

# Studying Small Medieval Communities in the Light of the Historiographical Revival of the Commons. The Case of Saint-Rémy-de-Provence (13<sup>th</sup>-mid 14th-century)

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**Abstract:** Commons, either collective rights or common goods, were seen for a long time as archaism, and compelled to disappear. The French *Annales* school shows great interest in the long-term evolution of collective rights, i.e. grazing and wood cutting. In recent decades, common goods have been reinterpreted and re-evaluated. In medieval history, Italian historiography has entered a fruitful dialogue with the modernists to place commons in a long-term perspective, to study how they were created, managed and evolved, and to show their fundamental role in the history and functioning of communities, considering the contributions of other social sciences under the influence of Anglo-American research. The small medieval community of Saint-Rémy-de-Provence gives a well-documented case study. After presenting the collective rights seen by French historiography, this article shows how the community tried to regulate them between 1290 and 1350. Then, to understand the common good of this Provençal community, a swamp bought under emphyteusis, the Italian historiography gives important leads. Commons were progressively restrained by the community, excluding foreigners: this change favoured agricultural activities at the expense of grazing. Leaving the hand of the Count of Provence, common goods were appropriated by the community, through private ownership.

**Keywords:** Commons; Provence; Middle-Ages; Communities; Historiography; *Annales*; Agriculture.

**Rezumat:** Comunalitățile, fie că este vorba de drepturi colective sau de bunuri comune, au fost considerate mult timp ca fiind arhaice și condamnate să dispara. Școala franceză *Annales* manifestă un mare interes pentru evoluția pe termen lung a drepturilor colective, adică pășunatul și tăierea lemnului. În ultimele decenii, bunurile comune au fost reinterpretate și reevaluate. În istoria medievală,

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*SUBB Historia, Volume 70, Special Issue 1, November 2025*

doi: 10.24193/subbhist.2025.sp.iss.1.03

istoriografia italiană a intrat într-un dialog fructuos cu moderniștii pentru a plasa bunurile comune într-o perspectivă pe termen lung, pentru a studia modul în care au fost create, gestionate și au evoluat și pentru a arăta rolul lor fundamental în istoria și funcționarea comunităților, luând în considerare contribuțiile altor științe sociale sub influența cercetării anglo-americane. Mica comunitate medievală din Saint-Rémy-de-Provence oferă un studiu de caz bine documentat. După prezentarea drepturilor colective conform istoriografiei franceze, acest articol arată cum respectiva comunitate a încercat să le reglementeze între 1290 și 1350. Apoi, pentru a înțelege bunul comun al acestei comunități provensale, o mlaștină cumpărată în emfiteuză, istoriografia italiană oferă indicii importante. Bunurile comune au fost restricționate progresiv de comunitate, excluzând străinii: această schimbare a favorizat activitățile agricole în detrimentul pășunatului. Părăsind mâna contelui de Provence, bunurile comune au fost înșușite de comunitate, prin proprietate privată.

**Cuvinte cheie:** Agricultură; Anale; Bunuri comune; Comunități; Epoca Medievală; Istoriografie.

## Introduction

The commons, as an intellectual construct, are attracting growing interest not only in the historiographical and scientific spheres but also in the public and political spheres. Characterised by a form of ownership that lies somewhere between private and state ownership, and by regulation through collective organisation,<sup>1</sup> they are seen by some as a solution to ecological and social issues.

Commons can be defined from several different perspectives. They can be public goods or public rights, i.e. collective rights or goods belonging to a defined community – in this case, the inhabitants, to which they have access or use collectively or individually, as members of this community. It has many different names, structures and modes of operation, and concerns diverse resources in various times and places. Commons refer to a complex and evolving reality that has been the subject of diverse interpretations in human sciences, specifically in history. For a long time, the dominant

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<sup>1</sup> Elinor Ostrom and Laurent Baechler, *Gouvernance des biens communs: pour une nouvelle approche des ressources naturelles* (Brussels/Paris : De Boeck, 2010).

historiography regarded commons as a form of archaism that had to be uprooted as an obstacle to economic progress. In recent decades, however, they have been reinterpreted and reassessed. Recent medieval historiography has entered a fruitful dialogue with modernists, placing commons in a long-term perspective, studying how they were created, managed and developed, and showing their fundamental role in the history and functioning of communities, considering the contributions of other social sciences under the influence of Anglo-American research.

There are many issues surrounding the commons, and not all of them can be addressed in this work. The first issue is, of course, the definition of commons. The French term refers not only to common goods but also to collective rights. This purely analytical definition varies according to sources, periods, authors and historiographical approaches. Secondly, an entire field of historiography studies the origins of commons, in both practical and legal terms. The third issue is, quite logically, their evolution, and eventual disappearance: such evolution takes place over the very long term, and the academic separation of historical research into modern and contemporary history on the one hand, and ancient and medieval history on the other, means that work on the latter two issues is generally separate. The fourth issue is the day-to-day functioning of commons, the roles of the various players and their respective interests, and thus the regulation of commons in practice. The fifth relates to the representations and discourses held by the various contemporary players. Finally, the sixth issue is part of a broader academic framework than just history and concerns the economic efficiency of commons. Indeed, in a more normative approach, bourgeois thought (mercantile and then liberal) erected commons as a symbol of archaism and inefficiency.<sup>2</sup> Neo-institutionalists such as Elinor Ostrom rediscovered them in a new light, to the extent that they are now the subject of new scientific approaches, even being promoted by political currents – often on the left and linked to ecology.

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<sup>2</sup> See for France Marc Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle. Première partie : l'œuvre des pouvoirs d'ancien régime,' *Annales* 2/7 (1930): 329-83; Juliette Dumasy, 'L'approche des communautés rurales par le biais des communaux. Autour de Nadine Vivier et Nicole Lemaître,' in *La Formation Des Communautés d'habitants Au Moyen Âge. Perspectives Historiographiques*, Xanten (RFA), June 13-22, 2003 (online edition at LAMOP, 2005), 4; or Gérard Béaur, 'En un débat douteux. Les communaux, quels enjeux dans la France des XVIII -XIX<sup>ee</sup> siècles?,' *Revue d'histoire moderne & contemporaine* 53-1/1 (2006): 89-114.

These issues can be approached from various angles, including economic, social, political, legal and environmental history. This case study will tackle the first and fourth issues, i.e. the historical and legal definition and delimitation of the commons of Saint-Rémy in the thirteenth-fourteenth centuries, as well as their operation and regulation by the various players.

To study commons in the light of different historiographical trends, this article will focus on Saint-Rémy de Provence, a small community north of the Alpilles, south of Avignon, and part of the County of Provence – a possession of the Angevins since the mid-thirteenth century. The counts of Provence were also the lords of the *castrum*, the fortified centre of the town, giving them a strong hold over the community. This small town of around 300 families at the beginning of the thirteenth century, i.e. some 1,500 inhabitants, was not a simple village, but a small town, a *bourg*.

Between the end of the twelfth century and the middle of the thirteenth century, small communities gradually appear in the sources. The inhabitants of Saint-Rémy were first mentioned in 1198. Over a century, the community gradually began to structure itself around tax issues and the delimitation of its territory, notably around common pastures. In the first half of the fourteenth century, before the Black Death, they set up a council, appointing people elected to lead the community. An important part of their legislative activity consisted precisely in regulating common goods, in particular commons. In other words, commons were at the heart of local political life.

The regulation of collective rights and common property was the responsibility of several players.<sup>3</sup> Over the entire territory, the Counts of Provence hold the rights of justice and ban and are the supreme lords of the place: the inhabitants have recognised their *majus dominium* since 1252.<sup>4</sup> In practice, the *bayle* is the local representative of the count's power, managing day-to-day affairs and enforcing the payment of bans – or having them leased. Justice came under the jurisdiction of the Tarascon judge, then of Aix from the mid-fourteenth century.<sup>5</sup> Ecclesiastical institutions lost most of their

<sup>3</sup> Romain Telliez, *Les institutions de la France médiévale : XI -XV<sup>e</sup> siècle*, 3rd edn, Collection Cursus, Malakoff, Armand Colin, 2022, pp. 43-59.

<sup>4</sup> AD13, B. 169, fol. 87, AD13, B 169 fol. 97 r°, B170 fol. 146; BNF, ms. Lat. 10.125.

