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Bertrand Crettez
Bruno Deffains
Olivier Musy
Ronan Tallec

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Judicial Venality: A Rational Choice Analysis

Bertrand Crettez[†], Bruno Deffains[‡], Olivier Musy[§], Ronan Tallec[¶]

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Venality, i.e., the sale of public positions, was widely used in the judicial sector in France between the 16th and 18th centuries. In a venal system, litigants finance the justice system by paying the judges directly. In France, moreover, the right to judge was sold by the ruler, who indirectly levied part of the legal costs. Here, instead of the state funding justice, justice funds the state. The cost to the King was a loss of control over the judiciary and biased legal decisions. We develop a model of judicial venality and build on this model to provide an analytical narrative of the rise and decline of judicial venality in Old Regime France. Historically, judicial venality enhanced legal capacity whereas the kings faced with limited opportunities to raise taxes and to borrow. Lack of control over the judiciary, however, led to overly costly and time-consuming trials, resulting in its final demise.

JEL Classification Numbers: H1, K0, K40, K41, N40, N43, P48.

Key Words: Law and Economics, Judicial Venality, Private Justice, Institutional and Legal Design, Economic Analysis of the History of Law, French Old Regime

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[†]Université Paris-Panthéon-Assas, CRED, EA 7321 - 75005 Paris, bertrand.crettez@u-paris2.fr.

[‡]Université Paris-Panthéon-Assas CRED, EA 7321 - 75005 Paris, bruno.deffains@u-paris2.fr.

[§]Université Paris Cité, LIRAES, F-75006 Paris, France, olivier.musy@u-paris.fr.

[¶]Université Paris Cité, LIRAES, F-75006 Paris, France, ronantallec.edu@gmail.com.

" *I do not think that there is anything in our usage more contrary to reason, than the trade and venality of offices, which prefers money to virtue in the thing of the world where virtue is more to be sought and money more to be rejected. And moreover, if the holder deserves his office, there is no reason for him to buy it: if he does not deserve it, there is even less reason to sell it to him.*" Loyseau (1610)[1]

1 Introduction

Venality was a prevailing practice throughout Europe during the Early Modern Times. In France, however, the sheer magnitude of the system rendered the experience both distinctive and intriguing. Legalized since the early 16th century, venality served as the standard method for appointing public positions until the French Revolution in 1789 (Bien (1987)). Public positions were sold to the highest bidder by the state, and their incumbents were entitled to a fixed remuneration, in addition to fees paid directly by the citizens who sought their services. Then, France earned a reputation for cultivating an *archomania*, a genuine passion for offices (Nagle (2008)). French kings monetized nearly every public position they created, extending the web of offices across the kingdom, with the proceeds used to finance royal expenditures. In the judiciary, thousands of new judges were appointed, establishing a comprehensive hierarchy of courts that spanned the entire territory. From both financial and administrative perspectives, venality emerged as a resounding success.

However, for most people of the time, venality was seen in a negative light, being closely associated with corruption, abuse of fiscal power and biased administration of justice. Wielding public authority in exchange for financial gain was perceived as a grave violation of moral order, especially in the judiciary. Because rendering justice was the main function of the King, the legalization of venality was seen as allowing corruption to infiltrate the core of the state. Legislation expressly prohibited the sale of judicial positions until the 16th century, not only for moral considerations but also to safeguard the impartiality of judges (Mousnier (1971, p.35)). Dignitaries also foresaw the degradation of the judiciary due to venality. For instance, political philosopher Jean Bodin argued that venality would diminish the King's autonomy, preventing effective control over the judges to whom offices were sold. Describing venality as a dangerous and pernicious plague, he emphasized the peril of judges selling judgments (Gilmore (1941, p.104)). Even figures like Montaigne, who held an important venal office at the Bordeaux Parliament, criticized a nation where judicial positions were sold, justice was outright paid for, and the poor were denied justice due to their inability to pay (Doyle (2000, p.103)). Public opinion blamed venality for the deterioration of the judicial system, where delays,

[1] Quoted by Doyle (2000, p.99).

bias and exorbitant costs prevailed.[2] Nevertheless, in the twilight of the French monarchy, when popular support was weak, venality still persisted. A notable example is Necker, a finance minister for Louis XVI who, despite criticizing venality, had no hesitation in selling 5,000 new offices to finance public spending during the American War of Independence (1775-1783) and extorting additional payments from existing office holders (Doyle (2000, p.77)). Until 1789, venality seemed resilient, remaining a cornerstone of the French Old Regime.

The paradox of venality, at once a pillar of the French Monarchy and one of its most criticized institutions, deserves to be analyzed using a rational choice approach, so as to highlight the system's trade-offs and the reasons for its long-term persistence. As offices can have different properties, we focus on judicial one, because justice rendering was the King's main duty and judicial venality concerned the most important state institutions, such as the Parliaments (see Boucoyannis (2021)). In this paper, we show how venality can distort judicial decisions, but also why despite the deterioration of the judicial system, the state may benefit from enforcing it and continuing to sell new judicial positions. We therefore construe venality as a rational compromise between the increase in financial resources available to the state and the deterioration in the quality of justice, due to the financial incentives resulting from the venality of judges. These two elements are linked, because a biased judicial system is more profitable for both the state and the judges. Our new legal design model focuses on two main aspects of French venal justice. The first is that venal justice was financed directly by litigants, who paid judges to deliver a judicial decision. The second is that judicial offices were sold at the ruler's discretion to the highest bidders for financing public expenditures.

To model venal justice, we take a two-step approach. We first adapt the standard model of trial with optimistic litigants developed by Landes (1972), Shavell (1982) and Bar-Gill (2005) to introduce the payments by the litigants of fees to the judges. We assume that there initially exists a set of non-venal judges and that the ruler had the possibility to expand this existing judiciary by selling venal offices. Since offices are sold to the highest bidder, each time an office is sold the ruler faces a trade-off between the rise of additional revenues and a shift in the composition of the judiciary. We then study the decision process of the ruler as a dynamic problem in which he chooses to sell (or not) one office on each date. When selling an office, the ruler faces a broad set of potential interested judges. Each of them is characterized by an intrinsic probability to rule in favor of the plaintiff impartially. A venal judge can increase this probability in order to get more litigation fees. Departing from his intrinsic probabililty, however, is costly for a judge. The ruler is also characterized by his own probability of supporting the plaintiff, reflecting the way he would like justice to

[2] Over time, the executive even expressed growing dissatisfaction with venality. Louis XV's Minister of Justice, Maupeou, made an unsuccessful attempt to abolish judicial venality in 1771, asserting it as the cause of poor justice delivery (Villers (1937)).

be rendered.

We identify two main biases associated with venality. The first is that fee-based justice alters judges' behavior through the introduction of monetary incentives, leading to a bias in favor of the plaintiff. In particular, although it is costly for a judge to deviate from his intrinsic value in dispensing justice, he will have an incentive to be more supportive of the plaintiff, given that it is the latter who initiates legal proceedings. This leads to an increase in the number of trials and the costs paid by the parties. While it would be possible for a ruler to limit the cost of each judicial act, a judge can retaliate by extending the duration of trials and obtain the same fees, as long as his opportunity cost of time is sufficiently low. Another bias relates to the sale of offices by the ruler, which leads to a selection bias among judges. Since offices are sold to those for whom they are most profitable, i.e., future judges with the highest intrinsic propensity to favor the plaintiff, the sale of an office increases the average propensity to favor the plaintiff, thus increasing the divergence from the ruler's preferred value. Selling an increasing number of offices would further result in the gradual loss of control by the ruler over the judicial system, as the share of venal judges increases over time. We show that if the initial average propensity to favor the plaintiff is above the ruler's and above a threshold, selling a new office is always the best decision for the ruler. In the long run, the ruler is trapped in a situation in which the set of judges favoring the plaintiff keeps growing, because selling new offices is always optimal.

We draw on this analysis to explain the paradox of venality, which was used until the end of the regime despite the growing discontent it generates over time. Indeed, although the absolute cost of venality increases, the marginal cost of creating new offices decreases in proportion to the number of existing venal judges. Our results also suggest that initial conditions are important when introducing a venal system. Judicial venality should only be implemented by rulers who have little control over the judiciary from the start. We believe that this is why judicial venality was used in France but not in England.

Our work is of twofold interest. First, from a legal design viewpoint, while judicial venality is considered an outdated and inefficient institution, we show that it can be rationalized. We therefore contribute to the exploration of alternative institutional models potentially helpful to countries trapped by low state capacity. Second, the use of standard economic tools gives a coherent reading of the historical descriptions of how justice operated in France under the Old Regime. Standard approaches in legal history overlook the role played by venality in the working of the French legal system.[3] In particular, we show that agents' incentives played an important role. Moreover, while previous analyses of venality were mainly based on the juxtaposition of separate analyses of facts and institutions, we see it as a whole.

[3] See for example Carbasse (2014) or Lovisi (2011).

More specifically, this paper contributes to three strands of literature. It first contributes to the literature on legal design and the issue of how to select and finance the judiciary.[4] An early paper on this issue is Allen (2005) who focuses on English legal history and analyzes how to design public employment, including the judiciary, when there are monitoring problems. Allen finds that resorting to office venality is useful whenever private incentives are aligned with the ruler's objectives. Where private incentives conflict with the ruler's objectives, patronage is a better choice. Here, the perspective is different since we concentrate on judicial venality *per se* and the decision to sell judicial offices. By selling offices, the ruler modifies the incentives faced by judges as well as the composition of the judiciary. In the analysis of Allen (2005), venality should never be used for justice, which makes it difficult to rationalize it in the case of France. In our framework, we show that venality was rational choice in a country where the King was originally weak.

We also contribute to the literature analyzing justice as a private good, financed by its users. Landes and Posner (1979, p.235) stress that "few economists (and few lawyers) realize that the provision of judicial services precedes the formation of the state; that many formally public courts had important characteristics of private institutions". They also argue that competition between judges should make fee-based private justice efficient, when fee values are fixed to control the trial costs. In a basic model of litigation, we show on the contrary that private fee-paying justice could induce a pro-plaintiff bias because it is the plaintiff who chooses to take the case to the court. By favoring them, judges can extract more fees from litigants. Our results are consistent with the historical evidence documented by Klerman (2007). In his study of English fee-based justice before 1799, he shows that justice was biased toward plaintiffs in order to raise fees, which was vigorously denounced by Bentham. We also provide some historical evidence suggesting that this was also the case in France under the Old Regime.

