Humble Petitioners? Seigneurial Courts, Royal Justice and the Role of Litigants in the Eighteenth Century

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In 1758 a *vigneron* named Simon Labeusse interrupted some timber cutters in south-western France, claiming that his forebears had planted the trees they were felling, and therefore he owned them. The carpenters duly stopped work and summoned the man who had employed them, Senguinet de Buros, a seigneur and aristocrat (*écuyer*). After an exchange of views, as one workman subsequently recalled, the nobleman closed the discussion with some advice for Labeusse, telling the *vigneron* that "if the oak trees are his, he has only to prove it: justice is available (*ouverte*)." So Labeusse consulted a lawyer who drew up the illiterate plaintiff's "humble petition" to have this dispute heard in court. However the *vigneron* did not approach a seigneurial jurisdiction near the site of the alleged offense in Renung (department of the Landes); his complaint was filed instead with the judicial officers of the royal forestry administration, the Eaux et Forêts.[1]

This case study provides an entry point for consideration of two themes that loom large in histories of the criminal justice system in Old Regime France: the relationship between seigneurial and royal jurisdictions, and the uses that ordinary people made of the courts. I would like to take issue with some recent analyses of the Old Regime's judicial system that focus primarily on magistrates and lawyers, thereby tending to conflate the competence and authority of different jurisdictions. Using examples of woodland contention in south-western France I argue firstly that it was litigants who played a large part in determining the course and outcome of a

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[1] Bordeaux, Archives départementales de la Gironde [hereafter ADG] 8B 142, Eaux et Forêts de Guienne. Procédure, Auditions, informations et divers, *Information* (17 Apr. 1758).

"disputing process" in Old Regime France.[2] Secondly my research into cases that were presented to local courts and the judicial authority of the Eaux et Forêts suggests that the parties to woodland disputes were well aware of the distinctions that existed between various "levels" of the eighteenth-century judicial system and considered these differences to be both important and useful.

In the normal course of events a dispute like Labeusse's would have been presented to one of the many seigneurial courts that covered Old Regime France. Royal jurisdictions heard few such cases: in the two *sénéchaussées* of Libourne and Bazas (department of the Gironde), Julius Ruff found details of about 179 thefts across the eighteenth century, of which stolen wood contributed less than 7 per cent of the total.[3] By contrast the surviving records of three seigneurial jurisdictions in the central Périgord belonging to the Marquis de Hautefort (Thenon, Lamothe and Lerm) documented several woodland offenses, mostly during the second half of the century: twenty-four cases of wood theft and tree cutting, plus six cases of allowing livestock to graze illegally in woodlands.[4] These were all matters that were handled by the procedures of criminal prosecution, but we know that many wood thefts were judged summarily or resolved through negotiation. Jeremy Hayhoe's study of seigneurial justice in northern Burgundy found that "wood thefts vastly outnumber[ed] all other criminal offenses," although most were handled expeditiously at the annual "assizes."[5]

Such cases abound in the surviving files of the lowest courts in Old Regime France not simply because they reflected the importance that rural people attached to property and access to essential materials like timber, but also because disputes of these kinds often reflected a struggle for status and pre-eminence in small, face-to-face communities. In our opening example there did not appear to be much at stake – the trees may have been large oaks, as Labeusse claimed, but even he admitted there were only a few of them, and the disputed area of land was small (amounting to only fourteen *lattes*, or about 0.37 hectares).[6] By comparison the social distance between an illiterate *vigneron* and a seigneurial lord suggested stark disparities of wealth and power. Yet a case like this also serves to highlight some recent trends in the historiography of the law and criminal justice in Old Regime France.

Historians have long felt that the eighteenth century was the period in which royal justice generally succeeded in supplanting the "private" jurisdiction of seigneurial courts. The inadequacies of seigneurial justice were well known in Old Regime France, dating back at least to the writings of men like Charles Loyseau in the

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[2] This term is borrowed from Laura Nader and Harry F. Todd, jnr., eds., *The Disputing Process: Law in Ten Societies* (New York, N.Y., 1978).

