

# Creating a Legal Field: Building Customs and Norms in Modern French Law

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**ABSTRACT:** When a mason builds, he is bound by two sorts of rules: on one hand, those that guide his movements, taking into account the current norms pertaining to materials and their assembly, in short to technical skill; but also, on the other hand, those that foster the building's social stability, that is to say, peace with its neighbours ensuring property rights and their developments. Construction law is therefore hybrid. It is fuelled on one hand, by technical regulations, of a rather public order, that standardise building rules, but also, on the other, by a customary law of neighbourly relations and of property's fair appraisal, of a rather private order.

## INTRODUCTION

In France, during the Ancien Régime, the normalisation of building rules gives an insight into a source familiar to lawyers: usages, practices and customs. Construction law only became a truly autonomous branch of law late in the twentieth century. Our purpose for this paper is to understand its formation since the Middle Ages. At least we know that private construction law was grounded in Roman law (Saliou; Rainer). However, in order to take stock of the all normative aspects of this law, its sources ought to be approached starting with the participants of the art of building. These were: the clients, contractors and architects. In this list engineers are deliberately omitted, as they only became involved in law during the nineteenth century. On one hand, a specific field of law was first established by and for mason-builders. On the other, the field evolved as the relationships between masons and architects changed.

To understand the disagreement between the historical founders of architecture concerning the necessity for construction professionals to know the law (Vitruvius versus Alberti), it is useful to read Phillibert de l'Orme who wrote in 1567 that "it is enough for [the architect] to know the Ordinances & customs of the place to make his report to the judge who decides according to the law... However, the (surveyor's) office is more appropriate for master masons & officers... than to the Architect, who has another profession, much more important & honourable." In fact, early on and from the Middle Ages, construction law was formed by a process of sedimentation, owing more to the professional uses of builders than to the specific wishes of royalty or learned lawyers. It developed more from the base upwards, rather than downwards from the top of the hierarchy, by transcribing uses of action into legal texts. Practice is for law a creative asset, continuously explored (Hilaire, 1994; Deumier). For that matter, a major part of the construction field of law pertains to settling jobsite conflicts. Masons must abide by the current standards concerning technical skills. This is what will be explored in the first part: Law taking hold of construction: a new judicial practice.

From the seventeenth century, construction law, until then essentially jurisprudential and amended following technical changes in the art of building and daily legal facts, became an ordered and well-taught body of knowledge, in brief an academic subject. To do this, the masons' exclusive power of appraisal in the construction field was challenged, to bring them to share it with architects. Building law's dissemination was made indispensable by the practice of appraisal both amicable and judicial. Owing to this, masons were led to respect other rules, those that allowed a building to be well established socially, that is, in peace with its neighbours. This guaranteed ownership rights and their developments. We will examine this in the second part of the discussion: neighbourhood relations: a field of law taught at the Academy of Architecture.

## THE NORMS OF GOOD BUILDING: AN INVENTION OF JURISDICTIONAL PRACTICE

The rules of construction pertain to mathematics, physics or chemistry. They are in no way legally binding. For law to take them into account, a connection needed to be established between the scientific and legal worlds. During the Middle Ages, this contact could only occur in the context of thriving jobsites, where disputes were frequently witnessed. This is the reason why the field of construction was remarkable in France: very early on, it instituted a specialised justice dealing with all the disputes concerning buildings. From the beginning masons also developed a police mission with the idea that buildings incorporated issues of public interest. Building in cities involved major risks. The line was thin between supervising jobsites on a regular basis and drafting a structured text of the rules to follow. Retaining for themselves this function initially reserved to the king and his councillors, builders also broadened their public service mission to setting down self-regulation, thus providing craftsmen with a regulated framework for the building skills. Drawing from practice a major part of construction law was gradually elaborated and consolidated in written intellectual constructions, which could however, if need be, always be updated.

