

The Customary Atlas of Ancien Régime France

Online Appendix

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A. Appendix Figures



Figure A.1. Customary Boundaries based on Klimrath (1843)

Notes. This figure reproduces Klimrath's (1843) original map of customary boundaries. It is available from Fourniel and Vendrand-Voyer (2017).

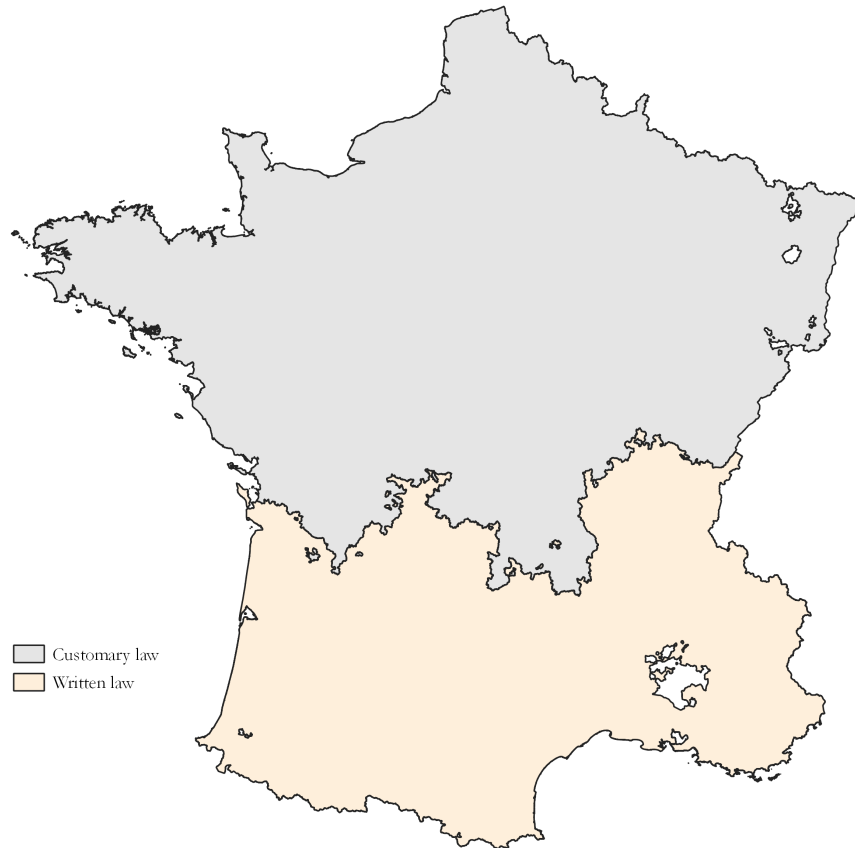


Figure A.2. Written-Law and Customary-Law Country per Klimrath (1843)

Notes. This figure displays Klimrath's (1843) division of France into written-law (brown) and customary-law country (gray). The shapefile of the boundaries of France in 1789 is from Gay, Gobbi and Goñi (2023a).

