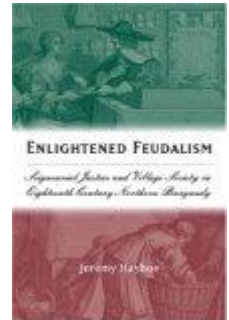


Jeremy Hayhoe. *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy.* Rochester: University of Rochester Press, 2008. xii + 309 pp. \$80.00, cloth, ISBN 978-1-58046-271-6.



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Published on H-Law (August, 2010)

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Local Justice in Eighteenth-Century France: Just Enough for Burgundy, If Not Elsewhere?

This is a work which aims to overturn many common perceptions about local justice in eighteenth-century France. Based on detailed study in and around the modern-day Côte d'Or *département*, a region of northern Burgundy falling under the close supervision of the *parlement* of Dijon, it succeeds admirably in doing so for that specific area. Whether it can legitimately claim as much for the national scene is far more of a moot point.

Hayhoe begins from the perspective of an older historiography that condemned seigneurial justice--the right of feudal lords to appoint the judges and officials who regulated village life--as either tyrannical or moribund, and sometimes both. As an institution that "combined public authority and private property" (p. 3), these courts functioned, this historiography told us, to give a veneer of legal authority to the abusive extractions of feudal lords, while also, because of their officers' laxity, venality, and muddled jurisdictions, denying the common people the everyday

justice that they were supposed to provide. Tens of thousands of seigneurial courts held sway over the legal lives of individual villages, safeguarded from effective royal oversight or reform by their very insignificance, and were an everyday instrument of oppression, untouchable until swept away by revolution. As Hayhoe points out, however, it is only more recently that historians have begun to dig into the voluminous records of such courts, bypassing the prejudices of hostile administrators on which so much earlier work was based, to dissect the actual practices of seigneurial justice. Unsurprisingly, a more nuanced picture is emerging. The value of seigneurial courts for plaintiffs in minor cases has been affirmed in some regions, while their oversight by royal authorities has been documented in others, and still other studies suggest that they were neither as costly, nor as time-consuming to use, as the older model assumed.

Nonetheless, there is still strong evidence that seigneurial justice was far from unproblematic.

Hayhoe discusses the recent study by Anthony Crubaugh of the system in the southwest (*Balancing the Scales of Justice; Local Courts and Rural Society in Southwest France, 1750–1800*, 2001), which compares it harshly with its revolutionary replacement. Courts in this region seem to have served mostly as a means for the wealthy to harass the poor for debts or feudal dues, and interpersonal disputes amongst the peasantry had slipped into a parallel realm of “private vengeance” (p. 6). Much of what Hayhoe has to say will stand in direct contrast to this grimly conflictual model.

The study embraces a diverse rural region in the general environs of Dijon, taking a sample of surviving documentation from fourteen courts that covered twenty villages. The size of communities varied from 100 to 1800 souls, averaging about 400; some were largely occupied with vine-growing, others practiced open-field farming; some had significant common lands, others had lost them to seigneurial and other enclosures; some villages had a fairly egalitarian social structure, others were sharply divided between a prosperous elite and a mass of day-laborers. Across this complex web of communities and conflicts, Hayhoe demonstrates the crucial role of seigneurial courts in the indispensable legal dimensions of everyday life.

The first chapter deals with the general institutional context, surveying the region more broadly than the fourteen courts that will later come in for detailed scrutiny. It shows that, contrary to some other regional examples, courts here generally served fairly clearly either one or several communities, with judicial boundaries that cut through villages being a relative rarity. Moreover, again in contrast to one of the standard complaints of the older historiography, nowhere in this region were there more than three levels of court to run through before appeals were exhausted—the potential for life-sapping litigatory marathons was sharply limited. Yet seigneurial

courts also retained a healthy range of jurisdictions: royal justice had not made them moribund, but in a series of reforms that continued into the closing years of the Old Regime, bound them into the wider structure of justice. Seigneurial judges retained exclusive jurisdiction over a range of rural disputes, while also becoming effectively examining magistrates for the initiation of criminal trials. In the 1780s these courts were hearing some 35 cases per 1000 inhabitants every year—evidence of an intense use. Judges were also a relatively professional grouping, despite the meager incomes that individual courts offered through fees. Well over three-quarters had law degrees or some other connection to legal practice, and only a handful of a sample of over 300 had no clear link to the profession of law. Evidence from the financial records of some judges suggests that the accumulation of several judgeships allowed someone building a legal career to earn a tidy income alongside private practice, and this seems to have been a common pattern. Thus, serving a seigneur was less a question, potentially, of being in a lord’s pocket than of building a professional profile—and in some cases, as expressed in writings on the subject, of serving society and justice.

