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Dissertation for the degree of doctor in History
at the University of Antwerp to be defended by

MAÏKA DE KEYZER



THE COMMON DENOMINATOR

Supervisor: **Tim Soens**
Faculty of Arts
Department of History

THE SURVIVAL OF THE COMMONS IN
THE LATE MEDIEVAL CAMPINE AREA.

The common denominator

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medieval Campine area**

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Universiteit Antwerpen
Faculteit letteren en wijsbegeerte
Departement geschiedenis

De grootste gemene deler

De overleving van de gemene gronden in de laatmiddeleeuwse Kempen

Proefschrift voorgelegd tot het behalen van de
Graad van doctor in de geschiedenis
Aan de universiteit Antwerpen
Te verdedigen door
Maïka De Keyzer

Promotor: Prof. Dr. Tim Soens
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Peasants were not my first love. As a city girl, for me the countryside was a place of recreation and outdoor activities during the weekend. “De Kempen” as a region was so completely unfamiliar to me that I had to look it up on the map when I started to work on a project on the Campine commons. During the last five years, however, these medieval peasants have conquered my heart. By examining their communal struggles, cooperative disposition, silent resistance and stubborn trajectory, I discovered a fascinating and dynamic side to the medieval Campine area, one mostly depicted as conservative and immobile. The Campine peasants deliberately chose to maintain collective property and communal organisations, something which went against the tide of increasing privatisations and intensified commercial production. It was this attitude, above all, which I enjoyed discovering so very much. Against all odds, these peasants managed to secure a positive economic climate while still obtaining a durable and sustainable environment.

A wide range of people played an important role in the revelation of these Campine peasants to me. I was lucky to come across Tim Soens who introduced me to peasant disputes and collective action by giving me the opportunity to start the project entitled “The Struggle for the Commons”. As my supervisor, I was always able to count on Tim whether it was being immersed in his incredibly wide-ranging knowledge of all things rural and archival, entering into interesting and animated debates or even exploring landscapes which ranged from the marshy to the rugged, looking for ancient barns, peat bogs or lost farmsteads on our ecological field trips. I am therefore enormously indebted and grateful to him for his constant and unwavering support.

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INTRODUCTION
LOOKING BEYOND THE MODEL

I. INTRODUCTION | LOOKING BEYOND THE MODEL

During the last two decades commons have conquered the academic world. As our quest for a more sustainable policy progresses, and traditional recipes for steering the economy based on private property and/or state intervention have been found wanting, sociologists, economists, anthropologists and even historians have directed their attention towards the commons for inspiration.¹ Guided by the work of Noble prize-winner Elinor Ostrom, who argued that communal management of our natural resources is as efficient or sustainable and, in certain circumstances, even outshines private or public attempts, scholars have dedicated countless studies to discovering which types of societies or institutions were best able to cope with a scarcity of resources and external pressures.² Historians could contribute to this debate significantly by looking both at societies in the past that have engaged in collective action to manage their natural resources and their success and failures, as well as attempting to explain them. Thanks to the extraordinary dynamics generated by the research team, called “the Collective Action Network”, of Tine De Moor at the University of Utrecht, the number of historical studies on commons and institutions for collective action in the past, has exploded the past few years.³ Many of these studies have questioned the “design” of the institutions that were required to bring about the sustainable management of natural resources and have asked which driving forces and conditions were required to allow and stimulate successful and enduring collective action.⁴

The Collective Action Network’s main aim is to offer long-term perspectives on the causes and mechanisms of so-called corporate (or permanent) collective action. For North-western

1 TOBIAS HALLER, GREG ACCIAIOLI, AND STEPHAN RIST, “Constitutionality: Constitutionality: Emic Perceptions of Bottom-up Institution Building Processes,” in *Design and Dynamics of Institutions for Collective Action*, ed. Tine De Moor (Utrecht: 2012); TOBIAS HALLER AND HARRY N. CHABWELA, “Managing Common Pool Resources in the Kafue Flats, Zambia: From Common Property to Open Access and Privatisation,” in *Development Southern Africa* (Routledge, 2009); MENNO HURENKAMP, EVELIEN TONKENS, AND JAN WILLEM DUUVENDAK, *Wat Burgers Bezielt. Een Onderzoek Naar Burgerinitiatieven* (The Hague: University of Amsterdam / NICIS Kenniscentrum Grote Steden, 2006). For the Vincent and Elinor Ostrom workshop in political theory and policy analysis see: <http://www.indiana.edu/~workshop/>

2 ELINOR OSTROM, *Governing the Commons. The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1997).

3 For all information concerning The Collective Action Network: <http://www.collective-action.info/>

4 JOSÉ MIGUEL LANA BERASAIN, “From Equilibrium to Equity. The Survival of the Commons in the Ebro Basin: Navarra from the 15th to the 20th Centuries,” *International Journal of the Commons* 2, no. 2 (2008); JAN LUITEN VAN ZANDEN, “The Paradox of the Marks. The Exploitation of Commons in the Eastern Netherlands, 1250-1850,” *Agricultural History Review* 47 (1999); PAUL WARDE, “Common Rights and Common Lands in South West Germany, 1500-1800,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina; Shaw-Taylor De Moor, Leigh; Warde, Paul (Turnhout: Brepols, 2002); ANGUS WINCHESTER, “Upland Commons in Northern England,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina De Moor, Leigh Shaw-Taylor, and Paul Warde (Turnhout: Brepols, 2002); TINE DE MOOR, “Tot Profijt Van De Ghemeensaemheijt”. Gebruik, Gebruikers En Beheer Van Gemene Gronden in Zandig Vlaanderen, 18de En 19de Eeuw” (University of Ghent, 2003).

Europe, this has led to the introduction of the concept of a “silent revolution” of this kind of institutions having taken place during the later Middle Ages.⁵ According to Tine De Moor, in this period, urban as well as rural societies opted to form collectives and manage their resources or skills in a communal way and to engage in collective action so as to cope with changing socio-economic circumstances. These medieval societies were put under pressure by various “driving forces” including rising population pressures, increasingly scarce resources, and the development of markets between 1100 and 1300. When societies were located within regions with weak state or power structures, failing market institutions and fragile family or kinship ties, their inhabitants were pushed to alter their organisations and institutions in order to cope with these imperfect circumstances. Engaging in the market as individuals and holding property in private could, after all, bring high profits, but would also make these societies prone to risk. Introducing institutions for collective action and managing resources, skills, or even threats such as floods, in a communal manner was a way to avoid risk or spread the costs of a crisis across the community. Moreover, communities could benefit from advantages of scale and reduce the transaction costs.⁶ Consequently North-western Europe became dominated by the “homo cooperans” and a wide variety of institutions for collective action sprung up, including common pool resource institutions, guilds, béguinages and water boards.⁷ While, according to De Moor, common land and cooperation had previously also been present, this type of institutionalised collective action was a particularly late medieval phenomenon that occurred in all of North-western Europe because of the specific conditions and driving forces outlined above.⁸ By looking at the constitutional sources and the basic design of institutions for collective action, the institutional school tries to explain how some Premodern societies were able to manage scarce resources sustainably and why others failed.

I. Universal or regional? | Institutional vs regional approach

The use of such overarching models to explain the rise and inherent logic of all types of institutions of collective action in all or at least many parts of North-western Europe is highly

5 “Silent, as the movement was primarily based on at first tacit and later explicit –written – agreements between powerful rulers and demanding subjects, villagers and townsmen alike”. TINE DE MOOR, “The Silent Revolution: A New Perspective on the Emergence of Commons, Guilds, and Other Forms of Corporate Collective Action in Western Europe,” *International Review of Social History* 52, no. suppl. 16 (2008).

6 *ibid.*

7 TINE DE MOOR, “Homo Cooperans. Instituties Voor Collectieve Actie En De Solidaire Samenleving,” (Utrecht: 2013).

8 DE MOOR, “*The Silent Revolution*”.

attractive.⁹ From a historical point of view, there might, however, be one basic problem: the historical sources used to inform us on the “rules” governing collective action in the later Middle Ages, are by and large “normative: byelaws, charters and other types of formalized “constitutional” documents, prescribing how collective action should be regulated and developing a normative and often idealizing discourse on the goals and motives of such rules. Both the type of normative documents and the discourse they use show important similarities across organisations and regions. A model based on normative sources risks neglecting fundamental differences between neighbouring regions even, while at the same time it can overestimate differences between regions with divergent institutional legacies. Apparently highly similar institutions, as witnessed by normative sources, did have significantly different outcomes, aims and applications in different contexts. Since constitutional sources such as byelaws and charters describing the formation and formal functioning of historical common pool resource institutions are abundant and quite uniform, they have been the most popular sources for historians to work with, especially for the medieval period, where sources informing us on practices are often scarce.¹⁰ As most medieval societies left barely any evidence regarding the commons, apart from the normative sources concerning the regulation of the use and management of the commons, historians studying historical commons have tended to take only these into consideration.¹¹ This has had two very important side effects. First of all, as the tradition of forming formalised institutions via charters and byelaws was adopted in a quite uniform way throughout North-western Europe, the institutions themselves, and the societies behind them, have been assumed to resemble each other and to have been subject to similar driving forces and therefore also to lead to similar evolutions. Secondly, they have been contrasted to regions that were less inclined to write any constitutional sources down. Miguel Laborda Peman and Tine De Moor have even referred to this difference as “the tale of two commons”. As such, they formulated the hypothesis that a fundamental divide existed between eastern and western Europe, whereby some informal common pool resource institutions were less powerful than others and managed their commons in a different way.¹²

However, in my opinion, too much value is often attached to the “formalised” aspects of the common pool resource institutions. Such formal institutions are characterised by an official recognition or even foundation by a local, regional or sovereign government and the possession

9 For similar projects see: R. ALFANI, G. ALFANI, AND R. RAO, *La Gestione Delle Risorse Collettive. Italia Settentrionale, Secoli XII-XVIII* (Milan: Franco Angeli, 2011), “Carte di Regola”-project under supervision of Marco Casari and Claudio Tagliapietra LL.M.

10 TINE DE MOOR AND ANNELIES TUKKER, “Penalty and Punishment. Designing Effective Sanctions for Freerider’s Behaviour on Early Modern Dutch Commons,” in *Design and Dynamics of Institutions for Collective Action* (Utrecht: 2012); MIGUEL LABORDA PEMAN AND TINE DE MOOR, “A Tale of Two Commons. Some Preliminary Hypotheses on the Long-Term Development of the Commons in Western and Eastern Europe, 11th-19th Centuries,” *International Journal of the Commons* 7, no. 1 (2013).

