (Leiden, 2018). [↑](#footnote-ref-152)
153. Willy van Hoecke and Dirk van den Auweele, “La première réception du droit romain et ses répercussions sur la structure lexicale des langues vernaculaires,” in Andries Welkenhuysen et al., eds., *Mediaeval antiquity* (Leuven, 1995), pp. 197-217. It is, however, to be noted that Musart represents more canonical influence which inherited a large part of Roman law rather than that of Roman law itself. [↑](#footnote-ref-153)
154. Serge Luisgnan, “Le choix de la langue d'écriture des actes administratifs en France, Communiquer et affirmer son identité,” in Claire Boudreau et al., eds., *Information et société en Occident à la fin du Moyen Âge* (Paris, 2004), pp. 187-201. [↑](#footnote-ref-154)
155. We should not forget that Marco Polo’s text was firstly circulated in a Franco-Italian language. [↑](#footnote-ref-155)
156. Philippe de Beaumanoir, le comte Beugnot, ed., *Les coutumes du Beauvoisis par Philippe de Beaumanoir, jurisconsulte français du XIIIe siècle* (Paris, 1842) , Chap. 6, Vol. I, pp. 98-99. [↑](#footnote-ref-156)
157. Musart and Baucent’s understanding of crime conform to a larger movement of “individualization of crime.” See Virpi Mäkinen and Heikki Pihlajamäki, “The Individualization of Crime in Medieval Canon Law,” *Journal of the History of Ideas*, Vol. 65, No. 4 (Oct., 2004), pp. 525-542. [↑](#footnote-ref-157)
158. Deroy, *op. cit.*, p. 106. [↑](#footnote-ref-158)
159. Gabrielle M. Spiegel, *Romancing the Past: The Rise of Vernacular Prose Historiography in Thirteenth-Century France* (Berkeley, 1993), p. 120. [↑](#footnote-ref-159)
160. Etienne Barbazan, ed., *Fabliaux et contes des poètes françois des XI, XII, XIII, XIV et XVe siècles, tirés des meilleurs auteurs* (Paris, 1808) , t. 2, p. 153. [↑](#footnote-ref-160)
161. Branch II, v. 1055 : Bauçans qui a grant le cors... [↑](#footnote-ref-161)
162. For the early history of the French royal chancellery, see Lucien Perrichet, *La Grande chancellerie de France, des origines à 1328* (Paris, 1912)。 [↑](#footnote-ref-162)
163. Michel Pastoureau, *Une histoire symbolique du Moyen Âge occidental*, Seuil, La librairie du XXIe siècle (Paris, 2004), pp. 73-88. [↑](#footnote-ref-163)
164. For the horn of Moses, see Ruth Mellinkoff, *The Horned Moses in Medieval Art and Thought* (Berkeley, 1970). For horned Moses as a theme of legal iconography, see Guillaume de Deguileville, *Le Livre du pèlerin de vie humaine* (Paris, 2015), pp. 155-156. [↑](#footnote-ref-164)
165. The non-validity of women’s witness is based on a misogynist tradition which regards woman as constantly lying and of uncontrollable desire for pernicious speech, inherited by medieval canon law. See next chapter. [↑](#footnote-ref-165)
166. In classical Roman law, the right of the defendant was not so important. But medieval canonists emphasized the right of being tried in due procedure. See Anders Winroth, “The Legal Revolution of the Twelfth Century”in Thomas F. X. Noble and John Van Engen, eds., *European Transformations: The Long Twelfth Century* (Notre Dame, 2012), pp. 338-353, especially, p. 346. [↑](#footnote-ref-166)
167. RdR, p. 207. [↑](#footnote-ref-167)
168. The translation of the Justinian *Institute* has been studied by Claire-Hélène Lavigne, “Literalness and Legal Translation: Myth and False Premises," in Georges L. Bastin et al., eds., *Charting the Future of Translation History* (Ottawa, 2006), pp. 145-162. But manuscript studies are still necessary for earlier, perhaps fragmentary, legal translations. [↑](#footnote-ref-168)
169. We can find Brichemer’s concern with proper procedure in Brance Vc, vv. 1592-1597: Ensi conme li saiges dist,/ Ne por mesfet ne por mesdit/ Qui n’est apers ne coneus/ Ne doit ja plais estre meus/ D’ome afoler ne de desfaire,/ Ains I afiert la pais a faire. [↑](#footnote-ref-169)
170. Kenneth Pennington, “Due Process, Community, and the Prince in the Evolution of the Ordo Iudiciarius,” *Rivista internazionale di diritto commune* 9 (1998), p. 10. [↑](#footnote-ref-170)
171. For a recent study on proverbs as means of communication of ideas, see Élisabeth Schulze-Busacker, *La didactique profane au Moyen Âge* (Paris, 2012)；The proberbs in the RdR, see B. J. Whiting, "Proverbial material from the Old French poem on Reynard the Fox ,"*Harvard Studies and Notes in Philology and Literature*, 18, 1935, p. 235-270. [↑](#footnote-ref-171)
172. Shulamith Shahar and Chaya Galai, *The Fourth Estate: A History of Women in the Middle Ages* (London,1983). [↑](#footnote-ref-172)
173. Philippe de Mezières, *Le Songe du viel pelerin*, Joël Blanchard et al., eds. (Geneva, 2015), Chap. 83. [↑](#footnote-ref-173)
174. R. Howard Bloch, *Medieval Misogyny and the Invention of Western Romantic Love* (Chicago, 1991). [↑](#footnote-ref-174)
175. M. C. Bodden, *Language as the Site of Revolt in Medieval and Early Modern England: Speaking as a Woman* (New York, 2011). [↑](#footnote-ref-175)
176. See the first two chapters of Bloch, *op. cit*. Especially, pp. 29-35 for our purpose. [↑](#footnote-ref-176)
177. See especially Prudence Allen, *The Concept of Woman: The Aristotelian Revolution, 750 BC–AD 1250* (Montreal, 1985), pp. 155-156, [↑](#footnote-ref-177)
178. Susan Dixon, “Infirmitas sexus: womanly weakness in Roman law,” *TvR*, 52 (1984), pp. 343-371. [↑](#footnote-ref-178)
179. As Paolo Crivelli has well demonstrated, Aristotle’s theory of truth is a theory of truth for assertions. But it’s less accurate to classify it as also a correspondence theory of truth. See Paolo Crivelli, Aristotle on Truth (Cambridge, 2004), chap. 2-4. [↑](#footnote-ref-179)
180. Giles of Rome, *Li livres du gouvernement des rois,* Samuel Paul Molenaer ed. (London, 1899), livre 1, chap. 5. [↑](#footnote-ref-180)
181. A citation from St. Ambrose. See also Charles J. Reid, *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids, 2004), pp. 78-79. [↑](#footnote-ref-181)
182. René Metz, “La femme en droit canonique médiéval,” in *La femme et l'enfant dans le droit canonique médiéval* (London, 1985), p. 105. [↑](#footnote-ref-182)
183. Cf. Ad Ephesios 5: 22. [↑](#footnote-ref-183)
184. Gl. *Haec imago*. The third reason shows that Augustine took the fact as granted and use it even to prove the lower status of women. [↑](#footnote-ref-184)
185. René Metz,“La femme en droit canonique médiéval,” pp. 97-105. In fact, we have already found corresponding scenes in RdR where Isengrin was accusing Reynard of the rape of Hersent for the sake of Hersent (even against her will). [↑](#footnote-ref-185)
186. D. 50, 17, 2. Suzanne Dixon, “Infirmitas Sexus: Womanly Weakness in Roman Law,” *TvR*, 52, 1984, p. 357.  [↑](#footnote-ref-186)
187. R. H. Bloch, *Medieval Misogyny*, p. 65. [↑](#footnote-ref-187)
188. This interpretation is perhaps derived from St. Paul (1 Cor. 7:14, 16) and St. Augustine (*De civitate Dei*, 12.28) and was preached in the sermons of Robert de Sorbon. See Frans N.M. Diekstra, "Robert de Sorbon on Men, Women and Marriage. The Testimony of his De Matrimonio and Other Works," in Thea Summerfield and Keith Busby eds., *People and Texts: Relationships in Medieval Literature* (Amsterdam-New York, 2007), pp. 67-86. [↑](#footnote-ref-188)
189. Ralph E. Giesey, "The Juristic Basis of Dynastic Right to the French Throne,Transactions of the American Philosophical Society," *Transactions of The American Philosophical Society*, New Series, Vol. 51, No. 5 (1961), pp. 3-47. [↑](#footnote-ref-189)
190. The visual deception is a theme in the complaint of Matheolus, a medieval misogynist text of the 13th century. See A.-G. Van Hamel ed., *Les lamentations de Mathéolus et le Livre de leesce de Jehan Le Fèvre, de Resson* (Paris, 1892), t. 1, p. 20 : Je me plaing, car par la veüe/ Fu ma science deceue. [↑](#footnote-ref-190)
191. Jean de Terrevermeille, *Three Tractates*, Ralph E. Giesey ed., Title III, Article III. The newest edition of Ralph E. Giesey can be accessed through <http://www.regiesey.com/terrevermeille/terrevermeille_home.htm>. [↑](#footnote-ref-191)
192. *Three Tractates*, 3．3．4d. 8 : Uxor sola tota et totaliter debet adherere viro suo qui est caput eius, secundum apostolum ad Ephesi. v [Ephesians 5, 23] [↑](#footnote-ref-192)
193. *Three Tractates*, 3．3．1．2 [↑](#footnote-ref-193)
194. For Jean de Terremerveille,the *caput mysticum* is nothing other than the representative of *veritas*. See Jean Barbey, *La fonction royale: Essence et légitimité d'après les Tractatus de Jean de Terrevermeille* (Paris, 1983), p. 207, n. 277. [↑](#footnote-ref-194)
195. *Ibid.*, p. 264. [↑](#footnote-ref-195)
196. Brundage, Medieval Origins of the Legal Profession, p. 205. [↑](#footnote-ref-196)
197. James A. Brundage, "Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Literature," *Roman Legal Tradition*, Vol. 1 (2002), p. 83. [↑](#footnote-ref-197)
198. See *Les lamentations de Matheolus*, t. 1, p. 283, vv. 4579-4584. For an elaboration see James Brundage, "Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Literature," *Roman Legal Tradition* 1 (2002), pp. 68-69. [↑](#footnote-ref-198)
199. Deschamps explained how chevalry was destroyed because of the rule of lawyers and the knights’ permission of their serfs to study : Depuis qu’ilz quirent le sejour/ Que leurs enfans n’appreissent pas, / Ont fait regner les advocas/ Et a leurs serfs donné licence/ D’apprandre les ars et science… (Monique Dufournaud-Engel, ed., *"Le miroir de mariage" d'Eustache Deschamps; Edition critique acompagnée d'une étude littéraire et linguistique*, PhD thesis, McGill University, 1975, vv. 8226-8230)  [↑](#footnote-ref-199)
200. Compare Mathieu’s description of women’s flattery：Que leurs bouches samblent le miel/ En douceur, mais c’est piz que fiel.(vv. 5657-5658) [↑](#footnote-ref-200)
201. Here we see again a theme which connects money debasement and corruption of justice, which often appears in the royal ordinances of reform. [↑](#footnote-ref-201)
202. Philippe de Mézières, *Songe du viel pelerin*, ch. 91. [↑](#footnote-ref-202)
203. Here we may recall the teaching of Giles of Rome who believed that natural rule should be based on the ruler’s perfect “sens et entendement”; if the ruler was not wise because of the default of his sense and understanding, he would become a tyrant. See his *De regimine principum*, Livre I, Chap. VII. [↑](#footnote-ref-203)
204. *Songe du viel pelerin*, ch. 91. [↑](#footnote-ref-204)
205. *Ibid.*, ch. 85. [↑](#footnote-ref-205)
206. Andreas Capellanus, *The Art of Courtly Love. Translated with an introduction by John Jay Parry* (New York, 1990) [↑](#footnote-ref-206)
207. André Tissier, *La farce en France de 1450 à 1550: Recueil de textes établis sur les originaux* (Paris, 1976), p. 144. [↑](#footnote-ref-207)
208. The legal signification of the *rouleau* is not to be neglected, as *rouleau* is the essential material form of daily practices of writing of the Parlement. [↑](#footnote-ref-208)
209. Marie Bouhaïk-Gironès, *Les clercs de la Basoche et le théâtre comique. Paris, 1420-1550* (Paris, 2007); 2007); Jonathan Beck, “La mise en scène du faux témoignage dans Pathelin. Analyse pragmatique du discours théâtral et judiciaire,” in Denis Hüe et Darwin Smith eds., *Maistre Pierre Pathelin: Lectures et contextes* (Rennes, 2001), pp. 95-121. [↑](#footnote-ref-209)
210. Branch Ic; Schulze-Busacker, “Renart, le jongleur étranger, analyse thématique et linguistique à partir de la branche Ib du Roman de Renart (v. 2403-2580 et 2857-3034),” J. Goosens et T. Sodmann éd., *Third International Beast Epic, Fable and Fabliau Colloquium, Münster 1979: Proceedings*, pp. 380-391. [↑](#footnote-ref-210)
211. *La farce de Maitre Pathelin*, P. L. Jacob ed. (Paris, 1876), pp. 49-50. [↑](#footnote-ref-211)
212. Ada-Maria Kuskowski, “Inventing Legal Space: From Regional Custom to Common Law in the Coutumiers of Medieval France” in Meredith Cohen and Fanny Madeleine eds., *Medieval Constructions of Space: Practice, Place, and Territory from the 9th to the 15th Century* (Ashgate, 2014), pp. 133-155. [↑](#footnote-ref-212)
213. For major parallels between a national language and a national legal system, and the fact that the effect of this ordinance should not be exaggerated, see Paul Cohen, “L'imaginaire d’une langue nationale: l'État, les langues et l'invention du mythe de l'ordonnance de Villers-Cotterêts à l'époque moderne en France,” in *Histoire Épistémologie Langage*, tome 25, fascicule 1, 2003, Politiques linguistiques (2/2), pp. 19-69. [↑](#footnote-ref-213)
214. *La farce de Maitre Pathelin*, p. 48: Il ne parle pas chrestien/ ne nul langaige qui apere… [↑](#footnote-ref-214)
215. See our discussion of Musart in the previous chapter. The incomprehensible language also leads to anger, the theme of the next chapter. [↑](#footnote-ref-215)
216. Samuel K. Cohn, *Lust for Liberty: The Politics of Social Revolt in Medieval Europe*, pp. 14-20; Jan Dumolyn, ”’A Bad Chicken Was Brooding’: Subversive Speech in Late Medieval Flanders,” *Past & Present* (214), pp. 45–86. [↑](#footnote-ref-216)
217. “Le pet”, *Farces françaises de la fin du Moyen Âge*, André Tissier, trad. (Genève, 1999), t. 4, p. 20. [↑](#footnote-ref-217)
218. “Legal Performances in Late Medieval France,” in Paul Dresch and Hannah Skoda, eds., *Legalism: Anthropology and History* (Oxford, 2012), p. 303. [↑](#footnote-ref-218)
219. The incomprehensibility of language is, however, also the means for the suppressed to relieve their resentment and complaint. In a farce, a shoemaker who was utterly dominated by his wife and his mother, believed in the necessity of learning Latin in order to curse his wife (*Je veulx aprendre a parler latin/ affin de mauldire ma femme*). The constantly singing shoemaker made a case for rebellion by not engaging in a conversation with an enemy-like figure backed by force. Our Lady’s pleading for humanity uses to some extent also the strategy as she often repeated her witness of the passion of Jesus Christ, ignoring questions of the devil which has much to do with theological and legal doctrine. [↑](#footnote-ref-219)
220. Krynen, *L’idéologie de la magistrature ancienne* (Paris, 2009), pp. 79-103. [↑](#footnote-ref-220)
221. John F. Wippel, “Truth in Thomas Aquinas,” in *The Review of Metaphysics*, Vol. 43, No. 2 (Dec., 1989), p. 297. [↑](#footnote-ref-221)
222. Angus Graham, "Albertanus of Brescia: A Preliminary Census of Vernacular Manuscripts," *Studi Medievali* 41 (2000), pp. 891-924. [↑](#footnote-ref-222)
223. The tales popularity is evidenced by its appearance in the *Jeu des échecs moralisés* and in the *Ménagier de Paris*. A textual comparison between the BNF fr. 1555 with the tale of Melibee in the *Ménagier* reveals that the latter copied rather faithfully the earlier manuscripts. So in the following discussion we will cite the edited text in the *Ménagier*: Jérôme Pichon ed., *Le Ménagier de Paris* (Paris, 1846). [↑](#footnote-ref-223)
224. The political significance has been discussed in Gardiner Stillwell, “The Political Meaning of Chaucer's Tale of Melibee,” *Speculum*, vol. 19, no. 4, 1944, pp. 433–444. Although originally intended for an Italian socio-political background, the Hundred Years' War made the tale ever more relevant. [↑](#footnote-ref-224)
225. The treatise is designed specifically for denouncing the Italian urban vendetta. See Enrico Artifoni, “Prudenza del consigliare. L'educazione del cittadino nel Liber consolationis et consilii di Albertano da Brescia (1246),” in Carla Casagrande, Chiara Crisciani et Silvana Vecchio eds., *Consilium. Teorie e pratiche del consigliare nella cultura medieval* (Firenze, 2004), pp.195-216; Christopher Kleinhenz ed., *Medieval Italy: An Encyclopedia* (New York; London, 2004), pp. 9-11. [↑](#footnote-ref-225)
