

Working Group on Civil Justice and Dispute Resolution

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Gender and Class Inequalities in Access to Family Justice (France-Québec)

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Access to Family Justice in the Age of Private Ordering



- A2J research: « the role of civil justice in **reproducing and destabilizing inequality** » (Sandefur, 2008)
- Key facts:
 - Adjudication through the courts is less common, **alternative dispute resolution** (e.g. family mediation) is more.
 - Post-divorce arrangements are made « **in the shadow of the law** » (Mnookin & Kornhauser, 1979).
- Who turns to **courts** to settle post-divorce arrangements? Who gets what kind of **legal services**?
- A focus on **class & gender** inequalities with a **top-down** approach.

A long-term collective research in France and Québec (Canada)



Ethnographic fieldwork
in lower courts and law
firms



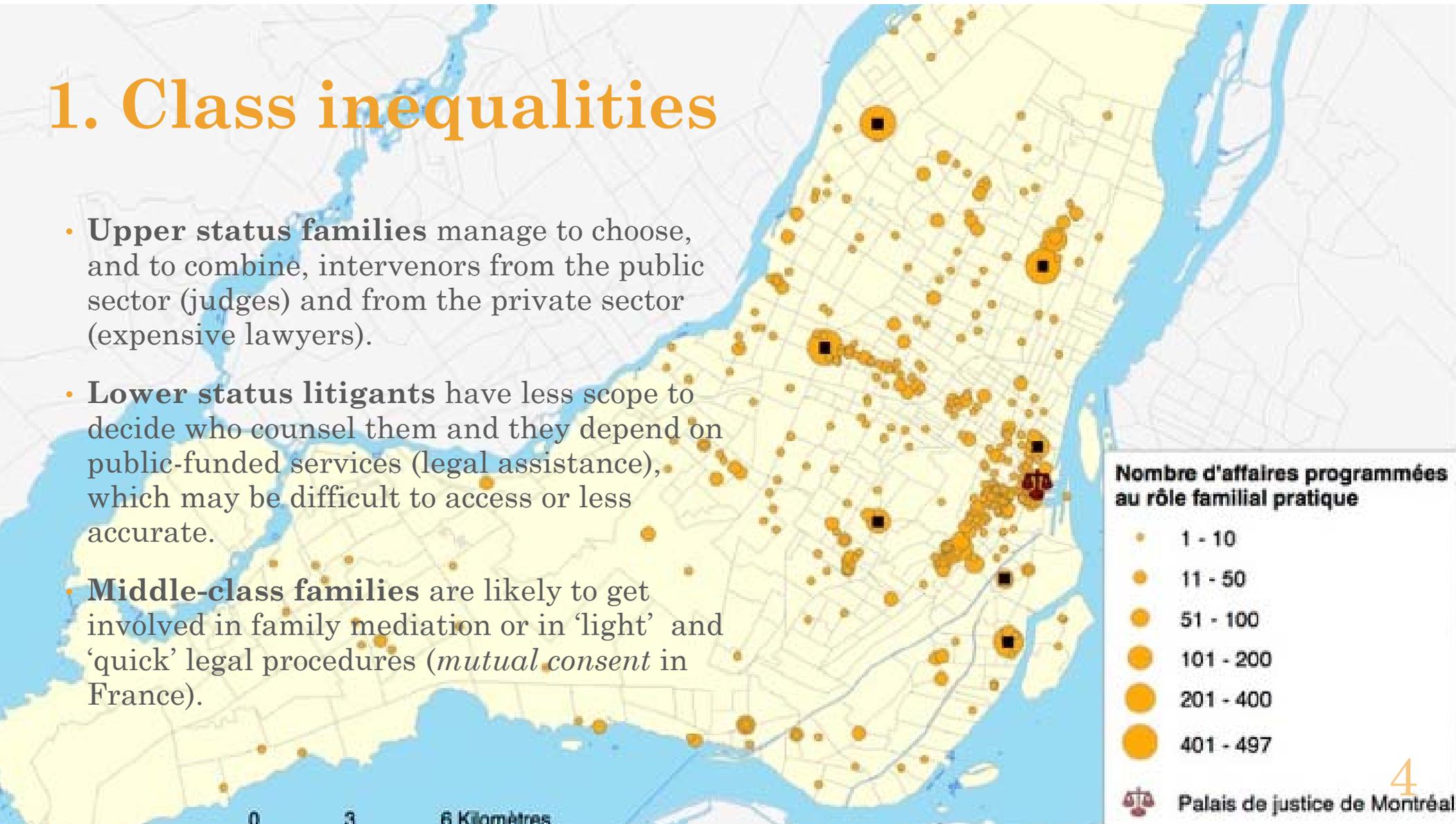
2009-2016

Policy analysis of
reforms regarding
family law since the
1990s

Quantitative analysis
of judicial records

1. Class inequalities

- **Upper status families** manage to choose, and to combine, intervenors from the public sector (judges) and from the private sector (expensive lawyers).
- **Lower status litigants** have less scope to decide who counsel them and they depend on public-funded services (legal assistance), which may be difficult to access or less accurate.
- **Middle-class families** are likely to get involved in family mediation or in 'light' and 'quick' legal procedures (*mutual consent* in France).



2. Gender inequalities

- **Lower-status men** are less likely to get legal advice than their ex-partners. The counterpart for women is to be screened by professionals.