11 LABORDA PEMAN AND DE MOOR, “A Tale of Two Commons”.

12 Ibid.

of constitutional documents regulating the use rights and management of the community. Elinor Ostrom herself has focussed exclusively on societies that did not introduce formalised institutions, proving that they were equally able to prevail for centuries, introduce remarkably similar regulations and maintain a sustainable environment.¹³ Secondly, the North-West European model as discerned by Laborda Peman and De Moor, is probably less uniform than they suppose. As we will argue in this study, some key divergences in the basic blueprint of North-west European common pool resource institutions, such as exclusion and restrictive use rights, can be distinguished. While some societies opted to introduce strict allocation rules and exclusive institutions, others formed and maintained inclusive institutions and did not adopt more restrictive use rights. Such anomalies therefore urge us to question whether we are truly dealing with a uniform movement that can be explained by a general model.

Therefore, instead of focusing on a grand model to explain the appearance and survival of common pool resource institutions within a wider geographical context, I have concentrated on the driving forces that generated regional or chronological differences. Thanks to the work of Erik Thoen, Bas van Bavel, Tim Soens and other rural historians working in their tradition, it has become clear that even within the relatively restricted area of the Low Countries, rural societies could diverge quite fundamentally. Due to social differences as defined by property, the environmental context, as well as different market dynamics, even neighbouring regions with similar characteristics began to diverge significantly from the later Middle Ages onwards.¹⁴ Thoen labelled these different regions “social agrosystems”.¹⁵ In this

13 OSTROM, *Governing the Commons*.

14 TIM SOENS, *De Spade in De Dijk? Waterbeheer En Rurale Samenleving in De Vlaamse Kustvlakte (1280-1580)* (Ghent: Academia Press, 2009); TIM SOENS, “Capitalisme, Institutions Et Conflits Hydrauliques Autour De La Mer Du Nord (XIIIe-XVIII Siècles),” in *Eaux Et Conflits Dans L'europe Médiévale Et Moderne : Actes Des XXXIes Journées Internationales D'histoire De L'abbaye De Flaran, 8 Et 9 Octobre 2010* ed. P. Fournier (Toulouse: Presses Universitaires du Mirail, 2012); TIM SOENS AND ERIK THOEN, “The Origins of Leasehold in the Former County of Flanders,” in *The Development of Leasehold in Northwestern Europe, C. 1200-1600*, ed. Bas Van Bavel and Philippe Schofield (Turnhout: Brepols, 2008); ERIK THOEN, “A ‘Commercial Survival Economy’ in Evolution. The Flemish Countryside and the Transition to Capitalism (Middle Ages - 19th Century),” in *Peasants into Farmers? The Transformation of Rural Economy and Society in the Low Countries (Middle Ages-19th Century) in Light of the Brennerdebate*, ed. P. Hoppenbrouwers, Van Zanden, Jan Luiten (Turnhout: Brepols, 2001); ERIK THOEN, “‘Social Agrosystems’ as an Economic Concept to Explain Regional Differences. An Essay Taking the Former County of Flanders as an Example (Middle Ages-19th Century),” in *Landholding and Land Transfer in the North Sea Area (Late Middle Ages- 19th Century)*, ed. Bas Van Bavel and Peter Hoppenbrouwers, *Corn* (Turnhout: Brepols, 2004); ERIK THOEN, “The Rural History of Belgium in the Middle Ages and the Ancien Regime: Sources Results and Future Avenues for Research,” in *Rural History of the North Sea Area. An Overview of Recent Research (Middle Ages- Twentieth Century)*, ed. Erik Thoen and Leen Van Molle (Turnhout: Brepols, 2006); BAS VAN BAVEL, *Transitie En Continuïteit. De Bezitsverhoudingen En De Plattelandseconomie in Het Westelijke Gedeelte Van Het Gelderse Rivierengebied, Ca. 1300- Ca. 1570* (Hilversum: Verloren, 1999); BAS VAN BAVEL, *Manors and Markets: Economy and Society in the Low Countries, 500-1600* (Oxford: Oxford University Press, 2010); BAS VAN BAVEL AND ERIK THOEN, “Rural History and the Environment. A Survey of the Relationship between Property Rights, Social Structures and Sustainability of Land Use,” in *Rural Societies and Environments at Risk. Ecology, Property Rights and Social Organisation in Fragile Areas (Middle Ages- Twentieth Century)*, ed. Bas Van Bavel and Erik Thoen (Turnhout: Brepols, 2013).

15 He defines social-agrosystem as: “rural production system based on region-specific social relations involved in the economic reproduction of a given geographical area”. THOEN, ‘Social Agrosystems’

study I have tried to reconcile the institutional study of the commons – inspired by Ostrom and applied in historical studies by De Moor - with the regional and social approach of rural societies, as developed by Thoen et al.. The main cluster of research questions in this study centres on how particular socio-economic or socio-political constellations of a region were translated into the practical organisation of the commons. Which type of society generated which type of common pool resource institution? Why could some common pool resource institutions remain stable, while others went through periods of fundamental transformation, such as increasing exclusiveness, restricted use rights and enclosure? As I will argue, only by approaching common pool institutions from their regional and chronological context, a better understanding of some of these basic questions in the research on commons and corporate collective action, becomes feasible.

II. Comparing the Campine area | The Brecklands and Geest regions

In order to do this, I have chosen to work on the regional level and thoroughly investigate one social-agrosystem in particular. Only by taking into account the evolving socio-economic, political as well as ecological features of a region can the appearance of institutions for collective action, along with the continuities and discontinuities they manifest, be properly explained. So far, however, few historical case studies have been earmarked which approach the commons from this evolving regional context.¹⁶ As a result of this lacuna, I have selected the late medieval Campine area¹⁷, a region often labelled a traditional peasant society, with a predominance of commons (mostly common waste- or heathlands, but also common pastures along rivers) at the heart of the Low Countries to the North-east of Antwerp. In order to describe the region, I would like to refer to the cover photo. The region can be portrayed as the piece of lumber balancing on the rapids of the fast-flowing river. While most regions within the Low Countries rushed along the stream towards an increase in private property, specialisation and commercialisation, the Campine area did not. Instead it was a region that opted to sail its own course, adapting and moulding itself according to external push and pull factors, but without taking the road towards market dependence and privatisation. As a result it has often been called a backward and traditional region, one afraid of commercialising and intensifying production via private enterprises thereby supposedly missing the boat

16 As mentioned previously, currently mainly large-scale projects or micro studies are popular. For regional studies see LANA BERASAIN, “From Equilibrium to Equity”. See also the “Contested Common Land Project” under the supervision of Angus Winchester. <http://www.collective-action.info/affiliated-projects>

17 The exact delimitation of my case study is given in chapter I.

towards modernity.¹⁸ This image, however, is in urgent need of a revision. Was the Campine area backward and conservative, or did it choose an alternative path? Was their economic trajectory really one of standstill and sclerosis, or can we trace a greater dynamism and economic success? A thorough investigation of the Campine area as a social-agosystem is needed to evaluate the economic climate, evolutions and the level of demographic, economic and ecological success or decline. When, during the later Middle Ages, the population started to rise and urbanisation and commercialisation reached a peak, most societies opted to continue on this path by specialising and intensifying production, together with abolishing communal property, while the Campine region maintained and even formulised common land and collective action so as to cope with the changing circumstances. Even though the Campine area, at first sight, could indeed be described as a text book example of the above mentioned “silent revolution” of the commons,¹⁹ the area showed some important anomalies when compared with societies with similar communal and ecosystems. While, in general, common pool resource institutions are believed to have grown more exclusive and restrictive because of growing population pressures, commercialisation and the increasing scarceness of resources,²⁰ the Campine area remained inclusive despite entitled users being able to benefit from practically unrestricted grazing rights and the fact that the natural environments was fragile.

Therefore, I will examine the causes and mechanisms that moulded the Campine common pool resource institutions into their particular form. Apart from the in-depth study of one region over a period of two centuries, a more comparative approach is needed to pinpoint the real causes and mechanisms behind the evolution of the Campine area. Consequently, throughout this thesis, two additional regions will be used as comparative case studies, namely the Brecklands of Norfolk and the Geest region of Schleswig-Holstein. All three regions were located in the cover sand belt stretching from the Brecklands throughout the whole of continental western Europe to Russia.²¹

18 VAN BAVEL, *Manors and Markets*; ROBERT P. BRENNER, “The Low Countries in the Transition to Capitalism,” *Journal of Agrarian Change* 1, no. 2 (2001).

19 DE MOOR, “The Silent Revolution”.

20 JAMES BOND, *Monastic Landscapes* (Stroud: Tempus publishing limited, 2004); BRUCE M.S. CAMPBELL, *English Seigniorial Agriculture 1250-1450* (Cambridge: Cambridge University Press, 2000); MARCO CASARI, “Emergence of Endogenous Legal Institutions: Property Rights and Community Governance in the Italian Alps,” *The journal of economic history* 67, no. 1 (2007); MARTINA DE MOOR, LEIGH SHAW-TAYLOR, AND PAUL WARDE, eds., *The Management of Common Land in North West Europe, C. 1500-1850* (Turnhout: Brepols, 2002); NANCY MCCARTHY, ABDUL B. KAMARA, AND MICHAEL KIRK, “Co-Operation in Risky Environments: Evidence from Southern Ethiopia,” *Journal of African Economies* 12, no. 2 (2003); ANGUS J. L. WINCHESTER AND ELEANOR A. STRAUGHTON, “Stints and Sustainability: Managing Stock Levels on Common Land in England, C.1600-2006,” *Agricultural History Review* 58, no. 1 (2010).

21 EDUARD KOSTER, “Aeolian Environments,” in *The Physical Geography of Western Europe*, ed. Eduard Koster (Oxford: Oxford University Press, 2007).

