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Gwenaël Guyon, Evert Kleynhans,
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**Military Justice: Contemporary, Historical
and Comparative Perspectives**

Revue Internationale de Droit Pénal
International Review of Penal Law
Revista internacional de Derecho Penal
Международное обозрение уголовного права
刑事法律国际评论
المجلة الدولية للقانون الجنائي
Revista Internacional de Direito Penal
Rivista internazionale di diritto penale
Internationale Revue für Strafrecht



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FATHER OF THE PEOPLE OR WARRIOR KING? ARBITRARINESS AND ARBITRATION IN THE PARDONING OF SOLDIERS IN THE KINGDOM OF FRANCE (1460–1559)

Benjamin Deruelle* & Quentin Verreycken**

Abstract

During the transitional period between the conclusion of the Hundred Years' War and the end of the Italian Wars, the King of France initiated a comprehensive reformation of his military institutions. Despite the escalating use of judicial measures against combatants, the Crown also persistently issued numerous pardon letters to its soldiers, enabling them to escape military justice. This article delves into the intricate interplay between the royal prerogatives of dispensing justice and conducting warfare, elucidating the role of pardons in 15th and 16th century France. The granting of pardons to soldiers, employed to address logistical deficiencies inherent in a burgeoning monarchical state, illustrates the Crown's necessity to adapt its response to the challenges of maintaining control over its armies. It showcases a delicate equilibrium between the coercive application of justice to preserve public order and the discretionary use of clemency to navigate the uncertainties imposed by the realities of war.

1 Introduction

In the late medieval and early modern periods, the power to pardon was one of the most striking expressions of princely arbitrariness.¹ All subjects of the king of France, whatever their crime or status, could theoretically petition for a royal pardon in the form of a remission letter. Although they probably represented no more than 0.2% of the population of the kingdom of France at the beginning of the early modern period, 10 to 20% of the remission letters preserved in the JJ series of the *Trésor des Chartes* concerned crimes committed by soldiers.² However, in the writings of chroniclers, jurists, as well as political theorists, the weight of military violence was perceived not only as a manifestation of divine wrath, but also as an intolerable tyranny that should not be subject to the king's pardon.

This paradox is even more surprising given that, since at least the 13th century, the sentencing of soldiers had belonged, in theory, to an exceptional justice system, the Tribunal of

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This article is the translation of a book chapter to be published in French : Benjamin Deruelle, Quentin Verreycken, 'Père du peuple ou roi de guerre ? Arbitraire et arbitrage de la grâce des gens de guerre dans le royaume de France, 1460-1559', in Benjamin Deruelle and Michel Hébert (eds.), *Arbitraire et arbitrages. Les zones grises du pouvoir (XIIe-XVIIIe siècles)* (Presses du Septentrion, in press).

¹ Claude Gauvard, *De grace especial. Crime, État et société en France à la fin du Moyen Âge* (Publications de la Sorbonne, 1991), Robert Muchembled, *Le temps des supplices. De l'obéissance sous les rois absolus, XVe-XVIIIe siècles* (Armand Colin, 1992), Michel Nassiet, *La violence, une histoire sociale : France, XVIe-XVIIIe siècles* (Champ Vallon, 2011).

² Loïc Cazaux, *Les capitaines dans le royaume de France. Guerre, pouvoir et justice au bas Moyen Âge* (Honoré Champion, 2022) 623-624.

Constables and Marshals of France.³ Its disciplinary and judicial powers extended wherever the army was present, and its jurisdiction covered all matters concerning soldiers or having any connection, however tenuous, with war as a 'matter' or 'domain'.⁴ For soldiers, however, the justice of the constable and the marshals of France was delivered by the Marshal's provosts, who rendered justice in the final instance in the armies.⁵ In this context, the existence of remission letters bears witness not only to the intervention of ordinary justice in regulating the criminality of soldiers and their appeals to the king's arbitration, but also to the basis on which pardons were granted in the military world.

The study of the military service argumentation used in the petitions for pardon to obtain the king's mercy – which, when successful, were included in the first part of the remission letter – sheds light on the desire of the soldiers to be judged based on their crime and their function.⁶ It is difficult, however, to conclude that the supplicants, particularly the humblest ones, had a genuine legal conscience. For we know that petitioning was a declarative act, that supplicants sometimes received legal aid, and that chancellery clerks intervened to ensure that their supplications were in order.⁷ Nonetheless, the admissibility of their arguments was recognized by the chancellery clerks who assisted them, by the legal advisors who assessed their acceptability, and by the king who pardoned them. Letters of pardon thus form a space for dialogue and negotiation between the actors involved in the remission process; a space in which the arguments presented mark the deference and humility of the supplicant, while at the same time questioning the king on the particular nature of military service and the duties, indeed obligations, incumbent upon him towards those who fought for him. In this encounter between the figures of the king of justice and the king of war,⁸ mercy, most often interpreted as a sign of monarchic power, also appears as a means of responding to the weaknesses of a rapidly evolving military apparatus.

Is it possible to reconcile these two central figures of the monarchy? What are the constraints which weight on the exercise of power? And finally, is the pardoning of soldiers a free and

³ Common opinion attributes the institution of the jurisdiction of the constableness to the Estates General of 1356 and to an ordinance that John II the Good drawn up on that occasion. Although the authenticity of this ordinance is disputed, it remains a reference for 15th and 16th century jurists. Gabriel Le Barrois d'Orgeval, *La Justice militaire sous l'ancien régime : le Tribunal de la connétablie de France du XIV^e siècle à 1790* (E. de Boccard, 1918), 15 ff. ; Louis Ferréol de Ferry, 'Z^{1c} connétable et maréchaussée' in *Guides des recherches dans les fonds judiciaires de l'Ancien Régime* (Archives Nationales, 1958) 247-254.

⁴ See the Ordonnance au sujet de la connoissance qui appartient aux Connétable et Maréchaux de France (1st^e April 1356) published in Jean Pinson de la Martinière, *La Connétablie et mareschaussée de France, ou Recueil de tous les edicts, declarations et arrests sur le pouvoir et jurisdiction de MM. les connestables et mareschaux de France, et de leurs lieutenans au siège de la Table de marbre* (P. Rocolet, Paris 1661) 1-5.

⁵ Le Barrois d'Orgeval (n 3) 84, Loïc Cazaux (n 2) 449-470.

⁶ Quentin Verreycken, "'Poure compaignon de guerre' ou 'meschant homme' ? La représentation du soldat dans les lettres de rémission des ducs de Bourgogne (1386-1482) ' in Emmanuelle Cronier and Benjamin Deruelle (eds), *Argumenter en guerre* (Presses universitaires du Septentrion, 2019) 329-346.

⁷ Natalie Zemon Davis, *Pour sauver sa vie les récits de pardon au XVI^e siècle* (Seuil, 1988), Quentin Verreycken, 'En nous humblement requerant : Crime narrations and rhetorical strategies in late medieval pardon letters' [2019] 5/1:62 *Open Library of Humanities* 1-31.

