STRATEGIC LITIGATION: LEGAL CULTURE AND DAILY LIFE IN SIXTEENTH-CENTURY NORMANDY

BY

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DISSEPTION

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Abstract

This study is about how people interacted with the legal system and navigated different forms of recourse for civil disputes in late fifteenth- and early sixteenth-century Normandy, an important transitional period for the legal system in France. Broadly conceived (across a range of activity), yet narrowly focused (on records from 1500 and 1510), it traces practices along a spectrum of negotiation, conflict, and resolution. Using qualitative and quantitative analysis of notarial records as well as court records from the vicomté of Elbeuf and the Échiquier (Parlement) in Rouen, it shows that the courts played a limited role in civil dispute practice and resolution relative to their over-representation in historiography of the French legal system, and I argue for a broadening of perspective on the legal system and records utilized in order to more completely capture how people interacted with it. This study begins with an overview of laws and institutions and analysis of commentaries by jurists to set up the evident disconnect between theory and practice. It moves to an analysis of contracts to show how individual wants and communal norms may be reconciled with the letter of the law, the commemorative and defensive functions of contracts, and the coexistence of oral and written practices. Delving into actions in and out of court—from instigating maneuvers such as seizing goods and clameurs to patterns of court appearances, defaults and obstruction tactics to new complications posed by documentation to settlements, arbitration, and court rulings to enforcement practices and challenges to them—reveals civil dispute practices to be non-linear and variant as people took advantage of the opportunities created by their pluralistic system.
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Note on Translations and Transcriptions

All translations and transcriptions within this dissertation are my own unless otherwise noted. I have opted for a more literal approach to the translations to preserve some of the character of the original and to give the non-specialist reader a taste of the authentic source. Those who are more accustomed to later periods of French writing will also notice, and perhaps experience some discomfort with, the absence of accents and the irregular (phonetic) spelling in the texts, which are typical of the sixteenth century. The major exception to this practice of preserving the original has been in regularizing the spelling of names to make them more searchable. Finally, a note on dates: dates were commonly written in French using a mix of words and Roman numerals, so “mil cccc iii^xx dix huit” is “mille quatre cent quatre-vingt-dix-huit” (1498). The exact mix also varies, but a good rule of thumb is to read them in French.
Introduction

“To keep the peace and brotherly love between them…and to avoid further proceedings in court…”

Pierre Delamare, residing in the parish of St. Austreberte near Pavilly, and Jean Delamare, residing in the parish of St. Nigaise [Niçaise] of Rouen, appeared, at the behest of their friends, before notaries of Rouen on January 2, 1500 to formalize a settlement to their dispute.¹ After a disagreement over division of their inheritance—specifically, Pierre tried to “prevent Jean Delamare his brother from taking possession and enjoying the benefits of a piece of land gifted to Jean by their mother Marion, widow of Romain Delamare their father”—they ended up “before the vicomte of Rouen or his lieutenant in the court session at the sergent’s hall of Pavilly.” The notarial document stipulated that a formal contract, drawn up by a high-level judge had transferred the property with “formal letters of title drawn up on the fourth of July 1497 before Charles Monfault, commissioned lieutenant of the Bailli of Rouen.” Nonetheless, Pierre “contested that his mother had no right” to leave this property to Jean and fought hard to recover it. By the time Pierre and Jean came to the table, the case was stalled and hanging before the court, “after several days of

¹ Archives de Seine Maritime (hereafter ADSM), 2E1 228, January 2, 1500.
proceedings,” and was shaping up to be a long, and likely expensive, affair, which both of them wanted “to escape and avoid” as much as they wanted to preserve “the peace and brotherly love” between them. To this end, they came to an agreement whereby Pierre would pay Jean 50 sous per year to Jean for use and hereditary possession of the land on the condition that Pierre could lease the land to one or two parties agreeable to both of them. These terms being formalized before notaries in Rouen, both parties “agree to go without further session in court by which they agree to vacate the court.”

2 ADSM, 2E1 228, January 2, 1500. The brothers negotiated a rente, which was a type of loan and investment. Rentes and other types of contracts will be examined in depth in Chapter Two. “Comme proces fut meu et pendant es ples de la sergenterie de pavilly devant le viconte de rouen ou son lieutenant entre Pierre Delamare demourant en la parroisse sainte austreberte pres led lieu de pavilly d’une part Jehan Delamare son frere demourant en la parroisse saint nigaise de rouen d’autre sur ce que led Pierre Delamare vouloit et s’efforcoit empescher led Jehan Delamare son frere en la saisie possession et joyssance d’une piece de terre contenant trois acres ou environ assis en lad parroisse sainte austreberte…le droit de laquelle piece led Jehan Delamare soutiennant et disant lui appartenir a titre de don et delais a lui fait par Marion veufve de feu Romain Delamare pere et mere desd freres ainsi qu’il faisant aparoir par lettres passees l’an mil cccc iiii^xx xvii le iiii^e jour de juillet devant Charles Monfault lieutenant commis de monsieur le bailly de rouen lequel don led Pierre Delamare avoit voulu debatre et contredire soustenant que sad mere ne le pouvoit ne devoit faire a son prejudice par certaines raisons dont il s’estoit aide sur quoy lesd parties avoient procede par certaines jouernes et en crire estoit en voye destre et encourur en long proces pour auquel fuir et eviter etc afin d’entretenir paix et amour fraternelle entre eux ilz soient par le moien d’aucuns leurs amys conveins ensemble et de ce fait traiete transaction et appointement entre eux en la maniere qui eussent comme ilz disoient savoir faisant etc furent presents led Pierre Delamare d’une part et led Jehan Delamare son frere d’autre etc lequelz confessant sur ce que dit est leurd traiete transaction et appointement estre tele cest assavoir que led Jehan Delamare bailla quicta transport et delaissa et par ces presentes baille quicta etc a heritage etc aud Pierre Delamare son frere etc tout tel droit raison action et reclamation que a raison dud don ainsi a lui fait par sad mere il avoit povoit avoir demander et reclamer en lad piece de terre dessus bournée voullant consentant et acordant en tant que a lui estoit que led Pierre Delamare son frere sesd hoirs etc en joyssance et possession hereditale comme de leur propre chose et tout ainsi que led Jehan eust peu faire a raison et en vertu dud don les lots Duquel il bailla et rendy presentement aud Pierre son frere pour estre etc d’aussi grant force etc et est ce fait pour evitar aud proces et moiennant le pris de i s t de rente a heritage par an que led Pierre Delamare en sera tenu et promist pour ce rendre paier par execution franche aud Jehan son frere etc ou etc chacun an au terme de Noel premier parement commencant a Noel prouchain venant par condition que led Pierre Delamare ne pourroit bailer lesd i s t de rente en bonne et suffisant assiecte en lad sergenterie de pavilly a une ou deux parties toutefoys qu’il leur plaira de laquelle assiecte led Pierre Delamare sesd hoirs ne seront et demoureront garans vers tous et partant lesd parties acorder eux en aller sans jour et hors dud proces duquel ilz acorderont vuiuer la court et faire qu’il appartenind et a ce tenir etc obligeant l’un a l’autre biens et heritages presents Robert Langloys et Jaques Alain.”
The account of family strife and legal dispute narrated above is hardly exceptional and in that regard it will serve as a useful opening vignette for this study. The dispute between brothers Pierre and Jean Delamare represents common discontent and disagreement over inheritance and transfer of property, especially when a woman was involved, in the early sixteenth century in Rouen (and elsewhere in France). That the dispute moved in and out of a court and ended in a settlement formalized before a notary is also not out of the ordinary and yet is of great interest. This case represents the capacity for initiative of people in resolving civil disputes as well as the prominence of notaries (and those acting as such) relative to the courts in this process. The notaries bore witness to a resolution that the courts played a limited role in influencing. Although going to court and appealing to legal authorities may have been an option, even an instrumental one, my study will draw on this case of the Delamare brothers and numerous similar examples to argue that going to court was not necessarily the most common or definitive option for resolving a dispute.

This dissertation will show that the courts' representation in scholarship on the legal system stands disproportionate to their role in resolving civil disputes. Overemphasis of the importance of the courts and their legal authorities and over-analysis of court records risk distorting practice, misrepresenting the processes of resolving disputes, and misrepresenting the role of the courts in the legal system and society on a larger scale.³ Along these lines, this study will show that the courts

(which, in this study, will serve as shorthand for the authority they represent and the officials who act on behalf of that authority), relative to the disputants and the petty officials they hire, play an almost passive role in the resolution of civil disputes; moreover, it will at the same time advocate for historians to look beyond court records when analyzing the legal system and will show the rich potential of alternative sources such as notarial records.

To this end, my work will build on and engage a small but growing literature on settlements and *infrajustice*. Alfred Soman, notably, in outlining some of the methodological problems of relying too heavily on court records to draw conclusions about criminality and criminal procedures, and in so doing drawing on work by Nicole Castan and others, called for attention to "infra-judicial" institutions and practices by historians of the legal system and gave a brief introduction of insights for the history of crime, redress and procedures to be gleaned from settlement contracts drawn up before Parisian notaries. The concept of infra-justice has been elaborated upon more recently by Benoît Garnot who has added the concepts of “parajustice” and “extrajustice” to the mix to more neatly define and categorize practices outside of court. He has defined infrajustice as public action taken out of court which he contrasted with parajustice (private action taken outside of court) and extrajustice (no

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action taken). Infrajustice implies intervention and publicity, and he insists that “it is not infrajustice without the intervention of a third party—individual or collective.”

These finer distinctions, being a little obtuse, have not, by and large, taken off in the emergent literature. Although these concepts are interesting methodologically as a reminder of how misleading the surviving record can be and encourage a more fine-grained analysis of the records and a broader perspective of actions and options, the lines between “public action” and “private action” remain difficult to define, especially for the late fifteenth and early sixteenth century. Moreover, the dearth of meaningful quantities of evidence for “private action” (in the strictest sense) or “no action” leave “parajustice” and “extrajustice” a little flat, both of which considerations, in turn, make these concepts difficult to apply. As such, I have elected not to adopt them explicitly, although my understanding of the law and approach to studying it has benefited from them.

The crux of the debate about settlements (and arbitration, although a separate phenomenon not fully appreciated by many), for scholars of the seventeenth and eighteenth centuries especially, is whether to interpret them as a good thing or a bad thing. That interpretation, in turn, supports conclusions about whether the court

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6 For more on the distinction between settlements and arbitration, see Jeremy Hayhoe, “L’arbitre, intermédiaire de justice en Bourgogne vers la fin du XVIIIe siècle,” In Entre justice et justiciables: Les auxiliaires de la justice du Moyen Age au XXe siècle, ed. Claire Dolan (Québec, Canada: Les Presses de l'Université de Laval, 2005): 617-26; and Jeremy Hayhoe, Enlightened Feudalism: Seigneurial
system effectively delivered justice and, more broadly, whether the legal system met the needs of the people (or a specific group of people). For some, like Nicole Castan, the settlement represented a sort of failure of justice, framing her argument with an old popular saying “a bad settlement is better than a good trial.” On this model, settlements were a grudgingly accepted reality, a bad alternative to the worse prospective of going to court, which was characterized by corrupt, greedy, ignorant officials; unreasonably long proceedings; and an exorbitant price tag. In short, “Old Regime justice” was simply not practical for many people and forced them to accept the deal they could get, even if it was not just.

For others, like Rafe Blaufarb and Jeremy Hayhoe, the settlement was the underlying purpose of going to court. Rather than being symptomatic of the failings of the judicial system, the settlement was the outcome desired by both court and litigants. Litigants went to court, or even merely threatened to go to court, with the aim of finally prompting a reluctant opponent to come to the bargaining table to negotiate a settlement. In support of this practice, courts were in no hurry to bring a case to a close, giving parties ample opportunity to work things out on their own. Courts provided leverage for negotiation, and the overarching goal was reconciliation and communal harmony, which, in theory, was better achieved by the parties coming to their own compromise than by the intervention and imposition of a court ruling.  

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7 Castan, Justice et répression en Languedoc, 15. See also Anthony Crubaugh, Balancing the Scales of Justice. Local Courts and Rural Society in Southwest France, 1750-1800 (University Park, PA, USA: The Pennsylvania State University, 2001).

8 See Rafe Blaufarb, “Conflict and Compromise: Communauté and Seigneurie in Early Modern Provence” The Journal of Modern History 82:3 (September 2010): 519-45; and Hayhoe, Enlightened Feudalism. For a comparative example, see James A. Sharpe, “Such Disagreement betwix Neighbours’: Litigation and Human Relations in Early Modern England,” In Disputes and Settlements:
The latter interpretation assumes that this dual practice by litigants and courts to promote reconciliation was effective because the court was a formidable coercive power, albeit held in reserve. Settlements did not undermine the courts’ authority (or, by extension, the state-building project) because the courts helped enforce settlements. Hayhoe also adds, against the general stream, that officials were competent and took their roles seriously and that costs were not prohibitive.

What these studies on both sides of the aisle have in common is a court-centric perspective of the legal system, part of which may be attributed to a heavy reliance on court records, law codes, and legal treatises. My study will attempt to broaden the perspective of the legal system and reposition the court by analyzing notarial records alongside records from two very different courts (the seigneurial court of Elbeuf and the Échiquier, which would become the Parlement of Rouen) to create a more comprehensive understanding of practice. In so doing, I will show how people influenced the trajectory of their disputes in choosing different options along a

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9 The problem of settlements and arbitration undermining the official legal system and the power of the state has been suggested by Brian Tamanaha. See Brian Z. Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global” *Sydney Law Review* 30:375 (2008): 375-411.

spectrum of negotiation, conflict, and resolution; which social groups used which options, where possible; and some of the challenges that they faced along the way. ¹¹ This analysis will, in turn, add complexity to our understanding of the coercive potential of the court and the role people played in supporting it.

Drawing on Julie Hardwick’s work on litigation and daily life for the seventeenth century, this dissertation is, additionally, an attempt to counterbalance a distortion in current scholarship, which has privileged criminal law and practice through the study of criminal records, by focusing on civil law and practice through the study of civil records—although I acknowledge the overlap and easy escalation from civil to criminal in the unfolding of a case. ¹² In so doing, it will suggest ways in which the history of daily life and the legal system in the sixteenth century in France might be understood differently if we shift our attention from criminal punishment to civil disputes. Along these lines, this dissertation will specifically explore the insights provided by civil litigation into the daily life and dispute resolution practices of greater Rouen in the late fifteenth and early sixteenth century, a timeframe which will also


¹² Julie Hardwick, Family Business: Litigation and the Political Economies of Daily Life in Early Modern France (Oxford, UK: Oxford University Press, 2009). Zoe Schneider has shown the value of studying civil and criminal cases side by side: Zoe A. Schneider, The King’s Bench: Bailiwick Magistrates and Local Governance in Normandy, 1670-1740 (Rochester, NY, USA: University of Rochester Press, 2008). Hervé Plant especially advocates studying civil and criminal side by side at the lower court levels to better understand the relationship between civil and criminal law and practice and to achieve a more balanced view of the social context and people’s interactions with the legal system. See Hervé Plant, “Des procès innombrables: Éléments méthodologiques pour une histoire de la justice civile d’Ancien Régime,” Histoire et mesure 22:2 Déviance, justice et statistiques (2007): 13-38; and Hervé Plant, Une justice ordinaire: justice civil et criminelle dans la prévôté royale de Vaucouleurs sous l’ancien régime (Rennes, France: Presses universitaires de Rennes, 2006). I concede that this is a valuable approach, but given that examining civil and criminal was too large an undertaking, I elected to focus on the civil side to fill a much more significant gap.
serve to counterbalance scholarship of the French legal system which has, by and large, focused on the seventeenth and eighteenth centuries. The sixteenth century has been largely recognized as the “golden age of litigation,” witnessing a “legal revolution” and a dramatic spike in lawsuits across much of Europe, and yet as striking as the rate of litigation is, the amount of research on the subject is even more so--much research remains to be done on the subject.¹³

Civil law in France, especially in the sixteenth century, remains an understudied area of society because the sources are voluminous, largely unindexed, and deal with seemingly mundane issues of life, but it is important to understand how this aspect of the legal system functioned in order to understand the system as a whole.¹⁴ People were much more likely to be drawn into civil cases than criminal ones.¹⁵ If we privilege the criminal system, we arrive at a skewed understanding of daily life and of the courts--an institution that has been attributed such importance. Scholarship on the legal system, and notably what has been done

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thus far on the civil side, has argued for a close relationship between the growth of the judicial system (the courts) and state formation.\textsuperscript{16}

All of that being said, scholarship on civil law is increasing, and each study offers a new and important way of understanding the behaviors observed on the civil side of the legal system. Daniel Smail provides an intellectual history of civil law procedure in late medieval Marseille framed by the issues of consumption and emotion. The ideas of consumption and emotion help illuminate the motives and value of litigating and the legal system more generally.\textsuperscript{17} Drawing on this approach, Julie Hardwick uses civil litigation cases to reconstruct economies of daily life in seventeenth-century French families and communities. The framework of economy and community underscores the relationships that influenced the behavior of the subjects and anchors the observed behaviors within a larger set of dynamics.\textsuperscript{18} Zoe Schneider frames her study on lower courts, including civil ones, in late seventeenth- and early eighteenth-century Normandy in terms of local governance, focusing on officials and their relationships both within their communities and with the monarchy. Shifting the angle of analysis to focus on the officials and the idea of governance helps to challenge the divide between civil and criminal law and the disruptive potential of both proceedings.\textsuperscript{19} Amalia Kessler’s study of the merchant court in Paris in the eighteenth century provides important insights into the relationship between a


\textsuperscript{17} Smail, \textit{Consumption of Justice}.

\textsuperscript{18} Hardwick, \textit{Family Business}.

\textsuperscript{19} Schneider, \textit{The King’s Bench}.
specific court and a community and the intersection of the court and arbitration practices with the social pressures of reputation and credit.\textsuperscript{20} Finally, for my purpose here—and I do not claim that this is a definitive list—Hervé Piant offers a social history of justice and \textit{infrajustice} from the perspective of the lower courts and presents justice as a social activity. In so doing, he uses the framework of sociability. Sociability and \textit{infrajustice} add to the discussion of motives and community and of social networks and legal culture that we find in Smail and Hardwick’s studies and further shifts the focus away from the courts.\textsuperscript{21}

Michael Breen has published an excellent essay on recent historiography on law and social history in early modern France. Although praising the above works, he argued that “the current tendency to focus on litigants’ agendas and strategies, and the ways in which they ‘consumed’ justice and manipulated the law in pursuit of their own ends, can sometimes come perilously close to removing the law and those who administered it from the equation altogether. Or at the very least, it reduces them to little more than mere accessories.”\textsuperscript{22} Taking his point very seriously, I would nonetheless argue that the legal system as a whole, in the period chosen for my study especially—and Breen is primarily concerned with the seventeenth and eighteenth centuries for his review, since that is where the bulk of the work has been


\textsuperscript{21} Piant, \textit{Une justice ordinaire}.

done—is more fluid in terms of institutions (like courts) and practice both on the part of litigants and legal officials than is often acknowledged. Breen has even alluded to the legal professions as an important new direction of study as the “growing differentiation between practitioners” “may have originally been more distinct in theory than in practice.” This, as will become evident in the chapters to come, was especially so at the turn of the sixteenth century, a hundred or so years earlier than Breen’s focus. Shifting attention away from the courts helps us to better understand their role within a larger system of practice and helps bring into focus the parts played by legal professionals, the options that people had in resolving disputes, and the decisions that people made in pursuing different options. In that sense, arguing that the courts’ role in resolving disputes was small is not to remove them from the equation but to change them from constant to variable within the equation.

Drawing on my research in civil archives for this period, court and notarial records suggest that the courts’ role in resolving civil disputes was limited. I will show alternative routes to resolving civil disputes, enabled by the complex legal pluralism of late fifteenth-, early sixteenth-century Rouen, by combining a quantitative analysis of settlements out of court and defaults with a close reading of several important case studies. My quantitative inquiry will analyze the characteristics of plaintiffs and defendants in civil litigation (including their occupation, gender, position within the family, relationship to other parties to the law suit) as well as the object of the litigation, the monetary value at stake and the outcome. This data, read alongside particularly representative and interesting case studies, will enable reconstruction of

23 Breen, “Law and Social History in Early Modern France,” 53.
some of both the social characteristics and the processes of negotiation, conflict, and resolution along the spectrum of civil dispute practices. To this end, analysis of legal activity outside of court will enrich our understanding of the role of the courts in the legal system and society more generally and the decisions that brought people into which court, if any. That said, the limitations of these methods and the conclusions drawn from them will be acknowledged and transparent throughout the dissertation as it seeks to further the conversation on how one studies legal pluralism—by which, I mean the co-existence of multiple, overlapping, even competing, sources of law and institutions and officials to support them—in a meaningful way.

My analysis thus relies on an accumulation of data drawn from mundane civil cases. The challenge of relying on quantitative methods lies in defining the data set and finding a representative sampling. For very practical reasons—the volume of available sources and the limited, yet meaningful, space in which to discuss them—I have specifically focused my inquiry in time and space on the courts of Elbeuf and the Échiquier (which would become the Parlement of Rouen) in the year 1510 read alongside notarial records from Rouen from the year 1500. This narrow focus has

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24 Methodology has been one of the bigger barriers to studying civil law because of the volume and general difficulty of working with the court records in particular. Suggestions for how to resolve this have been proposed by Plant, “Des procès innombrables”; Dickinson, “L’Activité judiciaire d’après la procédure civile”; Shoemaker, Prosecution and Punishment; and Soman, “L’infra-justice à Paris d’après les archives notariales”; and Soman, “Deviance and Criminal Justice.” Mine comes closest to that suggested by Plant, who advocates for a mixed quantitative and qualitative approach, but whereas he focuses on court records, I weave in notarial records, which adds a degree of complexity to this approach.

allowed for a thorough sounding of the abundant records from Elbeuf, the Échiquier, and the notaries of Rouen from the same period. Documentation from each of these jurisdictions, with the exception of Elbeuf in 1500, exists in sufficient quantity and quality to allow for meaningful analysis across records for these years. Comparing practice across these record sets also allows for a more holistic view of people’s experiences with the civil legal system in this period. While the records of the Échiquier, the vicomté of Elbeuf, and the notaries of Rouen each tell us about practice in their respective part of the legal system, they also reveal activity outside of their reach.

The Échiquier represents the peak of the royal judicial system with records recounting how the case before it progressed to the final stage. The vicomté of Elbeuf represents the first audience before a court in the seigneurial jurisdiction—the lowest court. The notarial records recount everything in between from the negotiations prior to disputing before a court to the follow up, even enforcement, of a court sentence to the formalization of settlements and arbitration. It is uncommon to see lengthy analysis across these jurisdictions, largely due to the massive undertaking involved in going through them for a longer timeframe, with each year typically spanning at least two hefty volumes of records (representing both the quantity and the length of the individual cases and contracts). This is another reason why I have chosen to limit my examination of these records to what may be considered a fairly short timeframe of ten years. I chose these years and these

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26 I have chosen to draw my sample from the arrêts sur rapport, which limits analysis to cases which proceeded all the way to a ruling but which also often include fairly detailed narratives by litigants of events leading up to their appearance before this court.
jurisdictions specifically because they offer a manageable set of records and allow me to pinpoint my analysis. More importantly, 1510 is one of several years for which court records survive in meaningful quantities for multiple jurisdictions.

Late fifteenth- and early sixteenth-century Rouen is particularly interesting for a study of legal practice and legal pluralism because it was a port city (the “port of Paris”—at the farthest point up the Seine river that a ship could travel, unload its goods and send them on smaller craft up the river to Paris) and a center of commerce, administration, religious activity, and law. It had an unusually large and thriving guild presence relative to most other European cities in this period and a population of about 50,000. It was also surrounded by centers of agriculture and the cloth industry, and Rouen had strong connections to the surrounding areas. All of these attributes in and around the city supported its economy in important ways. Furthermore, because of its different administrative and commercial capacities, it drew in people from the surrounding areas and had multiple jurisdictions to meet the needs of these people. And because so much of the business conducted in the city


involved people and property residing outside of the city, it makes more sense to consider the influences of the surrounding area on the city and vice versa and to discuss the legal practice of greater Rouen rather than trying to limit discussion to the city itself, which would be misleading and very difficult. This will, in turn, add more nuance to our understanding of the relationship between urban and rural life.\textsuperscript{29}

In terms of the surrounding area, Elbeuf is of particular interest and relevance to a study on Rouen because it was in close geographical proximity to the city of Rouen but was a center of cloth production in its own right. Elbeuf had a set of seigneurial courts that had the capacity to exercise haute justice (the right to hear all types of cases and deliver capital punishment, as opposed to basse justice for some other seigneurial courts, which was more limited) including a bailliage and a vicomté (lowest court in the legal system of the region), which, after the sixteenth century, were referred to interchangeably and were imperfectly consolidated in stages through the Old Regime. Its bailliage had the privilege of appealing directly to the Échiquier (Parlement of Rouen), rather than, as was common, beginning the appeals process in the lower royal courts and moving up to the Échiquier from there. This study will focus on the records from the vicomté which has an extensive surviving record set, better in fact than Rouen’s vicomté. And in terms of the issues of legal pluralism and legal culture, the people of Elbeuf contributed to the overall legal culture of Rouen,

which, as a major administrative and legal center, drew people in from outside its walls to conduct legal business, and their legal activities linked into the legal system and legal pluralism of greater Rouen. Analyzing cases from Elbeuf provides insight not only into the process of civil litigation as people moved through the courts but also various influences on the legal culture of Rouen.

Norman law is particularly interesting for a case study because the customary law code on which it was based differed significantly from other customary codes in France. It was especially remarkable to contemporaries, as it has been to the most recent scholars, for its strictures on women in the inheritance and management of property. These will be elaborated further in chapter one, but important features were the strict separation of a woman’s dowry from the husband’s property (which he managed on her behalf but could not alienate) and the denial of communal ownership of property acquired by the couple during their marriage. As Jacqueline Musset has characterized it, “the matrimonial régime denied all ‘frank collaboration’ between the couple and was articulated in a sort of permanent climate of

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suspicion.” Nevertheless, the notarial and court records are full of women. Given this apparent contradiction, when teasing out patterns of contracts and dispute practices, I will make a point not only of tracing which actions were more likely to be taken by women—or provoked by women—but also to try to determine the relationship of the woman to other parties as well as her social (primarily marital) status. This will serve to highlight the activities of women within this strict system and further our understanding of their legal authority, capacity, and practice in Normandy more generally.

The late fifteenth and early sixteenth century is particularly interesting for a focused study of legal practice not only because of its limited presence in the historiography but also because it was a period of uneasy transition legally, politically, and culturally, especially in Normandy. The decades following the end of the Hundred Years War and leading up to the early sixteenth century bore witness to the monarchy, particularly Charles VIII and Louis XII (reigning king for the period under consideration), instituting and encouraging important changes in the legal system. The monarchy made a concerted effort to promote royal jurisdictions, began a larger

31 Musset, Le régime des biens entre époux, 25.
trend of creating offices, and launched the massive project of the compilation, translation and consolidation of customary law codes in the entire kingdom, all of which would continue in greater force under Francis I and more so after the Wars of Religion. With the creation of offices, came ideas that moved in the direction of venality (still illegal in the early sixteenth century). More specifically, there was an increase in the importance of documentation in the legal system with the passing of ordinances requiring notarization of contracts to render them legal and the recognition of the importance of preparation of documentation in court appearances and in postponements for this purpose. This trend toward privileging documentation resulted in the increasing importance of lower level officials, like notaries and procureurs (legal representatives), whose primary responsibilities included the preparation of legal documents. And yet, I will show that in spite of this trend toward greater documentation, the importance of orality, performance, and witnessing persisted through, coexisted alongside, and even supported emergent writing

practices. These changes and resistance to them make the late fifteenth and early sixteenth century an important period of study for the legal system and bear important implications for the wider culture.

With this in mind, when looking at the legal system of sixteenth-century Rouen, we find the coexistence of practices that give the pursuit and resolution of civil disputes a character of multiplicity and fluidity. In the court and notarial records under consideration here, the simplicity of a final resolution often belies the complexity of the system in place. That said, the complexity of the system appears to have created opportunities as well as frustrations. In the mundane as in the spectacular cases, the multiple legal actions taken and multiple appearances and postponements are striking. A plethora of defaults appear alongside jurisdiction hopping as people took advantage of the fluidity of overlapping and contradictory jurisdictions. Also apparent is the fluidity of the geography under consideration. People residing in the city of Rouen are entering into contracts with people from outside the city to transfer property within the city and outside of it. Disputes arise over similar contracts and cases before the Échiquier bring in people from even farther a-field. Added to the mix of contractees and disputants are the legal

35 There has been a recent surge in scholarly interest in understanding writing practices, especially among medievalists. For some examples, see Peter Schulte, Marco Mostert, and Irene van Renswoude, eds., Strategies of Writing: Studies on Text and Trust in the Middle Ages (Turnhout, Belgium: Brepols, 2008); Marco Mostert and Anna Adamska, eds., Uses of the Written Word in Medieval Towns: Medieval Urban Literacy II (Turnhout, Belgium: Brepols, 2014; Mostert, Marco and Anna Adamska, eds. Writing and the Administration of Medieval Towns: Medieval Urban Literacy I (Turnhout, Belgium: Brepols, 2014); Marco Mostert and P. S. Barnwell, eds., Medieval Legal Process: Physical, Spoken and Written Performance in the Middle Ages (Turnhout, Belgium: Brepols, 2011).
professionals we find playing multiple roles alongside those individuals acting in the capacity of another legal professional—e.g. when a judge acts as a notary.

Following this, the challenge of using the law, broadly conceived, as a category of analysis, discrete concept, and subject of study is that the law, with its institutions, officials, and records, intersects with and is interwoven into many other categories and subjects of social, economic, and culture interest like business and family affairs, gender, urban and rural life, and relations between subjects and the state. The law is a useful lens of comparison, but it is not so useful to try to examine it detached from these categories because they offer important context to its creation, practice, and impact. The social practices and implications and impact of the law on the community more broadly must always be understood as context to the conversation on the law in this dissertation. Further, this study has as much to tell us about how the community shaped the law as how the law shaped the community. If I use the law as shorthand, it is not meant to be the end but rather the beginning, conceptually. The law is a comparative concept even within fairly narrowly defined geographical and temporal parameters because it intersects with so many other strata and conceptual categories. Even if one legal system is under discussion, the inherent pluralism within that system, especially in sixteenth-century France, wears away at its coherency. Legal pluralism is inherent to the legal system not only of

36 For a more detailed discussion of the relationship between legal history and social, political, and cultural history in the historiography of early modern France, see Michael P. Breen, Law, City, and King: Legal Culture, Municipal Politics, and State Formation in Early Modern Dijon (New York, NY, USA: University of Rochester Press, 2007); and Breen, “Law and Social History in Early Modern France.”

37 For a discussion of the challenges to defining “law” in recent scholarship, see Tamanaha, “Understanding Legal Pluralism.” He has argued that defining the boundaries of the concept of law is less important than setting up the specific context.
France more broadly but of Normandy, even Rouen, more specifically. Broadly speaking, the question of whether it is appropriate to refer to a legal “system” has been raised recently, and it is an interesting question with much promise for fruitful debate among scholars, especially, but not exclusively, when studying a customary “system.” C. W. Brooks has argued that a “legal system” did not exist in sixteenth-century England for instance.\textsuperscript{38} Michael Breen in particular has suggested that it may be better to think of France as having two (at least) legal systems to reconcile apparent contradictions of discourse and practice.\textsuperscript{39} As intriguing as this line of questions is, I would encourage caution. Even if the emergence, evolution, and practice of the institutions and laws was not systematic in the purest sense, the connections and influences between overlapping, contradictory, contested institutions, laws and divergent practices outweigh the dis-connects and differences. In short, a pluralistic system is still a system, as apparently inefficient, disorganized, and contradictory as it may be, especially by modern Western standards.\textsuperscript{40} Speaking of the law as the law or the legal system as the legal system will always be fraught with the risk of oversimplifying the narrative; however, this risk being acknowledged, it is necessary to take to move the discussion along.

Among the many questions this dissertation poses (and works to answer) are those that attempt to give contour to different parts of the legal system and to practice therein. One of the more fundamental questions is at what point a dispute becomes

\textsuperscript{38} Brooks, \textit{Pettyfoggers and Vipers of the Commonwealth}.
\textsuperscript{39} Breen, “Law and Social History in Early Modern France.”
\textsuperscript{40} For more on this discussion, please see: Brooks, \textit{Pettyfoggers and Vipers of the Commonwealth}; Breen, “Law and Social History in Early Modern France”; and Tamanaha, “Understanding Legal Pluralism.”
“legal.” Daily life is full of squabbles and disagreements, but when do we begin to recognize a legal dispute?\footnote{For a good overview of these considerations and relevant theories, see Hayhoe, \textit{Enlightened Feudalism}, chapter 4.} Parties to a dispute turned to sources of authority to support claims and seek favorable resolution—most of these sources examined in this dissertation will have legal backing (laws will be written to guide their use), from written contracts to courts and their officials to witnesses and the memory of older members of the community; however, the interpretation and the enforcement of the law could enflame disagreement, and we cannot assume that turning to the law meant turning to a court. To the contrary, this dissertation will argue that in the larger perspective of civil dispute practice, the role the courts played in resolving disputes was limited and that the plural nature of the legal system opened up many options for complainants and defendants.

The focus of this study are the practices and resolution of civil disputes; however, to fully put these practices into perspective, it is also necessary to trace the outlines of activity which lead up to open hostilities. It is for this reason that I will be referring to the range of activity which led up to and encompassed civil disputes as the spectrum of negotiation, conflict, and resolution, again recognizing that the (arbitrary) boundary between civil and criminal could be thin to nonexistent within the exigencies of daily life. The broad sketches of my dissertation follow.

Chapter One will discuss perspectives on the legal system from its highest levels and ideas about how the system worked in theory. It will outline, in broad strokes, the most essential institutions of the legal system for late fifteenth- and early sixteenth-century Rouen and its environs to serve as a groundwork for finer-tuned
discussions of legal maneuvers in later chapters. This will include a brief discussion of the theoretical duties and responsibilities of three specific lower-level officials—notaries, sergents, and procureurs—who will play important roles in the spectrum of activity related to civil disputes and who have been the subject of interest in recent scholarship. It will also problematize some of the bigger developments and transitions for the legal system in terms of tensions underlying the relationship between the recently re-acquired territory and the monarchy. It will end with an analysis of a selection of legal commentaries and their views on the more common or more important (from their perspective) actions taken. This analysis will ultimately serve to highlight the important disconnect between theory and practice that will become evident in later chapters.

Chapter Two will provide an in-depth look at the most common contracts drawn up before the notaries of Rouen and situate them within alternative options. It will show that orality, performance, and witnessing were important elements of the written contracts which were at once part of a negotiated process of standardization and mechanism of regulation, a form of property, a tool to recall terms and obligations agreed upon, and an instrument to reconcile individual wants and communal norms with the letters of the law. The chapter will explore the flexibility of the notarial profession as well as some of the stakes involved in drawing up contracts. These contracts will help to contextualize disputes that arise over similar types of contracts in subsequent chapters. They will also take their place on the spectrum of disputes because they will show not only evidence of pre-dispute re-
negotiation but also that contracts served a defensive purpose in preventing future disputes.

Chapter Three will examine legal activity leading up to or pursuant to a dispute outside of the courts. Knowing that many of the actions taken in advance of a court appearance did lead to a court appearance, they will nevertheless be treated separately from court appearances because they did not necessitate an appearance. This chapter will highlight the initiative taken by individuals in instigating an open dispute and will focus on various sources of policing, on the execution of a seizure of goods, and on clameurs--specifically the haro, the gage-plege, and the marché de bourse—to show some of the range of activity. This chapter will also explore the flexibility of practice of three important lower level officials—notaries, sergents, and procureurs—to reinforce the larger argument about the multiplicity inherent in the legal system and the flexibility of certain professions. The chapter will conclude by examining settlements reached out of court that make no mention of a court appearance to round out activity out of court and set up the following chapter.

Chapter Four will be an in-depth examination of disputes where parties appeared before one or more courts and then resolved their dispute in a settlement before the courts rendered a judgment. This chapter will show the range of options for litigants in court proceedings, examining, in particular, patterns in appearances or lack thereof (defaults). It will also show movement between jurisdictions and will explore obstruction tactics. These topics will ultimately lead to a discussion of time and the length of procedures before one or more courts. In showing the range of activity before a court, but in which the court did not provide a direct resolution, this
Chapter Five will examine challenges to resolution and enforcement. It will analyze cases in which a court provided a ruling but will at the same time question the finality of this resolution. It will show different types of judgments, especially from the Échiquier. It will explore the nature of appeals and will question whether an appeal was a commitment to see a dispute through to the bitter end. This chapter will also examine enforcement from various angles including the logistics of it and the forms it took. It will show failed resolutions and enforcement in cases that were renewed after a judgment had been rendered and will finally come full circle back to postscripts to judgments and formalization of the terms of enforcement in contracts drawn up before notaries. Finally, it will elaborate on themes of witnessing, cost, discretion, and reputation as they come through practices observed.

This dissertation is about how people interacted with the legal system and navigated different forms of recourse for civil disputes in late fifteenth- and early sixteenth-century Normandy, an important transitional period for the legal system in France as elsewhere in Europe. Indeed, this period has been recognized as the “Golden Age of Litigation” across many parts of Europe and yet, for France especially, remains critically understudied. Broadly conceived (across a range of activity), yet narrowly focused (on records from 1500 and 1510), it traces practices along a spectrum of negotiation, conflict, and resolution. Using qualitative and quantitative analysis of notarial records as well as court records from the vicomté of Elbeuf and the Échiquier (Parlement) in Rouen, it shows that the courts played a
limited role in civil dispute practice and resolution relative to their over-representation in historiography of the French legal system, and I argue for a broadening of historiographical perspectives on the legal system and records utilized in order to more completely capture how people interacted with it. This, in turn, underscores a different meaning of justice in this legal culture, one which is less focused on court rulings and speedy proceedings and more so on building and maintaining social relations by exploring more flexible and fitting resolutions to disputes. Highlighting the divergence between theory and practice (indeed it becomes obvious that law is the theory and practice is the norm), I show how individual wants and communal norms may be reconciled with the letter of the law, the commemorative and defensive functions of contracts, and the coexistence of oral and written practices, even as an increasing privileging of documentation creates new challenges for the legal culture. Delving into actions in and out of court--from instigating maneuvers such as seizing goods and clameurs to patterns of court appearances, defaults and obstruction tactics to new complications posed by documentation to settlements, arbitration, and court rulings to enforcement practices and challenges to them—reveals civil dispute practices to be non-linear and variant as people took advantage of the opportunities created by their pluralistic system and helped define its legal culture.
This chapter will lay out a preliminary sketch of the structures—the law codes and institutions—of the legal system in late fifteenth- and early sixteenth-century Rouen and its environs in order to reveal how the system worked on paper—that is, in theory and in writing. This overview illustrates the most obvious options with which people had to work and the guiding principles behind the legal system—structures, options, and principles which these same people drew on in their practices.  

Before beginning, it is important to acknowledge a significant problem with reconstructing the legal system more broadly and with studying legal pluralism more specifically—namely, how one studies legal pluralism when surviving records do not represent all institutions or options for legal action by people and when we may not even know of all options. It is an attempt at reconstruction without all of the pieces or knowing how many pieces there are. Furthermore, significant discrepancies existed between theory and practice; nevertheless, mapping the idealized structures of the legal system to the best of our ability helps anchor our understanding of what was theoretically possible as well as underscoring the significance of the divergent practices uncovered by the sources. The overview that follows will cover different


sources of the law in late fifteenth- and early sixteenth-century Rouen before moving to a discussion of the most commonly-used institutions and jurisdictions and ending with a brief discussion of privileges and the role of notaries in the legal system.\(^3\)

Finally, I will devote some time to legal commentaries as a way of bridging the gap between theory and practice. Commentaries often elaborate on sources of law and offer interpretations based on precedent in legal cases in order to provide a systematized, cohesive, and theoretical, even philosophical, view of the law and how it worked from a high-level perspective; however, upon closer examination, we see that they also reveal a great deal in spite of themselves about fissures in the system and how it worked on the ground, uncertainties or concerns in day-to-day practice, and the broader, even popular, legal culture that influenced and shaped the formal legal system. Given the overall project’s focus on civil law, this overview focuses more on that which pertains to the civil part of the system rather than the criminal (with the acknowledgement that civil and criminal could overlap in jurisdictions and the unfolding of cases—we will see a few comparative examples of this overlap in chapters 3 and 4, especially, where criminal cases appeared alongside civil cases in the lowest courts and where civil disputes devolved into criminal cases with the

irruption of violence; civil actions and cases still vastly outnumber criminal ones, however.\(^4\)

There were many complementary and competing sources of the law in late-fifteenth-, early-sixteenth-century Rouen. The most well-known, and arguably the most influential, source of law in Rouen, as in much of Northern France, was customary law. The customary law tradition prevalent in the north of France set it apart from the south, where Roman law, especially the *Corpus Juris Civilis* was the primary structuring source well before and well beyond the sixteenth century.\(^5\) The south of France, as a *pays de droit écrit* (statutory law), had a legal system and legal culture distinctive from that of the north, a *pays de coutume* (customary law).\(^6\) It is interesting to observe that scholarship on the legal system in France—and by extension social history drawing on legal sources—tends to follow this same great divide and even edited volumes tend to favor north or south even when addressing a more generalized theme. An important exception to this trend is Barbara Diefendorf’s essay on women and property in Dauphiné and Paris, which calls attention to common assumptions and conceptions across the Roman statutory-customary law divide. She argues, compellingly, albeit in broad strokes and in preliminary fashion, that these common conceptions ultimately allowed the two systems to coexist and


\(^5\) “Roman law” and “civil law” are synonymous terms in many texts and scholarly works because the primary Roman law code known and used was the *Corpus Juris Civilis* (Body of Civil Law).

\(^6\) Incidentally, Guillaume Terrien, whose commentary on Norman law is examined in detail below, also shares that where other sources of inspiration are lacking in deciding cases, Roman law may be used not as a binding source but as a source of common reason. See Guillaume Terrien, *Commentaires du droit civil tant public que privé, observé au pays et Duché de Normandie*, Second edition (Paris, Jacques du Puys, 1578), book 1, ch 2, p. 11.
interact fruitfully. This important exception aside, the divide, still pronounced in the historiography, makes drawing generalizations on France collectively in the early modern period more challenging.

Rooted in a much older oral tradition, the Norman customary law was first codified in the early thirteenth century in Latin and by a translation into French followed soon thereafter. This early iteration, known as the *Très Ancien Coutumier*, was a work of law and procedure created by a practitioner for his own reference. The second compilation and codification, from the mid-thirteenth century, was also written in Latin and then swiftly translated into French under the title *Grand Coutumier de Normandie*. Like the first, it was written by a practitioner of law, in an ecclesiastical position, as a tool of reference and was colored by the author’s training in Roman and Canon law, which were the common basis for education and most

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circulated among learned crowds. Unlike the first, the second codification enjoyed a more official, influential, and enduring status because it synchronized more effectively with the monarchy’s campaign in the region (recently conquered from the English), which encouraged, and outright ordered that, out of respect for its origin and quality, it could only be edited by royal jurists.

The early codification of Norman custom, relative to other regions of France, explains, to a large degree, why Norman law, especially that governing inheritance, property management, and women’s prerogatives, was so different from many other regions of France, and mystifying to outsiders, by the sixteenth century. The codification (mediated by savants), and determination to preserve it (instigated by monarchical ambitions), changed the nature of the law, which as an oral custom had been more adaptive and responsive to changing priorities over generations, making it

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more rigid and "true to its origins." Whereas, in its most ideal state, customary law was derived from and transmitted by practice, “remembered” or “forgotten” by succeeding generations of people, who agreed upon or negotiated its terms, within a given territory, and sanctioned and enforced by one with judicial power and authority, a lord of one form or another, within said jurisdiction, the written word was not so conveniently altered or forgotten (though this is not to say that orality, especially in practice, did not endure). To the extent that transformations happened (slowly), it typically came through interpretation, via official rulings, from the sovereign court (the Échiquier), which became the most obstinate guardian, ironically, of regional peculiarity in the face of reforming and centralizing efforts of the monarchy, budding in the mid-fifteenth century and blossoming in the sixteenth century and later.

Ostensibly a response to complaints about the multitude, confusion, and private character of customary laws, the monarchy, on the heels of the Hundred Years War, prescribed, in the Ordonnance of Moutils-les-Tours in 1454, the codification of all customary law in the kingdom. The complaints in question were an


outcry perpetuated variably by jurists, political theorists, and specific interests (which historians have perpetuated) and amplified by the *ad fontes* [to the source] ideals creeping into learned crowds (humanism, broadly speaking, was particularly interested in a return to origins), who looked back on Roman law. This undertaking, due to its massive scale, physical and material constraints, and the resistance it encountered, was not completed until the mid- to late-sixteenth century, by which time most customary laws had gone through a second edition or “reform” to clean them up. On the tail end of this campaign, in response to the Estates General of Blois in 1576, Henry III, via special decree, unequivocally ordered Normandy to fall in line and follow suit. This decree was a deliberate response to apparent apprehension and

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a pre-emptive attempt to avoid a later reclamation of the new edition, and it was intended to undermine the entrenched resistance, clouded in conservatism and claims that the coutumier already existed in an official form (thereby fulfilling the requirement of the ordonnance that the coutume be codified) and that such a project would threaten the integrity of the law. Despite the force of the decree, the project took six years to complete and was followed in short order by another project which lasted into the seventeenth-century. The transition to written law—and more expansively, the writing of law—was full of political implications, as was the translation of legal documentation into the vernacular, another large project of the monarchy in the first half of the sixteenth century.

The customary law of Normandy was itself distinctive from other customary regimes. The coutume prevailing in Normandy was significantly different from that of Paris, for instance, despite the fact that the regions were contiguous—this fact is partly explained by the political history of Normandy but is no less significant given that the coutume of Paris became the pervading standard post-Hundred Years War as the monarchy worked to consolidate law codes and jurisdictions. These differences were most acutely felt in civil law because the rules governing inheritance

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14 Musset, Le régime des biens entre époux; and Yver, “La rédaction officielle de la coutume de Normandie.”
and marriage in particular were so divergent. For example, in most other parts of France, married couples shared ownership of property (known technically as communal goods), meaning that their moveable goods and immovable property acquired during the marriage were held communally, with husband and wife having an equal claim to them, and the husband or wife would inherit this communal property upon the death of the other spouse.  

This was not the case in Normandy. Normandy was a régime dotal \((dot = dowry)\). This meant that the wife’s dowry was always strictly separate from the husband’s property, and rigidly preserved and governed as such property. This property included their moveable goods and the immovable property that they acquired during the marriage. The wife held her dowry, the husband owned and controlled everything else, and neither could inherit from the other (in theory), even via contract. Norman custom, relative to most other regions of France, was extremely lineage-focused and concerned above all with preserving property within a family, and women could not transmit the lineage.  

As Jacqueline Musset characterizes it, “the matrimonial régime denied all ‘frank collaboration’ between the couple and was articulated in a sort of permanent climate of suspicion.” She also shows that although not the heir of her husband in the strictest sense, the widow did exercise a right akin to it in practice in the sixteenth century up to the French Revolution, having

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the right to claim possession of a third of moveable goods and non-lineage property acquired during the marriage for the remainder of her lifetime (these could not be transmitted to her heirs). She also had the right to renounce this temporary (or term-limited) succession, which she may have done to preserve her dowry (over which she regained control upon her husband’s death) in situations where the debts of the estate, for which she would also be liable for a third, exceeded the assets. Renunciation could be a valuable means of ducking creditors.\textsuperscript{19}

Furthermore, the patchwork nature of customary law imbued itself on a smaller scale as well with variations existing within the smaller seigneuries under the same larger umbrella. Standards of measurement as well as rules governing harvests, dues owed to the lord, and privileges governing legal procedure could all vary with important implications for civil law practice and disputes.

It should be noted that Norman law, like much of French law, was an accumulation of laws over time and was not codified into neatly organized categories like criminal and civil law—or even public versus private law like the modern French legal code.\textsuperscript{20} More commonly, the laws were categorized into whether they pertained to people, goods, or actions and judgments.\textsuperscript{21} For court cases specifically, “civil” and “criminal” referred less to the nature of the offense than to the procedure by which the

\textsuperscript{19} Musset, \textit{Le régime des biens entre époux}, part II, chapter 1.
\textsuperscript{20} It should be noted that in the sixteenth century law was conceptualized and divided into natural (sometimes subdivided into natural and human) and civil law. For an example of this see, Terrien, \textit{Commentaires du droit civil}, ch. 1, pp. 1-2. Likewise, it should be noted that public power was a subject of interest and discussion. For an example of this see Charles Loyseau, \textit{Traict des Ordres}; and \textit{Cinq Livres des Droicts des Offices} in \textit{Les Œuvres, contenant les cinq livres du droit des Offices, les Traitez des Seigneuries, des Ordres et simples Dignitez, du Déguerpissement et Délaissement par Hyptheque, de la Garantie des Rentes, et des Abus des Justices de Village} (Lyon: La Compagnie des Libraires, 1701); Charles Loyseau, \textit{A Treatise of Orders and Plain Dignities}, ed. and trans. Howell A. Lloyd (New York: Cambridge University Press, 1994); and Terrien, \textit{Commentaires du droit civil}, 15-16.
\textsuperscript{21} See, for example, Terrien, \textit{Commentaires du droit civil}, book 2, ch 1, 15.
matter was judged. In terms of procedure, especially in the highest courts, a division was made between criminal procedure and civil procedure so that different chambers of the Échiquier (Parlement) heard one type of case or another. It is therefore following the procedural distinction and echoing historiographical conventions (largely for ease of discussion) that I use the terms criminal and civil in talking about the law.\textsuperscript{22} Additionally, civil law procedure is commonly categorized according to whether it was “gracieuse”—undisputed—or “contentieuse”—disputed.\textsuperscript{23} Although capacious as a category, for the purposes of this study, I would break down civil law, roughly, into family law, property law, and business law (categories which are not contemporary, strictly speaking, but which are helpful for navigating the terrain). Of these subcategories, property law, including personal and lineage property—intersects with the other two.\textsuperscript{24}

Although I will not go into too much detail about specific laws, it is important to delve into property law since it was so important in civil law and so central to many disputes. Property—acquiring it, exploiting it, selling it, and transferring it—was at the

\textsuperscript{22} Hervé Piant has argued that procedural differences were not as important as the links between civil and criminal and calls for examining them together at the micro-level. There are certainly merits to this approach, but given the colossal number of records involved, it is not always practical. Accepting the downside and acknowledging the real potential for overlap as disputes played out, I have nevertheless chosen to focus intensively on the civil side, which allows me to add more counterbalance to the over-representation of the criminal and to weave in the notarial records (an even more colossal record set), which are essential for a study of civil proceedings and yet are not part of the emerging canon. See Piant, "Des procès innombrables."


\textsuperscript{24} Diefendorf, "Women and property."
center of livelihood, family relations, social mobility, and personal honor, as Ralph Giesey, Julie Hardwick, Barbara Diefendorf, Robert Harding, Jonathan Dewald and many others have shown. It was at the center of major life cycle moments, especially marriage and death. It was carefully guarded and hotly contested. Moreover, Norman law was (in)famously strict in governing inheritance and the transfer of property. The restrictions placed on women in the inheritance, management, and alienation of property were especially rigid compared to the regimes of its neighbors in other regions of France and Europe more broadly. The stakes for those involved in civil disputes were thus high, and one could argue that these cases could be just as much a matter of life and death as criminal cases. This is especially so if we consider that it was not unusual for murderers to receive a civic death—to have their goods seized and to be exiled. The importance of a civic death reveals the blurriness of the division between civil and criminal as well as highlighting the significance of civil disputes and the stakes involved.

Adding great complexity to customary law was the more localized seigneurial (customary) law with the institutions and jurisdictions to match. Lords of higher rank


had the privilege of (delegated) governing—making laws and rendering judgments—within their territory, and the lord’s rank and status determined the weight of the laws and authority of the jurisdictions therein. These laws were often based on customs, practices, and interpretations of the more overarching Norman custom within that territory. The lord could hold fixed or itinerant court (the latter being more common) and could claim jurisdiction over cases alongside other jurisdictions in the area. Appeals from seigneurial courts and where in the system of royal courts the case would enter was determined by the status and privilege of the seigneurial court and of the litigants. Thus, where someone lived could determine to which regulations they were subject and to which jurisdictions they had a right to turn. The same applied to the location of fixed property. These more localized laws could make a difference to people residing in the city of Rouen if they owned property outside of the walls, or if they entered into legal agreements or disagreements with people from the surrounding area.

At the top of the hierarchy, though not necessarily the most immediately influential within the geographical or social community, in the legal system was the monarchy, which issued legislation in the form of edicts, ordinances and statutes. The monarchy issued laws that ruled and affected the entire kingdom, but it could also pass laws with a more specific target. Although the monarchy did not seem to issue laws systematically—repeatedly, yes, but not systematically in the sense of

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27 Looking these up in Huguet’s dictionary of sixteenth-century French, these terms were synonymous—written law. To add a little more nuance, statutes refer to a written law or body of laws or rules governing practice (as in the case of guild statutes). “Edict” and “ordinance” both conceptually refer to a decree, command, or order (deriving from Latin words with these meanings), the main difference between them seems to be one of scale, with ordinances being more localized and edicts being more expansive. Huguet, Edmond. *Dictionnaire de la langue française du seizième siècle*. 7 vol. Paris: E. Champion, 1925.
putting together an overarching code (though the ideal, emulating Roman law, was present)—it did issue a lot of them. Even though the laws could apply to the entire kingdom, the biggest impact could be more localized, depending on the existing customary law in place. Of particular interest in relation to the customary law of Normandy and legal practice in Rouen were ordinances passed by Charles VIII and Louis XII which required officials in the Échiquier (the sovereign court of Rouen which became the Parlement)—présidents, conseillers, procureurs, avocats, greffiers, and huissiers—to swear to specifically uphold royal ordinances, to inform on those who do not, and to pursue with diligence those who would transgress them.\textsuperscript{28} That Louis XII re-issued the ordinance suggests how well received it was the first time around, and it underscores the tension between competing sources of law and their jurisdictions charged with rendering decisions and enforcing them. Lack of enforcement may have been due to considerations other than purely means. The question of enforcement, including questions of discretion (at the intersection of theory and practice) and logistics, will be the subject of chapter 5. Suffice it to say here that one of the primary means by which the Échiquier (and other Parlements) expressed its displeasure with and resisted royal laws was to ignore them, to delay registering them, and to mitigate them through interpretation in enforcing them. This was especially true in the seventeenth and eighteenth centuries.\textsuperscript{29}

\textsuperscript{28} Terrien, Commentaires du droit civil; and Recueil général des anciennes lois françaises depuis l’an 420, jusqu’à la révolution de 1789, 29 vol. Edited by François André Isambert et al. (Paris: Belin-Leprieur and Verdière, 1821-1833).

\textsuperscript{29} Most of the work of the relationship between the parlements and the monarchy has focused on the Parlement of Paris, though studies of the provinces are emerging. In particular, for Normandy, see Chaline, Godart de Belbeuf; Dewald, Formation of a Provincial Nobility; Floquet, Histoire du Parlement de Normandie; Vincent Maroteaux, Parlement de Normandie. For other provinces, see Caroline Le Mao, Parlement et parlementaires: Bordeaux au grand siècle (Seyssel, France: Champ Vallon, 2007); and Jacques Poumarède and Jack Thomas, eds., Les parlements de province: pouvoirs, justice et
Aside from its ordinances, one of the most important ways the monarchy shaped the legal system was through the judicial system through the rendering of decisions in disputes and interpreting laws or even favoring competing laws or jurisdictions. It also, in theory, enforced these decisions, though there are a lot of questions about how effectively it did so and how to measure this. Although the monarchy reserved the right to grant pardons at the top of the system and to pass additional laws to clarify interpretations of laws, it generally delegated adjudicating to a hierarchy of courts and officials (separate from and not to be confused with that delegated to lords as part of the seigneurial branch).\(^{30}\) The lowest level of courts was the *vicomté* (known as the *prévôté* in other parts of France) which held sessions (itinerant or fixed, though fixed became more common especially within the city) at which people could present themselves and their cases. These sessions were subdivided by location into subjurisdictions (and often, but not necessarily called a *sergenterie*) and could be held on location or the sessions designated for that location.

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location could be held at the site of the *vicomté*, so, for instance, the session for the
*sergenterie* of Pavilly under the *vicomté* of Rouen could be held in Pavilly or Rouen.

Acting as an appellate court for the *vicomté* of Rouen and other *vicomtés* of
the surrounding area was the *bailliage* (known as the *sénéchaussée* in other regions
of France). The most predominant royal *bailliages* in Normandy were Alençon, Caen,
Caux, Cotentin, Evreux, and Rouen but which in closer proximity to Rouen also
included Aumale (with a *seigneurial bailliage* too), Cany, Caudebec, Dieppe,
Longueville, Montivilliers, Neufchatel, and Le Havre among others. Adding more
nuance to this breakdown (and confusion for the outsider), in some places (and
particularly in seigneurial jurisdictions), in Normandy and especially other regions of
France, “*vicomté*” and “*bailliage*” could be interchanged, especially if only one of
them existed, and the monarchy in later periods worked to consolidate some of these
courts.

Sitting above all of them, the highest court of appeals, which heard cases from
the *bailliages* of Normandy, was the *Échiquier* (Exchequer, a vestige of the English
administration system in Normandy), which the monarchy made a permanent
institution in 1499 and promoted to the status of Parlement in 1515. The *Échiquier*,
like other parlements, not only acted as a judicial body, hearing appeals and
providing official interpretations of laws, it also acted as a legislative body. It could
pass rulings which would have the force of law, and it was charged with registering
royal laws, which would put them into effect in the region. It could also ignore them or
formally object to (remonstrate) them, but it would run the risk of penalty and could be
ordered by special decree to register them anyway. This dual judicial-legislative role made it an important and powerful local institution.

Parallel to the Parlement was the Cour des Aides which rendered final judgments concerning taxes. In the middle of the sixteenth-century, after the period under consideration in this study, Henry II created the présidiaux to act as a final court of appeals for civil cases in an attempt to alleviate some of the pressure on the parlements due to the high volume of cases. It should be noted too that although the présidiaux did not enjoy the same status and privileges as the parlements, the parlements nevertheless did not like the re-direction of cases to the présidiaux.31 The above-mentioned royal courts all had their sets of officials—judges, lawyers, clerks, and sergents (agents who did most of the out-of-court business)—and interpreted and enforced relevant laws—not only royal statutes, but customary law and corporate statutes too.32

All of the courts mentioned in this hierarchy, especially at the lower levels, could also compete in jurisdiction and authority with specialized courts or with other vicomtés (even bailliages across levels of the hierarchy)—if the jurisdictional boundaries were unclear or exceptions, such as privileges, had been added—within

31 Doucet, Les institutions de la France au XVIe siècle.
the system of royal courts and with courts external to it, such as seigneural or ecclesiastical courts. To the extent that laws and institutions could be controversial, the controversy (in the sense of conflict or open disagreement), or even the unpopularity, could inform litigants’ decisions in taking legal action. Overlapping jurisdictions enabled these decisions. Which court had the right to hear which cases or overrule other jurisdictions could be a matter of great contention among legal authorities.

