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CHAPTER I

# *Introduction: the Parlement of Paris*

Established in the capital since the thirteenth century, the Parlement of Paris was the most prestigious law court in France.[1] Associated with some of the most momentous epochs in the history of the monarchy, it had acquired an international reputation and the respect and admiration of the French people, who by the eighteenth century had christened its members the 'fathers of the *patrie*'. Despite their great eminence, the magistrates of the Parlement worked in the cramped surroundings of the *Palais de Justice* situated on the *Ile de la Cité* in the heart of Paris. Within the walls of the *Palais* were housed not only the Parlement, but also several other distinguished courts including the *Cour des Aides*, the *Cour des Monnaies*, and the *Chambre des Comptes*. Judges from these different institutions rubbed shoulders with the lawyers, litigants, hawkers, and criers, who made up the bustling world of the legal capital.[2] There was nothing serene about the *Palais*, and prostitutes, booksellers, and artisans plied their wares in the very sanctum of justice. From here the authority of the Parlement expanded outwards, covering nearly one-half of the kingdom, including such diverse regions as Anjou, Picardy, Champagne, Brie, and the Auvergne. For those who lived within its jurisdiction, the Parlement represented the supreme court of appeal, but this reflects only part of a complicated picture because it also shared responsibility for a host of judicial and

[1] Amongst the better general studies of the Parlement are: E. Glasson, *Le parlement de Paris. Son rôle politique depuis le règne de Charles VII jusqu'à la révolution* (2 vols., Paris, 1901); J. H. Shennan, *The parlement of Paris* (London, 1968); J. Egret, *Louis XV et l'opposition parlementaire* (Paris, 1970); and B. Stone, *The parlement of Paris, 1774–1789* (Chapel Hill, 1981). The most thorough social history of the Parlement is that of F. Bluche, *Les magistrats du parlement de Paris au XVIIIe siècle* (2nd edn, Paris, 1986).

[2] A world brought to life by Bluche, *Magistrats du parlement*, pp. 211–17, and Shennan, *Parlement of Paris*, pp. 97–109.



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administrative functions. These included upholding public order, censorship, provisioning of bread and firewood for the capital, and overseeing the guilds, corporations and hospitals of Paris.

In addition to these responsibilities, the Parlement played a unique role in the political life of the monarchy. In part, this was caused by the absence of the national representative institution, the Estates General, which had not met since 1614. But it was also the result of the Parlement's powers of registration and remonstrance.[3] Over the centuries, French kings had followed the convention of sending new, or revised, legislation, including that concerning taxes and other fiscal matters, to the Parlement. The judges were then expected to check the proposed law against existing statutes and precedents, and, if no conflict was discovered, to add the text to their records. Registration provided the ruler and his subjects with the satisfaction of knowing that laws were promulgated according to traditional forms and customs. If, on the other hand, the Parlement believed that the law contradicted existing practice, or required alteration or amendment, it had the right to petition the king with remonstrances. Protests were also written when the judges wished to warn the monarch about the conduct of his officials, to inform him of abuses that had crept into his administration, or to criticise the activities of another court or institution, usually the clergy.[4] Not that the Parlement could claim to share sovereignty. It was the king alone who initiated legislation, and he alone who decided whether or not to heed the recommendations of the magistrates. If his response was negative, and the Parlement continued to complain, he had the power to command obedience by holding what was known as a *lit de justice*.[5] At this ceremony, the king personally visited the Parlement (or summoned it to Versailles), accompanied by the princes of the blood and the great officers of the crown, to announce his intentions. It was a legal fiction designed to give the impression that the monarch was consulting

[3] The origins and importance of these functions have been discussed by: J. Flammermont, *Remontrances du parlement de Paris au XVIIIe siècle* (3 vols., Paris, 1888–98), I, pp. lxxxviii–xcv, and Stone, *Parlement of Paris*, pp. 17, 20–1.

[4] Flammermont, *Remontrances*, provides plenty of examples.

