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Middle Ages & Early Renaissance Period

Legal Theory, Legal Practice and Drama (1200–1600)

Marie Bouhaïk-Gironès, Simon Gabay, Jelle Koopmans and Katell Lavéant*

Why do we look for links between law and drama? Or, why do historians try to find connections between legal practice and theatrical practice? And why would they need to?

Many documents dealing with late medieval dramatic practice are in fact legal documents, which can usefully complement our existing knowledge with extra information about performance practices not present in the play texts themselves. These documents have a twofold rationale. On the one hand, they translate points of legal theory, of jurisdiction and of law. On the other hand they are related to specific kinds of practice—however it is not always easy to determine the exact nature of this relationship. Some of these documents have been known to theatre historians for a long time, as documents on theatre, but many of them remain unknown. Historians of theatre use these sources if they happen to know them, but curiously enough they have never actively sought them. This is astonishing, since these documents often tell a story that is quite different from the traditional one told by 'literary history': they document an 'unseen theatre'.

Instead of looking for the exact moment when literary historians meet the law, or for the moment when lawyers stumble upon literary texts, it is also possible to combine the two from the outset, and actively search for the 'legal turn' in literary history. The case of late medieval and early modern drama in France enables us to explore these questions in greater detail. This is the interdisciplinary endeavour that forms the departure point for the University of Amsterdam's 'Law and Drama' project,[1] entitled 'Law and Drama: how

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1 Project funded by the Netherlands Organisation for Scientific Research (NWO).

theatrical practice has been defined by, with and against the law in France and in French-speaking regions (thirteenth–sixteenth centuries)'. Legal sources on late medieval drama in France have not yet been explored. They are all the more interesting because drama and theatre have always had a complex relationship with the law. Different authorities tried, in different ways, to control dramatic activity and performance, sometimes funding them, sometimes prohibiting them or subjecting texts to severe censorship. Acting troupes received privileges (like the Confrères de la Passion), and (professional) actors signed notarial contracts in order officially to register their mutual engagements. Of course, canon law and civil law inherited their notions of theatre from Antiquity, but this theoretical knowledge did not enable them to cope with more modern theatrical practice. Within this research programme, archival records are not used to document the history of theatre; rather they are analysed for their own sake. Their provenance, institutional context, and conservation history reveal information about the conceptualisation of theatrical performance, and the legal status of drama, actors and dramatic texts. The first clear examples of drama in the vernacular (thirteenth century, mainly around Arras) and the Wars of Religion in France set the start and end points for this research programme. Thus, the programme tries to bring together and combine different types of sources, de-autonomising disciplinary thinking. In doing so, it also draws into question the institutionalisation of knowledge that separated the theatre (considered as part of 'literature') from the authorities controlling the public space, from legislation on cultural practice, and from the regulation of the infrastructure of cultural life. It aims to change our way of thinking, and create the means, if not for an epistemological rupture, at least for an end to our easy acceptance of what is commonly called the history of the theatre.

This reflection originated in the apparent tension between the different, even multiple authorities and the realities of theatrical practice in the period. There is generous funding, yet there are severe prohibitions; there is control and yet there is a policy of 'laissez-faire'. There is a problem with satire (religious and political), yet it is not clear whether this only concerns theatre, or whether theatre is just one of multiple objects of control and legislation. A central point is the famous myth of the anti-theatrical attitude of the Church, and the subsequent so-called 'second birth' of European drama in liturgical practice. Within the cultural infrastructure of theatrical institutions, practical organisation becomes more and more evident: rules and stipulations abound, even to the point of including health insurance for actors. This growing regulation demonstrates how the world of law gradually becomes part of the world of theatre in this period—or perhaps, how the theatre gets mixed up with the law. Both interpretations can be seen as valid.

This project, for once, does not focus on the play-texts that have made their way down to us; rather it is about historical sources. We often know about theatrical performances either because the text has been kept in some form, or because the performance caused problems or called for special measures. Contracts, trial records, synodal statutes and conciliary legislation continually raise the question of the precise nature of the relation-

ship between normative and legal sources on the one hand, and theatrical practice on the other. It is also important to consider the motivations behind certain documents: for example, the famous circular letter written by the Parisian Faculty of Theology (12 March 1444, old style) about the Feast of Fools is certainly not merely a straightforward description; in fact it aims to prohibit these practices.[2] The regulation of mystery plays by the 'Parlement de Paris' (1542, 1548) had to be repeated in 1577 and 1598—and mysteries continued to be performed.[3] And municipal account books, when they mention theatre, see it from an accounting point of view: they measure performances by yards of cloth or by barrels of gunpowder. Carpenters' contracts or carpenters' reclamations for non-payment, even if related to dramatic performances, are still nothing more than carpenters' contracts and reclamations, yet they can act as fascinating sources on dramatic practice.

The central aim of the project, then, is not to look for information on dramatic practice in legal sources, nor is it to look for traces of legal thought in dramatic texts. Instead, it is about an integrated approach. If we have, for example, a notarial act dating from 1649–50 which tells us about a certain Philippe Boissard, a bachelor in theology, who apparently composed a 'farce en forme de prétandu libelle' (a farce in the form of a pamphlet),[4] our main interest is in the conflict that generated the act (Boissard claims to have been falsely indicted) and the place of the farce within this conflict, as well as the formalisation of these facts in a legal act which, in itself, is not about theatre. This example also shows why it is not always easy to determine the exact object of legal sources. Boissard has been indicted for a farce, but it took the form of a pamphlet (a printed edition? a libelous tract?) and he is a cleric. Sometimes legal documents are about the theatre, sometimes they are about the spoken word, and sometimes they are about the practitioners. Sometimes, as in the case of many pardon letters or *lettres de rémission*, drama receives nothing but a passing mention.

Documents have come down to us from manifold sources: the Parliaments, the Inquisition, the king, municipalities, bishops, religious orders. There are many documented cases of conflicts in jurisdiction—and it is certainly not always easy to grasp what exactly a document is about. It is important to create a typology of source material, and to launch an active search for new documentation. Earlier publications have already made clear how important trial records and witness statements can be.[5] In particular we should cite Marie

2 Edmund K Chambers, *The Mediaeval Stage*, vol 1 (Oxford University Press, 1903) 294. Ever since, this document has been cited as a 'description' of a certain reality.

3 Véronique Dominguez, *La scène et la Croix. Le jeu de l'acteur dans les Passions dramatiques françaises (XIV^e–XVI^e siècles)* (Brepols, 2007) 27–31; Jules Douhet, *Dictionnaire des mystères* (J-P Migne, 1854) cols 1351–2, 1355–6. A solid overall interpretation of these documents is still wanting.

4 Angoulême, Archives départementales de la Charente, E 2007 (Liasse)—acts of maître Amelin, royal notary at Angoulême (30 January 1647–21 September 1650).

5 Marie Bouhaïk-Gironès, 'Le procès des farceurs de Dijon (1447)' (2003) 7 *European Medieval Drama* 117–34; Katell Lavéant, 'Le théâtre du Nord et la Réforme. Un procès d'acteurs dans la région de Lille en 1563' (2007) 11 *European Medieval Drama* 59–77; Michel Rousse, 'Une représentation théâtrale à Rouen en 1556' (2003) 7 *European Medieval Drama* 87–116.