### Legal and police disputes

Generally, ordinary town justice and police held the power of supervising the work of trades. The first operations of community guards, such as inspections, appraisals or arbitration, were crucial. Building trades did not escape that rule. To begin with, building trades, through their elected representatives, inspected the jobsites from a purely technical standpoint. Subsequently, they also took bad builders to court, which was a guardian of the embellishment of cities. To ground this control on principles of justice and fairness, rules of independence and balance mostly dictated the choice of trade guards. For all practical purposes, courts of justice were often forced to adjust their sanctions, due to, for instance, rising prices. Moreover, the police's supervision of the quality of works was aimed primarily at restoring order, rather than punishing offenders. Such was not necessarily the attitude of ordinary city courts, which also looked into the responsibilities of builders, or even of contracting owners. In some cities trade communities sometimes even functioned as first degree jurisdiction, major disputes then taken to the superior city authority (Carvais, 2005c).

One of a kind, the *Chambre royale des Bâtiments* (jurisdiction of masonry) entirely controlled the building industry in the provosty and viscounty of Paris, from the thirteenth to the eighteenth century (Carvais, 2001). Constituted as a real court and headed by master generals (themselves masons, then architects, or even lawyers just before the Revolution), assisted by a staff of lawyers (Carvais, 2005b), it established its competence over all aspects of building. At the end of the sixteenth century appeals of its decisions were taken before the court of Parliament, instead of the provost, as previously. It was now playing in the big league. Within the *Chambre* and over approximately one third of the French territory, a twofold activity was organised: on one hand, on the judicial level, it settled ordinary cases of building disputes, and on the other, on the administrative level, it decided on police sentences in public matters. The relative importance of each function affected the nature of the institution. Initially only a professional court, the *Chambre* became an ordinary royal jurisdiction at the end of the sixteenth century, and by 1738 merely a police court. Several factors explain these developments: the predominance of technical conflicts, the birth of a working class disposed to social protests, the increasing private settlements that eliminated procedure costs, and the failed reform of professional structures.

The *ordinary causes* opposed two private parties. They were above all civil cases (conflicts with architects or builders), social cases (labour or wages disputes) or commercial cases (delivery of the building or payment of materials). Most frequently, the debate took place on the jobsite where the judge was present. Each party would argue his case concerning the facts invoked and the contract whose achievement was assessed. The magistrate asked the individuals meant to help him settle the case to testify. In the trial opposing building sponsors and professionals, the judge appreciated the contract's fulfilment strictly speaking, but sometimes he also made sure that building customs were respected. In that case, an official report of defects set off a liability procedure or the well-known ten-year liability procedure (on completion of the building). The latter's one but major compensation was the privilege of being paid first (Carvais, 1996). Thus, the principles guiding the settlement of disputes remained above all to respect the various parties' commitment (fairness, balanced allowances) and to carry out work according to the rules of construction (to restore the order of things). The judge tried to measure the efforts expended by the worker. This rule necessarily prevailed also in the relationships among professionals. But, moreover, respecting certain specific rules of guild law was added to the traditional principles, which formed an original whole. The oral nature of most commitments made it necessary to resort to surveyors to determine the contract's execution criteria. In ordinary cases, the rules of procedure were crucial as far as deadlines, costs and allowable proofs were concerned. Without proofs, however, the principle according to which "the master is trusted on his assertion" was applied, but not always for the masters exclusively (Carvais, 2005a).

*Police cases* were entirely different in nature. They opposed the royal state, public interest's protector, to offenders infringing on public safety and security. The mission of the buildings' police was carried out in three stages. The first stage consisted in a team of builders, among which some were *jurés* (surveyors), controlling jobsites, in the presence of a bailiff. Team members were appointed each month by the master general in order of seniority. Their round's itinerary was random, but could be inflected by rumour or informing. Questioning