Finally, we contribute to the literature on *state capacity* (see, *e.g.*, Besley and Persson (2011), Dincecco (2017), Johnson and Koyama (2017)). State capacity refers to the ability of a state to provide public goods and services. This stream of research considers taxation as the only source of public spending and does not address how a state can be developed in the presence of taxing constraints, a common problem in developing countries. Very few historical studies explain how states were able to escape the trap of low state capacity. However, many states of the early modern era, such as France, devised ingenious ways of extracting resources without resorting to taxation, either for political reasons or for lack of control. Venality initially helped to build a large but low-cost judiciary system and, despite low tax revenues during the 17th century (often called *Le Grand Siècle*), France became the most powerful country in Europe.

[4] See Gaukrodger (2017) for a recent review of the different compensation systems for adjudicators.

The paper unfolds as follows. In Section 2, we present the history of judicial venality under the French Old Regime. In section 3 we present a model of litigation with judicial venality. We use this model in section 4 to study the decision by a ruler to sell offices. In section 5, we rely on our model to provide an analytical narrative of French venality. We conclude in section 6.

2 The Venality of Judicial Offices in French Old Regime

This section outlines the main practical features of the venal judicial system of France under the Old Regime. We provide a brief description of the judicial procedures in force at the time, which will be used to justify our modeling hypotheses in the next section. We then give a short account of the historical origins of venality, focusing on the creation and sale of royal offices. We also present the main incentives inherent to a venal system.

2.1 The motivations for venality in France

During the Hundred Years' War, the French monarchy was close to collapse.[5] The late victory enabled the French kingdom to be consolidated and extended, but the Kings lacked the political authority to rule the country. Moreover, they feared rebellions. Indeed, at that time, each new royal tax required formal acceptance by the people to be considered legitimate and the rulers feared being challenged if additional taxes were imposed.[6] Funding public expenditures posed a permanent challenge until the end of the Middle Ages when the Kings opted for a decentralized approach to govern the country (see Major (1960)). Venality emerged as a practical solution to overcome this constraint, offering financial and political incentives to support the state, and developing an administration within a tight budget (Reinhard (1998) ; Descimon (2006)). While a customary venality existed at a local level, it was progressively managed by the monarchy. King Francis I gave an official framework to venality in 1523 and venal offices were continuously sold over the following centuries, the apogee of the system being reached in the middle of the 17th century. Progressive institutional arrangements were made to promote the venal market, notably the creation of the Paulette tax allowing office holders to ensure the patrimonial status of their office (Bitton (1969)).

Venality made it possible to overcome the tax obstacle until the advent of a strengthened state. It encompassed all public services and was instrumental in the building of French state capacity, notably legal capac-

[5] This historical reading is that of French historians in the 19th century (see Moeglin (2012)).

[6] During the 14th and 15th centuries, acceptance was granted by the Estates General, an assembly representing the French local institutions.

ity. The most notable transformation implied by the sale of offices occurred in the judicial system.[7] These sales laid the foundations of a renewed public service of justice. They helped to progressively implement a large body of professional and independent judges in France. Justice gradually shifted from being the duty of local lords to becoming the main responsibility of the King (Olivier-Martin (2005, p.518)). According to Montesquieu, venality served as an effective means to allocate public positions as it prevented patronage, favoritism, and nepotism. Since the value of offices depended on the permanence of the institution, venality was also instrumental in strengthening the support of the office holders to the government. As stated by Richelieu, 'the system of offices destroyed the power of aristocratic patronage, eliminated corruption by introducing publicity, and gave the rich a vested interest in supporting the government" (Doyle (1992)). Therefore, venality was not just a financial expedient, but a central institution of the French royal state.

2.2 Selling and buying royal offices

Only the King could create an office.[8] When additional financial resources were required, new offices were issued. Members of the Royal Treasury and private brokers could propose their creation. These proposals had to be approved by the Royal Council of Finance. Once a creation was ratified, it was sent to the Royal Chancery for registration and publication as a law. Subsequently, the creation of offices was communicated to the King's representatives in the courts where the positions were granted. Most offices were sold on primary markets. Direct sales were conducted through public auctions, with interested parties submitting bids above a minimum selling price. The office was awarded to the highest bidder. Indirect sales were negotiated by brokers, with profits to be made on a minimum price fixed by the King.[9] All purchases had to be ratified by the Royal Council of Finance before becoming effective. The process of creating and selling offices is summarized in Figure 1.

The buyer needed to fulfill some further conditions in order to hold it. For instance, a law degree was necessary for those wishing to purchase an office of judge. Finally, the office became a private property upon payment of a recognition fee, known as the *marc d'or*. Office holders could resell their office on secondary markets (Descimon (2006)). From 1604 on, the payment of an annual tax known as the *Paulette* enabled holders to transfer the office to their heirs with no conditions attached, thus completing the privatization of offices as assets. Every 9 years, the King would renew this concession, usually in exchange for additional

[7] The role of venality in the transformation of the judicial system will be presented with more details in Section 5.2.

[8] This paper only considers the case of royal offices. Mousnier (1971, p.44-67 and 129-184) provides a precise description of how the French Kings created and sold such positions.

[9] Indirect sales known as *traités* enabled the monarchy to raise money quickly. For the 17th century, Bayard (1988, p.164), counts 764 traités concerning office transactions out of a total of 2,278 listed.

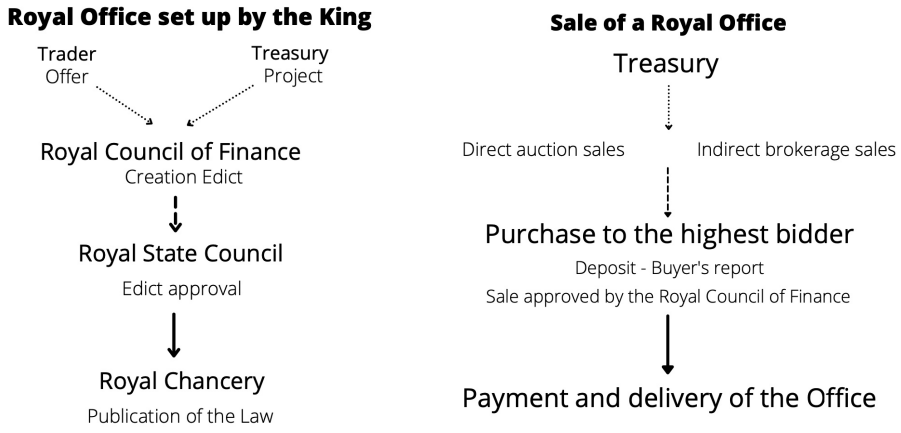

Figure 1: Creating and selling offices

funding. The demand was so strong that venality was dubbed a "French passion" (Nagle (2008)) and that Loyseau, a jurist specializing in the office law, coined the expression *archomania* to describe such enthusiasm. As stated by Pontchartrain, a minister of Louis XIV, "Each time the king of France creates an office, God immediately creates an idiot to buy it" (Royer et al. (2016)).

Offices conferred social prestige and monetary income that resulted in a market value. Social prestige is studied in Bonhoure et al. (2024). Here we focus on the monetary income provided by the offices. Monetary income took two forms. The first, the "*gages*", consisted of annual interest paid by the ruler. These were fixed and did not depend on the market value but on an estimate made when the office was issued. Gages values were known for each office, even if they were not always paid. A second income was linked to the holders' professional output. For judicial activities, this income was called "*épices*" and corresponded to the fees paid by litigants for procedural acts performed by the office holders involved in the legal process, such as judges, prosecutors, solicitors or court clerks. The judge's work, such as case studies, inquiries, information gathering, and so on, depended on his personal assessment of the complexity of the case. The amount of the fees was proportional to this work. The values of these revenues are much less known. Blanquié (1999) shows that the head of justice in a court in Libourne, near Bordeaux, tripled his average income with the épices. At a lower level of the judicial hierarchy, Piant (2006) shows that the judge of Vaucouleurs was earning 250 *livres tournois* (the French pound currency hereafter abbreviated as lt) on average per year between 1680 and 1689. This office was priced around 4.000 to 5.000 lt, implying an additional return of 5 to 6% a year provided by litigation fees. At a higher level of the hierarchy, in Parliaments, revenues were more important. Feutry (2012) shows that the épices received during the year of 1740 by the judges of the Paris Parliament rose to more than 6500 lt, which was 6 times the value of the *gages* paid by the King.

Note that these revenues concerns only the fees for judges. All other court office holders who performed acts throughout the procedure were also paid according to fixed fees. All in all, office holders' aggregate incomes were higher than those of most of the working people at the time.[10]

2.3 Legal system and procedural law

Under the Old Regime, custom was the main source of French legislation. Royal legislation was often limited to public law, and private law was difficult to define, as customs were numerous and divergent (Regnault (1965)). Customary law was in force in the northern France, while Roman law was in force in the south. In both areas, the judge was the legal arbiter responsible for the interpretation of the law. Even in southern France, Roman law played only a subsidiary role when a custom was imprecise or mute. As early as the Middle Ages, Roman law encouraged the writing of customs to ensure legal certainty (Gouron (1983). In the early modern era, the Montils-les-Tours ordinance of 1454, which aimed to guarantee the smooth running of justice by compelling judges to apply the law "as it will be written," amplified this writing process at the state's instigation (see Zink (2007, p.468), and, more broadly, Hilaire (1994)). To become law, a custom had to be approved by all the people of the three orders within its legal jurisdiction, and ratified by the local Parliament. However, the writing met with only partial success, and the customs were ultimately of little binding force for everyday judges. Indeed, in many cases, the writing took a long time, or was only partial. Several important customs, such as that of Paris, even had to be rewritten. Judges could still modify the law by pointing out local exceptions, notably seigneurial, that contradicted the written custom (Grinberg (2006)). Moreover, judges were not required to motivate their judgments, which made it difficult to rationalize the law.[11] Within Parliaments, jurisprudence could therefore be contradictory (see, for instance, Regnault (1965, p.57)).

The diversity of customs implied that legal procedures also differed from one local court to another, although they had much in common. Local *styles* explained the procedure to be followed in the various courts of the kingdom. The Code of Civil Procedure introduced in 1667 attempted to harmonize them. We use this Code to illustrate a brief account of a civil trial.[12] When a complaint was deemed valid by a court, it was assigned to a judge. Then each party would hire a solicitor (in addition to lawyers), whose task was to make sure that procedural formalities were complied with. Solicitors could negotiate a pre-trial settlement agreement.

