

THE Consumption OF Justice



Emotions, Publicity, and Legal Culture
in Marseille, 1264–1423

Daniel LORD Smail

THE CONSUMPTION OF JUSTICE

EMOTIONS, PUBLICITY,

AND LEGAL CULTURE

IN MARSEILLE,

1264–1423

DANIEL LORD SMAIL

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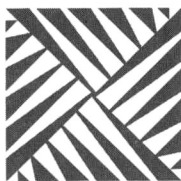
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OF JUSTICE



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Lawsuits are much the same the world over: underneath the tedious procedures, masked by the legal form demanded by the law, lie enmity, spite, aggravation, and the desire to avenge. Reading lawsuits leaves one with a rather jaundiced view of humankind. This opportunity to acknowledge all the assistance that made this book possible, therefore, is a happy occasion to reflect on the fact that the law and its emotions represents just a small part of what we are and what we do. Certainly scholarship would not be possible without the generosity of family, friends, colleagues, and institutions.

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ABBREVIATIONS

ADBR	Archives Départementales des Bouches-du-Rhône
AM	Archives Municipales de la Ville de Marseille
Durand, <i>Speculum iudicale</i>	Guillaume Durand, <i>Speculum iudicale</i> , 2 vols. Basel, 1574; reprint ed., Aalen, Germany: Scientia Verlag, 1975.
Mabilly, <i>Inventaire</i>	Département des Bouches-du-Rhône. Ville de Marseille. <i>Inventaire Sommaire des Archives Communales Antérieures à 1790</i> . Série BB. Vol. 1. Marseille, 1909.
Pernoud, <i>Statuts</i>	Régine Pernoud, ed. <i>Les statuts municipaux de Marseille</i> . Monaco: Imprimerie de Monaco, 1949.
Tancred, <i>Ordo</i>	Tancred, <i>Ordo iudiciarius</i> . In <i>Pilii, Tancredi, Gratiae, Libri de iudiciorum ordine</i> , ed. Friedrich Christian Bergmann. Gottingen, 1842.

A NOTE ON USAGE

The vernacular language of late medieval Marseille was a form of Provençal that incorporated a number of loan words from Latin and French. Latin was the most common language of record, though notaries of the court sometimes chose to leave insults and certain phrases in witness testimony in the vernacular. Wherever possible, I have translated names from Latin into their Provençal equivalent. Thus, a man known as *Johannes* in Latin records and as *Jean* in modern French was known as *Johan* in Marseille, the form I have used throughout this book. Surnames are more diverse than forenames, and there are some surnames for which I have been unable to find a Provençal equivalent; these I have left in Latin. Married women normally took their husbands' surnames though in a feminized form, and I have followed this convention in naming women. To take an example, a woman named Johana who was married to a man with the surname Robaut will appear as Johana Robauda in this book.

All dates in this book are given in the new style, with the new year beginning on 1 January rather than 25 March. Thus, a case whose date is given in this book as "20 March 1343" will be dated "20 March 1342" in the record.

For reasons discussed in the appendix, judicial registers were rarely paginated, and the material nature of the record makes it difficult to note the folio of a quotation or passage with much accuracy. The notaries' habit of sewing elements of the record into the register, often sheets or quires of paper with very different trim sizes, means that there can be no modern consensus about the foliation of a given register. Dates are not particularly helpful either, for although registers consist of a series of cases usually ordered by the date of initiation, the cases themselves internally proceed in rough (though not exact) chronological order. As a result, references to a given date will occur at various intervals throughout a given register. Dates are especially unhelpful in appellate cases, for the record of a given appeal includes transcripts of prior cases and therefore jumps around in time a

great deal. For these reasons, the citation style consists of the foliation and date on which a given case was initiated along with the folio on which the specific reference appears. Thus, to find folio 118r in the following reference—ADBR 3B 861, fol. 118r, case opened 5 May 1408 on fol. 69r—one should flip through register 3B 861 until one finds a case initiated on 5 May 1408 that is on or near fol. 69r. Counting approximately forty-nine more folios will then get the reader in the vicinity of what I call folio 118r. The problem arising from the almost inevitable divergence in opinion about foliation is somewhat lessened by counting folios from the beginning of the trial itself.