on the premises always had the same structure: determining who the contractor was and the nature of the building contract, and then examining the work. Reading the reports of these visits provides a comprehensive list of defects and their frequency, which concerned three major functions: solidity, fire prevention and sanitary conditions. This system had two drawbacks: the fact that a team member was not paid, which undermined the firm's sustainability, and the difficult neutrality towards colleagues. The second stage consisted in a judge settling the disagreements discovered during a visit between a representative of the public interest and the job-site offender. During a relatively long period, police trials were initiated by *syndic et adjoint* (elected deputies of the masons' community), representing construction's public order through "the largest and most sane part of the trade." For financial reasons and lack of a candidate, the official office of prosecutor of the king was created no earlier than 1769. Moreover, this stage was costly to the community, especially since the judge's purpose was less sentencing than reparation. The third stage consisted in making sure that the judicial decision was efficient. To this end, a proposition of repair, a recovery process and a certified control of the latter were implemented. This constituted a real technical follow-up of cases. If the contractor at fault was reluctant or slow in repairing the nonconforming work, the master general could very well appoint another contractor to carry out the repairs to be paid by the defaulter (Carvais, 1995, 1998).

It was quite clear that the police mission of the *Chambre des Bâtiments*, as of any of the kingdom's competent ordinary institutions, pursued a public interest ideal. The concept of police under the Ancien Régime, although vague, gave rise to that of administration, and subsequently of civil service. In the seventeenth and eighteenth centuries the police, defined as "a regulatory authority," became "the science of governing men" (Napoli). It was not just content with settling disputes concerning public interest, it also regulated the field. This regulatory assignment, initially merged with the judiciary mission, was gradually disjoined from and finally subsisted alone. In fact, exerting a police authority entails being in charge of the fields that benefit the community at large. Consequently, in the field of construction, the Parisian judge of masonry, like any ordinary police judge throughout France, did indeed hold an administrative authority over the building trades, in addition to his judiciary power. He governed these trades as the jurisdiction that oversaw them, but also had the power to enact construction norms.

### **The rules of the art of building**

Under the Ancien Régime, two sources of law interpret ordinances and customs in order to compensate their weaknesses: jurisprudence and professional practice. The sovereign courts have the power of enacting norms in the form of regulation judgments, like the Roman praetorium's prefect or the curia regis. The second source was the "non-formulated law" formed of uses of practice (Hilaire, 1988, p. 140). Combining both sources, the regulatory authority of the masons' justice had the specificity of drawing from practice in construction to enact laws, through two processes different in form and in scope. The first process consisted in broadening the range of a decision taken during a specific trial to the building community at large and making it a general, abstract, hypothetical and permanent rule. The second consisted in developing a general reflection on the rules and customs of the trade by gathering scattered knowledge in one organised and normative synthesis of practices, for the general public's welfare.

*Specific ordinances.* The power of enacting regulations was given to lower jurisdictions under a double condition. On one hand, these jurisdictions were subordinated to a superior court for that mission and could not innovate, but were meant to imitate or merely execute laws or court regulation judgments; on the other, they were to inform the attorney general, who in that field had a crucial role, of these decisions (Payen, 1997, pp. 37-110). The *Chambre royale des Bâtiments* was allowed to enact ordinances in its specific field of competence, while always respecting this double constraint.

The *syndics et adjoint* initiated regulations, while the master general recognized the decision's compulsory nature. At the end of the eighteenth century, at a time when lawyers took on the charges of trade deputies and master general, regulations adopted a more legal writing and were intended "to serve the king for the Nation's well-being." Whatever the period, ordinances always had the same structure, but varied according to the situations that triggered them (police sentence, official report of legal facts or repeated and recorded abuse) and to the subjects they treated. Besides the organisation of guilds and methods governing them, regulation concerned technical and legal questions. Who was allowed to build? What were the terms of building contracts? What were the principles determining prices? What were the protections for and against job-sites? From the technical standpoint, all the elements of heavy work were reviewed and standardized, be they foundations, walls, wood panels, chimneys, entablature, or the good quality of materials. When magistrates, after several failed reforms, realised that they were not going to obtain from their superiors the necessary reforms to curb the abuse in the field of construction, they decided to self-regulate by enacting countless ordinances. None, however, had the idea or the desire of writing a synthesis. And yet, from the late seventeenth century, several contractors or architects had considered such a text (Carvais, 1998).