[3] This compared with cash and other valuables (22 per cent of cases), foodstuffs (12 per cent), livestock (11 per cent), or household effects and clothing (9 per cent): Julius R. Ruff, *Crime, Justice and Public Order in Old Regime France: The Sénéchaussées of Libourne and Bazas, 1696-1789* (London, 1984), 134.

[4] Périgueux. Archives départementales de la Dordogne. Cours et juridictions. Juridictions secondaires, 'Jugements, procès-verbaux, procédures.' 2B 743–745, Juridiction de Thenon (1738–90); 2B 747, Juridiction de Lamothe (1741–90); 2B 748, Juridiction de Lerm (1759–90).

[5] Jeremy Hayhoe, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (Rochester, N.Y., 2008), 66 and 247 n.20.

[6] Paul Burguburu, "Métrologie landaise: vieilles dénominations, vieux poids, vieilles mesures," *Bulletin de la Société de Borda* 46 (1922), 67-68.

early seventeenth century.[7] Concerns and criticisms loomed large in pamphlet literature during the eighteenth century and were prominent features of many *cahiers* in 1789: judicial proceedings were allowed to drag on, at great cost to the parties; seigneurial officials not only had a reputation for incompetence, but were often corrupt; and court premises were ramshackle, where they existed at all. In many parts of the countryside, in fact, local justice was dispensed from the judge's home, the church porch, or even a tavern. In its August decrees "on feudalism" in 1789 the National Assembly proclaimed the abolition of seigneurial courts without indemnity, and no subsequent French government took steps to revive them.[8]

Twentieth-century scholars often disagreed, however, on the role and vitality of seigneurial justice under the Old Regime. Many were convinced that the "private" justice dispensed by the seigneurial courts served primarily to reinforce the lord's authority by cheating and oppressing the local population. Like the commentators and critics of the Enlightenment these historians regarded seigneurial justice as a medieval hangover that was incompatible with institutional or political modernity and the expansion of the "public sphere" during the second half of the eighteenth century. Plenty of evidence supports this view. Anthony Crubaugh's recent study of the region that in 1790 became the department of the Charente-Inférieure (later the Charente-Maritime) highlighted the enthusiasm of ordinary people for the speedy, accessible and inexpensive justice offered by the Revolution's *juges de paix* – a far cry in all these respects from the activities of pre-1789 seigneurial judges who were venal officers appointed by the lord.[9]

Other studies found, however, that local courts were often moribund by the second half of the eighteenth century when, with the encouragement of government legislation, most litigants preferred to turn to the greater certainties of royal justice.[10] Some historians were decidedly positive, pointing out that eighteenth-century records show how rarely these courts were involved in enforcing the seigneur's demands and how frequently rural inhabitants had recourse to their local jurisdiction for a host of everyday concerns.[11] Like the vast majority of woodland disputes, whether brought before the judicial officers of the Eaux et Forêts or heard in a local court, Labeusse's case was essentially a civil suit to be dealt with by the procedures and prescriptions of "private law" (*droit privé*).

Historians have simultaneously remarked how the formalities of the Old Regime's local courts were closely concerned with the rhythms of rural life and rites of passage: judicial officials were approached routinely and willingly when it came to appointing a guardian, granting a person's legal majority, publicizing the date of the

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[7] For a useful summary and contextualization, see François Brizay and Véronique Sarrazin, "Le *Discours de l'abus des justices de village*: Un texte de circonstance dans une œuvre de référence," in *Les justices de village: Administration et justices locales de la fin du Moyen Âge à la Révolution*, François Brizay, Antoine Follain and Véronique Sarrazin, eds. (Rennes, 2002), 109-22.

[8] John Mackrell, "Criticism of Seigniorial Justice in Eighteenth-Century France," in *French Government and Society: Essays in Memory of Alfred Cobban*, J.F. Bosher, ed. (London, 1973), 123-44; John Markoff, *The Abolition of Feudalism: Peasants, Lords and Legislators in the French Revolution* (University Park, Penn., 1996).

[9] Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France, 1750-1800* (University Park, Penn., 2001).

[10] For example Jonathan Dewald, *Pont-St-Pierre, 1398-1789: Lordship, Community and Capitalism in Early Modern France* (Berkeley, 1987).

