

“Cùm verè Ducis repraesentet personam”. The power to pardon of the Sovereign Council of Brabant according to the Brussels lawyer Henricus Kinschotius (1541-1608)

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The purpose of this presentation is to explore the power to pardon applicable in the Duchy of Brabant during the early modern period through the writings of the lawyer Hendrik van Kinschot.

Considered one of the most remarkable attributes of sovereignty under the *Ancien Régime*, the power to pardon consisted of the prince's ability, both in the principalities of the Low Countries and in the kingdom of France, to express mercy and hence grant any type of legal advantage to the subject of his choice with the aim of mitigating the effects of overly rigid and severe application of the law.

While legal historians have often tended to focus on the criminal aspects of the power to pardon (by which the King forgave perpetrators of an offence such as homicide), it is perfectly clear that the royal prerogative of mercy was not limited to what would be called criminal law today, but actually encompassed all branches of law in the *Ancien Régime* society, including civil procedure, contracts, and family relations.

This "polymorphism" of mercy is more than obvious in the seven treatises written by Hendrik van Kinschot, who had a brilliant career as he practised law for over forty years in the Sovereign Council of Brabant, the supreme jurisdiction of the duchy. Indeed, in his work titled *De rescriptis Gratiae, a supremo Brabantia senatu nomine Ducis concedi solitis*, he particularly focused on the power of pardon of the Sovereign Council of Brabant: it was the only jurisdiction in the landscape of the principalities of the former Netherlands, to be competent to issue within its territory pardon letters on behalf of its Prince (*in nomine Ducis*).

We will therefore discuss the different types of pardon letters that the Sovereign Council could grant, such as letters of ‘*atterminatio*’ aimed at granting payment facilities, letters of ‘security of body’ aimed at protecting against imprisonment for debt, or yet letters of legitimization for illegitimate children.



When? Tuesday May 21, 2024 at 11.15 am

Where? Nieuwe Valk, DV3 Room 01.10