<sup>5</sup> Jean-Paul Boyer, Anne Mailloux and Laure Verdon, eds, *La justice temporelle dans les territoires angevins aux XIII<sup>e</sup> et XIV<sup>e</sup> siècles : théories et pratiques* (Rome: École française de Rome, 2005); Alexandra Gallo, 'Justice et municipalité : le cas de Sisteron au XIV<sup>e</sup> siècle,' *Publications de l'École Française de Rome* 354/1 (2005), pp. 403-415; Gérard Giordanengo, 'Statuts royaux et

powers of justice in the early fourteenth century.<sup>6</sup> The local nobility is less well-known: its members belong to second-ranking lineages, who play an important role in administration and own seigneuries or lordship shares in neighbouring communities.<sup>7</sup>

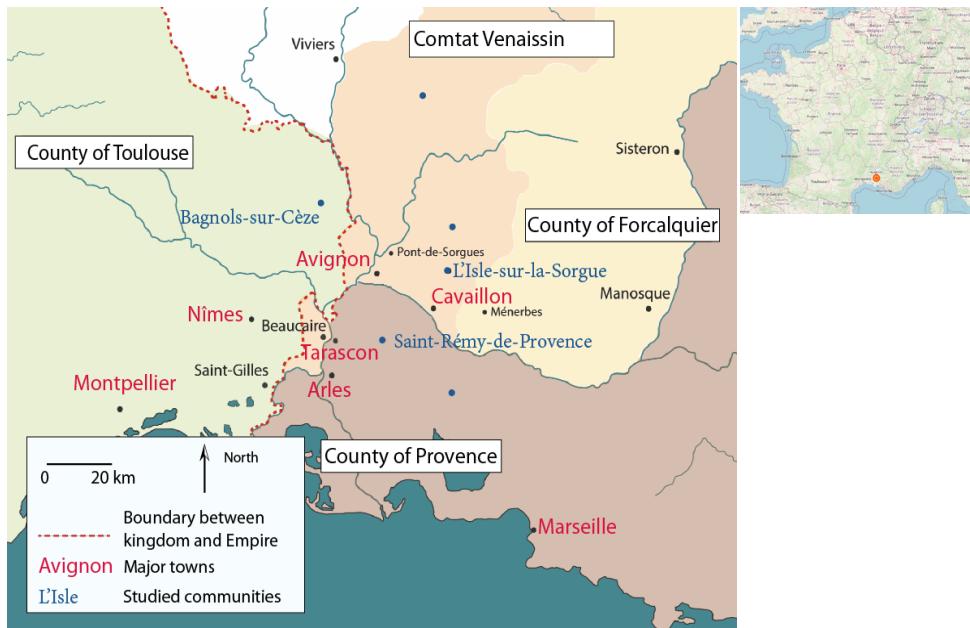


Figure 1. Location of Saint-Rémy de Provence

justice en Provence (1246-1309),’ *Publications de l’École Française de Rome* 354/1 (2005): 107-126; Laure Verdon, ‘Justice comtale et justice seigneuriale en Provence au miroir des enquêtes : l’exemple de la baillie de Castellane entre 1278 et 1310,’ *Publications de l’École Française de Rome* 354/1 (2005): 371-338.

<sup>6</sup> Simone Balossino, ‘Saint-Rémy, Reims et Avignon : des relations complexes,’ in *Saint-Rémy-de-Provence : Son Histoire*, ed. Société d’histoire et d’archéologie de Saint-Rémy-de-Provence (Aix-en-Provence : REF.2C éditions, 2014), pp. 230-234; and Christine Martin-Portier, ‘Saint-Rémy-de-Provence, une ville au cœur de son territoire, Au miroir des enquêtes domaniales des comtes de Provence (1252-1332),’ in *ibid.*, pp. 172-176.

<sup>7</sup> For other regional cases, see Danuta Poppe, ‘Saint Christol à l’époque médiévale,’ *Publication des Annales de la Faculté des Lettres* (Gap : Ophrys, 1966), 7-33; Danuta Poppe, *Economie et société d’un bourg provençal au XIV<sup>e</sup> siècle. Reillanne en haute Provence* (Wrocław : Ossolineum, 1980); Anna Rutkowska-Płachcińska and Urszula Sagan, *Salon-de-Provence, une société urbaine du bas Moyen Age* (Wrocław : Zakład Narodowy im. Ossolińskich, 1982); and Noël Coulet and Louis Stouff, *Le village de Provence au bas Moyen Age* (Université de Provence, 1987).

Some were descended from large families such as the Porcellets, well studied by Martin Aurell.<sup>8</sup> It seems that they shared the seigneur's revenues with the Count of Provence, in the form of a co-lordship. As a result, the power of the *universitas* is limited. On the one hand, it holds only useful rights over common property, with eminent domain remaining in the hands of the Count of Provence. On the other hand, its participation in defining collective rights over the entire territory is only possible with the consent of the *bayle*, and more generally with that of the count's administration. As a result, communal statutes are often a mixture of provisions requested by the population or its representatives, and measures imposed by the *bayle*. The actions of the *bayle* and those of the community are not opposed in principle.<sup>9</sup>

The corpus of sources used for this study refers to Saint-Rémy's communal deliberations and statutes in the fourteenth century, plus a few court rulings to complete and clarify certain points. Most of these are located in the Archives Ccommunales (AC) of Saint-Rémy, while some are held in the Archives départementales des Bouches-du-Rhône (AD13). Statutes can be defined as normative productions that communities produce or receive, providing for an internal organisation, in a certain relationship to the lord or princely administration.<sup>10</sup> I distinguish them from less complex deliberations, that deal with a limited number of subjects: appointing a person to an office or making a decision, without issuing a body of regulations. In practice, these decisions are part of a certain continuity, since statutes can take up and extend the content of previous deliberations, just as deliberations complement them.

This article aims to show the extent to which the historiographical developments of the last two decades are particularly fruitful for the study of medieval commons, collective rights and, above all, common goods, to understand how rural societies interact and regulate their relationships with their environment, in an approach that is not only economic or legal but also socio-political.

<sup>8</sup> Martin Aurell, *Une Famille de la noblesse provençale au Moyen âge, les Porcelet* (Avignon : Aubanel, 1986).

<sup>9</sup> For a more comprehensive historiography, see Joseph Morsel, *Communautés d'habitants au Moyen Âge (XI-XV<sup>e</sup> siècles)* (Paris : Editions de la Sorbonne, 2018).

<sup>10</sup> Étienne Anheim et al., 'La notion de *libri statutorum* : "tribut philologique" ou réalité documentaire? Les statuts communaux du Moyen Âge conservés pour l'actuel département de Vaucluse,' *Mélanges de l'École française de Rome - Moyen Âge* 126/2 (2014): p. 447-460, here p. 447.

First, commons, as collective rights, are the subject of a long historiographical tradition in France, around the work of the Annales, useful to understand Saint-Rémy's situation. Secondly, the historiographical revival since the late 1980s, particularly in Italy, about common goods, put a new light on the swamp bought by the community.

## I. From collective rights to commons

### A. *Collective rights, the traditional focus of Annales historiography*

Commons are not a new issue in French historiography, provided that the field of study is broadened to include commons of the modern era and that one considers the fundamental distinction between collective property and common rights.<sup>11</sup> Collective servitudes, "bind individual property itself,"<sup>12</sup> through the restrictions they place on private property as we know it today. However, one must be wary of any teleological narrative that would see medieval forms of property as incomplete, destined to become contemporary private property. These forms corresponded to other socio-economic relationships.

Marc Bloch devoted a great deal of thought to this subject, first in a two-part article, "La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle,"<sup>13</sup> published in 1930, in which the Middle Ages and commons are little discussed. He distinguishes between various rights, which form a continuum in practice for the community and its members. In addition to the right of *vaine pâture*, i.e. grazing on other people's fields after the harvest, there was the right to roam in neighbouring villages.<sup>14</sup> The following year,

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<sup>11</sup> Davide Cristoferi, 'Da Usi Civici a Beni Comuni. Gli Studi Sulla Proprietà Collettiva Nella Medievistica e Nella Modernistica Italiana e Le Principali Tendenze Internazionali,' *Studi Storici* 57/3 (2016) pp. 577-604, here p. 590.

<sup>12</sup> Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle. Première partie,' p. 330.

<sup>13</sup> Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle. Première partie' and Marc Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle. Part two: conflicts and results. Troisième partie : la Révolution et le "Grand Œuvre de la propriété"', *Annales* 2/8 (1930): 511-556.

<sup>14</sup> Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIII<sup>e</sup> siècle. Part One,' pp. 331-332.

in his famous work *Les caractères originaux de l'histoire rurale française*, he showed the fundamental nature of collective easements on private and communal land, placing the history of collective rights more broadly within agrarian history, the history of techniques and rural customs that more or less rigidly regulated the activity of farmers. He shows that their development is linked to the growth of livestock farming and transhumance practices during the thirteenth century.<sup>15</sup>

Throughout his book *Les caractères originaux de l'histoire rurale française*, Marc Bloch devotes considerable attention to collective rights, particularly in Provence, where collective rights were questioned at the end of the Middle Ages. As early as the thirteenth century, tenants forbid access to part of their fallow land – known as *mise en défens* (fencing) – to feed their plough animals. Marc Bloch observed a wider movement to question this custom during the next century.<sup>16</sup> He points out Pernes-les-Fontaines, in the Vaucluse region, to be one of the first communities to formalise this practice, where grazing was restricted as early as 1297, and banned from 1363 onwards, confirmed in 1395, 1397 and 1418<sup>17</sup> – even if the several confirmations indicate that it was not without difficulty. This trend was confirmed in 1469 by the Estates of Provence, which imposed year-round fencing.<sup>18</sup> Previously, the land was enclosed from spring to harvest. This ban confirms a trend, but is not the culmination of it, as the procedures continued into the modern era. The main contribution of Marc Bloch's work is to identify the causes of these changes. While the influence of Roman law and the organisation of land parcels were necessary conditions for these transformations, they do not explain their precociousness; the driving force was the evolution of socio-economic structures, in a well-defined environmental context of abundant grazing land. Marc Bloch emphasises that these transformations took place with difficulties: even during the French Revolution, many small farmers fought for the return of collective servitudes (p. 239-240). The opposing interests of different social groups, particularly breeders and farmers, their internal structuring, the

<sup>15</sup> Marc Bloch, *Les caractères originaux de l'histoire rurale française. Volume 1*, 2nd edition (1st ed. 1931) (Paris : Armand Colin, 1968).

