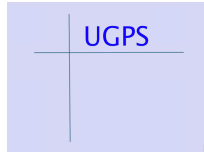


UGPS Working Paper Series

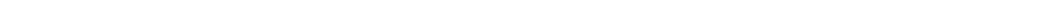
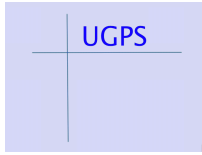
(UGPS WP 2014-005)

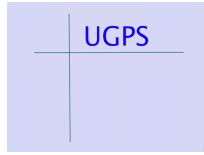
Civil Justice in Early Modern France: Use, Current Trends and Perspectives in Recent Research

Elise M. Dermineur



This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s). If cited or quoted, citation should be made to the full name of the author(s), the title, the working paper reference, and the year.





UGPS Working Paper Series

Civil Justice in Early Modern France: Use, Current Trends and Perspectives in Recent Research

ELISE M. DERMINEUR



Dr Elise Dermineur

Civil Justice in Early Modern France: Use, Current Trends and Perspectives in Recent Research¹

Abstract: Civil court records have remained until recently an obscure source for historians of early modern France. These documents have been neglected and under used mostly because scholars have preferred to focus on the more colourful study of criminality. Recently, however, a new interest in local and *seigneurial* courts has stimulated a significant production of doctoral dissertations and manuscripts, which use and rehabilitate civil court records in the historiography. This paper examines the historical value of such documents and presents recent developments and trends in historical research concerning French early modern civil courts and civil records. But more importantly, it also proposes a few new directions for research using this particular type of source, research that could enrich not only French historiography, but also the historiography of early modern justice.

Résumé:

Les archives de la justice civile d'Ancien Régime: utilisation, tendances actuelles et perspectives de recherche.

Jusqu'à présent, les archives de la justice civile d'Ancien Régime sont apparues comme une source obscure pour les historiens. Beaucoup de spécialistes de la période moderne ont affiché une préférence marquée pour les archives criminelles, plus palpitantes que les ternes procédures de la justice civile. Il en a résulté une sous-utilisation de ces dernières dans l'historiographie. Ces dix dernières années, nous avons cependant assisté à un regain d'intérêt pour ces sources avec, notamment, la publication de nombreux ouvrages et de plusieurs thèses de doctorat, qui ont eu pour effet de réhabiliter les sources de la justice civile dans l'historiographie. Le présent article passe en revue les avantages liés à l'usage de tels documents et présente les tendances actuelles de leur utilisation en s'arrêtant un instant sur les publications les plus récentes. Enfin, cette contribution se penche sur les nouvelles directions de recherche possibles grâce à l'emploi de telles ressources.

¹ A shorter version of this article appeared as Dermineur, Elise M. « The Civil Judicial System in Early Modern France ». *Frühneuzeit-Info* 22 (2011): 44-53.

Archives all over France have extraordinary and extensive collections of judicial court records, accounting for thousands of kilometres of shelving. These are undeniably the largest resource for early modernists.² Among these documents, civil lawsuits account for most of the judicial proceedings, while criminal records represent only a ratio of 1:20.³ Despite the fact that civil suits largely outnumber criminal trials in the archives, historians have, to date, and in the main, focused their attention on criminal trials. Indeed, they have always been fascinated by colourful criminal records, largely because they reveal the extraordinary, the dark and the violent side of human behaviour. Homicide, infanticide, rape, assault and other types of case have revealed interesting features about the structure of violence, attitudes, gestures, and emotions. Benoît Garnot, Nicole and Yves Castan, and Robert Muchembled, among many other specialists of the history of justice in the early modern period, have used criminal records extensively and opened the way for a whole new generation of historians interested in an innovative use of such resources.⁴ Juvenile delinquency, violence by women, pain and suffering, the psychology of violence and many other topics enlarge a now ever-growing field of crime and criminality studies.⁵ This field has never ceased to attract scholars of early modern Europe, and especially of early modern France.⁶

² Sylvain Soleil, « Nouveau scénario pour séries b: les fonds des tribunaux d'ancien régime », *Les Cahiers du Centre de Recherches Historiques*, n° 23, Officiers « moyens » (1) (1999), 3

³ Hervé Piant, « Des procès innombrables », *Histoire & mesure* XXII, n° 2, Déviance, justice et statistiques (2007): 13-38. Hervé Piant estimates that civil trials took up 90% of the court's time, 14.

⁴ See among others Nicole Castan, *Justice et repression en Languedoc a époque des Lumières* (Flammarion, 1980). Nicole Castan, *Vivre ensemble* (Gallimard, 1981). Nicole Castan, *Vivre ensemble* (Gallimard, 1981). Benoît Garnot, *Histoire de la justice : France, XVIe-XXIe siècle* (Editions Gallimard, 2009). Robert Muchembled, *Une histoire de la violence : De la fin du Moyen-Age à nos jours* (Seuil, 2008).

⁵ On the psychology of violence see among others: François Billacois, *Le duel dans la société française des XVIe-XVIIe siècles. Essai de psychologie historique* (Editions de l'Ecole des Hautes Etudes en Sciences Sociales (Editions de l'EHESS), 1995). Two recent books about different aspects of violence: Lucien Faggion et Christophe Regina, *La violence. Regards croisés sur une réalité plurielle*, (CNRS Editions, 2010). Michel Nassiet, *La violence, une histoire sociale - De la*

If these specialists in criminal records have developed new theories and new techniques of analysis, which have contributed definitively to making the field of criminality a vivid one, historians have somehow neglected the use of civil court records. Among the several reasons for this are: the dryness of such sources – the civil court records deal mainly with debt, property, and inheritance issues; the difficulty in exploiting these documents – there is a mosaic of various jurisdictions and a technical vocabulary which requires a solid knowledge of legal institutions and terminology; difficult handwriting to decipher; and finally their huge number has undeniably discouraged even the bravest of scholars.

Recently, however, early modernists have timidly begun to devote more attention to ordinary courts that dealt with everyday disputes. Indeed, debt repayment, inheritance conflicts, property ownership, honour, and other sources of dispute, constituted the core of civil lawsuits but remain largely under explored. Anthony Crubaugh, Jeremy Hayhoe, Antoine Follain, Fabrice Mauclair, Hervé Piant and Zöe Schneider, among others, have devoted their research to the mechanisms and structure of *seigneurial* and local courts, and to ordinary lawsuits. Yet, we know very little about these local courts and their litigants. This paper presents the current state of historical research using civil records and also proposes a few new directions for the use of this particular type of source, new directions that could enrich not only French historiography but perhaps also the historiography of justice.

1. Civil Litigation and Civil Records in Early Modern France: Characteristics and Issues

Hervé Piant has recently underlined that civil court records form an “unsung source” for historians, difficult to use but very rich.⁷ This first part explores the characteristics of civil lawsuits and also sheds light on their significance.

Renaissance aux lumières (Editions Champ Vallon, 2011). A recent study about the violence of women: Christophe Regina, *La violence des femmes - Histoire d'un tabou social* (Max Milo Editions, 2011).

⁶ Recently new books have been published, see among others Michel Nassiet, *La violence, une histoire sociale - De la Renaissance aux lumières* (Editions Champ Vallon, 2011).

⁷ Hervé Piant, *Une justice ordinaire : Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (PU Rennes, 2006). 51.

It is essential first to detail the judicial situation in early modern France, what Pierre Goubert has labelled an “administrative imbroglio”.⁸ Indeed, since the Middle Ages, the French kingdom was parcelled out into thousands of various jurisdictions and courts, small and more-or-less large ones. This chaotic situation was directly inherited from the Middle Ages and the long history of the development of justice throughout the country over centuries. As a result, in the early modern era, the king was in theory the only “owner” of justice in his kingdom, but a multitude of *seigneurs* held the right to maintain a tribunal and nominate local judges, a right that they commonly and lawfully gained from the crown in the Middle Ages largely because it was impossible for the king to deal out justice in person.⁹ The *justice seigneuriale* belonged therefore to those *seigneurs* who owned a distinct territory – the jurist Ferrière reminds us that the justice owned by a *seigneur* is attached to his territory.¹⁰ We can distinguish three levels of seigneurial justice: *basse*, *moyenne*, and *haute justice*, all with different competencies, usually based on the nature and resulting fine of the prejudice.¹¹ *Seigneurs* with the right of *haute justice*, for instance, had the right to judge criminal cases and to set up gallows on their territory.¹² Seigneurial courts were numerous across the kingdom in the early modern period. While some authors have advanced the heady number of 80,000 courts, it is probably wiser to estimate the number of seigneurial courts at about 30,000, most of them located in rural areas.¹³ Those courts had the right to judge civil and criminal cases – if the seigneur was an *haut-justicier* in the latter case.