"Reductions" into art. According to Hélène Vérin, the process of "reducing" a technique into art consists in three successive stages: "gathering a scattered, fragmentary and often unwritten body of knowledge, ordering it methodically thanks to mathematics, rhetoric, illustrations" in order to spread it and ultimately "contribute to the public welfare." The masons' know-how had stayed confidential during several centuries. Even the statutes governing building trades comprised very few technical norms. In fact, the wish to draw up a comprehensive regulation of the art of building appeared only at the end of the seventeenth century. Several reasons

account for this belated realisation. Although all legal endeavours are an integral part of a reduction into art, legal practice in the late seventeenth century emphasised the reduction phenomenon's development. At the same time and until the Régence, the *Chambre des Bâtimens* was under direct control of the Parliament and thus in a position to request a codification of construction practices. Reduction implies official writing and inevitably public knowledge. Thus trade communities revealed their secrets to develop their workforce's loyalty and to advertise their professional practice in order to reassure building sponsors. Furthermore, this occurred at a time when technology and Cartesian thought prevailed in the different Academies. Finally, the effervescence of public works under Louis XIV dramatically increased the amount of defects, as well as the abuse and embezzlement of the king's agents.

To these fundamental reasons, subjective reasons were added, related to the personality that initiated the reduction project. Jean Beausire, mason by training, Paris master of works, was the first to operate a reduction into the art of masonry. Well-acquainted with the Court, he became King architect at the Academy, and founded a dynasty of magistrates at the *Chambre des Bâtimens*. In the 1690s, he drew up a new regulation for the masonry trade in which he devoted "title XV" to "the manner of building." The text as a whole was endorsed by a judgment of the king's privy council dating from May 26, 1694. Because master generals resented the regulation, it was not recorded in Parliament and was used merely as private custom until the late eighteenth century. But many sentences refer to it precisely. Title XV comprised thirty-three articles organising construction in chronological building order, and only dealing with materials and skills. However it touched neither on geometric drawing (*trait*), nor on tools, prices, or professional responsibility; these questions were already the subject of a specific literature. Beausire focused on the mishaps in construction practice that were debated daily in the presence of the master general. Thus, the fields addressed in Beausire's regulation concerned for a large part the solidity of buildings and fire prevention and salubrity to a very minor extent. This text was definitely an innovating work, drawing from jobsite practices, and a codification of building usages. In order to avoid building disorders, it strived to unify basic processes of construction. Beausire was determined politically to unify building skills and know-how and, to spread them in the interest of all to the French land as a whole (Carvais, 2008).

This legal reduction into the art of construction was neither unique nor isolated. In fact, other public figures laid the basis for it, without entirely succeeding due to a limited dissemination. In the same years, Maréchal Vauban wrote his "maxims worth observing by all those who sponsor building," based on a lifetime of observations and abridged into 143 articles concerning the practices of building private dwellings. These were meant as a guide to clients only. Vauban managed to standardise construction know-how with clarity, precision and geometry, without, however, definitely fixing it owing to regional variations (Carvais, 2007c).

In the 1720s architect and engineer Germain Boffrand, *expert-bourgeois* from 1700 to 1723, also tried to perform a reduction when the Academy of Architecture commissioned a "report on fires." In 1739 he confirmed his attempt by writing a rather comprehensive legal summary of the art of building in 103 articles. He observed many abuses in construction practice and little or no solutions to rectify them; he criticized the guilds and judicial institutions and wondered at the faulty transmission of building knowledge. The summary remained confidential (Carvais, to be published).

Reduction was not a Parisian prerogative. Many French towns reached the same conclusion. In June 1587 the city of Besançon devoted several ordinances to construction, which together already formed a real legal treatise of construction including technical and easement rules. Such was also the case in 1688 in Lyon where, at the Consulat's request, a general regulation of the art of building was promulgated. Its 47 articles addressed the issues of materials and skills, as well as the *toisé*; likewise in many other cities (Carvais, 2005c and d).