[5] S. Hanley, *The lit de justice of the kings of France: constitutional ideology in legend, ritual, and discourse* (Princeton, 1983), offers a recent study of the ceremony. Unfortunately, her work does not discuss the evolution of the *lit de justice* during the eighteenth century.

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the Parlement, when, in reality, he was imposing his sovereign will. Although it often led to fierce protests from the judges, the *lit de justice* could, in the right circumstances, end a dispute to the advantage of the crown. The Parlement was, therefore, at the very heart of the institutional and political life of the *ancien régime*, but it was its primary function as a court of law that shaped the professional lives and attitudes of its members.

I

The Parlement's imposing range of responsibilities was matched by its distinguished membership. The king, who was always recognised as the unique source of justice in the kingdom, continued to exercise his right to sit in the court, for example, to attend the trial of a peer, to deliver a reply to remonstrances or to hold a *lit de justice*. So too did his chancellor, who, as the chief judicial officer in the kingdom, was the titular head of the Parlement. Despite occasional claims to the contrary, the Parlement was generally recognised as the *Cour des Pairs*.[6] As a result, the princes of the blood and the *ducs et pairs*, the cream of the French aristocracy, were hereditary members of the institution and enjoyed the privilege of having all litigation affecting their persons heard directly by the *grand'chambre* of the court. It was in the Parlement that some of the most solemn moments of the monarchy were celebrated, including the *lits de justice* held to confirm the establishment of a regency in 1610, 1643, and 1715. Such associations and privileges reinforced the prestige of an institution already imposing by the weight of its history and the strengths of its traditions. In addition to the princes and the peers, the Parlement had no fewer than 450 officers attached to it by 1750.[7] These included a vast number of honorary members, many of whom had little, if anything, to do with the daily affairs of the court. There were, for example, two clerical councillors of honour, the archbishop of Paris, Christophe de Beaumont, and cardinal de La Rochefoucauld, and six lay councillors of honour

[6] For an alternative view see the intriguing thesis of M. Mansergh, 'The revolution of 1771 or the exile of the parlement of Paris', unpublished D.Phil. thesis (University of Oxford, 1973).

[7] This total has been reached by counting both the full-time and honorary offices included in the *Almanach royal* for 1749.

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attached to the Parlement as a body, plus forty-six other honorary officers belonging to the various chambers. In addition, the court teemed with vast numbers of *greffiers*, bailiffs, and treasurers and even one midwife, whose duties amongst over 200 often elderly men, might seem curious were it not for their need of expert counsel in cases involving infanticide. From the perspective of this study, however, the key members of the court were the judges who sat on the benches, decorated with the *fleur de lys*, of the Parlement

The principal officer in the court was the first president. Although nominally a royal appointment, during the eighteenth century a vacancy was almost invariably filled by the senior *président à mortier*. While this was a restriction upon the king's scope for independent action, it also helped to calm the jealousies and intrigues amongst the principal candidates. In some of the provincial parlements, on the other hand, Louis XV occasionally chose an outsider as first president. Tactlessness on the part of the newcomer, or frustrated ambition amongst those who had been passed over, was a common cause of trouble, as events in Besançon between 1758 and 1761 and in Toulouse after 1763 demonstrated.[8] Both of these courts were riven by internal dissension, and despite the government's use of exiles and imprisonment the magistrates eventually succeeded in provoking the resignation of the first president. Such internal quarrels were, however, rare, and the first president exercised tremendous influence over his colleagues. It was he who allocated judicial business, and thus decided which judges should hear the most important and lucrative cases. Moreover, his position made him a public figure of great stature with easy access to the king and his ministers at Versailles and the opportunity both to obtain and dispense the patronage, pensions and graces of the crown.

The first president was vital to the smooth running of the Parlement because he had the difficult task of preserving royal interests while acting as the chief spokesman and faithful representative of the court as a whole. He was assisted by the *rapporteur*, usually a senior magistrate chosen by the crown and charged with presenting royal legislation to his colleagues. Of

[8] These quarrels are examined in chapters 7 and 8 below.