[10] Despite significant regional variations, the maximum annual income of an 18th century laborer was around 150 lt according to Fourastié (1950), while Morineau (1972) gives an average income of around 81 lt for a day worker and 108 lt for a weaver.

[11] Dauchy and Demars-Sion (2004) argue that judges did not motivate their judgments because they wanted to retain control over the judicial process.

[12] For a more thorough presentation, see Fréger (2006) and Feutry (2013).

Without this agreement, a first hearing would take place[13], during which the judge would decide whether the case was a simple or a complex one. When the case was considered simple, he could make a quick decision and some negligible fees were paid. When the case was considered complex, the judge could ask the litigants to supply additional trial materials. Each additional item had to be paid for by the litigants. Once the trial materials had been collected and processed, the judge could finally hand down a decision. The parties still had to pay another fee to obtain a written trace of the judgment. The trial procedure is roughly similar to modern proceedings, except that the litigants had to pay the judges and the court clerks directly. Figure 2 summarizes the conduct of a trial.

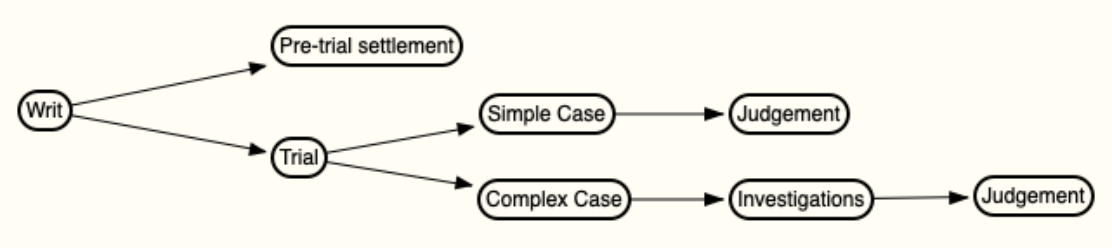

Figure 2: French Standard Civil Procedure in 1667

A fraction of the expenses generated by legal proceedings during the trial, called *dépens*, was reimbursed to the winning party at the end of the trial. Their amount depended on the length and complexity of the case. They included judges' fees, but also the cost of legal acts performed by other court office holders and other additional taxes paid to the King.

3 Judicial Venality and the Canonical Model of Litigation

As described above, judicial venality is a form of legal design characterized by two distinctive features. First, it is a fee-based system, in which litigants pay trial costs directly to judges. Secondly, offices are sold by the ruler to individuals who are willing to pay the highest amount. What those individuals are willing to pay depends on the expected level of fees they expect to earn from their judicial activity. In return, a judicial office becomes a private asset and makes its owner relatively independent from the ruler. This legal design contrasts with the standard system in which taxpayers *directly* finance the provision of judicial services and where judges are assigned to their function by other methods of recruitment. We now propose a model of venality in which we focus on these distinctive features. In this section we first introduce judicial fees in the canonical model of civil litigation with optimistic litigants designed by Landes (1972), Shavell (1982) and

[13] If the defendant was absent, the judge adjudicated in favor of the plaintiff.

Bar-Gill (2005).

3.1 The canonical model of litigation

Consider two optimistic litigants, a plaintiff and a defendant, who meet a venal judge. Let p^e be the expected probability perceived by the two litigants that the plaintiff will win his lawsuit (this probability is common knowledge and will turn out to be *judge* dependent).[14] Let C_p denote the cost of the lawsuit for the plaintiff, and C_d the cost for the defendant.

If the plaintiff wins the lawsuit, the defendant pays his own costs and a share γ of the trial costs borne by the plaintiff. If the plaintiff loses the lawsuit, he pays his own costs and a share α of the defendant's trial costs. The expected cost k_p of a lawsuit for the plaintiff is then

$$k_p = C_p(1-\gamma p^e) + C_d \alpha (1-p^e), \tag{1}$$

and the expected cost k_d of a lawsuit for the defendant reads

$$k_d = C_p \gamma p^e + C_d\big(1-\alpha(1-p^e)\big). \tag{2}$$

While both litigants expect the plaintiff to win his lawsuit with probability p^e, they have different estimates of the sum that the defendant is ordered to pay if the plaintiff is victorious. Let D_p and D_d be the plaintiff and the defendant's estimates, respectively, where $D_d < D_p$. This inequality reflects both the plaintiff's and the defendant's optimism. It means that the plaintiff expects to receive an amount larger than the sum that the defendant expects to give.

Under the foregoing assumptions, the expected gains of the plaintiff and the defendant are as follows

$$U_p = p^e D_p - k_p, \tag{3}$$

$$U_d = -p^e D_d - k_d. \tag{4}$$

To avoid paying litigation costs, the parties can negotiate an out-of-court settlement.[15] Pre-trial bargaining is chosen over a lawsuit whenever the expected loss of the defendant is larger than the expected gain of the

[14] One can imagine that litigants rely on lawyers who know every judge type.
[15] We assume that forum shopping is impossible.

plaintiff, that is

$$p^e D_p - k_p < p^e D_d + k_d. \tag{5}$$

Parties file suit whenever condition (5) does not hold. This is the case when the sum of litigation costs is no greater than the expected difference in the claim values

$$C_p + C_d \leq p^e (D_p - D_d). \tag{6}$$

3.2 Litigation and venality

In contrast to the standard model of litigation, venal judges earn the trial fees paid by litigants.[16] Suppose that a judge can choose the values C_p and C_d of the trial fees (section 5 presents evidence that Old regime judges controled the trial fees by managin the trial length).[17] Then the judge can extract all the surplus of the trial by choosing the values $C_p + C_d$ that makes the litigants indifferent between going to court and negotiate an out-of-court settlement, *i.e.*,

$$C_p + C_d = p^e (D_p - D_d). \tag{7}$$

Of course, a judge must also make sure that the plaintiff is not worse off when filing a suit, *i.e.*,

$$k_p \leq p^e D_p, \tag{8}$$

and thus should check that

$$C_p (1 - \gamma p^e) + C_d \alpha (1 - p^e) \leq p^e D_p. \tag{9}$$

Notice, however, that any pair (C_p, C_d) satisfying condition (7) also satisfies condition (9).[18]

A judge would be better off by *further* favoring the plaintiff, namely, acting in such a way that $p^e = 1$. However, we assume that a judge cannot always act in such a way. This assumption is supported by some historical evidence. To systematically judge in favor of the plaintiff regardless of the facts in order to

[16] Not all the litigation fees are actually received by judges. For instance, litigants had also to pay their lawyers and so on. For simplicity, we only consider the fees paid to judges.

[17] This assumption is made for the sake of simplicity. As long as, for the judge, the marginal cost of changing the length of the trial is sufficiently low, the predictions of the model remain the same.

[18] That is because both $1 - \gamma p^e$ and $\alpha(1 - p^e)$ are lower than one.

maximize income would have been a case of prevarication. Such offence was heavily punished by the royal administration, often leading to the forced sale of the office. We also assume that in the absence of venality, the probability of favoring a plaintiff differs from one judge to another. This probability may depend, for example, on unclear local laws or local customs, variations in courts' information, interpretations, and so on. It may also depend on the judge's personal views. An important part of the trials involved issues of violations of private property, and individual judges' views on this topic influenced their decisions. In the modern world, judges can have very different views on the need to punish offenders, notably in criminal cases. We call this individual probability the natural, or intrinsic probability, of favoring a plaintiff. The values of this natural propensity belong to the set $[0, \overline{p}]$.

Furthermore, suppose that the cost for judge i of deviating from his natural probability of favoring a plaintiff p_i is equal to

$$\frac{\rho}{2}\left(p^e - p_i\right)^2, \tag{10}$$

where ρ is a positive parameter.[19] This overall cost includes the cost of deviating from one's personal opinion and the cost of deviating from the local law as it is commonly perceived.[20] Using the above assumptions, the net payoff of judge i is given by

$$p^e(D_p - D_d) - \frac{\rho}{2}\left(p^e - p_i\right)^2. \tag{11}$$

Clearly, no judge would give full support to the plaintiff wherever ρ is large enough.[21]

[19] For simplicity, we suppose that this parameter does not depend on judge type.

[20] Judges had to justify their decisions in some way. Unhappy litigants would go to appeal and if if over time, grievances accumulated against a judge, an investigation would finally be initiated against the judge. In his study about the court of Vaucouleurs, Piant (2006), p.93, states that in 1780 the judge of Vaucouleurs was investigated for prevarication. This judge clearly charged too many fees in his activity, and was subject to bribery. He actually sold justice to those who offered the most (p.94). In our model, such behavior is construed as a deviation from the intrinsic probability p_i. Deviating too much raises the possibility to be punished, which is captured by equation (10). One can also consider that the cost of deviation includes a moral cost, which is increasing with the level of the deviation.

[21] Notice that our model of a trial is unusual in that the parties disagree about the damages $(D_p - D_d)$ rather than probability of plaintiff prevailing. To see the difference with the more usual model and that used in the paper, let p_P^e and p_D^e be the probability that the plaintiff prevails, for the plaintiff herself and the defendant, respectively. Let D be the common value of the damage. The expected cost of a trial for the plaintiff is written as: $k_P = c_P(1-\gamma p_P^e) + c_D(1-p_P^e)$ while the expected cost of a trial for the defendant reads: $k_D = \gamma c_D p_D^e + c_D(1-\alpha(1-p_D^e))$. The expected gains of a trial for the plaintiff and the defendant are $U_P = p_P^e D - k_P$ and $U_D = -p_D^e D - k_D$, respectively. Litigants file a suit whenever $p_D^e + k_D \leq p_P^e - k_P$, or $c_P\left[1-\gamma p_P^e + \gamma p_D^e\right] + c_D\left[1-p_D^e + (1-\alpha(1-p_P^e))\right] \leq (p_P^e - p_D^e)D$. A venal judge would maximize the sum of litigants' fees $c_P + c_D$ under the above constraint and should make sure that the plaintiff files a suit, that is, that $U_P \geq 0$. But one can check that this condition is satisfied when inequality $p_D^e + k_D \leq p_P^e - k_P$ holds. Now, imagine that each judge bears a cost from choosing expensive trial fees. For instance, we would have a quadratic loss equal to $-\frac{\psi}{2}(c_P + c_D - c_j)^2$ where c_j stands for the judge's preferred trial fee. This setting is quite similar to the one used in the paper.