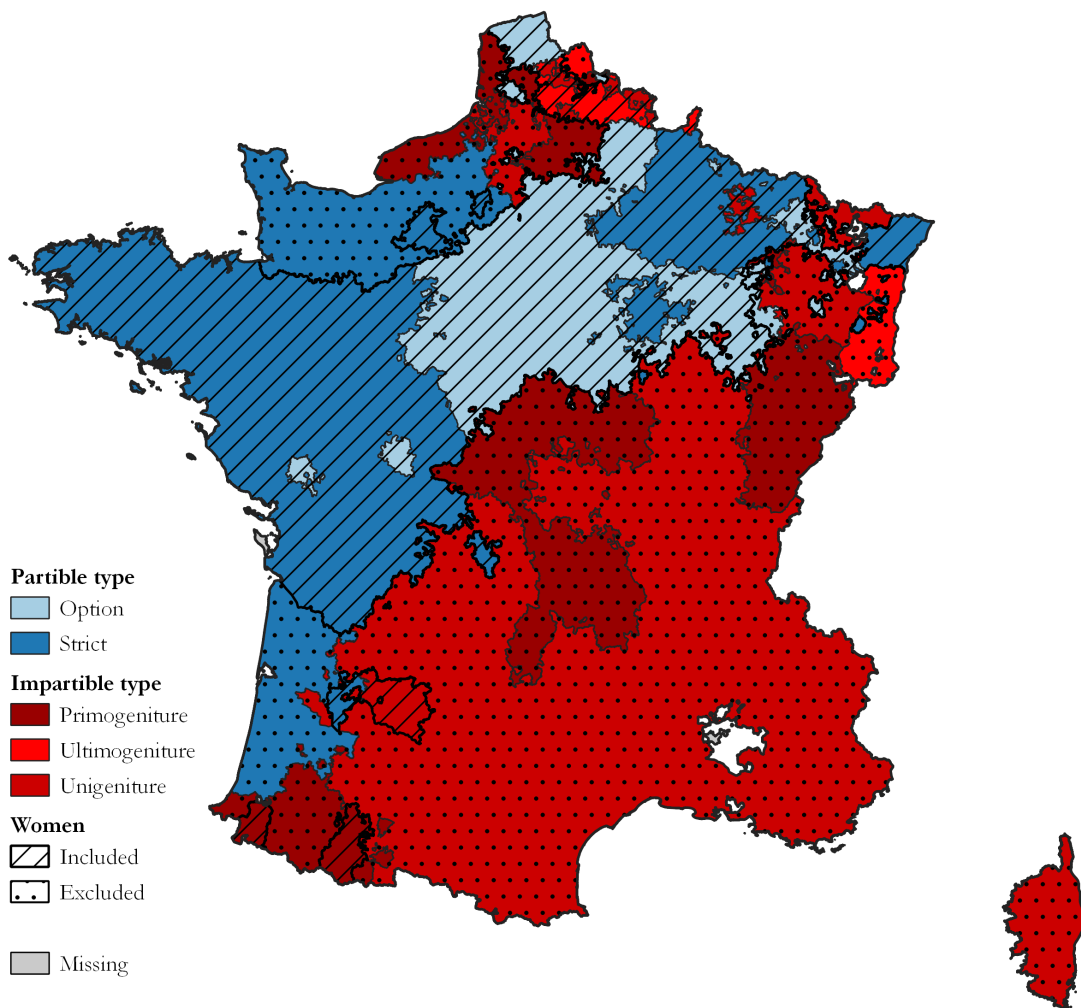


Figure A.3. Variation in Inheritance Customs in Ancien Régime France

Notes. This figure displays the spatial distribution of inheritance customs in Ancien Régime France. Partible inheritance customs (blue) could be either strict or with option. Under strict partible inheritance, heirs had to share equally the inheritance, including all *intra-vivos* transfers. Under partible with option, heirs could opt-out of the succession and instead keep all *intra-vivos* transfers they had received from the deceased. Impartible inheritance customs (red) could either favor the first born (primogeniture), the last born (ultimogeniture), or anyone of the offspring (unigeniture). Women could either be included (lines) or excluded from inheritance (dots). Shapefile based on Gay, Gobbi and Goñi (2023b).

B. Appendix Tables

Table B.1. Customary Laws in Occidental Europe

Region	Custom	Publication date
Venice	<i>Slendor consuetudinum civitatis Venetorum</i>	c. 1200s
Pisa	<i>Constitutum usus</i>	1230
Milan	<i>Liber consuetudinum</i>	1216
Naples	<i>Consuetudines Neapolitanae</i>	1306
Aragon	<i>Codigo de Huesca</i>	1247
Catalonia	<i>Consuetudines Ilerdenses of Lerida</i>	1228
England	<i>Tractatus de legibus et consuetudinibus regni Angliae</i>	1187–9
Scotland	<i>Leges quator burgorum</i>	Late 1200s
Denmark	<i>Jydske Lov</i>	1241
Sweden, Norway	<i>Landslag</i>	c. 1347
Poland	<i>Najstarszy Zwód Prawa Polskiego</i>	1300s
Bohemia	<i>Kniha rozmberska</i>	early 1300s
Bavaria	<i>Landrechtreformation</i>	1518
Saxony	<i>Sachsenspiegel</i>	1220–35