On a smaller scale, but no less important for the local legal system, municipal rules and regulations also played an important role. Local officials were tasked with keeping public order in their municipalities, and if they failed to do so, they were held accountable to the monarchy.33 These local laws attended to the specific needs of the city. Being a permanent resident of the city (bourgeois) brought with it special status and privilege, including the ability to participate in city governance.34 City residents were not subject to the local nobility (the monarchy traded this privilege of “liberty” for “loyalty” as part of efforts to undermine power bases of local lords), meaning municipal rules and privileges could shape existing options and offer new ones. Among the privileges enjoyed, residents may be exempt from some taxes


34 This is obviously a much simplified description as “participation” in city governance varied (and could be widely interpreted), and the lion’s share was largely the domain of a small group of elite; however, the theoretical privilege imbued status. Regarding the term “bourgeois,” as Barbara Diefendorf has succinctly noted, “The term ‘bourgeois’ presents special problems, for even in the sixteenth century the term had several, overlapping definitions,” among which, importantly, include a “juridical” definition and a “functional” one. Since my sources are not clear on these distinctions, I leave the definition more open at “permanent residents.” Diefendorf, Paris City Councillors, xxiii-vi.
(which the monarchy traded for “order,” cities being commonly hotbeds of “disorder”).
We will see an example of the existence of such a privilege and the complexity in how it worked in later chapters when I analyze a lawsuit initiated by Michel de Batenceurt, bourgeois of Rouen, against tax collectors from Caen for levees collected on one of his boats on the basis that “bourgeois de Rouen” were exempt from such taxes by royal privilege.\(^{35}\)

In direct competition with secular law--customary or Roman, civil or criminal--was ecclesiastical law deriving from the Christian tradition. Rouen was no exception. Although predominantly rooted in Canon law and the medieval Church’s tradition, bureaucracy, and institutions, the reform movements of the fifteenth and sixteenth centuries and the particularities of the Gallican Church, undermined whatever coherence there may have been of ecclesiastical law in France.\(^{36}\) Even though the period under consideration predates the large scale reform movements of the sixteenth century, it is nevertheless worth pointing out that Rouen, at different periods of the sixteenth century, alternated between being a Catholic and Protestant stronghold.\(^{37}\) The seeds of these diverse viewpoints among the population existed in the period under consideration and earlier (as there were many reform movements

\(^{35}\) ADSM, 1B 331, January 12, 1510.
prior to the sixteenth century) and may have stemmed from the different draws of the city as a major port city, center of legal activity and the rest. This may have weakened ecclesiastical law and jurisdictions in the face of secular institutions once the instability of the Wars of Religion faded and the monarchy made strides toward consolidating its power and authority, but early in the sixteenth century, competing and overlapping jurisdictions created opportunity for those seeking to resolve disputes.

Rouen, partly due to, and partly resulting from, its status as an administrative, legal, and religious center, had a strong ecclesiastical presence in the late fifteenth and sixteenth centuries. Regarding the medieval Church, it was the home of an archdiocese and of several large monasteries and convents within or just outside of the city itself. Members of the clergy, both secular and regular, played different roles in the larger legal system in Rouen as elsewhere, depending on the circumstances. They could act as judges hearing cases and rendering judgment in ecclesiastical courts; as plaintiffs bringing suit (or criminal charges) against other clerics or non-clerics for thefts, embezzlement, trespassing, damage to property, or dispute over ownership of property; and of course, as defendants in the same sorts of cases. Disputes over benefices were especially common, and Terrien writes a lot about them. Property disputes and debt collection were also common as will become obvious in chapters to come. Clergy also played an important, though often undocumented, role in mediating disputes and encouraging reconciliation. No less important, though less apparent, clergy acted as legal counsel (many of whom in Rouen in this period probably had a formal legal education) advising different parties
of their options and as notaries (not the same as royal notaries) or more simply, as literate people drawing up legal documents that may or may not have had to withstand challenges in various courts.\textsuperscript{38}

The size and compartmentalization of the medieval Church allowed for internal rivalries and disputes that fed into its courts but also shaped the opportunities for lay people both in resolving disputes with members of the clergy and with other lay people. The most notable of such divisions (and rivalries) for the purposes of this study was the separation of the clergy into secular and regular clerics, the latter of which was further divided into cloistered (monks) and mendicant (friars) categories. The archdiocese represented the highest authority for the secular clergy in the city and surrounding area. For the regular clergy, there were numerous groups, but the monastery of St. Ouen and the (female) convent of Dominicaines have the richest sets of surviving records for the period under consideration. St. Ouen was large, old, and wealthy (it owned extensive property in the area) and had the privilege--the

option--of bypassing lower jurisdictions to appeal directly to the Échiquier to resolve disputes that fell outside of ecclesiastical purview.\textsuperscript{39}

Increasing institutional complexity—in size, number, and competition—was not limited to religious institutions in the sixteenth century. There existed an uneasy relationship between canon law and secular law in the larger legal system, and the commentaries under examination below draw a definite distinction between the two, even when both sources of law are in effect. Although secular law in this period coexisted with and supported ecclesiastical law for the most part (for this study it is especially notable in the outlawing of usury—condemned by the Church, which the State supported and enforced, and worked around by both clergy and laymen in the form of \textit{rentes}, which will receive more attention in chapter 2), there were important points of contention, which flared up during disputes and which could influence certain decisions in the ensuing efforts to resolve them, such as to whom to turn to have a judgment rendered, to solve or to stall, or even to advise.

One such contested area was marriage. Canon law and secular law defined the age of majority at vastly different ages, which could make a difference controlling the entire process of marriage.\textsuperscript{40} On the one hand, marriage was a sacrament, but on

\textsuperscript{39} This is clearly a very simple breakdown of ecclesiastical laws and institutions influencing the legal system in the city, and of course, it does not go into great detail on reform movements (interests for reform) either internal or external. Although this study ends its analysis before the Wars of Religion began in France, it is nevertheless important to be cognizant of such movements. Unfortunately for this study, source material on reform movements, especially in relationship to legal practice, are sparse and difficult to work with. It is worth recalling that, in theory, reform movements, could strengthen or undermine the authority and integrity of ecclesiastical laws and institutions.

\textsuperscript{40} The official age of majority was also in transition, as were many other social considerations, in the sixteenth century, most notably after the Council of Trent. The Council of Trent set the age of majority at 16; it had been 12 for women and 14 for men through much of the late medieval period. France did not officially adopt the Council of Trent until 1615 and set the age of majority at 20 for women and 25 for men.
the other hand, it was an important node of social alliance and networking and of property transmission and inheritance. It was as much a legal and social (and economic) act as a religious one. The increasing prominence of the bureaucratic class, the *robins* (*noblesse de robe*), exacerbated these tensions as parental, specifically paternal, control and prerogative became much more important, expanding in power and authority, especially as the sixteenth century passed.41

Adding nuance to these laws and jurisdictions were privileges, which acted as exceptions and made the system much more complicated and full of contradictions and overlapping jurisdictions. The term “privilege” derives from the Latin for “private law.” Privileges could be large or small, could grant immunity from certain regulations or jurisdictions, and could grant expedited or exceptional access to resources. They could redefine the boundaries of jurisdictions. They could apply to individuals, groups, offices, and institutions. We have already seen that the monastery of St. Ouen had the privilege of having its cases heard directly before the sovereign court of the Échiquier.

The monarchy was the most important source of privilege in the late fifteenth and early sixteenth centuries. The Échiquier and the municipality could also grant privileges. This would change in the seventeenth and especially the eighteenth centuries with the movement toward restricting the right to grant privileges to the

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monarchy. Moreover, although it is unclear whether granting privileges enhanced or undermined the authority of those granting, receiving, mediating, or executing such privileges. If we take the privilege of St. Ouen before the Échiquier as an example, does this privilege lend authority to St. Ouen, the Échiquier, the monarchy, or a combination of these? Privileges were both exceptions to and part of the legal system. However, as we shall see in chapters to come, the fact that Michel de Batenceurt had to appeal the bailliage of Caen’s decision to the Échiquier to uphold his claim to privilege suggests that privileges were not so easily recognized or leveraged across jurisdictions in practice.42

Privileges were typically granted to corporate entities, and these “corps” were treated as legal persons and enjoyed, among other things, the right to autonomous self-government, which could be especially significant when the majority “ruled” to lend money to the king, for instance, collecting internally and paying collectively as one.43 Because early modern French society was largely corporate in nature—encompassing, in broad strokes, not only sociability and internal regulation but also strong values of collective interest or good and “order”—“membership” was a serious preoccupation and was understood as a pre-requisite to privilege and status.44

42 ADSM, 1B 331, January 12, 1510.
Guilds and other corporations, like universities, enjoyed special privileges within a city like Rouen and created statutes to govern the activities of their members. Rouen was an important city in terms of the scale of its corporations. The wool and textile industries were especially influential in the city and surrounding area. Guilds not only created most of their own regulations (others, such as the institution of a new corporation or where they could practice, came from the city and the monarchy), they also negotiated (and sometimes hotly contested) boundaries of production with other guilds. The cloth and clothing guilds are but one example with tailors, seamstresses, lingères, cloth-makers, hat-makers, and others all guarding their rights to production. The guilds also had a quasi-policing force, in the sense that their privileges gave them the right to regulate and police the trade, a function performed by their elected officials.

Finally, with regard to this overview, another important node of the legal system which will receive a lot of attention in this study is notaries. Notaries were key players in the civil legal system, and as legal officials, went through specialized

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46 Kaplan, “Réflexions sur la police du monde du travail, 1700-1815.”
training. They received their offices by appointment, and their activities and numbers were regulated by the monarchy. Though not exclusively—priests and even legal officials doing double duty in smaller jurisdictions drew up contracts—they were charged with drawing up and formalizing legally binding contracts, agreements, wills, and even settlements of disputes among many other things. They were required by law to keep registers of these contracts, which could be sold to other notaries, and were designed, in theory, to recall agreements between people, which would minimize or resolve disputes, and to give clear direction to the transfer of property.

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In order to make such documents as sound as possible the notaries had to navigate and reconcile as many of the different laws relevant to the interested parties as possible.

**Overview of Legal Commentaries**

With this broad sketch in mind, it is time to turn to published commentaries on the legal system from (near) contemporary authors. Looking at commentaries offers a contemporary perspective on the legal system from the viewpoint of the most erudite men of law. They offer a wealth of theory and generalizations about the letters of the law, the purpose of the law and its institutions, the structure of the legal system, and procedure. These works are by and large tools of reference; however, there are certain theoretical undertones that resonate with political theorists. Some of these undertones reflect the current events of the period in which they were published—during or right after the Wars of Religion—and some of them reflect ongoing projects to consolidate letters of the law and institutions. One of the downsides of selecting commentaries from the late sixteenth and early seventeenth century is they do not provide an exact “view from above” for the cases and contracts from the late fifteenth and early sixteenth century that will be the focus of this study, and the perspective

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very likely shifted to a degree unknown. Given the dearth of material from the late fifteenth and early sixteenth century, this trade-off is acknowledged but does not negate their utility, for the commentaries offer a valuable glimpse at the disconnect between theory and practice. They also reveal, intentionally or unintentionally, some of the major problems and critiques of the legal system.

The scant commentaries surviving from the early sixteenth century are not completely lacking in utility. At the very least, they suggest a different way of thinking about the legal system. Rather than in abstract, formal and systematic terms common among the more well-known legal humanists such as Charles Dumoulin, Jacques Cujas, and others, the absence of such manuals suggest a more open-ended, practice-based approach.\(^{49}\) One of the earliest examples of a commentary on Norman custom from the early sixteenth century is the *Grand Coutumier du pays et duché de Normandie* of Guillaume Le Rouillé, first published in Paris in 1534 and then again in Rouen in 1539.\(^{50}\) Le Rouillé was born in and practiced law in Alençon (under Norman custom, but with its own autonomous Échiquier) before becoming, by the time he published this work, lieutenant général (once an important military post, but which by this time was more of an administrative post, like a governor) of Beaumont and Fresnay (in Le Maine, under the custom of Le Maine) at the behest of Marguerite of Valois (King Francis I’s sister).\(^{51}\)


50 Le Rouillé, *Le grand coutumier du pays et duché de Normandie*.

humanism, the work, in French, is structured following the thirteenth-century
compilation of the custom, but it includes “additions” (annotations) by the author at
the end of each chapter, in Latin. In the view of Robert Besnier, a prominent scholar
of Norman customary law from the earlier twentieth century, are “encumbered with
abundant references to texts of Roman or Canon law and their
commentators…[T]hese developments are often pointless…. [A]t its depth, there is, in
this work, a tendency toward rational systematization and a unification of the law, but
it is singularly gauche and makes very clumsy use of Roman law, which is too
different from the customary system.” Besnier concludes that “Without a doubt, the
unknown author of the Summa de legibus [Grand Coutumier, thirteenth-century] was
a mind of greatly superior quality than that of Le Rouillé.”52 This, the work is not well-
received among historians of Norman custom as an object of study, specifically
among legal historians pre-occupied with the law code.53 While I would not go so far
as to dismiss it outright as an object worthy of study—it does reveal different pre-
occupations and standards of asserting one’s credibility and authority as a scholar, at
the very least—it is difficult to use, in large part because it is difficult to tease out Le
Rouillé’s own ideas and impressions about the law in theory and especially in

qu’elles touchent au droit Romain (Rouen, France: Imprimerie Léon, 1911). B. Haureau, Histoire
Littéraire du Maine. Vol. 7 (Paris, France: Dumoulin Libraire, 1874). For more on the lieutenants, see
Robert R. Harding, Anatomy of a Power Elite: The Provincial Governors of Early Modern France (New
52 Besnier, La Coutume de Normandie, 147-48. Besnier’s work remains influential as part of the legal
history canon but reads, like a good portion of Norman legal history, as rather stale in its judgments in
light of more recent social and cultural studies of the law in other parts of France for other periods.
53 More recently, Jacqueline Musset, concurring with Besnier, has described this and similar works
from the early sixteenth century as “a flaunt, without measure and nearly unrestrained, of their school
knowledge, nourished in Roman law, juxtaposing or mixing resolutely pragmatic customary solutions
with reasoned and logical considerations from erudite law…it is possible, as a result, to abstain from
naming these authors here.” Musset, Le régime des biens entre époux, 13-14.
practice, which are the most valuable part of a commentary for historical inquiry. It also does not seem to have been widely influential. For these reasons, I have chosen not to examine it at length in this dissertation, but it is still worth acknowledging its existence.

All that said, I have chosen to focus on a selection of commentaries which offer insights most closely bearing on the subsequent chapters of this dissertation. As a set up to the commentaries, Pierre Ayrault’s *De l’Ordre et instruction judiciaire, dont les anciens Grecs et Romains ont usé en accusations publiques, conferé à l’usage de nostre France*, first published in 1576, offers an important perspective on civil practices from a high-level official--Ayrault was, for a good portion of his life, *lieutenant criminal* (the highest ranking provincial judge who presided over criminal, as opposed to civil, cases) in Angers.54 This work, a treatise on judicial theory and procedure and full of references to ancient Greek and Roman precedent (part of his credential as an educated man of law), champions the rule of law, apparent in its consistent procedures and hierarchy, with the king as the keystone. Ayrault focuses primarily on criminal proceedings, which he deems “more noble” than mundane “civil matters” (“matieres civiles”)—for example, jurisdiction (the right to judge) can be delegated in civil matters but not criminal ones. In so doing, he focuses on cases that have a public interest rather than those which may be resolved privately such as “civil matters” and petty crimes (“delict privé et pecuniaire”).55 His apparent disdain for civil

55 Pierre Ayrault, *De l’Ordre et Instruction Judiciaire, dont les anciens grecs et romains on usé en accusations publiques. Et si on peult condamner ou absouldre sans forme ne figure de procés* (Paris: Jaques du Puys, 1576), 5v-6. “Car mesmement si ce n’estoit que quelque delict privé et pecuniaire, les Preteurs et Magistratz criminals, que nous avons appelé Quaestores, ou Quaesitores, deleguoient semblablement telles causes, et en faisoient comme le Praetor Urbanni, dees matieres civiles. Mais
procedure suggests a hierarchy of legal practice and a priority among elites when discussing the legal system. Although it would be unfair to envision Ayrault specifically as the mouthpiece of erudite men of law in this period, the proportion of publications on criminal law relative to those on civil law, does reinforce the idea of hierarchy and priority. Nevertheless, some of Ayrault’s ideas about procedure and the legal system more generally are broadly applicable, and he does use metaphors drawn from “civil matters” to elaborate on criminal ones: “in Justice, the parties have to find equity, and nothing must be permitted to one that is not consequently permitted to the other; everything must be common for them—the audience, the proofs, the delays, the option and the recusal of Judges. Otherwise with crimes, he who has been offended holds the place and position of creditor and he who has erred is properly the debtor.”

Again, Ayrault’s focus is on procedure to the point that he states that justice without formality has no authority and a trial should still be conducted after an execution (execution preceding trial only in extraordinary cases

quant aux crimes publics, aux grandes et graves accusations, les Preuteurs n’en commettoyent ny pouveroyent commetter à aultruy la connoissance et jurisdiction: les parties estoiyent ouyes en leur presence, le procés s’instruisoit devant eux, ils presidoyent aux jugements, les donnoyent et prononçoient eux mesmes….Pour le regard des Atheniens, il est certain qu’ils en usoyent tout de mesme, c’est que les matieres civiles, ils les terminoyent par arbitres; mais du crime public c estoit ce grand Senat d’Areopage, c estoit le peuple seul, qui en congoissoit….Parquoy (comme nous disons) puis qu’ainsi est que l’ordre et formalité judiciaire gist en l’instruction de la cause procedure, et contexture; que l’instruction criminelle est la plus noble; et quant à celle don’t nous usons pour le jour’d’huy qu’il m’a semblé plusieurs fois, pour ce peu d’experience, qu’il s’y faisoit beaucoup de fautes par mespris ou ignorance de l’antiquité; j’ay deliberé pour ce coup de traiter et esclaircir ceste partie de la matiere criminelle.”

56 Ayrault De l’Ordre et Instruction Judiciaire, 14-14v. “en Justice les parties doibvent trouver equalité, et rien n’estre permis à l’un, qu’il ne le soit consequemment à l’autre; tout leur doibt estre commun, l’audience, les preuves, les delaiz, l’option et la recusation des Judges. Or ès crimes, celuy qui est offencé tient le lieu et place de crediteur; celuy qui a delinqué, est proprement le debteur.”
where immediate action of the kind was necessary).\textsuperscript{57} The importance of procedure thus bridges the divide between civil and criminal procedure.\textsuperscript{58}

With these broad views of civil law in mind, it is important to focus in further on customary law, being the form of civil law most influential in sixteenth-century Normandy. Guillaume Terrien’s \textit{Commentaires du droit civil tant public que privé, observé au pays et Duché de Normandie}, first published posthumously in 1574 but surviving in the second edition from 1578 (the year after Henri III ordered the new compilation of the customary code in Normandy), is a reference guide to legal procedure specific to Normandy from the hand of the lieutenant général of the Bailli of Dieppe.

As a collection of the customary law (both “written and unwritten”), edicts and royal ordinances, and rulings of Parlement, which informs on the “usage and style of proceeding in the courts and jurisdictions of Normandy,” the work is billed as “very necessary and required, not only for Judges, Juris consults, and practitioners of the said Duchy, but also for all those in other provinces and jurisdictions of this Kingdom.”\textsuperscript{59} Unlike Le Rouillé’s compilation, however, Terrien’s commentary does not follow the structure of the \textit{Grand Coutumier} from the thirteenth century but rather, following the style of contemporary jurists (like Charles Loyseau, see below), draws on Roman law and organizes his work according to people, things, and actions. This structure breaks down in the details, and the influence of the \textit{Grand Coutumier} and

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\textsuperscript{57} Ayrault \textit{De l’Ordre et Instruction Judiciaire}, 4v and 41v.
\textsuperscript{58} Ayrault \textit{De l’Ordre et Instruction Judiciaire}, 42.
\textsuperscript{59} Terrien, \textit{Commentaires du droit civil}, title page. “Coutume dudit Duché, tant redigee par escrit, que non escrite: Usage, Style de proceder és Cours et Jurisdictons de Normandie, et style de ladite Cour; le tout en textes et en gloses….Tres-necessaires et requis, non seulement aux Juges, Jurisconsultes et Practiciens dudit Duché, ains aussi à tous ceux des autres provinces et ressors de ce Royaume.”
the compartmentalization of Norman custom in thought and practice infiltrate the organization when he subdivides civil and criminal procedures and further divides procedures involving property disputes according to whether the property is moveable or immoveable. And none of this was accidental or a surrender to the monumental task of forcing Norman custom into the Roman mold; it was a conscious decision on Terrien’s part. As a tool of reference, it makes sense that people trained in Roman law in their schooling would think in those categories and approach the law with those terms in mind at the outset. That is, this familiar categorization would also be a common foundation (similar to a common language) which, along with periodic annotations and references to a sort of common precedent (guide posts), would aid those approaching law and practice in Normandy from “other provinces and jurisdictions.” The peculiarities of the legal system in Normandy are then more apparent and accessible and, perhaps, also more legitimate (and less provincial) on the larger scale of legal codes and systems in other regions (and not just in France). These annotations were also intended to help more localized practitioners navigate ambiguities where the letter of the custom did not help in interpreting and applying the law to practice, thereby making it multifunctional and more than a work of erudition.

Of further note, Terrien acknowledges the evolving nature of customary law both internally through practice but also in relation to other sources of law such as royal ordinances or court rulings. He notes that “the Coutume and the manner of proceeding in their beginning were not written: but only kept and observed by common usage, and since ruled upon and rendered into writing. But just as by long
usage they have been kept and observed, so also by contrary usage or non-usage, as by a tacit consent that they have been in part abolished, and by Royal ordinances and Court rulings, have they been reformed and corrected.”

He observes that court rulings (by which he means Parlement) have potentially multiple uses: they decide a case; they could be used to guide interpretation of the law in future cases; and they could have the force of law. Published collections of such rulings, he notes, are intended for reference and to persuade interpretation. Terrien thereby reconciles competing sources of law and lends legitimacy to continued practice. However, his view of practice is court-centric and very much top-down.

Similar to Terrien’s Commentaires, Jean Bouteiller’s Somme rural, ou le grand coutumier general de practique civil et canon, is a compilation of customary law in use in France more broadly with royal ordinances and court rulings that override or influence interpretation of the customary law. It is intended as a guide for practitioners. Originally published in the fifteenth century as the Somme rural, it was re-published several times and became Le Grand coutumier in the early sixteenth century. The edition consulted in this dissertation is one from 1603 and was published and annotated by Charondas Le Caron, who was a juris consult and lieutenant to the baillage of Clermont in Beauvaisis. This work is particularly interesting because it includes commentary from both Bouteiller and Le Caron and reveals clear changes in practice and interpretation of the law between the fifteenth

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60 Terrien, Commentaires du droit civil, book 1, ch 2, pp. 9-10. ‘La Coustume et le stile en leur commencement ne furent escrits: mais seulement gardez et observez par un commun usage, et depuis arrestez et redigez par escrit. Mais tout ainsi que par long usage ils avoyent esté gardez et observez, aussi par usage contraire ou non usance, comme par un tacite consentement de tous ils ont esté en partie abolis, et par ordonnances Royaux et arrests de la Cour, reformez et corigez.’

61 Terrien, Commentaires du droit civil, book 1, ch 2, p. 10.

and seventeenth centuries—most evident when Le Caron notes that some practice or another has fallen out of use.\textsuperscript{63} In terms of the law, Bouteiller draws fine distinctions between types of law, drawing the expected distinction between written law and customary law but then also dividing customary law into “private custom” and “common knowledge custom”.\textsuperscript{64} Related to these others and also in the list is “hateful law,” which he defines as “the law which by means of the custom of the territory is contrary to the written laws.”\textsuperscript{65} Bouteiller and Le Caron also carefully distinguish custom from “usage” and “style” as well as other similar categories.\textsuperscript{66} This double commentary will be examined alongside Le Caron’s 1598 edition of another (anonymous) commentary from the fifteenth century, \textit{Le Grand coutumier de France}.\textsuperscript{67} As a pair, these commentaries offer several layers of insight on law and practice.

Finally, I have chosen to use Charles Loyseau’s \textit{Les Cinq livres du droit des offices} and \textit{Discours de l’abus des justices au village} contained within a collection (published in 1701) of his works. These books were published first as separate books

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\textsuperscript{63} Jean Bouteiller, \textit{Somme Rural ou le Grand Coustumier General de Practique Civil et Canon}. Reveu et Corrigé sur l’Exemplaire par Louys Charondas Le Caron (Paris: Barthelemy Macé, 1603). See p. 18 note c and the notes on pp. 43-44, for example.

\textsuperscript{64} Bouteiller, \textit{Somme Rural}, 3-6. “\textit{Et y a difference entre coutumes: Car il y a coutume privee et coutume notoire}. Et est perilleuse chose à arguer la premiere pout doute de la preuve, sinon qu’elle fust redigee par escrit, de l’authorité du Prince, et ses trois Estats du lieu ou Bailliage pour se faire appellez et assemblez, arrestée pour coutume. Et la notoire est plus legere, car elle se preuve d’elle mesme.\textit{’}” Quote pp. 5-6.

\textsuperscript{65} Bouteiller, \textit{Somme Rural}, 3. “\textit{Droit haineux est le droict, qui par le moyen de la coustume de païs est contraire au droict escrit, comme sont cas de retrait lignagier, qu’aucuns coutumiers appellent cas ou droict de promesse, ou autres plusieurs cas qu’à droict sont contraires, et toutesfois coustume les souffre et appreuve.\textit{’}”

\textsuperscript{66} Bouteiller, \textit{Somme Rural}, 6-8. “\textit{Us}” and “\textit{Stille}.”

in the late sixteenth and early seventeenth century and republished several times in
the seventeenth and eighteenth centuries. Loyseau held positions as avocat in
Parlement and lieutenant particulier in the présidial court of Sens and took a more
critical view of the legal system, particularly of the seigneurial branches and on the
subject of venality. Loyseau reflects one strain of opinion in the period following the
Wars of Religion and does not necessarily reflect ideas from the early sixteenth
century, but he does single out the reigns of Louis XII and François I as important
periods of change in the legal system. This attention underscores the importance of
examining practice in the late fifteenth and early sixteenth centuries.

Loyseau’s works, especially his *Des Ordres et simples dignitez*, *Les Traitez
des seigneuries*, and *Discours de l’abus des justices au village*, have been much
more influential in the historiography of early modern France than the commentaries
from the other authors noted above, as much on the subject of political and social
theory as legal theory.68 Those who have studied his works in depth comment on the
quality of his legal expertise, but in spite of his erudition and his background, these
same scholars do not give much attention to the legal system. When his work is not
used by socio-legal historians as an authoritative contemporary witness (even
beyond his lifespan), it is mined for political theory, particularly in relation to the idea
of public power and the state, and especially for his understanding of France as a
society of orders and how that relates to the monarchy.69 However, for my purposes,

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68 Loyseau, *Les Œuvres*. See Loyseau, *A Treatise of Orders*. See also Brigitte Basdevant-Gaudemet,
*Aux origines de l’État Moderne: Charles Loyseau 1564-1627 Théoricien de la puissance publique*
69 For more on the society of orders, see Arlette Jouanna, *Ordre Social: Mythes et hiérarchies dans la
Loyseau’s works will be examined specifically for their perspective on civil law and practice. Similar to Ayrault’s *De l’Ordre et Instruction Judiciaire*, Loyseau’s scope is broad, leading him to hedge his work with the sentiment that, “Given that the infinite variety of human affairs produces so many diverse encounters with the Law, and that it is not easy to assemble and understand them all under one general proposition, which is uniformly true, the juris consult can conclude without risk, that all definitions, that is, generalized resolutions, are risky in law.”

Having introduced the commentaries, it is now possible to collect their thoughts on various subjects of interest to the rest of the dissertation. In particular, I will examine what the various authors have to say about jurisdictions to show the elite views, or pretensions, of the structure of the legal system and how important it was. Jurisdiction being foundational to procedure, according to the authors, this will provide important background for subsequent discussions of officials and of procedures in and out of court. Because the chapters to come focus on contracts, seizures of goods, *clameurs*, patterns of appearances and defaults, settlements, enforcement practices, and lower-level officials such as notaries, *sergents* and *procureurs*, I have focused my analysis of the commentaries on these topics. Ultimately, the commentaries provide a court-centric perspective of the legal system. Regarding jurisdiction especially, the authors describe an ideal hierarchy of authority

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70 Loyseau, *Les cinq livres du droit des Offices* in *Les Œuvres*; 1. “La variété infinie des affaires humaines produit tant de diverses rencontres au Droit, qu’étant mal aisé de les assembler et comprendre toutes sous une proposition générale, qui soit entièrement veritable, le jurisconsulte a pu resoudre sans hazard, que toutes definitions, c’est-à-dire, resolutions generales, sont hazardeuses en droit.”
with clear-cut boundaries between jurisdictions and give the impression, in trying to force reality into this mold, of a more or less well-ordered—well-governed—system.

The echoes of complaints and disputes over jurisdiction, taken up here and there within the commentaries, reveal implicit criticisms of the system as practiced. Such criticisms, made explicit in preambles to legislation from the monarchy, suggest a system which is overly confusing, complex, and inefficient, thereby advocating for the ideal described above “to better meet the needs of the people” and “serve the interest of justice.” These commentaries provide (and advocate for) a theoretical and professional practitioner’s perspective on authority and who wields it, and also on what justice means, which is challenged by the individuals and groups who used the system to their fullest advantage. Jurisdiction, from the court’s perspective and predominant in elite legal culture, represents the primary point of initiative for litigants and will thus feature as an important element of the discussion of people’s capacity for initiative in the legal system in the chapters to come.

**Legal Commentary on Jurisdictions**

Beginning with the subject of jurisdictions, Loyseau argues that delegation of justice derived from delegation of governance and assumes that exercise of justice must be by men of letters not sword. Along these lines, the royal system replaced the seigneurial one in the city when the cities were reunited with the crown and the city governors similarly delegated exercise of justice. He argues (contradictory to

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71 Loyseau, *Les cinq livres du droit des Offices*; 32.
practice) that simple jurisdiction alone can be delegated and draws a distinction between lieutenants, who have the power to punish and whose decisions are appealed up to next tier in judicial system, and the “simple juge,” who has the power to decide and whose decisions are appealed to the person who delegated authority to him. He also draws an important distinction between *audientia* (more traditionally linked to justice and encompassing the right to hear cases, judge, and sentence) and *jurisdictio* (the right to execute—literally) and which he compares to the authority and practice of ecclesiastical judges in relation to secular ones. With slightly less subtlety, Terrien defines jurisdiction as “the dignity by which one has the power to do right by complaints which are made before him,” further divided into seigneurial and royal jurisdictions. Bouteiller defines jurisdiction similarly but divides it into “ordinary,” “natural,” and “bestowed” with which Le Caron disagrees and considers the definition too fine, preferring instead to define it as “public power to render law and administer justice”. Le Caron continues with a more succinct breakdown of jurisdiction: “that of the King, which is of two kinds, sovereign and inferior, and that of lords and after that into ordinary and extraordinary or delegated, and then into high, low, or middle.”

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74 Terrien, *Commentaires du droit civil*, book 3, ch 3, p. 54. “*Jurisdiction est la dignité qu’aucun a, pource qu’il a pouvoir de faire droit des plaintes qui sont faites devant luy.*”
75 Bouteiller, *Somme Rural*, 8-9; 18. “*Si dois sçavoir que jurisdiction est divisée en trois manières: Car l’une est ordinaire, l’autre naturelle, et l’autre est commise.*” (Bouteiller) “*La jurisdiction est icy trop estroitement définie: les Docteurs en font une generale, et l’autre speciale selon qu’elle est prise aux livres du droit Romain à la difference d’imperium merum et mixtum. Prise generalement se peut definir une puissance publicque de rendre droit et administrer justice.*” (Le Caron)
76 Bouteiller, *Somme Rural*, 18. “*Jurisdiction se pourroit plus egalement diviser, premierement en celle du Roy, qui est de deux sortes, souveraine et inferieure, et celle des seigneurs: en apres en ordinaire et extraordinaire ou deleguée; plus en haute, basse, et moyenne.*”
Beyond these simplified, theoretical divisions, I have found that all of the authors establish a similar structure and hierarchy of jurisdictions with clear competencies and connect jurisdiction to social status—not only who has the right to hear certain cases regarding certain people but also, from the opposite perspective, who has the right to appear before which court, to have the privilege of bypassing a lower court on first instance, for example. Le Caron notes that “the Bourgeoisie is a seigneurial right” and that a “Bourgeois du Roy” is subject only to the royal courts, regardless of whichever lord’s territory he is residing in. They also admit indirectly that jurisdictions can overlap and be disputed among officials, but although this can cause “vexations” for the people, the concern expressed is almost exclusively procedural, with noted exceptions in Loyseau’s works. An example of one of these disputes is provided by Terrien where he includes a ruling from 1516 from the Parlement of Rouen sorting out overlapping and contested jurisdiction between the *vicomté* and the *bailliage* of Constances. Despite the difficulties that the multiplicity of jurisdictions posed (and the vexations), the commentaries suggest a conscientious effort to preserve jurisdictions.

The question of jurisdiction in these commentaries affects not only the right by various lords and officials to hear and decide on cases but also affects notarial practice. Notaries practice “at all times under the name and authority of Judges” and they “must not practice outside of the territory of their Judges and if they do so, they

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77 Bouteiller, *Somme Rural*, 77. Le Caron also gives a lengthy description of privilege in his *Le Grand Coutumier de France*, 245. “La Bourgeoisie est un droit seigneurial...Lequel appartient au Roy, ou au Seigneur qui en a le privilege et droit du Roy, et a tel effect que le Bourgeois du Roy encore qu’il soit demeurant en la terre de quelque Seigneur, n’est toutesfois justiciable d’autre que du Roy, et son Seigneur ne le peut vindiquer.”

78 Terrien, *Commentaires du droit civil*, 63.

may be punished.” Taking this train of thought a step further, Loyseau elaborates on the question of the validity of contracts passed out of jurisdiction and answers it tentatively, “certainly with regard to the Notaries of Lords who passed contracts under the primitive Justice of the King or from another Lord who did not appear before them, there is a great appearance that these contracts are null in the face of rigor just as those of a foreign Notary like that of the Emperor, the Duke of Lorraine or of Savoy had they been passed in France.” The greater doubt still, according to Loyseau, hangs over the royal notaries who practice outside of their zone and parish, which by the letter of the law of Francis I and Henry II, these contracts are null and the notaries are responsible fourfold for all expenses, damages and interest of the parties. Loyseau suggests that enforcement of such would be too “rigorous” especially in the most important contracts—marriage, constitution of rente, and even a will—not because of the damages to the parties but because “Gentlemen, Merchants, and Foreigners, who know nothing of the separation of Justices, put their trust in the Notary, who, more often than not, does not have the means to dissuade them.” Loyseau concludes: “Would this not be to lay the foundation of Justice,

80 Loyseau, Les cinq livres du droit des Offices; 40. “Voila pour la jurisdiction contentieuse; quant à la volontaire dont les Notaires ont le plus frequent exercice, sous le nom toutesfois et authorité des Juges, qui sont toijours intitulez és greffes des Contracts, c’est chose bien certaine, qu’ils ne doivent pas instrumenter hors le territoire de leurs Juges, et s’ils le font, ils peuvent être punis.”

81 Loyseau, Les cinq livres du droit des Offices; 40. “mais la question est, si les Contracts qu’ils ont passez hors leurs territoire, sont nuls. Et certainement à l’egard des Notaires des Seigneurs, qui ont passé des Contracts en la Justice primitive du Roy, ou d’une autre Seigneur, qui ne ressortit devant eux, il y a grande apparence que ces Contracts soient nuls à la rigueur, tout ainsi que ceux qu’un Notaire étranger comme de l’Empereur, du Duché de Lorraine, ou de Savoye, auront passé en France.”

82 Loyseau, Les cinq livres du droit des Offices; 41. “Mais le plus grand doute est és Notaires Royaux, qui ont instrumenté hors la branche et Paroisse dont ils son établis, attendu les Ordonnances du Roy François I et Henry II….Neantmoins cela seroit bien rigoureux, qu’un contract d’importance comme de mariage, de constitution de rente, ou même un Testament, fust declaré nul, sous pretext que des Gentils hommes, des Marchands, des Etrangers, qui ne savent pas la separation des Justices, s’en sont fiez au Notaire, qui le plus souvent n’a pas moyen de les deinteresser.”
which relies on the faith of contracts, on too fine a point, a formality and subtlety of chicanery, rather than on equity and all apparent good faith?"83 A notable practical counter-example, from the eighteenth century, is described in Jean-Claude Perrot’s study of the way people from Normandy went to Paris to have their marriage contracts drawn up to avoid the limitations of the *Coutume de Normandie*, which, in theory, would create potential jurisdictional issues.84 I have not, unfortunately, had the opportunity to investigate whether this practice existed in the sixteenth century, but it is interesting given the monarchy’s increasing emphasis from the late fifteenth century onward on regulating notarial practice and requiring contracts to be formalized before notaries to be considered legally binding.

Loyseau’s discussion of notaries and contracts is important because it validates the foundational importance of contracts in civil law. It also illuminates the underlying risk not only for the parties entering into the contract but also for the notary drawing it up. The ambiguity and contestation of jurisdictions amplifies this risk, and the stakes of sorting out the jurisdictions touches not only the judges collecting fees and the wealthier litigants who drag out their disputes but also the lower rungs of the judicial hierarchy, anyone entering into a contract, and the very bedrock of the system. The importance of notarial practice and contracts underscores the necessity of drawing up good contracts, as we will see in later chapters. Also

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83 Loyseau, Les cinq livres du droit des Offices; 41. “Seroit-ce pas establir le fondement de la Justice qui gist en la foy des Contracts, sur une pointille, une formalité et subtilité de chicanerie, plutôt que sur l’équité et bonne foy toute apparente?”

significant is the close conceptual link in practice between scribes and notaries who record sentences and contracts.85

Among the other commentators, on the subject of notaries and contracts, Terrien echoes, but does not problematize at length, the jurisdiction of notarial practice, delving more into the finer points of different types of property, the rules governing transfer of them, and who can enter into contracts, including conditions for women and children.86 Bouteiller and Le Caron also lay out different types of property and rules governing it, but their interest in notaries specifically focuses on the right to institute a notary, the control of the royal seal, and the collection of revenue associated with notarial practice, with a pinch of “good morals” to finish it off.87

Commentary on Legal Actions, Procedures and Practitioners

Related to jurisdiction, but more expansive than contracts, are the explanations of legal actions and procedures, from how to initiate a dispute to how the resolution is to be enforced. On the subject of seizure of goods and various clameurs, Terrien, whose scope is most specific, has far more to say than the other authors, suggesting variant practices in different regions of France. For example, Terrien cites the privilege of the bourgeois of Rouen of being able to seize the moveable goods of outsiders who are their debtors who are found in the city until

85 Loyseau devotes an entire chapter to scribes and notaries. Les cinq livres du droit des Offices; 114-20.
86 Terrien, Commentaires du droit civil, books 2, 3, 5 and 7.
they have paid their debt. Terrien’s focus on Normandy allows for greater detail. It also suggests more interest in these practices in Normandy, especially the clameur. Although clameurs of various sorts, such as the haro, were not a practice unique to Normandy, Normandy did have a reputation for favoring them.

Taking one example in particular of this association, François Ragueau’s Indice des droit royaux et seigneuriaux (part dictionary and part index), published in 1620, indicates, echoing and citing Terrien, that the clameur de haro is a Norman practice (or at least especially in use in Normandy) and is “le cry de force qu’on leve sur aucun.” Ragueau continues to explain that the haro “must only be cried in response to criminal acts—that of fire, theft, homicide, or evident peril—against the offender so that everyone responds to it and takes and hands over the offender to Justice.” The haro, then, in this context, is an indicator of imminent peril of concern for those in the immediate vicinity and is a call to witness and to action and intervention for an immediate halt to the offense. “However,” Ragueau adds, “by the style of proceeding in the Justice system of the country of Normandy, the haro is also practiced to the end of hereditary possession, and he who finds himself dispossessed and his property usurped, can call upon the aid of the Prince, if there is no competent

90 François Ragueau, Indice des droits royaux et seigneuriaux : Des plus notables dictions, terms et phrases de l’Estat, de la Justice, des Finances, et Practique de France, Recueilli des Loix, Coustumes, Ordonnances, Arrests, Annales, Histoires du Royaume de France et ailleurs (Lyon: Simon Rigaud, 1620); 375. Ragueau also includes an anecdote from the 100 Years War, claiming that, “the inhabitants of Rouen, being sieged by the King of England in 1418, cried out the great Haro by their deputy to the King of France to call for help” (376). This anecdote is, if unlikely, an amusing caricature and highlights popular assumptions at the very least.
91 Ragueau, Indice des droits royaux et seigneuriaux, 375. ‘Le Haro ne doit estre crié que pour cause criminelle, comme pour feu, larcin, homicide, ou evident peril contre celuy qui mestfait, afin que chacun sorte au cry pour le prendre et rendre à Justice.”
Judge or Sergent on site at that time. And upon this clameur being cried, the offending party must cease and desist his enterprise."92 The placement of ancestral property and the proper transfer of it on the same level as criminal acts like arson and homicide underscores the peculiar strictness of hereditary property rights and is highly significant for understanding Norman legal culture and the disputes to come. On the clameur de gage plege Ragueau, again singling out this clameur as a Norman practice, indicates that it is “both a proprietary and a possessory action in one, taken when anyone doubts that the endeavors taken by another to seize possession or the right pertaining to him.”93 Similar in certain respects to the haro, the clameur de gage plege concerns property seizure and possession, but it is not specific to hereditary lands (patrimony) and lacks the undertones of imminent danger, though it is easy to imagine the initial response scene being comparable. For the final clameur under examination in the chapters to come, Ragueau, in familiar fashion, specifies that the clameur de marché de bourse is a Norman practice, “when by action, one takes back or reclaims patrimony that had been sold, by right of lineage or seigneurie.”94 The subtle differences between the clameurs and their use as outlined by Ragueau and others, and their survival to this day in the Channel Islands, where Norman custom persists, suggest a special, but not exclusive, prominence of

92 Ragueau, Indice des droits royaux et seigneuriaux, 375. “Toutefois par le stil de proceder en la Justice du pays de Normandie, le Haro se pratique aussi à fin heredital possessoire, et celuy que l'on veut dessaisit et deposseder, peut apeller l'ayde du Prince, s'il n'y a Juge competent ne Sergent sur le lieu et heure. Et a ceste clameur la partie doit cesser de son entreprise à peine d'attentat.”

93 Ragueau, Indice des droits royaux et seigneuriaux, 343-44. “Clameur de gage plege au stil du pays de Normandie. C'est une action proprieatoire et possessoire ensemble, quand aucun se doute qu'autre face entreprinse sur saisine possessoire ou droicture à luy appartenant.”

94 Ragueau, Indice des droits royaux et seigneuriaux, 125. “Clameur de bourse, ou de marché de bourse: au styl du pays de Normandie, quand par action l'on veut retirer l'heritage vendu soit par droit de linage ou de Seigneurie.”
clameurs in Norman legal culture. Their significance as evidence for the survival of orality in the legal system, despite a precocious written code, along with patterns of usage as documented in the notarial and court records will be examined at length alongside scholarship on the subject in chapter three.

For sixteenth-century practice specifically, Terrien notes that the clameur de haro is preferred in Normandy over other procedures and that it is meant to be a means of resistance for the "weaker, simple people" to recover and hold on to their possessions and defend them against the "violence of stronger people"—once "cried," the aggressing party must cease his activity until justice decides possession. Terrien adds that the haro is not valid against a sergent or other official. Unlike the clameur de haro, other clameurs had to be reiterated to a sergent or judge to remain in effect, and the party or parties pursuing the clameur did not have to appear at every court session but had to appear at least once a year for the clameur to remain in effect; once a year and a day passed, the clameur lapsed. These provisions underscore the importance of sergents, and their range of duties, and also the patterns of appearances observed in the court records, all of which will be discussed

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96 Terrien, Commentaires du droit civil, 265, 272-73. “Lequel Haro ainsi crié, la partie doit cesser de son entreprise….remede aux simples gens impuissans de resister, pour recouvrer leur possession a eux tollue par la force des puissans hommes. Depuis la clameur de Haro a esté pratiquee et receue en usage pour garder sa possession, et la defendre contre la violence des plus forts….Mais Haro ne peut estre crié, ne (comme on dit en France) complainte formee contre un Sergent, ou autre Officier publique, pour quelque exploit par luy fait par authorité de Justice: sinon qu’il fist prejudice à la jurisdiction d’autruy, ou que par ledit exploit il vousist s’attibuer la jurisdiction appartenant a autruy.”

97 Terrien, Commentaires du droit civil, 321-22.
at length in chapters to come. *Clameurs* were an important means of disputing and revoking a contract, most commonly used to reclaim alienated property.\(^98\)

On the matter of disputing before a court and associated proceedings, the authors go into much more detail than on actions taken out of court. All explain the manner in which a person must be summoned to court in the case of a dispute, once an appearance date is assigned. Not following the procedure may incur a delay at best or excuse a default at worst. An appearance, however, is only the beginning, and the defendant and the plaintiff are entitled to several forms of postponement (“delays”) for preparation.\(^99\) Le Caron elaborates that the defendant can only use this at the beginning of the court proceedings but that the plaintiff can use it whenever a new point of defense is presented.\(^100\) Bouteiller suggests, but dismisses, concerns of stalling and obstruction related to these delays.\(^101\) Le Caron notes that some of these delays indicated by Bouteiller were abolished by the ordinances of 1539 (Le Caron is, I believe, optimistic here—as noted above and discussed at length in chapter 4, the monarchy passed repeated ordinances to try to speed up proceedings, but change was slower in practice than Le Caron is letting on, though they may have been more noticeable in practice by the time he was writing).\(^102\) Bouteiller also enumerates a list of exceptions that can be employed by defendants to delay court action, including


\(^{100}\) Le Caron, *Le Grand Coutumier de France*, 301.


\(^{102}\) As will also be discussed in chapter 4, it is clear that the monarchy was passing laws to regulate the speed of proceedings, but it is unclear how rigorously these were enforced (their repetition suggests enforcement was ineffective or lacking). It is also unclear who was instigating these changes and who might benefit. Judges, backed more or less by royal authority, seemed content to encourage disputants to work things out on their own, and disputants were not necessarily in a hurry to reach a formal resolution either. “Efficiency” and “speedy” by a modern understanding of justice did not seem to be a primary concern or concept of justice in the period under examination.
questioning jurisdiction. Le Caron summarizes these exceptions as those “concerning the competence or incompetence of a Judge and the place where the case must be heard,” those that defer an action (such as not having heard the claim or not being able to be present for the designated appearance), and those that head off or overturn an action (such as proposing a settlement or claiming that the claim is inept).103

It is in these finer points of procedure that the character of Bouteiller’s and Le Caron’s works as reference guides for practitioners (likely procureurs) become clearer, especially since they switch to the second person (“tu”) at times. Terrien’s work differs from Bouteiller and Le Caron in that it is primarily giving directions to officials.104 Terrien does indicate that, in most cases, parties have the right to a delay to the next session held—the most notable exception being the case of a clameur de marché de bourse.105 Loyseau, similar to Terrien, is concerned primarily with the actions of officials, and his treatise on the abuses of seigneurial justice condemns the confusion of jurisdictions and sources of law that enable abuses and obstruction on the part of litigants.106

Not appearing in court may constitute a default, but the commentaries provide quite a few points and technicalities that would excuse a default. According to Bouteiller, the default of a defendant does not bring an end to the case or an

103 Bouteiller, Somme Rural, 76; 73-85, 295-304. “concernans la competence ou incompeta
nce du Juge et du lieu où la cause se doit traicter.”
104 Terrien, Commentaires du droit civil, 340-49.
105 Terrien, Commentaires du droit civil, 371-72.
immediate ruling in the plaintiff’s favor, but each default does constrict the
defendant’s options until the final default brings a ruling in the plaintiff’s favor;
however the default of a plaintiff is ruled immediately.\textsuperscript{107} In most cases of appeal,
default of one or other party ends the appeal immediately.\textsuperscript{108} Le Caron notes in his
edition of Bouteiller’s text and in his proper work that the ordinances of 1539 reduced
the number of defaults permitted (again, a signal of changes in legal culture to come
but not as immediate as the passing of a set of laws).\textsuperscript{109} Terrien adds that the letter of
Norman customary law categorizes a default as a delay, but “according to the
common manner of speaking, we do not number defaults among delays.”\textsuperscript{110} Terrien
also notes that denying that one received a summons, had it been delivered by the
Sergent in the absence of witnesses, would excuse a default.\textsuperscript{111} All of this adds up to
a lack of immediate repercussions for those who did not appear in court at the turn of
the sixteenth century.

Again, the authors are mostly interested in court actions, so the commentaries
do not delve into settlements too much. Bouteiller and Le Caron both acknowledge it
as a means to expedite an end to court proceedings, but they add undertones of fear
of proceedings and define it as a pact and a “doubtful and uncertain thing.”\textsuperscript{112} Terrien
does not discuss settlements at all, and his brief discussion of arbitration includes an
ordinance from 1561 which praises settlement and arbitration as alternatives to in-

\begin{footnotesize}
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\item \textsuperscript{108} Bouteiller, \textit{Somme Rural}, 26.
\item \textsuperscript{109} Bouteiller, \textit{Somme Rural}, 31; Le Caron, \textit{Le Grand Coutumier de France}, 349-56.
\item \textsuperscript{110} Terrien, \textit{Commentaires du droit civil}, 355. “Toutesfois selon la commune manière de parler nous ne
mettons les defaults au nombre des delais, et appellons delais seulement ceux qui son demandez et
ottroyez par Justice.”
\item \textsuperscript{111} Terrien, \textit{Commentaires du droit civil}, 355.
\item \textsuperscript{112} Bouteiller, \textit{Somme Rural}, 305. “Transaction est de chose douteuse et incertaine, ou de chose non
finie ou accomplie faire par paction et accord certain.”
\end{itemize}
\end{footnotesize}
court obstructions and which gives the final decision in an arbitrage the same force as a court sentence, making the appeal of such more difficult (and thereby undoing an ordinance from Louis XII which had made the appeal a more ready option resulting in the drawing out of proceedings rather than abbreviating them, contrary to its intent). This is suggestive of a larger shift in legal culture; however, it is unclear who was driving this change and how deep it went. If it does constitute one element of the larger arc of change, it may also, in part, explain underlying causes for the decline of litigation later in the seventeenth century. Arbitration, according to Terrien, was intended to pacify the parties and bring them to an agreement. Le Caron generally acknowledges the intent of arbitration shared by Terrien, but he adds that “it is not enough to compromise in general in all things.” Bouteiller separates arbitration from settlement completely and defines it as “a will or power given” to one elected through the consent of both parties to make a determination on the disagreement between both parties in accordance with the law. Whereas the “arbiter” is bound strictly by the law, arbitrateurs, amiables compositeurs, and appaisseurs serve a similar function in bringing parties to agreement but without the

113 Terrien, Commentaires du droit civil, 421-22.
114 For a recent discussion of the problem of the decline of litigation after the sixteenth century, see Breen, “Law, Society, and the State.”
115 Le Caron, Le Grand Coutumier de France, 490. ”Nota, qu’il ne suffit pas de compromettre en general de toutes choses, de tout le temps passé, si par special n’est nommé et exprimé par paroles ou par escript de quelles choses.”
116 Bouteiller, Somme Rural, 693-94. ”Arbitres sont dicts selon l’opinion d’aucuns arbotires, et selon aucuns arbitrateurs, et selon aucuns amiables appaiseurs, et selon Jean André son dicts ceux qui du consentement des deux parties sont esleus, et sur peine obligée et stipulée à tenir ce que faire voudront du discord d’entre eux. Ou autrement arbitrage est une volonté ou puissanc donnée à aucun qui entreprendre le veut à determiner et prononcer sur le debat des parties, ce que raison en donne. Si sçachez que comme le Juge peut determiner à sentence, ainsi donnent arbitres le droict où il appartient.”
same constraints.\(^{117}\) Although similar in function, the main difference between judges and arbiters, according to Bouteiller, is judges hold public power whereas arbiters are judges by will of the parties.\(^{118}\) Le Caron notes that the difference between arbiters, \textit{arbitrateurs}, and \textit{appaiseurs} was set into the law in 1510 by Louis XII.\(^{119}\) The apparent disconnect between the monarchy’s promotion of settlement and arbitration and the more hesitant or outright negative opinion of jurists serves as a reminder of the priorities of the authors which does not necessarily reflect practice.

Very much associated with practice and court actions, but almost as much reviled, are \textit{procureurs}. Bouteiller defines a \textit{procureur} as a person acting as a legal representative of another, and \textit{procureurs} can appear in court on behalf of a party in that party’s absence “if it is a case that can be served by a \textit{procureur}.”\(^{120}\) By the time Le Caron publishes his edition of Bouteiller’s work, he insists that “in civil cases each party can and must plead by \textit{Procureur}.”\(^{121}\) The authors all distinguish different types of \textit{procureurs}: the \textit{procureurs aux causes}; the \textit{procureur aux negoces} (one who by procuration sees to the needs of another, in special cases); and the \textit{procureur à litige}

\(^{117}\) Bouteiller, \textit{Somme Rural}, 693.94. “\‘Si doit sçavoir que difference y entre arbitre et arbitrateur, et entre amiables composites et appaiseurs. Arbitre ne peut et ne doit en la cause à luy submise proceder, ou autrement que par ordre de droict gardé selon qu’il est allagué ou prouvé devant luy; car nul traict ny peut ne doit faire non plus que feroit le Juge, ne plus ne doit avoir de faveur à une partie qu’à l’autre, mais tout laisser aller selon la reigle de droict….Arbitrateur si est celuy qui de la cause est chargé à sa conscience, ordre de droict gardé, ou non gardé, et peut les parties appoincter selon que bon luy semble. Amiable compositeur ou appaiseur, si est celuy qui du consentement des parties les met en accord.’”

\(^{118}\) Bouteiller, \textit{Somme Rural}, 700.


\(^{120}\) Bouteiller, \textit{Somme Rural}, 38.”\‘Les styl de cet article est du tout hors d’usage; car en causes Civiles chacun peut et doit plaider par Procureur.’”
(one who files claims and defends in all causes and common disputes and to whom general procuration suffices). The **procureur d’office** can receive and listen to the pleas of opposing parties in civil cases and can then report his conclusions to the judge. Norman custom, according to Terrien, also has the category of **attourné**, who serve specifically on one case or set of cases. The **procureurs** by contrast are contracted before a notary to serve on all actions and disputes on behalf of another whether that be as plaintiff in one case or defendant in another. Furthermore, whereas the **attourné** is contracted privately and serves in a specific and temporary capacity, the **procureur**’s status is public like that of an **avocat** and is more permanent. Le Caron echoes this point and notes that **procurations** (the act whereby a man is formally designated as **procureur** for another person) must be passed before a notary or public person to be official; private papers of the sort have no regard. This requirement brings notaries closer to civil disputes than they are explicitly given credit in these texts.

Most types of **procureurs** were not held in high regard. According to Terrien, “The office of those whom the civil law calls **Procureurs**, who are not like the **Procureurs** sworn in to take charge of a case, but are receivers only, or administrators of goods of a house, not being established and ordered by Justice,” is “vile.”

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122 Bouteiller, *Somme Rural*, 44.
123 Bouteiller, *Somme Rural*, 50.
125 Bouteiller, *Somme Rural*, 52.
126 Terrien, *Commentaires du droit civil*, 353. “L’office desquels tout le Procureurs reputez comme Advocats n’est pas vil, comme est l’office de ceux que le droit civil appelle Procureurs, qui ne sont pas comme les Procureurs jurez pour prendre la charge des causes, mais sont receveurs seulement, ou a administrateurs des biens d’une maison, n’estans establis et ordonnez pas Justice.”
although the *Procureurs* of the Sovereign Courts, appointed to an office, are illustrious persons, “procreation is a vile and infamous thing” and “the opinion of all of the Doctors [of law]” on the other sorts is that “notwithstanding this so-called oath and charge of common *Procureur*,” “the noble person who takes on the charge of *Procureurs aux causes* loses his nobility.”¹²⁷ Terrien includes a ruling from the Parlement (1520) which requires the *bailli* of Rouen to enquire as to the morals, legality, diligence, and ability of all practitioners (*procureurs*) who present themselves. This ruling along with the note from Terrien cross-referencing another ruling on the reduction of the number of *Procureurs* suggest legal business was booming and attracting questionable people. Terrien’s collection and comments all suggest that *procureurs* were classified as practitioners or men of practice alongside, but not of the same character, as the men of law (judges and *avocats*). The general disdain of *procureurs* is in keeping with the general disdain of civil procedure (with which the non-official *procureurs* are exclusively concerned) seen in Ayrault’s treatise. This hostility also suggests a division between the erudite jurists who placed greater value in jurisprudence (theory) and rhetoric (pleas) and who campaigned more or less subtly for professionalization among legal practitioners (a process of exclusion of elements they deemed less favorable) and a large number of people, with varying specializations not necessarily deriving from formal education, who took advantage of opportunities presented by fluidity and ambiguity in the system and used the system as it was, for better or worse (practice).

¹²⁷ Terrien, *Commentaires du droit civil*, 353. “Tellement que nonobstant ce pretendu serment et charge de Procureur commun, l'opinion de tous les Docteurs est en cela toute une : que la personne noble prenant charge de Procureur aux causes, il perd sa noblesse…la procuration est chose infame et vile.”
Setting forth who *procureurs* are, the authors then elaborate on their activities and set them in (hierarchical) relation to other legal professionals. Le Caron spells out the duties and responsibilities of the *procureur* and lists being loyal and diligent (support good causes, uphold the honor of the Court and the Judges, and show reverence to Judges and *Avocats*), determining when and where the court appearance is and whether his master [client] will be present, reviewing the documents and reports from the case, and determining whether there is a point of interruption or other advantage.\(^{128}\) In other words, the *procureur* is charged with organizing the case, reviewing the finer points of the case and arguments made, and with determining opportunities of procedure. However, he must consult and take direction from his *avocat* who is to formulate the actual texts and pleas.\(^{129}\) The *procureur* is to serve as the intermediary between the master (party to a suit) and the *avocat*.

