IV

IDEAS AND REFORMS
IN THE AGE
OF ENLIGHTENMENT

The highly esteemed Toulousan bar attracted men of intelligence and talent from all over the southwest. The mere acquisition of a law degree required little ability, but barristers with even a moderately successful practice must have had superior intelligence, memory, and verbal acuity. Occasionally, men of exceptional and multi-faceted talents came to the Toulousan bar. One of these was Alexandre Augustin Jamme, who won official recognition as a brilliant law student and still found time to study science and write prize-winning poetry. He became not only a leading barrister but also a member of the prestigious Academy of Floral Games and of the local Academy of Science.\(^1\) No less exceptional was Jamme’s colleague, Pierre Fermin de Lacroix. Before seriously practicing law, Lacroix tried a literary career in Paris and won the encouragement of Fontenelle. Even after he renounced literature as an occupation and returned to Toulouse, he wrote a letter imitating Rousseau’s style that circulated at Versailles. His legal career also flourished, as he pleaded the winning side of several causes célèbres.\(^2\)

How did these intelligent, sometimes exceptional, men perceive their government and society in this age of intellectual ferment? Fortunately, the barristers were engaged in the debates of their day and left a sizeable body of published writings. These sources, of course, represent disproportionately the opinions of prominent, highly articulate advocates or those with literary ability; care must be taken to determine when a position was shared by most colleagues and when it was peculiar to a few of them. Furthermore, our sources are largely public in nature and may well omit opinions which barristers held privately. Still, the barristers were capable of bold and critical thought.


even on a public level, so these writings do provide some valuable insights into the thought of the barristers in the Age of Enlightenment.

**EXPANDING CULTURAL HORIZONS**

During most of the Old Regime, Toulousan barristers had not been encouraged by their families or colleagues to take an interest in belles-lettres, science, or philosophy. Jurists condemned nonlegal pursuits as frivolous and incompatible with a serious legal career. By the mid-eighteenth century, however, men at the Toulousan bar were taking a more profound interest in literature, philosophy, and science than ever before. This important cultural transformation was closely related to a similar and prior evolution among the parlementaires, a development which should be examined before considering the barristers.

In the late seventeenth century, those who frequented aristocratic salons did not expect to discover charm, gaiety, politeness, or worldliness among the magistrates of the sovereign courts. Gravity, sobriety, diligence in attending to law—these were the virtues of the magistrates, and those who found the magistrates refined or *galant* were surprised. The intellectual endeavors of the high robe were usually heavy, learned histories or immense and incredibly dull collections of court decisions. Their life style was supposed to lack elegance; the chancellor d'Aguesseau once said that the magistrates' residences should have "the severity of edicts." By the mid-eighteenth century, however, the cultural world of the high robe had become much more receptive to current fashion. The magistrates continued to produce legal works and classical commentaries, but they also found time for the intellectual passions of their age—science, economics, belles-lettres, and travel accounts. Some critics occasionally deplored the magistrates' interest in the new artistic and intellectual currents, but the expansion of cultural interests among the magistrates was irreversible. Ovid had taken a place beside Cato on their library shelves.

The magistrates of the Parlement of Toulouse took part in this cultural reorientation. While they did not lose their reputation for severity and diligence, their failure to produce any new collections of legal decisions, in emulation of their seventeenth-century ancestors,
was indicative of an important change. In 1768, a friend of Voltaire, the abbé Audra, wrote to the great *philosophe* that "the youth of the Parlement, many in the center, and a few heads of the Court are devoted to you." The parlementaires were at least showing fashionable interest in the great ideas and literary figures of their time. The president du Bourg, an ardent admirer of Rousseau, named a son Emile. The wife of the counselor de Mani ban (comte d'Orbessan) offered her chateau to Rousseau as a refuge in 1766. It was at the hôtel of Mme. du Bourg that Mesmer was to be received in Toulouse, and by far the fullest collections of the philosophes' works available in Toulouse were to be found in the homes of President de Cambon and Advocate-General Resseguei. The magistrates of the Parlement enjoyed a richer cultural life than any other group in their provincial capital.

The Toulousan barristers were only beginning to participate in a fuller cultural life when that wider outlook had already become a well-established fact among their social superiors. The opprobrium surrounding literature and nonlegal pursuits began to dissipate by mid-century, and in the 1740s and 1750s law students engaged in a varied cultural life. University students like Jean François Marmontel entered literary contests and formed poetry circles. By the 1760s, the barrister Philippe Poitevin could discern a much more positive attitude toward literary studies among his colleagues. Not only did advocates now admit the compatibility of a serious legal career and the study of letters, but they came to value literature and philosophy as inherently worthwhile pursuits. Poitevin attributed this "happy revolution" to the example set by his colleagues Pierre de Lacroix and Thomas Verny, who "reconciled letters and jurisprudence by excelling in both." To this explanation, we might add the very puissant force of fashion, as the barristers sought once again to emulate the magistrates. And, beneath these explanations, it would be fair to posit a growing sense of dignity and confidence, as barristers defined for themselves a more

---

12Claude Delpla, "Etude du niveau intellectuel des émigrés toulousains (d'après les inventaires bibliothèques)" (D.E.S., University of Toulouse, 1959).
15Ibid. Verny was a very respected barrister who had always desired a literary career. In 1782, after inheriting the wealth of a rich uncle, he retired to Montpellier.
ambitious cultural role. They were no longer content to be learned jurists; they wanted to be well-informed, cultivated men. The self-imposed restrictions and limited self-awareness of a corporate-based society were slowly breaking down at the Toulousan bar.

Those barristers who wanted reassurance that letters and law were compatible had only to look to their colleagues, among whom were several distinguished pleaders with serious literary accomplishments. Aside from Jamme, Lacroix, and Verny, there was Joseph Nicolas Gez, Jamme's brother-in-law. Gez delivered a well-received discourse on literary taste at the Academy of Rouen and won the praise of Voltaire for it. Then he returned to his legal career and pleaded frequently in the Parlement. Like Jamme, he was a member of both the Academy of Floral Games and Academy of Sciences. The young Jean Baptiste Mailhe won several literary contests in Toulouse and became a member of the Academy; at the time of the Revolution he was among the most promising young barristers. Finally, Jerome Taverne, probably the most important advocate at mid-century, somehow found time in his busy legal career to write poetry. He won three Academy contests, thereby becoming a "master" of the Floral Games.

Ever since Daniel Mornet's pioneering study of private libraries in 1910, historians have investigated the intellectual interests of a social group by examining the books which individuals in that group owned. On this basis, can we assess the extent of exposure to literature and nonlegal culture at the Toulousan bar? Inventories of fifteen libraries have survived to inform us of the works they possessed. Their collections were sizeable, averaging 181 titles or 250 volumes. But the evidence from these libraries is disappointing and even misleading. These were professional collections, composed almost totally of legal reference works. They attest more to the sober spending habits of the barristers, who apparently bought only necessary and vocationally useful books, than to their intellectual interests. An average of 86.6 percent of their books were professional: collections of decisions, treatises on special questions, commentaries on ordinances.

18These may be found in the collections of inventories-after-death, A.D., 3E-11871-11966 and inventories of émigrés, A.M., I.S. They all fall within the years 1770 to 1793.
19Their libraries almost entirely lacked works on legal theory and natural law like Burlamaqui, Principes du droit naturel, Grotius (de Groot), Le droit de la guerre et de la
frequently possessed works were the *Corpus Juris Civilis* and the *Arrêts* of Maynard and Combolas. The twenty most common books were all juridical, and only one library was less than 80 percent professional in composition.\textsuperscript{20} Even among the nonlegal works, divided fairly evenly among history, religion, and letters, there were many books which had definite professional uses.\textsuperscript{21}

The narrow composition of these libraries may indicate that some ambivalence about the cultural pursuits befitting a barrister still persisted, but it should not mislead us into underestimating the changes that had occurred. Even the academician Jean Baptiste Mailhe, who surely had a rich intellectual life, possessed a library that was 83 percent professional.\textsuperscript{22} Other types of evidence clearly demonstrate that literary activity was common at the bar. After 1750, at least sixteen practicing Toulousan barristers won poetry or essay contests sponsored by the Floral Games.\textsuperscript{23} This included even a barrister at the Seneschal Court. The advocate Jean François Corail de St. Foi was a member of the Academy of Béziers,\textsuperscript{24} and Jacques Marie Rouzet, an important pleader, wrote a play (though not a very successful one).\textsuperscript{25} There are indications, too, that verse writing was a fashionable, if not very serious, pastime among young advocates.\textsuperscript{26} It does seem, then, that an active interest in literature was a common and quite acceptable pursuit after the 1760s.

