

The Coutumes
of France
in the Library
of Congress

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The Coutumes of France in the Library of Congress

An Annotated Bibliography

by

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Foreword

The Law Library maintains the world's largest legal collection of American, foreign, and international law materials and employs a staff of experts whose primary task is to provide legal reference and research services to Congress. In addition to this important function, the Law Library legal staff also periodically prepares and publishes reference works which are meant to describe the Law Library holdings and to assist scholars in their studies of various aspects of law.

The present bibliography is such a work and has been undertaken to make available, in a systematic order, a listing of one of the Law Library's special collections. The coutumes, or French local customary laws, played an important role in the development of the modern French legal system. A knowledge of these laws is also important in the study of the legal development of the various French colonies in America, especially in the state of Louisiana, and in other parts of the world.

Carleton W. Kenyon
Law Librarian

Preface

Among the several special collections—Canon Law, Consilia, Roman Law, Incunabula, Manuscripts, Feudal Law, etc.—in the custody of the European Law Division of the Law Library, there is a collection of the coutumes, or customary laws, of Andorra, Belgium, France, Italy, Luxembourg, the Netherlands, Switzerland, and other countries.

Originally these coutumes were incorporated in the holdings of the various countries in the European Law Division collections. Over the years, however, the number of the coutumes of France increased to such an extent that the formation of a separate collection was deemed necessary to provide a more convenient organization for their study by scholars and students of the *droit coutumier*. At first the collection was meant to comprise only French coutumes, but the coutumes of other European countries were added subsequently because of their close relationship to the French customary codes.

The following bibliography attempts to include the entire French coutumes collection within the jurisdiction of the European Law Division of the Law Library of Congress. An effort will be made in the future to cover also coutumes maintained in the other departments of the Library of Congress as well as the coutumes of countries other than France.

The materials have been arranged in three major groups: General Coutumes of France, Coutume Regions (*pays de coutume*), and Coutumes of Written Law Regions (*pays de droit écrit*). The *pays de coutume* are further subdivided into central, western, northern, and eastern, in accordance with the classification scheme of Ernest D. Glasson, on whose work this bibliography is primarily based.

For convenient reference, all of the coutumes listed are numbered consecutively, and cross-references are used to avoid repeating an item that falls within several categories. When there is more than one coutume for a city or region, works are listed chronologically by date of publication under their "short titles." The names of the authors, compilers, editors, publishers, printers, and places of publication are included in the entries. Due to their importance, five manuscripts and two incunabula which contain French coutumes but are not located in the Law Library main coutumes collection have also been included in this bibliography. In addition, customary law holdings available on microfilm in the Library of Congress are indicated by a list of dates at the end of each section.

A glossary of geographical terms as they appear in the titles of the various coutumes is given to assist those unfamiliar with these terms. An author index and a printer, publisher, and vendor index have been appended for reference and to furnish the scholar and reader with the modern English spelling of original French and Latin names. In some instances, however, certain names may be listed in their original forms because no established modern English names could be determined. In addition, a separate index of personal names appearing in the text of the bibliography is given for further convenience. Finally, tables of the rulers of France and the emperors of the Holy Roman Empire as well as a map showing customary law jurisdictions in old France and a short bibliography of reference materials are attached.

As the present bibliography is the first of its kind to be published in this country, it is certain to have some shortcomings. We hope, however, that this work will be a useful basis for further studies.

Jean Caswell
Ivan Sipkov

Note on the Illustrations

The map on the endsheets shows the major regions and cities mentioned in the text.

The seven color illustrations are from the *Coustumes de Normandie* (no. 263 in the bibliography), an unusual and appealing manuscript copy of the *Grand Coutumier de Normandie*. Although a number of manuscript coutumiers still exist, most of them, if decorated at all, have only colored rubrics announcing each chapter. The Library of Congress manuscript is embellished with elegant flourish initials, line endings, painted initials, and seven handsomely bordered miniatures.

The manuscript is regular in its physical composition. Most of the gatherings are in quires of eight. One skillful scribe seems to have written the entire manuscript, and the miniatures all appear to be the work of one hand.

The artist who painted the miniatures followed the contemporary conventions and techniques, but with a distinct individuality. He used bright, clear colors in a flat, decorative way. Unlike many other artists of that time, he showed no interest in atmospheric perspective. His style is loosely related to that associated with a group of manuscripts gathered around the name of Maître François, but the *Coustumes* master cannot be assumed to be a member of that circle. The works most closely comparable to the *Coustumes* miniatures appear in the *Queen Medusa Enthroned* miniature in the Cleveland Museum, and in the *Roman de la Rose* (Oxford,

Bodleian Library, Ms. Douce 364).

