Frans Camphuijsen

Scripting Justice in Late Medieval Europe

Legal Practice and Communication in the Law Courts of Utrecht, York and Paris

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In memoriam

Frans Tausch
1936–2004

Francis Heere
1938–2001

De man en de vrouw aan het water

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Wie de wordingsgeschiedenis van dit boek zou willen schrijven kan deze in ieder geval terugvoeren tot de zomer van 2009, toen ik voor het eerst kennismaakte met de toen net nieuwe hoogleraar Middeleeuwse Geschiedenis aan de Universiteit van Amsterdam, een zekere Guy Geltner. Als begeleider, promotor en collega-wetenschapper heeft Guy mij sindsdien steeds weten te inspireren en heeft hij een grote invloed gehad op mijn begrip van wat het betekent om historicus te zijn. Daar ben ik hem heel dankbaar voor.

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Introduction

Abstract
Late medieval Europe saw the spread and popularization of a particular form of institutionalized socio-legal practice and logic: the law court. While generally understood in legal or institutional terms, this book presents this 'rise of the court' as a socio-cultural history of communicative interactions between producers and consumers of justice. In a world with many alternatives for resolving conflicts and countering perceived threats to social order, courts presented people with specific – and in hindsight highly successful – scripts to perform and define justice, entailing spaces, acts, texts, oral pronouncements and more. By comparing three different types of courts from different regions, this book traces their shared and individual development as scriptwriters of justice, impacting both their contemporaries and modern historians.

Keywords: medieval law courts, medieval legal practice, medieval court records, comparative history, legal communication, performativity

Justice can be an ambiguous concept. That much was clear to the Parisian poet François Villon (b. 1431) from his encounter with law courts. In 1462 the provost of Paris had sentenced him to death, following his involvement in a street brawl. Fighting the latter's decision in an appeal to the supreme royal court, the *Parlement*, Villon managed to obtain a reprieve from this harsh punishment. Yet, while granting the poet his life, the *Parlement* also decided to exile him from his home town, effectively sentencing him to a social death instead.[1] In the poem 'Ode to the Court', Villon underscored the irony of his situation. While his poem begins as a laudatory exposition on

1 On this episode in Villon's life, see Marcel Schwob, "Date de la condamnation à mort de Villon", in *Œuvres complètes*, vol. 6, *Mélanges d'histoire littéraires et de linguistique: L'Argot, Villon, Rabelais* (Paris: François Bernouard, 1928). Every trace of Villon is lost after his exile from Paris, thus leaving us in the dark as to his fate.

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the goodness of the *Parlement*, by the third stanza the underlying critique becomes discernable:

> And you, my teeth, each one thus loosening,
> Leap forward, offer thanks of every sort,
> Louder than organ, trumpet or bell;
> And don't worry about chewing anymore.
> Consider that I could have been dead,
> Liver, lungs and spleen that breathe again.
> And you, my body, which is vile and worse
> Than bear, or pig who beds down in the mud,
> Praise the Court before it goes worse for you,
> Mother of the good, sister of blessed angels.[2]

In calling on his loose teeth, innards and filthy body to praise the court for letting him keep the ensemble of these parts, Villon juxtaposes, in an absurdist play on the poem's use of bodily metaphors, his own sorry state with a nearly divine *Parlement* that has decided to both pardon and punish him at the same time. Such justice provided by an all-powerful court, so the poem implicitly asks, are we supposed to be grateful for it, no matter the state in which it leaves us?[3]

Villon's subtle lambasting of the *Parlement*'s justice illustrates the ambiguous feelings late medieval people could have towards law courts and legal practitioners. With the growing role of courts in daily life came numerous reactions to what were perceived as the problematic aspects of this form of institutionalized legal practice. Lawyers in particular became a common target of moral criticism by learned elites. Their perceived avarice, deceitfulness and hypocrisy led authors as diverse as Jacques de Vitry (ca. 1160–1240), Dante Alighieri (1265–1321) and John Wycliffe (1330–1384)

2 For the Middle French original, see François Villon, *Lais, testament, poésies diverses/Ballades en jargon*, eds. Jean-Claude Mühlethaler and Eric Hicks (Paris: Champion, 2004), 310–313. My English translation is based on François Villon, *Poems*, trans. Peter Dale (London: Carcanet Press, 2001), 245, but I have chosen to favour a more literal translation.

3 The poem seems to have received little attention beyond that of philologists. For the latter, see Sarah Spilsbury, "Villon's *Louenge a la court* Reconsidered", *Neophilologus* 59, no. 4 (1975): 482–493. Spilsbury's assertion that in this poem Villon is certainly not 'irreverent towards the Court' nor 'insincere in his thanks' seems to me to overlook some of the more subtle strategies of venting social critique that this poem contains. Cf. Villon's characterization of court officials in one of the stanzas of his most famous poem, the *Testament*, as people that 'drain their bones and bodies for the public good' and are in need of absolution: Villon, *Lais*, 186.

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to lament the position such professional pleaders had come to play.[4] But other legal practitioners could also form the subject of these accusations, such as the scribes and notaries who were responsible for recording cases and thus susceptible to critiques of the power of the quill.[5] Law courts and their individual representatives would even occasionally become the explicit targets of violent protests.[6] Significantly, attacks need not be directed solely against individual officials, but could also involve the destruction of court documents and associated buildings, like prisons and courthouses.[7] Such reactions, however extreme or out-of-the-ordinary they may have been, reflect some of the polyvalent character of medieval understandings of justice. Fixed judicial bodies meting out sentences were not the only, nor necessarily the most accepted form of conflict resolution available.[8] Countering traditional distinctions between fundamentally rule-led and anarchic societies, historians have unearthed widespread evidence of elaborate feuding practices, forms of judicial self-reliance and extra-curial adjudication existing in tandem with legal institutions in the late medieval period.[9] These alternatives show us even more profoundly than explicit critiques of courts how people's legal literacy, that is, the way

4 James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago and London: University of Chicago Press, 2008), 477–487.

5 Romain Telliez, *'Per potentiam officii': Les officiers devant la justice dans le Royaume de France au XIV^e siècle* (Paris: Champion, 2005), 55–62.

6 Alan Harding, "The Revolt against the Justices", in *The English Rising of 1381*, ed. R.H. Hilton and T.H. Aston (Cambridge: Cambridge University Press, 1981).

7 W.M. Ormrod, "The Peasants' Revolt and the Government of England", *Journal of British Studies* 29, no. 1 (1990): 1–30; for similar evidence of attacks on court buildings and documents in Siena (1355) and Paris (1381), see the edited sections of the *Cronaca Senese* and the *Chronographia regnum Francorum* in Samuel K. Cohn, Jr., ed., *Popular Protest in Late Medieval Europe: Italy, France and Flanders* (Manchester and New York: Manchester University Press, 2004), 112–116, 294–299.

8 See the examples in John Bossy, ed., *Disputes and Settlements: Law and Human Relations in the West* (Cambridge: Cambridge University Press, 1983), and for the late Middle Ages, see, in particular, Michael Clanchy, "Law and Love in the Middle Ages", in ibid.