One significant and highly visible manifestation of this cultural expansion was the increased participation of barristers in the intellectual elite of the city, the academies. The most coveted literary honor was inclusion among the august forty of the Academy of Floral Games, reputedly the oldest such society in the world. Every Friday afternoon from January to August, this prestigious cultural circle met for critical reading and serious examination of ancient or contemporary works.\textsuperscript{27} Superior literary talent was the ostensible basis for membership; but ability had to be accompanied by high social standing, as was clearly

\textsuperscript{20}This was the collection of Jean Bernard Blanc, *A.D.*, 3E-11882. It contained only twelve titles, 75 percent of them legal.

\textsuperscript{21}Institutional histories and dictionaries were often cited in legal briefs.

\textsuperscript{22} *A.M.*, 1S-52. The library of Taverne (1S-57) was also composed almost solely of jurisprudence.

\textsuperscript{23}Duboul, *Académie*, vol. 1, contains a list of all prize-winners.

\textsuperscript{24} *A.D.*, 3E-11095, fol. 220, marriage contract of Corail.

\textsuperscript{25}*Lettre de M. Rouzet, avocat, à un de ses amis* (n.p., 1790), pp. 2-3.

\textsuperscript{26}See *Affiches, annonces, et avis divers, ou Feuille hebdomadaire de Toulouse*, 22 avril 1789, p. 69.

\textsuperscript{27}Poitevin, *Mémoire*, 1: 126.
indicated by the letters patent of the Academy, stating that members "should be chosen among the considerable citizens, not only by their enlightenment and their talents, but also by their rank, birth, profession, and employment." Such criteria led to a quota system of sorts and, given the structure of Toulousan society, the parlementaires inevitably dominated the Academy. Throughout the second half of the century, fifteen to twenty of the forty academicians were magistrates of the Sovereign Court. Some may well have "inherited" their seats regardless of their literary discernment or interest. In addition to the parlementaires, the Academy welcomed prelates, like Dillon, archbishop of Toulouse, and titled nobles. Six to ten seats went to socially undistinguished men, who had to compensate for their lack of status by having talent. Increasingly, the barristers were dominating the commoners' seats in the Academy.

There had been barristers in the Academy of Floral Games since at least 1713 and probably much earlier. However, their participation had been quite limited during the first half of the century. In 1750 there were only two advocates, Jean de Souberian and Jean François Duclos. By 1755 these two had died, and only one new barrister, Jean Castillon, had been admitted. After this, the position of the barristers began to expand, first slowly and then much more rapidly. New barristers took seats in 1756 and 1761. By 1770, the Academy had apparently adopted a much more generous quota for advocates; two new ones were admitted that year. By 1779, there were five members of the bar in the Academy: Castillon, Verny, Lacroix, Martel, and Jamme. The admission of five more in the 1780s (and the death of Lacroix in 1786) brought the total number of barrister-academicians to nine on the eve of the Revolution. They had become a major social element in the Floral Games.

The Academy of Sciences underwent a similar evolution in social composition. Only titular barristers were among its founding members in 1749; the first practicing advocate, Jean Raynal, was admitted in

---

28Ibid., p. 107.
30The son of M. d'Orbessan was admitted as soon as he reached the minimum age, twenty-two.
31The barrister de Cormouls was on the list for that year.
32*Calendrier de Toulouse*, 1750. It is possible that neither was a practicing barrister. Duclos was said to be "more an academician than an advocate." See Duboul, *Académie*, 2: 222-25, 334-35.
33Castillon is often cited as a contributor to the *Encyclopédie*. Actually, his brother Jean-Louis wrote for the "Supplément." See Frank Kafker, "A List of Contributors to Diderot's *Encyclopédie*," *French Historical Studies* 3 (1963): 120.
1751. He remained the only one until 1770, after which the number of barristers grew rapidly. By 1779, there were four barristers in the Academy of Sciences, and by 1789, there were seven (including a law professor). Aside from the scientific professions (surgeons, physicians, and engineers) the barristers were the major vocational group from the Third Estate.

This increasing participation of the barristers in the leading academic circles accurately reflected their position as the most intellectually active element among Toulousan commoners. No judges of the Senechal Court, no bourgeois, attorneys, or notaries, and few civil officers of any sort entered the Floral Games. It is not even clear that these groups experienced an expansion of cultural horizons; and if they did, it was certainly not so profound as the barristers' intellectual evolution. This development reinforced the barristers' claim to the position just beneath the parlementaires in Toulousan society.

To what extent did this cultural reorientation bring the barristers in contact with the ideas and great names commonly associated with the Enlightenment? Here again, their libraries may be misleading. There were few books written by the philosophes in the barristers' small collections of nonlegal works. The classical authors typically read in collège—Horace, Cicero, Ovid, and Seneca—dominated this portion of their libraries. Of the moderns, Boileau was the most popular, followed by Molière. Half the libraries contained no works whatsoever by a philosophe, not even The Spirit of the Laws. One in three had a work by Voltaire, usually a history, and only two (of fifteen) had writings by Rousseau. Completely absent from the collections we have examined were Descartes, Locke, Bayle, Diderot, Helvétius, and Fontenelle. Yet, there is compelling evidence that barristers did read and absorb the

35Calendrier de Toulouse, 1779 and 1789. In 1789, there were thirty-eight regular members.
36The only interesting philosophical works were those by Gassendi and St. Evremont in Chabanette's library (A.D., 3E-1877). Taverne owned a work opposing the philosophes, L'Anti-Lucrèce (A.M., 1S-57).
37These libraries differed so much from the collections examined by Mornet (which included forty-three Parisian barristers) that we may have to recognize regional variations in book-buying habits. Robert Darnton has noted in a recent article ("The Encyclopédie Wars of Prevolutionary France," American Historical Review, no. 78 [Dec., 1973], pp. 1149-1151) that numerous copies of the Encyclopédie were sold in Toulouse; in Besançon, "lawyers" frequently purchased the work. Whether this is another example of regional buying habits or whether the inventories I have found were not completely representative, I am unable to determine. At any rate, the Toulousan barristers were familiar with the Encyclopédie whether they purchased it themselves or borrowed copies, which were evidently numerous in the city.
thought of the philosophes. Guillaume Martel, for example, wrote enthusiastic poetry about Fontenelle, Malherbe, and the physiocrats Quesnay, Mirabeau, and Mercier de la Rivière.\textsuperscript{38} Gélibert and Barère both quoted the outspoken Parisian Simon Henri Linguet.\textsuperscript{39} Barère, apparently interested in English culture, read Richardson's \textit{Clarissa} and compared it with Rousseau's \textit{La Nouvelle Héloïse}.\textsuperscript{40} Mailhe's writing demonstrated a familiarity with Raynal's \textit{History of the Two Indies}.\textsuperscript{41} More than just being familiar to the Toulousan advocates, the philosophes were taking their place beside traditional literary giants. As early as the 1760s, some barristers had come to regard Fontenelle, Voltaire, and Montesquieu as "geniuses" in the same category as Virgil, Cicero, and Racine.\textsuperscript{42} Occasionally, an instructing advocate—even one of no particular literary distinction—quoted a philosophe in a brief; it was no longer extraordinary to find references to Voltaire and especially to Montesquieu along with others to Cujas.\textsuperscript{43} Indeed, by the end of the Old Regime, the advocates could cite the \textit{Encyclopédie} even in their most serious and urgent public pronouncements. Jamme wrote a letter to the Keeper of the Seals in protest over the edict of 8 May 1788, and this letter, signed by twenty-five barristers, quoted the \textit{Encyclopédie} twice and Abbé Mably once.\textsuperscript{44}

Rousseau, by virtue of his ideas, his personality, and his sensibilité, made an important impression on some Toulousan barristers.\textsuperscript{45} Espic and Mailhe, especially the latter, formed an intimate appreciation of Rousseau and a personal identification with him. Mailhe imagined that in his own dream world Jean Jacques could find happiness.\textsuperscript{46} The desire to be "men of feeling" and of humanity prompted Gez, Barère, and thirty other advocates to establish a Conference of Charity, in-


\textsuperscript{39}Gélibert, "Épitre à mon robe de Palais," \textit{Recueil de l'Académie des Jeux Floraux}, 1785, p. 4.