226. Pierre Alphonse is the bridge between the Arabic-oriental civilization and Western Europe. A converted Jew born in Islamic Spain, his works helped to enrich the Catholic intellectual tradition and was widely circulated. [↑](#footnote-ref-226)
227. *Le ménagier de Paris*, p. 216 : Puis doncques que tu demandes vengence, et la vengence qui se fait selon l’ordre de droit et devant le juge ne te plaist, et la vengence qui se fait en espérance de fortune est mauvaise et périlleuse et si n’est point certaine, tu n'as remède de recours fors au souverain et vray juge qui venge toutes villenies et injures, et il te vengera, selon ce que lui mesmes tesmoingne: à moy, dit-il, laisse la vengence et je la feray. [↑](#footnote-ref-227)
228. Ibid., p. 212. [↑](#footnote-ref-228)
229. Here the account for the five senses is not ordinary. Normally, the “feet” in the text should be changed into “eyes.” The author may have adjusted the detail according to his narrative needs. For the classical definition of the five senses, see Florence Bouchet, “Introduction. D'un sens l'autre,” in Florence Bouchet and Anne-Hélène Klinger-Dollé eds., *Penser les cinq sens au Moyen Âge: Poétique, esthétique, éthique* (Paris, 2015), p. 12. [↑](#footnote-ref-229)
230. *Le ménagier de Paris*, pp. 190-191. [↑](#footnote-ref-230)
231. By far discussions of five senses tackle mainly their relationship with medieval liturgy and art, see for example Eric Palazzo, *L'invention chrétienne des cinq sens dans la liturgie et l'art au Moyen Âge* (Paris, 2014). Their political and legal relevance is still to be discussed in detail. [↑](#footnote-ref-231)
232. Amanda Walling, “Placebo Effects: Flattery and Antifeminism in Chaucer's Merchant's Tale and the Tale of Melibee,” *Studies in Philology*, Volume 115, Number 1, Winter 2018, pp. 1-24, here p. 7. [↑](#footnote-ref-232)
233. Hugh of St. Victor, *PL*, t. 177, col. 185. See also the discussion of Louise Vinge, *The Five Senses: Studies in a Literary Tradition* (Lund, 1975). [↑](#footnote-ref-233)
234. Daniel Westberg, Right Practical Reason*: Aristotle, Action, and Prudence in Aquinas* (Oxford, 1994), p. 5. For the meaning of Prudence in Latin and Old French, see also Carolyn P. Collette, “Heeding the Counsel of Prudence: A Context for the ‘Melibee’,” *The Chaucer Review*, vol. 29, no. 4, 1995, pp. 416–433. [↑](#footnote-ref-234)
235. Barbey, *La fonction royale*, p. 206. To be added is the role of the written in the maintenance of cognitive stability. One example comes from Eustache Deschamps who, at first devoted some length to discuss why legal training might drive the student crazy given the chaotic customary reality which is in sharp contrast to the written law, believed that it is only by written law that judge may be said to render justice according to truth: *Vraiz juges est et veritables,/ qui rendra par la loy escripte/ a chascun selon sa merite,/ aux bons bien, et aux mauvés perte*. (vv. 4884-7). The multiplicity of customs and dialects is therefore analogous to the wife who hinders the cognition of truth. It is by cutting off these feminine elements that Deschamps proposes so as to preserve one’s righteous *science*, *renom* and *vaillance*. But Philippe de Mézières also believes that lawyers are interpreting the law which is a dangerous job. See J. Krynen, “Un exemple de critique médiévale du métier d’avocat: Philippe de Mézières,” *Revue de la Société Internationale de la Profession d’Avocat*, 1989, n° 1, p. 33. [↑](#footnote-ref-235)
236. Barbazan ed., *Fabliaux et contes des poètes françois*, t. 2, p. 106: Quant feme velt torner à bien, / ne la peut contrevaloir rien, / Et Salemons granz biens en dist / Es Proverbes que il escrit. / Mais s'ele velt à mal torner, / Nus hom ne l'en porroit garder: / Quar cil qui la quide meillor, / Plus tost en a au cuer tristor. [↑](#footnote-ref-236)
237. *Ibid.*, p. 115. [↑](#footnote-ref-237)
238. *Ibid.*, p. 117: Li Filosofes bien le croit, / Que gaires vezieus n’estoit;/ Ne tel home ne sembloit mie / Qui féist tele tricherie. [↑](#footnote-ref-238)
239. María Jesús Lacarra, “Las fábulas de la Disciplina clericalis y su difusión impresa,” in Uhlig, Marion, and Yasmina Foehr-Janssens, eds, *D’Orient en Occident: Les recueils de fables enchâssées avant les ‘Mille et une Nuits’ de Galland (Barlaam et Josaphat, Calila et Dimna, Disciplina clericalis, Roman des Sept Sages)* (Turnhout, 2014), pp. 377-392. [↑](#footnote-ref-239)
240. See W.J. Millor, and C.N.L. Brooke, eds, *The Leters of John of Salisbury: The Later Letters (1163-1180)* (Oxford 1979), Letter 140. [↑](#footnote-ref-240)
241. For the notion of divine justice and human justice, See Barbara Denis-Morel, “Passing Sentence: Variations on the Figure of the Judge in French Political, Legal, and Historical Texts from the Thirteenth to the Fifteenth Century,” in *Textual and Visual Representations of Power and Justice in Medieval France* (Ashgate, 2015), pp. 151-170. [↑](#footnote-ref-241)
242. For the process of instrumentalization of lawyer, see Krynen, *L’idéologie de la magistrature ancienne*, pp. 104-130. [↑](#footnote-ref-242)
243. Catherine Vincent ed., *Justice et miséricorde : discours et pratiques dans l'Occident médiéval* (Paris, 2015). [↑](#footnote-ref-243)
244. The text had many 19th century editions and was recently translated into English. *L' advocacie Nostre Dame et La chapelerie Nostre-Dame de Baiex: poème normand du XIVe siècle imprimé en entier pour la première fois, d'après le ms. unique de la Bibliothèque d'Évreux* (Paris, 1869); The latest English version: *Our Lady's Lawsuits in "L'Advocacie Nostre Dame" and "La Chapelerie Nostre Dame de Baiex": Our Lady's Advocacy and The Benefice of Our Lady's Chapel*, trad. Judith M. Davis, F. R. P. Akehurst et Gérard Gros (Tempe, 2011). [↑](#footnote-ref-244)
245. Karl Shoemaker, “The Devil at Law in the Middle Ages,” Revue de l’histoire des religions 4 (2011), pp. 567-586; “When the Devil Went to Law School: Canon Law and Theology in the Fourteenth Century,” in Spencer E. Young, ed., *Crossing Boundaries at Medieval Universities*, pp. 255-275. The author believes that the genre is exemplary in teaching the *mos italicus*. [↑](#footnote-ref-245)
246. See especially the work of an Italian research group dedicated to the genre: F. Mastroberti, S. Vinci, M. Pepe, *ll Liber Belial e il processo romano-canonico in Europa tra XV e XVI secolo con l’edizione in volgare italiano (Venezia 1544) trascritta ed annotate* (Bari 2012). [↑](#footnote-ref-246)
247. Gérard Gros, *Le poète, la Vierge et le prince: étude sur la poésie mariale en milieu de cour aux XIVe et XVe siècles* (Saint-Étienne, 1994). [↑](#footnote-ref-247)
248. Louis de Carbonnières, *La procédure devant la chambre criminelle du Parlement de Paris au XIVe siècle* (Paris, 2004), pp. 119-120. [↑](#footnote-ref-248)
249. *Advocacie*, p. 16. [↑](#footnote-ref-249)
250. *Ibid.*, vv. 575-92. [↑](#footnote-ref-250)
251. *Ibid.*, p. 36. The vernacular introduction of a Roman legal principle is remarkable. [↑](#footnote-ref-251)
252. *Ibid*., p. 43, vv. 1270-1271. We have to say that this pattern resembles that of the camel Musart. [↑](#footnote-ref-252)
253. *Ibid*., p. 52, vv. 1532-1539. [↑](#footnote-ref-253)
254. *Ibid.*, p. 30, vv. 857-862. [↑](#footnote-ref-254)
255. *Ibid.,* p. 64, vv. 1884-1886. [↑](#footnote-ref-255)
256. *Ibid*., p. 32, vv. 1823-1826. [↑](#footnote-ref-256)
257. *Ibid*., p. 64, vv. 1872-1875. [↑](#footnote-ref-257)
258. Ceslas Spicq, *Esquisse d'une histoire de l'exégèse latine au Moyen Age* (Paris, 1944), p. 19. [↑](#footnote-ref-258)
259. *Advocacie*, pp. 91-92. [↑](#footnote-ref-259)
260. The notion was then intermingled with the theory of body politic to turn into the *dame renommée*. See Daisy Delogu, *Allegorical Bodies: Power and Gender in Late Medieval France* (Toronto, 2015), pp.45-84. [↑](#footnote-ref-260)
261. *Advocacie*, p. 27, vv. 762-763. [↑](#footnote-ref-261)
262. *Advocacie*, p. 75, vv. 2220-2222. [↑](#footnote-ref-262)
263. C. 1, 14, 1: Inter aequitatem iusque interpositam interpretationem nobis solis et opportet et licet inspicere. [↑](#footnote-ref-263)
264. E. M. Meyers, “Le conflit entre l'équité et la loi chez les premiers glossateurs,” TvR 17 (1941), pp. 117- 135. For legal interpretation and equity as the soul of law, see Jacques Krynen, "Le problème et la querelle de l'interprétation de la loi en France, avant la Révolution : essai de rétrospective médiévale et moderne," *RHDFE*, 86 (2008), pp. 161-197. [↑](#footnote-ref-264)
265. Louis de Carbonnière, *op. cit.*, p. xxiii. [↑](#footnote-ref-265)
266. Lucien Febvre, “La sensibilité et l'histoire: Comment reconstituer la vie affective d'autrefois?” *Annales d'histoire sociale*, 3(1-2) (1941), pp. 5–20. [↑](#footnote-ref-266)
267. Peter N. Stearns and Carol Z. Stearns, “Emotionology: Clarifying the History of Emotions and Emotional Standards,” *The American Historical Review*, Vol. 90, No. 4 (Oct., 1985), p. 813. [↑](#footnote-ref-267)
268. Peter N. Stearns, “History of Emotions: Issues of Change and Impact,” in M. Lewis, J. M. Haviland-Jones, & L. F. Barrett, eds., *Handbook of Emotions* (New York, 2008), pp. 17-31. [↑](#footnote-ref-268)
269. Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, 2003). [↑](#footnote-ref-269)
270. Alain Corbin et al., eds., *Histoire des émotions: I. De l'Antiquité aux Lumières* (Paris, 2016). [↑](#footnote-ref-270)
271. Norbert Elias, *On the Process of Civilisation: SocioGenêtic and PsychoGenêtic Investigatins*, Stephen Mennell, Eric Dunnin, Johan Goudsblom and Richard Kilminster eds., *The Collected Works of Norbert Elias*, Vol. 3, Edited by (Dublin, 2012), p. 57 and pp. 85-86. See also the presentation of Robert van Krieken : “Norbert Elias and Emotions in History,” in David Lemmings and Ann Brooks, eds., *Emotions and Social Change: Historical and Sociological Perspectives* (New York, 2014), pp. 19-42. [↑](#footnote-ref-271)
272. A stilus in medieval law is the procedural norms of a certain court. [↑](#footnote-ref-272)
273. For the ecclesiastical impact on secular lawyers’ code of behavior, see Vidal, "L’avocat dans les décisions conciliaires et synodales en France (XIIe-XIIIe siècles)," *Revue de la Société internationale de l’histoire de la profession d’avocat*, 3 (1991), pp. 1-21. See also Jacques Krynen, “La déontologie ancienne de l’avocat (France : ΧΙΙIe-ΧVIIe siècle), ” in Jacques Krynen ed., *Le Droit saisi par la Morale* (Toulouse, 2005), pp. 333-352. [↑](#footnote-ref-273)
274. James Brundage, *The Medieval Origins of the Legal Profession*, pp. 424-430. [↑](#footnote-ref-274)
275. Pillii, Tancredi, Gratiae Libri de iudiciorum ordine, Frideric Bergmann ed. (Gottingen, 1842), p. 94: Omnem timorem debet a testibus removere. Cf. C. 3, q. 8, c. 20. [↑](#footnote-ref-275)
276. Guillaume Durant, *Speculum iudiciale*, Pars prima (Lyons, 1539), fol. 196 ro. [↑](#footnote-ref-276)
277. The humility leading to truth is a theme well elaborated in Bernard of Clairvaux’s sermons. It will be re-examined again in Chapter IV on Saint Louis. [↑](#footnote-ref-277)
278. *Speculum iudiciale*, Pars prima, fol. 200 ro. [↑](#footnote-ref-278)
279. C. 2, q. 3, c. 5 and C. 8, q. 2, c. 8. [↑](#footnote-ref-279)
280. Dionysius Cato, *Dicta Catonis* (Harvard, 1934), pp. 604-605. Before it: *Iratus de re incerta contendere noli.* [↑](#footnote-ref-280)
281. Brundage, *op. cit.*, p. 313. [↑](#footnote-ref-281)
282. See Beatrice Pasciuta, “Speculum iudiciale,” in Serge Dauchy et al., eds., *The Formation and Transmission of Western Legal Culture: 150 Books that Made the Law in the Age of Printing* (Cham, 2016), pp. 37-40. [↑](#footnote-ref-282)
283. ORFTR, t. 1, p. 300. [↑](#footnote-ref-283)
284. ORFTR, t. 1, p. 322. [↑](#footnote-ref-284)
285. See Art. 54 of this Ordinance. [↑](#footnote-ref-285)
286. See for example Jean Le Coq, *Questiones Johannis Galli*, Marguerite Boulet ed. (Paris, 1944), pp. 295-297. [↑](#footnote-ref-286)
287. Krynen, *L’idéologie de la magistrature ancienne*, pp. 116-130. [↑](#footnote-ref-287)
288. See Karl Shoemaker, “When the Devil Went to Law School,” p. 268. [↑](#footnote-ref-288)
289. *Tractatus procuratoris sub nomine dyaboli editus* (Venezia 1478); It is also circulated under other titles such as: *Processus contemplativus quaestionis ventilatae coram D. n. Jesu Cristo, Processus Sathanae contra genus humanum, Processus iudiciarius inter Mariam et Diabolum*. See Francesco Mastroberti ed., *Il Liber Belial e il pocesso romano-canonico in Europa tra XV e XVI secolo*, p. 67. [↑](#footnote-ref-289)
290. *Processus contemplatiuus questionis ventilate coram domino nostro hiesu christo tanque iudice & inter advocatam hominis scilicet beatissimam virginem Mariam ex una. et dyabolum partibus ex altera super possessorio humani generis* (Leipzig, c. 1495), fo. 3 vo. [↑](#footnote-ref-290)
291. *Processus*, fol. 4 ro. [↑](#footnote-ref-291)
292. *Processus*, fol. 4 vo. [↑](#footnote-ref-292)
293. *Processus*, fol. 4 vo. [↑](#footnote-ref-293)
294. *Processus*, fol. 7 ro. [↑](#footnote-ref-294)
295. *Processus*, fol. 7 ro. [↑](#footnote-ref-295)
296. *Processus*, fol. 7 vo. [↑](#footnote-ref-296)
297. *Advocacie*, vv. 970-972, vv. 981-983: Par grant ire lui respondi: /«Tu ne le seras pas encore; / j'en demant interloqutore» /... Mès el dist aussi com par ire: / Or die ceu que voudra dire/ Cel desloiyal procuratour. [↑](#footnote-ref-297)
298. *Advocacie*, v. 1697. [↑](#footnote-ref-298)
299. *Advocacie*, vv. 1498-1499. [↑](#footnote-ref-299)
300. *Advocacie*, vv. 2249-2250. [↑](#footnote-ref-300)
301. *Advocacie*, vv. 2130-2134. [↑](#footnote-ref-301)
302. *Advocacie*, v. 2060: le filz vit a sa contenance /la grant angoisse qu'elle avoit, / quer respondre bien n'i savoit. [↑](#footnote-ref-302)
303. *Advocacie*, vv. 745-746. [↑](#footnote-ref-303)
304. Jacques Le Goff, “Rire au Moyen Age,” *Les Cahiers du Centre de Recherches Historiques* [En ligne], 3 (1989), mis en ligne le 13 avril 2009, consulté le 09 septembre 2018. URL : http://journals.openedition.org/ccrh/2918. [↑](#footnote-ref-304)
305. Laurence Moulinier, “Quand le Malin fait de l'esprit. Le rire au Moyen Âge vu depuis l'hagiographie,” in *Annales : Histoire, Sciences Sociales*, 52ᵉ année, N. 3, 1997, pp. 457-475, here p. 470. [↑](#footnote-ref-305)
306. Albrecht Classen ed., *Laughter in the Middle Ages and Early Modern Times: Epistemology of a Fundamental Human Behavior, its Meaning, and Consequences* (Berlin, 2010), p. 10. [↑](#footnote-ref-306)
307. *Advocacie*, vv. 2464-2480. [↑](#footnote-ref-307)
308. Stefano Vinci, *Liber Belial: a vademecum for roman-canonical procedure in Europe* (12. February 2015), in *Forum historiae iuri*s, <https://forhistiur.de/2015-01-vinci/>. Accessed on Sept. 10, 2018. [↑](#footnote-ref-308)
309. Jacques de Teramo, *Cy commencent [sic] le Procès de Belial à l'encontre de Jhésus*, [Compilé par Jacques de Ancharano et trenslaté de latin en francoys par Pierre Ferget], (1481), fol. 6 vo. [↑](#footnote-ref-309)
310. It is to be noted that this arrangement may have made it less suitable for performative adaptation, hence the literal French translation of the text. [↑](#footnote-ref-310)
311. *Procès*, fol. 11 ro. [↑](#footnote-ref-311)
312. *Procès*, fol.12 ro. [↑](#footnote-ref-312)
313. *Procès*, fol. 12 ro. [↑](#footnote-ref-313)
314. *Procès*, fol. 26 ro. [↑](#footnote-ref-314)
315. *Procès*, fol. 66 ro. [↑](#footnote-ref-315)