In early fourteenth-century Marseille, the standard unit of currency was the royal pound, at twenty shillings per pound and twelve pennies per shilling (see Henri Rolland, *Monnaies des comtes de Provence, XIIIe–XVe s. Histoire monétaire, économique, corporative. Description raisonnée* [Paris, 1956]). Most sums were expressed in this currency, though the florin was infiltrating the local economy by the mid to late fourteenth century. The value of the florin was nominally fixed at thirty-two shillings though notarial records note that the exchange rate fluctuated considerably over the course of the century. In the places where I have made arguments based on the cost of litigation I have not tried to adjust either for this fluctuating exchange rate or for inflation: references in the sources themselves are generally too spotty and uncertain to warrant such care. Other coins, such as silver marks, were also in circulation.

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INTRODUCTION

Come to terms with thy opponent quickly while thou art with him on the way; lest thy opponent deliver thee to the judge, and the judge to the officer, and thou be cast into prison. Amen I say to thee, thou wilt not come out from it until thou hast paid the last penny.

—Matt. 5:25–26

Lawsuits are types of enmities.

—Leon Battista Alberti, *De iciarchia*

Troubles began for the shoemaker Antoni d'Ays in the early 1330s when his wife, Douselina, left him and left Marseille too.¹ Several years after her departure, at Antoni's prompting, the judge of the palace court wrote a stern letter ordering her to return to her husband. She, or someone writing on her behalf, impertinently scribbled a refusal on the back of the letter and returned it to the judge, declaring that she wished to have nothing further to do with that man. With his wife gone, Antoni's possibly sexual relationship with his maid, Dousa, developed into a cozy domestic one. The situation was not wholly irregular: as the shoemaker would later argue, it was normal for any man without a wife to keep a maid or concubine to do his work. He called on several witnesses to corroborate this claim—they seemed surprised that it was necessary to do so. Surely Antoni was not the only single man employing the services of a maid in mid-fourteenth-century Marseille. But trouble was brewing nonetheless, for Dousa, the maid, was not well liked by her neighbors. She was said to be quarrelsome, equally loose in

¹ For the case of Antoni d'Ays see ADBR 3B 41, fols. 164r–187v, case opened 16 Aug. 1340. The epigraph is taken from Leon Battista Alberti, *De iciarchia*, in *Opere volgari*, ed. Cecil Grayson (Bari, 1966), 2:254, cited in Thomas Kuehn, *Law, Family, and Women: Toward a Legal Anthropology of Renaissance Italy* (Chicago, 1991), 71.

tongue and body. People whispered behind her back. She had, in short, developed bad *fama*.

Antoni d'Ays was a relatively inconspicuous artisan who lived on Negrel street, at the heart of the largest of Marseille's four shoemaker districts, in the decades before the Black Death. He appears only once in notarial contracts from the mid-fourteenth century, a sign of his relative lack of community standing. For all that, he was relatively skilled at law and, when it came time to assemble a group of supportive witnesses, proved himself to be well connected to shoemakers and other artisans in the leather trades. Even so, we would know little about his life and travails were it not for the noisy lawsuit lodged against him in August 1340. The suit was initiated by a respectable married man named Guilhem de Podio, also a shoemaker, also a resident of Negrel street, also skilled at law, willing to spend a great deal of money in an effort to purge the neighborhood of those he considered a threat to its morals and good name. Joining Guilhem were his sons Raolet and Huguet and, with them, a neighbor named Gilet Alfans, all shoemakers. The suit was the culminating episode in a messy dispute that spread out over at least five years, roiled the shoemaker community, and drew the attention of several courts and officials, eventually making its way to the seneschal of Provence. Though the dispute generated a good deal of paperwork in its various official incarnations, only the record of the 1340 lawsuit has survived. By virtue of its rich set of arguments and witness depositions, this record contains a more or less complete history of the affair, an affair that in turn provides insights into how and why people used the courts in late medieval Europe.