Most often, the appeals went to a higher court, a royal court, a bailiwick or a parliament for instance. The number of appeal courts was certainly much lower than seigneurial courts; Mauclair estimates that there were about 1,500 royal courts across the entire kingdom.¹⁴ Royal courts were established during the early modern period, when the king was eager to regain control over the

⁸ Pierre Goubert et Daniel Roche, *Les Français et l'Ancien Régime: La société et l'État* (A. Colin, 1984). Chapter 8.

⁹ For more details on the history of justice see especially Benoît Garnot, *Histoire de la justice : France, XVIe-XXIe siècle* (Editions Gallimard, 2009).

¹⁰ Claude de Ferrière, *Dictionnaire de droit et de pratique*. (Bauche, 1771), 102.

¹¹ For more details on this question see Isabelle Mathieu, *Justices seigneuriales en Anjou et dans le Maine* (Rennes: PU Rennes, 2011). 53-63.

¹² The distinction between the three levels of justice seems to come from the different status of the nobles who held the *fief* and therefore the jurisdiction. See Ferrière, *Dictionnaire de droit et de pratique*, T2, 103.

¹³ See Fabrice Mauclair, « La justice dans les campagnes françaises à la fin de l'Ancien Régime: un nouveau regard sur les tribunaux seigneuriaux du XVIIIe siècle », dans *Justice et sociétés rurales du XVIe siècle à nos jours* (Presses Universitaires de Rennes, 2011), 125-135. 127.

¹⁴ Fabrice Mauclair, « La justice dans les campagnes françaises à la fin de l'Ancien Régime: un nouveau regard sur les tribunaux seigneuriaux du XVIIIe siècle », dans *Justice et sociétés rurales du XVIe siècle à nos jours* (Presses Universitaires de Rennes, 2011), 125-135. 128.

apparatus of justice.¹⁵ This is why lately the focus of historians has been particularly on the analysis of the state-building process and, considering the high number of seigneurial courts, on feudalism and, more precisely, on the link between the exercise of judicial authority, the lord, and the litigants.¹⁶

The history of the civil lawsuit in the early modern period is made up of evolutions and adaptations. It is important to remember that during the early modern period, customary law cohabited with new legal decisions made by the crown. The French kings, always concerned to establish more firmly their authority over their subjects, and also over their increasingly powerful vassals, took several legal decisions regarding the procedure and management of their tribunals, throughout the kingdom, in an effort at judicial unification. After all, the king was the head of the justice apparatus, as Cardin le Bret reminds us, “les rois sont institués de Dieu pour rendre la justice”.¹⁷ The Edict of Crémieu in 1536 made *baillages* and *sénéchaussés* the main units of justice across France. But more importantly, the civil ordinance (*ordonnance civile*) of April 1667 was established to regulate the procedure of all the civil disputes in the kingdom in a uniform manner.

In the meantime, customary law played a critical role in the legal construction of the justice system in early modern France. This ancestral regional legal set of rules, oral by tradition, was written down at the end of the Middle Ages in various French regions in an effort to institutionalize law and make sure legal rules were respected by all.¹⁸ One can find, therefore, the customs of Normandy, of Auvergne, of Burgundy, of Nivernais, and so on. Cities and towns might have their own customs, such as Paris, Agen in the southwest,

¹⁵ It should be noted that seigneurial and royal court auxiliaries and judges were often one and the same person. See Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 25

¹⁶ See especially Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France, 1750-1800* (Pennsylvania State University Press, 2001). And Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (University of Rochester Press, 2008) and Michael P. Breen, *Law, City, and King: Legal Culture, Municipal Politics, and State Formation in Early Modern Dijon* (University of Rochester Press, 2007).

¹⁷ Cardin Le Bret, *De la souveraineté du roy, de son domaine et de la couronne* (Jacques Quesnel, 1632). « Kings are appointed by God to deal out justice ».

¹⁸ See Bourdot de Richebourg, *Nouveau coutumier général ou corps des coutumes générales et particulières de France et des provinces connues sous le nom des Gaules*, vol. 3 (Paris, 1724). Emmanuel Le Roy Ladurie, « Système de la coutume. Structures familiales et coutume d'héritage en France au XVI^e siècle », *Annales. Histoire, Sciences Sociales* 27, n^o. 4/5 (1972): 825-846.

Blois near Paris, or even tiny towns such as Ferrette in the east.¹⁹ The French kings did not repeal these customary laws because “self-governance in certain provincial matters was largely in the interest of the crown”.²⁰ Customary law usually played a critical role in civil matters as it covered a wide range of familial and household issues, such as inheritance practices for instance.²¹ “Royal” law prevailed where matters were neglected by customary law, and where customary law remained silent.

Historians working on the early modern period often encounter civil records in the archives. This is not surprising as this type of document is undeniably the most common, not only on the shelves of the early modern system of justice but also among the early modern archives in general. In Côte d’Or, the archives of the série B (justice before 1790) count about 1,908 linear meters of judicial documents.²² The department of Meurthe-et-Moselle has about 1,900 meters of judicial archives, while the Côte d’Armor in the western part of the kingdom has about 380 meters.²³ Many of these documents are in fact civil court records. The unequal amounts are a result of the conditions of conservation of such documents and the way cases were recorded. The Territoire de Belfort, for instance, has only a few criminal registers left, and only a few justice records dated before 1630, but instead has an amazing collection of civil records with only a few gaps for the seventeenth and eighteenth century.²⁴ Some judges may have used bound registers (for the *registres d’audience* for instance), while others used single sheets, which makes uniform storage

¹⁹ Edouard Bouvalot, *Coutumes de la Haute-Alsace dites de Ferrette* (Barth et Held-Baltzinger, 1870). Claude de Ferrière, *Corps et compilation de tous les commentateurs anciens et modernes sur la coutume de Paris: enrichie de nouvelles observations & de plusieurs questions décidées par les Arrêts des Cours Souveraines, avec les Conférences des autres Coûtumes* (Chez Denys Thierry, 1685). Henry Tropamer, *La coutume d’Agen* (Y. Cadoret, 1911). Maurice Vallas, *La Coutume de Blois* (Fernand Lanore, 1987).

²⁰ Zoë A. Schneider, *The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 18

²¹ On this topic see among others Emmanuel Le Roy Ladurie, « Système de la coutume. Structures familiales et coutume d’héritage en France au XVI^e siècle », *Annales. Histoire, Sciences Sociales* 27, no. 4/5 (1972): 825-846.

²² Jean Rigault et Archives départementales Côte-d’Or, *Guide des Archives de la Côte-d’Or* (Archives départementales de la Côte-d’Or, 1984). 61. Among the 1,908 meters, 480 meters of documents are devoted to seigneurial justice alone, see Benoît Garnot, « Justices seigneuriales et régulation sociale: l’exemple bourguignon au XVIII^e siècle », dans *Les justices de village. Administration et justice locales de la fin du Moyen Âge à la Révolution* (Presses Universitaires de Rennes, 2003), 197.

²³ www.archives.cg54.fr/guide/PDF/B.pdf and

http://archives.cotesdarmor.fr/asp/FRAD022_eTATDESFONDS.htm

²⁴ Olivier Billot, *Série B. Juridictions de l’Ancien Régime*, 2007. Archives Départementales du Territoire de Belfort

complicated. If one takes into consideration the ratio of 1:20, or even the estimation of 90% formulated by Hervé Piant, many of these documents are civil records.²⁵

Ferrière defines civil justice as a procedure that dealt only with pecuniary issues.²⁶ This affirmation is not entirely true as the civil procedure was divided into two types of procedures. The first, *justice gracieuse*, was principally characterized by the absence of conflict between the parties. The registration of acts such as guardianship, the fixing of seals, inventories following deaths, for instance, came within its competence. These documents were often recorded in separate registers or on single sheets. The second type, *justice contentieuse*, dealt with all the remaining disputes between people, such as inheritance issues, debt, and quarrels over property. These cases are by far the most numerous in the archives of civil justice. Usually, the same judge was competent in these two types of procedure.