\textsuperscript{41}Thoumas, "Jeunesse de Mailhe," pp. 233-40.


\textsuperscript{43}See the reference to "the celebrated Voltaire" in Frédier, \textit{Plaidoyer curieux pour la Demoiselle Marie Lajon} (Toulouse, n.d.), p. 14.

\textsuperscript{44}"Lettre des avocats au Parlement de Toulouse à Monseigneur le Garde des Sceaux sur les nouveaux édits..." (n.p., n.d.), pp. 5, 9.

\textsuperscript{45}Scholars like Mornet ("L'enseignement," p. 466) and Bouchard (\textit{De l'humanisme}, p. 612) have denied the appeal of Rousseau to legal men, but his was not the case at the Toulousan bar.

\textsuperscript{46}Espic, "Discours," p. 16; Jean Baptiste Mailhe, "Mes chimères, ou les prestiges de l'illusion. Ode," \textit{Recueil de l'Académie des Jeux Floraux}, 1781. Espic's appreciation of Rousseau came quite early; Rousseau did not find his warmest audiences until the 1780s.
tended to provide free legal counsel to the poor.\textsuperscript{47} When the Academy of Floral Games made a eulogy of Rousseau its contest subject in 1786, it was no wonder that two Toulousan advocates, Bertrand Barère and Antoine Chas, captured the prizes.\textsuperscript{48}

The expanding cultural horizons of the Toulousan barristers did not lead inevitably to a deep appreciation of the philosophes. Philippe Poitevin, for example, was an outstanding proponent of literary studies for advocates, but he had some occasional harsh words for the great names of the Enlightenment.\textsuperscript{49} However, the barristers' cultural redefinition had its roots in the Enlightenment. The same spirit of the age that made traditional attitudes unacceptable also made the barristers' traditional cultural interests inadequate.\textsuperscript{50} This did not mean that the men at the Toulousan bar abandoned their own legal studies. The advocates remained immersed in jurisprudence, and they found in enlightened opinion new perspectives from which to examine the law.

**Law and Legal Reform**

Jurists and social reformers of the eighteenth century were critical of established law, both civil and criminal. Turning from questions of classification and past application, legal thinkers began to measure law by new standards of justice, equity, efficiency, and humanity; by each standard, established law was frequently found wanting.\textsuperscript{51} As the Toulousan barristers redefined their cultural goals and range of pursuits, they, too, became more critical of existing legislation and adopted new standards by which to measure it. This was especially the case for criminal justice. The Toulousan barristers became vocal proponents of change in criminal legislation.

Dissatisfaction with the existing criminal laws was widespread in Toulouse by the late eighteenth century. Even so traditional and narrow-minded a figure as Pierre Barthès, a minor official and chronicler of the city, began to criticize the criminal justice system. For years he had attended and duly reported each public hanging or torture, evincing absolutely no sympathy for the criminal and seeming certain

\textsuperscript{47}Jean Joseph Gez, *Discours adressé à une société d'avocats... sur son projet d'une Conférence de Charité* (n.p., 1783).


\textsuperscript{51}I know of no general works on eighteenth-century legal thought, aside from studies of the criminal reform movement. For an important introduction to legal thought, see William F. Church, "The Decline of the French Jurists as Political Theorists," *French Historical Studies* 5 (1967): 1–40.
that this punishment alone prevented anarchy. In the 1770s, however, Barthes first expressed some doubts about the efficacy of harsh punishment in deterring crime: year after year he had seen the guilty tortured, mutilated, or killed, but crime continued. He had even read some pamphlets from Paris on the subject. Like Barthes, the barristers were disturbed about the ineffectiveness of the established criminal laws. But an even greater impetus for reform, as far as they were concerned, was the need to curb the brutality and inhumanity of the criminal code.

French criminal law was based on the harsh Ordinance of 1670, whose purpose was to ensure that punishment inevitably followed crime. The procedure it established gave no advantage to the accused and no aid to the establishment of his innocence, the tacit assumption being that it was preferable to punish an innocent person from time to time than to give a criminal the chance to deceive the court. The entire procedure took place in secrecy, and the accused was not necessarily informed of the charges against him. No counsel was permitted in the trial of first instance, and this rule extended to the appeal in cases involving serious crimes. One judge had complete power over the case: it was left to him both to defend and prosecute the accused. The magistrates who decided the case saw and questioned the accused only once before passing sentence. If the judges believed that the proof of guilt was considerable but not complete, they could arrange for torture—the preparatory question—to extract a confession. Even after being found guilty, the criminal's torture was not at an end, for the judges could seek the names of accomplices through the preliminary question.

The first public criticism of criminal procedure from the Toulousan bar came in a brief signed by Joseph Marie Duroux in 1762, four years before Beccaria's influential work, Dei delitti e delle pene, appeared in French. Duroux questioned the effectiveness of torture, though, only in moderate language: "It has been shown a thousand times that the Question can lose the innocent and save the guilty... it's more an ordeal of patience than of truth." But he went beyond this in his criticism of criminal law. Duroux was very much aware that other countries

---

52 B.M.T., MS. 706, fol. 25-26. For the conservatism of Barthes, see Edmond Lamouzèle, Toulouse au XVIIIe siècle... (Toulouse, 1914), introduction.
53 The following paragraph is based on Adhémar Esmein, Histoire de la procédure criminelle en France (Paris, 1882).
54 For a description of the forms of judicial torture in Toulouse, see Paul de Casteras, La société toulousaine à la fin du XVIIIe siècle (Toulouse, 1891), pp. 104-6.
55 Duroux fils, Observations pour le sieur Jean Calas (n.p., 1762), p. 58. David Bien, in The Calas Affair (Princeton, 1960), p. 11, n. 8, claims that Duroux only signed this brief, and it was written by counselor Lasalle. Even if this was the case, Duroux must have agreed with the principles expressed in it, and he must have been willing to have his name publicly associated with it.
had much milder criminal procedures. That France, otherwise the most cultured and humane of nations, had such a severe criminal code seemed intolerable to Duroux. He believed that the abolition of judicial torture would render criminal justice infinitely more humane, and more effective, too.

