



# Common Violence: Vengeance and Inquisition in Fourteenth-Century Marseille

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Common Violence: Vengeance and Inquisition  
in Fourteenth-Century Marseille\*

I

Medieval violence has a bad reputation. In the words of a student essayist, "Medieval [sic] people were violent. Murder during this period was nothing. Everybody killed someone".<sup>1</sup> Yet however much we might object to the sweeping generalization, the sentiment is not anachronistic. Violence was condemned as harshly in the Middle Ages as it is today. Consider the diatribe of the early eleventh-century bishop Burchard of Worms:

Homicides take place almost daily among the family of St. Peter, as if they were wild beasts. The members of the family rage against each other as if they were insane and kill each other for nothing... In the course of one year thirty-five serfs of St. Peter belonging to the church of Worms have been murdered without provocation.<sup>2</sup>

This is violence without reason or justification, comprehensible only if viewed as insanity.

Burchard's characterization of violence as a crime without reason was a little disingenuous, however. Violence was often linked to vengeance in the Middle Ages, and vengeance was something that all could understand, even men of the church. Whatever Abelard's sentiments about the loss of his testicles, he was surely not surprised when the kinfolk of the woman he had seduced and abducted came to the defence of her honour —

and their own, for that matter.<sup>3</sup> The need for vengeance was as ancient as the lex talionis; in theology and Christology, the theme of God's vengeance had only recently given way, in the tenth and eleventh centuries, to that of his mercy and suffering.<sup>4</sup> Men of the church were perfectly aware of the social pressures that fostered vengeance in the secular world. The mendicant orders could not have emerged as Europe's foremost peacemakers without this understanding.<sup>5</sup>

This being so, we should understand the rhetoric for what it was and see vengeance as medieval observers would have seen it, as a practice worthy of condemnation that none the less had deep roots in society and served specific ends. For vengeance does make sense: order arises from predictability of behaviour and vengeance carries an aura of inevitability. This, at any rate, is what modern anthropologists have been arguing for some time. As students of the stateless societies of north Africa and the circum-Mediterranean region began to observe in the 1940s and 1950s, the feud and its attendant institutions of peacemaking comprised a legal system that offered a basis for political order.<sup>6</sup> Medieval historians, of course, had long been interested in both feuding and peacemaking,<sup>7</sup> and the arguments of E. E. Evans-Pritchard and others concerning the feud were not slow to cross from anthropology to history. A major conduit was an article published by Max Gluckman in Past and Present in 1955 called "The Peace in the Feud" which developed Evans-Pritchard's argument that the feud, as it expanded through the grades of kinship, inevitably compromised people with a foot in both camps; these were then activated to quell the discord.<sup>8</sup> J. M. Wallace-Hadrill cited Gluckman approvingly in his own work on the blood-feud in the Merovingian period.<sup>9</sup> The historical literature on this and related subjects has grown apace since the 1960s, offering a way to study order not from the top down, but from the bottom up.<sup>10</sup>

To describe vengeance and peacemaking as components of a logical and rational system, however, is to suggest that the practices can be isolated from other legal and judicial currents in medieval society. This is a very dubious proposition. In recent years,

for example, legal anthropologists have argued that there was a good deal of cross-fertilization between native or local legal systems and those imported by European colonists.<sup>11</sup> Much the same holds true for Europe, where centralized systems of law emerged at a more leisurely pace. This being so, the most compelling history of vengeance and peacemaking lies not just in describing these practices as elements of an independent and rational system, but also in seeing how these practices, over the centuries, interacted with or were circumscribed by the developing legal systems of kingdoms and nation-states.<sup>12</sup>

The complex legal culture of the city of Marseille in the later Middle Ages offers profound insights into these processes of legal exchange and amalgamation. Italianate in its commercial and legal culture, French in its family structures and destiny, Mediterranean in the breadth of its trade, the great Provençal port provides numerous grounds for comparisons. Blessed with one of the earliest and richest runs of notarial documentation of any French locale, blessed equally with rich judicial archives, the city offers splendid resources to the historian. Marseille's legal culture, moreover, is made all the more compelling by the city's unusual political circumstances. A fiercely independent commune for much of the first half of the thirteenth century, the city had fallen in 1252 to Charles of Anjou, king and founder of the expansionist Angevin dynasty of Naples and count of Provence by virtue of a strategic marriage.<sup>13</sup> Yet in Charles' own lifetime, the Angevin dynasty — hobbled by the revolt of Sicily in 1282 and undermined by the general decay of Mediterranean trade that followed upon the heels of the Moslem reconquest of the Levant — was falling swiftly from the heights to which it had once aspired. Preoccupied with its own intrigues, the crown had little energy to spare for the governing of Marseille. By the fourteenth century the city had begun to drift out of the orbit of Naples, quietly seizing the independence it had tasted a century before and thus following a trajectory at odds with processes of centralization more common in the later Middle Ages.<sup>14</sup>

One result of this trend is that by the mid-fourteenth century, the city's courts, all of which were run by judges and functionaries nominated by the Angevin crown, lacked the power to back their authority. Noble factions emerged, at least one of which was considered by an observer to be more powerful than the crown itself.<sup>15</sup> Given these circumstances, the Angevin-run court of inquisition, primarily responsible for criminal matters, was or became reluctant to prosecute murder and very serious acts of violence. Instead, judges built existing habits of settlement and peacemaking into their own legal edifice, allowing some measure of authority over homicides to devolve on to kinfolk and friends of the murderer and of the victim. They did not invariably do so; evidence reveals that only those assailants embedded in powerful social networks or kin-groups could expect to benefit from the immunity from prosecution conferred by the threat of the feud or of factional retaliation. The prosecution of violence short of murder reveals a noteworthy battle for rhetorical control that pitted defendants eager to display their social connections against judges interested in counting blows and not much else. All these circumstances reveal the constant dialogue that existed between two seemingly distinct ways of handling violence, and suggest some of the complexities that underlay the legal transformations of late medieval Europe.

## II

The court of inquisition was relatively new in mid-fourteenth-century Marseille. In the early years of the commune, the judicial structure of the city had been rudimentary, and authority over affairs of violence, including feuding and peacemaking, lay with political leaders and peacemakers, not with courts. Marseille's statute on homicide, for example, reveals that the authority to pursue and punish murderers was assigned to the rector and the councilmen of the commune.<sup>16</sup> This authority may have been a supervisory authority rather than a judicial one, the aim to produce a peace settlement rather than to punish.<sup>17</sup>

No court of inquisition, in fact, is mentioned in the constitution of 1252, called the Statutes of the Peace, which emerged as part of the peace-treaty between Charles of Anjou and the conquered city.<sup>18</sup> The document describes the operations of five civil courts, all of which were staffed by Angevin appointees whose terms in office lasted for no more than a year. Two lesser courts handled civil pleas; the judges assigned to each, at least in the fourteenth century, were drawn from a pool of local jurists. A third, called the palace court, was the major court of first instance, and behind it lay the courts of first and second appeals. The latter three courts were staffed by jurists brought in from the outside.<sup>19</sup> By the mid-fourteenth century, in concert with transformations in Roman-canon proceedings and the law of proof then sweeping over the Mediterranean region,<sup>20</sup> Marseille had developed what the sources call a curia inquisitionis. The court of inquisition was headed by the palace judge, who was assisted by an official known as the vicar (vicarius), the chief Angevin representative in the city. The vicar himself, or someone acting in his name, announced the sentences in public parlements, held five or six times a year in a square at the center of the city. The inquisitorial mode allowed for a more active court, one more willing to view law-breaking as a crime against the state, than had hitherto been the case.<sup>21</sup> The essence of the inquisitorial method is that once a potential crime had come to its attention, the court was able, on its own authority, to initiate an accusation and assemble witnesses. If the two witnesses necessary for a conviction in Roman-canon law were lacking, the court could use torture to extract a confession from the suspect.

Most of the sentences passed down by the court of inquisition in Marseille were fines, even if we must acknowledge that other forms of punishment usually do not show up in records devoted almost exclusively to pecuniary concerns. This much is indicated by a single register of fines paid by criminal defendants that has survived for the year 1331, from December 1330 through November 1331.<sup>22</sup> Each of the entries in this

register gives a brief description of five or ten lines of the main features of the sentence: below is a typical sentence, given here in full.

On the same day: concerning Guilhem Alexi, condemned to pay a fine of 20 shillings by the said lord vicar on the year and day above, since, with malice, and furious at heart, he threw Raymon de Tholosa to the ground on a public street.<sup>23</sup>

The register contains 492 entries; of these, 289 were for cases of violence or the threat of violence of one sort or another (including two rapes). Most of the cases of violence involved relatively minor wounds or even nothing more than the drawing of a knife; the defendants were assessed fines averaging a little more than 30 shillings, equivalent to eight days of labour for an agricultural worker. Many of the remaining fines were imposed for acts of a similarly confrontational nature such as bearing illegal arms (17) and making threats (15). Fines for insults were especially numerous, totaling 108. In sum, confrontations of various descriptions account for 438 of the 492 entries. The remaining entries describe non-confrontational criminal acts; these include twenty-two thefts and twenty fines for civil infractions such as selling flour illegally or going by night without a lantern.<sup>24</sup> Sexual delicts and blasphemy are utterly absent from the list.

