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BRILL



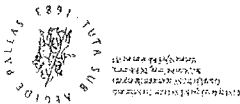
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Literary and Learned Societies in
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**The Reach of the
Republic of Letters**

BRILL





CHAPTER FIVE
THE BASOCHÉ IN THE LATE MIDDLE AGES: A SCHOOL
OF TECHNICAL SAVOIR-FAIRE

Marie Bouhark-Gironès

The Basoché of Paris was the professional community of law clerks attached to the Parlement of Paris, created in the fourteenth century. The law clerks had their own specific communal, professional and cultural practices, among which literature and theatre took on a major role. The Basoché influenced the development of theatre in the late Middle Ages very profoundly through its didactic and festive practices.¹

Sources

We dispose of frustratingly few sources for the history of the medieval Basoché. We do not have registers, accounts, or statutes before the end of the sixteenth century. The archives of the trade guilds, the confraternities, and other medieval communities in Paris are likewise sparse. Relatively few documents having belonged to these groups have survived. Hence, we do not find suitable archives for the Basoché before 1586. The registers and the internal sources of the Basoché undoubtedly burned in the fire that devastated the Palace of Justice at the beginning of the seventeenth century. We are however well informed about the Basoché by the traces left by its public activities and in particular its stage performances and its literature.

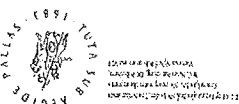
The clerks of the Palace of Justice undoubtedly represented an important community in the city in the fifteenth century, and one would expect that an institution encompassing a significant number

¹ The major part of the data for this article is drawn from my doctoral thesis: Marie Bouhark-Gironès, "La Basoché et le théâtre comique: identité sociale, pratiques et culture des clercs de justice (Paris, 1420-1550)" (Ph.D. diss., Université de Paris 7, 2004); *Les clercs de la Basoché et le théâtre comique (Paris, 1420-1550)* (Paris: Honoré Champion, 2007).

of members would have left tangible material traces of its existence as evidence of its place in the town, but the Basoche appears rarely and then only late in the sources. The traces are thin and not easy to locate. Exercising subordinate functions in the law courts, the clerks remain invisible most of the time. We catch glimpses of them when they had run-ins with the law or when they pursued a career in law subsequently, but we know almost nothing about their work, their careers, their families. The legal sources provide the bulk of the documents because the Basoche appear only when they broke the law or disturbed public order. We must likewise work with very partial data in the absence of sources on the institutions of the Basoche.

There are no documents at our disposal to write the history of the Basoche in the fourteenth century. The sole documents dating from the fifteenth century are the rulings (*arrêts*) pronounced by the Parlement, condemning a performance and its actors or censuring a text. It is only in later documents and the printed sources of the sixteenth and the seventeenth centuries that elements permitting us to define the Basoche emerge, and these come from the institution of the Basoche itself. In the first place, the principal printed sources are the works of Pierre de Miraulmont and René Gastier, which in turn serve as the principal sources for all subsequent writing on the Basoche. Pierre de Miraulmont wrote the history of the courts of justice and of the origins of the Parlement. The final chapter of his book is devoted to the Basoche.² René Gastier, a prosecutor at the Parlement, wrote a history of clerkship in 1631.³ After a short essay on the history of the clerks of justice and the institution of the Basoche, he reproduces the Statutes of the Basoche of 1586 and mentions some of the rulings of the Parlement from the sixteenth and seventeenth centuries without reproducing them. Secondly, the most complete printed source on the community of the Basoche is a collection of documents compiled in 1644.⁴ The anonymous author of this compilation was a clerk of the Basoche and fulfilled the function of lawyer attached to the court of

² *Les mémoires de Pierre de Miraulmont, escuyer, conseiller du roy, lieutenant général en la présostie de l'hostel, et grande présostie de France: sur l'origine et institution des cours souveraines et justices royales estans dans l'enclos du Palais royal de Paris*, 2nd ed. (Paris: Claude de la Tour, 1612).
³ René Gastier, *L'excellence du mot de clerc. Noblesse et antiquité des clercs. Leur première institution, leurs faits heroïques, les privilèges à eux concédez par les rois* [...] (Paris: N. Bessin, 1631).
⁴ *Recueil des statuts, ordonnances, réglemens, antiquitez, prerogatives et prééminences du royaume de la Basoche* [...] (Paris: C. Bonjon, 1644).



the Basoche (*cour basochiale*). It contains information and copies of the acts of the Parlement concerning the Basoche after 1550. Dedicated to the chancellor of the Kingdom of the Basoche (*Royaume de la Basoche*), it appears to have been an 'internal' document intended for the clerks. In the dedication, the author states his intention: to make "a real collection of the history of the Basoche, its statutes and prerogatives [...] to inform all the Clerks of the Palace what it is necessary for them to know."⁵ The collection contains the *Statuts et ordonnances de la Basoche de 1586*, the *Mémoires de l'institution de la Basoche*, an undated anonymous text (but after 1631, because the author gives as his sources Miramont and Gastier), three rulings of the Parlement from the first half of sixteenth century and a dozen rulings from the seventeenth century, extracted from the registers of the Basoche and the registers of the Parlement. The author claims to have joined together what remains of the documents of the Basoche.

Sources for writing the history of the Basoche become richer in the seventeenth and eighteenth centuries because the rulings of the Parlement were numerous during this period.⁶ The medieval Basoche did not withstand the political and ideological changes of the sixteenth century, however, and the community of the Basoche no longer played a direct role in theatrical productions by the end of the sixteenth century. Furthermore, the literature which it produced in the seventeenth and eighteenth centuries was restricted to comic poems. The decree of 13 February 1791 which disbanded all corporations put an end to the Basoche as a guild. Nevertheless in the nineteenth century associations of lawyers were created that again took up the name 'the Basoche' and that fulfilled an important function as a place for legal training.

