

Litigation and the policing of communal farming in northern Burgundy, 1750–1790*

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Abstract

This study examines the administration of common land and rights in northern Burgundy (now the *département* of the Côte d'Or). Based primarily on court cases heard and fines handed out in a sample of seigniorial courts, it argues that the glue holding communal farming together was a vigilant local court system assisted by a few inhabitants co-opted each year by the community to work as field guards. The everyday working of communal agriculture involved chronic rule breaking, sneaking, policing, fining and litigation in a constant struggle between the village as a community and each villager as an individual. In their attempts to describe class struggle and fights between lords and villages over commons, French historians have underestimated the extent of everyday conflict that was inherent to the system.

French historians have debated the social politics of communal farming at some length. Marc Bloch posited that the constraints of communal farming were most strongly resented by the better off in the village, the so-called rural bourgeoisie. It was they who most often wanted to withdraw their fields from village-wide crop rotation and divide commons. There is an easy symmetry to Bloch's association of 'agrarian individualism' with those who apparently best mastered market forces. In his assessment, it was the poorer members of the community, with little property and no pasture of their own, who clung most strongly to communal rights and opposed the coming of bourgeois individualist property to the countryside.

Bloch's identification of wealthier farmers with individual property rights has not gone unchallenged by historians. The destruction of the Marxist interpretation of the French Revolution has led to a re-evaluation of the social politics of farming. Alfred Cobban, characteristically, claimed that Marxist historians had things entirely back to front. In fact, it was the village poor who most strongly called for agrarian individualism (enclosure, division of common land) and the better off who most opposed it. The poor, he said, had little access to communal rights and land, which were dominated by those who owned the most animals and had the most clout in the village. The poor wanted to gain a few square meters of land through division of commons or to keep their own pasture away from the large herds of the better off.¹

Several local studies have provided evidence of Cobban's contention that communal farming did not benefit the poor. In many parts of France the number of cattle that inhabitants were

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¹ Marc Bloch, 'La lutte pour l'individualisme agraire dans la France du XVIIIe siècle', *Annales d'Histoire Economique et Sociale* 2 (1930), pp. 329–381, 511–565; Alfred Cobban, *The social interpretation of the French Revolution* (1965), pp. 112–117.

allowed to put out to common pasture, and onto openfield stubble after the harvest, was limited by wealth. Nadine Vivier says that everywhere the commons belonged only to those villagers who owned land, occasionally only to those landowners who had inherited their land. In lower Provence it was usual for the number of cattle permitted on common land to be determined by the amount of taxes each person paid. And in many regions villagers were allowed to keep on *vaine pâture* (communal pasture on privately held stubble and fallow) only the number of cattle they could fodder through the winter. This meant that only those who could provide winter hay could take full advantage of communal rights.²

The debate over which social classes were enclosers and which were fence-smashers focuses our attention on class conflict, but misses the sheer extent of conflict of all kinds in communal farming. This article employs evidence from court cases and village archives in late eighteenth-century northern Burgundy (Map 1) to propose that historians have underestimated the amount of contention that was inherent in the system of communal agriculture. Taken together, the volume and nature of disputes over common land and communal farming suggest that, despite the popularity of the system, what held communal farming together in northern Burgundy was neither social harmony nor class interests, but an effective and vigilant court system.

The article begins with a description of the rules and practices of communal farming in eighteenth-century northern Burgundy. Due to royal edicts and Parlement *arrêts*, by the mid-1770s villages and private individuals could do away with communal agriculture. That few chose to do so is used to suggest that the system remained popular. We then move on to a discussion of the way local seigniorial courts joined forces with the village community to police agriculture. The fields, forests and heaths of each village in northern Burgundy were protected by the local seigniorial court and up to six inhabitants who were appointed annually to patrol the fields. The most striking thing about the policing of agriculture in northern Burgundy is the volume of fines that local courts handed out each year. In most courts, fines for breaking the rules of communal farming outnumbered every other operation of the court (including civil, criminal, police and probate cases). Furthermore, every community had to be alert to protect its common land, suing its own inhabitants for wood theft, illegal pasturing and theft of commons.

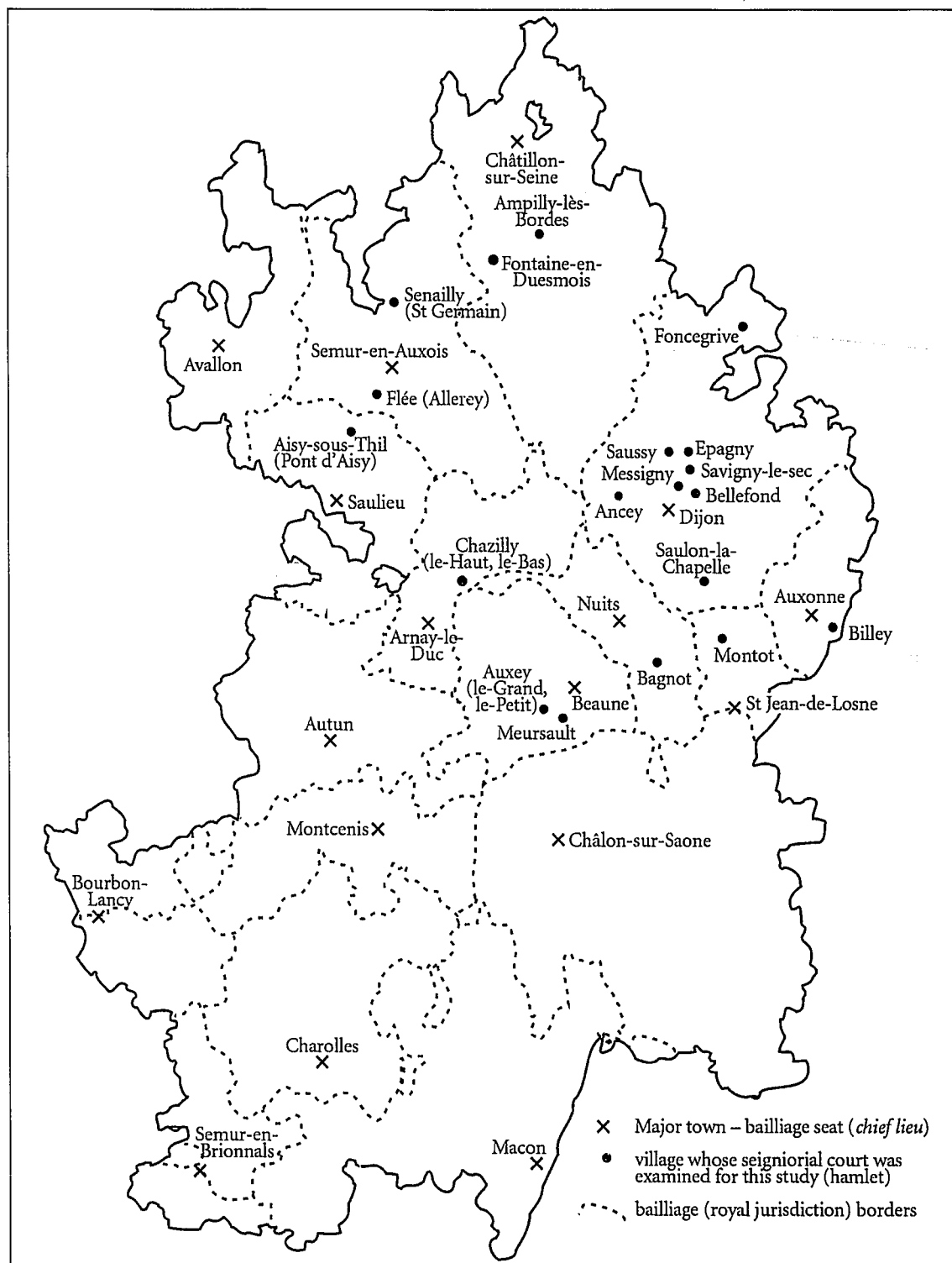
I

The rules governing communal pasture on fallow and post-harvest stubble in northern Burgundy were similar to those in other European regions of openfield farming and village-wide crop rotation. The whole village harvested at the same time.³ After the harvest was complete, all the