Table B.2. Additional Sources for Ancien Régime Customs

Custom	Source
Bazas	<i>Coutumes de Bazas</i> in <i>Recueil de coutumes, en langue provençale et en latin</i> . Manuscrit français 5361. Paris: Bibliothèque Nationale de France, 1481.
Bidache	<i>Coutume de Bidache</i> , Archives départementales des Pyrénées Atlantiques, Série 1 J, 60–1.
Blamont	<i>Coutumes du Comté de Blâmont</i> in <i>Coutumes générales du marquisat de Hatonchatel</i> . Nancy: Haener, 1788.
Bresse	<i>L’usage des pays de Bresse, Bugey, Valromey et Gex, leurs statuts, stils et édits</i> . Bourg-en-Bresse: Ravoux, 1729.
Colmar	<i>Ancien statutaire d’Alsace</i> . Colmar: Decker, 1825.
Corse	<i>Statuti civili et criminali dell’isola di Corsica</i> . Genova: Bellone, 1751.
Dauphiné	<i>Statuta Delphinalia novissime facta</i> . Grenoble: Balsarin, 1531.
Ferrette	<i>Coutumes De La Haute-Alsace Dites De Ferrette</i> . Colmar: Barth et Held-Baltzinger, 1870.
Forcalquier	<i>Délibérations de la ville, comté et viguerie de Forcalquier</i> . Aix: Mouret, 1788.
Marseille	<i>Les status municipaux et coutumes anciennes de la ville de Marseille</i> . Marseille: Garcin, 1656.
Navarre	<i>Les Fors et Costumas Deu Royaume de Navarre</i> . Pau: Desbaratz, 1681.
Orange	<i>Ordonnances, lois et statuts faits pour le règlement de la justice dans la principauté d’Orange</i> . Lyon, 1522.
Perpignan	<i>Libre de privilégie, usos, stils, ordinacions del Consolat de Mar de la fidelissima vila de Perpynià</i> . Perpignan: Barrau, 1651.
Petit-Pierre	<i>Ancien statutaire d’Alsace</i> . Colmar: Decker, 1825.
Provence	<i>Les statuts et coutumes de Provence</i> . Aix: David, 1658.
Quatre Vallées	Marsan (abbé), “Les coutumes de la vallée d’Aure,” <i>Bulletin de la Société Archéologique du Midi de la France</i> , 1898, 17, 48–56.
Saint-Amand	Meijers, E. M. and Salverda de Grave, J. J., <i>Des lois et coutumes de Saint-Amand</i> , 1934.
Strasbourg	<i>Urkundenbuch der Stadt Straßburg</i> . Strasbourg; Trübner, 1888.
Toul	<i>Usages locaux de la ville de Toul et du Pays Toulais</i> , 1747.
Toulouse	<i>Coutume de la ville, gardiage et viguerie de Toulouse</i> . Toulouse: Dupleix, 1770.
Vaudémont	Coudert, Jean, <i>La coutume de Vaudémont</i> . Nancy: Berger-Levrault, 1970.
Wissembourg	<i>Ancien statutaire d’Alsace</i> . Colmar: Decker, 1825.

Notes: These sources complement the list of customs included in Bourdot de Richebourg (1724). Titles are abbreviated for readability.

C. Details on the Process of Customs Codification

The royal campaign to record customs was launched by Charles VII's ordinance of Montils-lès-Tours dated of April 1454 (Isambert, Jourdan and Decrusy, 1825).¹ In particular, the key section of art. 125 of the ordinance is as follows (Kim, 2021, p. 66–7):

Thus the parties in judgment, both in our Court of Parlement and before other judges of our kingdom, both ours and others, propose and allege several usages, procedures, styles, and customs, which are various due to the diversity of the pays of our kingdom, and then they prove them, and in consequence lawsuits are often very long and the parties are subject to large fees and expenses; if customs, usages, and styles of the pays of our kingdom were written down, trials would be much shorter, and the parties would be spared the expenses and outlays, and also judges could adjudicate cases better and with greater certainty (because often it happens that the parties claim contrary customs in the same pays, and often customs mutate and vary to their liking, from where great damages and inconveniences occur to our subjects).

We, wishing to abbreviate lawsuits and disputes between our subjects, to relieve them from the outlays and expenses, to bring certainty to judgments as much as possible, and to remove all manners of variations and contradictions, order, decree, declare, and state that customs, usages, and styles of all the pays of our kingdom be drawn up and put into writing, accorded to by the coutumiers, practitioners, and people of each of the so-called pays of our kingdom, and that customs, usages, and styles so accorded to be laid down and written in books, which will then be brought to us, so as to be seen and visited by the members of our Grand Conseil or our Court of Parlement, and for us to decree and confirm them; and these usages,