Hayhoe’s second chapter considers directly the question of the seigneur’s interests in the courts. In addition to all the significant honorific privileges that went with the power of justice, seigneurs had a clear interest in maintaining courts that did rigorously enforce their rights. Vocal disapproval of the seigneur’s ability to get court judgments in his favor ran through the local *cahiers de doléances* in 1789. This, however, is an ironic affirmation of the way in which the courts had otherwise embedded themselves in community life: direct seigneurial litigation was a tiny fraction of the courts’ business, and the *cahiers* otherwise affirmed their value. As Hayhoe develops at length in his third chapter, the everyday role of the courts effectively hid their essential nature as instruments of the seigneur. These courts were the vital first step for rural families seeking probate

for relatives' wills, or to deal with intestacy. They dealt with thefts, assaults, and defamations, holding in check a complex culture of insult and honor with the final threat of official sanction, even if actual cases might amount to only one or two a year. More generally, through the institution of annual assizes or *Grands Jours*, at which attendance by villagers was compulsory, judges rallied the community to acknowledgment of both customary norms and a long list of regulatory measures passed by higher royal authorities.

As many studies have documented, the doctrines of *la police* attempted to impose a wide-ranging law-and-order agenda in the eighteenth century, which in some cases was little more than futile. Owners of taverns, for example, were annually enjoined not to serve alcohol to anyone who lived "within one league," while "gatherings at the time of weddings" were banned, along with a swathe of activities connected to hunting and fishing without seigneurial authority (p. 219). Hayhoe's brisk summary of the ordinances to be read out annually in the 1780s covers over three pages (pp. 219--222), much of which is concerned with controlling livestock, the timing and regulation of planting, harvesting, gleaning and foraging, the avoidance of fires, and the arrangements for tax assessment. While some might be futile aspirations, other reflected a clear need for judicial intervention. Assigning fines during the *Grands Jours* for breaches of the strictly agricultural regulations--known as *mésus*, and which Hayhoe glosses as "farming torts" (p. 82)--outweighed all other seigneurial court activity. From damage caused by straying cattle, to disputes over who owned what crop in the intricately subdivided open fields, such issues could be poisonously divisive, as well as pestilentially frequent. One village of 370 inhabitants saw 469 fines handed out for straying cattle in the 1750s, and 569 in the 1780s.

Hayhoe's next chapter places this activity in the wider context of dispute resolution, examining other quasi-judicial practices of dispute medi-

ation, arbitration, and accommodation. He argues that these formed part of a larger ecosystem of disputation and settlement, offering logical alternatives to full-blown litigation under a range of circumstances, but without excluding any social class from the judicial system. A plaintiff before a seigneurial court in the 1750s or 1780s was as likely to be a day-laborer as a lawyer (around 4 to 6 percent of cases); a vine-grower as a wealthy *fermier* (6 to 9 percent); and almost as likely a substantial cultivator (*laboureur*) as a merchant (14 to 16 percent for the former, 21 to 23 percent the latter). On scarcely more than 3 percent of occasions was the plaintiff the seigneur or his agent (pp.110--111).

The first part of the book thus ends with a convincing depiction of the seigneurial court as a necessary part of village life, in a context where that life was irremediably disputatious and built around inequalities of property and privilege. In the second part, Hayhoe considers some of the larger narratives that are challenged by this picture. His fifth chapter is an important case study of the reform and oversight of seigneurial institutions. Opening with an overview of writers against the seigneurial system in the eighteenth century, including the scathing assertions of S.-N.-H. Linguet that the courts were staffed by "peasants" (p. 139), Hayhoe goes on to show how the senior regional judges of the *parlement* of Dijon in fact oversaw local courts, and indeed worked steadily, especially in a series of landmark decrees in the 1760s, to amend, standardize, and improve their procedures and accessibility. In 1779 and 1786, semi-official handbooks of procedure were produced, which were often read out at *Grands Jours* thereafter to make the rules plain to all.