3.3 Venal judges' decisions

Owning a judicial office enabled judges to obtain fees from litigants, as well as continuing payment from the ruler. But office holders also had to pay taxes to the latter, and all in all, their sole income actually came from the litigation fees. For the sake of simplicity, we shall assume that a judge's income is exactly equal to the trial fees, $p^e(D_p - D_d)$. Hence, judge i's behavior is given by the solution to the following problem

$$\max_{0 \leq p^e \leq 1} \left\{ p^e(D_p - D_d) - \frac{\rho}{2}(p^e - p_i)^2 \right\}. \tag{12}$$

This solution depends on p_i, the judge's propensity to favor the plaintiff without venality, and is given as follows

Proposition 1. *A venal judge whose natural propensity to favor the plaintiff is p_i actually favors him with probability $p^e(p_i)$, where*

$$p^e(p_i) = \begin{cases} p_i + \frac{(D_p - D_d)}{\rho} & \text{if } p_i \leq 1 - \frac{(D_p - D_d)}{\rho}, \\ 1, & \text{otherwise}. \end{cases} \tag{13}$$

Clearly, the probability $p^e(p_i)$ increases with p_i and $D_p - D_d$ (the difference in the assessment of damages by the litigants), and decreases with ρ (the cost of deviating from one's natural propensity to favor the plaintiff). Thus, the fee-based feature of venality creates a *pro-plaintiff bias*. Whatever his type, the introduction of justice fees leads each judge to react to this monetary incentive by increasing the probability that the plaintiff wins the case, so as to increase fees. This individual bias is the same for all judges, to the extent that they face the same kind cost of deviation (which depends on the same parameter ρ).

We shall hereafter assume that

$$\overline{p} + \frac{D_p - D_d}{\rho} < 1. \tag{14}$$

This assumption ensures that judge $\overline{p}$, who is the most inclined to favor the plaintiff, will not always decide the case in his favor. To put it another way, $p^e(p_i)$ will always be strictly lower than one.

4 Judicial Offices

In this section, we consider that at the aggregate level level, venal judicial positions can be created by the ruler of the country. In the initial condition, there already is a exogenous number of non-venal judges, representing the existing judicial system at the time of the introduction of venality. We consider that venality is introduced gradually, as it has been the case historically. The idea is to reproduce the slow process of evolution of justice under the old regime of France, in which venal judges continuously coexisted with non-venal judges, for example the *commissaires* and the *intendants* (see Jaaidane et al. (2023)). For simplicity again, we assume that this initial number of non-venal judges is fixed and does not change over time. By selling new positions of venal judges, the ruler earns additional revenues but changes the composition of the judicial body because when an office is sold, it is sold to the highest bid, that is the judge with the highest probability to favor the plaintiff. We then study the choice faced by the ruler to sell offices or not, given the incentives it gives to judges, as described by Proposition 1. The ruler can sell one office at a time and at the beginning of each period. He takes as given the existing population of judges, characterized by an average value to favor the plaintiff. Since selling a new office will modify this average value, this creates a trade-off for the ruler.

4.1 Selling judicial offices

The ruler faces a binary choice. She may either sell or not sell a judicial office to a buyer with a natural propensity to favor the plaintiff equal to p (p will actually correspond to the probability to favor the plaintiff of the highest bidder).[22] In the event that he sells an office, the office price should be equal to

$$\mathscr{P} = \frac{\left(p + \frac{(D_p - D_d)}{\rho}\right)(D_p - D_d)}{r}. \tag{15}$$

This price is equal to the sum of the discounted trial fees that a judge can obtain from the plaintiffs (r being the interest rate).[23]

Suppose that for the ruler the cost of selling an office depends on the difference between the actual propensity to favor a plaintiff (that is, $p + \frac{(D_p - D_d}{\rho}$) and his own preferred propensity p_R. This cost can be thought of as being a political or a moral one. More formally, suppose that the payoff received by the ruler in the event of

[22] Perfect information is thus assumed. We shall discuss this assumption below.

[23] For simplicity, we suppose that the judge to whom the office is sold is in charge of one trial at each future date.

an office sale is

$$\mathscr{P} - \frac{\psi}{2}\left(p + \frac{(D_p - D_d)}{\rho} - p_R\right)^2. \tag{16}$$

In the expression above, ψ is a parameter that reflects the importance for the ruler of the distance between the actual and his preferred propensities to favor a plaintiff.

When the ruler does not sell an office, we assume that he has to bear a fixed cost C_R. This cost is associated with the difficulty to obtain financial resources in an alternative way, for example, the political costs of taxation. It also includes the political cost of not filling the position of a judge and therefore not meeting the demand for judicial services in the country. Thus, the ruler sells an office whenever

$$\mathscr{P} - \frac{\psi}{2}\left(p + \frac{(D_p - D_d)}{\rho} - p_R\right)^2 \geq -C_R. \tag{17}$$

In that case, the best outcome for the ruler would be to sell the office to the judge whose propensity to favor the plaintiff maximizes $\mathscr{P} - \frac{\psi}{2}\left(p + \frac{(D_p - D_d)}{\rho} - p_R\right)^2$, taking into account the fact that this propensity determines the price of the office through the equation (15). This propensity is equal to

$$p = p_R + \frac{1}{\psi r} - \frac{D_p - D_d}{\rho}. \tag{18}$$

This ideal propensity decreases with ψ and r, but increases with ρ. The higher the cost of the judge's freedom to adjudicate for the ruler (the higher ψ), the lower the ideal propensity. Likewise, the higher the interest rate r, the lower the equilibrium price of the office, and accordingly the costlier the judge's freedom to adjudicate. The effect of an increase in ρ works in the opposite direction.

Yet, while the judges' propensity to favor the plaintiff cannot be observed, if an office is auctioned, it will most certainly be bought by the individual with the greatest natural propensity to favor the plaintiff, *i.e.*, $\bar{p}$. That is because, the income obtained from the office depends on the trial fees, and the latter depend on the natural propensity to favor the plaintiff. In this connection, the ruler will sell an office if inequality (17) holds true with $p = \bar{p}$.[24]

Thus far, we have neglected the fact that the ruler's decision to sell an office must also depend on the number of existing offices, and thus of the actual average propensity to favor a plaintiff. Selling an office is bound to change this average propensity. Addressing this issue calls for a dynamic approach that we present next.

[24] We can check that the inequality is satisfied if $\bar{p} \leq p_R + \left(\frac{1}{\psi r} - \frac{1}{\rho}\right) + \sqrt{\left(\frac{D_p - D_d}{\psi r}\right)^2 + 2p_R\frac{D_p - D_d}{\psi r} + \frac{2C_R}{\psi}}$.

4.2 Evolution of judicial venality

We now study the decision by the ruler to sell judicial offices a dynamic optimization problem in which time is discrete and the decision horizon is infinite. Assume that there is an exogenous initial number of existing judges N_0, who are not venal. The average probability that the defendant prevails, $\hat{p}_0$ is also exogenous, not necessarily equal to the average value preferred by the ruler, p_R. Recall that for simplicity, we suppose that only one office can be sold at any given date. Let then N_t be the number of offices and $\hat{p}_t$ be the *average* probability that the defendant prevails at the beginning of date t.

When no office is sold, the average probability is constant and we have $\hat{p}_{t+1} = \hat{p}_t$. The cost of not selling an office is C_R and as the average probability to support the plaintiff is $\hat{p}_t$, the instant payoff for the ruler is

$$-C_R - \frac{\psi}{2}(\hat{p}_t - p_R)^2.$$

When an office is sold, it is bought by an individual whose natural propensity is the greatest (because his bid will be the highest), namely $\bar{p}$, giving an effective propensity to favor the plaintiff equal to $\overline{p} + \frac{D_P - D_D}{\rho}$ because of the pro-plaintiff bias.[25] Since initially the N_t existing offices have an average value $\hat{p}_t$ that the defendant prevails, the average probability to favor the plaintiff accordingly changes as follows

$$\hat{p}_{t+1} = \frac{N_t}{N_t + 1}\hat{p}_t + \frac{1}{N_t + 1}X \tag{19}$$

where $X = \overline{p} + \frac{D_P - D_D}{\rho}$ is the probability that the plaintiff prevails with the new office holder. Indeed, when an office is sold, the number of offices is equal to $N_t + 1$ and the average probability that the plaintiff prevails is an average mean of the average probability $\hat{p}_t$ and X.

The dynamic optimization problem faced by the ruler is described by the following Bellman equation

$$V(\hat{p}_t, N_t) = \max\left\{-C_R - \frac{\psi}{2}(\hat{p}_t - p_R)^2 + \frac{1}{1+r}V(\hat{p}_t, N_t),\ \mathscr{P} - \frac{\psi}{2}(\hat{p}_{t+1} - p_R)^2 + \frac{1}{1+r}V(\hat{p}_{t+1}, N_t + 1)\right\} \tag{20}$$

where $\mathscr{P} = \frac{X(D_p - D_d)}{r}$.[26]

[25] We actually assume that at each date, there is always at least one individual of type $\bar{p}$ willing to buy an office. Admittedly, this is a simplifying assumption (because it allows us to avoid dealing with the technical intricacies of the dynamics of the distribution of the potential judge type). This makes sense, however, since historically the number of judicial offices was limited compared to the stock of the population. Actually, as the size of the kingdom increased, it was likely that the $\bar{p}$ was non-decreasing across time.

[26] See equation (15).

The interpretation of this equation is as follows. Either it is optimal not to sell an office and then the average probability that the plaintiff prevails remains constant ($\hat{p}_{t+1} = \hat{p}_t$ and $N_{t+1} = N_t$) and so does the number of offices. This decision costs $-C_R - \frac{\psi}{2}(\hat{p}_t - p_R)^2$ to the ruler. The first part (C_R) refers to the direct cost of not selling an office. It can represent the cost for the ruler to rely on direct taxation, or else the cost of not going to war, because there is no money with which to wage it. The second part is the cost for the ruler of the distance between the actual average mean of the probability to favor the plaintiff and his preferred value for this probability. If it is optimal to sell an office, the ruler receives its price $\mathscr{P}$ but at the cost of changing the probability that the plaintiff prevails (in that case $\hat{p}_{t+1} > \hat{p}_t$, because the average probability gets closer to X, and $N_{t+1} = N_t + 1$).