Once the court proceedings examined above reached their end, proceedings could extend by appeal. Bouteiller indicates that there are several types of appeals. One type is against a judge, who would be called before the appellate court along with the disputing parties. Another form of appeal is against the sentence given by a judge.\(^{130}\) The appellant does have the option of renouncing the appeal but would have to pay a fine.\(^{131}\) If the appellant defaults twice, the judgment will be carried

\(^{130}\) Bouteiller, *Somme Rural*, 773-74. Terrien adds that this appeal must be made at the very next court session, if at all. Terrien, *Commentaires du droit civil*, 681-82.
\(^{131}\) Bouteiller, *Somme Rural*, 776-77.
out.\textsuperscript{132} No appeal can be made before a sentence is given.\textsuperscript{133} Le Caron also draws a distinction between renouncing an appeal and acquiescing to the sentence.\textsuperscript{134}

There are strict rules governing the timing of an appeal, the sharing of case materials, the investigation by \textit{commissaires}, and the assigning of blame depending on the findings. These rules suggest a concern about abuses, and this concern is echoed in the laws compiled by Terrien.\textsuperscript{135} Le Caron confirms the timing and breaks down appeals into two types: judicial and extrajudicial. An extrajudicial appeal would oppose an action taken out of court in relation to letters, and a judicial appeal would oppose a sentence, act, or appointment by a judge. Furthermore, the appeal must be made modestly and in such a manner as to not insult the judge.\textsuperscript{136} Le Caron’s work indicates a concern for not diminishing the authority of judges of the lower courts in the appeals process.\textsuperscript{137} In addition to appealing a sentence, a party may have the option of trying to have a sentence annulled, and one of the grounds for this is in a case where the sentence is passed by virtue of four defaults.\textsuperscript{138} Terrien indicates that for Normandy specifically, there are four cases in which a sentence may be annulled: “by proof that the sentence was pronounced by an incompetent judge either because it is outside of his territory and jurisdiction or because he has no corrective power over the person; the sentence is given during a delay; if the sentence is given against an undefended minor or against someone who is absent, who was not properly

\textsuperscript{132} Le Caron, \textit{Le Grand Coutumier de France}, 472.
\textsuperscript{133} Bouteiller, \textit{Somme Rural}, 777.
\textsuperscript{134} Bouteiller, \textit{Somme Rural}, 778-79.
\textsuperscript{135} Bouteiller, \textit{Somme Rural}, 775-776 ; Terrien, \textit{Commentaires du droit civil}, 681-93.
\textsuperscript{136} Bouteiller, \textit{Somme Rural}, 778.
\textsuperscript{137} Le Caron, \textit{Le Grand Coutumier de France}, 467.
\textsuperscript{138} Le Caron, \textit{Le Grand Coutumier de France}, 469-70.
summoned; and if the sentence was pronounced on a notoriously false case."\textsuperscript{139} One of the most notable grounds for appeal may be the negligence of a procureur.\textsuperscript{140}

Another is “when one hopes for another definitive ruling; or when the grief inferred by the lower court Judge is irreparable definitively; or when appeal of the ruling is not sufficiently provided to the party; or when after the definitive sentence is given, there is some question about conditions of the execution of it.”\textsuperscript{141}

Appeals notwithstanding, the commentaries make enforcement (“execution”) of rulings sound fairly simple, but the more they talk about swift and decisive enforcement, the more it seems like they are advocating for it and the less convincing it is. Behind the prescriptive measures are hints of ineffectiveness and those who would capitalize on it. When meting out justice, Bouteiller notes that the judge “must not enable the party to say or ask for anything frivolous nor to propose something impertinent to the cause, nor by delay or impertinent refuge to lengthen the process of legal decision and must not suffer matters and actions already definitively adjudged to be revived.”\textsuperscript{142} Moreover, if a judge does not pronounce on each article

\textsuperscript{139} Terrien, Commentaires du droit civil, 683. “Et outre desdites sentences diffinitives par le Style de ladite Cour n’y a autre pourvoy que la voye d’appellation. Car voyes de nullité son abroguees et n’a lieu en ce pais de Normandie ; fors en quatre cas. Le premier, si le condamné monstre et fait deuëment apparoir que la sentence qu’il veut impugner de nullité, est donnee par Juge incompetent, soit à cause de la chose qui n’est situee en son territoire et jurisdiction, ou à cause de la personne sur laquelle il n’a pouvoir ne correction ; en ce cas, s’il n’a prorogé la jurisdiction du Juge, il ne peut alleguer nullité. Le second, si la sentence est donnee durant le delay, pendant lequel doit conquiescer tous office de Juge. Le tiers, si la sentence est donnee contre un mineur indemne, ou contre un absent non deuëment adjourné. Le quart, si en la sentence en la partie dispositive notoirement y a fausse cause exprimee. Esquels cas audit pais de Normandie est loisible ou permis d’arguer sentence diffinitive de nullité.”

\textsuperscript{140} Le Caron, Le Grand Coutumier de France, 471.

\textsuperscript{141} Terrien, Commentaires du droit civil, 682. “Le tiers quand on n’espere autre diffinitive; ou que le grief qui est inferé par le Juge inferieur est irreparable en diffinitive; ou que par l’appellation interjetée de la diffinitive n’est suffissamment pourvue à la partie; ou qu’apres la sentence diffinitive se donne quelque interlocutoire sur les dependances de l’exécution.”

\textsuperscript{142} Bouteiller, Somme Rural, 763. “et ne doit souffrir à partie dire ne demander quelque chose frivolle, ne proposer chose impertinent pour alongner la cause de decision du droict, et ne doit souffrir de
of the complaint in a dispute, the court proceeding could be considered defective.\textsuperscript{143}

In a similar vein, Terrien includes an ordinance from Charles VIII requiring rulings and sentences to be certain and clear “because we have heard that several Judges in our land of Normandy, as much ours as others, give judgments and sentences so obscure and doubtful that one has difficulty understanding them; and they judge by experience without regard for the allegations or evidence provided by the parties; by which, on the interpretation and execution of these sentences and judgments, the parties are embroiled in as great a case as before, and in great fees and expenses, and the parties are often greatly damaged by them.”\textsuperscript{144} Part of the sentence implies imposing the cost of the winner onto the loser. In describing the difference between expenses, damages, and interest, Bouteiller hints at the cost of litigation by listing different sources of fees: “\textit{procureur, avocat, sergent, witnesses, letters, documentation, commissaires, and the like.”}\textsuperscript{145}

Once a sentence is pronounced, it is carried out by \textit{sergents}.\textsuperscript{146} Following this, Bouteiller adds, “The execution of the sentence given must be made according to proper form until the complete accomplishment of the sentence, and the executor must not exceed the sentence and commission lest there be a point of opposition or

\textit{relever action de chose autres-fois passée en force de chose adjugée, ne dont autrefois action ait esté faicte, et demande ouverte luy present, supposé que par default ait le demandeur obtenu sa querelle.”}\textsuperscript{143} Bouteiller, Somme Rural, 763.

\textsuperscript{144} Terrien, Commentaires du droit civil, 406. “\textit{Pource que nous avons entendu que plusieurs Juges de nostre pays de Normandie, tant noster qu’autres donnent et font leurs jugemens et sentences si obsccurs et douteux qu’à peine les peut-on entendre; et jugent par experience, sans avoir regard aux choses alleguees, et prouvees par les parties; parquoys sur l’interpretation et execution d’icelles sentences et jugemens, les parties sont constituées en aussi grand procez comme paravant, et en grands frais et despons, et en sont les parties souventesfois mout endommagees.”}\textsuperscript{144} Bouteiller, Somme Rural, 768. “\textit{Despons sont les frais de Procureur, d’Advocat, de sergent, de tesmoins, de lettres, escritures, Commissaires, et autres semblables.”}\textsuperscript{144} Terrien, Commentaires du droit civil, 696 [718].
other delay.” Terrien echoes this sentiment, “The execution of the rulings of the Court cannot and must not be delayed by opposition or appeal under the shadow of a suggestion of error.” A complaint about the enforcement must be registered within one month, and anyone who would prevent execution of a sentence is subject to a fine.

Aside from these technical points, the authors do not elaborate much on the process of enforcement; the difficulty of enforcement is apparent in the pronouncements against opposition, resistance and delay. Terrien’s inclusion of a ruling from the Échiquier of Rouen in 1501 indicates that this difficulty was especially important during the period under consideration in this dissertation. An excerpt from an ordinance passed by Charles IX in 1561 suggests the cyclical nature of disputes and the challenges to definitive resolution. Praising settlements as the best way to abridge court proceedings, it is conceded that “the spirits of men are so full of contentions that what they have just come to approve and agree upon, soon after they disapprove and disagree upon, contravening the settlements and compromises by them made and agreed upon.”

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147 Bouteiller, Somme Rural, 767. ‘L’execution de la sentence donnée doit estre faite par forme executoire jusques au plain accomplissement de la sentence, et n’y chet point d’opposition ne autre delay que l’executeur se doive pour ce arrester de faire son execution, ne l’executeur ne doit exceder la sentence et commission.’
148 Terrien, Commentaires du droit civil, 695 [717]. ‘L’Execution des arrests de la Cour ne peut, ny doit estre retardee par opposition, ou appellation, ne sous ombre de proposition d’erreur.’
149 Terrien, Commentaires du droit civil, 695 [717]; 425.
150 Terrien, Commentaires du droit civil, 695 [717].
151 Terrien, Commentaires du droit civil, 421-22. ‘Comme le vray moyen d’abbreger les procez soit de venir au devant, et empescher qu’ils ne soent amenez par devant les Juges, ains decidez hors jugement, par accord et transaction d’entre les parties mesmes, ou par arbitres, arbitrateurs et amiables compositeurs qui sont eleus du consentement desdites parties; toutesfois les esprits des hommes sont si pleins de contentions, que ce qu’ils ont peu avant accordé et approuvé, tost apres ils reprouvent et discordent, contrevenans aux transactions et compromis par eux faits et accordez.’
account for Bouteiller and Le Caron deeming settlements “doubtful and uncertain things.”

Conclusion

These commentaries provide a rich perspective on the priorities and primary concerns of elite jurists, as well as a view on practice from above. In theory, jurisdiction, represented by various courts, was foundational to practice within the system; however, it is clear not only in the chapters to come, but even in the commentaries themselves, that the idea of jurisdiction, with clear-cut boundaries and hierarchy, was more of an ideal--an elite aspiration--than reality. And further, the “problem” of jurisdiction, and who had the right to hear a case, troubled elite minds much more than people who turned to the legal system to settle their affairs and who actually took advantage of ambiguities, despite claims that the system was too confusing or inefficient.

This “problem”—ultimately, of who is in control of the system and who is driving it and how well it meets the needs of those who have a vested interest in it—serves the drive toward professionalism and underlies subsequent discussions of procedures and practice, such as contracts; actions taken in and out of court, from a seizure of goods or a clameur to appearances, delays, and even defaults; settlements and arbitration; officials such as notaries, sergents, and procureurs; rulings on cases and appeals thereof; and enforcement. Highlighting the divergence of theory and practice reveals the different priorities of individuals and groups which
shaped changes in later periods. Each of the chapters in turn will challenge the
different subjects drawn out of these commentaries with observations of practice from
below to provide a more comprehensive understanding of people’s interactions with
the legal system. Now that we have laid some groundwork for how the legal system
worked in theory, we can turn to an examination of how people used the resources
available to them.
Turning our attention from theories and perspectives on how the legal system worked from above to a lengthy examination on how it worked in practice, we must pause on our route to civil disputes to lay some important groundwork for understanding the nuances of cases to come. This chapter will provide foundational material for understanding the notarial records that will play a pivotal role in my argument for decentralizing the court from discussion of civil disputes and will position notaries and their work in relation to the spectrum of negotiation, conflict, and resolution under examination in this dissertation. It will answer important questions about common types of contracts, about the notarial profession, and the clients they served, such as what role contracts are playing in negotiations and mitigating disputes and how notaries, and those stand-ins fulfilling similar functions, facilitated these strategies; what the critical elements of a contract were, how they could vary and what these variations might reveal about social relations and even anticipated problems; and what groups of people were drawing up contracts, with particular attention to women and their activities, which were notably at odds with the letter of Norman customary law. It will also show some of the opportunities present in the flow of wealth and property as well as in the legal system. Progressing closer to the interjection of disputes, this chapter highlights the importance of a good contract to contractees, and to a certain degree, notaries, whose services were not strictly required in this period, and underscores some of the strategies behind drawing up contracts. Finally, it will show an alternative to the formal processes of litigation that
we will examine in chapters to come in order to illuminate more of the threads connecting contracts to disputes and of the options that people had.

The literature on notaries and their roles in society is expansive (and expanding) for France as elsewhere in Europe. Since notarial practices varied by region and time period, many of these studies focus on a specific legal culture. Because of the volume of surviving contracts and the wealth of information they contain about social and economic relations, many studies also focus on a particular type of contract. That said, notarial contracts also present significant methodological challenges for historians because of how formulaic and heavily regulated they were, especially in the seventeenth and eighteenth centuries. Denise Angers, Jean-Yves Sarazin, and Claire Dolan especially have made important contributions to the discussion of these problems, and Dolan in particular has shown through her study of notaries’ notes that the contracts were much more formulaic than had been assumed and cautioned against reading too much into views and values expressed in the contracts.1 Along these lines but taking a more open-ended approach, Isabelle Bretthauer and others, have taken a keen interest in the practice and regulation of notarial writing as a subset of a much larger wave of interest in writing and documentary practices among historians of medieval Europe.2 I will carry both lines of inquiry in mind in the analysis which follows.

2 Isabelle Bretthauer, “Official Rules of Writing in the North of France? The Writing of Notarial Documents in Normandy between Practices and Regulations,” in Ruling the Script in the Middle Ages:
Notarial records understandably feature heavily in this study of civil law and disputes. These contracts are in many instances the focal points around which disputes revolved. However, in focusing our attention on notarial documents, we must nevertheless be mindful of the fact that these too represent only a percentage of the contracts entered into in this period. Important alternatives included the sous-seing privé (a private, written, contract formulated between parties) and oral agreements. Whereas the notarial contract represented the most formal of contracts, with the application of an official seal in front of a minimum of two witnesses who knew the parties personally (in theory) and with the notary maintaining his own public copy of the agreement, the other two were less formal and less regulated. The sous-seing privé produced a document to which reference could be made as long as it survived, and the oral contract, depending on to what degree the parties wanted to cover the agreement, typically had a number of direct or indirect witnesses (the latter being the case when parties negotiated and agreed to the contract in an open, public
space with passersby). It is worth emphasizing that the written documentation served a commemorative function for the contract, which was the oral agreement between the parties; the documentation was not the contract itself. The oaths exchanged between the parties to hold to the terms of the agreement was the legally binding aspect of the contract, and the witnesses and documentation that accompanied recalled those oaths. In fact, Daniel Smail has shown that in fourteenth-century Marseille, the testimony of witnesses to a contract (oral agreement between parties) was much more valuable to the resolution of any dispute than written proof constituted by the document. The oral practices written into the contracts in late fifteenth- and early sixteenth-century Normandy suggest that the importance of orality persisted even with the increasing privileging of documentation. The oral (by which I mean undocumented) contract had the merit of being free whereas documentation incurred costs associated with purchasing writing materials (parchment or paper, ink, etc.) and possibly with paying someone who knew how to


5 Smail, “Notaries, Courts and the Legal Culture of Late Medieval Marseille.”
write. The notary charged fees for his services commensurate with the type of contract and the length of the document.⁶

All that being said, my use of notarial records over these other options is largely one of convenience. Although the analysis of notarial records certainly poses its own challenges, the evidence for the alternatives is scant. I have therefore elected to set aside what might be a piecemeal collection of accidental findings buried in other documents for a voluminous set of records that lends itself to more systematic analysis. This decision will necessarily represent a more formal segment of contracts, entered into by a more elite segment of the population, but keeping this limitation in mind, the notarial contracts serve as a useful starting point and an anchor for the examination of legal activity in this period.

A contract formalized before a notary had a special significance and came with a cost.⁷ We have seen that the monarchy took a keen interest in regulating notarial contracts and in exhorting, if not extorting, people to choose to make use of this option in conducting their affairs.⁸ Decidedly unrhetorical, notarial contracts were as formulaic as they were formal, as will become quickly apparent by the widespread use of abbreviations not only of words but of entire clauses, implied and understood

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⁷ Cailleux, “Pratiques et tarifications des actes des tabellions rouennais à la fin du Moyen Âge.”
by those who would refer to them (in the registers). Indeed, one of the most important purposes of the notarial contract was to serve as a tool of reference. The notarial contract was a public record in a legal system that was increasingly, and deliberately, privileging written records.\(^9\) By “public” record, I mean that many contracts were drawn up (or at least read aloud, formally witnessed and signed) in public spaces in full view, and within earshot, of passersby, that officials could consult the registers freely, and that private parties could request a copy of a contract for a fee.\(^10\) Also, there were always witnesses present, noted at the end, and some sources hint that it was common practice to read them aloud in a highly public place (for example, in front of the parish church or a market square).\(^11\) This suggests that orality helped support the authority and authenticity of the contract and that performance, witnessing and publicity were essential practices that aided enforcement.\(^12\)

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\(^10\) Unlike in later periods like the seventeenth and eighteenth centuries, they were not necessarily drawn up in an office, and to the extent they were, the setting was not exactly private by our understanding.

\(^11\) Terrien suggests that a contract of sale which is read aloud has a narrower timeframe in which family may dispute it than those which are not. Guillaume Terrien, *Commentaires du droit civil tant public que privé, observé au pays et Duché de Normandie*, Second edition (Paris, Jacques du Puys, 1578); 320-21. A case before the Échiquier involving a dispute over an announcement in church also supports this. This case will be examined in chapter three. ADSM, 1B 331 January 28, 1510.

\(^12\) Smail has argued that witnesses testifying to a contract had a greater impact on a court’s decision in a dispute than the terms of the contract itself. See Smail, “Notaries, Courts and the Legal Culture of Late Medieval Marseille.” For more on writing practices and legal texts, see Marco Mostert, “Making Court Decisions Known in Medieval Holland,” in *Medieval Legal Process: Physical, Spoken and Written Performance in the Middle Ages*, ed. Mostert, Marco and P. S. Barnwell (Turnhout, Belgium: Brepols, 2011): 281-95.
Turning our attention to the men drawing up these contracts, it is worth recalling that notaries were officials of the legal system. Sometimes characterized as intermediaries between people and the judicial system, they nevertheless take their place within the hierarchy of officials.\(^{13}\) To drive this point home, their practices followed familiar jurisdictional boundaries. The court records, and even some of the notarial records themselves, make reference to seigneurial and royal jurisdictions. For example, an exchange drawn up between Rogier Trenchant and Colin Andrieu references a contract previously drawn up before the “tabellions [notaries] in the sergenterie of St. Victor under the tabellions of the said Rouen.”\(^{14}\) Similarly a sale between Jean Boissel and Jean Dufour the elder references a prior contract drawn up before the “tabellions commissioned in the sergenterie of Pont St. Pierre under the tabellions of Rouen.”\(^{15}\) Both examples identify a sub-unit (sergenterie) of the larger jurisdiction (Rouen). By the end of the sixteenth century and into later periods (which the bulk of scholarship on notaries covers), notaries worked primarily in études (offices) with assistants on hand to help and learn the practice.\(^{16}\) Moreover, as lower


\(^{14}\) ADSM, 2E1 229, October 23, 1500.

\(^{15}\) ADSM, 2E1 229, October 23, 1500.

level officials, they were members of an upwardly mobile socioeconomic group.\textsuperscript{17} Although we see glimpses of these trends in the late fifteenth and early sixteenth centuries, notarial practice was not so narrowly professionalized and sequestered; much of it was conducted out in the open. Notaries commonly traveled to clients to take notes before returning to their office to draw up the formal contract, which would then be read, acknowledged and signed by the parties before witnesses. Unlike later periods, notarial offices were not venal (bought, sold, and transmitted via inheritance like personal property).\textsuperscript{18}

In spite of these considerations, the term “notary” runs the risk of being somewhat misleading. There were actually two roles under the notarial umbrella. According to Ragueau, introduced in chapter one, a notary was one who “takes down briefs, notes, writings, or minutes of obligations, contracts, and other instruments in brief.”\textsuperscript{19} Under the same listing, suggesting that the two were very similar in nature

\begin{itemize}
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and possibly interchangeable in concept, are the tabellions, who "puts them on parchment, in large writing, and in a form that is conclusive, public, and authentic."\(^{20}\) The similarity between the notary and the tabellion is echoed in the court records. I should clarify that I have used the term notary for the sake of simplicity and to follow common usage in historiography, but to be more precise, the notarial records under examination here are drawn from the tabellionage.\(^{21}\)

To complicate things further, in addition to clerics, who had largely been responsible for drawing up contracts, especially wills and marriage contracts to the extent there were any, up to the period under consideration, there are plenty of instances of other legal officials acting in the capacity of notary. For example, a rente contract between Jean Heuze and Colin Lebas mentions that one of the previous rente contracts in the series leading up to the one in question had been drawn up by Jean Debaugremare, lieutenant commissioned by the vicomte of Rouen.\(^{22}\) In another contract, in which Pierre Vedier pays off a rente to Phillippe Duval, a prior contract in a series was formalized before Guillaume Ango lieutenant général of the vicomte of Rouen.\(^{23}\) These cases of other officials acting as notaries indicates a fluidity of practice and a multiplicity of roles within the legal system that we will need to keep in mind as we delve further into the legal culture of late-fifteenth, early sixteenth-century


\(^{21}\) Notaries were more common in the south of France, and tabellions were more common in the north. Although there were subtle differences between the two, as was typical between practice in the north versus the south, they do not make a significant difference to my study. For more on these differences, see Mathieu Arnoux and Olivier Guyotjeannin, eds., Tabellions et tabellionages de la France médiévale et moderne (Paris, France: École des Chartes, 2011).

\(^{22}\) ADSM, 2E1 228, January 27, 1500.

\(^{23}\) ADSM, 2E1 229, October 21, 1500.
Rouen and the surrounding area. This fluidity and multiplicity will take on a larger scale as we progress further along the spectrum of legal activity.

**Rentes**

With some of this basic information about notarial practice and contracts in mind, it is important to outline what types of deals were being drawn up before the notaries of Rouen. There were many types of contracts, and there were a fair number that defy classification. Classification, posing certain challenges, has been the subject of some debate among historians of notaries, and different schemes have been suggested. Gabriel Audisio in particular has focused specifically on miscellaneous contracts to tease out more about the notaries’ roles (drawing up contracts, court scribe, or secretary to different groups) and social function within a community and legal system, which he characterizes as encompassing a “rich palette of activity” in a role that is “not merely reduced to drawing up acts of banality” but rather “responds to a need.” He argues that the variability of notarial roles accounts for some of the odds and ends found in their records and also argues that increasing specialization in the legal system reduced this variability because notaries were no longer called in for odd jobs.²⁴

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It is common for historians to select one type of contract to narrow the scope of their study—a necessity given the volume of documents and the general state of inventories available—but it is nonetheless useful to cast a broader net here to bring clarity to the perspective. Thus, even though in chapters to come I will privilege those contracts that result from a dispute in order to shed light on practice and the workings of the legal system along a spectrum of legal activity, it is worthwhile to give attention to some of the most common contracts, especially when, potentially, any deal could go bad. This will help in understanding why deals did go bad, why disputes erupted, and why the parties to the contracts took the course they did in resolving them. Providing models of different types of contracts will also help anchor discussion of atypical contracts and of the disputes to follow.

One of the main categories of contracts was rentes, which were a type of loan and investment.25 The rente was an important work-around to the Catholic Church’s ban on usury, which civil authorities enforced, and supported a significant system of credit.26 Private individuals or institutions could lend money legally through a rente agreement. The monarchy, for instance, made use of rentes as a form of state revenue (these forced loans were most notoriously in use in the seventeenth and

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25 The best description that I have found for a rente is in Barbara B. Diefendorf, ed., Social Relations, Politics, and Power in Early Modern France: Robert Descimon and the Historian’s Craft (Kirkville, MO, USA: Truman State University Press, 2016), 298.

eighteenth centuries and were quite controversial). In Normandy, in particular, monastic institutions had a long history of being important creditors.

The structure of the rente resembles something of a sale and something of an annuity. The “seller” (borrower) agrees to pay a fixed sum annually, divided by regular, designated intervals (typically once, twice or four times a year) in exchange for a large lump sum from the “buyer” (lender). Indeed, the “rente” referenced in these contracts refers to these regular payments. The rente could be set up so that payments would be made for a fixed term, either for a certain number of months (or, more likely, years) or for the duration of the life of one or the other of the parties to the contract (or both), or in perpetuity. In the latter case, the borrower would bind not only himself but also his heirs to make these payments in perpetuity until the original lump sum (principal) could be paid in full in one cash payment, plus any back payments.

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30 The term “rente” appears elsewhere in other contexts in reference to seigneurial dues (“rentes seigneuriales”).
payments (arrears) (the interest rate is lower for perpetual loans than for lifetime ones). For these reasons, the rente contract became a form of property that was transferable and inheritable and as we shall see in the coming chapters, highly contested, especially when delinquent payments left heirs with hefty arrears.31

Taking as a typical example of a very basic rente contract, we have an agreement drawn up between Guillaume Fichet, whom we learn was residing just outside the city, and Jean Lepatriarche, rope-maker, living in the city proper. The contract also specifies that Lepatriarche is “present” to the drawing up of the contract (as opposed to “absent,” which is less common). The agreement is for 40 sous tournois a year to be paid quarterly in perpetuity in exchange for 20 livres tournois (10% interest, higher than the usury law allowed: 5%). This contract wraps up with an acknowledgement (literally, confession) of receipt of the lump sum payment (which is neither a frequent nor an a-typical element) and a string of very formulaic (abbreviated by “etc.”) promises, guarantees, and references to non-specific collateral (“goods and patrimony”). Then, the witnesses to the contract are named.

Putting it all together, it looks like this:

Guillaume Fichet residing in the parish of Saint Aignen near Rouen sells for patrimony etc. to Jean Lepatriarche, rope-maker, residing in the parish Saint Pierre the gatekeeper of Rouen, present, etc. 40 sous tournois of rente in perpetuity per year to be paid at the quarter terms etc. the first [to be paid at the] next Easter forthcoming prorated etc. on all etc. in exchange for the sum of 20 livres tournois to which the said seller confesses receipt and possession from the said buyer which etc. and promises etc. to render and pay in full etc. and guaranteeing etc. and in this obligated by goods and patrimony etc. In the presence of Pierre Marc and Pierre Bosquet.32

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32 ADSM, 2E1 228, January 31, 1500. “Guillaume Fichet demourant en la parroisse Saint Aignen pres Rouen vend afin d’eritage etc a Jehan Lepatriarche cordier demourant en la parroisse Saint Pierre le portier de Rouen present etc quarante solz t de rente a heritage par an a paier aux quatre termes etc premier pasques prouchain venant prorata etc sur tout etc par execution pour la somme de xx L t que
Similar to Fichet and Lepatriarche, Jean Leroux, a laborer residing just outside of the city (in the parish of Notre Dame d’Angoville en Romais), and Regnault Lepoulletier, a bourgeois residing in the city proper (in the parish of St. Andrew), come to an agreement wherein Leroux “sells” 10 sous tournois of rente in one payment per year to Lepoulletier in exchange for 100 sous tournois. However, rather than setting up the payments in perpetuity, Leroux and Lepoulletier agree to a fixed term of six years after which point Leroux would be expected to pay Lepoulletier the 100 sous tournois or work out another agreement. The contract finishes with the same formulae, note of collateral, and naming of witnesses as that of the Fichet-Lepatriarche contract: “…in exchange for the sum of 100 sous tournois which etc. and promises etc. to render and pay in full and to deliver to Rouen etc. and guaranteeing succession etc. paying back within six years etc. so as to render the said sum of 100 sous tournois, arrears etc. prorated and all costs etc. obligated by goods and patrimony etc. In the presence of Robin Langloys et Guillaume Daubeuf.”

Immediately apparent from these two contracts are the highly structured, formulaic aspects of the contracts, and yet, as will quickly become apparent below,

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33 Amalia Kessler has shown that it was common practice for merchants and creditors to work out evolving agreements. See Kessler, A Revolution in Commerce.

34 ADSM, 2E1 229, October 2, 1500. “Jehan Leroux laboureur demourant en la parroisse de notre dame d’angoville en Romais vendant afin d'eritage a Regnault Lepoulletier bourgeois demourant en la parroisse Saint Andrieu de Rouen present etc Ceste x s t de rente a heritage par an a paier chacun an au terme St Michel premier etc a la St Michel prouchain venant sur tout etc par execution pour la somme de c s t font etc et promist etc rendre et paier par execution et livrer a Rouen etc et garant de surc___ etc racquict dedens six ans etc par rendre lad somme de c s t arieres etc prorata et tous coustz etc oblige biens et heritages etc present Robin Langloys et Guillaume Daubeuf.”

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there were plenty of options to customize the contract with additions to this base model to suit the needs of the parties (and not necessarily equally). It is also worth noting that both contracts carried the same (illegal) rate of interest (10%), which is not what would be expected in a “rational” market-based transaction (wherein loans with different terms have different interest structures). This would seem to suggest that underlying social relations factored into the equation, supported in part by my discussion of discretion to come. Given this baseline, it is useful to turn to some of the variations.

With the base contract in place, the borrower and lender could renegotiate their agreement and add to the rente. As an example of this, Pierre Fleury, residing in the parish of Mesnil Durescu, and Richart Cauvyn, residing in the parish of St. Denis of Rouen, revisited their contract wherein Fleury agreed to pay Cauvyn 30 sous tournois of rente per year. Making explicit note that the contract was still in effect—“per the letters which remain in effect from the date they were drawn up”—Fleury in this new contract agrees to pay 40 sous tournois in rente per year at quarterly intervals “above and beyond” the 30 sous tournois already in effect. For this addition, he is to receive from Cauvyn 20 livres tournois. Although the addition may seem like a lot—a 125 percent increase—I suspect that the formality of the letter of the contract betrayed a significant amount of discretion and informal negotiation in the actual payment/collection process. As long as the borrower was explicitly responsible for the arrears, per the contract, it is not unreasonable to assume an accounting which

35 Amalia Kessler notes similar practices among merchants in Paris in later centuries. See Kessler, A Revolution in Commerce. "jouxtes les lettres qui demeurent en vertu du jour et date que passees furent..."

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would tack one or more missed payments, as a line of credit, on to that lump sum due (which, in theory, could only be paid in total—or "one or two payments" in the case of this contract). If such an investment was projected to be "lucrative" and "a sure thing," or if Fleury was in desperate need of repairs to his house, who knows what they may have worked out between the lines. Such an arrangement would depend entirely on the nature of the relationship between the two parties, which is often unknown, even when the situation did explode into a dispute. Some of the disputes over arrears analyzed in future chapters will support this theory, so it is an important point to recall going forward.

This new contract between Fleury and Cauvyn is interesting not only because Fleury is stacking debts, but because he is also explicitly co-opting his wife Jeanne into them. Near the end of the contract, he "so promises that Jeanne his wife will ratify this present sale and will obligate herself to the payment of the said rente that is etc. receipt in one time or two that is etc. to render the said sum of 20 livres tournois arrears prorated and all costs etc. obligated by goods and patrimony etc." Such a statement not only furthers my point that women had a significant presence in the notarial records but also suggests that her agreement was important to sealing the deal, and that she shared a certain responsibility in taking on the debt. This consent on her part is particularly surprising given the strictures of Norman law regarding a woman’s dowry and communal property and its management in a marriage and in inheritance between husband and wife, as outlined in chapter one. Her consent

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36 ADSM, 2E1 228, January 31, 1500. "racquict a une ou deu foys touteffois etc."
37 ADSM, 2E1 228, January 31, 1500. "et si promist que Jehanne sa femme ratifira cest present vendit et s’obligera au paiement de lad rente touteffois etc racquict a une ou deu foys touteffois etc par rendre lad somme de xx L t arieres prorata et tous coustz etc obligez biens et heritages etc."
would imply that the property (dowry) that she brought into their marriage—and would have been strictly separate from her husband's—or their communal property—to which she has some sort of right—is being offered as collateral. This suggests that in practice women had much greater financial capacity in marriage than the letter of the law, in theory, would allow. What is not clear, but also plausible, is the amount of pressure her husband could exert to compel to take such an action. All this being said, adding to the rente was but one option in adapting the contract.

On the other side of the coin, the lender could sell the rente or use the rente payments to take out his own rente. In one such example, Michiel Lechiguerre, mason, bourgeois, and resident of the parish of St. Maclou of Rouen, uses the annual 30 sous tournois in yearly rente payments which he is entitled to collect from Gieffroy Leroy, of the parish of St. Victor de Buton in the diocese of Chartres, to negotiate a rente contract with Mathelin Germont, resident of the same parish of St. Victor. Similar to the contract above between Fleury and Cauvyn, this contract between Lechiguerre and Germont is sure to note that the rente between the Lechiguerre and Leroy is still valid. To that effect, Lechiguerre has a copy of the

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contract, and probably produced it as evidence in the collective witnessing of the
writing of the contract between him and Germont: “the letters of this agreement,
resulting from that which he agreed to and which remain in the hands of the said
buyer etc.” This possession of the physical contract, and its naming, underscores
its value as property and as testimony to the agreement between Lechiguerre and
Leroy and to its enduring validity.

Lechiguerre reinvests the income from Leroy to obtain a lump sum of 20 livres
tournois from Germont. The fact that payments from Leroy were central to, and at the
base of, the agreement between Lechiguerre and Germont, demonstrates how debts
could become linked and how fragile the chains linking them could be. Of course,
Germont and Leroy were from the same parish, and may have known each other,
which could have mitigated the risk underlying this transaction. Nonetheless, as
Lechiguerre re-invested the income, adding the role of debtor to his role of creditor,
the web of credit and debt grew in complexity, especially since Lechiguerre could
have sold the rente (if he needed the money now or wanted to re-invest that in
another rente).

Furthermore, the rente did not need be a cash transaction, but could instead
be contracted for payments in kind. It was not unusual, for instance, for the rente
payments to be in the form of wheat or some other good. Similar to Michiel
Lechiguerre in the contract above, Robert Griffon, a procureur in the lay court,
residing in the parish of St. Laurent of Rouen, transferred part of an inheritance, “one

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39 ADSM, 2E1 229, September 30, 1500. “envers led Lechiguerre comme il disait jouxte les lettres
d’icelle fieffe qu’il en disait estre de ce faictes qu’il acorda estre et demourer es mains dud acheteur
e tc.”
40 Mostert and Barnwell, eds. Medieval Legal Process.
myne of wheat of rente in perpetuity,” to Jean Conseil, conseiller in the said court, “residing in the parish of St. Estienne de la Rue aux Tournelliers of this city.”41 This suggests a certain variability in how people thought about value—goods could be mobilized to the same ends as money in taking out a loan.

The Clientele

Another major element of the contracts listed so far and which will be of continued note in this chapter and ones to come is the prevalence of agreements between residents of the city of Rouen and other places, some of them close, like St. Aignan (up one of the hills leading out of the city), and some of them more distant, like St. Victor in the diocese of Chartres. Rouen was an important center of legal business as with many other activities. The city, of course, bore witness to the activities of its lively and diverse residents but also hosted those dwelling in the surrounding area who made the trip to the city to conduct their affairs, legal or otherwise. Legal business was often conducted between residents of the city and those of the surrounding area. It was indeed rare for the parties to a contract, suit, or case before court to be exclusively from the city of Rouen. Looking at the notarial records from Rouen (a sampling of 606 out of 1,820), we find roughly 74 percent of the records involving residents outside of the contemporary city limits (the modern city has since enveloped some of these places or attached them as suburbs). Even

41 ADSM, 2E1 229, September 30, 1500. “assavoir une myne de ble de rente a heritage par an” and “Jehan Conseil conseilleur en lad court [laye] demourant en la parroisse St Estienne de la rue aux tournelliers d’icelle ville present etc.”
more of these records involved land outside of the city, as it was not uncommon for residents in the city to own land outside its boundaries.\textsuperscript{42} Even if the parties resided in the city, records will indicate that an individual came from an outlying area. For instance, we find a transaction from Antoine Bonjon the rope-maker who is a native of the parish of St. Amand Laillier près Moulins en Bourbonnois at the time of the transaction residing in the parish of St. Laurent of Rouen with his cousin.\textsuperscript{43} Given this pattern, the boundaries of the city soften, and many different people, residing in the city or elsewhere contributed to and shared in its legal culture. Unfortunately, my data, temporally limited as they are, are not suited to larger discussions of migratory patterns, but further research would likely draw out whether or to what degree families straddled these boundaries between city and countryside, whether their movements to and fro were temporary or permanent, their evolving economic and social status (if any), and how this fluctuated over time.

The pattern also suggests that the notarial records drawn up in Rouen were meant to stand up in multiple jurisdictions, within a scenario of overlapping jurisdictions, royal and seigneurial. If we assume that, in cases of debt, like a rente, that the contract functioned primarily to protect the creditor, then it would make sense for Lechiguerre to formalize the rente with Leroy before notaries closer to home (the contract here, between Lechiguerre and Germont, does not indicate which notaries, if any in the event of a sous-seing privé, drew up the Lechiguerre-Leroy contract).\textsuperscript{44}

\textsuperscript{42} ADSM, 2E1 228 and 229. Jeremy Hayhoe has noted that this was common in Northern Burgundy in the eighteenth century, suggesting a larger scale trend in the intervening period. See Jeremy Hayhoe,\textit{ Enlightened Feudalism: Seigneurial Justice and Village Society in Eighteenth-Century Northern Burgundy} (New York, NY, USA: University of Rochester Press, 2008).

\textsuperscript{43} ADSM, 2E1 228, January 2, 1500.

\textsuperscript{44} Hadfield, “The Many Legal Institutions that Support Contractual Commitments.”
However, that Germont is making the trip to Rouen when Lechiguerre is the debtor challenges this logic. Clearly there is more to it. But if Germont needed to take Lechiguerre to court to collect the debt and enforce the contract, where would he go? It is also worth noting that lenders (“buyers”) are typically from Rouen while borrowers (“sellers”) are typically from outlying areas. This pattern suggests economic inequality between city and countryside and to a much less obvious degree, given available indicators of status or occupation, social inequality.

Delving further into these notaries’ clientele, several trends stand out. Over a third of the notarial records mention a woman as being either directly or indirectly involved in the contract or agreement. The woman might be making a contract in her own right, if she were a widow or accompanied by her husband, or she could be the mother who left property to her children or even a sister making a partial claim of inheritance. The large percentage of women, and their relational statuses, though still significantly marital (widow or wife), and the variety of their relations to the other parties mentioned indicate that women were active in making contracts and especially so in the management of property behind the contracts and significant participants in the legal culture, despite the strictures of the law.

Roughly a quarter of the notarial records make no mention of the occupation or social status of the parties, though they might be guessed by the value of property involved. Of the records that do mention an occupation, just over 28 percent mention one or more clerics. Nearly two thirds mention a “bourgeois” or a specific artisan, and
almost a quarter mention a legal official.45 These groups are the most common and are, of course, entering into contracts with members across groups in varying combinations. We also see noblemen and the occasional laborer, merchant, and others. This breakdown suggests that these records are not consistently representing the lowest socioeconomic strata (possibly due to notarial fees and other costs), but they do represent negotiations between other strata. Social boundaries are crossed as much as geographical and gender ones but not necessarily equally.46

**Ventes**

With these larger patterns in mind, we can turn to the other of the largest categories of contracts: *ventes* (sales of property). These contracts could vary a little more than *rentes* depending on the complexity of the sale and property involved. The *vente* contract begins in much the same way as the *rente* with stating the parties to the contract and the sale. Taking as a typical example the contract between Thomas Maugier and Katherine his wife, residing in the parish of St. Vigor of Rouen, and M. Jean Lesueur, priest, residing in the parish of Pissy (about 18 km from the center of Rouen), “the said wife, authorized,” sells a piece of land to Lesueur. This particular

45 Bruno Sintic found a similar representation in a different study of urban society with a broader geographical scope. The four most common groups he found were bourgeois, nobility, officers and legal professionals, and priests. He does not seem to have been looking for representation by women, but I think tallying them out gives more dimension to the social relations. Additionally, for Rouen specifically, tradesmen cannot be ignored. Bruno Sintic, “Saisir la société urbaine des petites villes par les actes de tabellionage,” in *Tabellionages au Moyen Âge en Normandie: Un notariat à découvrir*, ed. Jean-Louis Roch (Rouen, France: Presses universitaires de Rouen et du Havre, 2014): 109-17.

46 My data are not detailed enough to fully flesh out all of the possible nuances of power relations between parties to a contract. For more on possible social relations, see Giovanni Levi, *Inheriting Power: The Story of an Exorcist*, trans. Lydia G. Cochrane (Chicago, IL, USA: The University of Chicago Press, 1988).
sale is an interesting example of a married woman contracting a sale. As is standard, her husband is present to, and authorizes his wife to make, the deal. The contract continues by denoting the amount of land, “three vergees or [about that] etc.,” and its precise location: “in the parish of Barentin, bordered dc [on one side by] the king our lord’s road; dc and db [on one side and at one end] the lord du Mesnil; and db [at one end] Guillaume Dubosc.”

After situating the land, the contract spells out the seller’s right to sell the property and gives a brief accounting of how the seller came into possession of it. In this case, “This piece of land the said married couple had acquired from Guillaume Riviere and Philippine his wife of the said parish of Pissy.” It goes on to detail more of that prior contract, indicating that the land in question had been acquired “in exchange for other pieces of land--certain other lands which pertained to the married couple and to the said wife by her right--per the letters of this said exchange drawn up before the said Jaques Houel and Robert Ygou tabellions in the said place of Rouen the Friday 3rd day of July of this past year.” Since the “present” contract is being drawn up on October 2nd, it means that the couple held on to the land for approximately three months before selling it again. Unfortunately, the contract from July has not survived, or we would know whether or not the couple made a profit on the sale—the brief summary of an original contract within a later one rarely gives the

47 ADSM, 2E1 229, October 2, 1500. “Lad femme auctorisee” and “trois vergees ou etc. assis en la paroisse de Barentin bournée dc le chemin du roy notre sire dc et db le sire Dumesnil et db Guillaume Dubosc…”

48 ADSM, 2E1 229, October 2, 1500. “Laquelle piece de terre lesd mariez avoit acquise par escchange avec autres terrs de Guillaume Riviere et Phle sa femme de lad parroisse de Pissy a l’encontre de certaines autres terres qui appartenent aud mariez et sad femme au droit d’ell jouxte les lettres dud eschange passees devant led Jaques Houel et Robert Ygou tabellions aud lieu de Rouen le vendredi trois^me jour de juillet derriere passe.”
amount, and it usually only appears in relation to some question or dispute; as a
general rule, the more robust the recap, the greater the anticipated need to shore up
the defenses. Nevertheless, teasing this contract within a contract apart further, it is
again striking, just as in the Lechiguère-Germont contract, that the “letters” (the prior
contract by which the couple came into possession of the land) are presented to
corroborate the right of ownership. It is even more striking that the pieces of land that
had been exchanged in the prior contract were part of Katherine’s dowry
(“pertain[ed]…to the said wife by her right”), which was inalienable, per Norman
custom, and belonged to the couple—not the husband who legally had right of
ownership and management, per Norman custom, but to the married couple. And,
again, Katherine, who has no legal right to manage the communal property acquired
by the couple, is taking the lead in this sale to Lesueur. Again, this suggests that in
practice women had much greater financial capacity in marriage than the letter of the
law, in theory, would allow. It also suggests that women had more discretion over the
management of the couple’s property than the law would allow. The contract finishes
by indicating that the land is being sold for 19 livres tournois, that the couple confess
the receipt of that sum in full, and then the predictable formulae and notation of
witnesses to the contract.

As more evidence of the elaborate series of land transfers by the couple, a few
days prior to the sale to Lesueur, we find Colin Gruel, baker, residing in the parish of
St. Gervais lez Rouen, selling to Thomas Maugier, mareschal, residing in the parish
of St. Vigor in Rouen “a portion of a garden or empty plot” for 17 livres tournois.
Similar to the contract above, this one confirms the seller’s right to sell the property:

“All of this garden the said seller said pertains to him.”

Of further note, the Gruel-Maugier contract ends by indicating that “Present to this deal is Binette, the seller’s wife, by him duly authorized,” who to this transaction “consents, agrees, and renounces by these present letters any and all right of dowry and other right that she could claim to have or demand on the said portion of garden from this moment sold; the said wife promises that never on the said portion of garden above outlined will she claim anything nor will claim be made on the title of her said dowry nor otherwise in any manner whatsoever on the obligation of goods etc.”

Though requiring her husband’s authorization to do so, Binette’s consent to the sale and explicit relinquishment of her right to the land in question—part or all of her dowry—is clearly key to cementing the deal. We likewise read in the future clauses the underlying risk posed by her and her heirs for reclaiming the land.

This defensive clause is found in similar contracts, such as that between Thomas Boullon, residing in the parish of St. Pierre de Carville in the hamlet of Long Paon, and Henry Duclos (present to the drawing up of the contracts) and Mariette his wife (absent), residing in the parish of Notre Dame of Auffay. In this contract, Boullon sells “a house, a small part of a garden and patrimony…seated in the said parish of Auffay.” Like that of Gruel-Maugier, near the end of this contract, it is confirmed that

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49 ADSM, 2E1 229, September 30, 1500. “une porcion de gardin ou vuide place…. Tout lequel gardin led vendeur disait lui appartenir.”

50 ADSM, 2E1 229, September 30, 1500. “present a ce binecte femme dud vendeur de lui deuement auctorisee quant a ce Laquelle a ceest present vendue et transporte se consenty et acorda et renonca et renonce par ces presentes a tout et tel droit de douaire et autre droit qu'elle pourroit avoir pretendre et demander sur lad porcion de gardin de present vendue promectre lad femme que jamais en lad porcion de gardin dessus bournée riens ne demandera demander ne fera soit a tiltre de sond douaire ne autrement en queque manière que ce soit sur l'obligation de biens etc.”
“present to this contract is Robine, wife of the said seller, authorized etc. who of the
said sale consents and agrees and promises that never anything etc.”51 Apparently
the rest of this “promise” is understood. Unlike with Binette, this property does not
constitute part of Robine’s dowry. Per the Norman custom, as we have seen, Robine
does not have a legal claim to this property, and yet, in practice, her consent to the
sale and promise not to lay claim to it in the future is crucial to validating the sale.
This would imply, as it did with Katherine and Binette, that “communal property” was
more “communal” than the letter of the law would let on.52 It also implies that women
specifically had greater capacity for legal action than Norman custom allowed in
theory.

The interest of the Boullon-Duclos contract as an example does not end there,
however. In now familiar fashion, the contract stipulates Boullon’s right to transfer
ownership of the property to Duclos and his wife: “all of which—house, plot, garden,
and patrimony—pertains to the said Thomas by right and title of gift made over to him
upon the contract of his marriage by Jean Boullon, his father, who had and acquired
it by title of fief from Thomas Leroy and Marguerite, his wife, Collenet Baard and
Alizon, his wife, and others…”53 This double confirmation, not only of the transfer
from his father, but back to his father’s acquisition of the properties underscores the
risk involved in acquiring property and determining the seller’s right to sell. The “gift”

51 ADSM, 2E1 228, January 14, 1500. “une maison masure court jardin et heritage ainsi etc assis en
ladite parroisse d’auffay” and “presente a ce Robine femme dud vendeur aucterise etc qui a lad vend
se consenty et acorda et promist que jamais riens etc.”
52 Again, this is supported by work done by Virginie Lemonnier-Lesage and Jacqueline Musset. See
note 37 above.
53 ADSM, 2E1 228, January 14, 1500. “laquelle maiso masure jardin et heritage appurtenant audit
Thomas au droit et tilter du don a lui fait au trairce de son marriage par Jehan Boullon son pere qui
l’avoit eue et acquise a tilter de fieffe de Thomas Leroy et Marguerite sa femme Collenet Baard et
Alizon sa femme et autres.”
from his father could easily be contested by his older brother (if he had one) as being out of proportion to his right to inheritance of the family property (up to one third, including acquisitions). In addition to the question of the father’s right to give the property in gift to his son, is the father’s right of ownership of the property at all, that Thomas Leroy, or Marguerite, or Collenet Baard, or Alizon, or “others” or their heirs would not come back to stake a claim to wrongly alienated property. The peculiar restrictions and rights governing property under Norman custom must have made operations of credit more challenging. These would have been especially challenging given increasing reliance, in other regions, on a wife’s dowry as collateral in the couple’s debt and when contracting between people accustomed to different codes.  

And yet, the notarial records suggest that people from varying social groups and backgrounds found a way. More research would shed light not only on the workings of credit under Norman custom (the effects of Norman custom’s restrictions relative to contemporary neighbors) but also on closely linked social practices. I would assume that notaries and their contracts helped facilitate the workings of credit even under the comparably strict terms of Norman custom.

Thomas Boullon’s “right and title” are reinforced “to the extent contained in the two letters to this effect drawn up, the one…passed in the year 1486 on the 1st day of January before Guillaume Damel and Jean Amiray then tabellions in the said place.

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of Auffay; and the other...in the year 1490 on Tuesday the 20th day of April after Easter before Contet Lenormant and Jean Lemael then tabellions in the county of Longueville in the Sergenterie of Basguillaume.”

We again observe the importance of the physical letters (contracts) in bearing witness to the legitimacy of previous deals on which the current one is based. Such was their importance that Boullon handed them over to Duclos as part of the current contract, transferred with the land as property.

Of greater interest still than the presence, witnessing, transfer, and notation thereof of the previous documentation—and this will be a recurring theme in future chapters—is the capturing of the persistence of orality and glimpses of performance in spite of the privileging of the act of writing. Leading up to Robine’s entrance into the contract to state her “consent, agreement, and promise,” in order to lend credit to the deal, Boullon gives his word (an oath) that his credit, drawing in part on his father’s credit, is good, “in so much as there was the deed from him and his said father alone, on oath that he was not required or compelled in any term-life rentes, for any amount of money, nor otherwise in old property rentes which he owes because of his ancestral lands.”

The value of his word—his credibility—here in relation to his debts, or lack thereof, which would have been attached to his property (similar to a mortgage, to which a creditor may have had claim in order to recuperate outstanding debts).
debt), is linked to his credit. Boullon’s oath along with the recording of who was “present” or “absent” to the drawing up of the contract, legitimized by the presence of witnesses, all attest to enduring orality and performance in legal practices, in spite of the increasing prominence of writing and documentation.

**Chain of Title and Credit Check**

Establishing the right to sell the property—the chain of title—was an important part of a deal. Just as Katherine proves how she came into the property she sold to Jean Lesueur, Boullon indicates his right of ownership in his sale to Duclos. The chain of title is a common element of property transactions which reveals a great deal about practices of property transfers, including inheritance, and the workings of credit. As another interesting example of the chain of title, which also proves that its force came not from the presence of documentation (absent in this contract) but rather from the oath, reinforcing the enduring quality of orality, I would add the *rente* contract between Cardin Letellier and Marquet Lesueur, both merchants. Right away we learn that whereas Marquet Lesueur (of unknown relation to Jean Lesueur the priest) is, at the time of the contract, residing in the parish of St. Nigaise [Niçaise] of Rouen, Cardin Letellier is “at present residing in Paris,” but is the “son and heir of defunct Cardot Letellier, [who] during his lifetime [was] a cloth maker residing in the parish of St. Vivien of Rouen.”58 In this contract, Letellier, originally from Rouen but

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58 ADSM, 2E1 229, October 30, 1500. "Cardin Letellier marchant a present demourant a Paris filz et heritier de defunct Cardot Letellier en son vivant drippier demourant en la parroisse Saint Vivien de Rouen lequel apres ce qu’il oult jure et aferme etc qu’il n’estoit tenu subject charge oblige ne ypothecque envers quelque personne en aucunes rentes ypotheques a heritage ne a vie sinon es
living in Paris, and who came into the family property back in Rouen, leverages his inheritance to set up a rente. Letellier asserts that the property in question belongs to him by right of inheritance and that he still owns the property and has not previously sold it to another party. To this effect, he swore and affirmed “that he had not sold nor transferred nor otherwise alienated any of his patrimonies and revenues succeeded to him and fallen to him by the succession of his late father.” In essence, he gave his word that he was not double-dipping. Without knowing the exact value of the inherited property directly, we can guess based on the fact that it helped secure a loan of 120 livres tournois on his promise to pay Lesueur 12 livres tournois of rente per year in quarterly installments. In this case, without knowing any prior personal or professional connections between Letellier and Lesueur, the notary would be in a position to facilitate supporting the chain of title as well as knowing who has property to unload and who may be looking to invest, especially if, as was common practice, he had performed an official inventory of the deceased’s property shortly after death (the date of death is not given, so the amount of time between inheritance and investment is unknown).

The chain of title is often part of a larger credit check. The right of ownership (proof of assets) accompanies the revealing under oath of any other debts that might compromise the sale and full enjoyment of the property. Similar to Letellier, who swore and affirmed “that he was not held subject, charged, obligated, or indebted toward any person in any rentes or debts in perpetuity nor for life except in old

rentes foncières et anciennes qu’il doit a cause de ses heritages et qu’il n’avoit vendu transporte ne autrement alliène aucuns des heritages et revenues a luy succedez et escheuz de la succession de sond feu père de son bon gre etc.”
property dues that he has because of his patrimonies,” we observe Thomas Perrier swearing the same status in prefacing his rente contract with Pierre Ducouldray.\(^5^9\) In this contract, Thomas Perrier, residing in the parish of St. Just prez Vernon sur Seine, after swearing “that he was not toward any person held subject, charged, obligated, or indebted in any rentes,” “confessed” to have agreed to a rente contract with Pierre Ducouldray, “bourgeois, residing in the parish of St. Vincent of Rouen, absent.”\(^6^0\) The crux of this contract, like that of Letellier-Lesueur, is the “confession” of sale (remember a rente is formulated as a sale). The act of confessing, with its inherent orality, underscores the oral agreement which the contract is documenting.

Of course, the credit check need not confirm that the buyer has no debts, but only those debts which are in place, to further reveal the buyer’s capacity to support more debt. As an example, Jean Leterrier, residing in the parish of Morigny, “swore” to Jean Courault, moneychanger, residing in Rouen, absent, “that he was not charged, obligated, nor indebted toward any other person in any other rentes” in the process of setting up (“confessed to have sold”) his third rente contract with Courault. To reinforce the oath, and his credit, he makes public his current debts to Courault: “the one totaling 30 sous tournois of rente and the other totaling 12 sous 6 deniers tournois of rente per the letters of this drawn up which remain in their force and virtue.”\(^6^1\) The fact that these prior debts are detailed is also interesting. Courault

\(^5^9\) ADSM, 2E1 229, October 30, 1500.
\(^6^0\) ADSM, 2E1 229, October 29, 1500. “Thomas Perier demourant en la parroisse St Just prez Vernon sur seine lequel apres ce qu’il oult jure etc qu’il n’estoit envers ne a quelque personne tenu subjest charge oblige ne ypothecque en aucunes rentes a heritage a vie comme plege ne autrement sinon es rentes foncieres etc de son bon gre etc confessa avoir vendu a heritage etc a Pierre Ducouldray bourgeois demourant en la parroisse St Vincent de Rouen absent…”
\(^6^1\) ADSM, 2E1 229, October 30, 1500. “Jehan Leterrier demourant en la parroisse de Morigny lequel oultre et par-dessus xlvi sous vi d t de rente a heritage par an en deux parties qu’il disait devoir de sa vendue et obligation a Jehan Courault changeur demourant a Rouen l’une montant xxx sous t de rente et
presumably knows this information but may expect it to be noted nonetheless as part of the formality of the contract to imbue it with more authority. It could also lend credibility to the notary in carrying through his professional duties to the letter, giving him some sort of claim to professional authority in his diligence to formula and process. More probable still is the reiteration and reconfirmation of those debts to witnesses—noted at the end of the contract and possibly passersby—to mitigate the risk of extending more credit. The confession of debts old and new highlights the public nature of the notarial contract, reinforcing its binding quality and giving the lender recourse in collection, theoretically.62 The very formulaic nature of the presentation of this information does not betray the importance of its presence to the contract. And, again, the notary is in a privileged position to facilitate proof of claims made, debts, and credit history. This is supported by a customary requirement in Normandy, as other regions in the north of France and the Low Countries, that transfers of immovable property be recorded in a public register (nantissement), which may also explain the growth and development of the financial markets in these regions.63

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62 On contract enforcement, see Smail, “Notaries, Courts and the Legal Culture of Late Medieval Marseille”; and Hadfield, “The Many Legal Institutions that Support Contractual Commitments.”

Nearly 50 percent of all of the contracts formalized before the notaries in the period under consideration in this dissertation make reference to a prior agreement, overwhelmingly documented before notaries. In the case of a transfer of property, such references give legitimacy of ownership and right to enter into an agreement with the property in question. In contracts concerning a renegotiation of contracts or debts or the settlement of a dispute, the original contract establishes a timeline and in the case of a dispute, provides evidence or a target. They reinforce the binding quality of the contract and may therefore also be understood as a proactive defensive measure.

Exchanges

With these observations in mind, we can continue with the breakdown of common contracts. To that end, a less common, but not uncommon, variation of the sale was an échange (exchange of property). Similar to the background of the Maugier-Lesueur contract above, an exchange usually took the form of a pair of contracts, which was in essence a mirrored pair of sales. For instance, on January 25, 1500 the notaries of Rouen recorded two contracts, one immediately following the other, between “Noble man Pierre Leclerc, lord of Croisset and tax collector for the King our lord in Rouen,” and “Master Jean Lebas, priest and curé of St. Jacques of Lisieux,” both present. In the first contract, Leclerc gives 50 sous tournois in private rente collections, which he “says pertains to him and [claims] to have the right to take and collect each year on a house” to Lebas in exchange for “the fourth of a house
and patrimony seated in the city of Bernay in the parish of St. Croix.” In establishing the chain of title, Leclerc reveals that Alain De Brismarie had sold him the rente nearly three years prior: “this rente with other rentes the said lord of Croisset had and acquired from Alain De Brismarie per the letters drawn up before the said tabellions on the 9th day of August in the year 1497.”

In drawing up this exchange contract, Leclerc hands over the papers pertaining to the rente to Lebas as part of transferring the right of ownership to the property that they signify: “And presently the said lord of Croisset gives to the said Lebas the letters of the creation of the said rente drawn up in the year 1491 on Thursday the 18th day of June before Robert Levigneron tabellion in Rouen with four pieces of writing on parchment making mention of the said rente for all be etc.” Leclerc gives Lebas not only the original contract drawn up nearly 10 years prior (which he had acquired from De Brismarie) but also supplemental documentation (“four pieces of writing on parchment”) which reinforces its validity even if its content is not explicit. Lebas reciprocates by giving Leclerc the “letters” (contract) pertaining to the fourth of the house “made and passed in the year 1458 on the 16th day of May before Guillebert Coupequesne then tabellion in Rouen.”64 Without knowing the

64 ADSM, 2E1 228, January 25, 1500. “Noble homme Pierre Leclerc Sr de Croisset et grenetier pour le Roy notre sire a Rouen baille en eschange afin d’eritage etc. a maistre Jehan Lebas prebtre cure de Saint Jaque de Lisieux etc…. que ledit grenetier disant lui appartenir et avoir droit de prendre et cueillir chacun an sur une maison et heritage…. Laquelle rente avec autres rentes ledit Sr de Croisset avoit eubz et acquis de Alain De Bris__ joxute les lettres passees devant lesdits tabellions le ix^e jour d’aoust l’an mil cccc iiiii^xx dix sept/ Et presentement ledit Sr de Croisset bailla audit Lebas les lettres de la creation de ladite rente passees en l’an mil cccc iiiii^xx et unze le jeudi xvii^e jour de juing devant Robert Levigneron tabellion audit Rouen avec quatre pieces d’escripture en parchemin faisant mencion de ladite rente pour le tout estre etc….le quart d’une maison et heritage assis en la ville de Bernay en la parroisse de Sainte Croix dudit lieu…. ledit Lebas bailla audit Leclerc vues lettres faictes et passees en l’an mil cccc lviiie le xvi^e jour de may devant Guillebert Coupequesne lors tabellions audit Rouen…”
value of the house, it is not possible to determine whether the exchange was an even trade or whether the trade favored one party in particular over the other as an act of charity or exploitation. Such questions are interesting and important to ask but not so easily answered.