316. *Procès*, fol. 34 vo. [↑](#footnote-ref-316)
317. *Procès*, fol. 13 vo. [↑](#footnote-ref-317)
318. *Procès*, fol. 80 vo. [↑](#footnote-ref-318)
319. *Procès*, fol. 15 ro. [↑](#footnote-ref-319)
320. *Procès*, fol. 63 vo. [↑](#footnote-ref-320)
321. The social implications of “crying”, see Didier Lett et Nicolas Offenstadt eds., *Haro! Noël! Oyé! Pratiques du cri au Moyen Âge* (Paris, 2003); Jan Dumolyn, “‘Criers and Shouters’: The Discourse on Radical Urban Rebels in Late Medieval Flanders,” *Journal of Social History*, vol. 42, no. 1, 2008, pp. 111–135. [↑](#footnote-ref-321)
322. Kings I, 11: 1-5. [↑](#footnote-ref-322)
323. By showing contempt to the blood and the flesh, Belial did nothing but refute the orthodox Christian creeds on the trinity. Solomon’s ill-famed lust is also related to the blood and the flesh. Cf. *Le chevalier de la Tour Landry* (1372): Le touchier et le bayser esmeuvent le sanc et lachar telement que ils font entroblier la crainte de Dieu et honneur de ceste monde...See Alexandra Velissariou,“Comment elles se doyvent contenir : règles de conduite et codes gestuels dans le Livre du Chevalier de La Tour Landry pour l’enseignement de sesfilles,”*Le Moyen Français* 65 (2009), pp. 53-78. [↑](#footnote-ref-323)
324. *Procès*, fol. 64 ro. [↑](#footnote-ref-324)
325. *Procès*, fol. 64 ro. [↑](#footnote-ref-325)
326. But a typical one too since it is common to speak of *interjeter un appel*. [↑](#footnote-ref-326)
327. *Procès*, fol. 28 ro. [↑](#footnote-ref-327)
328. *Procès*, fol. 30 vo. [↑](#footnote-ref-328)
329. *Procès*, fol. 36 vo. [↑](#footnote-ref-329)
330. *Procès*, fol. 48 vo. [↑](#footnote-ref-330)
331. *Procès*, fol. 49 vo. [↑](#footnote-ref-331)
332. *Histoire des émotions*, Vol. 1, p. 129. [↑](#footnote-ref-332)
333. Philippe Paschel, “Les sources du ‘Stilus curie parlamenti’ de Guillaume du Breuil,”*RHDFE*, vol. 77, no. 3, 1999, pp. 311–326.Philippe Paschel, “Guillaume du Breuil et son *Stilus curie parlamenti,*” *Droits*, vol. 49, no. 1, 2009, pp. 159-190. [↑](#footnote-ref-333)
334. Guillaume du Breuil, *Stilus curie parlamenti* (Paris, 1909), p. 2. [↑](#footnote-ref-334)
335. Marc Fumaroli, *L'Age de l'éloquence : Rhétorique et «res literaria» de la Renaissance au seuil de l'époque classique* (Geneva, 1980), p. 437. [↑](#footnote-ref-335)
336. Jacques d'Ableiges, *Le grand coutumier de France: et instruction de practique, et manière de procéder et practiquer ès souveraines cours de Parlement, prévosté et viconté de Paris et autres jurisdictions du royaulme de France* (Paris, 1868), p. 399. [↑](#footnote-ref-336)
337.  [↑](#footnote-ref-337)
338. « 4 curialis » (par C. du Cange, 1678), dans du Cange, et al., *Glossarium mediae et infimae latinitatis*, éd. augm., Niort : L. Favre, 1883‑1887, t. 2, col. 670c. http://ducange.enc.sorbonne.fr/CURIALIS2 [↑](#footnote-ref-338)
339. Christopher Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean, 400-800* (Oxford, 2005), p. 72. [↑](#footnote-ref-339)
340. G. Evans, *Law and Theology in the Middle Ages* (London, 2002), p. 91. [↑](#footnote-ref-340)
341. Jean Coste, ed., *Boniface VIII en procès: articles d'accusation et dépositions des témoins (1303-1311)* (Rome, 1995), p. 162. [↑](#footnote-ref-341)
342. Stéphane Péquignot, “Figure et normes de comportement des ambassadeurs dans les documents de la pratique : un essai d’approche comparative (ca. 1250 - ca. 1440),” Stefano Andretta, et al., eds., *De l’ambassadeur: Les écrits relatifs à l’ambassadeur et à l’art de négocier du Moyen Âge au début du xixe siècle* (Rome, 2015). [↑](#footnote-ref-342)
343. Magda B. Arnold, *Emotion and Personality* (New York, 1960). [↑](#footnote-ref-343)
344. Randolph R. Cornelius, "Magda Arnold's Thomistic theory of emotion, the self-ideal, and the moral dimension of appraisal," *Cognition & Emotion*, Volume 20, 2006 - Issue 7, p. 980. Thomas Aquinas, *Questiones Disputatae de Veritate* (Leonine, 1970-1976), q. 26. [↑](#footnote-ref-344)
345. Guillaume Durand, *Rationale divinorum officiorum* (Naples, 1859). [↑](#footnote-ref-345)
346. Barbara H. Rosenwein, *Emotional Communities in the Early Middle Ages* (Ithaca, 2006), p. 2. [↑](#footnote-ref-346)
347. Georges Kleiber, *Le mot "ire" en ancien français (XIe-XIIIe siècles) : essai d'analyse sémantique* (Paris, 1978), p. 87. [↑](#footnote-ref-347)
348. *Ire* and *corrouz* can both refer to mental torment, vexation and anger. See Bruno Méniel, "La colère dans la poésie épique, du Moyen Âge à la fin du XVIe siècle," *Cahiers de recherches médiévales*, 11 spécial (2004), pp. 37-48. [↑](#footnote-ref-348)
349. Paul R. Hyams and Susanna A. Throop, eds., *Vengeance in the Middle Ages: Emotion, Religion and Feud* (Ashgate, 2010), p. 191. [↑](#footnote-ref-349)
350. Alain Supiot, *Homo juridicus : essai sur la fonction anthropologique du droit* (Paris, 2005). [↑](#footnote-ref-350)
351. Walter Ullmann, *The Individual and Society in the Middle Ages* (Baltimore, 1966). He places the rise of individual from the corporate mentality in the 13th century. Previously a component of a *universitas*, the individual now becomes a member of a *societas*. [↑](#footnote-ref-351)
352. Major biographies of Saint Louis are contained in the 20th volume of *Recueil des historiens des Gaules et de la France*. Among them, the biography written in Latin by Geofroi de Beaulieu, the confessor of Louis IX is one that dates the earliest and was believed to be the primary reference in the preliminary inquiry of his sanctification. The biography of Guillaume de Nangis which can be found in the *Grandes Chroniques de France* is also a monument in national memory given the quasi-official nature of the *Grandes Chroniques de France*. The biography of Joinville, bailiff of Champagne, is highly valued by historians due to its personality and realism. Records of inquests during the reign of Saint Louis are collected in the 24th volume. [↑](#footnote-ref-352)
353. Le Goff, *Saint Louis* (Paris, 1996), introduction. [↑](#footnote-ref-353)
354. Genêt, in his conclusion, believes that “feudal and modern” may be the best description of Saint Louis. See Jean-Philippe Genêt, "Saint Louis: le roi politique," in *Médiévales*, n°34, 1998, p. 33. [↑](#footnote-ref-354)
355. Jean-Philippe Genêt, "La vérité et les vecteurs de l'idéel," in Jean-Philippe Genêt ed., *La vérité*, pp. 9-45. [↑](#footnote-ref-355)
356. Jean-Marie Carbasse, “Non cujuslibet est ferre leges: ‘Legiferer’ chez Gilles de Rome,” in *Le prince et la norme: ce que légiférer veut dire*, p. 69. [↑](#footnote-ref-356)
357. Bernard de Clairvaux, *Oeuvres complètes de Saint Bernard. Traduction nouvelle par M. L.Abbé Charpentier* (Paris, 1866), t. 2, VII, I, I, 1. [↑](#footnote-ref-357)
358. “Gloriosissimi regis,” in Cecilia Gaposchkin, ed., *Blessed Louis, the Most Glorious of Kings : Texts Relating to the Cult of Saint Louis of France*(Notre Dame, 2012), p. 48. [↑](#footnote-ref-358)
359. *RHGF*, t. 20，pp. 108-109. [↑](#footnote-ref-359)
360. *Ibid.*, p. 9 (in Latin), p. 26 (in Old French). [↑](#footnote-ref-360)
361. Cited by Boniface VIII in his canonization sermons. See RHGF, t. 23, p. 149. [↑](#footnote-ref-361)
362. Guibert de Tournai, *Le Traité Eruditio regum et principum de Guibert de Tournai*, A. De Poorter ed. (Louvain, 1914), p. 49. [↑](#footnote-ref-362)
363. Giles of Rome, *Li Livres du gouvernement des rois*, pp. 6-7. [↑](#footnote-ref-363)
364. *RHGF*，t. 23, p. 152. [↑](#footnote-ref-364)
365. *RHGF*，t. 20，p. 398. [↑](#footnote-ref-365)
366. Another anecdote of his merciless and constant justice, see Colette Beaune, *Naissance de la nation France* (Paris, 1985), pp. 150-154. [↑](#footnote-ref-366)
367. *RHGF*，t. 20，p. 398. [↑](#footnote-ref-367)
368. *Idem.* [↑](#footnote-ref-368)
369. *RHGF*, t. 20, p. 400: Magnumque fuit aliis regibus exemplum iustitiae, quod vir tantus tamque spectabilibus ortus natalibus, quasi a pauperibus factore accusatus, inter suos tam nobilies vix vitae remedium in facie cultoris iustitiae potuit invenire. [↑](#footnote-ref-369)
370. *RHGF*, t. 20, p. 199. [↑](#footnote-ref-370)
371. F. L. Cheyette, "Suum cuique tribuere,"*French Historical Studies* 6 (1970), pp. 287-299. [↑](#footnote-ref-371)
372. Jacques Krynen, *L’idéologie de la magistrature ancienne*, p. 25. [↑](#footnote-ref-372)
373. Gaposchkin, *Blesed Louis*, p. 190: …mediente iusticia et plerumque misericordia faciebat celeriter expediri. [↑](#footnote-ref-373)
374. For the production and enactment of this text, see Louis Carolus-Barré, "La grande ordonnance de 1254 sur la réforme de l'administration et la police du royaume," in *Septième centenaire de la mort de Saint Louis. Actes des Colloques de Royaumont et de Paris (21-27 mai 1970)* (Paris, 1976), p. 85-96。 [↑](#footnote-ref-374)
375. But the ordinance also made it clear that this measure was only applicable in royal domain, and it was met withmuch resistance. Although the judicial combat was abolished, it was reinstituted under the pressure of the nobility in 1306. See R. C. van Caenegam, "La preuve dans le droit du Moyen Age occidental," in *RSJB*, t. 17, p. 722 [↑](#footnote-ref-375)
376. Patrick Arabeyre, “Le premier recueil méthodique d’ordonnances royales françaises : le T*ractatus ordinationum regiarum*d’Étienne Aufréri (fin XVe-début du XVIe siècle),” in *TvR*, t. 79 (2011), pp. 391-453.. To be discussed also in Chapter VII. [↑](#footnote-ref-376)
377. Pierre de Fontaines, *Le Conseil de Pierre de Fontaines* (Paris, 1846),p. vi. [↑](#footnote-ref-377)
378. Cf. Philippe de Mézières, *Songe du viel pelerine*, livre 2, ch. 280. [↑](#footnote-ref-378)
379. Philippe de Beaumanoir, *Coutumes de Beauvoisis*, ch. 61 [↑](#footnote-ref-379)
380. Gaposchkin, *Blessed Louis*, p. 239: Nota quod baculum, quantumcumque rectus, si ponatur in aqua apparet tortuosus. Item in aqua non apparet proprium pondus rerum; videntur enim maioris ponderis quanta sint. sic causa pauperum quantumcumque recta sit apparet tortuosa per falsos advocatos et falsos consiliarios. Nec ius eorum ponderatur quantum deberet ponderari. Illud est iudicium in aqua. Iusticia est quasi torrens fortis qui si obviet turri forti non trahet eam secum. Sed res minutas trahit, sic exequtio iusticie, nunc non trahit magnos dominos potentes, sed parvos et pauperes. [↑](#footnote-ref-380)
381. *RHGF*, t. 20, p. 20. [↑](#footnote-ref-381)
382. François Durand, "Innocent III entre justice et miséricorde," in Catherine Vincent ed., *Justice et miséricorde: Discours et pratiques dans l'Occident medieval* (Limoges, 2015), pp. 116-7. [↑](#footnote-ref-382)
383. For the debate between the daughters of God, see Jean Rivière, “Le conflit des ‘filles de Dieu’ dans la théologie médiévale,” in *Revue des Sciences Religieuses*, tome 13, fascicule 4, 1933, pp. 553-590; Marielle Lamy, “Justice versus Miséricorde: la querelle des ‘Filles de Dieu’ dans les Vies du Christ de la fin du Moyen Âge,” in Catherine Vincent ed., *Justice et Miséricorde : Discours et pratiques dans l’Occident médiéval*, pp. 121-150. [↑](#footnote-ref-383)
384. See our discussion in Chapter 3. [↑](#footnote-ref-384)
385. ST, IIa-IIae, q. 120, also, IIa-IIae, q. 60, art. 5. [↑](#footnote-ref-385)
386. Krynen, *L’idéologie de la magistrature ancienne*, p. 287. [↑](#footnote-ref-386)
387. *Ibid.*, p. 56. [↑](#footnote-ref-387)
388. Jean Gaudemet, “La coutume en droit canonique,” in *RSJB*, t. 52, p. 55. [↑](#footnote-ref-388)
389. Jacques Krynen, "Saint Louis législateur au miroir des Mendiants," in *Mélanges de l'Ecole française de Rome. Moyen-Age*, tome 113, n°2, 2001, pp. 953-4. [↑](#footnote-ref-389)
390. See François-Louis Ganshof, “Étude sur le faussement de jugement dans le droit flamand des XIIIe et XIVe siècles,” in *Bulletin de la Commission royale des anciennes lois et ordonnances de Belgique*, XIV, 1935, pp. 115-140. [↑](#footnote-ref-390)
391. But many feature of the faussement de jugement were preserved in late medieval procedure of the appeal, see R. C. van Caenegem, “History of European Civil Procedure,” in *International Encyclopedia of Comparative Law*, XVI, 2 (Tübingen, 1973), pp. 11-36. For the appeals in the Parlement of Paris, see Jean Hilaire, "La procédure civile et l'influence de l'Etat: autour de l’appel," in *Droits savants et pratiques françaises du pouvoir*, pp. 151-160. [↑](#footnote-ref-391)
392. Jean Hilaire, *La construction de l'état de droit dans les archives judiciaires de la Cour de France au XIIIesiècle* (Paris, 2011), p. 23. [↑](#footnote-ref-392)
393. Hilaire, *La construction de l'état de droit*, p. 95. [↑](#footnote-ref-393)
394. Pissard Hippolyte, *Essai sur la connaissance et la preuve des coutumes en justice dans l'ancien droit français et dans le système romano-canonique* (Paris, 1910), p. 18. [↑](#footnote-ref-394)
395. L. Waelkens, "L'Origine de l'enquête par turbe," *TvR*, 53, Issues 3-4, 1985, pp. 337-346。 [↑](#footnote-ref-395)
396. Jacques Krynen, “Entre science juridique et dirigisme: le glas médiéval de la coutume,” *Cahiers de recherches médiévales*, 7, 2000, pp. 170-187. [↑](#footnote-ref-396)
397. Marguerite Boulet-Sautel, “Jean de Blanot et la conception du pouvoir royal au temps de Louis IX, ” *Septième centenaire de la mort de Saint Louis*, p. 57-68 [↑](#footnote-ref-397)
398. Laurent Mayali, “La coutume dans la doctrine romaniste au Moyen Âge,” in *RSJB*, t. 52, p. 14, n. 10. [↑](#footnote-ref-398)
399. Sophie Petit-Renaud, “Le roi, les légistes et le parlement de Paris aux XIVe et XVe siècles: contradictions dans la perception du pouvoir de « faire loy » ?” *Cahiers de recherches médiévales*, 7, 2000, pp. 143-158. [↑](#footnote-ref-399)
400. Le Goff, *Saint Louis*, pp. 895-896. [↑](#footnote-ref-400)
401. The this continuity of ideas, see Jacques Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Age (1380-1440) : étude de la littérature politique du temps*(Paris, 1981); Claude Gauvard, "De la théorie à la pratique: Justice et miséricorde en France pendant le règne de Charles VI," *Revue des langues romanes* 92 (1988), pp. 317-325. [↑](#footnote-ref-401)
402. “Après 1950, l'affaire albigeoise a cristallisé et integré toutes les préoccupations de l'époque: liberté et totalitarisme, colonisation et droit des peuples, occupation et résistance.” See Jean-Louis Biget, *Hérésie et inquisition dans le Midi de la France* (Bruxelles, 2007), pp. 8-9. [↑](#footnote-ref-402)
403. Henry Charles Lea, *A History of the Inquisition of the Middle Ages* (New York, 1887). [↑](#footnote-ref-403)
404. See for example the work of Douai, Bishop of Beauvais, *L'Inquisition: Ses origines-sa procedure* (Paris, 1906). [↑](#footnote-ref-404)
405. R. I. Moore, *The Formation of a Persecuting Society* (Oxford, 1987). [↑](#footnote-ref-405)
406. Chris Sparks, *Heresy, Inquisition and Life-Cycle in Medieval Languedoc* (York, 2014) [↑](#footnote-ref-406)
407. See our discussion of Musart in Chapter 1. [↑](#footnote-ref-407)
408. Firmin Laferrière, *Mémoire sur les lois de Simon de Montfort et sur les coutumes d'Albi des XIIIe, XIVe et XVe siècles* (Paris, 1856), p. 13. [↑](#footnote-ref-408)
409. Jacques Berlioz ed., *Les religions médiévales et leurs expressions méridionales* (Paris, 2016). [↑](#footnote-ref-409)
410. Karen Sullivan, *Truth and the Heretic: Crises of Knowledge in Medieval French Literature* (Chicago, 2005), p. 9. [↑](#footnote-ref-410)
411. Yvan Roustit, *Nouveau Testament occitan et rituel cathare, XIIIe siècle* (Albi, 2016), introduction. [↑](#footnote-ref-411)
412. Florian Mazel, “Vérité et autorité : y a-t-il un moment grégorien?” in Jean-Philippe Genêt, ed., *La vérité*, pp. 323-348. [↑](#footnote-ref-412)
