



Journal of Alpine Research | Revue de géographie alpine

109-1 | 2021

La montagne et la gestion collective des biens :
quelles influences ? quelles interactions ?

Mountains and the Collective Management of the Commons: Influences and Interactions

Alessandro Crosetti and Jean-François Joye



Electronic version

URL: <https://journals.openedition.org/rga/8693>

DOI: 10.4000/rga.8693

ISSN: 1760-7426

This article is a translation of:

La montagne et la gestion collective des biens : quelles influences ? quelles interactions ? - URL : <https://journals.openedition.org/rga/8663> [fr]

Publisher:

Association pour la diffusion de la recherche alpine, UGA Éditions/Université Grenoble Alpes

Electronic reference

Alessandro Crosetti and Jean-François Joye, "Mountains and the Collective Management of the Commons: Influences and Interactions", *Journal of Alpine Research | Revue de géographie alpine* [Online], 109-1 | 2021, Online since 13 May 2021, connection on 08 December 2022. URL: <http://journals.openedition.org/rga/8693> ; DOI: <https://doi.org/10.4000/rga.8693>

This text was automatically generated on 8 December 2022.



Creative Commons - Attribution-NonCommercial-NoDerivatives 4.0 International - CC BY-NC-ND 4.0

<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Mountains and the Collective Management of the Commons: Influences and Interactions

Alessandro Crosetti and Jean-François Joye

- 1 This multidisciplinary special issue of the JAR/RGA is part of the 'Comon' project ('Les communaux en territoire de montagne') carried out by the Savoy Mont Blanc University¹ in collaboration with other universities, including the University of Grenoble Alpes. By following a critical approach, the project had two main goals: to gain a better understanding of the workings of ancestral collective properties linked to village communities and to evaluate whether these systems can be used to meet the environmental and social challenges of today. In addition to a collective work (Joye, 2021), this issue shows the persistence of collective modes of land property management, the changes that affect collective properties and the dynamics according to which they take place outside the metropolitan areas in France.

Legal form of collective ownership systems

- 2 In this special issue, readers are invited to travel anew to the heart of contemporary collective property (Bourjol, 1989). It should be noted that collective land property has ancestral origins. Its current legal form, which stems from feudal law, has been shaped through a long historical, social and political process. All modern states have considered and 'respected' these systems and their village communities in different ways. As they were in the past, this has resulted in a wide variety of systems that can be broadly classified into two categories. One category can be linked to 'public' collective ownership because of its gradual shift towards the administrative regime of the municipalities. In France, 'sections de commune' are the most widespread form of this type of system. Under this system, land is the private property of a legal entity according to public law and is distinct from the municipality. Its members have collective rights of use as long as they really and permanently reside in the section.

Another type is ‘communaux à jouissance héréditaire’, where the land is the private property of the municipality, but families have hereditary rights of use. A second category, which is in the minority in France but not necessarily elsewhere, can be linked to ‘private’ collective ownership. In such a case, the property of a historically de facto created land ‘society’ is managed collectively and the rights of use are generally hereditary.

- 3 Since time immemorial in many parts of the world, these systems with very heterogeneous trajectories have formed a kind of public–private partnership. That is remarkable because of the hybrid nature of the interests pursued, the nature of rights of use, the specific governance involving people and the intimate relationship they have with nature and the territory they live in. These systems are the ‘commons’ because of this whole.

Mountains, land of collective ownership systems and a culture of collective management

- 4 Although they are no longer as essential for sustaining an agrarian economy necessary for self-subsistence (Bloch, 1964), collective properties are still in place in rural areas, mainly in mountain regions², which this issue highlights. Several reasons could explain this persistence. The first is that mountains were places where the hold of seigneurial power was probably less effective than elsewhere. It opened up more opportunities for communities to self-organise than in other areas. Another, more general reason is that collective ownership and management collective methods were – and remain – an appropriate response to difficult living conditions linked to altitude, climate or the specificities of the pastoral economy (pastures or farmland far from the permanent residence, seasonal activity). Thus, collective organisation makes mountains attractive to humans and their activities. Because of the rural exodus, we have forgotten how populated mountains used to be and how collective ownership systems kept families there (Mouthon 2017, Louvin 2017).
- 5 The research in this issue confirms that mountains are characterised by the specificity of land use, which always imposes particular constraints on land use planning and for land protection. Many authors have already highlighted this specificity (Mériaudeau 1989, Vivier 2003, Mouthon 2016), and this issue of the JAR/RGA pays tribute to them. This specificity is confirmed here. But now contemporary issues exceed the strict needs of local communities to reach those of society as a whole (environmental and social cohesion issues). Although collective property no longer occupies a central place in mountain societies and their economy, the collective management of high altitude areas remains a major recourse and confirms the primacy of interest in land use over its appropriation. The core issue, as Stefano Rodotà reminds us, is not the ownership of the land but its management, which must guarantee regulated access to the land and the participation of the people involved in the fundamental choices that affect them (Rodotà, 2016)³. In this way, ‘neo’ commons remain faithful to history even if they sometimes take new legal forms. The creativity of communities makes it possible to reconcile in law various interests in the land.⁴