9 Clanchy, "Law and Love"; Gerd Althoff, *Spielregeln der Politik im Mittelalter: Kommunikation in Friede un Fehde* (Darmstadt: Darmstadt Wissenschaftliche Buchgesellschaft, 1997); Société des historiens médiévistes de l'enseignement supérieur public, *Le règlement des conflits au Moyen Âge: Actes du XXXI^e congrès de la SHMES, Angers, juin 2000* (Paris: Publications de la Sorbonne, 2001); Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003); Warren C. Brown and Piotr Górecki, eds., *Conflict in Medieval Europe: Changing Perspectives on Society and Culture* (Aldershot and Burlington, VT: Ashgate, 2003); Corien Glaudemans, *Om die wrake wille: Eigenrichting, veten en verzoening in laat-middeleeuws Holland en Zeeland* (Hilversum: Verloren, 2004); Jeppe Büchert Netterstrøm and Bjørn Poulsen, eds., *Feud in Medieval and Early Modern Europe* (Aarhus: Aarhus University Press, 2007).

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they conceptualized justice and the proper ways to achieve it, extended beyond and could even at times be contrary to the institutional practices and ideology of the law court.[10]

Despite such diverging interpretations of the nature of justice, courts did manage to find a stable place in late medieval societies as prominent dispute settlers and political legitimators, forming crucial fora for individuals to make social, political and legal claims. This did not happen from one day to the next, nor do we see a uniform process between European regions. Yet the integration of courts in the socio-judicial practices of people in many if not most European regions fundamentally increased between 1200 and 1500.[11] Explanations of this change in judicial practice vary widely, relating it to processes of state-building,[12] the growth of bureaucracies, the professionalization of a social class of lawyers,[13] or changes in intellectual

10 Cf. the term 'legal consciousness' as proposed by Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasant's Revolt* (Manchester and New York: Manchester University Press, 2001), 7–9. However, Musson's legal consciousness is strongly related to the forms of legal reasoning as practiced in law courts, and is therefore also seen to 'grow' during the late medieval period. I interpret legal literacy as referring to people's ideas and emotions about proper judicial practice more in general, regardless of the form that this idealized system takes, and thus as a constant human factor whose substance may change over time and varies between individuals and societies. In this sense my definition of legal literacy comes closer to what Paul Hyams calls a mentality of 'resentment at wrong' (Hyams, *Rancor*, 265–266), where both what is considered as a 'wrong' and how one's 'resentment' may be eased, is subject to change over time and varies between societies.

11 Anthony Musson and W.M. Ormrod, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century* (Basingstoke: Macmillan Press and St. Martin's Press, 1999); Musson, *Medieval Law*; Brundage, *Medieval Origins*, esp. 126–163; for an exceptionally rich image of this integration of courts in practice in fifteenth-century England, see Tom Johnson, *Law in Common: Legal Cultures in Late-Medieval England* (Oxford: Oxford University Press, 2020).

12 Richard W. Kaeuper, *War, Justice, and Public Order: England and France in the Later Middle Ages* (Oxford: Clarendon Press, 1988); Jean-Philippe Genet, ed., *L'état moderne: Genese: Bilans et perspectives: Actes du colloque tenu au CNRS à Paris les 19–20 septembre 1989* (Paris: CNRS Éditions, 1990); Michelle Bubenicek and Richard Partington, "Justice, Law and Lawyers", in *Government and Political Life in England and France, c. 1300–c. 1500*, eds. Christopher Fletcher, Jean-Philippe Genet and John Watts (Cambridge: Cambridge University Press, 2015); this link with state-building is also prominent in many case studies of local legal practice, such as recently Aude Musin, *Sociabilité urbaine et criminalisation étatique: La justice namuroise face à la violence de 1360 à 1555* (Turnhout: Brepols, 2017).

13 Paul Brand, *The Origins of the English Legal Profession* (Oxford and Cambridge, MA: Blackwell, 1992); Susan Reynolds, "The Emergence of Professional Law in the Long Twelfth Century", *Law and History Review* 21, no. 2 (2003): 347–366; Brundage, *Medieval Origins*; R.H. Helmholz, *The Profession of Ecclesiastical Lawyers: An Historical Introduction* (Cambridge and New York: Cambridge University Press, 2019).

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traditions or legal theories.[14] Without denying the importance of these factors in understanding socio-judicial change, I contend that these approaches risk a number of pitfalls. Developments are often explained with a specific destination in mind, like the nation state or the modern legal profession. The present-day state of affairs thus provides the primary logic for the long-term historical processes taking place.[15] Moreover, the forces that shape developments work mainly 'from above', by political and economic elites implementing specific ideas and practices among other social actors lower down the hierarchy, or are limited to the internal forum of the court, springing from the interactions within a body of legal officials or between these officials and their superiors. Even in cases where historical actors beyond the court are considered, their role is at best one facilitating specific forms of institutional organization that are effectively beyond them.[16]

Microhistory has famously reacted to such overarching and top-down historical narratives by approaching courts and their records from the opposite direction. Classic works like Emmanuel Le Roy Ladurie's *Montaillou*, Carlo Ginzburg's *The Cheese and the Worms* and Natalie Zemon Davis' *The Return of Martin Guerre* and *Fiction in the Archives* have extensively drawn on the records of various courts in order to reconstruct the daily lives and experiences of people living centuries ago.[17] Rather than attempting to trace broad institutional developments, these authors presented an image

14 Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983).

15 This tendency echoes the Weberian model of the development of rational-bureaucratic European states: Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, trans. and ed. Guenther Roth and Claus Wittich (New York: Bedminster Press, 1968), esp. 641–900, 956–1005.

16 Such as the oft-repeated assumption of medieval litigants 'willingly' and 'enthusiastically' bringing their cases to court, thereby uncritically supporting the growth of these institutions: Frederik Pedersen, *Marriage Disputes in Medieval England* (London and New York: Hambledon and London, 2000), 11; and more carefully phrased: Brundage, *Medieval Origins*, 126–127. While I agree as to the critical role of litigants in shaping these institutions, said assumption risks instrumentalizing non-court actors, thus leaving them with very little actual agency to shape their interactions with law courts.

17 Emmanuel Le Roy Ladurie, *Montaillou: Village occitan de 1294 à 1324* (Paris: Gallimard, 1982); Carlo Ginzburg, *Il formaggio e i vermi. Il cosmo di un mugnaio del '500* (Turin: Einaudi, 1976); Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, MA, and London: Harvard University Press, 1983); idem, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987). Also see more recently: Thomas N. Bisson, *Tormented Voices: Power, Crisis, and Humanity in Rural Catalonia 1140–1200* (Cambridge, MA, and London: Harvard University Press, 1998); Robert Bartlett, *The Hanged Man: A Story of Miracle, Memory, and Colonialism* (Princeton, NJ: Princeton University Press, 2004); Michael Goodich, ed., *Voices from the Bench: Narratives of Lesser Folk in Medieval Trials* (New York: Palgrave

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of people's social interactions and mentalities in a court setting. However, while explicitly empowering the many people glossed over in larger historical narratives, this microhistorical prominence of individual historical actors also created new methodological problems. For in focusing strongly on a geographically and temporally narrow aspect of history, such as one town, individual or event, the relative weight of the studied phenomenon in relation to others is often assumed or otherwise unclear. Furthermore, by shifting attention explicitly away from the large machinations of power, some of these works overlook the strong institutional bias of the documentary sources used by historians to conceive of past people's lives.[18]

Building on and reacting to both historiographical trends, this book will trace the advent of law courts in the late medieval period by focusing on the mutual interaction between courts and the societies in which they operated. Instead of limiting an analysis to the development of formal institutional characteristics, it considers law courts as parts of broader communication processes, involving texts, speech, activities and spaces, through which a large variety of social actors negotiated, debated and struggled over concepts of justice, as well as the proper ways of achieving it.[19] I will argue how court officials themselves took an active part in these processes, attempting to influence people's legal literacy by propagating particular scripts of logic and practice, but will likewise stress courts' dependency on these same 'externals' for legitimizing their own position as adjudicators and guaranteers of social order.[20] As such, I will present the development and increasing popularity of

Macmillan, 2006); Steven Bednarski, *A Poisoned Past: The Life and Times of Margarida de Portu, a Fourteenth-Century Accused Poisoner* (Toronto: University of Toronto Press, 2014).