⁸ Jacques Krynen, *Idéal du prince et pouvoir royal en France à la fin du Moyen Âge (1380-1440)*, Étude de la littérature politique du temps (A. et J. Picard, 1981), Arlette Jouanna, *Le pouvoir absolu. Naissance de l'imaginaire politique de la royauté* (Gallimard, 2013), Nicole Hochner, *Louis XII. Les dérèglements de l'image royale (1498-1515)* (Champ Vallon, 2006).

discretionary act? These questions find a particular echo within the kingdom of France, from the end of the Hundred Years' War to the Italian Wars (1460–1559); a period characterized by the end of the great feudal revolts, the development of European ambitions for the French monarchy, and the transformation of judicial and military institutions. A period in which the policies undertaken by successive monarchs reflected both their desire to assert their authority and the need to adapt to the vagaries of the political context, while respecting the framework and customs of late medieval and early modern society.⁹

The assertion of the king's authority over the army thus sometimes clashed with the practices of an institution on which his power and the survival of the kingdom depended; an institution that must be preserved insofar given that its organization (I), practices and functioning (II and III) sometimes opposed the strict application of the law (IV). Far from being the sole expression of the sovereign's arbitrary power, the pardoning of soldiers also reveals itself as a means of reconciling the plurality of rights, jurisdictions, and powers, a pragmatic approach to governance subject to social, political and military constraints, in short.

2 King of justice and king of war: two images that oblige the king

The existence of remission letters granted to soldiers reveals the difficulties in the exercise of power, to reconcile the images of a king of justice and war, on the one hand, and the realities of a rapidly evolving military institution, on the other. How could the peace-making function of the monarchical ministry be fulfilled, when army recruitment was based on voluntary service, while military reforms served to establish a status for soldiers that was distinct from that of other subjects of the kingdom? While the images of the king of justice and the king of war obliged the monarch to dispense rigorous justice to maintain public order, its application was hampered by the uncertainties of the political situation and the structures of the military apparatus.

Since antiquity, justice and war have been two essential attributes of sovereignty. At the end of the Middle Ages, while the application of justice was considered a monarch's duty, and war, on the contrary, a necessary evil, only their combined exercise ensured peace and public order, essential for prosperity, the preservation of the general interest (*Res publica*) and the salvation of the subjects. The king's judicial and warlike actions came together to meet the requirement that Christian thought placed on the government: to protect the weak from the strong, to punish the wicked and defend the innocent, to quell seditions and fight tyrants. They demonstrated the king's ability to assume his ministry and embrace the messianic vocation of the monarchy, which contributed to its legitimization.¹⁰ Translated into principles of government by clerics and scholars from the 13th century onwards, these precepts remained remarkably constant until the beginning

⁹ Michel Senellart, *Les arts de gouverner. Du regimen médiéval au concept de gouvernement* (Seuil, 1995), Fanny Cosandey, 'Instituer la toute-puissance ? Les rapports d'autorité dans la France d'Ancien Régime' [2009] 17 *Tracés. Revue de Sciences humaines* 39-54.

¹⁰ Joël Cornette, *Le roi de guerre. Essai sur la souveraineté dans la France du grand siècle* (Payot, 2000), 18. See also Denis Crouzet, 'Désir de mort et puissance absolue de Charles VIII à Henri IV' [1991] 112 *Revue de synthèse* 423-441.

of the modern era.¹¹ In his *Mystère de Saint Louis*, written at the end of the reign of Louis XII, Pierre Gringore offers this answer to the young king, who wished to enact justice equally: 'the Kings of France are nobles and have great power, but they can barely reign without war.'¹²

Political treatises and scholarly works reflected the profound expectations of a society for whom the image of the just king could not be reduced to a political fiction. Didn't he pledge to defend the faith, the kingdom and his subjects on the day of his coronation?¹³ After the ivory hand, he received the sword, the instrument of the struggle against the Church's enemies, for the protection of 'widows and virgins' and avenging injustice.¹⁴ For the population to accept royal justice, it had to be implacable and exemplary. As a 'display of the monarchy', its exercise not only legitimized the king. It maintained the monarchy's popularity, social cohesion and popular support for the government.¹⁵

The need to embody this figure was even more pressing at the end of the Middle Ages and the beginning of the early modern era, as the state of war actualized the importance of the link between rulers and ruled.¹⁶ The restoration and assertion of monarchical power, alongside the conduct of war, imposed new fiscal, military and human constraints on the population. Even when they were justified by the general interest or the preservation of the common good, their acceptance depended on the people's adherence to the monarchical project. However, from the end of the Hundred Years' War to the end of the Italian Wars, the exactions of the *rouitiers* (wandering unemployed soldiers) proliferated, as did the now permanent military companies and stipendiary troops, raised in previously unprecedented proportions. The growing number of appeals to the monarchy underlined the urgent need to curb their excesses within the very kingdom they were supposed to protect. Complaints about the depredations of the soldiers became a commonplace in narrative and theoretical sources in the second half of the 15th century.¹⁷ The

¹¹ Jacques Krynen, *L'empire du roi : idées et croyances politiques en France, XIII^e-XV^e siècle* (Gallimard, 1993) 32-38, 163, 167-169, 249-252.

¹² Pierre Gringore, *La vie de monseigneur saint Louis par personnages* (P. Daffis, 1877) 105-106.

¹³ Richard A. Jackson, *Vivat Rex, histoire des sacres et couronnement en France* (Ophrys, 1984) 81-86, Ernst Kantorowicz, *Mourir pour la patrie et autres textes* (Fayard, 2004 [1984]) 88-91, Ernst Kantorowicz, *Les deux corps du roi. Essai sur la théologie politique au Moyen Âge* (Gallimard, 1989 [1957]) 161-164.

¹⁴ *Lordre du Sacre et couronnement du Roy treschrestien notre sire Francoys de valois, premier de ce nom*, (J. Jeannot, 1514).

¹⁵ Alfred Soman, 'La justice criminelle, vitrine de la monarchie française ' [1995] 153-2 *Bibliothèque de l'École des chartes* 291-304.

¹⁶ Philippe Contamine, *Guerre, État et société à la fin du Moyen Âge. Étude sur les armées des rois de France (1337-1494)* (Mouton, 1972) 3-11.

¹⁷ Christopher T. Allmand, 'Changing Views of the Soldier in Late Medieval France' in Philippe Contamine, Charles Giry-Deloison and Maurice Keen (eds), *Guerre et société en France, en Angleterre et en Bourgogne, XIV^e-XV^e siècles* (Centre d'histoire de la région du Nord et de l'Europe du Nord-Ouest, 1991) 171-188, Claude Gauvard, 'Rumeur et gens de guerre dans le royaume de France au milieu du XV^e siècle' [2000] 1 *Hypothèses* 281-292.

pleas included in the legal texts bear witness to the aspirations of the people for a government that they no longer wished to be merely virtuous, but efficient.¹⁸

The image of the warrior king, which became prominent at the turn of the medieval and early modern eras, also obliged the sovereign. According to this image, the prince not only had to be an expert in the military art and an able war leader, but also a reformer capable of providing the kingdom with a force able of ensuring peace.¹⁹ The control of the army was intended to protect his subjects from the excesses of the troops and increase their effectiveness, since the fortunes of a campaign depended as much on good administration and discipline as on the quality of the men. It was therefore essential to build institutions dedicated to maintaining discipline and repressing the excesses of the soldiers.²⁰

The sovereigns did not ignore the requirements of the many facets of the good prince.²¹ In his *Rosier des guerres*, Louis XI stressed that the king must protect his people from the exactions of his soldiers. For if the vocation of princes and their nobility is indeed to defend the 'common good' and 'maintain justice and peace among their subjects', then the 'good prince must take pride and boldness in judging with righteousness, authority and wisdom and avenge all the misdeeds of knights and forgive no one his misdeed when it touches many.'²²

The ordinances on the policing of soldiers codified their relations with other subjects and showed how the sovereigns sought to put this necessity into practice. They attested to the efforts made to clarify and rationalize the law, criminalize the 'excesses' of combatants, and strengthen not only the jurisdiction of the constableness, but also the ordinary courts.²³ They contributed to the development of institutions specialized in the management of military crime, in line with the reformist aspirations of the late Middle Ages.²⁴

¹⁸ Claude Gauvard, 'Ordonnance de réforme et pouvoir législatif en France au XIV^e siècle (1303-1413)' in André Gouron and Albert Rigaudière (eds), *Renaissance du pouvoir législatif et genèse de l'État* (Socapress, 1988) 89-98, André Gouron and Albert Rigaudière (eds), 'Le roi de France et l'opinion publique à l'époque de Charles VI' in *Culture et idéologie dans la genèse de l'État moderne* (École française de Rome, 1985) 353-366.