413. R.I. Moore, "Heresy as Disease," in *The Concept of Heresy in the Middle Ages (11th-13th C.)* (Leuven,1983), pp. 1-11. [↑](#footnote-ref-413)
414. Condemnantes haereticos universos, quibuscunque nominibus censeantur, facies quidem diversas habentes, sed caudas ad invicem colligatas, quia de vanitate conveniunt in id ipsum. [↑](#footnote-ref-414)
415. The Bishop also used vanity to accuse them for not performing the duty as a Christian, see Virginia Burrus, et al., *The Making of a Heretic: Gender, Authority, and the Priscillianist Controversy* (Berkeley, 1995), p. 39。 [↑](#footnote-ref-415)
416. Saint Philastrius, *De haeresibus liber* (Hamburg, 1721), p. 109. [↑](#footnote-ref-416)
417. Peter Abelard, *Petri Abaelardi opera theologica* (Turnholt, 1969), p. 202: Non enim ignorantia haereticum facit sed superbia. [↑](#footnote-ref-417)
418. Nicole Bériou, “La confession dans les écrits théologiques et pastoraux du XIIIe siècle : médication de l'âme ou démarche judiciaire ?” in *L'aveu. Antiquité et Moyen Âge. Actes de la table ronde de Rome (28-30 mars 1984)* (Rome, 1986), pp. 261-282, here p. 269. [↑](#footnote-ref-418)
419. L. J. Sackville noticed the concretization of the metaphor in the 13th century: sin was a disease, the sinner a patient and Church, imitating Christ, a doctor. See L. J. Sackville, *Heresy and Heretics in the Thirteenth Century: The Textual Representations* (York, 2011), pp. 171-172. [↑](#footnote-ref-419)
420. English Translation taken from *The Disciplinary Decrees of the Ecumenical Councils*, translated by H. J. Schroeder (St. Louis, 1937). [↑](#footnote-ref-420)
421. The earlier mention of heresy as filth see PL, t. CCIV, col 223, the letter of Henri de Marcy to Alexander III. [↑](#footnote-ref-421)
422. Lawrence M. Clopper "English Drama: From Ungodly ludi to Sacred Play," in *The Cambridge History of Medieval English Literature* (Cambridge, 1999), p. 741. [↑](#footnote-ref-422)
423. Darrel W. Amundsen, *Medicine, Society, and Faith in the Ancient and Medieval Worlds* (London, 1996), p. 210. [↑](#footnote-ref-423)
424. Bernard Gui, *Practica inquisitionis heretice pravitatis*, Célestin Douais ed. (Paris, 1886), p. 138, p. 193 and p. 202. [↑](#footnote-ref-424)
425. John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, 2001), pp. 74-110. [↑](#footnote-ref-425)
426. Edmond Martène et al., eds., *Thesaurus novus anecdotorum*, t. 5 (Paris, 1717), pp. 1797-1822. Cf. Bernard Gui, *Practica*, p. 3。 [↑](#footnote-ref-426)
427. Daniël Lambrecht, *De Parochiale synode in het oude bisdom Doornik gesitueerd in de Europese ontwikkeling: 11de eeuw-1559* (Brussel, 1984). [↑](#footnote-ref-427)
428. For a vivid account of the event, see Mark Gregory Pegg, *The Corruption of Angels: The Great Inquisition of 1245-1246* (Princeton, 2001)。 [↑](#footnote-ref-428)
429. Célestin Douais, ed., *Les sources de l'histoire de l'Inquisition dans le midi de la France, aux XIIIe et XIVe siècles: mémoire suivi du texte authentique et complet de la Chronique de Guilhem Pelhisso. Et d'un fragment d'un registre de l'Inquisition* (Paris, 1881), p. 88: Et convocatis Fratribus et clero et aliquibus de populo, iverunt confidenter ad domum ubi dictus hereticus obierat, et eam funditus destruxerunt, et fecerunt eam locum sterquilinii, et dictum Galvanum extumulaverunt, et de cimiterio Villenove, ubi sepultus fuerat, extraxerunt. (1231) [↑](#footnote-ref-429)
430. Jean Hardouin, Claude Rigaud eds., *Acta conciliorum et epistolae decretales ac constitutiones Summorum Pontificum*, t. 7 (Paris, 1714), col. 177 [↑](#footnote-ref-430)
431. Compare the Japanese case, 胜俣镇夫，“中世の家と住宅検断”，《中世社会の基層をさぐる》（東京，2011）.Cf. Bernard Gui, *Practica*, p. 208. [↑](#footnote-ref-431)
432. Reima Välimäki, “Imagery of Disease, Poison and Healing in the Late Fourteenth-century Polemics against Waldensian Heresy,” in *Infirmity in Antiquity and the Middle Ages: Social and Cultural Approaches to Health, Weakness and Care* (Oxford, 2015), p. 144. Cf. Bernard Gui, *Practica*, p. 160. [↑](#footnote-ref-432)
433. Cf. Bernard Gui, *Practica*, p. 219-220。 [↑](#footnote-ref-433)
434. Gauvard, *De grace especial*, pp. 191-224. [↑](#footnote-ref-434)
435. Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (Summer, 1982), pp. 777-778. The practice is part of objectification which turns a subject into an object [↑](#footnote-ref-435)
436. Valérie Toureille, *Crime et châtiment au Moyen Âge (Ve-XVe siècle)* (Paris, 2013),p. 16. [↑](#footnote-ref-436)
437. Pierre Legendre, “De confessis [Remarques sur le statut de la parole dans la première scolastique]: Remarques sur le statut de la parole dans la première scolastique,” in *L'aveu*, pp. 401-408, here p. 402. [↑](#footnote-ref-437)
438. The process, as Foucaut would say: de 1’«aveu», garantie de statut, d’identité et de valeur accor­dée à quelqu’un par un autre, on est passé à l’«aveu», reconnaissance par quelqu’un de ses propres actions ou pensées. See Michel Foucault, *Histoire de la sexualité,*tome 1 : La Volonté de savoir (Paris, 1994),p. 78. We may also recall the conflicting view of credibility and truth in RdR texts we discussed in the first chapter. [↑](#footnote-ref-438)
439. H. A. Kelly, “Judicial Torture in Canon Law and Church Tribunals: From Gratian to Galileo,” *The Catholic Historical Review*, Volume 101, Number 4, Autumn 2015, p. 773. [↑](#footnote-ref-439)
440. Faustine Harang, *La torture au Moyen Âge : Parlement de Paris, XIVe-XVe siècles* (Paris, 2017) [↑](#footnote-ref-440)
441. H. A. Kelly, “Judicial Torture in Canon Law and Church Tribunals,” p. 757. [↑](#footnote-ref-441)
442. -M. Carbasse, “Les origines de la torture judiciaire en France du XIIe au début du XIVe siècle,” in B. Durand et al., eds., *La torture judiciaire* (Lille, 2002), vol. I, pp. 381-419. [↑](#footnote-ref-442)
443. Esther Cohen, *The Modulated Scream: Pain in Late Medieval Culture* (Chicago, 2010), p. 43. [↑](#footnote-ref-443)
444. Edward Peters, *Torture* (Philadelphia, 1996), p. 43: “It was not the revived study and application of Roman law in the twelfth century, nor a leaving off of earlier barbarian practices alone that caused these changes, but a complex combination of changes in society and political authority that influenced the new legal procedure in several different ways.” See also R. van. Caenegem, *The Law of Evidence in the Twelfth Century: Intellectual Background and European Perspective* (Ghent, 1966). [↑](#footnote-ref-444)
445. Bernard Gui, *Practica*, p. 235. [↑](#footnote-ref-445)
446. *Power and Inquisiton*, Chap. 3, n. 112. [↑](#footnote-ref-446)
447. Ibid., p. 107. [↑](#footnote-ref-447)
448. Yves Dossat, *Les crises de l’Inquisition toulousaine au XIIIe siècle (1233-1273)* (Bordeaux, 1959). [↑](#footnote-ref-448)
449. Recent scholarship, however, tends to revise the invasion thesis and see it as part of the program of romantizing the South. [↑](#footnote-ref-449)
450. For details see Pierre Timbal, *Un conflit ď annexion au Moyen Age: L’ Application de la coutume de Paris au pays ď Albi* (Toulouse, 1950), pp. 16- [↑](#footnote-ref-450)
451. Marjolaine Raguin-Barthelmebs, "Simon de Montfort et le gouvernement : Statut des femmes dans les Statuts de Pamiers (art. 46) avant la *Magna Carta*." *Medieval Feminist Forum: A Journal of Gender and Sexuality*, 53, no. 2 (2018), pp. 38-90. [↑](#footnote-ref-451)
452. Timbal, *Un conflit ď annexion au Moyen Age*, p. 34. The Statutes are applicable in 9 *vigueries* and one *châtellenie*. [↑](#footnote-ref-452)
453. Compared to the image of “Butcher and Knight” of his father, Simon de Montfort VI is a legendary figure in English history, the center of historical fantasies. See Michel Roquebert, *Simon de Montfort: Bourreau et Martyr* (Paris, 2005); Adrian Jobson, *The First English Revolution: Simon de Montfort, Henry III and the Barons' War* (London, 2012). [↑](#footnote-ref-453)
454. For this long-term continuity, see Elaine Graham-Leigh, *The Southern French Nobility*. [↑](#footnote-ref-454)
455. See Gaël Chenard, *L’Administration d’Alphonse de Poitiers (1241-1271)* (Paris, 2017). [↑](#footnote-ref-455)
456. P.-Fr. Fournier et P. Guébin, eds., *Enquêtes administratives d’Alfonse de Poitiers, arrêts de son Parlement tenu à Toulouse et textes annexes (1249-1271)* (Paris, 1959), p. 59 [↑](#footnote-ref-456)
457. Edgard Boutaric, *Saint-Louis et Alphonse de Poitiers : étude sur la réunion des provinces du midi* (Paris, 1870), p. 361. [↑](#footnote-ref-457)
458. *Enquêtes administratives d’Alfonse de Poitiers* : ...Ut animam prefati comitis penitus liberetis. [↑](#footnote-ref-458)
459. Dossat, *Les crises de l'Inquisition toulousaine au XIIIe siècle*, p. XXI. For the inquest of Philip Augustus, see John W. Baldwin, *The Government of Philip Augustus: Foundations of French Royal Power in the Middle Ages*(Berkeley, 1991), pp. 248-256. [↑](#footnote-ref-459)
460. *Enquêtes administratives*, p. 64. [↑](#footnote-ref-460)
461. Lalou distinguishes two types of inquests : domanial and reformative. See Élisabeth Lalou, “L'enquête au Moyen Âge,”*Revue historique*, vol. 657, no. 1, 2011, pp. 145-153。 [↑](#footnote-ref-461)
462. See Alcide Curie-Seimbres, *Essai sur les villes fondées dans le sud-ouest de la France aux XIIIe et XIVe siècles sous le nom générique de bastides* (Toulouse, 1880), p. 42. [↑](#footnote-ref-462)
463. See Florence Pujol, “L'élaboration de l'image symbolique de la bastide,” *Annales du Midi*, tome 103, 1991 ,p. 347. [↑](#footnote-ref-463)
464. On this point see Carbasse’s review and revision in J.-M. Carbasse, “Les origines de la torture judiciaire en France du XIIe au début du XIVe siècle,” in B. Durand et al., eds., *La torture judiciaire* (Lille, 2002), vol. I, p. 387; “Droit romain et royal. À propos du droit de confiscation à Millau à la fin du Moyen Age,” in *Droits et justices du Moyen Âge: Recueil d'articles d'histoire du droit* (Paris, 2017), pp. 147-164. [↑](#footnote-ref-464)
465. See André Gouron, "Les étapes de la pénétration du droit romain au XIIe siècle dans l'ancienne Septimanie," pp. 103-120. [↑](#footnote-ref-465)
466. Hélène de Tarde, “La rédaction des coutumes de Narbonne,” *Annales du Midi : revue archéologique, historique et philologique de la France méridionale*, Tome 85, N°114, 1973, pp. 371-402. [↑](#footnote-ref-466)
467. Vincent Challet, “Les entrées dans la ville : genèse et développement d'un rite urbain (Montpellier, xive-xve siècles),” *Revue historique*, vol. 670, no. 2, 2014, pp. 267-293. [↑](#footnote-ref-467)
468. Especially given its border status. See P. Ourliac, *Les coutumes de l’Agenais* (Montpellier, 1976-1981). [↑](#footnote-ref-468)
469. Boutaric, *Saint-Louis et Alfonse de Poitiers*, p. 509. [↑](#footnote-ref-469)
470. Ibid., p. 535. The attitude of the Parlement of Paris towards custom, see also Albert Rigaudière, “La royauté, le Parlement et le droit écrit aux alentours des années 1300,” in *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*, 140ᵉ année, N. 3, 1996, p. 890. Here the Parlement believes that the written law is *finitum et certum*, while customs *dubie et incerte*. [↑](#footnote-ref-470)
471. Boutaric, *Saint-Louis et Alfonse de Poitiers*, p.509; *HGL*, t. 3, preuves 1265. [↑](#footnote-ref-471)
472. Albert Rigaudière, “La royauté, le Parlement et le droit écrit aux alentours des années 1300,” p. 891 and p. 902. [↑](#footnote-ref-472)
473. Jean Ramière de Fortanier, *Chartes de franchises du Lauragais* (Paris, 1939), pp. 44-45. [↑](#footnote-ref-473)
474. Serge Lusignan, "Le choix de la langue d'écriture des actes administratifs en France. Communiquer et affirmer son identité," in Claire Boudreau et al., eds., *Information et société en Occident à la fin du Moyen Âge* (Paris, 2005), pp. 193-194. [↑](#footnote-ref-474)
475. Patrick Arabeyre, "Un prélat languedocien au milieu du XVe siècle : Bernard de Rosier, archevêque de Toulouse (1400-1475)," *Journal des savants*, 1990, n°3-4, pp. 291-326. [↑](#footnote-ref-475)
476. Y. Dossat, “Guy Foucois, enquêteur-réformateur, archevêque et pape (Clément IV),” in *Cahiers de Fanjeaux*, 7, 1972, pp. 23-57. [↑](#footnote-ref-476)
477. Paul Meyer, “La langue romane du Midi de la France et ses différents noms,” in *Annales du Midi : revue archéologique, historique et philologique de la France méridionale*, Tome 1, N°1, 1989, *Langue et littérature d'oc et histoire médiévale*, pp. 3-17. [↑](#footnote-ref-477)
478. In the mentalities of the time, his action was actually honorable and a common means of social ascension. His success is also the result of the mediation of the Pope Nicholas I. [↑](#footnote-ref-478)
479. For the attitudes of medieval French historians towards the Flemish people, see Isabelle Guyot-Bachy, *La Flandre et les flamands au miroir des historiens du Royaume (Xe-XVe Siècle)* (Villeneuve d'Ascq, 2017), pp. 226-236. [↑](#footnote-ref-479)
480. Marc Boone, “Le comté de Flandre au XIVe siècle: les enquêtes administratives et juridiques comme armes politiques dans les conflits entre villes et prince,” in Thierry Pécout, ed., *Quand gouverner c'est enquêter. Les pratiques politiques de l'enquête princière (Occident, XIIIe-XIVe siècles)* (Paris, 2010), p. 461. [↑](#footnote-ref-480)
481. Most notably, the customary texts of Bruges and Ghent account for a large proportion in the 19th century *Recueil des anciennes coutumes de la Belgique* compared to those in the duchy of Brabant and county of Hainaut. [↑](#footnote-ref-481)
482. Jan Dumolyn, “The Legal Repression of Revolts in Late Medieval Flanders,” *TvR*, 68.4 (2000), pp. 479–521. [↑](#footnote-ref-482)
483. For relevant expressions in various historical sources, see Van Caenegem, *Geschiedenis van het strafprocesrecht in Vlaanderen van de XIe tot de XIVe eeuw* (Brussel, 1956), pp. 301-313. [↑](#footnote-ref-483)
484. The alderman (scabinus in Latin, échevin in French) is an official appointed by the Count as the urban ruler who, guided by the bailiff, exercises the function of judgment in name of the Count. See Van Caenegem, *Legal History: A European Perspective* (London, 1991), p. 41. [↑](#footnote-ref-484)
485. To be part of royal domain in 1191 due to the Treaty of Arras. [↑](#footnote-ref-485)
486. To be part of the county of Artois in 1212 due to the Treaty of Pont-à-Vendin. [↑](#footnote-ref-486)
487. R. Monier, “Le recours au chef de sens, au moyen âge dans les villes flamandes,” in *Revue du Nord*, tome 14, n°53, février 1928. pp. 5-19, here p. 11; L. A. Warnkönig, *Histoire de la Flandre et de ses institutions civiles et politiques jusqu'à l'année 1305* (Brussel, 1836), t. 2, pp. 288-289. [↑](#footnote-ref-487)
488. See for example the charter granted to the burgh of Lamminsvliete: Cil qui plaideront pardevant nous eschevins devant dis, porront devant no jugement appeller de nous à eschevins de Bruges no kievetein devant diz. Louis Gilliodts van Severen, ed., *Coutume de la ville de Bruges* (Brussel, 1874), t. 1, p. 260. [↑](#footnote-ref-488)
489. Monier, “Le recours au chef de sens,” p. 6. [↑](#footnote-ref-489)
490. Georges Espinas ed., *Privilèges et Chartes de franchises de la Flandre* (Brussel, 1959), t. 1, V. [↑](#footnote-ref-490)
491. Van Caenegem, *Geschiedenis van het strafprocesrecht*, pp. 305-306. [↑](#footnote-ref-491)
492. See for example the case of Tout-lieu de Saint-Dizier, *Ibid.*, p. 276. Also *Olim*, t. 2, pp. 718-853. [↑](#footnote-ref-492)
493. J. Lameere, *Le Recours au chef de sens dans le droit flamand* (Brussel, 1881), p. 8. See also his citation of Phillipe de Beaumanoir’s remark. [↑](#footnote-ref-493)
494. Philippe Godding, “Appel et recours a chef de sens en Brabant aux XIVe et XVe Siecles: Wie Hoet Heeft, Die