In comparison with the static approach of the ruler decision problem studied in the previous subsection, the dynamic approach highlights the fact that the ruler must pay attention to the future consequences of his immediate decision. This decision affects the future value of the average propensity to favor the plaintiff ($\hat{p}_{t+1}$) as well as the number of offices (N_{t+1}).

It is clear that if the ruler does not sell an office at date t, he will never sell one (because in the future the same problem will arise, and the same decision will be made) and in that case we have

$$V(\hat{p}_t, N_t) = \frac{-(1+r)}{r}\left(C_R + (\hat{p}_t - p_R)^2\right) \tag{21}$$

Yet there is a particular case where selling an office is *always* the best decision. As the next Proposition shows, this case arises when the average probability of favoring the plaintiff is equal to its maximum value X.

Proposition 2. *Suppose that $\hat{p}_t = X$. Then it is optimal to sell an office.*

Proof. If an office is not sold the instant payoff of the ruler reads $-C_R - \frac{\psi}{2}(X - p_r)^2$. If the ruler sells an office, the instant payoff is equal to $\mathscr{P} - \frac{\psi}{2}(X - p_r)^2$. That is because in each case $\hat{p}_{t+1} = \hat{p}_t = X$. To put it another way, the average probability does not change and is always equal to X. In particular, it does not depend on the actual number of offices. Since the immediate payoffs are constant whatever the ruler decides, it is clear that he would better off selling an office rather than bearing the cost C_R. □

The case considered in the previous Proposition is a special one. We now consider the ruler's decision when $\hat{p}_t$ is below X. Before presenting our results, we introduce a few definitions. Let $V_1(\hat{p}_t, N_t)$ be the payoff of the ruler when he never sells an office and let $V_2(\hat{p}_t, N_t)$ be the payoff of the ruler if he sells an office at *any*

date, that is

$$V_2(\hat{p}_t, N_t) = \frac{(1+r)\mathscr{P}}{r} - \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\hat{p}_{t+i+1}(\hat{p}_t) - p_R\right)^2 \tag{22}$$

where

$$\hat{p}_{t+i+1}(\hat{p}_t) = \frac{N_t+i}{N_t+i+1}p_R + \frac{N_t+i}{N_t+i+1}X \tag{23}$$

is the average propensity to favor the plaintiff if the ruler has sold i offices between date t and date $t+i$.

Furthermore define $\kappa(\hat{p}_t, N_t) = V_1(\hat{p}_t, N_t) - V_2(\hat{p}_t, N_t)$. Our major results, which come in the next Proposition rely on this value of $\kappa(p_R, N_t)$.

Proposition 3.

1. *Assume that $\kappa(p_R, N_t) \geq 0$. Then there is a threshold $\hat{p}'_t$ such that if $\hat{p}_t \in [\hat{p}'_t, X]$, the ruler sells an office at date t and at any future date, and if $\hat{p}_t \in [p_R, \hat{p}'_t[$ then the ruler sells at most a finite number of offices.*

2. *Assume that $\kappa(\hat{p}_t, N_t) \leq 0$ for all $\hat{p}_t \in [p_R, X]$. Then the ruler sells an office at date t and at any future date.*

3. *Assume that $\kappa(p_R, N_t) < 0$ and that there is a value $\hat{p}_t \in]p_R, X[$ such that $0 < \kappa(\hat{p}_t, N_t)$. Then there is an interval $[\underline{\hat{p}}, \bar{\hat{p}}] \subset [p_R, X]$ such that: if $\bar{\hat{p}} \leq \hat{p}_t$ the ruler always sells, if $\hat{p}_t \in [\underline{\hat{p}}, \bar{\hat{p}}]$, the ruler sells a finite number of offices, and if $\hat{p}_t \leq \underline{\hat{p}}$, the ruler's decision is indeterminate.*

Proof. The proof of this Proposition is provided in the Appendix 1. □

The Proposition above states that there is always a threshold such that if the average propensity $\hat{p}_t$ to favor the plaintiff is above the threshold, then the ruler will always sell an office (now and at every future date). It is as if he were trapped in the system. This result may seem paradoxical since as time goes by, the average propensity to favor the plaintiff always moves in a direction opposite to the ruler's target. The intuition of the result is as follows. If an office is not sold, the average probability remains constant. But if the difference between this average and the ruler's target is substantial, the cost of the discrepancy is substantial too. Yet when one sells an office, the increase in the discrepancy cost is relatively small because so is the increase in the average propensity to favor the plaintiff (the closer the average is to X, the smaller the increase). The

sale of another office, however, always yields an additional income equal to $\mathscr{P}$ and avoids the opportunity cost C_R). Therefore, the ruler is better off selling an office.

By contrast, when the average propensity to favor the plaintiff is near the ruler's objective, p_R, the value $\mathscr{P}$ obtained from selling an office is less than the increase in the cost for the ruler of losing control of judicial decisions (because the average propensity to favor the plaintiff deviates too far from the ruler's target).

A direct implication of our result is that, without any variation in the parameters' values, only a change of regime could stop the development of judicial venality (let alone its removal). Judicial venality can come to a halt, however, if some parameters change. In particular, a drop in C_R as well as a rise in ψ can result in the ruler choosing to stop selling judicial offices.

A rise in X could also lead to an increase in the cost of the difference between the average propensity to favor the plaintiff and the ruler's target, halting the sale of offices. Such a rise in X can be the byproduct of an enlarged realm (*e.g.*, through conquests). That is because, judges' characteristics can be more diverse in a larger country and the cost for the ruler of the decisions made by independent venal judges may increase in relation to the size of his country.

Finally, Proposition 3 focuses on the case where the initial value of the average propensity to favor the plaintiff $\hat{p}_t$ is no lower than the ruler's target p_R. Observe, however, that if $\hat{p}_t < p_R$ *and* $\hat{p}_{t+1}(\hat{p}_t) \leq p_R$, then selling an office at date t is the best policy. That is because, the ruler collects the price of the office *and* the average propensity to favor the plaintiff draws nearer to his target. However, the decision to sell an office is more intricate when $p_R < \hat{p}_{t+1}(\hat{p}_t)$. But in that case, one can rely on the previous Proposition to study the optimal choice.

4.3 A summary of the properties of judicial venality

To summarize our propositions, we highlight two major properties of a venal system. The first one concerns fee-based justice. Such a system does not bring money to the ruler, but since judges can finance themselves privately, it does not use the ruler's resources. The downside is that introducing fees to deliver justice leads to a pro-plaintiff bias. Each judge will render distorted decisions compared to those she would have rendered in the absence of fees. The second property relates to the sale of judge positions. With a venality system, the ruler not only does not have to pay anything to make justice work, but he can even receive additional financial resources by selling offices to individuals wishing to become judges. This introduces another bias into the way justice is delivered by changing the composition of the judiciary as new offices are sold to

judges with the highest propensities to favor the plaintiff. The greater the number of offices sold, the greater this effect.

5 An Analytical Narrative of Judicial Venality in Old Regime France

We now draw from the model to provide an analysis of judicial venality in Old Regime France. We show that venality helped the kingdom to increase its legal capacity, measured in the number of courts, judges and trials. We also discuss the disadvantages of venality, such as the provision of low-quality justice. We further show that, despite growing discontent, judicial venality endured until the last days of the French Monarchy due to the incentives inherent to the system. We conclude with a discussion of the initial historical conditions that drove the state to implement venality despite these drawbacks.

5.1 The rise of venal justice in Old Regime France

Before venality was legalized in the 16th century, France, like many other European countries at the time, experienced customary venality. In this conventional way, venality did not directly finance the state, but rather the judicial authorities. The French state, unable to pay judges, authorized them to levy fees directly on litigants. Judges were the main direct beneficiaries, but other players in the judicial process, such as clerks and lawyers, received a share of the fees. This state of mattere corresponded to a fee-based justice system, as studied in the model presented in section 3 and in Proposition 1, implying a biased judicial decisions in favor of the plaintiff. Where judges receive ltigation fees, we expect more biased and therefore more expensive trials. Because the plaintiffs initiate the legal proceedings, we also expect an increase in the number of trials. In England for instance, judges were not venal (see Allen (2005)) but they received fees until 1799. Klerman (2007) provides indirect empirical evidence of a bias in favor of the plaintiffs. Comparing a court's decisions before and after a judicial reform that abolished judges' fees, he finds that, on average, judges ruled more in favor of the plaintiff before the reform.

The French monarchy gradually shifted from customary venality to a deeper venal system, in which judicial positions were created and sold by the King. Financial resources were needed to build from scratch a complete judicial system with many courts and judges. In France, the sale of offices allowed the access to justice on a wider scale. New jurisdictions were created, gradually covering the entire country. Surveys of royal offices carried out in 1573 and 1665 show the development of judicial venality. Figure 3 shows the

evolution in the number of active office holders.[27] The introduction of venal judges was gradual, in line with the assumptions of the dynamic model. In each judicial field, the number of judges increased significantly over the course of the 17th century. This conclusion applied to all levels of jurisdiction (courts of first instance, appeal courts, sovereign courts such as parliaments). When provinces such as *Franche-Comté* and *Alsace* were conquered, the King created new offices to replace the local judges.

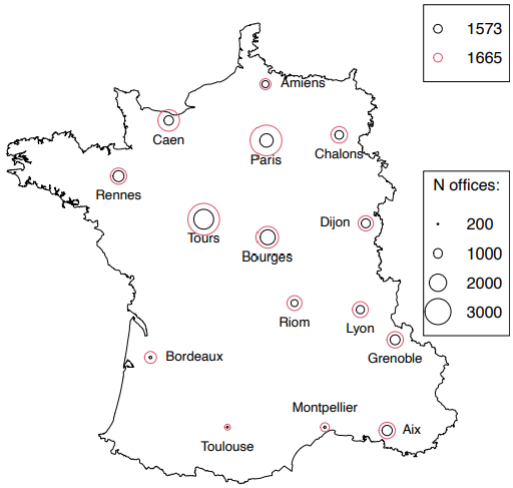

Figure 3: Number of judicial offices in 1573 and 1665.

As noted by Glaeser and Shleifer (2002), the number of judges in France was much higher than in England. The composition of the judiciary also changed. Whereas in England, local justice was still mainly dispensed by lay judges, in France, "through the last three centuries of the Old Regime, the displacement of lay by professional judges was almost everywhere complete" (Dawson (1960, p.69)). In terms of the creation of a complete judicial body, venality was a success, laying the foundations for legal capacity in France.