(insert Table 1 roughly here)

This profile, thin in the secret crimes of the household and the sphere of morals, is at odds with the criminal profiles of other late medieval cities drawn from similar sources. In nearby Avignon, as in Paris, courts assessed numerous fines for blasphemy, sexual delicts, and thefts.<sup>25</sup> The same holds true for Florence in the fourteenth and fifteenth centuries.<sup>26</sup> Marseille's inquisition, by comparison, was far more interested in prosecuting public confrontations.

Logically, this kind of profile would emerge if the inquisition prosecuted only those cases in which malefactors had been captured in flagrante delicto. To capture malefactors, the court of inquisition had developed a rudimentary police force led by the sub-vicar and sometimes by the vicar himself.<sup>27</sup> Transcripts of judicial inquisitions found in appeals court registers reveal that in cases involving violence, the sub-vicar and his familia often arrived while a fight was still underway, usually called to the scene by the neighbours. As a result, the official of the court was able to seize the malefactors while the blood was still fresh on the knife or the insult still lingering in the ears of the witnesses. The justice that resulted from this was summary: defendants in the cases I read were never allowed to present a defence. The defence — this seems unique to Marseille — was reserved for the appeal.

In no inquisition transcript from Marseille is there any indication that the court proceeded against criminal defendants merely on the basis of a report or a rumor, as courts of inquisition often did in other cities. Several victims of theft, vandalism, and threatening language were forced to initiate their own accusations and assemble their own proofs.<sup>28</sup> This preference for cases where the malefactors were captured in flagrante reveals an inquisition unwilling to commit time and resources to the prosecution of crime, unwilling to pursue cases involving secretive behaviour or states of mind. This was an inquisition, in other words, that dealt in open-and-shut cases, where the facts of the cases were obvious to all; appeals may have been limited in number precisely because the weight of condemning evidence was so great. The hesitancy to tackle more difficult cases is one reflection of the court's lack of power.

What was missing from the profile of fines assessed by Marseille's inquisition, therefore, is just as informative as what was present. This is especially true when we consider another class of criminal behaviour that is conspicuous by its absence, namely serious woundings. In the 289 acts involving violence or the threat of it, we find only seventeen where blood was shed. There are no truly debilitating wounds such as



amputations. Most surprising, the list includes no fines paid for homicides. In the entire register only one reference to a homicide can be found: during a street battle between Johanet Guis and Durant de Batuto, Durant was grievously wounded; he died a short while later. A terse account of the incident was given to explain why a 6 pound fine had been assessed against eleven-year-old Guilhem Guis, the younger brother of the assailant. The lad had emerged from his father's house towards the end of the battle; knife drawn, he had chased the wounded man down the street.<sup>29</sup> His brother, the actual assailant, does not appear in the record.

Whence this silence regarding homicide? Jacques Chiffolleau, observing a similar phenomenon in papal Avignon in the fourteenth century, has argued that murderers were punished corporally: corporal punishments do not find their way into financial records. But Chiffolleau also observes that murderers usually fled the city before they could be captured;<sup>30</sup> moreover, the Avignon court did not always proceed against murderers and other violent offenders where proof of a settlement was offered.<sup>31</sup> Historians and anthropologists of law considering similar forms of judicial restraint see a simple reason: a judicial decision is an artificial ending that does not necessarily resolve the tensions in a dispute.<sup>32</sup> Murder is the offence most likely to generate bad blood between rival families or groups. In the uncertain political climate of mid-fourteenth-century Marseille, the court of inquisition was more interested in establishing peace than in trying to stamp its tenuous authority on a potentially belligerent and independent-minded population.

As it happens, it is not entirely correct to say that the court of inquisition did not prosecute homicides. Records reveal that the court could pursue various lesser charges should it choose to move against murderers. The possibilities included infractions like bearing illegal arms, congregating in large groups, and going about the city by night. To take an example, fines of up to 100 shillings were assessed against several agricultural labourers and caulkers who had participated in a murder on 20 May 1342.<sup>33</sup> In addition, murderers who had fled the city could be accused of the crime and then, after failing to

respond to a series of summons, be charged for contumacy. In one particularly well-documented case involving a member of the nobility, the squire Amiel Bonafos had participated in the murder of his bitter enemy, Peire de Jerusalem, in May of 1356.<sup>34</sup> Following the murder, Amiel hid in the house of his infirm father; several nights later, he fled the city on horseback with a companion, seeking refuge in the countryside.<sup>35</sup> A trial was initiated by the dead man's uncle,<sup>36</sup> and since Amiel failed to answer the summons, he was assessed a staggering fine of 2,000 pounds simply for contumacy (...in duobus milibus librarum pro sola contumacia condempnavit...).<sup>37</sup> His allies, the Martin brothers, fared worse: each was assessed 4,000 pounds, and the prime instigator, Peire Martin, was assessed an additional 3,000 pounds.<sup>38</sup> To collect such fines, the court could and sometimes did seize the exiled man's property.<sup>39</sup> Technically speaking, the fine was collected for a violation of procedure (contumacy), not for murder.

Peacebreaking was a third category under which violent offenders could be prosecuted. It was clearly understood by all concerned that peacebreaking was a heinous crime — more serious, in fact, than the catalyzing offence.<sup>40</sup> From the transcripts of an inquisition into a small war between two elite factions that took place on or about 22 July 1351, we learn that fines of up to 200 pounds were levied against the participants for breaking an existing peace.<sup>41</sup> As Thomas Kuehn has argued for acts of arbitration more generally, this strategy of prosecution worked because instruments of peace were civil contracts. Peacebreaking could be prosecuted not as murder, but as breach of contract.<sup>42</sup>

### III

Yet these were indirect ways of prosecuting acts of grievous violence. Instead of forceful resolution, we find a discretion consonant with the inquisition's hesitancy to prosecute criminals not arrested in flagrante. It was a discretion that does not seem in keeping with its age, to judge by the violent retributions described in the statute books of some thirteenth- and fourteenth-century Italian and Provençal communes. Men who murder

shall be decapitated, declared a Veronese statute, and women cremated.<sup>43</sup> The Italian commune of Apricale, more imaginatively, buried its murderers alive.<sup>44</sup> "If he can be seized, he shall die", observe the statutes of Cuneo simply.<sup>45</sup>

Yet the violent language of these statutes obscures mitigating circumstances, here as elsewhere in Europe.<sup>46</sup> Several statutes list self-defence as a reasonable excuse, but the law could be mitigated in another way. In the civic world of Mediterranean Europe, the authority of any given commune extended only so far, and the legal geography of the region consisted of an untidy patchwork of uncoordinated jurisdictions. Each commune's jurisdiction was activated only when officers of the peace were able to seize hold of the murderer. Beyond the borders of the commune lay the shadowy world of exile and banishment.<sup>47</sup> Whether the police force could seize offenders before they reached this world depended on its efficiency and, for that matter, on the eagerness of the commune to get involved. We assume that communes were eager to exercise jurisdiction — the threats directed at murderers give every indication that murder was perceived as a crime against the whole commune, not just the family of the victim — but was this really the case? In Marseille, as we shall see, it was not. Murderers were frequently allowed to escape; even when they were caught, their subsequent incarceration, remarkably, was sometimes treated as if it were the equivalent of exile or sanctuary.

To understand why, it is important to realize that exile and sanctuary, in Italy as in southern France, did not mean the end of some sort of legal jurisdiction over the case. Instead, jurisdiction over the absent malefactor was in theory transferred from the commune to the kin of the victim.<sup>48</sup> If a murderer could not be seized within the jurisdiction of Cuneo, for example, the sum of 100 pounds was to be extracted from his estate and he was to be outlawed — at least, until a peace was made with the kin of the victim.<sup>49</sup> The principle held for cases other than murder:

It is declared that if anyone from Cuneo or its jurisdiction has sought exile or has been exiled for any crime, he will not be allowed to return nor should he do so — even if he has paid the fine for the offence — unless he first makes an agreement with his victim or his heirs.<sup>50</sup>

A similar passage is found in the statutes of Acqui,<sup>51</sup> and Apricale's state more tersely that the murderer will be perpetually exiled unless the heirs of the victim permit his return.<sup>52</sup> The statutes of both Verona and Nice indicate that exile was a common option and that a peace with the kin was a part of the ensuing judicial process.<sup>53</sup> With any luck, an exiled man could be back in town within a few years of a murder, restored in both reputation and wealth — and sometimes even more. Five years after his involvement in the murder of Peire de Jerusalem, Amiel Bonafos had not only regained his city, he had also been appointed to one of the highest of council offices in Marseille, that of syndic.

In a very curious way, the judicial competencies of court and kin in Italy and southern France hinged not on abstract legal principles but rather on the location of the murderer. This was a product of a complex set of circumstances involving the nature of the police force, the quality of the murderer's networks of support outside the city, and the nature of the crime. The harshness of statutory law, therefore, could be mitigated whenever the murderer escaped or was allowed to escape. In such cases, the authority of the commune derogated in favour of kin. Without clear evidence that executions were practised systematically in specific medieval communes, we cannot assume a priori that the law was always carried out with the promised harshness.

Marseille's law concerning homicide and exile mirrors those of the Italian communes. Redacted in the early thirteenth century, during the city's drive for communal independence, Marseille's book of statutes was based on a twelfth century model borrowed from Pisa. The peace-treaty of 1252, in turn, absorbed the book of statutes virtually intact. Because the council of Marseille had only limited legislative powers after 1252, and because the Angevins themselves were too preoccupied to attempt judicial reforms, the statutes underwent no changes in the century that followed;

compared to the statutes of other fourteenth-century communes, which periodically underwent revisions and concordances, those of mid-fourteenth-century Marseille were manifestly out of date.