Court actions began around 1335, a year or two after Douselina's departure, when Paul Fabri, a resident of Negrel street and a jurist (*iurisperitus*), went to the episcopal court and accused Antoni or perhaps Dousa of some unspecified delict. The accusation was probably one of selling Dousa's sexual favors to friends and colleagues: at one point in the later trial Antoni was called a pimp and Dousa a prostitute. The good folk of Negrel street were especially thin-skinned when it came to illicit sex, for the imagined boundaries of the quarter to which the city's prostitutes were nominally confined, located just a block or two north of Negrel street, often proved to be quite porous. Whatever the accusation, Antoni managed to beat back the charge. But the animosity was there and grew over the next several years. Guilhem de Podio took up the case: in 1339, he went before the city's leading officials, namely the *viguier*, Rostahn Gautelm, direct representative of the Angevin crown in the city of Marseille, and the palace judge, Peire Dalmas, and acquired an eviction notice. Antoni was not one to take things lying down, and in a series of careful moves he laid the groundwork for his subsequent defense. Matters came to a head in August 1340, when Antoni went before

Bulgarin de Tiboldis, the new palace judge in a position that rotated yearly, and asked, once again, that the court force Douselina to return to him. That the court was powerless to enforce such an order, whatever its will in the matter, was beside the point: by proving his *bona fides*, Antoni hoped to illustrate that Dousa was a stop-gap measure in his domestic arrangements. Guilhem de Podio and his allies immediately lodged a suit against Dousa on the grounds that she was cohabiting illicitly with Antoni: at one point they cited the statute titled “On Woman’s Lust” (*De libidine mulieris*). What they sought was her eviction from the “good street” (*bona carreria*) of Negrel. During the course of the trial, a group of witnesses testified in flowery and repetitive detail to Dousa’s misdeeds. Antoni then mounted a spirited defense: Douselina had left him and refused to return; every man is allowed to keep a maid or concubine as long as he doesn’t prostitute her, and he certainly never did *that*; all the neighbors used to accept Dousa, and even accorded her the respectful salutation *domina Dousa*, “mistress Dousa,” and shared fruit with her in a friendly way; they have launched this suit now only to pursue a budding enmity against Antoni; they have illicitly solicited contributions from members of the shoemaker confraternity to defray the costs of litigation; all this is commonly known among the neighbors of Negrel street; and so on. All in vain. As the trial dragged into its second month, Antoni’s opponents went behind the judge’s back and acquired a letter from the seneschal of Provence ordering the judge to uphold prior eviction notices issued by the viguier. It was a dramatic moment: the palace judge declared himself incompetent to overrule a higher authority, and the trial came to an abrupt end. Antoni immediately appealed, but the appeal, if pursued, has not survived. In 1341, Antoni made his only appearance as a witness to a notarial contract and then disappeared for good from the historical record. Dousa, his maid, vanished without a trace, having never even made an appearance at court. Guilhem de Podio, a rather more substantial figure, was before the court once again in 1344, this time suing a creditor-adversary, the merchant Isnart de Monteseuro, on the grounds that he unjustly ordered the seizure of Guilhem’s goods to repay a small overdue debt.² His litigating career, however, had drawn to a close by 1348, for he was dead by the time of his daughter’s remarriage in April.³ It is just possible that Antoni was around to see his old adversary die a victim of the Black Death.

Marseille in the fourteenth and fifteenth centuries was a commercial center of international significance and a prize possession of the Angevin kings

² ADBR 3B 45, fol. 226r–v, case opened 1 June 1344.

³ The dowry act for Ugueta de Podio, AM 1 II 61, fol. 12r–v, 14 Apr. 1348, identifies her father as deceased.