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Zoë A. Schneider, *The King's Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740*. Rochester, N.Y.: University of Rochester Press, 2008. xvi + 326 pp. Maps, tables, appendices, notes, bibliography and index. \$75.00 U.S. (cl). ISBN 9781580462921.

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In recent years a number of studies of local courts in the ancien régime, including both seigneurial and royal jurisdictions, have been published.<sup>[1]</sup> While there is much research that remains to be done, these works are changing the way that we think about how justice was administered and how the central state impacted the lives of ordinary people. Few historians, however, have approached the question in the way that Zoë Schneider does, placing the issue of the absolutist state at the center of her preoccupations. This is a revisionist study of absolutism that attributes little real authority to the Crown to impact the lives of ordinary people. Schneider goes further than those historians who see the absolutist state as a cooperative venture between elites and the Crown,<sup>[2]</sup> arguing that the judicial and administrative authority of *bailliage* and seigneurial judges combined in almost total isolation from the prying eyes of royal administrators to construct spheres of personal power over which the monarchy had little control or influence.<sup>[3]</sup> As lower judicial officers were increasingly squeezed out of higher venal office-holding starting in the early seventeenth century, they turned instead to local governance, accumulating various kinds of lower offices and positions to ensure their control over local affairs.<sup>[4]</sup>

The research for the book consists primarily in the analysis of “a vertical slice of the court system from bottom to top” (p. 23), specifically a *présidial*, four royal *bailliages* and four seigneurial high justices in the *pays* of Caux. Schneider chose Normandy because of its proximity to Paris and the fact that it was well-integrated into the state system, and she chose to focus on the period from 1670 to 1745 because it was “an era of intense judicial activism at the top of the state” (p. 23).

The study begins with a description of the importance of local judicial officers within the towns and villages. Crucial to the book's argument are the social changes that occurred in the region over the course of the seventeenth century, namely the increasing absenteeism of the great noble families that left space for a new local ruling class made up of lower royal judicial and seigneurial high justice officers. This class of landholding local elites maintained order, protected property and managed to amass considerable wealth in doing so. To be effective a judge needed to “occupy a social berth that would give him natural authority, not merely judicial authority, over his district” (p. 61). A substantial number of local judges came from the lower nobility—over half of judges in royal courts. Surprisingly, seigneurial judges in high justices were frequently nobles, or at the very least substantial local landowners. The judges formed a coherent social grouping, cemented through marriage and god-parentage.

The authority of the judges came not only from their social position, but also from the accumulation of offices. Judges combined lower royal and seigneurial court offices, while those at the apex of the local legal elite also worked as subdelegates to the intendant or held municipal office. Schneider argues that historians have underestimated the revenues that judges took in from their work in large part because

they failed to take the many fees charged in regular cases into account (these fees are not to be confused with *épices*). But equally important was the insider knowledge that judges gained about land leases, auctions and especially guardianships that allowed them to enrich themselves by defrauding the clients of the courts. Indeed, one of the most fascinating sections of the book involves an inquiry by the Parlement of Rouen into the misbehavior of the judges and other officers within the *bailliage* and *vicomté* of Pont-Audemer. The charges directed against the officers (from the clerks and notaries up to the head judges) were mostly related to bribery and overcharging. The judges justified their behavior by claiming that they were following local practice. The final judgments of the Parlement are missing, but other records indicate that punishments, if any were indeed handed out, were lenient, demonstrating the relative powerlessness of the Crown to enforce its rules and regulations within the province. Rooting out these judges who held so many local offices would have left entire communities rudderless, a prospect not to be envisaged during the famine of 1693 when the case was being decided.

Schneider then moves on to discuss exactly what law the judges were enforcing. The law in France was made up of three separate strands: royal edicts and ordinances (so-called French law), Roman law, and custom (the Custom of Normandy, but also local customs). Questions of *droit privé* were worked out under the auspices of the Custom, and the king was “deeply restrained in his ability to make private or civil law” (p. 96). And indeed, the vast majority of cases heard in the lower courts of Normandy were decided under customary rather than royal law (although I am somewhat skeptical that it is really possible to determine that only two percent of court cases involved the application of royal law). The author nevertheless identifies several problems with the Custom, notably the fact that it was outmoded from the very start. The matrimonial and successorial regimes were among the most inflexible (and exclusionary toward daughters) in all of France, a fact that helps explain the decline in recourse to the province’s courts over the course of the eighteenth century. But as the same decline in the number of court cases can be observed not only in other French provinces, but also in England and Spain, the argument that the decline in Normandy is due to the inflexibility of the Custom strikes me as implausible.[5]

Returning to her argument that the officers were slowly excluded from social mobility into the Parlement and the provincial Estates, Schneider sees the development of a local state “largely independent of direct royal or noble control and centered instead on the common courts” (p. 126). The contrast between what she calls bailiwick officers and the officers of the Parlement and other higher courts is significant—Schneider argues that the ordinary courts were more “modern” in the sense that the offices were more open to talent and merit and that direct succession of offices was rare. The Parlement allowed the bailiwick officers to consolidate their power locally and rarely overturned the latter’s decisions on appeal. The royal intendant also had little influence or authority over the judicial officers, who repeatedly refused or delayed sending the intendant the information he requested.