Heeft Beroep,” TvR, 65 (1997), p. 283. [↑](#footnote-ref-494)
495. See the doctoral thesis of L. M. De Gryse, *The Reform of Flemish Judicial and Fiscal Administration In the Reign of Philip of Alsace (1157/63-1191)*(Ann Arbor, 1980). [↑](#footnote-ref-495)
496. Van Caenegem, *Geschiedenis van het strafprocesrecht*, p. 39. [↑](#footnote-ref-496)
497. "1 veritas" (par C. du Cange, 1678), dans du Cange, et al., *Glossarium mediae et infimae latinitatis*, éd. augm., (Niort, 1883‑1887), t. 8, col. 281c. [↑](#footnote-ref-497)
498. Van Caenegem and Ludo Milis eds., *Edition critique des versions françaises de la Grande Keure de Philippe d'Alsace, comte de Flandre, pour la ville d'Ypres* (Ghent, 1982),pp. 20-21. [↑](#footnote-ref-498)
499. F. L. Ganshof, "La Flandre," in Ferdinand Lotand Robert Fawtier, eds., *Histoire des institutions françaises au Moyen Age* (Paris, 1957), pp. 343-426, here pp. 375-376. The aldermen of Ghent may be the most famous. In the 13th century, Ghent was ruled by the “XXXIX of Ghent”, an oligarchy which broke up the rotation rule stipulated by the Count. [↑](#footnote-ref-499)
500. *Veritas scabinorum* mainly consists of a deputation of the aldermen’s court in charge of making inquest on the place of the crime and its neighborhood who will later report their conclusion to the ordinary aldermen’s court. [↑](#footnote-ref-500)
501. " Henri Nowé, *Les baillis comtaux de Flandre : des origines à la fin du XIVe siècle* (Brussel, 1929), p. 282. [↑](#footnote-ref-501)
502. But this is only an exception, as at the point the power of the Count was relatively weak, after the long struggle against the French King [↑](#footnote-ref-502)
503. Nowé, *Les baillis comtaux*, p. 288 :"venir as eschevins le veritet dou fait et del avenue". Original in Jean Roisin, *Franchises, lois et coutumes de la ville de Lille* (Lille, 1842), p. 118. [↑](#footnote-ref-503)
504. On the hypothesis of Henri Pirenne, see Nowé, *Les baillis comtaux*, pp. 35-38. For De Gryse’s arguments on the origins of the bailiff, see De Gryse, "Some Obeservations on the Origin of the Flemish Bailiff (Bailli)," p. 254 et *infra*。 [↑](#footnote-ref-504)
505. Van Caenegem, *Geschiedenis van het strafprocesrecht*, p. 40. [↑](#footnote-ref-505)
506. Ibid., p. 45. [↑](#footnote-ref-506)
507. As Lameere has noted, as late as in the early 13th century, in the *Keure de Franc* (Warnkeonig et Gheldolf, t. IV, p. 463), judicial combat co-existed with the inquisitional procedure. See Lameere, “Les 'Communes vérités' dans le droit flamand” (Brussel, 1882), p. 10. [↑](#footnote-ref-507)
508. Lameere, “Communes vérités”, p. 14. [↑](#footnote-ref-508)
509. Lameere, “Communes vérités”, p. 19. [↑](#footnote-ref-509)
510. Van Caenegem, *Geschiedenis van het strafprocesrecht*, p. 211. [↑](#footnote-ref-510)
511. B. Chevalier,*Les bonnes villes: l'Etat et lasociété dans la France de la fin du XVe siècle* (Orléans, 1995), pp. 15-26. [↑](#footnote-ref-511)
512. Ganshof, “La Flandre”, p. 362. [↑](#footnote-ref-512)
513. Serge Dauchy, *Introduction historique aux appels flamands au Parlement de Paris (1320-1521), avec indexes* (Brussel, 2002), p. 39. [↑](#footnote-ref-513)
514. *Coutume de la ville de Bruges*, t. 1, p. 267. [↑](#footnote-ref-514)
515. Neglecting the demand of the middle and lower class of the city, Guy de Dampierre gave Bruges a rather rigid charter in 25 May 1281. See Jan Dumolyn, Georges Declercq and Jelle Haemers, "Social Groups, Political Power and Institutions I, c.1100–c.1300" in Andrew Brown and Jan Dumolyn, eds., *Medieval Bruges, c. 850-1550* (Cambridge, 2018), p. 147。 [↑](#footnote-ref-515)
516. Sealed letter of Philip the Fair, January 1297, *Coutume de la ville de Bruges*, t. 1, p. 270. [↑](#footnote-ref-516)
517. See *Olim*, t. 2, p. 28 also *Coutume de la ville de Bruges*, t. 1, p. 271. [↑](#footnote-ref-517)
518. For a long time, Parlement of Paris does not seem to be biased against the Count in dealing with the appeals. See Warnkönig ed., *Documents inedits relatifs à l'histoire des Trente-neuf de Gand, suivis d'éclaircissemens historiques sur l'origine et le caractère politique des communes flamandes* (Ghent, 1832), p. 39. [↑](#footnote-ref-518)
519. For the *Klacht van Damme*, see Antoine De Smet, “De Klacht van de «Ghemeente» van Damme in 1280: Enkele gegevens over politieke en sociale toestanden in een kleine Vlaamse stad gedurende de tweede helft der XIIIde eeuw,” in *Bulletin de la Commission royale d'histoire*, Tome 115, 1950, pp. 1-15. For *Moerlemaye*, see Thomas A. Boogaart II, “Reflections on the Moerlemaye: Revolt and Reform in Late Medieval Bruges,” in *Revue belge de philologie et d'histoire*, tome 79, fasc. 4, 2001, pp. 1133-1157; Jan Dumolyn and Jelle Haemers, “Reclaiming the Common Sphere of the City: The Revival of the Bruges Commune in the Late Thirteenth Century,” in Jean-Philippe Genêt ed., *La légitimité implicite* (Paris-Rome, 2015), pp. 161-188. [↑](#footnote-ref-519)
520. Jan Dumolyn et Jelle Haemers, “Reclaiming the Common Sphere of the City,” pp. 161. [↑](#footnote-ref-520)
521. *Coutume de la ville de Bruges*, t. 1, p. 240. [↑](#footnote-ref-521)
522. The process of “pacification” and the monopoly of violence was achieved only at the end of the 14th century. See Marc Boone, “Le Comté de Flandre au XIVe siècle: Les enquêtes administratives et juridiques comme armes politiques dans les conflits entre villes et prince”, pp. 461–480. [↑](#footnote-ref-522)
523. Jan Dumolyn, "Les « plaintes » des villes flamandes à la fin du treizième siècle et les discours et pratiques politiques de la commune." *Le Moyen Âge* 121 (2015), pp. 383-407. [↑](#footnote-ref-523)
524. Warnkönig ed., *Documents inedits relatifs à l'histoire des Trente-neuf de Gand*, p. 3. [↑](#footnote-ref-524)
525. Gheldolf, ed., *Coutumes de la ville de Gand*, t. 1, pp. 426-495. A brief introduction to this charter see Marc Boone, *Gent en de Bourgondische hertogen, ca. 1384-ca. 1453: Een sociaal-politieke studie van een staatsvormingsproces* (Brussel, 1990), pp. 140-145。 [↑](#footnote-ref-525)
526. Original. *Histoire des trente-neuf de Gand*, p. 9. For the bailiff’s influence (same page): il convient kil soit jugies par les eskevins de Gant en tel maniere, ke li baillieus puet prendre et doit la veritei du fait et amener bones gens et loiaus de toutes manieres de gens pardevant eskevins de Gant si com loy le done et ke li tesmoing aient sauf venant et sauf alant pour porter leur tesmoignages en la vile de Gant pardevant eskevins. The sentence further remarks that the judicial activities of the aldermen should be aided by the bailiffs and witnesses should be able to travel freely in the city of Ghent so as to testify in front of the aldermen. [↑](#footnote-ref-526)
527. Dirk Heirbaut, "Institutions et droit en Flandre vers 1302," in R. van Caenegem, ed., *1302: Le désastre de Courtrai: Mythe et réalité de la bataille des Eperons d'or* (Antwerp, 2002), p. 107. [↑](#footnote-ref-527)
528. Comte Thierry de Limburg-Stirum, ed., *Codex diplomaticus flandriae* (Bruges, 1879), t. 1, p. 134. [↑](#footnote-ref-528)
529. *Etablissements de Saint Louis*, t. 2, pp. 421-422: it distinguishes two situations, debt promiss or convenance with one’s lord, applicable; fief, heritage,and other qui deüst estre tenue de son seignor [↑](#footnote-ref-529)
530. *Codex diplomaticus flandriae*, t. 1, p. 142. [↑](#footnote-ref-530)
531. *Codex diplomaticus flandriae*, t. 1, p. 142. [↑](#footnote-ref-531)
532. The Treaty of Melun is signed between Louis VIII and Jeanne of Constantinople which establishes the King-vassal relationship between the French King and the Count of Flanders, a representative movement of the “personal feudalism” on which Ganshof had much elaborated. See also the comments on the types of feudalism and Ganshof’s works by Dirk Heirbaut: Dirk Heirbaut, *Over heren, vazallen en graven : Het persoonlijk leenrecht in Vlaanderen ca. 1000-1305* (Bruxelles, 1997)；Dirk Heirbaut, "Zentral im Lehnswesen nach Ganshof: das flämische Lehnsrecht, ca. 1000-1305," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, Vol. 128, 1, 2001, pp. 300–347. [↑](#footnote-ref-532)
533. *Codex diplomaticus flandriae*, t. 1, p. 143. [↑](#footnote-ref-533)
534. Dirk Heirbaut, “Thirteenth-century legislation on mortmain alienations in Flanders and its influence upon France and England,” in *Law in the City* (Dublin, 2007), p. 56. [↑](#footnote-ref-534)
535. Brigitte Bedos-Rezac, "Civic Liturgies and Urban Records in Northern France (Twelfth-Fourteenth Centuries)," *City and Spectacle in Medieval Europe, ed. Kathryn Reyerson and Barbara Hanawalt* (Minneapolis and London, 1994), pp. 34-55. [↑](#footnote-ref-535)
536. Dirk Heirbaut, “Flanders: a Pioneer of State-oriented Feudalism? Feudalism as an Instrument of Comital Power in Flanders During the High Middle Ages (1000-1300),” in Anthony Musson, ed., *Expectations of the Law in the Middle Ages*, pp. 23–34. [↑](#footnote-ref-536)
537. According to the synthesis of Jean-François Nieus, the court of peers was first evoked during the conflict between the Count of Flanders and the urban ruling elites. At the end of the 11th century, the principle that every nobleman in the court should be supported by 12 of his peers was established. See Jean-François Nieus, "Du donjon au tribunal: Les deux âges de la pairie châtelaine en France du Nord, Flandre et Lotharingie (fin XIe-XIIIe s.) (2e partie)," *Le Moyen Age*, tome cxii, no. 2, 2006, pp. 307-336. For the transmission of the trial by peers in Western Europe, especially after the 12th century, see B.C. Keeney, *Judgment by Peers* (Cambridge, 1952), pp. 5-34. [↑](#footnote-ref-537)
538. Cohen, *Crossroads of Justice*, pp. 39-40. [↑](#footnote-ref-538)
539. Ferdinand Lot, “Quelques mots sur l’origine des pairs de France,” *Revue Historique*, t. 54, Fasc. 1 (1894), pp. 34-59, here p. 50. [↑](#footnote-ref-539)
540. Antoine Loysel, *Institutes coutumières* (Paris, 1846), t. 1, p. 13. [↑](#footnote-ref-540)
541. For the myth, see Colette Beaune’s work cited earlier. [↑](#footnote-ref-541)
542. John Gillisen, "Légistes en Flandre aux XIIIe et XIVe siècles." *Bulletin de la Commission Royale des Anciennes Lois et Ordonnances de Belgique* 15, fasc. 3 (1939), pp. 118-231. [↑](#footnote-ref-542)
543. Ganshof, “La Flandre”, p. 388. [↑](#footnote-ref-543)
544. For the image of Philip the Fair’s legists, see Elisabeth Lalou, “Les légistes dans l'entourage de Philippe le Bel,” in F. Attal, J. Garrigues, T. Kouamé, J-P. Vitu, eds., *Les universités en Europe du XIIIe siècle à nos jours : Espaces, modèles et fonctions. Actes du colloque international d'Orléans, 16 et 17 octobre 2003* (Paris, 2005), pp. 99-111. Here, p. 104. From the prosopographic point of view, there were few legists among the *clercs du roi*, and most of them were administrator of interior affairs. Ibid., pp. 106-107. [↑](#footnote-ref-544)
545. Heirbaut, “Institutions et droit en Flandre ver 1302”, p. 137. [↑](#footnote-ref-545)
546. Nous vous mandons et deffendons ke, de nulle querelle ou de nulle besongne à nous appertenant, n'ales avant pour nous au parlement le roy de France, ne ore ne en autre tans, et tout le poir ke nous avons donneit par procuration, à qui ke ce soit, par lequel on porroit faire procheit de aler avant devant le roy, comme devant seigner u juge, ne devant cheaus ki de par li sont et seront, soit en parlement soit hors parlement, nous le rapielons, et volons ke li porteres de ces lettres puist chou dénonchier au Roy et à cheaus ki de par lui sont, se bon li samble. To be noted is the expression “parlement le roy de France," possibly a personification of the court. [↑](#footnote-ref-546)
547. The commission document of Jan Calward for him to organize the appeal in Rome is preserved in the Archives of the Department of the North (Lille). Previously, Calward was also in charge of interrogating the *mortmain* in the county. See Dirk Heirbaut, “Thirteenth-century legislation on mortmain alienations in Flanders and its influence upon France and England,” p. 64. [↑](#footnote-ref-547)
548. It is a dictum used by Innocent III to justify his intervention in the marriage of Philip Augustus and has since been an easy reference in support of “papal absolutism”. It was later on adopted by the propagandists of the French King. See “Responsio domini pape facta nuntiis Philippi in consistorio” in *Regestum Innocentii III Papae super negotio Romani Imperii*, p. 47; Evrart de Trémaugon’s refutation in the 14th century can be found in his *Somnium viridarii* (Paris, 1993), livre I, chap. 149. [↑](#footnote-ref-548)
549. Isidore of Seville, *Etym.*, I. xli. De historia. English translation: A history (historia) is a narration of deeds accomplished; through it what occurred in the past is sorted out. History is so called from the Greek…from‘seeing’ or from ‘knowing.’ Indeed, among the ancients no one would write a history unless he had been present and had seen what was to be written down, for we grasp with our eyes things that occur better than what we gather with our hearing. Stephen A. Barney et al., trans., *The Etymologies of Isidore of Seville* (Cambridge, 2006), p. 67. [↑](#footnote-ref-549)
550. Jacques Chaurand, “La conception de l'histoire de Guibert de Nogent,” *Cahiers de civilisation médiévale*, Juillet-décembre, 1965, pp. 381-395. [↑](#footnote-ref-550)
551. Bernard Guenée, *Histoire et culture historique dans l'Occident médiéval* (Paris, 1980), p. 30. [↑](#footnote-ref-551)
552. *Hier.*, Ep. 129, n. 6: [↑](#footnote-ref-552)
553. Henri de Lubac, *Exégèse médiévale: les quatre sens de l'écriture* (Paris, 1959), t. 2, p. 473: [↑](#footnote-ref-553)
554. Victor Cousin et al., eds., *Petri Abælardi opera* (Paris, 1849), t. 1, p. 627; Henri de Lubac, *Exégèse médiévale*, p. 473 [↑](#footnote-ref-554)
555. Claude de Turin, *prol. In. lev. Et in matth*, PL, t. 104, col. 617 and 836. Cited from Ceslas Spicq, *Esquisse d'une histoire de l'exégèse latine au Moyen Age* (Paris 1944), p. 19。 [↑](#footnote-ref-555)
556. Guibertus a Novigento, *Guibert de Nogent: Dei gesta per Francos et cinq autres texts* (Turnholt, 1996). [↑](#footnote-ref-556)
557. Othmar Hageneder, *Il sole e laluna: Papato, Impero e Regni nella teoria e nella prassi dei secoli XII e XIII* (Milano, 2000). [↑](#footnote-ref-557)
558. From the perspective of modern philosophy, this is a method of recursive argument, see Christopher I. Beckwith, *Warriors of the Cloisters: The Central Asian Origins of Science in the Medieval World* (Princeton, 2012), Chap. 2. See also Olga Weijers, *In Search of the Truth: A History of Disputation Techniques from Antiquity to Early Modern Times* (Turnholt, 2013), pp. 71-98。 [↑](#footnote-ref-558)
559. See Alessandro Giuliani, “L'élément 'juridique' dans la logique médiévale,” pp. 540-570; Hermann Kantorowicz, “The Quaestiones Disputatae of the Glossators,” *TvR*, 16 (1939), pp. 1-67. [↑](#footnote-ref-559)
560. For the authorship of this text, see Paul Saenger, “John of Paris, Principal Author of the Quaestio de potestate papae (Rex pacificus),”*Speculum*, Vol. 56, No. 1 (Jan., 1981), pp. 41-55; Original text see Dupuy, ed., *Histoire du differend d'entre le pape Boniface VIII et Philippes le Bel Roy de France* (Paris, 1655), p. 663 et infra. His connection with On Royal and Papal Power, see Joannes Parisiensis, *On Royal and Papal Power*, John Anthony Watt ed. (Toronto, 1971), introduction. [↑](#footnote-ref-560)
561. Possibly a text written after the consultation of the King and his assembly, a response to *Unam Sanctam*. See Paul Saenger,“John of Paris,” p. 42. [↑](#footnote-ref-561)