¹There were several (failed) attempts to codify customs prior to that of Charles VII. A notorious attempt was that of Charlemagne, right after his coronation as Emperor, and the resulting *capitula legibus addita* (Gilissen, 1962, p. 60–1).

customs, and styles thus decreed and confirmed will be observed and maintained in the pays where they exist and also in our Court of Parlement which has jurisdiction over proceedings from those pays; and judges in our kingdom of our Court of Parlement as well as our bailis, sénéchaux, and other judges will judge in accordance with those usages, customs, and procedures, without allowing any proof other than what will be written in the said book; and we want those customs, styles, and usages thus written, granted, and confirmed, as has been said, to be maintained and observed in judgment and outside the courtroom. But we do not intend any change in the procedures at our Court of Parlement. And we prohibit and forbid all lawyers of our kingdom from alleging or proposing customs, usages, and styles other than those which will be written, accorded to, and decreed as it has been said; and we enjoin the said judges to punish and correct those who do the opposite, and not to hear or receive any person alleging, proposing, or saying otherwise.

In practice, however, few customs were written at first (Kim, 2021, p. 68). Moreover, while written and published, they were not officially promulgated: the customs Burgundy in 1459, Touraine in 1462, Anjou in 1463, Mehun-sur-Yèvre and Troyes in 1481. In 1494, Charles VIII renewed the order to push the campaign to record customs. He also modified the existing recording procedures, making them more participatory for all three estates—Louis XII further improved this procedure in 1505.

In particular, the process of codification of customs involved customary practitioners and representatives of the three orders—the clergy, the nobility, and the Third Estate (Grinberg, 2006; Grinberg, Geoffroy-Poisson and Laclau, 2012). Assembled at the seat of the judicial district on a specific day (*assemblée bailliagère*), these representatives had to approve the content of each article of the written custom by way of majority within each order and unanimity across all three. Should unanimity not be reached on a given article, the Parliament had the authority to accept or reject the article, and even to modify its content

(Chénon, 1929, p. 296).² The final text of the custom then had to be approved by two commissions: one composed of eight magistrates and presided by the President of the Parliament of Paris and another composed of advisers of the Parliament that superseded the judicial district. Once this process was completed, the custom was recorded with the court registry and made public through a letter patent by the King.

Several customs were written under this process: Bourbonnais in 1500; Perche in 1505; Bar, Melun, and Sens in 1506; Auxerre, Touraine, Péronne, and Amiens in 1507; Anjou, Maine, Chartres, and Dreux in 1508; Troyes, Orléans, Artois, Vitry-en-Perthois, Chaumont, and Meaux in 1509; Paris and Auvergne in 1510, Angoumois, Poitou, Dax, Bayonne, and La Rochelle in 1514 (Kim, 2021, p. 75). This campaign continued under Francis I with the customs of Loudunois in 1518, Bordeaux in 1521, Nivernais in 1534, and Senlis, Brittany, and Berry in 1539. By and large, this initial codification process was complete by the late sixteenth century.

²Parliaments were at the apex of Ancien Régime's judicial system. While there was a single Parliament starting in the mid-thirteenth century with jurisdiction over the entire royal domain, their number expanded to 13 parliaments by the Revolution.

D. The Content of Customs

In this section, we provide a summary of common themes that emerge among the vast number of customs across the territory: the status of individuals and goods, marital rules, parental authority, illegitimacy, inheritance, economic transactions, and crimes—see Giraud (1852) for an extensive discussion. Examples below were drawn directly from the original texts of customs available in Bourdot de Richebourg’s (1724) *Nouveau Coutumier Général* or from the sources listed in Table B.2.

Status of individuals and goods. Individuals’ customary rights and duties depended on their legal status and that of the goods considered. Customs therefore generally started with a description of how individuals and goods were to be classified.

The legal status of individuals depended on their social and demographic status: whether they were nobles or commoners, freemen or serfs, men or women, married, remarried, or never married, legitimate or illegitimate, and emancipated or not. Rights associated to their legal status at birth were further subject to their spouse’s upon marriage. For instance, the custom of Vermandois (art. 15–6) specified that a commoner woman married to a noble man would benefit from rights associated to the nobility, while a noble woman married to a commoner man would lose her rights as a noble.