² Nadine Vivier, *Propriété collective et identité communale. Les biens communaux en France, 1750-1914* (Paris, 1998), pp. 48-54. René Baehrel, *Une croissance. La Basse-Provence rurale de la fin du seizième siècle à 1789. Essai d'économie historique statistique* (Paris, 1961), pp. 195-197.

³ Inhabitants were forbidden from harvesting until the *prud'hommes* (locals elected each year for the estimation of civil farming torts) decided that the fields were ripe for harvest. Sometimes the lord was entitled to nominate two experts to accompany the village's two.

Starting the harvest before the publication of the *ban de moisson* would lead to a fine, if caught. In one village, for example, four inhabitants appeared before the local judge to tell him that 'having roamed the fields of wheat [they] have decided that for the public good and utility the harvest cannot be opened before next Monday, ninth of the present month'. Departmental Archives of the Côte d'Or (hereafter ADCO.), B2 605/1, seigniorial court of Fontaine-en-Duesmois, Grands-Jours, 2 May 1781.



MAP 1. Burgundy – seigniorial courts studied.

Source: Drawn from Christine Lamarre, *Petites villes et fait urbain en France au XVIIIe Siècle. Le cas bourguignon* (Dijon, 1993), p. 124.

fields of the village were thrown open for pasture on the stubble. Village pasture rights also applied to unenclosed meadows after the first cutting of hay, although in some parts of Burgundy, notably the *bocage* of the Morvan, pastoral land had long been surrounded by hedges and stone fences and was exempt from communal pasture. This right was the result of the division of land into miniscule plots spread over the countryside, the size of which made it impossible to keep grazing animals on one's own fallow or stubble.

There were several controls on the use of pasture that helped the system work smoothly. The two main considerations were the protection of fields still planted in crops and the need to ensure the fair distribution of existing pasture resources. To settle these problems, the law of Burgundy's provincial Parlement required that each village have a communal herder and that all cattle, sheep and even pigs be committed to his care.⁴ Depending on the size of the herds, the same herder could look after all of the animals, or the herds could be divided into the 'large' and 'small' cattle (cows and horses in one case and sheep and pigs in the other). The herders were paid by those whose animals they kept, according to the number of animals in the herd. In Senailly the communal herder annually received two bushels of wheat and one bushel of barley per cow, a half-bushel of wheat per calf and a quarter bushel per pig.⁵ All inhabitants, as the local courts never ceased repeating, were to keep their animals 'under the staff of the communal herder'. The only exception was animals used to work the fields. Oxen and horses, by definition work animals, never appear in lists of animals in the communal herd. Those without oxen but well off enough to own a plough could keep several cows out of the herd as work animals.

The main purposes of the communal herd were to control access to village farming resources and to protect the unharvested fields. The herder did his most important work during the summer, keeping the animals on pasture and fallow and out of the wheat, barley and oats in the fields. He also made it much easier for the court and local officials to police the fields, since hundreds of wandering animals under the careless eye of children and domestic servants could have caused untold, and unattributable, damage in the fields. The requirement that all inhabitants keep their animals in the communal herd also made it easier for the village community and the court to know exactly how many animals each villager owned, making it harder for a few inhabitants to monopolize pasture.

In Burgundy most villages owned some land. This could range from fertile permanent meadow used for hay, to scrub land fit only for occasional pasture, to dense forest. Whatever the nature of the land, commons in northern Burgundy benefited wealthier villagers the most. When the community harvested the land and divided the crop among the inhabitants, whether the crop was wood or hay, the better off got the most. The most common arrangement was to divide a third of the hay or wood evenly among all the families, in equal portions. The remaining

⁴ This was a long-standing policy of the Parlement of Dijon. A pamphlet published for officers of seigniorial courts with relevant police laws, lists under the heading of 'troupeau séparé' (separate herd) Parlement arrêts from the following years: 1608, 1609, 1622, 1656, 1660, 1670, 1676, 1679, 1683, 1697, 1700, 1732, 1733, 1735, 1740, 1771. *Règlements généraux qui s'observent dans tout*

le ressort de la cour, et dont on fait lecture à la tenue des Grands-Jours. Nouvelle Edition. Revue, corrigée et augmentée (Dijon, 1786). See Henri Forestier, 'Le troupeau commun', *Annales de Bourgogne* 14 (1942), pp. 130-134.

⁵ ADCO, B2 1220/7, seigniorial justice of Senailly, St Germain, Grands-Jours, 22 June 1789.

two-thirds they would divide 'au marc la livre de la taille royale', in proportion to the amount of royal taxes each household paid.⁶ Occasionally the division was still less equal. For instance, in Villerottin the villagers decided to divide half of the hay proportional to taxes, and to sell the other half 'to the profit of the community'.⁷ Since inhabitants paid village expenses in proportion to royal taxes, this division of the hay was in effect entirely proportional to income. In Chazilly-le-Haut all of the harvest from the communal forest was divided in proportion to taxes.⁸

The same uneven use of communal resources applied to pasture rights. In Lanthès, after the public prosecutor had brought a suit against three locals, the judge ordered them to get rid of any sheep they owned or leased 'over and above the amount of land they cultivate'. Apparently a formula was used to relate the amount of land farmed to the maximum number of sheep each family was allowed to put on common land or stubble.⁹ The unequal division of the produce from communal resources was not only the practice in most villages, but was also the formal policy of the Dijon Parlement. This can be seen most clearly in the Parlement's policy toward *regain*. In 1779 this court authorized all communities to reserve some of their lands for growing a second crop of hay. The *arrêt* specified that this hay be sold in public auction, with the revenue divided 'in proportion to what each of the said inhabitants has heads of large cattle'.¹⁰

A consensus is emerging among historians of communal agriculture in France that the view of common land as a pre-capitalist form of land holding where all villagers shared equal access is romanticized and inaccurate. The wealthy had a larger share. There remains some question, though, on the extent and ways that the village poor could make use of common land and rights. Access to commons in many parts of France was determined by law and enshrined in written legal custom.¹¹ This was not the case in Burgundy, and the result was that access of the poor to common land varied from village to village.¹²

In a few villages, the poor were explicitly included among those entitled to use common land. The village of Senailly devoted part of its commons to arable farming. Every twenty years or so they re-divided the land among the inhabitants. In 1789 they did such a division. A survey

⁶ ADCO, B2 603/2, seigniorial justice of Foncegrive, Grands-Jours, 18 Dec. 1787.