The temptation is great to localize the production of this book in a Norman workshop simply because the *Coustumes* are for Normandy. More solid justification for a Norman origin can be found, however, in the page layout and borders, which are as useful in identifying an atelier as the miniatures themselves. Codicological similarities between the Library of Congress *Coustumes de Normandie* and its *Horaes* Ms. 174, with Evreux Use and Evreux saints; between the *Coustumes* and the Pierpont Morgan *Coutumier de Normandie* Ms. M 457, with its Rouen saints; and between the *Coustumes* and Waddesden Manor Ms. 12, a Book of Hours for Rouen Use, suggest a related provenance for this manuscript—either an atelier in Normandy, or one that produced books for use in Normandy.

A date on folio 239r of the *Coustumes* reads “le xix^e jour du mois de mars lan mil cccc et xiiii” (19 March 1414). This date does not accord with the style of the miniatures and must be a scribe’s error in copying the text date of 19 March 1314, the historical date of the *Charte aux Normands*, which ends on that same folio. The date of the Library of Congress manuscript can be approximated by comparing the *Coustumes* codicologically and stylistically with other manuscripts, such as those used in the above comparisons. In spite of the archaic script, a date of production in the third quarter of the fifteenth century is suggested.

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The Coutumes
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Introduction

The coutumes, a primary source of modern French law, were originally local customary laws. They were the chief laws of the pays de coutume, i.e., the central and northern part of France, where the parlements, acting as sovereign judicial bodies independent from each other, rendered their decisions based on the legal principles derived from these local customs and privileges.¹ On the other hand, the pays de droit écrit, corresponding to the Midi, were those areas in which Roman law dominated. Ernest Glasson emphasized, however, that even in the pays de droit écrit, the importance of Roman law should not be exaggerated, because coutumes did develop in those southern regions, and they often contradicted Roman law.²

The term *coutume* refers to both the customary laws and usages of a region and to any collection of these laws. Although not originally collected systematically, coutumes were sometimes recorded in the charters of franchises or of communes granted by the king or by lords as early as the eleventh century.³ Because the coutumes grew out of daily life and custom, the ensuing droit coutumier was truly indigenous and met the needs of contemporary life. However, as a legal system, droit coutumier often lacked precision and varied greatly from region to region. Another disadvantage of droit coutumier before the codification of the coutumes was the complicated procedure necessary to establish a coutume.⁴ To be accepted as coutumes, usages coutumiers had to show certain characteristics. They had to be *généraux* (in the territory in which applied), *multipliés* (applied often enough to constitute established habit), *anciens* (required age varied, but was often forty years), and *constants* (uninterrupted).⁵ To test a coutume for acceptance or to establish its true meaning, an inquest by a turbe was necessary. A turbe was made up of twelve to thirty witnesses (*sages hommes*). The members of the turbe elected a chairman to speak for them, and any decision had to be unanimous. Two obvious disadvantages of the inquest by turbe

were the expense of calling so many witnesses and the strong possibility that a session would fail to reach an agreement.⁶

Because coutumes were numerous and varied, and because the establishment of their validity through turbes was so costly in time and money, some legal practitioners (lawyers, baillis, and other government officials) collected the coutumes which were in force in their region.⁷ These collections, called coutumiers or anciennes coutumes, were purely private works, but some of them attained the force of law through use.⁸ Examples are the *Grand Coutumier de Normandie* of ca. 1254–58 (nos. 263, 264), and Philippe de Beaumanoir's *Coutumes du comté de Clermont en Beauvaisis*, ca. 1283 (nos. 65–67). Although it was unofficial, the *Grand Coutumier de Normandie* continued to be applied until, in answer to royal letters of 1577, the official redaction of the *Coutume de Normandie* took place in 1583.⁹

Charles VII responded to the need for a systematic collection of French coutumes in the decisive article 125 of an ordinance delivered at Montil-lès-Tours in April 1453 (O.S.).¹⁰ He ordered that the "coutumes, usages et stiles" of all the countries in his realm be drawn up by the people of each region, written in books which would be brought before the king, examined by members of his grand conseil or of his parlement, and decreed and confirmed by the king.¹¹ This codification program was carried on in various forms by later monarchs for three and a half centuries.¹² At first, progress was slow because of the complex procedure outlined by Charles VII, but this procedure was simplified by several of his successors. For example, Charles VIII, in letters patent of March 15, 1498 (N.S.), declared that the articles already agreed upon by those charged with the drafting of the coutume did not have to be verified by his parlement.¹³