Actions, changes, contemporary issues

- 6 In the context of agriculture decline, landscapes modification and the reduction of public subsidies given to municipalities, as well as the need to preserve natural resources and revitalise rural life, it is essential to ask what roles communities associated with collective properties can play in sustainable development. Tourism, water, forestry, agro-pastoralism, energy production, services to populations, inhabitants' participation in collective life... village communities are involved in bringing the mountain territories to life in a variety of ways, just like other – often more visible – territorial actors.
- 7 It is important to consider the evolution of the collective ownership and management of lands over the long term. What is happening today is a new stage in their continuity, and Christian Laviolle asks whether the 'communaux' are the ancestors of the future commons (Laviolle, 2020). Like the studies presented in this issue, we see dynamics of resurgence at play in many European countries. Moreover, by engaging in 'decentring', we no longer focus solely on the collective practices of indigenous communities, which have already been analysed elsewhere in the world (Posey, Plenderleith, 2004).
- 8 Italy is undoubtedly the country in Europe where most initiatives are emerging, as shown by the five articles published in this special issue. Approaches tend to recognise the specificities of the village communities that manage land collectively and integrate them as relevant actors of local development. The Italian Constitutional Court has ruled in favour of collective properties and recognised, in particular, their importance in protecting the landscape. National law no 168 of 20 November 2017, 'Norme in materia di domini collettivi' (Crosetti 2020, Pagliari 2019), explicitly recognises the interest of these collective properties, whether public or private, for example, those attached to *usi civici* or *consortages* (Marinelli, Cervale, 2019). It should be noted that Italy's fascist regime tried to abolish them but was not entirely successful. There is a fruitful breeding ground for reflection in the country; it is supported by university research centres and generates ample scientific literature⁵. These reflections are part of a broader framework than the 'communaux' and join others that are carried out in parallel on common goods and public property.⁶ Initiatives taken by members of the communities are promoted for sociability, solidarity economy and the fight against global warming. We see actors innovating and deploying strategies to resist, renew their social function or build a strategic vision for their territory while remaining attached to their history. Maurizio Daici links history with the current needs of local development (case studies in Friuli Venezia Giulia), and Luigi Lorenzetti and Roberto Leggero refer to the metamorphosis of a collective institution, the *patriziati* (Ticino Alps). Michele Francesco Barale and Margherita Valcanover take a look at a collective asset that has begun to adapt to the needs of today in a study dealing with the territory and landscape of the Val Germanasca (Piedmont). For their part, in an exploratory study, Cristina Dalla Torre, Elisa Ravazzoli, Andrea Omizzolo, Alessandro Gretter and Andrea Membretti address the changes that are underway in case studies in Trentino. And when Italian autonomous regions intend to use legislation to extend the national legal framework renewed by that of law no 168 of 2017, operational collective properties can get a new lease on life. In this respect, Roberto Louvin and Nicolò P. Alessi insist on the importance of considering the actions of the *consorteries* of the Aosta Valley to revitalise local life and repopulate the valleys.

- 9 In other regions of Europe and around the Mediterranean, there are examples of attempts to renew collective property functions, even if it is a challenge. This special issue focuses on only a few cases. Charles Bonnin deals with the adaptation and hybridisation of the commons in the 'Aït Oucheg' territory (High Atlas, Morocco), and Michel Lompech examines the trajectories of collective property in Slovakia (the urbáriat). For his part and according to a different dynamic, Gilles Guerrini retraces the decline of collective land ownership in the Corsican mountains while outlining some of the perspectives that accompany those properties that remain, particularly to rethink their usefulness given the decline in agriculture on the island's inner regions. All these cases demonstrate the will of the communities to take action in order to survive, as they have always done in the past, and how they are regularly called upon to renegotiate their role in the mountain territories.
- 10 However, we did not want to limit ourselves to the specific cases presented. Nicole de Lalouvière seeks to establish a conceptual framework for the 'cultural landscape commons'. Against the backdrop of the cultural landscape of the bisses and traditional irrigation in the canton of Valais in Switzerland, her theoretical work aims to further integrate this other form of the commons into academic research on the topic. The goal is to reduce the gap between history, anthropology, geography and law – more specifically, between utilitarian, institutionalist and bio-culturalist approaches. Land commons are the archetype of a way of life linking nature and culture, especially in highly anthropised alpine territories (cultural landscape has been shaped by various systems of collective property management). So, back to the title of this special issue to remind us that the topic includes influences and interactions, and to understand it fully, we cannot study it by using a single disciplinary approach. This is also a reason to argue that mountains, because of the tangible and intangible heritage and the "collective" intelligence that characterise them, should be included in the common heritage of humanity.