The statute that governed homicides and other assaults resulting in death, entitled Qualiter Homicidia Puniri Debeant, or "How Homicides May Be Punished", ran as follows:

Since it is a matter of great importance to the republic that crimes go not unpunished, and especially homicides committed illicitly, by the authority of this statute we ordain ... that if anyone shall have assaulted or wounded or mortally injured anyone else in Marseille or its territory... [and] if perchance the man who did such things shall have fled from Marseille ... at no subsequent point in time may the criminal in any way be allowed or permitted to return to Marseille or its suburbs unless he shall have first made composition for the crime with four or five of the closest relatives of the murdered or dead man, and at the same time unless he, or another in his place, shall have first paid the fine assessed to him for the act or crime by the rector or councilmen or the Commune of Marseille (a rectore vel consulibus vel Communi Massilie)...

...similarly, if the murderer shall be found or can be found anywhere within Marseille or its territory, then he shall be captured by the rector or by the councilmen of Marseille, or by others acting for them, by force if necessary, and then the rector and councilors shall do with him what they think ought to be done (que eis videbuntur facienda)...<sup>54</sup>

The text speaks of a public concern (Cum rei publice intersit plurimum...), but the early origins of the statute are revealed in the failure to define precisely what the commune could do to the person of the captured murderer. The commune evidently was allowed to levy a fine, a right, to judge by the register of fines paid, that does not seem to have used often. The text of the statute, however, is dominated not by this matter, but rather by how the rector and councilors should proceed once a murderer has exiled himself. The statute, moreover, is careful to spell out the nature of composition and the grounds on which the exile will be allowed to return, officially transmitting a degree of power over the exile's fate to the four or five closest relatives mentioned in the statute.

Once the murderer achieved exile, the system of peacemaking and arbitration came into play. There is plenty of indirect evidence for this system in existing court cases from fourteenth-century Marseille. In July 1339, for example, a dispute between two cutlers climaxed with some regrettable words regarding the paternity of the eventual plaintiff, Johan Suziol. Johan's suit for defamation, asking for 100 pounds in damages, was then withdrawn when he subsequently submitted evidence to the effect that an agreement had been reached: to continue the suit would be to disrupt the fragile peace.<sup>55</sup> Cases that ended in arbitration are common enough in the records: many or even most accuser-initiated trials ended shortly after the reading of the accusation, and only 18 per cent of 564 palace court trials over the period between 1337 and 1362 included the testimony of even one witness.<sup>56</sup>

As it happens, we have more authoritative evidence for peace settlements from the notarial archives of the period from 1337 to 1362: five notarized settlements for homicides and three further settlements for grievous wounds short of homicide. These legal drafts,<sup>57</sup> variously entitled instrumentum pacis, compositio, concordia, and faciendum pacis, can be found in some of the seventy notarial casebooks<sup>58</sup> extant in Marseille from the middle quarter of the fourteenth century; they can be found alongside dotal acts, testaments, loans, apprenticeships, and dozens of other contracts offered by the Roman legal system of Mediterranean Europe. All eight peace acts involve men and women of middling or low status: labourers, carpenters, butchers, bakers, furriers (notarial casebooks were probably considered too vulgar for the peace acts of the nobility). As with all notarized acts, peace acts follow standard legal formulae that name the parties involved and define their subsequent legal responsibilities.<sup>59</sup> Since the extant notarial casebooks represent only a fifteenth of the original total, it is clear that such settlements were more common than these numbers suggest: had all notarial casebooks survived from the years 1337 to 1362 — there should have been around a thousand — they would probably have recorded as many as seventy-five settlements arising from a

murder over a twenty-six year period.<sup>60</sup> The existence of these cases shows that peace settlements for some or most homicides and a for few grave injuries played a role of no small significance in the legal system of mid-fourteenth-century Marseille.

The typical peace formula, significantly, included a clause declaring that all court actions on behalf of the victim would be dropped. In one case, Isnart Bayle, the kinsman of a murder victim, made the following contract with the murderer, Guilhem Bascul.

Isnart Bayle, in the names of those above and for himself and his heirs and successors and friends whoever they may be, through solemn intervening covenants, promised that he would not proceed further with the indictments made on these occasions by himself or by others. Nor would he draw up others anew, nor consent that any be drawn up, nor even will any of those on his side make an effort that [a suit] be brought against Guilhem Bascul by any court, judge, or chief, by the inquisition or in any other way...<sup>61</sup>

The inclusion of this clause in the peace formula is probably the major reason why no remits for homicide appear in the register of receipts from the year 1331.<sup>62</sup>

The peace acts range in length from half a page to three or four pages. The unabbreviated cases all begin with a preamble that speaks of the Christian desire for peace and of the agency of the Devil in spawning hatred. In one of these acts, for example, we find that Adalacia Rogiera, the wife of the baker Jacme Rogier, was brought by the Devil's instigation to proffer many insults and contumacious words against Antoni Bort. Antoni was so moved by wrath that he drew his sword and struck her on the head, killing her.<sup>63</sup> The effect of this argument was to treat her death as the result of Antoni's disabling and blinding rage — regrettable, but not homicidal.<sup>64</sup> Following a very brief statement of who had murdered or wounded whom, the formula pushes on to a description of the bad blood existing between the murderer (and sometimes his kinfolk) and the kin of the victim, the names of two to four of whom are enumerated. When Guilhem Garrigas killed Uguo Clalpin, he and his uncle Andrieu made peace with Uguo's

two cousins, Johan Bernis and Johan Bonaut, and with Peire, the son of Johan Bernis, and with two of the victim's maternal aunts (amicae), Huga Romea and Resens Berengiera.<sup>65</sup> Similarly, the carpenter Guilhem Bascul, killer of Guilhem Turel, made peace with the butcher Isnart Baille, Laurens Gartin, and the rest of his victim's kin, relatives, and affines.<sup>66</sup> A peace is made and the kin of the victim are then sternly charged with the duty of keeping this peace; the force of these acts is generally directed against the victim's kin and not the murderer. Arbiters, where named, were typically noblemen or other members of the patriciate. For example, the two noblemen Montoliu de Montoliu and Aragon de Rabastenc, assisted by two men of common status, helped arrange a peace between the labourer Guilhem Johan and his kinsmen on the one hand, and the victim Peire Tallarone (whom Guilhem had wounded on the arm), and Peire's kinsmen on the other.<sup>67</sup> In some cases, mendicants, jurists, and other noblemen made their presence felt as witnesses to the peace. The role of mendicant orders and other members of the regular clergy is particularly pronounced in the five peace acts arising from murders: all were redacted in the house of a religious order. The three woundings, by contrast, were settled in the notary's house or in houses belonging to one of the parties involved.

Rarely were the results of arbitration given in these acts, although we must assume that some form of arbitration had been undertaken prior to the making of any given act. Sometimes an exchange of the kiss of peace was noted. No money composition was ever expressly mentioned, although we can assume that a payment often took place. The labourer Pons Gasin, killer of Alasacia Borgona, concluded a peace with her brother and two sons; in a separate act made on the same day, the murderer gave the daughter of his cousin in marriage to one of the victim's sons, adding a vineyard to the girl's dowry. The dotal act expressly stated that the marriage was made to seal the peace and avoid future danger (pro pacem habenda et futurum periculum evitanda), and the vineyard was clearly part of the settlement.<sup>68</sup>



An exiled murderer, of course, could not be present when a settlement was being arranged — he only returned to approve the pact — and it was up to relatives and friends to arrange a peace. Notarized peace settlements do not describe this process, and we must turn to court records to see how it worked. Early in the year 1353, for example, Lois Orlet had sliced off the left hand of Johan Robert during a fight.<sup>69</sup> On 2 September 1353, Johan brought Lois to court — not to accuse him of the amputation, but instead to complain about Lois's failure to fulfill certain conditions of the peace accord that had terminated the dispute: the peace had included a requirement that Lois pay for the medical care of his victim.<sup>70</sup> Testimony reveals that Lois had sought sanctuary in the monastery of St Victor immediately following the fight; the peace had been arranged by two city councilors, Guilhem Blanc and the nobleman Johan de Sant Jacme. Lois's unnamed wife was also involved in making peace; testimony shows that she had offered the victim 100 pounds by way of settlement, and had sent medicaments to the wounded man.

Two cases of capital importance show that even when the court seized hold of the murderer before he could seek sanctuary or make his escape from the city, it treated incarceration as exile. One case from the year 1362 reveals that the butcher Anhellon Fabre, a man of some standing and good connections in the community, had been imprisoned immediately after he murdered his wife, Dulciana.<sup>71</sup> Those working on his behalf successfully made a peace with the agnates and cognates of his late wife, however, and Anhellon was released from prison. In November, he had the audacity to come before the court to complain that his late wife's relatives were now harassing him, despite the peace. In a similar case, from February of 1353, the cutler Nicolau Garnier was imprisoned for the murder of a goldsmith, Antoni Jardin.<sup>72</sup> His relatives made peace with the three known kinsmen of his victim, Guilhem Cauderie, Bernat Bonaut, and Jacme Bonaut, and had evidently gone to some lengths to search out these men. None the less, the court refused to release him, as the murderer expected, because no peace had been

made with the victim's widow, Johaneta — and it was Johaneta's resistance that was keeping the man in prison.<sup>73</sup>

In both these cases, the courts treated incarceration as exile or sanctuary. The practice may have been more common than the number of cases suggests: we hear of these two only because difficulties arose during or after the process of arbitration. The very existence of the practice, of the equivalency drawn between incarceration and exile, reveals the degree to which the court of inquisition was willing to forgo its jurisdiction over violent crime in favour of the catharsis of the peace settlement. To judge by this practice, the ability of a murderer to escape the jurisdiction of the court, in Marseille or anywhere, should not be taken as evidence for the inadequacies of a medieval city's police force. Instead, exile was part and parcel of an untidy but reasonably effective system for prosecuting and punishing homicide and other cases of violent crime, cobbled together from Roman-canon law and from local legal traditions and habits of peacemaking.