Success was achieved because, in a venal system, justice is not expensive for the ruler. But a second positive feature is that additional resources were also obtained to finance other public expenditure, such as wars, without having to resort too heavily to taxation, with its associated political costs. Indeed, tax revenues were low until the reforms introduced in the mid-17th century (Johnson and Koyama (2014, 2017)). The sale of offices provided the monarchy with a steady stream of additional revenue. As shown in figure 4, based on tax data published in Bonney and Bonney (1993), office revenues gradually increased during the first half of the 17th century, sometimes even exceeding tax revenues, before declining slightly. Venality then helped to

[27] The towns mentioned in figure 3 are the chief towns of the *généralités* in 1573. The *généralités* were the basic administrative jurisdictions in Old Regime France. We have compiled the information contained in the 1665 survey within the limits of 1573 to compare the evolution of the numbers of judicial office holders in an identical jurisdiction.

finance public expenditure and strengthen state capacity overall.

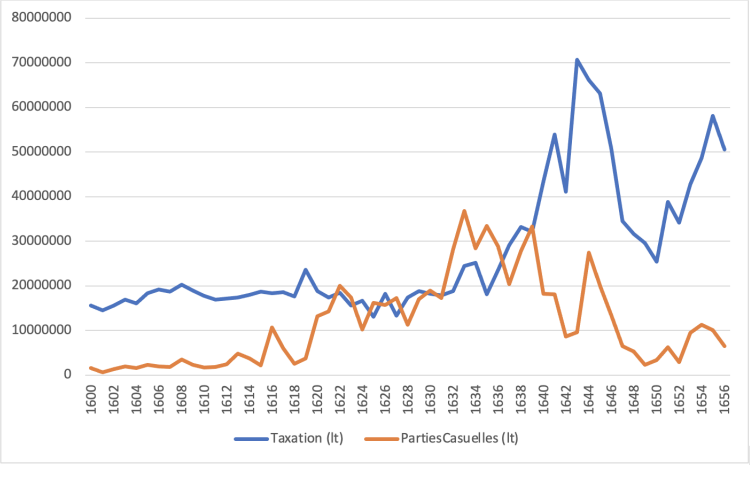

Figure 4: Nominal revenues from taxation and office selling (1600-1656).

In many cases, selling new judicial offices fulfilled a dual purpose. The first was related to the organization of justice, and the second to the funding of specific expenses. For example, the creation of new intermediate courts (the *présidiaux*) in 1552 was as much about simplifying the organization of justice as it was about funding military expenses to conquer the three bishoprics (*Trois-Évêchés*) of *Metz*, *Toul* and *Verdun*.

5.2 Discontent with venality

Although venality enabled France to build a comprehensive justice system, our model outlines a larger justice bias compared to a simple fee-based justice system. This is the second bias presented in section 4 of the paper. Offices sold by the King were bought by those who thought they would make the most profit, and were therefore the most venal. There behavior led to more numerous and more costly lawsuits. Then, as the system became deeply venal, it also became increasingly biased in favor of the plaintiffs. With each new office sold, the quality of justice rendered gradually deteriorated. As the number and weight of venal judges in the justice system increased, so did public dissatisfaction with the justice delivered. Building on Proposition 1, we can assert that public dissatisfaction with the justice system was likely to be higher in France than in other European countries where venality was less developed.

There is indirect evidence of such a pro-plaintiff bias. Historians have shown that the number of trials in France was very important, many of which were undertaken for trivial reasons. The number of trials and their cost were particularly discussed by the contemporaries of venality. For Nagle (2008) there were

as many trials in France as in all European countries combined, and going to court (*chicaner*) was thus a "French passion." Bugnyon, a 16th French jurist who was an outspoken critic of venality, stated that "one has never seen a kingdom province, country, estate or seigneurie so occupied in litigation as France." He also stated that "the greater part of the king's subjects gave up and abandoned their form and manner of living, ...employing the time and their lives in the process of litigation without, most often, ever seeing the end."[28] This was still the opinion of the Abbé de Saint-Pierre (1725) in his *Mémoire pour diminuer le nombre de procès*.[29] Saint-Pierre argued that litigants resorted to the courts because judges had an economic interest in hearing as many cases as possible. Therefore, lawsuits were expensive. From the judge's standpoint, the legal costs paid by the defeated party were one of the main reasons for frivolous lawsuits. For example, in a trial analyzed by Piant (2006, p.125), the charges against the accused were so weak that the judges were embarrassed to reach a verdict. Although the verdict was still in favor of the plaintiff, the damages were only 10 lt, while the legal fees paid by the defeated party (who bore the entire cost of the trial) amounted to 325 lt. In a venal system, increasing the costs of a trial while transferring these costs to the defendant, most of the time the loser, makes sense. Since the judge controls the procedure, even if the cost of each act is low, a judge can increase his earnings if the marginal cost of extending the trial is limited. This is in contrast with Landes and Posner (1979) who suggest that costs can be limited by setting tariffs. Keeping venality was costly for the population and a source of dissatisfaction, as justice did not appear to be impartial. We can rely on Proposition 3 to assert that the gradual development of venality in France eventually resulted in a far greater deterioration of justice in this country than in other European countries. In the latter, legal costs were borne by litigants, but judges were not intrinsically venal, unlike in France. The damage caused by venality increased in the 16th and 17th centuries, reaching its peak in the 18th century.

Empirical support for the assessment above is diffuse but important and convergent. Venality was criticized from both the bottom and the top of society. Among the French, dissatisfaction was especially strong regarding the judiciary: the judicial process was considered as lengthy, costly, geographically variable and unpredictable. Indeed, judges' ability to use obscure local procedures was a way to raise fees. Carbasse (2014, p.206) describes France as being characterized by "an excessive diversity of judgments from one place to another." Reading the *Cahiers de doléances* provides an insight on the popular discontent during the 16th century.[30] They show that, after taxation, the judicial sphere was the most criticized. In 1614, for

[28] Quoted and translated from Schneider (1973, p.58).

[29] [Memorandum to decrease the number of trials].

[30] Cahiers de doléances (grievance books) were prepared prior to each convening of the Estates-General, in order to set out the grievances of the population to the King. In the 16th century, during the wars of religion between Protestants and Catholics, several meetings were held. The last meeting before 1789 took place in 1614 (Mousnier (1974), vol.2, p.214). Here, we study the national synthesis of these *cahiers* for the sessions of 1560, 1576, 1588 and 1614.

example, over four hundred articles were devoted to the reform of the judiciary (Hayden (1974) ; Sawyer (1988)). Procedural irregularities and inefficiencies, nepotism, the excessive venality of judicial offices, costs, delays, the tortuousness of the appeals process, and the inappropriate conduct of judges were all denounced. Interestingly, these criticisms came from all orders of the society, as shown in Figure 5, which gives the number of articles devoted to justice criticism as a proportion of the total number of articles for the sessions. We present the specific justice grievances in Appendix 3.

	1560		1576		1588		1614	
	Nb	%	**Nb**	%	**Nb**	%	**Nb**	%
Clergy	19	11	123	28	61	24	49	16
Nobility	75	31	82	33	69	24	142	32
Third Estate	124	35	154	34	125	46	229	34
Complaints about justice	**218**	**28**	**359**	**32**	**255**	**31**	**420**	**30**
Total number of complaints	765		1130		814		1408	

Table 1: Complaints about justice in the *Cahiers de doléances*.

Several solutions were proposed by the Estates General to improve the judicial system, such as limiting the number of intermediate jurisdictions to reduce the burden of appeals, simplifying the procedure and deadlines for filing legal documents, as well as increasing control over judges, who had a vested interest in delaying cases to maximize their income. But whereas the call for French legal procedures to be standardized was constant and general, there was also no question of abolishing local legal customs (Halperin (1992, p.47) ; Dauchy (2006)). These grievances also echo the preparatory memoirs for Colbert's civil (1667) and criminal (1670) ordinances, with the same topics addressed by the government administrators, the *Conseillers d'État*, in charge of the judicial reform. From then on, dissatisfaction with the venal system gradually spread, and the lack of control over judicial office holders came in for criticism.

As the model suggests, the benefits of venality appeared to outweigh its costs. However, this mood began to change when the French state became sufficiently powerful to diversify its revenues. Qualitative studies consider that the deterioration was substantial. On a national scale, on the eve of the Revolution, the French were unanimous in their criticism of judicial venality and the poor quality of justice (Doyle (2000, p.107)). On a local level, Piant (2006) shows that the rendering of justice deteriorated over time in Vaucouleurs. He shows that the judicial positions were gradually occupied by "new men," often coming from the commercial sector, who replaced the "old lineages" (pp. 56 and 98). Venal judges were criticized for their lack of honesty, and many of them had already been convicted, notably of corruption. They progressively lost the confidence of the public, who instead hoped for "perfect justice and virtuous men" (p. 100). A distrust of

the judiciary among litigants, unheard of before the second half of the 18th century, later emerged (p. 99).

One intriguing aspect of venality is its persistence over several centuries, right up to the French Revolution. Proposition 2 points out that, when venality is fully implemented and pervades the entire judiciary, the cost of selling new offices is low, since the quality of justice cannot be lowered furter, while the sale of offices and the taxation of existing offices remain a regular source of revenue. This may explain why a deficient institution such as office venality can persist. In the same way, Proposition 3 examines the decision whether or not to implement a venal judiciary system. It shows that initial conditions are important. If the average propensity to favor the plaintiff is close to the ruler's ideal of justice, which implies a strong initial control over the judiciary, it may be preferable not to sell offices in order to retain control over it. On the contrary, if the propensity to favor the plaintiff is already far from its ideal point, the marginal cost of issuing additional offices decreases with the number of offices, as it reduces the increase of the pro-plaintiff bias. As a result, the cost of losing greater control over the judiciary is less than the financial gain of selling an additional office. Finally, any such expansion exacerbates the overall cost of venality. A paradoxical prediction is that once a ruler starts selling offices, he won't stop, even if the whole system deteriorates. Besides financial considerations, another consequence is that many judicial positions can be progressively filled at low financial cost. Legal capacity will increase if measured by the number of judges, courts, trials and judicial decisions, while the quality of justice will actually deteriorate.