In early modern France, seigneurial judges were primarily those in charge of civil lawsuits, while royal judges, exercising their power mainly in urban areas, took care of criminal cases and civil conflicts that could not be resolved locally. The differences between civil and criminal litigations lay not only in the nature of each, but above all in the instigator(s). A private person could file a complaint against someone before the local judge. Rural and urban dwellers therefore had the possibility of themselves initiating not only the trial but also the investigation. They were the ones to decide what cases to bring before the judge, while the prosecutor initiated the investigation for criminal cases and gathered evidence against the offender (people could also bring criminal cases before the judge).²⁷ In civil proceedings, it seems that plaintiffs knew their rights and were well aware of legal and social norms and the practices of such litigation. The geographical proximity of the court certainly played a key role in its use by plaintiffs, and in its growing popularity. This all means that users of the tool's of justice decided what cases should be brought before the judge. There is a development in the nature of lawsuits in the early modern period. Indeed, it seems that cases related to indebtedness gradually filled the dockets of local tribunals to the detriment of cases involving property issues or moral issues, as we shall see later.²⁸

²⁵ Hervé Piant, « Des procès innombrables », *Histoire & mesure* XXII, n° 2, Déviance, justice et statistiques (2007): 13-38. 14.

²⁶ Claude de (1639-1715) Ferrière, *Dictionnaire de droit et de pratique*. T1, <http://gallica.bnf.fr/ark:/12148/bpt6k1230375>. 291.

²⁷ Zoë Schneider claims that the vast majority of civil and criminal cases were brought by the king's subjects, not the king's prosecutor. Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 4

²⁸ See among others Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011). And B. Zorina Khan, « Justice of

Only recently have historians become attentive to such resources. For many years, historians have preferred to concentrate their attention on criminal records because civil ones were challenging to use for several reasons. First, depending on the nature of the jurisdiction (royal vs. seigneurial), and upon how the judge recorded trials, historians might be confronted with diverse types of documents, varying from one region to another, making it difficult not only to understand the institution under study, but also making it difficult to make comparisons between various regions. There are two main types of civil records: the trials (often registered under *registre d'audiences* or *registres des causes*) are by far the most exhaustive documentation available, and all the related documents produced by the court to inform and complement the investigation (*procès-verbaux*, expert witnesses, testimonies, and other documents useful for the investigation and the judge's decision). The *registres d'audience* are perhaps the most useful source of information. They contain the name(s) of the plaintiff(s) and defendant(s), sometimes their age, and their place of residence. These also state the "*moyens*", that is to say the arguments of both parties set before the judge, who also listened to the prosecutor. The magistrate could subsequently give a final decision on the matter, render a sentence and assess court costs, or he could decide he needed to gather more evidence (expert witnesses or testimonies for instance) and another hearing would take place, or he could indicate that his court was not competent on the matter and order a *pourvoi*. Solid knowledge in law is frequently required to understand the often abstruse terminology and language used by the *greffier* who recorded the cases. All the other documents contributing to the proceedings are usually housed elsewhere in the archives, and constitute a chaotic, uncatalogued, and enormous mass of documents.²⁹ But sources such as testimonies can be valuable to understand interpersonal relations, the structure of emotions, and other social aspects and should not be neglected just because they are challenging to use.

The methodology for examining these documents is indeed crucial because civil records amass a tangled set of cases. One of the most difficult tasks for the researcher is to identify the nature of the trial and to categorize all the proceedings. Historians have not agreed yet on a universal typology and each of them produces their own, which makes comparison enormously difficult. Furthermore, the results can be different depending on whether a historian takes into consideration the number of cases or, since some cases needed several hearings, the number of trials.

the Marketplace": Legal Disputes and Economic Activity on America's Northeastern Frontier, 1700-1860 », *The Journal of Interdisciplinary History* 39, n° 1 (2008): 1-35.

²⁹ Recently, Sylvain Soleil has denounced the chaos in the archiving of judicial sources in French archives. Sylvain Soleil, « Nouveau scénario pour séries b : les fonds des tribunaux d'ancien régime », *Les Cahiers du Centre de Recherches Historiques*, n° 23, Officiers « moyens » (1) (1999).

Finally, historians have questioned the dynamism of local courts. Julie Hardwick states, like many other scholars that, “the levels of litigation rose dramatically in the sixteenth century, and remained high throughout the seventeenth century before declining in the eighteenth century”.³⁰ If this decline in the level of litigation in the eighteenth century has been observed in other European countries, we sadly still lack statistics on this issue. In the seigneurie of Delle and Florimont, in the extreme eastern part of the kingdom, for instance, the number of cases gradually increased in the eighteenth century, contradicting traditional historiography, demonstrating, therefore, that much more work needs to be done in this area.³¹

2. Current Trends in the Use of Civil Court Records

The historiography of justice has always been a vivid and fascinating field. It has been enriched year by year with significant contributions from both Anglo-Saxon and French scholars, but mainly within the field of criminality studies. Only recently have several historians launched new research in the area of local and seigneurial justice, with particular attention paid to the examination of civil justice records in order to fill a gap in the historiography. Indeed, the profusion of dissertations and manuscripts on this topic demonstrates the critical importance that this field is currently attracting in the profession. But if the functioning of the higher courts, such as the *parlements*, seems mostly well known by now, mystery still surrounds the structure and function of local courts, especially the courts of first instance. The significance of such tribunals cannot be neglected because they not only covered most of the territory, but also settled the majority of the conflicts, in the first instance, for many rural and urban men and women in early modern France.

Civil court records have been examined and used only partially by historians over past decades, despite their incontrovertible historical potential. Great monographs on rural areas, written by the most prominent historians of France in the 1960s and 1970s, used this type of resource, but only to highlight the struggle for power between those who dominated and those who were dominated in turn. In a Marxist conception of early modern justice, people were oppressed by their *seigneur*, who used the tools of justice to promote his

³⁰ Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (OUP Oxford, 2009). 58

³¹ See Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011).

interests alone, favouring the privileged over the poor peasants, resulting inexorably in the social clash of 1789.³²

The Marxist perspective on early modern local justice set up a paradigm and it was difficult for non-Marxist historians to work outside this framework. Liana Vardi, for instance, looks at the civil court records of rural communities and underlines the old power struggle between peasants' ancestral rights and *seigneurs* over gleaning issues.³³ This important emphasis on the correlation between authority/power and justice in recent historiography somehow blurred the meaning of justice that functioned in early modern France.

This centrality of feudalism in the study of justice still attracts the attention of historians. Anthony Crubaugh and Jeremy Hayhoe, principally, have tried to shed some light on the dramatic question inspired by the French Revolution, and contemporary commentators such as Charles Loyseau on whether or not local justice – mainly seigneurial – was authoritarian and really effective.³⁴ The famous jurist Loyseau, like many of his contemporaries, has indeed accused seigneurial justice of being expensive, slow and dysfunctional.³⁵ For many years, this point of view was taken for granted by traditional historiography and is only now being revised.

Anthony Crubaugh has thus examined seigneurial justice through the lens of judicial reforms that occurred after the French Revolution, which suppressed the justice of the *seigneurs* and, in 1790, established instead the *juge de paix* (revolutionary justice of the peace). He argues that in the region of Aunis and Saintonge, in the second part of the eighteenth century, seigneurial justice was “slow, costly, and often inaccessible to the poorer members of society”, and therefore did not satisfy rural dwellers at all.³⁶ On the other hand, the *justice de paix* created in 1790 accomplished its task remarkably well and was much more effective. In Crubaugh's opinion, seigneurial justice represented “the failure of

³² See for instance Philippe Goujard, « L'abolition de la féodalité dans le pays de Bray (1789-1793) », *Annales historiques de la Révolution française* 224, n° 1 (1976): 287-294.