The legal status of goods depended on their nature, origin, and quality. For the nature of goods, customs distinguished between movable and non-movable goods—some customs were very specific while others were more generic.³ Some customs also considered an intermediate category, cattels, for goods that could be alternatively be classified as non-movable or movable depending on their state, e.g., wheat over harvesting stages. For the origin of goods, customs distinguished between those transmitted through inheritance and those acquired over

³The custom of Vermandois (art. 99–100) stated that goods that could be moved from one place to another were to be classified as movable while goods attached to a wall by a nail were to be classified as non movable. In contrast, the customs of Paris (art. 91) and of Calais (art. 4) specified the nature of goods in excruciating details, e.g., when a fish was to be classified as a movable good.

the lifetime of an individual. Such distinction was especially important for non-movable goods, and in particular, for land. Finally, for the quality of (mostly non-movable) goods, customs distinguished whether they were associated to a nobility title or not, e.g., fiefs.

Marital rules. The celebration and validity of marriages were regulated by canon law. However, the legal consequences of a marriage for spouses were regulated by customary law. Specifically, customs regulated spouses' common property rights, the types of goods subject to these rights, and the moment from which these rights were applicable.⁴ In general, wives were the legal dependents of their husbands and under their authority. Moreover, husbands had legal rights over their wives' assets (Giraud, 1852, p. 16). For instance, in most customs, wives could not sell their non-movable assets without the consent of their husbands, as in the custom of Brittany (art. 429).

Customs also differed regarding the rights of married women to sign a contract or to write a will. They further had different rules regarding dowries: their composition, the rights of husbands over it, and its restitution after the dissolution of the marriage. In case of remarriage, customs regulated the rights of the second wife and those of the children to come relative to the rights of the first wife and children. Customs also regulated the custody of children in case of the death of a spouse, as in the custom of Poitou (art. 304–9).

In addition, customary law established penalties for adultery. For instance, the custom of Agen (art. 5) specified both a physical and a pecuniary fine; the custom of Bayonne (art. 1, title 25) had first-time adulterers sentenced to run through the town—a common form of customary punishment. Second-time offenders were sometimes sentenced to public flogging and perpetual banishment.

The rights of surviving spouses had an important place in customary law given the high mortality rates in Ancien Régime France. Widows were generally entitled to a *douaire*, which was either a property right or a right of usufruct. For instance, the custom of Paris (art. 247–9) specified that widows would acquire

⁴For example, the custom of Paris (art. 220) specified that common property applied to movable and non-movable goods acquired during the marriage, starting from the wedding blessing. See also the custom of Péronne (art. 112).

half of their deceased husbands' assets while the remaining half would go to their offspring. However, widows could not sell such assets, which were to be bequeathed to the couple's heirs upon death. In contrast, in the custom of Normandy (art. 367–74), widows were only entitled usufruct of a maximum of one third of their deceased husbands' non-movable goods.

Parental authority. In areas closest to written-law country under Roman law, parental authority followed the strict authority of the *patria potestas*. It entitled fathers (*pater familias*) to extensive rights, from that of physically punishing their children to excluding them from the inheritance or denying them marriage. Some customs even allowed them to sell their children in cases of extreme poverty (Chénon, 1929, p. 129).

In most customs, however, parental authority was relatively weak.⁵ Parents – including mothers – usually had the duty of raising their children in their best interest. In general, they were also legally responsible for the crimes committed by their minor children and subject to the associated fines, as in the custom of Brittany (art. 656). Weak or strong, parental authority lasted until the child's emancipation, i.e., when the child reached the age of majority – specified by customs separately for boys and girls – or at the child's marriage.

Illegitimacy. The rights of illegitimate children varied across customs. Under some customs, illegitimate children had no other right than a subsistence alimony, for instance in the custom of Brittany (art. 476). Under other customs, illegitimate children had broader rights. For instance, they held the right to inherit their mothers' assets in the custom of Valenciennes (art. 152). Illegitimate children's rights to testate also varied across customs and depended on the type of goods involved.

Inheritance. In pre-industrial societies, wealth and status were closely tied to the ownership of land. Because land markets were generally not developed, inheritance of land was central to individuals' lifeways as one of the few means of

⁵Some even explicitly prohibited full parental authority rights. For instance, the custom of Senlis (art. 221) stipulated that “[t]he right of paternal authority has no place in this bailliage.”

obtaining or expanding one's landholdings. Inheritance was therefore carefully regulated by customs, either through marital rules, donations, testaments, or intestate successions. In contrast to Roman law – which gave almost complete freedom to testators – customary law restricted testators and designated the heir(s).