Public appeals for the reform of criminal justice multiplied after 1770. The cause célèbre of Catherine Estinès, a young girl accused of poisoning her father, provided Pierre Fermin de Lacroix with the opportunity for requesting changes in the criminal code beyond the abolition of torture. His widely read mémoire expressed the hope that Louis XVI would hear of this case "and hasten the reform of our criminal laws, so ardently desired by all right-thinking men." Lacroix offered no specific proposals, but he did identify himself with a powerful nationwide current of opinion. So did the thirty-two barristers who formed the Conference of Charity, that humanitarian association to provide legal defense for the poor. They aspired, by their example, "to render our criminal laws more gentle and more humane." The unpublished notes of Bertrand Barère, then a young, rising barrister, indicate that he thought long and systematically about criminal reform. Like Duroux, Barère bemoaned the fact that France, the greatest and most enlightened nation, had a criminal code suited "for Iroquois or cannibals." Barère desired numerous changes in criminal procedure, including counsel for the accused and public interrogation. But what makes Barère's reform proposals especially noteworthy and significant is his special interest in penal legislation, a much neglected aspect of French criminal administration. He called for the abolition of corporal punishment in most instances, the prohibition of imprisonment for debt, and the improvement of prison conditions. Although English criminal law was superficially known and much admired at the Toulousan bar, Barère discerned its major fault: the harsh punishments meted out. The young barrister called upon Louis XVI to promulgate a penal code—but one that was more humane than the English one. Finally, Barère carefully considered the arguments for and against the abolition of capital punishment but expressed no definite stand in these notes, perhaps because he was

56 Pierre Fermin de Lacroix, Mémoire pour Catherine Estinès (Toulouse, 1786), p. 54. (The printed brief is itself undated.)
57 Gez, Discours, p. 18.
58 A.D., Hautes-Pyrénées, Fonds Barère, laisse 31. This is a collection of notes on his reading and personal thoughts, written both before and during the Revolution. Since there is no pagination, I will not cite each quotation from it separately.
unable to make up his mind on this issue. It is clear that Barère shared the humanitarian concern for the accused which his colleagues felt and extended this to the convicted criminal.

No doubt Barère's opinions on criminal reform were more concrete and more advanced than most others at the Toulousan bar, but there was still a very widespread desire for changes in the criminal code. Amid the chorus of speeches celebrating the reestablishment of the Parlement in 1775, the elderly barrister Jean Besaucelle delivered a harangue to the Criminal Chamber (Tournelle) that included a strong plea for reform:

The most enlightened part of the Nation desires a reform of our criminal laws. These terrible buttresses that have so often retained frightening maxims no longer listen to the lessons of humanity. Our century waits for the boon of a Legislator whom providence destines for great things. It is worthy of you magistrates to accelerate the moment of this so-much-desired reform by your representations [to the king].

It is inconceivable that Besaucelle would have made such a bold public appeal in the name of the Order of Barristers if he had not had widespread support from his colleagues. This desire for more humane criminal laws was an important indicator of a new social attitude. A greater sensitivity to the plight of the unfortunate was replacing fear and the impulse to repress as basic responses to deviancy.

In comparison to the urgent and deeply-felt criminal reform movement among the Toulousan barristers, demands to alter civil legislation were hardly voiced. Perhaps civil laws themselves are more protected from currents of changing opinion because they are often social norms stated in juridical language. But the barristers had other reasons for not favoring civil reform. As students and masters of Roman law, they identified with it, and they saw the jurisprudence of the Parlement as partly their own work. When changes in civil law were attempted, they were often seen as royal interference with provincial customs and prerogatives, so opposition to reform engaged the barristers' sense of localism and attachment to the Parlement. This suspicion of civil law reform can best be seen in the barristers' response

60For a review of eighteenth-century works on capital punishment, including the works Barère consulted, see Dominique Muller, "Les magistrats et la peine de mort au 18e siècle," Dix-huitième siècle 4 (1972): 79-107.
62As Peter Gay has written, "... humanity was acquiring the status of a practical virtue" (Enlightenment, p. 36).
to codification, which had had the support of celebrated jurists since the sixteenth century, at least, and was being effected by royal officers in the early eighteenth century.\(^6\)

The resistance of the Parlement to royal initiatives at private law reform, especially codification, was hardly new by the mid-eighteenth century. Louis XIV’s Ordinance of 1667, which attempted to unify civil procedure only, had met with open hostility from the Sovereign Court of Toulouse.\(^6\) Of course, the court was unsympathetic to the moderate efforts of Chancellor d’Aguesseau to unify civil law in the first half of the century. The chancellor intended to respect the basic differences between Roman and customary law and limit unification to “what is most essential for public order.”\(^6\) His work, embodied in several royal ordinances dealing with donations (1731), testaments (1735), entails (1747), and other subjects, encountered resistance at the Sovereign Court of Languedoc. In their remonstrance against the Ordinance of 1735 on testaments, the Toulousan parlementaires were more consistent than all other sovereign court magistrates in advancing their own jurisprudence as superior to royal legislation.\(^6\) The Toulousan magistrates even added a general statement to their remonstrance declaring their unwillingness to see “pure Roman principles” replaced by legislative text.\(^6\)

At least until the 1770s, the bar seemed to be as much in opposition to legal unification as the magistrates were. This is the conclusion one must draw from the barristers’ ostracism of the one proponent of codification among them, Jean Baptiste Furgole. He was the most highly-regarded jurist of Toulouse at mid-century, so respected, in fact, that the chancellor d’Aguesseau had corresponded with him about legal questions and sought his advice in preparing ordinances.\(^6\) Much of Furgole’s professional work consisted of treatises that commented on these ordinances and advanced their provisions over previous jurisprudence.\(^7\) As if responding to the Parlement’s remonstrance of 1735, Furgole wrote that “the Ordinances of our King are the laws we ought


\(^6\) Cauvière, *Codification*, p. 46.


\(^7\) Among Furgole’s works were the *Commentaires sur l’ordonnance de Louis XIV sur . . . les substitutions* (Paris, 1767); *Ordonnance . . . de donations* (Toulouse, 1753); *Traité des testaments . . .*, 3 vols. (Paris, 1769).
to regard as the first and principal [ones] to which the dispositions of Roman law ought to be subordinated."\textsuperscript{71} His commentaries occasionally expressed the hope that the royal acts would "correct" the jurisprudence of the Parlement.\textsuperscript{72} Furgole's colleagues did not approve of his positions, especially because Roman law was declining in prestige and needed defenders, not critics.\textsuperscript{73} The jurist's local reputation and career suffered accordingly.

Furgole never received from the Toulousan bar the respect due to a jurist of his stature. He had an international reputation and his scholarly works were widely consulted, but Furgole was rarely praised in his home city.\textsuperscript{74} And though jurists of such importance usually became capitouls, Furgole was never even nominated. In fact, when the king placed him on the norme, there was apparently some attempt to reject his candidacy, followed by an unusual protest against the "irregularity" of the procedure—though irregularity of many sorts had long been a normal part of the selection process.\textsuperscript{75} The barristers did not even select Furgole, their most renowned colleague, batonnier of their Order.\textsuperscript{76} Proponents of codification were evidently not highly regarded—or lightly excused—at the Toulousan bar, at least before the last decades of the Old Regime.

Furgole's position never gained widespread acceptance among Toulousan advocates, but his ideas did become more respectable in the twenty years following his death in 1761. A few of the more advanced thinkers at the bar were converted to legal unification, and they spoke openly in favor of it in the Floral Games. One such convert was the distinguished pleader Jamme. His eulogy of Louis XV in 1775 lavished praise on the ordinances of d'Aguesseau, which Jamme saw as the first strike against a legal structure in which "the law . . . floated at the mercy of opinions, according to the times and places where it is examined." The existing state of the law was, for him, a "monstrous deformity" which reason could not accept.\textsuperscript{77} How far Jamme wished codification to proceed is unclear, but he did praise Louis XV for attempting to establish a "perfect uniformity."

\textsuperscript{71}Furgole, \textit{Traité des testaments}, 1: iv.

\textsuperscript{72}See, for example, \textit{ibid.}, 1: 39, on proof by witnesses for military testaments; p. 480, for Furgole's criticism of d'Olive and the jurisprudence of the Parlement on the legal disabilities in second marriages for women; p. 453, for his comments on Catellan.

\textsuperscript{73}Philippe Sagnac, \textit{La législation civile de la Révolution française} (Paris, 1898), pp. 15–16.


\textsuperscript{76}Bertrand Barère, \textit{Éloge de Jean-Baptiste Furgole, avocat au Parlement de Toulouse} (n.p., n.d.), p. 19.