³³ Liana Vardi, « Peasants and the Law: A Village Appeals to the French Royal Council, 1768-91 », *Social History* 13, n° 3 (1988): 295-313.

³⁴ Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France, 1750-1800* (Pennsylvania State Univ, 2001). Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (University of Rochester Press, 2008).

³⁵ Charles Loyseau, *Les oeuvres de maistre Charles contenant les cinq livres du droit des offices, les traitez des seigneuries, des ordres et simples dignitez, du déguerpiement et délaissement par hypothèque, de la garantie des rentes et des abus des justices de village*. (Lyon: Compagnie des libraires, 1701).

³⁶ Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France, 1750-1800* (Pennsylvania State University Press, 2001). 32.

the French state to provide a crucial service demanded by rural dwellers” and therefore “must have certainly contributed in part to their acceptance of the Revolution in Aunis and Saintonge”.³⁷ In his book, Crubaugh pays too little attention to the civil justice records themselves, as his sampling was probably too incoherent – in space and time – and too reduced to give significant results.³⁸ But the author has the merit of having made a first approach in using this key material.

Jeremy Hayhoe, investigating the functioning of the seigneurial justice system in northern Burgundy in the second half of the eighteenth century, through the careful examination of fourteen *seigneuries* records, reached different conclusions to Anthony Crubaugh. Hayhoe, indeed, concluded that seigneurial justice in Northern Burgundy worked well and looked like nothing described by Loyseau and other detractors of this system.³⁹ But Hayhoe’s main contribution lies probably in his call to use civil dockets more widely: “court records are essential for understanding social relations not only because they provided evidence of the kinds of social relations that existed and broke between individuals, but because local courts provided some of the context for the elaboration and construction of social bonds”.⁴⁰

Zöe Schneider has also used the resources of the série B in order to examine the functioning of local justice in Normandy between 1670 and 1740, within a system of various, and sometimes overlapping jurisdictions.⁴¹ Like Crubaugh and Hayhoe, Schneider is interested in examining the mechanisms of justice at the local level, but contrary to them, she focuses more on the interaction between the state and the local tribunals, between “royal” law and customary law, within the perspective of an examination of state building.⁴² She reaches the conclusion that local justice was quite independent from the central power and that royal judicial institutions did not encroach upon local ones, but that, rather, the two entities complemented each other.

³⁷ Ibid.

³⁸ Crubaugh’s sampling includes 427 lawsuits for eight different courts in the second half of the eighteenth century. Crubaugh, *Balancing the Scales of Justice*, 34.

³⁹ We can only regret that Hayhoe did not push his investigation a little further back into the eighteenth century; he focuses only on the fifty years before the French Revolution

⁴⁰ Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (University of Rochester Press, 2008). 98.

⁴¹ Zoë A. Schneider, *The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008).

⁴² Séverine Debordes Lissilour has a similar approach in Séverine Debordes, *Les sénéchaussées royales en Bretagne (1532-1790): la monarchie d’Ancien Régime et ses juridictions ordinaires*, (Presses Universitaires de Rennes, 2004).

These three authors, Crubaugh, Hayhoe, and Schneider, have attempted to replace seigneurial justice/royal justice in the historiographical debate, presenting a solid description of the functioning of judicial and legal machinery in the eighteenth century. They have relied heavily on civil court records, contributing to legal history. Their research is, however, centred principally on the eighteenth century, therefore at the end of the process of the institutionalization of justice in France. French scholars, led principally by Antoine Follain, have chosen a different perspective. They have realised that it was essential to give a broader picture of the justice system, more in the *longue durée*. Contrary to their Anglo Saxon colleagues, French historians were no longer interested in the struggle for power between rural dwellers and their *seigneurs*.⁴³ Follain and his colleagues focused instead on the structure and functioning of local justices in a regional and comparative approach, and therefore undertook to reopen civil court registers in the archives.

Antoine Follain was one of the first to bring together historians in two major conferences in the early 2000s on respectively local justice and village justice, both of which produced collections of essays. These two books shed light mostly on the organisation of justice but also enrich social history with contributions that use, largely, samplings of civil records. Most of the contributors seek to describe in detail the characteristics of tribunals in various parts of France, giving then a broad picture of local justice in the early modern period. We already knew that regional differences were important in the

⁴³ Antoine Garnot is probably the most well-known specialist of the early modern French judicial system. His bibliography is extensive. One can cite among others : Garnot. *De la déviance, délinquance, XVe - XXe siècles*, 1998. Editions universitaires de Dijon, 1999. Garnot, Benoît. *Les juristes et l'argent: le coût de la justice et l'argent des juges du XIVe au XIXe siècle*. Dijon: Ed. universitaires de Dijon, 2005.

———. , éd. *Les témoins devant la justice: une histoire des statuts et des comportements*. Rennes: Presses universitaires de Rennes, 2003. ———. *Questions de justice: 1667-1789*. Paris: Belin, 2006. Garnot, Benoît. *Histoire de la justice : France, XVIe-XXIe siècle*. Editions Gallimard, 2009. ———. *Juges, notaires et policiers délinquants: XIVe-XXe siècle*. Eud, 1998. ———. « Justice, infrajustice, parajustice et extra justice dans la France d'Ancien Régime ». *Crime, Histoire & Sociétés / Crime, History & Societies* 4, n° 1. Varia (2000): 103-120. ———. « Justices seigneuriales et régulation sociale: l'exemple bourguignon au XVIIIe siècle ». In *Les justices de village. Administration et justice locales de la fin du Moyen Âge à la Révolution*, 197-204. Rennes: PU Rennes, 2003. ———. « Une réhabilitation? Les justices seigneuriales dans la France du xviii siècle ». *Histoire, économie & société* 24e année, n° 2 (2005): 221. doi:10.3917/hes.052.0221. Garnot, Benoît, et Pascal Bastien. *Normes juridiques et pratiques judiciaires du Moyen Âge à l'époque contemporaine*. Dijon: Éditions universitaires de Dijon, 2007. Garnot, Benoît, Pascal Bastien, Hervé Piant, et Eric Wenzel. *La justice et l'histoire : Sources judiciaires à l'époque moderne*. Bréal, 2006.

administration of local justice but these two collections of essays provide insightful details and explanations about the functioning of justice.

Following Follain's conferences, French, and some Anglo Saxon, historians have focused on the judicial institution, its agents, and its mechanisms, in order to fully understand all the cogs of the judicial apparatus, organising conferences and publishing extensively on the topic.⁴⁴ Didier Catarina, more recently, has devoted his doctoral research to the functioning of local courts in the South of France between 1667 and 1789, stressing not only its various legal and administrative attributions but also its evolution across the seventeenth and eighteenth century.⁴⁵ Cogs of the judicial machine remain a key concern in his work.⁴⁶

But only a handful of scholars have devoted their research to the proper examination of civil court records themselves. Hervé Piant is among those who have recently attempted to redress this gap.⁴⁷ Piant's book, published in 2006, focuses on the functioning of local justice in a small area, the *prévôté* of Vaucouleurs, in Lorraine, between 1670 and 1790. The author, while examining about 10,000 judicial cases, has analysed not only criminal records but also, and above all, civil litigations, showing the links between the two judicial procedures. Hervé Piant reminds us that the population used first and primarily the local court to settle their ordinary conflicts. But more importantly for our purposes, Piant has given voice to the users of this local justice and has meticulously examined the sociology of such courts, thanks to a close examination of civil records. He successfully draws up the portraits of Vaucouleurs litigants and sheds light on, among other things, conflict mechanisms, sociability, and the local economy. He was one of the first historians to open the way for judicial monographs in the recent historiography.

Fabrice Mauclair, another French historian, has imitated Piant and offers an analysis of the functioning of the civil and criminal justice of *duché-prairie* of *La Vallière* between 1667 and 1790 in his book, inspired by his doctoral thesis,

⁴⁴ See Cassan, *Les officiers « moyens » à l'époque moderne: Pouvoir, culture, identité: actes du colloque organisé par l'Équipe de recherches Territoires et Sociétés ... de Nantes: Limoges, 11-12 avril 1997* (Presses Universitaires de Limoges (PULIM), 1998). Claire Dolan, *Entre justice et justiciables: les auxiliaires de la justice du Moyen Âge au XXe siècle* (Presses Université Laval, 2005). Jacques Krynen, *L'état de justice: France, XIIIe-XXe siècle: Tome 1, L'idéologie de la magistrature ancienne* (Editions Gallimard, 2009).