[11] For example Anne Zink, *Clochers et troupeaux: Les communautés rurales des Landes et du Sud-Ouest avant la Révolution* (Talence, 1997), 163-87.

grape-harvest, identifying a corpse, overseeing a property valuation, setting the price of meat, dissolving a marriage contract (usually in response to a wife's petition to safeguard her dowry), or compiling the inventory of a deceased estate. The prominence of such procedural activities among the dossiers of seigneurial jurisdictions tends to confirm Olwen Hufton's conclusion that rural communities valued the local courts of the Old Regime.[12]

This trend to reassess the activities, usefulness and vitality of the Old Regime's seigneurial courts amounts to what Benoît Garnot called a "rehabilitation" of the Old Regime's system of seigneurial justice.[13] In several recent studies that view has been reinforced.

Jeremy Hayhoe examined fourteen seigneurial jurisdictions in northern Burgundy, as well as hundreds of *cahiers* from the region. He found that local justice in this area was generally appreciated for its capacity to serve the interests of the population: the courts sat often; they were nearby – few were more than about fifteen kilometers away from villages in their jurisdiction – and according to the judicial calendars (the registers of audiences between a judge and the parties to a dispute), cases were concluded reasonably quickly. By 1789 people in this region seemed generally satisfied with the delivery of local justice. The courts' actions to enforce seigneurial demands nonetheless constituted a notable exception: many parish *cahiers* called for "reform" of the lords' ability to influence judicial proceedings.[14]

Fabrice Mauclair studied the well-preserved records of one large seigneurial jurisdiction in the Touraine. The distinctive contribution of this research was Mauclair's ability to canvass the whole range of the court's activities and to track its shifting priorities over a long time-frame from the 1660s to 1790.[15] In the course of the eighteenth century this jurisdiction handled fewer cases of civil disputes and (especially) crimes, but its central role in voluntary civil justice – dealing with requests on behalf of abandoned babies, unmarried mothers, orphaned children and legal minors – went hand-in-hand with a significant increase in the fees charged to petitioners.

Studies by Sylvain Soleil and Zoë Schneider, in Anjou and Normandy respectively, emphasized the close connections between seigneurial justice and royal justice in the eighteenth century.[16] Soleil found that seigneurial courts were increasingly involved in publicizing and enforcing the royal edicts that issued from Versailles and Paris in growing numbers, a point that Mauclair likewise highlighted. This regulatory role (known at the time by the generic term *police*) was very significant, not just because of its scope – covering as it did the multiple "material, moral and spiritual" aspects of rural life – but also because it represented a subtle shift

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[12] Olwen Hufton, "The Seigneur and the Rural Community in Eighteenth-Century France. The Seigneurial Reaction: A Reappraisal," *Transactions of the Royal Historical Society,* 5th ser., 29 (1979): 21-39; Hufton, "Le paysan et la loi en France au XVIIIe siècle," *Annales. É.S.C.* 38 (1983): 679-701.

[13] Benoît Garnot, "Une réhabilitation? Les justices seigneuriales dans la France du XVIIIe siècle," *Histoire, économie, société* 24 (2005): 221-32.

[14] Hayhoe, *Enlightened Feudalism.*

[15] Fabrice Mauclair, *La Justice au village: Justice seigneuriale et société rurale dans le duché-pairie de La Vallière, 1667-1790* (Rennes, 2008).

[16] Sylvain Soleil, "Le maintien des justices seigneuriales à la fin de l'Ancien Régime: Faillite des institutions royales ou récupération? L'exemple angevin," *Revue historique de droit français et étranger* 74 (1996): 83-100; Zoë Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740* (Rochester, N.Y., 2008).

in emphasis: in many areas these courts were becoming less closely bound up with other sources of collective authority at the level of the parish, the village and the community.[17]

Another important point of contact between royal and seigneurial justice under the Old Regime was one that Soleil called "sociological": judges, lawyers and court officials received the same sorts of training during the eighteenth century, whether they ended up working in royal jurisdictions or seigneurial ones. Officials in the royal courts were reasonably effective in monitoring their seigneurial counterparts precisely because of their shared expertise and a concern to defend their mutual interests.[18]