18 See in particular the methodological discussion on Le Roy Ladurie's *Montaillou* in Chapter 4 and the historiographical reflections on the field of microhistory in Bednarski, *Poisoned Past*, 1–22.

19 Cf. Marco Mostert and P.S. Barnwell, eds., *Medieval Legal Process: Physical, Spoken and Written Performance in the Middle Ages* (Turnhout: Brepols, 2011). Also see Marco Mostert, *A Bibliography of Works on Medieval Communication* (Turnhout: Brepols, 2012) for a sense of the range of media and forms of communication that have received the attention of medievalists in recent years.

20 For the value of taking into account both exogenous and endogenous influences on the development of legal systems, see Musson and Ormrod, *Evolution*, 6–7; however Musson and Ormrod's definition of 'external influences' (war, famine, disease, revolt, tyranny) and 'internal influences' (consumer demand, legal professionals, legislation) seems to echo a legalistic distinction between disorder (i.e. anything that can disrupt the smooth functioning of institutionalized justice) and order (i.e. anything that contributes to a smooth functioning of institutionalized justice), rather than a necessary distinction between what is external or internal to these institutions as such. Thus, consumer demand, which Musson and Ormrod define as an internal influence on the judicial system, would be more appropriately considered as an external influence, as it originates beyond the legal officials that constitute a judicial body. Considering consumers of justice as fundamentally

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a court-centred model of justice in the late medieval period as the result of concrete interactions between many agents, be they court officials, litigants or others.[21] This book therefore traces a socio-cultural, rather than a purely legal or institutional, process in late medieval Europe, which shaped ways of conceptualizing and pursuing justice that have remained highly influential in subsequent centuries.

With its focus on the socio-cultural history of law courts, the book positions itself within a growing body of literature. Influenced by the sociology and anthropology of law, an increasing number of historians have turned to stressing the social and cultural embeddedness of medieval courts.[22] While acknowledging the institutional contexts that shaped both legal practice and the written record of this practice, these authors show the influence of broader social and cultural phenomena on the institutionalized court, such as vendetta systems, emotion discourses, ritual forms and conceptualizations of gender. So far these studies have tended to limit their scope to one locality[23] or one region.[24] However, throughout this literature very similar social and cultural processes can be seen to operate in and involve institutionalized courts. For example, engagement with 'bottom up' or communal knowledge in the form of witness testimony, or *fama*, is shown to have occupied courts from Marseilles to York.[25] What is more, examples from legal history have shown the added value of a transregional comparison between courts, even when sticking to the strict confines of one legal system only.[26] While a focus on the court as socio-cultural phenomenon

internal to a judicial system, risks limiting them to the role of 'cogs in the machine' and thus losing sight of their agency. See my critique of the idea of litigants merely facilitating institutional growth above.

21 The focus on tracing a multiplicity of agencies in interaction is influenced by the 'sociology of associations' or Actor-Network-Theory of Bruno Latour and others. See Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2005). For the implications of this sociological perspective on the study of modern courts, see Bruno Latour, *La fabrique du droit* (Paris: La Découverte, 2002).

22 Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264–1423* (Ithaca, NY, and London: Cornell University Press, 2003); Trevor Dean, *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press, 2007); Patricia Turning, *Municipal Officials, Their Public and the Negotiation of Justice in Medieval Languedoc: 'Fear Not the Madness of the Raging Mob'* (Leiden and Boston: Brill, 2012); Steven Bednarski, *Curia: A Social History of a Provençal Criminal Court in the Fourteenth Century* (Montpellier: Presses universitaires de la Méditerranée, 2013); Johnson, *Law in Common*.

23 Smail, *Consumption of Justice*; Turning, *Municipal Officials*; Bednarski, *Curia*.

24 Dean, *Crime and Justice*; Johnson, *Law in Common*.

25 Smail, *Consumption of Justice*, 207–241; Johnson, *Law in Common*, 184–212.

26 Most notably Charles Donahue, *Law, Marriage and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2007).

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seems perfectly suited to combine the microhistorical interest in lived experience with a transregional sense of institutional developments, this has to my knowledge not been pursued consistently.[27]

By comparing multiple courts across geographical and legal boundaries, this book is meant to add an absent transregional perspective to the socio-cultural study of medieval law courts. To do so, I have developed three case studies with different geographic, social, political and institutional backgrounds. Next to the royal *Parlement* of Paris, encountered in Villon's poem, I will consider the archiepiscopal Consistory Court of York and the urban Council of Utrecht in the northern Low Countries. My selection of case studies is explicitly meant to cross various geographical, institutional, linguistic and historiographical boundaries that have implicitly shaped much of the scholarship on the phenomenon of the late medieval law court. In taking the communication processes surrounding these courts as a point of departure, I argue that another logic – one looking beyond many of these traditional boundaries and involving both producers and consumers of justice – is fundamental to understanding the proliferation of this particular form of judicial activity in many European societies.[28]

Studying the intersection between institutionalized courts and the many potential consumers of their justice, naturally raises the issue of sources. In late medieval Europe the development of a variety of institutions went hand in hand with increasing amounts of written documentation.[29] Historians studying law courts have therefore based their analyses strongly on written texts, and more in particular on records of court practice or 'court records'.[30] However, the means by which late medieval people negotiated definitions and practices of justice comprised a much broader range of modes of communication, including the spoken word, embodied acts, images, objects and spaces.[31] Tracing the socio-cultural history of law courts thus means on the one hand to pay serious attention to the many forms of communication that constituted these institutions beyond their written legacy, and on the other

27 A notable exception being Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford: Clarendon Press, 1984), who, however, treats law courts as part of a broader socio-political history of 'collective activity'.

28 Cf. the consumerist model proposed by Daniel Lord Smail in Smail, *Consumption of Justice*, and discussed extensively in Chapter 5 of this book.

29 Michael Clanchy, *From Memory to Written Record: England 1066–1307*, 3rd ed. (Chichester and Malden, MA: Wiley-Blackwell, 2013).

30 Frans Camphuijsen and Jamie Page, "Introduction: New Approaches to Late Medieval Court Records", *Open Library of Humanities*, 5(1), no. 69 (2019): 1–26, DOI: http://doi.org/10.16995/olh.505.

31 Mostert and Barnwell, *Medieval Legal Process*.

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to consider the role of the documents themselves more firmly within this contemporary multimedial context. Both approaches are pursued in this book, with the explicit purpose not only to understand the functioning of court records within a late medieval communicative context, but also to reflect methodologically on the uses made of these written fragments of medieval communication by historians.