Bouhaïk-Gironès' work on the Parisian Basoche, where law and drama are historically interlinked.[6] As a professional community of law clerks of the Parisian Parliament, its festive and parodic culture profoundly influenced the development of theatrical literature. The dramatic production of the Basoche simply extends its didactic role: it is a school for legal practice and theatrical practice; a conservatory of the techniques of the spoken word. The question of the social status of the actor will be explored in greater detail in the second part of this article, but for further detail we refer to Marie Bouhaïk's monograph on the subject. The importance of the political and cultural infrastructure to the study of early modern drama has been put forward in the monograph Lavéant devoted to the French-speaking Low Countries.[7] And of course, there is a vast body of ecclesiastical legislation on drama, which is much more complicated than theatre history's dogmatic focus on the Roman Church's anti-theatricality would lead us to believe.[8]

In order to map out the territory and test our approach, this article will focus on three types of legal documents, to illustrate the point at which law and drama meet. In the first part of this article, the central question will be that of medieval perceptions of ecclesiastical sources and their conceptualisation of drama. The main focus of this 'archaeology' will be a straightforward analysis of words and things, but it will also provide interesting perspectives on the evolution of thinking—and not thinking—about drama. The second part of the article will investigate another point of dogma in theatre history: that the rise of professional theatre occurred during the Italian Renaissance. This conception is mainly based on one single legal document, which in fact tells us a different story once it is properly contextualised. And that is not all: at the same time, we will show how theatre historians simply have not done their elementary homework as historians. The third issue that we will address is the tension between imperial and municipal regulations on theatre during the Reformation, especially in the French-speaking Low Countries. This analysis has many consequences for, on the one hand, our approach to documentation and practice, and, on the other hand, the study of theatrical traditions in many other regions (for example the South-West of France, or the Franche-Comté). But let us first take a closer look at the ecclesiastical sources.

6 Marie Bouhaïk-Gironès, *Les clercs de la Basoche et le théâtre comique (Paris, 1420–1550)* (Honoré Champion, 2007).

7 Katell Lavéant, *Théâtre et culture dramatique d'expression française dans les villes des Pays-Bas méridionaux (XV^{e}–XVI^{e} siècles)*, dissertation, Amsterdam, 2007 (Paradigme, forthcoming).

8 This matter will be further investigated in the PhD thesis currently being prepared by Simon Gabay at the University of Amsterdam.

THE CHURCH, OR CODIFICATION AS AN *ARS POETICA*

The question of whether the people of the Middle Ages understood what theatre could be is an object of debate, and one that is all the more important because the answer has a bearing on the very existence of theatre in this period. How can one practise what one cannot even imagine? Different monographs give different answers, largely dependent on the nature of the sources used. Edgar de Bruyne uses the *Artes Poeticae*, and stresses the distance between Antiquity and the Middle Ages.[9] Others hold the opposite position and try to dig up a recognisable medieval theatrical practice, or even a continuity between Antiquity and Renaissance theatres based on theology and dictionaries (with their glosses).[10] However, the first of these positions seems to prevail, with the argument being that the hostility of the Church would have destroyed the very concept of theatre.[11]

Now if the persistence of words through time shows a certain amount of continuity, their potentially shifting meaning complicates the understanding of documents, or offers only questionable solutions. Researchers are often confronted by the essential problem formulated by Mary Hatch Marshall: the need 'to distinguish literary tradition from contemporary application in the living Latin language'.[12] Canon law may offer a way to circumvent this problem. Beginning from the same compulsory tendency to classify, it also comes into contact with the arts; more specifically with the art we are talking about here. Theatre has a performative dimension, in that it is practised in public, and therefore publicly regulated. However, whilst lawyers might depend on the same documentation (and therefore on the same way of thinking) as others, they ultimately have to assess and pass judgment on a specific reality. It is not the theoretical and historical dimension of their writings that offers a new view: rather we can learn from their incessant efforts to actualise their exegesis in relation to actual practice.

9 'Il va de soi que Diomède se met ici au point de vue de la représentation scénique. Les médiévaux ne voient que le contenu ou l'esprit de la forme poétique.' Edgar De Bruyne, *Etudes d'esthétique médiévale*, 'Bibliothèque de l'évolution de l'humanité' vol II (Albin Michel, 1998) (1st edn De Tempel, 1946) 386. ['It goes without saying that Diomedes here adopts the perspective of scenic representation. Medieval man only saw the content or spirit of the poetical form.']

10 'The thread that connects the Elizabethan stage with the Roman cannot be traced all the way, but there are hints that it existed', states Jack Ogilvy. If his attitude is the most extreme on this subject, it contains many references to more nuanced works: Jack DA Ogilvy, 'Mimi, Scurrae, Histriones: Entertainers of the Early Middle Ages' (1963) 38(4) *Speculum* 603–19.

11 Luigi Allegri, *Teatro e spettacolo nel medioevo*, 'Biblioteca universale Laterza' (n° 242) (Laterza, 1988). The author supports an equivalent hypothesis, which he summarises thus: 'During the Middle Ages, theatre died, or so it is said. I believe it would be more apt to say that the *idea* of theatre died, suffocated by a Christian culture that has long waged a virulent ideological campaign against it.' (Luigi Allegri, 'On the Rebirth of Theatre, or the *idea* of Theatre, in Humanistic Italy' in Paul C Castagno (ed), *Theatrical Spaces and Dramatic Places: The Reemergence of the Theatre Building in the Renaissance* (University of Alabama Press, 1996) 51.

12 Mary Hatch Marshall, 'Theatre in the Middle Ages: Evidence from Dictionaries and Glosses' (1950) 4(1) *Symposium: A Journal Devoted to Modern Foreign Languages and Literatures* 2.

The idea is to re-open the case and to use the legal code as an 'ars poetica'. In this way, important new documentation, unpublished or forgotten, can pave the way for a resolution of the problem.[13] Our first analysis, based on Gratian's *Decretum* and its earliest glosses (especially those by Rufinus of Bologna and his disciple Stephen of Tournai), aims to grasp the position of canon law at its inception.[14] We will proceed through an analysis of later documents, legislation and practice, in order to try to identify possible evolutions.

The clearest example of a system of legal interpretation displaying a twofold attitude towards the exegetical tradition, and thus a modernisation of way things should be understood, is to be found in the thirty-third distinction, second canon of the first part of the *Decretum*. In its list of reasons for exclusion from the priesthood, the canon mentions 'in scena lussisse' ('to play on stage').[15] Commentators tend to linger on this point.[16] Let us specify that all artistic matters regarding performance are irrelevant, since this reflection is concerned purely with the regulation of moral issues. The position of the law is not situated within any literary continuum: it is situated in the public space and in ways of life. That position is, however, meaningful: there is no canon devoted to this problem.[17] This attitude is far from being isolated. We could recall Hugh of Saint-Victor's *Didascalicon* (written before 1140, about the same date of Rufinus' commentary), which situates the *theatrica* amongst the seven *artes mechanicae*, and not amongst poetry.[18]

Rufinus elaborates, in a classic way,[19] on the meaning of *scena* in Latin and Greek:

> The scena is a place next to the theatre, in the way of a house with a pulpit, which was called the orchestra-pulpit, where comedians and tragedians sang, where histrions and mimes danced.

13 Here we are strongly reminded of Umberto Eco's analysis of medieval aesthetical discourse: 'Qu'il en ait parlé tout en faisant de la philosophie ou en faisant de la théologie importe peu: il suffit de lire selon une clef philosophique des pages théologiques' (*Le problème esthétique chez Thomas d'Aquin* (PUF, 1993) 14). ['Whether he spoke of it in a philosophical or in a theological context does not matter all that much: it is sufficient to read theological pages with a philosophical key.']