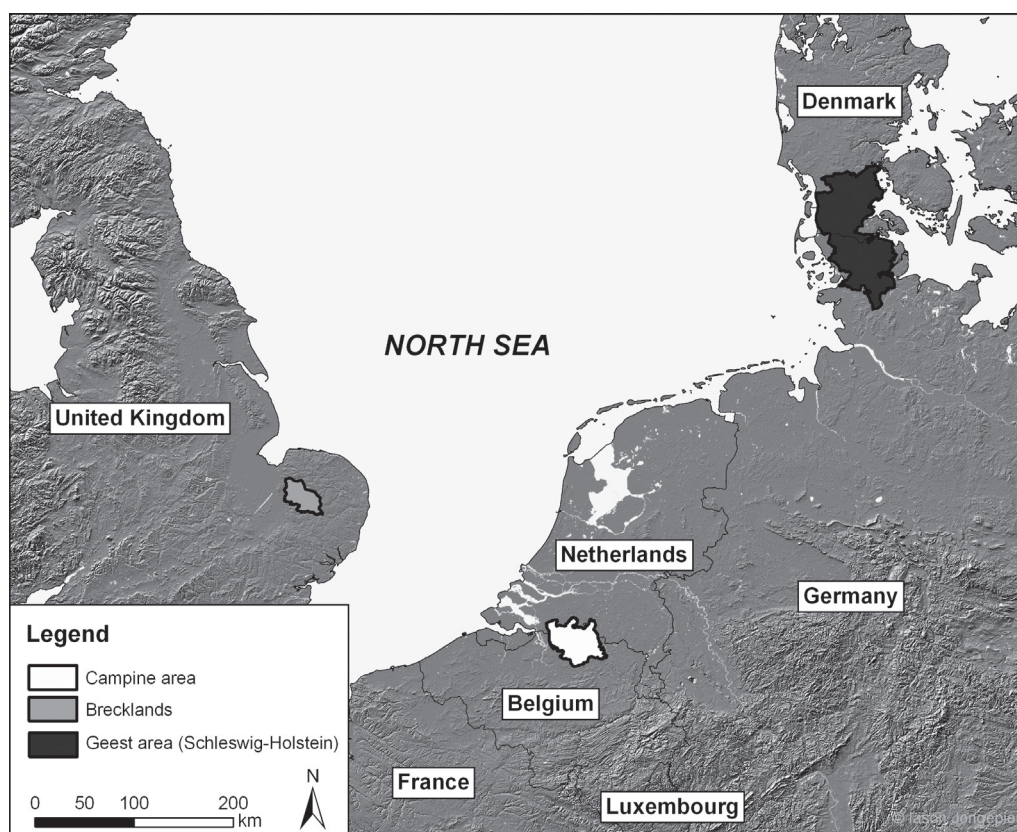


Fig 1 Location of the Campine area in relation to the comparative case studies: the Brecklands in Norfolk and the Geest region in Schleswig-Holstein. Map made by Iason Jongepier.

All three regions have been called “marginal economies” as they experienced challenging ecological circumstances due to the subsoil being largely made up of barren, acid and loose sandy soils.²² Consequently, arable production was limited and a majority of the region could only be used in a more extensive way as pasture or wasteland. All three regions therefore adopted a mixed farming system, combining intensive arable production on the infields near village centres with extensive grazing and the collecting of resources on the infertile wastelands. In addition, these regions have been classified as “marginal” because they lagged behind on the transformation towards modern factor markets and capitalistic growth.²³ They all abstained from introducing exclusively private and enclosed lands as well as managing the majority of their territories as communal property. Apart from these similarities on the ecological front in addition to formalised common pool resource institutions, these societies evolved in quite diverging directions. While before the late medieval crises the majority of smallholders were able to enjoy the fruits of communal property and steer the institutions that managed them, the Brecklands and Geest region underwent a fundamental transformation

22 MARK BAILEY, *A Marginal Economy? East Anglian Breckland in the Later Middle Ages* (Cambridge: Cambridge University Press, 1989).

23 VAN BAVEL, *Manors and Markets*; BRENNER, “The Low Countries in the Transition to Capitalism”.

towards very exclusive and restricted institutions.²⁴ By looking into the socio-economic and political constellations of these regions and comparing them with those of the Campine area, the specificity of the late medieval Campine area can become clear.

III. Plethora of sources | Combining normative, economic and juridical sources

In order to go beyond a standard institutional approach, I have supplemented an analysis of the normative sources with a study of conflicts (based on court records) and tried to explain divergences in rules and practices based on an in-depth study of the social distribution of property and power, agricultural practices, and economic fortunes of the regions studied. By normative sources, I mean byelaws and charters. In general, all formalised common pool resource institutions were formally recognised by the local, regional or sovereign government in the form of a charter. These charters went by different names, but in the Low Countries they are often called “aardbrief”, “vroentebrief” or “markebrief” depending on the type of institution.²⁵ In addition, by the end of the Middle Ages most North-west European regions started to homologise their oral regulations and laws, therefore producing written transcriptions of customary law or extensive normative books from the fifteenth century onwards, even though certain regions did this before others.²⁶ These byelaws contain the rules for collective management of the commons, but also, rules concerning village or society policies. As stated before, the layout, types of rules, forms of fines and officials that were

24 BJØRN POULSEN, “Landesausbau Und Umwelt in Schleswig 1450-1550j,” in *Dünger Und Dynamit. Beiträge Zur Umweltgeschichte Schleswig Holsteins Und Dänemarks*, ed. Manfred Jakobowski-Tiessen and Klaus-J. Lorenzen-Schmidt (Neumünster: Wachholtz Verlag Neumünster, 1999); CARSTEN PORSKROG RASMUSSEN, “An English or a Continental Way? The Great Agrarian Reforms in Denmark and Schleswig-Holstein in the Late Eighteenth Century,” in *Contexts of Property in Europe : The Social Embeddedness of Property Rights in Land in Historical Perspective*, ed. Rosa Congost and Rui Santos (Turnhout: Brepols, 2010); MARTIN RHEINHEIMER, “Umweltzerstörung Und Dörfliche Rechtssetzung Im Herzogtum Schleswig (1500-1800),” in *Dünger Und Dynamit. Beiträge Zur Umweltgeschichte Schleswig-Holsteins Und Dänemarks*, ed. Manfred Jakobowski-Tiessen and Klaus-J. Lorenzen-Schmidt (Neumünster: Wachholtz Verlag Neumünster, 1999); MARTIN RHEINHEIMER, *Die Dorfordnungen Im Herzogtum Schleswig. Dorf Und Obrigkeit In Der Frühen Neuzeit* (Stuttgart: Lucius & Lucius, 1999); K.J. ALLISON, “The Sheep-Corn Husbandry of Norfolk in the Sixteenth and Seventeenth Centuries,” *The Agricultural History Review* 5, no. 1 (1957); MARK BAILEY, “Sand into Gold. The Evolution of the Fold-Course System in West Suffolk, 1200-1600,” *Agricultural History Review* 38 (1990); NICOLA WHYTE, “Contested Pasts: Custom, Conflict and Landscape Change in West Norfolk, C. 1550-1650,” in *Custom, Improvement and the Landscape in Early Modern Britain*, ed. Richard W. Hoyle (Farnham: Ashgate, 2011).

25 P. HOPPENBROUWERS, “The Use and Management of Common Land in the Netherlands. An Overview,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina De Moor, Shaw-Taylor, L., Warde, Paul (Turnhout: Brepols, 2002); DIEDERIK THEODORUS ENKLAAR, *Gemeene Gronden in Noord-Brabant in De Middeleeuwen* (Utrecht: Kemink, 1941).

26 WIM BLOCKMANS, *Keizer Karel V. De Utopie Van Het Keizerschap* (Leuven: Van Halewyck, 2001); ROBERT STEIN, *De Hertog En Zijn Staten. De Eenwording Van De Bourgondische Nederlanden Ca. 1380- Ca. 1480* (Hilversum: Verloren, 2014).

appointed were remarkably similar throughout North-western Europe. Most of these byelaws and charters of the Campine area have been published.²⁷ Consequently, these normative sources provide the possibility of tracing the origins of formal common pool resource institutions and investigating how the commons were managed and controlled in theory. As these byelaws and founding charters do not provide the main source in this study, not every normative document will be analysed. Instead, a representative selection of byelaws and charters will be analysed here.²⁸

In addition, I have used a wide range of socio-economic and administrative sources, tax and rent registers, farm descriptions and land books, hearth counts, lease registers and accounts of the common pool resource institutions to complement the approach considering institutional sources. In the tradition of a regional and social approach to rural societies, I have tried to gain an understanding of the social differences in terms of property, agricultural practices and income strategies. Only by looking into the socio-economic background of the different rural interest groups can the function and importance of the common pool regime for the different rural subgroups be properly evaluated. After all, it has become generally accepted that normative sources tend to veil more than they reveal regarding actual day-to-day management and practices. Particularly within different fields of medieval and Premodern history, the usefulness of byelaws and regulations as main source material has been criticised.²⁹ Consequently, sources regarding social differences and the distribution of power are necessary to complement the picture painted by these normative sources. Traditional socio-economic sources, such as those mentioned before, provide the backbone of this thesis. In particular, the landholdings, agricultural practices and commercial activities of both peasant smallholders and rural elites will be recorded in order to assess their involvement and reliance on the common pool regime.

Juridical court records comprise a third significant heuristic body put to use in this study. This study is one of the first to make use of this wealth of data for this particular type of research. Even though a combination of a regional and social approach, together with an institutional perspective, provides an insight into the social profile of the peasants and their institutions, it does not permit us to grasp the real power balances and tensions that steered society. In

27 See database byelaws.

28 See database of byelaws and charters.

29 JEAN-PIERRE SOSSON, "Les Métiers, Normes Et Réalité. L'exemple Des Anciens Pays-Bas Méridionaux Aux XIVE Et XVe Siècles," in *Le Travail Au Moyen Âge. Une Approche Interdisciplinaire*, ed. Jacqueline Hamesse and Colette Muraille-Samaran (Louvain-La-Neuve: Publications de l'Institut d'études médiévales, 1990); MARC BOONE, "Les Métiers Dans Les Villes Flamandes Au Bas Moyen Âge (XIVE–XVIIe Siècles): Images Normatives, Réalités Socio-Politiques Et Économiques.," in *Les Métiers Au Moyen Âge: Aspects Économiques Et Sociaux*, ed. Pascale Lambrechts and Jean-Pierre Sosson (Louvain-La-Neuve: Publications de L'Institut d'Études Médiévales, 1994); PETER STABEL, "Guilds in Late Medieval Flanders. Myths and Realities of Guild Life in an Export Oriented Environment," *Journal of Medieval History* 30 (2004).

order to supplement our knowledge of the different social subgroups with a perspective on their interests and bargaining power, juridical records are also analysed.³⁰ Since juridical records reveal both the tensions that arose as well as the way they were settled, they allow the different interests of all social subgroups to be assessed in addition to establishing why some could prevail while others could not. As juridical records are rather scarce, I have focussed on the sentence registers of the Council of Brabant as well in order to reveal the underlying tensions and conflicts that originated from the use and management of the commons. In this way some fundamental discrepancies between the normative or theoretical management and employment of the commons and the actual practices and interests are allowed to come to the surface.