Scripting Justice will thus develop a number of interrelated arguments, concerning sources, methodology and historical developments. First of all it argues for a socio-cultural interpretation of the 'rise of the law court' in the late medieval period. It contends that the increasing acceptance of and reliance on a specific court-centred model, notwithstanding the presence of multiple other ways to define and pursue justice, needs to be understood in terms of the history of communicative interactions between the courts as producers and the many contemporary consumers of justice. Secondly, because the influence of the development of institutionalized courts on people's lived experience can be seen to have played a role in many different regions of late medieval Europe, it is deemed relevant to trace these communicative interactions comparatively across geographical, legal and other boundaries. Doing so will help us to distinguish broader social and cultural aspects of late medieval lives from the particular institutions that developed locally or regionally. Lastly, court records, being the primary yet highly limited documentary basis for historians' view on these communicative interactions, need to be considered more firmly within their contemporary contexts of multimedial communication. To better understand people's experiences of late medieval law courts it is fundamental to consider these courts as more than text-producing entities, while also, however, recognizing the impact of the increasing number of court documents on people's lives. Each of these three arguments engages partly unique and partly overlapping historiographies and theoretical frameworks. In what follows I will further introduce them one by one, before giving an overview of the structure of the book as a whole.

Court records

In the thirteenth century, courts in north-western Europe began generating large numbers of written reports of the cases appearing before them. This was neither exclusively nor even primarily a regional phenomenon. Northern and central Italy, for instance, had seen a very similar development during the twelfth century, when communal courts began producing an

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increasing amount of records.[32] Nor was this development necessarily linear and evenly spread within north-western Europe. Where some courts already produced records around 1200, others have left nothing earlier than the late fourteenth century.[33] But overall a parallel practice became commonplace in courts from different legal traditions, which saw them committing more and more to writing. This broader change is in itself relevant to explore, if only because its chronology overlaps so strongly with the institutional developments that saw the establishment of law courts in these regions. Far from forming a uniform programme implemented from the top – wherever that may be – downwards, keeping court records came to be a varied and multidirectional practice, shared among many different courts from various jurisdictional hierarchies and localities.[34] The mutual development of record-keeping and other marked aspects of these judicial institutions – permanent courtrooms, specialized functionaries, and more – stand at the centre of this story.

The proliferation of court recordings did not necessarily lead to any uniformity of documentation. Differences between how courts produced and used written materials could be great, from the written acts composed by the *Parlement*, to the Utrecht Council's registers of verdicts, to records of witness testimony in York.[35] Why then consider them as one category of documents, distinct from other categories? Part of the answer has to do with understanding the role of the document as an object, rather than just a text.[36] As Chapter 4 will show, building on an interpretation of texts that has become commonplace in integrationist linguistics, court documents were essentially verbal utterances and material artefacts combined. These language-objects, through their association of two distinct practices, form

32 Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford: Oxford University Press, 2003), 8–9. Note furthermore that Italy had seen earlier phases of intense court record production: ibid., 8.

33 For the English royal court, for example, rolls of pleas are extant as early as 1194: Clanchy, *Memory*, 98–99.

34 For important reflections on the production, use and logic of late medieval court records, see Daniel Lord Smail, "Aspects of Procedural Documentation in Marseille (14th–15th Centuries)", in *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter*, eds. Susanne Lepsius and Thomas Wetzstein (Frankfurt am Main: Vittorio Klostermann, 2008).

35 For a sense of the diversity of documents falling under the header of 'court records', see the various contributions to the online *Open Library of Humanities* special collection 'New Approaches to Late Medieval Court Records' and in particular the introduction to the collection: Camphuijsen and Page, "Introduction".

36 The value of treating the materiality of court records is also shown in Tom Johnson, "Legal Ephemera in the Ecclesiastical Courts of Late-Medieval England", *Open Library of Humanities* 5(1), no. 17 (2019): 1–27, DOI: https://doi.org/10.16995/olh.334.

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particularly tactile forms of communication with their own communicative dynamic.[37] The objects dealt with in this context had one main locus of use, namely, the courtroom. Contrary to other legal texts, like law codes and other regulations, court records had a very physical relation to the courtroom, because they were frequently produced and often also physically used there. They thus stood closer to the daily comings and goings at court than most other documents broadly called legal, even those that only survive in the form of fair copies. In addition, from a linguistic point of view, their relation to the legal process as such was diverse, in that they prescribed, described, but also often performed this process.

The physical records themselves are thus very much part of this history. Moreover, involving them in such a way makes it possible to connect them more fundamentally to the many non-textual forms of communication that comprised the legal process. Since one of the intentions of this book is to reconstruct late medieval courts as multimedial fora, it is paramount to place these text-objects within a broader context of the speech, spaces and activities involved in the daily practice of the courts: a multimedial context both mediated by and underlying the surviving textual record. This book will therefore consider court records next to and in relation to the court as space, the often ritualized activity taking place there, and the people participating in such legal performances. This approach thus broadens our understanding of these documents and the cultures in which they were used, confronting us with the defining, albeit heavily biased, view that such records promote. Historians depend on them for much of their understanding of people's legal practices and experiences, but have to be careful not to lose sight of the logic and ideology of their production and maintenance.[38] The relation that is important to consider is thus not just between these records and the world in which they were made and used, but also between us historians, these documents of social practice and the world for which they form some of our richest sources.

Comparing courts

If offering a broader understanding of medieval court records and their uses is a major goal of this book, no less important is to explore the potential of a comparative approach towards late medieval law courts. In 1928, Marc

37 Roy Harris, "The Semiology of Textualization", *Language Sciences* 6, no. 2 (1984): 271–286.
38 For a similar approach to modern court records, see Latour, *Fabrique du droit*.

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Bloch announced that the time had come to break down 'the outmoded topographical compartments within which we seek to confine social realities'.[39] Given the legal pluralism of late medieval Europe, this call for comparative history seems all the more important. The socio-legal reality of late medieval Europe was after all one where different types of courts operated next to, together with or in competition with each other.[40] Among scholars of late medieval law courts topographical compartmentalization in itself is occasionally challenged.[41] But it is not done so extensively or regularly. Nor do most studies try to bridge other forms of classification, like that between different legal traditions or types of courts. It is possible to construct an increasingly full image of city authorities' legal activities in highly urbanized areas like the Low Countries or northern Italy.[42] Likewise, the royal courts of, for example, France and England, have a rich historiography, covering centuries of scholarship.[43] And the courts from the canon law tradition are similarly well researched.[44] But these formal boundaries need not have influenced contemporaries as much as one might assume, based on modern experiences or medieval ideal types.[45] They constituted claims to a certain power and conceptualizations of an ideal legal order, but do not directly tell us everything about how contemporaries actually operated in navigating the legal pluralism surrounding them. By sticking

39 Marc Bloch, "Pour une histoire comparée des sociétiés Européennes", in *Mélanges historiques* (Paris: Fleuris, 1963), 36.

40 Musson, *Medieval Law*, 9–18.

41 See, for example, Dean, *Crime and Justice*, who compares the judicial activities of a large number of urban authorities in Italy, and Donahue, *Law, Marriage and Society*, who makes a comparison between five ecclesiastical courts from England, France and the Low Countries.

42 Wim Blockmans, "Les pouvoirs publics dans des régions de haute urbanisation: 'Flandre' et 'Italie' aux XIVe–XVIe siècles", in *Villes de Flandre et d'Italie (XIIIe–XVIe siècle): Les enseignements d'une comparaison*, eds. Élisabeth Crouzet-Pavan and Élodie Lecuppre-Desjardin (Turnhout: Brepols, 2008); Élodie Lecuppre-Desjardin, "The Space of Punishments: Reflections on the Expression and Perception of Judgment and Punishment in the Cities of the Low Countries in the Late Middle Ages", in *The Power of Space in Late Medieval and Early Modern Europe: The Cities of Italy, Northern France and the Low Countries*, eds. Marc Boone and Martha Howell (Turnhout: Brepols, 2013).