Following this, for reasons unknown but not unique to this case, this contract of exchange was insufficient to seal the deal, and we find, right below it in the register, the exact same contract in reverse: “The said master Jean Lebas sells, relinquishes, transfers, and gives up for patrimony etc. to the said Pierre Leclerc, present, etc….” This particular exchange is interesting not only because it represents a model of this type of contract and further underscores my points about the crossing of geographical and social boundaries and the testimonial nature of contracts but also because it shows, through its parts, now familiar in light of contracts discussed above, that practices revealed in the contract and the scale of transfer--whether for 50 sous or 120 livres--do not vary significantly across traditional social divides—the nobleman is not investing more than the merchant. In other words, social factors do not have an obvious effect on practice or scale (economic factors presumably do).

The rentes, sales, and exchanges, as common as they were, were also points of contention if one party did not live up to the terms. They were also frequently contested in relation to one party’s heir or heirs. The heirs might call into question the legitimacy of the debt or may dispute the alienation of property because the property

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65 ADSM, 2E1 228, January 25, 1500. “Ledit maistre Jehan Lebas vend quicte transporte et delaisse afin d'eritage etc. audit Pierre Leclerc present etc. Le quart d'une maison et heritage…”

66 Admittedly this is due, at least in part, to the nature of the merchants’ livelihood, requiring larger advances up front, to be sure, but that is beyond the scope of this study.
was not eligible to be sold or because the seller was not eligible to alienate the property. We saw hints of this overshadowing the Boullon-Duclos contract. In the case of disputing the alienation of property, the heirs would be embroiled in a *clameur de marché de bourse* or a *réclamation* (both being an objection to the sale and attempt to negate it and recover the property). These potential disputes cast a shadow on the negotiation of contracts and underscore the importance of the content. Such disputes will be analyzed at length in the chapters to come.

**Marriage Contracts, Wills, and the Acceptance of Lots**

Directly related to inheritance and designed to direct and facilitate transfer of property between generations, among common notarial contracts, in most parts of France and neighboring areas in the late fifteenth and early sixteenth centuries were marriage contracts and wills. However, in Normandy, marriage contracts and wills drawn up before notaries were extremely rare, and to the extent that they may have been drawn up, they would have been written on paper, which, being less durable than parchment, have not survived for this period. Indeed, in my sampling of nearly a third of the available notarial records for 1500, there were none. To put this in perspective, in Paris, in the same year, of 741 notarial contracts (from one notary of

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at least 60) there were 15 marriage contracts and 11 wills. Their absence from the notarial records do not mean that marriage contracts and wills were not utilized in Normandy. We have indirect evidence that they were. For instance, the Boullon-Duclos contract references property passed to Boullon by his father on the instance of his marriage. We also find references to dowries, such as those of Katherine and Binette. Disputes over marriage agreements, especially over dowries and gifts, were also fairly common. We also find occasional references to wills in disputes such as that between the Mauclerc brothers (examined in chapter four). But families did not, as a general rule, formalize such contracts before notaries in this period. It has been suggested (for the eighteenth-century) that this was due to inflexibility of Norman custom governing family discretion in directing inheritance and transfer of property and that turning to a notary would thus not be worth the fee for his services.

All of this being said, it is difficult to study such contracts systematically, and only very general conclusions can be made at this time. Marriage contracts (where and however they were contracted) transferred property to daughters in advance in the form of a dowry and may have included part of or the entirety of their inheritance. Similarly, wills, even more rare than marriage contracts, directed much of the content within the divisions of inheritance dictated by Norman custom. More

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69 There were 60 notarial études (offices) as of 1480. For more information and for a very useful guide into this record set, see Claire Béchu, Florence Greffe, and Isabelle Pébay, eds., Minutes du XVe siècle de l'Étude XIX: inventaire analytique (Paris, France: Archives nationales, 1993).

70 ADSM, 52BP 11.

71 Perrot, “Note sur les contrats de mariage normands.”

common than wills, but not contracted much before notaries for similar reasons, were
gifts given between generations during their lifetime. The dispute between the
Delamare brothers which opens this dissertation centers on a gift from their mother.73
Disputes over inheritance, wills, gifts, and dowries—whether it was too much or too
little in terms of the right of inheritance—were fairly common and were colored by the
heirs remaining after the death of the relative, both in quantity and disposition.

More significant, in Norman notarial records, to the transfer of property through
inheritance was the formal acceptance of divisions. The acceptance of “lots”—
visions of property—by the heirs was meant to finalize negotiations over the
division of inheritance to the extent there were any. There were instances of brothers
exchanging parts of their lots and noting those in the acceptance. Similar to a will, an
acceptance of lots reads like an inventory. Taking as an example the acceptance of
lots by Jean Lambert the elder and Jean Lambert the younger of their brother Jean
Lambert’s estate, we learn that the deceased was a mason residing in the parish of
St. Laurent of Rouen who owned quite a lot of property in the parishes of Amfreville
and Lamyvoye (present day Amfreville-la-Mi-Voie) outside of the city (roughly 6km
from the center of Rouen).

I will not list the composition of both lots because it is very, very dry reading,
but the scale of how much property there was—more than a dozen parcels in each
lot—is interesting. More interesting still is the process (and performance) of settling
the divisions. According to the contract, the younger brother had divided the property
in the two lots. It was then up to the older brother to inspect the two inventories, and

73 ADSM, 2E1 228, January 2, 1500.
possibly tour the properties, and then to choose first between them which one he wanted. The contract does not preview the decision and impersonally lists the composition of both lots: “he who will have the first lot….he who will have the second lot….”. Only after both inventories are spelled out do we find out which one he chose: “Present to this were the said Jean Lambert the elder and Jean Lambert the younger, which after what the said Jean the elder heard, claimed to have seen the said lots, and considered them as good and duly made, and in accepting these, the said Jean Lambert the elder takes and chooses the said first lot, and leaving the said second lot, which remained by non-choice, to the said Jean Lambert the younger for them to enjoy and dispose of as of their proper true inheritance per the above said lots etc. and these two promise to hold etc. on the obligation of goods and patrimony etc.”

Like many of the contracts discussed above, the orality and performance captured by this contract is fascinating.

One can easily imagine a contract which simply states which brother took which grouping of property, signed by both parties. And yet the contract specifies that both parties were present to the reading of both inventories (“Jean the elder heard”), that the choosing brother saw the lots, affirmed and accepted them as they had been created, and then after all of these necessary procedures, chose which one he...

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74 ADSM, 2E1 228, January 18, 1500. For another example see the acceptance of lots by the heirs of Martin Lecousturier, ADSM, 2E1 228, January 27, 1500. “Ledit maistre Jehan Lebas vend quicte transporte et delaisse afin d'heritage etc. audit Pierre Leclerc present etc. Le quart d'une maison et heritage… Qui auro le second lot il auro… furent presents l'esdits Jehan Lambert l'aisne et Jehan Lambert le jeune lesquelz apres ce que l'esdit Jehan l'aisne oult dit avo l'esdits lotz et iclesx tenus comme bien et deuement fais et en acteptant iclesx l'esdit Jehan Lambert l'aisne print et choisy l'esdit premier lot et partant l'esdit second lot fu et demoura par non choix audit Jehan Lambert le jeune pour d'iclesx joyr et disposer comme de leur propre vray heritage a la charge dessusdit desquelz lotz etc. et iclesx promist___ tenir etc. sur l'obligation de biens et heritages etc.”
wanted. The contract is then wrapped up with defensive clauses, including “promises,” to seal the decision. The notary and the parties are not just drawing up and ratifying the contract, they are capturing the performance of it. In this acceptance of lots, as in others, the younger brother divides the property, and the older brother makes the first choice between the two lots. Both brothers then formally acknowledge fair division and receipt of the patrimony. This contract is meant to be a final and binding agreement between the heirs and to quell a potential dispute because, more so than a dowry or a will, the heirs are actively engaged in the division.

**Notaries as Brokers of Information**

One of the more striking features of the notarial records is the wealth of information they furnish regarding the real estate and investment market of greater Rouen. Notaries would have been at the center of much of the flow of wealth and property, knowing for instance that an heir may have come into a property that he would not wish to keep or that another man may have a sum of money from a previous sale that he may be wanting to re-invest. This observation is not new, and it has been suggested that notaries were important brokers of information and were central to the operations of credit in later periods.75 My findings would suggest that

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such an inquiry could be extended back to the early sixteenth century and that it might yield interesting results given Rouen’s status as a hub of a variety of economic activities.76 In addition to the contracts discussed above, a pair of sales will show some of the maneuvers in the real estate market to which the notary bore witness. In the first contract Jean Freret, residing in the parish of Moustieravillier, “of his good will, without any constraint whatsoever,” confesses to have sold a plot of land to Jean Conseil, “conseiller in the lay court” in exchange for payment of outstanding debts and 50 livres tournois in “current, to-date money.”77 We learn that Freret had acquired the land from Jacotin Defontaines “for the average price and conditions contained and plainly declared in letters regarding this drawn up and passed before Thomassin Baudouyn and Jean Leprevost tabellions in the Chastellenie de la Ferte

76 As a start to this line of inquiry, see Renault, “Tabellions et cré dit dans les campagnes normandes au XVe siècle.”

77 ADSM, 2E1 229, October 27, 1500. “Jehan Freret demourant en la parroisse de monstieravillier lequel de sa bonne voullente sans aucune contante congne et confessa avoit vendu et transporte afin d’eritage etc tant pour lui que pour ses hoirs aians cauc__ a Jehan Conseil conseiller en court laie acquiseur present pour lui ses hoirs etc...lesquelz heritages led Freret acoit eu et acquis de Jacotin Defontaines par les prix moiene et conditions contenus et a plain declarez es lettres de ce faictes et passees devant Thomassin Baudouyn et Jehan Leprevost tabellions en la chastellene de la ferte en bray le xiii^e jour de novembre l’an mil cccc iii^xx dix sept lesquelles avec plusieurs autres lettres et escriptures qu’il avoit led vendeur... Que par et moienant la somme de I L t paier present en monnant courant...apres ce que led vendeur oult jure et aferme par les foy et serment de son corps qu’il n’estoit envers ne a quelque personne tenu subject charge obligue ne ypothecque en aucunes tentes a heritages ne a vie sommes de deniers ne autrement sinon es rentes fontieres et anciennes qu’il doit a cauc___ de ses heritages.”
en Bray the 13th day of November in the year 1497." In assuming possession of this property, Freret had also assumed a rente attached to it contracted between Defontaine and Michel Feudry and Guillaume Letellier. At this time of his contract with Conseil, Freret owed 9 livres tournois in back payments on this rente as well as 116 sous 6 deniers tournois to the lord of Moustieravillier. In now familiar terms, Freret turned over the contract of sale that he had from his purchase of the land from Defontaine along "with several other letters and documents which he had" to Conseil to possess with the land. The contract wraps up with a credit check from Conseil, "sworn and affirmed by the faith and oath of his body that he was not toward any person held subject, charged, obligated, nor indebted in any rentes in perpetuity nor for life, for any sums of deniers, nor otherwise, except in old property rentes which he owed because of his patrimonies."

This oath by Conseil is especially interesting because among the witnesses to this first contract was Robert Hervieu to whom Conseil turned around and immediately sold the land in the following contract. In this second contract "the said Jean Conseil" exchanges the property and debt acquired "this very day" from Freret for all of Hervieu's holding in the parish of Quebeuf and Critot sur Cailly.  

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78 ADSM, 2E1 229, October 27, 1500. "Led Jehan Conseil baille en eschange afin d'eritage etc a Robert Hervieu demourant en la parroisse de quebeuf etc Cest assavoir lesd heritages dessus bourniez et declarez que led Jehan Conseil a ce jourdit euz et acquis de Jehan Freret....tous et tels heritages que led Robert Hervieu avoit es par es de Quebeuf et Critot sur Cailly et qu'il avoit euz a tilitre de don a lui fait par Guillaume Hervieu son pere pour les caves___ et jouxte les lettres dud don sur ce faictes et passees devant Pierre Cormer et Pierre Huchon tabellions en la sergenterie de cailly seubz les tabellions de Rouen le tiers jour de may l'an mil cccc quatre vings et quatorze lesquelles avec plusieurs autres lettres faisant mention du droit que led Robert avoit en iceux heritage led Robert bailla present aud Jehan Conseil.... reserve led Hervieu par cested eschange une piece de terre nomme le camp des mares pour en faire et disposer a son bon plaisir et n'est en riens comprise end. Eschange...por ce que l'eschange que baille led Hervieu aud Conseil est de plus grant valleur que celle que lui baille led Conseil__ icellui Conseil quicte descharga quicte et descharge pour lui etc led Robert Hervieu ses hors etc de xxx s t de rente a heritage par an et des arrieres de ce deuz en laquelle rente led Robert Hervieu s'estoit oblige de sa vendue a prenre sur tous ses biens et heritages
owned these lands "by title of gift made to him by Guillaume Hervieu, his father, for the reasons laid out in the letters pertaining to the said gift." Unfortunately, this contract does not elaborate on these "reasons." Pausing on this chain of title, we find an example of a transfer of property between generations in the form of a gift (again, more common than wills), which may have been a means to transfer specific property (perhaps with special sentimental value) to a child within the larger strictures of amount and value of property (no more than a third total to any person or persons other than the eldest son). As we have come to expect by now, the "letters" (contract) pertaining to this gift, "drawn up and passed before Pierre Cormer and Pierre Huchon, tabellions in the sergenterie of Cailly under the tabellions of Rouen, on the 3rd day of May in the year 1494," along with "several other letters making mention of the right that the said Robert had on these patrimonies" were handed over to Conseil as part of their deal. Not part of the deal, we come to find, is a piece of land "named the Camp des Mares" which Hervieu "reserves" from the exchange to "do with and dispose of at his good pleasure."

With these larger points settled, we learn that this is not the first deal between Hervieu and Conseil. On account of the fact that the exchange under this present contract is uneven—"the part of the exchange which the said Hervieu gives to the said Conseil is of greater value than that which the said Conseil gives to him"—Conseil excuses a debt owed him by Hervieu (and his heirs). The debt in question, "30 sous tournois of rente in perpetuity per year and the arrears of this due, to which
the said Robert Hervieu was obligated…toward the said Conseil per the letters passed before the said tabellions on the 10th day of April before Easter in the year 1499, which the said Conseil renders presently relinquished and broken according to the decision on this made, to be crossed out and annulled, promising that never anything etc.” From this relinquishment and formal breaking of the rente agreement and the crossing out and annulment of that contract we learn that this rente already had back payments (“arrears”) accumulating. Not knowing anything more of the relationship between Conseil and Hervieu, including possible kinship ties, the existence of these back payments suggests some discretion in carrying out the letter of the contract and some leniency in collection. This annulment tipping the balance back in the other direction, “the said Conseil acknowledges receipt from the said Hervieu of 4 livres tournois in a once only payment which this Hervieu owes to Colin Dufiefnay and Pierre Martin.” When Conseil assumes possession of Hervieu’s property, he assumes the debts attached to it, and Hervieu clears the outstanding debt to Dufiefnay and Martin—4 livres tournois—to square his deal with Conseil and even out the exchange. This set of contracts shows an apparent “flipping” of property on the part of Jean Conseil via a double exchange and a transfer of debt. At the center of this web of transactions, the notary witnesses the flow of property, cash, credit, and debt, and it is likely that the notary used this knowledge to help negotiate and broker this complex set of exchanges.79

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79 For more on brokerage by notaries, see note 74 above.
Procuration and Power of Attorney

Following the legal right to sell and establishing the capacity to buy, another important type of contract for understanding maneuverings and the capacity for initiative in the legal system was the *procuration*. Similar in certain respects to a *tutelle* (assigning a legal guardian to a minor) or a *curatelle* (assigning a legal guardian to an adult who was without capacity for one reason or another), which were examples of *justice gracieuse* registered through a court, the *procuration* was, generally speaking, the act of giving someone the legal right to act on someone else’s behalf, to represent this person before the law, and to manage his or her property. It may be useful to think of it similarly to a power of attorney. As a simple example of a *procuration*, we have the example of Robin Benard, *huissier*, residing in the parish of St. Croix of St. Ouen of Rouen, who “without the help of another person confides himself fully to the person of Jean Benard, his son, chariot-maker, residing in the parish St Maclou of said Rouen.”\(^\text{80}\) The reason for giving the right of *procuration* to his son, we learn, is consideration for “his antiquity, feebleness, and debility and that henceforth he does not have the wherewithal to govern himself and

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\(^{80}\) ADSM, 2E1 229, October 24, 1500. "Robin Benard huichier demourant en la parroisse Sainte Croix de Saint Ouen de Rouen Lequel considerant son antiquite foiblesse et debillitation et que desormais il ne savoit gouverner lui et ses choses sans l’aide d’aucun soy confiant a plain a la personne de Jehan Benard son filz caron demourant en la parroisse St Maclou dud Rouen et pour la bonne amour qu’il avoit a lui de son bon gre confessa soy estre rendu et du tout denus a sond filz avec tous et chacuns ses biens meubles et heritages present et avenir ou qu’ilz soient assis sans riens en retenir etc… etc pour d’iceuxx biens et heritages joyr et possider par led Jehan Benard ses etc a la charge de telles rentes debtes et charges que deubz en sont Ceste rendue faicte Tant a la charge dessusd Que par ce que led Jehan Benard qui present estoit se submist et promist trouver et g____rir a sondit père boire menger coucher feu lit et hostel et toutes ses nectessitez generallment quelzconques a lui convenables et necessaires durant sad vie et apres son decez et trepas le faire mettre et inhumer en terre sainte et fe fe et paier ses obsecles services et funerailles le tout bien et deuement obligez l’un a l’autre biens et heritages etc presents guillaume daubeuf et robin langloys."
his things without the help of another person.” In the contract, it is clearly established that the person giving his (or her) legal rights to another person is of sound mind and not under coercion. Thus, Robin Benard, confiding himself to his son, “for the good love that he had for him, of his good will, confessed himself to be rendered in all things laid bare and left to his said son with each and every of his goods, moveable property and patrimonies, present and future wherever they be located without anything retained etc.” The procuration gives the right of full disclosure to the other person (“all things laid bare’) and total discretion over management of all assets—all property, fixed or moveable, family patrimony or acquired, including the right to sell or acquire new property and including any new property the individual might inherit (“present and future”). Although Jean Benard “enjoys and possesses” these “goods and patrimonies,” he also assumes, as procureur to his father, liabilities on the property and is “charged with paying such rentes, debts, and charges that are due” on it. Jean also assumes responsibility for his father’s care and well-being, to provide food and drink, heat, accommodation, and a place to sleep “all his other necessities generally, whatever are decent and necessary during his said lifetime.” The contract also stipulates Robin’s last wishes, requiring his son, “after his decease and passing, to do right by him and have him placed and buried in holy ground and to arrange for and pay his funeral services and final expenses.”

Knowledge of a procuration may also come indirectly through a contract of sale as in the case of Guillaume Piart. In this contract, M. Guillaume Piart, priest, residing in the parish of Cany, confesses to have sold a piece of land to Jean Vastel, bourgeois, residing in the parish of St. Caudry le Vieil of Rouen. In establishing his
right to sell the land, Piart presents himself as *procureur* for Guillaume Piart, his father, residing in the same parish, and as such “having special power among other things to act on his [father’s] behalf and in this right thus he duly presented his *procuration* papers drawn up and passed before Gaultier Malherbe and Pierre Bazire tabellions in the city of Cany and Canyel on the 5th day of this present month of October.”

Presenting paperwork to prove a person’s right to sell property is familiar practice, following examination of the above contracts, but Piart is doing more than this; he is exercising power and authority transferred to him. As the prelude to the expected practice, he is presenting himself, “by virtue of and in exercising his power to him given by the said *procuration* letters.” He then establishes the chain of title and

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81 ADSM, 2E1 229, October 29, 1500. "Messire Guillaume Piart prebtre demourant en la parroisse de Cany procureur de Guillaume Piart son père demourant en lad parroisse aiant pouvoir especial entre autres choses de faire ce qui eust ainsi qu'il a paru deuement par lettres procuratoriques de ce faictes et passees devant gaultier malherbe et peirre bazire tabellions en la ville de Cany et Canyel le cinqueme jour de ce present moys d'octobre lequel messire guillaume piart par vertu et en usant du pouvoir a lui donne par lesd lettres procuratoriques onfessa avoir vendu quicte transport et delaisse a fin d'heritage a tousjours a Jehan Vastel bourgeois demourant en la parroisse St Caudry le vieil de Rouen present etc une piece de terre contenant acre et demye assis en la parroisse de veulletes en hamel de heaulives bournes dc Jehan Danger le jeune dc led acquiseur comme aiant le droit des hoirs de feu Jehan Estambart db Morisse Daugier et db Griffin Desert en lieu de Bynet Gouel laquelle piece de terre led guillaume piart avoit eue et qcuise dud Morisse Daugier de lad parroisse de veulletes par le prix et jouxte les lettres de ce faictes et passees l'an mil cccc iii^xx dix huit le xvii^e jour de fevrier devant led gaultier malherbe et led vendeur lors tabellions en lad viconte de Cany et Canyel et avec ce led vendeur en son propre et prive nom confessa aitone vendu quicte etc a heritage etc audit Vastel pour lui etc une autre piece de terre contenant cinq vergees assis en lad parroisse de veulletes end hamel bournes dc la piece cy dessus bournes dc pierre de daime dit duflo db guillaume gaillare et db le chemin du roy notre sire laquelle piece de terre derriere bournee led prebtre avoit eue et acquise dud Jehannet Duegier par le prix et jour les lettres de ce faictes et passees devant led Malherbe et Jehan Piart tabellions en la viconte de Caudebec en siege et sergenterie dud lieu de Cany l'an mile cccc iii^xx xix le vii^e jour d'octobre lesquelles deux lettres led vendeur bailla presentement aud acheteur pour estrc en force et vertu ceste vendu etc pour la somme de xx l t avec e s t au vin etc le tout franch ven es mains dud vendeur pour lui et sond père dont etc et promist led vendeur tant pour lui que oudit nom procuratoire garant etc lesd deux pieces de terre vers tous Cest assavoir lad piece dessus premiere bournee de tous troubles encombremens etc en tant qu'il y avoir du fait et obligation de lui et de sondit père seulle et lad autre pre de pire bournie aussy de tous troubles etc en tant qu'il y avoir de son fait et obligation seulle obligez en sond nom presente biens et heritages etc et par vertu de lad procuracion les biens meubles et immeubles de sond père presents Nicolas Aumour et Robin Langloys.”
his father’s right to sell the property, which he is exercising. To that end, his father had acquired the land in question from Morisse Daugier of the parish of Veuilletes “by the price and per the letters of this drawn up and passed in the year 1498 on the 18th day of February before the said Gaultier Malherbe and the said seller, then tabellions in the said vicomté of Cany and Canyel.” Here we observe Piart the son as presiding notary over the purchase that his father had made in 1498 of the property that he is now selling on his father’s behalf. To this sale of his father’s land, he also adds “in his proper and private name” another piece of land, which he had acquired from “Jeannet Duegier for the price and per the letters drawn up before the said Malherbe and Jean Piart tabellions in the viconté of Caudebec in the siège and sergenterie of the said place of Cany in the year 1499 on the 7th day of October.” Piart hands over all paperwork for both sales to Vastel in transferring ownership.

Unlike in the procuration contract above, this contract shows how the procuration may be exercised. Given that Piart the son adds a sale of his own to the contract to make a double sale, we see the deliberate separation of credit, assets, and liability in relation to his father’s property and his own at the same time as he establishes his legal right to act on behalf of (but separately from) his father. This separation is evident when he “promises as much for himself as in the said capacity of procureur” and when he denotes different “obligations” for each piece of land, the first “of him and of his said father alone,” guaranteeing “by virtue of the said procuration the goods, mobile and immobile of his father,” and the other “of his deed and obligation alone in his said name.” The contract is of further interest because of the blurring of jurisdictional boundaries—although this contract is formalized before
the notaries of Rouen, the chain of title for both previous acquisitions leads back to notaries of Cany in the *vicomté* of Caudebec.

Of even greater interest as an example of the exercise of the right of *procuration*, we have Jean and Colin Guibel acting as *procureurs* and contracting a sale on behalf of Denise Levignereux, widow of Guillaume Guibel and sister and heiress of defunct Jean Levignereux. In this contract, property belonging to Denise Levignereux by right of succession from her brother is sold to Guillaume Vollant, “postulate in the lay court, residing in Rouen” for “the good love that the sellers say that the said widow and they have for the said Vollant and as a means of paying him back for several great joys and services that they say that he had done for them and the said widow.”

In it we find the same familiar elements, including the

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82 ADSM, 2E1 229, November 5, 1500. “Jehan Guibel et Colin Guibel dit Giart procureurs de Denise Levignereux veufve de defunct Guillaume Guibel dit Giart a present demourant en la parroisse d’aubourville sur seine seur et heritiere de defunct messire Jehan Levignereux en son vivant prebtre demourant en lad parroisse d’aubourville aint pouvoir entre autres choses de faire ce qui eussent ainsi qu’il a paru deuement par procuration passée le xxiii^e jour de may derriere passe devant Jehan Haineaulx et Jehan Levillain tabellions en bailliage de mauleurier lesquelz Jehan et Colin dix Guibel par vertu et en usant dud pouvoir procuratoire a euxx donne par lesd lettres de procuration de leurs bons grez etc confessent avoir vendu quicte transport et delaisse afin d’eritage a toujours a Guillaume Vollant postullant en court laye demourant a Rouen qui present estoit etc Cest assavoir xv s t de rente a heritage par an que lesd vendeurs disant appartenier a lad veufve de la succession et comme hertiere dud feu messire Jehan Levignereux Lequel defunt avoit acquis lad rente de Jehan Foynaire de la parroisse Saint Estienne de la rue aux tourneliers de Rouen Lequel Foynart avoit promis et s’estoit oblige garant lad rente et icelle amplir fournir faire valloir rendre et paier executoire sur tous ses biens et heritages jouxte et selon qu’il est contenu et plusapluus declare es lettres de ce faictes et passees l’an mil ccxc lxxvii le xxiii^e jour d’octobre devant Guillaume Delamare et Pierre Vincent lors tabellions aud lieu de Rouen laquelle rente led Foynart avoit en paravant acquise de maistre pierre bazire precetre de la fresnaye a prendre et avoir lad rente sur une piece de terre tant en mesure que a camp contenant cinq vergees our environ assis en la parroisse St Pierre de Varengierville dont estoit lors tenant Jehan Yvelin dud lieu de Varengierville Lequel Yvelin confessa par lad acquisition estre tenant de lad piece de terre et estre debteur de lad rente Laquelle il promist lors rendre et paier par execution sur lad piece de terre jouxte et selon qu’il est contenu et plusapl déclare es lettres de ce faictes et passees l’an mil ccxc lvi le xxvii^e jour de mars avant pasques devant led pierre vincent et nicolas ogier lors tabellions aud lieu de rouen lesquelles deux lettres lesd vendeurs baillerer present aud acheteur pour estre et demourant en ses mains etc d’aussuy grant force etc comme ilz pouvait estre es mains de lad veufve etc Ceste vendue etc pour la somme de xv I t qu lesd procureurs vendeurs en confessant avoir eue et receue et leur avoir este paieee comptant par led Guillaume Vollant acheteur et oitlure pour la bonne amour que lesd vendeurs disant que lad veufve et eulx avoient aud Vollant et pour aucunement le recompencer de plusieurs grans plaisirs et services.
establishment of legal right of *procuration* as well as the separation of assets and liability. Unfortunately, the contract does not elaborate on what the “joys and services” were which inspired such gratitude.

The last thing that I want to draw attention to in this contract is the dual status—widow and sister/heiress—of Denise Levignereux. Although not acting in her own right directly in this contract (though it would not be too far-fetched to understand her influence behind the sale), her status as widow and her status as sister/heiress would each bring opportunities and limitations in relation to legal activities. And it would be even more interesting, as an avenue of future research, to trace whether and to what degree the same limitations imposed upon Levignereux as widow and sister/heiress would then be transferred onto her male *procureurs* and how they would then negotiate acting upon and within her rights. In future chapters I will trace not only women’s activities but also tease out any patterns related to their status, to the extent possible within the scope of this study. In any case, such examples of *procuration* and the exercise thereof add nuance to our understanding of practice and the capacity for initiative within the legal system and to the broader conceptualization of *procureurs* and their activities.

Saving the best example of the exercise of *procuration* for last and as a good preview of the action to come in future chapters, I will examine the establishment of

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qu'ilz disent qu'il avoit faiz a eulx et a lad veufve lui donnerer quicte et delasier tous et telz arrieres qu'ilz sont et peuvent estre deubz de lad rente dont de tout etc et promistent lesd vendeurs oud nim procuratoire garant etc lad rente vers tous etc en tant qu'il y avoit du fait et obligation d'eulx de lad veufve et dud deffunct Levignereu seule et que jamais riens ny sera demande par eulx ne par lad veufve en aucune maniere et ace tenir etc lesd vendeurs obliger par vertu de lad procuration les biens et heritages d'icelle veufve etc presents Robin Langloys et Jacques Alain.”
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Ysabel’s husband Guillaume Allart as her *procureur*, found within a contract of sale in which he exercises this right, in fine detail.\(^3\) This contract begins much like that of Piart or Levignereux. We learn that Guillaume Allart resides with his wife Ysabel in the parish of St. Ouen de Brueil in the hamlet of Malletot. We also learn that he is presenting himself as her *procureur* to act on that power, and has, per usual, presented the documentation of that right: “having power among other things to do what has been thus indicated in the *procuration* contract ("*lettres procuratoires*"), which he has laid before us and runs thusly…”

Unlike the other examples of exercising the right of *procuration* that we have just seen, before we even get to the point of the contract and how he is exercising that power (and finish the opening sentence!), the notary transcribes the entirety of the *procuration* contract. To this point, in the contracts examined above, we have seen variations in sharing these prior contracts, giving a contract within a contract, but they have been paraphrases and summaries of those contracts. The fact that the notary transcribes the entire contract to the letter, including a description of the signatures at the end, underscores how unusual this situation was by contemporary standards. So much so that the notary felt the need to (or the other party insisted that he) include this contract within the primary contract, most likely as a defensive measure to justify and legitimate the sale.

“To all those who will see or hear these letters,” it begins, drawing in the attention, both visually and orally, of anyone who may have an interest in its contents,

\(^3\) ADSM, 2\(^{\text{e}}\) 1228, January 27, 1500. “Guillaume Allart demourant en la paroisse de Saint Ouen de Brueil en hamel de Malletot procureur de Ysabel sa femme aiant povoir entre autres choses de faire ce qui euss ainsi qu’il aparu par lettres procuratoires sur ce facitres desquelles la teneur euss…”
“Pierre Dare, vicomte of Malletot and keeper of the vicomte’s seal of obligations, greetings.” This opening salutation highlights the public nature of the contract and the probability that it was read aloud. The jurisdiction and authority behind this contract, and its seal of approval, are fore-fronted. “Know,” he/it commands, “that before Oudin Leroux and Guillaume Sergent, tabellions sworn in the said parish, as they testified to us, were present Guillaume Allart and his wife at present residing in the parish of Saint Ouen de Brueil in the hamlet of Malletot.” The orality and performance that this contract captures are striking. The sworn (“official”) notaries of this jurisdiction formalize the contract before Dare’s authority, testifying that Allart and his wife had physically presented themselves before them to “solemnize” [sacraliser] her wishes, following the formality of being authorized by her husband to do so.

The document continues, “After the said wife had been authorized by her said husband as to the passing of what was so, the said wife named Ysabel, daughter of Jean Bonamy and heiress of Jean Luce, made, named, ordered, and established as her procureur général and certain special messenger Guillaume Allart, her husband.” For as pompous as the lead up to this act of giving her husband the right of procuration is, we really have no indication that she or any of her relatives have any special social status, which we would expect to be presented for the audience as well. More suspicious, and perhaps explaining some of the caution underlying this

84 ADSM, 2E1 228, January 27, 1500. “A tous ceulx qui ces lettres verront ou orront Pierre Dare viconte de Malletot et garde du seel des obligations de lad viconte salut. Savoir faisant que par devant Oudin Leroux et Guillaume Sergent tabellions jurez en lad si comme il nous ont tesmoigne furent present Guillaume Allart et sa femme a present demourant en la parroisse Saint Ouen de Brueil en hamel de Malletot apres ce que lad femme eust este auctorisee par sond mary quant a passer ce qui euss lad femme nommee Ysabel fille de Jehan Bonamy et heritiere de Jehan Luce feist nomma ordonna et estably son procureur general et certain messagier especial Guillaume Allart son mary.”
contract and the others it supports—its credit—is the question of Ysabel’s capacity to exercise her legal right in her own right. Unlike, the Benard procuration, which indicates a reason why Robin is passing the right to his son—his age and incapacity to manage his affairs on his own—we have no indicators, no justification as to why Ysabel feels compelled to take this fairly extreme action. And the build up and later transcription of this act—the shoring up of the defenses—underscores just how extreme it was. In short, her legal right and capacity are not unusual; the fact that she is transferring them to her husband is. But most importantly, the idea that this act of transferring her legal right to her husband is extreme—the gravity with which it is enacted—reveals the significance of women’s legal capacity in practice, setting aside theory, in contemporary eyes, in a time and place where the going is supposed to be especially tough for women, particularly married women. The fact that her husband is exercising her right in her name, in theory, should not change the limitations of that right.

The interest of this procuration grows when she spells out exactly and in great detail what the exercise of her legal right entails, and it gives us a valuable perspective on the big picture playing field of practice. To her husband, “this constituent gave and gives full power, authority, and special mandate fully to be, to appear, to found, to plea for her and to represent, excuse, exempt her person in all courts and before all judges as much in the church’s court as in the secular court of whatever power or authority they use or are founded.”85 She grants her husband the

85 ADSM, 2E1 228, January 27, 1500. "auquel icelle constituante donna et donne plain pouvoir auctorite et mandement especial d’estre comparison fonder plaider pour elle et sa personne representer excuser exoneree en toutes cours et par devant tous juges tant de court d’eglise que de court seculiere de quelqu pouvoir ou auctorite quelz usent ou soient fondez..."
right to represent and stand in for her before all forms of power or authority or to excuse and exempt her from such. The fact that she (or the notary) leaves this vague but comprehensive gives us a very clear picture of the variety of forms these powers and authorities could take and the very likely flux in their source and how they are “used,” especially in the context of post Hundred Years War Normandy.

Where the contract is vague on the “powers and authorities,” it spells out in great detail what actions might be taken—and might already be in progress—in and out of court. Her husband has the right to represent her “in all of her causes that she negotiates, jobs, and affairs which she has or intends to have [had] set in motion or to set in motion.” He takes over her business past, present, and future. This and what follows suggest that she had quite an elaborate series of affairs or strategy going, and the relentless list in which all of these actions fall at once suggest how banal they are—not dressed up or elaborated upon—and how extreme giving all of this up would be. Her husband has the right to assume her affairs “as much in claiming as in defending, toward and against all persons her adversaries; to request all adjournments, summons, judgments, enforcements, and coercions.” Here we take note of the very active and adversarial nature of her affairs (or potential affairs and embroilments) in court. The list continues with the right to request “deliverance of

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86 ADSM, 2e1 228, January 27, 1500. "en toutes ses causes qu'elles negoces besongnes et affaires qu'elle a ou entend a avoir meues et a mouvoir tant en demandant comme en defendant vers et contre toutes personnes ses adversaires de requerir tous adjournements citements arrestz executions et contrainctes delivrance de namps et de fiefz renvoy de cause de cconvenir reconvenir demander nyer coignoistre advouer desavouer administrer tesmoings lettres actes ascriptures es instrumens mettre en fourme et maniere depreuve dire contre dire tesmoins leurs ditz de deppositions blasmes et se opposer en tous cas et a toutes fins poursuites et soustenir son opposition ou oppositions apellations garants or garans prendre fais et charge de garant de bailler raisons et replications tant de fait comme de droit aux oppositions fais et articles de partie adverse jurer en l'ame de lad constituante et faire tous sermens comme ordre de droit requiert et enseigne..."
deposits and dues, referrals to convene, reconvene, claim, deny, to know, to avow, to
disavow, to administer, to witness contracts [lettres], acts, writings, and instruments
[contracts], to put in form and manner of proof, to support or contradict witnesses,
their words, their depositions and accusations.”

This section of the list, along with that following, highlight the importance of the
spoken word, acts of witnessing and contesting what is seen, said, and known. Her
husband has the right to “oppose pursuits in all cases and to all ends and to support
her opposition or oppositions, appeals, guarantees made or those to take, and is
charged with being answerable to give reasons and responses, as much of fact as of
law, to the oppositions made and articles of the adverse party, to swear on the soul of
the constituent and to take all oaths as order of law requires and instructs.” Striking
again is the active and adversarial nature of the pursuits, but more striking still is the
degree to which the husband is taking over her word. Not only does he have the right
to administer her affairs and represent her in legal actions, he is to take responsibility
for swearing on her soul and taking all oaths on her behalf. Here again is the extreme
character of the contract, and it reveals the pervasiveness of the legal system and
interactions with the law in daily life.

Her husband is to be her eyes, her voice, and her ears: “to hear laws, rulings,
judgments, interlocutions, and definitive sentences; to appeal and to complain of
wrongs, griefs, and sentences; to pursue and sustain the appeal or appeals, to renew
them or renounce them, to endeavor to undertake and to raise a brief or briefs and all
manners of *marché de bourse* as other claims seen and shown." 87 This section of the list is a great window into the spectrum of negotiation, conflict, and resolution that will be examined in later chapters and the discretion and decisions that made up practice. They also help to place the court within a much broader context of legal activity. To reinforce this point further, the husband has the right “to decline court and judge and to make known all other things pertaining to the deed according to usage in pleading, and also to substitute and establish in his stead one or several *procureurs* who have the power to dispossess.” He could decide to go to court or not as needed, as best suits the strategy, and he, as *procureur*, could hire another *procureur* and further transfer her legal right to one with more expertise as needed.

Ysabel not only transfers her personal legal rights to her husband, to conduct her affairs and represent her in eyes, ears, mouth, and soul, to defend and pursue her interests, but she also, as would be expected based on the usual *procuration* contract, transfers her property rights. “Thus it pleases her, and the said constituent especially gave and gives these powers to the said Guillaume Allart her husband to take over and apprehend the usage and possession of all of her property, *rentes*, and revenues which belong and pertain to the said Ysabel by the death and passing of the late Jean Luce as much in Frichemesnil as those parties to come, and to give away, affirm, or rent out to such person or persons and for whatever price and sum

87 ADSM, 2E1 228, January 27, 1500. “de oyr droitz arrestz jugements interlocutoires et sentences diffinitives d’appeler et lui dolloir de tors de griefz et sentences poursuivre et soustenir leur appel ou apeaul les renouveller ouy renoncer se mestier est de prendre et lever brief ou briefz et toutes manieres de marche de bourse que autres demandes veues monstreset obstencions de lieur eslie domicille decliner court et juge et de faire dire toutes autres choses appartenant au fait a stille de plaider et deppendent de substituer et etablir en lieu de lui ung ou plusieurs procureurs qui ait ou aient le povoir dessaisir ou partie d’icelu.”
as may please him and to sell them and to renovate as seem good to him and to have drawn up the contracts of sale such as pertain to the case and generally to do as many of the things above-stated and each of them as if the above-stated constituent would do them or could do them if present in her person as the case required and mandated.\textsuperscript{88} He is assuming her credit, and is assuming her right as her, as she would or could act, depending on the circumstances. All restrictions within the law that would apply to her are still in effect, and he is responsible, as her representative, for all judgments and fines.

This is indeed an extraordinarily detailed list of the myriad kinds of legal activity that she could be involved in, but as extraordinary as the document is, there is no indication that the powers she is claiming are exceptional or beyond what would be expected of a married woman. What is exceptional, given that this \textit{procuration} is documented (fully, not as an excerpt as would be expected) in the context of a property sale, is these powers are spelled out so comprehensively and explicitly and transferred totally and completely to her husband to exercise in her stead. The contract of sale is documenting her husband’s extraordinary right to act on her behalf not her extraordinary rights.

\textsuperscript{88} ADSM, 2e\textsuperscript{e} 1 228, January 27, 1500. "ainsi qu’il lui plaira et par especial lad constituante donna et donne par ces presentes pisuissance aud Guillaume Allart son mary de prendre et apprehender la saisine et possession de tous les heritages rentes revenues qui sont et appartenennent a lad Ysabel de la more et trespas de deffunct Jehan Lure tant a frichemesnil que es parties devenir icelulx heritages bailler afermer et a louage a telle personne ou personnes et par tel prix et somme qu’il luy plaira et icelulx vendre et adevrer se mestier et bon lui semble et d’en faire passer lettres de vendre telles que au cas appartendent et generallement de faire autant es choses dessusd et chacunes d’icelle comme la dessusd constituant ferot ou faire pourroit se present en sa personne y estoit jasoit que le case requiere mande…”
The *procuration* contract wraps up with a reminder that the notaries are relating all this to the *vicomté*. Further transcribed are the date “this was done,” which was nearly 11 years prior “in the year of grace 1489 on the 14th day of February,” and the witnesses: “in the presence of Jean Bots and Guillaume Dubus.” And, again, the notary drawing up the contract of sale, in which this *procuration* appears, leaves nothing out and notes the signatures, which authenticate and bestow authority upon the contract: “thus signed LeRoux and Sergent.” The final note to add here is the timing. A *procuration* could be temporary or confined to a specific case, as in hiring an expert to represent someone in court or in a settlement, but it could also be indefinite and all-encompassing as in the case of Ysabel. In the latter case, the *procuration* could be revoked, despite the total transfer of legal right, but 11 years later, the force of the decision is still in full effect.

The contract of sale then resumes much in the same manner as that of Piart and Levignereux: “Guillaume Allart…[*procuration*]…which as much in his private name as in the said name and in virtue of the said *procuration* that he affirmed to be in virtue without having been revoked and using the power contained in these letters, confessed to have sold…to Jean Auber, residing in the parish of Frichemesnil, present, Be it known a piece of land containing an acre and a half *vergee* or etc. seated in the parish of Biennays…which…the said seller said and affirmed pertained

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to his said wife...for the sum of 17 livres tournois." Allart confirms his right to sell the property and confesses having done so. The notary then draws up the details to formalize and seal the deal.

**The Purpose of Contracts: Defensive Tactics**

As we have seen so far, having a notary draw up a written contract was an important means of memorializing, enforcing, and reinforcing an agreement, and more significantly, the contracts facilitated in making (or repairing damage to) social relations. On the one hand, they enabled unequal creditor-debtor relationships by reinforcing potentially predatory contracts, but on the other, they also linked people together in a larger web which encouraged renegotiation to mitigate consequences of breaches of contracts. In this sense, notarial contracts, commemorating or recalling the original agreement (oral contract), were tools which served significant defensive purposes—legal, social, and economic. All the more important was writing a good contract, especially if the parties were more distant, geographically or socially.

For the sixteenth century there exist a pair of texts put together by Pardoux du Prat which may be considered good practice guides aimed at the (emerging)
profession (notarial practice was old but the profession as such was in a state of
development and shoring up its boundaries). His *Theorique de l’art des notaires* and
*Pratique de l’art des notaires* are meant to be comprehensive guides to assist
notaries in their profession, including templates of various contracts. They also
provide us with an indication of the considerations factored into drawing up contracts
or “instruments,” as they were commonly known.91 He warns that “omissions” or
“imperfections,” however minor they may seem, are not “vain” concerns, but rather
arise from current events: “I know of a lawsuit today, long-running at that, which
began as a result of an omission made by the negligence or haste of the notary. The
notary must painstakingly ensure that he builds and fortifies his instrument so that he
not be insulted or mocked and that he avoid all defect.”92

Elaborating on this point and emphasizing the importance of spelling out the
details of the terms, rather than leaving them implicit in the local custom, he warns
that “it could easily come about that if the instrument is taken far a-distance by the
parties and is then questioned, the judge of that place being ignorant of the custom
would condemn the debtor to pay prematurely [based on a specific, long-winded
example]…and therefore it is not such a matter of so little importance, which must be

91 Pardoux Du Prat, *Theorique de l’art des notaires, pour cognoistre la nature de tous Contracts, et
tous les points de droit qui concernent l’estat, et office de Notariat. Nouvellement traduite de Latin en
Francoys et succintement adaptee aux Ordonnances Royaux et depuis reveu et augmenté* (Lyon, France:
La veuve Gabriel Cotier, 1571); and Pardoux Du Prat, *Pratique de l’art des notaires, contenant les formes de
minuter et groffoyer toutes sortes de Contracts, tant és matieres Ecclesiastiques que Temporelles. Nouvellement
traduite de Latin en Francoys et succintement adaptee aux Ordonnances Royaux et augmenté de nouveau* (Lyon, France:
La veuve Gabriel Cotier, 1571).
“Car ceste maniere de questions ne sont vaines ne faiates : mais adviennent des affaires mesmes. De
quelle sorte je say un proces aujourd’hui demené long temps y a meu à cause d’une obmission faite
par la negligence, ou hastivété du notaire. Le notaire doit mettre peine de si bien munir, et fortifier son
instrument qu’il ne soit calomnié, ou moqué : et qu’il evite tout defaut.”
despised by the notary if sometime some doubt or hindrance could issue forth from this.\textsuperscript{93} This example also implies the movement of people and contracts, the potentially (and assumed) impersonal social relations between parties who lived at significant distances and in different communities and legal cultures or systems (and the role of the contract in bridging those geographical and social distances), and most importantly the role the written contract is playing in witnessing the original agreement in its original terms. The written contract, and especially the notarial contract which “looked” more official with its format and seal, was more portable than the witnesses to the original contract.

The purpose of the notarial contract was to bear witness, in a broadly recognizable fashion, to the original agreement to ward off potential challenges to that agreement across time and space (this parallels the writing of customary law more generally—contract or law become less flexible to memory and interpretation when fixed through writing). Du Prat underscores this point in defining the “instrument”: “By this word INSTRUMENT is...understood all that can instruct legal proceedings. And therefore witnesses and persons are reputed as Instruments by the law. And one must understand this word generally...instrument is a certain solemn piece of writing, well and duly ordered, made, and passed publicly for memorandum and by the hand of an authentic, public and approved person.” He specifically

\textsuperscript{93} Du Prat, Pratique de l’art des notaires, 11-12. “...Il pourroit d’onq facilement advenir, que si l’instrument estoit porté és parties loingtaines et estoit debatu, le juge d’iceluy lieu ignorant telle coutume condamneroit le debteur à payer au septième moys: qui (à dire vray) auroit encores en an entier de terme. Et pourtant n’est il chose de si petite importance qui doive estre mise à mespris par le notaire si quelquefoys quelque doute ou empeschement pouvoit issir d’iceluy.”
contrasts the “instrument” with private writings.\footnote{Du Prat, Pratique de l’art des notaires, 7. “Par ce mot INSTRUMENT est...entendu tout ce qui peut instruire le proces. Et pourtant les tesmoignages, et les personnes son repuez Instrumens par la Loy. Et faut entendre ce mot generalement: autrement, selon le signifié qui est le plus en usage, instrument, est certaine escriture solonnelle, bien, et deuïment ordonnee, faite, et passee publiquement pour mémoire, et ce par main de personne authentique, publique et approuvee...”} Again, an authentic and official notarial contract is recognizable, according to Du Prat, by its format and formulae—including the date, place, witnesses, the name and signature of the notary—is public (as opposed to secret or private), and written by an officially-appointed professional (notaries were regulated offices by the time Du Prat was writing). As this definition would suggest by the words “authentic” and “public,” concerns about witnessing ultimately derived from bigger concerns about fraud, which was a major preoccupation in the early sixteenth century. Reforming legislation made a point of addressing witnessing and fraud, and Francis I went so far as to make bearing false witness a capital crime in 1539.\footnote{For more on false witnesses and measures against them in practice, see Aurélien Peter, “Prendre la mesure de paroles insaisissables: Les faux témoins mentionnés dans les archives du parlement de Paris (XVIIe-XVIIIe)” Histoire et Mesure 31:2 (2016): 107-40.} In sum, a good contract was not only well-crafted and properly prepared, witnesses and all, to be free of ambiguity but also to remain above doubt and dispute, to mitigate challenges to it.

A good contract affects not only the agreement itself therefore but future agreements as well. We have seen that an important element for many contracts is the chain of title and the credit check. If a contract is compromised, then subsequent contracts resting on the validity of that original are undermined and may risk a domino effect that threatens a more elaborate web of credit, economy, and social relations. The discussion to come of disputes will bring this risk more clearly into
focus. Suffice it to say that the shadow of dispute hung over the process of entering into an agreement and drawing up a contract.

It can be reasonably assumed that part of the intrinsic value of a contract was its enduring and binding quality. That is, formalizing an agreement before a notary was an implicit, and sometimes explicit, defensive tactic. Ideally, the contract protected the interests of both parties, but on occasion, it is clear that one party had more to lose should the agreement collapse. Moreover, with the shadow of dispute in mind, the defensive nature of the contract comes to the fore. That a contract was a strategic, defensive move is most apparent in the unusual contracts and the deviations from the typical. In a similar vein to Binette and Robine’s assurance that neither they nor their heirs will lay claim to the property their husbands alienated, noted above, we observe other examples of defensive parts of a contract. In one contract in particular, Cardin Millet, “of the trade of cloth maker, residing in the parish of Roucherolles sur le Vinier, confessed to have sold...to Cardin Gosmont, sergent of the King our lord in the sergenterie of Cailly, residing in the parish St. Nigaise [Nicaise] of Rouen, present, etc. two pieces of land of wood and brush seated in the said parish of Roucherolles in the Buret Pass.”96 The land is sold for 17 livres 10 sous tournois, but there is further interest in the transfer of the property. The land is held from the monastery of St. Ouen (as indicated in chapter one, one of the largest

96 ADSM, 2E1 229, October 26, 1500. “Cardin Millet du mestier de drippier demourant en la parroisse de Roucherolles sur le Vinier Lequel confessa avoir vendu quicte etc a heritage etc a Cardin Gosmont sergent du roy notre sire en la sergenterie de Cailly demoutant en la parroisse Stu Nigaise de Rouen present etc deux pieces de terre en boys et buisson assis en lad parroisse de Roucherolles en triege du buret...led vendeur disant lui appartenir de la succession de ses predecesseurs Ceste vendue etc. pour la somme de xvii l x s t avec xxx s t au vin etc franch ven etc dint etc et promist led vendeur etc garant etc ldsd deux pieces de terre vers tous etc par en faisant et paient par led acheteur etc au feur et prix de xx d t de rente seigneurialles pour chacune acre partie et du nombre de plus grant rente seigneurialle deue ausd religieux de St Ouen a l'office du tresorier du couvent d'icelle abbaye.”
land-holders in the area) and taxes are due “at the sum and price of 20 deniers tournois of seigneurial dues for each acre, part of the greater seigneurial dues owed to the said monks of St. Ouen, at the office of the treasurer of the convent of this abbey.” Millet shares the chain of title and establishes his right to sell in saying that the land in question “pertains to him from the succession of his predecessors.” His right to sell the land would have instantly been met with very strict rules in Norman custom governing the alienation of family land. Notably his son would have had a claim on this land, and so “present to this sale is Guillaume Millet, of the said trade of cloth maker, son of the said seller, residing the parish of St. Vivien, who for the good love that he bears for his said father, at this present sale and transfer consents and agrees and promises and swears that never on the two pieces of land will he demand or reclaim or cause to be demanded or reclaimed anything either by title of clameur de marché de bourse or otherwise in any manner whatsoever.” In this case, Guillaume Millet is explicitly called in to relinquish any claim on the property that his father is selling. The risk and shadow of future dispute hangs over this contract and is specifically named—clameur de marché de bourse. The son’s statement is designed to pre-empt this threat.

As another example of the defensive nature of contracts, there is an intriguing case of a man taking in a widow of two husbands and the agreement between this man and this woman not to make any claim or have any claim to the other’s property:

97 ADSM, 2E1 229, October 26, 1500. “present a ce Guillaume Millet dud mestier de drappier filz dud vendeur demourant en lad parroisse St Vivien Lequel pour la bonne amour qu’il avoit a sond père a ceste presente vendue et transporte se consenty et acorda et promist et jura que jamais esd deux pieces de terre riens ne demandera ne reclamera ne fera demander ne reclamer soit a tiltre de clameur de marche de bourse ne autrement en quelque manière que ce soit.”
Jeanne, widow of the late Pierre Desforges and before that of the late Guillebert Lechevalier, residing in the parish of St. Jean of Rouen with and in the house of Henry Duparc, on the one hand, and the said Henry Duparc, on the other, both parties being present freely consent and agree that whatever dwelling or residence that they have made together in the past and that they will make together in the future does not happen to the prejudice or damage of the other and that for this reason they cannot claim any common share of goods in acquisition. Confessing otherwise, that by friendship and courtesy the said Duparc had placed and welcomed the said widow with him in his hôtel for no other reason than to help her and see to her needs as a gesture etc. Robin Langloys and Robert Poree bearing witness.98

In essence, this agreement is designed to prevent any claim to communal sharing of property resulting from their cohabitation.99 These defensive strategies lead us closer to the spectrum of legal activity in relation to disputes.

Re-negotiation

Notarial records hint at what must have been tense situations that had the potential to turn into a dispute but nevertheless remained in a pre-dispute phase, resulting in re-negotiations of terms. Such is the case where parties had negotiated and entered into a contract that was subsequently not fulfilled. The lack of fulfillment of that contract leaves no traces of a dispute but rather that of a re-negotiation formalized before a notary. To take one instance in particular, involving residents

98 ADSM, 2E1 228, January 3, 1500. “Jehanne veufve de feu Pierre Desforges et euparavant de deffunct Guillebert Lechevalier demourant en la parroisse saint jehan de rouen avec et en l’ostel de Henry Duparc d’une part et led Henry Duparc d’autre lesquelz vouloit consentiront et acorderont et partes presentes veullent consentier et acordent que quelque demeure ou residence qu’ilz avoit faicte le temps passe et qu’ilz furent le temps avenir l’un avec l’autre ce ne leur faicte ne a aucun d’eulx aucun prejudice ou dommage et que a ceste cause ilz ne puisse avoir ne demander quelque communite de biens en conquestz Ne autrement confessant outre lad veufve que par amytie et courtoisie led Duparc l’avoit mise et acueillier a demourer avec luy et en son hostel pour aucunement lui aider et subvenir a ses necessitez en tesmoin etc presents Robin Langloys et Robert Poree.”
99 Terrien notes that co-habitators, and he gives an example of men, share claim to communal property after a certain amount of time. That this could apply to women, given the strictures of Norman custom, is striking and seems like a rather large loophole.
from Rouen and the surrounding area, representatives of parties of a contract made in 1470 formalize an agreement about outstanding debt of 8 *mynes* of wheat out of an original 20. Here the son and heir of Jean Ango, of the same name, comes to terms with Simon Haset, representing the party of Colin Devos who owed the 8 *mynes* to Jean Lemachon, the original party to the contract with Jean Ango the elder. In this record, Jean Ango the younger formally acknowledges receipt and fulfillment of the principal and arrears. No mention is made of legal proceedings in or out of court or of a legal professional aside from notaries, which we have come to expect (and will soon see) from other formalized agreements that have followed legal activity. 100

In a similar example, Jean Asse, residing in the parish of St. Germain-sous-Cailly, “to the end that he be, and remain, released and discharged toward Simon Delamare, of the parish of St. Vivien of Rouen, of the sum of 10 *livres tournois*" which was still due to Simon based on promises “made by this Asse to the said Simon" per the deal they made when “contracting the marriage of this Simon to Ysabel, sister of the said Jean Asse, of his good will confesses” to have agreed to 20 *sous tournois* of *rente* per year. However, this *rente* is not as straight forward as it seems. Asse promises to “render and pay in full" the outstanding sum of 10 *livres tournois* plus “arrears, pro-rated, and all costs.” 101 The *rente* is essentially a way to tack on 20 *sous* a year to the final payment—adding up the arrears—whenever Asse finally makes good. It sweetens the deal to let the debt rest and buy Asse some time. No obvious legal dispute has transpired, but Simon Delamare nevertheless holds Jean Asse

100 ADSM, 2E1 228, January 3, 1500.
101 ADSM, 2E1 229, November 9, 1500.
accountable to their previous agreement. They re-negotiate the debt and formalize the terms for the fulfillment of the previous contract in a new contract. These re-negotiations edge us nearer to the spectrum of dispute activity and offer an alternative option to open hostilities.

We see these re-negotiations most clearly in cases of debt. In addition to inheritance, debt was a major matter of contention in civil disputes. As we have seen, people often entered into debt through contracts, which also stipulated pay off terms. Collecting debts made under contracts that had not been fulfilled represent another “shade” of the spectrum of disputing. What is more surprising about many of the cases where debts go unpaid are not the open legal disputes which come of them but rather the re-negotiation of the debt and agreement to pay it off, even among heirs of the parties to a previous contract. The formalization of the re-negotiation of the debt was not a contract that reveals an open dispute, especially not heard before a court (though it could have been as a breach of contract, presumably), but it reveals an acknowledged problem and attempts to resolve it and come to another agreement. Disputing in or outside of court is therefore best understood on a larger continuum of negotiation.

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103 ADSM, 2E1 228, January 3, 1500.
Conclusion

This chapter has been an introduction to notaries and their records and has provided necessary context for an in-depth analysis of civil disputes. I have shown not only some of the most common types of contracts but also underlined their importance and some of the strategy behind them. Ultimately, formalizing an agreement before a notary was a choice among several options, but it had important signification in a legal system that was increasingly privileging documentation. And yet, in spite of this trend, we notice the persistence of orality and performance in the contracts. Notarial records are integral for understanding legal practice and will have a sustained presence in the chapters to come because they offer information about civil disputes and legal maneuvering inside and outside of the court systems. Whether it is a formalization of settlement or arbitration or even a well-crafted contract or will—which among other reasons, is designed to prevent disputing—documents like these complete the picture the court records paint, not only in terms of biographical information but also in terms of procedure.

One of the more important things we can conclude from this lengthy discussion of contracts is that people’s conceptions of property and ownership, across a significant representation of society of greater Rouen in the late fifteenth and early sixteenth centuries were not rigid or standardized to the same degree as they would be in later periods. In particular, we can confirm that lineage property held a special status for people and preserving it was of broad concern, as will be evidenced by the overwhelming number of clameurs taken to recover it in the next
chapter. This point follows the strictures of Norman customary law. That said, there is far more complexity to the story as evidenced by the contracts discussed in this chapter which showed how often people, both men and women, alienated this property and took measures to make the agreements in which they alienated that property endure. Important in this enduring effort were the fact that the contracts were documented before notaries. It may be said then that the transition to privileging documentation facilitated the flexibility that oral agreements could not in the specific case of alienating lineage property. Having renunciations to claims on such property in writing, witnessed, and bearing the notarial seal surely made them less prone to challenge than oral promises. The impetus to have more flexibility in the management of property on the part of the people may have, in turn, helped drive the privileging of notarial contracts and documentation more generally. This trend suggests, and is supported by the contracts above, that social relations were also relatively flexible, as people entered into contracts with people more distant, socially and geographically, from them, and notaries, as important brokers of information, facilitated the more flexible networks. Of great significance, I have also shown that women not only had more agency than has been assumed, but they were engaging in forming the more expansive social relations. They were also heavily involved alongside men in imbuing value into documentation and in co-creating the observed emerging documentary practices within the broader legal culture.
Chapter Three
Instigating a Dispute: Offensive Behaviors and Initiatives Taken Prior to Appearing Before a Court

The previous chapter has shown various agreements and contracts that people formalized before a notary. It even revealed re-negotiations of contracts as an alternative to disputing. It also showed the enduring orality and performance in written practices. The co-existence of oral and written practices in the legal culture of greater Rouen and the value that people imbued into these practices will become more evident in this chapter. What follows will be an examination of legal action taken in advance of, or as an alternative to, appearing before a court. These actions shall be considered part of an open dispute, and many of them were “pre-court” maneuvers with their distinction from activity before a court being largely a matter of timing. I have chosen to draw this fine distinction to highlight the initiative of people in civil disputes and to clarify the role of the court in the spectrum of disputing. Even though many of these actions instigated an appearance before a court, they did not necessitate an appearance. These actions often come to light through court records, but they could have stood alone.