<sup>16</sup> Bloch, *Les caractères originaux de l'histoire rurale française*, p. 202.

<sup>17</sup> AC Pernes FF1/1 A to D

<sup>18</sup> Marcel Lachiver, ed. 'Défens Ou défends,' *Dictionnaire du monde rural : les mots du passé* (Paris : Fayard, 1997).

environmental characteristics of the areas opened to agriculture, and their reciprocal evolutionary dynamics are all important features in understanding the evolution of collective rights.

Of lesser importance in the book, the communal, i.e. the common property of rural communities, not appropriated by private individuals, is presented in the chapter devoted to social groups: according to Marc Bloch, the communal is above all part of the definition, not to say the identity, of the rural community. He points to its many uses for communities, which can rely on the many natural resources they lack on their lands.<sup>19</sup> Above all, he questions their legal status: they may belong to several communities in indivision, and most of them are the subject of entangled property rights, established progressively over long procedures, and legal battles. The parts that are not exploited are considered usable, or even appropriable, in other words, *res nullius*.<sup>20</sup>

Later generations of the Ecole des Annales did not ignore the problem either: communes were studied from the angle of rural history. Communes are primarily concerned with grazing, as well as the extraction of resources from forests.

Throughout his work, Georges Duby's analysis of commons is rooted in the theme of seigneurial domination, especially in the late Middle Ages, in the context of social differentiation resulting from economic growth and demographic pressure. In the twelfth-thirteenth centuries, the local lord-controlled commons, "strove above all to divert collective agrarian constraints and the use of communal land to his benefit".<sup>21</sup> This inequality of position and power is fundamental to understanding the evolution of commons and continues Marc Bloch's analyses: members of the same community have different relations to commons, depending on their activities and social position. Georges Duby extends these reflections with a more detailed approach to the partial reversal at the end of the Middle Ages, seen as the result of economic and demographic developments.

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<sup>19</sup> Bloch, *Les caractères originaux de l'histoire rurale française*, p. 185.

<sup>20</sup> Bloch, *Les caractères originaux de l'histoire rurale française. Tome 1*, p. 186-187. On this point, see in particular Yan Thomas, 'La valeur des choses. Le droit romain hors la religion,' *Annales. Histoire, Sciences Sociales* 57e année/6 (2002), 1431-1462.

<sup>21</sup> Duby, *L'économie rurale et la vie des campagnes*, p. 483.

Rural economic dynamism had an impact on the use of collective rights. From the end of the thirteenth century onwards, social differentiation increased within villages, due to changes in land uses, particularly on seigneurial estates. Contrary to Marc Bloch's analysis, the richest peasant in the village "endeavoured, to extend his profits, to withdraw more and more of the fields and meadows of the estate from collective constraints, from idle grazing, from the obligations of the common herd. Closer to the land, less spendthrift than the nobleman, and more devious, he thus increased his fortune. In this way, [these transformations had] the main effect of loosening agrarian solidarities and accentuating tensions between rich and poor within peasant society".<sup>22</sup>

At the beginning of the fourteenth century, the poorest peasants were excluded from the communaux in France, Germany and England. Exclusion could come from the richer peasants, the lords, or from the community itself, as in England. For the latter, the excluded provided rural labourers employed as day labourers for low wages.<sup>23</sup> At the beginning of the fourteenth century, collective and communal rights were more difficult to access or exercise. The root of the problem was the demographic and agricultural growth of the thirteenth and early fourteenth centuries, which led to accelerated social differentiation. The Black Death, on the other hand, reduced demographic pressure and, according to Duby, reorganised and improved agricultural production, with the least fertile land, often communal, returning to grazing.

The more difficult economic context of the late fourteenth and fifteenth centuries did not hinder the development of livestock farming, a source of great profit not only in the urban environment but also in the high mountain countries:<sup>24</sup> the opening of open spaces and the shortage of manpower favoured the orientation towards pastoral economy, based either on grazing or leasing grassland.<sup>25</sup> The development of these activities has had the effect of reviving conflicts over communal land.

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<sup>22</sup> Duby, *L'économie rurale et la vie des campagnes*, p. 526.

<sup>23</sup> Duby, *L'économie rurale et la vie des campagnes*, pp. 506, 535.

<sup>24</sup> Georges Duby, 'La seigneurie et l'économie paysanne. Alpes du Sud, 1338,' *Études rurales* 2/1 (1961): 5-36, here 625.

<sup>25</sup> Duby, *L'économie rurale et la vie des campagnes*, p. 625.

Emmanuel Le Roy-Ladurie's work devotes great attention to communal and collective rights in *Montaillou, village occitan*, first published in 1975, which quickly gained international success.<sup>26</sup> Located in the Midi, where collective rights were preserved with greater vigour, this village was the subject of a lengthy investigation by the Inquisition, led by Jacques Fournier. The usual scarcity of documentation is compensated here by a survey from 1672, that describes the registration of certain collective rights in the seigneurial rights of the kings of France, successors to the ancient counts of Foix.<sup>27</sup> The inhabitants could graze their flocks in the seigneurial forests and wastelands in exchange for fees, paid to the king's representative. Similar rights, as part of oral practices, probably already existed in late medieval times.

These collective rights are attached not to individuals, but to families: the "Pyrenean house is a legal entity, indivisible in property, and the holder of a certain number of rights: these are expressed in the ownership of land, and the use of forests and common mountain pastures".<sup>28</sup>

Eventually, widely present in the work of the Ecole des Annales, from one generation to another, commons are not necessarily common goods, but above all collective rights, whether exercised over the property of others – referred to as collective servitudes – or over spaces belonging to the community or a lord, the communal. These collective rights apply to individuals – the members of the community – whom they help to define, in areas of varying status, under varied and complex ownership relationships. Gradually fixed in writing, sometimes under the name of custom, they may seem to reflect immemorial and relatively unchanging rights in the image of the peasant community. This representation is erroneous: the peasantry has a history, and so do collective rights.

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<sup>26</sup> Le Roy Ladurie's work has been criticized, particularly in the way he considers the inquisitorial procedure and its effects on testimonies, see for example John H. Arnold, 'The Historian as Inquisitor: The Ethics of Interrogating Subaltern Voices,' *Rethinking History*, 2-3, 1998, 379.

<sup>27</sup> Emmanuel Le Roy Ladurie, *Montaillou, village occitan de 1294 à 1324* (Paris : Gallimard, 2008) chapter I. Environnement et pouvoirs.

<sup>28</sup> Le Roy Ladurie, *Montaillou, village occitan de 1294 à 1324*, chapter II. The family home: *domus, ostal*.

### B. Collective rights at Saint-Rémy

The origin of grazing rights at Saint-Rémy is not easy to determine. Ecclesiastical sources mainly mention churches and the *castrum* and its inhabitants, not the surrounding area. On the side of the secular seigneur, i.e. the Counts of Provence, the status of wetlands before the end of the thirteenth century is not mentioned in royal surveys. Nevertheless, we know that in Tarascon, in 1236, the inhabitants obtained the right to graze in the marshes, granted by royal privilege.<sup>29</sup> Similarly, a letter from Charles II, dated March 24, 1289, mentions the *palud* located north-west of Saint-Rémy, granted to the community of Saint-Rémy in exchange for a cens: this was probably an emphyteutic lease, followed by a division, with the counts retaining eminent domain.<sup>30</sup> Following a flood, the inhabitants obtained a cens reduction. At the same time, the Count imposed – or ratified – the use of a third of the marsh as *patui*, i.e. common grazing land, for the *universitas* and the inhabitants.<sup>31</sup> Nothing is known about the cultivation of the remainder, the sharing of the land, or compliance with this request. Finally, a letter patent from 1307 explicitly defines the collective rights of the inhabitants to graze and cut wood, excluding strangers.<sup>32</sup>

The legal framework was therefore mainly set by the Counts of Provence. However, the geographical framework depended on the definition of the status of inhabitant, which was not clearly defined in the sources,<sup>33</sup> and above all on the geographical extension of the *territorium* over which these

<sup>29</sup> Emeline Roucaute, 'Une Histoire des zones palustres en milieu méditerranéen entre Bas Rhône et Basse Durance (XIV<sup>e</sup> siècle-début XIX<sup>e</sup> siècle)'. PhD thesis, Manuscript, Prehistory, Archaeology, History and Civilizations from Antiquity to the Middle Ages, Aix Marseille Université, Marseille, 2008, p. 125.

<sup>30</sup> AD13 B. 262, f° 11, v°; AC Saint-Rémy, CC 1 e, in Edgar Leroy, *Les Archives Communales de Saint-Rémy de Provence Des Origines Au XVI<sup>e</sup> Siècle* (Saint-Rémy : Edition de la Municipalité, 1950), pp. 206-207.