## NEIGHBOURLY CUSTOMS: A LEGAL TRADITION RECOVERED

Jurists have long been inclined to examine property and its mishaps. Roman law opposed on one hand property through which man directly and physically holds things, and on the other, the legal relations between men concerning the things organised by the science of lawyers. Roman easements were characterised by the absence of obligation between owners of servient and dominant tenements. The fundamental Roman distinction was altered by medieval legal science which reintroduced property and its division as a full-fledged category. In medieval law, the difference between the property of land and the property of its use no longer existed (Patault, pp. 18, 119).

The real debate since the Middle Ages pertained to land ownership versus the rights on the lands of others, and consisted in establishing personal relations in the matters of easement. Customary law disturbed the Roman system by introducing the reality of neighbourhood relationships on the border space between two properties (Halperin, pp. 50-54, 84-85). It was characterised by the coexistence of competing properties on the same land, where a good many neighbourhood conflicts occurred; in France, these were settled thanks to "the respect for the social pact." Customary regulation of easements "spontaneously" developed owing to the growth of cities in relatively confined spaces. In Paris easements were increasingly mentioned in the late fourteenth century, "after a series of investigations based on witnesses (*enquête par turbes*) in the Châtelet of Paris." D'Ableiges drew from this spontaneous regulation to write a chapter in his *Grand Coutumier de France*. The easement system swung between a Roman liberty and customary constraints. Common ownership and settlements between neighbours involved precise construction norms, but also economic compromises, such as assessing the "fair price" of a party wall, of its upkeep costs, or the *toisé* of joint work (Martin, pp. 120-138). To this end, custom books chose the technique of permanent arbitration of interests through appraisal.

These prescriptions ruling easements were directed at masons because they were prime contractors and the oldest surveyors. Moreover, housing law (Coudert, 1982), as well as the trade ordinances, often incorporated these customary dispositions to remind builders of them (Carvais, 2005d). However, architects, the other project managers, begrudged masons this legal competence; it was thanks to architects, therefore, that this knowledge developed widely.

### Sharing construction appraisal

Roman law and customs were taught in medieval universities and there questions of property and easement were debated and commented by lawyers, but masons had the privilege of being the only referents for judges in that matter, because they were the ones who physically applied these easements to prevent conflicts between neighbours. Furthermore, only the masons were solicited—sometimes amicably—to determine if a litigious construction complied or not with legal and technical norms defined by local custom. Masons held this legal knowledge, but how did they obtain it? Traces left by surveyors can be found in judicial archives. Moreover, in the sixteenth century these traces brought about the creation of a specific body of clerks whose mission was to protect these survey reports from manipulation by involved parties or the surveyors themselves (Martin, pp. 137; A.N. Z1J 256-1314).

*Learning on the job.* Building professionals were not usually prone to study law, but some of them were nonetheless called upon as surveyors. To our knowledge, no official text established their status. But in practice they did exist (Martin, pp. 132-151; Jezierski). In fact, masons who achieved this power of surveying were a kind of élite who had acquired a specific kind of knowledge to serve the general public. How this knowledge came about is not known. These masons probably gained it on the job, as in any other trade (Farr, 1997, pp. 24-54; Munck, Kaplan and Soly (dir.), 2007).

In case of neighbourhood trial or possessory actions, magistrates called on surveyors to examine the difficulty posed. Initially, surveyors, formed into teams, were meant to hold collectively the technical and legal knowledge on construction questions. For all that, was their survey report binding for the judge? This is doubtful as, initially, a second degree system of surveying was set up. The system, headed by a body of *bacheliers* was in charge of reviewing survey reports at the request of parties involved. Surveyors owed indemnities, due to the simple fact of having their reports reviewed and altered. The system thus served as a guarantee for all parties. However, the judge could be bound by the surveyors' advice unless challenged by the parties. Thus surveyors were mostly considered as judges on the questions for which they were appointed. This solution did not last because it was too detrimental to the judge's office and/or to the surveying missions led by professionals, especially since the etymology of the term "bachelier" referred to a servant or a candidate. Thus, in the sixteenth century, courts resumed the system giving only information value to survey reports, with the role of surveyors limited to clarifying technical questions for the judge (Martin, pp. 136-137).