IV. Chronological framework | A focus on the fifteenth and sixteenth centuries

The main focus of this research is therefore on the fifteenth and sixteenth centuries, with a clear end date of 1580. Even though information and evidence of the thirteenth and fourteenth centuries is also employed, most of the source material originates from those two centuries. This era witnessed some of the large-scale transformations that occurred after the thirteenth century. While the fourteenth century could be pinpointed as a “golden age” for the Campine area, with strong population growth and land exploitation,³¹ the second half of the fifteenth century ushered in a short crisis from which the region had quickly recovered by 1490 onwards, leading to a period of blossoming during the sixteenth century. This end date marks the beginning of the religious struggles and the Eighty Years’ War, a period which constitutes a real caesura, for large parts of the Campine countryside were destroyed. During this timespan, the countryside in the Low Countries was subject to many internal and external pressures that had far-reaching effects. First of all, involvement in the market economy increased in

30 The usefulness of juridical records for research into peasant communities and village life has been demonstrated most convincingly by: RODNEY HILTON, *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381* (London: Methuen and co ltd, 1973); CHRISTOPHER DYER, “The English Medieval Village Community and Its Decline,” *Journal of british studies* 33, no. 4 (1994); CHRISTOPHER DYER, *Everyday Life in Medieval England* (London: Hambledon and London, 2000); CHRISTOPHER DYER, “The Political Life of the Fifteenth-Century “ in *Political Culture in Late Medieval Britain*, ed. Linda Clark and Christine Carpenter (Woodbridge: The Boydell Press, 2004); MIRIAM MÜLLER, “Conflict, Strife and Cooperation; Aspects of the Late Medieval Family and Household,” in *Marriage, Love and Family Ties in the Middle Ages*, ed. Isabel Davies, Miriam Müller, and Sarah Rees Jones (Turnhout: Brepols, 2003); MIRIAM MÜLLER, “Social Control and the Hue and Cry in Two Fourteenth-Century Villages,” *Journal of Medieval History* 31, no. 1 (2005); MIRIAM MÜLLER, “Arson, Communities and Social Conflict in Later Medieval England,” *Viator* 43, no. 2 (2012).

31 DANIEL VANGHELuwe, SPEK, THEO, “De Laatmiddeleeuwse Transitie Van Landbouw En Landschap in Noord-Brabantse Kempen,” *Historisch Geografisch Tijdschrift* 26, no. 1 (2008).

many neighbouring regions, with both commodity and factor markets as a whole becoming more prominent in rural life, although the degree of market penetration and the institutional organisation of markets remained highly divergent from region to region. One of the most important institutional changes of the later Middle Ages, was without doubt the introduction and spread of short-term leasehold, which in some regions became the predominant way of tenure, and even in regions based on the owner-occupation of land changed the access to land significantly.³² Next, in the very backyard of the Campine area, the city of Antwerp transformed from being a town of regional importance to one that was a European metropolis.³³ Moreover, not only Antwerp, but also several Brabantine cities or towns, saw their position in the urban landscape being altered. While southern towns such as Leuven and Mechelen were flourishing centres of cloth production until the fifteenth century, they were deeply affected by the late medieval crisis.³⁴ In the north, however, centres such as 's Hertogenbosch, Oisterwijk, Oirschot and Tilburg reached their peak as production centres only at the end of this period.³⁵ Their role as industrial towns, in addition to the search for raw materials, labour and land for urban citizens through different means, had an impact on the countryside. As crucial factors such as population pressure, urbanisation and commercialisation were changing so fundamentally, it is interesting to investigate how these factors affected the Campine area and, more specifically, the common pool resource institutions.

32 VAN BAVEL, *Manors and Markets*; A. BOUSSE, "De Verhoudingen Tussen Antwerpen En Het Platteland," *Bijdragen tot de Geschiedenis* 58, no. 1-2 (1975); MICHAEL LIMBERGER, *Sixteenth-Century Antwerp and Its Rural Surroundings. Social and Economic Changes in the Hinterland of a Commercial Metropolis (Ca. 1450-1570)*, vol. 14, *Studies in European Urban History* (Turnhout: Brepols, 2008); ALFONS THIJS, "Structural Changes in the Antwerp Industry from the Fifteenth to the Eighteenth Century," in *The Rise and Decline of Urban Industries in Italy and in the Low Countries*, ed. Herman Van Der Wee (Leuven: Leuven University Press, 1988); HERMAN VAN DER WEE, *The Growth of the Antwerp Market and the European Economy (14th-16th Centuries)* (The Hague: Martinus Nijhoff, 1963).

33 BOUSSE, "De Verhoudingen Tussen Antwerpen En Het Platteland"; LIMBERGER, *Sixteenth-Century Antwerp*; THIJS, *Structural Changes*; VAN DER WEE, *The Growth of the Antwerp Market*.

34 N.B. HARTE, *The New Draperies in the Low Countries and England, 1300-1800* (Leeds: Pasold Research Fund, 1997); ALPHONSE THIJS, "Van 'Werkwinkel' Tot 'Fabriek'. De Textielnijverheid Te Antwerpen Van Het Einde Der Vijftiende Tot Het Begin Der Negentiende Eeuw" (University of Ghent, 1978); ALFONS THIJS, "De Zuidnederlandse Stedelijke Nijverheid En De Pre-Moderne Industrialisering Op Het Platteland," *Economisch- en Sociaal-Historisch Jaarboek* 44 (1982); N. VAN DEN HEUVEL, *De Ambachtsgilden Van 'S-Hertogenbosch Voor 1629. Rechtsbronnen Van Het Bedrijfsleven En Het Gildewezen* (Utrecht: Kemink en zoon N.V., 1946); RAYMOND VAN UYTVEN, *Stadsfinanciën En Staseconomie Te Leuven* (Brussels: Paleis der Academiën, 1961); R. VAN UYTVEN, "De Omvang Van De Mechelse Lakenproductie Vanaf De 14de Tot De 16de Eeuw," *Noordgouw, Cultureel Tijdschrift van de Provincie Antwerpen* 5, no. 1 (1965); RAYMOND VAN UYTVEN, "La Draperie Brabaçonne Et Malinoise Du XII Au XVIIe Siècle: Grandeur Éphémère Et Décadence," in *Roduzione Commercio E Consumo Dei Panni Di Lana*, ed. Marco Spallanzani (Florence: Leo S. Olschki, 1976); A. VERHULST, "La Laine Indigène Dans Les Anciens Pays-Bas Entre Le XIIe Et Le XVIIe Siècle," *Revue Historique* 96 (1972).

35 LEO ADRIAENSEN, "Een Zestiende-Eeuws Vluchtelingenprobleem," *Brabants Heem* 53, no. 4 (2001); MARTIN DE BRUIJN, "Groeien Aan De Grens. De Afzet Van Tilburgse Wollen Stoffen En De Scheiding Tussen Noord En Zuid," in *Geworteld in Taxandria* (1992); VAN DEN HEUVEL, *De Ambachtsgilden Van 'S-Hertogenbosch*; LEO ADRIAENSEN, "De Plaats Van Oisterwijk in Het Kempense Lakenlandschap," *THB* 41 (2001).

V. Outline

This research starts with a sketch of the basic blueprint of “de Kempen” or the Campine area. In an introductory chapter, the basic aspects of the research area as a social agrosystem will be discussed. Most attention will be dedicated to the remarkable demographic evolutions, changing agricultural practices, rising commercial activities (sheep-breeding) and the shift in the balance of power during the thirteenth century. These findings make it clear that the Campine area experienced more transformations and evolutions than is often considered. The following chapters, therefore, focus on the different social, institutional, political and ecological repercussions of these transformations. In chapter III, the debate concerning the rise and design of common pool resource institutions will be central. According to Tine De Moor and Laborda Peman, North-western Europe distinguished itself by introducing formal common pool resource institutions by the later Middle Ages.³⁶ This revolution changed the form, efficiency and organisation of collective action. In addition, Tobias Haller has argued that these self-governed and bottom-up institutions were the most efficient way of dealing with scarce resources and growing external pressures.³⁷ By digging into the founding charters, byelaws and administrative village documents, more informal institutions, or rather the day-to-day management and regulation of the commons, will be brought to the fore so as to bring a new perspective to the traditional image of dominant, formal institutions. In addition, the bottom-up character of the Campine institutions is tested by looking into the social profile of the village ruling elites and the prerogatives of the Campine peasants in terms of managing village affairs.

Next, the two most central paradoxes of the Campine area are discussed. For most regions witnessing a gradual increase of population pressure and market-involvement, scholars would expect the introduction of strict delimitations of the entitled users to the commons on the one hand, and restrictive regulations regarding the amount of resources a commoner could enjoy on the other.³⁸ Most Premodern communities allowed only a particular segment of society to access the commons. Landless labourers, smallholders, women and immigrants were often the ones who lost out in terms of access.³⁹ In addition, common rights became increasingly

36 DE MOOR, “The Silent Revolution”; LABORDA PEMAN AND DE MOOR, “A Tale of Two Commons”.

37 HALLER, ACCIAIOLI, AND RIST, “Constitutionality: Constitutionality: Emic Perceptions of Bottom-up Institution Building Processes”.

38 MARCO CASARI, “Gender-Biased Inheritance Systems Are Evolutionary Stable: A Case Study in Northern Italy in the XII-XIX Century,” in *Seminar of History department University of Utrecht* (Utrecht: 2010); DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; MARGARET A. MCKEAN, *People and Forests: Communities, Institutions, and Governance* (Cambridge: MIT press, 2000).