43 A rich bibliography is provided in Malcolm Vale, "Courts", in *Government and Political Life in England and France, c. 1300–c. 1500*, eds. Christopher Fletcher, Jean-Philippe Genet and John Watts (Cambridge: Cambridge University Press, 2015); Bubenicek and Partington, "Justice", in ibid.

44 Donahue, *Law, Marriage and Society*; Brundage, *Medieval Origins*; Mia Korpiola, ed., *Regional Variations in Matrimonial Law and Custom in Europe, 1150–1600* (Leiden and Boston: Brill, 2011).

45 Cf. Susan Reynolds' important argument about the transregional similarity of collective activity in medieval Europe vis-à-vis ideas of (proto-national) differences, in Reynolds, *Kingdoms*, 7–9.

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too strongly to these formal jurisdictional separations, we risk losing sight of developments in broader socio-legal practice.

The comparison that this book thus intends to make goes beyond the purely geographical – York, Paris, Utrecht – but also involves more extensive differences between the three cases under scrutiny. As the first chapter shows, institutionally, all three courts found themselves in very different positions within a (theoretical) jurisdictional hierarchy, from the highest court in the Capetian realm, to the governing board of one, albeit prestigious, urban centre in the Low Countries. All three worked within different legal traditions – be it canon law, Roman law or something else altogether – that overlapped only partially. To complicate matters even more, their individual competences differed strongly, some being clearly limited to what from a modern Western viewpoint would be considered judicial activities, others claiming executive powers that had a much broader, and more strongly political character. And even between their 'purely' legal activities there were major differences. Some courts focused on accusational dispute resolution, letting litigants take the initiative to begin a legal process, while others primarily operated *ex officio*, by initiating these processes themselves. Considering such broad differences between the three courts, and thus between what is generally identified as late medieval law courts, we might rightly ask whether a comparison between entities so different is possible at all. Is it even feasible to define anything like a late medieval law court? Or are they simply a category too diverse to allow any kind of overarching characteristic to be identified?

In answering these questions we turn to one of the basic activities underlying the social role of law courts, namely, the resolution of disputes. The attempt to resolve a conflict of some sort is fundamental to most types of legal procedure that were and are practiced in the courtroom, be they accusatory or inquisitorial.[46] Yet systems of dispute resolution themselves are far from dependent on the institutionalized form of the law court. As anthropologists and social historians have come to recognize, neither the presence of central government agencies, nor even of a judging third party is a necessary condition for such a system to be in place.[47] Considering societies that are chronologically and geographically close to the ones considered

46 See furthermore Massimo Vallerani, *Medieval Public Justice*, trans. Sarah Rubin Blanshei (Washington, DC: The Catholic University of America Press, 2012), who argues that both types of legal procedure often overlapped, and cannot be strictly separated.

47 Simon Roberts, "The Study of Dispute: Anthropological Perspectives", in: *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 10–11.

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here reveals a variety of mechanisms for dispute resolution, many of which did not involve formal courts, or attributed them with a minor role in the peacemaking process.[48] Nor is this form of social interaction exclusively limited to human groups and societies, as primatologist Frans de Waal has extensively shown.[49] The form mechanisms of dispute resolution take thus varies greatly between different times, places, societies and even species.

What connects the forms that emerged in the three societies treated here, and identifies them as law courts, was the specific role they claimed in the resolution of disputes. Considering the roles third parties can play in such processes of mitigation, anthropologist Philip Gulliver has proposed to distinguish between those of negotiators and adjudicators.[50] The fundamental difference between the two lies in the place where the power of decision is located. In case of a negotiation the parties themselves hold the competence to decide, while the third party mainly acts as a facilitating agency. In case of adjudication, however, this power is claimed by the third party.[51] In medieval practice, the distinction between these two categories was far from absolute. All courts treated here, and York's Consistory Court in particular, accepted various forms of extra-curial negotiation, regularly taking a facilitating role in processes of peacemaking. However, as Chapter 5 will show, the social claim that these courts posed did present them in a strong adjudicatory role. And in this they differed markedly from some earlier judicial bodies.[52] Where early medieval royal and seigneurial courts provided provisional fora for arbitration, the later courts studied here presented themselves consciously as third parties that held the power to judge.[53] Thus, although in practice the facilitating and adjudicatory roles often worked in tandem, ideologically the emphasis shifted to the latter.

48 Hanna Vollrath, "Rebels and Rituals: From Demonstrations of Enmity to Criminal Justice", in *Medieval Concepts of the Past: Ritual, Memory, Historiography*, eds. Gerd Althoff, Johannes Fried and Patrick Geary (Cambridge: Cambridge University Press and Washington, DC: German Historical Institute, 2002). See the contributions in: Netterstrøm and Poulsen, *Feud*, for various examples of late medieval feuding systems in northern and southern Europe. Also note Susan Reynolds' preference for the term 'assemblies' over 'courts' for many judicial gatherings before the twelfth century: Reynolds, *Kingdoms*, 24–25.

49 Frans de Waal, *Peacemaking among Primates* (Cambridge, MA: Harvard University Press, 1990).

50 Philip Gulliver, *Disputes and Negotiations: A Cross-cultural Perspective* (New York and London: Academic Press, 1979), 3–7.

51 Roberts, 'Dispute', 13–15.

52 Vollrath, 'Rebels', 92–94.

53 Cf. the relative flexibility in numbers and composition of Iberian judicial bodies in the ninth and tenth century, as treated in Wendy Davies, "Judges and Judging: Truth and Justice

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At the same time, the documentary evidence plays an important role in distinguishing these courts from other forms of judicial activity. As mentioned, one of the main features of these institutionalized judicial bodies was the increasing use made of court records. The appearance of such documents between the thirteenth and fifteenth centuries is an important factor linking the different courts considered here. Such an increase in the use of written texts in the activities of the court is not an isolated development, but is, as I will show, closely related to other organizational changes in these adjudicative bodies. As suggested by Michael Clanchy in his linking of developments in literacy to those in the royal bureaucracy, the increasing use of texts formed part of the advent of particular bureaucratic ways of working and thus of a particular style of dealing with disputes or potential disputes arising from interactions in society.[54] However, as Simon Roberts has stressed, the use of texts is not a necessary characteristic of any adjudicative body, and the distinction between negotiation and adjudication cannot be paired automatically with one between formal state-directed judicial processes and informal practices of negotiation.[55] The fact that certain bureaucratic modalities, including a relatively strong reliance on texts, did form part of the bodies under scrutiny, is something to be explained rather than an inevitable consequence of their role in dispute resolution processes.

Related to these first two features, various other characteristics can be unearthed that were held in common by all three courts. One important similarity was their fixed location. Although many law courts developed out of the itinerant courts of secular and ecclesiastical magnates, by the time they took the shape of a text-producing adjudicative body, they had fixed their place of operations in one locality. And in this state they managed to survive major political upheavals and intellectual transformations, showing a strong socially embedded logic of connecting particular places with judicial activities.[56] This has important implications for the exact

in Northern Iberia on the Eve of the Millennium", *Journal of Medieval History* 36, no. 3 (2010): 193–203.

54 Clanchy, *Memory*, 18–19, 64–70.

55 Roberts, 'Dispute', 14; also see Susan Reynolds' arguments about the role of non-textual custom on legal developments in medieval Europe before the twelfth century: Reynolds, *Kingdoms*, 12–38.