⁷ ADCO, E Dépôt 701/1, communal archives of Villerottin, register of village assemblies, assembly, 30 May 1781.

⁸ In 1788 Emiland Bize sued the village of Chazilly-le-Haut to receive what he claimed was his share of that year's harvest of wood from the communal forest. He claimed that since he paid an eighth of the village's taxes, he should be entitled to an eighth of the wood. The villagers never challenged him on this, pointing out instead that he was an inhabitant of Chazilly-le-Bas, where he paid his taxes. ADCO, B2 sup 77, seigniorial justice of Chazilly-le-Haut, sessions 26 Apr., 31 May, 7, 14 June, 19 Aug. 1788.

⁹ ADCO, B2 668/1, seigniorial justice of Lanthès, sessions 27 June, 8 July 1785. Similarly in 1755, the judge of Montot reminded the village of his ruling of 1744

limiting the number of sheep according to the amount of land owned and leased. ADCO, B2 763/1, seigniorial justice of Montot, Grands-Jours, 3 Sept. 1755.

¹⁰ Dijon Municipal Library, MS 19,178, Recueil des déclarations, édits, lettres patentes et arrêts du Conseil d'Etat du Roi, registrés au Parlement de Dijon. vol 12, Arrêt 6 July 1779.

¹¹ Vivier, *Propriété collective*, pp. 49–50.

¹² The Burgundian Custom contains sections on common land, but is more concerned with relations between neighbouring villages and between lords and villages than with relations within the village over rights to land. Jean Bouhier, *Les coutumes du duché de Bourgogne avec les anciennes coutumes, tant générales, que locales, de la même province, non encore imprimées*. (2 vols, Dijon, 1742), I, pp. 22–23.

determined that the land measured 204 *journaux*, which they split into 200 plots and divided among the 64 families (each got three plots of first, second and third quality). The land was divided among all taxpayers in the village, and since even the poor paid nominal taxes they received as much land as the other inhabitants.¹³

It was more usual for villages to use their commons for pasture than to divide it for arable use. In these cases, could the village poor send animals out for free pasture? The question of whether the poor could put a cow or two onto the commons is difficult to answer. We will see below that the poor almost never got fined for illegal pasturing of cows on the commons, suggesting that they did not own any bovine animals. But since a cow represented a serious investment that would likely be beyond the means of most poor inhabitants, it is more instructive to consider the rules for smaller animals like sheep, goats and pigs. There was great variety in the pasturing of these smaller animals. In some cases the number of pigs allowed onto the commons was to be proportional to taxes, effectively barring the poor.¹⁴ Some villages forbid pigs entirely from commons, while others allowed them into the village herd.¹⁵

Rights over commons varied not only from village to village, but over time within the same village, with the rights of the poor changing depending on the leanings of the judge, the local power-brokers, the lord and even the provincial Intendant. In Ancey, for example, after 1754 villagers were not allowed to own any goats, due to the way their teeth destroyed the trees even in mature forests. In 1788 the judge told the same village that thereafter they would be permitted only one goat per household.¹⁶ Access to common land in northern Burgundy remained inegalitarian everywhere, and in most places the poor had no established right to use the land. The poor, though, did what they could get away with, sending sheep, goats, geese and other small animals onto the commons until they became troubling enough for some of the more settled inhabitants to complain to the local judge.

The uneven access to common land and communal rights meant that conflict over these resources sometimes split the village along lines of wealth. In 1782 the seigniorial judge of Montot called the village together to see if the inhabitants wanted to allow sheep and geese to pasture on the commons. Of the 42 men present at the assembly, 27 were opposed to the free pasturing of sheep and geese, while 15 wanted the practice to continue. Of those opposed to the ban, six had herds of sheep and geese that they routinely sent onto the commons. It is also significant that all but two of those who voted to allow the sheep and geese access to the land were poor *manouvriers* and *journaliers*.¹⁷ This is not only because some of these poorer

¹³ ADCO, B2 1221/2, seigniorial justice of Senailly, St. Germain, village assembly before the judge, survey, description of land, 1789. For a list of the households, ADCO, C 7375, tax rolls, Senailly. Ampilly-lès-Bordes also split some of its common into plots for arable farming. See ADBO B2 1078/1, seigniorial justice of Ampilly-lès-Bordes, village deliberation before the judge, 13 Feb. 1787.

¹⁴ ADCO, E Dépôt 701/1, Villerottin, register of village assemblies, 4 Oct. 1789.

¹⁵ For the former, Belleneuve, ADCO, B2 451/1, seigniorial justice of Belleneuve, Grands-Jours 29 Oct. 1755.

For the latter, Senailly. ADCO, B2 1022/7, Grands-Jours 14 Apr. 1750.

¹⁶ ADCO, B2 1253/1, seigniorial justice of Ancey, local ruling, 15 May 1754. ADCO, B2 1252/3, seigniorial justice of Ancey, Grands-Jours 21 Oct. 1788.

¹⁷ A note on occupational titles: by definition *laboureurs* were those better-off peasants who owned their own plough and a team of horses or oxen. *Manouvriers*, on the other hand, were too poor to have their own plough.

farmers in the village used the commons to feed a small gaggle of geese for subsistence, but also because some *manouvriers* kept large flocks of sheep, most often acquired by credit in the form of the *bail à cheptel*. In this case it seems that some of the less wealthy villagers used the commons to raise some money and were opposed to attempts to reserve common pasture for horses and cows, the animals of the more prosperous.¹⁸

Disputes that pitted social groups against each other could also arise when the villagers discussed the mode of division of communal resources. The policy of the Parlement of Dijon to divide the wood, straw and hay from common land a third by head and two-thirds by taxes, sometimes came up against local practice, which in some places was division entirely in proportion to taxes. In Messigny, at a village assembly ordered by the provincial Intendant to determine whether division of wood from the forest would be done in the prescribed proportions, five inhabitants stormed out of the assembly in expression of their opposition to this slightly more egalitarian division. All of those who left were *laboureurs* and all paid more taxes than average. They included the seigniorial over-tenant (*fermier*) and the second wealthiest inhabitant of the village.¹⁹

In these local disputes between social groups there is no indication that anyone was truly opposed to village-wide crop rotation, post-harvest communal pasture, or common land. By the late eighteenth century individual farmers could choose whether to participate in communal agriculture. In 1770, at the request of the provincial Estates of Burgundy, the king formally authorized all farmers to enclose their land, subtracting it from communal crop rotation and pasture. Land enclosed by a hedge or fence of any kind, the edict specified, was not to be subject to 'the pasturing of animals other than those to whom the land belongs'. Furthermore, to facilitate the consolidation of the small strips characteristic of openfield agriculture, the king offered exemptions on royal and seigniorial land transfer fees to any who exchanged small plots within the next six years. Four years later, again at the request of the Estates, the king allowed communities to divide their common land among the inhabitants.²⁰