For Jamme, the criterion of uniformity was all-important as a standard by which to judge established law. He might well have accepted the *content* of Roman law as enforced by the Parlement of Toulouse. Two other, more radical thinkers saw codification as only the beginning of civil law reform, because uniformity was, for them, only one criterion among many. In the name of reason, utility, and "legal nationalism" (an insistence on French laws for Frenchmen) they rejected the very principles on which the established civil law of Toulouse was based. In his Discourse of 1784, celebrating the American Revolution, Mailhe called established law "an inextricable labyrinth in which are confused successively and by chance customs of the conqueror and the conquered, of barbarian nations and well-governed ones, centuries of ignorance and enlightened centuries." This confused mass of laws, so difficult to comprehend or to justify, was for him "the source of most of the evils that afflict humanity." Mailhe proposed that Frenchmen "reject this mass of foreign laws and substitute for them new ones which are proper." This barrister obviously had no reverence whatsoever for the "pure principles of Roman law" so hallowed by the Parlement.

Once again, Bertrand Barère pursued the criticism of established law further and more systematically than anyone else at the bar. Applying the criteria of reason and utility to law, Barère adopted an extremely anti-Romanist position and found in the customary law of northern France the principles by which civil law should be altered. A fundamental tenet of Roman law was absolute paternal authority over the family and its property. In Toulouse, a son of any age remained under the control of his father until emancipated. To Barère, this principle did not meet the test of reason; when a son ceased to need his father's protection, paternal authority should cease. Barère wanted the law to emancipate the son at a fixed age. This barrister struck even closer to the heart of Roman law when he attacked the right to dispose of property at death through a testament. This right was a fundamental principle of Roman law, distinguishing it from the customary laws of northern France, which regulated the devolution of property in the interest of the family. Barère argued that a man had no right over

78 Jean Baptiste Mailhe, "Discours sur la grandeur et l'importance de la révolution qui vient de s'opérer dans l'Amérique septentrionale," *Recueil de l'Académie des Jeux Floraux*, 1784, p. 22.
79 Ibid.
80 The following discussion is based on Barère's manuscript notes, *A.D.*, Hautes-Pyrénées, Fonds Barère, *laissé 31*. For a much earlier "reformer" who found support in customary law, see Donald Kelly, "Fides Historiae: Charles Dumoulin and the Gallican View of History," *Traditio* 22 (1966): 347-402. Dumoulin was held in very high regard in Barère's time.
81 Imbert, *Droit privé*, pp. 13, 30.
82 Ibid., p. 30.
property after his death, and the law ought to prevent fathers from disinheriting their “natural” heirs, their children. This preference for customary over Roman principles would triumph in the Revolution. In fact, Barère’s colleague, Mailhe, proposed to the National Convention the abolition of the right to will one’s property in direct succession (7 March 1793), effectively ending Roman law in France. It is tempting to believe that he first discussed the desirability of this change with Barère, years before the Revolution, in Toulouse.

Barère employed reason and utility not only to measure the merit of certain laws, but also to suggest desirable social goals. He implicitly arrived at the conception of law as a mechanism to improve society. Like Rousseau, he wished to use laws to reduce the extremes of wealth, and he found Roman law and the jurisprudence of the Parlement unacceptable for this purpose. Barère believed that the laws governing the disposal of property should divide successions as equally as possible among the children, thus mitigating against the concentration of wealth in one hand. That was also the goal of another of Barère’s proposals, the abolition of entailments (substitutions). Royal attempts to limit entailments had been resisted by the Parlement for centuries, and Barère deplored this. He argued that entailments allowed the testator to designate the recipient of his property for several generations, thereby preserving great families but harming society in general by restricting the circulation of wealth.

These two anti-aristocratic reforms were realized during the Revolution, but another of Barère’s proposals went beyond even the Jacobins of 1793. Barère argued for the abolition of dowries. With these suppressed, “virtue, beauty, and finally the good qualities would be recompensed by marriage.” Not only was this intended to improve the education of women, but it would also have established a society in which marriageability depended on personal virtue rather than on family status. For its time, this was egalitarian thought pushed to an extreme.

It was not fortuitous that Barère attempted to resurrect the reputation of Furgole by eulogizing him before the Conference of Charity in 1783. The young social critic had long recognized his intellectual kinship and indebtedness to the jurist; it was not the work of a philosophe but rather Furgole’s treatise on testaments that had first

83Sagnac, Législation civile, p. 225.
84Barère was willing to allow a small portion of the estate to be at the father’s free disposal.
85The "rights of the eldest" were not usually recognized in the south, so entail was used to keep family fortunes together. This explains why the Parlements of the south resisted attempts to limit substitution. See Paul Viollet, Histoire du droit civil français (Paris, 1893), pp. 879–80.
brought Barère to question the right to dispose of property by will.\textsuperscript{86} Furgole had pointed the way toward a critical examination of civil law and the application of external standards to measure its reasonableness and equity. Several barristers of the next generation carried this approach well beyond the jurist's intentions, a few to genuinely radical positions. Most Toulousan advocates, though, were hostile or indifferent to this questioning of established civil law. They believed in the need for substantial variations to meet local conditions,\textsuperscript{87} and they could not regard the Roman principles in which they were trained, and of which they were masters, as "foreign" or unreasonable. Any minor adjustments that were required could be made by the Parlement itself through its own jurisprudence.

Thus, enlightened attitudes had an important, but limited, impact on legal thought at the Toulousan bar. The barristers felt the new demands of humanity quite deeply, and they dismissed the social fear expressed in existing laws. Yet, even the most ardent criminal reformers remained insensitive to, or unconcerned about, many other failings of the judicial system.\textsuperscript{88} The barristers' briefs almost never contained appeals to "reason" or to "nature." These enlightened standards lacked the force of the humanitarian impulse, and only a few pleaders applied them to civil law. Far from replacing their traditional authorities and standards with new ones, the barristers mixed the two and often held enlightened notions in subordination to their older authorities and loyalties.

**Economics, Politics, and Religion**

The barristers could claim a special authority in legal questions, but they also took an interest in a wide range of public affairs. In writings and speeches the barristers freely addressed themselves to matters of public import. One academician wrote of an informal group composed largely of young barristers which he disparagingly called the "news-mongers" because they discussed the latest events and considered it their business to spread the news about town.\textsuperscript{89} The expansion of

\textsuperscript{86} Barère, *Eloge de Furgole*, p. 14. Barère may also have been influenced by Furgole's work on entails, but he did not mention this in the eulogy.

\textsuperscript{87} The barristers had very respectable authorities for this position. No less than Montesquieu was one of them.


cultural horizons resulted in a heightened interest in matters not directly related to law.

A number of Toulousan advocates had a lively interest in economic reform. The barrister-academician Guillaume Martel first introduced physiocratic doctrine into the Floral Games, and when he published his poem "Political Economy" in 1770, he had to provide extensive notes, references, and definitions for the uninformed reader. Martel used the royal edict of July 1764, which allowed some freedom of trade in grain, as an occasion to extol physiocratic reforms. He affirmed the existence of a hidden, harmonious order in nature and defined government as "the observation of natural laws, which assure to nations and to each man in particular the property of his being and the right to pursue his needs through his work." It was the duty of states to let this natural order operate without restraint. Martel believed that the edict of 1764 foretold the eventual realization of this hope, and he was enthusiastic enough to expect "a new world" to follow from his economics.

Like many physiocrats, Martel was uninterested in manufacturing and looked upon it with disfavor. For him, France was an agricultural nation. Rejecting an essential tenet of mercantilism, Martel believed that the interests of the artisan, manufacturer and urban worker could easily be sacrificed to those of the cultivator. He hoped that the liberation of the grain trade would draw some of the urban masses to agricultural labor where "work, exalting your soul, will console humanity."