Recovered survey reports show that the surveyor's mission was actually split into two. The first part allowed him to visit places and establish their description. He was allowed to go beyond simple observation by boring holes, and measuring volumes or distances. The second allowed him to appraise *de intellectu* the collected elements and to give his written opinion on the evaluated object's compliance with customary norms and technical rules. To obtain his office in the thirteenth century, the surveyor had to sit a fourfold examination on *toisés*, practical geometry, construction law and building knowledge (Lemas, p. 105-106). Their knowledge formed a "veritable normative science of construction," combining mathematics, law and construction techniques.

And yet, from the sixteenth century, masons were challenged in their surveyor's function by a specific category of *bourgeois* [city dwellers paying taxes], often architects. The latter demanded to share the technical knowledge of building owing to the fact that they could represent contracting owners, simple *bourgeois* like them. The transformation of the surveyor's status occurred in three stages:

*Conquest by the bourgeois-architectes.* Entrusting the mission of surveyor to any kind of master would have undermined "justice and the public's good." Offices of *juré* [sworn] master masons and carpenters elected by their peers were thus created by patent letters in February 1404. Candidates were requested to "have a large experience of the art," and perfect knowledge of usages and of the Paris Custom on buildings and easement. Through his October 1574 edict, the King radically upturned the statutes of *juré maçon* by turning their elective charge into a created office to be acquired in order to improve the profession's service to the public and above all for the Royal Treasury's benefit (Delamare, IV, pp. 59-60). The edict of 1574 was registered in Parliament on March 8, 1574, despite objections by the Court, who wished to preserve the liberty of parties to choose *bourgeois* as surveyors. But the King only authorised existing *jurés* to continue surveying until their body's extinction (BnF, Ms fr. n.a. 3357, fol. 28 v°- 34). Officially, *bourgeois* were still not evoked yet. Surveyors remained professionals.

The Parliament, upholder of liberties, was bound to react. And so it did with its September 7, 1616 judgment that differentiated judiciary visits carried out by *jurés* from amicable appraisals that could be led by anybody, even *bourgeois*, on free request of a party. Faced with such an assertion, the King had no choice but to confirm his support of the *jurés* he had created, thus neglecting *bourgeois* (Council judgment, August 18, 1623, BnF, Ms fr. n.a. 3357, fol. 59 v° - 61). Between 1610 and 1643 88% of surveyors in the field of Parisian property belonged to the building trades, while 12% were simple *bourgeois*, including architects of the Royal Buildings (Krakovitch). In the Civil Ordinance of 1667 the King nonetheless determined that: "Judges and parties can

appoint *bourgeois* as surveyors; and if a craftsman were to be interested for himself against a *bourgeois*, only a *bourgeois* could be chosen as third surveyor."

But these *bourgeois* surveyors, "lacking sufficient experience," and defined only by an urban fiscal status (Descimon and Croq in Cosandey, pp. 69-168), remained the objects of recurrent complaints. The King was therefore compelled to organise this liberty within an adequate legal framework. In his May 1690 edict, he created for Paris a single body of surveyor offices for buildings, divided into two classes: twenty-five *Bourgeois-Architectes*, who would have explicitly given up building and twenty-five *Entrepreneurs Maçons* (contractors) (Delamare, IV, pp. 62-64). These *bourgeois-architectes*, who, without specific training, could henceforth "say the art of building," were no doubt the new "architects" (Diderot and d'Alembert, "Experts"). They conquered the field of building surveying, but did they really have the sufficient intellectual means for that? Having very little prior practice in that field, on what part of their knowledge could they ground their thinking to write and support their surveying statements?

### **From writing the surveyor's knowledge to teaching it**

Masons had indeed acquired the knowledge required to survey jobsites by building and, if need be, by consulting books written by mathematicians and lawyers. During the eighteenth century architecture incorporated measuring and law to its literature in two different stages.