14 Jean Gaudemet, 'L'élaboration du droit canonique (XI^{e}–XV^{e} s)' in Jean Gaudemet, *Formation du droit canonique et gouvernement de l'Eglise de l'Antiquité à l'âge classique* (Presses Universitaires de Strasbourg, 2008) 180 (article taken from E Maier, A Rochat and D Tappy (eds), *A cheval entre histoire et droit, Mélanges Poudret* (Bibliothèque historique vaudoise, 1999) 211–34).

15 *PL*, CLXXXVII, col 185b. In scenical plays we find simony, mutilation, bigamy, usury and the like. These recurring and to an extent changing lists will not be studied here, but they can help us understand in a concrete manner the status of the scenic arts in the Middle Ages.

16 Raising this question directly implies a reference to the article in which Michel Rousse summarised a large part of the problem: Michel Rousse, 'De la scena médiévale à l'espace de la commedia dell'arte' in Michel Rousse, *La scène et les tréteaux* (Paradigme, 2004) 25–50 (first published as 'De la *Scena* médiévale à l'estrade de la commedia dell'arte' in Maria Chiabò and Federico Doglio, *Origini della Commedia Improvvisa o dell'arte* (Torre d'Orfeo, 1996) 303–27).

17 Cf below the canons from Cahors and Toledo, or even the canon of the *Decretum* that follows.

18 Paul Zumthor, *La Lettre et la voix. De la littérature médiévale*, 'Poétique' (Seuil, 1987) 289–90. The reference Taylor made to a gloss by William of Conches on this passage of the *Didascalicon* (*The Didascalicon of Hugues of Saint Victor* (Columbia University Press, 1967) 205 n 68) mentioned by Zumthor is an essential document in the chronology of the acceptance of theatrical practice, and it justifies the classification using the same arguments as the Aquinate.

19 See Hatch Marshall (n 12) 7, 10, 21, 25, 26 for definitions of the *scena* during the High Middle Ages.

> It is called scena from the Greek, as it was built like a house; that is why the Hebrews called it the scenophegia-feast of the tabernacles resembling domiciles. Scena in Greek, umbra in Latin: from whence, scena or umbraculum where poets sing songs.[20]

Stephen only summarises his master's ideas[21] in order to propose a much longer and more contemporary interpretation of the term. He passes from the past tense to the present ('sed hodie'!). The two canonists return to the problem once more:

> But today the scena is what is established as occasion for plays in any place, where people go to spectacles. And those who after being baptised play in such a scena, are prohibited to come and receive the clerical gift.[22]

Stephen attempts to develop this further:

> The scena, as Labeo defined it, which is the occasion for having plays in some place, where some spectacle takes place or is moved, placed in public or private, or in a quarter, in which place men can be admitted because of spectacles.[23]

Clearly canonists, and *a fortiori* medieval men, could divest themselves of the old paradigms that continued to imprison other commentators. They did so in the context of a reality that witnessed the development of 'play' in space, thereby entering into contact with the *arts poétiques*[24] that are traditionally cited as having kept the Middle Ages in a state of ignorance. However, Stephen's reference shows the existence of an alternative interpretation that could prove more helpful in our understanding of the theatrical phenomenon.[25]

20 'Scena enim erat locus iuxta theatrum, in modum domus instructa cum pulpito, quod pulpitum orchistra vocabatur, ubi cantabant comici tragedique, saltabant ystriones et mimi. Dicta autem scena greca appellatione, eo quod in speciem domus erat instructa; unde apud Hebreos tabernaculorum festivitas scenophegia ad similitudinem domiciliorum appellabatur. Vel scena grece, latine umbra: hinc scena seil, umbraculum, ubi poete carmina recitabant.' Rufinus of Bologna, *Die 'Summa decretorum' des Magister Rufinus* (F Schöningh, 1902) 78.

21 '*in scena* ie in theatro; a scenon, quod est umbraculum propter cortinas quasdam, intra quas latitabant personae, quae ad gestus suos repraesentandos prodibant.' Stephen of Tournai, *Die 'Summa' des Stephanus Tornacensis über das 'Decretum Gratiani'* (E Roth, 1891) 50–51.

22 'Sed hodie scena est que ludorum causa in quolibet loco, ubi ad spectaculum convenitur, statuitur. Ubi ergo, qui consueverunt post baptismum in huiusmodi scena ludere, ad clericale munus prohibentur venire.' Rufinus of Bologna (n 20) 78.

23 'Scena autem, ut Labeo diffinit, quae ludorum faciendorum causa quolibet loco, ubi quis consistat moveaturque spectaculum sui praebiturus, posita sit in publico vel privato vel in vico, quo tarnen in loco passim homines spectaculi causa admittantur.' Stephen of Tournai (n 21) 50–51. The reference to Labeo could point to the passage by Notker Labeo quoted by Henry Ansgar Kelly in his *Ideas and Forms of Tragedy from Aristotle to the Middle Ages*, 18 Cambridge Studies in Medieval Literature (Cambridge University Press, 1993) 56.

24 Like Matthew of Vendome, Geoffry of Vinsauf or John of Garland, cf De Bruyne (n 9) vol II, 14 ff.

25 As shown in Mary Hatch Marshall, 'Boethius' Definition of Persona and Mediaeval Understanding of the Roman Theater' (1950) 25(4) *Speculum* 471–82; Bruno Roy, 'Arnulf of Orleans and the Latin "Comedy"' (1974) 49(2) *Speculum* 258–66; or Ansgar Kelly (n 23).

Two conclusions can be drawn from this. On the one hand, the *scena* is a playing ground that is ephemeral and cannot be localised. This is in line with the general idea of performative practice, and with the idea of a generalised theatricality as Zumthor would have it.[26] On the other hand the law abandons its proper legal dimension of regulation in order to formulate an artistic definition or description, denoting a different, esthetical tendency.

The idea of the *scena* does not simply denote drama, either in the Middle Ages or today. It can be occupied by dance, music, or simple recitation, with no necessary link to theatrical practice. Defined thus as the space for 'shows', it may however nevertheless be linked to a specific theatrical practice if we take into account the definition of the 'histrion'.[27] This figure is also well defined by the glossators; a delicate exercise if one recalls the multiplication of definitions and taxonomies, such as those of Thomas of Chobham or Petrus Cantor (to give just two examples).[28] Rufinus adds the following gloss:

> Is to be understood as concerning a jongleur, though histrions are properly those that tell tales, that change their faces and clothing and show other images that make people laugh, and thus they nearly tell a story with their own body. In fact, they are infamous *ipso jure*, as *infra* …[29]

First, Rufinus situates his definition in the vast continuum of performance, and distinguishes between a *jongleur* and a *histrion*. He then stresses his lexicographical precision by defining the *histrion*. In fact this passage is about mime, about a bodily narrative practice of transformation and imitation, that brings us close to the theatre, without apparently moving beyond the reader/mute player scheme inherited from Isidorus: the spoken word is absent.[30] Once more, Rufinus follows his master closely:[31]

26 Zumthor (n 18) esp ch 12.

27 Pars Prima, LXXXVI, c VII: 'Donare res suas histrionibus vitium est immane, non virtus. Et scitis de talibus, quam sit frequens fama cum laude, quia, *sicut scriptum est,* *laudatur peccator in desideriis animae suae, et qui iniqua gerit, benedicitur*.' *PL*, CLXXXVII, col 408b. ['To give goods to histrions is a great vice, not a virtue. And you know what fame and praise they get from it, because, as is written: "The sinner is praised for the desires of his soul, and who commits foul acts, is blessed".']

28 For references, see (amongst others) John W Baldwin, *Masters, Princes and Merchants*, vol I (Princeton University Press, 1970) 198–204.