Despite the physiocratic programme of Burgundy's administrators, communal farming remained vibrant until well into the nineteenth century. There was little enclosure of arable land in the province. Since *vaine pâture* was in effect a reciprocal arrangement, any farmer who enclosed and thereby kept others' animals off his fields would then not be allowed to put his animals onto the village fields. There would be, therefore, little real gain for the

¹⁸ ADCO, B2 764/1, seigniorial justice of Montot, village deliberation recorded in judicial archives, 9 June 1782. The identities of the villagers come from ADCO, C6036, Montot tax rolls, 1782. The list of those who had sheep and geese is from ADCO, B2 764/1, seigniorial justice of Montot, report of the sergeant, 5 Apr. 1784. The *bail à cheptel* was a form of credit whereby the farmer agreed to raise a herd of borrowed sheep in exchange for half of the profits (the lambs and the manure). The farmer generally also engaged himself to take half of the

losses. Françoise Fortunet, *Charité ingénieuse et pauvre misère. Les baux à cheptel simple en Auxois aux XVIIIe et XIXe siècles* (Dijon, 1985).

¹⁹ ADCO, 4E 5/120, notary Forneron of Messigny, village assembly, 21 Dec. 1788.

²⁰ ADCO, B 12138, Parlement de Dijon, registration of royal acts, Edit portant permission ... de clore, Aug. 1770. ADCO, B 12143, Parlement de Dijon, registration of royal acts, Jan. 1774.

encloser.²¹ In a sample of 3200 court cases from fourteen local seigniorial courts in northern Burgundy during the 1750s and 1780s, there is only one case that clearly involved arable land enclosed by a farmer.²²

Communal agricultural practices remained an important part of the running of farms in late eighteenth-century Burgundy. In an openfield system it would have been impossibly difficult to police the fields and guard against pasture theft and roaming animals. Few Burgundian farmers took advantage of the possibility of enclosure of arable land because people were not opposed to *vaine pâture*. Put simply, the incredible multiplicity of miniscule plots in these fields made open pasture and communal herds the most logical arrangement.²³

II

If communal farming simplified the policing of fields and forests by giving everyone a stake in all the land, there was nevertheless a great deal of patrolling, reporting and fining required to keep the system running smoothly. In northern Burgundy communal farming worked through a close relationship between the village community and the local seigniorial court.²⁴ Most of the interaction between the court and the village took place each year at the Grands-Jours. These were annual assizes, held in each village, where the judge read aloud the relevant royal and Parlement edicts and *arrêts* and oversaw the election of local officials. The judge would ask the assembled heads of household (whose attendance was mandatory and enforced by fines) whether they had any complaints about village affairs. The complaints could come from any of the villagers present and might touch on a wide variety of matters. Frequently the inhabitants informed the court that the forest was in poor condition, that encroachments were eating

²¹ On attempts of administrators to reform agricultural practice, André-Jean Bourdes, *Agronomie et agronomes en France au XVIII^e siècle* (3 vols, Paris, 1967); Georges Weulersse, *La physiocratie à la fin du règne de Louis XV, 1770-1774* (Paris, 1959); Georges Weulersse, *La physiocratie à l'aube de la Révolution, 1781-1792* (Paris, 1985); Elizabeth Fox-Genovese, *The origins of Physiocracy: economic revolution and social order in eighteenth-century France* (Ithaca, 1976). See too Saint Jacob's discussion of the effects of enclosure. He lists many examples of *clôture*, but they all involve meadows rather than arable land. Pierre de Saint-Jacob, *Les Paysans de la Bourgogne du Nord au dernier siècle de l'Ancien Régime* (Paris, 1960), pp. 450-53. Jean Meuvret, *Le problème des subsistances à l'époque Louis XIV*, (6 vols, Paris, 1977-88), II (i), pp. 12, 26-28, 30-32.

²² In 1786 in the village of Villerottin, Jeanne Roussey, widow of François Merceret, was fined for not having constructed a strong barrier around her land. She had subtracted some land from the communal rotation, choosing to plant to wheat a parcel that was in the field reserved that year for fallow. ADCO, B2 458/4, seigniorial justice of Billey, Villerottin, Grands-Jours, 7 Sept. 1786.

Jeanne Roussey and her husband were from the poorer half of the village (in 1782 they paid 13 livres in royal taxes, while the average for the village was 21 livres). When Merceret died in 1782, Roussey asked that the court should not conduct an inventory of the estate, claiming that the costs of the probate inventory would devour all of the property. Merceret died with so little property that his four children only got 3 livres each from the moveables of the estate. For the appointment of guardianship for the children: ADCO, B2 454/7, seigniorial justice of Billey, Villerottin, tutelle, 10 Dec. 1782. For the tax data, ADCO, C6452, Villerottin tax rolls, 1782.

²³ D. N. McCloskey, 'English open fields as behavior towards risk', *Research in Economic History* 1 (1976), pp. 124-170.

²⁴ Quite possibly Burgundy had the most active seigniorial courts in all of France, in part because of a series of reforms undertaken by the Dijon Parlement from the late 1760s. See Jeremy D. Hayhoe, '“Judge in their own cause”: seigniorial justice in northern Burgundy, 1750-1790' (unpublished PhD thesis, University of Maryland, 2001).

up the commons, even that an inhabitant's chimney threatened to set his home and the village afire. The judge ruled on these matters, sometimes simply ordering the community to investigate. He then handed out all of the police fines for the past year. These fines included some feudal matters like poaching, some disruptions of public order such as charivari, public drunkenness and working on the Sabbath. The vast majority of fines were for violating the rules of communal farming.

For the judge to pass sentence on illegal pasturing and wood pilfering he first had to hear of the offence. Local officers known in Burgundy as *messiers* reported pasturing on private land before the fields were opened. These field guards, known elsewhere in France as *gardes champêtres*, were nominated and elected each year by the village community. Since each village appointed two new *messiers* each year, a high proportion of married men served in the position at one time or another.²⁵ They patrolled the fields, seized any trespassing cattle, and then submitted a report to the clerk of the seigniorial court. The clerk held the reports, and submitted them to be judged at the next annual assize.²⁶

Villagers did not want the job of *messier*. They were paid a small amount of money, but not enough to pay for the time they spent on the job.²⁷ They would also be held civilly responsible for any offences that they failed to report. In 1783 the *messiers* of Foncegrive were fined 3 livres 5 sols for failing to catch some cattle roaming the fields. In civil damages they paid the owner of the land a half measure of oats (about twenty litres).²⁸ In fact 178 of 603 civil trespass torts tried in the assizes of fourteen local courts from 1780 to 1789 saw civil damages assessed against *messiers* rather than those actually responsible. This civil responsibility made the job undesirable for villagers, who often tried to pass the job off on someone else.²⁹

III

The fines levied each year by the judge of the local seigniorial court on those whose animals were caught either in other people's fields or on the stubble before all fields had been completely

²⁵ For a discussion of local office holding in northern Burgundian villages, see Robert M. Schwartz, 'Beyond the parish pump. The politicization of the peasantry in Burgundy, 1750-1850', in Michael P. Hanagan, Leslie Page Moch and Wayne te Brake (eds), *Challenging authority: the historical study of contentious politics* (Minneapolis, 1998), pp. 120-35.