Martel's optimism and distaste for manufacturing were shared by Jean Baptiste Mailhe. Mailhe's remarkable discourse on the American Revolution allowed him to combine two passions: physiocratic economics and Anglophobia. He glorified the Americans for ending the English domination of the seas, a development which promised to open commerce to all, enrich the world (since trade was infinitely expandable), and engender thousands of material and moral improvements. Mailhe had a firm faith in the benefits of material progress. Trade and communication would extinguish national differences and

---

94Ibid., p. 6. This was a common attitude among physiocrats. See Weulersse, *Physiocrats*, pp. 159-60.
95Physiocrats were frequently Anglophobes. See Francis Acomb, *Anglophobia in France, 1763-1789* (Durham, 1950), p. 42.
religious prejudices, thereby ending wars and despotism. The human mind, thus liberated from all artificial restraints, would become infinitely creative. Mailhe even speculated on the possibility of inventing an "areostatic machine" as long as superstition did not fetter human reason. Neither Turgot nor Condorcet surpassed Mailhe in creating a euphoric picture of continuous social progress based ultimately on physiocratic reform.

No other barrister possessed Mailhe's fertile imagination and sweep of vision, but physiocratic ideas and a faith in man's ability both to alter existing institutions for the better and to improve the quality of life were widespread at the Toulousan bar. Just as Besaucelle used the public celebration at the reestablishment of the Parlement to champion criminal reform, so Pierre Alexandre Gary harangued the court in praise of Turgot's economic reforms:

Here in rendering foodstuffs free, he [Louis XVI] annihilated frauds and favored production; in freeing importation, he called forth abundance... one law which devastated our countryside in subjugating our cultivators—already the corvée exists no more.

It was unlikely that Gary, speaking as a representative of the Order, would have been so bold to praise Turgot if the minister's work did not have the support of many barristers. A belief in the material progress to be achieved by uprooting old institutions and following the natural laws of freedom and pursuit of interests had captured opinion at the bar. On this topic, Gary and many other advocates were no less advanced than the more radical thinker, Mailhe.

Though the barristers were hardly practitioners of the physiocratic virtues of careful land management, they, along with the parlementaires, were the most ardent proponents of free trade in Toulouse. A letter from the Sovereign Court to the king in 1769 protested against the reversal of a free-trade policy: "... the least suspension of liberty of the grain commerce would [be] the most deadly blow, the most terrible punishment." The magistrates' adherence to physiocratic reforms, a matter which touched them deeply as landlords, probably explains the prestige of these ideas at the bar.

Pierre Gary, in Journal de ce qui s'est passé..., p. 133. See also Lettre des avocats à Monseigneur le Garde des Sceaux, p. 16, where it was claimed that commerce "should be free like air and water."

G. Marinière, in "Les marchands d'étoffes de Toulouse à la fin du XVIIIe siècle," Annales du midi 70 (1958): 275, claims that the textile merchants were uninterested in physiocratic reform.

A.D., 51 B-29.
The speculative and reforming approach with which barristers considered economic relations did not extend into politics. For the advocates, students of law and history, political relations were fixed by constitutional principles acting through institutions; as political theorists they were jurists. They stressed constitutional theories that favored the Parlement in its struggle with the crown. If their constitutional thought had any single inspiration, it was the work of the Toulousan magistrate La Roche-Flavin, who published his *Thirteen Books of the Parlements of France* in 1617. This book was in most barristers' libraries, and its content was repeated, refined, or strengthened by the decrees of the Parlements during the eighteenth century.\(^{100}\) The letter sent by the barristers to the Keeper of the Seals (1788) emphasized the original election of the king in a general Parlement and implied that the sovereign courts descended from the "nation assembled." Moreover, the letter claimed that the Parlements represented the Estates-General when the latter was not convoked. All this was to be found in La Roche-Flavin. The letter also implied a contractual relationship as the basis of authority, but the contract was feudal rather than Lockean in inspiration. It was between the monarch and the province, not between king and people, and it hardly formed the basis for a theory of state. Like the Parlements themselves in the second half of the century, the barristers placed the law above royal authority—with varying degrees of boldness and consistency. The letter to the Keeper of the Seals denounced the "deadly maxim" that the king's power had no limits. The king ought to govern according to the law, though the barristers ultimately admitted only self-imposed restraints on his power. They declared that the king had "an absolute power to do good" and quoted Fénelon's *Telemachus* in support of this.\(^{101}\) Pierre Gary went much further in his speech at the recall of the Parlement. His formula, "One King, One Law, One Parlement: eternal and immutable relations," seemed to establish the courts and the law as sources of authority separate from and equal to the king.\(^{102}\) Thus, the barristers drew their political theories from traditional sources, sometimes bending their authorities to defend the Parlement against royal power.

In view of the barristers' juridical approach to political relations, it is interesting to examine their reading of a theoretical work like Rousseau's *Social Contract*. Two Toulousan barristers, Bertrand Bar-
ères and Antoine Chas, commented on this treatise in their prize-winning eulogies of Rousseau. Neither admired the work deeply or seemed conscious of its political relevance, though there were Frenchmen who did both. Both Barère and Chas appreciated Emile and the Discourse on the Origins of Inequality more than they did the political treatise. Barère considered the Social Contract only briefly and called its ideas "those ravishing chimeras of human society." Though the book contained "primitive truths," Barère apparently did not consider it pertinent to concrete situations. Chas, too, displayed an inability to treat the Social Contract as a politically relevant document. He did apprehend the "daring" balance which Rousseau established between the king and the people and the notion of legitimacy arising from the contract itself. But he could not identify these with existing public law, however much he approved of them:

Happy the People who could be governed by these principles. But how reduce them to practice? If it is not possible to change entirely the constitution of a state without shaking it to its foundations, it is not, without doubt, the same, relatively speaking, with individuals, in which reform ought to operate with the greatest benefits.

Chas could take the Social Contract seriously only by transforming it into a moral argument; even advanced thinkers like he and Barère could not easily integrate such speculative theory into their political notions. Their thinking about political arrangements was guided by public law and constitutional arguments.

If the barristers' constitutional approach to politics precluded an interest in speculative thought, it did not completely block innovation. The public law they cited allowed for no popular participation in government outside the Estates-General. Nevertheless, the barristers im-


105 Echeverria (in "The Pre-Revolutionary Influence") has argued that Rousseau's notions of popular sovereignty and contract theory were being used to justify the limitation of monarchical authority. This may have been true in some circles, but Barère and Chas did not see the Social Contract as relevant to this debate, and the Lettre des avocats à Monseigneur le Garde des Sceaux, concerning the May Edicts of 1788, did not use arguments borrowed from Rousseau; it argued along the lines of traditional constitutional theory.
plicitly assigned an important extraconstitutional role to the governed—or at least to the propertied, educated subjects. That role involved the formation of an intelligent and informed public opinion to which those in power had a duty to listen. The barristers saw this extraconstitutional source of governmental direction as crucial to progress and to social improvements. But if public opinion was to be useful, it had to be critical and unrestrained. Mailhe praised the new American government—and implicitly criticized his own—for its "civil, moral, and political liberty: [there are] no barriers to inhibit thought [or] the enlightening of government. . . ." Martel emphasized the need for philosophers to explore all mysteries, and Barère's eulogy of Louis XII delicately reminded kings that they ought to encourage talented men to speak openly and consider their judgments. Rejecting the idea of passive acceptance as a subject's duty, the barristers hoped for a public opinion that would be critical and independent. Espic's ode to "beneficent princes" pictured monarchs as no more than supreme administrators who had to earn, not expect, the good will of their subjects. And Jamme implied that the public had a right to review the legitimacy of wars waged by kings. This belief in the importance of, and necessity for, an independent public opinion was the most significant innovation in the barristers' political thought.

One barrister who did think about large and sudden changes in political relations was Mailhe. Rebellion against royal authority was a constant theme in his poems and discourses. But far from advancing radical proposals on this subject—as he did on civil law—Mailhe was always strongly hostile to rebellion and rebels, at least until 1784. In his poem "Charles II, or the Reestablishment of the English Monarchy" (1777), Mailhe declared in absolutist terms:

De revolutions toujours insatiables
Toujours impatients contre le joug des loix
Apprenne que Dieu seul est le Juge des Rois.  