29 '*Donare* (etc) *ystrionibus*. Hoc de omnibus joculatoribus intelligendum est, licet ystriones proprie dicantur quasi ystriones, qui transformationes vultus vel habitus et alias imagines dignissimas risu representant et ita quasi quandam sui corporis ystoriam faciunt. Qui quidem ipso iure sunt infames, ut infra Cs IV q I cap I.' Rufinus of Bologna (n 20) 176.

30 One should not forget that, even though current scholarship tends to re-examine the literarity of drama, subordinating the written text to the performance, *Acts without Words I and II* by Samuel Beckett (*Comédie et Actes Divers* (Minuit, 1966)) show that the spoken word is itself subordinate to the action—just as, for example, ballet music is subordinate to the dance (cf *The Song* by Anne Teresa de Keersmaeker, premiere: Théâtre de la Ville, Paris, 24 June 2009).

31 But still more than Hugguccio, if one looks at other glossators: '*histrionibus*: Ystriones dicuntur qui ludibria sui corporis exercent et gesticulatione et motu corporis et transformatione vultus gestus aliorum

> This denomination comprehends all jongleurs, be it those that offer a performance of their body. More precisely, is called a histrion he who represents the gests of others through movements of their body and transformation of their face. The story is, in fact, told through gests, and this is called *res gestae*. They have been infamous *ipso jure*, as *infra* …[32]

The terminology is still not clearly determined at the moment of the Gregorian Renaissance. However, when we search for it, the theatre does appear in the semantic extension of terms (*histrio* or *scena*), and it seems to have its own nature compared to other performative practices. The absence of a gloss for *histrio* in commented versions of the canon on *jongleurs* of the Council of Lateran IV[33] could be explained by definitions that prevent any error in understanding, despite their differences.

Theatre history in general encounters a simple problem once it tries to reach back before the fourteenth century: the genre, and therefore legislation on it, does not exist, but the idea does. It is drowned in the large and vague category of what scholars nowadays call 'performance',[34] and the history of the legal object in the Middle Ages is also that of the codification (and not the precision) of terms that designate that performance.[35]

The Renaissance is not the moment when theatre reappears, but the end of a complicated process of development that lasted the full length of the Middle Ages. It is one of the movements of the 'long Middle Ages' advocated by Jacques Le Goff.[36] Today we do

representant. Hi ipso iure sunt infames.' ['Histrions. Are called histrions those who play with their body and who represent the acts of others through gestures and bodily movement and changing their face. These are infamous under the same law.'] Archives of the Vatican S Petr C 114, f° 101ra and Paris BN 15396, f° 87ra, quoted by Baldwin (n 28) vol I, 199, 202; vol II, 139 n 188 and 142 n 215. In the French translation of the *Decretum, histrionibus* reads as *jugleeurs.* It does not take into account Rufinus' classification, but the number of divergences between the Latin and the French texts may point to a problem of a different nature. For the Old French translation see Leena Löfstedt (ed), *Gratiani Decretum, La traduction en ancien Français du Décret de Gratien*, vol I (Societas Scientiarum Fennica, 1992) 182.

32 '*Donare histrionibus*. Quo nomine omnes ioculatores vel spectaculum sui populo praebentes intelliguntur. Nam proprie histriones dicti sunt qui motu corporis et transformatione vultus aliorum gestus repraesentabant. Historia namque gerere interpretatur, unde et res gestae historiae appellantur. Isti ipso iure infames fuerunt, ut infra C 4 Q 1 C 1.' Stephen of Tournai (n 21) 107. One should notice the absence of laughter in Stephen's definition, as it is exceptionally present in Labeo's texts (quoted in the gloss that precedes it) and as Rufinus mentions it. Now the reference to Labeo, though it does not explain the disappearance in Stephen's text, could explain its presence in Rufinus' text, which, in that case, does not give its source.

33 'Clerici officia vel commercia saecularia non exerceant, maxime inhonesta, mimis, ioculatoribus et histrionibus non intendant et tabernas prorsus evitent, nisi forte causa necessitatis in itinere constituti …' ['Clerics should not hold secular offices and commerces, that are most dishonest. They should not watch mimes, jongleurs and histrions; and they should altogether avoid taverns, except when needed because of the necessity of a journey …'] Giuseppe Alberigo (ed), *Les conciles œcuméniques*, 'Le magistère de l'Eglise' (Cerf, 1994) vol II-1 (the *Decreta*, from Nicea to Lateran V) 520–21 (and Mansi, vol XXII col 1003).

34 For a definition, see Zumthor (n 18) 245–68.

35 As for the very French adjective that qualifies it as 'classique', 18th-century theatre shows that it is only a return to an intellectual construction, which can be dated and localised, as many scholars have noted.

36 Jacques Le Goff, *Un long Moyen Age* (Taillandier, 2004).

not have words to designate all satellites of theatrical practice (like the diabolo-artist, the living statue, and the acrobat out on the street).

This is a clear example of a linguistic void, which also extends to include regular theatre. We can now refer only to 'théâtre' (plays at the Théâtre de l'Odéon, at the Comédie Française …), as the Middle Ages (Latin and vernacular) had several words to designate the first category (histrion, jongleur, mime), but none for the latter (our modern theatre). We have therefore attempted to study not only the jurisdiction applied to theatre, but also the linguistic and conceptual evolution behind that twofold movement, which is reflected in law.

The turning point becomes apparent in the late Middle Ages, between the fourteenth and sixteenth centuries, when more and more plays are being performed. The problem is no longer only the cleric as a *joueur* (in a theatrical play or in a card game) or the remuneration of an entertainer, but rather the staging of the play itself; a problem which is gradually transferred from the gloss to the canon. The code, in its slow evolution, demonstrates how the fundamental notion of *representatio*, already present in Stephen of Tournai, moves from the margins to the heart of the problem. Karl Young and Edmund Chambers[37] quote the Council of Seville, 1512,[38] but already in Toledo (1473) the term appears in regional Councils:

> Thus, in our cities, in our cathedral churches and others, the inept custom, at the occasion of feasts like Christmas, St Stephen's day, St John's day and Innocents' day, during the solemn masses, to introduce in the church masques and mumming, all sorts of indecent things; besides that to speak tumultuously, to scream, to sing lines, to hold derisory speeches that prevent the mass and turn the spirits of the people away from pious things, we prohibit.[39]

However, whilst the canon of Toledo is of some importance and lies at the origin of a larger movement,[40] the term *representatio* does not appear there for the first time. The well-known source of this local legislation (the twenty-first session of the oecomenic Council of Basle, 1435)[41] does not mention it, but a canon of the synodal statutes of Cahors, Rodez and Tulle of 1289 contains an earlier example:

37 Karl Young, *The Drama of the Medieval Church*, vol 2 (Oxford University Press, 1962) 420.

38 c XXII *Quod non fiant repræsentationes in ecclesiis*, Mansi, vol XXXII col 602.

39 c XIX, *Quod non fiant in eclesiis repræsentationes inhonestæ, dum divina aguntur*: 'Quia vero quædam tam in metropolitanis, quam in cathedralibus et aliis eccelsiis nostræ provinciæ consuetudo inolevit, ut videlicet in festis nativitatis domini Jesu Christi, et sactorum Stephani, Joannis et Innocentium, aliisque certis diebus festivis, etiam in solemnitatibus missarum novarum, dum divina aguntur, ludi theatrales, larvæ, monstra, spectacula, nec non quamplurima inhonesta et diversa figmenta(?) in ecclesiis introducuntur; tumultationes quoque et turpia carmina et derisorii sermones dicuntur, adeo quod divinum officium impediunt, et populum reddunt indevotum …' Cf Mansi, vol XXXII col 397 (383)—Labbe, XIII, col 1460a–b—quoted in Douhet (n 3) col 28; and Charlotte Stern, *The Medieval Theater in Castile* (Medieval and Renaissance Texts & Studies, 1996) 85.