¹⁹ Benjamin Deruelle, 'François I^{er} roi de guerre' in *Chambord, 1519-2019, l'utopie à l'œuvre* (Éditions Faton : Domaine national de Chambord, Dijon 2019) 3-19.

²⁰ Loïc Cazaux, 'Le connétable de France et le Parlement : la justice de guerre du royaume de France dans la première moitié du XV^e siècle' in Marie Houllemare and Pierre Nivet (eds), *Justice et guerre de l'Antiquité à la Première Guerre mondiale* (Encrage, 2011) 53-62.

²¹ André Stegmann, 'Le Rosier des guerres : testament politique de Louis XI' in Philippe Contamine et Bernard Chevalier (eds), *La France à la fin du XV^e siècle. Renouveau et apogée* (Éd. du CNRS, 1985) 313-323. See also Krynen (n 11) 238-239.

²² Stegmann (n 21) 7 and 31.

²³ Loïc Cazaux 'Réglementation militaire royale et usage de la force dans le royaume de France (XIV^e-XVI^e siècles)' [2010] 13 *Inflexions. Civils et militaires : pouvoir dire* 93-104.

²⁴ Bernard Chevalier, 'La réforme de la justice : utopie et réalité (1440-1540)' in André Stegmann (ed), *Pouvoir et institution en Europe au XVI^e siècle* (Vrin, 1987) 237-247.

This dual process of legalizing military activity and judicializing relations between soldiers and the rest of society completed the organization of a three-tier system of extraordinary justice: within the troop, by the captain, who had disciplinary powers; within the army, under the authority of the provost marshals; and, from Paris, before the Tribunal of Constables and Marshals of France. The monarchy also reorganized the military apparatus to further nationalize it, to standardize the status of soldiers and to institutionalize and professionalize the military profession.²⁵ While the army was an essential tool in the reconquest of the kingdom and the assertion of sovereignty, the monarchy could not ignore the widespread hatred of the soldiers within society.

However, while the figures of the king of justice and the king of war converged when they required the sovereign to exercise perfect control over the army and the soldiers, they sometimes diverged when the sovereign's peacemaking mission clashed with the structures of the military apparatus, or when judicial and military reforms took contradictory paths. It then became difficult to reconcile the interests of the kingdom and the protection of the subjects.

3 Referring between public order and military efficiency...

The reforms carried out by the kings brought the soldiers more regularly before the courts and the people. This undoubtedly increased control over the army, in line with the aspirations of a society that now rejected the violence of the soldiers in its midst. Yet, despite the imperatives that led the monarchy to rigorously punish these exactions, the pardons granted to soldiers did not disappear. While it is usually accepted within the historiography that the use of royal pardons had a political function, as a form of government,²⁶ the over-representation of soldiers in the registers of the JJ series of the *Trésor des Chartes* may demonstrate a multiplication of procedures against soldiers.²⁷ More regularly condemned, they needed to more systematically recourse to pardons. On the contrary, this situation could also reflect a form of protection, or even mitigation of responsibility, for those who enlisted in the king's army, in the same way as for civilian officers.²⁸ Many combatants thus chose to mention their service—past, present or future—as

²⁵ Benjamin Deruelle, 'Uniformisation, institutionnalisation et étatisation de l'armée (1520-1600)' in Hervé Drévilion and Olivier Wieviorka (eds), *Histoire militaire de la France, 1. Des Mérovingiens au Second Empire* (Perrin, 2018) 243-276.

²⁶ Claude Gauvard, 'Le roi de France et le gouvernement par la grâce à la fin du Moyen Âge. Genèse et développement d'une politique judiciaire' in Hélène Millet (ed), *Suppliques et requêtes. Le gouvernement par la grâce en Occident (XII^e-XV^e siècle)* (École française de Rome, 2003) 371-404.

²⁷ Pierre Prétou, *Crime et justice en Gascogne à la fin du Moyen Âge* (Presses universitaires de Rennes, 2010) 63-72.

²⁸ Romain Telliez, 'Per potentiam officii'. Les officiers devant la justice dans le royaume de France au XIV^e siècle (Honoré Champion, 2005), Antoine Follain, *Contrôler et punir : les agents du pouvoir (XV^e-XVIII^e siècles)* (Éditions universitaires de Dijon, 2015).

an argument to be pardoned in their supplication. Some even joined the army after committing a crime, seeing the entry into military life as an opportunity to make a living despite their criminal past.²⁹

The arguments used to justify the exception completes these interpretations, revealing the tensions inherent to the exercise of power, torn between the strict application of positive law, on the one hand, and the workings and realities of war, on the other. The ‘fear of a rigorous justice’, a recurrent theme within remission letters, is particularly meaningful when we consider the damages desertion could inflict to an army. We know just how difficult recruitment was in a system based on voluntary service. Except for the nobility and fiefdom owners, who were theoretically subject to the ban and monarchical summons, the common people were under no obligation to serve the king at war, while the hardships of military life did little to inspire interests. Death, illness and desertion also took their toll on the strength of armies in the field. The shortage of men was therefore antithetical to the exercise of overly rigorous discipline and justice. The pardons granted to soldiers were a response to the army’s structural shortcomings, or to immediate needs, such as completing a campaign or responding to an emergency. At the end of the Hundred Years’ War, during the first phase of the reconquest of Guyenne (1443–1453), Charles VII regularly intervened to stop judicial proceedings against his soldiers, so as not to run out of men.³⁰ When he established his *compagnies d’ordonnance* in 1445 to put an end to the exactions of the companies of routiers, he granted them numerous letters of abolition, erasing their past crimes to better integrate them into the royal army. This decision was based on a necessary return to the spirit of the law, rather than its literal application:

it pleases us to offer a general abolition to all companions and soldiers who served us during the war, who wish to retire and live as good people must do, without returning to pillaging and continuing the bad life which they lead in the past.³¹

Supplicants who mentioned their service were aware of its importance, and thus did not hesitate to emphasize their commitment to war and even their belonging to military dynasties. Such was the case of Pierre de Cotes, an archer in the *compagnies d’ordonnances*, whose father and uncle, men-at-arms in their time, had worked ‘greatly and virtuously in the service of our predecessors and in the defence of our Kingdom.’ He himself had

²⁹ Under Louis XI, these cases represented 2 % of the remission letters granted to soldiers. See Quentin Verreycken, *Crimes et gens de guerre au Moyen Âge. Angleterre, France et principautés bourguignonnes au XV^e siècle* (Puf, 2023) 62.