The history of the term 'Basoche'

It has long been accepted that the Latin *basilica* (court of justice) is the etymological origin of the word 'Basoche' or 'Bazoche'.⁷ The term

⁵ "un véritable recueil de l'histoire de la Bazoche, de ses statuts et prerogatives [...] pour faire entendre à tous les Clercs du Palais ce qui leur est nécessaire de sçavoir," *Recueil des statuts*, 5.
⁶ See Charles Desmazé, *Le Châtelet de Paris: son organisation, ses privilèges* (Paris: Didier, 1863), 379–411.
⁷ Alain Rey, *Dictionnaire historique de la langue française* (Paris: Dictionnaires Le Robert, 1992), 189.

'bazoche' is not found in legal documents until the middle of the fifteenth century, however. The first occurrence of the word 'Bazoche' in its Latin form *bazochios* (*basochiens*, people of the Bazoche) that I have been able to identify dates to August 1442. Then in August 1443 the Kingdom of the Bazoche (*Royaume de la Bazoche*) is mentioned by the Parlement.⁸ The term 'Bazoche' occurs in a speech by Louis XII reported by Brantôme.⁹ It appears in a literary text in the middle of the fifteenth century, then very frequently at the beginning of sixteenth century and more and more frequently thereafter. The terminology, furthermore, differs according to the nature and the status of the documents.

The law clerks themselves, however, claimed a Capetian origin for the Bazoche and maintained that their association had been created by Philippe le Bel in 1303. The history of the community of the Bazoche was necessarily dependent on the reorganization of the Parlement and concerning lawyers goes back to 1274, but the institution of the community of the Bazoche more probably occurred as such in the fourteenth century, at the moment when the increasingly significant number of clerks made the creation of a specific community necessary.

Historians of the Bazoche always reported that it was created by Philippe le Bel, after the establishment of the Parlement: "This *bazochien* justice was created a very long time ago, and was established at the same time that the Parlement was fixed in Paris," wrote Pierre de Mirailmon.¹⁰ The date 1303 is taken from the *Mémoires de l'institution de la Bazoche*.¹¹ I did not, however, find any document from this time relating to the creation of the Bazoche. It is possible that the Bazoche did indeed have a Capetian origin and that all the documents relating to its creation are indeed lost, but the reference to Philippe le Bel looks very much like a foundation myth on which to establish the legitimacy of the Bazoche, a myth which it might well have needed in the face of

⁸ Paris, Arch. Nat., X1a 1482, fol. 252v.

⁹ "Paroles de Louis XII sur la liberté des spectacles" (undated), François-André Isambert, *Recueil général des anciennes lois françaises depuis l'an 420 jusqu'à la Révolution de*

1789 (Paris: Belin-Leprieux, 1822-1833), vol. 11, 683-684, no. 127.
¹⁰ "Cette justice bazochienne est d'institution fort ancienne, et établie du temps mesmes que le Parlement fut arresté, et fait sédentaire à Paris [...]. Les mémoires de Pierre de Mirailmon, 654.

¹¹ *Mémoires de l'institution de la Bazoche, juridiction royale et souveraine des privilèges concédés par les roys, des officiers d'icelle, et des arrests et reglemens intervenus sur le subject de ladite juridiction*, in *Recueil des statuts*, 20.

any foundation myth, the Capetian reference can serve to clarify and unify a more complex prior history.

Other Basoches coexisted with the *Basochie du Palais*. On the one hand,

there are two other Parisian Basoches, that of Châtelet and that of the Chamber of accounts. On the other hand, during the fifteenth and sixteenth centuries, one notices that a multitude of provincial Basoches

were founded in the other Parliamentary cities and in the majority of the large towns of France. The Basochie of the Parlement of Paris

served as a model for the other Basoches. For some, it was a model they copied exactly. It is necessary though to distinguish the Basoches of

the Parliamentary cities (Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix-en-Provence) from the Basoches that were established based on their

example in all the large cities of the realm. We encounter Basoches indeed in cities where there is no Parlement, in particular in university

towns. By 1500, the cities of Montpellier, Toulouse, Angers, Cahors, Orléans, Aix-en-Provence, Poitiers, Valence, Caen, Nantes, Bourges, and

Bordeaux all have both their university and their Basochie. We have numerous indications of their participation in local theatrical life.¹²

We need to clarify here that in fact the term 'basochie' refers to several institutions: the community of the clerks of justice of the Parlement of Paris; its jurisdiction, which judged the members of this community; as

well as any community or association of judicial clerks, which, in Paris as in the provinces, was created on the model of the Parisian Basochie

of the Palace of Justice. At the end of the Middle Ages, the 'Basochie du Palais' was a foundational reference point for all other associations

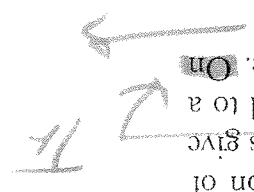
of law clerks. It would remain so thereafter. And in the course of time 'basochie' became a generic name.

Training and culture of the basochiens

We encounter a problem with sources again when it is a question of identifying the *basochiens* themselves. Only some Parliamentary acts give

us the names of the clerks, who are mentioned as clerks attached to a lawyer or to a prosecutor; for some, we have only the first name. On

¹² See the chapter "Les Basoches de province," in Bouhaik-Gironès, *Les clercs de la Basochie*.





However?

the other hand, we frequently find the name of their employers. The clerks are never situated in a domestic context. We also do not know their age, and we know nothing of their possessions. Therefore, it is difficult to answer important questions, like, for example, the extent to which the clerks of the law courts constituted a socially homogeneous group.

