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Chapter 1

TINY COURTS, INCOMPETENT JUDGES?

The village of Jullenay straddled the border between the territories of the Paris and Dijon Parlements. The only high-justice lord of the village, Etienne Philibert Debadier, had one set of officers to judge the village, but these officers theoretically sat over two different courts, depending on the residence of the litigants.¹ In 1741 the lord complained that each time he began a court case against villagers, they “took no time to propose a change of venue [*déclinatoire*], and to maintain that they were from the jurisdiction of the other court.” Debadier himself had been the victim of such action in the 1730s, in a case that went all the way to the Royal Council. This expensive case made him decide to have the village surveyed and the borders of the two provinces and justices clearly established.

Geographic jurisdiction was complicated in Jullenay. Many cases led to requests for a change of venue, suggesting not only the lack of rationality in the administration of justice but also the exasperation ordinary people may have felt with the judicial system. This village, then, seems illustrative of many of the criticisms historians have directed against seigneurial justice in the ancien régime. They have complained that geographic jurisdiction was too divided, too irrational, and too arbitrary. André Giffard estimated that in Brittany in the early eighteenth century there was an average of two seigneurial courts per parish and sometimes as many as thirty courts within one parish.² Abel Poitrineau reports that in Auvergne seigneurial justice was so complicated royal administrators did not know where one court began and the next one ended.³ The result was that by the late eighteenth century plaintiffs simply stopped going to court in a system they could not navigate or even understand.

Closer analysis of the strange case of Jullenay, however, allows us to distinguish powerful forces pushing seigneurial justice toward a clear definition of judicial geography. The surveying Debadier commissioned began with an invitation to the villagers to testify to the location of the borders between the two justices. The inhabitants refused, and two villagers responded insolently and were fined for contempt of court by the seigneurial judge. When the surveyors arrived, nine members of the community gathered shovels and pitchforks and forcibly stopped the experts, filled

in the hole the workers had dug as border markings, threw stones, and threatened the surveyors. The officers summoned the heads of household—married men and widows—to attend assizes (annual meetings between the court and the village) for each of the two courts, but none came, other than “a horde of women, who had no place at the Jours [assizes], and had come only to cause disorder.” More fines seemed to accomplish nothing, so the lord called in soldiers, who were sent packing by a group of men armed with pitchforks and pickaxes. In response to this armed rebellion, the seigneurial court began criminal proceedings against twenty-two men and ordered them all imprisoned pending investigation.

The inhabitants were opposed to what seemed to be the clarifying of geographic jurisdiction in their village. This was not because they preferred one court over the other—the officers and lord were the same, after all. The reason for their violent opposition was that the judicial confusion provided an opportunity to protest the lawsuits their seigneur initiated against them. “This division is more tiresome and onerous for the lord than for the inhabitants, for whom it provides at all times an occasion for disputing.”

What is most important in this story, though, is not that the villagers opposed the surveying, but that the lord initiated it. Like all seigneurs, Debadier used his court, staffed by his own choice of judge, prosecutor, and clerk, to collect his dues and protect his property and rights. If the court was rendered useless because of uncertain jurisdiction, the lord’s ability to use his court was hampered as much as that of the nonnoble clients of the court. It was the link between justice and seigneurial authority that led to the attempt to bring clarity to a confused situation.

The desire of lords to use their own courts to protect their authority and property rights maintained the vitality of seigneurial justice by ensuring that lords knew not only who their *consitaires* were but who their *justiciables* were as well. In addition, seigneurial courts in northern Burgundy held annual assizes, a practice that had fallen into disuse in much of France. Since all heads of household within the court’s jurisdiction were required to attend (the judges took attendance), this meant not only that lords knew what peasants lived within their justice but also that all peasants knew which court should hear their disputes.

There was, then, a practical workability to seigneurial justice that ensured that ordinary people knew what court should hear and settle their disputes. This calls into question the idea, frequently repeated, that seigneurial courts increasingly lost cases to royal courts.⁴ This attrition was supposedly part of the strategy of royal administrators to centralize and modernize state institutions. It also occurred because royal courts offered quicker, more reliable service to judicial clients than they would receive in the increasingly abusive seigneurial courts. In opposition to this vision of rationalizing state centralization, this chapter demonstrates that even in 1789 seigneurial courts

remained the justice of first instance for most country dwellers, while royal courts were reserved either for appeals or for the urban elite.

While admittedly complicated in theory, jurisdiction in seigneurial courts worked simply enough in practice that most ordinary people could understand it. There were occasional jurisdictional disputes between various high-justice lords, but with an examination of historical title and some surveying, the judges of northern Burgundy's higher courts were always able to settle the matter and draw jurisdictional lines between seigneurial courts. The courts were, it is true, too small to allow a judge to make a decent living, but this did not favor the selection of untrained judges or demands for bribes. To the contrary, lawyers from the cities accumulated several judgeships and continued practicing as lawyers. The relatively small number of judges that sat over a large number of courts also made it easier for the bailliages and parlement to exercise oversight and control over the province's many courts.