Cromwell, for him, was an "abominable monster." Two years later, Mailhe won another prize for his poem about Lisimon, the peasant who raised Henry IV and taught him the wisdom and virtue to rule

with mercy after a period of great turmoil and rebellion. In the same year, Mailhe published his poem about “The Taking of La Rochelle” in revolt against Louis XIII. He later wrote an ode to Maria Theresa, another monarch who, like Henry IV and Charles II, came to the throne after a period of rebellion. In each case, the monarch in question was a benevolent figure who restored order and humanity after rebellious confusion. Mailhe’s discourse on the American Revolution was the last in a series of works about rebellions, but it marks an important transition in his conception of revolts. The American Revolution seemed to teach Mailhe that rebellions could have a positive, desirable consequence: liberty. His poem went beyond a mere glorification of a French victory to a celebration of liberty itself. Thus, in the last years of the Old Regime, Mailhe departed from his blanket condemnation of armed resistance to authority, but his new attitude toward revolts was clearly more a reaction to concrete events than a result of theoretical political thought.

Despite their demands for complete freedom of thought, the barristers were not boldly speculative in their political ideas; and they were even less so in their religious thinking. Barère, so daring in his legal and social reform schemes, strongly disapproved of religious controversy. He had to curb his enthusiasm for Rousseau when the citizen of Geneva attacked established religion. Referring to The Faith of the Savoyard Vicar, Barère asked, “Why must genius always please itself by touching sacred objects? Would that the talented could exercise themselves in this sphere without incursions on respected truths.” The barrister-academician Philippe Poitevin, who had the delicate task of writing a eulogy for Abbé Prades, denied the controversial religious views attributed to the abbé and described him as a devout and orthodox Catholic. To act in outward conformity to Catholic

116 Barère, “Eloge de Rousseau,” p. 205. It is interesting to compare Barère’s reaction to that of a future associate, Jean-Pierre Brissot, who “had his eyes opened” by the work. See Brissot’s Mémoires, 4 vols. (Paris, 1830), 1:50-54.
doctrines was the first rule of public decorum for all barristers, regardless of their personal persuasion. The Protestant barrister Jacob Londois, author of the constitution for a Masonic lodge, stipulated that members must attend a mass after each yearly election. Barristers strongly believed in the need to preserve and respect Catholic forms.

Despite this absence of religious questioning, the place of religion in the barristers' lives and their understanding of Christian morality were undergoing profound changes. By mid-century, barristers seemed incapable of comprehending religious fervor. Passionate behavior inspired by religion was "fanaticism" to them. The advocate Jean Raynal wrote a history of Toulouse that concentrated on the Wars of Religion, and he treated both Catholics and Protestants as fanatics worthy only of disdain. Indeed, Raynal could not accept religion as their basic motivation for action; he viewed the war as a struggle for power among the great nobles. Another advocate, Ponsard, echoed Raynal's denunciation of fanaticism in his poem about President Duranti, a leader of the Catholic League in Toulouse. Ponsard portrayed Duranti as a good man ruined by his failure to let reason conquer his religious fanaticism.

This insensitivity to the demands of orthodox religion led to a radical, if unconscious, reassessment of Christian morality. The barrister Joseph Faure thought of himself as an orthodox Catholic, but he nonetheless believed that God demanded only what was reasonable. And the barristers' conception of "reasonableness" increasingly excluded austerity and included worldly pleasures. Monasticism seemed irrelevant, even dangerous, to them. In 1770, Martel published a poem addressed to mothers, in which he advised them, without qualification or hesitancy, not to have their daughters raised in convents. Martel saw religious vows as an encouragement to laziness and uselessness and convents as establishments where vices and crimes were hidden by an unnatural lugubriousness. The feigned austerity of these houses shut out love and laughter, which the barrister considered innocent and natural pleasures.

Jamme, too, disapproved of religious orders and praised a new law inhibiting legacies to monasteries. He believed that religious houses weakened the state by preventing funds from flowing into commerce, and he lamented the fact that families lost their children to "a passing inspiration [which] often threw them into a

---

118B.M.T., MS. 1184, fol. 4.
cloister to be the sad victims of penitence and despair." Like many other barristers, Jamme could not comprehend religiously-motivated behavior, whether it was fighting heretics or devoting one's life to prayer. Worldly pursuits, like love or even commerce now seemed much more important than the contemplative life of traditional Christian morality.

The barristers' imperviousness to religious fervor engendered a spirit of tolerance, a principle underscored and made more conscious by the Calas affair in the 1760s. Not surprisingly, the bar as a whole failed to take a public stand on this famous case, in which a Protestant father was accused of killing his son for converting to Catholicism. For the bar to have done so would have been quite extraordinary, and, moreover, bigotry was not the only reason for accepting the sentence against Calas. Scholars have sifted the evidence until the present without arriving at a definitive assessment of the verdict. At any rate, individual barristers did emerge as defenders of Calas. Théodore Sudre won the lasting admiration of Voltaire for his well-argued defense of the Protestant and his family. Joseph Marie Duroux was no less adamant than Sudre in combating the myth that Protestants punished converts with death. It is difficult to believe that these barristers were alone in rejecting the prejudices concerning Protestants that flourished in Toulouse immediately after the crime. Indeed, the advocate Carbonel, assessor of the city, asserted Calas's innocence, and Monyer protested against the cruel treatment given to the accused. From the little evidence we have, there seems to have been much more debate about the case among the advocates than among the parlementaires who made the decision, and certainly more than among the populace at large.

Ultimately, the Calas affair served to impress upon educated Toulousans the importance of religious tolerance, and the bar was ready and willing to accept this new spirit. In the early 1750s, even before the affair, the barrister Brun de Rostang had argued against the stereotype of Jews as covetous and dishonest. Barristers like Lacroix, Laviguérie, and Gary later argued for and applauded the Parlement's decision to recognize Protestant marriages and grant other civil liberties. The tragic fate of Jean Calas did not truly create new religious attitudes, but

124 See Bien, Calas Affair, pp. 7-24.
it made an older spirit of open-mindedness more conscious.\textsuperscript{128} The case undoubtedly added prestige and urgency to the "enlightened" attitudes appearing at the bar by mid-century.

**BIRTH, TALENT, AND SOCIAL STATUS**

The social relations of the Toulousan barristers demonstrated a deep status-consciousness, an acute awareness of the inequalities among men. At this point, we wish to explore more closely the barristers' thoughts and assumptions about the determinants of social status. The philosophes were, of course, questioning traditional notions of hierarchy; "equality" was becoming a frequently-voiced slogan, whether it had much meaning or not.\textsuperscript{129} What theories, assumptions, justifications, and criticisms did the Toulousan barristers have about the inequalities that characterized their society in this Age of Enlightenment?

It is informative to compare the barristers' social attitudes to an "enlightened" analysis of social structure. Jean d'Alembert provides a coherent discussion of the determinants of social position in his "Essay on the Society of Literary Men and the Great."\textsuperscript{130} Though his opinion takes into account many of the enlightened assumptions about human nature and treats traditional views critically, d'Alembert did not want to undermine the existing social order, and most philosophes would have accepted his position. Thus, d'Alembert's analysis provides a convenient point of departure for studying the barristers' social attitudes.

For d'Alembert, all distinctions among men were to some extent artificial, for there was a natural human equality which required implicit recognition. Yet d'Alembert admitted that a hierarchy was necessary; he demanded only that the inequalities be as reasonable as possible. He saw three determinants of status: birth, wealth, and talent. The "real" differences between men involved talent alone. Deference to birth and wealth were a matter of social convention; one gave "exterior consideration" to people of high birth or great fortune and reserved "inner esteem" for the talented.\textsuperscript{131} But d'Alembert did insist that this outward regard for ancestry and fortune—and he considered both of equal social significance—was reasonable and obligatory.\textsuperscript{132} Ulti-

\textsuperscript{128} Bien, Calas Affair, p. 148 and chap. 7.
\textsuperscript{129} Aristocrats of Burgundy, for example, used the rhetoric of equality freely. See Regime Robin-Aizertin, "Franc-Maçonnerie et lumières à Semur-en-Auverois en 1789," *Revue d'histoire économique et sociale* 43 (1965): 236.
mately, he sought a social order that accepted the social reality of birth while honoring men of merit.