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equal importance were the *gens du roi* or *parquet*,[9] which were the collective terms used to describe the *procureur général*, three *avocats généraux* and their eighteen *substituts*.[10] The *gens du roi* had a long and distinguished history dating back to at least the fourteenth century, and the powers of the *procureur général*, whose office was equal in stature to that of the first president, have been described as those of a public prosecutor acting on the king's behalf.[11] It was the *gens du roi* who presented royal legislation to the court, oversaw the implementation of the Parlement's decisions and had wideranging responsibilities for maintaining public order. The effective management of the court and the implementation of royal policies was, therefore, dependent upon close cooperation between the officials in the central administration and these magistrates.

In 1750, the Parlement was organised into eight chambers. The senior and most illustrious, known as the *grand'chambre*, was composed of the first president and ten *présidents à mortier*, so-called because of the black velvet mortars worn as part of their elaborate attire, and thirty-three councillors, twelve of whom were clerics.[12] The offices of *président à mortier* were highly prestigious, conferring membership in the *grand'chambre* by right, and they were by far the most expensive. The councillors, on the other hand, had entered the chamber from the lower chambers, known as *enquêtes* and *requêtes*, by virtue of a system of rank calculated according to the date of their reception into the court. The *doyen* of the Parlement in 1750 was M. de Symonnet, who had first entered the Parlement in 1697. As a general rule, therefore, the *grand'chambre* was staffed by men mature in years who could be expected to set an experienced and restrained example to their younger colleagues. It was here that the most important cases were judged, including those affecting the princes, peers, and great officers of the crown, or litigation touching the *régale*.[13] The *grand'chambre*

[9] The *parquet* referred to the physical position they occupied within the Parlement itself. The work of P. Bisson de Barthélemy, *Les Joly de Fleury, procureurs généraux au parlement de Paris au XVIIIe siècle* (Paris, 1964), offers an excellent introduction to their role.

[10] Shennan, *Parlement of Paris*, pp. 43–5, and Stone, *Parlement of Paris*, p. 24. The numbers given here are from the *Almanach royal* of 1749.

[11] Shennan, *Parlement of Paris*, pp. 43, 67.

[12] These figures are from the *Almanach royal* of 1749.

[13] Stone, *Parlement of Paris*, pp. 19–22. The *régale* was the term given to the king's right to receive the revenues of vacant bishoprics.

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also heard appeals from the other chambers of the court, notably the *requêtes* where the litigation of individuals holding the privilege of *committimus*[14] was heard in the first instance.

The remainder of the Parlement's magistrates sat in the five chambers of *enquêtes* and two of *requêtes*. There was no internal hierarchy separating the different chambers, and the first *enquêtes* had no precedence over the fifth, nor were there any distinctions between the *enquêtes* and *requêtes*. Instead, they owed their names to the professional duties they performed in the court. Indeed, the members of the *requêtes* continued to maintain that they were officers in the Parlement with a commission to serve in the *requêtes*.[15] Should they choose to renounce that commission, there was nothing theoretically preventing them from entering the *enquêtes* at a level of seniority commensurate with the date of their original entrance into the court. As this happened very rarely, nobody saw fit to challenge their pretensions. At mid-century, a chamber of *enquêtes* had an average of thirty-five judges, consisting of three presidents and thirty-two councillors.[16] The two chambers of *requêtes* were far smaller, both having three presidents and only twelve and fourteen councillors respectively. Despite their title, the presidents of the lower chambers should not be confused with the *présidents à mortier*. They were presidents of the *enquêtes* or *requêtes*, not of the Parlement, and their title was a commission rather than an office.[17] They had nevertheless enjoyed a higher salary and certain marks of precedence since the sixteenth century, and after the internal reorganisation of 1757 were given increased responsibility for the conduct of their chambers and the enforcement of the Parlement's own regulations.

The *enquêtes* heard civil appeals in cases judged in the first instance by written, not oral procedures. In criminal matters, they heard cases that had not incurred afflictive or infamous

[14] This privilege enabled the holder, usually a member of the nobility, to seek justice before the Parlement in the first instance.

[15] Shennan, *Parlement of Paris*, pp. 39–40.