The influence of Charles VII's ordinance extended beyond his realm and his time. On March

11, 1457, in Bruges, Philip the Good, duke of Burgundy, issued letters patent ordering the redaction of the coutumes of his land. The coutumes of both the duchy and the county of Burgundy were confirmed in 1459.¹⁴

After codification, the exact text of any coutume could be verified by referring to the copy which was deposited with the record office of the parlement or the court of the sovereign. According to Glasson, more than 400 coutumes were officially recognized; approximately sixty of these were coutumes générales; the rest were coutumes locales. The application of each of the general and local coutumes was limited to a definite area.¹⁵ As a rule, each local coutume was included within the territory of a general coutume, but the local coutume could prevail over the general. A coutume could not contradict a royal ordinance, and it could be derogated by such an ordinance.¹⁶ Roman law was applied when the local and general coutumes were silent.¹⁷

The coutumes are of interest to legal scholars concerned with the formation of law. The officially compiled and published coutumes supplied the foundations for French legal doctrines and paved the way for the codification undertaken by Napoleon. Many basic concepts of the Code Napoléon

were, in fact, taken from the codified coutumes. The coutumes of Normandy are especially interesting because of the reciprocal influence that existed between the customary law of Normandy and the law of England. The Norman and Parisian coutumes and the later Code Napoléon are of particular importance to American lawyers, for these were introduced into the French colonies and consequently into the law of the modern state of Louisiana. The law relating to community property, for example, is based to a great extent on the rules of the *Coutume de Paris*.¹⁸ Furthermore, approximately 1,800 of the 2,281 articles in the Code Napoléon are contained, in full or in part, in the State of Louisiana Civil Code of 1870. Most of these appear without substantive change.¹⁹ In addition, because Louisiana is a civil law state whose code is based on the Code Napoléon, it has relied heavily upon the writings of French legal scholars for the doctrinal discussions which are so necessary to a logical interpretation and consistent development of a code of general law.²⁰

The coutumes are also valuable to historians as a rich source of information about medieval customs. They reveal a lively image of France in the Middle Ages.²¹

Notes

1. Adhémar Esmein, *Cours élémentaire d'histoire du droit français*, 11th ed. (Paris: L. Larose et L. Tenin, 1912), p. 42 ff.

2. Ernest D. Glasson, *Histoire du droit et des institutions de la France*, 8 vols. (Paris: F. Pichon, 1891), 4: 14-17.

3. Jean Brissaud, *A General Survey of Events, Sources, Persons and Movements in Continental Legal History*, transl. Rapelje Howell (1912; reprint ed., New York: Augustus M. Kelley, 1968), vol. 3, pt. 1, pp. 221-23.

4. Glasson, 4: 20-22.

5. Maurice Lefebvre, *La Coutume comme source formelle de droit* (Lille: Camille Robbe, 1906), pp. 67-70.

6. Glasson, 4: 20-22.

7. Auguste Lebrun, *La Coutume, ses sources—son autorité en droit privé* (Paris: R. Pichon et R. Durand-Auzias, 1932), p. 71.

8. Glasson, 8: 11. When laws were collected and codified in response to the orders of the ruler, they were usually entitled "coutume" or "coutumes" of the specific region to which they applied. Because, however, many of the books listed in this bibliography are from a very early date, before these terms were used consistently, their titles do not always match the descriptions exactly.

9. Brissaud, pp. 225-26.

10. Glasson spells the name "Montils les Tours," 8: 12. Henry Klimrath, *Etudes sur les coutumes* (Paris: Levraut, 1837), gives dates in Old Style. Glasson usually, though not consistently, gives dates in New Style. All publication dates in the bibliographical listings are, naturally, Old Style and may differ by one year from Glasson's dates quoted in the descriptive introductions to each section.

11. Free translation of a part of article 125 (Klimrath, p. 4): "... ordonnons et décernons, déclarons et statuons: que les coutumes, usages et stiles de tous les pays de nostre royaume soyent redigez et mis en escrit, accordez par les coutumiers, praticiens et gens de chascun estat desdiz pays de nostre royaume, lesquelz coutumes, usages et stiles ainsi accordez seront mis et escritz en livres, lesquelz seront apportez pardevers nous, pour les faire veoir et visiter par les gens de nostre grand conseil, ou de nostre parlement, et par nous les décréter et confermer. . . ."