40 A similar canon can be found in Seville in 1512, as stated above, but also in Milan in 1565 (Pars prima, c VIII; cf Mansi, vol XXXIV col 11).

41 c XI, *De spectaculis in ecclesia non faciendis*, cf Alberigo (n 33) vol II-1, 1010–11.

> We should know that the mass represents the passion of Our Lord, the priest in sacerdotal vestment signifies Christ. His vestments signify the most holy flesh, that God took on for us in becoming man. The deacon and the sub-deacon signify the apostles and the 72 disciples, to whom the office of preaching was given.[42]

The central Middle Ages are linked logically to the late Middle Ages, but the sample of documents we have seen gives the impression of another turning point near the end of the Gregorian reform, as well as that already located in the Renaissance. If the 'theatre' in its Aristotelian sense is massively present in the sixteenth century, with tragedies and comedies that become more and more 'classical', in fact the words of the law demonstrate a coming into being of the theatre, or at least of a theatrical performance under the name of *représentation*,[43] well before that, alongside an early attempt to differentiate it from other types of medieval performance. Medieval man, it seems, tried to re-theorise his own form of theatre, and it is crucial to take into account its specificity and its relationship to later developments.

With the appearance of canons on the *representatio*, information becomes more important, changing from description to prescription—as in the gloss on the *histrion* by Rufinus—including the suggestion that laughter is one of the tipping points between what is legal and what is illegal. Though the distinction between comic theatre and serious theatre is no longer valid for the classification of medieval drama, laughter remains a distinctive element. According to the logic of the transition from gloss to canon, the Council of Narbonne of 1551 reformulates this prohibition in an independent canon, and extends it to the sacred in general:

> It is prohibited, by the present edict, to practise, in places of worship, be it on holy feasts or any other time, spectacles (amusements of fools and children), nor plays, nor secular songs, nor handclapping; and to clerics or lay people, to do whatever it is that get people away from real piety, like coughing and laughing.[44]

The problem of laughter is confined to a certain place and time,[45] but other constraints weigh on the generic elements of theatrical art at the end of the Middle Ages, like the fictive nature of plays. The debate on loaning sacerdotal vestments for use in the theatre

42 'Sciendum est autem quod missa Passionem Domini repræsentat, sacerdos indutus vestimentis sacerdotalibus Christum significat. Vestimentis ejus significant carnem illam sanctissimam, quam pro nobis Deus induit factus homo. Diaconus et subdiaconus significant apostolos et 72. discipulos, quibus fuerat officium prædicationis injunctum …' Pars prima, c XVI, cf Mansi, vol XXIV col 1000.

43 One also finds *spectaculis* (cf the Basle text above), but mostly in vague contexts which do not enable us to identify them directly as theatrical practice.

44 c XLVI: 'Hoc edicto præscribitur, ne in templis, cum aliqui dies festi coluntur, vel alio tempore spectacula (quibus stultorum, puerorum animi solent delectari artes ludicræ, cantilenæ sæculares, strepitus, a clericis vel laicis, neque alia hujusmodi fiant: quibus a religione populus revocatur: et in cachinnationes immodicosque risus solvitur.' Mansi, vol XXXIII col 1270. This passage, as is indicated by what follows, takes its substance from the Basle Council (see above).

45 We recall Basle and the Feast of Fools (see above), but prohibitions during Easter are also numerous.

leads to an angry reaction from the canon of Saint-Hilaire in Poitiers on 21 March 1534; he considers that 'vestments of this church should not be used in any other way than to ecclesiastical goals'.[46]

Law is not mere regulation. It tries to modify the nature of medieval drama. It not only describes, but also forms a genre. It makes a genre in the sense that it describes theatre under the cover of morality, confining it to a place, a style and a social category;[47] bearing witness to evolutions, but equally provoking them.

Thus the evolution of the theatre, and that of 'oral literature', should be understood both internally—as a play of influences, (re)discoveries and imagination on the part of its authors—and also externally, through the different types of constraints that try to control them. Law is not at a loss, and if its impact on everyday practice is relative, limits are imposed on it.

In a way, law goes beyond law, in the sense that it proposes a-legal elements. These are of interest to the law, certainly, but not amongst its main concerns. Through this process, law is part of several movements. First, it participates in the long medieval struggle for classification, sometimes adding new elements because of its specific approach to the subject. Secondly, whilst not the principal motor, law can be one of the driving forces in the evolution, creation and definition of a genre. Thirdly, it helps us to understand the theatrical genre in its embryonic stage, giving us various clues as to how to look for it in remote eras when modern definitions do not work. Furthermore, it can be very interesting to look at modern theatre from the perspective of those primitive definitions of theatrical art.

What this brief analysis shows above all is that we should try to understand the documents in order to grasp their meaning; such an effort will enable us to revise the old dogmas of theatre history. This presentation of the first appearance of theatre as 'theatre' in these sources gives one version of the story without excluding others. In a way, this also applies to our second example: the rise of professional theatre, traditionally situated in the Italian Renaissance, when we also witness a sudden manifestation of the theatrical art as theatre in legal documents.

46 Graham A Runnalls, *Les mystères dans les provinces françaises* (Champion, 2003) 220. Could we see an equivalent problem in the archives of the Rouen officiality (Archives Départementales de Seine-Maritime, ser G, n° 338, 'Registre de compte des émoluments du vicariat de Pontoise de 1476 et 1477'), where a private person from Triel is condemned for having used a statue as an idol in a mystery of saint Victor? If the matter of theft is obvious, that of fiction could be subjacent.

47 As shown above, the incompatibility of clericature and theatre is already present in Gratian.

WHAT DO CONTRACTS TELL US ABOUT PROFESSIONAL THEATRE?

As stated above, much of our documentation on the history of theatre consists of legal documents. One of the most interesting examples of how and why this legal documentation affects our knowledge is the case of what has come to be known as the birth of professional theatre.

As everyone knows, professional theatre comes into being in sixteenth-century Italy, with the *commedia dell'arte*. The document on which this 'knowledge' is mainly based is a notarial act, a contract through which eight actors engage themselves to form a fraternity, for a period of one year. This act, passed in Padua in 1545, acts as the proof of the birth of professional theatre.[48] In it, eight actors found a fraternel company, for the period from the octave of Easter 1545 until the first day of Lent 1546. Ser Maphio is elected chief; the actors will play his comedies and obey him. In the remainder of the act, clauses are formulated that the companions will respect. There is a form of health insurance: if one of the actors falls ill, the common benefits will help him until he gets better (or until he gets home). In addition they will travel as regulated by Ser Maphio, they will share the profits in equal parts, and there is a penalty in case of breach of contract.