562. Dupuy ed., *Histoire du differend*, pp. 676-677. [↑](#footnote-ref-562)
563. Magnus Ryan, "Feudal Obligation and Rights of Resistance," in N. Fryde et al., eds., *Die Gegenwart des Feudalismus* (Göttingen, 2002), p. 58. [↑](#footnote-ref-563)
564. *Secundum veritatem historiae, magis deberet glossari, Deposuit, id est, deponere volentibus consuluit*. The pope was consulted by Pepin because he was wis, his words authentic: *Quia consilium eius, ratione status Summi Pontificii, videbatur esse multum authenticum, sicut apparet ex verbis illius historiae, quae sunt ista...*

Chris jones, discussing the source of Jean de Paris here, indicates that Jean has gone so far as to discard Martin of Troppau and Vincent de Beauvais, and mingled several narrative sources together to make his own invention. See his "Historical Understanding and the Nature of Temporal Power in the Thought of John of Paris," in Chris Jones ed., *John of Paris: Beyond Royal and Papal Power* (Turnhout, 2015), pp. 98-99. [↑](#footnote-ref-564)
565. He separated the development of Biblical exegesis into two phases: 7-11 centuries and 12-14 centuries. See Spicq, *Esquisse*, introduction. Other polemical texts reflect similar university style, see Jean Rivière, “Le problème de l'Eglise et de l'Etat au temps de Philippe le Bel,” *Etude de théologie positive* (Paris, 1926), p. 133. [↑](#footnote-ref-565)
566. Spicq, *Esquisse*, p. 287. [↑](#footnote-ref-566)
567. Brian Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism* (Leiden, 1998), p. 149. [↑](#footnote-ref-567)
568. Kelly, *The Foundation of Modern Historical Scholarship*, p. 154. [↑](#footnote-ref-568)
569. See James M. Murray, *Notarial Instruments in Flanders between 1280 and 1452* (Bruxelles, 1995), pp. 3-15。 [↑](#footnote-ref-569)
570. The documents lost mainly involved interest of the royal domain and feudal incomes. The Trésor ceased to move with the army after this event. See ORFTR, t.1, p. lv. [↑](#footnote-ref-570)
571. Dupuy, *Histoire du Differend*, p. 323: Petimus super iis per nos inspici, et videri. [↑](#footnote-ref-571)
572. Guenée, *Histoire et culture historique dans l'Occident médiéval*, pp. 34-35. [↑](#footnote-ref-572)
573. *Idem*. [↑](#footnote-ref-573)
574. See Julie Claustre, “La prééminence du notaire (Paris, XIVe et XVe siècle),” in *Marquer la prééminence sociale* (Palermo, 2012), pp. 75-91 [↑](#footnote-ref-574)
575. In 1291, Philip the Fair attempted to monopolize the appointment of notaries, and expanded the usage of seal to the South where the signature of the notary was suffice for the verification of a document. See Edgard Boutaric, *La France sous Philippe le Bel* (Paris, 1861), pp. 220-222. [↑](#footnote-ref-575)
576. Albert Rigaudière, "Le Religieux de Saint-Denis et le vocabulaire politique du droit romain," in *Penser et construire l'Etat dans la France du Moyen Âge, XIIIe-XVe siècle* (Paris, 2003), p. 129. [↑](#footnote-ref-576)
577. Jacques Chiffoleau, “Le crime de majesté, la politique et l'extraordinaire. Note sur les collections érudites de procès de lèse-majesté du XVIIe siècle français et sur leurs exemples médiévaux,”in Yves-Marie Bercé ed., *Les procès politiques (XIVe-XVIIe siècle)* (Rome, 2007), pp. 577-662. [↑](#footnote-ref-577)
578. Trémaugon, *Songe*, t. 1, p. 56. [↑](#footnote-ref-578)
579. Patrick Arabeyre, “Le premier recueil méthodique d’ordonnances royales françaises : le Tractatus ordinationum regiarum d’Etienne Aufréri (fin XVe -début du XVIe siècle),” *TvR*, t. 79 (2011), p. 391-453. [↑](#footnote-ref-579)
580. For the definition and origin of Gallicanism, see the classical remarks of Victor Martin, *Les origines du gallicanisme* (Paris, 1939), t. 1, p. 38. [↑](#footnote-ref-580)
581. The ordinance was issued by Charles VII on 7 July 1438 at Bourges and fixed the relationship between the Gallican Church and the Pope. The original text, with the commentary of Cosme Guymier, see Cosme Guymier, *Caroli Septimi Pragmatica Sanctio a Cosma Guymier glossata* (Lyon, 1488). [↑](#footnote-ref-581)
582. Pierre Pithou, *Traitez des droits et libertez de l'Eglise Gallicane* (Paris, 1731). [↑](#footnote-ref-582)
583. Pithou, *Traitez*, p. 4 [↑](#footnote-ref-583)
584. For this scholarly debate, see Patrick Arabeyre, *Les idées politiques à Toulouse à la veille de la Réforme, Recherches autour de l’œuvre de Guillaume Benoît (1455–1516)* (Toulouse 2003), pp. 463-465. [↑](#footnote-ref-584)
585. Kelly, *Foundations*, p. 160. [↑](#footnote-ref-585)
586. Laurent Avezou, *Raconter la France: Histoire d'une histoire* (Paris, 2013), p. 147. [↑](#footnote-ref-586)
587. But it is not to be neglected the development of personal history in late medieval France. A branch of historiography whose starting point is political practice, these texts often wished to teach the reader by their authors’ own lessons from their career. The most well-known representative may be Philippe Commynes and his Memoires (Philippe de Commynes, *Mémoires*, 2 Vols. [Geneva, 2007]). Recent studies established the influence of legal training on his writing. But how this branch of historiography was influenced by the legal issues of the day has to be discussed elsewhere. See Joël Blanchard, “L'histoire commynienne: Pragmatique et mémoire dans l'ordre politique,” *Annales: Économies, Sociétés, Civilisations*, 46ᵉ année, N. 5, 1991. pp. 1071-1105; Joël Blanchard ed., *1511-2011, Philippe de Commynes : droit, écriture: deux piliers de la souveraineté* (Geneva, 2012). [↑](#footnote-ref-587)
588. Jacques Chiffoleau, “Saint Louis, Frédéric II et les constructions institutionnelles du XIII siècle,”*Médiévales*, n°34, 1998, pp. 13-23. [↑](#footnote-ref-588)
589. R. Van Caenegem, "Considerations on the Customary Law of Twelfth-Century Flanders," in *Law, History, the Low Countries and Europe* (London, 1994), pp. 97-106. [↑](#footnote-ref-589)
590. Van Caenegem, *History of European Civil Procedure* (Tübingen, 1973), p. 19. [↑](#footnote-ref-590)
591. André Gouron, “Ordonnances des rois de France et droits savants, XIIIe-XVe siècles,”*Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*, 135ᵉ année, N. 4, 1991, pp. 851-865, here p.853. [↑](#footnote-ref-591)
592. L. Waelkens, *La théorie de la coutume chez Jacques de Revigny* (Leiden, 1984), p. 566. [↑](#footnote-ref-592)
593. Gérard Giordanengo, “Consuetudo constituta a domino rege: coutumes rédigées et législation féodale,” in *El dret comú i Catalunya : actes del V simposi internacional, Barcelona, 26-27 de maig de 1995* (Barcelona, 1996), p. 70. [↑](#footnote-ref-593)
594. Dupuy, *Histoire du différend*, pp. 315-324. [↑](#footnote-ref-594)
595. Elizabeth A. R. Brown,“Veritas à la cour de Philippe le Bel de France: Pierre Dubois, Guillaume de Nogaret et Marguerite Porete,” in Jean-Philippe Genêt ed., *La vérité*, pp. 425-445. [↑](#footnote-ref-595)
596. Patrick Arabeyre et al., eds., *Dictionnaire historique des juristes français, XIIe-Xxe siècle*, p. 771. [↑](#footnote-ref-596)
597. ORFTR, t. 1, p. 501. Similar writing style can also be found in other writings of Nogaret. [↑](#footnote-ref-597)
598. ORFTR, t. 1, p.502 [↑](#footnote-ref-598)
599. Ordinary gloss: Verum est de facto, sed non de iure: Quia de iure debet recognoscere Imperatorem. [↑](#footnote-ref-599)
600. Melchior Goldast, *Monarchia Sancti Romani Imperii* (Frankfort, 1614), p. 98 : Respondeo, illud factum versum esse in consuetudinem, quae dat iurisdictionem, ut dicit Innocentius extra de iudic. cap. novit, super verbo, consuetudinem: Nota, inquit, consuetudinem dare iurisdictionem supra de arbitr. delect. Et ibi praemittitur in Glossa: Nota iurisidictionem pacificari iuri & privilegio 10. quaest. 3. cap. conquestus.Quia ista etiam consuetudo est approbata & hactenus observata pacifice; nec a Papa nec ab Imperatore impugnata, imo iuramentis & pactionibus foederata, & ex longissimis temporibus iam praescripta.. [↑](#footnote-ref-600)
601. Jacques Krynen, “La réception du droit romain en France: Encore la bulle *Super specula*,” in *Revue d'histoire des facultés de droit et de la culture juridique du monde des juristes et du livre*, vol. 28 (2008), pp. 227-262. [↑](#footnote-ref-601)
602. Marie Bassano,*"Dominus domini mei dixit. . . "; Enseignement du droit et construction d'une identité des juristes et de la science juridique. Le studium d'Orléans (c. 1230-c. 1320)*, Thèse doctorale sous la direction de Corinne Leveleux-Teixeira et de Albert Rigaudière, Paris II. [↑](#footnote-ref-602)
603. But also because of cases when a newly elected Emperor was showing off his authority to the French King. See Jean-Marie Carbasse, “De verborum significatione: quelques jalons pour une histoire des vocabulaires juridiques,” *Droits*, vol. 39, no. 1, 2004, pp. 3-16. [↑](#footnote-ref-603)
604. Jean-Marie Moeglin, *L'Empire et le Royaume : Entre indifférence et fascination 1214-1500* (Lille, 2011), p. 292. [↑](#footnote-ref-604)
605. Evrard de Trémaugon, *Le songe du vergier,* Marion Schnerb-Lièvre ed. (Paris, 1982), t. 1, p. 50. [↑](#footnote-ref-605)
606. *Ibid.*, chap. 36, sections 22-34. [↑](#footnote-ref-606)
607. Please note that at the time there was no united Spanish monarch, so the author must have meant the different monarchs coexistent on the peninsula. [↑](#footnote-ref-607)
608. *Ibid*., pp. 154-155. [↑](#footnote-ref-608)
609. *Ibid*., p. 54. [↑](#footnote-ref-609)
610. For the image of Charlemagne in the Middle Ages, see Robert Morrissey, *L'empereur à la barbe fleurie : Charlemagne dans la mythologie de l'histoire de France* (Paris, 1997); To compare his popularity in Germany, see R. Folz, ”Charlemagne en Allemagne” in*Charlemagne et l'épopée romane. Actes du VIIe Congrès international de la Société Rencesvals, Liège, 28 août–4 septembre 1976*, Madeleine Tyssens et Claude Thiry, eds. (Paris, 1978), t. 1。 [↑](#footnote-ref-610)
611. For the notion of *translation imperii*, see Goez, *Translatio Imperii: Ein Beitrag zur Geschichte des Geschichtsdenkens und der politischen Theorien im Mittelalter und in der frühen Neuzeit* (Tübingen, 1958). [↑](#footnote-ref-611)
612. Tremaugon, *Songe*, pp. 154-155. [↑](#footnote-ref-612)
613. Ibid., p. 56. [↑](#footnote-ref-613)
614. Ibid., p. 156. [↑](#footnote-ref-614)
615. Ibid., p. 273. Treaty of Calais was signed by Charles, son of John II who was captured by the English duringthe war, with Edward III, according to which the sovereignty of Guyenne and Gascongne was surrendered to England. See Eugène Cosneau, ed., *Les grands traités de la Guerre de Cent Ans* (Paris, 1889), pp. 33-68. [↑](#footnote-ref-615)
616. Barbey, *La function royale*, p. 275. [↑](#footnote-ref-616)
617. André Combes, *Jean de Montreuil et le chancelier Gerson* (Paris, 1942). [↑](#footnote-ref-617)
618. Jean de Montreuil, *Opera, Volume 2: L'œuvre historique et polémique. Édition critique par N. Grévy, E.Ornato, G. Ouy* (Torino, 1975), p. XVIII. [↑](#footnote-ref-618)
619. For the use of archive in diplomacy, see Jean-Marie Moeglin ed., *Diplomatie et “relations internationales” au Moyen Âge* (Paris, 2017), pp. 139-146. [↑](#footnote-ref-619)
620. For the connections between humanism, rhetoric and legal archives, see Claude Gauvard, "Les humanistes et la justice sous le règne de Charles VI," in *Pratiques de la culture écrite en France au XVe siècle: Actes du colloque international du CNRS. Paris, 16-18 mai 1992* (Turnholt, 1995), pp. 217-244, here, pp. 221-222. [↑](#footnote-ref-620)
621. David Hult ed., *Debate of the Romance of the Rose* (Chicago, 2010). [↑](#footnote-ref-621)
622. Éliane Viennot, *La France, les Femmes et le Pouvoir: l'invention de la loi salique (Ve－ XVIe siècle)* (Paris, 2006). [↑](#footnote-ref-622)
623. The rediscovery of the manuscript see Colette Beaune, *Naissance de la nation France*, pp. 264-290;Jacques Krynen, *L’Empire du roi*, pp. 127-135. [↑](#footnote-ref-623)
624. Jean de Montreuil, *Opera*, t.2, p. 168. [↑](#footnote-ref-624)
625. *Ibid.*, pp. 226-227. [↑](#footnote-ref-625)
626. Beaune, *op. cit*., p. 271. [↑](#footnote-ref-626)
627. Pierre de Fontaines, *Le Conseil de Pierre de Fontaines*, p. 492. [↑](#footnote-ref-627)
628. To be elaborated in the final chapter. [↑](#footnote-ref-628)
629. Cf:…en Droit canon et en Droit cyvil et ez coutumes et es constitucions et loys royaux. *Songe*, t. 1, p. 410. [↑](#footnote-ref-629)
630. The origin of the Salic law is still a contested issue. Authors like Poly and Kroeschell believe in its late Roman origin, while many others still believe that it was redacted in the last years of the reign of Clovis. See for example Jean-Pierre Poly, « La corde au cou : les Francs, la France et la loi salique », dans *Genèse de l’État moderne en Méditerranée : approches historique et anthropologique des pratiques et des représentations, actes des tables rondes internationales tenues à Paris les 24, 25 et 26 septembre 1987 et les 18 et 19 mars 1988* (Rome, 1993), p. 287-320; and the overview of Etienne Renard, “Le Pactus Legis Salicae, règlement militaire romain ou code de lois compilé sous Clovis ?” *Bibliothèque de l'école des chartes*, 2009, tome 167, livraison 2, pp. 321-352. [↑](#footnote-ref-630)
631. Krynen, *L’Empire du roi*, pp. 128-129. [↑](#footnote-ref-631)
632. Noël de Fribois, *Abregé des croniques de France*, Kathleen Daly, Gillette Labory, eds. (Paris, 2006), p. 225：comme l'en treuve par les histoires anciennes, la Loy salique est l'ancien et vray droit des François, et est fondé pour la pluspart sur le livre de Tulles, qui se intitule De re publica; et avecques ceen droit divin et humain. Note the inaccurate citation of Cicero here, also found in another citation (*Unde dicit Tullius, princeps eloquencie latine, quod Athenis erit una consuetudo et alia Rome*). [↑](#footnote-ref-632)
633. *Ibid*., p. 168: les causes qui jadiz meurent les anciens François a prandre et accepter des anciens Rommains la constitucion appellee la Loy salique sont douze, fondees es droiz naturelz civilz et canoniques. [↑](#footnote-ref-633)
634. *Ibid.*, p. 164: Patet autem ex libris et scripturis antiquissimis constitutionem et ordinacionem nuncupatam legem saliquam, a Romanis quondam emanatam, a primis Francis acceptatam et actenus observatam, extitisse maxime ante Clovis Francorum regis susceptum baptismum et unctionem celitus emissam; quamquidem salicam legem Karolus Magnus Francorum rex et imperator laudavit, approbavit et confirmavit et postmodum Ludovicus ejus filius et successor agnominatus Piissimus,[prout superius succincte dictum extitit]. [↑](#footnote-ref-634)
635. Bellaguet, ed., *Chronique du religieux de Saint-Denis*, (Paris, 1994), t. 3, p. 725: Nam quasi in iure civili eruditus et sacris canonibus dedignaretur subici prius scriptis. [↑](#footnote-ref-635)
636. P.S. Lewis eds., *Écrits politiques de Jean Juvénal des Ursins* (Paris, 1978), t. 1, p. 156. [↑](#footnote-ref-636)
637. Kathleen Daly, Ralph E.Giesey, “Noël de Fribois et la loi salique,” *Bibliothèque de l'école des chartes*, Volume 151, 1993, p.27. [↑](#footnote-ref-637)
638. Claude de Seyssel, *La grand monarchie de France: Avec la loy Salique, qui est la premiere et principlae loy des François* (Paris, 1558), fol. 84 vo. Four strange names but seem to be of same meaning of “wise men”. [↑](#footnote-ref-638)
639. *Ibid.*, fol. 84 ro. [↑](#footnote-ref-639)
640. Robert Gaguin, *Compendium Roberti Gaguini super francorum gestis*, Liber I, 1511, fol. IV. . [↑](#footnote-ref-640)
641. A point derived from Cicero and inherited by Noel de Fribois. Jean de Montrueil, *Opera*, t.2, p. 166. [↑](#footnote-ref-641)