³⁰ Pierre Prétou, ‘Abolir l’excès de guerre : le pardon royal face à la guerre de Guyenne, 1444-1463’ in Marie Houllemare and Philippe Nivet (eds), *Justice et guerre de l’Antiquité à la Première Guerre mondiale* (Encrage, 2011) 63-72.

³¹ Archives Nationales [hereafter AN], JJ 178, fol. 69 r. Also refer to Claude Gauvard, ‘Pardoner et oublier après la guerre de Cent ans. Le rôle des lettres d’abolition de la chancellerie royale française’ in Reiner Marcowitz et Werner Paravicini (eds), *Pardoner et oublier ? Les discours sur le passé après l’occupation, la guerre civile et la révolution* (Verlag, 2009) 27-55.

‘on several and various occasions fought against our enemies and adversaries [...] at the ends and limits of our kingdom bordering the country of Hainault.’³²

Some went even further, spelling out the need for them to desert if the king did not grant them a pardon. They diverted the motive of fear of prosecution, albeit at the risk of offending royal majesty: ‘Doubting the rigour of justice, the said supplicant would not dare to converse or remain in our service with his captain if our grace and mercy were not granted to him.’³³ The over-representation of soldiers could also be linked to the collusion of captains, who were responsible for the state of their company, and of their intercession or even financial support of their men. On September 24, 1495, Charles VIII replied to the Duke of Bourbonnais that, at his request, he had pardoned a certain Polain and retained him in his service as a member of his guard, because he had ‘known him to be a good bowman for a long time.’³⁴

By imposing its jurisdiction, the justice of the Constable and the Marshals of France helped to distinguish soldiers from other litigants, reinforcing the sense that they belonged to a special body of the kingdom, defined by the exercise of a military profession. The repetition of the war service argument reflects this sentiment, as does the king’s occasional reminder, in the legal dispositions of the letter, of the granting of a pardon ‘in favour of [the supplicant’s] service to us and in our wars.’³⁵

Of course, we shouldn’t underestimate the role played by Chancellery clerks in writing the letter. Encouraging supplicants to mention their service record in their supplication could be a way of relaying the monarchical ideology.³⁶ However, in the remission letters, when the victim of the pardoned crime, was also a combatant, he was systematically described in extremely negative terms: quarrelsome, lazy, disloyal, he corresponded in every way to the image of the brutish soldier denounced in the literature and royal legislation alike. These vices and behaviours painted him as the one truly responsible for his fate, instead of an innocent.³⁷

Nevertheless, the devotion of the supplicant soldiers to the king’s cause does not need to be sincere for the armed service argument to contribute to building army cohesion and shaping a military identity. In February 1481, Squire Anthoine de Peroulx exclaimed to an inhabitant of a small village in the Bourbonnais region who had just described him and his servants as pillagers: ‘Go away, we belong to the king!’ However, he didn’t belong to the *compagnie d’ordonnance*, but only to the *morte-paye*, the less prestigious garrison troops assigned to guard certain places in the kingdom. That didn’t make him any

³² AN, JJ 236, fol. 108 v.-109 v.

³³ AN, JJ 195, fol. 349 r.-v.

³⁴ ‘Lettre de Charles VIII au duc de Bourbonnais, le 24 septembre 1495, de Verceil’ in Paul Pélicier (ed), *Lettres de Charles VIII* vol. 4 (Société de l’histoire de France, 1904) 295-296.

³⁵ AN, JJ 195, fol. 360 r.

³⁶ Gauvard (n 1) 859.

³⁷ Verreycken (n 29) 69-72.

less a member of this community in the armed service of the king, and he made sure to point this out when people questioned his legitimacy.³⁸

If, legally speaking, the granting of a pardon meant to make an exception to the law, the repetitive nature of remission letters enabled the sovereign to produce new norms.³⁹ It even established itself as a form of jurisprudence, as underlined by the numerous compilations written by jurists in the 17th and 18th centuries which contained numerous remission letters.⁴⁰ In this way, the pardoning of soldiers helped to make the special status of combatants tangible, by emphasizing that their condition offered privileged means of access to royal mercy. In so doing, the king nurtured the feeling of belonging to a specific social body, characterized not only by duties, but also by specific 'rights'.

4 ... and between delegated justice and 'military laws'...

If, in monarchical symbolism, the king of war was the one who masters the art of war, for those who served him in the army, he was also the king 'father of arms.'⁴¹ This patriarchal metaphor, modelled on the one used, as early as the 16th century, to describe François I's role in the restoration of the letters, is highly significant. It refers to the king's reforming action toward the army—to the founding role of the man who restored the arms by making himself their sovereign master—and to his complete authority over a military apparatus that he had to administer with 'economy'—in other words, as a good 'father of the family'. This metaphor refers to the paternal love of a man who suffers from the misfortune of his children to the love of the king for his subjects, the foundation of the social pact,⁴² and to God's special benevolence towards mankind.

By appealing to the king, the soldiers recognized him as the one from whom they could expect protection against the rigours of delegated justice, a benevolent judgment of their behaviour, and arbitration in the light of both their faults and their merits. In April 1523, Yves Le Jeune, known as Malherbe, lieutenant of the gens de pied of the lord of Lucé in Brittany,⁴³ thus appealed directly to the king. From his prison in Angers, where he had

³⁸ AN, JJ 207, fol. 29 r.- v. Regarding the morte-paye, see Philippe Contamine (n 16) 290-294.

³⁹ Pascal Texier, 'La rémission au XIV^e siècle : significations et fonctions' in *La faute, la répression et le pardon* (Comité des travaux historiques et scientifiques, 1984) 193-205.

⁴⁰ For examples, see: Pinson de la Martinière (n 4) 235-283 and Gabriel-Henri de Baucelas, *Dictionnaire universel, historique, chronologique, géographique, et de jurisprudence civile, criminelle et de police, des maréchaussées de France* (Gabriel-François Quillau, 1747-1750).

⁴¹ Charles de Cossé, *Mémoires du sieur François de Boyvin, chevalier, baron du Villars, [...] sur les guerres demeslées tant en piedmont qu'au Montferrat et duché de Milan, par feu messire Charles de Cossé [...] (Foucault, 1822) 81.*

⁴² Stephen C. Jaeger, 'L'amour des rois : structure sociale d'une forme de sensibilité aristocratique' [1991] 46 (3) *Annales. Économies, sociétés, civilisations* 547-571, Josiane Barbier, Monique Cottret and Lydwine Scordia (eds), *Amour et désamour du prince. Du haut Moyen Âge à la Révolution française* (Kimé, 2011), Lydwine Scordia, 'Le cœur politique à la Renaissance' [2019] 50 *Revue française d'histoire des idées politiques*.

⁴³ Probably Charles II de Couesme, baron de Lucé (Sarthe) and vicomte de Saint-Nazaire (ca. 1540/1500-1543).

been held for seven months, he recounted how, in mid-August 1522, he had tried to intervene between 'some adventurers' and 'some from the city'. No looting or murder here, but the simple accusation of not having been able to prevent his men from breaking 'some barriers or bridges from said city'. In his case, the ordinary judges strictly applied the articles of the ordinances which, since that of 1374, have made captains, or their lieutenants, responsible for the behaviour of their men. Having taken cognizance of the case, François I referred it to the Grand Council, which pardoned the crime in view of the supplicant's service, the prodigality of his goods and the harshness of his sentence, 'for the service of us of our predecessors honour and defence of our kingdom and its public thing.'⁴⁴ Had he not been placed, at a young age, by his father in the armies of Louis XI before serving Charles VIII as a man-at-arms, fighting at Rhodes (1480), in Turkey, then in the Naples and Genoa campaigns, and now in Brittany against English incursions?