39 CASARI, “Gender-Biased Inheritance Systems Are Evolutionary Stable: A Case Study in Northern Italy in the XII-XIX Century”; DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; LANA BERASAIN, “From Equilibrium to Equity”; WHYTE, *Contested Pasts*.

restricted and fixed. Direct and indirect products derived from the commons were intended for subsistence only and livestock numbers were limited from the fifteenth century onwards.⁴⁰ Nevertheless, in the Campine area, a region which witnessed an increase of its population throughout the later Middle Ages as well as being situated a short distance from the main commercial hub of the Low Countries in the sixteenth-century, such tendencies were absent. Therefore, in chapter IV and V, the reasons and driving forces behind this particular course are investigated. Who was granted access to the commons and why was the growing pressure to exclude parts of the community not used by any interest group to introduce an exclusive access regime? Thereafter, in chapter V, the reasons and influences behind the introduction of an unstinted or unrestricted regime are discussed. Testing the hypothesis of Jean Ensminger and Ogilvie regarding the implementation of apparently “non-efficient” institutions, the various agricultural and economic strategies of the different social subgroups such as micro-smallholders, cottagers, independent peasants and rural elites, will be analysed.⁴¹

After this initial part of the study, describing the workings and design of the Campine common pool regime and institutions, the forces driving change as well as the tensions come to the fore. The dominant paradigm concerning commons is one that stresses that it was generally peasants who were the most important supporters of the survival of the commons and traditional practices, while lords and their tenant farmers pushed for transformations and enclosures.⁴² Recently, however, this perception has been shaken up.⁴³ In fact, it was peasants who pushed for enclosure while lords could potentially benefit from the survival of common pool regimes in certain circumstances. In addition, their perspective could change fundamentally through time. In chapter VI, I will elaborate on this issue by looking into the actors that initiated privatisations and enclosures between the thirteenth and sixteenth century. Indeed, a dichotomous image of supporters and opponents of the commons needs to be abandoned and more attention should be given to the various dynamics that steered and moulded the common pool regime and institutions. Rather than being based on an overall consensus, the use and management of the Campine commons was characterised by tensions and disagreements. As Miriam Müller and Christopher Dyer have claimed, such conflicts

40 WINCHESTER AND STRAUGHTON, “Stints and Sustainability”; BOND, *Monastic Landscapes*.

41 JEAN ENSMINGER, *Making a Market. The Institutional Transformation of an African Society* (Cambridge: Cambridge university press, 1996); SHEILAGH OGILVIE, “Whatever Is, Is Right? Economic Institutions in Pre-Industrial Europe,” *Economic History Review* 60, no. 4 (2007).

42 ROBERT C. ALLEN, *Enclosure and the Yeoman: Agricultural Development of the South Midlands, 1450-1850* (Oxford: Clarendon Press, 1992); JANE HUMPHRIES, “Enclosures, Common Rights, and Women. The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries,” *The Journal of Economic History* 50, no. 1 (1990); LEIGH SHAW-TAYLOR, “Parliamentary Enclosure and the Emergence of an English Agricultural Proletariat,” *ibid.* 61, no. 3 (2001); CHRISTOPHER DYER, “Conflict in the Landscape : The Enclosure Movement in England, 1220-1349,” *Landscape History* 28 (2006).

43 NADINE VIVIER, “Le Conflict Autour Des Biens Communeaux Ou La Crise De La Propriété Collective (1760-1870),” in *Temps Et Espaces Des Crises De L'environnement*, ed. Corinne Beck, e.a. (Paris: éditions Quae, 2006); WHYTE, *Contested Pasts*.

were not necessarily pernicious.⁴⁴ It is, however, important to assess whether or not the opposing parties were able to have constructive negotiations or whether they fought battles that were already lost. The types of conflicts concerning the commons, as well as the conflict resolution mechanisms that were employed to settle these disputes, are therefore analysed in chapter VII. Did peasants rely only on informal conflict resolution mechanisms and violence, or were formal courts receptive to settling disputes within the rural population as well as being inclusive and popular?⁴⁵

I will conclude with a chapter discussing the ecological consequences of this particular Campine perspective on the management and regulation of the commons. Until now, it has been almost unequivocally argued that the Campine area and similar sandy regions in the Low Countries failed to implement a sustainable management system thereby causing deforestation and disastrous sand drifts.⁴⁶ By considering new data on sand drifts derived from OSL techniques (luminescence analysis of sand) along with the historical data that exists on the management of the Campine heathland commons, the long-standing hypothesis of a tragedy of the commons can be re-evaluated.

44 DYER, *Everyday Life*; DYER, *The Political Life of the Fifteenth-Century*; DYER, "Conflict in the Landscape"; MÜLLER, *Conflict*; MÜLLER, "Arson".

45 MAARTEN VAN DIJCK, "Towards an Economic Interpretation of Justice? Conflict Settlement, Social Control and Civil Society in Urban Brabant and Mechelen During the Late Middle Ages and the Early Modern Period," in *Serving the Urban Community: The Rise of Public Facilities on the Low Countries*, ed. Manon van der Heijden, Elise van Nederveen Meerkerk, and Griet Vermeersch (Amsterdam: Aksant, 2009); BENOÎT GARNOT, "Justice, Infrajustice, Parajustice Et Extra Justice Dans La France D'ancien Régime," *Crime, histoire & sociétés* 4, no. 1 (2000); RICHARD L. KAGAN, *Lawsuits and Litigants in Castile 1500-1700* (Chapel Hill: The University of North Carolina Press, 1981); STEIN, *De Hertog En Zijn Staten*.

46 VAN ZANDEN, "The Paradox of the Marks"; H.A. HEIDINGA, "The Birth of a Desert; the Kootwijkerzand," in *Inland Drift Sand Landscapes*, ed. Josef Fanta and Henk Siepel (Zeist: KNNV Publishing, 2010); CLIA DERESE et al., "A Medieval Settlement Caught in the Sand: Optical Dating of Sand-Drifting at Pulle (N Belgium)," *Quaternary Geochronology* 5 (2010); ILONA CASTEL, "Late Holocene Aeolian Drift Sands in Drenthe (the Netherlands)" (University of Utrecht, 1991).



De Kempen
The forgotten social agrosystem
of the Low Countries

II. DE KEMPEN | THE FORGOTTEN SOCIAL AGROSYSTEM OF THE LOW COUNTRIES

*“In de stille kempen op de purperen hei staat een eenzaam huisje met een berk erbij”.*⁴⁷

This verse not only defines the Campine area in our collective memory, but also describes how the region is viewed by the academic world: a rather backward region, dominated by small hamlets surrounded by vast waste lands and characterised by inertia. It is seen as a region that remained unchanged from the thirteenth century until the time of our great grandmothers. This stands in contrast with the surrounding regions. Counties and Duchies such as Flanders, Holland, Hainaut and even southern Brabant had moved in different directions. Erik Thoen explains this phenomenon through his model of social agrosystems. He defines such a social agrosystem as a “rural production system based on region-specific social relations involved in the economic reproduction of a given geographical area”.⁴⁸ Bas Van Bavel has adopted this point of view and has stated that the origins of such regional differences are connected to diverging socio-institutional contexts that developed during the reclamation period. The base of these socio-institutional structures was property relations and the manner of surplus extractions.⁴⁹ Erik Thoen has argued that from the late medieval period onwards, regions that were formerly quite uniform, with only minor differences, were transformed into fundamentally different social agrosystems. While before the thirteenth century, most of the Low Countries could be described as peasant societies with a predominance of “survival-farming” and substantial commons or common rights, the later Middle Ages and the later medieval crisis in particular pushed different regions into fundamentally divergent directions. Based on rather modest differences in property relations, power balances and soil quality, the different social-agrosystems further deviated from each other from the fourteenth century onwards. In several regions, pressures from rising populations led to the asserting of land and intensifying production.⁵⁰ According to Erik Thoen, high population densities in inland Flanders during the thirteenth century led to the abolishment of the commons and the increase of tiny estates. Peasants intensified production because of convertible husbandry and had to complement their household income with rural labour or proto-industrial activities. Finally, cash crops were introduced in order to generate sufficient earnings for buying food supplies on the market. Reliance on the markets was therefore crucial for the survival of peasants.⁵¹

47 In the silent Campine area, on the purple heath, stands a lonely cottage with a birch next to it. Song called “Op de purperen hei” by Conny & Danny Fabry.

48 THOEN, ‘Social Agrosystems’

49 VAN BAVEL, *Manors and Markets*.

50 ERIK THOEN, “The Rural History of Belgium in the Middle Ages and the Ancien Régime: Sources, Results and Future Avenues for Research,” in *Rural History in the North Sea Area*, ed. Erik Thoen, Van Molle Leen (Turnhout: Brepols); VAN BAVEL, *Manors and Markets*.

51 THOEN, ‘Social Agrosystems’

Quite logically, this social agrosystem was called a “commercial survival economy”.⁵² In coastal Flanders the late medieval crisis swept away most of the small peasants and land was concentrated in the hands of large landowners who leased their estates to powerful tenant farmers. Extensive use of marshlands and un-drained wetlands had to make way for intensive agriculture rapidly, possible thanks to ingenious dikes, specialised draining systems and water management. Consequently this region became one of the most fertile and productive regions within the Low Countries where commercially orientated and specialised farming systems appeared.⁵³ It is these regions that have received the most attention from scholars because they have been described as the forerunners of innovation, modernity and success. In fact, the Corn series, focussing on rural history in the North Sea area, consistently focuses on these coastal and commercially orientated hinterlands bordering the North Sea.⁵⁴ As such, eastern Norfolk, Nord-Pas-de-Calais, Flanders, Holland, Gelderland and coastal Schleswig-Holstein have been the focus of attention within academia. All these regions can be defined by a transformation towards agrarian capitalism.⁵⁵ Other regions bordering the North Sea, those that maintained traditional field systems or a less commercialised economy, have been pushed into the background.

Taking a broader perspective, however, shows that these regions that were on the road to commercialised or even capitalised societies, were the exception rather than the rule. While Flanders, Hainaut, Holland and Gelderland dominated the Low Countries, regions such as eastern Norfolk, Schleswig-Holstein and Nord-Pas-de-Calais were exceptional for England, Germany and France. Throughout the Premodern era, more traditional field systems, mixed farming and communal property were dominant in most regions. Nevertheless, few of these traditional societies have been thoroughly analysed. While every aspect of the eastern part of Norfolk has been scrutinised, its western part, the Brecklands, where vast common waste lands and communal practices such as fold course remained dominant until the late seventeenth

52 Ibid.

53 KRISTOF DOMBRECHT, “Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)” (University of Ghent, 2014); SOENS, *De Spade in De Dijk*; TIM SOENS AND ERIK THOEN, “Vegetarians or Carnivores? Standards of Living and Diet in Late Medieval Flanders,” in *Le Interazioni Fra Economia E Ambiente Biologico Nell’europa Preindustriale, Secc. XIII - XVIII: Atti Della “Quarantunesima Settimana Di Studi”, 26 - 30 Aprile 2009 = Economic and Biological Interactions in Pre-Industrial Europe from the 13th to the 18th Centuries*, ed. Simonetta Cavaciocchi (Florence: Firenze University Press, 2010).