Indeed, as demonstrated by Schneider's examination of different "levels" of the judicial system in Normandy – seigneurial courts, local royal courts (*bailliages*), regional royal courts (*présidiaux*) and the Parlement – many legal and judicial officers held posts in several jurisdictions and at different "levels." Men who sat as seigneurial judges also appeared in the royal courts acting on behalf of clients. Such accumulation of offices was (strictly speaking) against the law, but a legal career in the eighteenth century represented an investment that was both appealing and lucrative.[19] One result was that institutional distinctions were effectively erased by the intermingling of personnel: royal justice and seigneurial justice may have been solidly established in their distinctive realms back in the fourteenth or fifteenth centuries, as Antoine Follain argued, but by the eighteenth century there was in essence just one system of justice in France: that of the king.[20]

Much of this work tends to focus on the attitudes and activities of judges and lawyers, but I prefer to turn attention back to the litigants and their relationships with the court system. Let us begin by recalling the 1758 case of Simon Labeusse, the Landais *vigneron*. This man may not have owned much land and was unable to sign his name, but in his efforts to take advantage of the justice that was "available" – according to the unsolicited advice of his noble adversary – he made some useful decisions. At the outset he approached a well-placed lawyer with a big-city practice and widespread experience in handling woodland disputes in south-western France. This meant the *vigneron*'s complaint was presented in persuasive terms to a powerful royal jurisdiction: the judicial officers of the Eaux et Forêts in Bordeaux. The royal foresters then authorized the royal court at Grenade (Landes) to handle the local proceedings because of the distance involved: about 150 kilometers separated the provincial capital from the site of the alleged offense in the parish of Renung, not far from the River Adour.[21] This was not unusual: detailed analysis of the eighteenth-century Eaux et Forêts records by Philippe Crémieu-Alcan shows that most woodland offenses in the south-west that were reported to the royal forestry officials did not come from the immediate vicinity of Bordeaux. Cases from the Landes amounted to 21 per cent of Crémieu-Alcan's sample, which suggests that Labeusse's lawsuit was one of more than 460 that were referred to the royal foresters from this region.[22]

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[17] Soleil, "Le maintien des justices seigneuriales," 87-89.

[18] Soleil, "Le maintien des justices seigneuriales," 90-91.

[19] Schneider, *The King's Bench*, esp. 47-94.

[20] Antoine Follain, "Justice seigneuriale, justice royale et régulation sociale du XVe au XVIIIe siècle: Rapport de synthèse," in *Les justices de village*, Brizay, Follain and Sarrazin, eds., 20.

[21] ADG 8B 142, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Plainte* (14 Mar. 1758).

[22] Philippe Crémieu-Alcan, "Les limites du pouvoir royal au XVIIIe siècle, à travers l'exemple des délits forestiers dans la Guyenne" (paper presented to 20th Annual Conference of the Society for the

Labeusse's complaint may seem rather trivial and some of its details difficult to verify, but the documents generated by the *vigneron*'s litigation also highlight the steps by which many judicial proceedings unfolded during the eighteenth century. It was essentially an accusatory process that relied on the plaintiff to initiate proceedings – the *vigneron* was a private individual, but public prosecutors could also take on this role in cases that were deemed to be serious, such as homicide, sedition, rioting or infanticide.[23] The plaintiff was also responsible for paying the costs of prosecution: not just the fees charged by his lawyer, but the allowances and expenses of the judges, clerks and bailiffs, and even the reimbursement of witnesses, not to mention the cost of official paper and associated taxes.

This was also a procedure that relied on plaintiffs to drive the process forward, especially in the early stages. In "private" prosecutions like the *vigneron*'s there was a good deal of scope for plaintiffs to influence the course of events: they were the ones who decided initially whether or not to launch a lawsuit; they could usually choose the jurisdiction; they supplied a good deal of the information that went into the judge's report of the damage cause by the alleged offender; and they nominated the witnesses. Plaintiffs could also keep a court action bubbling along if it suited them, by reconvening the court in order to present additional witnesses, for instance, or by demanding that further charges be added. The prospect of drawn-out litigation was enhanced by the multiplicity of often overlapping jurisdictions in Old Regime France: a stalemate or even a loss in one court might simply lead to further litigation in another.