This system, it seems, had become so widely accepted in mid-fourteenth-century Marseille that actual revenge killing, at least among people of common status, was relatively rare. There are, at any event, no clear and unambiguous examples in the few surviving court records involving homicide between commoners, although several cases<sup>74</sup> hint at the possibility and the case of Julian Marquet, discussed below, involves an assault motivated by a desire for revenge. The feuding nobility was another matter entirely; mid-fourteenth-century records reveal a series of revenge killings involving two noble factions that stretch back at least to 1309, and noble defendants, when prosecuted, used the logic of vengeance conspicuously in defending their actions.<sup>75</sup> Yet although common folk victimized by violence were more likely to pursue a peace settlement than were nobles, it was the threat of hatred and retaliation that gave the assailant an incentive to arbitrate. The evident potency of this threat shows that the practice of revenge killing was not completely moribund among commoners.

## IV

Delicate handling by the court may not have been everyone's prerogative. And certainly genuine exile was not available to all. It took resources to escape the city for the countryside: friends or kin in the city willing to undertake legal battles to preserve the abandoned estate and initiate a peace, friends or kin in the countryside willing to aid the miscreant. Exile, therefore, was self-selected: only well-off criminals could actually hope to benefit from it.

In considering what it should do with those left behind, the inquisition did not necessarily incarcerate murderers and wait for a peace settlement. It moved more vigorously in those cases where assailants were kinless and friendless — that is to say, without power. The evidence, almost by definition, is poor: it took resources to put up a fight that could be documented. Yet hints found in the documents support the conclusion. On 15 December 1357, Guilhem Robaut came before the judge of first appeals to retract a confession of homicide.<sup>76</sup> He declared that he had been coerced into confessing to the murder of a court crier, Guilhem Telhet, through fear of torture (metu tormentorum). Begging a judicial delay so that he could organize his defence, the defendant explained that he had been unable to meet the original deadline "because of his poverty and his lack of kinfolk" (propter eique paupertatem et carenciam amicorum). One month later, on January 15, he was declared innocent of murder — a tribute to his legal acumen.

In a second case, a wealthy cobbler and city councilor, Jacme Johan, had angrily denounced the city judges and the vicar for having hanged a certain man named Boryaca or Buryata, while at the same time allowing a notorious Catalan pirate, Peire Maura, to go free. For the insult, Jacme had been fined 10 pounds, which he appealed in September of 1357.<sup>77</sup> The charge against Boryaca was not given, but the name is not Marseillais in origin (hence the notary's difficulty in transcribing it), indicating that the man was a

foreigner. This is the only known hanging for the entire period from 1337 to 1362; the man's status as a foreigner almost certainly helped determine his fate.

In a third, the inquisition apparently misjudged their man.<sup>78</sup> Late in the year 1351, Uguo Jaume, originally from the fishing village of La Ciotat but now residing in the city of Marseille, was brought before the palace judge and charged with the murder of Martin Jordan, a citizen of Marseille. The alleged murder took place in Calabria. Uguo, who denied the accusation, was led to a room in the basement of the royal palace of Marseille and thence to an eculeum, the wooden horse used for torture; there, in the presence of three judges and a notary, his hands were bound behind his back and then raised until he hung above the ground. But as he hung in this torturous way he called out to the notary, vive voce, saying, "I ask, I ask and require you, Uguo Berengier the notary, to make a public instrument for me!"<sup>79</sup> Immediately the judges ordered him brought down from the horse; an act was made; and the prisoner, presumably on the strength of the things said therein, was released. As in the first case, powerlessness was compensated for by legal acumen. Tellingly, we know of this case only because Uguo's wife, her husband lying crippled in bed, actually came into court to lodge a complaint against the judges. Uguo was not wholly bereft of support.

These are cases in which the inquisition made free use of execution and torture (or the threat thereof). In others, we find that prisoners who did not dispute the charges laid against them were incarcerated and then released following a peace settlement. The disjunction shows that the court of inquisition could adopt judicial postures that varied according to the status of the murderer; the kinless, the foreigner, the immigrant were treated with greater severity. That assessment of status was negotiable, and both family and friends of defendants took pains to pack the court during trials to assist in the defence. The press of bodies proved so burdensome that the council issued a proclamation in February of 1351 restricting those attending the defence of a case to lawyers and to the kinfolk of the defendant — fathers, brothers, uncles, nephews, and

cousins.<sup>80</sup> But in the outdoor booths where the courts of medieval Marseille sat in justice, the ability of the council to keep friends and more distant kin at bay was surely limited. An impressive show of solidarity could have had a considerable influence on the court.

Such may have been some of the circumstances surrounding the peace of Guilhem Bascul, the carpenter, killer of Guilhem Turel.<sup>81</sup> There had been a melée, a rix. Turel had been wounded and "wholly killed" (totaliter interfectus). Bascul had then been arrested for the murder, subsequently banished, and condemned for contumacy (delatus tunc de dicto homicidio et propter eo banitus fuit et pro contumacia per curia Massilie condempnatus) — the procedure of banishing the murderer and then charging him with contumacy being a new twist on the court's custom of treating imprisonment as exile, yet another imaginative way to fine murderers for something other than murder. Bascul made his act of contrition on Good Friday, in the Dominican's church, before a great congregation (coram omni populo ad divina audienda congregato), under the watchful eye of the man who mediated the peace, brother Guilhem of Marseille, prior of the Dominican convent. Bascul was on his knees. Humbly and tearfully, he requested pardon. He offered the kiss of peace and was embraced by his victim's kinsmen, the butcher Isnart Baille, Laurens Gartin, and unnamed others. He seems to have been utterly alone and kinless.

So why was he treated with a measure of respect by the court? Why wasn't he imprisoned and tortured, like Guilhem Robaut or Uguo Jaume, or summarily executed, like Boryaca? Like all notarial acts, this one terminated with a list of witnesses, seven in number. Two were Dominicans. The other five — Uguo Esteve, Jacme Gili, Antoni Bonfilh, Peire Bonfilh, and Bernat de Soluiers — were identified only by name. Yet in searching through Marseille's archives I have found that all these men, like Bascul, were carpenters. Moreover, they all lived on the same street as Bascul, the Carpenters' Street. The kin group assembled on behalf of Turel was more than matched by Bascul's friends

and neighbours, their willingness to throw their weight about possibly being what saved the man from inquisitorial excesses, allowing him to be banished and subsequently restored to his community.

Having kith and kin was a sign of respectability, which in turn was rewarded by more lenient treatment, by the inquisition's derogation of authority to the victim's kin and to the peacemaking process. The scarcity of trials for homicide makes it impossible to see the process at work in other cases. Yet other trials involving less serious violence, such as the first of the two below, illustrate how defendants sought to impress the court by the depth of their social networks. In such cases, the defence consisted as much in establishing one's reputation before the uninformed judge as in challenging the inquisition's sequence of events.

## V

To judge by the surviving documents, exile was used exclusively by those guilty of murder or of very serious woundings. The more trivial the wound, the more likely it was that the assailant would remain in town and risk arrest by the inquisition. In a very curious and counterintuitive way, the judicial system of fourteenth-century Marseille was primarily responsible for acts of common and petty violence, leaving more serious cases to the system of arbitration and peacemaking.

Yet what was common, and what was serious? It was difficult for foreign judges to grasp the relations of enmity that sometimes lay behind acts of violence. It was difficult to predict whether an assault might prick the honour of the victim and give rise to a lasting hatred. In practice, the court avoided the issue entirely. To judge by the few inquisitions that have survived in the appellate court records, the court preferred to proceed with a mechanical kind of justice in cases of violence. It counted the blows given but never inquired into motive and rarely bothered to establish the chronology of events leading up to the encounter. This indifference to motive tended to trivialize

violence; the trivialization of violence created grievances; and many defendants chose to pursue those grievances by means of an appeal. In these appeals, we find defendants struggling to restore some dignity to their behaviour by establishing a chronology that helped explain their motives, sometimes using witnesses whose own probity enhanced the value of their testimony. Two cases illustrate the process particularly well.