⁴⁵ Didier Catarina, *Les justices ordinaires, inférieures et subalternes de Languedoc: 1667-1789* (Publications de l'Université Paul Valéry, Montpellier 3, 2003).

⁴⁶ See also Sylvain Soleil, *Le Siège royal de la sénéchaussée et du présidial d'Angers: 1551-1790* (Presses universitaires de Rennes, 1997). Sylvain Soleil is a legal historian.

⁴⁷ Hervé Piant, *Une justice ordinaire: Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (Presses Universitaires de Rennes, 2006).

published in 2008.⁴⁸ Regarding the use of civil court records, Mauclair insists that the litigants in La Vallière were no more or less *chicaneurs* than elsewhere at the time. Despite this claim, there is almost no emphasis at all on the users of justice in his book. The section on civil justice is disappointing because Mauclair's methodology proves to be too imprecise, with its narrowed categories, and also because the author offers only vague statistics with no further analysis, which reminds us of the importance of a strong typology for the examination of civil dockets. Mauclair's main achievement, however, lies in the fact that he describes the mechanisms of the *justice gracieuse*, which has been too often forgotten in the historiography.⁴⁹

Simultaneously, in addition to these monographs on the justice system, some historians have recently considered civil justice records in order to study the structure and functioning of families.⁵⁰ Julie Hardwick has been a pioneer in the examination of separation of property as an important legal and economic tool not only for women but also for entire families in early modern France.⁵¹ In her book, "The Practice of Patriarchy", she dedicates a good part of her analysis of patriarchy as a social norm to the dissection of lawsuits of separation of property (or persons and property) among the families of notaries in Nantes between 1560 and 1660. Thanks to about 1,000 lawsuits filed by women before the judge, she highlights not only the use of courts by women but also their strategic approach when it came to property matters. In order to see the return of their dowries and to protect their assets from creditors, these wives of notaries did not hesitate to carry out a separation of property and underlined the bad management of their estates and capital by their husbands, thus undermining patriarchy. In the majority of cases these women were granted access to their marital contribution to the household and were then able to manage it independently. Hardwick's work, among others, show the wide range of possibilities offered in the use of civil court records as main sources.

3. Future Research and Perspectives

⁴⁸ Fabrice Mauclair, *La justice au village : Justice seigneuriale et société rurale dans le duché-pairie de La Vallière* (Presses Universitaires de Rennes, 2008).

⁴⁹ Other French historians have devoted their research to judicial monographs. One can cite also Michel Heichette, *Société, sociabilité, justice : Sablé et son pays au XVIIIe siècle* (Presses Universitaires de Rennes, 2005).

⁵⁰ See among others Sylvie Perrier, *Des enfances protégées: la tutelle des mineurs en France (XVIIe-XVIIIe siècles) : enquête à Paris et à Châlons-sur-Marne* (Presses universitaires de Vincennes, 1998).

⁵¹ Julie Hardwick, « Seeking Separations: Gender, Marriages, and Household Economies in Early Modern France », *French Historical Studies* 21, n°. 1 (1998): 157-180. Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (Pennsylvania State University Press, 1998). Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (OUP Oxford, 2009).

To date many authors have focused on the institution of justice and seigneurialism and it is time that other fields were explored. There are at least three major fields (economy, gender, and emotions) that could benefit from a more attentive use of civil court records and this is what I would like to suggest here. This list is not exhaustive and I am sure that the reader will find other themes and other historical areas in which civil court records could be used in an effective way. First, economic history, macro and micro economics alike, would be enriched with data from the civil court records regarding family inheritance, household property and management, indebtedness and the like. Next, research in the field of gender in early modern France, which has concentrated its effort so far on the study of female criminality, violence and domination on the one hand, and on urban and noble women on the other, would profit from an interest in civil court records as they reveal interesting features about patriarchy and women's role and position within the rural community. Finally, the nascent but dynamic field of emotions would also find exciting elements in the study of civil court records, notably in the testimonies reported in the sources.

3.1. Historians have highlighted the fact that early modern authorities were mainly interested in social control and regulation, and it was therefore those authorities that produced justice records. Recent research, however, has demonstrated that the nature of litigations changed in the course of the eighteenth century, to reflect the new interests of urban and rural dwellers, the users of justice in the Western world, opposing the interests of the authorities. Zorina Khan, Hervé Piant, and Craig Muldrew, among others, show that the proportion of debt litigation gradually increased throughout the eighteenth century.⁵² This shift occurred nearly everywhere in the Western world. Individuals themselves brought lawsuits relevant to their own interests before the judge. It seems that the judicial and legal authorities had little to say in this shift, as Schneider notes: "what they (the people) wanted resolved at the bench was not the king's business but their own".⁵³ People chose their own concerns and moulded the tools of justice to their benefit and interests. Here, the rapid transition to capitalism (or pre-capitalism) in the eighteenth century is essential, as the increase in debt litigation shows.

⁵² B. Zorina Khan, « "Justice of the Marketplace": Legal Disputes and Economic Activity on America's Northeastern Frontier, 1700-1860 », *The Journal of Interdisciplinary History* 39, n° 1 (2008): 1-35. Craig Muldrew, « Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community », *The Economic History Review* 46, n° 1, New Series (1993): 23-38. Hervé Piant, *Une justice ordinaire : Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (Presses Universitaires de Rennes, 2006).

⁵³ Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 160

Hervé Piant has shown the importance of debt litigation in Vaucouleurs, which constituted half of the *causes d'audiences*, but says little about their significance.⁵⁴ He also found that in the late seventeenth century 39% of the *causes d'audience* concerned the repayment of loans and debts, which reached 76% in the eighteenth century.⁵⁵ He partly explains the gradual increase of debt lawsuits in the eighteenth century with a collection of economic circumstances, and also with the decline of intra judiciary strategies.⁵⁶ Schneider also notes that most of the civil records in Normandy dealt with this issue.⁵⁷ Almost everywhere, legal disputes over debt increased.⁵⁸ The sociology of debt, and mechanisms of indebtedness, could enlighten us on microhistory and local history. Economic concerns became more important to people before the French Revolution, to the detriment of social and moral issues. Comparative studies using justice records could help to shed new light on this matter.

Indebtedness was the most represented issue at court. But other economic questions can be raised thanks to the civil court records, notably macro economic concerns. Indeed, these dockets can also shed light on the economic strategies used by different groups of people, depending on the interests at stake. Several economic historians have reached the conclusion that economic litigation encouraged the stability and regulation of the local economy and gave birth to a greater normativity in economic exchanges.⁵⁹ Negotiation, arbitration and mediation were key aspects of the tribunals' competence, especially in the economic area, but remain blurred historical themes so far. Crossing the economic data given by the civil court records with other economic sources (notarial or tax rolls for instance) could shed new light on exchange and transaction in early modern France.

This link between financial issue and people could also be explored through the lens of the notion of property. Gradually debt litigation lawsuits

⁵⁴ Hervé Piant, *Une justice ordinaire : Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'Ancien Régime* (Presses Universitaires de Rennes, 2006). 143

⁵⁵ Piant, *Une justice ordinaire: justice civile et criminelle dans la prévôté de Vaucouleurs sous l'Ancien Régime*. 143 Piant mentions that J.-A. Dickinson found that between 30% and 40% of cases in the balliwick of Falaise were in debt litigation and that D. Martin found over 50% of such cases in Besse in Auvergne.

⁵⁶ Ibid. 150

⁵⁷ Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 160

⁵⁸ Even in the part of France where the justice system was not totally efficient, the proportion of debt litigation was high. See for instance Crubaugh, *Balancing the scales of justice : local courts and rural society in Southwest France, 1750-1800*. He found 142 legal disputes over debt out of 427 civil cases in total.