²⁶ In regions where the villagers made wine, the inhabitants also generally appointed two *vigniers*, whose duties were virtually identical to the *messiers* except that they were to seize cattle that wandered into the vines.

²⁷ In Messigny the *messiers* were paid 4 sols for every cartful of hay or clover harvested in the village. In Ancy, on the other hand, villagers had to pay 5 sols for each journal of land (about half an acre) they planted. See ADCO, B2 1048, seigniorial justice of the religious chapter St. Bénigne, justice of Messigny, Grands-Jours, 28

Aug. 1780. ADCO, B2 1252/3 seigniorial justice of Ancy, Grands-Jours, 4 Sept. 1786.

²⁸ ADCO, B2 603/2, seigniorial justice of Foncegrive, Grands-Jours, 17 Nov. 1783.

²⁹ Being a *messier* was a heavy responsibility, both financially and in time spent patrolling. The judge of Belleneuve enjoined the *messiers*: 'to report to the clerk, with the same exactitude the whole year ... all offences to the fields and to land planted in wheat, barley, oats, hemp, beets and other small grains and the pasture torts ('*mésus*'), as well as degradations committed to the communal forests, heaths and bushes either by animals or by the theft of grass, hay and wheat, or in cutting, removing, gathering wood ... and if they fail to seize the guilty ... will be responsible for the torts and offences in their own private name'. ADCO, B2 451/1, seigniorial justice of Belleneuve, Savolle, la Motte d'Ahuy, and Lambelin, Grands-Jours, 12 Nov. 1753.

TABLE 1. Offences tried in eight northern Burgundian seigniorial courts.

	1750-59	1780-89
Pasturing fines	1638	1625
All cases in regular session	324	530
All (civil and criminal) cases in the assizes	220	1181
Probate acts	365	578

harvested can help us see how the system worked in practice. There were a large number of violations of the rules of communal farming. Even courts with no more than two or three meetings a month in regular sessions, and fewer than fifty cases over a decade, remained active in fining people for farming misdemeanours at the assizes. The court of Fontaine-en-Duesmois heard only twelve cases in regular session during the entire decade of the 1780s. Over the same period this court fined 148 people for letting their cattle roam free in the fields of the village. In the same decades the court of Ancy had only 21 cases in regular session, yet saw 138 fines handed out. Fines for pasturing offences were by far the most common kind of judicial activities carried out by the courts. In eight courts studied in detail, these fines outnumbered every other legal action. In the 1750s there were three times more farming fines than all civil and criminal cases combined! From 1780 to 1789 the fines approximately equalled the number of civil and criminal disputes (Tables 1 and 2). The seigniorial courts of northern Burgundy worked hard to protect the fields from the premature exercise of pasture rights and from roaming cattle.³⁰

The professions of those fined for pasture offences should allow some insight into the social politics of farming, with the social group that most resented communal constraints being over-represented in the fines. The courts of northern Burgundy handed out fines to virtually everyone. In Ampilly-lès-Bordes, a village that in 1752 had 26 hearths, the court handed out 53 fines over the 1750s. Of the 26 families in the tax-rolls, fourteen paid fines. These fourteen families paid 41 of the 53 fines – the remaining twelve fines were either paid by inhabitants of nearby villages, or by members of local families who could not be matched to their households (wives, for example, were not always identified by both their own name and that of their husbands). Jacques Demont, a *laboureur*, was the worst culprit, with seven fines over the decade, but Denis Languereau and his widowed mother (also *laboueurs*) came a close second with six fines. The situation was almost identical in the village of Bagnot. In the 1750s, of the 36 families in the Bagnot tax rolls, 25 paid fines. Claude Trivier, *laboureur*, had to pay fines nine times, almost once a year.³¹

The better off in the village were fined for roaming cattle far more often than the village poor. In both Ampilly-lès-Bordes and Bagnot during the 1750s there was not a single *laboureur* who made it through the decade without being fined. The twelve who did not get fined in Ampilly-lès-Bordes had the following professions: an innkeeper, five *manouvriers*, a mason, a domestic servant, two beggars, a weaver and a hemp-worker. Those fined, by contrast, were

³⁰ ADCO, B2 605/1, seigniorial justice of Fontaine-en-Duesmois. ADCO, B2 1252/3, seigniorial justice of Ancy.

³¹ For the tax records, see ADCO, C6886 and C6887, Ampilly-lès-Bordes tax rolls, 1755, 1785; C7057, Bagnot tax rolls, 1754, 1785.

TABLE 2. Pasture fines in eight seigniorial courts, 1750-9, 1780-9.

	1750-59	1780-89
Ampilly	53	107
Ancey	175	138
Bagnot	158	219
St Bénigne prieuré	190	37
Billey	469	569
Foncegrive	434	213
Fontaine	7	148
Lanthes	152	194
TOTAL	1638	1625

13 *laboureurs* (all of them) and a bourgeois. Similarly in Bagnot it was mostly *manouvriers* who escaped fine-less, although here there were also several artisans (a carpenter and a boot-maker) who paid no fines.

There are two reasons for the over-representation of *laboureurs* among those fined for pasturing offences. The first is that only *laboureurs* were allowed to keep any cattle or horses out of the communal herd. Since *manouvriers*, by definition, did not have a team of oxen or horses to work the land (or did not have a plough on which to hook a team of cows), all of their cattle were required to be in the village herd. The other reason for the over-representation of *laboureurs* in these fines is simply that they owned more animals than *manouvriers*. Indeed those who did not get fined by the courts always included the village artisans. In Ampilly the innkeeper, mason, servant, beggars, weaver and hemp-worker almost certainly did not own any animals that could have been caught by the court. The *manouvriers* who paid no fines generally came from the bottom of the village social scale and most likely owned neither cattle nor horses.

Another way to address the issue of the social bases of communal agriculture is to consider those whom seigniorial courts fined for having illegal separate herds of cattle.³² This was closely related to the simple pasture offences discussed above. Nevertheless, seigniorial courts treated this as a separate matter, fining for 'troupeau séparé' only those who consistently failed to hand their cattle over to the communal herder. In fourteen seigniorial courts during the decades of the 1750s and the 1780s there were about a hundred such cases involving 150 defendants, of whom 77 could be matched to the tax-rolls of the villages.³³ The villagers who failed to submit

³² See for example, the Grands-Jours of Franxault reproduced in Pierre de Saint-Jacob (ed.), *Documents relatifs à la communauté villageoise en Bourgogne* (Paris, 1962), p. 61.