The first is an appeal made by the master shoemaker Tomas Dorlos against a 10 pound fine assessed for a severe beating he gave to a journeyman shoemaker, Jacme de la Barre, a native of France.<sup>82</sup> The fight between the two men took place in the late summer or early autumn of 1342 in a part of the city called the Agudaria, in the vicinity of a square alongside the port called the Scaria where many shoemakers formed a community. The inquisition took place immediately after the fight, and the appeal by Tomas was lodged a month or two later, on 29 October 1342. In the transcript from the inquisition into the fight,<sup>83</sup> the witnesses all claimed to have seen Jacme, severely wounded, first defending himself against Tomas and then lying prostrate on the ground. Peire de Moustiers, the first witness, reported that he heard the clamor (rumorem) from inside the house of the shoemaker Peire Chamonet. Rushing out, he saw the victim bleeding in the street, the accused striking yet another blow with his sword. Asked who else was present, the witness said many others whose names he did not know.<sup>84</sup> This ignorance of names suggests that the witness, Peire de Moustiers, was not a resident of the quarter; other documents show that he may have been a goldsmith or a labourer residing some distance away. The next witness, the brassworker Johan Raynier, reported that he heard the clamor from his workshop on an adjoining street; coming to the scene, he saw the accused striking the victim several times with a sword.<sup>85</sup> This witness saw the fight in its earliest stage; he did not report that the victim had fallen to the ground, and explained that he had returned to his workshop almost immediately. He, too, knew none of the names of the other bystanders. Both of the next two witnesses, namely Salvaire Clemens, a resident of the quarter, and Bernat Spitalier, probably another brassworker, gave similar

testimony: Salvaire seems to have arrived on the scene in time to see the initial stages, whereas Bernat reported the events after the victim fell to the ground.<sup>86</sup>

The testimony given by the witnesses for the inquisition was thin. None of them appears to have been among those who raised the clamor. All arrived too late to see the very early stages of the battle; all reported only a portion of the events, in a curiously disjointed fashion. The sequence of events is confused: it is not entirely clear, for example, whether the wounds were inflicted before or after the victim fell. With the possible exception of Salvaire Clemens, none of the inquisition witnesses was a shoemaker, and although this may have resulted from the unwillingness of the shoemakers to become involved in an intraprofessional dispute it is more likely that members of the profession were carefully pruned out by the inquisition. When Tomas was given a chance to testify, all he was allowed to add was that Jacme had once worked in his workshop and had struck him first.

This flattening of chronology and studied ignorance of the context of the dispute was typical of the inquisition style in other cases that came to be heard on appeal. As a rule of thumb, the inquisition had no interest in probing into the sequence of events that had led up to the dispute. Judges were not interested in finding out whether defendants were in any way justified in being angry; nor, as a rule, did they make any inquiry into the social context of the dispute or the reputations of the parties involved. We cannot tell whether this inquisitorial habit was intentional or not — it may simply have been an incidental result of the custom of prosecuting those caught in flagrante. Whatever the circumstances in this case, Tomas was offended, and in his appeal he tried to present the violence within the context of a larger dispute, including the social context. He was not above name-calling: in the inquisition record, Jacme was called a shoemaker, whereas in the appellate hearing Tomas described his victim as a vagabond (homo vagabundus) and called him by the diminutive form of his name, Jacomin. But Tomas's primary concern was to show how his actions were justified by the real chronology of events, a



chronology revealed by the list of titles or legal positions that he presented to the judge and aimed to prove through witnesses, as paraphrased below:

1. Jacme owed his ex-master some money. One day Jacme, coming at Tomas (veniens versus predictum Thomassium), asked that he be paid his wages; Tomas responded "Pay me what you owe me", whereupon Jacme suddenly raised his hand and gave Tomas a great slap (magnam alapam) on the face.
2. Jacme then took his cane and further wounded Tomas.
3. Jacme, assaulting Tomas with one hand, seized him by the hair with the other and pulled him about. Seeing that he could not evade the blows, Tomas drew his sword in self-defence (ad suum defensionem evaginavit gladium suum) and wounded Jacme; Jacme then let go.
4. Jacme was strong and robust, possessing bodily limbs of great size (habens extremitates corporeas magnas), and was more capable of hurting Tomas with a small knife than Tomas could hurt him with a great one.
5. Tomas was a peaceful man.<sup>87</sup>

The story seems realistic enough and includes several points, such as the debt and the original aggression by Jacme, that were not mentioned by the witnesses recruited by the inquisition. To confirm this story, moreover, Tomas was able to recruit two shoemakers, a currier, a next-door neighbour, and a close friend, the squire Tomas de Portu. These men constituted the respectable social network in which Tomas was embedded. At least three of these witnesses had known the defendant Tomas for some

time and hence were in a position to report favourably on the fifth point, namely that Tomas was a peaceful man.<sup>88</sup> All claimed to have witnessed the fight from beginning to end, and for the most part the testimony they offered corroborated Tomas's story well.

The transcript ends with the declaration, "The case was dropped by a higher authority".<sup>89</sup> Yet it is doubtful that this outcome was in any way guaranteed. Moreover, Tomas may well have spent more than 10 pounds on his appeal, and there is nothing to suggest that the crown was asked to pay these costs. Obviously, Tomas was motivated by the sense of a miscarriage of justice as much as anything. Moreover, since appellate cases were heard in booths in the city's central square, it is distinctly possible that the highly public nature of the appeal, with its presentation of Tomas as a reasonable man, would have served the useful end of restoring Tomas's reputation regardless of the eventual verdict. The public nature of justice in Marseille, which may have helped the inquisition to trivialize violence and to shame defendants, was also a tool available to wealthy defendants to restore damaged reputations.

A second case is that of Julian Marquet and Jacme Guilhem.<sup>90</sup> On a cloudy day in January of 1342, Julian, a fishmonger from Catalonia, and Jacme, a fisherman, had a running fight along the quay of the port, which led to blows being exchanged and blood spilt. Witnesses testified that Julian had been walking along the quay away from the church of St Jean when he was accosted by Jacme, who (according to one witness) said to him "Aras es loc!" (leave this place!). Knives were drawn; Julian turned and fled back up the street and into the tavern of Nicola Bonifilia. Both men were yelling "Ar es ora! ar es ora!" and Nicola screamed "Sancta Maria acorres!" (Please help, St Mary!) As the neighbours gathered, they saw Julian give Jacme a blow to the right arm, which was returned threefold by Jacme, who struck Julian twice on the head and once on the right hand. One or two neighbours intervened at this point, placing a wooden bar between the fighting men. Several witnesses for Julian claimed that as Jacme reemerged from the tavern, his brother, Peire Guilhem, challenged him in some way, saying, "Torna lo ferir

car tu non las ben ferit" (roughly, "Go back and strike him again because you didn't get the job done").

Medical evidence given at the original inquisition suggested that both men were wounded to more or less the same degree; both were up and about a day or so after the fight. Yet although Julian received three blows and managed to deal only one, and had not precipitated the fight, he was none the less fined 20 pounds by the inquisition, whereas Jacme got away with 15 pounds.

In the inquisition record, a copy of which was bound into the appellate register, the court had made absolutely no effort to put the fight in any kind of context. Temporally the inquisition was limited to the time it took Julian to walk from the compound to the place where Jacme was waiting and the few minutes of the fight itself. Witness testimony was fragmented. No inquiry was made into the kinfolk of the defendants, especially into the suggestion that Jacme's brother Peire was involved in the fight. No inquiry was made into whether Jacme had planned the encounter. No inquiry was made into whether Julian, as a fishmonger and tax collector on fish sales, was involved in any professional dispute with the fisherman Jacme. Some of these points, it is true, emerged when the two men themselves were allowed to testify at the end of the original inquiry, but no effort was made to pursue these points through the testimony of corroborating witnesses. In short, the court was focused intently on a short slice of time and a very limited set of motives. A very limited set of motives indeed, for the court explained Julian's act of violence only by saying that Julian was "moved by the agency of the Devil" to strike Jacme the blow from which much blood flowed.<sup>91</sup> Julian was given the larger fine, according to this depiction of events, most probably because he was the first to draw blood, thus escalating the conflict from one involving insults to one involving weapons and bloodshed.

As in Tomas's case, Julian's appeal consisted in part in establishing a chronology that highlighted his opponent's role in starting the fight and cast his own behaviour as

self-defence. But the logic of his argument was informed in part by the logic of vengeance. He sought to prove that he lived in the Fishmonger's Quarter, several blocks away from the scene of the fight, and was not originally from Marseille but from Catalonia. His enemy, by contrast, was from Marseille and made his hearth in front of the church of St Jean, as did relatives of Jacme, namely his brother and "many other agnates and cognates, affines and neighbours, and friends".<sup>92</sup> Last, he was alone on the day of the battle. In this story, Julian was deep in enemy territory, stripped of the protective shield of kin. As it turned out, the hostile assortment of agnates, cognates, and affines arrayed against him dissolves, upon inspection, into the sole figure of his enemy's brother, Peire Guilhem. Furthermore, we find that his enemy Jacme did not live anywhere near where the violence took place; all witnesses agreed that he lived instead in the Praepositura, a section of the city many blocks to the north. None the less, by heightening the sense of danger it made a good story and served to confirm the reasonableness of Julian's act of self-defence.

Pointedly absent from his story was the rationale for the fisherman Jacme's aggressive behaviour. In a remarkable revelation in the original dossier, however, Jacme himself explained to the judge of the inquisition that he had been wounded by an unnamed brother-in-law of Julian's some time during the previous year. The implication is clear: his was a legitimate act of vengeance against the kinsman of an earlier aggressor. No effort was made during the original inquisition to inquire into this history, however, and Julian did not mention it on appeal. Julian's silence regarding the vendetta is significant, for it shows that ordinary folk, unlike Marseille's nobility, were reluctant to tell the inquisition to stay out of their feuds, although this did not prevent Jacme from so doing. One did better to employ a language of self-defence, delicately tinged with the odour of bad blood, and leave the thinking to the judge.