54 Corn (Comparative Rural History of the North Sea Area) is research network founded in 1995 and coordinated by scholars from Ghent University, the University of Leuven (Belgium) in collaboration with Utrecht University (The Netherlands).

55 BRENNER, “The Low Countries in the Transition to Capitalism”; P. HOPPENBROUWERS, VAN ZANDEN, JAN LUITEN, ed., *Peasants into Farmers? The Transformation of Rural Economy and Society in the Low Countries (Middle Ages -19th Century)*, vol. 5, *Corn* (Turnhout: Brepols, 2001).

century, has largely been forgotten.⁵⁶ When we step away from England, the situation is even worse. Studies which examine regions located in the cover sand belt, those with continuous traditional peasant societies such as the Campine area, Drenthe, the Veluwe and the Geest region in Schleswig, can be counted on one hand.⁵⁷ Nevertheless, the stability of these regions in periods of change and transformation is just as important and fascinating as the evolutions within other regions. These regions did not necessarily miss the boat in terms of change and improvement, rather, they took another road one that cannot be labelled either “better” or “worse”, but was a road most certainly taken in the Campine area. Always being compared to social-agrosystems such as inland and coastal Flanders, most scholars have labelled it a “traditional” peasant society which has pejorative connotations.⁵⁸ The region, it has been argued, did not embrace change and improvements because the risk averse peasants would not part from their conservative and inefficient methods. At best, the region has been credited for maintaining a certain level of stability, thanks to its tactics.⁵⁹ This chapter will therefore be dedicated to showing the basic characteristics of the Campine area as a social agrosystem and it will focus on the aspects that determined the development of the region during the late medieval period: the landscape, power structures, agricultural possibilities, economic climate and village structures. I will assess what made such a region as the Campine area retain its stability. What characterised this region, within a framework of urbanising, commercialising and intensifying regions? What were the effects of such an alternative path?

I. De Kempen | Where and what is it?

De Kempen or Campine area as an entity is very difficult to grasp. The area, after all, has been described and defined by a multitude of characteristics. First of all, it can be delineated

56 Some key references for eastern Norfolk are: BRUCE M. S. CAMPBELL, “The Regional Uniqueness of English Field Systems? Some Evidence from Eastern Norfolk,” *Agricultural History Review* 29 (1981); BRUCE M. S. CAMPBELL, “Agricultural Progress in Medieval England: Some Evidence from Eastern Norfolk,” *The Economic History Review* 36, no. 1 (1983); BRUCE M.S. CAMPBELL AND M. OVERTON, “A New Perspective on Medieval and Early Modern Agriculture: Six Centuries of Norfolk Farming, C. 1250- C.1850,” *Past and present* 141 (1993); MARK OVERTON AND BRUCE M. S. CAMPBELL, “Norfolk Livestock Farming, 1250-1740: A Comparative Study of Manorial Accounts and Probate Inventories,” *Journal of Historical Geography* 18, no. 4 (1992).

57 THEO SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie* (Utrecht: Stichting Matrijs, 2004); ANTON KOS, *Van Meenten Tot Marken. Een Onderzoek Naar De Oorsprong En Ontwikkeling Van De Gooise Marken En De Gebruiksrechten Op De Gemene Gronden Van De Gooise Markegenoten (1280-1568)* (Hilversum: Verloren, 2010); VAN ZANDEN, “The Paradox of the Marks”; POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550j*; RHEINHEIMER, *Umweltzerstörung*; Rheinheimer, *Die Dorfordnungen*.

58 VAN BAVEL, *Manors and Markets*.

59 DANIEL R. CURTIS, “Pre-Industrial Societies and Strategies for the Exploitation of Resources. A Theoretical Framework for Understanding Why Some Settlements Are Resilient and Some Settlements Are Vulnerable to Crisis” (University of Utrecht, 2012).

through its geographical features. The Campine area is the wet and dry sandy area between the Scheldt, Meuse, Demer and Nethe valleys, stretching across the present-day Belgian provinces of Antwerp and Limburg, together with northern Brabant in the Netherlands. This entire area shares the cover sand belt of Aeolian deposits, which resulted in an extremely infertile and challenging eco-system where woodlands and heath fields dominated.⁶⁰ Arable production was difficult to achieve, which has led this entire region to adopt strategies of intensively using the arable infields and extensively using the heath fields for grazing.⁶¹ Historical jurisdictions can also be used to demarcate the area. By the eighth century, the “pagus Taxandria” was founded. Even though the exact borders are difficult to assess, it was supposed to have stretched between the axis of Antwerp and the river Dijle to the Meuse valley and Peel swamps. Within Taxandria, two distinct regions developed: Rijen and Strijen, of which Rijen largely corresponds to the contemporary province of Antwerp.⁶²

Depending on the definition the Campine area can grow or shrink considerably. It is, therefore, not my aim to introduce a new or definite definition, but rather demarcate a research area, which I will present as being located within the Campine area.

60 KOSTER, *Aeolian Environments*.

61 VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

62 KAREL A. H. W. LEENDERS, *Van Turnhoutervoorde Tot Strienemonde. Ontginnings- En Nederzettingsgeschiedenis Van Het Noordwesten Van Het Maas-Schelde-Demergebied (400-1350)* (Zutphen: Walburg Pers, 1996); WILLY STEURS, *Naissance D'une Région. Aux Origines De La Mairie De Bois-Le-Duc, Recherches Sur Le Brabant Septentrional Aux 12e Et 13e Siècles.*, vol. III, *Memoire De La Classe Des Lettres* (Brussels: Académie royale de Belgique, 1993).

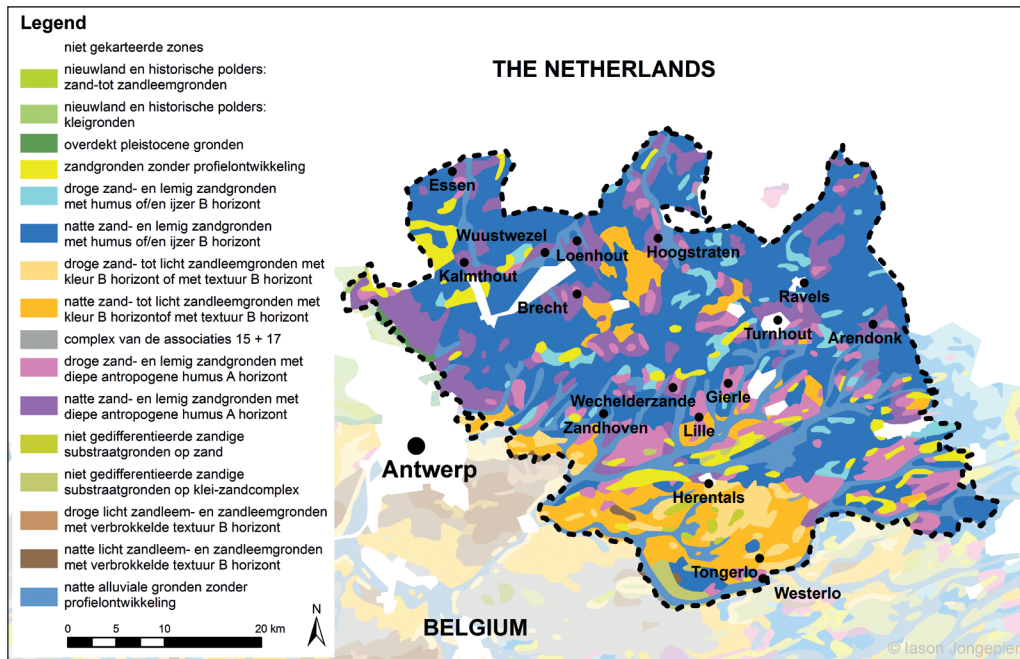


Fig 2 De Kempen as defined for this research: largely corresponding to the Antwerp Campine area (made by Iason Jongepier).⁶³

For this research I have chosen the area delimited by the Nethe in the South and West, the border between the polder region and sandy interior in the East and the present-day Belgian-Dutch border in the North (see figure 2). This highly subjective and ahistorical limit in the North was chosen because of practical considerations. Because a smaller area needed to be selected, I opted to scan through the Belgian village archives in its entirety, but not to look into the Dutch Ancien Regime archives. Nevertheless, this border is a rather porous one. Just as Campine peasants were not to be contained by hierarchal boundaries and preferred the concept of boundary zones, I included some source material from the northern part of Brabant in this research.⁶⁴ Since the abbey archive of Tongerlo and the sentence registers of the Council of Brabant provided two of the most important sources of archival material, a fixed delimitation of the Campine area, either to the North or South, proved to be impossible.⁶⁵ The abbey possessed important estates near Alphen and Goirle, while the Council of Brabant

63 Translated legend: 1: non-mapped areas, 2: Newly reclaimed land or polders (sand or sandy loam), 3: Newly reclaimed land (clay), 4: covered Pleistocene soils, 5: sandy soils without profile development, 6: dry sandy or sandy loam soils with humus or iron b- horizon, 7: wet sandy or sandy loam soils with humus or b- horizon, 8: dry sandy or sandy loam soils with a coloured b-horizon, 9: wet sandy or loamy sand soils with a coloured b-horizon, 10: complex of the associations 15 + 17, 11: dry sandy or loamy sand soils with a deep anthropogenic humus A horizon, 12: wet sandy or loamy sand soils with a deep anthropogenic humus A horizon, 13: non-differentiated sandy substrate soils on sand, 14: non-differentiated sandy substrate soils on clay-sandcomplexes, 15: dry loamy sand soils with a crumbled b-horizon, 16: wet loamy sand soils with a crumbled b-horizon, 17: wet alluvial soils without soil profile development.

64 MAÏKA DE KEYSER, IASON JONGEPIER, AND TIM SOENS, "Consuming Maps and Producing Space. Explaining Regional Variations in the Reception and Agency of Cartography in the Low Countries During the Medieval and Early Modern Periods," *Continuity and Change* 29, no. 2 (2014).

65 Abbey Archives of Tongerlo (AAT) Section I, II and IV.; State Archives Brussel (RAB), Conseil de Brabant, Archives of the registry, General sentence registers.

presided over the entire Duchy. Such vague borders correspond well to the notion of investigating a social agrosystem rather than a fixed region. Nevertheless, this rather small part of the larger Campine area located around Antwerp was chosen as the basis area of my research because the part in the Netherlands around 's Hertogenbosch and Breda were more true border regions where the "Campine" social agrosystem was mixed and had different models due to a more dense urban network, a larger quantity of peat and marshlands and the proximity of larger river valleys.