<sup>31</sup> AD13 B. 262, f° 11, v°; AC Saint-Rémy, CC 1 e : "ad usum et patium universitatis et homini dicti castri debeat perpetuo remanere".

<sup>32</sup> AC Saint-Rémy AA2, "homines ipsi Sancti Remigii sint et fuerint a longis retro temporibus, in possessione vel communi lignarandi et pastorgandi, soli et in solidum, infra territorium memoratum et quoslibet extraneos id agere prohibendi".

<sup>33</sup> See more generally Joseph Morsel, *Communautés d'habitants au Moyen Âge (XI -XV<sup>e</sup> siècles)* (Paris : Editions de la Sorbonne, 2018).

rights applied, a constitutive element of the community.<sup>34</sup> The delimitation procedures were spread over several decades, from the first mention in 1266 to 1328. The longest were those of Lagoy (whose lords faced financial losses) and Mollèges, who held rights over the eastern *palud*. These deeds were an important part of the activity of the *universitas* during this period. In addition to delimiting territory, they also provided an opportunity to reaffirm collective rights. A 1296 lawsuit between the syndics of Saint-Rémy and the lord of Lagoy, Karleti Albe, tells us that the inhabitants of Saint-Rémy had identical rights over the territories of their *castrum* as they did over that of Lagoy, in particular concerning the right of way, the reciprocal being not verified, hence some of the tension surrounding the demarcation.<sup>35</sup> These procedures follow roughly the same pattern: the community appoints representatives, and syndics, who then take legal action, requesting a decision, arbitration, and not hesitating to appeal. In the 1316 demarcation with Romanin, the reciprocal right of way is specified, on condition that any damage to private property is paid for.

Within this legal framework, Saint-Rémy *universitas* intervened gradually in the fourteenth century to regulate usage conflicts linked to collective rights and communal land, and to defend its collective interests. Before the community was able to regulate certain uses, regulation was the jurisdiction of the judge and the *bayle*, i.e. the counts of Provence. In 1306, several inhabitants brought before the Tarascon judge a case against a landowner. He had had the *bayle* seize the cows of Guillelmus Blanchi, notary, which were grazing on a private area after the harvest. In other words, he was trying to restrict the right to graze,<sup>36</sup> and his complaints were taken up by the *bayle*: the victim had to complain with the judge of Tarascon, i.e. a higher authority, who asked the *bayle* to investigate. Guillelmus Blanchi had to produce witnesses, and the questioning focused on the customary practice of “vaine pâture” in this place: oral confirmation was enough for the *bayle*. The inhabitants probably acted collectively, and those who regularly grazed in this area have probably gathered to testify. Nor can we rule out the possibility that they were the shepherds of Guillelmus Blanchi’s herd, the

<sup>34</sup> Marc Bloch, *Les caractères originaux de l'histoire rurale française. Tome 1*, 2nd edition (1st ed. 1931) (Paris: Armand Colin, 1968), 173.

<sup>35</sup> AD13, B.84, f° 255 et seq.

<sup>36</sup> AC Saint-Rémy FF 2 F.

complainant: we know nothing of their respective links. Ultimately, this first way of defending collective rights is based on practice and customs and took place before the law.

Besides, keeping a copy of these proceedings is a way of defending these collective rights and inscribing them in the long term: two representatives of the community asked a notary, Egidius Porcelli, one of Saint-Rémy's leading notables, to copy the contents of these proceedings and give them a public form.<sup>37</sup> Such a request, common in manuscripts kept by the community between the 1290s-1300s, shows the importance attached by the *universitas* and its representatives to keep a record of these proceedings, and to register themselves in action. For the community, the stakes are perhaps as much social – ensuring the community's equilibrium – as they are social-political – maintaining a certain identity, associated with collective rights, against individuals who wish to restrict or detach themselves from them.

The first regulatory interventions of which we have any trace are the statutes of 1323; the content is only known by modern inventories. For subsequent statutes of 1335 and 1337, the communal and departmental archives have preserved the originals. Reviewing their whole content and the deliberations preserved episodically for the fourteenth century would be tedious. The following table summarises collective rights.

Themes	Deliberations	Statutes
Collective easements (grazing and grass-cutting)	-	March 1335 (art. 1), May 1335 (art. 3, 6, 12) Feb 1337 (art 3, 9)
Collective grazing rights on common land	-	May 1335 (art. 1, 2, 14)
Other easements and collective rights	-	May 1335 (art. 4, 5, 11); Feb 1337 (art. 17)

*Figure 2. Collective rights in the communal statutes and deliberations of Saint-Rémy*

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<sup>37</sup> AC Saint-Rémy, FF 2 F : "ad quadam cartulario Johannis Garantonis notarium publicum [...] ad requisitatem Johannis [Robertis] et Isnardi Garantoni, hac instrumentum signo meo signavi et in formam publicam redigi".

Overall, collective rights are mostly defined by statutes, and very little in the deliberations, as shown by the detailed record of decisions over time (see Figure 2). The two deliberations concerning collective rights in 1344 involved the appointment of vine guards. This clear dichotomy between the content of the statutes and the deliberations can be explained quite logically: the purpose of the statutes is to define collective rights, within the framework defined by the Counts of Provence and their representatives, while the deliberations concern day-to-day management.

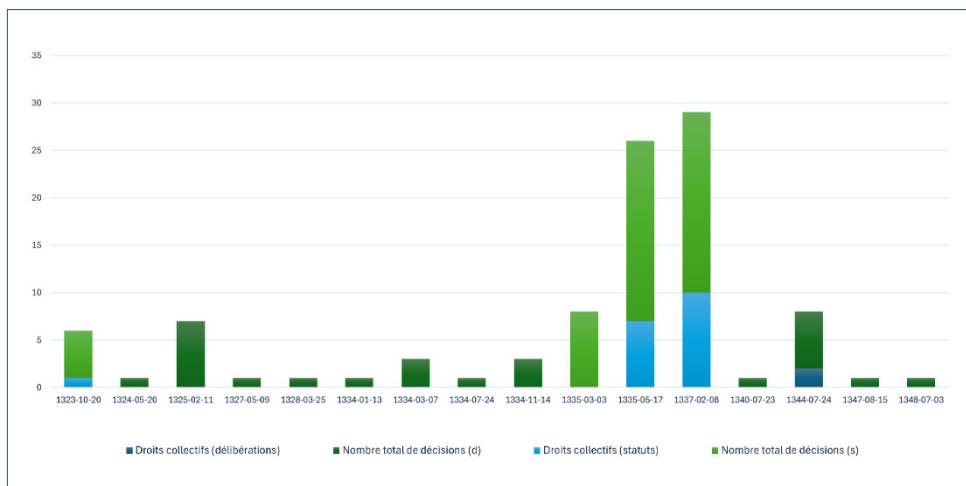


Figure 3. Chronology of collective rights in Saint-Rémy's deliberations

The evolution of statutes provides a clearer picture of how content is constructed. Decisions may follow on from conflicts, of which they keep a record. For example, the first article of the statutes of March 1335 specifically mentions a dispute with a nobleman from outside the commune, Francescus Raymundi, who was grazing his flocks in the *défens* or pastures and whose animals were seized, which seems to lead to a trial. The *universitas* generalises the procedure and plans to finance it, a sign of the importance of the case, but also their cost. The status of grazing land is not specified, whether communal or open to free grazing. The problem here is not the right to graze or the right to graze per se, but how to limit it to members of the community.

These statutes were probably confirmed from year to year,<sup>38</sup> without being reproduced in the new statutes. For example, the 1335 ban was extended in the 1337 statutes: the prohibition on outside herds in the *défens* and pastures was extended to include a ban on livestock rearing by outsiders<sup>39</sup> – which may well have been a way of circumventing the first ban.

The problem posed by Francescus Raymundi seems to be linked to a shift from subsistence pastoralism to lucrative pastoralism, corresponding to much larger herds. Such practices can lead to over-grazing, endangering the very existence of some rural communities, as was the case for certain villages in Provence in the mid-fourteenth century.<sup>40</sup> At first glance, this situation echoes the “Tragedy of the Commons”: but, contrary to what Hardin writes, the communities and the administration of the Counts of Provence sought to regulate access, in this case by excluding outside herds.

More broadly, the articles of the 1335 statutes, for those of interest to us here, regulate access to the community’s natural resources, i.e. those taken from nature on the community’s territory. *The sine qua non* for the exercise of collective rights is the existence of a material base. Against a backdrop of strong demographic growth and increasing pressure on harvests, the community is seeking to protect its collective rights. The second article of March 1335 lifted the ban imposed a year earlier by the *bayle* of Saint-Rémy on taking timber from other people’s property. The statutes of March 1335 can be read as an organisation of the *universitas*, its council, and the relations they maintain with the *bayle*, i.e. with the administration of the counts of Provence: this codification also concerns collective rights. These statutes therefore help to define a collective identity, associated with collective rights, certain forms of political and legal relations with the authorities, and a particular role for the notables at the head of the political community in this scheme. In this way, the notables can claim to be defending a collective right.

Two months later, the focus of the statutes of May 1335 was no longer the organisation of the *universitas* and its council, but rather the defence of

<sup>38</sup> Didier Lett, ed. *Statuts, écritures et pratiques sociales dans les sociétés de l’Italie communale et du Midi de la France (xii -xv<sup>e</sup> siècle)* (Rome : Publications de l’École française de Rome, 2021).