Tomas de Portu in the first case and the two antagonists in the second were faced with very different situations. Tomas could not offer an argument based on hatred or the

prospect of vengeance because his victim was friendless. He was forced to play the card of good reputation and self-defence — strategies that were common enough in other criminal and civil court cases. In the second case, by contrast, Julian evoked the threat posed by his antagonists's kin; Jacme, in turn, offered an argument of justifiable vengeance. Arguments based on the existence of mutual hatreds were common in cases involving violence between nobles; if less common in cases involving commoners, they can be found in this appeal and in several other cases. Hatred was felt to be a prerogative of the powerful, of those with kin, friends, and allies. Court rhetoric, intentionally or not, removed acts of violence from the context of anger or hatred and in so doing tended to make common violence common, explainable as the product of insanity or diabolical influence rather than rational thought processes. By evoking hatred in their appeals, criminal defendants were able to make their petty acts of violence seem more heroic.

As with exile, the appellate process favoured those with resources. The lowest cost found in these records was 6 pounds, already more expensive than all but a few of the fines assessed, and the highest cost for an appeal was 42 florins, the price of a modest house or a decent-sized vineyard, well beyond the reach of all but the wealthiest citizens.<sup>93</sup> As a result, appeals were not common. Over the years between 1337 and 1362, twenty-one registers of Marseille's court of first appeals have survived, containing only thirty cases involving violent confrontations. The negotiable qualities of the system clearly favoured those with money. Others had to suffer in silence. If legitimate violence and the pursuit of vengeance came to be restricted to members of the European elite, this was not necessarily because common folk were not honourable. Over time, they may just have lost the chance to tell us so.

## VI

To judge by the example of Marseille, justice did not emerge in medieval Europe fully formed, like Botticelli's Venus on the waves of a turbulent past. Nor was peace

something that figures of authority imposed on a lawless and violent population, although the legacy of Hobbes encourages us to interpret the Christian discourse of peace in this way. Habits of peacemaking were ingrained in medieval society, along with those habits of vengeance that gave the spur to peacemaking. Some law courts recognized the utility of peace. Peace is fulfilling. It satisfies. And in certain circumstances, the royal court of Angevin Marseille was willing to allow the peace process to have its way, deferring its own authority over homicide and other crimes of violence to ensure that the peace process would not be derailed by a hasty judgment. Both the power vacuum and the continuing reality of group vengeance encouraged this caution.

But a peace was effective only where assailant and victim alike were embedded in matrices of kin and friends, where both parties involved possessed a certain social standing. This was a matter for negotiation, not an object of common knowledge, especially to judges who were foreign to the city, to its families, to its neighbourhoods and its problems. So we see justice practised in a discretionary, delicate way. We see people anxious to discover groups of kin and friends, groups that would legitimate their claims for preferential treatment. We find numerous men, like Guilhem Bascul and Tomas de Portu, embedding themselves in networks of friends when kin were in short supply. We see subtle rhetorical battles taking place in court, as inquisition and defendant alike sought to define the context in which acts of violence took place. In these practices for handling violence, there was room for negotiation and flexibility, judicial abuse and popular resistance. It was a system without clear rules. It was a system that the judges and the judged made up as they went along. This was not a legal system that knew where it was going, that developed according to an internal logic regardless of the ends that it served, of the people who used it. It was a hybridizing system, one in which the act of vengeance would eventually merge into the art of litigation, leaving a taste of revenge in the writs and pleas that supplanted the swords and knives of an earlier era.<sup>94</sup>

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Table 1: Profile of criminal prosecutions in Marseille, 1331-1332

<u>type of incident</u>	<u>number</u>	<u>per cent</u>
violence or threats with weapons	289	58.7%
insults	108	22.0%
verbal threats and other confrontations	24	4.9%
theft	22	4.5%
civil infractions	20	4.1%
bearing illegal arms	17	3.5%
unidentifiable	12	2.4%
<u>total</u>	<u>492</u>	<u>100.1%</u>

source: ADBR B 1940, fos. 76r-139r



## NOTES

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<sup>1</sup>Anders Henriksson, "A History of the Past: 'Life Reeked with Joy'", Wilson Quart. vii (1983), p. 168. This is a collection of quotes from student essays put together by a professor of history.

<sup>2</sup>Quoted in Oliver J. Thatcher and Edgar Holmes McNeal, A Source Book for Mediaeval History (New York, 1905), p. 559; original source, *Monumenta Germaniae Historica, Leges IV*, vol. 1 (Hanover, 1893), p. 643. The passage goes on to declare the nature of the punishment for homicide (whipping, shaving of the head and branding) and continues with lengthy provisions intended to hinder the spread of a dispute between the kin of the murderer and of the victim.

<sup>3</sup>Burchard himself acknowledged that in certain circumstances members of the family of St Peter were free to pursue vengeance against any foreigner who had murdered a member of the family. For a similar argument regarding Gregory of Tours' equivocal stance towards the bloodfeud in Frankish society, see J. M. Wallace-Hadrill, The Long-Haired Kings and other Studies in Frankish History (New York, 1962), p. 128.

<sup>4</sup>The theme of God's vengeance in the early Middle Ages is one that goes well beyond this paper, but insofar as it relates to blood vengeance, see Stephen D. White, "Feuding and Peace-Making in the Touraine around the Year 1100", Traditio, xlii (1986), p. 201; Jon N. Sutherland, "The Idea of Revenge in Lombard Society in the Eighth and Tenth Centuries: The Cases of Paul the Deacon and Liudprand of Cremona", Speculum, l (1975), pp. 391-410. Also very pertinent are R. W. Southern, The Making of the Middle

Ages (New Haven, 1953); Marie-Madeleine Davy, "Le thème de la vengeance au Moyen Age", in Gérard Courtois (ed.), La vengeance dans la pensée occidentale, vol. iv of La vengeance: Etudes d'éthnologie, d'histoire, et de philosophie (Paris, 1981).

<sup>5</sup>Two enormously valuable studies of violence and peacemaking in thirteenth-century Italy have emerged in the last few years: Augustine Thompson, Revival Preachers and Politics in Thirteenth-Century Italy: The Great Devotion of 1233 (Oxford, 1992); James M. Powell, Albertanus of Brescia: The Pursuit of Happiness in the Early Thirteenth Century (Philadelphia, 1992).

<sup>6</sup>The classic account is E. E. Evans-Pritchard, The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People (Oxford, 1947). Evans-Pritchard's theories on the feud and its constraints were subsequently challenged by Jacob Black-Michaud, Cohesive Force: Feud in the Mediterranean and the Middle East (Oxford, 1975). See also Philip S. Khoury and Joseph Kostiner (eds.), Tribes and State Formation in the Middle East (Berkeley, 1990). With the exception of Christopher Boehm, Blood Revenge: The Anthropology of Feuding in Montenegro and other Tribal Societies (Lawrence, 1984), anthropologists in recent decades have turned away from the study of the feud. More vigorous has been the study of banditry and raiding, both of which can be acts of revenge; the literature has been inspired in part by E. J. Hobsbawm, Social Bandits and Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries (Glencoe, Ill., 1959). See, for example, Michael Herzfeld, "Pride and Perjury: Time and the Oath in the Mountain Villages of Crete", Man, xxv (1990), pp. 305-22; Paul Sant Cassia, "Banditry, Myth, and Terror in Cyprus and other Mediterranean Societies", Comparative Studies in Society and Hist., xxxv (1993), pp. 773-95.

<sup>7</sup>Early works in European history include Heinrich Brunner Deutsche Rechtsgeschichte (Leipzig, 1906); Frederick Pollock and F. W. Maitland, The History of

English Law before the Time of Edward I (Cambridge, 1896); F. W. Maitland, The Collected Papers of Frederic William Maitland (Cambridge, 1911). See also Charles Petit-Dutaillis, Documents nouveaux sur les moeurs populaires et le droit de vengeance dans les Pays-Bas au XV<sup>e</sup> siècle (Paris, 1908), which includes commentary and a brief orientation to the large contemporary bibliography (pp. 39-40); Bertha Surtees Phillpotts, Kindred and Clan in the Middle Ages and After: A Study in the Sociology of the Teutonic Races (New York, 1974 [1913]); Gabriel Maugain, Moeurs italiennes de la Renaissance: La vengeance (Paris, 1935); Julius Goebel, Felony and Misdemeanor: a Study in the History of Criminal Law (Philadelphia, 1976 [1937]); Otto Brunner, Land and Lordship: Structures of Governance in Medieval Austria, trans. Howard Kaminsky and James Van Horn Melton (Philadelphia, 1992 [1939]).

<sup>8</sup>Max Gluckman, "The Peace in the Feud", Past and Present, no. 8 (Nov. 1955), pp. 1-14.

<sup>9</sup>Wallace-Hadrill, Long-Haired Kings. For some account of the influence of Gluckman's article on subsequent social history, see White, "Feuding and Peace-Making", p. 258 n. 252.