Following Yver's (1966) classification – itself building on Klimrath's (1843) – customary inheritance rules belonged to one of three systems: systems of strict equality, systems of option, or liberal systems (*coutumes préciputaires*). Under strict equality, heirs had to share equally the inheritance left by the *de cujus*, including all *intra-vivos* transfers. Strict division was for instance applied in the customs of Alençon, Brittany, La Rochelle, and Normandy. In contrast, under systems of option, heirs could opt-out of the succession and instead keep all *intra-vivos* transfers they had received from the *de cujus*—generally transfers that occurred at marriage. Should heirs choose to take part in the succession, all *intra-vivos* transfers had to be returned and accounted for during the (equal) division of the beholding. The customs of Bassigny, Dourdan, Hesdin, and Paris regulated inheritance under this system of option. Finally, under liberal systems, parents were explicitly allowed to favor one or several children over the rest. This encompassed rules of primogeniture, ultimogeniture, and unigeniture, in which most of the inheritance was received by a single heir, the first born, last born, or one offspring regardless of birth order, respectively. Favoritism was however never absolute, and customs also defined the legitimate amount that each child was entitled to at the death of a parent (*réserve coutumière*). Liberal systems were in place in the customs of Amiens, Artois, Berry, and Lorraine. In some cases, customs also mentioned the circumstances that allowed parents to exclude a child from inheritance.

More broadly, customs further distinguished gender-specific rights to inherit, and in particular, women's rights. For instance, the custom of Normandy (art. 249) specified that daughters could not claim any portion of the inheritance against their brothers but could ask for a marriage settlement instead. In contrast, the custom of Lavedan endorsed strict primogeniture where a first-born daughter would be the sole heir. Appendix Figure A.3 illustrates the wide heterogeneity in inheritance customs across customary regions in France.

Finally, most customs protected families' patrimony from being diluted and sold outside the family. They did so by providing blood heirs the right of ancestral withdrawal (*retrait lignager*). This right entitled blood heirs to buy back their family's assets at the price paid by non-family buyers—the time window to exercise this right varied across customs.

Economic transactions. Customs regulated many types of economic transactions. The main areas covered by customary law were similar to those covered by current commercial laws. Among others, these included taxes, prescriptions (claims), obligations, contracts, and financing (rents, loans, debts, etc.). In detail, customs specified rules over several existing taxes. For example, the custom of Paris (title 2) regulated taxes on real property to be paid to the local lord — the *cens* or *censive*. In addition, it fixed the fine for not paying this tax (art. 85). More generally, taxes on commodities—the *champart* or *torsage* – and taxes on real estate transactions were also regulated by various customs. For instance, the custom of Boulenois (art. 34) specified the amount to be given to the local lord by both the seller and the buyer of cattle. Art. 50 of this custom also specified the taxes related to a real estate transaction. Customs also prescribed the acquisition of rights by the owner of the property. For instance, the custom of Melun (art. 169) prescribed that a person could claim to own a movable good after publicly possessing it for three years. In contrast, most customs prescribed that feudal taxes could not be claimed, as in the custom of Melun (art. 173). With respect to obligations and contracts, Roman law took over customary law in several places (Giraud, 1852, p. 61). That said, many customs did provide explicit regulations on it. For example, the custom of Toulouse (art. V of part II) specified that the landlord of a shop or house could expel a tenant in case of non-payment of the rent and keep the movable goods that were inside. Customary law also provided a regulatory framework for several sources of financing, e.g., mortgages, as in the custom of Ponthieu, which mentioned that any non-movable good could be mortgaged (art. 121) and provided three different ways of getting a mortgage (art. 122–4).

Crimes. Besides civil law , customs also regulated criminal law. They provided sanctions the severity of which depended on the nature and gravity of the crime, but also on the legal status of the perpetrator. For instance, the custom of Agen (art. 6) specified that a “false witness must have their tongue pierced, run through the city, and have their assets confiscated.” The custom of Bayonne (art. 4, title 25) sentenced prostitutes’ procurers to death. The custom of Labourd provisioned that any man who killed another man other than in self-defense was sentenced to beheading (art. 2, title 29). The custom of Brittany specified that a man who injured another man who survived 40 days was exempted from the death penalty (art. 620). In the custom of Corsica (chap. 33), poisoned-induced death or invalidity was punished by beheading and the confiscation of the property of the perpetrator. Finally, suicide was sometimes forbidden, as in the custom of Brittany (art. 631).

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