Of course, not every soldier could claim such service record. The same year, however, the king had already pardoned Gilles Maillart, gunner of the castle of Hesdin, for the homicide of his companion Myroul, who refused to pay him the 4 sols he lost 'at a game of heads or tails', because 'the said case arose from the aggression of the said Myroul and that the said suppliant is in our service.'⁴⁵

The supplicants therefore expected their crimes to be judged with regard to their commitment to the defence of the kingdom and the public good. The argument of service here played on the idea that the power of the king and the nobility was never more legitimate than when it served the common good. Forged by jurists on the basis of Roman law since the 13th century, it was repeated again and again in mirrors to princes and treatises on good government.⁴⁶ Louis XI recalls it in his *Rosier des guerres*: 'It is a good and charitable work to expose one's life to defend the common good which concerns all estates: it is the public thing of the kingdom.'⁴⁷ The legitimacy of their request thus rested on the reminder that, by enlisting, they were complying with this new idea of service promoted by the monarchy. From then on, they expect it to be recognized.

Why should the sovereign listen to this argument? Alongside the causes associated to the context and structure of military institutions, there existed a belief, widespread among soldiers and expressed by their elites, that a tacit 'contract' unites the king and those who put their lives on the line to safeguard the State. This idea was perhaps fuelled by the gradual contractualization of the relationship between the sovereign and the soldiers at the end of the Middle Ages, following the reforms undertaken since the reign of Charles VII.⁴⁸ To reassert the sovereign's authority over the army and restore law and

⁴⁴ AN, JJ 236, fol. 83 v.-85 v.

⁴⁵ AN, JJ 236, fol. 65 r.-66 r.

⁴⁶ Frédérique Lachaud and Lydwine Scordia (eds), *Le Prince au miroir de la littérature politique de l'Antiquité aux Lumières* (Publications de l'université de Rouen et du Havre, 2007), Frédérique Lachaud and Lydwine Scordia (eds), 'Au-delà des miroirs : la littérature politique dans la France de Charles VI et Charles VII' [2012] 24 *Cahiers de Recherches médiévales et humanistes*.

⁴⁷ Stegmann (n 26) 6.

⁴⁸ Deruelle (n 25) 219-242.

order, these reforms sought to break down the horizontal feudal relations, in favour of vertical relations based on hierarchy and direct dependence on the king, reflected by the imposition of a military oath and the remuneration of service through pay.

This contractual logic was widespread in the military world and sometimes explicitly displayed. Bastard feudalism, characterized by the contractualization and monetarization of feudal-vassal relations, was thus reflected in the army by obeying the ban and answering the summons.⁴⁹ This was also the case for the recruitment of volunteers and stipendiary troops, sanctioned by the enlistment bonus, 'the king's money', and wages paid quarterly.⁵⁰ Soldiers committed to serve the king, and to comply with the ordinances on discipline and the military police. The king, for his part, committed to provide them with pay, housing and utensils, as well as the food they needed to survive.⁵¹ Feudal logic had not disappeared, however. Company recruitment was still based on locally rooted personal ties, which mirrored those of civil society; such ties contributed to the army's cohesion.⁵²

This reasoning also survived tacitly, particularly regarding recognition perceived as the just reward for commitment and merit.⁵³ At the end of the 16th century, François de La Noue, who had served in Picardy and Piedmont during the last Italian Wars, perfectly transcribed this tension between mercy and an aspiration based on the custom of war rather than the law:

I am not of the opinion of some, who, out of a desire to flatter the Princes, maintain that the rewards distributed to the soldiers are purely the result of their generosity, and that they are under no obligation whatsoever. And the reason they give is that they pay them to be well employed, and that the surplus they obtain is a favour, [...], but if we consider military laws and customs, we will find that in such actions there is more duty than grace. And let the rule stand, that as pay precedes service, so too must reward follow merit.⁵⁴

⁴⁹ Jean-Philippe Genet, *La genèse de l'État moderne. Culture et société politique en Angleterre* (Puf, 2003).

⁵⁰ Geoffrey Parker, *The Army of Flanders and the Spanish road 1567-1659: the logistics of Spanish victory and defeat in the Low Countries' wars* (Cambridge University Press, 1972), 35 and ff.

⁵¹ The ordinances on the policing and morals of soldiers sometimes determined precisely what soldiers were entitled to: André Naveau, *Le logement et les ustensiles des gens de guerre de 1439 à 1789* (Société française d'imprimerie, 1924), Dominique Biloghi, *Logistique et Ancien Régime : de l'étape royale à l'étape languedocienne* (Université Montpellier III, 1998).

⁵² Benjamin Deruelle (n 25) 232.

⁵³ Refer to: Arlette Jouanna, *Le Devoir de révolte. La noblesse française et la gestation de l'État moderne, 1559-1661* (Fayard, 1989) 40-65, Benjamin Deruelle, "'Pour Dieu, le roi et l'honneur" : Éthos chevaleresque, mérite et récompense au XVI^e siècle' [2009] 12 *Hypothèses* 209-220, Guillaume Pinet, 'Récompenser le service armé du roi : les obligations royales chez les mémorialistes militaires du XVI^e siècle' in Eric Gojossa (ed), *Les obligations royales* [2021] 113 *Cahiers poitevins d'Histoire du droit* 47-66.

⁵⁴ François de La Noue, *Discours politiques et militaires du seigneur de La Noue* (François Forest, 1587) 360-361.

La Noue's thinking is similar to that of his contemporary, Jean Bodin, for whom the king, although subject neither to the laws of his predecessors nor to his own, is nevertheless bound to respect his 'conventions and promises [...] made, either with an oath or without any oath, just as a private individual would do.'⁵⁵ Like the law of God and of nature, these conventions bind him, 'considering the law, it is quite certain that if the convention is of natural law, or of law common to all people, then the obligation and the action will be of the same nature.'⁵⁶ At a time when civil war was raging, and reflections on the conditional obedience of subjects and the nature of power⁵⁷ were developing, jurists distinguished not only sovereignty from its exercise, but also the law of contract, which 'is mutual [...] between the Prince and the subjects, [and] [...] obliges both parties reciprocally'. In this matter, 'the Prince [...] has nothing over the subject'. His obligations are even greater. As guarantor of the agreements and obligations between his subjects, his word 'must be like an oracle', for 'there is no crime more detestable in a prince than perjury.'⁵⁸

However, this thinking resists too strict a formalization. Principles from Roman, canonical, and natural contract laws were interwoven without distinction. This was close to the consensualism that developed in the 16th century with the School of Salamanca and the school of modern natural law.⁵⁹ It could also be found in other aspects of the customary law of war, notably in the management of military captivity, in which, for example, the acceptance of surrender is tantamount to a promise of good treatment.⁶⁰ In the same way, the binding force of the contract was based both on the formalism of military enlistment (pledge, oath, signature, and enlistment bonus) and on a moral prescription: keeping one's word, which is found in consensualism. This veneer of contractualism, however, does little to mask a more anthropological approach to gift and counter-gift, and the resistance aroused by the affirmation of the monarchical order.⁶¹

The coexistence of tacit and explicit 'duties' prompted the sovereign to arbitrate between the strict application of positive law, on the one hand, and the recognition of the military condition and the service rendered, on the other. In this scenario, mercy favored a kind of social contract that unites the sovereign and his soldiers in the name of the public good. However, as in political literature that did not link the king's duties to any form of reciprocity,⁶² recognition and pardon remain political practices freely exercised by the

⁵⁵ Jean Bodin and Gérard Mairet (eds), *Les six livres de la République*. Un abrégé du texte de l'édition de Paris de 1583 (Librairie générale française, 1993) 122.