[16] In 1749, the numbers in the five chambers of *enquêtes* were as follows: first, two presidents and thirty-one councillors; second, three presidents and thirty-one councillors; third, three presidents and thirty-four councillors; fourth, three presidents and thirty-one councillors; fifth, three presidents and thirty-two councillors.

[17] It is true that in 1704 the presidents had been recognised as an office, but they reverted to the status of a commission in 1757, Shennan, *Parlement of Paris*, pp. 38–9.

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penalties in the first instance. The *requêtes*, on the other hand, were courts of first instance hearing the cases of individuals holding the right of *committimus*, privileged cases such as those affecting certain religious orders or foundations and litigation involving the personnel and administration of the royal household.[18] Delegates from within the eight chambers provided the officers for two other tribunals. The most important was the chamber of the *tournelle*, which judged criminal cases that had resulted in afflictive or infamous sentences involving those individuals, the vast majority, who did not possess the privilege of a hearing before the *grand'chambre*. The *tournelle* had a rotating membership consisting of two presidents and eight councillors drawn from the *grand'chambre* and two judges from each of the chambers of *enquêtes*. Clerics were, however, excluded because their religious vows prevented them from ordering either corporal punishment or the death penalty. Finally, a *président à mortier* and two councillors from the *grand'chambre* formed the *chambre de la marée*, which heard civil and criminal cases arising from the commerce of sea fish. This unlikely body owed its existence to the church's dietary strictures, and it was of relatively minor significance. In addition to the first president and *gens du roi*, therefore, the Parlement had approximately 248 judges theoretically active in 1750.

With the exception of the first president and *gens du roi*, entry into the court was possible through the purchase of an office.[19] During the sixteenth and seventeenth centuries, French kings had sold judicial and administrative offices on the open market, including those of president and councillor in the Parlement. These offices had been coveted by wealthy members of the bourgeoisie, and had commanded enormous sums because of their ennobling properties and the access they offered to the privileges and social distinctions conferred by membership of the Parlement. According to the traditional formula, twenty years of continuous service, or death while in charge, was enough to propel the owner or his heirs into the privileged ranks of the French nobility. After a long struggle, the magistrates had

[18] Ibid., pp. 17–23, 37–42.
[19] The classic study remains that of R. Mousnier, *La venalité des offices sous Henri IV et Louis XIII* (Rouen, 1945), but Bluche, *Magistrats du parlement*, pp. 9–100, is especially relevant to this chapter.

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succeeded in confirming the hereditary ownership of their offices in the seventeenth century, and by 1750 they had long been part of the family patrimony, enjoying full property rights. No new offices were created in the court after 1715, and to enter its ranks it was necessary to find an officeholder who was willing to sell.[20] Once that had been achieved and a mutually acceptable price agreed, the candidate had to petition the chancellor for letters of provision. These were rarely refused, and with the formalities completed the would-be magistrate was now free to tackle the most formidable obstacle of the whole process, securing the consent of his potential colleagues.

The procedure was a serious one, and the judges appointed one of their number to assess the conduct, morals, and general suitability of the candidate. Refusals were not unknown, although the Parlement was never a closed caste, and of the 590 families who were represented in the court between 1715 and 1771, no fewer than 228 were making an appearance for the first time. Moreover, unlike the provincial Parlements of Rennes or Toulouse, Paris never excluded members of the third estate from joining its ranks, although at any given moment in the eighteenth century no more than ten per cent of the court was in the process of ennoblement. Nor were these commoners of humble status. Most were already members of the judicial or financial elite of Paris, often with kinship ties to existing magistrates.[21] Amongst those families entering the court for the first time, whether noble or commoner, there were a number of distinct pools of recruitment. Particularly prominent was the legal profession itself, and naturally enough successful *avocats* or officeholders from lower down the judicial scale made the transition to the Parlement. Some were drawn from families that had served in another sovereign court or in one of the many branches of the royal administration, even in a few isolated cases as military officers. Finally, the Parlement was particularly receptive to the sons of financiers and tax farmers.