This document is quoted by all *commedia dell'arte* historians, and has been used to stress the important role of Italian theatrical practice in the birth of modern drama: as Benedetto Croce stated, modern theatre is an Italian creation.[49] In the *Dictionnaire encyclopédique du théâtre*, s.v. *Commedia dell'arte*, Cesare Molinari states: 'En ce qui concerne l'histoire de la profession de comédien … on a situé la date de naissance de la *commedia dell'arte* en 1545 lorsque à Padoue huit hommes signèrent un contrat pour former une troupe d'acteurs'.[50] Renzo Guardenti affirms, in the same dictionary, s.v. *Troupes de la commedia dell'arte*: 'le caractère professionnel de la *commedia dell'arte* marque la naissance des troupes théâtrales modernes, formées par un ensemble d'acteurs

48 Archivio Notarile di Padova, Atti'not. Vinceneo Fortuna Instr, 1. 20, e. 171. This contract was first published by Esther Cocco, 'Una compagnia comica della prima metà del secolo XVI' (1915) *Giornale Storico della Letteratura Italiana* 45, 57–58. Ever since, it has systematically been cited in the reference bibliography for the *commedia dell'arte*: Federico Taviani et Mirella Schino, *Il Segreto della Commedia dell'Arte. La memoria delle compagnie italiane del XVI, XVII e XVIII secolo* (Florence, 1982); Cesare Molinari, *La Commedia dell'arte* (Milan, 1985); Cesare Molinari, *L'Attore e la recitazione* (Roma-Bari, 1992); Siro Ferrone, *Attori mercanti corsari. La Commedia dell'Arte in Europa tra Cinque e Seicento* (Turin, 1993); Philiep Bossier, '*Ambasciatore della risa*'. *La Commedia dell'arte nel secondo Cinquecento (1545–1590)* (Florence, 2004).

49 '… il teatro moderno, in quanto teatro, è creazione italiana. Agli italiani, autori della commedia dell'arte, risalgono non solo la costituzione industriale e commerciale ricordata di sopra, ma la moltiplicazione dei teatri stabili, l'introduzione delle donne come attrici …' Benedetto Croce, 'Intorno alla Commedia dell'arte' in Benedetto Croce, *Poesia popolare e poesia d'arte. Studi sulla poesia italiana dal tre al cinquecento* (Bari, 1933) 504–5.

50 Michel Corvin (ed), *Dictionnaire encyclopédique du théâtre* (Bordas, 1991) 191. ['As for the history of the profession of the comedian … the birth of professional theatre has been dated to 1545, when eight men signed a contract in Padova in order to form a company of actors.']

qui s'associent dans le but de réaliser des spectacles. … La première troupe de comédiens de l'art dont nous avons le souvenir a été formée à Padoue en 1545, où huit acteurs, guidés par une certain "ser Maphio Zanini", souscrivent par devant notaire un contrat professionnel où l'on établit le règlement de la troupe, appelée Fraternal Compagnia.'[51] However, it is not difficult to identify the shortcut that has been taken in the interpretation of this document: the 'name' of the company in the act, *Fraternal Compagnia*, designates only the type of *societas* in which the actors are engaged; the 'professional nature' that would characterise this contract which is, by definition, legal.

If we look at things from a different perspective, in legal terms and not in terms of drama history, what do we see? First of all, this act is just like the others in the registers: it is part of an established legal practice. The contract is based on a template for all individuals that form a company in order to mutualise their profits in professional and lucrative activities. Except for guild regulations, no social law protects labour in the late Middle Ages. Commercial association contracts, which appear in Italy in the twelfth century, and in France from the thirteenth century onwards,[52] are used for all professional activities, especially those that are not covered by the guild system. It is no surprise that actors (no matter how often they perform) use the legal instruments at hand in order to organise their activities like all others engaged in commercial acts. Their contracts do not prove any professionalisation or any new theatrical practice (even though that may very well have developed at the time, but that is another matter).[53] What the 1545 act shows is the legal framework for a commercial act: nothing more, and nothing less.[54]

There is more to this question. Within the realm of contracts, we could look for other specimens, and find them. The Italian archives should be subjected to a rigorous search, as it is simply unthinkable that there should not be any actors' contracts before 1545 in Italy, with its very important notarial tradition. In France, Paris's National Archives contain contracts of exactly this type dating from the fifteenth century, even though the French legal situation is different, notarial practice being considered much weaker.

51 *Ibid*, 192 ['the professional nature of the *commedia dell'arte* marks the birth of modern theatrical companies formed by actors who associate in order to put on shows … The first company that we know of was formed at Padova in 1545, where eight actors, guided by a certain "ser Maphio Zanini" entered into a professional contract before a notary whereby they established the rules of the company they called a "Fraternal Compagnia".']

52 The first notaries in France are found around 1290 in Marseille, whilst in Genoa and Venice they were already present in the 12th century: Yves Renouard, *Les hommes d'affaires italiens du Moyen Age* (Armand Colin, 2nd edn 1968).

53 We will not address the case of the famous amateur-cum-professional Ruzzante, often claimed to be the first professional actor before professional companies came into being, who was the administrator of the lands of his protector at the time he is supposed to have been the first professional actor, or the problem of Michaut Taillevent, 'farce player' of the dukes of Burgundy, and thus more or less a professional.

54 On this question, see Marie Bouhaïk-Gironès, 'Comment faire l'histoire de l'acteur au Moyen Age?' *Médiévales*, dossier spécial *Le théâtre au Moyen Age. Pratiques textuelles, pratiques socials* (forthcoming).

However, actors appear in many contractual situations (association contracts, obligation contracts, contracts for mystery plays), and there are examples from different regions in archives of gracious jurisdiction. Generally speaking, they present two types of organisation of labour. Some of them refer to the organisation of projects in which a large number of individuals is implicated, as is the case for huge stagings of mystery plays, where actors and organisers bind themselves before the municipal authorities for a particular event.[55] Others document groupings organised for a specific duration, in general one year, and these associate fewer individuals; perhaps four or five. The associations thus contracted serve, like all commercial associations, to mutualise risks and profits. We have discovered several notarial contracts establishing *societas* of actors in Paris from the late fifteenth century onwards. Until now, the first known contracts of this type for the French capital dated from the late sixteenth century.[56] The two new, early examples were discovered in the 'Minutier central des notaires de Paris': a Parisian notarial contract, passed on 2 March 1486, and another passed on 31 October 1500 before the associated notaries Pierre Pichon the elder and Pierre Pichon the younger, rue Saint-Antoine, establishing a societas of farce players.[57] It should be stressed that the first new document dates from 2 March 1486 (n. st.), which is very early for any records, as the first continuous series of Parisian notarial minutes date from after 1480.

The contract of 1486 binds four contracting parties to *jouer ensemble toutes farces et autres esbatemens avecques bancquetz, dances et autres festes et lieux*. Profits will be shared equally and no party can perform in another company without the others' consent: this exclusivity clause is very clear. Complementary clauses specify that if someone fails to perform, he will pay the totality of the missed profit. The sanction for penal damage is a fine of two écus (one for the king, the other for the contracting parties), and prison.

Also for the duration of one year, the 1500 contract associates five contracting parties, *pour jouer farces, moresques et autres jeux, esbatemens a festes, bancquetz et autres convys et assemblemens*. As in the 1486 contract, no actor can perform in another company without the full consent of the others. The clauses that follow stipulate that they all have to perform whenever one of them gets a deal, that they have 24 hours to share the profits, and that in case of illness, the party will have his share of the profits—but if he is replaced by another actor, he will have to pay him from his share. Sanctions for penal damage are a fine of 28 sols parisis (half for the king, half for the other parties). As in the 1486 contract, the failing party risks prison, as the formula 'obligeant corps et biens' implies. In passing their convention before the royal notaries at the Châtelet, the parties agree to

55 On the contracts from Tournai and Valenciennes, see Marie Bouhaïk-Gironès and Katell Lavéant, 'S'associer pour jouer. Actes notariés et pratiques théâtrales (XV^{e}–XVI^{e} s)' (forthcoming).

56 See Alan Howe, *Le théâtre professionnel à Paris (1600–1649)* Paris, Archives Nationales (Documents of the Minutier central des notaires de Paris, 2000).