642. *Ibid.*, p. 135. [↑](#footnote-ref-642)
643. Claude de Seyssel, *op. cit*., fol. 8 : celuy qui vient d’esgrange nation, est d’autre nourriture & condition, & a aultres meurs, autre langage, & autre facon de vivre, que ceulx du pais ou il vient dominer. [↑](#footnote-ref-643)
644. For the notion of “nature” in the late Middle Ages, see Krynen, “Naturel, Essai sur l'argument de la Nature dans la pensée politique à la fin du Moyen Âge,” pp. 169-190. [↑](#footnote-ref-644)
645. François Hotman, *La Gaule françoise,* (Cologne: Jierome Bertulphe, 1574), p. 81. [↑](#footnote-ref-645)
646. *Ibid.*, pp. 82-83. [↑](#footnote-ref-646)
647. *Ibid.*, pp. 85-86. [↑](#footnote-ref-647)
648. *Ibid*., p. 86. [↑](#footnote-ref-648)
649. In 1588 he made another critique which calls the Salic law an old error (inveteratus error): François Hotman, *De jure successionis regiae in regno Francorum* ([Genève], 1588), pp. 32-33. [↑](#footnote-ref-649)
650. Élie Barnavi, "Mythes et réalité historique : le cas de la loi salique,"*Histoire, économie et société,* 3ᵉ année, 3 (1984), p. 334. [↑](#footnote-ref-650)
651. Ralph E. Giesey, “The Juristic Basis of Dynastic Right to the French Throne,” *Transactions of the American Philosophical Society*, New Series, Vol. 51, No. 5 (1961), p. 20. [↑](#footnote-ref-651)
652. Emmanuel Jeuland, “Preuve judiciaire et culture française,” pp. 149-170. [↑](#footnote-ref-652)
653. Rehabilitation, at the time, meant the revocation of the condemnation of a justly condemned. The term “nullité” (nullification) should therefore be preferred, as explained by Pierre Duparc, “Le troisième procès de Jeanne d'Arc,” in *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*, 122ᵉ année, N. 1, 1978, pp. 28-41. [↑](#footnote-ref-653)
654. Sophie Poirey, “La procédure d’inquisition et son application au procès de Jeanne d’Arc,” in François Neveux, ed., *De l’hérétique à la sainte : Les procès de Jeanne d’Arc revisités* (Caen, 2012), pp. 91-110 here, p. 109. [↑](#footnote-ref-654)
655. Philippe Contamine,“La réhabilitation de la Pucelle vue au prisme des Tractatus super materia processus : une propédeutique,” in François Neveux, ed., *De l’hérétique à la sainte*, pp. 177-196. [↑](#footnote-ref-655)
656. Laura Stokes, *Demons of Urban Reform: Early European Witch Trials and Criminal Justice, 1430-1530* (New York, 2011), p. 6. [↑](#footnote-ref-656)
657. Heribert Müller, “France and the Council,” in Michiel Decaluwe et al., eds., *A Companion to the Council of Basel* (Leiden, 2016), p. 380. [↑](#footnote-ref-657)
658. See Colette Beaune, *Jeanne d’Arc* (Paris, 2004), pp. 357-397; Philippe Contamine, “D'un proces à l'autre. Jeanne d'Arc, le pape, le concile et le roi (1431-1456),” in Heribert Müller ed., *Das Ende des konziliaren Zeitalters (1440 - 1450)* (München , 2012), pp. 235-252. [↑](#footnote-ref-658)
659. Pierre Lanéry d'Arc ed., *Mémoires et consultations en faveur de Jeanne d'Arc* (Paris, 1889). [↑](#footnote-ref-659)
660. J. Fabre, *Procès de réhabilitation de Jeanne d'Arc* (Paris, 1888), t. II, p. 185. [↑](#footnote-ref-660)
661. Francesco Viola, “The Judicial Truth” in *Persona y Derecho*, 32, 1995, pp. 249-266. [↑](#footnote-ref-661)
662. Julien Théry, "Une hérésie d’État. Philippe le Bel, le procès des 'perfides templiers' et la pontificalisation de la royauté française," *Médiévales*, 60 (2011), pp. 157-185. The period of Philip the Fair’s rule may even have pioneered the conciliarist ideals, see Henri Xavier Arquillière, “L'appel au concile sous Philippe le Bel et la genèse des théories conciliaires,” *Revue des questions historiques* 89 (1911), pp. 23-55. [↑](#footnote-ref-662)
663. For the life of Pierre Cauchon, see Jean Favier, *Pierre Cauchon:* *Comment on devient le juge de Jeanne d'Arc* (Paris, 2010), p. 597。 [↑](#footnote-ref-663)
664. In contrast to traditional view, recent studies reveal the active participation of England in the conciliarist movement which in turn influenced the way and attitude England treated heretics. See Alexander Russell, *Conciliarism and Heresy in Fifteenth-Century England: Collective Authority in the Age of the General Councils* (Cambridge, 2017). [↑](#footnote-ref-664)
665. Quicherat, *Procès de condamnation et de réhabilitation de Jeanne d'Arc* (Paris, 1841), t. 1, p. 323. [↑](#footnote-ref-665)
666. Karen Sullivan, *The interrogation of Joan of Arc* (Minneapolis, 1999); François Neveux, "Les voix de Jeanne d'Arc, de l'histoire à la légende ," *Annales de Normandie*, vol. 62e année, no. 2, 2012, pp. 253-276. [↑](#footnote-ref-666)
667. For interrogation techniques medieval and modern, see Sullivan, *The interrogation of Joan of Arc*, p. 93 and infra. [↑](#footnote-ref-667)
668. Ibid., p. 105. [↑](#footnote-ref-668)
669. Sullivan, pp. 8-9. [↑](#footnote-ref-669)
670. Quicherat, *Procès*, t. 1, p. 341-342. It was also him in the fourth place to ask for the abandonment of Joan to secular court without mercy. [↑](#footnote-ref-670)
671. Many doctors cited this bull. See Quicherat, *Procès*, t. 1, p. 387. [↑](#footnote-ref-671)
672. Quicherat, *Procès*, t. 3, p. 358. English translation can be found here: www.stjoan-center.com/Trials/null13.html. [↑](#footnote-ref-672)
673. Quicherat, *Procès*, t. 3, p. 361. [↑](#footnote-ref-673)
674. Antonella Bettoni, "Res judicata and null and void judgment in the Italian and German doctrine of Sixteenth – and Seventeenth – century criminal law. Certain interpretative profiles," *Crime, Histoire & Sociétés / Crime, History & Societies*, Vol. 12, n°1 (2008), pp. 65-96. [↑](#footnote-ref-674)
675. André Gouron, ed., *Error Iudicis: Juridistische Wahrheit Und Justizieller Irrtum* (Frankfurt am Main, 1998), introduction. [↑](#footnote-ref-675)
676. Jean Chartier, *Chronique de Charles VII, roi de France*, A.V. de Viriville ed. (Paris, 1858). [↑](#footnote-ref-676)
677. “Consideratio Roberti Ciboule,” *Mémoires et consultations*, p. 351 et infra. [↑](#footnote-ref-677)
678. Philippe Contamine, “La réhabilitation de la Pucelle,” pp. 177-196. [↑](#footnote-ref-678)
679. *Mémoires et consultations*, p. 37. [↑](#footnote-ref-679)
680. *Mémoires et consultations*, p. 53. [↑](#footnote-ref-680)
681. Pierre Duparc, ed., *Procès en nullité de la condamnation de Jeanne d’Arc*, t. 1 (Paris, 1977), pp. 219-225. [↑](#footnote-ref-681)
682. *Mémoires et consultations*, p. 41. [↑](#footnote-ref-682)
683. Cf. Quicherat, *Procès*, t. 2, p. 25. [↑](#footnote-ref-683)
684. Just as Thomas Basin would say, she should not be put into such a private jail. *Carcer igitur fuit injustus et non legitimus*. It is, however, to be kept in mind that Joan was brought by the English-French king from Duke of Luxemburg for quite an amount of money. In some way, she was now a prisoner of war of the king. If her legal status is seen as such, there's much reason to justify her imprisonment in a secular jail and treated probably as other prisoners of war. Besides, if this should be considered a problem in 1431, a cautious person like Cauchon might not have allowed such potential risk or such overt violation of procedures. See Basin’s *consilium* in *Mémoires et consultation*, p. 187 and infra. [↑](#footnote-ref-684)
685. *Mémoires et consultation*, p. 76: Notorium autem est per totum Franciae regnum et alibi, quod ipse definitus Petrus Cauchon tunc episcopus Belvacensis et par Franciae, dum viveret, partes Anglicorum inimicorum capitalium dictae Johannae contra dominum regem Franciae, dominum suum naturalem tam ratione originis quam beneficii, fovebat, et clare patuit quia, reducta ad ipsius domini regis Franciae obedientiam Belvacensi civitate, obtinuit se per sedem apostolicam ad ecclesiam Lexoviensem in Normannia sitam se transferri, quae patria tunc ab Anglicis occupata detinebatur. [↑](#footnote-ref-685)
686. *Mémoires et consultation*, p. 116. [↑](#footnote-ref-686)
687. *Mémoires et consultation*, p. 121. [↑](#footnote-ref-687)
688. *Mémoires et consultation*, p. 122. [↑](#footnote-ref-688)
689. For a vivid recount in Modern French language based on original texts, see Joseph Fabre, *Procès de réhabilitation*, t. 1, pp. 9-13. [↑](#footnote-ref-689)
690. *Procès en nullité*, t. 1, p. 116. [↑](#footnote-ref-690)
691. *Procès en nullité*, t. 1, p. 115. [↑](#footnote-ref-691)
692. Quicherat, *Procès*, t. 5, p. 90. [↑](#footnote-ref-692)
693. André Vauchez , "Les théologiens face aux prophéties à l'époque des papes d'Avignon et du Grand Schisme," *Mélanges de l'Ecole française de Rome*, Moyen-Age, tome 102, n°2 (1990), *Les textes prophétiques et la prophétie en Occident (XII-XVI siècle)*, pp. 577-588, here p. 587. [↑](#footnote-ref-693)
694. Jean Favier, *Pierre Cauchon*, p. 652. [↑](#footnote-ref-694)
695. Again, the phenomenon is to be explained by the awakened cognitive apparatus of the state. These activities must have been no less common in the earlier ages. [↑](#footnote-ref-695)
696. Nicolas Oresme, *Tractatus de configurationibis qualitatum et motuum (vers 1351-1355 ? 1360 ?)*, M. Clagett ed., *Nicole Oresme and the Medieval Geometry of Qualities and Motions*(Madison; Milwaukee; Londres, 1968). [↑](#footnote-ref-696)
697. Beaune, *Jeanne d’Arc*, pp. 107-139. [↑](#footnote-ref-697)
698. Quicherat, *Procès*, t. 4, p. 267. [↑](#footnote-ref-698)
699. Quicherat, Procès, t. 5, p. 52. [↑](#footnote-ref-699)
700. For Gerson’s remarks on prophecy ,see Daisy Delogu, *Allegorical Bodies: Power and Gender in Late Medieval France* (Toronto, 2015), p. 172; For his treatise, see Daniel Hobbins, “Jean Gerson's Authentic Tract on Joan of Arc: Super facto puellae et credulitate sibi praestanda (14 May 1429),” *Mediaeval Studies*, 67 (2005), pp. 99-155. [↑](#footnote-ref-700)
701. Charles T. Wood, “Joan of Arc's Mission and the Lost Record of Her Interrogation at Poitiers,” in Bonnie Wheeler et al., eds., *Fresh verdicts on Joan of Arc* (New York, 1996), pp. 19-29. Deborah A. Fraioli, *Joan of Arc: The Early Debate* (Woodbridge, 2000), pp. 46-54: "Therefore, viewed in the context of the requirements set by Gerson's discernment treatises, the Poitiers Conclusions deserve final assessment as an orthodox, if unusual, theological investigation." [↑](#footnote-ref-701)
702. Huppert, *The Idea of Perfect History*, pp. 198-212. [↑](#footnote-ref-702)
703. Françoise Michaud-Fréjaville, "Autour du bûcher de Jeanne," *Cahiers de recherches médiévales*, 3 (1997), pp. 131-141. [↑](#footnote-ref-703)
704. In fact, it was only after the 15th century that the details about witchcraft were theorized and stereotyped. [↑](#footnote-ref-704)
705. Gauvard, *De grace especiale*, pp. 438-448, here p. 442. [↑](#footnote-ref-705)
706. For the Council of Basel, see also Michael D. Bailey and Edward Peters, “A Sabbat of Demonologists: Basel, 1431–1440,” *The Historian*, vol. 65, no. 6, 2003, pp. 1375–1395. [↑](#footnote-ref-706)
707. Wolfgang Behringer, “How Waldensians Became Witches : Their Journey to the Other World,” in Gábor Klaniczay et al., eds., *Communicating with the Spirits*, vol. 1, pp. 156-158. [↑](#footnote-ref-707)
708. Craig Taylor, *Joan of Arc: La Pucelle* (Manchester, 2007), introduction and sources n. 59. [↑](#footnote-ref-708)
709. See the article of Philippe Contamine cited earlier. [↑](#footnote-ref-709)
710. Hans Peter Broedel, *The Malleus Maleficarum and the Construction of Witchcraft: Theology and Popular Belief* (Manchester, 2003), p. 123. [↑](#footnote-ref-710)
711. Alfred Soman, "La décriminalisation de la sorcellerie en France," *Annales: Histoire, économie et société*, 1985, 4ᵉ année, n°2, pp. 179-203. [↑](#footnote-ref-711)
712. *Ibid.*, p. 196. [↑](#footnote-ref-712)
713. Richard Kieckhefer, *European Witch Trials: Their Foundations in Popular and Learned Culture, 1300-1500* (Berkeley and Los Angeles, 1976), pp. 10-11. [↑](#footnote-ref-713)
714. Michel Winock, 'Jeanne d'Arc' in *Les lieux de mémoire*, t. 3 (Paris, 1997), p. 4428. [↑](#footnote-ref-714)
715. Huppert, *The Idea of Perfect History*, p. 212. [↑](#footnote-ref-715)
716. Ennio Cortese, *LaNorma giuridica: Spunti teorici nel diritto comune classico*, II (Milano, 1964), ch. 2-3. [↑](#footnote-ref-716)
717. O. Hageneder, “Die Rechtskraft spätmittelalterlicher Papst-und Herrscherurkunden ‘ex certa scientia’, ‘non obstantibus’ und ‘propterimportunitatem petentium’,” in P. Herde, H. Jakobs, éds., *Papsturkunde und europäisches Urkundenwesen : Studien zu ihrer formalen und rechtlichen Kohärenz vom 11. bis 15. Jahrhundert* (Köln; Weimar; Wien, 1999), pp. 401-429. [↑](#footnote-ref-717)
718. Julius Kirshner, "Baldo degli Ubaldi’s Contribution to the Rule of Law in Florence," in *VI centenario della morte di Baldo degli Ubaldi, 1400-2000* (Perugia, 2005), pp. 313-364. [↑](#footnote-ref-718)
719. Arndt Brendecke, *The Empirical Empire: Spanish Colonial Rule and the Politics of Knowledge* (Berlin; Boston, 2016), pp. 59-61. [↑](#footnote-ref-719)
720. François Seignalet-Mauhourat, “Le valeur juridique des préambules des ordonnances et des édits sous l'ancien régime,” *RHDFE*, No2, 2006, pp. 229-258. [↑](#footnote-ref-720)
721. Hostiensis, ***In secundum decretalium librum commentaria* (**Torino, 1965), fol. 207, c.1, n.3. [↑](#footnote-ref-721)
722. See Hageneder, “Die Rechtskraft,” p. 417. He also provided other examples. [↑](#footnote-ref-722)
723. X. 2,30,8, gl. *sicut sine pravitate* : sed quum cognoscit de compositione, & videt ea quae confirmat; tunc licet illa verba ponantur in confirmatione, non intelliguntur conditionaliter, sed causative. The edition being used is *Decretales D. Gregorii Papae IX, suae integritati una cum glossis restitutae*, Rome, 1582. [↑](#footnote-ref-723)
724. Cited from Cortese, *op. cit.*, p. 89: quod tunc videtur papa vel princeps ex certa scientia derogare precedenti, et statuere in contrarium… [↑](#footnote-ref-724)
725. *Ibid.*, p. 90 n. 92: Ideo, si in secundis non fiat mentio priorum, presumuntur esse impetrata per mendacium, et ideo nullius momenti iudicantur, quoniam iniquum hoc est. [↑](#footnote-ref-725)
726. Hostiensis, *op. cit.*, fol. 209: Si in confirmatione per Papam facta sit insertus tenor rei confirmatae, dicitur facta confirmatio ex certa scientia, etiam si in ea sit inserta clausula sicut sine pravitate. [↑](#footnote-ref-726)
727. Panormitanus, *Comm. X 2.30 De confirmatione utili vel inutili c. 7 Examinata* (ed. Lugdun. 1555 fol. 142o, n. 3)，Cited from Hageneder, *op. cit*., p. 410: Si vero exprimitur tenor rei confirmate vel papa diceret, quod ex certa scientia confirmat, tunc dicitur facta confirmatio ex certa scientia. [↑](#footnote-ref-727)
728. Panormitanus, *Comm. X 2.30 De confirmatione utili vel inutili c. 7 Examinata,* n. 5-6. Glosses and commentaries of other canonists on this decree see Valentin Gómez-Iglesias, "Naturaleza y origen de la confirmación 'ex certa scientia,'" *Ius Canonicum*, Vol. XXV, No. 49, 1985, pp. 101-102. [↑](#footnote-ref-728)
729. Charles Dumoulin, *Prima pars commentariorum in Consuetudines Parisienses* (Paris, 1539), Titulus I, n. 70-73. The same with the two subsequent citations. [↑](#footnote-ref-729)
730. Gérard Giordanengo, “De l'usage du droit privé et du droit public au Moyen Âge,” *Cahiers de recherches médiévales*, 7 (2000), mis en ligne le 03 janvier 2007, consulté le 25 janvier 2018. URL: http://journals.openedition.org/crm/880. [↑](#footnote-ref-730)
731. X. 1, 35, 1: *Pacta quantumcumque nuda servanda sunt*. For the origin of this principle in the canon law, see Wim Decock, *Theologians and Contract Law: The Moral Transformation of the Ius Commune* (Leyde; Boston, 2013), pp. 121-130. [↑](#footnote-ref-731)
732. See in Chinese徐涤宇，黄美玲：《单方允诺的效力根据》，《中国社会科学》，2013年第4期，第147-148页. [↑](#footnote-ref-732)