³³ Generally I recorded all individual entries from the tax rolls of 1752 and 1782. But when this year was missing or illegible I used instead another year (usually 1753 or 1783, but also 1755 and 1785). The tax records employed are as follows: ADCO, C5929, Bellefond; C5978, Epagny;

C6033, Messigny; C6077, Saussy; C6078, Savigny-le-Sec; C7057, Bagnot; C5914, Ancey; C5930, Belleneuve; C5993, Foncegrive; C6036, Montot; C6131, Chazilly-le-Haut; C6403, Lanthes, le Meix; C6452, Villerottin; C6533, Auxey-le-Grand, Auxey-le-Petit, Moulin au Moines; C6590, Meursault; C6887, Ampilly-lès-Bordes; C6961, Fontaine-en-Duesmois; C7228, Aisy, Pont-d'Aisy; C7292, Flée, Allerey; C7375, St. Germain and Senailly.

to this communal institutions could hardly be described as the rural elite. On average those who kept illegal separate herds paid 1.2 times as much royal taxes as the village average in the 1750s and 1.15 times more than average in the 1780s. Those fined for separate herds paid about six-tenths the taxes of *laboureurs*, the rural elite. The better off did not oppose the use of the communal herd in eighteenth-century Burgundy. In fact, as with those fined for pasture offences, these farmers did not form a coherent social or economic group at all, with villagers from across the social spectrum being fined for separate herds. If they did pay a few *livres* more taxes than average, this again was due to cattle owners being generally wealthier than the village mean. Those who consistently refused to put their cows in the charge of the village herd did so not because they belonged to a class of better off farmers who yearned to break free from the constraints of their poorer neighbours but in order to pasture where they wished, possibly because of the poor quality of the care the herders sometimes provided.³⁴

IV

Seigniorial courts had to remain vigilant to enforce the rules of pasture. They also had to police common land. Several historians of northern Burgundy have pointed to seigniorial usurpation of common land as a major threat to communities there.³⁵ When common land originated in a past concession from the lord, that seignior was entitled either to a third of the revenue from the land, or to a third of the land in a once-off division.³⁶ The practice of *triage*, whereby lords took a third of the land, harmed villages considerably. Unfortunately, the nature of the sources used for this study do not allow for the evaluation of the extent and effect of *triage* and seigniorial usurpation of commons. There are no lawsuits between villages and lords over commons among the cases heard in the seigniorial courts of northern Burgundy. Given the likelihood that the lord's personally appointed judge would find in his favour, the absence of lawsuits in seigniorial courts against lords over commons is only to be expected.³⁷

Another documentary source for *triages* are municipal archives, specifically the registers of village assemblies. Usable records of this sort are unfortunately rare in northern Burgundy, and of the 21 villages studied, only two contained references to *triage*. In 1727 the inhabitants of Foncegrive voted unanimously in favour of *triage*, granting the lord ownership of 251 *journaux*

³⁴ In 1754 René Mercier sued the village herd for money lost to him through the death of a pig committed to the communal herd. Blaise's sheep dogs, René claimed, tried to devour the pig, ultimately chasing it off a cliff. In the end the court sentenced Blaise to pay 21 livres for the value of the pig and three piglets, not yet weaned, which starved to death. ADCO, B2 601/2, seigniorial justice of Flée, sessions 30 July, 5, 12, 19 Dec. 1754, 23, 30 Jan., 13, 20 Feb. 1755.

³⁵ Most notably, Saint Jacob, *Paysans de la Bourgogne du nord*, pp. 377–379; also Régine Robin, *La société française en 1789: Semur-en-Auxois* (Paris, 1970), p. 153; Hilton L. Root, *Peasants and king in Burgundy. Agrarian foundations of French absolutism* (1987), pp. 162–163, 178; Jean Bart, *La Révolution française en Bourgogne*

(Clermont-Ferrand, 1996), pp. 50–52; Arlette Brosselin, *La forêt bourguignonne, 1660–1789* (Dijon, 1987), pp. 111–114.

³⁶ This had been decided by the Parlement of Dijon in 10 Dec. 1644. The onus in these cases was on the community, which had to prove that the land had not been conceded by the lord. See ADCO, B 12071/8, Recueil des délibérations secrètes du Parlement de Bourgogne, written by Président Bénigne Bouhier, 1748. See entry, 'triage'. There is another copy of the same manuscript at Dijon Municipal Library, MS 2292.

³⁷ These lawsuits would be heard in the royal *bailliage* court or in the *Maîtrise des Eaux et Forêts*. Jean-Claude Wacquet, *Les grands maîtres des eaux et forêts de France de 1689 à la Révolution* (Geneva, 1978), pp. 278–82.

of land in exchange for his renouncing his right to a third of the revenue from the common forest. But in 1792 when the community discussed dividing its commons, the total area was again 750 *journaux*, suggesting that in the intervening 75 years the community had somehow recovered the land. In 1781 the community of Villerottin deliberated in a general meeting to request that the lord exercise his right of *triage*, 'that is to say that the said lord ... would take his third on one hand and the inhabitants their two-thirds on the other so as to avoid all difficulties that could arise'. The community hired experts to survey the land and divide it into three parts of equal value. Three years later, though, the lord backed out, effectively ending the attempted *triage*.³⁸

The full evaluation of seigniorial usurpation of commons awaits detailed study,³⁹ but it is clear from parish *cahiers de doléances* (lists of grievances drawn up in 1789 in every parish in France) that people perceived a great deal of unfairness in the exercise of this right. The most common complaint about *triage* was that lords who had taken a third of the village's land continued to claim their share of the revenue from the remaining two-thirds. In Vivry the inhabitants requested that lords who had exercised *triage* no longer be permitted rights of use or pasture in the remaining commons. Similarly in Minot the inhabitants complained that the lord continued to take some of the wood from the communal forest, and this despite the fact that 'there are elders who say that long ago the lord exercised his right of *triage*'.⁴⁰

In her study of southwestern France, Anne Zink analysed conflicts that involved village communities. Of 136 conflicts over common land, 40 per cent (52 disputes) involved the lord. Of the remaining 84, 59 involved outsiders to the village, seven were semi-internal disputes between neighbourhoods of the same village and only 18 were truly internal conflicts.⁴¹ In northern Burgundy, on the other hand, internal conflicts over common land were far more common than were lawsuits that pitted villagers against outsiders. The reason for this difference is not that villages in the south were more peaceable, or that the inhabitants did not try to defraud the system. Local elected village officials in the southwest had the authority to settle this type of internal dispute over common land summarily. They could, for example, order a villager to restore land that he had usurped from the commons. In northern Burgundy, on the other hand, most village political affairs came before the local seigniorial judge, and the elected *syndics* had no authority over the inhabitants.⁴²

In northern Burgundy, the myriad of small thefts of land by inhabitants was as important a threat to common land as was seigniorial usurpation. The inhabitants of northern Burgundy devoted much time to usurping land from the commons, in pieces ranging from small to large.⁴³

³⁸ ADCO, E Dépôt 283/24, communal archives of Foncegrive, folder on common land. ADCO, E Dépôt 701/1, communal archives of Villerottin, register of communal assemblies, assemblies 14 Apr. 1781, 7 Oct. 1783, 25 Mar. 1784.

³⁹ Jeff Houghtby of Emory University, is currently engaged in such a study.

⁴⁰ ADCO, B2 242/1, bailliage of Arnay-le-Duc, cahiers de doléances, cahier of Vivry. ADCO, B2 209 bis, bailliage of Châtillon-sur-Seine, cahiers de doléances, cahier of Minot.