The Geography of Justice

Counting the number of functioning seigneurial justices is not an easy task. Seigneurial clerks were supposed to hand over all judicial papers to the state during the early stages of the Revolution, but it is unlikely that the archives of all seigneurial justices ended up in departmental archives.⁵ Historians working on other regions of France have used reports prepared by intendants, parlements, and bailliages to count the number of seigneurial courts. In Angers, for example, Sylvain Soleil found a detailed inquiry into seigneurial justice. The officers of the presidial court required each seigneurial court to justify the lord's possession of high justice. They also requested a list of the parishes under the control of the court and the days of the week the court met.⁶ Similar enquiries were carried out in Brittany and in the *généralité* of La Rochelle.⁷

No comparable inquiry was ever carried out in Burgundy. There is no mention made of such a report in the administrative correspondence concerning the province in the National Archives, nor is any such report housed in the intendant's files in the Departmental Archives of the Côte d'Or.⁸ There is one administrative report that gives an approximate estimate of the number of seigneurial courts in Burgundy, but it is impressionistic and the number is probably inflated. In 1780 Sieur Acher de Montorval, first secretary of the intendance, prepared a report on the administrative powers of the intendant and the way the province was governed.⁹ This report begins with a description of the province obviously written to impress the reader with the size, population, and administrative complexity of the province. The intendant sits over a generality of more than twelve hundred square leagues

and about “eleven hundred thousand inhabitants.”¹⁰ Here is his description of the judicial system of the province:

There is a Parlement that is also a *Cour des aides*, a *Chambre des comptes*, a *Bureau des finances*, eight presidial seats, 22 royal bailliages of which three appeal to the Parlement of Paris that extends onto part of Burgundy, a *Table de marbre*, nine *mâitrises des Eaux et Forêts*, five *élections* of which three appeal to the *Cour des aides* of Paris, and two to that of Dijon, 35 *greniers à sel* and over 3000 seigneurial courts, nine seats of the *maréchaussée* and 43 brigades commanded by a *prévôt général*.¹¹

While the intendant and his staff may have had only an approximate idea of the number of seigneurial courts in the province, the same was not true of the officers of the superior courts, who kept lists of seigneurial courts within their jurisdiction. The Parlement of Dijon frequently issued general *arrêt*s on matters of rural police and ordered them to be sent out to all seigneurial courts and read to the inhabitants at the annual assizes, a responsibility that fell on the bailliage officers.¹²

The actual lists kept by each bailliage for this purpose seem to have disappeared, but other documents copied from them have sometimes come to light. An *arrêt* of parlement ends with a list of the “inferior courts that appeal to the bailliage of Beaune.”¹³ And a letter from a lower officer of the bailliage of Saulieu to each seigneurial court likewise listed the courts to which the letter was to be sent.¹⁴ In addition to these two documents, the *Almanach de la province de Bourgogne* annually published a list of all seigneurial courts in the bailliage of Dijon, along with the names of the officers that staffed these courts.¹⁵ The population, number of parishes, and number of seigneurial courts are presented for these three bailliages in table 1.1. The bailliages of Beaune and Saulieu had approximately the same number of seigneurial courts as they had parishes, while the bailliage of Dijon had almost two parishes per seigneurial court—approximately one court for each 600 inhabitants for the bailliages of Saulieu and Beaune, and about one court per 800 inhabitants in the bailliage of Dijon.

The size of the territory covered by a court varied widely, and a rough average disguises this fact. Still, as many as half of the courts were contiguous with villages. Of the three sources described above, only that for the bailliage of Beaune indicates which villages were under the authority of each court. As we can see in table 1.2, there were 41 courts (53.2 percent) that sat over only one village. There were a few very large courts (five had more than seven villages), and some villages were split between several courts. If a substantial proportion of courts were contiguous with a single village, it is nevertheless true that only about one village in five had its own seigneurial court. Half of villages were part of seigneurial courts that sat over fewer than five villages.

Table 1.1. Seigneurial courts in three bailliages, late eighteenth century

	Bailliage of Dijon	Bailliage of Beaune	Bailliage of Saulieu
Number of parishes ^a	139	77	39
Number of seigneurial courts ^b	90	77	41
Courts per parish	0.65	1.00	1.05
Population in 1786 ^a	74,097	41,675	24,648
Courts per 1,000 inhabitants	1.21	1.85	1.66

^a ADCO L496, Amelot census, 1786.

^b For Dijon: *Almanach*, 78–98. For Beaune: BM Dijon, MS 1307, “Recueil d’Arrêts du Parlement de Dijon.” vol. 4, *arrêt* 11 May 1767. For Saulieu: ADCO B2 424/2, seigneurial justice of Aisy, Pont d’Aisy, letter 30 November 1783.

Table 1.2. Geography of justice: Villages within the jurisdiction of seigneurial courts, bailliage of Beaune, 1767

Villages within the jurisdiction of a seigneurial court	Number of courts	Percentage of courts sitting over the corresponding number of villages	Percentage of villages
1	41	53	21
2	12	18	7
3	9	12	14
4	3	4	6
5	5	6	13
6	1	1	3
7	1	1	4
8	2	2	8
10	1	1	5
13	1	1	7
14	1	1	7

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