<sup>39</sup> AD13, B 507: “Item quod nullus cuiuscumque status et conditionis existat audeat tenere in territorio Sancti Remigii ab aliquo extraneo aliqua animalia grossa vel minuta ad medium incrementum, vel alias”.

<sup>40</sup> Pierre Coste, ‘La vie pastorale en Provence au milieu du XIV<sup>e</sup> siècle’. *Études rurales* 46/1 (1972): 61-75.

property, whether individual or collective. Without calling into question collective servitudes, the community regulates them for the cultivation and harvesting periods: mowing grass (art. 3) and gathering and harvesting fruit (art. 4 and 5) are forbidden on the property of others. Article 6 prohibits the keeping of animals on cultivated land.<sup>41</sup> The statutes are valid until mid-October, until the end of the harvest. Cultivation and grazing activities must be kept separate, a sign of encroachment, not to say conflict, between one and the other. Such provisions, which take up the general operation of collective servitudes, are part of a form of defence, or at least regulation, of property. Politically speaking, they also reflect the desire of the *universitas* or its representatives to play a role in their regulation.

Associated with the supervision and protection of property rights, other mentions of collective rights include the management of damage caused by unidentified animals in 1335 (art. 12) and 1337 (art. 11). Such damage is probably related to grazing, or if the animals escape the surveillance of their keepers or their enclosure. The first version explicitly excludes nobles from any responsibility, and animals guilty of damage are to be sought among neighbouring non-nobles unless their herds can be explicitly accused. This statutory distinction was abolished in 1337. This evolution bears witness to the socio-political tensions within the community of Saint-Rémy, and how they are or are not reflected in the regulations of the *universitas*, including in terms of collective rights. The complexity of the 1335 article, and its subsequent deletion, lead us to believe that a particular case was ratified by the *universitas*, a regulation that was probably subsequently rendered null and void or contested.

The royal swamps are the only area for which the *universitas* precisely regulates collective rights. They have been owned under emphyteutic leases since 1324 and divided up in 1337. Between the two, usage seems unclear: if the swamp is not drained, collective rights seem to apply without restriction. By 1335, on the other hand, drainage was well underway and sharing was being actively prepared: the community restricted access. Failure to comply with the regulations resulted in fines, part of which were paid to the *universitas*: these are the only documented cases where the community receives part of

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<sup>41</sup> AC Saint-Rémy, FF 2 F: "Item quod nulla persona ut supra, audeat ponere aliqua animalia grossa vel minuta in [121] alieno prato, blado vel deffenduta nec vineis, nec inter garbas".

the proceeds. In detail, the first article prohibits all community members from grazing in the *palud*,<sup>42</sup> and the second from mowing grass,<sup>43</sup> except by agreement with the council in both cases. The aim is therefore to control access to a limited resource, to prevent over-grazing that would excessively damage this largely drained but not yet shared area, or to generate income. The thirteenth and fourteenth articles specify the nature of the agreement to be entered into with the designated council: an entry fee, distinguished between natives and non-natives, and according to the type of animal (figure 4). The much higher fees for large livestock may aim at restricting profit-making grazing practices. This provision was not renewed in 1337: the *palud* was divided up and grazing was largely excluded. The 6th, 7th and 18th articles forbid access to the *palud* for grazing; only ploughing and pack animals are allowed,<sup>44</sup> except for harvest restrictions.<sup>45</sup> Intensive grazing for profit is excluded and it is only possible to feed animals useful for cultivation.

Inhabitants	small animals	large animals
Native	2 denarii	16 denarii
Non-native	3 denarii	25 denarii

*Figure 4. Grazing rates in the royal palud of Saint-Rémy in 1335*

Except for the royal *palud*, the actual management of these regulations is the responsibility of the *bayle*, who designates the *banniers*. Indeed, the rights of justice depend on the local lord, in this case, the Counts of Provence. At most, the community can grant the banners a share of the fines for illegal mowing. In other words, regulation by the community fell within the very limited framework of the counts' power and their representatives.

<sup>42</sup> AC Saint-Rémy, FF 1G, translated in Edgar Leroy, 'Les archives communales de Saint-Rémy de Provence. Des origines au XVI<sup>e</sup> siècle' (Saint-Rémy : Edition de la Municipalité, 1950), 186-93.

<sup>43</sup> *idem*.

<sup>44</sup> AD13, B 507: "Item fuit ordinatum et statutum quod nulla animalia audeant intrare dictam paludem divisam nisi animalia aratoria et animalia basti".

<sup>45</sup> AD13, B 507: "intrare infra duas robinas medietarum a quindena Sancti Michaelis usque ac festum natalis domini, sub pena banni consueti cum animalibus aratoriis basti, et equabus quantum messes durabunt pro pastergagio assignato".

Overall, the community's collective rights are a tangle of rights and practices, complex to regulate, that evolve in line with economic and socio-political dynamics. The community, or its representatives, are gradually taking over part of their management. *Vaine pâture* (grazing) was increasingly restricted to local inhabitants and subsistence use, although noble and non-noble, natives and non-natives were treated differently by the royal *palud* in 1335. The *universitas* intervened mainly in the areas it owned, i.e. the royal *palud* to the east. For the rest, the provisions are a mixture of measures aimed at achieving a certain social balance between owners, particularly of vineyards, and those who graze their livestock. Some measures seem to have been requested by the administration. Finally, the set of statutes from the 1330s appears to be a means for the council to play an increasing role in the social life of the community and to find new temporary revenues. In other words, it sought to justify its existence, since it was unable to regulate all collective rights. Indeed, anything not mentioned in these statutes is subject to regulation by the *bayle* and the judge of Tarascon, i.e. the Counts of Provence, lords of the town.

## II. Commons goods

### A. *The Italian revival of commons*

While the French historiography of the Annales has tended to focus on the study of collective rights, more recent historiography uses the term *common*, mainly in the sense of common goods and collective property. The boom in Italian work on this subject over the past two decades or more has led to the publication of several high-quality historiographical reviews.<sup>46</sup> As in France, the historiography of commons is rooted in the long-term and the socio-political changes that have taken place in Italy.

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<sup>46</sup> See in particular Emanuele Conte, 'Comune proprietario o comune rappresentante? La titolarità dei beni collettivi tra dogmatica e storiografia,' *Mélanges de l'École française de Rome* 114/1 (2002): 73-94; Emanuele Conte, 'Beni comuni e domini collettivi tra storia e diritto,' in *Oltre il pubblico e il privato. Per un diritto dei beni comuni* (Rome: Ombre Corte, 2012), pp. 43-59; Giacomo Bonan, 'Beni Comuni: Alcuni Percorsi Storiografici,' *Passato e Presente* /96 (2015): 97-115; and Davide Cristoferi, 'Da Usi Civici a Beni Comuni. Gli Studi Sulla Proprietà Collettiva Nella Medievistica e Nella Modernistica Italiana e Le Principali Tendenze Internazionali,' *Studi Storici* 57/3 (2016): 577-604.

Against the backdrop of the Industrial Revolution and the socio-political transformations it spawned, bourgeois law and “individual statism”<sup>47</sup> developed, based on free individual initiative as the sole and full manifestation of man, and a source of benefits for the community and the state. For the bourgeoisie and academics alike, these political currents had a negative interpretation of collective property, which had to be abolished. However, from the nineteenth century onwards, Positivism, Romanticism and then Socialist currents were critical of bourgeois property and turned their attention to collective property and its origins. The context was that of the transformation of the countryside: Italian parliamentary surveys and debates after unification showed the impoverishment resulting from the disappearance of common property in the villages concerned.

However, until the 1960s, collective property was confused with private property and dealt with under private law, i.e. as a particular relationship between a private subject and an object.<sup>48</sup> On the contrary, from this decade onwards, commons are studied from the angle of public law, as a modality of possession and management by the state or public power. For the Carolingian period, Ennio Cortese studied how “strategic” public goods, such as roads, bridges, ports and saltworks, gradually came under the authority and ownership of the king. These assets became *regalia* under Frederick I.<sup>49</sup> Paolo Grossi’s work marks a turning point in this respect, for while he takes up the public law approach, he introduces the distinction between collective and public property. More recent work by legal scholars includes that of Emmanuel Conte: in particular, he has studied the problems of ownership of the collective rights of communities over the feudal domain, i.e. the relationship between these collective rights and the feudal domain of the lords, where most of these rights are exercised. Since the 1990s, legal debates have extended to the relationship between legal forms of ownership and economic, social and environmental factors,<sup>50</sup> in parallel with the development of these historical fields.

<sup>47</sup> Paolo Grossi, *Un altro modo di possedere* (Milano: A. Giuffrè, 1977). in Cristoferi, ‘Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,’ 580.

<sup>48</sup> Cristoferi, ‘Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,’ 580, 584.

<sup>49</sup> E. Cortese, *Il Problema Della Sovranità Nel Pensiero Giuridico Medioevale* (Bulzoni Editore, 1966), in Cristoferi, ‘Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,’ 582-84). See also Pierre Racine, ‘Aux origines du droit public : la législation de Frédéric Barberousse à la Diète de Roncaglia (1158),’ *Le Moyen Age* CXIV/2 (2008): 361-368).