This chapter will begin by examining different policing forces, formal and informal: neighbors, guild officers, and sergents. The sergents will be of particular interest because of the breadth of their activities, which included assisting in the execution of a seizure of goods. The seizure of goods did not require the presence of a sergeant, however, and it was one of the more common means of enforcing a contract involving a debt and of instigating a dispute. A more emphatic instigating
move was a *clameur*. I have already shown examples of the learned view of *clameurs* in chapter one. What follows is a discussion of practice, and it will expand upon the observations of the endurance of orality and performance in the legal culture. I will also discuss patterns revealed by the records of social groups utilizing these tactics. As a complement to these maneuvers and to the spectrum of disputing as a whole (and before proceeding too far along it), I will show the flexibility of three lesser, emergent legal professions—notaries, *sergents*, and *procureurs*. This examination of their roles in civil disputes will tie together the legal system and the maneuverings of the disputants. It will also highlight some of the options in pursuing a civil dispute as well as help to illuminate the obscurity of these officials, who were taking on an increasingly prominent role in legal procedures. Finally, to wrap up the discussion of actions taken out of court, I will examine settlements and mediation that make no mention of a court appearance. This will provide important background for the next chapter, which focuses on settlements that were reached after at least one appearance in court.

**Policing**

Policing in this period must be placed in the context of mechanisms of social control that encompassed a variety of state and municipal officials, clergy, guild officers, as well as family and community members. One of the most important sources of informal policing in this period consisted of neighbors. Neighbors of disputing parties often bore witness to actions leading up to a dispute in or out of
court. They may be called in to witness a contract, especially an oral one, and their knowledge of the contract (and testimony if a dispute arose which went to court) could prove crucial for enforcement of that contract.¹ More generally, they would notice a person’s habits—their own security, in part, depended on it. They would intervene in an emergency in the case of natural or manmade disasters, like fire, and violence; as we have seen, the line between civil and criminal could be quite fine.² More importantly for our purposes, they would witness a summons to court delivered by a sergent or a seizure of goods in enforcement of a contract. Neighbors would also be the first responders in the instance of a clameur being raised and would serve as witnesses and en masse enforcers of it, which was a sort of kill switch for the action that instigated the clameur.³ They could also be called in for their expansive memories to certify property lines and instigate a collective action suit against a neighborhood nuisance, as in the case of Abraham Leduc’s neighbors, which will be elaborated in the next chapter.⁴ Related to this notion, but taking on a character of its own, is popular justice and mass protest or unrest—another use of

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¹ Oral contracts were frequently discussed and finalized in an area where neighbors could overhear (and later confirm) it. For more discussion of examples of this practice, see Daniel Lord Smail, “Notaries, Courts and the Legal Culture of Late Medieval Marseille,” in Urban and Rural Communities in Medieval France: Provence and Languedoc, 1000-1500, ed. Kathryn Reyerson and John Drendel (Boston, MA, USA: Brill, 1998): 23-50; and Amalia D. Kessler, A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France (New Haven, CT, USA: Yale University Press, 2007).


³ Miriam Müller has done an interesting study of communal policing and the clameur (“hue and cry”) as practiced in England. Her study is especially recommended not only for its blend of quantitative and qualitative methodology but also because of her attention to difference in practices which resorted to the “official” (seigniorial/manorial) system and those which did not. Müller, “Social control and the hue and cry.”

⁴ ADSM, 52BP 11, February 26, 1510.
the *clameur* was to start a riot.⁵ Although neighbors may not act in an official or professional capacity to police activity, their broadly accepted social duty to observe and intervene made them important informal policing agents.

Such practices show that the “law,” broadly conceived, was not a top-down monopoly of the state in this period in Normandy—although the commentators introduced in chapter one would argue, on a related note, that the king was the source of justice—but was, to the contrary, much more diffuse.⁶ It in many ways resembles Miriam Müller’s observation, for peasant practices in relation to manorial courts in fourteenth-century England, that the court may be viewed “as a jurisdictional structure superimposed upon existing mechanisms of keeping order within the

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community.”

Circling back to practices in Rouen, it follows that the boundaries between “social norms” and “laws” are blurred.

Among those with a more official capacity for policing were guild officers or gardes, elected for a fixed term of years. The guild officers were charged with the enforcement of their guild’s statutes as well as with ensuring proper boundaries were maintained between theirs and other guilds. They were charged with ensuring that outsiders did not encroach upon the professional prerogatives of their trade, which included a monopoly over buying, producing and selling goods outline in their statutes. These boundaries were especially important to guilds whose trades were closely related, such as the cloth and clothing trades. By the end of the fifteenth century, on the rebound after the devastation of the Hundred Years’ War, Rouen was at the center of a thriving cloth industry (linen was a major export along with woolen textiles) with accompanying trades and was equally known for its lively guild scene—exceptional in the number of trades compared to contemporary cities.

Moreover,

7 Müller, “Social control and the hue and cry”; 32.
Rouen was exceptional among contemporary cities as being one of the few cities with female-dominated guilds (at least five in medieval Rouen, compared to seven in Paris), and mastership (or mistress-ship), and especially election to a guild officer position, conferred special social status and privileges. Though the exact details of this status and privilege (including but not limited to civic enfranchisement) in the late fifteenth and early sixteenth centuries remain vague in the literature, it is safe to assume that the female *gardes* were, to a certain degree (supported by practices discussed below), empowered legal authorities.¹⁰

With all of this being said, there were plenty of opportunities for disputes to arise. One of the more rich set of surviving records among the corporations of Rouen for the sixteenth century is actually that of a female guild: the *lingères* or linen-drappers (divided by this time into two separate guilds: those who worked and sold “old” and “new” linen). Within this record set we find rulings from the *vicomté* of Rouen that no longer exist among the court records. The presence of these rulings among the guild records seemingly underscores the importance of the court and its rulings, but the very fact that the survival of these rulings depended on actions taken outside of court also underscores the importance of situating the court within the

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larger context of activity outside of court in order to more fully understand the legal system, how people interacted with it, and the court’s place in all of it.

As to their content, the rulings recount not only the ruling of the judge but also a narrative of the offense and actions leading up to a court appearance. Adding this all up in terms of policing and practice, we observe a mix of life-time professionals, such as judges (professionals but not necessarily holding law degrees in this period) and lawyers; informal influencers, such as neighbors; the Church, both professional and informal, in making and practicing law, advising on affairs, and encouraging normative behaviors; a group of temporarily empowered legal officials, who go back to being ordinary people (albeit guild masters); and officials whose professional duties and boundaries are still being defined, such as notaries, sergents, and procureurs (as we shall see below), all contributing to shaping the legal culture and the functioning of the system.

In most cases surviving in the lingères’ archives, the appearance in court followed a seizure of illicit goods by the gardes; the, sometimes violent, objection by the party having goods seized; and the rapid escalation of that dispute. To take a few examples, from the records of the lingères de linge neuf (linen-drapers in new linen) we start with the ruling from 1540 before Pierre Dubosc, licencie es loix (the lowest law degree, below master and doctor) commissioned lieutenant of the vicomte of Rouen, in which Marguerite Petit, Guillemyne Macte, Marion Deleaus, and Katharine Dufoure, gardes of the linen-drapers’ guild, bring suit against a woman named Jeanne Gosselin (no guild affiliation mentioned) for the insults that she spoke against them, requesting that she be fined for the insults and be further required to
compensate them for their court costs. They claimed that when they confiscated some of the cloth that they caught her selling illegally, she directed “several atrocious and ill-reputed insults in the public place” to Marion Deleaus and “among other things called her a thief or said that she was nothing but a thief.” The court fined Gosselin five *sous*, ordered her to pay Deleaus’ legal expenses which were moderated to 12 *sous*, and ordered her to stop selling cloth illegally in the future.\(^\text{11}\)

This case is particularly interesting because it highlights the (relatively independent) legal authority and initiative of the female *gardes*. The judge not only ruled in favor of the *gardes* in their complaint against the insult but also upheld their

\(^{11}\) ADM, 5EP 507b, June 14, 1540. “Lan de grace mil cinq cens quarante le lundy quatorziesme jour de Juing. De Relevee en la cohue du Roy nre sire devant nous Pierres Dubosc escuier licencie es loix lieutenant commis de noble homme monsr. le vicounte de Rouen sur ce que Marguerite Petit, Guillemyne Macte, Marion Deleaus et Katharine Dufoure gardes du mestier de linge neuf en ceste ville de Rouen pour ceste annee presente comparantes en personne et par Raoul Mouchet leur procureur avoient faict convenir et adjourner Jehanne Gosselin affin de faire amende et estre condampnee aux despens et interestz desdictes gardes dict que vendredy dernier oult huict jours ainsy que lesd. gardes estoient en leurs halles de lingerie avoient trouve ladicte Gosselin qui coupouict et datailloict une grosse piece de thoille destouppe laquelle elle debictoict coupouict et talloict ainsi que font ordinairement les maistresses dudict mestier de linge neuf et estre prohibe et deffendu par les ordonnances de leurdict mestier soustenans que dicelle estoict amendable et condampnable en amende et despens desdizct gardes et oultre et davantage lad. Marion Deleaus lune desdizct gardes a faict plainte et querimont sur ladicte Gosselin disant que jeudy dernier icelle Gosselin sestoict a elle adressesse et luy avoict dict et inpropere plusieurs inures atrosses et deshonnestes en lieu public et qui porte record et entre autres lavoict appellee laronnesse ou dict quelle nestoict que une laronnesse ou a elle dict quelle luy avoict desrobbe unze aulnes de thoille comme ces choses lad Deleaus vouloit veriffier et offroict sommairern. veriffier et prouver si estoict mescongnu Ce qui a este contredict et voulu deffendre par ladicte Gosselin disant quelle luy avoict debebte ne vendu ladicte piece de thoille en detail mais disoit bien et confassoit que vray estoict et ne vouloit pas mescongoistre qui ne luy eust este baille par Anne Oricult femme de Loys Oricult une grosse piece de thoille pour icelle vendre au marche comme font les bourg. de ceste ville et ainsi quelle estoict a la halle aux fustailliers estoict illic survenu ung povre femme tenant ung enfant en son col qui luy pria de luy bailler de aulnes d’icelle toille ce qu’elle avoict faict remi tant en droict que de ce elle nestoict amendable et pour le gard desdictes inures que ladicte Marion Deleaus vouloit dire luy avoir este dicte ledict jour de jeudy dernier dict que si elle luy en avoict dict ladicte Deleaus luy en avoict par samble dict surquoy les parties oys veu la qualite de la matiere avons ordonne que ladicte Gosselin demeurera en amende desdictes inures taxe a cinq solz tournois et si lavons cinq solz tournois de interestz envers ladicte Deleaus avec despens en ce regard et defiance faict a ladicte Gosselin de ne plus vendre pour ladvenir toilles en detail ne chose qui soict contre ne en prejudice desdictes ordonnances sur la pane au cas appartenant lesquel despens furent par nous taxes et medezr a la somme de douze solz tournois. a ces pntes comprises sy donnons en mand. au premier sergent ou soussergent de lad ville et viconte sur ce requis le contenu cy dess. mctr. a exon. deue joux. sa forme et teneur donne comme dessus.”
determination that Gosselin was violating the law and reinforced the female guild officers’ legal actions. The sergents were charged with collecting the fine and fees, but it is unclear how the order to stop selling cloth illegally was executed (presumably by the gardes) and whether it was obeyed (a theme that will be suggested again below and then further developed in chapter five with questions of enforcement).

The confiscation of the goods in this incident was not disputed before the judge as it was in the case that follows; it was disputed directly, in the moment, with the gardes in the form of a verbal objection to their action and thereby instigated additional, more escalated action in court. The central drama of this action in court was a criminal act—the insults directed at the gardes. The insult—amplified by its having been shouted “in the public place”—would have been considered an attack on their honor (linked to their reputation and credit, with important economic and social implications). As such, it was considered a criminal offense, albeit a minor one. This means that enforcement of civil law met with a criminal offense. Minor criminal offenses, such as insults, were prosecuted by the offended party, not an official, as a lawsuit, not an act of state repression.12

The witnessing of the insult and the orality captured in the court record is particularly interesting. The *gardes* involved in—named, present to, and supporting—the confiscation are acting as witnesses to the words expressed by Gosselin. They have significant interest in the stakes of the decision, as evidenced by their being party to the suit alongside their colleague, by their having been present to the action, and by their claiming the same status and authority as Deleaus. However, the vagueness by which they recount the insults (or by which the court records them) but zero in on the word “thief”—“among other things called her a thief or said that she was nothing but a thief”—underscores the weight of that word (theft was a crime against property not a person but could be punished no less severely, especially in instances of significant status difference between accuser and accused) and the important, yet ephemeral, nature of the spoken word in the legal culture.13

Similar to the case above, the following case shows the execution of a seizure of goods, the fine line between civil and criminal litigation, and the role played by witnesses. In this case, from 1550 before Pierre Dubosc, *lieutenant particulier* of the *vicomte* of Rouen, in which Christophe Thyron and his wife, cloth merchants (no guild affiliation mentioned), sue, and are countersued by, the *gardes* of the *lingères* guild.

13 In theory, theft could be a capital crime, but it has been suggested that, in practice, most cases of theft were settled privately out of court, for various reasons including the potential knowledge of domestic life that the thief had. This private and potentially shameful knowledge may be revealed in the course of a trial. See for instance Alfred Soman, “L’infra-justice à Paris d’après les archives notariales” *Histoire, économie et société* 1:3 (1982): 369-375; and and Hervé Plant, *Une justice ordinaire: justice civil et criminelle dans la prévôté royale de Vaucouleurs sous l’ancien régime* (Rennes, France: Presses universitaires de Rennes, 2006). A study of settlements and prosecution of theft would be particularly interesting for Normandy given the peculiar interest in protecting property rights written into the customary law and observed, yet toned down, in some practices.
Pursuant to their suit, the Thyrons claimed that the *gardes* had illegally seized a piece of cloth in the market which they had bought in Caudebec and brought to show to a specific woman as a potential buyer. In their defense, and pursuant to their countersuit, the *gardes* claimed, in the act of seizing this cloth, to have been met with the verbal insult of “wicked thieves” and brought ten witnesses forth to swear to it.

The court fined Thyron 40 *sous* for the insult, plus the *gardes’* legal expenses (100 *sous* minus the consultation fee of 50 *sous* of an expert lawyer) and threatened him with prison in the event of a repeat offense and ordered the restitution of the disputed cloth by the *gardes* to the Thyrons.14 Like the case above, this one shows the legal

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14 ADSM, 5EP 507b, November 18, 1550. “Lan de grace mil cinq cens cinquante De mardy dix huictiesme jour de novembre De relievee en la cohue du Roy nre. Sr. a Rouen devant nous Pierre Dubosc escuier licen. es loix lieuten. particulier de noble homme monsr. le vicon. de Rouen En la matiere d’entre le procur. du roy nre. Sr. et les gardes du mestier de linge neuf comparen. par maistre Jehan Ouffray leur procur. Pntes. Katherine Deneufville et Jacquette Thomas dune part et Xpofle. Thyron et sa femme marchans de toille comparen par maistre Richard ledoulx leur procur. daultre part sur la requeste fcte. par lesd. Thyron davar restitution dune piece de toille de chamire qu’ilz disoient contenir trente aulnes ou environ qui avoit este ja prinse par Marguerite Petit lune desd gardes et laquelle icoex Thyron disoient avoir achaptee en la ville de Caudebec passez estoient quatre moys et laquelle piece ilz disoient avoir fait porter en la halle pour icelle monstrer a une femme qui la voulloit achaptater de laquelle action lesd. gardes avoient prins deffence et soutenu a bonne cause l’approchment dicelle toille et dicelle avoient lesd. gardes led. Procur. du roy jointct avec elles soutenu la forfaiture pour les causes et raisons contenez en lacte du dix neufme. jour de mars mil cinq cens neuf et davantage avoient lesd. gardes faict plaincte de ce que lesd. Thyron eu contend de ce que icoex gardes leur avoient remonstre que ce nestoit bien faict a eulx de vendre les toilles qu’iz achapatatan et qu’iz en fraignoient les ordonnances icelluy Thyron les avoit appellez meschantes larronnesses et dict plusieurs aultres injuries Surquoy par led. acte lesd. gardes avoient estre receuz a informer ce qu’ilz avoient faict et a ceste fin produict jusques a dix tesmoingz contre lesquelz ou la pluspart il y avoit eu saon allegue par lesd. Thyron et saluaons. baillez par lesd. gardes et par aprez l’informaon. publyee aux partyes et depuyes le tout distribue par ordonnance de justice a honn. homme Maistre Jacques Cadyot advocat aprez lecture fcte. End. acte informaons. Saons. et saluaons et des aultres lectes respectivem. closes par lesd. partyes sur ce ouy le rapport dud. Cadyot en ensuyvant son adviz et oppinion des aultres assistens en la plus grand partye nous avons dit et dcle. que sans avoir regard a l’escript desd. saons. que pour le faict de lad. plaincte en injuries quelle estoit assez suffisamment rapportee et que dicelle led. Thyron en demourra en amende pnimement. taxee en regard a la quallite desd. injuries a quarante solz et par icelle adjuge ausd. gardes leur interest eu lieu de repparaon. qui a este taxee par ladviz que dessus a cent solz et a este enjoinct et deffindu aud. Thyron comparent comme dessus de ne plus soy adresser ausd. gardes en invectives ne injures sur paime de prison et daultre pugnition a la discretion de justice et en surplus ordonne que lesd. Thiron auront restituon. de lad. piece de toille et que a ce fe. lesd. gardes seront contrainctz et si avons adjuge ausd. gardes leurs despens qui ont este reservez et taxer pour les bailler par declaraon. et fut taxe aud. Cadyot pour son salaire d’avoir veu lad. Informaon. lectes et escriptures faict son rapport et la mynute de ces pntes. la somme de cinquante solz tourn. a prendre et avoir sur lesd.
authority and initiative of the female *gardes*. From this we may glean that the privileges accompanying guild membership appear to trump the disadvantages of being a woman. Normally, if married, a woman would need her husband’s authorization to make these complaints, but her status as a guild official—or even as a guild mistress or independent businesswoman—means she can represent herself in affairs related to her business. And like the case above, it also shows, in vivid detail, the fine line, and easy escalation, between possible interpretations of acts of violence and between civil and criminal litigation—here, rolled up into one.¹⁵

The insult (an act of violence in contemporary eyes) levelled at the *gardes* in response to their execution of the seizure of goods (an act of violence—the physical confiscation of their stuff—in the eyes of the Thyrons), as we have seen, would have been considered an attack on their honor. Once again enforcement of civil law (seizure of goods) met with a criminal offense (insult). The judge, in sorting out the intricacies of the offenses and complaints, found a way to rule in favor of both parties while prioritizing the criminal act—validating the complaint against the insult and returning the seized goods (which was, to be sure, an implicit overruling of the *gardes*’ judgment in enforcing the guild statutes and by extension, a blow to their

authority and reputation). However, it is interesting that although Christophe Thyron and his wife were a joint party, Christophe was singled out for the fine and warning about a repeat offense. This suggests that the judge (and probably the law) imbued Christophe with more responsibility as a man and as husband for the behavior of his wife in public spaces such as the market. He did so in spite of the wife's apparent, but ill-defined, participation in the whole affair—from purchasing and peddling the cloth, to the disturbance in the market, to the appearance in court. The significance of the difference, or lack thereof, in status between Christophe (man, merchant of unknown residency) and the gardes (female, resident guild mistresses, gardes) in determining the course of the dispute and the outcome (arguably a draw) is suggestive of the relationship between (corporate) privilege and (gendered) social status. It is an example of how privilege worked in practice to override one fundamental social inequality with another.

Finally, I want to call attention to the important role played by the witnesses in the drama in and out of court. An important part of the impact of orality is in who speaks the words and who hears them, so the relative weight of the insult—the damage, the stakes, of the offense—was in the statuses of the accuser and accused and also in the high number of people, the “neighbors” noted above, who could swear to having heard it. This case and the one above support the persistence and

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16 For a recent breakdown of the question of women and crime, see Manon van der Heijden, Women and Crime in Early Modern Holland, trans. David McKay (Boston, MA, USA: Brill, 2016). See also, Müller, “Social control and the hue and cry.” Shoemaker has also given some attention to the question of patterns of women, crime, and prosecution in his study of misdemeanors in England. Shoemaker, Prosecution and Punishment.  
17 Uninsky notes that litigation over insults usually included at least two witnesses to corroborate the offense. See Uninsky, “Violence, Honor, and Litigation.” For more on witnessing, see Aurélien Peter, “Prendre la mesure de paroles insaisissables: Les faux témoins mentionnés dans les archives du parlement de Paris (XVIIe-XVIIIe)” Histoire et Mesure 31:2 (2016): 107-40; Daniel Lord Smail,
importance of orality and performance in the legal culture of Rouen and its environs in the late fifteenth and early sixteenth centuries.

In the last example of a case involving a seizure of goods by the gardes of the lingères guild here, from 1553 before Guillaume Druel, licence es loix, lieutenant general of the vicomte of Rouen, Jean Delyvet brought Katherine Leleu, one of the gardes, into court for having seized some of his cloth in the market. He claimed that the seizure had been unjustified and demanded restitution and compensation for his expenses in the case. She claimed, and brought forth other gardes to attest, that Delyvet had been selling cloth contrary to the ordinances—in pieces, embellished, and outside of the market—and made the counter request that he and others be forbidden to do so, enforcing the ordinances in place (it is implied that this man belonged to the group of “marchans et aultres gens mecaniques”). The court ordered the restitution of the cloth to Delyvet on account of his “parvurete” (poverty) but also fined Delyvet five sous six deniers and forbade him and others from selling cloth illegally, according to Leleu’s request for enforcement of the law. Neither was awarded compensation of expenses. Here again, we observe a challenge to the

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18 "Lan de grace mil cinq cens cinquante troys Le vendredi vingt huitiesme jour d’avril De Rellevee en la cohue du roy nre. Sr. a Rouen devant nous Guille. Druel licen. es loix liuten. general de noble homme monsr. le viconte de Rouen. Sur ce que Jehan Delyvet pnt. avoit fait convenir et adjourner Katherine Leleu lune des gardes du mestier de linge neuf aussy pnte. et par ouffray son procur. affin de dire les causes pourquoi elle avoit prins et oaste ung gobet de toile conten. une aulne et demye ou envyrion laquelle il avoit aporte vendre pour sa necessite requerant avoir restituton dicelle et estre condempnee en ses despens icelle Leleu pnte. en la pnce.
initiative taken by the garde in executing a seizure of goods, and the garde under accusation bringing in witnesses, and notably, other gardes at that, to reinforce her claim/defense. We also find the court overruling the garde’s judgment in confiscating the goods but without overtly punishing her—she was not ordered to compensate Delyvet, but the punishment may have been implicit in whatever damage was done to her reputation and authority of discretion.

But the most interesting aspect of this case is in the nature of Leleu’s defense. She not only recalls the letter of the law and Delyvet’s alleged breaking of it (a claim reinforced by knowledgeable but not disinterested witnesses) to the judge, whose law degree (a fairly recent requirement for judges) is specifically stated (licence es loix)—her social status may have been lower but her expertise on the specific laws in question may have been comparable to his, giving her a suggestive claim to authority relative to him—but she also specifically requests enforcement of the law. The case takes on a broader scope by suggesting that there are “others” beyond Delyvet who have been breaking the law. The challenges to enforcement and resolution will be
examined at length in chapter five; suffice it to say here that the frustration over the lack of accountability and lack of support from higher-level authorities outside of the courtroom is a suggestive undercurrent to the drama in the courtroom in this case. On that note, all of the rulings in the above-mentioned cases involving the *gardes* were confided to the first royal *sergent* or *sous-sergent* of the city and *vicomté* to be carried out.

Arguably the most important official policing agents of this period were the *sergents*. I use the term “policing agent” here very deliberately. Although the *sergents* morphed into a more professional policing body akin to a modern police force in later centuries, to call them “police” would be anachronistic in the context under examination in this dissertation because “police” in concept and practice did not exist in this period and because, as we shall see, the *sergents’* duties encompassed a much broader range of activities.\(^\text{19}\) Nevertheless, their activity qualifies under the larger heading of “policing.” My preliminary research suggests that concepts of policing in the late fifteenth and early sixteenth century in Rouen and its environs bore some resemblance to that described by Steven L. Kaplan for eighteenth-century Paris, although on a much smaller scale.\(^\text{20}\) That is, policing was understood as a “social process,” a means of governing people, of preserving social order (hierarchy) in harmony and concord, and of promoting the public good. Ultimately, it was an


ongoing process of “containing,” through repressive and preventative practices, various social forces that threatened to disrupt stability and the status quo. It was not simply a means of enforcing laws, although such enforcement practices were part of the big picture of an orderly society. Just as neighbors and corporations (guilds) did their part to regulate (and on a certain level, legitimize and co-define) and institutionalize a collective ideal, so did sergents.

The sergents will receive a lot of attention because of their importance to legal activity outside of court. Sergents performed a lot of the footwork for the legal system and were sent to arrest, convey and guard criminals. In a similar capacity for the civil side, they were sent to deliver summons to appearances in court for civil cases. That legal commentators went into such elaborate detail on the particularities required in the proper execution of a summons, as seen in chapter one, suggests that the importance of the sergents to the workings of the legal system is disproportionate to the attention given them, in contrast to other officials such as judges and avocats, by

the erudite jurists and commentators (and the level of attention is reflected in the secondary literature).\textsuperscript{22} The \textit{sergents} were frequently charged with publishing laws and court rulings (which could, as we saw in chapter one, carry the weight of a law)—usually by announcements (shouting or “\textit{cris}”) but also by posting something to be read.\textsuperscript{23} In addition to publishing rulings, they were charged with seeing to the execution (enforcement) of a sentence, which commonly meant collecting fines. They were also commonly called in to execute a seizure of goods. This made them important sources of power and authority at the front and the back end of disputes.

\textbf{Seizure of Goods}

The seizure of goods was one of the more important actions taken prior to an appearance in court. Given how often mention of it is made in records of civil dispute,


it is worth discussing it in depth. Like the actions of the sergents (who were often the ones charged with carrying out a seizure), they occurred both at the front end of legal practices, instigating disputes, and at the back end, as a means to execute a legal ruling. We have seen how the gardes of the lingères guild seized illicit goods in the marketplace to enforce the prerogatives of their guild. Goods might also be seized to reclaim a debt--sometimes to enforce the terms of a contract or sometimes to collect a delinquent tax.\(^{24}\) As an example of the former, we have the case of Jean Regnault versus Jean Leribert the elder, fermier de l'eau de Seine heard before the vicomté of Elbeuf. Leribert was not shy about taking matters into his own hands. He took it upon himself to collect arrears on a rente contract—48 sous, 9 deniers—which he claimed Regnault owed him, executing a seizure of some of his goods personally. This seizure prompted Regnault to follow up in court with a formal declaration of his opposition.\(^{25}\) The case may have ended in the courts, but it did not start there.

These actions suggest a great deal of initiative on the part of litigants, but not only in the sense of simply taking their cases to court. They are in many cases initiating legal action, in various forms, outside of the court, and an example of one of these actions was a seizure of goods. Of the 109 appearances before the vicomté of Elbeuf in 1510, three began with one party seizing the goods of another, but not all of them mention a sergent being present to record the activity.\(^{26}\) That a sergent may not be required for a seizure of goods softens any understanding of the rigid formality of legal proceedings, even if in the case of Leribert we are trading one type of official for

\(^{24}\) Smail, *Legal Plunder*; Smail, "Violence and Predation"; and Smail, "Notaries, Courts and the Legal Culture of Late Medieval Marseille."
\(^{25}\) ADSM, 52BP 11.
\(^{26}\) ADSM, 52BP 11.
another (though Leribert was not explicitly acting in his official capacity, he certainly used his status to his advantage to excuse himself from court and slow down proceedings, as will become evident in the next chapter).\textsuperscript{27} The 	extit{sergent}'s presence, as an official representative of the “forces of order,” was not required legally or practically to initiate a seizure of goods or to execute the law in these cases.

Among the records from the Échiquier, four cases indicate a seizure of goods had been executed in the events leading up to the appearance in that court. Of these, the 1510 case between Jean, Colin, and Étienne Daudin and a priest named Jean Bouquet stands out. In this case, the Daudin party, heirs of Guillaume Daudin, is claiming that in an attempt to recover alleged delinquent payments, their property had been seized in excess (20 to 40 times the alleged value of the delinquent payments, to be precise) of the right to do so. The original contract between Guillaume Daudin and Robin Hurel (from 1481) had stipulated that if Daudin (or anyone who assumed liability for his part of the contract through inheritance or purchase) missed three consecutive years of payments on his rente, Hurel (or any person or persons who had taken over his part of the contract) would have the right to take back the property “without authority of justice” (“sans auctorite de justice”).\textsuperscript{28} The importance of the contracts, their stipulations and the discretion in deciding to take a hard line on collection, as discussed in chapter two, come to the fore in this

\textsuperscript{27} A fermier was a type of fiscal agent, similar to a tax collector. Leribert was likely assigned to collect dues on the movement of goods along the Seine. Rouen is situated at the last point at which ships can travel up the Seine; goods would then be transferred to smaller vessels to continue up the Seine to Paris.

\textsuperscript{28} ADSM, 1B 331, January 19, 1510.
case. Also important to note is the difficulty of transferring unwritten understandings and credit when a debt was sold, had there been any.

In 1497, Étienne and Berthault Landri, heirs of Robin Hurel by marriage (“because of their wives”), taking a hard line on the stipulation of the contract above-noted, and shortly before transferring the right to the rente over to Bouquet, had called in a sergent, Jean Couronne, to be present to (that is, to witness) their seizing the Daudins’ property. The Daudins, to the contrary, argue that payments had been made by them or by others on their behalf during the period in question and that, furthermore, the amount of property seized was in excess of the principal and arrears allegedly due. This case is as rich with initiatives taken out of court by the litigants as it is with actions taken in court, including a repeat of the case before a different judge in the same court (bailliage of Evreux), and will be elaborated in chapter five in relation to challenges to enforcement. It is clear that, notwithstanding the sergent’s presence, which was not necessary, that the seizure of goods could be an option for legal action taken independent of the court system—and could be built into the original contract as a safeguard—even if it often led to court.

Clameurs

Another important action taken outside of court was the clameur. Of the records under consideration here, there are 28 total references to clameurs in the notarial records. Records from 37 appearances before the court in Elbeuf and 6

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29 ADSM, 1B 331, January 19, 1510. For another example see 1B 331, January 30, 1510. Estienne et Berthault ditz Landri eux disant heritiers a cause de leurs femmes dud defunct Hurel'
appearances before the Échiquier mention a clamuer having been made leading up to the appearance. There were several types of clameurs which are important to this study: the clameur de haro, the clameur de gage plege, and the clameur de marché de bourse. All of these clameurs had subtle differences in usage (especially according to the law), but in practice, they all had a similar effect in asserting a claim to property.

The clameur de haro is probably the most famous (and infamous) clameur—popularly associated with Normandy, especially in France and more so self-identified in Normandy, but in usage elsewhere in Europe. The popular understanding, anecdotes, and usage of the clameur de haro, and its association with Normandy, is well-documented in contemporary sources and more recent histories, but its essence is well-captured by Glasson in a study on the history of the clameur de haro from the late-nineteenth century as an “interjection that one hurls to excite indignation or disdain against someone.” This usage has also been known to incite collective actions, such as riots, being linked conceptually to other “shouts” and “cries.” Furthermore, this popular understanding and usage of the haro is often confused with the narrower legal sense of the clameur de haro, which will be examined in this

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30 For examples of its usage outside of Normandy see, Müller, “Social control and the hue and cry”; and Ernest Désiré Glasson, Étude historique sur la clameur de haro (Paris, France: L. Larose et Forcel, 1882).

31 Glasson, Étude historique sur la clameur de haro, 2. For a full discussion of these sources, see chapter one, especially notes 89 and 94. See, for example, François Ragueau, Indice des droits royaux et seigneuriaux: Des plus notables dictions, terms et phrases de l’Estat, de la Justice, des Finances, et Practique de France, Recueilli des Loix, Coustumes, Ordonnances, Arrests, Annales, Histoires du Royaume de France et ailleurs (Lyon: Simon Rigaud, 1620); F. Soudet, ed., Ordonnances de l’Échiquier de Normandie aux XVe et XVIe siècles (Rouen, France: A. Lestringant, 1929); “‘Harrow!’ Quod He,” Jersey and Guernsey Law Review (Feb. 2008), <http://www.jerseylaw.je/Publications/jerseylawreview/feb08/JLR0802_Bridgeford.aspx> Accessed September 17, 2012; Glasson, Étude historique sur la clameur de haro; and Hippolyte Pissard, La clameur de haro dans le droit normand (Caen, France: L. Jouan, 1911).

32 Boone, “Armes, Coursses, Assemblees et Commocions.”
dissertation. The association with Normandy extends beyond the popular usage, and as Glasson beams, “associated with the empire of Norman custom,” the clameur de haro is a “glorious memory for Normandy, for it attests to the peculiar attachment of this province to respect for the law,” building on his characterization of the legal usage as “a powerful and…energetic means…of protecting against unjust enterprises.”

It is very likely that the concept of “popular action” in the face of “unjust enterprises,” especially in instances where the powerful prey on the weak, as noted by Terrien (see chapter one), helps explain the confusion between popular usage and legal usage—the concept of justice (the “crying out” for justice) resonates between them. To be fair to Glasson’s exuberant chauvinism (and imperialism), he does make a point of distinguishing between the popular understanding of the haro and the much narrower legal sense of the clameur de haro as well as of demonstrating its broader usage. However, untangling the legal usage from the popular usage and imagination risks being somewhat misleading in and of itself because on a certain level, the latter probably lent significant undertones to the former in the bigger picture of practice and legal culture.

That all being said, it is necessary to establish the subtleties and nuances of the legal usage to understand the practices observed in the records under consideration in this dissertation as well as, and more importantly, to distinguish it from other clameurs in use. At the most basic level, the clameur de haro was a cry for help (the “hue and cry”). It conveyed the urgency of imminent danger to person or

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33 Glasson, Étude historique sur la clameur de haro, 6 and 4.
34 Müller, “Social control and the hue and cry.”
property and was a call to immediate witnessing and intervention by those who heard it, and those who heard it were required by law to drop everything and come running. Recalling Terrien’s commentary from chapter one and reinforcing it with Houard’s *Dictionnaire analytique* from the eighteenth century, the *clameur de haro* “is a means of halting the accomplishment of all that which constitutes a threat to the liberty of our persons or causes damage to our goods, when a delay is perilous….And to this principle, we must add another, that the haro can only be introduced among us to preserve the possession that one has; one cannot have recourse to it to reclaim what has been lost or to acquire what one never had.”

The limitations to usage given by Houard here at the end set it apart from the other *clameurs* to be discussed below. As it was practiced in Normandy (at least), people extended the concept of robbery, a criminal act, understood in the *clameur de haro*, to include any act of dispossession in progress (as an urgent disruption of the peace), giving it a civil aspect as well as a criminal one: “The *clameur de haro* is an institution of Norman law which, in criminal matters, has as its goal the halt of evildoers in their tracks, and which in civil matters, serves to reconcile [“règler”] without delay the arguments which require an immediate solution.”

Pissard would have us believe that this “rally cry” was something special in Normandy, describing his task, in his otherwise detailed study of Norman jurisprudence, as that of “amassing the characteristic traits which make the Norman

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35 David Houard, *Dictionnaire analytique, historique, étymologique, critique et interprétif de la coutume de Normandie, ou l’on trouve la résolution des questions les plus intéressantes du droit civil et ecclésiastique de cette province, conformément à la jurisprudence des arrêts*. 4 vol. (Rouen: Le Boucher le jeune, 1780-1782); vol. 2, 701. “Le haro est donc une voie introduite pour arrêter l’accomplissement de tout ce qui porte atteinte à la liberté de nos personnes, ou cause dommage à nos biens, lorsqu’il y a péril dans le délai...A ce principe, il faut en ajouter un autre; c’est que le haro n’étant introduit parmi nous que pour conserver la possession où l’on est, on ne peut y recourir pour réclamer une possession perdue, ou en acquérir une dans laquelle on n’est pas.”

36 Pissard, *La clameur de haro dans le droit normand*, 1.
An original procedure” which “will only be fulfilled if the reader finds in this essay a new reason to marvel at the mind, so supple and so procedure-oriented, so conservative and so entrepreneurial, of the Normans, who little by little were driven to transform a simple cry of distress into a regularized and complicated procedure.”

The dual nature of the clameur de haro makes its usage in practice a fascinating subject of study (one which could use a bit of a refresher from the dusty “nationalism” of the late nineteenth and early twentieth centuries), and although I will not argue that the dual nature of the haro was unique to Normandy, I will attempt to show some of the contours of its practice in and around Rouen in the late-fifteenth and early-sixteenth centuries to place it among the options available as people worked through their disputes and, further, to reveal some of the important insights that it and other clameurs offer into the legal culture and people’s interactions with the legal system.

As broad as its potential usage was, however, it is important to note that the risk remained constant: a false clameur de haro (one cried unjustifiably) was penalized with the same base fine, meaning that the offender who disturbed the peace and forced all of his neighbors to drop everything and come running could expect a fine, whether he be the “evildoer” who caused the clameur to be raised justly or the “false accuser.” The witnesses could be crucial to determining which one was the offender.

Part of the clameur de haro’s appeal has been attributed to the opportunities created by the immediacy and exigencies of justice upon its cry. For instance, the

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37 Pissard, *La clameur de haro dans le droit normand*, 4.
38 Pissard, *La clameur de haro dans le droit normand*. The automatic fine assessed upon the clameur’s cry was not unique to Normandy and was an essential element of the clameur de haro’s broader usage. On the subject, see Müller, “Social control and the hue and cry.”
person who enacted the *haro* was also “invested with a sort of public power” to arrest the “offender” and bring him to justice—and the alleged offender was required to appear in court within 24 hours, so it also expedited procedures in court.\(^3^9\) These attributions are intriguing and may have held a measure of truth, but I have already shown and will continue to show that the state and its officials assumed by this notion did not have a monopoly on public power or the law—in theory they did, but not in practice. That is, the *clameur de haro* represents what was already in place, not an exception to it—people, especially in civil matters, played a critical role, mediated by their power of discretion, in publicizing offenses and mobilizing local authorities.

Of course, a crucial element of the *clameur de haro* was that it “forced the hand” of the disputing parties and the courts. The case had to go to court, and the court decided who should be fined, settling the uncertainty created by the *clameur* and not necessarily according to expectations, depending on the proof available. Nonetheless, as important as the court’s role was in assigning blame and in deciding the fine and punishment for the offender, another central point of this dissertation, as noted above, is that the court and its ruling diminish rapidly in the larger scale of a civil dispute. Like seizures of property, a *clameur de haro* and a foray into court may only be the “opening salvo” and the beginning of a series of procedures. Moreover, the court’s records sometimes distort the picture because the disputes are often settled out of court, even if additional maneuverings in court are in progress at the time of the settlement.

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\(^{39}\) Glasson, *Étude historique sur la clameur de haro*, 11-13; and Pissard, *La clameur de haro dans le droit normand*. 
As an interesting example of the *clameur de haro* in action, the final settlement contract, formalized before notaries, between Jean (uncle) and Pregent Leprevost (son of Jean’s older brother) provides insights into this practice and the richness of the notarial records for understanding legal practices more generally. Jean and Pregent were contesting rights to some of the patrimonial property which Jean’s brother, Rigault, had transferred to him, with the consent of Pregent on condition of *rente* payments, which another contract confirms had been paid. Pregent then determined that he had not received a fair cut of some shares and “was combative” and “tried very hard to hinder Jean in his enjoyment of the patrimonies and enacted the haro.” However, shortly thereafter, the narrative continues, Pregent realized “upon bringing this dispute between them before the bailly of Vitefleu or his lieutenant and seeing that he could not pursue the said haro, paid the fine for it and obtained royal letters” by which others may be given to understand that in making the disputed contract, “he had been deceived” and that his uncle made a great sum of money at his expense. The letters ordered that the “contract be rescinded, broken, and annulled,” and Jean “contested and challenged” the letters, “saying that they were obtained under false pretenses and denatured the facts” and that they omitted sums of money that Pregent had received.

In his defense before the bailly of Vitefleu, Jean claimed that the letters were inadmissible, and seeing Pregent’s defense of his claim as it was and seeing the writing on the wall, “as the case was hanging before the court,” Jean approached Pregent about a settlement. Having seen his uncle’s defenses in turn, Pregent went to the bargaining table with his uncle to work out a settlement, which by and large
favored Jean except for a substantial cash payment of 150 livres which Jean made to Pregent. By this agreement both were content, the royal letters, which Pregent handed over to Jean, were nullified and broken, and they promised to “vuider la court” [literally “empty the court”].

This case between Jean and Pregent provides an interesting example of the haro as an act of instigation in a dispute but one which, although presumably achieving an annoyance factor, proved to be not sustainable (because it was enacted after Jean had taken possession of the property not as the preventative measure for which it was intended) and “forced" other maneuvers in and out of court. It is also an example of some of the narrative qualities and the orality captured in notarial records and the equally important act of transferring possession of documents (elaborated in chapter two). More importantly, this settlement places the haro within a much broader context of practice. For instance, the fine Pregent would have paid was about five sous. If we assume that he knew that the haro was a lost cause going in and decided that the five sous was an acceptable price (on the scale of 150 livres; 1 livre = 20 sous) for the ruckus it would create, then the haro may be seen as a far cry from the

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40 ADSM, 2E1 228, January 31, 1500. For another example see 2E1 229, October 5, 1500. "lequel Pregent s’estoit puisnagnes [pugnare = combat] non obstant ces choses efforce troubler et empescher ledit Jehan Leprevost en la joissance desdits heritages et fait haro et sur ce proces entr’eux intente devant le bailly de Vitefleu ou son lieutenant et voiant qu’il ne pouvoit conduire ledit haro avoit d’icelui fait amende et obtenu lettres royaux en moys d’octobre derriere passe donnant a entendre que endit contract faisant il avoit este deceu et que sondit oncle avoit recueilli grand somme de deniers durant le soubz dudit Pregent lesquellez appartenant audit Pregent tendit par lesdites lettres ledit contract estre recinde, casse et adnulle lesquelles lettres royaux eussent este contredictes et debatues par ledit Jehan Leprevost disant quelles estoient subreptices et obreptices et que en icelle estoit teu et obmis la droicure dudit Jehan Leprevost qui avoit fait plusieurs mises pour ledit Jehan Leprevost et autres caucions que ledit Jehan Leprevost entendre declerer en temps et lieu par lesdites ledit Jehan Leprevost eust pretendu deffence desdites lettres devant ledit bailly de Vitefleu ou son lieutenant sur l’enterinement desquelles ledit proced esloit pendant et voiant ledit Pregent Leprevost les defend dudit Jehan Leprevost son oncle s’est tourne devers lui et tant fait que sur ce que dit est ilz sont condescendu en appointment en la maniere qui eussent comme ilz disant savoir faisant etc.”
glorious harbinger of justice imagined by Glasson and Pissard. It becomes one
maneuver among many, a pawn sacrificed in the larger chess game of the dispute
with his uncle. It is also plausible that Pregent’s knowledge of the law and the
nuances of the different clameurs available to him was a little rusty—or that the
contested possession was more ambiguous than it seems, given the state of the
record—and that he was trying different procedures as the dispute progressed,
improvising as it developed. The risk of the fine may have been acceptable even if
the ruling was not clear from the start. Regardless of Pregent’s strategy in pursuing
the dispute, the clameur de haro was not a discrete act.

As further evidence of how the haro worked in practice, there is a similar
account of a haro made in the events leading up to an appearance before the
Échiquier. In this case, Robert and Jean Dorenge raised a clameur de haro against
the recteur and vicaire de Sarneville, Colin Barbey, who denied them an
announcement in the church, that had been approved via letters, by the bishop of
Lisieux or his official, to recover a receipt for a sum of money. This action brought
them to plead before the vicomté d’Auge at the seat of Honfleur which was the
beginning of many actions and delays before various courts, and a couple of defaults
by the Dorenges, that ultimately led them before the Échiquier.41 As another example
of improper usage of the haro (and failures can be as revealing as successes), we
can assume both that contemporary understanding of proper usage was a little fuzzy
and also that practice was more fluid than the letter of the law allowed. It also
provides an important example of the coexistence of oral and written practices. The

41 ADSM, 1B 331, January 28, 1510.
Dorenges obtain letters to grant them the right to make an announcement in church, which was an important means of publicizing a contract drawn up before a notary and which set a distinct time limit (theoretically, though there were excuses to be found) for disputing that contract—a year and a day. This practice, according to Terrien, was especially important for undermining a *clameur de marché de bourse* (discussed below); in lieu of the announcement, the timeline extended to ten years.⁴²

To add more context to the *clameur de haro* in practice, I think it is important to examine a few from the court in Elbeuf, even from a (not far) different year (there were no instances of the *clameur de haro* recorded in 1510). Looking at the lower court examples, the *haro* seems to be used mostly in cases of physical altercations ("*malfacons de corps*")—four out of six during three weeks of 1502.⁴³ One such entry has Pernot Bonamy appearing to plead his defense against a *clameur de haro* raised against him by Guillaume Hebert and his mother for an assault which drew blood. Another entry notes that Richard Ducure is paying the fine for a *clameur de haro* raised against him by Jean Poullain after punching Poullain during a heated game of "*boules.*" Another entry notes that Pernot Morel is paying the fine (5 *sous*) for a *clameur de haro* raised against him by Jean Bacheler in relation to an attempted dispossession of some of Bacheler’s patrimony. A final example has Guillaume Delacroix paying the fine for a *clameur de haro* raised against him by the *fermiers* of the mills of Elbeuf for trying to slip a "*hamboure*" of beer passed them "without paying

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⁴³ ADSM, 52BP 9. “Guillaume DeLacroix fist amende d’une clameur de haro sur luy faicte par les fermiers de la prevoste coutume et moullins d’Ellebeuf pour ce qu’il en pore... ung hamboure du biere sans paier la coutume.”
the custom.” Even this very small sample of cases provides a fascinating range of usage for the haro and is worth a slight temporal digression from the main sample of these records. Although lacking in details about the incidents that prompted the haro, we nevertheless observe the fluidity of practice where daily life and the legal system come together.

For all of this discussion, the supposed popularity and renown of the clameur de haro is disproportionate to its presence in the records under consideration here: twice in the notarial records, three times in the Échiquier, and none in Elbeuf (though there are 6 over the course of three sessions in 1502). It is but one of several clameurs in practice. For my purposes, the clameur de haro examined alongside the other clameurs underscores the persistence of orality and witnessing in legal practices (introduced in chapter two).

Another noteworthy clameur, though mentioned in the records less frequently than the haro (only once in the notarial records and none in the others) was the clameur de gage plege. Similar in certain respects to the haro, the clameur de gage plege concerns property seizure and possession, but it is not specific to hereditary lands (patrimony) and lacks the undertones of imminent danger, though it is easy to imagine the initial response scene being comparable (however, a sergent had to record it for it to be valid and Terrien’s description of it and other “clameurs” would suggest that it was more of a “complaint” than a “shout”). We learn from a settlement contract between neighbors that Jean Petit raised a “clameur de gaige plege” against Rogier Lecheron during the course of a dispute over a property line

44 ADSM, 52BP 9.
45 Terrien, Commentaires du droit civil.
and building project attempted by Petit. The dispute worked its way through the
courts up to the Échiquier before the parties worked out a settlement, which will be
elaborated in the next chapter.\footnote{ADSM, 2E1 228, January 8, 1500.}

By far the most frequent clameur in the records was the clameur de marché de
bourse, which was a means of reclaiming lineage property that had been sold, in
exchange for the reimbursement of the sale price [bourse]. The importance of lineage
property has already been introduced in previous chapters, but the clameur de
marché de bourse was one of the more important legal practices used to recover and
maintain it.\footnote{It was similar to a nouvelle dessaisine procedure or the reclamation in use in other parts of France. See Giesey, “Rules of Inheritance.”} Of all of the appearances before the vicomté of Elbeuf in 1510, 35 were
in relation to a clameur de marché de bourse—that’s nearly a third of the
appearances.\footnote{ADSM, 52BP 11.} Among the notarial records there are 17 references to this clameur
and 2 in the Échiquier records. In chapter two, I showed some examples of attempts
to defend against the threat of this clameur in contracts. Further, it is fairly common
for the chain of title in contracts (discussed in chapter two) to indicate that the
property had been (re)gained by clameur de marché de bourse. For example, Noel
Lemachon notes in his sale of property to Colin Leclerc that he had recovered and
gained the right over the property in question by clameur de marché de bourse from
Guillaume Roque who had bought it from Noel’s brother Jean. The contract also
indicates that when the rente contract between Jean Lemachon and Guillaume
Roque was nullified, the money that Jean had loaned Roque who had then loaned it
to Gillet Dufour had to be returned. The contract between Noel Lemachon and Colin

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46 ADSM, 2E1 228, January 8, 1500.
47 It was similar to a nouvelle dessaisine procedure or the reclamation in use in other parts of France. See Giesey, “Rules of Inheritance.”
48 ADSM, 52BP 11.
Leclerc also suggests that some of the finer details of recuperating the property were still being sorted out because the *vicomté* of Rouen had ruled in favor of Noel the very day that he drew up the contract with Leclerc, but Leclerc would have assumed Noel’s right to collect. The *clameur de marché de bourse* was clearly a commonplace among the courts and the notaries and a preferred action taken to instigate a claim on property. The lengths that people went to reclaim property, and the fact that it was institutionalized and common in practice, underscore how important lineage property was to Norman legal culture.

In terms of the court records, the proceedings following a *clameur de marché de bourse* reveal some interesting points of practice. For example, the case between Guillaume Robellot and Jean Robellot before the *vicomté* of Elbeuf reveals more about activity out of court than anything in court. In this case, Jean Robellot had raised a *clameur de marché de bourse* against Guillaume Robellot. Following this, on September 5th, Jean Yver, the *sergent*, delivered a summons to Guillaume to respond to the *clameur* and then, with the help of a couple of other men, conducted an inventory and appraisal of the property in question (valuing 40 *sous tournois*). When the court date arrives on September 18th, Guillaume does not appear and is in default. The court records this brief narrative of events but not a sentence. Defaults will be discussed at length in the next chapter; suffice it to say here that the pattern of defaults suggests that the case was left hanging. This means that much happened leading up to the appearance in court, on a fairly short turnaround, but that following

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49 ADSM, 2E 1 228, January 29, 1500. For another example of the *clameur de marché de bourse*, see 2E 1 228, January 15, 1500.
50 ADSM, 52BP 11, September 18, 1510. For more examples, see the three records following on the same page, all from the same day.
this one appearance, the court did not render a decision. The fact that so many cases are left “unresolved” (without a court ruling), as will be elaborated in chapters four and five, indicates on the one hand that “resolution” was not necessarily the most important issue at stake in conflicts and on the other, that resolution for the legal culture of Normandy in this period, especially with regard to civil procedures, had a different meaning. That is, a court ruling and resolution of a conflict were not equivalent, and “justice” more broadly did not require or necessarily result from a court ruling.

Taking an example from the other end of the court system, the Échiquier heard, deferred and heard again an appeal and complaint from Robert Legouez regarding a couple of clameurs raised against him by Guillaume Levesque and Thomas Berquet and his wife that resulted in an appearance before the vicomté d’Auge in the ples de la sergenterie de Pont l’Évêque in 1507. We learn that in subsequent proceedings, Legouez claimed to have transferred the disputed property and debt of 11 livres tournois to his uncle Jean Lepannier who would assume defense of the clameurs. In that regard, Legouez claimed that Lepannier had “sufficiently accepted the transfer of the patrimonies,” but he adds that the transfer was “made in his [Lepannier’s] absence.” On this premise, Levesque opened proceedings pursuant to the clameur against Lepannier “by several and diverse summonses” to the “ples du pont levesque” and “toward him took several defaults.” In the meantime, Jean Lepannier “had gone from life to death and his succession passed to several underage children” whose tuteur, Jean de Brey, upon receiving a summons for them to appear in court on the matter, “declared that the children would
hear nothing demanded on the said patrimonies and that they did not want to accept
the sale that Legouz claimed to have made to their father Jean Lepannier in his
absence.\footnote{ADSM, 1B 331, January 8 and January 24, 1510. “depuys lequel transport ledit Levesque s’estoit
clame pour avoir et ratraire dudit Legouez lesdits heritages ainsy decretez sur le nom dudit Julienne
sur laquelle clameur assignacion avoit estei fait audit Legouez a comparoir es ples du pont
l’evesque devant le viconte d’Auge ou osn lieutenant devant lequel icelluy Legouez s’estoit comparir
et declaire qu’il n’estoit plus tenant desdits heritages et qu’il les avoit transportez et baillez audit
Lepannier et a ces causes disoit ledit Legouez soy en estre alle hors de proces et avoit ledit Lepannier
Lequel Lepennier avoit passe procuration expresse pour proceder et deffendre la clameur dudit
Levesque et par ce disoit ledit Legouez que icelluy// pannier avoit suffisamment accepte le transport
fait en son absence desdits heritages et aussy ledit Levesque avoit procede contre ledit Lepannier par
plusieurs et diverses assignacions esdits ples du pont levesque sur ladite clameur et vers luy prins
plusieurs deffaulx et pour ce que ledit Jehan Lepannier estoit alle de vie a decez et sa succession
escheue a plusieurs enfans soubz ausquelz avoit este esleu tucteurs et que sur l’assignacion qui
avoit estei faitte audits soubjectz Jehan de brey tucteur desdits soubjectz avoyent declare que lesdits
soubjects n’entendoyent aucune chose demander esdits heritages et qu’ilz ne vouloyent accepte la
vendue que ledit Legouez disoit avoir faicte audit Jehan Lepannier père desdits soubjectz en son
absence et qu’ilz se rapportroyent audit Legouez dobair ou deffendre a ladite clameur et aussy pour ce
que ledit Legouez aprez ladite declaration avoit derechef doobair ou deffendre a ladite clameur...”}

With this deflected sale, Legouez was back to defending the clameurs.
The Échiquier had postponed the case 16 days because it was “not for the present in
a state to be judged” (“le proces n’est pour le present en estat de juger”) before
supporting the vicomté against Legouez’s complaint and sending the dispute over the
claimed property back to that court for resolution.

This summary and small excerpt from this case presented to the Échiquier
reveals a great deal about legal maneuverings in and out of court and the role of the
courts and contracts in the melee. The first notable point is the failed (absentee)
contract between Legouez and Lepannier. The difference between this deflected sale
and a fraudulent contract remain unclear—there is no evidence in this case that
Legouez was accused of fraud during the proceedings. How the Lepannier party was
able to successfully deflect the sale is also unclear but an interesting point for
discussion of enforcement practices (elaborated in chapter five). The contract--
assuming that it existed, and even if it didn’t—was a personal defensive ploy on the part of Legouez in the midst of litigation in which he leveraged a well-known and accepted method of transferring legal responsibility over the disputed property. Even though the guardian of Lepannier’s minor children, very much in defense of their interests, passed on the acquisition from their cousin, at the very least, it clogged the workings and bought him some time with multiple summonses, appearances, and defaults indicated.

The tactic by Legouez not only reveals contracts in a new light as potential instruments of diversion, but it also places activity out of court in the foreground of activity in court. We also observe by this case that the activity in court was fairly one-sided with the claimants appearing and the defender(s) not appearing. But the pivotal action in the dispute remains the *clameurs* raised by Levesque and the Brequets which instigated litigation and looped the court in, even if it was peripheral to much of the action. We can conclude from this that the court is not the main player but that it remains key as an enforcer (or potential enforcer), albeit not center stage.

The manner and frequency of the use of the *clameur* underscores the importance of legal activity preceding appearances in court. Even as a more formal instigation, *clameurs* help to put appearances in court in perspective, placing them within the larger picture of the dispute. They also add nuance to our understanding of the role of officials in a dispute. Though *clameurs* were frequently invoked, it is rare to find mention of a *sergent* having been summoned to record one.52 Such actions taken leading up to a court appearance, involving officials or not, suggest a great

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52 ADSM, 52BP 11.
deal of independence, initiative and self-determination on the part of interested parties to a dispute.

Focusing on actions taken outside of court or as an instigation to an appearance in court, it is important to examine more carefully who was actually involved in such actions, as claimants or clai"meees, to see if they form a representative sample of disputants or favor one social group more than another. Regarding the seizure of goods, there is very little demographic information in the records mentioning this action, though the activities of the gardes of the lingères guild helps round this out. However, for the clameurs, the records under examination here indicate that this action was practiced fairly evenly by a range of groups. For instance, of the total number of references to clameurs, 12 of the notarial records (of 27 total) and 4 from the Échiquier (of 7 total) indicate that women were involved in some capacity. Of the other major groups mentioned, tradesmen and bourgeois figure in 14 references in the notarial records, once in Elbeuf (for which demographic information is scant anyway), and once in the Échiquier; nobles and clergy figure in 12 references in the notarial records, 9 in Elbeuf, and 4 in the Échiquier; and legal professionals figure in 7 references in the notarial records, none in Elbeuf, and 2 in the Échiquier. No one group stands out significantly, suggesting that the practice was not favored by, or exclusive of, one group.53

53 These groups are the most common ones represented in the sources sampled here, but admittedly represent a (significant but unknown) segment of the population as a whole. Similar findings are presented in: Bruno Sintic, “Saisir la société urbaine des petites villes par les actes de tabellionage,” in Tabellionages au Moyen Âge en Normandie: Un notariat à découvrir, ed. Jean-Louis Roch (Rouen, France: Presses universitaires de Rouen et du Havre, 2014): 109-17; and Smail, “Notaries, Courts and the Legal Culture of Late Medieval Marseille.”
Pre-Court Settlements

The final action taken outside of court pursuant to a dispute and the resolution thereof that needs mentioning here is the mediation and settlement of disputes before an appearance in court. Among the notarial records, the settlement between the heirs of Regnault Cabot and Jean Bourdon stands out. In this settlement, Nandin Cabot, as part of reconciling his inheritance with his co-heirs of Regnault Cabot, agrees to pay the outstanding debt from a rente contract to the heir and representative of the party of Bourdon, Jacques Devreux. The debt had grown, with arrears, from 45 sous tournois to 70 livres tournois—again reinforcing the idea that there was considerable discretion in the collection of debt but that transferring that unwritten understanding, relationship, and credit nurtured between the individual parties, through a sale or even across generations (to those not on board with the informal understanding), was a significant challenge to these implicit operations of credit and debt. To that end, whereas nantissement typically supported the workings of credit on a more formal level (as discussed in chapter two), in cases like these, where the credit may have been of a more personal nature, nantissement, by publicizing the letter of the agreement, may have had an effect beyond or even opposite to intention.