BIBLIOGRAPHY

- M. Bloch, ed 1964.- *Les caractères originaux de l'histoire rurale française*, A. Colin, p. 68, p. 185 et s.
- M. Bourjol, 1989.- *Les biens communaux, voyage au centre de la propriété collective*, LGDJ, 452 p.
- A. Crosetti, 2020.- « Nuove prospettive per i domini collettivi », *Diritto e processo amministrativo*, 2-2020, pp. 323-363.
- J.-F. Joye (dir.), 2021 (à paraître).- *Les « communaux » au XXI^e siècle. Une propriété collective entre histoire et modernité*, Presses de l'USMB.
- C. Laviolle, 2020.- « L'ayant droit d'un bien communal : figure archaïque ou pionnière ? » *Droit rural*, n° 487, comm. 169.
- R. Louvin (dir.), 2017.- *Mondi montani da governare*, ed. Aracne, coll. Diritto e ambiente n° 17, 267 p.

- R. Mériaudeau, 1989.- « La spécificité foncière de la montagne française », *Revue de géographie alpine*, tome 77, n°1-3, pp. 203-210.
- F. Marinelli, M.-C. Cervale (a cura di), 2019.- *Codice degli usi civici e dei domini collettivi*, Pacini Giuridica ed., 288 p.
- F. Mouthon, 2016.- *La naissance des communs. Eaux, forêts, alpages dans les montagnes de Savoie (XII^e-XVI^e siècles)*, Société savoisienne d'Histoire et d'Archéologie, Chambéry, 165 p.
- F. Mouthon, 2017.- *Le sourire de Prométhée. L'homme et la nature au Moyen Age*, La Découverte, p. 174 et s.
- S. Rodotà, 2016.- « Vers les biens communs. Souveraineté et propriété au XXI^{ème} siècle », dans *Tracés. Revue de Sciences humaines*, spécial hors-série 16-2016.
- G. Pagliari, 2019.- « Prime note sulla l. 20 novembre 2017, n° 168 », *Il diritto dell'economia*, 1-2019, pp. 11-41.
- D. Posey, 2004.- « Traditional Resources Rights - De facto self-determination for indigenous peoples », in K. Plenderleith (eds.), *Indigenous Knowledge and Ethics. A Darrell Posey Reader*, Routledge, p. 155-168.
- N. Vivier, 2003.- « Les biens communaux en France », in M.-D. Demelas, Vivier N. (dir.), *Les propriétés collectives face aux attaques libérales (1750-1914). Europe occidentale et Amérique latine*, Presses Universitaires de Rennes, pp. 139-156.

NOTES

1. 2018-2021, see <https://projetrecherchecomon.wordpress.com>
2. Massif Central, Pyrenees, Alps... In France, a preparatory report on the 1985 "Mountain" law mentioned that 94% of the properties of the 'sections de commune' (one of the categories of collective properties) are located in departments classified as mountain areas: Report no 2164, R. de Caumont, Vol. 1, Doc. Ass. nat. 1983-84, 30 May 1984, p. 124.
3. S. Rodotà, "Vers les biens communs. Souveraineté et propriété au XXI^{ème} siècle", *Tracés*, spécial hors-série 16-2016.
4. Various tools (pastoral land associations, joint farming groups, pastoral groups, agricultural land groups, forestry groups, etc.) allow cooperation between owners and/or farmers, combining use and/or transfer of ownership. See an example of a common mountain pasture reformed in 1978 in Savoy: P. Thomé, "Le fruit commun du pastoralisme de plan Pichu. De la nécessité des communs", 3 December 2014, *Médiapart*.
5. For over 25 years, Trento has had the Centro Studi e Documentazione sui Demani civici e le Proprietà collettive, Università degli studi di Trento, Dipartimento di Economia e Management - Facoltà di Giurisprudenza. In addition, see the Centro Studi della Sardegna sulle Terre Civiche, consorzio per la Promozione degli Studi Universitari nella Sardegna Centrale, Consorzio Universitario Nuorese or refer to the Centro Studi sulle proprietà collettive e la cultura del giurista Guido Cervati (Facoltà di Economia dell'Università de l'Aquila).
6. U. Mattei, E. Reviglio, S. Rodotà (eds.), *I beni pubblici. Dal governo democratico dell'economia alla riforma del codice civile*, Académie nationale Lincei, Scienze e Lettere editore commerciale, 2010, 491, p. For a more general overview, see "L'Italie des biens communs", *Tracés*, hors-série 16-2016 or refer to P. Cacciari, N. Carestiatto, D. Passeri (ed.), *Viaggio nell'Italia dei beni comuni, Rassegna di gestioni condivise*, Marotta & Cafiero, Editori, 2012, 256 p.

AUTHORS

ALESSANDRO CROSETTI

Honorary Professor of Law at the University of Turin. President of the 'Centro studi dell'Arco alpino occidentale' (CSSAO)
prof.a.crosetti@gmail.com

JEAN-FRANÇOIS JOYE

Professor of Law at the Faculty of Law of the Savoy Mont Blanc University (USMB), Director of the 'Law Research Centre Antoine Favre' (Centre Favre).
jean-francois.joye@univ-smb.fr