⁵⁹ See for instance B. Zorina Khan, « "Justice of the Marketplace": Legal Disputes and Economic Activity on America's Northeastern Frontier, 1700-1860 », *The Journal of Interdisciplinary History* 39, n° 1 (2008): 1-35.

came to outnumber cases related to property (land).⁶⁰ Moreover, in recent years historians have demonstrated the importance of land ownership both for peasants and urban investors. But yet, the notion of property itself, its evolution across time, its relationship with profit and cash, etc., eludes us. Civil court records could definitively help scholars to fill the gap on these issues.⁶¹

Of course, authorities such as the French king or the local *seigneurs* had a say in the control and regulation of the local economy, on issues such as taxation, and this can be observed in civil court records. We often find the *procureur fiscal* summoning the poor taxpayer before the judge. Schneider observes in Normandy that “the judges’ powers of economic regulation over markets, guilds, grain prices, fairs and taverns gave them broad discretion to intervene in the daily economy of their bailiwicks”.⁶² Yet, there is too little research on these major economic levers. Historians have preferred to focus instead on the state revenues and politics of taxation, or on peasant uprisings related to heavy dues.⁶³ Using civil court records could shed light on micro economic forces and mechanisms, perhaps in a more effective way than tax registers have done so far. The field of taxation – and therefore absolutism – could benefit from a new angle of research using these records, highlighting for instance the dichotomy between theory – rigid tax rolls – and practice – huge delays in tax payments and local arrangements. Light could be shed on the role of judges as economic actors within the community.

The economics of justice is also a key element in our understanding not only of the mechanisms of justice but also of the functioning of the community. It appears that towards the end of the eighteenth century, local judges gradually began to base their judgements on the word of external parties, such as “*experts*”. Indeed, the judge, in order to have enough information on issues such as the price for a quantity of grass cut in a meadow, or the value of a cow, for instance, designated and paid people from the community to provide him with the necessary information. Men and women alike were also paid for their testimony in court. Few studies have focused on these issues. Analysis of the economics of the justice system still needs work and civil court records could help shed light

⁶⁰ See Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011), chapter 6. And B. Zorina Khan, « “Justice of the Marketplace”: Legal Disputes and Economic Activity on America’s Northeastern Frontier, 1700-1860 », *The Journal of Interdisciplinary History* 39, n^o. 1 (2008): 1-35.

⁶¹ On property in early modern France see John Brewer and Susan Staves, *Early Modern Conceptions of Property*, New edition. (Routledge, 1996).

⁶² Zoë A. Schneider, *The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 54

⁶³ On taxation and absolutism see the recent work of Darryl Dee, *Expansion and Crisis in Louis XIV’s France: Franche-Comté and Absolute Monarchy, 1674-1715*, First Edition. (University of Rochester Press, 2009).

on this question. While historians have examined the personal aspect of justice, they have remained silent on the economics of justice, in which the statements of witnesses and experts were rewarded.⁶⁴

Combining loan deeds and civil justice records – not only the *registres d'audience* but also the testimonies – could help shed light on credit strategies, networks of sociability and the structures of the local economy.

3.2. Gender as a category of historical analysis is almost always absent from the concerns of historians researching in the civil justice records.⁶⁵ Female victimization or female violence, from murder to infanticide, has been investigated for several years now and has been the object of many studies.⁶⁶ But the examination of women's ordinary lives and social interaction in the early modern period has suffered from this attention and could undoubtedly benefit from a greater use of civil justice records in order to fill a gap in the historiography.⁶⁷

In early modern France, women were considered to be legally incapacitated, meaning, among other things, that they could not go to court as either a plaintiff or a defendant without the assistance of their father, husband or other male relative. Women were under the authority and protection of the head of the household and, as such, were to be accompanied or represented by him in court. In any case, they needed to be authorized by him to proceed. Their marital status, indeed, played an essential role in their legal rights, as the well-known adage recalls "*la femme est en puissance de mari*". Depending on their marital status, therefore, women had different latitudes of action. In most of the French kingdom, women reached their majority at twenty-five years old. If by that time they were not married, they could, in theory, manage their property independently and appear before the judge to testify, to defend themselves or to file a complaint, but always with the assistance of a male relative. Married, they

⁶⁴ See Claire Dolan, *Entre justice et justiciables: les auxiliaires de la justice du Moyen Âge au XXe siècle* (Presses Université Laval, 2005).

⁶⁵ With the exception of Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008) and Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford University Press; Oxford, 2009).

⁶⁶ Christophe Regina, *La violence des femmes - Histoire d'un tabou social* (Max Milo Editions, 2011). Christophe Regina is currently completing his dissertation titled "Les expressions de la conflictualité féminine à Marseille au siècle des Lumières". Diane Roussel, « La description des violences féminines dans les archives criminelles au xvie siècle », éd par. Cécile Lavergne et Anton Perdoncin, *Tracés. Revue de Sciences humaines*, n° 19, Décrire la violence (30 November 2010): 65-81.

⁶⁷ This has already been begun in a small way, see for instance Collectif et al., *Eternelles coupables : Les femmes criminelles de l'Antiquité à nos jours* (Editions Autrement, 2008). But an emphasis on criminality undermined its significance.

were under the authority of their husbands and he represented and authorized his wife for any court action. The customs of Paris, for instance, state, “a woman cannot go to court without the consent of her husband”.⁶⁸ As widows, women could experience a greater liberty, as they became heads of the household.

Women from any social class in any century of the early modern period undeniably appear in the civil justice records everywhere in France. Quantitative analysis, so far very limited, suggests that women were actively taking part in the judicial process and used the tools of justice. Among the few and unequal statistics available, we can find single and married women, and widows, appearing before the local judge in various numbers. Hervé Piant has counted 13% of female plaintiffs in civil cases in Vaucouleurs in the eastern part of France.⁶⁹ In Normandy, women were either plaintiffs or defendants in almost a quarter of all civil proceedings in the lower courts.⁷⁰ In the *duché-pairie* of La Vallière, Fabrice Mauclair found about 11% to 15% were female litigants but – strangely enough – he did not include married women.⁷¹ In the south of Alsace, I found in the seigneurie of Florimont, for instance, that about 11% were female plaintiffs and 12% were defendants in 1700-1605, while there were about 19% as plaintiffs and 24% as defendants a century later (1780-1785).⁷²

The examination of women’s involvement and their role in civil litigations is still, sadly, marginal but the few statistics available show a gradual increase in their participation in civil disputes across the kingdom, especially in the second part of the eighteenth century. How do historians explain this change? We can advance answers such as a greater liberty for these women to go to court because of the evolution of society and the breach in the patriarchal model in the eighteenth century.⁷³ Gender relations might have influenced social and judicial norms. Or we can propose that, because of the economic changes

⁶⁸ Bourdot de Richebourg, *Nouveau coutumier général ou corps des coutumes générales et particulières de France et des provinces connues sous le nom des Gaules*, vol. 3 (Paris, 1724). 45 « femme ne peut ester en jugement sans le consentement de son mari ». Author’s translation.

⁶⁹ Hervé Piant, *Une justice ordinaire : Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l’Ancien Régime* (PU Rennes, 2006). 104

⁷⁰ Zoë A. Schneider, *The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). 165.

⁷¹ Fabrice Mauclair, *La justice au village : Justice seigneuriale et société rurale dans le duché-pairie de La Vallière* (PU Rennes, 2008). 308.

⁷² Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011). 200.