This settlement contract indicates that Devreux “wanted to mettre en criée pour passer par decret les heritages de Nandin Cabot,” meaning that the dispute was

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54 ADSM, 2E 1 228, January 4, 1500.
heating up and the threat of a possible court action was looming. As an alternative, Cabot loans Devreux some property, and gives him the right to profit by them, as collateral in exchange for more time to collect the funds. Within six years, Cabot would, per the terms of the agreement, pay the outstanding debt plus costs, fulfill and wipe out the *rente* contract, and the collateral property would return to him.\(^{56}\) Such disputes reached a stage escalated beyond a renegotiation of a contract, but both parties decided, or were persuaded by relatives and friends, to come to a resolution without resorting to court. These settlements take a very similar shape to those that come after an appearance in court, a pattern which diminishes the presence of the court and removes it from a central position in the unfolding and resolution of a dispute. Settlements reached after a scheduled audience before a court will be examined at length in the next chapter.

**Multiplicity and Fluidity of Legal Professions**

When considering the actions of disputants inside or outside of court, we must not lose sight of the fact that their actions were not always as independent as they may seem and that some of them were turning to different officials and legal professionals at various stages for specific things (and possibly influenced by membership in kinship groups, guilds or other collective affiliations); they also turned to members of the clergy for advice and informal mediation of disputes. Although higher-level officials such as judges and *avocats* have received a considerable

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\(^{56}\) ADSM, 2E 1 228, January 4, 1500.
amount of attention from historians, lower-level officials, with the exception of notaries, though crucial, as we have seen, to civil disputes, have received far less. Despite some very promising initial research, little is known of the *sergents* and *procureurs* who frequent the records.

Shifting our focus to the officials most commonly mentioned in the records, we find, in this period before duties were defined and the rigid and exclusive boundaries of these professions drawn, an interesting degree of flexibility in the professions. That is, we find legal professionals playing multiple roles and a fluidity in their duties and practices. The richest source of evidence for these professionals and their activities in the records under examination in this study are the notarial records, but court records provide another perspective and help complete the picture. Each set of records offers a different lens through which to observe practice, offering a different perspective on the same practices and at the same time revealing different practices. Examining the scope of activities of these professionals adds complexity to our understanding not only of the spectrum of disputing from the angle of the

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57 Further, most of the literature for judges and avocats relates to criminal procedures or their involvement in politics or relation to the monarchy.
opportunities and ambiguities that disputants navigated but also of the discretion of, and ambiguity for, the officials in the legal system.

The simplest example, but by no means simple, of the multiplicity apparent within a legal profession is that of the notaries. We have already seen (in chapter two) something of the range of documents that notaries drew up as well as their position at the center of information in the credit market. We also know that notaries played an important role in formalizing a resolution to a dispute (though this will be discussed in depth in the next chapter). It is common knowledge that priests served in the capacity of notary (and one of the settlement contracts refers to a notary/priest in an ecclesiastical court in Rouen), especially in rural areas, long before the period under consideration and continued to do so after, though in a more diminished capacity as the monarchy tried to assert its own prerogatives with respect to notarial records (discussed in the previous chapters). Along these lines, rarely do we find notaries acting in another capacity, but we do find a wide range of other officials acting as notaries. Typically these instances come forward in relation to prior contracts, such as in the establishment of a chain of title or in the dispute of a previous contract. The most common instances are that of a procureur, conseiller, or even a lieutenant of a vicomte or baili acting as a notary, as seen in chapter two. We also recall the Piart contract, where the son, a priest, served as a notary for a sale contracted by his father, and then, several years later, was serving as procureur to his father. Although an important question and line for further research, it is unclear

60 ADSM, 2E1 229, October 29, 1500.
at this time whether these contracts drawn up by stand-in notaries (and even oral and sous-seing privé contracts) were more prone to being disputed. The nature of such disputes would reveal a lot about the legal culture and about people’s familiarity with contract composition and what they considered to be essential and legally binding.

The next example of the flexibility of the legal professions under examination in this dissertation is that of the sergents. We have already seen some of the sergents’ activity in policing, but their duties encompassed a broader range of activity beyond policing. It should also be noted that although the office of sergent was not supposed to be hereditary in this period, I have found clear references to hereditary sergents. Although there is no mention of other officials acting in a capacity of a sergent, we have seen in this chapter that they performed a lot of leg work in facilitating and witnessing some of the actions taken out of court by disputants. They also had a role in publicizing laws and court rulings and collecting fines. Their work in delivering summons and recording events, when they were called, was as varied as, and determined by, the actions taken by the disputants. This conformed, as discussed above, to the bigger picture goal of policing.

To draw the variability out a little more, I want to focus in particular on the activities of Jean Yver, sergent in the vicomté of Elbeuf, whose name will pop up in relation to various cases examined in this dissertation. By 1510, he had been practicing for at least eight years as sergent in the vicomté, giving him a considerable amount of experience by the time the cases in question rolled around. One of Yver’s

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61 See, for example, ADSM, 2E 1 229, November 7, 1500 and 1B 331, January 26, 1510.
62 Cauchies, “Le ‘cri’ et l’espace urbain.”
63 Kaplan, “Réflexions sur la police du monde du travail.”
more common activities was to summon people to court, as defendants or witnesses.

In the cases against Abraham Leduc (elaborated in the next chapter), he rounded up and swore in 19 expert witnesses (the oldest men in town) to “recall” the boundary lines of a property recently enclosed. He would also be present in court to swear that he had properly summoned people who had not made an appearance—a fairly regular occurrence as we shall see. Such was the case with Jacquet Vallet, whom Yver had summoned “speaking to his person,” (“en parlant a sa personne”) to appear in court to answer an accusation of assault on Raoullin Cavellier’s wife. Yver could also be called upon to seize someone’s property at the behest of a private individual or at the behest of another official, for example to collect delinquent taxes as was the case with Fleury Mesnage, for example or at the behest of a private individual. In the event that the person having his goods seized objected, as did Fleury Mesnage, he would pass along the person’s formal opposition for the purpose of setting up an appointment in court (he may have also informally passed along the person’s informal objections). He could then expect to be blamed for an improper seizure (as Mesnage tried to assert). Yver would also receive and record clameurs. One of the entries for the court’s sessions on June 18th notes that “Jean Yver recorded that this past Sunday [Jeannet] Lefevre clamored to him to have and retrieve from [Simmonet] Dupuis [drappier] by the sale price and reason of lineage a piece of land…seated in the parish of Caudebec.”

Yver and other sergents represented the power of the law

64 ADSM, 52BP 11. “Simonnet Dupuis drappier en deffault vers Jehannet Lefevre filz de Collin Lefevre porteur de clameur de marche de bourse et recorda Jehan Yver sergent que dymenche derrain passe led Lefevre cestoit a lui clame pour avoir et ratraire dud Dupuis par bourse et raison de lingnage une piece de terre contenant cinquante perches ou environ assis en la parroisse de Caudebec entriege de boscquet duree d’un coste bouys pigrior d’autre coste plusieurs boutieres d’un bout Jacques Dufay escuier et d’autre bout led boscquet duree que led Dupuis aent et acquise de Pierre Lefevre demourant a Rouen prochain dud clamant obaissant paier le prix que lad piece de terre lui
on the one hand but also facilitated practices and helped connect people to the legal system on the other.

Of the legal professionals and practitioners under consideration here, the procureurs are the most complex and nebulous group. Very little research has been done on the procureurs to date, as Michael Breen has recently lamented, (and most of it has been on professional procureurs), so very little is known about them.65 The boundaries between different genres of procureurs—professional (and different types of these, moreover), legally-appointed (power of attorney), and stand-in procureurs—is ill-defined in the contemporary legal commentaries, as seen in chapter one, and in much of the historiography. They are all easily lumped together under one heading, but they are not easily distinguished, and much remains to be done on enriching our understanding of “procureurs” and their practices.

The records examined in this dissertation suggest some interesting parallels between professional procureurs and notaries, despite their relative obscurity. That is, although subject to some regulation of practice and in some instances carrying a bestowed office or title, not all of those acting as procureurs were professional procureurs (who made a living representing the legal interests of another person). We have seen similar phenomena among notaries—where the office and profession of notary are still in development. Similar to the example of notaries, we find instances of conseillers and other officials serving as procureurs. However, for

consellers, avocats, judges, and lieutenants/vicomtes, these professions carry more distinct titles. A conseiller may act as a procureur, but I have yet to see the inverse.

Furthermore, it is not always clear that those acting as procureur have any status as a legal professional, “high or low,” or any formal legal training or degree (a newer requirement for legal professionals of most types in the early sixteenth century). It is also important to recall the procuration contracts, discussed in the previous chapter, which set up a power of attorney and transferred legal rights to another individual on behalf of the one. All of this suggests that the designation “procureur” or “notary” is linked more to the practice than a title which bears status (although there are distinct, titled offices such as the procureur du roi). In other words, “procureur” (or “notary”) denotes a role more than a “status,” so it may be best to think of the procureur as a legal “representative” of an individual or party.66 This broader conceptualization of the procureur helps to explain some of the variability of the role and of their practices. Of course, as these professions became more regulated and more commodified later in the sixteenth century, the boundaries of the profession likely became more rigid and imbued more status.

Of the titled procureurs, a notable example is the procureur fiscal. One contract in particular makes reference to a nobleman’s “procureur fiscal en normandie,” and one of the more notable cases from Elbeuf (that concerning Abraham Leduc) indicates the actions taken by the “procureur de la sieurie,” which I

66 Historians (especially Anglophones) have rather easily translated the distinction between avocat and procureur according to the distinction between barrister and solicitor familiar in British law. Although I will admit there are similarities, I think too little is known of the procureurs at this stage to use this translation (solicitor). It would be more tempting to translate “procureur” as “procurator” (agent), but “procurator” appears to have additional meaning derived from Roman law, which may be confusing if used to discuss practices in northern France.
interpret as another name for the same official. The *procureur fiscal* was an official appointed by the *seigneur* (lord) to perform duties in the *seigneurial* court akin to those of the *procureur du roi* in the royal court. That is, he “represented the interests of his lord” and “acted in the interest of the public good,” which Sylvie Perrier suggests landed him in an “ambiguous position of having to serve two masters.” The *procureur fiscal*’s exact duties were related to the privileges and customs within that jurisdiction and so were as varied as the jurisdictions themselves. In the hierarchy within *seigneurial* jurisdictions, the *procureur fiscal* generally came after the judge and before the *procureurs* hired privately, who came before the *huissiers*, notaries and *sergents*. Perrier has likewise determined, in her research on the *procureur fiscal*’s role in the legal appointing of guardians, that *procureurs fiscals* did not get involved in civil matters between those of legal majority. In so much as they were present for certain cases, they were not systematically brought in to audiences before the *seigneurial* courts, and their presence was only required in cases where they had to represent the lord’s interests wherein said interests were brought into question or in representing the *ministère public* in criminal and police matters as well as those involving minors and *incapables*. Despite this, the *procureur fiscal* was a “very active auxiliary of justice since a good proportion of cases introduced in *seigneurial* courts pertained to *justice gracieuse*.”

As for the non-titled *procureurs*, people hired *procureurs* for a broad range of tasks. Their primary, yet expansive, role was to serve as legal strategists, and they

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67 ADSM, 2E1 228, January 31, 1500 and 52BP 11, respectively.
would represent their clients in court (and thereby their clients would not need to appear). They were brought into a dispute because of their expertise in civil law procedure, surpassing even the *avocat* in knowledge not of the law codes but of the law in practice.\(^7\) That said, *procureurs* were very much at the heart of civil procedure and civil disputes in practice: “Among the numerous actors thus implicated in the administration of justice, the auxiliaries of justice, even more so than the judges, were in direct contact with those who would be answerable to it and represented, in a very concrete way, the judicial system at the individual level.”\(^7\) Making the case for the study of civil procedure, being more common than criminal, makes the case for *procureurs* and “lesser” officials as a subject worthy of scholarly attention.

And yet, for as much as we know of *procureurs*, they remain in the background of many of the records under consideration here. There is often a brief reference as to their participation, and we can infer that they did a lot of leg work collecting documentation and representing clients (sometimes in their absence) in court. For instance, from the records of Elbeuf, we know that the same Leribert we observed above hired Michel Deleslardiere to be his *procureur*.\(^7\) We also know that a Vincent Regnault appeared in court with a Francois Leflameng as *procureur* to defend a declaration and *clameur de marché de bourse*.\(^7\) Moreover, Jacques Dufay had a team of at least three *procureurs* (including Leflameng) making various appearances in his defense of a *clameur de marché de bourse* initiated by Jean

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\(^7\) Perrier, “Le procureur fiscal et son rôle dans la protection des mineurs orphelins,” 491.

\(^7\) ADSM, 52BP 11.

\(^7\) ADSM, 52BP 11.
Carre (elaborated in the next chapter). Ysabel’s procuration contract, discussed in the previous chapter, reveals quite a bit about what a procureur might be expected to do, including hiring a more qualified procureur (recall that her husband was the primary procureur, but the contract stipulated that he had the right to bring in [professional] procureurs to pursue her interests as a case necessitated). Nevertheless, we are left guessing at more exact details of their practice, including especially the fees for their services, which are left out of the records under consideration here.

Accepting that procureurs were important legal strategists, we must credit them with their (obscure) share of actions taken inside and outside of court on behalf of disputants, as consultants and agents/representatives, and we must keep that in the back of our minds when analyzing the recorded activities of disputing parties. We must also bear in mind that procureurs worked for a fee and that there were economic considerations in hiring them just as there would have been in the decision to go to court. The procureur was likely central to the shape and trajectory of many disputes and their resolutions along the spectrum of negotiation, conflict and resolution.

Conclusion

Officials and legal professionals played important roles at strategic points along the spectrum of negotiation, conflict, and resolution. From formalizing contracts

74 ADSM, 52BP 11
75 ADSM, 2E1 228, January 27, 1500.
to actions taken in and out of court, we find evidence of people calling upon the services of legal professionals in various capacities. We also find that the boundaries around these professions were not always clearly defined. The variety and ambiguity of practitioners correlated to the variety and ambiguity of the legal system itself, which allowed for significant initiative on the part of litigants in resolving disputes, as we have seen and as we will see in chapters to come. The flexibility of practitioners, as a product of the legal culture, also facilitated the flexibility of actions taken in and out of court. Looking back at the open-dispute and instigating maneuvers taken prior to an appearance in court—from policing to seizures of goods to *clameurs*—we see a great deal of initiative taken by the parties to a dispute and the strategic interventions of different professionals. These actions are reinforced by settlements formalized prior to any court appearance. Looking forward to varying court appearances, we will come to a better understanding of the practice of civil disputes, of the roles of legal professionals, and of the legal system more broadly.
Chapter Four
Vuider la Court, or, Putting the Court in Its Place

Up to this point I have given an overview of the legal system and contemporary thought on it; of notaries and the contracts they formalized; and of legal actions taken prior to an appearance in court. It is now time to turn our attention toward what happened when people finally decided to turn to a court intervention in a dispute. Recalling the case between the Delamare brothers which opened this dissertation, we turn now to activities before one or more courts but focus on the disputes which were heard by but not resolved before a court. Weaving together findings from the lowest and highest courts as well as notarial records, this chapter will begin by examining settlements and arbitration and will then move to a fine-grained analysis of the role of procureurs in these cases and of the litigators most commonly involved in these disputes. Once we have laid the groundwork of options for resolution out of court and the people involved, we will dive more deeply into some of the actions taken in the course of court proceedings to see what we might glean about the motivations and strategies affecting the unfolding of cases. As we trace the activity of people in and out of court over the course of these proceedings, we will ultimately arrive at a much broader perspective of the legal system in relation to civil disputes and a better understanding of the role of the courts within that system.
Settlements

Interpreting the significance of settlements out of court and arbitration have been the subject of some debate. Those in favor of the concept of *infrajustice* regard settlements as something removed from, and rivaling, the court system, and the focus has been primarily on the criminal side.¹ Jeremy Hayhoe has argued that settlements and especially arbitration (in eighteenth-century northern Burgundy) did not threaten and rather worked with the court system, on both the civil and criminal side.² In a similar vein, Rafe Blaufarb, analyzing civil procedures specifically, challenges the distinction in recent scholarship between “formal legal procedures (associated with the rise of the modern state) and informal ones such as compromise and arbitration (associated with the medieval church and noble culture)” by showing a dynamic relationship that existed between the two (in Provence) for at least the seventeenth and eighteenth centuries and probably before and after.³ He argues that

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negotiation and arbitration (in which he includes settlement out of court) were the ultimate goal behind the variety of legal maneuvers in the predictable cycle of litigation between large property holders and that the length of this cycle and the absence of court verdict were not symptomatic of judicial inefficiency or dysfunction—contrary to what has been argued by others, notably Nicole Castan for eighteenth-century Languedoc and Steven Reinhardt for the Sardelais in the eighteenth-century.4 “The civil law of early modern France was neither expected nor asked to render decisive rulings,” according to Blaufarb, and “the purpose of legal contestation…was to provide a framework for negotiation…a means to disagree and debate” while upholding the social order.5 Blaufarb has shown that appearing before a court was a sort of lever in a larger process, a chapter in a more elaborate story.6 This debate, largely led and elaborated upon by scholars of the eighteenth-century, determined and supported by studies of different regions in the eighteenth century, constitutes part of a larger debate on the state of the legal system leading up to the French Revolution and the impact of the French Revolution on access to, and on the effectiveness of, justice.

Although the nature of settlements is important, this metanarrative of justice and the Revolution is rather far removed from late-fifteenth-, early-sixteenth-century

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4 Castan, “La justice expéditive”; Castan, Justice et répression en Languedoc; Steven G. Reinhardt, Justice in the Sarladais, 1770-1790 (Baton Rouge, LA, USA: Louisiana State University Press, 1991). This view has also been adopted more recently by Anthony Crubaugh, Balancing the Scales of Justice. Local Courts and Rural Society in Southwest France, 1750-1800 (University Park, PA, USA: The Pennsylvania State University, 2001).
5 Blaufarb, “Conflict and Compromise,” 544. This is part of a much larger debate on whether the prevalence and “value” of settlements were symptoms of “inadequacy”—broadly speaking—of premodern institutional justice. For an example of the other side of the debate, see Crubaugh, Balancing the Scales of Justice.
Normandy, and this will change the character of the analytical framework slightly. My own work resonates closely with that of Hayhoe and Blaufarb, as outlined above, and it may be viewed, in part, as an extension of the questions above to an earlier period and a different legal culture, drawing in Normandy and social questions like gender into the story. However, it is worth emphasizing that in my study, we are not looking at the endings of the Old Regime legal system but rather the transformations of the medieval system and the beginnings of the early modern, so assumptions going in must be different. The records from early sixteenth-century Rouen sampled for this dissertation would suggest that a broad range of actions taken in and out of court in pursuit of a dispute were the norm and that distinctions between “formal” and “informal” procedures, similar to that outlined by Hayhoe and more so by Blaufarb, were more procedural than practical. Looking at dispute procedures more holistically allows for a more complete understanding of how people interacted with the legal system and how certain parts of that system related to other parts.

One of the primary challenges to examining settlements is the problem of giving them definition. Often conflated with mediation and arbitration in the historiography, the judicial and notarial records are not much more helpful in clarifying the process.\(^7\) Jeremy Hayhoe has drawn attention to the imprecise use of terminology in the historiography and has defined the different terms in great detail. He also argues that, in Southern France in the eighteenth century, arbitration is an extension of court authority and is therefore more enforceable than private

settlements and mediations; further, it is more appealing to litigants as an enforceable solution to a dispute and appealing to the court which can delegate decisions while maintaining authority. The practices that I have observed in the early sixteenth-century Norman records would not fully support such a conclusion because settlements do appear to be more common than arbitrations and less contested. The inclusion of arbitration and settlement within the more nebulous category of “infrajustice” complicates the discussion further. In the sixteenth-century Norman records, a settlement may be referred to variably as a “transaction,” an “accommodement,” a “médiation” or a “compromis” and for the purposes of this study will be simply defined as an agreement reached out of court between two parties to resolve a dispute. Unlike an arbitration, which was sometimes mandated by a court, was mediated by one or more court-appointed officials (which could, and often did, include relatives, and as Zoe Schneider has shown, women) and likely had the resolution recorded by that court, the settlement was arranged independently by the parties themselves or their friends and relatives (and if they had sought the assistance of procureurs, may or may not have been following the advice of those intermediaries) and may have been recorded, sometimes before a notary, or may have remained an oral agreement. The settlement may (or may not) have encompassed a mediation, which would have meant involving a third party, sought out and agreed upon by the disputing parties, to help them come to an agreement. Procedurally, the mediated settlement strongly resembled an arbitration, especially if the parties over the course of their dispute had appeared (or at least made

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arrangements to appear) in a court. Part of what makes a settlement so difficult to define is its malleability. Far removed from the lofty, clear-cut, systematic, and rigid ideals and aspirations of the learned jurists of chapter one, its malleability is indeed what made it so useful. Settlement, arbitration, and mediation are conflated with good reason—they all have elements that intertwine, often in unequal proportions—but teasing out the subtle differences among them, as well as the areas in which they overlap, brings into focus the variety of options and the potential for complex maneuvers that people had and, as a result, their capacity for agency and strategic entanglement or disentanglement.

With this in mind, the notarial records provide critical information about settlements and actions taken out of court that are absent from the court records. In such cases, disputing parties formalized their settlement in a contract drawn up before a notary, presumably as an attempt to prevent further disputing. Here we can recall the case that opened this dissertation. Two brothers fighting over inheritance began a heated court battle in the plés de la sergenterie de Pavilly (about 10mi north-northwest of the city) before the vicomte of Rouen or his lieutenant, but in the interest of “peace and brotherly love,” they resolved the matter out of court and drew up a formal document to this effect in front of a notary in Rouen. This act of settlement and the desire to avoid court was so common that the notary had a formula for drawing it up which was so well understood that he abbreviated it (“etc.”). Further motives for why the parties wanted to avoid court are not spelled out.

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9 ADSM, 2E1 228, January 2, 1500.
To the example of the Delamare brothers, we can add the settlement between Jean and Pregent Leprevost from the previous chapter. In a dispute over patrimony, uncle and nephew were embroiled in court proceedings which, because of Pregent’s failed haro, involved at least two appearances before the bailli of Vitefleu. Owing to each other’s claims and defenses, as stipulated in the contract itself, and possibly sensing that they were in for a long and drawn out court battle, Jean approached Pregent about working out an agreement, and Pregent consented. So, while the case was left hanging, which might lead us to believe that the case had been postponed and no resolution had yet been given, Pregent and Jean in fact came to an agreement to resolve the dispute out of court.

As part of the arrangement and to ensure that “there could be no more proceedings on the above-mentioned circumstances,” Pregent handed over all documentation and evidence that he had gathered in pursuit of his case. And here we recall the significance of transferring documentation elaborated in chapter two. He also agreed to “desist and depart from the proceeding.”¹⁰ Pregent’s agreement to desist and vacate the court indicates that Pregent had instigated the proceedings in court (because a defendant cannot call off proceedings so readily), but his consent to pay the fine (the amount is not given) and release Jean from the responsibility of it suggest that Jean may have had an edge after all. The payout of 150 livres by Jean

¹⁰ ADSM, 2E1 228, January 2, 1500. “desormais entre eulx deux ne puisse avoir aucun proces des choses dessusdits circonstances deppendent ne autrement et si luy promist bailler toutes les lettres et escriptures qu’il avoit et povera recouvrer touchant lesdits heritages et se desista et departy ledit Pregent Peprevost dudit proces et deleffect et poursuilte d’icellui et au moien des choses dessusdites et pour eviter audit proces frais et mis. d’icellui et a toute autre poursuilte que ledit Pregent Leprevost eust peu faire vers ledit Jehan Leprevost icelui Jehan Leprevost donna audit Pregent la somme de sept vings dix livres quelle somme ledit Pregent confessa avoir eue et receue dudit Jehan// Leprevost et sentint pour content et outltre promise le fait tenu quicte.”
to Pregent probably evened things out and may be a clue to the projected costs and fine incurred by Pregent for his various legal maneuvers; however, they would be impossible to separate from any compensation over the disputed property and revenues. The fine for an unjustified *haro*, for instance, pales in comparison, but the *haro* case was resolved before the second court proceedings pending as of the settlement, and with this in mind, many fines were “arbitrary,” meaning that judges had the discretion to assess them to “fit” the offense and the value of what was contended. The question of cost and the difficulty of determining it will be discussed in chapter five along with the question of discretion.

Similar to the agreement reached between Jean and Pregent Leprevost, the settlement between Robert Ygou and Nicolas Fere’s heirs also involved a cash sum in exchange for abandoning the cause in court. The contract notes that Ygou was demanding the third of a house and patrimony from Fere and that the case was hanging before the assise of Rouen. The contract also notes that Fere has died while the case was ongoing and that this has prompted Ygou to confess that he never had any right to the disputed property. As such, Ygou ratified the sale of the property that his uncles had made, making exception of his mother, and agreed that the heirs of Fere would enjoy the property as he had done prior to the court proceedings. The court records were to be renounced, Ygou would desist and abandon the case before the court, and in exchange he received 4 *livres tournois* “to support the expenses made by the said Ygou in pursuit of the trial” from Pierre Delahaye, “who married the

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11 ADSM, 2E1 228, January 31, 1500.
widow” (of Nicholas Fere) and Pierre and Guillaume Fere. This case suggests that the cost of court proceedings was not exorbitant, but could be significant to a poorer person. It also shows how dramatically proceedings could change when transferred from one generation to another. It is possible that Ygou had a personal grudge against Nicholas Fere that he did not wish to pursue against Fere’s heirs. It is also possible that proceedings were projected to be more complex and lengthy (and expensive) with the transfer between generations, and he decided to cut his losses.

An arbitration does not look much different from a settlement, especially when it is drawn up before a notary. In one such case, two parties--Raoulin Lambert and his wife Jeanne (represented by Raoulin’s father Jean Lambert as procureur), residing in the parish of Amyvoye (present day La-Mi-Voie), and Raoulin Denormare and his wife Marguerite, residing in the parish of Bloville--had gone to the vicomte of Rouen at the ples de la sergenterie de Pont Saint Pierre held in Rouen to claim partial right to a piece of land issuing from Roumyet Raoul, father to both women via different mothers. There the judge had “passed a compromise” in which both parties, in order to pacify their discords, promised to agree to the sentence to be

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13 ADSM, 2E1 228, January 31, 1500. For more examples see 2E1 228, January 14 and 21, 1500.
14 ADSM, 2E1 229, October 23, 1500. “Raoulin Lambert et Jehanne sa femme demourant en la paroisse de l’amyvoye et Raoulin Denormare et Marguerite sa femme demourans en la paroisse de Bloville icelles femmes heritieres chacune en partie de deffunct Roumyet Raoul Lesquelz apres ce que lesd femmes oulrent este auctorisee Lesquelz leverent greerent ratififfert accepteren et oulrent agreable la sentence contenue en ung fuceliet de papier dont la teneur eussent Nous Colin Lambert, Jaquet Raoul, et Guillaume Raoul charges arbitres de tous les discors et proces pendant par devant Monsr le viconte de Rouen ou son lieutenanct es ples de la sergenterie de pont saint pierre Entre Raoulin Denormare d’une part et Jehan Lambert pour lui et procureur de Raoulin Lambert son filz et sa femme d’autre part jouxte le memorial dud compromis fait et passe es ples dud pont st pierre tenus a Rouen par noble homme Guillaume Ango lieutenanct general de mond Sr le viconte le xxiii^e jour de septembre l’an mil v^n par lequel compromis lesd parties ont promis tenir et avoir agreable la sentence qui par nous arbitres seroit faitce en peine de x L t et sans appel ne dolleance a en dire et sentencier dedens les prouchains ples eussent dud compromis fait et passe a nous aujourd a mercredi iii^e jour d’octobre end an mil v^n assemble ensemble pour d’iceulx discords paciffer et appoincter et avons fait sentence telle que il s’ensuit…..”
given in advance of the next court session by appointed arbiters, Colin Lambert, Jaquet Raoul and Guillaume Raoul (apparently family members, though the exact relations are not indicated), on penalty of 10 livres tournois and to forego the option of appeal or complaint regarding the sentence. The arbiters also ruled on a second suit between the two parties regarding a fee for service by Lambert’s daughter to Denormare. The arbiters ruled that the property and levees on it were to be divided equally between the parties and that Lambert’s daughter, being six or seven years old, was too young to warrant a fee for service. Further, they ruled that the Lamberts would “vuider la court et juridiction desdits proces” (literally “empty the court and jurisdiction of the said trials”) and pay half of the fine, costs and expenses for the suits. Unfortunately, again, the final tally of the fine, costs, and expenses is not given.

Furthermore, even though, based on studies of arbitration practices in later periods, we would expect the ruling from the arbitration to have been documented as part of the court record, this one was finalized as a document within a contract in front of a notary.\textsuperscript{15} This contract suggests, on the one hand, that, in this jurisdiction in this period, the notary was also the court recorder or that an arbitration was not automatically recorded by the court as it would be in later periods.\textsuperscript{16} On this assumption, the notary is serving an important supplementary function as court recorder (typical in the fifteenth century, especially in rural areas), and/or if not serving the court, is satisfying a desire on the part of the litigants to have a record of the oral proceedings, which would in turn mean that disputing parties, alongside

\textsuperscript{15} ADSM, 2E1 229, October 23, 1500.
\textsuperscript{16} This would be contrary to the practices observed in Hayhoe’s study of Burgundy in the eighteenth century. Hayhoe, “L’arbitre, intermédiaire de justice en Bourgogne”; and Hayhoe, \textit{Enlightened Feudalism}. 215
centralizing, top-down initiatives discussed in chapter one, are co-creating the value of documentation and reinforcing the trend toward privileging it, as discussed in chapter two. This action would support not only the idea that such contracts were serving a commemorative and testimonial purpose but that the choices of litigants were supporting the growth of institutions, though settlements and arbitration add a lot of gray area between the roles these institutions are actually playing.17

Approaching it from a different angle, with the unfortunate disappearance of the court record entirely (records from the vicomté of Rouen, as noted in chapter three, have survived only very sparsely), this contract may also be read as a postscript to the court record and a double-documentation of the final agreement, even a hybrid arbitration-settlement. Additionally, having a copy of the final arbitration for the family record would have been a practical act of foresight given that obtaining a copy of the judicial records later could be challenging and costly in the event that questions arose or that hostilities resumed.18 In this scenario, assuming the initial record before the court bears the stamp of authority and coercive potential of the court, this postscript suggests the difficulty of enforcement and realization of that potential and the risk of a resumption of hostilities, all of which will be elaborated


18 Several ordinances chastise officials for delaying delivery of such documentation and the case between the children of Jean Ausoult and the esliseurs of Tuit Signol before the vicomte of Elbeuf supports this concern. ADSM, 52BP 11.
upon in chapter five. This record within a record also suggests the possibility of a desire to give additional direction, interpretation and an action plan to the decision. In either case, the notary is playing a pivotal role in the process of resolving the dispute.

Putting these considerations into even greater relief, a settlement may even follow a failed arbitration. Taking the case between Jean Ribault and Jean Dugardin as an example, their arbitration had included a contingency that if anything had been omitted or if new information not accounted for by the arbiters came to light, Ribault would be within his right to continue pursuit of his “mobile and patrimonial actions and demands” against Dugardin. In opposition to which, we learn from the contract, “the said Dugardin intended to defend himself by several means and reasons that he intended to declare and support in time and place, and the said Ribault intended to support the contrary.” At which point, both parties “could enter into a long suit; to flee and avoid which they had assembled together by means of their counsels and friends” to work out a lasting settlement. In this settlement, Ribault agreed, in exchange for some property, to cease and desist his suit, and a debt plus arrears owed by Dugardin was forgiven in exchange for a lump sum payment of 250 livres tournois to be paid to Ribault.19 The amount of any original debt is unknown, but we

19 ADSM, 2E1 229, October 22, 1500. “Comme Descord et proces feust meu et espere mouvoir entre Jehan Robault l’aisne bourgeois et demourant en la paroisse saint erblanc de Rouen une part et Jehan Dugardin changeur aussi bourgeois et demourant en lad paroisse d’autre part Sur plusieurs actions et demandes mobilies et hereditalles que led Jehan Ribault vouloit faire aud Dugardin a raison de ce que led Jehan Ribault disait que en faisant certaine sentence arbitraire de leurs descords il avoit este dit que se aucune chose avoit est obmis et qui fu trouve du compte de l’entremise d’entr’eux qui n’eust est couche en icelui et dont led arbitres meussent en congoissant icelui Ribault demourroit entier a faire poursuitue sur led Dugardin ainsi qu’il verroit bon estre jouxte lad sentence desquelles actions et demandes led Dugardin eust intention soy def tendre par plusieurs moiens et raisons qu’il avoit intention declarer et soutenir en temps et lieu et led Ribault eust intention soutenir le contraire et qu’il y avoit eu plusieurs obmissant end compte de lad entremise Surquoy icelles parties povointr entreer en long proces pour fuir et eviter auquel ilz se soient assembliez ensemble et par le moien de leurs conseulx et amys demourant a acord et appointement tel qu’il eus __ Savoir faisant furent presents led Jehan Ribault l’aisne d’une part et Jehan Dugardin
can assume that it was substantial and in excess of 250 *livres tournois* based on the assumption that the value of the property plus the lump sum equated to or were an acceptable fraction of the original amount (plus projected court costs to recover it).

The stakes for Dugardin’s credit and possible continuing social or business relations between Dugardin and Ribault can only be treated speculatively, but such considerations would complicate the situation further. The trade-off for salvaging Dugardin’s credit, for instance, may have meant a larger pay out and desire to settle out of court to keep the lid on his alleged delinquency in paying his debts. What is not clear (and a conclusive answer to which is beyond the scope of this study) are the levels of publicity of court appearances versus settlements/contracts on the one hand--was settling out of court more discreet and conciliatory? Knowing, based on material discussed in chapter two, that notarial contracts were not necessarily, even typically, drawn up behind closed doors, required and represented witnessing of the agreement, and were in some cases read aloud in a similar manner to court rulings, would suggest that the discretion of one practice versus the other may have been fairly even (designated court buildings were still rare in the late fifteenth century and many proceedings still took place “in open air”).

Also unclear, however, is the perception by the litigants of one or the other practice being more shameful or socially taboo--was going to court and not finding a way to settle a sign of stubbornness or spite, and did it signal the end of social

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d’autre part lesquelz pour eviter ausd proces Tant sur lesd actions que autrement en quelques manieres et pour et quelque cause ou causes que ce soit Confessant leur appointeinent et tracte estre tel qu’il euss___ C’est assavoir que led Jehan Ribault l’aisne quicta et clama quicte a toujours/
led Jehan Dugardin de toutes et telles demandes et actions tant mobilies que heriditalles que iceluï Jehan Ribault lui eust peu ou pourroit faire en quelque maniere que ce soit ou peust estre de tout le tmeps passe jusques a ce jour moiennant et par ce que led Jehan Dugardin quicta transcpota et delaissa afin d'eritage pour lui etc. aud Jehan Ribault l'aisne pour lui ses hoirs....”

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relations? Smail and Kagan’s studies of litigation would suggest so. Kagan has argued that “[g]oing to court involves a series of decisions and generally occurs only after other methods of reconciliation, arbitration, and compromise have failed” and that “a lawsuit in the sixteenth century was a good sign that other, more amicable methods of reconciliation and compromise had failed. It signaled the end of friendship, and for many it was a precursor to violence.”

Taking up Kagan’s argument that a “lawsuit was an excellent means of settling scores [and] exacting revenge,” Smail has argued that hatred, and the appeal of ruining an enemy financially with the cost of litigating, was a strong motivating factor in taking someone to court; that taking someone to court was an act of public humiliation; and that the courtroom was a new arena for feuding. In a similar vein, Castan has argued that going to court was a matter of shame for peasants.

Jeremy Hayhoe has challenged these claims by calling attention to the numbers of litigants as well as by breaking down some of the motives and rhetoric behind claiming that an opponent was hard-headed. His study suggests that going to court was fairly routine and banal: “In this litigious society, court cases did not generally lead to the severance of normal social bonds (in contrast to the situation in contemporary industrialized societies, and with the notable exception of private family matters, there was little public dishonor associated with calling in the seigneurial court to mediate between disputing parties.” Further supporting this perspective, he

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20 Richard L. Kagan, Lawsuits and Litigants in Castille, 1500-1700 (Chapel Hill, NC, USA: The University of North Carolina Press, 1981). See ch. 1 but the quotes are from pp. 137 and 91, respectively.
21 Kagan, Lawsuits and Litigants in Castille, 136; Smail, Consumption of Justice, 11-12.
22 Castan, “La justice expéditive”; Castan, Justice et répression en Languedoc.
24 Hayhoe, Enlightened Feudalism, 98.
found that going to court did not preclude future dealings, as many opponents in court were quick to strike up another deal.  

These opposing arguments may, in part, be attributed to the different socio-legal-cultural contexts and the types of records analyzed by the historians in question. I therefore hesitate to draw on one side or the other as support in interpreting the context under examination in this dissertation. Given the laconic nature of the records available for the late fifteenth and early sixteenth century, a larger sampling would be necessary to piece together tidbits into trends and yield a more thorough response to these questions. Nonetheless, my research, suggests that Hayhoe’s argument that litigation was fairly banal was closer to the mark than the notion of litigation being a source of shame for people in late-fifteenth and early-sixteenth-century Normandy. Although my data are not extensive enough to show people maintaining ongoing social relations after litigation, there is even less evidence to suggest that anxiety about the potential negative impact of litigation on an individual or family’s honor was a major consideration in the process. Of course, social relations and honor are not exactly equivalent, but I do think that social relations influenced the unfolding of litigation and the directions it took more so than honor in most cases.

Moreover, the fluency that people had with legal instruments seem to suggest that legal actions, in court or out, were not shocking or scandalous. What we can assume is that people had more flexibility in the final resolution to their dispute the farther removed from the courts they were because the courts had to follow the letter

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of the law more closely than private parties. Assuming that social relations were a primary motivating factor would account for the variety of practice observed, including renegotiation of debts and supplemental contracts, taking advantage of the options afforded by the aforementioned flexibility and discretion. It would also account for hints (with a necessary caveat for formulae) like that in the Delamare settlement which opened this dissertation that preserving “peace and brotherly love” were important, a sign that that was in theory a larger, acknowledged communal value if not a reality. When the relationship between the parties mattered, for whatever reason it mattered, it would direct action away from the courts, not because going to court was shameful but because parties could customize their solution to the problem at hand more easily. The priority of social relations would also account for the court’s indulgence toward litigants and its allowance of ample time for parties to work things out on their own. The law was an important tool in making or breaking social relations, but it was much more complex than the act of going to court.

What the Ribault-Dugardin case does show is that arbitration and settlement were not mutually exclusive, and one of these procedures could fill in where the other was lacking. It also shows that the progression of a dispute, in and out of court, could easily be cyclical rather than linear. Settlements could break this cycle but, like any other contract, were vulnerable to challenge at a later point. A court may provide a resolution that the parties could not arrive at on their own, or the parties, at the prospect of a lengthy court battle, may decide to leave the courts out of it entirely. The parties likely adapted their proceedings in a case to new developments and their evolving priorities.
These settlements and arbitrations out of court also highlight the limited role that the court is playing in the larger context of dispute resolution. Though we find instances of failed settlements before the courts, we also find failed court cases before the notaries. Sometimes the settlements also suggest a desire to prevent or end long, drawn out court proceedings. These examples illustrate the variability in the route to settlement as well as the fluidity of practice in the legal system. Parties could appear before a court for a decision and then come to their own agreement afterwards. As we will see in the next chapter, this also suggests that enforcement may have been a challenge for the litigants and that to some degree, coming to an agreement outside of the court may have been a matter of practicality in reaching closure.

In a similar vein, the notarial records, as much as the court records, reveal information about court proceedings, about movement between and among courts, and about the flurry of activity that took place between appearances in court. For example, in the settlement contract between Jean Petit and Rogier Lecheron, there is an account of a dispute over a property line and building activity which escalated to a point where Petit raised a *clameur de gage plege*. The contract continues to explain that Petit had received a favorable ruling before the *vicomte* of Vernon which prompted Lecheron to appeal to the *bailli* of Gisors, who ruled in favor of Lecheron. Petit countered by appealing to the *Échiquier*, which is where the case was pending when “in order to pacify the said parties, they were assembled together by theirs relatives and friends.” Lecheron and Petit’s *procureur* (his son) agreed that Petit would abandon his case in the *Échiquier* and acquit Lecheron in exchange for which
Lecheron promised to stop doing prejudice and damage to Petit’s property and to stop troubling and hindering Petit from building in the vacant area. Lecheron agreed to cease all claims to the property for himself and his heirs and confessed to have accepted a cash sum of 100 sous tournois from Jean Petit the younger’s hands.26

The contract does not indicate why Petit did not come to the table himself, though it would not be too hard to imagine that tensions were not fully resolved. Following this

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26 ADSM, 2E1 228, January 8, 1500. “Comme proces feust meu et pendant en l’eschiquier de normandie en dolleance prinse et obtenue par Jehan Petit sur maistre Guillaume Damel escuier lieutenant commis de Monsr le bailly de Gisors pour plusieurs tors et grefz a lui fai par led lieutenant a l’instance de Rogier Lecheron en la deppendance d’une clameur de gaige plege mise et assise par led Petit a l’encontre did Lecheron pour ce que led Lecheron lui empeschoit la jouissance d’une allee assise d’un coste lepignon de la maison dud Lecheron et ung appentis d’autre coste la masure et vuide place dud Lepetit db a la rue d’autre bout a la court dud Cheron a prendre icelle allee autant que la cause dud Petit se comporte et mesme la joyssance d’une place ou souloit avoir anciennement cause assis au lieu ainsi que lad cause souloir contenir en long et le surquoy led Lecheron vouloit edifier son appentis sur le dessus et entree d’icelle// d’icelle cause et empescher la veue du sousperal d’icelle et disant avoir allee en lad vuide palce ce que led Petit vouloit defender par lad clameur de gaige plege qu’il avoir mise qui fut en l’an cccc iiiii^xx douze et tellement avoit este procede sur lad clameur en la vicomte du bourgaige de Vernon par les parties que veu le rapport des ouvriers machons charpentiers et voisins congoissant le lieu descorde dessus bourne entre lesd parties la promisant d’icelle heritage avoir eeste adjugee aud Petit du pocessore dud heritage sans prejudice du principal de matiere en baillant plege et caucion de laquelle promise led Lecheron avoit prins dolleance sortissant juridiction es assises dud Vernon en quel siege d’assise led Petit avoit requis ainsi qu’il avoir fait en lad viconte aud Damel commis a congoinste de lad matiere veu ses droitz et la possession qu’il avoir eue dud heritage de laquelle requiste il fut escondit par led Damel dont il avoit obtenu et prins sad dolleance sortissant juridiction d’assise end eschiquier pour lequel proces pacifier lesd parties se feussent assmeblez ensembles par le moien d’aucuns leurs parens et amys et fait transation et appoinctement entrez eux en la maniere qui eussent Savoir faisant etc. se comparution led Rogier Lecheron d’une part et Jehan Petit le jeune procureur suffissant fonde de Jehan Petit l’aisne son père Promectant qu’il aura agreable etc. d’autre lesquelz confessant les choses dessusd estre vrayes et par lad transaction icellui Lecheron quicta et delaissa et par ces presentes quitte et delaisse pour lui et ses hoirs ou ains cause aud Jehan Petit l’aisne et a ses hoirs ou au porteur de ces lettres Tout et tel droit qu’il eust peu demander et reclamer en lad allee et place out est lad cause cy dessus bourne et declare Moiennant la somme de c s t que led Lecheron confessa avoir receuz par les mains dud Jehan Petit le jeune par ce que led Cheron sera tenu porter et soustenir ses causes et veues qu’ilz viennent et sont sur lad masure allee et vuide palce et qu’ilz ne puissent faire prejudice ne dommage aud Petit eud heritage et sans ce que led Cheron puisse donner aucun trouble et empeschement aud Petit quant ainsi seroit qu’il voul sist edifier en lad vuide palce et dessus lad cause et que jamais out heritage riens ne demandera ne fera par lui ne par autre en aucune maniere et par ce que led Petit sera tenu vuidr la court de l’eschiquier et en acquicter led Lecheron et a ce tenir etc. obligez l’un a l’autre biens et heritages etc. Presents Pierre Troges et Jehan Lemollier l’aisne.”
point a little further, I would caution against the blanket assumption that settlements necessarily did more to salvage social relations than court judgments because of the likely banality of going to court on the one hand and the unknown shape of social relations post settlement on the other.

As further evidence of the information about maneuverings in and out of court that notarial records can provide, we learn from the settlement contract between Helie Vippart (priest, *curé de l'Aunay*) and Guillaume Haveron that their case bounced around the *ples de la sergenterie de Dyne*, the *vicomté* of Roucheville, the *vicomté* of Auge, and the *Échiquier*. Vippart had seized some of Haveron’s goods to collect back payments (30 *livres*) on a *rente* (the principal was 6 *livres*). In response to this seizure, Haveron had declared a formal opposition that spilled from court to court as rulings kept coming in Vippart’s favor. Each ruling and renewed attempt at enforcement led to new proceedings until both agreed to the settlement contract, facilitated by Vippart’s brother, Jean Vippart, chevalier and sire of Drumare. Also of note is the jurisdiction hopping not only between courts but between notaries. The original *rente* contract (dating to January 1493 [n.st.]) had been drawn up before notaries in the *vicomté* of Auge whereas the final settlement was drawn up before notaries in Rouen.

More impressive still is the compressed timeline of this case, given the infamy of the judicial system for long procedures in this period. The original execution (seizure of Haveron’s goods) took place in April 1498, and the settlement, post all of the maneuverings from court to court, was drawn up less than two years later in January 1500, where the case was pending simultaneously before the lowest court
(the *sergenterie de Dyne*) and the highest (the *Échiquier*). Also clear is that Haveron’s original debt (6 *livres* per annum) grew five times in just over five years, meaning that Haveron had likely not made any of the annual payments since agreeing to the original contract (and owed Vippart 42 *livres* by the time of the settlement). This also means that the priest, for reasons unknown, had not, as far as we know, attempted to collect the delinquent payments until five years had passed and, not knowing what changed, had decided to set aside any charitable impulses and channel his discretion toward collection, underscored by the aggressive act of seizing Haveron’s goods.²⁷ To go so far as to call this seizure an act of “legal plundering,” although not incorrect per se, would seem a tad strong, conceptually, given the intervening time between the first missed payment and the seizure.²⁸ It is a question of degree. A seizure of goods, in the right circumstances, was a socially and legally sanctioned act of violence, to be sure, but were the circumstances right? Among the likely considerations were status differences between the parties (a person of lower status may have had a harder time executing a seizure on a person of higher status); the amount of debt and how notorious it was in the community (variably defined); the number, character and status of witnesses to the original


contract; and the ongoing social relations between the parties (and possibly their kin) and the notoriety of those relations. The question of discretion will be elaborated in chapter five.

As a final example of maneuverings in and out of court present in the notarial records is the contract between Preudomme Duval, nobleman residing in the parish of St. Martin sur Revelle of Rouen, and Mahiet Duquesnay, bourgeois residing in the same parish. Behind this contract, which may best be described as a settlement wrapped up in a sale, was a complex settlement of an inheritance resulting from an elaborate series of debts on the part of the deceased (Jaquet Dupast), the stakes of which affected multiple parties. Duval and Duquesnay went back and forth between contracts and courts until landing at their (final?) contract.29

For all of the notarial contracts we have, a number of them contain evidence of prior court proceedings. Many of these records take the form of settlement agreements outside of court, meaning the parties negotiated and reached an agreement outside of court and cancelled their suit, but as discussed in chapter two, many of them also reveal court proceedings through a chain of title, establishing the seller’s right to sell. This is one major reason why notarial records are so important to read alongside civil court records to understand civil dispute practices. Of the notarial records under examination, just over one in eight allude to prior court proceedings. To reinforce this point, comparative data from the same year for one notary in Paris indicates that of the 741 contracts recorded, 20 were settlements, 5 were in relation to an arbitration, 49 were procuration contracts pursuant to an impending dispute,

29 ADSM, 2E1 229, November 8, 1500.
and 32 contain odds and ends references to legal proceedings, including attestations (witness statements). This means that a significant percentage of notarial records contains information about activity in the courts. Many of these proceedings documented in the notarial records from Rouen were in courts for which records no longer survive both outside of the city of Rouen and within the city itself such as, notably, the vicomté of Rouen. For example, we have a follow up to a sentence rendered by the assises de Pontautou [vicomté of Rouen] before the notaries of Rouen. The notarial records survive where the records of the vicomté of Rouen have disappeared.

Notarial records represented the formalization of negotiations, some of which were tense and involved a legal dispute, between two parties or among several. What is clear is that going to court was simply one step—one optional step—in resolving a civil dispute and that to understand more completely the practices of resolving civil disputes, whether it involved litigation or not, it is necessary to look beyond the courts and their records. Though the focus in this dissertation is on civil law practices, the same reasoning applies to criminal procedures as well, especially for petty crimes. There were a lot of similarities between practices in relation to criminal offenses, such as insults, and civil ones, such as collecting a debt. Both types of cases were heard alongside each other in the lower courts and procedures moved in and out of court. For example, in Elbeuf, sandwiched between ongoing proceedings regarding a disputed property boundary between Thomas Bacheler and

31 ADSM, 2E1 228, January 3, 1500.
Julien Lefevre on the one side and ongoing proceedings involving collection of back payments on a *rente* between Jean Leribert and Jean Regnault on the other is the ongoing proceeding between Jacques Vallet and Raoullin Cavellier (on behalf of his wife). According to Cavellier, Vallet “without cause or just reasoning (”*sans cause et raison raisonnable”*)” addressed himself to Cavellier’s wife as she passed him and then proceeded to give her “one or several blows” with an iron implement on “the head, the neck, the arm, and other parts of her body” causing her to bleed such that she required “visitation” (by which I interpret this to mean some form of medical attention, but the record is not explicit). Although, Jean Yver, *sergent* had, since the last session, adjourned him—“speaking to his person”—to appear and respond to the complaint filed against him, Vallet declined to appear. The court registered a default for Vallet but did not fine him and instead ordered him to be “constrained by body and goods” to appear and respond to the complaint. This was on June 18th, and no further mention is made of the case in the court record, despite expecting *something*—a request for delay, an appearance—in the next session on July 2nd.32

This was just another day in court (and not in court). It should also be noted, quickly, that this was the only complaint of physical violence recorded in this court in 1510, underscoring the exceptional quality of criminal proceedings, dwarfed by civil ones, even if civil and criminal proceedings bear some resemblance.

32 ADSM, 52BP 11. “Jacquet Vallet deffault vers Raoullin Cavellier ples pour sa femme et recommande Jehan Yver sergent avoir adjourne led deffaillant en parlant a sa personne et pons les dernains ples pour respondre aud Cavellier sur sad plaincte laquelle il fist present disant que mercredi derrain led Vallet sans cause et orasion raisonnable s’estoit adreche a sad femme ainsi qu’elle passoit par devant lais dud Vallet lequel lui avoit baille vng ou plusieurs coups de pallete de fer sur la teste le col le bras et autre partie de son corps a sang et playe tellement qu’il acabla requerant visitacion et de seur plus estre receu a informer dud cas pour y estre. Sur ce procede ainsi que de raison et led deffaillant estre contrainct par corps et biens a son repleinier d’ester a droit sur lad plaincte laquelle reponce par l’advis de la court lui a este acordi et donne en mandit”
Resuming the main thread of our argument, the line between civil and criminal was fairly thin. It has been suggested that even a significant number of felony crimes such as theft and murder were settled before notaries rather than judges.33 Furthermore, we have already seen the narrow line between civil and criminal crossed in the examination of the lingères cases before the vicomte of Rouen (in chapter three), in which we observed the quick escalation of civil to criminal—meeting a seizure of goods with insult. It is also not a stretch to imagine a seizure of goods (or a “renegotiation” of debt) devolving into fisticuffs, though there is not an example of this in my sample. This escalation gave the court cases a dual—civil and criminal—nature. We also saw, in chapter three, the dual practice of the clameur de haro in relation to physical violence or property. Whether in civil or criminal matters, people generally had an array of options in pursuing resolution to their dispute.34

Procureurs and Settlement of Conflicts

When thinking about the considerations behind the decision to settle out of court, we recall the procureurs of the previous chapter. If professional procureurs (and here I mean specifically those who primarily made their living as legal representatives of clients, not those contracted to stand in as powers of attorney such


34 For a good comparative example, which also employs a mixture of quantitative and qualitative methodology, see Robert B. Shoemaker, Prosecution and Punishment: Petty crime and the law in London and rural Middlesex, c. 1660-1725 (New York, NY, USA: Cambridge University Press, 1991).
as Jean and Colin Guibel for Denise Levignereux or Guillaume Allart for Ysabel) have been credited with being legal strategists, however ill-defined their role in the legal system may have been otherwise, then we would expect a significant presence in cases of settlement.\textsuperscript{35} Their influence upon the decisions of parties to continue the battle in court or to come to a less costly agreement should be measurable. What we find is not quite such an easy correlation. Not all settlements make reference to a procureur and not all references to procureurs are in relation to a settlement. This trend again underscores the flexibility of the procureurs’ role in relation to civil disputes more generally and settlements more particularly, when they are called in at all.

There are several possible, yet inconclusive, explanations for the relative scarcity of procureurs in the settlement contracts. A possible explanation for their absence in the settlement contracts is one of degree. A professional procureur may have been consulted regarding the case and/or the settlement or may have even gone so far as to recommend a settlement as the best course of action but did not go so far as to represent the client in hammering out the details or drawing up the contract. A different degree of consultation/representation may have incurred a reduced fee. There may also have been some reluctance to bring a more formal legal

professional into a less formal legal process (referring to the settlement agreement not the contract, which was, as we have seen, very formal). Finally, it is possible that recourse to procureurs was favored by some (perhaps those more prone to going to court) and not others or that it was spotty and irregular. In other words, the trend is that it wasn’t really a trend. One thing is certain—unlike at the Chatelet in eighteenth-century Paris, people were not required to be represented by a procureur. More research is needed to flesh out the activities of the procureurs in the domain of dispute settlement.

Demographics of Settlements

Turning to the disputants, we do not find a particular group dominating the 77 settlement contracts. Similar to the clameurs of the previous chapter, we find a near even distribution of references to the four largest groups represented in the notarial records (in different combinations of oppositions): women (36), bourgeois and tradesmen (36), clergy and nobility (34), and legal professions (20). Breaking down the category of women in particular, there are 17 references to the woman’s status as wife, 7 as widow, 11 as daughter, 3 as sister, and 2 as mother. Some of the records mention several women, and sometimes one woman is referenced with more than one status—appearing as a wife alongside her husband making a claim to some

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36 Bruno Sintic found a similar representation in a different study of urban society with a broader geographical scope. The four most common groups he found were bourgeois, nobility, officers and legal professionals, and priests. He does not seem to have been looking for representation by women, but I think tallying them out gives more dimension to the social relations. Additionally, for Rouen specifically, tradesmen cannot be ignored. Bruno Sintic, “Saisir la société urbaine des petites villes par les actes de tabellionage,” in Tabellionages au Moyen Âge en Normandie: Un notariat à découvrir, ed. Jean-Louis Roch (Rouen, France: Presses universitaires de Rouen et du Havre, 2014): 109-17.
property as a daughter. Even if we allow for some overlap, the dominant status is marital (wife/widow), which we would expect based on women’s legal rights. The second largest status being that of daughter reinforces our understanding that inheritance disputes were among the largest category of disputes.

The distribution of references to these different social groups suggests that settlements were not an option which was favored or dominated by one of them in particular but which was, rather, more broadly used and accessible across these groups. Obviously these groups only represent a slice of society in their own right, but it is fairly safe to assume that social status alone did not determine whether people resorted to a settlement; economic status likely did, inferring from the absence of lower socio-economic groups. These results must remain tentative, however. Some contracts do not indicate one or both party’s occupation or social status, and Piant in particular has suggested that such a blank was indicative of a party wanting to conceal a lower status. Having a range of social groups represented in the records indicates that no single group dominated processes of settlement and that a significant portion of the population actively participated in the legal system and in shaping the legal culture.

In terms of the presence of women particularly, juxtaposing the notarial records to the court records yields some interesting results. Of the 109 appearances

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before the *vicomté* of Elbeuf recorded, only seven mention women, one of which involves two men appearing with their wives in an inheritance dispute. Another man and wife appear together seeking an appointment, and a husband represents his wife (the Cavellier case outlined above). The four remaining appearances by women involved two widows, one of whom appeared three times—once in May and twice in September—to contest a *decret d’héritages*. From this data, it appears that women are only directly involved in the courts in a limited capacity. They are either widows representing themselves, or they are represented by their husbands or male kin. The scarcity of women in court in Elbeuf may be explained by its more rural setting and stricter adherence to Norman custom governing women’s legal capacity in management of property.

The cases involving female guilds, like the *lingères*, in Rouen, as we have seen, would seem to support this urban-rural dichotomy, but even so, these records are quite sparse (and involved the *gardes*, who enjoyed a more privileged status than a woman who was not a mistress), and I have already presented evidence that would suggest that the boundaries of the city and its culture were quite porous. Nevertheless, the cases involving women offer a small representative slice of larger patterns. In five of the seven cases, the dispute is in relation to inheritance; this percentage (71) is nearly the same for the entire sample (76). For the other two, one is in relation to an assault and the other does not specify what the dispute is about.

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39 ADSM, 52BP 11.
40 Some scholarship supports a connection between an urban setting and women’s opportunities, including legal ones. See, for example, Manon van der Heijden, *Women and Crime in Early Modern Holland*, trans. David McKay (Boston, MA, USA: Brill, 2016; and Shoemaker, *Prosecution and Punishment*.)
(many entries do not, but the subject may be gleaned from other appearances by the parties in question which are obviously part of the same case based on context).

Women’s disputing patterns, then, are not out of the ordinary within the larger patterns of Elbeuf (to the extent that they can be established at this time).

That being said, the number of women mentioned in court cases in Elbeuf contrasts dramatically with the records from the Échiquier. Of the 30 records sampled, 16 mention women, of which 13 involve a wife or widow and the remaining three do not specify—an overwhelming representation of marital status as opposed to other relations (mother, daughter, sister, etc.). As dramatic as the difference is between the records from the two courts, the representation of women in the records of the Échiquier, in themselves fairly extraordinary given the court’s status as a sovereign court and its jurisdictional breadth, nearly matches that of the settlement contracts: 47% for the settlements and 52% for the Échiquier mention a woman. Given the significant differences between these types of records and the people that created them, the similarity in the representation of women is surprising, and it would be tempting to bracket them as coincidental. However, there may also be an important link between women’s legal opportunities and experiences between the notaries and the Échiquier. Virginie Lemonnier-Lesage in particular has shown that despite the strictures of Norman custom regarding women’s claims to and management of property, people found ways around them, and notaries were the greatest facilitators of this activity. She found that notaries translated client requests into legal terms and that they cloaked contracts, whose legality was questionable.

41 ADSM, 1B 331.
according to the rigors of the law’s letter, in fail-safe clauses. She also found that although lower court jurisdictions were prone to rejecting such sketchy contracts as illegal, the Parlement (Échiquier) was more prone to upholding the legality of the contract.42 These findings are the results of examining records from later periods (and slightly different notarial records), but nonetheless, they seem to indicate that there is more to the similarity of experiences represented in my data. That said, we must be cautious with this data. My data do not distinguish instigators and defendants of disputes at this time. More research would be needed to explore this question further.