In addition to discussing the functions filled by judicial officers, Schneider analyses the cases heard in the courts studied. As in all judicial systems, the vast majority (87 percent) of cases were civil rather than criminal. Among the civil cases where the nature of the cause was known, debt and property issues predominated, followed by family questions (primarily inheritance). A few cases involved seigneurial privilege, and moral and communal life was also the subject of a small amount of litigation. It is unfortunate that Schneider gives few statistics regarding the nature of civil cases heard—this is because only a small proportion of cases (between a tenth and a quarter) are clearly identified in the records according to the nature of the case. Schneider discusses three types of cases in some detail: family and property litigation regulated by customary law, morality and community cases, and equity cases. A number of cases involved issues that were not explicitly covered either by the Custom or by royal law, and these were to be settled by the judge, in the words of legal author Daniel Jousse, through the use of “reason and equity” (p. 175). This is an interesting point, and one that could have been further expanded. In fact it seems to me that while Schneider is right that historians have overestimated the importance of royal law in terms of the daily practice of lower courts, she herself places too much

emphasis on the role of the Custom. A substantial proportion—probably the majority—of cases decided by lower courts in fact involved neither Custom nor royal law, but rather the enforcement of promises or the reimbursement of damages.

Schneider argues that the ways that ordinary people used the courts demonstrates considerable popular legal skills and a depth of understanding of the law that penetrated far below the elites. There is a fascinating discussion of the hue and cry (*clameur de haro*), an early version of the citizen's arrest that was frequently practiced in Normandy under the ancien régime. It applied not only to criminal matters, but also to questions involving various kinds of property offences, sometimes even against royal officials. Schneider then discusses the role played by arbitration in the settling of disputes. Fewer than one case in five in her courts include a final judgment—although this figure is doubtless far too low, as summary civil cases here generally neglected to provide the final judgment—which means that litigants must often have resolved their cases informally or submitted them to an arbitrator.[6] The discussion is interesting and informative, although based primarily on normative sources rather than the records of actual cases known to have been arbitrated or settled informally. There can be little disagreement with her argument, however, that legal culture was widespread and that by frequent recourse to local courts through waging law ordinary people “wove their own ideas and practices of justice into the royal system, even as the royal system knit its reasoning and discipline into theirs” (p. 189).

As with civil affairs, the plaintiffs in criminal cases generally actively participated in the prosecution, and sentences judges passed were in line with community notions of justice. Royal theories of swift and terrible punishment were moderated by judicial discretion, including composition (payment of damages), restitution and conviction on lesser charges. Magistrates possessed a large arsenal of possible punishments, which allowed them to match punishment to crime. Furthermore, conviction in criminal cases depended heavily on community participation, since testimony was the most important form of proof. When a case that did not have the support of the community came up (poaching, wood theft in seigneurial forests), witnesses frequently refused to testify, effectively halting the prosecution.

Schneider puts forward considerable evidence demonstrating that the lawyers and notaries that staffed the thousands of local judicial offices in the seventeenth and eighteenth centuries played an important role in local governance and could sometimes enjoy considerable independence from the central government. I can't help but wonder, however, if the power and authority of these judicial officers are not somewhat overdrawn. The seventeenth-century aristocratic reaction the author describes that closed the sovereign courts and provincial Estates to modest legal families was probably accompanied by a seigneurial reaction that saw many lords across France seeking out new forms of revenue and more authority over their villagers. To an extent that is perhaps insufficiently acknowledged in the book, and even in Normandy—that most modern and industrial of French provinces—seigneurs remained a powerful political force until the Revolution. In seigneurial courts success in finding judgeships depended on garnering (and keeping) the support and patronage of noble seigneurs.

While it is abundantly clear that royal intendants did not have much control over the judicial officers, and even that their authority over municipal and community affairs has been substantially exaggerated by an overly-zealous application of Tocqueville's vision of state centralization, there were nevertheless checks and balances in place by the kingdom's parlements that ensured a measure of supervision over the activities of local courts. Certainly by the second half of the eighteenth century parlements closely watched these lower courts, and at least in some provinces royal edicts and ordinances were passed that affected the way things were done in local courts, a fact that has led many historians of seigneurial and royal courts to see them as part of the royal state.[7] It seems to me that by the latter decades of the eighteenth century “bailiwick” officers had less independence than Schneider allows. But then again, much had changed between the late seventeenth and the late eighteenth century, and the book provides a much-needed corrective to a tendency to analyze the practice of government in the ancien régime primarily from the perspective of the elites.