⁷³ See Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011). And Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (Pennsylvania State University Press, 1998).

that occurred in the eighteenth century – the advancing of the market economy and the transition to capitalism –, women had more reason to go to court. Litigation for debt repayment indeed tends to indicate a greater participation of women in such conflicts.⁷⁴ These two propositions may both very well explain the increase in female participation in court litigations but they do need to be verified and compared with other case studies that use civil court records.⁷⁵

Civil justice records reveal interesting features relating to the appearance of women before the local judge and therefore relating to the gendered practice of justice. As previously stated, women were theoretically incapacitated, they had to be authorized to proceed in court by their husbands, fathers, or other male relatives. In my own research, I have observed that in the seventeenth century men frequently came alone to represent the interests of their wives or daughters, while a century later women came by themselves to defend their interests – nonetheless not without having first been authorized by their husband or father. The following examples from my research illustrate this aspect. In November 1684, Pierre Billoz from Vellescot filed a suit before the local judge, on behalf of his wife, against their neighbour Pierre Vuillaumin because this latter had supposedly “outraged” the woman.⁷⁶ In October 1684, Jean Neurat from Bourogne disagreed on the division of his parents inheritance between his sister and himself. Instead of summoning his sister to court, he preferred to summon her husband, Jean Vallet.⁷⁷ In August 1681, Martin Coutte from Faverois filed a request against Maury Barré, his neighbour. Coutte claimed that Barré had sowed his wife’s field and he therefore asked for damages on her behalf.⁷⁸ By the late eighteenth century, it seems that judicial practice had evolved. On 22 August 1744, Marie Michelat, wife of Pierre Vuillaumé from Saint Dizier, came to court to ask Maurice Maitre, her neighbour, to give her back the grain he had taken from her field. She stated that her husband had been intoxicated when he signed the deed with Maitre in his office. The judge decided that Marie Michelat should get her grain back and declared the so-called deed between her husband and Maitre invalid.⁷⁹ In September 1781, Marie Fleury, wife of Joseph Erard from the village of Courtelvant, came before the judge and accused Jean Pierre Doyon of taking 300 pears from her orchard.⁸⁰ Her husband did not seem to be present with her at the hearing. It seems that, gradually, women freed themselves from men’s tutelage regarding their own interests, affairs and property. They came before the judge to ask for reparation and to defend their case themselves. They did not need their father, husband or brother

⁷⁴ These two arguments have been developed in Elise Dermineur, « Women in rural society: peasants, patriarchy and the local economy in northeast France, 1650-1789 » (West Lafayette, Indiana: Purdue University, 2011).

⁷⁵ On this topic, see Julie Hardwick, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (OUP Oxford, 2009).

⁷⁶ Archives départementales du Territoire de Belfort (ADTB hereafter), 8B 22.

⁷⁷ Ibid.

⁷⁸ ADTB 8B 19.

⁷⁹ ADTB 8B 97.

⁸⁰ ADTB 12B 80.

to speak in their place; women had learned to do this themselves and had gradually gained knowledge in legal procedures and actions.

Until now, historians have been silent about the meaning of male “assistance” to their wives in court. We do not know if they were physically present at court in all cases, if a verbal authorization was enough for women to go to court, or if instead this authorization had become obsolete and existed only in theory, or if husbands spoke on behalf of their wives’ interests or if they remained silent. In the cases I have mentioned, it seems that women in the late eighteenth century spoke for themselves. Further research in the civil justice records should help to answer these questions, answers that are essential to come to an understanding of not only judicial norms and practices but also gender interaction and its evolution throughout the early modern period. I should add that the legal culture of the population in general is still not very well known and further research should inform us on this aspect.

Finally, civil court records can shed light on gender through the questioning of a gender typology of cases. Hervé Piant has devoted a part of his recent book to gendered cases and he contends that some types of litigation were specifically feminine, that is cases involving specifically and mostly women.⁸¹ Julie Hardwick agrees, finding that “women dominated particular kinds of litigation, bringing suit in over 95% of cases of separations for example. Likewise, in other parts of the early modern world, they monopolized certain actions, like slander suits in London, or played prominent roles in particular kind of cases, like those for debts in Connecticut.”⁸² Unfortunately, we know very little about gender differentiation in lawsuits. Julie Hardwick has been one of the first to apply gender as a category of historical analysis to the examination of civil records while researching separation of property in Nantes. But too often, historians neglect the weight and significance of women’s involvement at court. Anthony Crubaugh reduced the role of women in civil lawsuits to a marital question, as his emphasis is on ‘rapt de seduction’ and separation of property.⁸³ While Hervé Piant offers only quantitative results with no other explanation or serious typology, Fabrice Mauclair simply forgot to include married women in his calculations, pushing them to the background and devoting only one paragraph to the participation of women in civil lawsuits. On the other hand, Zoë Schneider has devoted an entire chapter to women’s legal participation.⁸⁴ But we

⁸¹ Piant, *Une justice ordinaire: justice civile et criminelle dans la prévôté de Vaucouleurs sous l'Ancien Régime*.

⁸² Hardwick, *Family business: litigation and the political economies of daily life in early modern France*. 78.

⁸³ Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France, 1750-1800* (Pennsylvania State Univ, 2001). 41-44

⁸⁴ Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (University of Rochester Press, 2008). See also Zoë A. Schneider, « Women before the Bench: Female Litigants in Early Modern Normandy », *French Historical Studies* 23, n° 1 (2000): 1-32.

know that magistrates took seriously cases of moral deviance, such as adultery and unwed mothers. While adultery cases were the province of the criminal courts, funds for children born out of the wedlock were sought in the civil courts. Fathers were pursued at court and the judge settled the *bâtard's* fate.⁸⁵ Sarah Hanley has shown that the state was concerned with paternal authority and marriage and was therefore dynamic in passing laws regarding these matters.⁸⁶ But apart from Hanley's contribution, too little research on this topic has been done so far.

Historical research has only recently begun to consider judicial norms and practices in early modern France, we may suggest that integrating gender analysis would be fruitful as a very few studies have considered this aspect.⁸⁷

3.3. Finally, the study of emotions appears as a new inter-temporal field in current historiography. The medievalists have been primarily the pioneers in this area, led by Barbara Rosenwein, Nagy Piroska, Damien Boquet and Daniel L. Smail among others.⁸⁸ Several decades ago, Lucien Febvre called for an examination of sentiments, but only recently have a few historians begun to investigate emotions, contributing to the formation of emerging patterns about attitudes and about relationships between individuals.⁸⁹ Social relations were far more complex than has been theorized so far and a gap in the historiography

⁸⁵ In my own research, I have found very few such cases, which does not undermine their historical significance.

⁸⁶ Sarah Hanley, « Engendering the State: Family Formation and State Building in Early Modern France », *French Historical Studies* 16, n° 1 (1 April 1989): 4-27. Sarah Hanley, « Social Sites of Political Practice in France: Lawsuits, Civil Rights, and the Separation of Powers in Domestic and State Government, 1500-1800 », *The American Historical Review* 102, n° 1 (1 February 1997): 27-52. Sarah Hanley, « "The Jurisprudence of the Arrêts": Marital Union, Civil Society, and State Formation in France, 1550-1650 », *Law and History Review* 21, n° 1 (1 April 2003): 1-40. Sarah Hanley, « The Family, the State, and the Law in Seventeenth- and Eighteenth-Century France: The Political Ideology of Male Right versus an Early Theory of Natural Rights », *The Journal of Modern History* 78, n° 2 (1 June 2006): 289-332.

⁸⁷ On judicial norms see especially Benoît Garnot et Collectif, *Normes juridiques et pratiques judiciaires : Du Moyen Âge à l'époque contemporaine* (Editions de l'Université de Dijon, 2007).

⁸⁸ See Piroska Nagy et Damien Boquet, *Le sujet des émotions au Moyen Age* (Editions Beauchesne, 2009). Barbara H. Rosenwein, « Worrying about Emotions in History », *The American Historical Review* 107, n° 3 (1 June 2002): 821-845. Barbara H. Rosenwein, *Emotional Communities in the Early Middle Ages*, 1^{er} éd. (Cornell University Press, 2007). Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264-1423* (Cornell University Press, 2003). Daniel Lord Smail, *On Deep History and the Brain* (University of California Press, 2008).

⁸⁹ See for instance Mary S. Hartman, *The household and the making of history : a subversive view of the Western past* (Cambridge, UK ; New York, 2004).

does exist. Attitudes are so often observed through the lens of criminal records; it is clear that coupling civil and criminal records in order to explore emotional mechanisms could be a fruitful path to follow.

Emotions *did* things, as Sara Ahmed put it recently, and should be analysed as a historical object in their own right.⁹⁰ Emotions had multiple meanings and effects, and were also manipulated in turn. They expressed the way people lived and interacted, and had social and economic functions and followed rules and norms.