We can, however, be fairly certain that the *basochiens* were former students, but we do not know at what level of study they were recruited. They had certainly studied for at least a brief period of time and attained the lower ranks of the university. The majority doubtless spent some years at the university but left it with a Master of Arts degree at best or without any diploma at all. Thousands of students were in this situation; either they failed the exams, or they were forced to stop their studies in order to go to work as quickly as possible. The increasing cost of the studies leading to higher university degrees forced many pupils into subordinate careers. They became priests in rural parishes or vicars, lawyers in small towns, scribes, or law clerks in a big city.¹³ Since civil law could no longer be taught at the University of Paris after the bull of Honorius III (1219), many students chose to further their law studies by going to the University of Orléans, where education in civil law was authorized by Gregory IX in 1235. Those who did not make the journey to Orléans had to content themselves with a *licentiate* in law. We note all the same that some *basochiens* are called *masters* in the registers, a testimony to the fact that they had obtained the Master of Arts degree.¹⁴

To be able to complete research on the academic education of the *basochiens*, one would have to find them in the rolls of the university-archives, one might hope to find them in the archives of the University of Orléans, but archival sources are scarce for the second half of the fifteenth century. There is no roll or register of students for this period (except for the German nation from 1444).¹⁵ This is, moreover, true of almost all the medieval university archives, with the exception of the University of Avignon.

¹³ See Jacques Verger, *Les gens de savoir en Europe à la fin du Moyen Age* (Paris: Presses universitaires de France, 1997), 166-167.
¹⁴ For an example, see the ruling of the Parlement dated 14 July 1528 in which a clerk of the Basoche is named *maître Roland*. Paris, Arch. Nat., X^{1a} 8345, fols. 255v-257.
¹⁵ See Cornelia M. Riddetkirkhoff and Hilde de Ridder-Symoens, eds., *Les Livres des procureurs de la Nation germanique de l'ancienne Université d'Orléans, 1444-1602* (Leiden: Brill, 1980).

We cannot imagine that young law clerks possessed their own library,

but they may have had access to that of their employers. What books did the Parisian law practitioners possess? The contents of the libraries of the Parisian jurists have already been studied.¹⁶ Not surprisingly,

books on law and jurisprudence are the most important. The *Corpus juris civilis* and the *Corpus juris canonici* are the basic works, then come the *Institutes*, the *Digesta Justinian*, the *Codex legum* and the *Novellae*, the *Decretum Gratiani*, Gregory IX's *Nova Compilatio Decretalium*, etc. We then find commentaries on these texts and the works of classical authors (Aristotle, Cicero, Suetonius, Valerius Maximus). *Les grandes coutumes du royaume de France*, the *Grand coutumier* of Jacques d'Abbeiges and particular *coutumes* are also found in certain libraries. Finally, collections of rulings offer elements of jurisprudence. We can cite among others the

Style de Parlement, the *Protocolle de Chancellerie*, the *Questions* of the lawyer Jean Lecoq (who died in 1404), etc. The *Stilus Curie Parliamenti*, written by the lawyer Guillaume Du Breuil in the fourteenth century, is a summary of practical rhetoric, a sort of manual for lawyers.¹⁷ This work summarizes the judicial practice of the Parlement and contains notably a chapter on oratorical rules, as well as a chapter fixing the manner and procedure for pleading (*plaidoyer*) a case. This book was very influential until the middle of the sixteenth century, and we can easily imagine that it was one of the books on the bedside table of every legal practitioner of the Palace of Justice.

The *basochiens* had a jurist's limited culture, but a rather vast experience of everything having to do with judicial procedures. In sum, a *basochien*, educated in the scholastic method and trained in the dispute

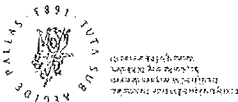
quodlibetique,¹⁸ had to possess a basic knowledge of Latin, know some Aristotle, the Code and the Digest of Justinian, and Gratian's *Decretum*. Appropriating Jacques Verger's terms, we can thus conclude that the *basochiens* were among those whom he names the "intermediate intellectuals."¹⁹

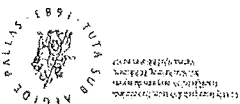
¹⁶ Roger Doucet, *Les bibliothèques parisiennes au XVII^e siècle* (Paris: A. et J. Picard, 1936), 26–72. See also Albert Labarre, *Le livre dans la vie amnésienne du XVI^e siècle: l'enseignement des inventaires après décès (1503–1576)* (Paris/Louvain: B. Nauwelaerts, 1971), 243–249.

¹⁷ Guillaume Du Breuil, *Stilus Curie Parliamenti*, ed. Félix Aubert (Paris: A. Picard et fils, 1909).

¹⁸ See Jacques Le Goff, *Les intellectuels au Moyen Âge* (Paris: Seuil, 1957), 103–104.

¹⁹ Jacques Verger, *Les gens de savoir en Europe à la fin du Moyen Âge* (Paris: Presses universitaires de France, 1997), 165.





A minority of the *basochiens* eventually pursued a legal career; the majority remained minor clerks at the court of justice; and some were maybe reduced to marginal status. ~~It is necessary to note that the documents that we possess derive from the minority of the *basochiens* who pursued a legal career.~~ This category, the least representative in number, is thus the one for which we have the most information.

~~Sketching the typical profile of the Parisian clerk of the Basoche is a risky but necessary exercise.~~ We can assume that he was a young man who had studied briefly at a university; perhaps he had begun law studies at a university such as Orléans. On returning to Paris, he was employed as a law clerk by a lawyer or a prosecutor of the Palace of Justice. He worked and lived at ~~his employer's dwelling~~ and frequented the halls of the Palace of Justice, where he encountered his old university companions. He became affiliated with the community of the Basoche which protected his interests. After several years' service to his employer, the clerk who had the means, both financial and relational, would himself become a lawyer or a prosecutor and would leave the community of the Basoche to join that of the employers.

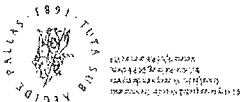
The organization of the community

The Basoche included clerks working for lawyers and prosecutors, and the clerks of Parliamentary advisers. Any clerk who worked in the Palace of Justice formed part of the community. While the organization of the community was already clearly visible in a ruling of the Parlement from 1528,²⁰ the Statutes of 1586 are the main document allowing us to analyze precisely the functioning of the community of the Basoche.²¹ The fact that these are reformed statutes ~~presupposes~~ that there were previous statutes that have not come down to us. The first lines of the Statutes of 1586 announce the main functions of the community: to maintain the unity of the body of the Basoche and administer justice to its members (*supplés*).