⁵⁶ *ibid.* 133.

⁵⁷ Paul-Alexis Mellet, *Les traités monarchomaques* (Droz, 2007) 157-168.

⁵⁸ Jean Bodin (n 55) 133.

⁵⁹ Élise Charpentier, 'Un paradoxe de la théorie du contrat : l'opposition formalisme/consensualisme' [2002] 43-2 *Les Cahiers de droit* 275-297.

⁶⁰ Remy Ambühl, *Prisoners of war in the Hundred Years War. Ransom culture in the late Middle Ages* (Cambridge University Press, Cambridge 2013).

⁶¹ Gwenola Cogan et Benjamin Deruelle, 'Distinguer, intégrer : Dimensions politiques et sociales de la récompense' [2009] 12 *Hypothèses* 171-180.

⁶² Krynen (n 11) 313 and ff.

sovereign. Nevertheless, there remains the idea of a special bond that binds the soldier to the king, but also the king to his soldier, in the name of just recognition of the sacrifices made and all that was lost in the service of the monarchy. The ideas of loyalty, service, and sacrifice for the common good, promoted by the monarchy and the legal and administrative elites, were thus matched by the idea of a privileged access to mercy for soldiers. In 1493, Charles VIII pardoned Pierre, Gabriel and Pasquet de la Salle after the murder of one of their neighbours in a dispute over the ownership of a field, because

the said supplicants come from noble lines and their predecessors served our beloved predecessors, kings of France, with their bodies and goods in the context of our wars and for the public good of our kingdom, the said Gabriel and Pasquet who were young orphans and without wealth as a result of the great losses their predecessors experienced during the aforesaid wars.⁶³

Humbler supplicants were also quick to point out their sacrifice, such as Jehan de Gremont who, some twenty years earlier, had loyally served Louis XI and ‘was wounded in several places, including an arrow to the head, by those holding the opposite party, which greatly endangered his person.’⁶⁴ Didn’t the superiority of the nobility rest on this martial function, which only a small proportion actually performed?⁶⁵ Didn’t those who shared with them the torments of war in the exercise of a regal function deserve to be distinguished from the rest of society?

Thus, there was a tension between the rigorous application of justice demanded by the people, and the soldiers’ aspirations for recognition. To the exhibition of their wounds and material losses, the combatants readily added the absence of regular payment to explain their crimes. In this way, they highlighted the shortcomings of the State. How to treat with those who, forced into complete destitution by delays in pay and supplies, were reduced to stealing or killing to survive? While there was undoubtedly an element of exaggeration in their pleas—it was indeed a matter of ‘saving one’s life’—the monarchy’s financial difficulties and their links with military crime were common knowledge. The authors of military treatises made the regular payment of wages and the proper organization of logistics two pillars of discipline. As for memoirists, they openly questioned the very possibility of moderating men’s behaviour when pay was not paid.⁶⁶

In August 1477, Colin de Bailly was pardoned for stealing and selling several horses while on duty in Artois. His supplication reminded Louis XI that he had ‘posted a great quantity of companions’ to guard the county roads against the Burgundians. It was on this occasion that Bailly

⁶³ AN, JJ 226A, fol. 21 v.-22 r.

⁶⁴ AN, JJ 195, fol.159 r.

⁶⁵ Arlette Jouanna, ‘Les controverses sur l’utilité de la noblesse dans la deuxième moitié du XVI^e siècle en France’ in *Théorie et pratiques politiques à la Renaissance* (J. Vrin, 1977) 287-299.

⁶⁶ Benjamin Deruelle, *De papier, de fer et de sang : chevaliers et chevalerie à l’épreuve du XVI^e siècle* (ca. 1460 – ca. 1620) (Publications de la Sorbonne, 2015), 524.

was in our said service and he continued to do so for a long period of time, while waiting for the payment of his wages, in accordance with our ordonnance, [but] he received nothing and to such an extent that he reached such a state of mendicity and poverty that it was like he was naked and without anything to live.⁶⁷

Unable to support himself, Colin de Bailly had been forced to steal. Captured and taken away by local justice officials, he now feared he would end his days miserably in prison. For him, the royal pardon remedied a double injustice: that of being forced into poverty because of his commitment, and that of being subjected to overly rigorous justice when the origin of their crime lies in the failings of the state.

We could multiply the examples of these soldiers who fell into poverty during their service or once out of the army, and who declare that they have no choice but to steal to live. The professionalization of martial occupations and the creation of permanent troops heightened the importance of reintegrating them into society. Whereas those who were mobilized for a season or two could hope to return home to their farm, their trade or their business, those whose only occupation was war had to rebuild their lives once they were discharged. No institution comparable to the *aerarium militare* of imperial Rome⁶⁸ existed in 15th and 16th century France. There was little support for ex-servicemen once the demobilization bonus had been swallowed up. The lucky ones could hope for a place as a *morte-paye* or a lay brother in a convent. Many fell into poverty and sometimes into crime.⁶⁹ Thus, in 1523, Robert Fosset, an archer from Bournay, now in his sixties, begged the King to forgive him for a series of crimes committed between 1490 and 1508—the murder of a baker who refused to sell him a loaf of bread on his way to Honfleur, and the theft of four bushels of oats, two sheep and a few pieces of bacon from three of his neighbours—while on duty and after leaving the army, ‘all out of indigence and poverty.’⁷⁰

The combined arguments of war service and poverty thus underline the failings of the military system and the king’s failure to support the soldiers in accordance with his commitments. They place the sovereign in the position of having to arbitrate between the application of the law and a combination of behaviours, for which the State was, at least in part, responsible. By pardoning soldiers, the prince effectively recognized these failings as grounds for forgiveness. Faced with the rigour of justice, which paid no heed to the personal situation of the combatants or to what they lost in the service of the king, remission came as a form of compensation. As a result, pardon testified not only to the difficulty of articulating the divergent interests of the bodies of the kingdom and the

⁶⁷ AN, JJ 206, fol. 246 r.- v.

⁶⁸ Mireille Corbier, *L’aerarium Saturni et l’aerarium militare. Administration et prosopographie sénatoriale* (École française de Rome, 1974).

⁶⁹ Valérie Toureille, ‘De la guerre au brigandage : les soldats de la guerre de Cent Ans ou l’impossible retour’ [2005] 24 *Cahiers du Centre d’études d’histoire de la Défense* 29-42.

⁷⁰ AN, JJ 236, fol. 105 v.-106 v.

different imperatives weighing on the State, but also of reconciling the plurality of rights and jurisdictions.

5 ... to reconcile the plurality of rights, jurisdictions and powers?

The arbitrariness of mercy guaranteed a certain balance between military and ordinary justice. Mercy made it possible to regulate situations in which the law remained difficult to apply, to reconcile positive law and the custom of war, and thus to ease tensions between the maintenance of order and the recognition of service.