**Actions and Procedures In Court and Out**

Now that we have established the general contours of settlements and know more about the people involved in disputes that go to court, we can turn to a more fine-grained analysis of activities in and out of court which follow a decision to go to court. One of the most important initial decisions in the escalation of a dispute would have been to which jurisdiction to turn. Knowing that there were a myriad of options, conditioned in part by privileges assigned to an individual’s social status, it would be tempting to try to map a web of possibilities and then glean one or both parties’ strategy for pursuing the dispute based on their chosen course. However tantalizing

that prospect is, I would caution against leaning too heavily on conclusions in regard to strategy because records do not exist in meaningful quantity from all of the options we know to have existed. Nevertheless, we have in many of the settlement agreements recorded by notaries and records of cases heard before the Échiquier information about court proceedings leading up to the settlement or appearance before the Échiquier. This information is rare for the court of Elbeuf because there was little to no action before other courts prior to an appearance before it (which we would expect given its status as a court of first instance), and these records are generally much more laconic (due, likely, to differences in procedure between the lowest and the highest courts rather than differences between rural and urban justice, although more research may reveal significant differences between the latter two). Even less common but most interesting of all are the instances where the parties change jurisdictions over the course of pursuing the dispute. We have already seen this in the case between Vippart and Haveron outlined above where they made a lateral move from one vicomté to another.43 Such instances reveal a great deal about the role of the courts in disputing procedures and the legal system more broadly.

Although we must leave room for disputes wherein both parties are going in with good, or at least benign but self-assured, intentions, it is also reasonable to assume that sometimes both parties may not have been going into their court proceedings completely in good faith. As problematic as it may be to try to glean motives and emotions from litigants’ activities—Jeremy Hayhoe, echoing Hervé Piant, has drawn attention to the surprising volume of self-disclosed level-headed

43 ADSM, 2E1 229, November 8, 1500.
individuals, who abhorred litigation, who appeared in court and has picked apart the rhetorical strategies that underlay such claims—it is nevertheless useful to examine concerns about and accusations of obstruction of proceedings, and instances that would seem to support those concerns, in search of a better understanding of people’s opportunities, frustrations and experiences with the legal system. In addition to the changing of jurisdictions and appeals/complaints observed above, there were numerous obstruction tactics that manipulated procedural requirements and loopholes in the system and created opportunities.\textsuperscript{44} In chapter one, we saw the learned jurists discuss some of these concerns and tactics. Another stalling point could be a delay to wait for a change in officials.

More subtle tactics could hide beneath procedural requirements. For instance, there are instances of accusations of one party withholding documents or information or not sharing them with the other party for review in a timely manner. That such a tactic could work highlights the importance of documentation and procedure as well as the opportunities that the system created. It likewise reveals some of the physical constraints of the system.

Of particular interest is the case between the children of Jean Ausoult, who was deceased at the time of the proceeding, and the \textit{éliseurs} of the \textit{prévôté} of Le Thuit Signol (within the jurisdiction of Elbeuf).\textsuperscript{45} Although we may only speculate on the details of the case and what brought them into court (quite possibly an underlying tax dispute), the parties involved appeared eight different times before the court.

\textsuperscript{44} Hayhoe, \textit{Enlightened Feudalism}, 98-101.
\textsuperscript{45} An “\textit{éliseur}” was a tax collector. Eventually, cases heard before the \textit{prévôté} of Le Thuit Signol appealed to the \textit{bailliage ducal d’Elbeuf}.
There was also a possibility of underlying family tension. The representatives of each party--Pierre Tallon as *tuteur* for the children and Robert Tallon for the *éliseurs*--shared the same family name, and on two separate occasions Nicolas Ausoult, father of Robert Tallon, and Jean Tallon, son of Robert Tallon, both made appearances. In one session Robert Tallon, summoned by Jean Tallon, suggested that he and the *éliseurs* were contracted to provide documents needed for another trial but that the children submitted the information in such a disorganized way, including submitting more at the last session, that it had been impossible to produce them, which was why he had not paid the required damages and fees. The children blamed him for the delay of the trial, and he turned the blame back on them. In the session immediately following, Nicolas Ausoult promised 26 *feuilles tant écrits que non écrits* from the children to be delivered to his son, Robert Tallon, and the *éliseurs.* Again, the exact details are unclear, but it appears that there were several layers of court cases wrapped up in these appearances.

This case is also an example of the importance of documentation and of giving parties the opportunity to look over the opposition’s materials in civil procedure to prepare a response. The dispute between the children of Jean Ausoult and the *éliseurs* of Thuit Signol over documents is not unique. Nor is the activity of the *procureurs*, who make intermittent appearances to report on documentation. The case between the Daudins and Jean Bouquet (introduced in chapter three) represents another example of documentation being the subject of and the deciding factor in a dispute. A dispute over delinquent *rente* payments and a seizure of goods

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46 ADSM, 52BP 11.
had been decided before the *bailli* of Evreux (according to the Daudins) until Bouquet, having acquired the contract, dredged up the past by requesting a copy of the court’s records of the case. The record was not available, so the Daudins were “forced to start over.” Bouquet’s plea complains that his casual attempt to recover the writings had been obstructed and so he made a formal request to retrieve them, which prompted the Daudins to renew their complaint before the *bailli* of Evreux (the missing record pertains to a complaint/appeal). The case then hinged on the original *rente* contract, the contract which transferred the right (ownership) of this contract to Bouquet, and undocumented payments of the disputed arrears. By the time the *Échiquier* heard this case, the court ordered the parties to correct and submit their (written) pleas with all relevant documentation for deliberation and ruling.47 The documentation, capturing the oral qualities of the original contract and the narrative pleas of the parties, but missing the alleged payoff, was ultimately what the judges reviewed and deliberated. Documentation could be critical in civil procedure before a court at any level but became increasingly so the farther the case moved up the line.

The court, especially at the lower levels, although privileging documentation, did not seem to presume literacy on the part of the litigants, as the numerous postponements suggest. The postponement would allow finer scrutiny of the letter, declaration etc. and, more practically, the opportunity to find someone to read it. Giving parties adequate time to scrutinize evidence and respond to it was a cornerstone of procedure, and the “adequacy” of the time allowed was partly determined by the parties, who could request extensions. For example, in the eight

47 ADSM, 1B 331, January 19, 1510.
appearances registered before the court in Elbeuf in 1510 concerning Julien Lefevre and Thomas Bachelier, all of which were “continued” (postponed), two consecutive entries (September 17th and October 8th) contain a note that specifies that the case is being postponed so that one or both parties may bring written evidence ("pour apporter faiz").48 In another case before the vicomté of Elbeuf, a dispute over inheritance between brothers Antoine, Jean, and Guillaume Mauclerc, we learn that Antoine had convened his brothers to court to formally “have a share in the succession of mobile as well as patrimonial property of defunct Jean Mauclerc, their father, such as may pertain to them according to reason and the custom of the region.” Having all come in person, the entry specifies, Guillaume and Jean, who was a priest and was the executor of their father’s will, contested the allotment on the grounds that all mobile goods were to come to them “as much by reason of continuity…as per the will.” This entry provides a rare glimpse of the actions in court as the proceedings unfolded, with the judge observing as the parties went to it—a rapid flurry of moves, countermoves, and papers. The priest produced a copy of the will, and Antoine demanded to see it, so it was given to him. Antoine countered that there was a discrepancy between the will and some letters that had been communicated to them, which the priest demanded to see, having some letters of his own. The entry leaves off with Anthony requesting time to “recover” the letters (apparently he had not brought them with him to court) and the granting of his

48 ADSM, 52BP 11.
request until the next session. This entry on June 18th was the last entry for these parties for the year 1510.49

This case, and that of Bacheler-Lefevre, reveal that documentation was important but not always at the forefront of people’s minds, giving us important insights into practices and standards of preparation and organization within the legal culture of Rouen and its environs. They also reflect the “piecemeal” addressing of evidence and non-sequential presentation of pleas that have come to characterize (“modern”) civil law systems.50 Of course, knowing that not having documents ready at hand and the need to find them was an acceptable excuse in the eyes of the court, presented an opportunity for a delay—to stall, to regroup, to reconsider, etc. People presumably used the court’s procedural requirements and inclination toward leniency in regard to parties’ marshaling and management of documentation to their full advantage. That this led to accusations of delaying the process deliberately is hardly surprising.51 The social status of the parties, with the exception of the priest, is

49 ADSM, 52BP 11. “Sur ce que Anthoine Mauclerc avoit faict convenir et adjourner messire Jehan Mauclerc prebtre et Guillaume Mauclerc pour avoir partage en la succession tant mobil que hereditel de defunct Jehan Mauclerc leur pere telle qui leur povoit appartenir selon raison et la coutume dupuis Aprez ce que lesd parties se fait comparus en personne et que ieeuulli prebtre et led Guillaume outre dit et declare que pour le regard dud meuble ilz vouloient deffendre led partage pour ce qu’ilz disoient tous lesd biens meubles tant par raison de continnuite leur competent et que a tilte de testament et delays faict par leur defunct pere dont led prebtre estoit executeur ainsi qu’il faisoit apparoir de la coppie d’icellui testament lequel testament icellui Anthoine demanda a voier qui lui fut baille present et touchant led partage heredital icellui prebtre et Guillaume leur acordonrent qu’il face telz lotz qu’il vera bon estre sauf la question des blasmes par ce qu’ilz seront chacun d’eulx tenant communiquer leurs lectres d’un a l’autre et pour ce journee leur fu baillée a dymenche prochain venant et regard les lectres demandez par led prebtre aud Anthoine icellui Anthoine demanda temps de les recouvrer qui lui acoorde jusques a la prochaine vicomte.”


51 See, for example, ADSM, 1B 331 January 12, 1510 and January 26, 1510. Smail, Consumption of Justice; and Philip Benedict, Rouen during the Wars of Religion (New York, NY, USA: Cambridge University Press, 1981).
unknown in these examples, but on the whole, there is no real evidence of a significant difference in approaches to written documents by people of different status. We can speculate that wealthier people had greater access to them and had more practice in using and managing them, but then again, they also would have likely hired people to do it for them.

Although we must be cautious about reading too much into accusations, they nevertheless resonate with and represent a matter of broader concern and a certain plausibility in courses of action. Recalling the scholarship of our erudite jurists from chapter one, we saw concerted discussion of the subject of abuses within the legal system, particularly in regard to the obstruction and drawing out of proceedings. We find hints of those concerns in the notarial and court records; however, the claims are not exhaustively developed.\textsuperscript{52} We must also bear in mind that accusations of obstruction could also be a delaying, if not only a deliberately offensive or annoying, tactic (if we assume that such an accusation would be investigated).

The final delaying tactic under consideration in this chapter is the decision not to show up in court. The best example of this encountered so far was in the case of Legouez versus Levesque and the Berquets before the Échiquier outlined in chapter three. Recalling that, after several defaults of his own, Legouez tried and failed to transfer liability to Lepannier, who then, possibly ignorant of the transfer though not, presumably, ignorant of the summonses, registered a few defaults of his own, we find Levesque beating his head against the bench as his case goes on and on.\textsuperscript{53} For the

\textsuperscript{52} For an example, see ADSM, 1B 331, January 26, 1510.
\textsuperscript{53} ADSM, 1B 331, January 8 and January 24, 1510. For another example of a no show see, January 19. 1510.
court of Elbeuf there are many instances recorded of parties not appearing for their audience. Entries such as “Jacques Dufay, escuier, was asked, called, and placed in default toward Jean Carre, bringer of a *clameur de marché de bourse*” from April 9th; “Jacques Dufay, escuier, default toward Jean Carre, bringer of a *clameur de marché de bourse*” from April 23rd; “Jacques Dufay, escuier, was asked, called, and placed in default toward Jean Carre, bringer of a *clameur de marché de bourse*” from May 7th; “Jean Lefevre, bringer of a *clameur de marché de bourse*, in default toward Simonnet Dupuis” on September 17th; and “Jeannet Lefevre default toward Simmonet Dupuis” on October 29th are very common. Even though this was a finable offense, after several occurrences properly established (i.e. the defaulting party did not have a reasonable excuse for his absence, such as being unaware of the summons, being ill, travel difficulties, etc.), very few notations of the fine are present (even fewer excuses are noted).

Indeed it is more striking when a fine is recorded than when it is not. Very few indicate a sentence, fine or otherwise, as a result of a failure to appear, some indicate a postponement, and the majority say nothing. For instance, on December 3rd, the court of Elbeuf finally fined Jeannet Lefevre “at the instance of two defaults.” The amount of the fine was not indicated, and the case was postponed again. However, entries from September 3rd, September 17th, and October 29th note a default by Lefevre, and one from June 18th notes a default from Dupuis (who was a

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54 ADSM, 52BP 11. “Jacques Dufay escuier fut demande appelle et mis en deffault vers Jehan Carre porteur de clameur de marche de bourse joxte etc.” “Jacques Dufay escuier deffault vers Jehan Carre porteur de clameur de marche de bourse.” “Jacques Dufay escuier fut demande appelle et mis en deffault vers Jehan Carre porteur de clameur de marche de bourse joxte etc.” “Jehan Lefevre porteur de clameur de marche de bourse en deffault vers Symonnet Dupuis joxte etc.” “Jehannet Lefevre deffault vers Symonnet Dupuis joxte etc.”
cloth-maker, we learn).\textsuperscript{55} This suggests either that the repercussions are so commonplace and obvious that they need not be mentioned or that, based on the few sentences and postponements that are present, the court is remarkably tolerant of this behavior. Some studies of civil dispute practices in later periods have found that not showing up was an admission of guilt and an acceptance of debt and of the ensuing sentence.\textsuperscript{56} The idea that one party was letting the other have his way by non-engagement and not appearing may explain some of the absenteeism, but it does not neatly account for all of the behaviors observed in my study. For instance, it is not rare for a party to lodge a complaint that a judge is too reluctant to assign a default. Michel de Batenceurt, bourgeois de Rouen, presented such a complaint against Hugues Bureau, \textit{lieutenant général} of the \textit{bailli} of Caen, to the \textit{Échiquier}. The case began when De Batenceurt objected to taxes levied on one of his boats by Jean Onardel and Nicolas Basire ("\textit{fermiers des neuves et anciennes aides de la ville de Caen}") on the basis that, by royal privilege, "bourgeois de Rouen" were exempt from such taxes. In the course of proceedings, when Bureau, adjudicating the case, proved reluctant to "inscribe a default," giving his opponents another appointment, that De Batenceurt felt was due, he complained to the \textit{Échiquier}. The \textit{Échiquier} determined that the case had been "poorly conducted, given and appointed by the said Bureau, lieutenant, and well complained against by the said plaintiff" ("\textit{du proces il sera dit qu'il a este mal procede et donne et appointe par led. Bureau lieutenant et...}")

\textsuperscript{55} ADSM, 52BP 11. "Jehannet Lefevre porteur de clameur de marche de bourse fut mis en amende quant a instance de deulx deulx en quoy il s'estoit lesse mettre vers Symonnet Dupuis et continue pour appointer descleration."

\textsuperscript{56} Kessler, \textit{A Revolution in Commerce}; Hayhoe, \textit{Enlightened Feudalism}; Dickinson, "L'Activité judiciaire d'après la procédure civile".
Inter-city rivalries aside, there was not a simple “if a party no-shows, then default; if default, then fine” formula governing procedures; judges had a considerable amount of discretion, and sometimes that discretion was contested. It is a remarkably tolerant attitude, and it is unclear from these records what the participants—judges, plaintiffs and defendants—thought the purpose and function of the court was exactly. The court stands by with coercive potential, but it takes something truly extraordinary to fully activate that potential. On a related note, this case also suggests that privilege (or at least certain privileges) may not have been so easily leveraged or recognized in practice, as it was in theory.

Litigants also had a considerable amount of discretion in deciding which options to pursue when, and sometimes that discretion was contested too (as obstruction). As another example, Pierre Lepetit filed a complaint in the Échiquier against Guillaume Adoubart, conseiller commissaire for the bailli of Evreux, for “wrongs and griefs” that had been done to him in settling his parents’ estate and his claims to inheritance against would-be debt collectors—the debt contested was 57 sous tournois of arrears on a rente contract, a not necessarily insignificant, but hardly staggering, figure. The proceedings as recounted, covering nine pages of the register in increasingly messier handwriting, appear to be a series of prescriptions by the court for Lepetit and non-compliance followed by complaints on his part. Lepetit tried to cast doubt on Adoubart’s narrative that he was being a deliberate pain, but his much less detailed accounting of his behaviors failed to convince the judge. The

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57 ADSM, 1B 331, January 12, 1510.
58 To give this figure a little context, Benedict indicates that 47 livres equated to about five months’ wages for a master mason in the mid-sixteenth century. Benedict, Rouen during the Wars of Religion, 12. There were 20 sous to a livre and 12 deniers to a sol, meaning that the debt was less than 3 livres.
Échiquier ruled against Lepetit, fined him (for an amount unspecified), and sent all parties back to continue proceedings before Adoubart.\textsuperscript{59} Turning Lepetit back over to Adoubart’s mercy may have been a greater punishment than the fine. We observe from this and the other examples outlined above that beyond the decision to turn to the court and schedule an appearance, the decision to follow through on making an appearance, or not, was a critical element of practice, manifest through an array of options, in civil disputes. Although the risk seems minimal given the patterns of behavior observed, having a court officially inscribe a default could add up, and if enough of them were recorded without sufficient excuse, then the court could rule in favor of the other party, leaving the first party with a potentially hefty bill for the courts’ services if he or she let the proceedings drag out to that point. What is also apparent is the removal of the courts from a central place in the resolution of civil disputes. The court records, especially those of Elbeuf, document, in large part, what is not happening in court. The courts and even the individual procedures in working with a court, like scheduling an appearance and maybe going, are set within a much larger relief of options.

The cases before the court of Elbeuf discussed above especially show the fluidity of practice and the relatively passive role the court is playing in these cases. Moreover, the court often seems to be standing in more as another mediator than as a judging force.\textsuperscript{60} Of the 109 appearances, 85 are explicitly postponed, while 12 list the opposing parties only—in some places the register looks more like a list than a summary of actions. In fact, the court only renders seven final decisions in the whole

\textsuperscript{59} ADSM, 1B 331, January 26, 1510.
\textsuperscript{60} Hayhoe, \textit{Enlightened Feudalism}. 

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year. The remaining appearances are listed as defaults, but this does not imply a final decision, as even more cases are postponed in spite of a default. There are 22 defaults recorded, only two of which prompt a final decision. The court is either indulgent to people’s inability to be present in court, or it has little power to bring them in, or a little of both. What is surprising is how often the summons are ignored and the lack of (immediate) repercussions beyond the fine when a fine is assessed.

What we learn about defaults from the records of the Échiquier adds more nuance to this picture. The default was a sort of judgment but was not the same as a ruling on the case itself, especially since most of the appeals come in the form of a complaint against the judge of the preceding jurisdiction. The De Batenceurt case is an example of this—the decision to “inscribe” a default could be a matter of contention as well as any other ruling. And yet, the many proceedings and defaults of Jacques Dufay in Elbeuf add nuance to the designation. For the Échiquier, there was only one default ruled in the cases examined. That being said, we do know from a few of the settlements that indicated proceedings before the Échiquier that there was a window of opportunity to settle out of court somewhere between scheduling the appearance and the ruling—recall the settlements between Lecheron and Petit and between Haveron and Vippart discussed above.

Elaborating further on patterns of court appearances, the first most striking aspect of court appearances is the number of noted scheduled appearances in relation to the number of cases. Of the 109 appearances before the vicomté of

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61 ADSM, 52BP 11.
62 ADSM, 1B 331, January 12, 1510.
63 ADSM, 2E1 228, January 8, 1510; and January 30, 1500.
Elbeuf, there are only 40 distinct cases, which deflates the activity in court and the presence of the court in the bigger picture of legal practice. The remaining appearances are part of ongoing cases in which the same parties reappear either in the same manner as before or with a switch in who is complaining against whom. It is in some cases a long process of moves and countermoves. Moreover, a number of people were involved in several different cases. Although it is risky to assume that people bearing the same name are the same person—a list of witnesses called to testify in support of Jean Gueroult and Robert Mouchart’s defense against Jean Martin’s *clameur de marché de bourse* (all of whom were convened by Jean Yver, *sergent*, but all but one of whom defaulted) underscores this risk: Credot Martin, Rogier Martin, Martin Martin, Raoulin Martin, Jean Meret dit Foriere, and Jean Merot—certain people stand out nonetheless. For instance, Jacques Dufay, *esquier* of Bois Guillaume (now a suburb to the north of Rouen), had what appears to be a rough year in 1510 (his noble status presumably made him a target for litigation by disgruntled tenants and creditors but also gave him the clout to get away with more). He was called into court 14 different times by four different people, of whom Jean Carre stands out. Carre, who filed a *clameur de marché de bourse* to reclaim a house or part of a house, valuing 12 *livres* 10 *sous tournois*, seated in the parish of St. Jean in Elbeuf (south of Rouen), appeared in court eight different times in 1510 alone (the case began prior to 1510) to pursue his case before the court finally ruled in his favor, and even after the court ordered Dufay to be fined, there were still two follow up appearances before the court to finish the process. In the final session, the court awarded the property definitively to Carre, giving him the right to take possession of it.
and ordered the first sergent or soussergent (deputy sergent) to “put the said Carre in possession of the said property and in this to guard it from all force and undue violence.”

Whereas we may be surprised by the number of appearances and the number of defaults by Dufay in this case, we are also reminded that Dufay had a team of at least three procureurs managing his case, so it is also difficult not to imagine a deliberate strategy behind the numerous procedures (hold out and hold on to the property as long as possible?). The cost of litigation and the fine incurred, though seriously defended by the procureurs, appear not to have been Dufay’s foremost concern since he did not bother to collect the reimbursement for the disputed property owed to him. That said, the repetition of appearances in cases suggests complexity in the unfolding of, and rendering a decision in, those cases.

To put these multiple appearances in greater perspective, the vicomté was only in session on 14 different days in 1510. This means that some people, like Jean Carre, were frequent flyers while their case was ongoing. It also suggests that people may have needed to turn elsewhere if resolution was more time-sensitive, which would account for some of the sudden disappearance of cases from the records. Some of the default numbers have even been attributed to evidence of out of court settlements. Although there is not an exact correspondence between the number of appearances and the number of people involved on either side of a case, more

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64 ADSM, 52BP 11. “Et fu donne en mandement au premier sergent ou soussergent de lad viconte mectre led Carre en saissine et possession dud heritage et en ce le garder de toutte forche et violence indue.”

people, more often than not, meant more appearances and suggests that more people meant more complexity to the unfolding of cases. The social status of one or more parties may have also influenced the length of a case, but this information is too infrequently noted to draw conclusions one way or another.

In addition to the case involving the children of Jean Ausoult detailed above, another striking case of multiple parties making multiple appearances is the also familiar case of Jean Regnault versus Jean Leribert the elder, fermier de l'eau de Seine. Recalling that Leribert executed a seizure of some of Regnault’s property to collect on a debt, this seizure prompted Regnault to follow up in court with a formal declaration of his opposition. In the meantime, Regnault had called two brothers, Jean and Guillaume Leblanc to act as guarantors of the debt and to testify on his behalf. Guillaume refused. Jean did not refuse but made things difficult for Regnault nonetheless.\(^6^6\)

Regnault called upon Jean and Guillaume Leblanc to act as guarantors to his debt and to testify as to Leribert’s actions. The sergent Guillaume Bourdet reported that he had summoned Jean Leblanc en garranti and collected the paperwork of Regnault and Leribert for Michel Leflameng, the procureur representing the Leblancs, who was in the process of preparing four reports and a declaration. Regnault, in another appearance, in the presence of Leribert’s procureur, insisted that Guillaume Leblanc should testify, seeking a garanti to this effect from Leflameng, who refused because Leribert had not appeared in court. Leribert, it was noted, had not shown up

\(^6^6\) ADSM, 52BP 11.
to court because he was a fermier. The case was adjourned to summon Leribert to the next session. In the next session, Leribert, in response to a request from Jean and Guillaume Leblanc, who would otherwise refuse to testify on Regnault’s behalf, produced a letter to prove that he was a fermier, and the case was adjourned to give the Leblancs time to look at it. Finally, after the fourth summons, Jean Leblanc appeared in court as a garrant for Regnault. The case was adjourned, with the court holding on to the disputed property. After a few more sessions, we see a Vincent Regnault appear in court with a Francois Leflameng as procureur to defend a declaration and clameur de marché de bourse made against him by Jean Leribert. Although it is unclear whether this case is related to the other, it is clear that Leribert is a busy man in court. Several more sessions, all of which are postponed, take us to the end of the year.

The patterns of appearances before the Échiquier were noticeably different, as should be expected given its status as a sovereign court. The multiplicity of appearances is of a much smaller degree—just over 15 percent of cases were postponed—and the rate of assessing fines much higher—just over one third indicate a fine. In addition to the Legouez case, which was postponed, as mentioned previously, the case between Robert de Thienville on the one side and Guillemette Pelerin and inhabitants of several parishes on the other was postponed one month to convene and question experts, including carpenters and masons. Guillemette

67 In addition to the agricultural sense, “fermier” was (based on readings of other cases) the term for a customs officer or tax collector, but the sense is not explicit here. Nonetheless, based on the context, I would favor the tax collector interpretation, which would likely bestow more privileges.
68 ADSM, 52BP 11.
69 ADSM, 1B 331, January 26, 1510.
Pelerin is an interesting figure in the records and her presence seems to support the idea that noble patrons, even women, would get involved in a case, leveraging their social status, to lend weight to the claim of one of the parties.\textsuperscript{70}

The more descriptive nature of the records of the Échiquier, represented by the narratives of the case (the pleas) given by opposing parties, reveals some of these proceedings but is rather more summary of actions pertinent to rendering a final judgment. That many of these proceedings existed, as is clear from lower court records and some notarial records, but were not pertinent in an appeal reveals a great deal about the court’s indulgence of such behaviors (with notable exceptions like Lepetit, discussed above), about the higher court’s perspective of happenings in the lower courts, and about the pitfalls of relying too heavily on records from the higher court when examining practice. That is, records from the higher court do not represent a complete picture of the case leading up to the appearance before it but rather a selection of what happened which may be pertinent to the appeal.

The observation that multiple parties to a case, with their own agendas and priorities, tended to drag out proceedings has its exceptions, of course. As “immortal” as some of these cases could be, to use the contemporary term, some of them could also be swift and efficient. Collective actions, as that initiated by the inhabitants of several parishes with the support of Guillemette Pelerin against Robert de Thienville, introduced above, could take time if experts and witnesses needed to be consulted.\textsuperscript{71} Collective actions could also influence a quick turnaround on a case to render a


\textsuperscript{71} ADSM, 1B 331, January 26, 1510.
ruling and a sentence, sometimes double that, in a day. On a chill February morning, the 26th to be exact, Denis Farin, commissioned lieutenant of the vicomte of Elbeuf, took a side trip to his usual bench for the day’s sessions. Plume in hand, or unnamed scribe at his elbow, he made an on-site visit to hear, and to see, a complaint against Abraham Leduc’s newly constructed fence. Leduc’s neighbors, represented by the procureur de la sieurie (the lord’s procureur—an official who was appointed by the lord to serve the dual function of public prosecutor, to serve public interest and to keep the lord’s peace in the case of public disturbances, and of legal representative of the lord’s private interests) himself, complained that Leduc’s “enclosure” was a novelty, an encroachment on common land, and a nuisance ("sur ung approchement en quoy icellui Leduc a vost mis par ledit procureur de ce qu’il a voit fait de nouveau constuire ou ediffier certain paillifz ou closture joignant et contigu de sa maison assise a la rue meleize prez la croix feret le tout contre et en prejudice de la varye et de la chose publicque"). A fairly common complaint for this period in Normandy and elsewhere, Jean Yver, sergent, diligently recorded the initial complaint and rounded up as many of the resident “old guys” as he could to testify at Farin’s visit.

The 19 men summoned provide us with an interesting sample of the locals: Berthault Coullombe* (90 years old), Collin Davyd (70), Jean Hesbert* (60), Guillaume Ausoult* (60), Edouard Leboullenger (80), Gieffin Gourdel* (60), Jean Varouldes (60), Guillaume Mancel (60), Robin Desperoys (50), Laurens Lavisne

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72 ADSM, 52BP 11, February 26, 1510.
73 I am freely assuming that “procureur de la sieurie” is equivalent to the “procureur fiscal” referenced in other contexts. For more on the procureur fiscal, see Perrier, “Le procureur fiscal et son rôle dans la protection des mineurs orphelins.”
(60), Louys Lesueur (35), Guillaume Regnault*, boucher, (48), Jean Carre* (50), Jean Cave (40), Jean Boscuillaume (40), Collin Delarue (35), Guillaume Tollener (60), Guillaume Herle (40), and Jean Guenet (40).

Within this sample of many of the most common first names of the period in this area, we find one representative only from each family with an age spread from 90 at the oldest to 35 at the youngest, with a majority falling in the 50-60 range. Extended kin networks unknown, one family is not dominating the testimony, though several generations of the neighborhood are represented by the family’s oldest, most able (physically and mentally), or most prominent member. The only occupation or status-marker noted is that of the butcher Guillaume Regnault. Also striking is the number of them (those with an asterisk (*) next to their name) who appear, or who share a family name with another litigant, in Elbeuf’s court records for the year 1510 (about a third of them). The most notable absences in this regard are the Martin, the Bonyn, the Bonamy, the Lefevre, the Levesque, and the Dupuis families, who may not be residing in close enough proximity or who have some other reason to excuse themselves or for being excluded.

With everyone gathered at the place being disputed, at 8:00 a.m., the proceedings began. First, the sergent called each witness, all of whom had come in person, to swear, in the presence of Farin and the procureur, to tell the truth on the encroachment. The witnesses were then taken on a tour to see and to visit the entire length of the disputed place. Upon their return from this tour, they reported to Farin, under oath, in the presence of Abraham Leduc, that the fence made by Leduc

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74 ADSM, 52BP 11, February 26, 1510.
adjoining, and contiguous with, his house, was a new undertaking and “against and to the prejudice of the public access.” The highly performative nature of these proceedings—with the witnesses (many of whom, it would be reasonable to assume, had instigated the complaint) being sworn in, taking a tour of the space and then reporting their findings in front of their offending neighbor—is remarkable. The orality of the proceedings, in light of the flurry of documentation examined above, is also remarkable. As much as people complained about or searched for or presented documentation, and as much as courts chose to privilege it, documentation did not dominate proceedings to the same degree as witness or guarantor statements, complaints and *clameurs*, or the movement in and out of court, especially in the lower court. Further, the oral nature of the proceedings (and the brisk February morning air?) also very likely expedited resolution.

The report was all Farin needed. “Having heard the report and at the request of the said *procureur*,” he “ordered and sentenced” Leduc to take down and remove the fence to return the place to its former state, “as it was accustomed to be in the past and in preceding the enclosure.” He also fined Leduc for the offense, which he “executed” immediately “in his presence,” collecting the money on the spot (the marginal notation “EM” on the register also indicates that the fine was collected, but it does not indicate the amount).

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75 ADSM, 52BP 11, February 26, 1510.
76 Plant, “Des procès innombrables.”
77 ADSM, 52BP 11, February 26, 1510. “…et Jehan Guenet ages de quarante ans pour estre et comparoir ce jourdys heure de huit heures sur le lieu descordable lesquelz en la presence de nous et dud procureur furent appellerz par led sergent auquel appel ilz se comparurent tous en personne et iceulx par nous adurez a dire verite sur led approchement aprez ce qu’ilz ourent veu et visite bien au long led lieu descordable et en le presence dud abraham le duc a leur retour nous disdrent et rapporterent par leurs sermens que led closture de pallifz faicte par led Leduc joingnant et contigue de sad maison et de lad croix feret estoit nouvelle entreprise et contre et eu prejudice de la varye
Putting a “point” on this case, figuratively speaking, but not even starting a new line on the register, a new collective action began against Leduc. In this case, the procureur and fifteen of Leduc’s neighbors, including Caudry Lefevre, Pernot Boscguillaume, Robinet Bonamy, Regnault Levesque, Colin Levesque, and Collin Leboullenger, complained about Leduc’s misappropriation and pollution of a well “adjoining and contiguous with his house but public and common to all the neighbors of the street,” who had been accustomed to “go there all and as many times as it pleased them” and who Leduc now “wanted every day to speak against ["contredire"] and hinder them, saying that the well pertained to him particularly.” Further, he was pumping the water into his boilers, for use in his cloth-making business, and the water from these boilers was leaking back into the well, “which was contrary to the public good” ("laquelle chose estoit contre le bien de la chose publicque"). Farin “tried to interrogate and examine” the people present to “know whether the well was common and public,” and Leduc “tried to interrogate and examine” them on the same point.78 The performance of these proceedings is a little less ceremonious than the

78 ADSM, 52BP 11, February 26, 1510. “voysins dud Abraham Leduc estoient plaintifs sur led Abraham Leduc que combien qu’il y oult certain puys joingnant et contigue de la maison de Abraham publicque et commun a tous les voisins de lad rue et a ce moien y aller toutes et quanteffoys qu’il a plairoit de neant icelluy Leduc chacun jour les vouloit a ce contredire et empescher disant led puys a luy appartenir particuellier et qui puys est acoit une denestre ouvraente sur le boit joingnant et contigu d’icelluy puys par la quelle il puchois de l’eaue d’icelluy et la fais aller dedens ses chaudieres ou il appeirit de son mestier de drapperie et les maidices qui veurient desd chaudieres aucuneffoys redoudoytement et chieschettement dedens led puys et se avoir au prez dud puys certain apprentiz par le quel l’eaue du cyel degoustoit et chiechoit dedens led puys laquelle chose estoit contre le bien de la chose publicque et povoit de ce advenir inconnement en nous requerant sur ce provision et que voulsissions interroguer et examiner lesd gens de veue savoir se led puys estoit commun et public icellui Abraham Leduc sur ce que voullions interroguer et examiner lesd gens de veue a la fin dessusd confessa reognust que led puys n’estoit point partiellierement maiz estoit public et commun a tous
last, and we imagine a small but imposing crowd of fed up neighbors massed around Farin and Leduc complaining about their recent loss of access to, and the offender’s contamination of, this well (on top of that *offensive* fence). Judge and defendant float questions in all directions looking for clarity and support. At the end of this quick flurry of words, Leduc, shrinking back in the face of his neighbors, “confessed and acknowledged that the well did not pertain to him particularly but was rather public and common to all the neighbors of the place.” The record continued, “He did not want to hinder their access to the well,” but he reserved the right to continue his work and requested that everyone chip in to attach a new and stronger rope to the well to bring up the water. “ Seeing this confession and response from Leduc,” Farin ordered that “henceforth the well would be common to all of the neighbors of the said place and as such, by common expense, there would be a rope placed on the well to draw for water from it” and all would do their part in the maintenance of the well. He also ordered Leduc to construct and maintain a gutter under the offending window of his

les voisins du lieu et ne vouloit ne enterine contredire ne empescher les voysins ne autres que toutes et quenteffoys qui leur plairoit a une queue de l'eaue pour leur usage qu'ilz le peussent faire maiz en tant que a luy estoit leur consentoit et accordoit l'usage d'icellui puys comme puys public et commun par cenque chacun en sa part et porcion continueront au cirage et voidenge d'icelle toutefoys que mestier seroit et mesmes a querir le corde d'icelle puys et y faire ung potence pour atachey lad corde. Veue laquelle confession et responce dud Abraham a nous ordonne que desormaiz led puys sera commun a tous les voysins dud lieu et que a communs despens il y sera mis une corde pour tyrer de l'eaue dud puys et que toutefoys qu'il sera mestier de voider et curer icellui puys chacun y contribura en sa part et porcion et eu surplus que icellui Abraham sera faire la paren d'au prez dud puys sur la quelle sad fenestre est assise de pierre en aboutant sur sad maison ou est sa tainture et ou lad fenestre est assise et que led Leduc sera mestre une gouttiere de quatre a cinq piedz au long du degouse de sad maison qui est assise prez led puys laquelle demourrae l'estat qu'elle este de present assise pour ce que par lesd gens de veue et aussy par l'impertion des anciennes lenones ou autres loys a quoy led Abraham Leduc se submist faire et acomplir les choses dessusd en tant que a luy apartien faire et agreer enseignemens il n'a point este trouve ne rapporte que pour le present lad maison assise prez led puys soit sur la vanarit publique desquelles choses lesd Robinet Centsolz Robin caron Cardin Lefevre Anthoine Dhuze Henry Lecherf Pernot Boscguillaume Adam Dumarest Robinet Bonamy regnault Levesque Jehan Cauchois Michault Lemonnier Guillaume Lemonnier Collin Levesque Collin Leboullenger et Simonnet Hary nous requestent ces presentes pour leur valloir et servir ce que de raison donne commune dessus.”
house to divert leaking water from his boilers away from the well. Leduc “submitted himself to do and complete the above-said things,” and “on which things” all of the neighbors present requested a copy of the day’s proceedings. Not bad for a morning’s work. Farin went on to hear seven more cases that same day.

These “on-site” proceedings and judgments by Farin for the court of Elbeuf, reveal a great deal about practice and serve as an important counterbalance to cases discussed above. They demonstrate specifically how neighborhood policing could work (introduced in chapter three), putting an end to nuisance behaviors that crossed a line and calling in the local judge to put his stamp on it. They also show that legal practice, the law’s authority and coercive power through enforcement behaviors (elaborated in chapter five) were more diffuse and not a top-down monopoly in this period in Normandy.79 They confirm that a dispute with its proceedings, ruling and sentence could all be remarkably swift or could drag on with different maneuvers and an apparent reluctance to render judgment and sentence. This fact was likely not lost on Jean Carre, who, having served as a witness to swift justice in the morning, met Farin in the afternoon for another session in which Jacques Dufay defaulted.80

Social factors likely made a big difference in these cases. Jean Carre had to go through the motions and patiently maneuver through the troubled waters of litigation that nobleman Jacques Dufay and his team of procureurs stirred up in opposition to his clameur de marché de bourse. That said, Carre probably heard

80 ADSM, 52BP 11, February 26, 1510.
about the quick resolution to Jean Boullart’s *clameur de marché de bourse*, which took only two sessions, both falling in the month of January, against a fairly cooperative Simon Hode. Carre also witnessed the coercive power of the lord’s *procureur* and the even greater coercive power of collective action during a fairly well-orchestrated encroachment suit and a fairly impromptu rush upon the judge at the end to pursue another sort of encroachment complaint. Unlike the collection of individual parties seen in some of the cases examined so far, the collective social pressure of a “mob” of determined neighbors could brush the unnamed lord’s *procureur* aside after a *pro forma* introduction of the complaint to compel a piggy-back suit. The oral proceedings wrapped up relatively efficiently, but the plaintiffs still wanted a written record of the proceedings. Documentation may then be understood as the “double-edged sword” of justice, which litigants increasingly imbued with value and made necessary to proceedings, while at the same time slowing those proceedings down. This is, of course, a simplistic explanation of complex and variable practices.

**Length of Cases**

Accusations of abuses and delaying tactics as well as complaints about the length of litigation have drawn scholars in to a debate about the length of cases and how to interpret it. How long did it take to dispute before a court? Was the length a

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81 ADSM, 52BP 11, January 3 and 17, 1510. The *clameur* began, technically, in the preceding September, but Boullart had lodged it against the wrong person, who had transferred the property to Hode.

82 Plant, “Des procès innombrables.”
sign of inefficiency, inefficacy, inadequacy, resistance, or corruption? Or, was it an attempt to deter disputes and encourage resolution out of court? Was it actually a deterrent and in what sense?\textsuperscript{83} What the majority of viewpoints in this debate have in common is the presumed centrality of the court, and the ideal that it should be so, in civil disputes. These assumptions added to the fact that much of the evidence for arguments in the debates comes from the Parlements (i.e. at the end of the longest trials), private papers from elite families (a very narrow segment of the population), and from criticisms drawn from printed sources with their own agendas leave the debate rather one-dimensional. Recognizing that the length of cases before a court has been a subject of great concern but also that much of the literature focuses on the seventeenth and eighteenth centuries, I want to take the opportunity to examine the question of time in late fifteenth-, early sixteenth-century Rouen to see what the records under consideration in this project yield in terms of the length of cases specifically and legal practices more broadly. With the delaying tactics, procedural requirements, and the nature of appearances discussed above in mind, we can dive more deeply into the amount and length of ongoing litigation.

Although the cases involving multiple parties in multiple appearances from the court of Elbeuf generally offer us little satisfaction when it comes to details or narrative, they nonetheless provide important information about the process of civil

litigation. Even within the span of one year, it is clear that cases heard by the court were most often either very short, with only one appearance in court, or a long, drawn out process.\textsuperscript{84} The length of time most often resulted from parties trying to put all of the supporting materials together for their case and to find people to testify on their behalf. Of course, delaying the process could also be part of the litigation strategy if one party was trying to obstruct or discourage the activity of the other.\textsuperscript{85} It is more likely that procedure before the court was stricter in its requirements to render a decision and offer resolution and that this, coupled with the cost, forced parties to regroup and possibly reconsider. It is also possible that the court simply did not want to hear civil cases—possibly disdaining them along the lines of the learned jurists from chapter one—or that there was an idea that the resolution and harmony effected by it would be longer lasting if both parties were actively enfranchised in the final decision rather than having a judge hand one down. That is, the court wanted to stand back as a mediating force to encourage reconciliation between disputing parties and offered them plenty of opportunities to back down from formal proceedings. Furthermore, we may infer that asking, and dwelling on, how long court cases lasted is not exactly the right question, making debates about the significance of the length of cases beside the point. What we are observing from these records is a concept of justice which does not consist of court cases—the process is what is


\textsuperscript{85} Smail, \textit{Consumption of Justice}; Benedict, \textit{Rouen during the Wars of Religion}. ADSM, 1B 331, January 12, 1510.
important, not the day in court—so what looks like a “delaying” tactic may actually be a move into a parallel form of justice-seeking such as negotiation, contracts, etc.

As one would expect, the cases before the Échiquier, when they give any sense of timeline, reveal a consistently and considerably longer timeline between initiation and resolution of a dispute. The case as presented to the Échiquier in 1510 between Gilles Fayel and Mathurin Legalloys, for example, dates back to a ruling from 1502 by the mayor of Nonancourt in relation to some debt that Legalloys had inherited from his father who had acquired it from a delinquent debtor Hector Gazeau. This ruling from 1502, being challenged before the baili of Evreux (which procedure was the subject of the complaint to the Échiquier) had been an endpoint to dispute proceedings leading up to it both in and out of court, but this ruling had not provided satisfactory resolution and eight years later, the case continued.86

This case is an extreme example, but it does serve my point that the records from the Échiquier are not the best sources for measuring the average timeline of cases. They often do not give enough detail about proceedings leading up to the appearance before the Échiquier to determine how long each intervening step took.

We should expect cases that moved through three courts (vicomte to bailliage to Échiquier on the ideal model) to have taken longer than those that only moved through one. Since there were far fewer cases that made it to the highest level, the most meaningful source of information about the average length of litigation is going to be the lower courts. The cases before the Échiquier and the other Parlements

86 ADSM, 1B 331, January 17, 1510.
need to be studied as revealing and important entities but entities outside the norm when the question is the average length of time.

Notarial records, for the most part, suggest shorter, but not necessarily short, timelines. The settlements sometimes suggest an urgency to resolve the dispute out of court before it progresses too far in court and sometimes suggest a desire to prevent dragging the dispute out too long. These expressed motives for settlement reveal the potential for speed and the potential for length and suggest that the pace was at least in part determined by the parties themselves and their decisions for the course of their disputes. The notarial records and the court records from Elbeuf and the Échiquier reveal a lot of variation in the timeline of disputing both in the court and out. What is not clear, despite (ordinarily one-sided) accusations and complaints of the delay in litigation or agreements by both parties to avoid further action in court, is what the standard or expectation of what a reasonable length of time should be.

**Conclusion**

The forays into court discussed in this chapter offer an important glimpse into civil litigation procedure—the back and forth, the length, the importance of documentation etc. From scheduling an audience to making an appearance, or not, to the preparation and adherence to procedures to accusations of abuse and even to the eventual settlement out of court, they highlight the maneuverings of the disputants and situate the court more clearly in the larger landscape of dispute proceedings. We take these decisions to go to court but not resolve the disputes in
court along with some of the more common procedures in court and proceed to the
next chapter for an analysis of resolutions of disputes by a court judgment and
enforcement thereof.

More importantly, as we move into the next chapter on resolution and
enforcement practices, it is important to bear in mind that my examination of
settlement practices and maneuverings in and out of court show that the legal culture
defined resolution and justice differently. Equally important to recall is that the
question of how long cases lasted is to miss the point. The legal culture placed a
greater value on procedure and on repairing and maintaining social relations than on
the notion of “speedy” or “efficient” justice, and people were afforded ample
opportunity to come to a renewed agreement which best suited their individual needs
while at the same time serving greater communal harmony.
Chapter Five
Jugement: Challenges to Resolution

The preceding chapters have shown much of the activity along the spectrum of disputing with a particular emphasis on actions taken outside of the courts and actions taken to resolve a dispute before a final ruling by a court. This chapter will provide an in-depth analysis of court rulings, sentences prescribed, and enforcement; it will also elaborate on themes of witnessing, discretion, reputation and cost. With this, it will challenge the theory that litigation was a commitment to cause as much damage to an opponent as possible as well as the assumption of finality or resolution in court rulings--how final is final and who really decides this? The question is not whether the court wanted to have the final say in a case or whether it was content to allow parties to resolve disputes independently, even encouraging such practices. The question is what role it did play in resolution and enforcement and how effective it was, challenging a prominent assumption that the court served as a lever at key moments in a dispute to bring parties to a settlement by serving as a costly and coercive threat, central to thought and background to action.¹

In this chapter, I will not argue that this was not the case, but I will argue that it was not so simple. Although I cannot answer how enforcement worked (and how it didn’t) exactly, this chapter will open more avenues of investigation by exploring some of the enforcement practices in relation to civil disputes in late-fifteenth- and early-sixteenth-century Rouen as observed in the notarial records as well as the court records from Elbeuf and the Échiquier. In so doing, I will argue that evident challenges to enforcement diminish the coercive power of the courts.

On the surface of it, one would expect a court’s ruling on a case to be decisive—judgment rendered, resolution final—especially that of the Échiquier as the last court of appeal. However, even if, for a moment, we set aside the notarial records that chip away at this judicial fantasy, the court records themselves indicate that this was not the case on many occasions. This does not necessarily mean that a court’s decision was challenged (overtly)—the option of appeals show that it could be—but that the dispute did not necessarily end. It may, of course, be regenerated in off-shoot cases between litigants and/or their heirs. It may also be the court itself that continues the loop by dismissing the case or sending it back to the lower courts for a decision. The record of a ruling may also be “lost.” Looking at court records from the vicomté of Elbeuf and the Échiquier in Rouen reveals a lot about the role of courts in the resolution of disputes. This chapter will follow these points by examining four main categories related to judgment: court rulings, sentences, appeals, and

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enforcement. It will then elaborate on related themes of witnessing, discretion, reputation, and cost.

**Court Rulings**

Beginning with court rulings, we recall from the previous chapter the apparent dual reluctance of, and lack of opportunity for, the court of Elbeuf to render a final decision in the fact that it only rendered seven on the 109 appearances before it for the year 1510. Many cases disappeared as abruptly from the record as they appeared. The case between Jacquet Vallet and Raoullin Cavellier is an example of this. Cavellier appeared in court on behalf of his wife to complain that Vallet had assaulted her to the point of drawing blood. Vallet had not appeared, and the case was postponed to summon him again to answer the accusations against him. And that was the final entry on the matter.³ We can only guess how the disputed was resolved. We do know that complaints floated around, especially at the highest levels, about “desertion” (usually following complaints about the numbers of requests and the length of cases) and can assume that sudden disappearances could be a nuisance for the courts’ operations and caused concern that attention was unnecessarily diverted from cases that were still ongoing. Legislation, like the royal ordinance on the administration of justice from 1493, was passed repeatedly to address such complaints.⁴ The most plausible explanation for these sudden

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³ ADSM, 52BP 11.  
disappearances is that the parties worked out a settlement. Evidence for some of these settlements is found in the notarial records, but many were also probably negotiated orally.\textsuperscript{5} These disappearances and complaints suggest that if courts were content by people working out settlements and encouraged such practice, not everyone was on the same page about it. Given that the ordinance from 1493 focused primarily on procedures in the highest courts, I would assume that there were considerable differences between practices and attitudes on “comings and goings” in the lower courts and in the highest. More research would be needed to flesh this theory out.

In addition to abandoned cases, we also recall the number of cases postponed and the extraordinary lead up to the final decision in some of the cases, such as Jean Carre calling Jacques Dufay into court eight times before the court ruled in his favor or the complex proceedings between Jean Leribert and Jean Regnault.\textsuperscript{6} The number of entries which indicate that a case is continuing for the purpose of summoning a witness or one of the parties, for bringing documentation

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elle n’est relevée dedans les trois mois, le juge pourra mettre à execution la sentence nonobstant oppositions ou apppellations quelconques, sans ce qu’il soit besoing à la partie de faire adjourner l’appelant en matière de désertion d’appel, et néanmoins ordonnons à notre procureur général qu’il fasse adjourner l’appelant en notredite cour pour, veoir déclarer estre descheu, en amende de 50 livres parisis.” See also article 57: “Souventesfois advient que ceux qui on délinqué se absentent et est nécessité de procéder contre eulx par adjournemens personnels, et les appeller à ban et à jour à eulx assigné, et laissent donner la sentence, et après en appellent en icelle cour où ils ne comparent point, mais se laissent mettre en défaut et après que la sentence est confirmée par arrest, ils se tirent en la chancellerie et obiennent lettres pour estre reçus en leurs justifications en reffondant les despens de déffaut. Nous avons ordonné et statué que tel arrest sera exécuté royaumment et de fait selon sa forme et teneur, en tant que touche l’intérest de partie; nonobstant lesdites lettres, en baillant caution par icelle partie de le rendre en fin de cause, après cogneu desdites lettres et si elles son enthéérinées.”


\textsuperscript{6} ADSM, 52BP 11.
("pour apporter faiz") as in the case of Julien Lefevre and Thomas Bacheler, or for preparation and reading such documentation as in the case of the Mauclerc’s inheritance far outweigh the rulings. The apparent open-endedness of proceedings and willingness on the part of the court to give litigants every opportunity to find an alternate solution, diminished its coercive image, suggesting that the courts, at least in terms of civil law, viewed themselves more as a last resort for resolving civil disputes, perhaps to encourage continuing social relations and harmony, rather than as a deterrent to future actions as it would be for criminal acts. The same ordinance from 1493 quoted above indicates that elite contemporaries recognized this issue as well, complaining that “parties do not fear to make infinite requests.” The degree and extent to which this concern was shared (or fairly isolated among select elites) is less important than the implication that the court’s coercive presence in the legal system was far from dominant (or feared) in practice. The patterns observed in people’s actions in and out of court support this idea. Some people were in a hurry to settle once the dispute went to court, and some people were not. One party’s status relative to another probably influenced this to a certain degree, but the demographic information in my samples is not consistent enough to draw conclusions on that topic at this time.

This observation is also not meant to imply that the court’s coercive power, if inconsistent, was completely lacking. When Denis Farin, lieutenant of the vicomte of

7 ADSM, 52BP 11.
8 Hayhoe, Enlightened Feudalism; Blaufarb, “Conflict and Compromise.”
9 Recueil général des anciennes lois françaises depuis l’an 420, vol. 11, pp. 214-49; article 50. “les parties ne craignent point à bailer requestes infinies et de travailler ceulx contre lesquels ils ont à faire.”
Elbeuf, went out to hear a complaint about Abraham Leduc’s new fence, the morning of February 26, 1510, Leduc’s neighbors had the satisfaction of hearing a ruling in their favor and the ordered removal of the offending fence that same day. In fact, they tacked on another complaint against Leduc about the misappropriation and contamination of their well and received a favorable ruling on that on the same day as well.\textsuperscript{10} The court could render a decision with remarkable efficiency. Even so, the orchestrated nature of the first case and the impromptu undertones of the second (elaborated in chapter four) suggest that Leduc’s neighbors were exercising as much coercive power as the court, if not more, in influencing the pace and direction of rulings. Furthermore, and this will be an ongoing theme in this chapter, it is one thing to order that the fence be taken down or that Leduc install a gutter, and it is another thing entirely whether, when, and how those orders are followed. Leduc’s neighbors very likely played a greater role in the oversight of these orders than the court, since the stakes were higher for them and they may have been in closer proximity to monitor Leduc’s actions and inaction. The court’s role as a decisive force is thus limited relative to social pressures, and the court is less central to the bigger picture of disputing practices.

We contrast these patterns from the lowest courts with those of the highest court of appeals, looking at its register of rulings, and yet arrive at similar conclusions. Of the 30 judgments examined (out of 219 total) from the Échiquier in 1510, only five were postponed. Among these postponed cases are counted the now familiar case of Robert Legouez versus Guillaume Levesque and Thomas Berquet

\textsuperscript{10} ADSM, 52BP 11.
and his wife, coming up from the baili of Rouen, which was postponed because the case was not “in a state to be judged,” as well as that of Robert de Thienville versus Guillemette Pelerin and the inhabitants of several parishes, coming up from the baili of Caen, which was postponed to consult expert artisans in relation to the disputed building project in question. The relatively small number of postponements relative to the rulings (below) would seem to support the decisive power of this court. This is not surprising given its status as a sovereign court, at the peak of the judicial hierarchy, with different stakes and different spaces for maneuvering; however, its status as a sovereign court also makes it rather more exceptional than normative. The records from Parlements have received more scholarly attention generally, and their records are important for understanding practice, especially in accounts of the lead up to an appearance before it included with some of the entries, but we must also be cautious about weighing observations and analysis proportionately so as not to distort the bigger picture of practice with exceptional examples—they help to complete the picture but they should not enjoy a central place.

Of the 25 cases remaining in my sample from the Échiquier, one or more rulings were given per case, depending on the appeal, complaints and counter-complaints encompassed in the case brought before it. Recall as an example the complain that Pierre Lepetit brought to the Échiquier against Guillaume Adoubart, conseiller commissaire for the baili of Evreux, for “wrongs and griefs” that had been done to him in settling his parents’ estate. The primary complaint is that Adoubart is

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11 ADSM, 1B 331, January 8 and January 24, 1510. “le proces n’est pour le present en estat de juger.”
ADSM, 1B 331, January 26, 1510.
12 ADSM, 1B 331, January 26, 1510.
mismanaging the case. The primary dispute is between Lepetit and his parents’ creditors. The court ruled against Lepetit on the primary complaint not on the primary dispute and then sent the central case itself back to the lower court for judgment. In total among the appearances examined, the court ruled in favor of six complaints and against double that figure (supporting the proceedings of the lower court). The court also ruled nine dismissals and three cases sent back (renvoyé).\(^\text{13}\)

As an example of a case that was dismissed and sent back, the case between the Daudins and Jean Bouquet, first introduced in chapter three, is also one of the richest examples from the Échiquier’s records for insights into our understanding of rulings. We have examined the case so far in relation to the seizure of goods executed during the course of the dispute and also for the importance of documentation to the proceedings. Related to the latter, the case is of special interest because of the repeat of the case and the ruling, which, whether or not it was an actual repeat or the Daudins trying to pass a forgotten “desertion” off as resolved, reveals some of the potential challenges to resolution in relation to court rulings, including a missing record. It will be of continued interest for my examination of enforcement and discretion further in this chapter as well, so I am going to paraphrase the case in detail, following its presentation in the court record fairly closely to give a sense of the pleas made by both parties.

Jean, Colin and Étienne Daudin file a complaint (“dolleance”) against Jean Fillon, once lieutenant general of the baili of Evreux, in relation to a case against Jean Bouquet, priest.\(^\text{14}\) In support of their complaint, the Daudins claim that they had

\(^{13}\) ADSM, 1B 331.
\(^{14}\) ADSM, 1B 331, January 19, 1510.
proceeded in the court in question via written facts and ordinary accounts and had taken their right [received a ruling in their favor] as much to the principal case as to their original complaint submitted to the baili [this is an apparent lateral appeal, which was not rare given the interchangeability of vicomté and bailliage in some places]. These original proceedings had been brought to a close in 1502.

Since that time Bouquet turned to the chancellery of the court for a copy of the case record and documentation.\textsuperscript{15} Ostensibly he was searching to see what terms had been decided to see whether he was responsible for any outstanding loose ends and liabilities, but he was also searching for evidence that the case had indeed been brought to a close. He was not able to recover the record as expected. Bouquet pressed the issue to the point that the Daudins were forced to renew the case, or, rather, to start over and resubmit their appeal/complaint before the baili.

Whatever the previous ruling had been, this time, after the request had been submitted and the parties heard, the presiding judge—Thomas Postel, “counselor in the said court and deputed commissaire”—ordered the Daudins to detail what had happened on the day of the audience in court about which they were complaining, along with their original case, to determine whether they had rightly or wrongly filed their complaint.\textsuperscript{16} According to the Daudins, their father Guillaume Daudin had been enfiefed certain property (“heritages”) by (defunct) Robin Hurel in exchange for 70 sous tournois per year of rente payments on condition of repurchase and by condition also that in the event that the borrower defaulted in three consecutive years

\textsuperscript{15} ADSM, 1B 331, January 19, 1510.
\textsuperscript{16} Commissaires, in this period, were officials who had variable duties and functions, especially in rural areas, which could include presiding as a judge. They were not, however, police officers in the modern sense of the term. “conseiller en lad court et commissaire depputé par icelle.”
of payments, Hurel would be able to seize back the property “without authority of justice” (“sans auctorite de justice”).\textsuperscript{17}

For this reason, Étienne and Berthault Landri, so-called heirs of the defunct Hurel by marriage (“because of their wives”), had claimed that in the year 1497 or so the Daudins, representing the right of their father [by inheritance], had defaulted on the rente payments for three consecutive years. The Landris thus turned to Jean Couronne, 

\textit{sergent} at that time [though presumably no longer so by 1510], and in his presence, attempted to seize the property/debt, for which they took movable goods belonging to the Daudins amounting to 20, even 40, times the value of the three years’ worth of rente. The Daudins argued that, notwithstanding their trivial and continued possession of the property, the Landris had also opposed the transmission of the Daudins’ inheritance, but nothing had come of it.\textsuperscript{18}

Soon after this point, Bouquet had acquired the right of the Landris and obtained letters (subrogation) to take up the opposition to their inheritance, for which he was fined by Fillon, lieutenant of the \textit{bailli} of Evreux. In the course of those proceedings, the Daudins had claimed that they, or someone on their behalf, had paid all or part of the disputed arrears, during the three years in question, and had offered to pay back the principal and any remaining arrears to the Landris/Bouquet so that Bouquet “did not know that the Daudins had defaulted” (meaning they wiped out the debt and left no trace of default).\textsuperscript{19} They also claimed that the “condition” in

\textsuperscript{17} ADSM, 1B 331, January 19, 1510.
\textsuperscript{18} ADSM, 1B 331, January 19, 1510. “Estienne et Berthault ditz Landri eulx disant heritiers a cause de leurs femmes dud deffunct Hurel”
\textsuperscript{19} ADSM, 1B 331, January 19, 1510. “…icellui Bouquet intyme avoit acquis le droit d’iceulx Landri et obtenu lettres pour est receu a opposition en la deduction de laquelle opposition apres la matiere sortie par devant maistre Fillon lieutenant dud bailly avoit este soustenu que led intime devoit faire l’amende de lad opposition voullant procurer lesd complaignants que en icelles// trois annees ilz
the contract (collecting without recourse to justice) only applied to Hurel not to heirs or anyone assuming the contract. Nonetheless, Fillon awarded the disputed property ("heritages") and others not included in the original contract ("plusieurs autres heritages non comprins en lad. fieffe") to Bouquet, prompting the Daudins to file a complaint that Fillon had done them wrong ("leur avoir fait tort et grief apparent"). In that appeal, the Daudins argued that Bouquet should be fined, by which the judgment should be broken and annulled, and that Bouquet should be condemned to restitution of the levees that Bouquet or his brothers had by force or otherwise taken, enjoyed, or had hindered the enjoyment of, along with expenses, damages and interests.