Entrance into the court was thus possible if the candidate possessed the necessary virtues of wealth and social background, although certain barriers did exist. The offices of the *parquet* and

[20] Bluche, *Magistrats du parlement*, pp. 17–24.
[21] Ibid., pp. 31–40, and Egret, *L'opposition parlementaire*, pp. 12–13.

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the *présidents à mortier* were dominated by distinguished *robe* dynasties such as the d'Aligre, Joly de Fleury, Lamoignon, Maupeou, Molé, and Turgot, who formed a higher caste at the apex of the social pyramid of the *robe*. They jealously guarded their position, and competed for the office of first president and especially the coveted chancellorship. Several generations of quiet assimilation were required before a new family could aspire to join their ranks. However, the process of integration began immediately, and the novice *parlementaire* quickly adopted the professional comportment and social mores of his peers. An office in the Parlement provided a judge with a vested interest in upholding the privileges and honour of his institution. It was also a way of life.

It is instructive to reflect upon the effects of hereditary officeholding upon the mentality and behaviour of the *parlementaires*. With judicial offices handed down over several generations, the court had produced veritable dynasties such as the d'Argenson, Molé, Lamoignon, Le Peletier, Potier de Novion, and Turgot, whose members held some of the most powerful offices in the kingdom. It was these families that set the tone for the court as a whole, and acted as role models for new recruits. While the hereditary principle no longer enjoys much support, there is no doubt that it could have certain advantages. With successive generations of the same family sitting in the court, traditions of service, professional knowledge, and pride in the honour and duties of the magistrature were transmitted from father to son. An already powerful *esprit de corps* was reinforced, and it was given additional strength by the rampant endogamy that was such a feature of social relations amongst the judges.[22] The fact that the *parlementaires* were legally immovable, other than through voluntary resignation or conviction for a serious crime, was also significant when they entered into one of their periodic conflicts with the crown. Disobedience might bring punishment in the form of exiles or imprisonment but with their offices recognised as personal property, they could not be easily dismissed. French kings were not in the habit of confiscating the patrimony of their subjects, and the chronic financial weakness of the crown made it difficult to find the sums needed to reimburse the officeholder. Other than in exceptional circumstances, therefore, the

[22] Bluche, *Magistrats du parlement*, pp. 81–90.

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*parlementaires* were secure, and they policed their own membership and internal organisation with little royal interference.

It was, therefore, extremely difficult for Louis XV to exercise any direct control over the choice of his judges. It is true that a declaration of 1708 contained strict regulations concerning the age and educational qualifications of individuals entering the Parlement.[23] A councillor was required to be at least twenty-five years of age, have a degree in law, and to have been received at the bar. His proficiency in jurisprudence was also subject to a formal examination before the assembled chambers, although the regulation was far more menacing on paper than in practice. Presidents, on the other hand, were expected to have reached forty years of age, and to have served as a councillor for a minimum of ten years. Yet both the crown and the Parlement were notoriously negligent when it came to enforcing these regulations. Bluche has demonstrated that the age of councillors entering the court was declining during the eighteenth century, averaging twenty-two years seven months for lay and twenty-eight years six months for clerical recruits. Chrétien-Guillaume de Lamoignon joined the court as *président à mortier* at the tender age of seventeen, and René Nicolas Charles Augustin de Maupeou, the future chancellor, assumed the same office at only twenty-three. For the families concerned, the untimely death of an incumbent frequently made the premature promotion of his successor unavoidable. Ambition may also have played a part because of the king's habit of appointing the senior *président à mortier* to the place of first president. A judge who assumed his office as a very young man had an excellent chance of finding himself at the head of the queue later in his career. Much the same could be said of a councillor in the *enquêtes* or *requêtes* as it was notorious that the *grand'chambre* heard the most financially rewarding litigation. While these family strategies were understandable, they were detrimental to the quality and reputation of the judicial system.

There were theoretically checks on the most damaging consequences of these abuses, and the junior judges were not supposed to have a voice in the court's decisions until they had reached the age stipulated by the ordinances. Once again, these sensible

[23] Ibid., pp. 17–24.

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