733. Cited from Cortese, *op. cit.*, p. 57, n. 37: Princeps enim romanus nihil...ignorare quod ad ius pertineat extimandus est. [↑](#footnote-ref-733)
734. See Walter Ullmann, *The Medieval Idea of Law as Represented by Lucas de Penna* (New York, 2010), pp. 47-48. Ullmann also noted the limit of this view. [↑](#footnote-ref-734)
735. Suarez, *Opera omnia* (Paris, 1856), t. 6, p. 295: Scientia iuris semper praesumitur in confirmatione, quae fit ex certa scientia, quia Princeps habet ius in pectore, et illud ignorare non praesumitur. [↑](#footnote-ref-735)
736. Guillaume Durand, *Speculum judiciale*, I, part. 1, *de legato*, § 6 *nunc ostendendum*, n. 49: ipse confirmando ex certa scientia firmat et sanat infirmum. [↑](#footnote-ref-736)
737. Cited from Cortese, *op. cit.*, p. 97, n. 109: quando imperator statuit aliquid ex certa scientia credendum est hoc esse verum. [↑](#footnote-ref-737)
738. Bernard Papiensis, *Summa*, ii, 21, *de confirmatione*, 3. Cited from Cortese, *op. cit.*, p. 93. [↑](#footnote-ref-738)
739. Note here the leap from the will to certain knowledge. [↑](#footnote-ref-739)
740. Baldus ad *Feud*., Proem, ad v. 'Aliqua’ in Joseph Canning, *The Political Thought of Baldus de Ubaldis* (Cambridge, 1987), p. 242. [↑](#footnote-ref-740)
741. Cited from Cortese, *op. cit.*, p. 92, n. 98: Si ex certa scientia vult, nemo potest ei dicere”Cur ita facis?”. Note its similarity with *Job* 9：12. [↑](#footnote-ref-741)
742. *Idem*. [↑](#footnote-ref-742)
743. Panormitanus, *Comm*. X 1.3 *De rescriptis* c. 10: Clausula "ex certa scientia" idem importat ac si papa dixisset, quod faciebat illud de plenitudine potestatis, ex quo generaliter infero unum singularem dictum, quod ubicumque in materia requiritur plenitudo potestatis principis, satis est principem dicere, quod illud facit de certa scientia. [↑](#footnote-ref-743)
744. Sophie Petit-Renaud, *“Faire loy” au Royaume de France de Philippe VI à Charles V (1328-1380)*, p. 199. [↑](#footnote-ref-744)
745. Guillaume Leyte, *Domaine et domanialité publique dans la France médiévale (XIIe-XVe siècles)* (Strasbourg, 1996), p. 276. [↑](#footnote-ref-745)
746. Kenneth Pennington, “Was Baldus an Absolutist? The Evidence of His Consilia,” in Martin Kaufhold ed., *Politische Reflexion in der Welt des späten Mittelalters. Political Thought in the Age of Scholasticism: Essays in Honour of Jürgen Miethke* (Leiden, 2004), pp. 305-319. [↑](#footnote-ref-746)
747. Baldus, *Commentarii* in *C*. 1, 18, 8, *de iuris et facti ignorantia*, l. *cum testamentum*, n. 3; Cited from Cortese, *op. cit.*, p. 97, n. 110: Iudicium:scilicet scientia, potestas et voluntas quia ista tria integrant actus humanos, secundum Aristotelem…quia velle et posse sine scientia nihil operantur in his quae dependent ex animo, ubi requiritur certitudo: et ista est veritas. [↑](#footnote-ref-747)
748. *Ibid.*, p. 112, n. 26: Sexti dicunt quod, ex certa scientia utens populus contra legem, vincit consuetudo legem, ignorans non. Quod non placet: quia melioris conditionis esset populus delinquens, quam innocens: quod esse non debet…Hoc delictum non est mortale, sed veniale, quia ius civile per aliud ius civile tolli potest: secus in iure naturali, quod est immutabile: unde ibi esset mortale peccatum. [↑](#footnote-ref-748)
749. HGL, t. 8, pp. 304-305. Also there are similar expressions like *scientes & verissime cognoscentes vos tenore* (*Ibid*., p. 497). [↑](#footnote-ref-749)
750. Semper faciam universa supradicta & singula & te & tuos habere & possidere in pace...ex certa scientia cum promissione sollempniter interposita. [↑](#footnote-ref-750)
751. *Ibid.*, p. 340: Predicta omnia approbamus & concedimus, & nos ea inconcussa in perpetuum observaturos promittimus, renunciantes ex certa scientia moni auxilio juris & consuetudinis, quo possemus adversus praescripta vel praedictorum aliquod adjuvari. [↑](#footnote-ref-751)
752. *Ibid.*, p. 339: Renunciaverunt insuper ex certa scientia omnibus exeptionibus, defensionibus & appellationibus, que possent eis competere. [↑](#footnote-ref-752)
753. RGALF, t. 1, p. 242: …lesquels aussi nous de ceste authorité royale et de certaine science, au dit duc et à ses successeurs ducs de Bretagne par la teneur de ces présentes, en tant comme besoing serait, nous reseruons. [↑](#footnote-ref-753)
754. *Olim*, p. 31. [↑](#footnote-ref-754)
755. André Gouron, "Cessante causa cessat effectus : à la naissance de l'adage," *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*, 143ᵉ année, N. 1, 1999, pp. 299-309. [↑](#footnote-ref-755)
756. Albert Rigaudière, “Introduction,” in Sophie Petit-Renaud, *Faire la loy*, p. 4. [↑](#footnote-ref-756)
757. François Seignalet-Mauhourat, “La valeur juridique des préambules,” p. 241. [↑](#footnote-ref-757)
758. Notice the meaning of the term in contractual law as the necessary formalities which make a contract valid. [↑](#footnote-ref-758)
759. RGALF, t. 2, col. 808: …de praelatorum et baronum consilio et certa scientia et auctoritate, et de plenitudine regiae potestatis omnino tollimus, annullamus, cassamus, irritamus et penitus abolemus. [↑](#footnote-ref-759)
760. Hageneder, “Die Rechtskraft,” p. 413. [↑](#footnote-ref-760)
761. Claude Gauvard, "La justice du roi de France et le latin à la fin du Moyen Âge : transparence ou opacité d'une pratique de la norme," in M. Goulet et M. Parisse, eds., *Les historiens et le latin médiéval* (Paris, 2001), pp. 37-38. [↑](#footnote-ref-761)
762. François Olivier-Martin, *Les Lois du Roi* (Paris, 1997), p. 260. [↑](#footnote-ref-762)
763. RGALF, t. 5, p. 282. [↑](#footnote-ref-763)
764. Some expressions can be found in the two ordinances issued in 1315 and 1316 related to the promotion of pairs de France: *ex certa scientia facimus de nostrae protestatis plenitudine, statuentes et decernentes specialiter et expresse...quod ut firmum permaneat in futurum, praesentibus litteris nostrum fecimus apponi sigillum*. Note here terms such as *specialiter* and *expresse*. [↑](#footnote-ref-764)
765. See Damien Boquet, *L'ordre de l'affect au Moyen Age: autour de l'anthropologie affective d'Aelred de Rievaulx* (Caen, 2005), chap. 1. [↑](#footnote-ref-765)
766. Bénédicte Sère, "Ami et alié envers et contre tous. Étude lexicale et sémantique de l'amitié dans les contrats d'alliance," in François Foronda ed., *Avant le contrat social. Le contrat politique dans l'Occident médiéval XIIIe-XVe siècle* (Paris, 2011), pp. 245-268. [↑](#footnote-ref-766)
767. Ralph E. Giesey, “The French estates and the ‘corpus mysticum regni’,” in *Rulership in France: 15th - 17th Centuries* (Burlington, 2004), pp. 155-171. [↑](#footnote-ref-767)
768. See Martin Gosman, *Les sujets du père, les Rois de France face aux représentants du peuple dans les assemblées de notables et les états généraux, 1302-1615* (Paris; Leuven, 2007), pp. 213-246. [↑](#footnote-ref-768)
769. *Thalamus parvus: le petit thalamus de Montpellier, publié pour la première fois d'après les manuscrits originaux* (Montpellier, 1840), p. 57; *HGL*, t. 5, p. 17. [↑](#footnote-ref-769)
770. …volumus et praecipimus ex gratia speciali, quod dictae Consuetudines de caetero tanquam firmae et validae habeantur, et ad perpetuam memoriam registrentur. [↑](#footnote-ref-770)
771. …diligenter examinari fecimus per viros prudentes et discretos de nostro Consilio, qui omnes Consuetudines praedictas, contentas in rotulo quem vobis mittimus, inspexerunt. [↑](#footnote-ref-771)
772. …inde duo Regesta fieri, quorum unum remaneat penes Consules Tolosae, et aliud penes Vicarium Tolosae in Castro Narbonensi, ut quando dubitabitur super Consuetudine, ad dictos libros, seu eorum alterum, ad habendam certitudinem recurratur. For the above three citations, see De Vilevault, *Ordonnances des Rois de France de la troisième race*, Paris: Imprimerie Royale, t. 12, pp. 326-327. [↑](#footnote-ref-772)
773. Charles A. Bourdot de Richebourg, *Nouveau coutumier générales et particulières de France et des provinces* (Paris, 1724), t. 4, pp. 1037-1038. [↑](#footnote-ref-773)
774. As the charter of Mas-Saintes-Puelles (April, 1328): Jean Ramière de Fortanier, *Chartes de franchises du Lauragais* (Paris, 1939), pp. 491-492. [↑](#footnote-ref-774)
775. Maria Milagros Cárcel Ortí, *Vocabulaire international de la diplomatique* (Valence, 1994), p. 34. [↑](#footnote-ref-775)
776. *Ibid*., p. 35. [↑](#footnote-ref-776)
777. Gérard Giordanengo, "*Roma nobilis, orbis et domina*. Réponse à un contradicteur," *RHDFE*, 88 (1), 2010, pp. 91-150. [↑](#footnote-ref-777)
778. For proving customs, see Jean-François Poudret, "Rapport de synthèse. Connaissance et preuve de la coutume en Europe occidentale au Moyen Âge et à l'époque moderne," in *RSJB*, t. 52: *La coutume* (Bruxelles, 1990), pp. 511-545. [↑](#footnote-ref-778)
779. See Bulgarus’s comments in Meijers, *Études histoire du droit* (Leyde, 1959), t. 3, p. 254. [↑](#footnote-ref-779)
780. Cited from Cortese, *La Norma giuridica*, p. 128, n. 61. [↑](#footnote-ref-780)
781. Ibid., p. 103. For the theory of customs of Jacques de Revigny, see Laurent Waelkens, *La théorie de la coutume chez Jacques de Révigny : édition et analyse de sa répétition sur loi De quibus (D. 1, 3, 32)* (Leiden, 1984). [↑](#footnote-ref-781)
782. ORFTR, t. 1, p. 501-504. S. Petit-Renaud, *op. cit.*, pp. 142-150 for its discussion. See also our discussion in Chap. 7. [↑](#footnote-ref-782)
783. Azon, *Summma codicis* I, *si contra ius vel ut. Publi*., n. 4: …ubi autem per mendacium impetratur, sive quis mentietur principi in iure scripto—in quo tamen non est verisimile principem decipi, quia in eius scrinio omnia condita sunt iura…--vel in iure non scripto, id est consuetudine, in quo facilius decipi potest princeps; sive mentiatur in facto… non tenet rescriptum… [↑](#footnote-ref-783)
784. Henri Gilles, ed., *Les coutumes de Toulouse (1286) et leur premier commentaire (1296)* (Toulouse, 1969), p. 196. [↑](#footnote-ref-784)
785. Jacques Krynen, “Entre science juridique et dirigisme: le glas medieval de la coutume,” *Cahiers de recherches médiévales:* *Droits et pouvoirs* 7 (2000), pp. 170-187. [↑](#footnote-ref-785)
786. André Gouron, "Théorie des présomptions et pouvoir législatif chez les glossateurs," in *Droits savants et pratiques françaises du pouvoir*, p. 119. [↑](#footnote-ref-786)
787. Jean-Marie Carbasse, “Justice « populaire », justice savante: Les consulats de la France Méridionale (XIIe-XIVe siècle),” in Jacques Chiffoleau et al., eds., *Pratiques sociales et politiques judiciaires dans les villes de l’Occident à la fin du Moyen Âge* (Rome, 2007), pp. 347-364. [↑](#footnote-ref-787)
788. Gouron, "Théorie des présomptions et pouvoir législatif chez les glossateurs," p. 122. [↑](#footnote-ref-788)
789. Ernst H. Kantorowicz, *Selected Studies by Ernst H. Kantorowicz* (New York, 1965), p. 156, n. 24: Multi imperatores ignoraverunt iura, et maxime hodie ignorant, sed intelligi debet in scrinio sui pectoris, id est, in curia sua, quae debet egregiis abundare Doctoribus, per quorum ora loquatur iuris religiosimmus princeps. [↑](#footnote-ref-789)
790. Jacques Krynen, *L’idéologie de la magistrature ancienne*, pp. 39-61. [↑](#footnote-ref-790)
791. D.1, c.3: Consuetudo est jus quoddam moribus institutum, quod pro lege suscipitur… [↑](#footnote-ref-791)
792. Ista est bona definitio, in qua verba ista "jus quoddam" ponuntur ad differentiam eius consuetudinis, quae est facti, ut dixi; "moribus institutum" ponitur ad differentiam aliarum partium juris. See L. Mayali, "La coutume dans la doctrine romaniste au Moyen Âge," *RSJB*, t. 52, p. 16. [↑](#footnote-ref-792)
793. ORFTR, t. 14, pp. 312-313. [↑](#footnote-ref-793)
794. Richebourg, *Nouveau Coutumier*, t. 2-2, p. 1169: …six de non Conseillers s'informeroient desdites coustumes, & le tout mettroient ou feroient mettre par escrit & declaration… [↑](#footnote-ref-794)
795. *Ibid.*, p. 1170: …après toutes altercations se sont resoluz esdites Coustumes, en la forme & maniere qu'elles sont cy-après escrites: Et icelles ont tenues pour veritables, pour le bien & utilité desdits pays & ressorts, & les ont fait mettre & rediger par escrit bien au long, selon l'information sur ce par eux faite, & par l'advis & consentement desdits devant nommés. en la maniere qui s'ensuit. [↑](#footnote-ref-795)
796. *Ibid.*, p. 1194: … par l'advis & deliberation de nostredit Grand-Conseil, de nostre certaine science & pleniere puissance, avons ordonné & statué, ordonnons & statuons par Loy & Edict perpetuel, que lesdites Coustumes generales d'iceluy nostre Comté, sont & seront gardées & observées d'oresenavant en la forme & maniere, et de l'effect & substance qu'elles sont cy après dictées & declarées… [↑](#footnote-ref-796)
797. Richebourg, *Nouveau coutumier*, t. 3, p. 267: Nous étoit & est mandé, appellez les Avocats, Procureurs, Greffiers & autres Officiers d'icelui Seigneur, gens d'Eglise, Nobles, Bourgeois, bons Coutumiers bien-famez & nommez, en nombre suffisant; Et après le serment solemnel d'eux prins & reçû, ôtée toute faveur & acceptation de personne, enquerir bien & diligemment, de & sur la verité et effet des Coutumes dudit Bailliage, ainsi que de tout remps & d'ancienneté, selon bonne raison & équité, ont accoutumé être gardées, entretenues & observées, & icelles accordées & interpretées, appellez les dessusdits, rédiger & mettre par écrit en forme dûe & autentique, en un livre ou cahier signé desdits Officiers, gens d'Eglise, Noble & autres gens de bien pour ce appellez, & scellé du seel dudit Bailliage. [↑](#footnote-ref-797)
798. See Anette Smedley-Weill et Simone Geoffroy-Poisson, “Les assemblées d'états et la mise en forme du droit,” in *Les Cahiers du Centre de Recherches Historiques*, 26 | 2001, mis en ligne le 16 janvier 2009, consulté le 26 janvier 2018. URL : http://journals.openedition.org/ccrh/1592 [↑](#footnote-ref-798)
799. ORFTR, t. 21, p. 20. [↑](#footnote-ref-799)
800. *Idem.*: Et dès maintenant pour lors et dès lors pour maintenant les coustumes contenues en iceux articles accordez en la maniere dessus dite, de nostre certaine science et propre mouvement, plaine puissance et auctorité royale, avons decreté et auctorisé, decretons et auctorisons par ces presentes, et icelles voulons estre inviolablement gardées et observées, sans enfraindre, comme loy perpetuelle, sans ce qu'aucun doresnavant soit receu à poser ne prouver coustume contraire ou derogant à icelles coustumes ainsi publiées. [↑](#footnote-ref-800)
801. Richbourg, *Nouveau coutumier*, t. 3, p. 17. [↑](#footnote-ref-801)
802. Franck Roumy in his discussion of ignorantia iuris in medieval Roman law also noted the influence of the learned law on the procedure and form of royal legislation. See Franck Roumy, "L'ignorance du droit dans la doctrine civiliste des XIIe-XIIIe siècles," in *Cahiers de recherches médiévales*, 7 (2000), p. 43. [↑](#footnote-ref-802)
803. Guy Coquille, *Institution au droict des françois* (Paris, 1607), p. 2. [↑](#footnote-ref-803)
804. Martine Grinberg, "La rédaction des coutumes et les droits seigneuriaux : nommer, classer, exclure," in *Annales. Histoire, Sciences Sociales*, 52ᵉ année, N. 5, 1997, p. 1024. [↑](#footnote-ref-804)
805. ST, II-II, q. 58, a. 4, ad 1. [↑](#footnote-ref-805)
806. For the impact of the Gregorian reform on Southern France, see Florian Mazel et al. eds., *La réforme "grégorienne" dans le Midi (milieu XIe-début XIIIe siècle)*, *Cahiers de Fanjeaux* 48 (Toulouse, 2013). In March 2019, a colloquium of young scholars hosted by Lyon III and University of Hamburg intends to examine the Reform from a comparative angle. [↑](#footnote-ref-806)