II. Prehistory | The early Middle Ages in the Campine area

The prehistory of the Campine area was neglected for a long time because of the dominant ecclesiastical narrative of the explorer monks, cutting their way through untouched and uncultivated wilderness called Taxandria. Now, however, a great deal of archaeological research is available to researchers and historians have also turned their focus to these "dark Middle Ages".⁶⁶ First of all, the history of this region as described by the Norbertine monks is erroneous. Twelfth century abbeys did not establish themselves in a wild and untamed region, rather, they slotted into an already exploited area.⁶⁷ In the Campine area, rich archaeological sites of Neolithic, Bronze and Iron Age settlements were found. The sandy ridge, transgressing the area, was an ideal encampment place for semi-mobile or more sedentary societies. Afterwards, Roman settlements such as Arendonk appeared in the region as well. Due to the

66 A. -J. A. BIJSTERVELD, "Een Nieuwe Orde? De Politieke En Religieuze Ontwikkelingen in Het Maas-Demer-Scheldegebied in De Elfde En Twaalfde Eeuw En De Stichting Van Norbertijnenabdijen in Het Tweede Kwart Van De Twaalfde Eeuw," in *Norbertijnen in De Politiek*, ed. Werkgroep Norbertijner geschiedenis in de Nederlanden. (Brussels: Werkgroep Norbertijner geschiedenis in de Nederlanden, 1997); A. -J. A. BIJSTERVELD, VANDERDENNEN, B., VANDERVEEN, A., *Middeleeuwen in Beweging* ('s-Hertogenbosch: stichting Brabantse Regionale geschied-oefening, 1991); DERESE et al., "A Medieval Settlement"; NELE EGGERMONT et al., "Nederzettingssporen Uit De Ijzertijd En De Vroege Middeleeuwen Onder Een Stuifduin Langs De Keulsebaan Te Pulle," ed. VIOE (Brussels: 2008); J. E. Jansen, Erens, A. , "De Norbertijner Abdij Van Tongerlo. Achthonderdjarige Werking in De Antwerpse Kempen 1133-1933," *Taxandria, Jaarboek van de Koninklijke Geschied- en Oudheidkundige Kring van de Antwerpse Kempen* (1983).

67 STEURS, *Naissance D'une Région*; BIJSTERVELD, *Een Nieuwe Orde?*

collapse of the Roman Empire, the area underwent a depression, even though a fundamental de-population has by now been refuted.⁶⁸

From the eighth century, however, the Campine area experienced a period of expansion, with permanent settlements being established that have survived until today, even though their centre of habitation moved elsewhere later on.⁶⁹ From at least 709, the area was introduced into the feudal system which we know because a charter mentions “pagus Taxandria.”⁷⁰ Around that time, several individual families had been able to claim allodia and became lords of their seigniories. They founded manors and used serfs to perform labour on their fields. The reserve, existing largely of woodlands and smaller heath fields and swamps, was used for extensive pasturing. This feudal system was introduced in the North-western corner of the Campine area, within the Dommel valley, near Hilvarenbeek, Tilburg and Alphen. Ancient abbeys such as Echternach had concentrated their domains here.⁷¹

As shown by the case of Pulle, a dense population on the highest sandy ridges was attained. After a period of relative abandonment and stabilisation leading to the recovery of forests and vegetation, the early Middle Ages witnessed a renewed period of exploitation.⁷² By the seventh and eighth century, the high sandy ridges, best suited for arable production, were again reclaimed and large unenclosed fields were created. Despite the absence of large sheep herds, the surrounding forests were cleared for construction wood and the pasture of cattle.⁷³ According to Steurs, this situation barely changed from the period of outset in the eighth century until four centuries later.⁷⁴

68 Even though the time-frame after the Roman occupation has often been called ‘Post-Roman void’, the population decline and declining numbers of settlements did not entail the disappearance of habitation in the entire region. It has, however, been argued convincingly that a large part of the cultivated land was abandoned and forests were able to regenerate. See: JAN BASTIAENS AND KOEN DEFORCE, “Geschiedenis Van De Heide. Eerst Natuur En Dan Cultuur of Andersom?,” *Natuur.focus* 4, no. 2 (2005); EVERT VAN GINKEL AND LIESBETH THEUNISSEN, MEFFERT, MARTIN, *Onder Heide En Akkers. De Archeologie Van Noord-Brabant Tot 1200* (Utrecht: Matrijs, 2009); FRANS THEUWS, “De Nederzittingsontwikkeling in De Middeleeuwen: Een Model En Enige Thema’s Voor Toekomstig Onderzoek,” in *De Archeologie Van De Brabantse Akkers*, ed. M. van der Heiden (Amsterdam: Amsterdams Archeologisch Centrum, 2011), 60. STEPHAN DALARUELLE, “Middeleeuwse Nederzettingen in De Noorderkempen (500-1250) De Regio Turnhout Onder De Loupe,” in *Merovingische pioniers, Brabantse boeren. Landelijke bewoning doorheen de tijd* (Turnhout: 2011); SOFIE DEBRUYNE, RICA ANNAERT, AND ALDE VERHAERT, “Middeleeuwse Ervan Op Het Hovener Veld,” in *Merovingische pioniers en Brabantse boeren. Landelijke bewoning doorheen de tijd* (Turnhout: 2011).

69 FRANS THEUWS, “Middeleeuwse Parochiecentra in De Kempen, 1000-1350,” in *Het Kempenproject 3. De Middeleeuwen Centraal*, ed. A. Verhoeven and Frans Theuws (Waalre: 1989).

70 STEURS, *Naissance D'une Région*.

71 Ibid.

72 DERESE et al., “A Medieval Settlement”.

73 Ibid.; J.M. VAN MOURIK, *Landschap in Beweging: Ontwikkeling En Bewoning Van Een Stuijzandgebied in De Kempen* (Amsterdam: Nederlandse geografische studies, 1988).

74 STEURS, *Naissance D'une Région*.

By the twelfth century, a new era had arrived when new ecclesiastical orders such as Cîteaux and Prémontré became popular and also entered the Campine area. Moreover, these orders started to dominate the less fertile peripheral regions of Europe. While Benedictine abbeys had already claimed all the productive, loamy, grain producing regions, these new orders concentrated precisely on the more marginal areas.⁷⁵ Abbeys, such as those in Tongerlo, Averbode and Postel, were founded by local noblemen and bishops. These foundations, according to Bijsterveld, clearly paint a picture of a society dominated by local political and clerical elites created because absent sovereign lords - in other words the German Emperor - had left a power vacuum. This society was, both politically and socially, monopolised by these lords and bishops.⁷⁶ Once abbeys such as Tongerlo appeared, existing exploitation centres were further developed. In the first stage the monks laboured the land themselves via direct exploitation, then changing to granges and tenant farms managed by lay tenants. At first the focus was predominantly on grain, but by 1175 they began to invest in pasture and sheep flocks to provide wool for emerging urban centres.⁷⁷

III. Ménagement à quatre | A shifting power balance

From the end of the twelfth century, however, the co-existence and equilibrium between noble and ecclesiastical lords was to become fundamentally disturbed. By 1190 the Lords of Leuven, appointed Dukes of Brabant, had great ambitions to exploit their position within the periphery of the German Empire. They directed their attention northwards, as this area constituted a boundary zone between different regional lords. First of all, they wanted to integrate this area as a military buffer between their core area and the Duchy of Holland and Geldre but in addition, the Campine area possessed some features beneficial for the expansion of their wealth.⁷⁸ For this reason they started a campaign to take the region by force, or pushed local lords and ecclesiastical institutes to sell their allodia to them, or accept them as their feudal lord and become fiefs. To consolidate their power and assure earnings, they needed the support of the local population, which they rapidly secured by founding “nova oppida” and franchise entire rural communities, where they abolished serfdom, introduced charters with

75 BOND, *Monastic Landscapes*.

76 BIJSTERVELD, *Een Nieuwe Orde?*

77 STEURS, *Naissance D'une Région*.

78 P.J.V. Dekkers, “Brandend Zand. Hoe De Hertog Van Brabant Zijn Heerschappij Op De Kempense Zandgronden Verwierf Ten Koste Van De Lokale En Regionale Adel,” *Noordbrabants Historisch Jaarboek* 12 (1995).

civil rights, founded village governments and aldermen's benches and granted market rights.⁷⁹ For example, in 1210 the "nova oppida" of Herentals received a charter stating: "Les justiciers, les echevins et les bourgeois d'Anvers attestent que Henri I, duc de Brabant, à concede à ses homes de Herentals les droits et les franchises de la ville d'Anvers".⁸⁰ The majority of these "franchises" refer to the mother charter of 's Hertogenbosch, which has actually been lost and can only be traced via indirect sources. For example, both Oisterwijk and Dormael refer to it in 1230 even though the charter of Oisterwijk seems to have been a false charter.⁸¹

As a result of this push by the Lords of Leuven, local feudal lords who had until then been relatively independent and had possessed their land without any control or overlordship, were degraded to vassals of the Dukes. Moreover, their position vis à vis their subjects was fundamentally weakened because when the Dukes made their appearance, they had freed and empowered the rural inhabitants within their realm. In addition, they had bestowed them with the power to govern themselves via village governments and granted the use of the common waste lands via communal rights instead of using the reserve.⁸² This franchise frenzy was quite extraordinary if we compare it to the situation in Flanders where barely any rural communities was given such formal rights and powers.⁸³ In order not to lose all their subjects, the feudal lords had to grant similar rights. Nevertheless, they did not follow the trend of donating charters, rather, they agreed upon freedom rights informally.⁸⁴ Even though they maintained more control over the governance of their seignories, serfdom appears to have disappeared and oral agreements regarding the right to use the commons, foundation of aldermen's benches and the diminishing of feudal dues were obtained.⁸⁵ Certain relics, such as obligatory feudal grain mills, persisted however.

Rural communities, on the other hand, were the winners of this story. As the Dukes were in constant search for money, they were able to secure their rights and even receive charters or

79 WILLY STEURS, "Les Franchises Du Duché De Brabant Au Moyen Age: Catalogue Alphabetique Et Chronologique Provisoire," *Handelingen van de Koninklijke Commissie voor Geschiedenis* 25 (1971-1972); ASTRID DE WACHTER, "De Opname Van De Kempen in Het Hertogdom Brabant (Elfde Tot Dertiende-Veertiende Eeuw). Een Politiek-Geografische Probleemstelling," *Tijdschrift van de Belgische Vereniging voor Aardrijkskundige Studies*, no. 1 (1999); PETER HOPPENBROUWERS, "De Middeleeuwse Oorsprong Van De Dorpsgemeenschap in Het Noorden Van Het Hertogdom Brabant," *Noordbrabants Historisch Jaarboek* 17-18 (2000-2001).