Whether in response to the need to supply the army or to recognize the service rendered, the pardoning of soldiers corrects the 'rigour' of delegated justice. Direct royal justice is used to arbitrate the decisions, actual or feared, of delegated justice. Many soldiers were indeed seeking to escape ordinary justice or that of their captains and provosts. In May 1498, Jehan Barrault, squire and man-at-arm in the ordinances, appealed to the king from prison, fearing that the Provost of the Hotel 'would proceed against him by rigour of justice.'⁷¹ Some forty years later, in 1544, another 22-year-old squire, Anthoine Danglars, obtained the king's intervention so that his letter could be registered by the Tribunal of Constables rather than that of the seneschal of Limousin, thus evading the ordinary justice whose decision he feared.⁷²

Interrupting the course of ordinary justice, the pardoning of soldiers thus reveals the tensions between the letter and spirit of the law. It put two judicial logics on opposite sides: the severe and impartial logic of the ordinary and military courts, and that of the king, which nuanced them.⁷³ The former fulfilled its function by severely condemning soldiers who were subject to the dual regime of ordinary justice, similarly to non-combatants, and that of the captains and provost marshals. These judges applied the law to the letter, without regard for their status or condition, as shown by the case of this lieutenant condemned for having been unable to prevent the excesses of his men in Angers in 1523. At the end of the Middle Ages, both theologians and the nobility criticized this tendency to apply the law rigorously, favouring learned law and royal justice. They criticized them for 'neglecting the profound content of the law and the meaning of laws, focusing instead on technique and multiplying procedures'.⁷⁴ These criticisms testify to the attachment to the image of the king of justice, rendering prompt and equitable justice in the light not only of positive law, but also of natural law and morality. The pardoning of soldiers thus punctually nuanced the strict application of the law by introducing into the legal process a recognition of their service and shortcomings of the state. Philippe

⁷¹ AN, JJ 226A, fol. 294 r.

⁷² Pinson de la Martinière (n 4) 272-276.

⁷³ Michel Nassiet, 'Rémission et pacification (1563-1567)' in Didier Boisson and Yves Krumenacker (eds), *Justice et protestantisme* (LARHRA, 2011) 27-49.

⁷⁴ On this, see also: Bernard Guenée, *Tribunaux et gens de justice dans le bailliage de Senlis à la fin du Moyen Âge (vers 1380-vers 1550)* (Publications de la faculté des lettres de l'Université de Strasbourg, 1963) 3-8, Pierre Ourliac, Jean-Louis Gazzaniga, *Histoire du droit privé de l'an mil au Code civil* (Albin Michel, 2016) 60-65, Krynen (n 11) 223, 260 ff., Chevalier (n 24).

de Clèves underlined this distribution of justice in his *Instructions de toutes manieres de guerroyer*,⁷⁵ when he wrote:

It is also necessary, my lord, that you have a marshal who is valiant, sage, discreet, and diligent and that he is righteous to render justice in your host and army. For he must have the total cure and charge, under you; the mercies and pardons belong to you and no others.⁷⁶

By applying the spirit of the law rather than its letter, in imitation of the God of mercy, the king played his role not only as the great law keeper, but also as the great ordinator of social order and judge of earthly merits. He re-established the mediating function of justice, in the light of military reason. In so doing, however, he made clear that, sometimes, it was impossible to reconcile military and social imperatives.

However, the king's intervention can also be seen as a form of disavowal that sheds light on another tension: that between the judge's 'arbitrariness'—in the sense here of what falls within his discretionary decision—and the necessary respect for habits and customs, in this case of war, in the name of the kingdom's higher interest; between law and politics, in short. This resentment against arbitrariness came to the fore at the 1560 Estates General in Orléans, when representatives of the nobility protested the lack of reasons given for such rulings.⁷⁷ As in other areas, this feeling was undoubtedly also based on the gaps and indeterminacies of the law, on the 'interpretative construction of the law' by judges, and on the contradictions between the various sources of law. This arbitrariness was, however, a structuring principle of modern criminal law, and a source of flexibility that left it up to the judge to assess guilt and evaluate penalties.⁷⁸ Together, they created zones of uncertainty and indeterminacy that were conducive to discontent and contestation, even more so as no crime is, in theory, unforgivable.

This correction of ordinary justice thus appears to be a means of maintaining or restoring trust between the king and his soldiers, and of giving substance to the 'contract' that united them. Unsurprisingly, the pardoning of soldiers also fitted in with more general issues concerning the social function and limits of the law in the late medieval and early modern period. The duality between ordinary judge and the king allowed the embrace of a wide range of functions: repression of crime, reparation of injustice, and maintenance of order and social cohesion—the very principles that led to the establishment of the 'Grands Jours' of the Parlement de Paris in the aftermath of the Hundred Years' War.⁷⁹

⁷⁵ Hubert Claude, 'Quelques lettres inédites de Philippe de Clèves' [1967] 193 *Revue du Nord* 293-306.

⁷⁶ Philippe de Clèves, *Instructions de toutes manieres de guerroyer tant par terre que par mer, et des choses y servant* (Guillaume Morel, 1588) 12.

⁷⁷ See Georges Picot, *Histoire des États-généraux*, 158 and 4, 49 and Le Barrois d'Orgeval (n 3) 268.

⁷⁸ Bernard Schnapper, *Les peines arbitraires du XIII^e au XVIII^e siècle (doctrines savantes et usages français)* (Librairie générale de droit et de jurisprudence, 1974), Michel Porret, *Le crime et ses circonstances. De l'esprit de l'arbitraire au siècle des Lumières selon les réquisitoires des procureurs-généraux de Genève* (Droz, 1995).

⁷⁹ Élisabeth Schmit, *En bon trayn de justice: les grands jours du Parlement de Paris au lendemain de la guerre de Cent Ans* (Éditions de la Sorbonne, 2022).

In pardoning civilians and soldiers alike, the government not only placed itself above the parties, it tried to reconcile positive law and 'military laws', and thus to overcome the constraints of a legal system characterized by the plurality of rights. This was an attempt to control arbitrariness and deal with the fragmentation of the law.⁸⁰

The content of the remission letters, however, demonstrates the complexity and difficulty of bringing together multiple sets of norms, principles and values that had developed since the Middle Ages within two distinct social groups—combatants and non-combatants—whose interests sometimes converged, but also often diverged. Together, monarchical arbitration and the arbitrariness of the pardons accorded to soldiers acted, in the context of a parallel increase in the anxiety caused by the circulation of soldiers in the kingdom and the severity of ordinary justice, as a means of overcoming their incompatibilities and finding a form of equilibrium.⁸¹

The king's judicial action thus constructed an 'ordered', even hierarchical space, beyond the complexity of rights; a space that respected legal pluralism in a kind of relative uniformity, helping to ease social tensions and reduce resistance to political transformations. However, this construction was neither perfect nor without risk. The king's action could also be seen as an instrumentalization of the law, contributing to the desacralization of justice and the delegitimization of his decisions. It was no longer the expression of the general will, but the product of social and political power. Is this not illustrated by François de La Noue's reflection on the nature of the pardon—liberality or duty of gratitude—in the military world?