The late date of the source imposes the most serious limitation on it in so far as its use for a medieval study is concerned, especially since

²⁰ Paris, Arch. Nat., X1a 8345, fols. 235v-257.

²¹ Statuts et ordonnances du royaume de la Basoche faites, reformées, et accordées par la cour à ses supplés en 1586 [...], in *Recueil des statuts*, 8-20.

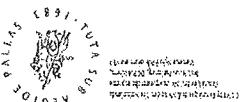


the Basoche was certainly not organized in the fifteenth century in the same way that it was at the end of the sixteenth century. However, an examination of the ruling of 1528 shows that a similar structuring principle existed sixty years previously and provides the basis for some speculations. Finally, the limits of this source are those of any normative text. The text provides a model of organization and behaviour but does not inform us at all about real life within the community.

This text does not look like the statutes of a guild in any classical sense because there is no question of the conditions of employment of the clerks at their employers. It has more in common with the statutes of a confraternity, determining the function of its officers and governing the organization of its ceremonies. Yet the Basoche is not a confraternity, because the association appears to have no religious or liturgical character and does not appear under the protection of a patron saint (*saint patron*). There is no question, furthermore, of charity and mutual aid which characterize the second axis of activities of any confraternity.²² The only religious element in the Statutes is the presence of a chaplain among the officers, and we have no details regarding his function and his activities within the community. Did he have a responsibility in the chapel of Saint Nicolas situated in the *Grande Salle* of the Palace? Would the community of the Basoche have been able to share the chapel with the confraternity of their employers, the prosecutors and the lawyers of the Parlement, created in 1341, under the protection of Saint Nicolas and Saint Catherine? This is possible, because Saint Nicolas was also traditionally the patron saint of clerks and students (*ecoliers*).

The collective organization and coordination of the members of the community, the election of its officers, and the management of capital are the only matters treated in the statutes, as well as everything concerning the preparation of ceremonies, that is everything concerning sociability. In this regard, the community of the Basoche had a functioning comparable to that of any confraternity. It is necessary to preserve the term 'community' (*universitas*), employed in the Statutes, a generic term that designates any corporate body, whatever it may be. We find moreover in the Basoche the characteristics essential to any such community:

²² See Catherine Vincent, *Les confréries médiévales dans le royaume de France XIII-XV^e siècle* (Paris: A. Michel, 1994), 10.



- the oath of the lawyers and the officers, with a procedure for recording the swearing of the oath,
- an internal jurisdiction which assures the preservation of the peace among the members and the regulation of quarrels,
- the meals and the ceremonies which assure the durability of the identity of the community.

The officers of the community numbered approximately thirty. There was a chancellor, a vice-chancellor, some masters of requests, and a chaplain, who formed the council; an attorney general and a lawyer of the king of the Basoche and a prosecutor of the community who represented and protected the community; four treasurers who managed the funds and organized the festivals and ceremonies; a registrar (*greffier*) and four notaries and secretaries who wrote the legal briefs of the community; and a first usher and eight other ushers for the execution of the decisions of the council. The lawyers of the Basoche, whose number is not given, form the second rank in the hierarchy. Finally, we find the members (*suppôts*) of the community.

All the clerks entering the Palace of Justice had to pay an entrance fee called a "yellow beak" or "welcome" ("bec jaune" or "bienvenue") to the treasurers. No clerk could escape this fee "assessed indiscriminately on all the clerks upon their entrance to the Palace" ("pris sur tous les clercs indifféremment entrans au Palais") (§ XXI). This statute presupposes that there was no rival association in the Basoche, that all the clerks, whatever the profession of their employers, had to join the community, and that there was no difference in treatment among the clerks of the various Parliamentary offices. The entrance fee amounted to a king's *teston* for every clerk, two for noble persons. The value of the *teston* in 1586 was 14 sous 6 deniers.²³ No article clarifies the role or the activities of the members (*suppôts*) within the community, doubtless because they occupied the most subordinate positions. They were, however, obliged to attend the ceremony of the planting of the May tree at the risk of a fine of one *ecu* (§ XXV) and had to show honour and reverence to the officers of the Kingdom of the Basoche, obey rulings and judgments of the court, and give assistance ("confort et aide") for their execution (§ XL).

²³ A king's *teston* is a royal currency of silver, showing a princely head, struck since the reign of Louis XII.



We can suppose that, at some point, some members (*suppôts*) were received into the ranks of the lawyers of the Basoche. But when, on what conditions, and how did they become lawyers? Were all the members (*suppôts*) intended to become lawyers of the Basoche? Nothing allows us to answer these questions. Those who became lawyers were recorded in the register of the Clerk's Office according to the order of their swearing of the oath, and this order was observed according to the roll in the case of a general assembly (§ XXXVII). This roll, the list of the lawyers of the Kingdom of the Basoche, was kept by the community and was doubtlessly used to prove to the various authorities that this or that person was a part of the community. A reading of the list of the lawyers opened the November session.²⁴ All the lawyers were required to attend the ordinary and extraordinary pleadings (§ XXXVI). This was the only definition of their responsibility in the community. This position is perhaps comparable with the situation of the new lawyers (*avocats ecouteants*) of the Parliament of Paris. At the beginning of the sixteenth century, next to the pleading lawyers (*avocats plaidants*) and consultant lawyers (*avocats consultants*), the *avocats ecouteants* were trainees who made their debuts without pleading a case for two years.²⁵

The organization of the Basoche was modelled on that of the Parliament. On the Wednesday following the opening of the sessions (*audiences*) of the Court of the Parliament, which was held the day after Saint Martin's day (11 November), the sessions of the court of the Basoche (*cour basochiale*) opened as well. The common pleas were publicly held in the Palace of Justice twice a week (§ III). The Statutes tell us that the clerk of the court maintained a register of rulings given by the court of the Basoche and that he had to present it every three months (§ IX).