<sup>50</sup> Cristoferi, ‘Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,’ 584-585.

Outside the field of legal history, the study of commons underwent a revival in the late 1980s, with two major colloquia on collective property and commons. In 1987, Jean-Claude Maire-Vigueur introduced the colloquium at the Ecole Française de Rome, deplored the overly strong influence of legal formalism, which had prevented the development of other forms of analysis, whether of the economic role of commons in communes, the nature of collective ownership or the political struggles linked to their control.<sup>51</sup> His work has demonstrated that commons were a central element of communal finances in the twelfth-thirteenth centuries, at the heart of the confrontation between *milites* and *popolo*. In particular, he has highlighted the trajectories of appropriation of communal property by the first communal elites of the tenth-eleventh centuries, and their relative distribution (comtadine, parochial, centralised), achieved under the growing power of the bourgeois classes during the thirteenth century. Collective property thus appeared to be made up not only of fields but also of cultivated land, mines, castles and mills – in other words, much more extensive than had previously been thought.<sup>52</sup>

The 1990s saw the emergence of environmental studies outside the Anglo-American world. In 1992, the *Quaderni Storici*, edited by Diego Moreno and Osvaldo Raggio, studied commons, admittedly mainly in the modern era, from the perspective of environmental micro-history. They are defined as spaces and resources that occupy a crucial and ambiguous position in the organisation of the territory and the structure of an economic system, and for these reasons are at the centre of conflicts.<sup>53</sup> The 1990s also saw the development of commons studies from an agrarian history perspective. François Menant<sup>54</sup>

<sup>51</sup> Jean-Claude Maire Vigueur, 'Premessa,' *Mélanges de l'Ecole Française de Rome. Moyen-Age, Temps Modernes* 99/2 (1987): 553-554, Cristoferi, 'Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,' 587-588).

<sup>52</sup> Cristoferi, 'Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,' 592-594.

<sup>53</sup> Osvaldo Raggio and Diego Moreno, eds. *Risorse Collettive*, *Quaderni Storici* (Bologna: Il Mulino, 1992), Cristoferi, 'Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,' 593.

<sup>54</sup> François Menant, *Campagnes lombardes du Moyen Âge. L'économie et la société rurales dans la région de Bergame, de Crémone et de Brescia du X<sup>e</sup> au XIII<sup>e</sup> siècle* (, 1993), François Menant, 'Les chartes de franchise de l'Italie communale : un tour d'horizon et quelques études de cas,' in *Pour Une Anthropologie Du Prélèvement Seigneurial Dans Les Campagnes Médiévales : XIe-XIVe Siècles : Réalités et Représentations Paysannes : Colloque Tenu à Medina del Campo du 31 Mai au 3 Juin 2000*, eds. Monique Bourin and Pascual Martínez Sopena (Paris : Publications de la Sorbonne, 2004).

and Gérard Rippe<sup>55</sup> demonstrate the important role of commons in the evolution of the companions of northern Italy between the tenth and thirteenth centuries.

Gradually, the disappearance of collective property, first through the reclamation and tilling of the soil by secular, ecclesiastical and community lords, and later through the arrival of urban landowners, led either to the proletarianization of peasants or to the development of a more modern and efficient form of agriculture geared to the urban market.<sup>56</sup>

Finally, in the wake of the neo-institutionalist perspectives opened up by Elinor Ostrom,<sup>57</sup> i.e. from the angle of transforming resource management, we should mention the work of Riccardo Rao. Picking up where Jean-Claude Maire-Vigueur left off, he brings together legal and socio-economic perspectives in a regional rather than local framework, using Piedmont and Lombardy as examples. It reconstructs the forms of management and ownership of these properties, the *comunia*, fundamental to the study and understanding of community history. In this sense, it goes far beyond Ostrom's perspectives and opens a much broader field of research. The study of common property in Lombard villages enables him to show the role it played in the political affirmation of village communities, their gradual autonomy from the lordships, and the construction of local identity: from the twelfth century onwards, Italian communities became legal personalities and were able to exercise not only a right of regulation but also a right of alienation, if not exchange, in agreement or otherwise with the lords. In the thirteenth century, competition with the seigneuries became fiercer: communities were recognised as communes, with their governing bodies, which could cultivate, sell or lease common property. Not only the right to use was brought before the courts, but also the direct right. The regulation of all collective resources is reorganised, in the broader context of the extension of the prerogatives of the communes.<sup>58</sup> Rao shows that enforcing rights, particularly the rural police agents, is an important issue in determining the political role of village

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<sup>55</sup> Gérard Rippe, *Padoue et son contado (Xe-XIIIe siècle)*, Rome, Publications de l'École française de Rome, 2003.

<sup>56</sup> Cristoferi, 'Da Usi Civici a Beni Comuni: Gli Studi Sulla Proprietà Collettiva,' 594.

<sup>57</sup> Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 2015).

<sup>58</sup> Rao, 'I beni comuni nel Piemonte bassomedievale,' pp. 332-334.

communities. However, these communities do not always represent the entire population: changes in the use of common property did not satisfy all inhabitants. Indeed, these communities gradually simplified the stratification of seigneurial rights, reclaiming the useful domain and restricting the collective rights associated with these spaces, particularly for neighbouring communities. In doing so, they brought these commons into the land market, from which they had previously been excluded. Gradually, communal property could be cultivated, rented out and even alienated, with the proceeds financing communal institutions. Yet, one part of the community could legitimately ask for the preservation of public uses of these spaces, on which it might depend for its survival, while another demanded the economic valorisation of these same spaces. Schematically speaking, village communities in the mountains are more likely to preserve the collective uses of grazing and harvesting, while communities on the plains are more likely to cultivate these areas.

The Italian reflections should be seen in the broader context of the scientific revival of commons in Northern Europe. The simplified picture is that of a southern Europe that lost its commons much faster than in the north, due to the much stronger power of the lords: to show a plural and more nuanced reality, Riccardo Rao and Iñaki Martín Viso<sup>59</sup> have carried out comparative work between their two respective work areas, northern Italy and the Duero plateau, in the north-west of the Iberian Peninsula. They proposed approaching commons as dynamic resources, i.e. “constantly in the process of being assimilated into public or private goods”;<sup>60</sup> above all, they advocated broadening the perspective to their non-economic functions, such as the search for internal social equilibrium, the construction of local identities and the involvement of external authorities. According to Rao, collective rights and common goods were encompassed by the term *communia*. Regulation was not only based on a definition of commons in terms of ownership by the community; rights of access to specific spaces were gradually formalised during the Middle Ages and played an essential role in the construction of the notion of the collective, a notion subsequently

<sup>59</sup> Iñaki Martín Viso and Riccardo Rao, ‘Commons and power dynamics in medieval southern Europe. A comparison between Northern Italy and the Duero Plateau (VII -X<sup>th</sup> century),’ trans. Antoine Heudre, *Annales. Histoire, Sciences Sociales* 77e année/3 (2022): 511-542.

<sup>60</sup> Viso and Rao, ‘Communs et dynamiques de pouvoir dans l’Europe du Sud médiévale,’ 5.

broadened to include the “common good” and moved into the political sphere.<sup>61</sup> However, Viso and Rao show that we should not oppose a public sphere, associated with the defence of commons, to a private sphere, which would aim to usurp and privatise them: communities themselves limited collective uses and were able to organise privatisation.<sup>62</sup>

During the twelfth century, local communities in northern Italy began to hold full rights over commons, while consulates were established and their institutions stabilised.<sup>63</sup> Conflicts between lords and communities led to partition in the form of fiefs; with the rise of the written word, rights were formalised and henceforth associated with residence. Commons were thus increasingly defined as linked to a territory and could be delimited by borders, and *termini*. “This evolution reflects the profound spatialisation of social relations that was taking place at the time, and the part that commons played in this process.”<sup>64</sup> Gradually, they were leased to private individuals, reinforcing inequalities within the community, between the richest who could pay, and the poorest who couldn’t, but also lost access to grazing lands.<sup>65</sup> One of the areas where commons remain is the wetlands, which have been drained.

### ***B. The role of common marshes in the community organisation***

Approaching common goods in terms of resources has been a long tradition, in legal history and outside it, whether in environmental history or Elinor Ostrom’s work. In particular, Fabienne Orsi summarised the bundle-of-rights approach, thus enabling to “conceive of property in terms of different independent rights whose distribution as well as composition can vary”.<sup>66</sup> The work of Elinor Ostrom and her team makes it possible to distinguish five rights associated with property: the right to access, to take (these first two form the right to use, which Ostrom describes as the operational level), the right to manage, to exclude and to alienate (which form the level of collective choice, where the rules that apply to the first level are defined).

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<sup>61</sup> *Ibid.*, 6.

<sup>62</sup> *Ibid.*, 54.

<sup>63</sup> *Ibid.*, 25.

<sup>64</sup> *Ibid.*, 25.

<sup>65</sup> *Ibid.*, 26.

<sup>66</sup> Fabienne Orsi, ‘*Faisceau de droits*,’ *Dictionnaire des biens communs*, Dictionnaires Quadrige, Paris, PUF, 2021.