56 The most striking example is probably the seat of the Parisian *Parlement*, the *Palais de la Cité*. Despite major socio-political upheavals since the end of the Middle Ages, most notable of which was the French Revolution, the modern *Palais de justice*, which houses some of the highest courts in France, is still situated at the same site, thus continuing its explicit association with legal practice for over seven centuries. Also see Katherine Fischer Taylor, "Le code et l'équité: La transformation du palais de justice de Paris au XIX^{e} siècle", in *La justice en ses temples: Regards*

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understanding of law courts. For, apart from their institutional sense, law courts can also readily be understood as spatial phenomena. The fact that we begin to see such a unity of place for these bodies in this period suggests that institutional and documentary developments were somehow related to the use of place and space in legal practice. The same goes for the legal practice proper. The attitudes and practices of these courts as regards the course of the legal process – including the use of space, the management of time and the relation towards potential audiences – often show a remarkably similar logic.

It is thus possible from the outset to point out both strong similarities and marked contrasts between the three case studies. The question that follows, however, is: What interpretive value do such similarities and contrasts hold? Do they show that these courts are mere variations on a common theme, or are they, on the contrary, locally embedded forms that happen to share one or two characteristics? Are they, in other words, defined by certain overarching structural developments, or primarily by their individual contexts? Similar considerations have been famously put forward by David Nirenberg in the context of the study of medieval minorities. In his *Communities of Violence*, Nirenberg argued for a context-driven approach to the interpretation of violence against religious and social minorities. According to Nirenberg, historians tended to overemphasize the continuity of collective discourses on minorities, while downplaying local particularities. In such approaches, individual instances of violence are strung together in a long narrative from medieval to modern times, often obfuscating the particular meanings such occasions had for contemporaries.[57]

The same critique holds for much of the historiography on law courts. In line with broader narratives on the rise of the state, law courts are often presented as paragons of a process of bureaucratic centralization and rationalization eventually resulting in the modern nation state. The tendency is particularly strong among historians of royal courts.[58] But the state-building narrative is present in other historiographies as well. Cities and their politico-legal institutions, such as law courts, are often regarded within the context of the appearance of large political constellations, either as a fundamental basis of or, to the contrary, as independent bodies resisting

sur l'architecture judiciaire en France, ed. Association Française pour l'histoire de la justice (Paris: Éditions Errance and Poitiers: Éditions Brissaud, 1992).

57 David Nirenberg, *Communities of Violence: Persecution of Minorities in the Middle Ages* (Princeton, NJ: Princeton University Press, 1996), 3–7.

58 Kaeuper, *War*; Bubenicek and Partington, "Justice".

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state-based centralization.[59] The narrative can even be found underlying work on ecclesiastical law courts. Although distinct from the process of nation building, there exists a tendency to read many of the developments in late medieval church courts, such as the codification of law or the professionalization of its personnel, as constituting the institutional origins of the later secular state apparatus.[60] Like the historiography with which Nirenberg is concerned, such perspectives on the role of premodern law courts follow a teleological interpretation of history, stressing the institutional continuities that would underlie the birth of the modern nation state. Or, as Norbert Elias, a well-known spokesman of this approach, has formulated it, 'the compelling forces of social interweaving have led the transformation of Western society in one and the same direction from the time of utmost feudal disintegration to the present'.[61] I agree with Nirenberg that such approaches, in replacing a contextual analysis with a strongly directional historical narrative, can tell us very little about the activities and concerns of historical actors.

On the other hand, more than is the case for Nirenberg, whose work is largely concerned with individual instances of violence and people's interpretations of these events, the study of law courts fundamentally involves structural patterns of thought and behaviour. Such broader patterns – or at least their suggestion – were part of how judicial bodies legitimized their own existence. It was thus partly a discursive strategy utilized by successive generations of court operatives to position themselves against potential resistance to their desired role in society. Even beyond purely discursive strategies, however, courts as institutions displayed very tangible structural developments. As has been argued, their places of operation were often fixed

59 Neithard Bulst and Jean-Philippe Genet, eds., *La ville, la bourgeoisie et la genèse de l'état moderne (XII^e–XVIII^e siècles): Actes du colloque de Bielefeld (29 novembre–1^er décembre 1985)* (Paris: Centre National de la Recherche Scientifique, 1988); Wim Blockmans, "Voracious States and Obstructing Cities: An Aspect of State Formation in Preindustrial Europe", *Theory and Society* 18, no. 5 (1989): 733–755; Charles Tilly and Wim Blockmans, eds., *Cities and the Rise of States in Europe, A.D. 1000 to 1800* (Boulder, CO: Westview Press, 1994); Wim Blockmans, André Holenstein and Jon Mathieu, eds., *Empowering Interactions: Political Cultures and the Emergence of the State in Europe, 1300–1900* (Farnham and Burlington, VT: Ashgate, 2009).

60 Berman, *Law and Revolution*; Brundage, *Medieval Origins*.

61 Norbert Elias, *Über den Prozess der Zivilisation* (Basel: Haus zum Falken, 1939), 438: 'Hier führt das Hebelwerk der Verflechtungsmechanismen in der Tat von der Zeit der aüβersten feudalen Desintegration bis zur Gegenwart hin die Veränderung des abendländischen Menschengeflechts in ein und derselben Richtung weiter.' For the English translation, see Norbert Elias, *The Civilizing Process: The History of Manners and State Formation and Civilization*, trans. Edmund Jephcott (Oxford and Cambridge, MA: Blackwell, 1994), 515.

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for several centuries, in some cases surviving momentous political events that rocked the institution itself or at least its political underpinnings. Thus, the actual locations where justice 'was to be had' could be constant for decades, if not centuries on end. Moreover, strong continuities can also be found in the documentary material. To be sure, one needs to be careful not to project later archivists' attempts at serialization back on the institutions producing the texts. But such later attempts at standardization notwithstanding, these courts produced, used and archived specific types of texts over successive generations, which influenced these bodies' interactions with and interpretations of the world beyond the court over the long term. These and other institutional structuralities thus formed an inalienable aspect of the lived experience of contemporaries in encountering late medieval law courts, as the various chapters in this book will show.

Rather than distinguishing strongly between the structural and the particular, this book seeks to lay bare the creative tension between both. It contends that individual interactions between court officials and others, be they litigants, witnesses or audiences, were shaped by more structural features, such as the spaces of procedure, the use of written texts, or discourses on social order and disorder. However, these structural features in their turn only developed because they were put into practice through many individual occasions of interaction involving varying actors and contexts. A comparison between communicative interactions involving law courts of different types and from different regions is thus meant to negotiate between these structural and particular aspects of developing court practice. Working from individual social experiences of interacting in and with courts, this book will seek to trace broader structural patterns in these experiences both geographically, but also diachronically. Comparing multiple late medieval law courts from the perspective of communicative interaction is thus explicitly meant to unpack the creative tension between the structural and the particular, between a certain institutional obdurateness and the many instances of interaction between these institutions and broader society.