The jurisdiction of the Basoche

Although the first lines of the Statutes of 1586 announce that the function of the community was to administer justice to its members (*suppôts*), the jurisdiction of the court of the Basoche is not the object

²⁴ *Recueil des statuts*, 37.
²⁵ Robert Delachenal, *Histoire des avocats au Parlement de Paris (1300–1600)* (Paris: Plon, 1885), 80.

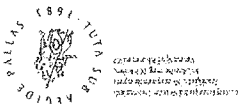
of a specific article. René Gastier describes the Basoche as "a justice which is administered between the clerks of the Palace" ("une justice qui s'exerce entre les clercs du Palais"). The role of the officers was to assist the chancellor in the judgment of the lawsuits which were brought before them by one clerk against another clerk, or between a merchant and a clerk ("jugement des causes qui sont introduites pardevant eux de clerc à clerc, ou un marchand contre un clerc").²⁶ The jurisdiction of the court of the Basoche would extend, if we follow this author, to any affair in which a clerk was implicated and not only to disputes between clerks. I did not find any text allowing me to confirm or to counter Gastier's assertion that the jurisdiction of the Basoche (*jurisdiction basochiale*) extended to cases involving a merchant. Pierre de Mirailmont also seems to suggest that the jurisdiction of the court of the Basoche judged all the lawsuits concerning a clerk of the Palace:

"This *basochien* justice was established to judge all the conflicts between clerks, as well as *fautes, crimes and offences done and committed by them in executing their responsibility*. This justice is royal and sovereign, and was given to them and granted by privilege and concessions of kings, and is subject to no one other than themselves and the Parlement for things which concern their rights and the exercise of their justice."²⁷

But the jurisdiction of the court of the Basoche was not recognized until late by the Parlement. In August 1443, a Parliamentary ruling reassessed the control of the Parlement over the jurisdiction of the court of the Basoche. The Parlement imprisoned clerks of the Palace of Justice for having judged one of their own too rigorously; it forbade them to invoke their claimed privileges and "to use or to set up the Kingdom of Basoche" ("d'user ou d'eriger le Royaume de Basoche"), and "all that they call their jurisdiction and privileges" ("tout ce qu'ilz appellent leur jurisdiction et privileges"), without the authorization of the Parlement (even though the Parlement seems to have noted and

²⁶ René Gastier, *Les Nouveaux styles des cours de Parlement, des gyles, requestes du Palais et de l'hôtel, de la chambre des comptes, et du tresor, et autres jurisdictions* [...], 3rd ed. (Paris: Langlet, 1661), last ed. (Paris: L. Billaine, 1668), 339.
²⁷ "Cette justice basochienne [...] establie [...] pour cognoistre de tous differens meus entr'eux, comme aussi *des fautes, crimes et delicts par eux faits et commis au fait de leur charge*. Et est hadicte justice royalle et souveraine, comme leur ayant esté donnee et octroyee par privilege et concessions des rois, ne recognoissans autres qu'eux et le Parlement es choses qui concernent leurs droicts et l'exercice de leur justice," Mirailmont, 633 (my emphasis).





recognized the existence of this jurisdiction by forbidding it.²⁸ We can suppose that at first the Parlement did not look favourably on this jurisdiction which claimed sovereignty, and that doubtless the Basoche had difficulty in imposing its jurisdiction, but that it finally achieved this goal. No doubt the Parlement had to tolerate it and accept it bit by bit simply for pragmatic reasons. The Parlement saw it as a means to divest itself of minor cases which the clerks of the Basoche were certainly competent to adjudicate. We are unable to follow the evolution of the connections between the Parlement and the jurisdiction of the Basoche during the fifteenth century, but in the first half of the sixteenth century, it is certain that only the Parlement recognized the judgements of the court of the Basoche (*Conseil de la Basoche*).

Gastier offers evidence that this jurisdiction was overseen by the community of the lawyers and the prosecutors:

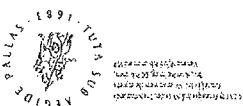
This justice was always maintained by the Parlement and when some judges wanted to review decisions taken by the court of the Basoche, the rulings of the Parlement prohibited them from doing so. The community of lawyers and prosecutors of the said Parlement are their only superiors and it settles the conflicts that arise between them regarding the execution of their official responsibilities, or their election or appointment to an office or the other difficulties regarding the execution of their rulings.²⁹

The Parlement went so far to ask the prosecutors to maintain discipline between themselves and their clerks, to pronounce on the appeals presented against the rulings of the court of the Basoche, and to give their opinion on questions of procedure which the Court of the Parlement sent back to them.³⁰

²⁸ Paris, Arch. Nat., X1a 1482, fol. 252v.

²⁹ "Cette justice a toujours esté maintenue par le Parlement et lors que quelques juges ont voulu entreprendre sur cete jurisdiction, les arrests du Parlement leur ont fait defenses d'en connoistre, Il n'y a que la communauté des advocats et procureurs dudit Parlement qui sont leurs superieurs et qui regle les differends qui surviennent entre eux pour le fait de leurs charges, soit pour leur reception à icelles, ou autres difficultez sur l'execution de leurs arrests," Gastier, *Les nouveaux styles des cours de Parlement*, 339.

³⁰ A. Grun, *Notice sur les archives du Parlement de Paris*, in Edgard Boulaire, *Actes du Parlement de Paris*, vol. 1 (Paris: Plon, 1863), cxciii.