Rights	Owner	Owner without right of alienation	Owners of use and management rights	Authorised user
Access and sampling	X	X	X	x
Management	X	X	X	
Exclusion	X	X		
Alienation	X			

Figure 5. Bundles of rights

Using a bundle-of-rights approach to analyse the common property of Saint-Rémy is not without complexity from a legal point of view, due to the superimposition of feudal forms of ownership and the appropriation of the land by private individuals in 1337. After this division, only drainage canals remained as common property: the inhabitants owned them in the form of emphyteusis,<sup>67</sup> without holding the eminent (or direct) domain.<sup>68</sup> This system is not specific to Saint-Rémy, nor to the county of Provence: Fabrice Mouthon's work on the Alps shows that it was widespread.<sup>69</sup> The *universitas* exercised most of the rights of use and management, almost from the outset, since in 1334 it was allowed to appoint *roubiniers*, responsible for maintaining the *roubines*, i.e. drainage canals.<sup>70</sup>

<sup>67</sup> AD13, B 507, l. 276-277: "Constituerunt et assignaverunt emphiteosim perpetuam vice et nomine prefati domini nostri regis, et heredum suorum infrascriptis hominibus et personis castri de Sancto Remigio presentibus et requirentibus ac recipientibus pro se et heredibus suis quibuscumque predictam terram paludis dictamque paludem".

<sup>68</sup> AD13, B 507, l. 279-280: "sub maiori et directo domino et senhoria domini nostri regis et heredum suorum sit et taliter". Regarding emphyteusis, see Jean-Michel Boehler, 'L'art d'être propriétaire sans l'être tout en l'étant. Pratiques emphytéotiques dans la campagne alsacienne aux XVII<sup>e</sup> et XVIII<sup>e</sup> siècles,' *Revue d'Alsace* /140 (2014): 79-96. On the operation of feudal seigneurie, see Romain Telliez, *Les institutions de la France médiévale : XI-XV<sup>e</sup> siècle*, 3rd edn, Collection Cursus (Malakoff: Armand Colin, 2022), 43-59).

<sup>69</sup> See, among others, Fabrice Mouthon, *La naissance des communs : Eaux, forêts, alpages dans les montagnes de Savoie : (XII-XVI<sup>e</sup> siècles)* (Chambéry: Société savoisienne d'histoire et d'archéologie, 2016); Fabrice Mouthon, 'XIII-XV<sup>e</sup> Siècles : La Naissance Des Communs Dans Les Alpes Françaises,' *Histoire Des Alpes - Storia Delle Alpi - Geschichte Der Alpen* /24 (2019): 23-42).

<sup>70</sup> Missing moose manuscript, analyzed and summarized in Edgar Leroy, *Les archives communales de Saint-Rémy de Provence. Des origines au XVI<sup>e</sup> siècle* (Saint-Rémy : Edition de la Municipalité, 1950), 177-78).

The following year, the statutes of 1335, and above all those of 1337, oriented activities towards cultivation rather than grazing.

The general pattern of drainage is the following. Secondary canals, or *vallati*, are used for drainage and to delimit plots, which drain into roubines, the main canals,<sup>71</sup> collecting the water to the Durance between Noves and Châteaurenard, to the north. The precise shape of these canals is difficult to estimate, given their variety,<sup>72</sup> but also due to subsequent abandonment and redevelopment in the 15th-16th centuries.<sup>73</sup> In 1327, the representatives reached an agreement with the bishop of Avignon, lord of Noves, to cross its territory.<sup>74</sup> The *universitas* contributed to purchasing a mill in Noves, that obstructed the<sup>75</sup> *roubine*, as well as to widening existing canals; finally, in the event of damage in Noves due to lack of maintenance in Saint-Rémy, the *universitas* was obliged to repair the damage. For the *vallati*, funding comes directly from the owners,<sup>76</sup> who pay *curatores*, entrusted by the *universitas* with the upkeep of roubines. Finally, the *universitas* paid the cens corresponding to the emphyteutic lease directly to the *bayle*, or the farmer of the cens, as it occurred in 1373,<sup>77</sup> financed by the inhabitants' regular contributions to the community.

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<sup>71</sup> Christine Portier-Martin et al, eds, *L'enquête générale de Leopardo da Foligno dans la viguerie de Tarascon : janvier - février 1332*, Collection de documents inédits sur l'histoire de France Série in-80 51 (Paris : Éd. du Comité des Travaux Historiques et Scientifiques, 2010), CXLII, see also Emeline Roucaute, *Une histoire des zones palustres en milieu méditerranéen entre bas Rhône et basse Durance (XIV<sup>e</sup> siècle-début XIX<sup>e</sup> siècle)*, p. 184.

<sup>72</sup> See Jean-Loup Abbé, *À la conquête des étangs : L'aménagement de l'espace en Languedoc méditerranéen (XII - XV<sup>ee</sup> siècle)* (Toulouse : Presses universitaires du Midi, 2006).

<sup>73</sup> Roucaute, *Une histoire des zones palustres en milieu méditerranéen entre bas Rhône et basse Durance (XIV<sup>e</sup> siècle-début XIX<sup>e</sup> siècle)*, pp. 192-195.

<sup>74</sup> ADV, G 249, n° 29 (*Diversorum Sancti Remigii*), analyzed in Edgar Leroy, *Les archives communales de Saint-Rémy de Provence des origines au XVI<sup>e</sup> siècle* (Saint-Rémy : Edition de la Municipalité, 1953), 562-569.

<sup>75</sup> Purchase probably financed by a loan the following autumn, see AC Saint-Rémy, CC IIIa, translation in Leroy, *Les archives communales de Saint-Rémy (II)*, 163-64.

<sup>76</sup> AC Saint-Rémy CC IIo, quoted and analyzed in Leroy, *Les archives communales de Saint-Rémy (II)*, pp. 218-220: "solvantur per omnes et singulas personal qua possessiones seu possessionem in dicta palude [habent] prorata portione, secundum que servicium dicte paludis ut eis melius debitur expedire".

<sup>77</sup> AC Saint-Rémy CC 1 h, summarized in Edgar Leroy, *Les Archives Communales de Saint-Rémy de Provence Des Origines Au XVI<sup>e</sup> Siècle* (Saint-Rémy : Edition de la Municipalité, 1952), pp. 279-280.



Figure 6. The royal marsh of Saint-Rémy

Since the 1335 statutes, the community has exercised the right of exclusion for collective rights, mainly grazing rights, against people outside the community, but also against members. After the 1337 division, the right to exclude common property was limited to that associated with the canals. It is difficult to see how this right could be exercised: penalties for non-participation are not specified, nor are the possibilities for exclusion. In societies where village solidarity is relatively strong, offenders may face strong pressure. Nevertheless, this may have encouraged lone-rider behaviour. Ostrom identifies poorly defined rights and sanctions as one of the causes of the failure of the commons.

Finally, the right of alienation is not very explicit concerning canals. Necessary to drain marshlands and to demarcate plots, they are delegated to the *universitas*, which manages them. Their proper operation and upkeep imply forms of collective organisation. However, legally speaking, the *universitas* is not the owner; the emphyteutic lease concerns the inhabitants, and the community acts as an intermediary between them and the authorities and for the organisation of common space.

The rights associated with the lots allocated in 1337 are much more precisely defined. Community members took ownership of most of the common property. The right of alienation was recognised, subject to payment of *lods* and *trezains*, i.e. sales duties levied by the lord, and above all to the exclusion of ecclesiastical owners. The terms in which this restriction is formulated evolve between the agreement reached in 1324<sup>78</sup> between the syndics, mandated by the community to apply for the Aiguillons marsh in the form of emphyteutic leases and the division between the members in 1337.<sup>79</sup> The prohibition of 1324 seemed above all to restrict the prohibition of sale to religious, and the exclusion then extended to religious communities and persons incapable by law or custom.

In a recent article, Gérard Chouquer calls into question a paradigm founded on a resource-based approach: "the realities are first and foremost those of land and territories, in other words, of the relationship between powers and the relationship between populations and space".<sup>80</sup> Whether we're talking about certain approaches to environmental history or a more legal approach, the angle remains the same: resources taken or to preserve, and their regulation. However, and this is an essential contribution of Italian historiography, understanding commons in the Middle Ages requires a socio-political approach. For Saint-Rémy, the issues at stake are already apparent when examining bundles of rights: understanding legal and economic dynamics refers to an explicit socio-political background.

The Aiguillons marsh was quite complex to develop, for both physical reasons, linked to the wetland environment, and political reasons, delimiting the marsh surface between the various neighbouring communities. At the beginning of the fourteenth century, the marsh was used for grazing and was the subject of conflicts with the neighbouring communities of Lagoy

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<sup>78</sup> AD13 B2, f. 122: "exceptis ecclesie militibus et religiosis personis".

<sup>79</sup> AD13, B 507, l. 284-285: "in militares seu ecclasticas personas universitatem et collegium seu alias quascumque inhabiles et a jure prohibitas tam de consuetudine quam de jure".