12. Ernest Anderson, *The Renaissance of Legal Science after the Middle Ages* (Copenhagen: Juristforbundets Forlag, 1974), p. 133. Most of the books in this bibliography are examples of coutumes drawn up, published, codified, and reformed according to the orders of Charles VII and later French kings. In many volumes the procès-verbaux are bound with the coutume, and commentaries by legal scholars are often included.

13. Lebrun, p. 72.

14. Klimrath, p. 5.

15. Glasson, 8: 22.

16. Ibid., p. 25.

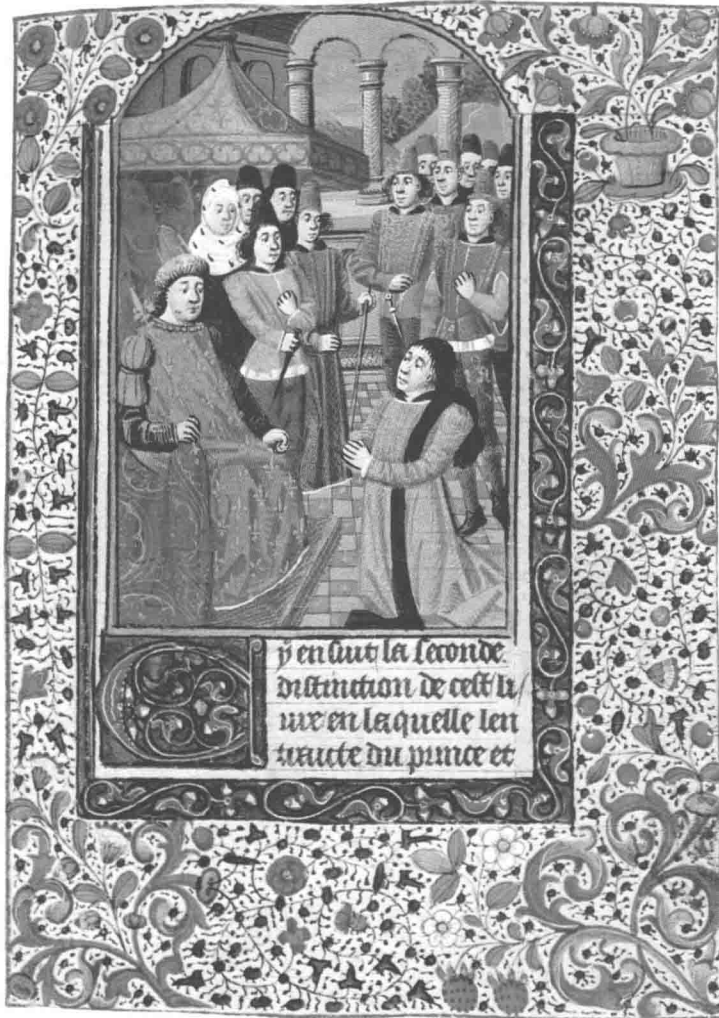
17. Brissaud, p. 218.

18. Glasson, 8: 12.

19. Ibid., p. 22.

20. Marcel Planiol, *Treatise on the Civil Law* (1959), vol. 1, pt. 1, "Foreword," p. 3.

21. Klimrath, p. 1.



Homage to the king of France, folio 27. One of the twelve witnesses to this ritual homage wears a love knot (usually linking the first initials of a husband and wife) on his thigh. The rarity of illuminated coutumiers and the inclusion of the love knot suggest that the Library of Congress *Coutumes* was a commissioned work rather than a routine workshop product.

General Coutumes of France

Of the fifteen editions of the general coutumiers of France listed by Claude Berroyer, the seventeenth-century French authority in this field, the Law Library holds ten, nos. 1, 2, 3, 4, 8, 9, 14, 21, 24, 29; missing are the editions of 1519, 1526, 1546, 1550, and 1567.¹ This collection also includes many other editions—some with notes and commentary—that were not mentioned by Berroyer.