A school of practice

Thus the role of this professional association is traditional: the community must maintain the unity of the Basoche, judge its members, defend the professional rights of the law clerks, and organize apprenticeships. In view of the sources at our disposal, we can say nothing about the organization of learning within the community of the Basoch, yet it is certain that it was a place of vocational training and a school of judicial practice. Paragraph 36 of the Statutes of 1586, for example, requires that all the *basochien* lawyers attend all the sessions of the court of the Basoche. The Basoche can thus be considered as a training school for the profession, intended to educate professionally the future lawyers and prosecutors who were recruited from the community. For the anonymous author of the *Mémoires de l'institution de la Basoche*, this training was one of the main justifications for the jurisdiction of the Basoche:

Having been educated in the investigation of cases, these clerks serve the public more easily, and the public receives from them great satisfaction and it is a means to enable them to investigate cases fully, and to render them more fearless and more intelligent in the execution of justice.³¹

The jurist Brillion expresses the same opinion in his dictionary of jurisprudence (1711):

Although the clerks of the Basoche were granted some privileges to encourage their spirit of competition, what takes place between them is a game of wit, which serves, by exercising them pleasantly, to make them capable of a more serious profession.³²

The ethical and practical rules of the legal profession included the obligations to defend cases which they consider just, to respect the truth of the facts, to be honest, not to be a judge in cases to which they are a party, to know and to respect customary law, to prepare the lawsuit, to be punctual, to respect protocol, to be diligent, concise and loyal.

³¹ "Ces clerks s'estant instruits en l'instruction de proces, plus facilement ils servent le publicq, et le publicq en reçoit de grandes satisfactions et est un moyen pour les rendre capable à l'entiere instruction des procez, et plus harthis et intelligens au fait de la justice," *Mémoires de l'institution de la Basoche*, 34–35.

³² "Quoy qu'on ait accordé aux clerks de la Basoche quelques privilèges pour leur donner de l'émulation, ce qui se passe entre eux est un jeu d'esprit, qui sert, en les exerçant agréablement, à les rendre capable d'une profession plus sérieuse," Pierre-Jacques Brillion, *Dictionnaire des arrests ou jurisprudence universelle des Parlements de France et autres tribunaux* (Paris: Charles Osmont, 1711), vol. 1, 265–266.

Some of these rules required a certain level of learning. Civil law, as we have seen, was not taught at the University of Paris and knowledge of it could thus be acquired only through practical experience. The young lawyers could learn it only by attending the sessions of their elder brothers and by pleading cases themselves in the hearings of the court of the Basoche. Not all the clerks of the Basoche intended to make a career of law, but the court of the Basoche offered them the opportunity to develop their capacities to become a lawyer or a prosecutor. No diploma was required for these two occupations. The letter of Charles VIII for the reform of justice, dated April 1454 (n. st.), shows that, in order to be received into the prosecutor's office at the Parlement, the *savoir-faire* and the ethics of the candidate were decisive:

Let no one be received as a prosecutor in our court, nor take the oath of prosecutor, before having been suitably examined by our said court and found sufficient and expert in justice, and of good and loyal conscience.³³

In the course of the centuries, the rules of the profession seem to become more rigid. In the eighteenth century, Duchesne of Beaumont, general prosecutor of the Basoche, notes that the legal age to become a prosecutor was twenty five, and he quotes several royal decrees and a Parliamentary ruling of 17 December 1577 which state the requirement of ten years of service for a prosecutor's clerk (three of which as head clerk) before making a request to the Court of the Parlement to be received as a prosecutor.³⁴ Several rulings from the eighteenth century add to this the obligation of being registered in the register of the Basoche.³⁵ One of the most important competences that the Basoche obtained in the course of time seems to have been that of

³³ Article 47: Item, Que nul ne soit receu procureur en nostre dicte cour, ne faire serment en icelle comme procureur, jusques à ce qu'on ait esté deurement examiné par nostre dicte cour et trouvé suffisant et expert en justice, et de bonne et loyale conscience," *Ordonnances des rois de France de la troisième race* (Paris: Imprimerie Royale, 1790), vol. 14, 295.

³⁴ *Observations pour la Basoche du palais à Paris* (Paris: Impr. De Veve Ballard, 1785), 5-6.

³⁵ A ruling of the Parlement dated 7 September 1713 concerning the officers of the Basoche repeats the following rules: it is necessary to be ten years in the practice [of law] to be a prosecutor and the Basoche has to maintain a register of its clerks. Michel Félibien and Guy-Alexis Lobineau, *Histoire de la ville de Paris* [...], (Paris: G. Desprez, 1722), vol. 4, 444-445.



exercising a monopoly on the issuance of the certificates of clerkship.³⁶ The community of the prosecutors exercised control over the registers of the Basoche, in which the clerks had to register their training of ten years. In return, the prosecutors could give up their office only to a clerk of the Basoche.³⁷

While we have no explicit documentary evidence of the nature and the organization of education within the Basoche, we have numerous indications of it and testimonies concerning it in the form of literary texts, what I call 'legal fictions,' the most well-known of which are those of Martial d'Auvergne and Guillaume Coquillart. Martial d'Auvergne was a prosecutor at the Parlement of Paris from 1458 until his death in 1508. He was a poet as well as a jurist. Before writing his best-known poems, he wrote a collection of 51 narrative poems, the *Arrêts d'Amour* (Rulings of Love), around 1460–1465.³⁸ The author creates a fictional jurisdiction, the Parlement of Love (*Parlement d'Amour*), where all the lawsuits concerning love are tried. The *Arrêts d'Amour* imitate strictly the style and procedures used at the Parlement and employ the compulsory judicial formulas. Each ruling begins with the statement of the case, followed by the oral debate in which the different parties confront one another. Finally the conclusions of the Parlement of Love are given in a ruling.