Cases nevertheless lapsed if the prosecutor got sick or died; if plaintiffs ran out of money; if they reached a settlement with the opposite side; or if they simply lost the will to continue the struggle. This meant that the judicial process operated as a kind of filtering mechanism. Some litigation seemed to lapse almost as soon as it had begun, but other cases dragged on, sometimes for years or even decades. After the initial steps, of course, judges could play a larger role. They might decide, for instance, that the evidence offered by the plaintiff and witnesses was insufficient and therefore decline to issue the writs requiring the accused to present themselves for questioning. Surveying criminal prosecutions in eighteenth-century Brittany, Louis-Bernard Mer found that about one-half of all cases consisted of no more than the initial complaint and the witnesses' testimonies. The filtering did not end there, however, because even after the accused had been formally questioned, there was room for judges to accept their explanations. If that occurred, the matter might go no further. In Brittany about 85 per cent of cases did not go beyond the interrogations, which was the point at which the judges made crucial decisions about the nature of the charge(s) and the evidence. Only around 15 per cent of criminal cases were pursued, whether because the matter was deemed sufficiently serious or the evidence was considered conclusive, and it was only in these circumstances that the accused's guilt or innocence was actually put to the test.[24] When it came to civil disputes and

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Study of French History, Brighton, U.K., July 2006). I am very grateful to M. Crémieu-Alcan for allowing me to cite his research.

[23] Nicole Castan, *Justice et répression en Languedoc à l'époque des Lumières* (Paris, 1980), 14; Steven G. Reinhardt, *Justice in the Sarladais, 1770-1790* (Baton Rouge, La., 1991), 99-102. An example of one carefully documented prosecution is Alfred Soman, "Anatomy of an Infanticide Trial: The Case of Jeanne Bartonnet (1742)," in *Changing Identities in Early Modern France*, Michael Wolfe, ed. (Durham, N.C., 1997), 248-72.

[24] Louis-Bernard Mer, "La procédure criminelle au XVIIIe siècle: L'enseignement des archives bretonnes," *Revue historique* 109:274 (1985): 12.

"private" prosecutions, the filtering was even more startling: Ruff identified 842 such matters in the *sénéchaussées* of Libourne and Bazas in the Bordelais, of which only 4 per cent reached a definitive judicial verdict.[25]

Taken together these observations are a useful reminder that judicial proceedings in Old Regime France were "partial" in more than one sense. They were partial because litigation was initiated and developed at the behest of the plaintiff. Invariably it was the plaintiff's side of the story that was heard and, therefore, documented. Unless the accused undertook to launch a counter-suit, they had no opportunity to present testimonies from their own witnesses. The filtering mechanism outlined by Mer explains why so much of the judicial documentation is also partial in the sense of being fragmentary. Many records have been lost or destroyed, of course. But the propensity for legal action to break down (often at the instigation of the plaintiff), together with the range of potential jurisdictions, means that many of the accessible archival holdings contain only scraps of documentation about specific cases.

Historians of Old Regime justice are usually left to presume that an incomplete file meant that the parties were able to reach some kind of settlement. But unless there is documented confirmation of that outcome – a notarized agreement, for example, a letter, or even a marginal note – our conclusions are often speculative.
Much of this discussion is borne out by evidence from the *vigneron*'s litigation in 1758: Labeusse had a deed drawn up by a royal notary, and his complaint was sent directly to the Eaux et Forêts in Bordeaux. Then, once the forestry officials issued their authorization to proceed, four witnesses were summoned to appear before the royal judge in Grenade to testify about their knowledge of the allegations. In this instance, the witnesses were all laboring men aged between fifty and seventy who were unable to sign their names. They all knew the parties to the dispute, and they all confirmed every part of the plaintiff's case. Within three weeks, the *vigneron* had his lawyer send the witnesses' statements to Bordeaux, along with a strongly worded plea for the forestry officials to give him "justice." The public prosecutor (*procureur du Roi*) of the Eaux et Forêts duly recommended that Senguinet de Buros, the noble seigneur who employed the carpenters, be served with a writ requiring him to present himself in Bordeaux for interrogation. But there are no further documents in this file.[26]