With the Daudins’ plea closed, Bouquet responded to it by arguing the contrary ("avoit este dit et soustenu le contraire")—that they (the Daudins) had been in agreement with the procedure and the written facts, all of which had been submitted to the court scribe.20 He complained, however, that he had been obstructed in his attempt to recover the writings and that he had not been able to do so and made a more formal request, which forced the Daudins to file a complaint ("lesd. complaignants fussent contrainctz a proposer sur leurd. dolleance"). Bouquet added that the “vice of litigation was not unknown to the plaintiffs” ("vice de litige ne fut pas

avenient pai ou autres pour eux en tout ou partie lesd arrières ou l’anie d’iecelles annees et non obstant et qu’il eust este offert paier en argent comptant le principal et arrières de lad rente aud Bouquet subrogue desd Landri et qu’il ne fust aucunememnt congnu que ieux complaignants eussent defailly mesmement quant ainsi oust este se estoit lad condition nulle et ne se povoit estendre aud heritiors mais aud Hurel seul sans avoir regard au choses dessusd led Fillon lieutenant avoit ordonne que led Bouquet joyroit desd heritaiges et de plusieurs autres heritaiges nnon comprins en lad fieffe comme lesd complaignants disoient estre contenu et le tout demonte pour congno par les faiz et escriptures ainsi clozes devis lad court enquoy faisant led Fillon leur avoir fait tort et grief apparent pour laquelle cause ils avoient obtenu leur dolleance soutenant lesd complaignants que d’icelle led intime devoir faire amende par laquelle le jugie dont estoit dolle devoir estre casse et adnulle avequacs et est condemne a la restitution de levees que led intime ou ses freres avoient par force ou autrement pris et perceuz ou empesesche percevoir avequacs despens dommaiges et interessz a quoy de la part dud Bouquet intime avoit este dit et soustenu le contraire..."

20 ADSM, 1B 331, January 19, 1510.
mescongnu par lesd. complaignants”). He also presented documentation of his having assumed the right of the Landris (subrogation contract) to the disputed property and debt collection and, further, documentation of the original “obligation” (contract in which debt is formally acknowledged) dated August 2nd, 1481, which clearly stated that in the event that the borrower (“preneur”) defaulted in three consecutive years of payment, the lender, or whoever had taken over the right, could seize back the property enfeifed and do so “without authority of justice.” He had, further, presented the documentation to the Daudins in relation to the default.

As to the “facts” that the Daudins had alleged before the judge in question, Bouquet claimed that that was not the question at hand and that they had never alleged them before the judge in question, which a copy of the complaint by the Daudins proves and in which there is no mention. During those proceedings they had also not provided any receipt, discharge or other documentation that the debt had been settled. Accordingly, the judge had “rightly, and in keeping with the law,” ordered and declared that Bouquet would have enjoyment of the property of his fief and had not awarded additional property beyond that included in the fief, as the Daudins would have the court believe, because Bouquet had never demanded more property than that included in the fief--he had stopped and was stopping at the property loaned.21 To further support his claim that the judge had every reason to

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21 ADSM, 1B 331, January 19, 1510. “…mais touchant les faiz que lesd complaignants disoient avoir alleguez devant led juge subsect disoit icellui intime que ce n’estoit la question presente aussi que jamais ilz ne furent alleguez devant led juge subsect preuve la coppie de la dolleance desd complaignants qui n’en fait aucune mention et quant ilz eussent este alleguez ce que non encore pendant le proces actendre qu’il a aparoiissant de racquit quittance ne autre descharge le juge acoit bien et juridiquement ordonne d’avoir/ declare la joissance par provision a icelluy intime des heritaiges de sad fieffe et n’voit pas adjuge autres heritaiges comme lesd complaignants a vouloient mettre en fait car icellui intyme ne demander jamais autres heritaiges que ceux ainsi fieffez...”
award the property to him, he brought a copy of the original complaint ("dolleance"), as proof, in which the Daudins confessed having been served letters regarding the defaulted payments and thus rendered the seizure just and lawful. As for the offers that the Daudins claimed to have made and were being forced to make, namely, to garnish and pay the principal and arrears that may have been due, Bouquet claimed that they were impertinent and that he had every reason to deny and refuse them. By these means and others alleged by him against the Daudins, he supported his case that for their complaint the Daudins must be fined and by this fine, the judge had to uphold the ruling with restitution of the levees, expenses, damages, and interests.

On which, the parties having been heard in judgment, the court ordered them to correct their pleas and submit them with their supporting documentation to the court within the time stipulated and the matter would be put to council to determine their right ("pour leur estre fait droit"). The Échiquier dismissed the complaint by the Daudins without assessing a fine or awarding expenses to either party ("la dolleance mist au neant sans amende et despens"). However, it did order that Bouquet would, provisionally, enjoy the disputed property as collateral for restitution if he be awarded such by the lower court at the end of the trial. The court then sent the parties back to the bailliage of Evreux to continue proceedings on the principal subject of their case ("renvoye lesd. parties par devant led. bailly ou son lieutenant pour proceder sur le principal de leur matiere ainsi qu’il appartendit").

The case between the Daudins and Bouquet is rich in enforcement practices. In regard to rulings specifically, it is interesting because it shows some of the challenges to the resolution understood in rulings. Very much central to the complaint
is not only the original contested ruling but the missing ruling on the appeal which
necessitated a “re-trial.” That the original ruling is challenged is expected in appeal
proceedings. What is surprising is the plausibility of a missing ruling, which casts a
shadow of uncertainty over rulings. Whether or not there was a ruling on the first
appeal is less important than the uncertainty of it, forcing a resumption/renewal of
proceedings. And it had only been eight years—not even as long as the contract had
been in effect prior to the “end” of the initial appeal. It underscores not only the
increasing importance of documentation but also, and more so, its relation to
publicizing a ruling.\textsuperscript{22} The elevated, but not especially high, social status of these
parties is less significant than the procedures and challenges faced in this case,
which are broadly accessible and applicable in experience and not dependent on
status.

Examining the Échiquier’s rulings more closely, the “strong” rulings in favor or
against complaints were nearly equivalent to the “weak” rulings of dismissal and
renvoyé, even more so if linked to the postponements, especially if, conceptually, we
think of a renvoyé and a postponement as two sides of the same “deferred judgment”
coin. The rulings “end” the procedures—appealed cases or complaints—before the
Échiquier, but the resolution of the core of the dispute remains tentative. In other
words, a ruling does not necessarily mean a resolution.

The notarial records add even more complexity to our understanding of court
rulings. In the settlement contract between Jean and Pregent Leprevost, for instance,

we recall (from chapter three) that the (required) ruling on Pregent’s *clameur de haro* was a relatively minor, and possibly intentional, hurdle on the way to further proceedings. The ruling did not provide resolution to the dispute, though it may have influenced the direction. The additional proceedings were not a direct appeal of the ruling but were rather a different set of proceedings pursuing the same core dispute.23

**Sentences**

Reinforcing the uncertainty and lack of resolution overhanging rulings, sentencing patterns also reveal a great deal about the role of the court in resolving disputes. Aside from ruling in favor of or against one party or another, after which we would expect a finalized transfer of property in civil cases, the court would also decide whether or not to fine one of the parties as punishment for some part of the proceedings and possibly even award damages and expenses incurred to the winning party. Of the 25 rulings the *Échiquier* passed, only half came with a fine, and all of them were in relation to the “strong” rulings indicated above. But, even then, not all of the strong rulings assessed a fine. Even more striking is the sentencing from Elbeuf, which only noted assessing five fines for the year. The lack of zeal in assessing fines takes some of the sting out of the cost of going to court and lightens some of the burden of resolution on the losing party (the question of cost is discussed at length below).

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23 ADSM, 2E1 228, January 31, 1500.
It is worth recalling here too the defaults discussed at length in the previous chapter. When the judgment was a default, it rarely brought a fine—though it was in theory a fineable offense after a few had been officially tallied—or a ruling on the case. The stakes of the recording of a default, we saw in chapter four, were high enough that a plaintiff might appeal the decision not to record a default, just as Michel de Batenceurt did in his case against Jean Onardel and Nicolas Basire over taxes on his boats in Caen.²⁴ The default may best be thought of as a ruling on an action or procedure, a sub-ruling in the bigger context of the case, made up of several or many actions or procedures (unlike in other contexts where it was essentially an admission of guilt).²⁵ And the case itself is part of the whole of a dispute. Breaking down cases in this manner also diminishes the decisive force of the court.

Appeals

With these observations about rulings and sentences in mind, it is important to take a more in-depth look at appeals and complaints to see what light they may shed on the role of courts in the resolution of civil disputes. As expected, the appeal was a direct objection to a ruling by a lower jurisdiction and a request for the Échiquier to review the case and render a judgment. There are also instances, though much

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²⁴ ADM, 1B 331, January 12, 1510.
fewer, of people appealing arbitrations. For example, Jean Ducroq appealed the ratification of an arbitration between himself and Sauvage Destanely and his wife over the transfer of a *rente* to the couple as part of their marriage contract by the Jean Lepelletier, *lieutenant particulier* of the *bailli* of Gisors. More common were appeals of defaults, such as that of priest Guillaume Dugardin on a ruling of default which awarded disputed property to Jean Lerine, bourgeois of Rouen. The case had begun before the *vicomte* of Rouen, which ruled in favor of Lerine. Dugardin appealed this ruling to the *bailli* of Rouen. Upon the third default by Dugardin, Louis Dare, lieutenant general of the *bailli*, declared the final default and upheld the ruling of the *vicomté*. The *Échiquier* upheld Dare’s judgment and fined Dugardin.

Most commonly, an appeal was registered as a complaint (“*doléance*”) against the judge of a preceding jurisdiction—often in relation to ongoing proceedings and objections to how the judge of the lower court is handling the case—unnecessary delays and postponements, reluctance to rule a default, etc. Michel de Batenceurt’s complaint against Hugues Bureau, *lieutenant général* of the *bailli* of Caen, to the *Échiquier* is a straightforward example of the appeal as complaint. Another example is that of Jean Baron who brought a complaint against the *bailli* of Caen in relation to an ongoing case between him and Martin Maurry, representing himself and the right of Jean Buitel and Perrette his wife. The case was hanging after two “instances” in the *vicomté* of Fallaise and then after two more in the *bailliage* of Caen.

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26 ADSM, 1B 331, January 23, 1510.
27 ADSM, 1B 331, January 17, 1510.
28 ADSM, 1B 331, January 12, 1510.
29 ADSM, 1B 331, January, 19, 1510.
In such cases, the Échiquier would decide if a complaint/appeal was “mal 
dollé” (unjustified) dismissing or punishing the complaint and implying the upholding of a previous judgment, if there was one, or “bien dollé” (justified) implying the overturning of a previous judgment. However, in the case where the Échiquier decided that a complaint was justified, it could postpone the case to judge it separately and render a ruling on the case itself, which may or may not have ended in the appellant’s favor, as in the case of Robert Legouez. The appeals and complaints represented an opportunity to affect the tempo of proceedings, to stall (as in the case of Lepetit) or to try to speed up (as in the case of De Batenceurt) proceedings, and to question the management of proceedings by, and the judgment of, the judges of the lower courts. The very nature of an appeal temporarily cast doubt upon and sometimes outright undermined the “finality” of a court ruling or the resolution of a case. Knowing that settlements, too, could break down and make their way into the courts, as we have seen, casts a shadow of doubt over the entire spectrum of negotiation, conflict, and resolution and adds greater complexity to our understanding of enforcement practices.

Following these appeals and complaints, it would also be interesting to track which courts appear the most often in the appeals before the Échiquier because, depending on population, it could be a sign that rulings from that court or official specifically were most contested or controversial or alternatively, that that jurisdiction heard a higher volume of cases proportionate to others. It could be suggestive of a sort of “hotbed” for civil disputes before the court and a higher level of contention.

30 ADSM, 1B 331, January 8 and January 24, 1510.
regardless of the underlying cause of the number of appeals coming to the Échiquier. Of all of the different bailliages whose decisions were appealed in my sample, Rouen’s is by far the most represented in the appeals, comprising just over one-third of the cases. The nearest followers are Caen, Constantin, and Evreux, which, added together, equal that of Rouen. It is important to note, however, that Rouen had a significantly higher population than the other cities. Whether that higher population fueled contention is another matter and one requiring further research.

**Enforcement**

The discussion on rulings, sentences, and appeals ties into a larger discussion of challenges to enforcement and enforcement practices. Enforcement—the extent to which it occurred and the extent to which it was possible—has been a long-standing gray-area for the early modern legal system. Enforcement is often assumed in the ruling, but the records examined in this dissertation do not give much evidence for how enforcement worked. They do, however, hint that enforcement did not necessarily follow a ruling or sentence, that there were various enforcement practices in play, and that the prevalency of challenges to enforcement erode assumptions of a top-down coercive power emanating from “the court” or “the state.” Gillian Hadfield, in particular, has argued (in relation to modern contract law) that there is great complexity in the operation of the law in practice and that “there are many potential enforcement mechanisms available to support agreements,” not limited to court
rulings. Approaching enforcement practices in late-fifteenth- and early-sixteenth-century Rouen and its environs with this theory in mind, it becomes possible to see court rulings and sentences within a larger spectrum of enforcement practices. Just as the courts play a limited role in dispute proceedings, they play a limited role in enforcement, relying instead on supplemental “mechanisms.”

As difficult as evidence of enforcement practices is to come by, some information can be gleaned from the court and notarial records. Rulings on appeals present one of the more obvious enforcement practices in the court records. As subtle as it is, the act of upholding a ruling in an appeal was an act of re-enforcement by adding legitimacy to the ruling from the lower jurisdiction. The judgment was questioned, and that doubt and contention was laid to rest. Upholding an appeal may be thought of as one form of “re-enforcement”--a judgment supporting a judgment. Another form of re-enforcement was a court ruling in favor of a party that had seized the goods of another, either enforcing a contract, as in the case of the Landris/Bouquet on the Daudins, or enforcing guild statutes, as in the cases of the gardes of the lingères guild seizing illicit fabric examined in chapter three. However, in the cases surrounding a seizure of goods examined, the initial act of enforcement was challenged, which necessitated the “re-enforcement.” Similarly, overturning a ruling in an appeal had the effect of reversing the course of enforcement, and any provisionary measures, such as one party holding onto disputed property and collecting revenue from it (think Bouquet in his case against the Daudins outlined

31 Hadfield, “The Many Legal Institutions that Support Contractual Commitments,” 177-78.
32 Court authority backed law enforcement, in theory. Courts enforced laws through rulings and supported officials, such as sergents, in proper execution in the event of a complaint.
above), would need to be reversed. Since delays could be considerable, shifting the course of enforcement could create a larger ripple effect.

Very few surviving records document procedures for enforcement of court rulings. Within court records, especially from the Échiquier, there are occasionally descriptions of how cases unfolded, and these narratives will mention enforcement actions after the earlier rulings. The case of Jean Ducroq, mentioned above, is an example of this. In this case, Ducroq appealed a ruling by the bailli of Gisors, and the Échiquier ruled that the complaint was unjustified, that the case had been well-judged, and fined Ducroq 10 livres while also awarding expenses to his opponents Sauvaige Destennaly and his wife. Ducroq’s mother, Robine Debail had given Destennaly the right to a rente contract and its arrears (the right to collect on this debt) as a wedding present. Ducroq contested the execution of this right, that is, the enforcement of the terms of the contract. Each ruling from successive courts prompted a new attempt at collection, which met renewed opposition. The multiplicity of attempted and failed attempts to enforce the court’s orders underscores the challenge to enforcement. These references are fairly rare, but they are telling nonetheless.

Generally, as we saw with the lingères cases in chapter three, sergents were charged with the execution of a sentence, including publicizing the ruling and sentence as well as collecting fines and fees. The sources are not clear on how this process worked (one imagines a sergeant and/or one or more soussergents calling on the person’s home), although legal reformation legislation and legal treatises do

33 ADSM, 1B 331, January 23, 1510.
reiterate that it should be fairly immediate, suggesting that it was, in fact, not so. This suggests more complexity to how power and authority were wielded in the legal culture, possibly explained, at least in part, by socio-economic differences, which accounts for the challenges to enforcement.

Another indicator of the challenges of enforcement are complaints about the lack of enforcement. We have already seen the erudite jurists from chapter one address these concerns in their writings, specifying the terms, including the timeline, by which a sentence needed to be executed, so clearly it was a matter of broad concern. Along these lines, the lingères from time to time would demand enforcement of ordinances in the course of their own suits. When Katherine Leleu met opposition to confiscating Jean Delyvet’s illicit cloth, for example, she specifically requested that the judge uphold the ordinances and forbid others from selling cloth in the future.34 We also see appearances before the Échiquier which request an execution of a sentence. Jean Gaude, residing in the parish of Abbeville in Picardy, and Simon Adam both presented such requests to the Échiquier.35 Hardouin Theroulde brought a copy of the court’s ruling in to the Échiquier and formally requested execution of it in spite of his opponent having filed an opposition to the execution (collection of back payments of revenue from a chapel).36 Similarly, in the case of Jean Lepetit, the court responded to a demand for enforcement that due notice had to be made before enforcement could be executed.37

34 ADSM, 5EP 507b, April 28, 1553.
35 ADSM, 1B 331, February 8, 1510 and February 12, 1510.
36 ADSM, 1B 331, February 6, 1510.
37 ADSM, 1B 331, January 26, 1510.
We see by these examples that enforcement could be as much of a (varied) process as the dispute itself. We may also infer that, similar to the examples above, enforcement practices were more complex than we might assume (such as a state-appointed official immediately enacting the court’s decision) and followed a specific process, and further, following what was suggested by Ayrault in chapter one, that this legal culture, or at the least its institutional apparatus, was highly procedure-oriented. It was not simply a matter of enforcing rulings, but making sure that they were enforced following proper procedure.

Enforcement practices could also be cyclical. Cases such as those of the lingères show both the leading role that the gardes were playing, and the supporting role that the courts were playing, in enforcement and challenges posed not only by the likes of Delyvet but also by the judge. The gardes’ actions are central to the entire process of enforcement because they catch the malefactors coming and going—their act of enforcement in confiscating the cloth is challenged in court and their enforcement is upheld by the court, but they would be the best-positioned to make sure that the ruling in their favor was itself enforced, by monitoring activity to make sure that cloth was not sold illegally in the future (thus the fear that if they stop enforcing their privileges, the privileges would disappear practically speaking).

Another important example of the cyclical nature of enforcement is that of Abraham Leduc and his neighbors in Elbeuf examined in chapters three and four.38 In this case, the neighbors initiated a suit to enforce local laws and norms about enclosure, and once they received a favorable ruling, they would have played a

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38 ADSM, 52BP 11, February 26, 1510.
primary role in ensuring that the ruling was enforced—that the fence was removed, that obstructions to the well ceased, and that a gutter was properly installed to divert pollutants to the well. For this reason, the neighbors requested documentation of the case and ruling, to have future recourse as necessary and very likely to justify actions taken to move the process along if Leduc dragged his heels in following through. The sentence was not specific about the time-frame for executing the requirements for Leduc nor did it stipulate oversight. This is because the neighbors were understood as providing the oversight as interested parties, exercising their informal policing function to enforce laws, and more importantly, communal norms.

Such cases show coordinated enforcement efforts between authorities and interested parties and show the importance of enforcement from “below” as much as that from “above.” We must not lose sight of the potential from “above” as in the case of Jean Carre being assigned a sergent to assist in retaking possession of a house from Jacques Dufay and “in this to guard it from all force and undue violence.”39 The threat of violence and the need to counteract that, however, reveals yet another challenge to enforcement.

As an extreme example of the cyclical aspect of enforcement, we see the challenge of enforcement come to a head when the execution of a sentence is contested and re-enflames the dispute. We've seen examples of this in settlement contracts especially. The settlement contract between Haveron and Vippart (discussed in chapter four) shows that in the course of their dispute, each new ruling and renewed enforcement led to new proceedings; that is, enforcement could renew

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39 ADSM, 52BP 11.
the cycle of disputing and enforcement as opposed to ending it.\textsuperscript{40} Furthermore, the arbitration contracted between the Lamberts and the Denormares in relation to a dispute over a piece of land (discussed in chapter four) suggests that behind this postscript to the arbitration was a risk of a resumption of hostilities, further underscored by the threat of a fine in the event of an appeal or complaint about the ruling.\textsuperscript{41} Heading off an expected challenge to enforcement was itself a (re-)enforcement practice, but it also reveals that enforcement was not a simple task.

These settlement contracts also show how important notarial records are for filling in gaps in understanding how enforcement worked—arguably more important than the court records. Jean de Rouves, for instance, sold land that he had reclaimed by *clameur* and trial before the *vicomte* of Pont St Pierre from his uncle Guillaume de Rouves back to his uncle. The accounting of legal action is found in the chain of title to the sale of the property by Guillaume de Rouves, tanner, to Thomas Brisbarre.\textsuperscript{42} The right of the property passed to Jean, but ultimately, it passed back to Guillaume. Lacking details owing to its indirect revelation, this case is somewhat of a mystery because it would have been an even back and forth. Jean would have had to compensate Guillaume for the sale price of the property per the requirement of the *clameur* procedure. Guillaume would have then paid Jean to repurchase the land. Unless one of them got a real bargain or the value of the land changed dramatically, they would have been passing the same amount of money back and forth and paying court costs in the process. Without knowing more details, it is difficult to say whether

\textsuperscript{40} ADSM, 2E1 228, January 30, 1500.
\textsuperscript{41} ADSM, 2E1 229, October 23, 1500.
\textsuperscript{42} ADSM, 2E1 229, October 23, 1500.
this was a ploy to annoy the uncle, whether it was an act of charity or of predation. Regardless, the chain of title can be an important source of evidence of enforcement because it shows how a person came into a piece of property (via enforcement). Added to the above example is one where Colin Delyvet formally transfers a piece of property to Laurent Delapreuse “in obedience to a clameur de marché de bourse taken and obtained” by the latter.\footnote{ADSM, 2E1 229, November 3, 1500.} Further evidence for enforcement is found in postscripts and receipts. As an example of the latter, Guillaume Mauduit acknowledges that he received the sum of money awarded to him by the vicomte of Elbeuf from Toussaint Letort in fulfillment of the decree.\footnote{ADSM, 2E1 229, October 31, 1500.} These postscripts to court cases bring us full circle in our discussion of the spectrum of disputing. In order to ensure enforcement of a ruling by a court, some parties chose to draw up the details in a contract and formalize this agreement before a notary. These cases suggest that it was one thing to have a court rule in one party’s favor but that it was another thing to see that that ruling was enforced. One imagines the difficulty in enforcement when parties decide to take extra precautions via contract. The rulings thus enforced, these contracts drawn up before the notaries also serve as a receipt and a defensive measure against claims to the contrary and demands for enforcement.

The modest but important role that notaries played in enforcement of court rulings reinforces the idea that resolution before a court was not as definitive as it may seem on the surface. It also sets the courts within a broader spectrum of dispute resolution. The notion that the courts represented the peak of resolution and enforcement has been challenged by their own records. This is not to say that the
courts did not represent a formidable coercive power, but that in practice, the resolution they provided to disputing parties was perhaps as tenuous as settlements reached without them.

That being said, court records also cast a shadow over contracts and enforcement of them. For instance, in the Legouez case described in chapters three and four, we saw that Robert Legouez had tried to pass disputed property and debt over to his uncle Jean Lepannier via contract. Lepannier’s heirs deflected the contract, and Legouez resumed his defense.45 This deflection is interesting because there was no successful enforcement of the contract, but the implication of fraud behind the failure of enforcement also met no response. The contract simply disappeared from proceedings with no enforcement pursuant to either interpretation of this contract. The case of the Daudins versus Bouquet is the clearest example of challenges to enforcement.46 The contract stipulated that the property loaned could be reclaimed after three consecutive years of missed payments and that enforcement of that condition could be executed by the creditor, bypassing the court. Anticipating that this condition would not be enough to carry out the enforcement, the Landris/Bouquet brought in sergent Jean Couronne to oversee proceedings. The Daudins challenged the enforcement by claiming that the condition allowing the bypassing of the court was not transferrable with the contract (upon inheritance or sale) and by claiming further that the enforcement was excessive and over-reached the debt.

45 ADSM, 1B 331, January 8 and January 24, 1510.
46 ADSM, 1B 331, January 19, 1510.
Transferring a contract could open difficulties in enforcement of its terms because the core of the contract was the oral agreement between the parties, including any unwritten understanding or trust (credit) between them. The written contract served a commemorative function, and it was only becoming, slowly and awkwardly, an instrument of enforcement. This fact coupled with the missing written ruling central to the proceedings suggest that documentation was presenting new challenges to oral enforcement practices in Rouen in this period. That is, in this important period of transition for the legal culture, we see nascent privileging of documentation popping up in the sources, but we also see an uneasy management and leveraging of this documentation. Even as documentation could present a solution to a problem—enforcing contracts—it also could just as easily exacerbate the problem of coming to resolution of a dispute until people became more fluent with documentary practices.

Witnessing, Legal Credit and Discretion

Very much linked to these oral enforcement practices was the act of witnessing. Daniel Smail found, in fourteenth-century Marseille, in fact, that witness testimony to the terms of the contract was more important than the terms of the

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Whether the degree of importance attached to witness testimony relative to the document in late fifteenth-, early sixteenth-century Rouen is the same as fourteenth-century Marseille is unclear, but there was clearly a broad-sweeping concern by authorities about witnessing by 1539 when Francis I ordered that false witnesses were to meet capital punishment. That such a punishment was rarely prescribed shows the importance of discretion to enforcement (elaborated below). But the seriousness of concern over witnessing does reveal how important witnessing was to the functioning of the legal system, especially enforcement.

Witnessing was important to both oral and written practice. For example, the law accorded special concern to the issue of false witnessing of contracts, particularly marriage contracts.\(^\text{49}\) Knowing that by of the end of the fifteenth century, two notaries and two witnesses who knew the contractees had to sign off on a contract in order for it to be legitimate and knowing that for most contracts in my sample the same handful of witnesses signed most of the contracts, reveals at once the importance of witnesses for the integrity (and performance) of contracts and also the significant gap between the letter of the law and practice. Although there were occasionally variations in the witnesses listed, the same dozen names or so overwhelm these exceptions, and this trend seems to indicate that many of the contracting parties did not know each other and that their social relations outside of the contract were fairly impersonal. People were entering into agreements across social distances, and the


extra defensive security provided by the notarial contract (however real or false that actually was) facilitated these relations.

In the case of the Daudins versus Bouquet, the missing documentation of the ruling was amplified by the missing (dead?) judge and the lack of witnesses to corroborate that it had been given (probably because it hadn’t, knowing the patterns of cases that simply dropped from the courts). Witnessing—“hearing and swearing”—was a key responsibility which Ysabel passed to her husband Guillaume Allart in her procuration contract. Witnesses were also key to clameur proceedings—hearing the cry, dropping everything to intervene (as necessary), and corroborating what happened to determine who was in the right and who the wrong and to whom the fine would be assessed. Witnesses also saw the lingères seize Jeanne Gosselin’s illegal cloth and heard the insults that she fired back at them. Witnesses, however, were only as good as their credibility, and discrediting witnesses was a time-honored defensive strategy.

Reputation was important to enforcement practices. It could lend credibility to or discredit witness testimony. The “legal credit” understood in reputation may be included under the larger umbrella of the economy of justice. At stake, for instance, in the litigation surrounding the gardes’ seizure of illegal cloth, was not only the

50 ADSM, 2 E1 228, January 27, 1500.
51 ADSM, 5EP 507b, June 14, 1540.
enforcement of statutes which protected the prerogatives of the lingères guild, but also the defense of their reputation for exercising appropriate discretion in those enforcement practices to ward off increasing challenges to enforcement. Reputation was closely linked to discretion.

One of the more important aspects of enforcement and sentencing was discretion. We have already seen in the previous chapters instances of discretion in enforcement activities. For instance, we have clues from the notarial contracts that debts, particularly rentes, may not have been collected rigorously. This is evident not only in disputes over “delinquent” sums but also in the terms of the initial contracts, especially but not exclusively, those with fixed terms. The contract’s indication that the principle plus any arrears will be due was both a defensive measure to allow for collection of any delinquent sums but also left room for interpretation. It gave the parties the implicit opportunity to come to an informal agreement about “running a tab” to tack on the regular payments to the end. The creditor would still collect the same amount of money, eventually, but the option to defer payment(s) to the end would give the debtor more flexibility, especially if payments were contingent on harvests or trade imports. Theoretically the creditor could chose to enforce the terms of the contract rigorously, but allowing room for discretion would open up operations of credit under a fairly strict system which banned usury (see chapter two). 53

Such discretion would likely depend on the relationship, the trust cultivated, between creditor and borrower—imagine additional personal, professional, kinship, proximal residential, etc. ties—vouchers for the borrower from others with these ties

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53 For more on informal and evolving agreements and the relationship to credit, see Kessler, A Revolution in Commerce.
to the creditor, collateral offered, the projected return on the investment, and if all of that failed, then the “credit” of the borrower as relayed by the notary. The presumed existence of these agreements “between the lines” of a contract are supported by the persistence of oral contracts (notably marriage contracts) and by the endurance of orality transcribed within the contract itself, all of which is suggestive of a significant oral legal culture co-existing alongside an emergent one which privileges documentation. The physical contract and the implicit agreement would satisfy both elements of the legal culture.

That said, however, we have seen indicators that the implicit agreement ran foul or that such discretion was not easily transferrable in cases where a contract or debt was sold or inherited (especially if the inheritance transferred to more distant kin relations). In such cases, some form of enforcement was enacted. Indicators that an implicit agreement existed and ran foul may be gleaned from cases of pre-dispute renegotiations of debt or from cases where disputes were settled out of court before any appearance in court. Such cases would indicate that there may have been a bump in the borrower’s credit or that the continued value of the relationship between both parties merited a soft-line approach to enforcement. This soft-line approach would suggest some degree of gentle, but no less persistent, corrective measures to set the agreement back on track. In such cases both parties to the original contract were usually still alive and holding the contract. The renegotiation of a marriage gift contracted between Jean Asse and Simon Delamare examined in chapter two is an example of this discretion in enforcement of an oral contract.54 The contracts

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54 ADSM, 2E 229, November 9, 1500.
between Pierre Fleury and Richard Cauvyn and Jean Conseil and Robert Hervieu in stacking or eliminating debt, also from chapter two, are also examples of this potential.\textsuperscript{55}

The kin relationship between Asse and Delamare and the assumed meaningful, perhaps kin, relations between the latter parties mentioned suggest that when the relationship mattered to both parties, discretion could strongly influence the contours of legal actions taken. Of course, there is not an exclusive correlation between challenges to discretion and dispute procedure. However, we must remember that notarial contracts and settlements were no less public than court appearances, but they may have been less scandalous and less damaging to a person’s credit, since a person’s willingness to negotiate was likely linked to his or her credit. A willingness to negotiate could save some legal fees or litigation costs and spare some scandal in relation to dispute practices. On the other hand, having a reputation for being litigious (like Bouquet tried to suggest of the Daudins) or for having a stubborn or combative temperament could damage a person’s credit.\textsuperscript{56}

Such considerations may have provided some of the motivation for settlements such as the one reached between Jean and Pregent Leprevost, which noted at the outset of the dispute between them that Pregent had been “combative.”\textsuperscript{57} However, as noted above, we must be equally careful about assuming that an appearance in court—a lawsuit—was scandalous. The high rate of litigation in

\textsuperscript{55} ADSM, 2E1 229, October 2, 1500 and ADSM., 2E1 229, October 27, 1500.
\textsuperscript{57} ADSM, 2E1 228, January 31, 1500.
the sixteenth century suggests that it was, in fact, fairly banal to go to court and that litigation did not actually damage a person’s reputation or credit-worthiness. Such patterns are also observed in later periods, and in such cases, a lawsuit does not exclude a future contract or loan between the disputing parties; such future credit relations post-lawsuit were also fairly banal.58

Cases where a contract or debt was transferred by sale or inheritance indicate that discretion (and by extension, credit) was not so easily transferrable. The many disputes over long-standing debts and delinquent payments attest to this limitation on transmitting discretion, whether they were resolved in court or out. And yet, there was some overlap between the soft-line and hard-line approaches to enforcement. Contracts that result from a dispute settled before action in court, such as the one between Nandin Cabot and Jacques Devreux (examined in chapter three) are good examples of this point.59

Despite these caveats, some trends do emerge. Cases of dispute over debt which went to court and were resolved with court rulings or contracts of settlement after court appearances had a fairly high rate of generation transfer—either intergenerational conflicts, conflicts initiated between ancestors which were then settled by heirs, or conflicts between heirs that flared up quickly and were then settled. All that being said, there need not have been any transfer or evidence of an implicit agreement for a hard-line approach to enforcement to be enacted.

Of course, discretion in the enforcement of contracts and laws is imbued in many of the other practices examined in prior chapters. People exercised discretion

59 ADSM, 2E 1 228, January 4, 1500.
in enforcing their agreements and in taking the initiative to seize another party’s goods or to cry out a clameur. Examples of such actions elaborated in previous chapters indicate that enforcement did not necessarily require the coercive powers of state officials. We have likewise seen, in complaints and requests for enforcement, that the coercive power of state officials was sometimes not sufficient either.

And in some cases, discretion was called into question. Disputed discretion is most starkly seen in the cases involving the gardes of the lingères guild before the vicomté of Rouen, where they were called into court to answer for their enforcement of guild statutes. Opposition to Jean Leribert’s seizure of Jean Regnault’s goods to collect on a debt (outlined in chapter three) and a similar instance in the Daudin-Bouquet case (above) are also examples of questioning discretion as are complaints to the Échiquier, such as that of Michel de Batenceurt or Pierre Lepetit, regarding a lower court official’s mishandling of a case and reluctance to register a default where one party thought that one was merited.60 The question of judicial discretion is an important one and is related to theories of justice and of the structure of the judicial system as well as the education and professionalism of judges.61

60 ADSM, 52BP 11; and 1B 331, January 12, 1510 and January 26, 1510.
Cost

An important question underlying many of the actions and procedures under examination in this dissertation is that of cost. Indeed, the question of cost is one of the bigger questions still bedeviling investigations into the legal system in the early modern period in France on a broad scale. The cost of Old Regime justice is very much bound up with the dark reputation that Old Regime justice had for being a confusion of jurisdictions filled with ignorant, complacent, or greedy officials, who presided over a system that was inefficient, intolerably lengthy, and out of reach for most people. Moreover, the cost is presumed to be especially egregious for civil litigation, but could really apply to any procedure initiated by a private party (as opposed to an inquisitorial procedure—in relation to a major crime—for which the official in charge of that particular jurisdiction bore responsibility for the costs of trial).

Part of this assumption derives from the “collective wisdom” and rhetoric of early modern, predominantly seventeenth and eighteenth century sources. For instance, “everyone knows” that a “bad settlement is better than a good trial” and that Racine’s “plaideurs” racked up astronomical fees pursuing outrageously long, farcically petty suits.62 The economy of justice has been cast in a very negative light. This raises the question of whether early modern men and women were skilled practitioners of parallel kinds of justice because that made sense in their legal culture or whether

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62 The first saying is quoted in Nicole Castan, *Justice et répression en Languedoc à l’époque des Lumières* (Paris, France: Flammarion, 1980); 15. Racine’s *Plaideurs* is a very well-known comedic play from the seventeenth century in which the central drama focuses on absurd lawsuits. The play is often quoted and used to frame discussion of cost, length of time for suits, and the larger processes of litigation more generally. It is used almost as much as Loyseau’s works to set up old regime justice.
they resorted to them because of the limitations of the courts. Although both answers are likely appropriate to a certain degree, I would favor the former interpretation because of the vast amount of initiative and agency demonstrated by the litigants observed in the records and because the courts could be effective, even if in many cases they were not asked to be so.

Of course, the hard reality is that litigation, civil or criminal, could be ruinously expensive. The evidence for this fact is hard to ignore. A couple of account books examined by Philip Benedict break down charges associated with a couple of suits in the late sixteenth century amounting to 47 livres (“about five months’ wages for a master mason”) for a case lasting less than a year and 311 livres for a case lasting five years. Similar accountings have been found in many different regions for the seventeenth and eighteenth centuries as well. Smail has argued, moreover, that the allure of financially ruining one’s opponent was a strong motivating force for litigation. Such evidence has led to the sweeping conclusion that “la justice coûte cher” (“justice is expensive”) at best and at worst, “predatory”. There is truth to the collective wisdom.

And yet, as damning as this evidence seems, it provokes additional questions that are not easily answered. The biggest of these questions is, if costs were “known” to be so prohibitive, why is there overwhelming evidence that people frequently chose to take up lawsuits? It is equally “well-known” that the early modern period was

64 Smail, Consumption of Justice.
highly litigious with an unusually high rate of litigation (admittedly by modern standards)—peaking in the sixteenth century but going strong into the seventeenth century before dropping off sharply, for reasons unknown, in the eighteenth century—not only in France but in England and elsewhere. Some of the discrepancy may result from the way the numbers are presented—for example, not breaking down the number of cases initiated in court but settled outside (incurring fewer costs) and the number of cases that progressed all the way to the end (incurring more costs)—thereby inflating numbers. There were also surely some people who went to court repeatedly, even frequently. Some historians, like Rafe Blaufarb, have argued that going to court (with the threat of expenses associated with court proceedings) was a means of forcing a reluctant opponent to get serious about working out a settlement, which was the preferred outcome to a dispute. Acknowledging these possibilities and not excluding potential others, the number of people and the number of suits nevertheless remains very difficult to reconcile with the figures on cost.

Another plausible explanation that is gaining ground among historians is that although litigation could be expensive, it was typically not so or that at the very least, people found ways to cut costs and since the cost was not fixed, it could vary considerably from jurisdiction to jurisdiction (of which we already know there were

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67 Blaufarb, “Conflict and Compromise.”
Among proponents of this idea are Jeremy Hayhoe, Hervé Piant, Michael Breen.\textsuperscript{68} These scholars have notably drawn attention procedural differences and the significant impact such difference could have on the final tally. For instance, oral procedures were relatively cheap, but as soon as a suit strayed into a written procedure, the charges could increase rapidly.\textsuperscript{69} Such observations about practice force us to view the casual paragraph on the account books shared by Benedict, out of context of the legal proceedings, with more suspicion. This difference in procedures also underscores the importance of trends toward privileging written documentation and the impact that that may have had on litigation practices. These findings are part of larger projects which seek to challenge assumptions about the working of the early modern French legal system and which chip away at the dark, even predatory, reputation of Old Regime justice.

For my study, my sources are disappointingly silent on costs of proceedings. It has not been clear how much a notarial contract cost nor how much any of the multitude of other proceedings cost, let alone the totals for different cases. Some of this may be found in other studies, such as Philippe Cailleux’s detailed breakdown of the costs associated with different types of notarial contracts.\textsuperscript{70} And yet, it is difficult to test how such prescriptions matched practices. And since we do know that costs


\textsuperscript{69} Plant, “Des procès innombrables.”

were tallied procedure by procedure, person by person, with each individual being compensated for his work or his right in the matter, and that procedure could vary widely depending on who the parties decided to involve at what point, it has been impossible to derive averages to make more generalized conclusions.

Looking back at the account books (one from one guild’s records and one from a parish's records) to which Benedict draws attention, which are the closest of all of the evidence outlined thus far to the context in time and place of my study, it is hard not to take note of the exceptional nature of this evidence. The fact that much of the evidence for the cost of litigation is sparse, even accidental, makes it suggestive but not yet conclusive—much more data need to be gathered. The facts cannot be ignored, but sometimes, when taken out of context, they can be made into more than they are. Also of note is the apparent correspondence between length of proceedings and cost—the longer proceedings lasted, the most expensive the final tally. However, although judges had a role in requiring certain procedures and in setting the pace—as evidenced by the number of postponements and certain complaints—the reasons for which were, it has been argued, partly due to a desire to give litigants ample opportunity to settle on their own, the litigants themselves also had a significant measure of discretion in choosing the course of their dispute and for speeding things up or slowing them down.71

I have found cryptic references in the notarial records especially to costs and the desire to avoid them. For example, the settlement contract between Robert Ygou and Nicolas Fere’s heirs stipulates that Ygou was to receive 4 *livres tournois* to compensate him for legal expenses incurred “in pursuit of the trial.” As a more common example, the arbitration contract between the Lamberts and the Denormares stipulates that both parties will be responsible for an equal share of the fine, costs, and expenses associated with their suits, but it does not indicate how much that was. Most references, in fact, note the desire to avoid the projected length of litigation and make no reference to cost—an example of such a reference is found in the Delamare settlement which opened this dissertation. However suggestive these references are, their explanatory power is fairly hollow, along the lines of a canned response or the “collective wisdom” outlined above. The bottom line is there is very little hard, regular evidence of cost, negligible or exorbitant, in my sources.

The clearest evidence of cost comes from the *lingères* cases discussed in chapter three. And what is most striking about the cost is how much it varied. The cases were, in nature, very similar—controversy over a seizure of allegedly illicit goods by the *gardes* met with the occasional insult. And yet the total costs (fine plus legal expenses) for all three cases examined varied considerably. The explanation for these differences rests, I think, in the underlying social considerations of each case. The difference between Thyron, married man and cloth merchant, who cast insults at

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72 ADSM, 2E1 228, January 31, 1500.
73 ADSM, 2E1 229, October 23, 1500.
74 ADSM, 2E1 228, January 2, 1500.
the *gardes* and was fined 40 *sous* plus legal expenses at 100 *sous*, and Jeanne Gosselin, of unknown marital status but probably not married, who cast the same insults at the *gardes* and was fined five *sous* plus legal expenses mitigated to 12 *sous* suggest that socio-economic status was factored into the final sentence.

More interesting still is the apparent inverse relation between status and sentence in these cases. Although the status divide between Gosselin and Thyron was not as extreme as it could have been—between, say, a nobleman and a laborer—nevertheless, it seems that Gosselin is receiving *more* consideration than Thyron because of her *lower* socio-economic status.75 For similar reasons—his “*parvurete*”—Delyvet is fined five *sous* six *deniers* and has the cloth returned to him.76 This inverse discretion may account in part for the complaints about the “dark” Old Regime justice, lodged principally by those with higher socio-economic status. Costs could be higher and could also be mitigated, depending on a more holistic review of the case and the parties involved. What we must remember is that judges were supposed to exercise discretion and that many fines were supposed to be “*arbitrary*” (left ultimately up to the decision of the judge) to be proportionate to the circumstances. We arrive from all of this at a definition of justice as “*arbitrary*” (rather than blindly equal) within this legal culture.

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75 ADSM, 5EP 507b, June 14, 1540, and November 18, 1550.
76 ADSM, 5EP 507b, April 28, 1553.
Conclusion

In this chapter, I have tried to show many of the enforcement practices and challenges to enforcement that come through the notarial records and the court records sampled for this dissertation. Through analysis of court rulings, sentences prescribed, and enforcement practices, I have shown how cyclical practices could be. I have also shown how enforcement practices from below supported those from above which diminished the role of the court and its coercive presence. Equally important were the ways in which witnessing, reputation, and discretion intersected with enforcement practices. Finally, I elaborated on the question of cost which has run through this dissertation and culminates, in theory, with enforcement. As with so many other practices and options for people in pursuing their disputes examined in this dissertation, enforcement practices must take their place along the spectrum of negotiation, conflict, and resolution.

What these observations add up to is a broader communal support network of enforcement practices which spills beyond the courts and their rulings. The matrix of social relations, manifested through witnessing practices, considerations of reputation and discretion, provided coherency to the challenges to enforcement observed. As with the discussion of the length of cases in chapter four, my examination of cost also casts doubt on the relevance of fixating on the cost of Old Regime justice, given the variety of options and the amount of discretion litigants and judges (and even the lower level professionals who have been a subject of interest in this dissertation) had in shaping the course of cases and the tally of services, resources, and expenses.
Conclusion

“A bad settlement is better than a good trial”, so the saying used to go. Many scholars, like Nicole Castan and others following in her footsteps, have taken this popular sentiment, along with its associated complaints of “immortal” lawsuits, exorbitant costs, and scheming lawyers, and plentiful evidence of settlements as a clear sign of the failures of Old Regime justice.¹ Although primarily expressed in reference to the criminal side of the legal system (in the eighteenth century), this view nevertheless places a premium on decisive court rulings. In so doing, it undermines the legitimacy of alternatives to such rulings in the resolution of conflicts and derives, in part, from a larger narrative glorifying a triumphant state-building project.² At almost the polar opposite, Hervé Piant argues (for the eighteenth century in Vaucouleurs) that such agreements and settlements out of court—“infrajustice”—represented the preferred and most just course of action for most people. He further claims that, although not formal, these methods of resolving conflicts were perceived as legitimate and far surpassed the formal court system in numbers.³ Although I agree, in certain respects, and have shown that the courts played a more limited role in civil dispute practice and resolution than that to which they are often given credit, I

² For elaboration on this idea, see Brian Z. Tamanaha, “Understanding Legal Pluralism: Past to Present, Local to Global” Sydney Law Review 30:375 (2008): 375-411.
have also shown that activities in and out of court are best understood as part of a larger spectrum of negotiation, conflict and resolution. I have argued, above all else, that the perspective of legal practices needs to be broadened in order to more completely understand how the system worked and how people worked the system.\(^4\)

In pursuit of this end, I chose a narrow geographical and temporal scope. Rouen, as a center of commerce, religious activity, administration, and legal activity surrounded by thriving agriculture and textile industry, offers a variety of options for inquiry into people’s socioeconomic-legal practices with a plentiful, yet manageable, set of records. The late fifteenth and early sixteenth century was a period of important projects and reforms for the legal system, among those the codification of customary laws, and yet there are very few studies of civil disputes in this period. The limited number of works upon which to build also necessitated a narrow scope.

Narrowing the focus still further, I chose to focus on civil cases rather than criminal ones. This, in part, helps to balance a distortion in the historiography which has privileged the criminal side of the legal system. Although the literature on civil law in France, and specifically disputes and litigation, is growing with contributions from Daniel Smail and Julie Hardwick, more often civil matters are overshadowed as in Zoe Schneider’s study of lower court officials and governance which weaves in civil jurisdictions but to a limited extent or in Jeremy Hayhoe’s study of seigneurial justice which dedicates a single chapter to conflict and compromise that closely examines

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\(^4\) The concept of “working the law” has been suggested by Julie Hardwick. See “Women ‘Working’ the Law: Gender, Authority, and Legal Process in Early Modern France” *Journal of Women’s History* 9:3 (Autumn, 1997): 28-49. Broad views of legal practice and legal systems have been especially fruitful in legal pluralism literature. For starters and good reviews of the literature, see Tamanaha, “Understanding Legal Pluralism”; and Griet Vermeesch, Manon van der Heijden, and Jaco Zuijderduijn, eds., *The Uses of Justice in Global Perspective, 1600-1900* (New York, NY, USA: Routledge, 2019).
litigation and arbitration. More common still are those studies that take a socio-legal approach but focus primarily on criminal records while hinting that civil litigation was important. Jonathan Dewald’s case study of Pont-St-Pierre in Normandy is a classic example of this approach. Amidst a lengthy discussion of violent conflict, he acknowledges, without providing more detail, that “more often” than acts of violence and assault “the villagers used litigation—with surprising tenacity and with some degree of success” against elite members of the community to assert their rights of property and usage. The fact that people were more likely to be drawn into civil cases than criminal ones makes the examination of civil cases that much more important.

For my analysis of civil disputes, I chose to juxtapose seigneurial court records, royal court records, guild records and notarial records. I also chose to examine a group of legal commentaries to highlight the differences between theory and practice. Although many studies of French legal history and social history make use of these records and sources, it is quite rare to find studies of legal practice

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7 Jonathan Dewald, Pont-St-Pierre, 1398-1789: Lordship, Community, and Capitalism in Early Modern France (Berkeley, CA, USA: University of California Press, 1987): 148. It should also be pointed out that the data in this chapter (“community and conflict”) derives primarily from a sample of records from the late seventeenth and eighteenth centuries.

8 Hayhoe’s data from eighteenth-century Burgundy provides a clear example. Hayhoe, Enlightened Feudalism.
which examine notarial records in depth. In an effort to counter-balance these limitations, I have shown the promise and necessity of in-depth inquiry into notarial records for understanding and analyzing legal practices. Much more work in this area remains to be done for the sixteenth century as for other periods.

An additional way this study has attempted to contribute to methodological and historiographical approaches to the early modern legal system has been by expanding the limited yet growing literature on lower level officials like notaries, sergents, and procureurs and to illuminate their roles in the actions taken by people in pursuit of their interests. I have highlighted the multiplicity and flexibility of their roles. I have also called attention to the variability of those who take on these roles, especially the procureurs, who could be titled office-holders, private legal consultants, or those exercising a form of power of attorney. Teasing out the nuances of their activities is another important direction for future research.

With all of this in mind, the main purpose of this dissertation was to show the wide variety of options people had in pursuing and resolving their civil disputes and the wide variety of activities they undertook toward this end. My analysis of these options has revealed important patterns of conception and practice. Similar to the villagers of Pont-St-Pierre, the people of Rouen and the surrounding area “proved capable of defending their interests in the complex ways the early modern state

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demanded.”\textsuperscript{11} That the early modern legal system was complex has been well-established. As Frederic Baumgartner argued, “The French of the sixteenth century were a people who respected law and loved litigation despite enormous complexity and confusion in the legal system. The only certainty about French law of that era is that any statement about it has many exceptions….The result was a system of law that resulted in enormous confusion, protracted litigation, and frequent miscarriages of justice.”\textsuperscript{12} Differences in regional laws and practices were considerable. What held true for eighteenth-century Burgundy did not necessarily hold true for eighteenth-century Bordeaux or Normandy.\textsuperscript{13} These differences were even more pronounced for the sixteenth century. However, these complexities did not seem to deter people, who created opportunities out of the confusion. Although Baumgartner’s assessment that people in this period respected law and loved litigation and that generalizations are fraught with oversimplifications is valid, to argue that that necessarily resulted in confusion and protracted litigation, let alone “miscarriages of justice,” is to accept reforming rhetoric (and complaints by elite voices in the course of their professionalization campaigns—a process of exclusion, for better or worse), too easily. What I have tried to emphasize through my analysis is that there was great complexity to people’s legal practices, but the complexity of the system did not seem to deter people or disrupt justice because people defined justice differently from modern-day historians. People were not simply making the best of a bad system;

\textsuperscript{11} Dewald, \textit{Pont-St-Pierre}, 128.
\textsuperscript{12} Frederic J. Baumgartner, \textit{France in the Sixteenth Century} (New York: St. Martin’s Press, 1995), 84. See also Hayhoe, \textit{Enlightened Feudalism}.
\textsuperscript{13} Hayhoe, \textit{Enlightened Feudalism}; Crubaugh, \textit{Balancing the Scales of Justice}; Dewald, \textit{Pont-St-Pierre}; Schneider, \textit{The King’s Bench}. 
they were co-creating and shaping it through their practices. The complexity and open-endedness of the system suited the complexity and variability of their needs and interests, and my study has shown the high level of strategic thinking and agency with which they directed their legal maneuvering. I have shown their various activities in and out of court along a spectrum of negotiation, conflict, and resolution and have shown some of the challenges faced—from defensive contracts to failed contracts, from obstructions and manipulations of the pace of court actions (by both litigants and officials) to demands for enforcement. I have also shown the coexistence of written and oral practices within the legal culture.

From all of this, we must remember that even though people may have had access to various courts and legal authorities, not all (perhaps not even most) chose to take advantage of this access. My research suggests that the courts’ roles in resolving disputes was relatively small in relation to the courts’ representation in scholarship. By privileging courts and court records, we risk capturing a small piece of practice, over-emphasizing the importance of the courts and legal authorities and even of misunderstanding the courts, how they functioned, and their role in society more broadly. Moreover, this activity outside of court does not have to imply that the court is less authoritative or powerful, but it does suggest that the role of the court in resolving civil disputes is limited. Appearing (or not) before a court is only one, not necessarily definitive, option in pursuing a dispute. Both Daniel Smail and Julie Hardwick have emphasized the importance of having options in litigation and how the decision to go to court led to the growth of the legal system and of the state.14 But the

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14 Smail, *Consumption of Justice*; Hardwick, *Family Business*. 
cases I have studied raise the question of the extent to which utilizing this option lends authority, power, and legitimacy to the court when it is frequently not involved in the resolution. This is not to say that the relationship is not there, but rather, that the relationship is not so easily determined.\textsuperscript{15} Also difficult to reconcile with this argument about the growth of the state are the numerous studies which argue that people used the threat or first step of going to court as a coercive tactic to force an opponent to “get serious” about coming to an agreement.\textsuperscript{16} On the one hand this tactic worked because of the coercive potential of the courts (and the state), but on the other hand, the court was another game token that was rarely asked and sometimes refused to exercise that potential. And this was largely determined by the disputants themselves.

From all of the activities and maneuverings examined in this dissertation we learn several keys things about the legal culture of early sixteenth-century Normandy. The first is that it was highly procedure-oriented. The numerous delays and postponements permitted to get the procedure right confirm this aspect of the law. The second is that witnessing and orality persisted even as documentation was playing an increasingly privileged role in the unfolding of cases. This new emphasis on documentation challenged and put stress on practices and procedures in place, and we see a transitional process of reconciling new (more widely accessible and utilized) technology to persisting values. This process, and the accompanying “blues


of document management,” surely accounts for the length of certain proceedings. In this sense we can contrast the case of the Mauclercs in resolving their inheritance troubles, hinging on misplaced, even competing, documentation with the cases against Abraham Leduc, which were mostly oral proceedings and wrapped up efficiently in one morning.

Building on this idea of reconciling new practices to old, we also learn a great deal about the role that this documentation is playing in the legal system and society more broadly, not simply in relation to disputes. We especially learn a lot about the purpose of contracts for these people. Having a notary draw up a written contract was an important means of recalling, enforcing, and reinforcing an (oral) agreement, and more significantly, the contracts facilitated in making (or repairing damage to) social relations, particularly across larger socio-economic divides. On the one hand, they enabled unequal creditor-debtor relationships by reinforcing potentially predatory contracts, but on the other, they also linked people together in a larger web, requiring serious consideration of doing damage control, socially and economically. All the more important was writing a good contract, especially if the parties were more distant, geographically or socially. If we understand notarial contracts as a tool of memory—commemorating or recalling the agreement (oral contract)—then it is easier to read them as being defensive in purpose, which enabled more impersonal social relations; it also helps explain the growth of the notarial profession during the golden age of litigation.17

17 For more on the commemorative function of written records, see Michael T. Clanchy, From Memory to Written Record, England 1066-1307, Second edition (Cambridge, MA, USA: Blackwell, 1993); and Carol Symes, “Out in the Open, in Arras: Sightlines, Soundscapes, and the Shaping of a Medieval Public Sphere,” in Cities, Texts and Social Networks, 400-1500: Experiences and Perceptions of
As documentation enabled more distant social relations, we also see in the myriad of legal practices—“confusion”—a larger process of working out of to what degree these relationships mattered to people. The increasing use of more formal contracts (along the oral-written-notarial continuum discussed in chapter two), with increasingly defensive elements, therefore, helps to explain higher litigation rates because these contracts were useful as leverage in a dispute and because they enabled tenuous, less personal social relations, which had a greater potential for rupture. They gave parties a false sense of security and decreased the impetus for social responsibility. However, parties also faced challenges in managing and leveraging these new tools at their disposal, requiring increasing assistance from other professionals, such as procureurs and contributing to the growth of these professions. The transition to privileging documentation, and the challenges of effectively using it in a still highly oral legal culture, and increasing litigation may be seen as cyclical and feeding into each other. There was an apparent correlation between the use of documents and the increased length of litigation; moreover, better defense (notarial contracts) lead to more offense, meaning that the solution to

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challenges of enforcing contracts exacerbated this problem during this period of transition, until people established good document practices and became more fluent with them.

This cyclical trend also influences our understanding of the nature of settlements because they represent, to a degree, an acknowledgement that the relationship between the disputing parties mattered enough, socially or economically with the webs of credit (defined both socially and economically in its own right) built through these contracts, to add more nuance to the resolution of the dispute than a court ruling, which tended to follow the strict letter of the law more closely, may have allowed. Instigating a legal dispute could be a means of enforcing a contract (or more broadly of claiming a legal right), but less important than having a court ruling was inspiring one or both parties to come to terms, and at whatever point in the process that happened (if it happened), a new agreement (re-negotiated contract or settlement) followed. What we are observing in the various actions observed in this dissertation, and the larger trends that emerge, are responses to unexpected consequences of change in this period of transition for the legal culture as people shaped and reshaped it.

It is worth pausing, for a moment, to ask whether a case progressing all the way to a court ruling (or even simply stepping into court) implies that the relationship between the disputing parties did not matter. The answer is: not necessarily—a court ruling did not preclude future relations (it was not, in itself, an act of rupture), but it does imply that there was something else driving the dispute which led to a situation of irreconcilable differences. More significantly, this means that it is less pertinent to
ask why people “settled” for “less” than a court ruling than to ask why people went to court and maybe even settled for a court ruling; that is, why people settled for a more rigid solution closer to the letter of the law than a customized solution, more tailored and improvised to their unique circumstances. This, in turn, helps us understand the legal system more holistically and the role of the courts within that system, playing an integral, but not central, part.

Finally, related to social relations, we learn key aspects of the conception of justice for this legal culture. Discretion was much more important than equality in how people defined justice—in other words, justice was “arbitrary” (it was measured to fit the circumstances of the case). The above-mentioned social relations, including webs of credit, and co-opting social consensus among the informal policing agents were necessary for the effective operation of “justice” and its associated enforcement practices. Moreover, it is clear that the monarchy was passing laws to regulate the speed of proceedings, but it is unclear how rigorously these were enforced (their repetition suggests enforcement was ineffective or lacking). It is also unclear who was instigating these changes and who might benefit. Judges, backed more or less by royal authority, seemed content to encourage disputants to work things out on their own, and disputants were not necessarily in a hurry to reach a formal resolution either.

Thus, “efficiency” and “speedy” as defined in a modern understanding of justice did not seem to be a primary concern or conception of justice in early sixteenth-century Normandy. Resolution for the legal culture of Normandy in this period, especially with regard to civil procedures, had a different meaning. That is, a
court ruling and resolution were not equivalent, and “justice” more broadly did not imply a court ruling. In conclusion, I would argue that it is important to focus on why the system made sense not why it didn’t, to focus on different practices and their purposes rather than on the apparent—presumed—confusion.
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