*The pioneers.* Since Antiquity few practitioners ventured to write down practical knowledge (Dubourg and Vérin). Jean Beausire was a pioneer in the legal writing of construction norms, but what about the customs framing the construction field, that is, the *toisé* conforming to the habits and customs, and easements governing neighbourhood relations?

Master-carpenter Jean Pussot (1544-1626) opened the way with his manuscript treatise written at the turn of the seventeenth century, wherein he gave "warning of the difficulties, obscurities and vexation to be found in the articles of the chapter on easements and real rights of the Reims custom." This legal treatise remained unknown to historians (P Varin, 1840, pp. 1015-1059). Dating from 1600, it strived to clarify the matter, by using common sense, concrete cases, comparisons with other customs and knowledge of classical works of science, architecture and geometry. Pussot also sought to rehabilitate surveyors despised as "mechanical people." His motto, "no convenience without inconvenience," expressed how an easement that provided its holder with a definite advantage could also turn out to be "pernicious and harmful." He commented successively on the thirty articles (450-480) of the Reims Custom. Pussot's treatise, although handwritten, was often brought forth in courtrooms, copied and used by law practitioners.

In 1624, Louis Savot (1570-1640), king's doctor and humanist, published *L'architecture française des Bastimens particuliers*. This work introduced three novelties: examining building economy, considering the legal question of construction and drawing up a bibliography on architecture. Two chapters were devoted to law. Chapter XXXIV specifies the hierarchy of sources and a bibliography on easements: first, laws, ordinances, statutes and local customs, then Roman law and his comments, finally the customs closer to Paris. To learn more, he referred the reader to scholarly law and commentators of customs, without forgetting the "country's good and learned lawyer." The following chapter analysed the Parisian Custom articles on easements, and reproduced the comparison with other customs that differentiated identical, altered or opposed dispositions. Reprinted in 1632 and 1642, the work had two versions illustrated by François Blondel in 1673 and 1685 (Carvais, 200b).

Pierre Bullet (1639-1716), son of a mason, was a king and city architect and engineer, and entered the Academy in 1685. He was interested in technical questions. His major work *L'Architecture pratique* (1691) was in reality merely a *toisé* handbook for those who wanted to build. In the book, he rejected Savot's treatise which he deemed too short and above all written by an ignorant amateur. Ferrière's treatise he considered inconsistent on *toisé*. But to understand the rules crucial to construction economy, he had to refer to the *toisé* rules of the Parisian habits and customs in order to add his own observations. He was quite naturally inclined to expose and comment on the articles of customs on easements and surveyor reports. His work was outstandingly successful, with more than twenty editions constantly updated between 1691 and 1838, owing to its handiness (octavo) and to the gap it filled (Carvais, 2007b).

In 1728 a two-volume anonymous book, attributed to Tiercelet, was published under the title *Architecture moderne ou l'Art de bien bâtir pour toutes sortes de personnes tant pour les maisons des particuliers que pour les palais*. Divided into five parts or "treatises," it could, alone, represent the sum of the surveyors' knowledge. The first part concerned "construction and use of materials," the fourth dealt with "the *toisé* of buildings according to the custom of Paris" and the fifth with "habits and customs concerning buildings and reports by surveyors." Moreover, the third book described how to prepare estimates, an eminently legal matter. In reality, this unfinished work summed up what the Academy wished to pass on to those it was meant to train.

*Academic teaching.* From 1672 Antoine Desgodets (1653-1728), son of a cabinet-maker, attended the conferences at the Royal Academy of Architecture. He was famous for having published *Les Edifices antiques de Rome dessinés et mesurés très-exactement* in 1682, which challenged the Palladian works and contributed to the quarrel of the Ancients and the Moderns. Admitted at the Royal Academy of Architecture, in 1719 he replaced Philippe de la Hire as a teacher and until his death trained a generation of architects. Thirty manuscript copies of his courses, possibly realised by students or practitioners—or himself—are extant; they address four themes: the orders, of course, from 1721, the *commodités* [interior layout] from 1722, but also law (easements) from 1723, and *toisé* from 1724. His course on easements was so practical and useful that it was copied and