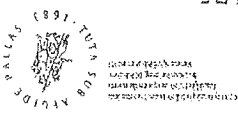
Twenty years after the *Arrêts d'Amour*, Guillaume Coquillart composed texts in around 1478–80, while he probably was a student at the end of his studies in canon law or a young law clerk. The first text, the "Plea between Simple and Cunning" (*Le plaidoiré d'entre la Simple et la Ruse*), presents the plea of Simple who asks to be given back Mignon, a young man whom Cunning wants to take from her. The plea is built on the juridical question of property rights. The sequel to this text, the "Inquiry between Simple and Cunning" (*L'Enqueste d'entre la Simple et la Ruse*) presents the second part of this fictional trial.³⁹ Guillaume

³⁶ On the issuance of prosecutors' certificates by the Basoche in the seventeenth and eighteenth centuries, see the chapter on the history of the Basoche as a legal institution in Charles Batallard and Ernest Nusse, *Histoire des procureurs et avoués (1483–1816)* (Paris: Hachette, 1882), 186–200.

³⁷ Laure Koenig, *La communauté des procureurs au Parlement de Paris aux XVII^e et XVIII^e siècles* (Cahors: impr. A. Couestant, 1937), 103. On connections between the community of the prosecutors and the Basoche in modern times, see Ibid., 101–106.

³⁸ *Les Arrêts d'Amour de Martial d'Auvergne*, ed. Jean Rychner (Paris: A. et J. Picard, 1951).

³⁹ Michael J. Freeman, ed., *Guillaume Coquillart, Œuvres* (Paris/Genève: Droz, 1973).

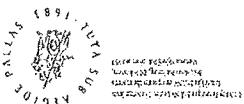


Coquillart's texts are saucier, closer to the atmosphere of French comic drama than Martial d'Avvergne's *Arrests d'Amour*. But all these texts exploit the same themes, the same judicial vocabulary, and the same Latin quotations taken from the *Corpus juris civilis* among other texts. We can consider them as literary extensions of didactic practices. Far from being texts that merely laugh at the legal machine, these texts illustrate, emphasize, and highlight judicial procedures and allow a stage setting for the legal debates of the time. These texts are to be envisaged here not only in their parodic dimension but also in their didactic dimension, as the literary continuation of learning practices and practical exercises that took place before the court of the Basoche, the court whose competence, as we have seen, was itself limited to conflicts involving law clerks.

The causes grasses

There is textual evidence as well of fictional trials. These texts have to do with pleas of *causes grasses*,⁴⁰ lawsuits brought before the Parlement of Paris on *Mardi gras* in the 1470s, at the request of the king of the Basoche, and registered in the register of the civil cases of the Parlement just as any other case would be. These documents have remained hitherto unknown to the historians of judicial practice. Constructed in exactly the same way as the other pleadings, the *causes grasses* are transcribed in the registers in the midst of the other 'serious' cases, with no other indication except the date: *Mardi gras* or *Par Tuesday*. The outline is as follows: after the opening of the trial by the president comes the *litcontestatio* during which the opposing parties each present their side of the case, the appellant on the one hand, the defendant on the other, ending with the formulation of the ends and the conclusions (*fins et conclusions*). The pleadings follow, in which the lawyers for each side support their case by proofs and arguments. After the close of the debate, either the judges withdraw in council and give their ruling, or they oblige the parties to produce written evidence. An inquiry can be ordered to be carried out by a commissioner of the Chamber of

⁴⁰ This is an untranslatable play on words as the term 'grasses' refers both to *Mardi gras* and to greasy cooking, and can at the same time be construed in the sense of obscene ('grivoises').



Inquiries. What we read in the registers is a rewriting, or an analysis, by the clerk of the court of what was said before the judges and during the pleadings based on his own notes and maybe the written pieces of evidence which the parties supplied him.

Here is the summary of the case that was heard on Fat Tuesday of the year 1471:⁴¹ the young saddler Colin Mesnard appealed to the Parlement for having been imprisoned by the provost of Paris at the request of Thomasse. Colin's lawyer claims that Thomasse employed him as saddler after the death of her husband and that, very satisfied with his services—he stuffed six saddles a day—, she had taken him as her lover and then asked him to marry her. He further argues that she dismissed him because he was no longer so diligent in his job and took another suitor, Blanchefort, before having Colin unjustly imprisoned. Thomasse's lawyer defends her by first questioning Colin's ability to stuff saddles: "the appellant has no tools to stuff saddles as he boasts." He explains that Thomasse's engagement to Blanchefort was opposed by Colin, who insulted him and struck a blow to Thomasse's honour by shouting in public that she was "a bawdy whore and that he had done with her what he had wanted to." The lawyer goes on to deny any sexual relations between his client and Colin as well as any promise of marriage, etc. Fretey, the lawyer of the king of the Basoche, asks for the case to be transferred to the court of the Basoche "because the stuffing of six saddles or pack saddles is an exceedingly great matter" ("puisqu'il est question de si grants exces comme de rembourrer six selles ou batz"). The court suspends its judgment.

The whole text is based on sexual ambiguity, on the double meaning of the expression "to stuff a saddle" ("rembourrer une selle") or "to stuff a pack saddle" ("rembourrer un bât"), which makes literal reference to the profession of the saddler. Figuratively, however, "rembourrer son bas (bât) à une femme" ("to stuff the lower parts [or pack saddle] of a woman") meant to make love to her.⁴² This erotic metaphor, playing on the homophony of "bât/bas" ("pack saddle/lower parts of the body"), was lexicalized in the fifteenth century. We notice that a question of family law is at the heart of the debate between the lawyers. Indeed, as the historian of law Anne Lefebvre-Teillard explains, marriage in

⁴¹ Paris, Arch. Nat., X1a 4813, fols. 75v-76.

⁴² Giuseppe Di Stefano, *Dictionnaire des locutions en moyen français* (Montréal: CRRS, 1991), 63.



facie ecclesiae was still not systematic at the end of the Middle Ages since the control of the Church over marriage was not yet total. Pragmatically, two marriage forms had been recognized since Alexander III (1159-1181): marriage *per verba de presenti*, which was an exchange of assents, and marriage *per verba de futuro, carnalis copula subsequuta*.⁴³ Colin Mesnart's lawyer seems to be playing on the fact that the marriage contracted with Thomasse was a consummated engagement, which constituted a real marriage, and which denied the contentions of the lawyer for the opposition.