Contemporary cases from the same area offer some hints about what may have been going on here. In June 1758 Jean-Pierre Bonnefemme, a merchant from Grenade, complained to the forestry officials in Bordeaux, blaming a sharecropper named Jean Farbos for allowing his sheep to graze in a coppice of young chestnut trees that Bonnefemme owned in the parish of Renung. In line with the legal formula of the period, this appeal to the judges was made "humbly."[27] At least in its initial stages the ensuing procedure was identical to Labeusse's case: the Eaux et Forêts authorized the royal court at Grenade to handle the local proceedings, which amounted to summoning five witnesses to testify about their knowledge of the plaintiff's allegations. Again they were all mature working men, but three of their

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[25] Ruff, *Crime, Justice and Public Order*, 46 (Table 3.01).

[26] ADG 8B 142, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Acte* (6 Mar. 1758), *Plainte* (14 Mar. 1758), *Information* (17 Apr. 1758); *Appointement* (2 May 1758).

[27] ADG 8B 144, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Plainte* (6 June 1758). Deciphering this plaintiff's name is not easy. cf. Jacques Lerat, "Délits forestiers dans le département des Landes de 1750 à 1770," *Bulletin de la Société de Borda* 111 (1986), 21.

testimonies were decidedly equivocal about whether the accused's animals had ever damaged Bonnefemme's property. After that there seemed to be a hiatus of eight months until April 1759, when Bonnefemme and his lawyer suddenly revived the case, asking for a judicial inspection of the damage caused by Farbos's flock. The royal judge of Grenade duly spent half a day traveling to Renung and drawing up a sketchy report that did not quite meet the requirements of the 1669 Ordinance of Waterways and Forests: the land area and its boundaries were not established and the number of damaged trees and their dimensions were not detailed. For this Bonnefemme had to pay over 30 *livres* to the judge, his clerk and the lawyer. A subsequent petition to the Eaux et Forêts resulted in the forestry officials' prosecutor recommending that a writ be issued against Farbos, and the following month, the sixty-year-old sharecropper traveled to Bordeaux. He was interrogated about the charges against him, and denied most of them, claiming that his sheep had plenty of fodder and blaming other people's animals for damaging Bonnefemme's young trees.[28]

Again matters seemed to lapse for several months, but in February 1760 Bonnefemme opened a new case against Farbos. This second complaint to the Eaux et Forêts was essentially the same as the first, and again local proceedings were handled by the court in Grenade. Some of the same witnesses testified, and again Farbos – still aged sixty – was required to travel to Bordeaux for questioning.[29]

There were some revealing differences between the cases, however. Under interrogation by the forestry officials Farbos expanded upon his identification of the "other people" whose animals were allegedly responsible for the damage: prime among them, with a flock of over 100 sheep, was the key witness against him – Bonnefemme's own tenant, a "stranger" who came from the Béarn. As we know from the work of rural historians, seasonal transhumance from the Pyrenees was actively encouraged by Landais landowners, who were always anxious to enhance the fertility of their impoverished soils.[30]

Also significant were the few hints that Bonnefemme provided about what else had been going on behind the scenes. After the initial testimonies by Bonnefemme's witnesses in August 1758, Farbos had sought to have the case "civilized" – effectively, to have a settlement negotiated. This was apparently not achieved because Bonnefemme reopened hostilities in April 1759, which led Farbos to respond with a lawsuit of his own in September 1759. Bonnefemme went on to complain that, although he knew of this counter-claim's existence, Farbos had still not seen fit to take the step of applying for a court injunction that would allow (and indeed compel) Bonnefemme to answer the charges against him.[31]

These twists and turns highlight the central role of litigants and make it clear that it was the plaintiffs rather than the judicial officers who made the crucial

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[28] ADG 8B 144, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Information* (9 Aug. 1758), *Procès-verbal de visite* (10 Apr. 1759), *Supplique* (3 May 1759), *Audition* (30 May 1759).

[29] ADG 8B 151, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Plainte* (11 Feb. 1760), *Information* (26 Feb. 1760), *Supplique* (31 Mar. 1760).