Communication, performance and scripting

The approach I will follow in tracing the development of law courts looks for explanations where judicial institutions and their respective societies interact. It looks at the legal process before all else as a communication process, a constellation of words, signs, spaces and actions through which

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various groups and individuals were making sense of the world around them and laying claims to its interpretation. Such a perspective has found a growing group of adherents among cultural and social historians. Some focus on the role of publicity and theatricality in the cases conducted in court.[62] Others emphasize the way in which participants in the legal process formed legal narratives or discourses.[63] Giving communication a central role in the understanding of legal practice has in fact a long history in academia. In his *De la division du travail social*, Émile Durkheim argued for a discursive interpretation of penal activity. Punishment, according to Durkheim, was essentially a show of concerted aversion by a society whose collective conscience had been infringed by a particular act. It was a means by which society told itself what it thought and valued.[64] Drawing on this interpretation of judicial activity as communal discourse, sociologists have come to emphasize the cultural and discursive elements in law. Philip Smith, for example, sees the creation of meaning as one of the central aspects of penalizing behaviour. Punishment constitutes a communicative act by which people speak about contrasting pairs of concepts, like order versus disorder and purity versus pollution, in discussing their society's moral identity.[65]

In this communicative approach to law, legal acts are essentially interpreted as speech acts, a term strongly associated with the English philosopher of language John Austin. Austin distinguished a particular type of speech, so-called performative utterances. This category constituted all those statements that do not simply describe a given action, but in effect perform the act itself, thereby bringing about an actual change in the world. Thus, when a court pronounces a verdict it is not just giving an account of the decision taken in a specific case, but brings the decision into existence.

62 Esther Cohen, "To Die a Criminal for the Public Good: The Execution Ritual in Late Medieval Paris", in *Law, Custom and the Social Fabric in Medieval Europe: Essays in Honour of Bryce Lyon*, eds. Bernard S. Bachrach and David Nicholas (Kalamazoo: Medieval Institute Publications, Western Michigan University, 1990); Smail, *Consumption of Justice*.

63 Claude Gauvard, *'De grace especial': Crime, état et société en France à la fin du Moyen Âge* (Paris: Publications de la Sorbonne, 1991); John Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia: University of Pennsylvania Press, 2001); Mark G. Pegg, *The Corruption of Angels: The Great Inquisition of 1245–1246* (Princeton, NJ, and Oxford: Princeton University Press, 2001); Dean, *Crime and Justice*; Jeremy Goldberg, *Communal Discord, Child Abduction and Rape in the Later Middle Ages* (New York and Basingstoke: Palgrave Macmillan, 2008).

64 Émile Durkheim, *De la division du travail social*, 5th ed. (Paris: Félix Alcan, 1926), 76–77, translated as Émile Durkheim, *The Division of Labor in Society*, trans. George Simpson (Glencoe, IL: Free Press, 1960), 108–109.

65 Philip Smith, *Punishment and Culture* (Chicago and London: University of Chicago Press, 2008), 13–15.

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Whereas the accused has until then resided in limbo between guilt and innocence, through this linguistic utterance he becomes either an offender or an innocent man. For Austin, however, the utterance of a certain type of statement by itself was not sufficient for it to count as performative. He drew up several prerequisites for what he called a 'felicitous' – we may also say 'effective' – performance. One of these was the condition of 'appropriate circumstances'. If a verdict is not pronounced by a judge in a court setting, it fails as a performative utterance, since people are unlikely to acknowledge the speaker as an authoritative performer or the context as one in which verdicts can be pronounced. For Austin there thus had to exist a certain convention between speech participants in order to make a performative utterance work.[66]

It was in further elaborating on the Austinian condition of conventionality, that the French sociologist Pierre Bourdieu developed his own theory of linguistic practice. For Bourdieu, linguistic conventions were above all socially constructed phenomena, which involved the relations between different actors in a particular linguistic arena. Following from his more general theory of practice, Bourdieu saw language use as springing from a combination of people's linguistic habitus and the specific field in which they operated. In this model, the habitus encapsulated all those pregiven socially determined factors that shape the way someone perceives, thinks of and acts in the world at a given moment, that is to say, people's historically developed frame of reference. With these preconceived notions and habits in mind, actors then engage in a field, a socio-spatial arena with its own rules, where they encounter and interact with other social agents. In these linguistic fields – often also indicated as markets – agents possess varying amounts of symbolic capital, which entails the recognition by other participants in the field of the legitimacy of the speaker's use of language. Performative utterances, Bourdieu emphasized, are only effective in so far as their speaker possesses a form of legitimacy that is external to the utterance itself.[67] Thus, in Bourdieu's understanding, the reason that a court's verdict can actually be considered a performative statement is because its speaker is recognized by others – who have learned to rely on the court in certain cases – as a legitimate pronouncer of verdicts.

66 John Austin, *How to Do Things with Words*, ed. J.O. Urmson (Cambridge, MA: Harvard University Press, 1962), 1–38. For a recent introduction into Austinian theories of performativity, see James Loxley, *Performativity* (London and New York: Routledge, 2007).

67 Pierre Bourdieu, *Language and Symbolic Power*, ed. John Thompson, trans. Gino Raymond and Matthew Adamson (Cambridge, MA: Harvard University Press, 1991), 37–89; also see Thompson's clarifying editor's introduction in the same volume.

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In emphasizing the social embeddedness of language, Bourdieu crucially broadens our understanding of performative speech. Whereas Austin limited his understanding of performativity primarily to spoken language, Bourdieu's integration of linguistic activity in a broader theory of practice seeks to sensitize us to the performative qualities of the many non-vocal types of interaction. Acts like looking, dressing, moving about and positioning oneself in space all have the potential to change the perceived reality of the people involved in them, and are in that sense acts of performative communication.[68] In the same way that the pronunciation of a verdict can turn a defendant into a culprit, the public enactment of a penal measure can make the law effective for those witnessing the event. Consequently, in this book we will encounter the term 'performance' in two understandings, both concerned with the link between speech and practice. The first, working in the Austinian line of reasoning as set out above, considers as a performance those instances where an individual performs an act by speaking. In the second sense, which is closer to the understanding of the term among students of theatre, to perform is to say something by means of an act, not necessarily an oral one. Essentially then, performance is concerned with a two-sided relation between speaking and acting. Furthermore, as this book, and in particular its third and fourth chapters, will show, this relationship between the two modalities of performance is not mutually exclusive. Rather, both aspects of the relationship – acting through speech and speaking in acts – formed an essential means for the participants in the medieval legal process to claim legitimacy.

Bourdieu, like many social theorists, is mainly concerned with performative speech in a modern context. The ideas about people's habitus, linguistic fields and socio-linguistic capital on which his model is based, tend to assume the existence of modern forms and institutions, like a centralized state and legal system.[69] Consequently, the historical coming into being of specific fields or forms of linguistic capital as distinguished by Bourdieu, tends to be absent from the analysis or reduced to a strongly teleological reading. An analysis of socio-judicial communicative interaction in the medieval period, concerned as it is with a world where extensive legal pluralism and limited institutional fixation meant a fundamentally different constellation of linguistic fields, capital and habitus, allows a look beyond these modern assumptions to shed light exactly on this coming into being

68 On the role of non-linguistic forms of performance, also see Judith Butler, *Notes Toward a Performative Theory of Assembly* (Cambridge, MA, and London: Harvard University Press, 2015).
69 Thompson, in Bourdieu, *Language*, 25.

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of more familiar linguistic fields and socio-linguistic capital. In other words, to understand the institutions and modes of communication that influence so much of Bourdieu's linguistic practice, their late medieval modalities form a crucial piece of the puzzle. As Chapter 5 of this book will show in more detail, my analysis of socio-judicial communicative interaction will not be limited to a social contextualization of linguistic practice, but will also involve the ways in which such a social context of linguistic fields and capital takes shape.