*The King's Bench* is an outstanding book. It is based on an impressive amount of research in archives that are unwieldy and difficult to use. It makes a major contribution to the debate concerning the functioning of the absolutist state. Other historians have portrayed local judicial officers as basically independent from royal control; indeed this has been a dominant trope of the literature on seigneurial justice for a long time. But Schneider's take on the role of this group of men is much subtler and more interesting. Few historians have thought to study seigneurial and royal officers together as a united governing group and to relate the results so explicitly to the nature of the absolutist state.

## NOTES

[1] See especially François Brizay, Antoine Follain and Véronique Sarrazin, eds., *Les justices de village: Administration et justice locales de la fin du Moyen Âge à la Révolution* (Rennes: Presses universitaires de Rennes, 2002). Recent monographs include Anthony Crubaugh, *Balancing the Scales of Justice: Local Courts and Rural Society in Southwest France* (University Park: Pennsylvania State University Press, 2001); Fabrice Mauclair, *La justice au village. Justice seigneuriale et société rurale dans le duché-pairie de La Vallière (1667-1790)* (Rennes: Presses universitaires de Rennes, 2008); Hervé Piant, *Une justice ordinaire. Justice civile et criminelle dans la prévôté royale de Vaucouleurs sous l'ancien régime* (Rennes: Presses universitaires de Rennes, 2006); Sylvain Soleil, *Le siège royal de la sénéchaussée et du présidial d'Angers (1551-1790)* (Rennes: Presses universitaires de Rennes, 1997); Séverine Debordes-Lissillour, *Les sénéchaussées royales de Bretagne. La monarchie d'ancien régime et ses juridictions ordinaires (1532-1790)* (Rennes: Presses universitaires de Rennes, 2006); Jeremy Hayhoe, *Enlightened Feudalism. Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy* (Rochester, N.Y.: University of Rochester Press, 2008).

[2] For example, James B. Collins, *The State in Early Modern France* (Cambridge: Cambridge University Press, 1995); William Beik, *Absolutism and Society in Seventeenth-Century France: State Power and Provincial Aristocracy in Languedoc* (Cambridge: Cambridge University Press, 1985); Sharon Kettering, *Patrons, Brokers and Clients in Seventeenth-Century France* (Oxford: Oxford University Press, 1986).

[3] Schneider's vision of the limits of royal authority owes much to David Parker's important article, "Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France," *Past and Present* 122 (1989): 36-74.

[4] They were also largely pushed out of municipal office-holding in many of the kingdom's largest cities. See Michael Breen, *Law, City and King: Legal Culture, Municipal Politics and State Formation in Early Modern Dijon* (Rochester, N.Y.: University of Rochester Press, 2007).

[5] For evidence that the eighteenth century likely saw a decline in litigation rates across much of Europe, throughout a variety of legal systems, see Christopher W. Brooks, *Lawyers, Litigation and English Society since 1450* (London: Hambledon Press, 1998), 63-128; Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London: St. Martin's Press, 1998), p. 203; Richard Kagan, *Lawsuits and Litigants in Castille, 1500-1700* (Chapel Hill: University of North Carolina Press, 1981); John A. Dickinson, "L'activité judiciaire d'après la procédure civile: Le bailliage de Falaise, 1668-1790," *Revue d'histoire économique et sociale* 2 (1976), p. 152; Colin Kaiser, "The Deflation in the Volume of Litigation at Paris in the Eighteenth Century and the Waning of the Old Judicial Order," *European Studies Review* 10 (1980): 309-336; Jonathan Dewald, *Pont-St-Pierre, 1398-1789: Lordship, Community and Capitalism in Early Modern France* (Los Angeles and Berkeley: University of California Press, 1987); Mauclair, *La justice au village*.

[6] In other parts of France the records frequently include details concerning summary cases, at least for seigneurial courts, and in general the rates of attrition are far lower than we are accustomed to seeing in studies of criminal justice. In the large twin seigneurial high justices in the duchy of La Vallière, whereas only about five percent of criminal complaints led to a full trial, between 65 and 80 percent of civil cases were seen through to final judgment, a statistic that is close to what I found in northern Burgundy. Mauclair, *Justice au village*, pp. 239-40, 276; Hayhoe, *Enlightened Feudalism*, p. 161.

[7] This is the argument put forward by Sylvain Soleil for both lower royal and high seigneurial courts, and by Fabrice Mauclair for large seigneurial courts. But Séverine Debordes-Lissillour's analysis is much closer to that of Schneider, as she sees the royal *sénéchaussées* of Brittany as largely independent of royal control. Sylvain Soleil, "Les justices seigneuriales et l'État monarchique au XVIIIe siècle : L'incorporation par le droit," in François Brizay, Antoine Follain and Véronique Sarrazin, ed., *Les justices de village*, pp. 325-39; Soleil, *Le siège royal*; Mauclair, *Justice au village*; Debordes-Lissillour, *Sénéchaussées royales*.

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