- In **middle and upper-class families**, inequalities in economic resources may result in variations regarding legal services (costs, time dedicated, legal expertise)... unless women are awarded with interim and advanced costs.



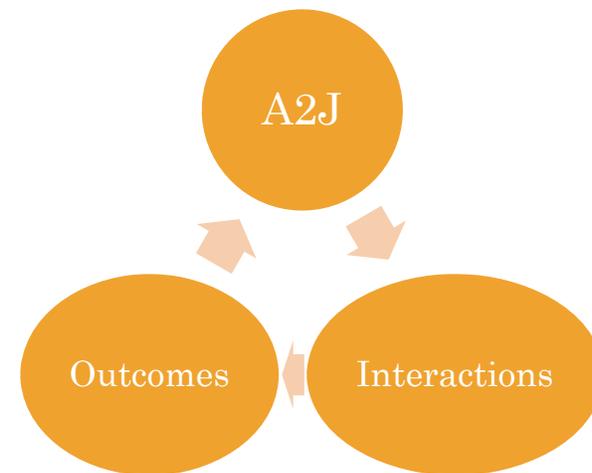
3. National patterns in A2J

- In **Quebec**:
 - Official goal: “each according to need”
 - In practice: “each according to means”
- In **France**:
 - Adjudication through the Courts is still massive (till 2017)
 - But it varies a lot depending on social status.
- **Comparison** :
 - Class inequalities in A2J are larger in Quebec than in France.
 - Gender inequalities are smaller... in upper status families.



Conclusion

- The trend toward « private ordering » takes various ways and means depending on class and gender.
- **Three kinds of inequalities** are interrelated:



- Toward a **bottom-up approach**, in order to study « subjective orientations » toward law's legitimacy or efficacy (Sandefur, 2008)
 - New project on marital dissolutions involving LGBT partners.

To go further:

- Biland E. & Steinmetz H., « Are Judges Street-Level Bureaucrats? Evidence from French and Canadian Family Courts. », *Law and Social Inquiry*, 2017, v. 42, n°2, p. 298-324.
- Biland E., Mille M. & Steinmetz H., « National paths towards private ordering : professional's jurisdictions and separating couples' privacy in the French and Canadian Family Justice Systems », in Maclean M., Eekelaar J. et Bastard B. (dir.), *Delivering Family Justice in the 21st Century*, Hart Publishing, 2015, p.87-105.
- Biland E. & Mille M., « Selon que vous serez puissant ou misérable... Les inégalités sociales et genrées dans l'accès à la justice familiale », *Nouveaux Cahiers du Socialisme*, n°16, 2016, p. 70-78.
- Biland E. & Mille M., « Ruptures de riches. Exceptionnalité de classe et inégalités de genre au sein de la justice québécoise », *Sociétés contemporaines*, n°108, 2017, p. 97-124.
- www.ruptures.ulaval.ca (in French)