No Toulousan barrister left so systematic a discussion of social structure, but numerous informal remarks on the subject make it possible to explore their social attitudes. Like d'Alembert, the Toulousan barristers clearly valued talent and saw it as a meaningful distinction among men. They believed that talent conferred an important dignity on a man and thought it urgent that merit be recompensed. Such recognition of talent was not only just but useful: the commendation given to men of talent inspired others to emulate their efforts. Indeed, barristers berated the "vulgar minds" who could recognize only ancestry and not talent. To value merit was a mark of discernment and enlightenment.

In other important ways, the barristers' social thinking diverged from that of d'Alembert. The men of the Toulousan bar did not think in terms of "natural equality"; in fact, they never used the term themselves. Though they occasionally alluded to bold, unorthodox subjects like "original goodness," even theoretical "equality" was not part of their framework of ideas. Furthermore, the barristers did not acknowledge wealth (theoretically, that is) as an independent determinant of status. For d'Alembert, "opulence and independence" were just as significant as "high birth," but the barristers never considered that notion, which might well have been distasteful to them. Their social conceptions conformed much more to a "society of orders," in which birth and function determined status, and wealth accompanied this standing.

The barristers' social attitudes diverged most profoundly and most tellingly from those of d'Alembert on the subject of birth. Ancestry and inherited status were not mere social conventions to the men of the Toulousan bar; these were identifiable social realities. Indeed, in 1789 the barrister Poitevin compared "the virtues and titles of glory which are transmitted from father to son" with the distinctions "that merit alone extracts from chance," and he found the former to be "more interesting." These barristers saw no conflict at all between personal merit and inherited virtue as sources of distinction; one erred only in considering birth the sole source of respectability. The barristers would have found nothing incongruous in one legal brief that simultaneously

---

133See, for example, Jamme, "Eloge de Louis XV," p. 91 and various other eulogies in the Recueil de l'Académie des Jeux Floraux.


135See Espic, "Discours," p. 16, for the concept of "original virtue."

defended a client’s right to a university chair because of his merit and referred to another party as being “recommended by his birth and the thousand hereditary virtues in his family.”\textsuperscript{137} It was only the most radical barrister, Barère, who saw the respect attributed to high birth as little more than social convention, unrelated to virtue itself.\textsuperscript{138}

The barristers’ acceptance of birth and inherited status was sincere but uncritical. They made no attempt to define the virtues inherited or to determine whether these were transmitted by upbringing or through the blood.\textsuperscript{139} Moreover, the advocates seemed entirely unaware of a very important nuance in their own social thought: the inherited stains that they conceived to be the inevitable result of lowly extraction seemed more real and meaningful to them than the virtues transmitted through noble ancestry. In this sense, the social division that seemed to matter most to the barristers was not between nobles and commoners, but rather between those of respectable origins and those of “vile” birth.\textsuperscript{140}

In recognizing “birth” as a mere convention, d’Alembert implicitly removed the social stigma from lowly extraction. But the barristers profoundly acknowledged the indelible mark that unrespectable birth left on a person, regardless of his individual accomplishments. This notion of inherited “vileness” was so much a part of their mental framework that it inevitably entered their legal arguments. To bring discredit upon the opposing party in a case, Mousinat, a future member of the National Assembly, pointed out that she was the daughter of a domestic servant, and he berated her for “always [having] the deadly ambition of appearing above her state.”\textsuperscript{141} The distinguished barrister Faget lauded the son of a baker who had risen, through effort and talent, to an important army post for “never forgetting the lowliness of his extraction . . . . Flattered by his distinctions, he never lost sight of his birth.” The opposing party, however, though a military officer, was worthy only of contempt, for “he offers on all sides of his genealogy nothing but vile artisans, village tailors, butchers, and a domestic for a paternal grandfather.”\textsuperscript{142} Conversely, a

\textsuperscript{137}Jean Boubée, \textit{Factum pour Dome Laume, professeur de l’Université de Toulouse} . . . (n.p., n.d.), pp. 2, 9, and \textit{passim}.

\textsuperscript{138}Barère, “Eloge de Furgole,” p. 7.

\textsuperscript{139}For contemporary opinions on these matters, see Marcel Reinhard, “Elite et noblesse dans la seconde moitié du XVIII\textsuperscript{e} siècle,” \textit{Revue d’histoire moderne et contemporaine} 3 (1956): 5-6.


\textsuperscript{142}Jean Pierre Faget, \textit{Mémoire servent de réponse pour Demoiselle Anne Huc . . .} (Toulouse, n.d.).
respective ancestry was a point in favor of a client. Lacroix, for example, reminded the court of the ancient "bourgeois" status of his client's family, implying that this extraction marked him as incapable of committing a crime.\textsuperscript{143}

In contrast to their notions about inherited stigma, the virtues of high birth were vague and qualified, even if their existence was sincerely accepted. The prestige bestowed by noble birth was frequently contrasted unfavorably with the distinction derived from talent. Even Poitevin, who consciously defended traditional positions, believed that the virtues of "high birth" had "less éclat" than those of talent. And to "the man of merit whom Heaven had born in an obscure state," Poitevin could only counsel humility; he did not defend the virtues and prerogatives of noble extraction.\textsuperscript{144} The barristers rendered deference to high birth because it was tied to a social system and an entire pattern of relationships that they did not question.

When, on the eve of the Revolution, the barristers were confronted with demands for a new social hierarchy based on wealth, talent, and education, one that denied the inherent virtue of high birth, they would be only partially prepared to recognize its validity. Before they could do so, they would have to clear away many unconscious assumptions and hitherto uncritically accepted attitudes.

In 1768, Abbé Audra wrote to Voltaire:

\begin{quote}
I now know Toulouse well enough to assure you that there is not, perhaps, another city in the Kingdom with so many enlightened men. As for the Parlement and the barristers \ldots practically all under 35 are full of zeal and light . . . .\textsuperscript{145}
\end{quote}

The cultural expansion at the Toulousan bar had born fruit in a noticeable intellectual vitality and a sensitivity to the new currents of thought. Indeed, the barristers were "enlightened" in any contemporary sense of the word. Open to the essential innocence of worldly pleasures, aware of the importance of tolerance, the drama of salvation no longer dominated their outlooks. Material progress fostered by rational changes in legislation was widely accepted. Talent was viewed as an important distinction that demanded recognition and reward. Above all, the barristers were sensitive to the plight of the unfortunate, and the demands of "humanity" inspired a critical attitude toward established institutions.


\textsuperscript{144}Poitevin, "Eloge de M. de Senaux," p. 80.

\textsuperscript{145}Voltaire, \textit{Correspondence}, vol. 70, letter 14365.
But the intellectual ferment at the Toulousan bar had its limits. The Enlightenment failed to teach the barristers how to ask intricate and sophisticated questions about their place in society, about social organization, and about patterns of authority. Only a very few advocates, like Barère, and perhaps Mailhe, developed a comprehensive critique of society. The others championed limited reforms or single causes, many of which were effected during the Old Regime. To be "enlightened" was to participate in a pervasive cultural movement that interested and influenced many parlementaires in the same way that it touched the Toulousan barristers. Far from finding in the philosophes' works and in enlightened ideas an ideology with which to challenge the existing order at crucial points, the barristers assimilated, applied, or ignored the new opinions within the confines of their traditional perspective.

146 The preparatory question was abolished in 1780, and in 1788 the crown announced its intentions to reform criminal justice.