One of the most important coutumes in this section of the bibliography is the *Grand Coutumier de France* (no. 12). Sometimes known as the *Coutumier de Charles VI*, the official name was *Le Grant Coutumier de France, et instruction de pratique et manière de procéder et practiquer ès souveraines cours de Parlement, prévosté et viconté de Paris et autres juridictions du royaume de France*. This compilation was a practical book, at once a civil code, a code of procedure, and a collection of formulae. The *Grand Coutumier de France* comprised four books. Book One was a later summary of the other books and does not appear in the manuscript copies. Book Two contains the first seeds of the coutume of Paris. Book Three is a book of procedure, and Book Four addresses the question of the dispute between ecclesiastical and secular jurisdictions. There are many versions of this coutume; the seven manuscripts described by Edouard Laboulaye and Rodolphe Dareste, for example, include six different texts. Although Laboulaye and Dareste did not know the author or date of the coutume, they were able to ascertain one important fact; namely, there was no reason to call this work the *Coutumier de Charles VI*.² The author's identity was discovered by the nineteenth-century historian Léopold Delisle to be Jacques d'Ableiges, who in 1371 was the secretary of Jean, duke of Berry (1340–1416); d'Ableiges subsequently became examiner at the Châtelet, then bailli of Chartres, Saint-Denis, and Evreux. Thus the *Grand Coutumier* was the work of a practicing lawyer who also knew Roman law and coutumes. The *Grand Coutumier de France* remained in force

with some modification until the middle of the sixteenth century.³

In addition to the *Grand Coutumier de France*, this section of the bibliography includes a number of treatises on customary law in general, as well as some editions of *La Somme rurale de Boutillier*. Henry Beaune considered the *Somme rurale* to be far superior to the *Grand Coutumier de France*. Sometime after 1383, Jean Boutillier, a citizen of Tournai, wrote this compilation of laws for the rural man, the poor, and the commoner. A summary of all the customary law of the fourteenth century, his book is a rich resource for the juriconsult and historian.⁴

1517

- 1 Les grâdes coustumes generalles et particulieres du rayaulme de France . . . Cestàscavoir les coustumes de la preuoste et viconte de Paris . . . les coustumes de Meaulx, Melun, Victry, Chaumont, Orleans . . . Paris, Ils se vendent sur le pont nostre Dame a lenseigne saint Jehan leuangeliste, 1517. 430 l.

1522

- 2 Les grandes coustumes generalles et particulieres du royaume de France . . . Paris, François Regnavlt, 1522. 436 l.

1527

- 3 Les coustumes et statutz . . . du Royaume de Frâce . . . Paris, Jehan Petit, 1527. 578 l.

1536

- 4 Les coustumes et statutz . . . du Royaulme de Frâce . . . Paris, Galliot du Pré, 1536. 598 l.

1539

- 5 La grant somme rural du sont contenues deux parties . . . compilee par maistre Jehan Boutillier . . . plusieurs coustumes . . . Paris, Denis Ianot, 1539. 2 pts.