<sup>10</sup>White, "Feuding and Peacemaking", includes a thorough and up-to-date bibliographic survey of recent studies. The most recent entries in the historical bibliography on feuding and vengeance in the Middle Ages and the sixteenth century include William Ian Miller, Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland (Chicago, 1990); Edward Muir, Mad Blood Stirring: Vendetta and Factions in Friuli during the Renaissance (Baltimore, 1993); Paul R. Hyams, Rancor and Reconciliation: Violence and its Motivations in Medieval England (forthcoming), which I have not yet seen. On conflict more generally, along with a bibliography and a programmatic statement regarding conflict as order rather than anarchy, see Patrick J. Geary, "Vivre en conflit dans une France sans état: typologie des mécanismes de

règlement des conflits (1050-1200), Annales E.S.C., xli (1986), pp. 1107-33; see also Barbara A. Hanawalt, "Community Conflict and Social Control: Crime and Justice in the Ramsey Abbey Villages", Mediaeval Studies, xxxix (1977), pp. 402-23; John Bossy (ed.), Disputes and Settlements: Law and Human Relations in the West (Cambridge, 1983); Wendy Davies and Paul Fouracre (eds.), The Settlement of Disputes in Early Medieval Europe (Cambridge, 1986).

<sup>11</sup>Sally Falk Moore, Social Facts and Fabrications: "Customary" Law on Kilimanjaro, 1880-1980 (Cambridge, Mass., 1986); S. F. Moore, "Treating Law as Knowledge: Telling Colonial Officers what to Say to Africans about Running 'their own' Native Courts", Law and Society Rev., xxvi (1992), pp. 11-46; Laura Nader, Harmony Ideology: Justice and Control in a Zapotec Mountain Village (Stanford, 1990); June Starr and Jane F. Collier (eds.), History and Power in the Study of Law: New Directions in Legal Anthropology (Ithaca, 1989); Peter Just, "History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law", Law and Society Rev., xxvi (1992), pp. 373-411.

<sup>12</sup>See Osvaldo Raggio, Faide e parentele: lo stato genovese visto dalla Fontanabuona (Turin, 1990); Stephen Wilson, Feuding, Conflict and Banditry in Nineteenth-Century Corsica (Cambridge, 1988).

<sup>13</sup>For the political history of the commune of Marseille up to the advent of Angevin rule in 1264, see V.-L. Bourrilly, Essai sur l'histoire politique de Marseille des origines à 1264 (Aix-en-Provence, 1925).

<sup>14</sup>On this see Edouard Baratier, Histoire de Marseille (Toulouse, 1973); Georges Lesage, Marseille angevine (Paris, 1950).

<sup>15</sup>See Marseille, France, Archives Départementales des Bouches-du-Rhône (hereafter A.D.B.R.) IIIB 820, fo. 161v.

<sup>16</sup>Les statuts municipaux de Marseille, ed. and trans. Régine Pernoud, (Monaco and Paris, 1949), bk. V, ch. 25, p. 178.

<sup>17</sup>See Thompson, Revival Preachers and Politics, pp. 138-9 and p. 200-204. More generally, see also Stephen D. White, "Pactum ... Legem Vincit et Amor Judicium: The Settlement of Disputes by Compromise in Eleventh-Century Western France", American J. Legal Hist., xxii (1978), pp. 281-308; Thomas Kuehn, Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy (Chicago, 1991), p. 21.

<sup>18</sup>See Les statuts municipaux, ed. and trans. Pernoud.

<sup>19</sup>Some discussion of the judiciary in medieval Marseille can be found in Raoul Busquet, "L'Organisation de la justice à Marseille au Moyen-Age", Provincia, ii (1922), pp. 1-15; Raymond Teisseire, Histoire des juridictions et des palais de justice de Marseille depuis leur origine jusqu'à nos jours (Paris, 1931).

<sup>20</sup>John A. Langbein, Torture and the Law of Proof: Europe and England in the Ancien Régime (Chicago, 1977).

<sup>21</sup>On criminal procedure in Roman law, see A. Esmein, Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire, depuis le XIII<sup>e</sup> siècle jusqu'à nos jours (Paris, 1882); John Langbein, Prosecuting Crime in the Renaissance: England, Germany, France (Cambridge, Mass., 1974); Sarah Rubin Blanshei, "Crime and Law Enforcement in Medieval Bologna", J. Social Hist., xvi (1982), pp. 121-138; Jacques Chiffolleau, Les justices du pape: délinquance et criminalité dans la région d'Avignon au quatorzième siècle (Paris, 1984); Laura Ikins Stern, The Criminal Law System of Medieval and Renaissance Florence (Baltimore, 1994); John K. Brackett, Criminal justice and crime in late Renaissance Florence, 1537-1609 (Cambridge, 1992).

<sup>22</sup>A.D.B.R. B 1940, fos. 74<sup>r</sup>-139<sup>v</sup>. The list was itself part of a yearly compilation of royal revenues and financial activity in the city made by the clavaire, the royal officer in charge of the city's finances. Only two other such registers, A.D.B.R. B 1941 and

1942, have survived for the mid-fourteenth century; regrettably, in neither of them did the *clavaire* include receipts from criminal sentences. The acts of violence recorded in the register do not all belong to a single year, since the register includes receipts for fines assessed in past years (some defendants had to defer payment on account of poverty). We can reasonably assume that the extra receipts for fines levied in past years were balanced by the fines levied in 1331 that themselves remained unpaid.

<sup>23</sup>A.D.B.R. B 1940, fo. 87<sup>r</sup>.

<sup>24</sup>The crime in the remaining twelve cases cannot be identified.

<sup>25</sup>Chiffolleau, Les justices; Bronislaw Geremek, The Margins of Society in Late Medieval Paris, trans. Jean Birrell (Cambridge and Paris, 1987).

<sup>26</sup>See the discussion in Stern, The Criminal Law System, p. 214.

<sup>27</sup>Records show that these two men were aided by groups of men called familiae, private servants belonging to their households. The role of the sub-vicar in apprehending malefactors is evident everywhere in the appeals to criminal sentences found in the appellate court transcripts, A.D.B.R. IIIB 800 and up. These two officials were also empowered to deputize ordinary citizens in moments of crisis; see, for example, A.D.B.R. IIIB 819, fo. 4<sup>r</sup>, testimony of Guilhem de Serviers. This entire register is devoted to several appellate hearings made by men accused of involvement in a street battle. One of their counter-arguments was that the city's vicar had in effect deputized the men to follow him with any arms they could find in an attempt to apprehend a murderer and prevent his death at the hands of his enemies. For more on inquisitorial procedures, see Brackett, Criminal Justice and Crime, p. 57-68.

<sup>28</sup>For several examples see A.D.B.R. IIIB 41, fos. 224<sup>r</sup>-234<sup>r</sup> (vandalism of a vineyard); A.D.B.R. IIIB 41, fos. 150<sup>v</sup>-151<sup>r</sup>, and IIIB 66, fos. 14<sup>r</sup>-28<sup>r</sup> (theft); IIIB 62, fos. 183<sup>r</sup>-184<sup>r</sup>, and Archives Municipales de la Ville de Marseille (hereafter A.M.) FF 519, fos. 61<sup>r</sup>-<sup>v</sup> (threats).

<sup>29</sup>A.D.B.R. B 1940, fos. 76<sup>r</sup>-v. If his brother Johanet was fined for the homicide, either the fine was unpaid at this point in time or was being appealed to a higher court.

<sup>30</sup>Chiffolleau, Les justices, p. 148.

<sup>31</sup>Chiffolleau, Les justices, pp. 222-23; see also Stern, The Criminal Law System, pp. 27-28.

<sup>32</sup>Marvin B. Becker, "Changing Patterns of Violence and Justice in Fourteenth- and Fifteenth-Century Florence", Comparative Studies in Society and Hist., xviii (1976), p. 282. See also the useful interdisciplinary discussion in Kuehn, Law, Family, and Women, pp. 19-21.

<sup>33</sup>A.D.B.R. IIIB 808, fos. 123<sup>r</sup>-159<sup>r</sup>. See fo. 137<sup>r</sup> for a description of the statutes and proclamations (preconisationes) that the men offended. The accusation goes on to relate that the men had gathered at a friend's house intending to murder Uguo Robert, but the murder itself was ancillary to the specific charges. According to testimony given on behalf of the defendants, the same group of laborers and caulkers had been involved in the murder of a butcher named Antoni Raynaut, brother of a close friend of the victim in this case; see fos. 127<sup>v</sup>-131<sup>v</sup>. This series of murders bears some of the characteristics of a feud (although one group seems to be doing all the killing), but the judge had little interest in the subject and never probed into the case's antecedents, leaving us in the dark.

<sup>34</sup>A.D.B.R. IIIB 820, fos. 8<sup>r</sup>-103<sup>v</sup>. The appeal itself opened 7 July 1356.

<sup>35</sup>From the way the case develops it is clear that the Jerusalem militia was a far greater threat to Amiel than was the crown's police force.

<sup>36</sup>Ibid., fo. 8<sup>v</sup>

<sup>37</sup>Ibid., fo. 8<sup>r</sup>.

<sup>38</sup>Ibid., fos. 1<sup>r</sup>-6<sup>v</sup>.

<sup>39</sup>If the exiled man had any property. This was a delicate point. In the case of Amiel Bonafos, the procurer declared that Amiel was in patria potestas: his father was his

legal administrator (fo. 8<sup>v</sup>). Technically, then, Amiel possessed no property in his own name. A Marseille statute (De parentibus pro filiis, et e converso, non multandis) makes it clear that a father could be held liable for his son's crimes — but only after the father's own death or entry into a monastery (see Les statuts municipaux, ed. and trans. Pernoud, p. 179). I think it is unlikely that Marseille's court had the institutional memory to carry out this threat, assuming the father lived for at least several years after the event.

<sup>40</sup>The Italian communes also condemned peacebreaking in harsh terms; see Thompson, Revival Preachers and Politics, p. 176 and ch. 7.