57 Paris, Archives Nationales, Minutier central, étude XIX. Documents edited in Bouhaïk-Gironès and Lavéant (n 55).

submit themselves to the jurisdiction of the 'prévôt royal' as the first competent jurisdiction to control its execution. The seal of the Châtelet, valid in the whole of the kingdom of France, could be especially important in case of travel.

The profession of the associates is not indicated in the 1486 contract. In the second contract, the notary started to note the profession of the first two actors, and then ruled it out. Did he think that the information was not necessary for this type of contract? Or did he do so at the request of the parties—in which case it would be meaningful for the construction of their social identity? In any case, this contract shows that even if no profession is mentioned in such a contract, it does not mean that the actor carried out no other professional activity or had not previously practised another profession, by which his contemporaries would have identified him. In the left margin, outside the template of the contract, the notary wrote: *item musiciens et retoriciens*. This is a clear example of professional de-multiplication, and it reinforces our view of some important aspects of so-called 'professional actors'. Specialists as well as polyvalent, they had a principal profession and were, at the same time, recognised as competent actors. It could, however, also be that the associates stopped practising their first profession, as they had acquired a reputation as actors living off their art. However, a situation of multiple practice is here most probable.[58]

These Parisian contracts are in many respects prefigurations of the 1545 contract from Padua. The latter is more detailed and elaborate in its rhetoric, and differs from the French documents in terms of its legal template and the type of *societas* in which the actors associate themselves. The goal is identical: to share profits and avoid losses.

These documents should be analysed, in the first instance, in a context of legal practice, and not as documents on theatrical practice. This is precisely the interest in carrying out research into the organisation of theatrical performance, and into the study of 'law and drama'. The notary formulates the legal wishes of the contracting parties. This formulation is carried out according to a certain *modus*. The contracts that have been rapidly analysed here do not constitute proof of the existence of professional actors in France in the fifteenth century; they merely bear witness to the fact that actors followed current legal practice. Notarial practice, which influenced the evolution of the legal system, also had an influence on the legal status of actors—and not the other way round. Theatrical activities are based on the models of legal practice, through legal casuistics, through conflicts of jurisdiction, through the evolution of gracious and contentious law. It is important to know and understand them in order to use them, with their variations and internal reasoning, to analyse what theatrical practice was and what it meant in the period.

58 This situation resembles the Dijon case in 1447. The minutes of the interrogations they had to suffer during their trial after the farce show that the craftsmen who staged the farce were theatre specialists and not simply occasional actors who knew nothing of the technè. Bouhaïk-Gironès (n 5).

It is possible, then, to move the rupture point in theatre history forward from mid sixteenth-century Italy to late fifteenth-century France: companies of actors are clearly not an invention of the Italian Renaissance. That, however, is not the most interesting result. Rather than completely erasing one of the biggest misunderstandings in drama history, it is far more interesting and important to question the rupture point separating medieval theatre from modern theatre. It is important to reflect upon the relevance of categories like 'amateur' and 'professional', but the discovery of contracts of this type in the late fifteenth century invite a re-examination of the status of these documents as proof for the paradigm of the professionalisation of actors. What we have here is the 'source effect'; an elementary trap for historians. When a legal document appears, it is easy to imagine that it documents a new practice. Relating the document to the state of documentation and considering the evolution of legal practice can in this case be very helpful. This is a lesson that can also be applied to our third example: the ways in which local and imperial regulations interact in the Low Countries during the Reformation.

JURISDICTIONS FACING THEATRE: WHO IS RESPONSIBLE?

Our third example is that of local and imperial jurisdictions and drama during the Reformation, especially in the French-speaking Low Countries during the late Middle Ages and the sixteenth century. First of all, a brief background sketch of the context of this theatrical practice is apposite. Our discussion concerns cities situated nowadays in Northern France, such as Lille and Arras, and cities situated in the south of what has become Belgium, especially Tournai and Mons. The geopolitical domain to which they belonged during that period determines the legal framework within which their dramatic culture can be studied, at the moment when theatre is becoming a medium for the Reformation to spread ideas and ideologies. From the 1520s onwards, Charles V and Philip II establish legislation in order to censure proselytism.[59] It should be stressed, in order fully to understand what will follow, that this legislation is above all concerned with repressing both the diffusion of texts and meetings favouring discussions about Reformation ideas. However, drama only enters the stage at a fairly late date, through a specific imperial bill that clearly prohibits the staging of plays concerning religion, either in public or in private. Let us concentrate on a specific point here: that of contentious jurisdiction and the theatre, and more precisely the case of problematic performances, since this point once again raises important questions for the position of the theatre historian faced with legal practice.

59 For a concise study of this legislation on theatrical activities, see Katell Laveant, 'Contrôle et censure de la parole et des textes: la législation impériale sur le théâtre dans le sud des Pays-Bas, 1520–1560' in Marie Bouhaïk-Gironès, Jelle Koopmans and Katell Lavéant (eds), *La Permission et la Sanction: théories légales et pratiques du droit (1400–1600)* (forthcoming).

When considering legal responsibility in the case of problematic performances, one naturally thinks of the legal responsibility of the actors and organisers of the performance, but also of the attitude of authorities towards the organisation and progress of these stagings. The first question—that of the responsibility of actors and of the status of the spoken word—has been addressed by Marie Bouhaïk in a series of papers and articles.[60] Here, the second element of the question of responsibility will be addressed, with a particular focus on the structures of surveillance and the repression of problematic theatrical events. Who, within the legal framework imposed by imperial authorities, is in charge of controlling performances in the cities of this region?

There are two major difficulties corresponding to what happens before, and what happens after the performance. On a local level, from the fifteenth century onwards, city authorities controlled performances and required the organisers to submit the texts of the play(s) they wished to stage in advance of the actual performance. For a long time, the attention of critics has been focused on 'exceptional' cases of authorisation, concerning above all companies from abroad coming to a city in order to perform.[61] Looking more closely at the documentation, it becomes clear that such authorisation is standard procedure for municipal events where the play needs important funding (whether or not provided by the city), and has a religious subject, and is unaffected by whether the actors are city inhabitants or come from elsewhere.[62] Ecclesiastical and civil authorities co-operate in controlling texts and performances: ecclesiastical authorities control the texts, especially their religious content, whilst municipal authorities can grant permission to perform in public spaces to all those who request it. It appears that this control intensifies from the early sixteenth century onwards, as no longer it is only religious plays (mystery plays and morality plays) that are the object of control by a censor, but also plays that could be described as worldly or comic, especially when they are put forward by travelling actors from other regions.

When the problem arises of plays containing Reformation ideas, the structures are already in place to control and direct performances on a local level, even in the absence of imperial legislation. As mentioned earlier, the latter appears only in 1560 and it mainly stipulates how and why the subject matter of a play and its performance can be prohibited,

60 See in particular Bouhaïk-Gironès (n 54).

61 Alan Hindley mentions some of these cases for the city of Amiens, in order to illustrate the formation of troupes of 'professional' travelling actors during the 16th century: Alan E Hindley, 'Acting Companies in Late Medieval France: Triboulet and his Troupe' in AE Hindley (ed), *Drama and Community: People and Plays in Medieval Europe* (Brepols, 1999) 78–98.