The holding of such assizes was just one of the various judicial activities that the *parlement* required seigneurial judges to confirm in writing had been carried out each year. The provincial Estates of Burgundy, political representatives of the wider social elite, also intervened in court procedures, securing royal decrees in 1773 to make ap-

peals against tax assessments that passed through the seigneurial courts cheaper and quicker, and creating a faster procedure for dealing with agricultural *mésus* disputes. Hayhoe notes how this exceptional level of scrutiny may have had something to do with the provincial elite's determination to retain their collective identity--"a kind of provincial patriotism" that embraced the close connection between local justice and higher institutions as part of their heritage, and the root of their social distinction: over two-thirds of the *parlementaires* were themselves seigneurs, after all (p. 152). Nonetheless, reforms were effective in encouraging use of the courts, and as procedures were streamlined and swifter resolution encouraged, the proportion of cases which were pursued to a conclusion rose significantly between mid-century and the 1780s. Settlement of *mésus* cases at assizes shot up thirty-five-fold thanks to radically improved protocols for documenting crop damage that delays had hitherto rendered unprovable.

In his final two chapters Hayhoe tackles the complex question of how attitudes to these institutions related to the coming of the French Revolution. One "Tocquevillian" thesis has it that increasing royal power through the regional *intendants* helped make seigneurial institutions moribund, and paved the way for their overthrow by teaching the peasantry that the authority of their social superiors was not unchallengeable. Hayhoe shows that, whatever may have been the case elsewhere, royal officials did not succeed in northern Burgundy in placing themselves between the people and the courts. Indeed, when they did try to intervene more strongly in some issues later in the century, the *parlement* of Dijon took the lead in protecting the system of local jurisdictions it had carefully nurtured from such external attack. The evidence for another traditional view, that there was a "seigneurial reaction" in the last decades of the Old Regime, is stronger--seigneurs and their agents sued peasants for infractions of their rights more than twice as often in the 1780s than in the

1750s, and sued larger groups of defendants (p. 187). This picture supports one side of an emergent picture of the "reaction": that seigneurs were squeezing more revenue from their lands by more carefully patrolling the boundaries of their entitlements; taking, as Hayhoe puts it, a more "capitalist" approach to their properties and rights (p. 189). This could extend to ruthless pursuit of payment of their traditional feudal dues, including suing for literally decades of back payments from unfortunate peasants who had lost past years' receipts, but it did not encompass the invention of new supposed rights, something widely held against seigneurs elsewhere. Ironically, improved and accelerated court procedures here worked to intensify the seigneur's ability to pressurize villagers, and this had, perhaps, served to focus minds on the inherent problems of the system as 1789 arrived.

Local *cahiers de doléances* in 1789 spoke of the problems of the seigneurial courts widely. Many of them, however, sought to enhance their effective role--a substantial minority proposed reforms that would have consolidated powers in the hands of local judges currently dispersed to other institutions, or given them summary jurisdiction of matters then subject to appeal. Some even proposed that the judicial powers of the *intendant* and the Royal Waters and Forests authority be vested in seigneurial judges. Yet a quarter of all comments also "decried the way the lord could use seigneurial justice to force payment of exorbitant and unfair dues and fines" (p. 209). While individual *cahiers* might seem relatively moderate, what their overall tenor suggested was that the "seigneurial" aspect of seigneurial justice was fast becoming intolerable. In his conclusions, Hayhoe points to the idea of communal self-regulation as a key to unravel peasant attitudes. Insofar as seigneurial courts were genuinely local, and operated within a realm of customs and assumptions familiar to local workers and property-owners, they were recognized as an invaluable part of the community's mechanisms of control and equilibri-

um. The fact of their “seigneurial” nature was accepted, until it became possible to question it, in the *cahiers*. But to change this aspect of the system would, in fact, be to abolish it and replace it with a more genuinely impartial local justice, which is just what the Revolution was to do. Ironically, despite Hayhoe’s evidence of the smooth running of the system in northern Burgundy (something which he repeatedly acknowledges is not the case in areas studied by other, even very recent, historians), in the end his evidence points towards a demand for change which was revolutionary, even if those asking for it did not realize that.

This work is a fine study of the intricate workings of early-modern local justice in France, showing both the strengths and weaknesses of a system that answered to many constituencies, and had a contentious and frequently aggrieved population to oversee. It demonstrates that, in some regions at least, there was a lively elite interest in preserving and enhancing the parts of the system that best served common interests. It also shows that, however much reformers strove to avoid the charges laid against the system elsewhere, in the end its increasingly divided nature as “public authority and private property” made its abolition, as part of the general revolutionary upheaval, unavoidable.

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Citation: David Andress. Review of Hayhoe, Jeremy, *Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy*. H-Law, H-Net Reviews. August, 2010.

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