<sup>80</sup> Gérard Chouquer, 2023 'Le rôle du récit historique dans la définition du statut juridique des communs fonciers,' ([https://www.academia.edu/110945455/Le\\_r%C3%B4le\\_du\\_r%C3%A9cit\\_historique\\_dans\\_la\\_d%C3%A9finition\\_du\\_statut\\_juridique\\_des\\_communs\\_fonciers](https://www.academia.edu/110945455/Le_r%C3%B4le_du_r%C3%A9cit_historique_dans_la_d%C3%A9finition_du_statut_juridique_des_communs_fonciers)), accessed December 2023, 29<sup>th</sup>, p. 5.

and Romanin,<sup>81</sup> two small seigneuries. The marsh was gradually demarcated with neighbouring communities: Romanin to the southeast, Mollégès and Saint-Andiol to the east and, albeit less conflictually, Noves to the north. The boundaries between Romanin and Saint-Rémy were established in 1315, following a procedure that had been underway since 1292: the procedure thus spanned almost 23 years, although conflicts were older, dating back to 1263.<sup>82</sup> The duration of demarcation procedures with Mollégès is roughly the same, 22 years, between 1306 and 1328. Mollégès was an abbey, and there do not appear to have been any previous conflicts of use, or at least no proof left. Until 1324, these proceedings mainly concerned the *saltus*, in this case, a seasonal wetland, for the Aiguillon marsh. Once boundaries have been established, the community can buy it. The interest is older since in 1308 the *universitas* delegated two syndics to negotiate an agreement with Romanin for the *palud*, outside administrative framework, which led the seneschal to pronounce the nullity of the division and to remove a milestone planted in the soil.<sup>83</sup>

In 1324, an agreement was reached with the royal court, in the form of emphyteutic leases.<sup>84</sup> The first two years were exempt, after which the swamp was to be cultivated and shared. In 1326, the syndics, representatives of the *universitas*, negotiated with representatives of the bishop of Avignon – Pope Jean XXII – on the tithe rate and the construction of a drainage canal passing through Noves, of which the bishop was lord. This canal was necessary for drainage, so the work was delayed, perhaps due to a poor estimate of its scope, or more likely due to negotiations with the bishop over tithes and the assumption of the cost of the drainage canal in Noves.

Subsequently, the division between the community members stretched over almost a decade, due to the difficulties in reaching an agreement. In terms of chronology, in 1328, John XXII united the tithes of the *palud* with the episcopal *mense* of Avignon, justifying this by the progress of drainage

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<sup>81</sup> Yves Grava, 'Vivre Au Village,' in *Saint-Rémy-de-Provence : Son Histoire*, ed. Société d'histoire et d'archéologie de Saint-Rémy-de-Provence (Aix-en-Provence : REF.2C éditions, 2014), pp. 177-181.

<sup>82</sup> AC Saint-Rémy, FF 2A.

<sup>83</sup> A13, B436.

<sup>84</sup> AD13, B2, fol. 121v-124.

works that made agriculture possible,<sup>85</sup> and the letters patent of the seneschal of Provence in 1337, authorising the meeting of the *universitas* to proceed with the sharing, mention an earlier unfinished sharing,<sup>86</sup> probably in 1328 given the bull fulminated by John XXII. As a further indication of the difficulty of sharing, the parcels were drawn by lot.<sup>87</sup> This division altered the social balance, favouring cultivation in general and reducing the space available for grazing: it's easy to imagine that this could have led to tensions and difficulties. In the absence of agreement, the drawing of lots is seen as an external arbiter, allowing the balance of power within the community to be clarified, and avoiding *a posteriori* criticism.<sup>88</sup> The stakes are therefore eminently political, respecting internal balances to reach a viable agreement. While the manuscript describes the drawing of lots procedure in detail, the council elected to head the *universitas* specifies that some plots have been sold by owners to people who did not have the right to own tenure there and are seeking legal nullity: the effects of the drawing of lots may have been "rectified" by dissatisfied parties, or those who wanted to sell. However, the manuscript does not specify whether the sales were actually cancelled.

The division is based on a meticulous description, with the total shared surface area ranging from 4 to 8 km<sup>2</sup>. The 98 parcels, or *faysses*, are 60% "useful" land (*utili*), suitable for cultivation, and 40% "useless" land (*inutili*), divided equally between each lot. *Faysses* may be split between different owners.

Over thirteen years, this agreement and sharing gradually brought the uncultivated *saltus*, part of the royal estate, onto the agricultural land market.<sup>89</sup> This development was part of a regional movement to transform

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<sup>85</sup> ADV, 1G 7, n° 22, Edgar Leroy, *Les Archives Communales de Saint-Rémy de Provence Des Origines Au XVIe Siècle* (Saint-Rémy: Edition de la Municipalité, 1950), pp. 166-167: "ad agriculturam pro magna parte inde aquis humanum expulsis ingeniu".

<sup>86</sup> AD13, B 507, "cumque de ipsa palude certa pars remanserit dividenda que tunc dividi non potuit bono modo".

<sup>87</sup> AD13, B 507, "certas cedulas sive lotos [...] posuerunt et proiesserunt a fortuna et ipstis projectis dictas cedulas aperiri mandaverunt publicando ibidem publice".

<sup>88</sup> Bernard Manin, *Principes du gouvernement représentatif* (Paris: Flammarion 1995).

<sup>89</sup> See Riccardo Rao, 'I beni comuni nel Piemonte bassomedievale,' in *Propriété individuelle et collective dans les États de Savoie : actes du colloque international de Turin, 9-10 octobre 2009*, (Nice: Serre, 2012), pp. 169-83.

marshlands and bring them under cultivation, which was intensifying.<sup>90</sup> Above all, it helped transform the community of Saint-Rémy. On the one hand, the organisation of sharing and the regulation of access and activities provided an opportunity for the *universitas* to structure itself further, by creating a twelve-member council and developing new tasks to manage, accompanied by new inflows and outflows of money, which also had to be organised – even if no accounting records were kept. On the other hand, it is taking greater ownership of its territory, even though the members were already roaming it. This appropriation is first and foremost legal, by the community members rather than by the community itself, whose role is merely to organise sharing and regulate conflicts, but not to own the land. It is also physical, since the commissioners representing the Count of Provence surveyed the *palud*, accompanied by the representatives and numerous witnesses, to share the territory. Finally, ownership is also symbolic, as each *faysse* is named after one or other of the owners.

## Conclusion

After a strong interest in the history of law and the Annales school at the end of the nineteenth and beginning of the twentieth centuries, the renewed interest in commons in other disciplines of the humanities and social sciences, around the neo-institutionalist approach of Elinor Ostrom, has opened up new and fertile fields for history provided, however, as Riccardo Rao invites us to do, that we do not limit ourselves to them. Open to other, more socio-political angles of analysis, this renewal is also part of the rise of environmental history. All these approaches study, from one angle or another, the history of relations between human societies – in this case, a community of inhabitants – and their environment, whether they appropriate it or exploit it, the two not necessarily going hand in hand.

Collective rights and common property form a certain continuity in practice, except between 1330 and 1340 when the shared marshland was taken out of use and restricted to cultivation. The community progressively

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<sup>90</sup> See the in-depth study for Languedoc : Jean-Loup Abbé, *À la conquête des étangs : L'aménagement de l'espace en Languedoc méditerranéen (XII<sup>e</sup>-XV<sup>e</sup> siècle)* (Toulouse : Presses universitaires du Midi, 2006).

restricted access to collective goods and rights, and managed more and more aspects of them, principally their regulation. The *universitas*, the political form of the community, thus acquired new prerogatives and a more elaborate organisation on this occasion, although the scope of its action was limited. The definition of the territory and the status of Saint-Rémy's inhabitants was also completed in the 1330s. Therefore, commons not only had an economic role but were also at the heart of the community's social and political life, and their control by its members transformed the fragile internal equilibrium. The appropriation of space by its members, and the definition, or at least the clarification, of collective operating rules solve conflicts between neighbours and within the community.

As far as collective rights and grazing are concerned, exploitation may have taken place within the framework of county rights. On the contrary, collective appropriation, which aims at sharing, i.e. appropriation by individuals, puts an end to these collective harvesting practices. The Black Death of 1348, periods of heavy flooding in the early 1360s, and perhaps also a lack of canal maintenance due to poorly organised financing, led to the abandonment of cultivation,<sup>91</sup> and a return to harvesting practices.<sup>92</sup> The history of the marshes is therefore not linear either, from *saltus* to cultivation. On the contrary, the reversibility of land development is entirely possible, albeit under very specific circumstances.<sup>93</sup>

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<sup>91</sup> AC Saint-Rémy, CC 1 f. See Edgar Leroy, *Les Archives Communales de Saint-Rémy de Provence Des Origines Au XVI<sup>e</sup> Siècle* (Saint-Rémy : Edition de la Municipalité, 1950), pp. 255-256.

<sup>92</sup> Attested in AC Saint-Rémy FF 6 E, summarized in Edgar Leroy, *Les Archives Communales de Saint-Rémy de Provence Des Origines Au XVI<sup>e</sup> Siècle* (Saint-Rémy : Edition de la Municipalité, 1952), pp. 362-369.

<sup>93</sup> Gérard Béaur, 'En un débat douteux. Les communaux, quels enjeux dans la France des XVIII-XIX<sup>es</sup> siècles?' *Revue d'histoire moderne & contemporaine* 53-1/1 (2006): 89-114, here 97.