But while royal mercy tempered the rigour of the delegated royal courts, the latter were not entirely deprived of their functions. Since the 14th century, the pardoning procedure had indeed required the criminal to have his letter of remission or abolition 'ratified' by a royal court, generally the one that judged the pardoned crime, or should have done so, in the first instance. Local courts verified that the letter had not been granted based on a false plea ('subreptice et obreptice'), and the supplicant must conclude an agreement or 'peace to party' with the other party, most often in the form of financial compensation.⁸² This stage of the procedure was designed to ensure that the lower courts did not take offence at the exercise of the pardon, and that the victims, seeing the guilty party escape condemnation, did not resent it. In this way, the pardon sought to interrupt the cycle of violence and vengeance. In the case of soldiers, the requirement of ratification and peace to the party allowed the sovereign to forgive while re-establishing harmony between his soldiers and civil society.

⁸⁰ Dominique Terré, *Les questions morales du droit* (Puf, 2007) 55.

⁸¹ This is similar to what Claude Gauvard observed in regard to the death penalty and the more frequent usage of extraordinary procedures. Claude Gauvard, 'Grâce et exécution capitale : les deux visages de la justice royale française à la fin du Moyen Âge' [1995] 153(2) *Bibliothèque de l'École des chartes* 285.

⁸² Pascal Texier, "'Offrir plus grant que son vaillant", Réparation et rémission à la fin du Moyen-âge' [2009] 22 *Cahiers de l'Institut d'Anthropologie Juridique* 229–240.

Indeed, it is striking to note the scarcity of ratification procedures carried out by military jurisdictions: barely twenty cases were confirmed for the entire reign of Louis XI.⁸³ Remission and abolition letters were primarily ratified by bailiffs, seneschals, and parliaments. This practice, which continued unabated,⁸⁴ confirmed the right of ordinary courts to judge soldiers. In legal terms, however, there was nothing to prevent a military justice officer, such as a provost marshal, from ratifying one of these remission letters themselves, as they did on at least a few occasions.⁸⁵ The existence of such a control procedure ensured that the pardon was neither limitless nor guided solely by military interests. Moreover, during his reconquest in 1440–1450, Charles VII, who granted dozens of letters of abolition to his combatants, took care to specify that they must have committed no ‘rape of women, murder, sacrilege, or arson’, i.e., exactly the crimes declared irremissible by the reform ordinance of 1357.⁸⁶ These abolitions for war excesses then declined from the early 1450s until they practically disappeared at the time of Louis XI. The action of the Parliaments of Paris and Toulouse does not seem to have been unrelated to this evolution, as they rejected, with increased regularity, the letters deemed contrary to the 1357 ordinance, in the name of preserving the laws of the kingdom.⁸⁷ This affirmation of irremissibility disrupted the exercise of royal pardons, which in the following decades refocused on crimes deemed excusable, such as homicide committed in self-defence or in anger.⁸⁸ This trend was confirmed in the 16th century, when the *Trésor des Chartes* recorded almost exclusively cases of brawl homicide.

6 Conclusion

As we can see, it was not always easy to reconcile the two faces of Janus—king of war and king of justice—in the exercise of power. Urgent necessity, as well as the limits of the royal armies and finances, put the general interest and the common good in tension between defending the kingdom and maintaining public order, between the legitimate expectations of society and the constraints of the state of war. Based on a contractual approach to the relationship between the king and those who choose to serve in his armies, the arguments presented in the supplications reminded the sovereign of his duty—to recognize merit—and of his role as the great organizer of the social order.

⁸³ Verreycken (n 29) 184.

⁸⁴ The remission letters endorsed in the archives of the constabulary (A. N., series Z1a), preserved from 1527 onwards, are also rare.

⁸⁵ AN, JJ 196, fol. 141 v.-142 r. See also Leah Lydia Otis-Cour, ‘Les limites de la grâce et les exigences de la justice : l’entérinement et le refus d’entériner les lettres de rémission royales d’après les arrêts du Parlement de Toulouse à la fin du Moyen Âge’ in *Critères du juste et contrôle des juges* (Faculté de droit d’économie et de gestion, 1996) 76.

⁸⁶ AN, JJ 177, fol. 143 see Gauvard (n 26) 47.

⁸⁷ *ibid.*, 44. See also Claude Gauvard, *Condamner à mort au Moyen Âge. Pratiques de la peine capitale en France, XIII^e-XV^e siècle* (Puf, 2018) 202–209.

⁸⁸ Verreycken (n 29) 85–89. See also Aude Musin and Michel Nassiet, ‘Les récits de rémission dans la longue durée. Le cas de l’Anjou du XV^e au XVIII^e siècle’ [2010] 57–4 *Revue d’histoire moderne et contemporaine* 57–59.

Beyond the misery or greed, the fortuity or intentionality of the criminals, or their innocence or guilt, these letters raise the question of the very nature of the pardon—liberality or recognition—granted to soldiers. Granted in the name of the king as a reward for service and sacrifice to the public good, this royal act, while indeed a manifestation of monarchical arbitrariness, was understood as the result of the ‘estimation’ of a situation that is fixed neither by law nor by statute, rather than of ‘a sovereign power whose only rule is the will of the person who possesses it.’⁸⁹

However, the changes observed in the practice of granting pardons to soldiers also bear witness to the processes of professionalization and nationalization within the military apparatus alongside a growing imposition of discipline. By distinguishing excusable crimes from those that must be systematically condemned, pardons also determined the limits of what was acceptable. Of course, the pardon alone did not resolve all the tensions that ran through society between the late medieval and early modern periods, as its arbitrary nature itself gave rise to unrest or opposition movements. Whether or not it was the result of the constraints and pressures exerted on royal power, the right to pardon offered the monarchy a versatile instrument of governance capable of circumventing the rigours of justice, reconciling the plurality of rights and jurisdictions, and ultimately articulating the figures of the king of justice and the ‘father of arms.’

⁸⁹ *Dictionnaire de l'académie* (J. B. Coignard, 1694) vol. 1 48.

Military justice is an essential aspect of a nation's defence system, rooted in a rich historical context that is intertwined with wider legal, political and social developments. Its importance has increased in the 21st century due to the changing nature of war, the need to protect civilians, the need to deal with misconduct by soldiers and to protect victims. It is essential to understand the historical development of military justice in order to grasp its complex legal and ethical dimensions, and avoid past mistakes.

Military justice serves to address misconduct within the armed forces, and to ensure discipline and compliance with ethical and international standards. Ongoing training in military law is mandatory to prevent illegal actions and foster a culture of respect for legal standards. One of the main objectives of military justice is also to protect civilians during armed conflicts. International humanitarian law, including the Geneva Conventions, requires the protection of non-combatants, and military justice systems help to ensure compliance with these laws. Investigating and prosecuting violations, particularly those that endanger civilians, helps to ensure accountability and maintain the legitimacy of military operations. In the same way, advances in military technology, such as the use of drones and artificial intelligence, pose new challenges for military justice. Legal frameworks must evolve to take account of legal and ethical implications of these technologies. Additionally, warfare has significantly transformed in recent years, with cyber warfare, private military companies and counter-insurgency operations. Finally, contemporary military operations often involve coalitions of multiple countries, requiring harmonized approaches to military justice to ensure consistency across different legal systems.

The International Military Justice Forum (IMJF) provides a platform for global discussions on military justice, bringing together academics, practitioners, and military personnel. It fosters comparative analysis of international military justice systems and explores their historical and current evolution.

This volume brings together major contributions to the 2nd International Military Justice Forum, which convened on 8 and 9 November 2023 in Stellenbosch, South Africa.

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ISBN 978-90-466-1277-4