preserved in legal libraries and in the hands of builders before it was posthumously published, in 1748, under the title *Loix des bastimens* by a former student, Martin Goupy, *bourgeois-architecte*. "The company [of architects] decided that a copy would be given to every Academy member of that time." It thus became the founding book of private construction law and the prayerbook of surveyors for over a century (Herrmann; Carvais, 2005d, 2007a and b). It was a commentary on the Paris Custom concerning easements, joint ownership, surveyor reports, and rental repairs. Desgodets isolated the part pertaining to building (89 articles) from the Custom and wrote a comment taking into account "judgments, sentences and regulations handed down in previous times, decisions by the most famous juriconsults (such as Ferrière), and the sound reflections which a profound science and an extended experience had provided for him." This is what accounts for the work's novelty compared to the existing legal and architectural literature. It prefigured its potential readership: it was immediately aimed at building contractors and sponsors as well as judges and supplied them with practical tools (glossary, index, table of contents). We know of only one copy, located at the Senate Library (BS, Ms 95), complemented by a preliminary volume of extracts of legal sources (BS, Ms 94). Desgodets was probably fulfilling the ambition of the Academy of Architecture whose the order of the day in 1715 was a "much needed" reflection on the "habits and customs that comprise two parts, knowing easements and *toisé*" (H. Lemonnier, IV, p. 84 and following).

Desgodet's book was hugely successful through sixteen successive editions. Republished eleven times during the eighteenth century, it included comparing customs from the second edition onwards, and two editions were annotated by the lawyers of the Dijon Parliament. After the Revolution former lawyer P. Lepage, drawing on the Civil Code, took up and remodelled the work. Subsequently, there were seven republications during the first half of the nineteenth century, including an updated edition conserving the initial plan. Desgodet and Goupy's work thus directly inspired the Civil Code's authors (Patault, p. 161) and became an inescapable reference for the next two centuries. As for *toisé*, Desgodets's course was probably published by N. Ginét in 1768, although Morisot claimed that it had already been published earlier on by Charles-François de Lespée in 1743. The Academy, whose mission was by definition to educate architects, also trained the first class of *bourgeois-architectes*. And the prestige of their knowledge allowed the latter to assert themselves when faced with the *jurés-maçons* (mason contractors).

## CONCLUSIONS

Construction law addressed two paradoxes: the paradox of being a technical discipline that also took into account its social role, and that of being rooted in practice rather than resulting from a theoretical reflection. At the time of the Revolution, construction law was formed by combining two separate corpuses. On one hand, there were the police rules vindicated by practice, whenever daily constructive disorders occurred and were recorded in public order regulations. These regulations were mostly written by master masons and gradually spread from city to city, to nearby towns or more remote urban centres that remained closely linked to the French capital's development. The capital's predominance in pre-Revolutionary increased with the Empire's administrative centralisation through the establishment of the *préfectures* system and of a key revolutionary institution: the *Conseil des Bâtiments civils* [Council of Civilian Buildings] wherein architects had a crucial role. As for the *Chambre des Bâtiments*, it was by the end of the eighteenth century no longer under the authority of masons or architects, but of lawyers. Courts of the administrative order therefore took over from it. On the other hand, the fragmented customary regulation of the private order was unified and transposed into articles 637 to 710 of the Civil Code thanks to the summarising efforts of the Enlightenment lawyers. The rules of property law still strived to establish peace in neighbourhood relationships. This is why local customs continued to be applied in the nineteenth century (David). But courts of the judicial order were always busy with the tribulations of people forced to respect the rights of their neighbours. This phenomenon did not however challenge the easement system, which, as carpenter Pussot would say, remained a legal space full of contradictions, requiring that each convenience automatically be matched with an inconvenience.

During the nineteenth century, lawyers joined themselves to builders and architects to appropriate the field of buildings which, with the growing economic impact of the sector, had become worthy of interest. As for education, construction law courses were given in all schools of engineering, Beaux-arts and civil engineering. It took quite a while, however, for construction law to be allowed into law faculties (Carvais, 2007a)

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