5.3 Why venality has developed the most in France ?

Despite the costs of venality, why did the French kings resorted to venality more than their European counterparts? The dynamic model and Proposition 3 suggest that the initial difference between the King's preferences and those of the judges is key to determine whether the French ruler chooses venality or not. Indeed, if the King has a strong initial control over the judiciary, he prefers not to resort to venality, which would cause him to lose this control. Conversely, if the King's initial control is weak, resorting to venality makes little difference.

From a historical perspective, there are many elements that make the scenario above credible. Indeed, after the Hundred Years' War, the French King emerged as a weak ruler of a "conglomerate of duchies, counties, seigneuries and towns" (Major (1960, p.4)). Each of them retained a share of sovereignty, with the various judicial Parliaments becoming the most important in modern times (Mousnier (1974). Legislation was local and customary, and the King's legislative power was merely a complementary source of the law, not a binding one. Consistent with the model, we can assert that the initial set of non-venal judges was already

relatively independent of the King, and that the marginal cost of introducing venal judges was low with regard to the loss of control over the judiciary. Above all, financial needs were urgent and all expedients were being considered. Another element is that French kings sought to regain control of the judicial system by introducing non-venal judges who were under their control (the *commissaires* and *intendants*). Obviously, as the non-venal judges threatened their positions, the venal judges prevented these developments from realizing, and venality became the norm in the judiciary (see Jaaidane et al. (2023)).

Comparisons with England are equally instructive. In this country, since the Norman Conquest and the Angevin period, institutions and law were common to the whole kingdom, and the rulers had a strong control over them. In addition, England benefited from a strong fiscal capacity due to custom rights (Hopcroft (1999)), and there was less need for exceptional revenues. Consistent with our model, therefore, English kings had no need to resort to venality for funding their expenditures. Judicial venality did exist at a local level, and there was an active market for public office. But although office holders received fees, they did not buy their office from the ruler, and venality only financed the state to a marginal degree. According to Aylmer (1974, p.240-241), "the administrative system, of which the sale of offices was a part, did not provide the English Crown with a regular revenue of any great consequence." Since judicial venality was absent at the central level, the number of judges remained low, much lower than in France (Dawson (1960) ; Glaeser and Shleifer (2002)). English judges were less independent than their French counterparts (Aylmer (1974, p.106-125) ; Klerman and Mahoney (2007)). As the model suggests, the loss of control over the judiciary was an obstacle to deep venality.

In France, on the contrary, kingship was the only institution common to the many counties and duchies united by the Capetians during the Middle Ages. Major (1997) stresses that France only emerged as a state after the Hundred Years' War, when a policy of decentralization was adopted. From then on only it became a polity, including large independent feudal principalities. Each addition to the kingdom was made based on a treaty in which the King undertook to respect the numerous local laws and customs (Mousnier (1974, p.471) ; Barbieux (2022)). All provinces had a legal status guaranteed by privileges, with representative states and local parliaments enforcing local legislation. Furthermore, the French kings avoided convening the Estates General, which could have constrained them on a fiscal level. Boucoyannis (2021, p.148) states that France had a lower extractive fiscal capacity than England due to a lack of administrative centralization. For the same reason, unlike English Kings, the French rulers never controlled the judicial system. In our model, we can consider that in France, the initial average propensity to support the plaintiff $\hat{p}_t$ was significantly different from p_R, whereas the initial propensity was closer to p_R (the ruler's preferred propensity) in England.[31]

[31] This implies that in France the average propensity to support the plaintiff was initially higher than that of the monarch.

Moreover, since it was relatively more difficult to raise taxes in France than in England, the opportunity cost C_R of not selling an office was higher in France than in England. Thus, judicial venality was more likely to be introduced in France than in England.

6 Conclusion

Venality helped France to build its administration and judicial system. When the provision of public services is costly for the state, it may be worthwhile for users pay service providers directly. However, venality was distorting incentives, thereby reducing the quality of public services. In the long-run, it was not an inefficient way to collect resources. France, however, borrowed at a higher interest rate than England during the 18th century because its power to tax was impaired by the lack of representative institutions, implying a constant risk of default (see Stasavage (2003) and Velde and Weir (1992)). In addition selling public advantages to private agents rendered the judiciary difficult to reform, given the considerable amounts to be repaid.[32] It took the French Revolution to put an end to the venal system and to introduce a modern system of civil servants. Reform of the judicial system was one of the first tasks undertaken by the newly created National Assembly, and judicial venality was completely abolished by 1789 (Lafon (2001)). Justice became free-for-all, and judges became civil servants, paid directly by the state, who had to strictly apply legislation enacted by a central parliament. Judges were no longer allowed to interpret the law or rely on local customs. However, these severe restrictions proved too restrictive. More flexible legislation followed Napoleon, notably the *Code civil* (1804) and the *Code de procédure civile* (1806). Treilhard, one of the four fathers of the new Civil Code, argued, however, that such a code was necessary to prevent judges from slowing down trials or making arbitrary decisions, in reference to the judicial confusion of the Old Regime (Dauchy (2006)). Since correcting the flaws of the venal justice of the Old Regime was the main object of the revolutionary reforms, our paper also helps to understand French *legal origins* (La Porta et al. (2008), Glaeser and Shleifer (2002), Crettez et al. (2018)). The consequences of this alternate views remain to be evaluated (see Barriola et al. (2023)).

Examining some of the trade-offs of judicial venality, we have shown that rather than being a strange and outdated institution, venality can be a rational institution in specific circumstances. When a country is fragmented and its central state weak, lacking fiscal resources and unable to borrow, venality can improve the state's capacity. It can be seen as an *intermediary* or *second best institution* capable of overcoming initial

[32] See Tullock (1975) for a general argument and Ekelund and Thornton (2020) and Jaaidane et al. (2023) for applications to the French Old Regime.

financing constraints, and thus helping a country out of its trap.[33] The question of whether certain modern forms of venality can, at least in part, alleviate the financial difficulties faced by certain countries without locking them into this institution is therefore a natural topic for further research.

[33] See Rodrik (2008) for a discussion of such institutions that can be useful in a growth process.

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Appendix 1. Proof of Proposition 3

Recall that the dynamic optimization problem faced by the ruler is described by the following Bellman equation

$$V(\hat{p}_t, N_t) = \max\left\{-C_R - \frac{\psi}{2}(\hat{p}_t - p_R)^2 + \frac{V(\hat{p}_t, N_t)}{1+r}, \mathscr{P} - \frac{\psi}{2}(\hat{p}_{t+1}(p_t) - p_R)^2 + \frac{V(\hat{p}_{t+1}(p_t), N_t+1)}{1+r}\right\}$$

where we recall that $\hat{p}_{t+1}(\hat{p}_t) = \frac{N_t}{N_t+1}\hat{p}_t + \frac{1}{N_t+1}X$.

Also recall that we defined $V_1(.)$ as follows

$$V_1(\hat{p}_t, N_t) = -\frac{(1+r)}{r}\left(C_R + \frac{\psi}{2}(\hat{p}_t - p_R)^2\right). \tag{24}$$

V_1 is the value function when the ruler never sells an office. It is obtained from the Bellman equation above and the observation that when one decides not to sell at a given date, one never sells afterwards (because at any future date t' we would have $\hat{p}_{t'} = \hat{p}_t$, $N_{t'} = N_t$) and the value function takes a constant value (that depends on $\hat{p}_t$ and N_t).[34]

Also recall that we have defined $V_2(\hat{p}_t, N_t)$ as the value of the ruler's objective when she sells an office at any date. That is

$$V_2(\hat{p}_t, N_t) = \frac{(1+r)\mathscr{P}}{r} - \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\hat{p}_{t+i+1}(\hat{p}_t) - p_R\right)^2 \tag{25}$$

where

$$\hat{p}_{t+i+1}(\hat{p}_t) = \frac{N_t+i}{N_t+i+1}p_R + \frac{N_t+i}{N_t+i+1}X. \tag{26}$$

[34] Actually, the value function only depends on $\hat{p}_t$.

Using the expression above, we obtain

$$V_2(\hat{p}_t, N_t) = \frac{(1+r)\mathscr{P}}{r} - \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\hat{p}_{t+i+1}(\hat{p}_t) - p_R\right)^2 \tag{27}$$

$$= \frac{(1+r)\mathscr{P}}{r} - \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{N_t}{N_t+1+i}(\hat{p}_t - p_R) + \frac{i+1}{N_t+1+i}(X - p_R)\right)^2 \tag{28}$$

$$= \frac{(1+r)\mathscr{P}}{r} - \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{N_t}{N_t+1+i}(\hat{p}_t - p_R)\right)^2 \tag{29}$$

$$- \psi\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{N_t}{N_t+1+i}(\hat{p}_t - p_R)\right)\frac{i+1}{N_t+1+i}(X - p_R) \tag{30}$$

$$- \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{i+1}{N_t+1+i}(X - p_R)\right)^2 \tag{31}$$

Therefore we can write the value function in the following way

$$V_2(\hat{p}_t, N_t) = \frac{(1+r)\mathscr{P}}{r} - A_t(\hat{p}_t - p_R)^2 - B_t(\hat{p}_t - p_R) - C_t \tag{32}$$

where

$$A_t = \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{N_t}{N_t+1+i}\right)^2 \tag{33}$$

$$B_t = \psi\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\frac{N_t(1+i)}{(N_t+1+i)^2}(X - p_R) \tag{34}$$

$$C_t = \frac{\psi}{2}\sum_{i=0}^{\infty}\frac{1}{(1+r)^i}\left(\frac{1+i}{N_t+1+i}(X - p_R)\right)^2. \tag{35}$$

• Now for all $\hat{p}_t$ in $[p_R, X]$, define

$$\kappa(\hat{p}_t, N_t) \equiv V_1(\hat{p}_t, N_t) - V_2(\hat{p}_t, N_t). \tag{36}$$

Notice that

$$\frac{\partial\kappa}{\partial\hat{p}_t} = \kappa_p'(\hat{p}_t, N_t) = -\frac{(1+r)}{r}\psi(\hat{p}_t - p_R) + 2A_t(\hat{p}_t - p_R) + B_t \tag{37}$$

thus

$$\kappa_p'(p_R, N_t) = B_t > 0. \tag{38}$$

Also observe that

$$2A_t = \psi \sum_{i=0}^{\infty} \frac{1}{(1+r)^i} \left(\frac{N_t}{N_t+1+i} \right)^2 < \psi \sum_{i=0}^{\infty} \frac{1}{(1+r)^i} = \psi \frac{1+r}{r}. \tag{39}$$

Now, as

$$\frac{\partial^2 \kappa}{\partial \hat{p}_t^2} = \kappa''_p(\hat{p}_t, N_t) = -\frac{(1+r)}{r}\psi + 2A_t \tag{40}$$

from inequality (39) we have that $\kappa''_{pp}(\hat{p}_t, N_t) < 0$ and thus that $\kappa(\hat{p}_t, N_t)$ is strictly concave with respect to its first variable.