To attune our understanding of linguistic practice to such historic variety, it is important to stress not only the socially constructed character of this practice, but also to consider the ways in which speech acts in their turn contribute to shaping – and thereby also changing – the fields where they are performed and the socio-linguistic capital they express. In this understanding, linguistic fields and capital are not necessarily pregiven external factors, but may themselves form part of the negotiation of legitimate speech. This enriches our view of linguistic practice in several ways. On the one hand, it explains speakers' motivations for trying their hand at performative utterances in situations where the relative symbolic capital is not clearly recognizable for or accepted by everyone. This would be the case, for example, if a court pronounces a verdict in a situation where its legitimacy is disputed by other authorities or in light of a certain socio-judicial tradition; a not uncommon situation in late medieval Europe. The verdict itself may well fail as a performative utterance in a direct sense if those involved in the case do not recognize the court as a legitimate speaker. Yet by pronouncing it as such, the court also poses a claim for its legitimacy to utter this particular type of performative statement; a claim that upon regular reiteration may well succeed in structurally changing ideas about the legitimacy of its verdicts. Furthermore, this understanding of speech acts allows for an interpretation of historical changes as being not merely socially, economically or politically driven, but also the result of the performance strategies of speakers in a field. When a court at some point successfully manages to claim jurisdiction over a particular type of case, this need not only signal developments in the social, economic or political constellations surrounding it. We can also explain this change in judicial legitimacy by considering the court's and others' previous activities in the linguistic field, that is, as an effect of the posing and counter-posing of claims to legitimate speech.

This posing of claims to legitimate and authoritative speech will form the central process on the basis of which this book traces the history of late medieval law courts. In order to cover both linguistic and non-linguistic

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means of posing such claims, I will consider these attempts as forms of scripting. That is to say, by making performative utterances, be they bodily, vocally, textually or otherwise, one or more actors in a communicative field may suggest a specific script according to which all participants in the said field are supposed to operate in order to become legitimate speakers. Thus, to draw once more on our previous example, the judge's verdict is more than a single vocalized utterance to claim legitimacy for its speaker. Rather, it presents those witnessing the event with a constellation of spaces, acts, words and symbols, constituting what is claimed to be the proper way to do justice. Such processes of scripting explicitly extend the socio-legal communicative activity beyond the officials operating the court. Although the latter's voice is often heard most prominently, the communicative activity surrounding these courts was largely given form and meaning by the many non-officials who were in some way or another involved, be it as active participants, ostensibly passive audiences, or a combination of both. Like language in general, socio-legal performance was not only shaped by its most obvious producers, but just as much by those traditionally considered as its passive consumers.[70] By taking the communicative activity between court and broader society as the main *explanans* for these bodies' historical development, this study thus critically involves the roles of all these historical agents in an understanding of the court.

Structure of the book

The main threads of this book – the role of court records, the possibilities of comparison and the legal process as communication process – are integrated into four thematic chapters. However, since the book also encapsulates three different case studies, the Council of Utrecht, the Consistory Court of York and the *Parlement* of Paris, these cases will first be considered within their respective historical contexts. Chapter 1, 'Profiles: Three late medieval law courts', thus treats the social, political and legal environment of the three courts, presenting a case-by-case overview of developments before, during and after the period on which the focus of this book lies. This chapter provides a first consideration of the practical aspects of the

70 Bourdieu, *Language*, 38–39. Important to note in this context is furthermore Michel de Certeau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1984), whose ideas also concern the way in which cultural products – like language – are essentially produced by their consumers. Cf. Smail, *Consumption of Justice*.

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courts, like personnel and location, and sets out their formal organization, judicial competences and the records they produced. Mapping the historical context in this way is crucial for understanding the particularities of each of the courts, and forms a necessary basis for the broader developments that I trace in the subsequent chapters.

Chapter 2, 'Legal space', provides a first thematic exploration. It proceeds from the idea that a law court, besides its character as an institution, is primarily a location where specific activities take place. Drawing on the work of Henri Lefebvre and others, it offers a spatial analysis of the law courts under scrutiny, asking how judicial activities related to the sites where they were performed. The chapter is first of all concerned with the choice, construction or reconstruction of places to be used in the legal process. As the three cases studied here illustrate, such spaces could vary widely, from churches to royal palaces to market squares and guild halls. At the same time, however, they exhibit remarkable similarities as regards the way in which people used and adapted them to accommodate both public and non-public aspects of the court's daily business. Furthermore, the court's relation to its spatial context also had a more discursive side. In speaking about aspects of space, from the stones used to repair the city wall to the boundaries of areas of jurisdiction, people used their built and demarcated environment to generate meaning in the context of the legal process. As such, space – and particularly urban space – both influenced and was influenced by the legal activities taking place within it.

From a consideration of the role of space vis-à-vis legal activity, Chapter 3, 'The rituality of court practice', shifts focus to the character of court practices themselves. Building on anthropological theories of ritual, it considers legal acts as ritualized acts, forms of activity that are given meaning in relation to perceived broader structures of meaningful activity. By analyzing particular instances of legal practice for each of the three courts under consideration, this chapter illustrates how actors in these courts linked the things they did to such broader structures of meaning. Ritualizing court activity in this way thus became a means to claim legitimacy for these practices, their actors, and the institution catering to them. Although the forms these activities could take varied greatly between the different courts, their role in performing and thus validating the court can be seen in each instance. In this we see again how considerations of the audiences to be reached with such communicative activity shaped much of what took place in court.

Chapter 4, 'Legal text and social context', zooms in on the court records that underlie much of this book. It considers the role of texts in the legal process and their complex relation to other forms of communication that

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took place in law courts. The creation and use of a text, here interpreted in the integrationist sense as language-objects, had a particular influence on the nature and content of the communicative activity thereby performed. The translation of socio-legal messages to the text reshaped their contents in various ways, for example, by mediating between languages and by standardizing the spoken word within written legal and narrative frames. Their subsequent presentation to various – partly non-literate – audiences in turn involved retranslation through a number of non-textual media, again influencing form and content of these socio-legal messages. That such language-objects became increasingly common in the courts' legal process is thus a particularly relevant development from a communicative perspective, fundamentally shaping the way these judicial bodies worked. In this, the chapter also engages with the social historian's challenge of searching for authentic voices 'from below' in a period when texts as a medium, despite the marked increase in their production, were used, and certainly written, by a very small section of society.

Chapter 5, 'Court and society: The production and consumption of justice', moves beyond the media used in communicating to discuss the historical actors using them and their strategies of communication. Building on Bourdieu's theory of social interaction, it attempts to contextualize the different court communities within their broader society. This is done on the one hand by tracing the habitus of the various court officials, considering social background, training and other relevant elements influencing these people's frames of reference. In addition, the chapter regards these actors' position in their communicative fields, the speech arenas in which various groups and individuals negotiated socio-legal meaning. Here it draws upon the conclusions of the previous chapters to argue where, when and through which media the courts interacted with various elements in their surrounding societies. Finally, and related to this last point, the chapter considers how the respective courts then claimed a specific position for themselves within these communicative fields. Through the use of various media, and by constructing specific socio-legal narratives, these courts put forward claims about the ordering of society and their own role therein.

The conclusion will bring these different elements together in presenting a final analysis of the development of the considered courts as communicators and communicative environments. By relating court-specific changes to more overarching processes in socio-legal practice, I will argue that the courts scripted particular forms of judicial practice and logic, thereby attempting to influence people's conception of legitimate speech and activity. In linking the various media of the court to each other in this way, I show

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how a consideration of communication processes can not only elucidate the historical development of law courts, but is also crucial to understanding their surviving documents, which purport to tell us so much about medieval society.

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