⁴¹ Anne Zink, *Clochers et troupeaux. Les communautés*

rurales des Landes et du Sud-Ouest avant la Révolution (Bordeaux, 1997), pp. 85–94.

⁴² In the southwest it was primarily local elected officials who policed the system of communal agriculture, a job that in northern Burgundy fell overwhelmingly to the local seigniorial judge and public prosecutor (*procureur d'office*).

⁴³ For corroboration in another part of France, see A. Achard, *Une ancienne justice seigneuriale en Auvergne. Sugères et ses habitants* (Clermont-Ferrand, 1929), pp. 205–6.

All villages periodically began proceedings to re-take common land sown, fenced or harvested by inhabitants. To investigate the ways village communities worked to protect their common land from encroachers, the various judicial, administrative and local records have been sampled for evidence of disputes over common land. As part of a larger study on seigniorial justice in northern Burgundy, all cases heard during two decades (1750–1759 and 1780–1789) in fourteen local seigniorial courts that sat over twenty-one villages (for which see Map 1) have been extracted. These villages were selected to secure a wide distribution over all the agricultural regions of northern Burgundy. Other records for these two decades were also searched for cases concerning the administration of commons.⁴⁴

Only three of the twenty-one villages did not initiate judicial proceedings to take back common land from one or more inhabitants in these two decadal periods. Two of the three villages without recorded official disputes over commons had very little or no common land. Larrey, one of the dispute-less villages, was a suburb of Dijon and probably had no common pasture or forest.⁴⁵ Bellefond, another village without recorded disputes over commons, probably also had no common land.⁴⁶ The only village without disputes over commons that did have common land was Bagnot.⁴⁷ In all there were 42 disputes, an average of two per village. Since these disputes all occurred during two ten-year periods, on average a village in northern Burgundy had to go to court about once a decade to take common land back from usurpers and encroachers.

Of the nineteen villages with common land, eighteen had to go to court more than once during the 1750s and the 1780s to protect their common forest and pasture. In 1789, for example, the inhabitants of Aisy complained to the judge that, despite a survey done several decades ago, people had recently usurped so much of the commons that the land was hardly wide enough for one cart to pass (that is, all the arable and/or pastoral land had been taken by locals, leaving only the path through the fields). The court ordered the community to appoint experts to investigate the usurpations and authorized it to take back the land in question.⁴⁸ Similarly in 1751 at the assizes of Meursault, some complained of usurpations, this time naming the culprits. The court commanded Lazare Jobard and François Feragni to give the land back to the village.⁴⁹

Complaints made by villagers to the judge concerning usurpation of common land which name those that had stolen the land and planted grain or garden crops are exceptional. Most

⁴⁴ In addition to the archives of seigniorial courts, I used the records of the royal Intendant (primarily requests from villages for permission to defend or initiate court cases, but also village fiscal accounts that mention commons), and municipal records (not abundant in northern Burgundy, but indispensable where they do exist).

⁴⁵ Indeed the seigniorial court of the religious order of St. Bénigne, which had judicial authority over Larrey, had to fight to maintain its jurisdiction in opposition to the municipal court of Dijon, which claimed that Larrey was properly part of the city. See, for example, Dijon Municipal Archives, C31, jurisdictional disputes, legal *mémoire* dated 1715. The judicial officers of the municipal court noted that the inhabitants of Larrey paid taxes as Dijonnais and were exempt from the *octroi* tax imposed

on strangers selling wares inside the gates of the city.

⁴⁶ There were no fines assessed in Bellefond for illegal pasture on common land or pilfering in communal forest. Since the local seigniorial court here policed the village as carefully as any court, this suggests that there was no common land here.

⁴⁷ Village account books list revenue from forests. ADCO, C1454, Intendant, village fiscal accounts, Bagnot, account 12 Jan. 1780, and other years.

⁴⁸ ADCO, B2 423/1, seigniorial justice of Aisy, Grands-Jours, 12 May 1789. They did a survey of the common land in 1765. ADCO, E Dépôt 10/33, communal archives of Aisy, bornage des communaux, 19 Sept. 1765.

⁴⁹ ADCO, B2 734/1, seigniorial justice of the barony of Meursault, Grands-Jours, 4 Oct. 1751.

often the court simply ordered that all who had taken land from the commons were to plough under their crops and hand the land back to the village. Occasionally, though, communities brought to court individuals who must have refused to submit. Since these cases required the use of the court's authority, pressure from other villagers must have been ineffective in getting the land restored to common. This sample, therefore, overestimates the social standing of the usurpers. Still, the professions and social standing of these villagers challenge the notion that most usurpers were subsistence farmers or the village poor. In 1754, for example, the community of Ampilly-lès-Bordes sued Jean Demont to get back the common land it claimed he had usurped. Demont, though not one of the economic elite of the village, was a *laboureur* (he had his own plough) and paid marginally more taxes than average.⁵⁰ François Michel, on the other hand, was one of the village elite of Savigny-le-Sec. Michel, who paid double the average taxes for the village in 1782, was ordered by the court to restore to the village the land he had usurped, enclosed and planted with hay.⁵¹ In 1777 the Dame of Chambolle and Morey wrote to the judge of her seigniorial court. She complained that, although everyone in the village usurped and enclosed land from the commons, the better off got away with it while the poor found themselves in trouble. She suggested that the judge talk with the community to see how best to 'make the community enjoy the use of the ancient lands that now are possessed by the village elite (*coqs du village*)'.⁵²

Villagers also pastured their animals on the commons illegally. This could involve sending the cattle onto common pasture in a separate herd, or letting cattle wander into a meadow set aside for hay. These cases were similar to pasture offences on private land, in that the court both assigned a fine to the delinquent, and ordered the payment of damages for the hay eaten and trampled. In the villages of Billey and Villerottin there was so much of this kind of illegal pasturing on the commons that the inhabitants petitioned the royal Intendant for a reduction in the amount of the fines. In the spring of 1789 they wrote the Intendant, claiming that: 'it would be impossible to recover the fines, since some are insolvent, and others dead or absent'.⁵³

Lords and big property owners employed forest guards to protect their woods from the pilfering of villagers. Lords used their courts to impose heavy fines and payments of damages for wood thefts. In 1781 the court of Foncegrive assigned 240 livres of fines and the same amount of civil damages for the theft of three old oak trees from the seigniorial forest.⁵⁴ Like lords, village communities too needed continued vigilance to halt theft of wood in their forests. The court of Epagny fined Prudent Michel, *laboureur*, 12 livres and the same amount in damages for theft from the communal forest.⁵⁵ If there are fewer examples of court cases of pilfering in communal than seigniorial forests, this is only due to the fact that lords owned more forest.⁵⁶

⁵⁰ ADCO, B2 1077/1, seigniorial justice of Ampilly-lès-Bordes, sessions 2 Oct., 30 Dec. 1754, 7 Mar., 2 May 1755, 23 Feb. 1756.

⁵¹ ADCO, B2 1048, seigniorial justice of the religious chapter St Bénigne, village of Savigny-le-Sec, sessions 30 July 1785, 10 Sept. 1785, 26 Oct. 1785, 7 Dec. 1785.