These fictitious lawsuits, thus, allow us to envisage the Basoche as a school of judicial practice, a place for the transmission of technical *savoir-faire*.

Drama and festivities

The community of the Basoche celebrated and staged plays in the city of Paris during its festive ceremonies and during its parades (the *monstre*), which followed a military model. This was the occasion to show its coat of arms: three pencil boxes and an inkpot (*trois écritoires et un encrier*) on a shield (*écu*) topped with a crown.⁴⁴

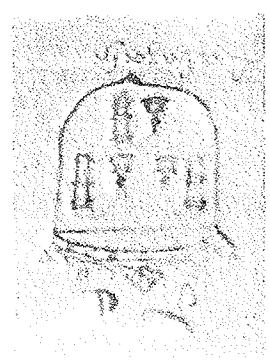
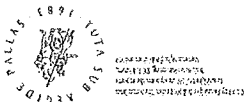


Fig. 5.1. Coat of arms of the Basoche of Paris, 1528. (Les armes de la Basoche, dessinées dans la marge d'un registre du Parlement de Paris (1528). Document conservé au Centre historique des Archives nationales à Paris. Paris, Arch. Nat., X1a 8345, fol. 253v).

⁴³ Anne Leleuvre-Teillard, *Introduction historique au droit des personnes et de la famille* (Paris: Presses universitaires de France, 1996), 133-141.
⁴⁴ A hand-drawn sketch of their coat of arms is preserved in the margin of a register of the Parlement. Paris, Arch. Nat., X1a 8345, fol. 255v.

Need Artist



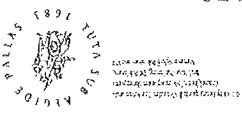
In addition, the *basochiens* developed a satiric and parodic culture, perpetuated by theatrical performances. These productions were public and monitored by the authorities, in particular by the Parlement, in a friendly manner, sanctioning the *basochiens* with punishments of detention only in 'royal cases,' when the sovereign, his family or his people were affected.⁴⁵

Parisian dramatic culture was very complex and varied. Mystery and Passion plays were performed by the *Confrérie de la Passion*, an association of Parisian bourgeois. Professional players were numerous in the French capital. The theatre of the Basoche was very important in the Parisian dramatic landscape but difficult to apprehend. An analysis of the sources leads us to conclude that the performances of the Basoche took place at least four times a year, during the periods of the feasts of the community, according to an adjusted calendar, which followed the rhythms of the main medieval calendar: on twelfth-night (*fête des rois*), during carnival, at the time of the planting of the May tree, and perhaps on the day of the procession of the Basoche, at the beginning of summer. But nothing allows us to affirm that these were the only times plays were performed. The law clerks performed especially comic drama, farces and *soffes*. The farces and *soffes* they performed reveal a *basochien* culture of its own, where a carnivalesque spirit thrives, where political satire takes a prime place, nurturing a strong *esprit de corps*, a pronounced inclination towards intellectual reasoning, and an obvious form of materialism.⁴⁶

We see that the literary and theatrical activity of the law clerks can be considered an extension of their didactic practices. Many authors of the end of fifteenth century and the beginning of sixteenth century, and almost all the men of the theatre, come from the social group of the lawyers. The most famous members are Guillaume Coquillart, Marival d'Auvergne, Henri Baudé, Pierre Gringore, Jehan Bouchet, Jehan d'Abondance, André de la Vigne, Roger de Collety, François Habert, and Clément Marot. It seems that for the people in the the-

⁴⁵ For numerous testimonies regarding the censorship of the drama of the Basoche, see the chapter "La censure du théâtre de la Basoche," in Bouhaïk-Gironès, *Les clercs de la Basoche*.

⁴⁶ See the chapter "Le théâtre sous influence basochienne," in Bouhaïk-Gironès, *Les clercs de la Basoche*.



atrical circles of the sixteenth century, a stint with the Basoche was a kind of 'legitimation.'

Conclusion

The Basoche was then a professional community, grouping together the clerks of the court of justice. On no account was it a joyful association (*compagnie joyeuse*),⁴⁷ nor was it simply a theatrical company. The role of the community of the Basoche was classic. It defended the professional interests of its members and maintained order and peace among them. The distinction guild/contratierly does not hold for the Basoche, as for numerous other communities. After all, the specificity of the professional life of a clerk of the court of justice explains the sense of identity of the community of the Basoche. Indeed, the Basoche answered the criteria of a professional community: it was an association of persons exercising the same professional activity, recognized by the public authorities, with a collective rule. But this community had a specific nature. It was not organized according to the hierarchy of master/apprentice (*maître/valet/apprenti*) and did not engage in the organization of learning in a traditional way. It was not a profession that was organized 'vertically,' but rather 'horizontally.' The Basoche represented an intermediate 'moment,' a stage in the profession, or more exactly a stage in the career of its members, between the university and the communities of the lawyers and the prosecutors. A small number of the clerks of the Basoche would become employers, that is lawyers or prosecutors, and would change professional communities. We can thus consider certain *basochiens* as apprentices (*apprentis*). The Basoche was a network of professional and intellectual solidarity. The social and cultural practices of the clerks of the court of justice were spread within the Basoche, which was thus the place of transmission for a double kind of knowledge, legal and theatrical, and the guardian of a cultural inheritance common to the world of justice and the world of the theatre.

Preserving a culture common to the whole legal group, the Basoche played a fundamental role in the heritage of legal knowledge, in the

⁴⁷ For a definition of joyful association (*compagnie joyeuse*), see the article by Katiell Lavent in the present volume.

transmission of intellectual knowledge, notably of the rules of rhetoric, the practice of eloquence, and of a technical *savoir-faire* that was very important for jurists. In England, judicial apprenticeship took place in the famous Inns of Court. But in France, the Basoche fulfilled this function. The Basoche in the late Middle Ages was a school of judicial practice and a school of theatrical technique.