62 For the 15th century, there are mentions in the deliberations of aldermen concerning the control of staging mystery plays, whereas stagings for joyous festivities—such as the annual feasts of the joyful companies of the region—seemed to attract far less attention from the controlling authorities. An explanation could be the 'less written' nature of the plays (some leave much space for improvisation), but could that account for an absence of control? In fact, the joyous repertory has not come down to us, as it was not subject to any checking before the performance, or registered in the archives of the groups afterwards.

however imperial authority practically hands things over to local authorities.[63] Two questions follow: what happens if a performance is given without the permission of the local authorities? And what happens if, out of ignorance or indulgence, local authorities allow a play to be performed that is in favour of the Reformation?[64]

Katell Lavéant has studied the case of a problematic performance in Mouvaux in 1563.[65] The documents that have come down to us (the preliminary inquiry for the actors' trial and for that of the 'lieutenant' of the bailiff who has permitted the play to be staged, and the registers that indicate the penalties in case of condemnation) make it possible to reconstruct the affair. It is clear that the performance has been prepared secretly and without warning the local authorities, or—another possibility—with the complicity of a person who should uphold the public order. That is probably the case here, as the actors come from important families, including those of the 'lieutenant' and the bailiff. The authorities cannot stop the performance; they can only start legal proceedings after the performance, in order to punish the persons thought to be responsible for this problematic performance—in this case both the actors who have also organised the play, and the 'lieutenant' who did not want to, or could not, prevent it.

Prior to the performance, a well-tried system, which had been working well before the first manifestations of the Reformation, enabled local authorities (both municipal and ecclesiastical) to frame and if necessary prevent performances. Through it, new imperial rules could be applied, continuing to employ the same systems of control. However, what happens if this system is flouted and a play is performed without authorisation, as in the case of Mouvaux? Who is it that, after the performance takes place, is responsible for the indictment of those who have infringed the rules, in the specific context of the repression of the Reformation by imperial authorities?

This is the second difficulty formulated earlier: who is empowered to commence an inquiry and who is responsible for the legal proceedings when a pro-Reformation play has been staged? In our region, three entities are involved. In the case of a local inquiry, municipal authorities will normally collaborate with ecclesiastical authorities, and more specifically with the 'officialty'. In the 1563 trial, a clerk of the officialty of Tournai was in charge of preparatory information and the interrogation of witnesses, and the penalties are inscribed in the ban register of the city of Lille. We do not have the minutes of the trial

63 Imperial decree of Philip II dated 26 January 1560, Brussels.

64 It is known that in several cities in the region of Tournai, some members of the Magistracy were more or less openly sympathetic to the Reformation, and this may explain why polemical plays could continue to be performed after the prohibition of 1560. For an example of a city where parts of the population were won over by Reformation ideas towards the middle of the 16th century, see Gérard Moreau, *Histoire du protestantisme à Tournai jusqu'à la veille de la Révolution des Pays-Bas* (Les Belles Lettres, 1962); Gérard Moreau (ed), *Le journal d'un bourgeois de Tournai. Le second livre des chroniques de Pasquier de le Barre (1500–1565)* (Palais des Académies, 1975).

65 Lavéant (n 5).

itself, but it is probable that the accused would have been tried by a civil court (as was the case with inquiries during the Inquisition, as we will see). A copy of the inquiry documents was sent for information to the Governance of the Low Countries, representing Philip II in Brussels: this is how we still have a copy of the witness statements.

However, other institutions appear in the documents, because the Inquisition could take responsibility for inquiries into cases of scandalous plays. In our context, the Emperor appointed the general inquisitors, and they controlled the adjunct inquisitors who operated at the local level. Thus, even though the Inquisition fell under the power of the Pope, it reported to the Emperor. Inquisitors frequently opened inquiries into scandalous performances, especially in Flanders. The procedure in cases of suspected heresy was the following: the inquisitor interrogated the suspects, and then handed them over to civil justice if they were found guilty. Municipal authorities did not appreciate this invasion into their domain of jurisdiction. They were no longer responsible for the inquiry and the verdict of justice, only for the penalty. Municipal authorities had a tendency to contest the jurisdiction of the Inquisition in certain cases, in order to entrust the inquiry to ecclesiastical authorities like the officialty. These authorities also resented another ecclesiastical authority taking over part of their responsibilities.[66] Finally, it should be added that the Governance itself sent envoys to the towns concerned. These royal commissaries were empowered to prosecute those suspected of protestant heresy. This was a complex situation rather than a well-defined system. We should accept that jurisdictions overlap and even enter into conflict, as each authority wishes to retain control over the procedure in order to preserve its authority.

A certain paradox appears when one studies the contexts of jurisdiction in order to establish the complex links between theatre and justice in the French-speaking Low Countries during the Reformation. First of all, drama was not a separate case amongst problems related to the Reformation. In order fully to understand the status of performances, their effect on the public and their importance in public debate, one should recognise that the control of texts and performances, and even the prosecution of actors or organisers of performances, did not differ fundamentally from the procedure employed for other public expressions in favour of the Reformation—such as singing Psalms translated by Clement Marot in public, or spreading written or printed texts. Of course, in 1560 there was a desire to produce a specific edict to compensate for the fuzziness of all previous ordinances that had not taken into account the specificity of theatrical

66 Aline Goosens, *Les inquisitions modernes dans les Pays-Bas méridionaux (1520-1633)*, vol 1: *La législation* (Editions de l'Université de Bruxelles, 1997) 175. On the case of an Inquisition tribunal in Flanders that illustrates this functioning of justice, see Johan van de Wiele, 'De inquisitierechtbank van Pieter Titelmans in de zestiende eeuw in Vlaanderen' (1982) 97 *Bijdragen en mededelingen betreffende de Geschiedenis der Nederland* 19–63; Johan van de Wiele, 'Het optreden van inquisiteur Pieter Titelmans en zijn inquisitierechtbank in het Westkwartier en Waals-Vlaanderen tussen 1545 en 1566' (1987) 12 *De Franse Nederlanden* 67–80.

performances. However, the legal procedures remained the same as in other cases of heresy. In that sense, when studying the history of theatre in this period, it is necessary to start with legal practice in order to understand how this object (theatre) belongs to the larger problem of the spoken word in public in late medieval society, to avoid over-interpreting the situation by giving drama a deceptive uniqueness in this context.

However, during the legal proceedings it also becomes necessary to return to the specific nature of performance. The difficulty we have in grasping what has been said on stage in relation to what is contained in a written text before or after the performance, and the ambiguity of the words spoken on stage under the mask of allegory, are central points that pose specific problems for the legislator and the judge who wish to determine who is guilty, and of what (and actors are perfectly aware of this fact, when one looks at their interrogations). These two findings, the normal (and not exceptional) inscription of dramatic performance in a larger list of social practices framed by the legal system, and at the same time its unique performative status, lie at the basis of the study of early modern theatre.

BY WAY OF PROVISIONAL CONCLUSION

One of our most astonishing findings is that the problem of Law and Drama is a non-problem. The latter notion is too complex and too anachronistic to be functional within this context, and its problematic inscription in legal documents cannot be isolated from a broader context of the control of amusements, shows, performances and the spoken word in public spaces. Ecclesiastical rulings did not consider drama as such, notarial acts of association were merely acts of association—even when dramatic activities appeared in them—and Imperial decrees and the Inquisition in the Low Countries were mainly concerned with the spread of Reformation ideas—through drama or otherwise. For drama historians, that is an important lesson in modesty.

And yet, if one combines the appearance and confirmation of the theatre in canons of Church councils, the *scripturisation* of the commercial enterprise of travelling companies, and the general institutional context of legal practice during the Reformation, it becomes clear that they may, together, tell a story, and even contribute to history. The most astonishing finding, without any doubt, of this sample of intersections of the legal and the theatrical is that they clearly show a history of the theatre that is not in any way inscribed in the History of Theatre itself. In that sense, and though we have been fairly prudent in using the idea of an epistemological rupture, it can be affirmed at least that 'something happens here'. It would now be a natural step to try to determine more specifically what that 'something' might be …