⁵² ADCO, 18J 30, private papers, seigniorial justice of Chambolle and Morey, letter from Madame de Cléry dame de Chambolle et Morey to M. Ondot, procureur d'office in the same justice, 30 Sept. 1777.

⁵³ ADCO, C849, Intendant village files, Villerottin, petition Mar. 1789. See also ADCO, C741, Intendant village files, Billey, for a similar document.

⁵⁴ ADCO, B2 604/2, seigniorial justice of Foncegrive, sessions 5, 9 Apr., 21, 24 July, 17 Sept. 1781.

⁵⁵ ADCO, B2 1248, seigniorial court of the religious chapter St. Bénigne, justice of Epagny, Grands-Jours, 24 Aug. 1784.

⁵⁶ Brosselin, *La forêt bourguignonne*, pp. 100-101.

By the late eighteenth century most communities had appointed a guard who patrolled the communal forest to watch that the trees were allowed to grow enough to be harvested and divided among the villagers. At a village assembly in Fontaine-en-Duesmois, the villagers noted that:

they have learned that there are committed offences daily in their communal forest, and that [they arise] by the negligence of the said Philipe Renaut, now guard of their community, to do regular patrols like he should according to his appointment. If the inhabitants do not bring order to these abuses, annoying results (*suites fâcheuses*) will follow ...

Wishing to replace him with 'a person of probity to be guard of their forest', they chose one Claude Chouxblanc as their new guard.⁵⁷ Villages in northern Burgundy needed to watch carefully over their communal resources. Inhabitants took advantage of the slightest lapse in vigilance to pasture their animals illegally and to steal wood from communal forests. To keep pilfering and illegal use under control, villages needed frequent recourse to the local courts, suing those caught in violation of the rules of communal agriculture for damages.

V

Ordinary people and elites alike understood that villages had to fight continually to maintain their common land. In 1776 and 1779 the provincial Estates of Burgundy petitioned the king on the subject. Villages lost much land, they suggested, because of the lack of written title to common pasture and forest. This meant that villages were generally left to establish ownership through proof of continual use over the past thirty years. 'It is not uncommon to see the inquiry of the inhabitants as plaintiffs and that of the defendant equally conclusive'. When the usurpers were locally important people, 'they act against him slowly, and after thirty years of use, the community would try without success to retake the land'.⁵⁸ The Estates suggested that each village name four principal inhabitants who would draw up a declaration of all common land ('forests, bushes, fields, marshes, islands, heaths, good pasture and generally all lands') owned by the village. The municipality, the local seigniorial court and the provincial administration would hold copies of the declaration, which would have force of law. Lawsuits over commons would not have to lead to costly investigations by the court and the calling of multitudes of witnesses to testify of agricultural practice.⁵⁹ Although the king turned down their request out of fear that the proposal would lead to innumerable court cases that would bankrupt villages, the request shows that the province's administrators were aware of the continual struggle that villages faced in the upkeep of their commons.

The Cahiers de doléances of 1789 contain many references to the policing of common land. The inhabitants of St. Germain-la-Feuille complained of an expensive court case against an individual over the communal forest. The case had reduced them to 'a state of indigence so

⁵⁷ ADCO, B2 606/1, seigniorial justice of Fontaine-en-Duesmois, village assembly, 5 June 1780.

⁵⁸ ADCO, C3012, provincial Estates, décret des Etats, Remontrances des conseillers et procureurs syndics, 1781, 'Usages et communaux'.

⁵⁹ ADCO, C3332, provincial Estates, cahier des remontrances, 1761-76, 1776, art. 7, 'Usages communaux'. ADCO, C3333, provincial Estates, cahier des remontrances, 1779, art. 9, 'communaux'.

terrible' that many inhabitants had left the village. In Chissey they noted that those elected to fill local offices were poorly informed of their duties. They requested detailed instructions on the duties of these officers, instructions that should be 'capable to stop usurpations and destruction of communal land'. The inhabitants of Thoisy-la-Bergère less specifically requested that those who had usurped common land be made to give it back. The inhabitants of Austrude asked for a survey of the commons, and restitution of all land usurped over the past twenty years.⁶⁰ The *cahiers* of northern Burgundy make it clear that conflict characterized the use of commons.

Villagers understood the need for the coercion of a few inhabitants each year to police the fields. Twenty *cahiers* (from a total of 301 in four *bailliages*) comment on the lot of village pasture guards. The most common demand is that *messiers* be paid a decent salary to compensate for their onerous duties. In Bussy-le-Grand the inhabitants commented that:

it would be appropriate to give payment to the *messiers* for the guard of the countryside. It is unfair, despite the decisions of superior courts, that unfortunates be made responsible for the offences while exercising unpaid office.

The other request that crops up repeatedly in the *cahiers* is that *messiers* be given more authority. Country-dwellers complained that, while seigniorial forest guards were believed on the simple strength of their reports, the unsubstantiated word of a field guard could only lead to a maximum fine of seven sols – that is, for the court to assign more than a seven sol fine the *messiers* would need corroborating witnesses to prove that the animals seized were indeed in the field in question. The authors of the *cahier* of Charencey complained that: 'nasty (*coquin*, the word is written and then crossed out) guards ... are believed up to 500 livres, while two honest *messiers* are only trusted up to seven sols, which requires a remedy'.⁶¹ Most people understood the importance of the policing of agriculture and the need to seize animals pasturing illegally. They wanted to give more strength to the system, by allowing the seizures of guards to bring higher fines, and by ensuring payment to those who policed the fields.

VI

In northern Burgundy communal farming survived without the need to coerce the better-off or to convince the poor that they profited from it. There is no evidence in the court cases that those fined had any ideological opposition to communal agriculture or wanted to inaugurate a private, individual system of land tenure. Peasants realized that the system benefited everyone at least some, and more importantly that in open fields it was the only practical way to protect private property. If farming in open fields with communal rights over private land worked at all in northern Burgundy, it was because the local seigniorial courts, with the help of a few

⁶⁰ ADCO, B2 209 bis, bailliage of Châtillon-sur-Seine, cahiers de doléances, cahier of St. Germain-la-Feuille. ADCO, B2 254/1, bailliage of Saulieu, cahiers de doléances, cahier of Chissey. ADCO, B2 254/1, bailliage of Saulieu, cahiers de doléances, cahier of Thoisy-la-Bergère. ADCO, B2 226/1, bailliage of Semur-en-Auxois,

cahiers de doléances, cahier of Austrude.

⁶¹ ADCO, B2 209 bis, bailliage of Châtillon-sur-Seine, cahiers de doléances, cahier of Bussy-le-Grand. ADCO, B2 209 bis, bailliage of Châtillon-sur-Seine, cahiers de doléances, cahier of Charencey.

villagers each year, policed the system. The biggest threat to communal agriculture was not enclosure, for as historian Saint-Jacob argued, enclosure of arable land remained rare in eighteenth-century northern Burgundy. Nor was seigniorial usurpation the most significant threat to common field and forest. The system was under continual assault by the cows, horses, sheep and goats of the inhabitants. Communal farming, in fact, did work for the benefit of most inhabitants (some more than others, of course), but this did not stop practically everyone from trying to work the system to his advantage, even if at the expense of a neighbour or the community as a whole.