Also observe that using equation (28) we have

$$\frac{\partial V_2}{\partial N_t} = V'_{2N}(\hat{p}_t, N_t) = -\psi \sum_{i=0}^{\infty} \frac{1}{(1+r)^i} \frac{i}{(N_i+i+1)^2} (\hat{p}_t - X)\big(\hat{p}_{t+i+1}(\hat{p}_t) - p_R\big) > 0.$$

Thus, $\kappa'_N(\hat{p}_t, N_t) < 0$.

We now consider three cases in turn.

- $\kappa(p_R, N_t) > 0$

Since $\kappa(p_R, N_t) > 0$, $\kappa'_p(p_R, N_t) > 0$, $\kappa''_p(p_R, N_t) > 0$ and $\kappa(X, N_t) < 0$, there is a unique value of $\hat{p}'_t$ such that $p_R < \hat{p}'_t < X$ and such that $\kappa(\hat{p}'_t, N_t) = 0$.

Let us now show that for all $\hat{p}_t \in]\hat{p}'_t, X]$, the ruler will sell an office at any future date. Since $\kappa(\hat{p}_t, N_t) < 0$, always selling an office is better than never selling one. And always selling an office is also a better policy than selling a finite number of offices. Indeed, at any future date $t+k$, $1 \leq k$, we will have $\hat{p}_t < \hat{p}_{t+k}(p_t)$ and thus

$$\kappa(\hat{p}_{t+k}(p_t), N_t) < 0. \tag{41}$$

But as $\kappa'_N(\hat{p}_t, N_t) < 0$ we deduce that

$$\kappa(\hat{p}_{t+k}(p_t), N_{t+k}) < 0 \tag{42}$$

and thus that it is better to always sell at date $t+k$ rather than never sell. Consider now $\hat{p}_t$ such that $\hat{p}_t \in [p_R, \hat{p}'_t[$. For this value we have $\kappa(\hat{p}_t, N_t) < 0$. So never selling is a better policy than always selling.

But it could be that selling a finite number of offices is an even better policy than selling none. In any event, the ruler sells at most a finite number of offices.

Finally, notice that if $\hat{p}_t = \hat{p}'_t$, the ruler is indifferent between always selling an office and never selling one.

• Assume now that $\kappa(\hat{p}_t, N_t) < 0$ for all $\hat{p}_t \in [p_R, X\,]$. Then, reasoning as above enables to conclude that the ruler sells an office at any future date.

• Lastly, assume that $\kappa(p_R, N_t) < 0$ but that there is a value $\hat{p}_t \in]p_R, X[$ such that $\kappa(\hat{p}_t, N_t) > 0$. Because $\kappa(., N_t)$ is concave in $\hat{p}_t$ and $\kappa'_p(p_R, N_t) > 0$, and $\kappa'_p(X, N_t) < 0$, there is an interval $[\underline{p}, \bar{p}] \subset [p_R, X]$ such that $0 \leq \kappa(\hat{p}_t, N_t)$ for all $\hat{p}_t \in [\underline{p}, \bar{p}]$. For all these values of $\hat{p}_t$ the ruler sells at most a finite number of offices. We can also show as we did previously that she will sell an office at any date when $\bar{p} < \hat{p}_t$. When $\hat{p}_t < \underline{p}$, the ruler's decision is indeterminate. That is because, for these values of $\hat{p}_t$ never selling is a better choice than always selling. But it could be that the best choice is selling a finite number of offices.[35]

Appendix 2. The increase in the judiciary in France between the 16th and 17th centuries

Surveys of royal offices made in 1573 and 1665 allow us to appreciate the development of venality. In particular, Table 2 describes the increase in the number of judicial offices between 1573 and 1665. Table 3 shows the increase in the different types of courts (first-instance courts, appeal courts, and sovereign courts like Parliaments). Table 4 shows the distribution of office holders in the entire kingdom. Data were collected from the original manuscripts B.N. Fr. 4436 and B.N. 500 Colbert 259 and 260. Holders are regrouped by *généralité* in 1573, that is to say, the basic administrative districts in force under the Old Regime. The town names given are the chief towns of these districts.

Offices	1573	1665	Prog. (%)
Judges	2796	6038	116
Prosecutors	570	1741	205
Court office-holders	12288	21660	76
Total	**15654**	**29439**	**88**

Table 2: Evolution of the number of judicial offices in France from 1573 to 1665.

[35] Such a case never happens if, *e.g.*, $\bar{p} < p_{t+1}(p_R)$. In that particular case, one never sells when $\hat{p}_t \in [\underline{p}, \bar{p}]$.

Types of courts	1573	1665	Prog. (%)
Sovereign courts (Cours souveraines)	745	1189	60
Appeal courts (Présidiaux, bailliages, sénéchaussées)	1056	2808	166
First instance courts (Justice royale simple)	901	1556	73
Total	2796	6038	116

Table 3: Offices of judges.

Généralités	Judges 1573	Judges 1665	Prog. %	Prosecutors (Parquet) 1573	Prosecutors (Parquet) 1665	Prog. %	Court office-holders (Auxiliaires de just.) 1573	Court office-holders (Auxiliaires de just.) 1665	Prog. %
Amiens	85	165	94	24	68	183	706	1040	47
Bordeaux	225	909	304	39	264	577	44	206	368
Bourges	131	229	75	37	89	141	1563	2186	40
Bourgogne	150	315	110	68	143	110	825	1299	57
Bretagne	144	232	61	20	44	120	1105	1599	45
Chalons	123	232	89	42	106	152	833	1575	89
Dauphiné	203	421	107	10	37	270	929	1441	55
Lyon	115	192	67	35	55	57	798	1587	99
Montpellier	133	233	75	21	54	157	116	741	539
Normandie	336	629	87	78	249	219	681	1602	135
Paris	465	973	109	49	262	435	1035	2308	123
Provence	149	229	54	38	59	55	994	1614	62
Riom	105	299	185	27	80	196	679	1345	98
Toulouse	153	332	117	18	55	206	38	290	663
Tours	279	648	132	64	176	175	1942	2827	46
Total	**2796**	**6038**	**116**	**570**	**1741**	**205**	**12288**	**21660**	**76**

Table 4: Number of judicial offices per *Généralité* (national surveys of 1573 and 1664).

Appendix 3. Topics of complaints on justice in the *Cahiers de doléances*

The general grievances (*Cahiers de doléances*) of the deputies of the three orders (Clergy, Noblesse, Third Estate) presented to the Estates General in 1560, 1576, 1588 and 1614 were published by Lalourcé and Duval (1789) for the convening of the Estates General of 1789. All those cahiers include a section specifically devoted to the reform of justice. According to Sawyer (1988), who studied the 1614 cahiers following Hayden's earlier study (Hayden (1974)), the cahiers were highly detailed in dealing with legal matters since they were intended to provide the king with the information and the political mandate to reform the legislation. The specific accusations of judicial corruption in the cahiers were also significant since most of the deputies were legal practitioners. For Sawyer, the cahiers highlight the fact that the deterioration of the Old Regime judicial system is due to its fee-based structure. Here, we present, for each cahier published by Lalourcé and Duval, the grievances of the three orders in relation to the judicial reform and the main predictions of our model, notably the criticisms focusing on the cost and length of the trials, the excessive legal diversity, and the requests for reforming the judicial procedure. Criticisms calling for the abolition of the venal system and for a reduction in the number of judicial office holders are also counted. We have also included criticisms of judicial corruption which, according to Sawyer, were directly attributed to venality and the financial incentives of the system. Complaints against the judicial system increased significantly from the Estates of 1576 onward and remained at a high level for the following sessions of 1588 and 1614. Only the number of grievances expressed by the clergy decreased in 1614. Table 1 in the text summarizes the total number and percentage of grievances expressed about justice. Tables 5 and 6 below give details about the grievances against venality, in numbers and percentages, so that we can compare them from one session of the Estates to the next. Some grievances may denounce several types of abuse simultaneously, for example, the length and cost of a trial. In this case, we split up the grievance into several grievances.

	1560			1576			1588			1614		
	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate
Abolition of venality		1		1	1	1	1				2	2
Decrease in the number of judicial office-holders	1	5	13	72	13	13	5	11	83	2	6	54
Complaints about judges' behavior (pro-plaintiff bias)		8	9	4	24	21	7	5	4	3	12	13
High number of lawsuits	1	6	1			1	2		1			
High cost of lawsuits	5	15	31	11	9	27	7	7	4	7	19	25
> Judges fees specifically denounced	1	1	5	5	1	4	5	4	2	1	2	8
Lengthy lawsuits	2	9	14		1	9	3	1		2	5	7
Legal divergence		5	3	2	1	2		2	1	1	2	5
Request of procedural reform	6	11	13	2	27	45	6	9	3	3	7	27
Request of law enforcement		1	1		1	3		3	4		7	1
Total	16	62	90	97	78	126	36	42	102	19	62	142

Table 5: Themes of grievances about justice for different meetings of the Estates General (number).

	1560			1576			1588			1614		
	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate	Clergy	Nobility	Third Estate
Abolition of venality	0	2	0	1	1	1	3	0	0	0	3	1
Decrease in the number of judicial office-holders	6	8	14	74	17	10	14	26	81	11	10	38
Complaints about judges' behavior (pro-plaintiff bias)	0	13	13	4	31	17	19	12	4	16	19	9
High number of lawsuits	6	10	1	0	0	1	6	0	1	0	0	0
High cost of lawsuits	31	24	34	11	12	21	19	17	4	37	31	18
> Judges fees specifically denounced	6	2	6	5	1	3	14	10	2	5	3	6
Lengthy lawsuits	13	15	16	0	1	7	8	2	0	11	8	5
Legal divergence	0	8	3	2	1	2	0	5	1	5	3	4
Request of procedural reform	38	18	14	2	35	36	17	21	3	16	11	19
Request of law enforcement	0	2	1	0	1	2	0	7	4	0	11	1
Total	100	100	100	100	100	100	100	100	100	100	100	100

Table 6: Themes of grievances about justice for different meetings of the Estates General (percent).

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