Traditionally, historians turn to criminal records in order to examine the behaviour, feelings and emotions of the past. These records have shed light on the mechanisms of violence, hatred, love, friendship, and other emotions. Few scholars have ventured into the civil court records to find information on these issues. Recently, however, a few historians, such as Daniel Lord Smail for instance, have shown that civil lawsuits could also be used to analyse emotions and could offer new perspectives on this subject.

In this respect, civil court records can inform us on emotional mechanisms and their demonstration, notably thanks to the testimonies, or witness statements. Here, language as a category of historical analysis is privileged. Testimonies, and especially their language, should yield information on the mechanisms of social relations, community networks, and also on the system of signs and gestures. We are still ignorant about how notions such as love, hatred, friendship and compassion were expressed by ordinary early modern people. Robert Darnton has shown that early modern social rituals, norms and expectations were somehow distinctive from our contemporary culture for instance.⁹¹

Civil lawsuits, which also deal with ordinary violence, such as cases of battery or the use of insults, could be a wonderful vantage point from which to view early modern interactions and emotions. People came to the civil court to denounce, testify, pursue enmities and advance private interests, all of this performed in the public eye. Language in the case of insults, for instance, should reveal interesting features, not only about emotions, but could also inform us on gender relations for instance.

Both individual emotion and collective emotions can be observed. While the latter has been the object of several studies, such as popular emotions and the rebellion of the peasants in early modern France, we know very little about love, hatred, spite, anger, resentment and other emotional manifestations.

⁹⁰ Sara Ahmed, "Affective economies," *Social Text* 22 (2004).

⁹¹ Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (Basic Books, 2009).

Thanks to civil court records, we can reconstruct a nexus of emotions within the community.

The following example illustrates how civil court records could enlighten us about emotions and emotional mechanisms. This incident occurred in the extreme eastern part of the kingdom, in the middle of the eighteenth century, in a rural community. In December 1741, a widowed female baker, Margueritte Durand, came before the judge of Florimont to ask for the payment of nine *livres* for some bread she had sold on credit to Henry Monnier, the mayor of Florimont.⁹² Trust was such that it was usual to keep a tab at the local store for this kind of transaction. The amount of money was not great, and the fact that the baker had to request payment before the local judge indicates that she had not been successful earlier in getting it by direct means and that she was now in open conflict with Monnier. The story is a little bit complicated as the bread ordered by the mayor was consumed by a carpenter working for the community of Florimont, and therefore a man commissioned by the mayor. The judge requested to hear all the parties involved and, in the end, the mayor claimed that he had paid for the bread, which the baker continued to deny, as her books made no mention of it. The parties appeared in the courtroom on two further occasions and witnesses were even summoned to testify as to whether or not the bread had been paid for.

In March 1742, three months after the initial complaint of the widow, whose case was still open and under investigation, she came to ask the judge for 100 *livres* of "*dommages et intérêts*" (compensation) as the wife of the mayor, Marie Bettevy, had physically attacked her. She claimed that the mayor's wife "beat her up, knocked her down to the ground several times and punched and kicked her, and that she lost so much blood that she had to stay in bed at home for several days." Marie Bettevy, the mayor's wife, simply declared that the baker insulted her, saying she was a "silly woman and a thief" ("*une sottie et une voleuse*"). Several court hearings took place afterwards to hear the two cases. On 11 October 1742, the mayor's wife was charged to pay 10 *livres* of *dommages et intérêts* to the baker; to pay for the medicines and expenses, and finally she was fined 4 *livres* and 16 *sols*. The very next day, her husband, the mayor, was charged to pay the baker 19 *livres* for the bread and late interest fees, and had to pay the legal expenses, about 30 *livres*.

This example shows that, first, financial issues could trigger strong sentiments such as enmity, revenge, hatred, humiliation and more. For the payment of 9 *livres*, and in defence of their honour, the mayor's wife severely injured the baker, which tends to indicate that the matter was extremely important to her and her husband. Second, it also reveals the flip side of trust as a complaint was lodged against the mayor. As Daniel Smail explains, this aspect implies sanction, both legal and moral.⁹³ When the norms of cooperation were

⁹³ Daniel Smail, 158

infringed, in this case the default of payment for the bread, material reparations and also moral reparations were looked for in the courts. Legal sanctions therefore implied moral sanctions, as the trust that bound the parties had been broken. Emotions could arise as a consequence of legal sanctions (shame/pride, anger, hatred/joy, sentiment of justice/injustice, indignation, desire for vengeance, etc). Third, enmity was exposed to the public eye and news was spread and conveyed within a close community. In this community, emotions could be manipulated in order, for instance, to emphasize a prejudice and seek compassion, understanding and sympathy from others, to diminish an opponent through giving him or her a bad reputation, to seek pity or admiration from others. Then, the public nature of this small case was quite important as witnesses had to give information on the payment or otherwise for the bread and consequently had to take sides. Finally, emotions such as those in this example have meaning and send information to the participants. Marie Bettevy's attack on the baker refers to her husband's conflict with Margueritte Durand and describes the network of emotions in the community. It is also interesting to underline that the mayor's wife was the one attacking the baker and not the mayor himself.⁹⁴

The historian, thanks to civil court records, can reconstruct such emotional patterns. It is undeniable that microhistory's methodology and approach applied to civil lawsuits seems the best way to get valuable results. In the years to come, it is undeniable that new research on this topic will enrich our understanding and knowledge of the mechanisms of emotions.

Conclusion

Civil court records have been almost entirely ignored by the historiography so far, as researchers have preferred the colourful records of criminal lawsuits. Historians of early modern France, both French and Anglo-Saxon, are progressively redressing this gap and are starting gradually to focus on local courts, seigneurial justice and early modern civil procedure. Yet the perspectives of research are expanding and fields such as gender, economics and emotions, among others, could greatly benefit in the years to come from not only an interest in civil court records but also in new historical methodologies.

⁹⁴ This example belongs to a broader project tentatively titled : « Peasants and their Emotions in Early Modern France, 1650-1789. Local Economy, Legal Culture and Gender »

Appendix

Categories	Description of cases
Debt (This category ultimately calls for several subcategories)	Repayment of debt/loan, recognition of debt, money owed, sale credit, bankruptcy, <i>saisie</i> (seizure of goods)
Inheritance	Inheritance dispute concerning share of the deceased's property, broken seal on the deceased's property, condition of the transmission of property, conflict over the share received by the heirs, liquidation of dowries.
Property	Litigation over the ownership of a piece of land/house, placement of boundary stones, litigation over the harvest and the limits of the property, litigation after the sale of a piece of land, damage caused by cattle/vandalism on property
Ordinary Violence	Ordinary violence cases involving battery, assault, physical attacks of persons, threats, and insults. These cases are usually treated as criminal cases but they appear in good number in the civil litigations records.
Social behaviour	Reprehensible social behaviour such as public intoxication, pregnancy out of wedlock, blasphemy, illegal work on a Sunday, church attendance, nocturnal disturbance, recognition of an illegitimate child, etc. These cases tend to disappear from the civil records in the second part of the eighteenth century.
Separation of property	Separation of property and dispute over separation of property.
Community	Litigation concerning the management of the community as a legal and administrative entity: issues over elections of its representatives, litigation over the accounts of the community and the management/payment of taxes, inter-community litigation over wood, fields, etc; <i>chastois</i> (payment of damage to communal property), litigation over rights and prerogatives of <i>bourgeois</i> , and also litigations about the management of the church vestry (<i>fabrique</i>) and its accounts.
Cost of justice	Litigation concerning the payment of legal fees, payment of judicial officers wages
Wages/Pensions	Litigation concerning the payment of wages (especially rural and domestic wages) and pensions
Conflict with the authorities	Litigation with the seigneur involving seigneurial rights, monopolies, commons, seigneurial taxes (<i>cens and corvées</i>), royal taxes (<i>taille, épis du Rhin</i>), ecclesiastical taxes (<i>dîme</i>), purchase of salt, illegal fishing, illegal poaching, illegal use/theft of seigneurial wood.
Guardianship	Litigation over guardianship legal procedures, management of children's money/estate, curatorships, tutorships.
Other	Unique cases, cases that do not fit in any description above
Unknown	Unknown cases, missing part of the document

Table 1 Classification and typology of litigation at the civil court records