- 1542
- 6 Jan Bottelgier heeft dit boeck gemaect. Ende is gheheeten Summe ruyrael . . . Antwerpen, Symon Cock, 1542. 309 p.
- 1548 (i.e. 1547)
- 7 Les coustumes et statutz particuliers de la plus-part des bailliages, seneschauces et preuostez royaulx du royaulme de Frāce . . . Paris, Vend[u] par J. de Roigny, 1548 [i.e. 1547] 588 l.
- 1552
- 8 Les coustumes & statutz particuliers de la plus-part des bailliages . . . de France . . . Paris, Arnoul l'Angelier, 1552. 2 pts.
See also Burgundy, no. 412 (1565).
- 1581
- 9 Des covstvmes generalles et particvlieres dv rayavme de France & des Gaulles . . . Corrigees & annotees . . . par Charles dv Movlin & autres iuriconsultes. Paris, I. du Puys, 1581- 2 v.
- 1585
- 10 Paraphrase dv droict de retraict lignager, recuelle des coustumes de France . . . [par Francois Grimavdet]. Avec vne pref. . . a Christophle de Thov. Paris, H. de Marnef & la veufue G. Cauellat, 1585. 376 p.
- 1596
- 11 La conference des covstvmes tant generales, qve locales et particvlieres dv Rayaume de France . . . annotations par Pierre Gvenoy. Paris, G. Chavdiere, 1596. 2 v. in 1.
- 1598
- 12 Le grand covstvmier de France [par Jacques d'Ableiges] . . . diuerses obseruations, par L. Charondas Le Caron . . . Paris, Iean Hovzé, 1598. 562 p.
- 1603
- 13 Somme rvral ov le grand covstvmier . . . composé par Iean Bovteiller (. . . par Lovys Charondas le Caron) . . . Paris, Barthelemy Macé, 1603. 904 (i.e. 940) p.
- 1604
- 14 Les covstvmes generalles et particvlieres de France et des Gavilles, corrigees . . . par Charles du Moulin . . . Avec des Tables . . .
- Par Gabriel Michel. Paris, Gvillavme de la Nove, 1604. 2 v.
- 1607
- 15 Institvtion av droict des Francois. Par Gvy Coqville. Paris, A. L'Angelier, 1607. 364 p.
Printer's mark on title page.
- 1607
- 16 Institvtes covstvmieres. Ov Manvel de plvsievr et diverses reigles, sentences, & prouerbes . . . du droict costumier & plus ordinaire de la France. [Par Antoine Loisel] Paris, A. L'Angelier, 1607. 79 p.
- 1609
- 17 Institvtion av droict des Francois. Par Gvy Coqville. Paris, A. L'Angelier, 1609. 364 p.
- 1609
- 18 Institvtes Covstvmieres ov Manvel . . . [par Antoine Loisel]. Paris, Abel L'Angelier, 1609. 79 p.
- 1609
- 19 Indice des droicts roiavx et seigneuriaux . . . par François Ragveav . . . 3 ed. Paris, Pierre Chevalier, 1609. 595 p.
- 1611
- 20 Qvestions et responses svr les covstvmes de France par Gvy Coqville. Paris, Abel L'angelier, 1611. 632 p.
- 1615
- 21 Les covstvmes generalles et particvlieres de France et des Gavilles. Corrigees et annotees . . . par Charles du Moulin . . . & autres iuriconsultes. Augmentees & reueuës par Gabriel Michel Angeuin . . . Paris, la veufue Marc Ory, 1615. 2 v.
Publisher's device on title page.
- 1615
- 22 Les covstvmes generalles et particvlieres de France et des Gavilles. Corrigees et annotees . . . par Charles du Moulin . . . & autres iuriconsultes. Augmentees & reueuës par Gabriel Michel Angeuin. Paris, Iean Hovzé, 1615. 2 v.
- 1621
- 23 La somme rvral, ov le grand covstvmier . . . par Iean Bovteiller . . . Reueu . . . par

- Lovys Charondas le Caron. Lyon, Simon Rigaud, 1621. 1552 p.
- 1635
- 24 Les coutumes generales et particulieres de France et des Gavles, corrigees et annotees . . . par Charles du Moulin. Augmentees & reueues par Gabriel Michel Angevin . . . Paris, C. Sonnius, 1635. 2 v.
- 1644
- 25 Questions et responses sur les articles des coutumes de France . . . par Guy Coquille . . . Paris, Edme Pepingvé, 1644. 906 p.
- 1646
- 26 Institutes coutumieres, ou manuel de plusieurs et diverses regles . . . du droit coutumier & plus ordinaire de la France. Par Anthoine Loisel. Paris, Henry le Gras, 1646. 164 (i.e. 166) p.
See also Nivernais, no. 121 (1646), and Paris, no. 150 (1652).
- 1656
- 27 Institutes coutumieres, ou manuel de plusieurs et diverses regles, . . . du droit coutumier & plus ordinaire de la France. Par Anthoine Loisel, avec les notes et observations de Paul Challine . . . Paris, Henry le Gras, 1656. 380 p.
- 1664
- 28 Les coutumes generales et particulieres de France et des Gavles. Corrigees et annotees . . . par Charles du Moulin. Augmentees & reueues, par Gabriel Michel Angevin. Paris, L. d'Allin, 1664. 2 v.
- 1688
- 29 La jurisprudence . . . les coutumes de France . . . par Claude de Ferrière. Second edition, reveue, augm. & cor. avec des sommaires. Paris, Jean Cochart, 1688. 2 v.
- 1699
- 30 Bibliotheque des coutumes, contenant la preface d'un nouveau coutumier general . . . Le texte des nouvelles coutumes de Bourbonnois corrigé sur l'original, avec les apostils de Charles Du Molin . . . Par Claude Berroyer, & Eusebe de Lauriere . . . Paris, N. Gosselin, 1699. 286 p.
Includes a list of editions of this coutume.
- 1710
- 31 Institutes coutumieres de Monsieur Loisel . . . avec des notes nouvelles par Eusebe de Lauriere. Paris, Nicolas Gosselin, 1710. 2 v.
- 1715
- 32 Les notes de maistre Charles du Moulin sur les coutumes de France . . . Paris, Denis Mouchet, 1715. 430 p.
- 1724
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