<sup>41</sup>See A.D.B.R. IIIB 811, appeal heard 12 Dec. 1351, fos. 15<sup>r</sup>-101<sup>v</sup>. Although the record of this particular case is fragmentary and does not explain the reason for the fine, we know from another case that a peace had been set up between the rival parties on 24 March 1350, and the fines probably arose as a result of breaking this peace. Extant peace acts usually stipulate a 100 pound fine in the event of a transgression. The small war of 1351 itself was followed immediately by another peace dated 26 July 1351: copies of both acts of peace are included in the appeal arising from the murder of Peire de Jerusalem; see A.D.B.R. IIIB 820, 7 July 1356, fos. 16<sup>r</sup>-18<sup>v</sup>, for the transcript, which is entitled Tenor instrumentorum productorum super pace.

<sup>42</sup>Kuehn, Law, Family, and Women, p. 69.

<sup>43</sup>Gino Sandri (ed.), Gli Statuti Veronesi del 1276 (Venice, 1940), p. 410.

<sup>44</sup>Girolamo Rossi (ed.), Gli Antichi Statuti di Apricale (1267-1430) (Bordighera, 1986), p. 21.

<sup>45</sup>Piero Camilla (ed.), Corpus Statutorum Comunis Cunei 1380 (Cuneo, n.d.), p. 220.

<sup>46</sup>Thomas A. Green, Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800 (Chicago, 1985); Douglas Hay et al. (eds.),



Albion's Fatal Tree: Crime and Society in Eighteenth-Century England (New York, 1975).

<sup>47</sup>On exile see Randolph Starn, Contrary Commonwealth: the Theme of Exile in Medieval and Renaissance Italy (Berkeley, 1982); on banditry, see Raggio, Faide et Parentele, esp. ch. 8.

<sup>48</sup>See for example Thompson, Revival Preachers and Politics, p. 143ff; he bases his arguments on statutory law.

<sup>49</sup>Corpus Statutorum Comunis Cunei, p. 221.

<sup>50</sup>Ibid., p. 221.

<sup>51</sup>Giuseppe Fornarese (ed.), Statuta Vetera Civitatis Aquis (Bologna, n.d.), p. 25.

<sup>52</sup>Gli Antichi Statuti de Apricale, p. 21.

<sup>53</sup>Gli Statuti Veronesi, pp. 410-15; for the statutes of Nice, see Monumenta Historiae Patriae II. Leges Municipales (Turin, 1838), col. 61.

<sup>54</sup>Les statuts municipaux, ed. and trans. Pernoud, p. 178.

<sup>55</sup>A.D.B.R. IIIB 37, fos. 280<sup>r</sup>-282<sup>v</sup>.

<sup>56</sup>The trials for these years are found in A.D.B.R. IIIB 33 through A.D.B.R. IIB 66.

<sup>57</sup>By the thirteenth century, Roman law courts in Marseille (and elsewhere) had come to recognize these drafts as legally binding in most circumstances. See the discussion in John Pryor, Business Contracts of Medieval Provence. Selected "Notulae" from the Cartulary of Giraud Amalric of Marseilles, 1248 (Toronto, 1981).

<sup>58</sup>Bound registers containing dozens or hundreds of such acts.

<sup>59</sup>A lengthy discussion of peace acts can be found in Kuehn, Law, Family, and Women. See also Petit-Dutaillis, Documents nouveaux, esp. pp. 54-88; Becker, "Changing Patterns of Violence", esp. pp. 282-85; Wilson, Feuding, Conflict and

Banditry, ch. 9, "Conciliation and Peacemaking"; Thompson, Revival Preachers and Politics, pp. 136-178.

<sup>60</sup>For an overview of the problem of survival, see Louis Stouff, "Les registres de notaires d'Arles (début XIV<sup>e</sup> siècle-1460). Quelques problèmes posés par l'utilisation des archives notariales", Provence historique, xxv (1975), pp. 307-10. The figure of one in fifteen is based on my own calculations for Marseille: the average year between 1337 and 1362 was covered by slightly more than two notarial casebooks, and a document in the Archives Municipales de la Ville de Marseille, A.M. FF 166, reveals that thirty or more notaries were licensed to practice in any given year.

<sup>61</sup>A.M. II 42, fo. 60<sup>v</sup>.

<sup>62</sup>This did not, I think, automatically prevent the inquisition from proceeding with other charges, such as bearing arms.

<sup>63</sup>A.D.B.R. 381E 79, fos. 46<sup>v</sup>-47<sup>r</sup>.

<sup>64</sup>For a discussion of arguments such as this one, see Natalie Zemon Davis, Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France (Stanford, 1987).

<sup>65</sup>A.D.B.R. 381E 384, 25 Apr. 1337, fos. 19<sup>v</sup>-21<sup>r</sup>.

<sup>66</sup>A.M. 1 II 44, 10 Apr. 1349, fos. 60<sup>r</sup>-61<sup>v</sup>.

<sup>67</sup>A.D.B.R. 381E 79, 8 Dec. 1353, fo. 125<sup>v</sup>.

<sup>68</sup>A.D.B.R. 355E 290, 4 Apr. 1355, fos. 20<sup>r</sup>-21<sup>r</sup>.

<sup>69</sup>A.D.B.R. IIIB 52, 2 Sept. 1353, fos. 12<sup>r</sup>-20<sup>r</sup>.

<sup>70</sup>Johan's complaint was not uncommon; we find similar accusations lodged in two other cases. See A.M. FF 518, fos. 106<sup>r</sup>-107<sup>v</sup>, and A.M. FF 520, fos. 88<sup>r</sup>-102<sup>v</sup>.

<sup>71</sup>A.D.B.R. IIIB 62, fo. 73<sup>r</sup>.

<sup>72</sup>A.D.B.R. IIIB 50, fos. 196<sup>r</sup>-203<sup>r</sup>.

<sup>73</sup>The involvement of wives in feuding, either indirectly through goading their male relatives to take revenge, or directly in vengeance itself, is common in societies that practice the feud. See, for example, Boehm, Blood Revenge, pp. 55-56; Miller Bloodtaking and Peacemaking, pp. 212-14; Wilson, Feuding, Conflict and Banditry, pp. 220-21.

<sup>74</sup>Notably the case of the murder of Uguo Robert; see n. 33 above.

<sup>75</sup>For violence among the nobility, see my "Telling Tales in Angevin Courts", forthcoming in French Historical Studies.

<sup>76</sup>A.D.B.R. IIIB 822, fos. 84<sup>r</sup>-85<sup>r</sup>.

<sup>77</sup>A.D.B.R. IIIB 22, fos. 25<sup>r</sup>-35<sup>v</sup>.

<sup>78</sup>A.D.B.R. IIIB 811, fos. 3<sup>r</sup>-13<sup>r</sup>.

<sup>79</sup>A.D.B.R., IIIB 811, fo. 3<sup>r</sup>.

<sup>80</sup>A.M. BB 21 (Council deliberations), fo. 102<sup>v</sup>.

<sup>81</sup>A.M. 1 II 44, 10 Apr. 1349, fos. 60<sup>r</sup>-61<sup>v</sup>.

<sup>82</sup>A.D.B.R. IIIB 808, fos. 184<sup>r</sup>-210<sup>r</sup>

<sup>83</sup>Ibid., fos. 193<sup>r</sup>-205<sup>v</sup>

<sup>84</sup>Ibid., fos. 197<sup>v</sup>-198<sup>r</sup>.

<sup>85</sup>Ibid., fo. 198<sup>v</sup>.

<sup>86</sup>Ibid., fos. 198<sup>r</sup>-200<sup>r</sup>.

<sup>87</sup>Ibid., loose leaf inserted between fos. 186<sup>v</sup>-187<sup>r</sup>. These titles are too long to transcribe in full.

<sup>88</sup>It is significant that one of these three, his neighbor Alasacia Viola, was a woman, for women were commonly understood by the courts to have a sound grasp of neighbourhood reputations and frequently appeared as character witnesses in Marseille.

<sup>89</sup>Ibid., fo. 210<sup>r</sup>. Sopita est causa per summam.

<sup>90</sup>A.D.B.R. IIIB 808, 5 Mar. 1342, fos. 32<sup>r</sup>-65<sup>r</sup>; the case is entitled Causa appellationis Juliani Marqueti, catalani peysonerii de Massilie contra curia.

<sup>91</sup>A.D.B.R., IIIB 808, fo. 62<sup>r</sup>.

<sup>92</sup>Ibid., fo. 34<sup>r-v</sup>. The phrase used to describe Jacme's associates is attinentes dicti Jacobi viz. frater suus qui tunc fuit et erat presens et alii plures agnati cognati seu affines et vicini et amici Jacobi Guillelmi supradicti...

<sup>93</sup>Expenses could range considerably depending on the quantity of written instruments needed and the salaries for lawyers and other assistants. For examples, see respectively A.D.B.R. IIIB 822, fo. 75<sup>v</sup> (6 pounds); A.D.B.R. IIIB 816, fo. 67<sup>r</sup> (30 florins); and A.D.B.R. IIIB 811, fo. 173<sup>v</sup> (42 florins).

<sup>94</sup>Chiffolleau, Les justices du pape, p. 160; Richard L. Kagan, "A Golden Age of Litigation: Castile, 1500-1700", in Bossy (ed.), Disputes and Settlements; Kuehn, Law, Family, and Women, pp. 80-82.