[30] ADG 8B 151, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Audition* (8 May 1760). On transhumance pastoralism in this region, see Antoine Richard, "Le département des Landes au début du XIXe siècle," *Annales historiques de la Révolution française* 3 (1926): 565-77; Jean-Marc Moriceau, *Histoire et géographie de l'élevage français, du Moyen Âge à la Révolution* (Paris, 2005), 342-44, 366, 369 and 382; Henri Cavaillès, *La transhumance pyrénéenne et la circulation des troupeaux dans la plaine de Gascogne* (Paris, 1931).

[31] ADG 8B 151, Eaux et Forêts de Guienne. Procédure, Auditions, [etc], *Plainte* (11 Feb. 1760).

decisions about the form and timing of a disputing process. The plaintiffs – Labeusse, Bonnefemme and Farbos – were also the ones who determined the jurisdiction in which these features of their dispute were played out. Taking a case to a local court had its advantages, as several recent studies have pointed out: the judge and court officials were known in the community, the court sat regularly, and the expenses of providing witnesses and expert testimony were kept in check. Philippe Crémieu-Alcan has further noted that local litigation could also be useful to a plaintiff, because the summoning of witnesses and other activities by the court officers helped to turn a "private" prosecution into a matter of "public" interest – as Bonnefemme became aware towards the end of 1759. In certain circumstances this might allow a litigant to shame an opponent in the eyes of community opinion, although publicity of this kind could also encourage the parties to find an out-of-court settlement, perhaps because their families and neighbours pressured them to compromise.[32]

Scholars who are keen to "rehabilitate" the Old Regime's seigneurial courts and the justice system more generally have paid a good deal of attention to the ways in which judges were flexible in applying the provisions of the law. Court officials were not only adjudicators but were equally adept at resolving local disputes through mediation, conciliation or arbitration. These were the hallmarks of a *justice de proximité* that was capable of meeting local needs in the eighteenth century.[33] By contrast, however, when a plaintiff took his or her case to a distant authority like the Eaux et Forêts, the accused could easily face very significant costs in terms of both time and money. Such decisions by a plaintiff might therefore be punitive in intent.
There is another aspect of judicial proceedings conducted by the Eaux et Forêts, however, and it is one that is easy to miss among the eighteenth-century legalese of the surviving documentation. Most woodland disputes were essentially civil matters that arose between "private" parties. Yet every case that was accepted by the judicial officers of the Eaux et Forêts included a note by the *procureur du Roi* detailing the specific breach (or breaches) of Louis XIV's landmark legislation, the 1669 Ordinance of Waterways and Forests. Thus when plaintiffs invoked the judicial authority of the royal forestry officials, their complaints were effectively redefined as "criminal" offenses, and thereby became matters of "public" concern. The plaintiff usually remained responsible for the timing and financing of the prosecution, but official endorsement by the Eaux et Forêts represented the addition of significant weight to one side of a woodland dispute.

If local judges in both royal and seigneurial courts were often adept at applying the king's laws with discretion, to the mutual satisfaction of the parties – as the recent historiography insists – then we must also recognize that plaintiffs could make conscious decisions about shaming or punishing their adversaries. Differences among the various "levels" of the Old Regime's judicial system may have appeared insignificant to criminal justice "insiders" like lawyers and judges, but disparities of jurisdiction, competence and distance offered important opportunities that could be exploited by ordinary litigants in the course of a dispute. George Rudé was one of the

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[32] Pers. comm. (Dec. 2009). See also Philippe Crémieu-Alcan, "La forêt pour le plaignant: Les délits forestiers en Guyenne au XVIIIe siècle," in *La Forêt: Perceptions et représentations*, Andrée Corvol, Paul Arnould and Micheline Hotyat, eds. (Paris, 1997), 121-31.

[33] *L'infrajudiciare du Moyen Âge à l'époque contemporaine*, Benoît Garnot, ed. (Dijon, 1996).

twentieth-century scholars who made us aware of the insights to be gained from looking at "history from below": that approach still has useful things to teach us.[34]

[34] For example George Rudé, *Paris and London in the Eighteenth Century* (New York, 1971); Rudé, *The Crowd in History* (London, 1981).