80 STEURS, "Les Franchises Du Duché De Brabant Au Moyen Age: Catalogue Alphabetique Et Chronologique Provisoire", 227.

81 *Ibid.*, 250-251.

82 STEURS, *Naissance D'une Région*; HOPPENBROUWERS, "De Middeleeuwse Oorsprong"; HILDE VERBOVEN, VERHEYEN, KRIS, HERMY, MARTIN, *Bos En Hei in Het Land Van Turnhout (15de-19de Eeuw). Een Bijdrage Tot De Historische Ecologie*, ed. Monumenten & landschappen (Leuven: Ministerie van de Vlaamse gemeenschap, Monumenten & Landschappen en het Vlaams Instituut voor het Onroerend Erfgoed, 2004); ENKLAAR, *Gemeene Gronden*.

83 WIM BLOCKMANS, JOS MERTENS, AND A. VERHULST, "Les Communautés Rurales D'ancien Regime En Flandre: Caracteristiques Et Essai D'interpretation Comparative."

84 ENKLAAR, *Gemeene Gronden*.

85 STEURS, *Naissance D'une Région*.

proof of their newly received powers, by paying a one-off sum of money, annual rents and taxes.⁸⁶ These dues were, however, of a less pressing nature than the former feudal dues, as those monetary sums diminished quite quickly due to inflation. In addition, they received a free status and possessed a strong power base. Thanks to the right to govern and control the village affairs themselves, they formed solid village communities with a strong group identity. It cannot be claimed that village communities were made up of uniform rural households, with equal status and values, as Blickle had stated,⁸⁷ but despite their internal differences, they were well aware of the advantages of forming collectives.⁸⁸ The willingness to set aside those differences and participate gave them a strong position within late medieval society, something which will be argued in the next chapters.

A fourth group, a well-known phenomenon in the southern Low Countries, are cities. Despite the foundation of several “vrijheden” or freedoms with city and market rights, most “nova oppida” within the core Campine area remained fundamentally rural centres even though some guilds and urban features appeared in Geel, Turnhout and Herentals.⁸⁹ All these newly founded freedoms retained their arable fields and common wastelands and a majority of inhabitants in the urban centres were engaged in agricultural activities. Apart from some extra rules, regulating markets, trade and guild practices, their byelaws highly resemble those of small rural villages such as Gierle, Herenthout and so forth.⁹⁰ Some more important cities did exist or appear on the borders of the research area of this study. In the South, old urban centres such as Lier, Mechelen and Leuven were important craft centres with international markets. To the west, Antwerp was just out-growing its status as a military fort, but was on its way to becoming the most important metropolis and trade centre in western Europe by the beginning of the sixteenth century.⁹¹ To the north, the Dukes of Brabant had founded or franchised cities such as ‘s Hertogenbosch, Oisterwijk, Hilvarenbeek and Tilburg, which became important players in the field, especially for the production of cloth.⁹²

Van Uytven has suggested that during the later Middle Ages a sort of “ménage à trois” was developing between the Dukes, feudal lords and cities. All these parties were in a constant

86 ENKLAAR, *Gemeene Gronden*; HERMAN VAN DER HAEGEN, “Hoe De Kempense Gemeenschappen Hun Aard Verkregen, Gebruikten... En Verloren. Een Overzicht.,” *Post Factum. Jaarboek voor Geschiedenis en Volkskunde*, no. 1 (2009).

87 ELINE VAN ONACKER, “Leaders of the Pack? Village Elites and Social Structures in the Fifteenth and Sixteenth-Century Campine Area” (University of Antwerp, 2014).

88 DYER, *Everyday Life*.

89 HARRY DE KOK, *Turnhout: Groei Van Een Stad* (Turnhout: Culturele Raad Turnhout, 1983); VERBOVEN, *Bos En Hei*; J.R. VERELLEN, “Lakennijverheid En Lakenhandel Van Herentals in De 14e, 15e En 16e Eeuw,” *Taxandria* 27, no. 3-4 (1955); RAYMOND VAN UYTVEN, “Brabantse En Antwerpse Centrale Plaatsen (14de-19de Eeuw)” (paper presented at the Het stedelijk netwerk ik België in historisch perspectief (1350-1850), 1990).

90 See databases: byelaws.

91 BOUSSE, “De Verhoudingen Tussen Antwerpen En Het Platteland”; LIMBERGER, *Sixteenth-Century Antwerp*; THIJS, *Structural Changes*; VAN DER WEE, *The Growth of the Antwerp Market*.

92 ADRIAENSEN, “Een Zestiende-Eeuws Vluchtelingenprobleem”; Adriaensen, “De Plaats Van Oisterwijk”.

power struggle, forming coalitions and fighting feuds between the different interest groups, which resulted in an equilibrium, that was regularly changed and transformed with shifting power balances between the three groups. Van Uytven, however, looked at the question from an urban perspective.⁹³ When considering the Campine area, it can only be argued that there was a “ménage à quatre” which included the rural communities. They were a group to reckon with, and often proved to be a decisive factor in the power struggle between the other three interest groups.

IV. Dominated by sand | The Campine ecosystem and landscape

One thing that is crystal clear concerning the Campine area, especially if we take a look at figure 2, is the predominance of sandy soils. The colours blue and pink indicate wet or dry sandy soils, which speaks for itself. During the last Ice Age, dating back 114000 – 10300 years, and especially the young Dryas period, also known as the Loch Lomond stadial (12,700-11560 BP), these wind-borne sand deposits were introduced and defined the Campine’s geology and structure.⁹⁴ Because of the sandy topsoil, together with an impenetrable clay layer near the surface in the largest part of the study area, the region suffered from extremely wet zones. In the parts where the clay layer was missing, the soil was characterised by arid conditions. As a result, only a limited area was suitable for grain production and many grain types, such as wheat for example, could barely be cultivated. In the wet regions, open spaces consisting of peat bogs, swamps with woodlands and reeds together with alders were dominant. A mixed forest was able to develop on the dryer areas.⁹⁵ These forests cannot be considered to be the dense, dark woods depicted in romantic paintings, but rather a mixture of oak and beach timber trees, shrubberies and open heath fields. As soon as too much pressure was put on this ecosystem, the woodlands transformed into shrubberies interspersed with sturdy grasses and heath land (see figure 3).⁹⁶

93 RAYMOND VAN UYTVEN, “Vorst, Adel En Steden: Een Driehoeksverhouding in Brabant Van De Twaalfde Tot De Zestiende Eeuw,” *Bijdragen tot de Geschiedenis* 59, no. 2 (1976).

94 EDUARD KOSTER, “Origin and Development of Late Holocene Drift Sands: Geomorphology and Sediment Attributes,” in *Inland Drift Sand Landscapes*, ed. Josef Fanta and Henk Siepel (Zeist: KNNV Publishing, 2010).

95 NICO ARTS et al., “De Middeleeuwen En Vroegmoderne Tijd in Zuid-Nederland,” *Nationale Onderzoeksagenda Archeologie* Chapter 22 (2007).

96 VERBOVEN, *Bos En Hei*.

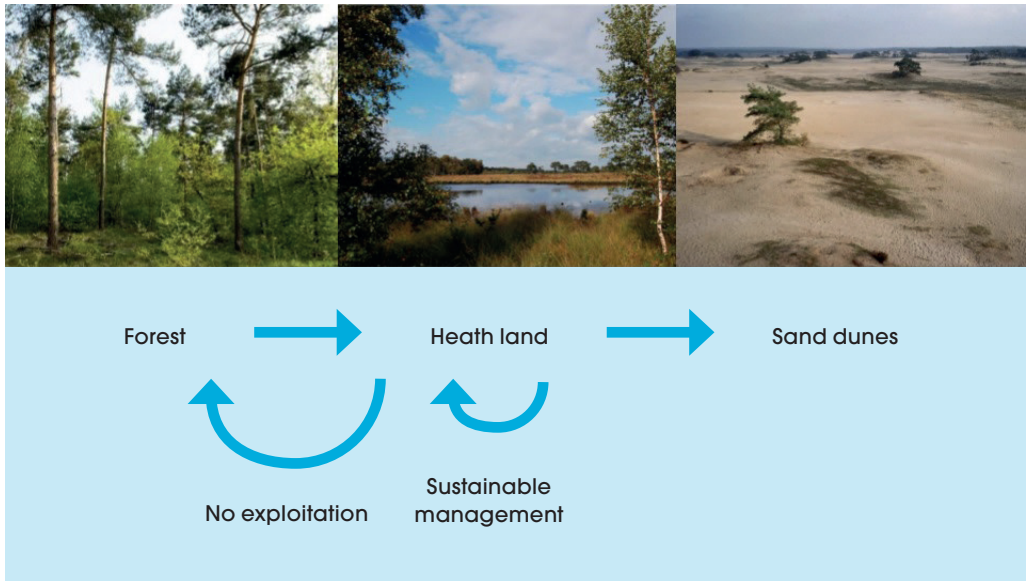


Fig 3 Campine Ecosystem, defined by Hilde Verboven.⁹⁷

These heath fields could either be sustained or transformed. If left alone, even for only a brief period, the forest would recuperate itself. On the other hand, exploitation would further degrade the ecosystem and turn diversified heath lands into poor land existing of mere heather plants or, ultimately, a sand bowl (see figure 3).⁹⁸ This transformation from woodlands into progressively open space started quite early. Jan Bastiaens and Koen Deforce speak of the Neolithicum as the first period when heather vegetation gained ground in forests because of human intervention.⁹⁹ Even during the Roman occupation, large parts of the forests were reclaimed for fields, housing and pasture.¹⁰⁰ After a period of relative population decline, the forests had recovered¹⁰¹ only to undergo the same process from the eighth century onwards.¹⁰² On the high sandy ridges, colonising communities cleared large parts of the forest for their fields and villages, while grazing animals further expanded the waste lands.¹⁰³ According to Bastiaens and Derese, this de-forestation and transformation into open and vast heath fields only increased, with an accelerated pace between the thirteenth and sixteenth century.¹⁰⁴ Like

97 Ibid.

98 Ibid.

99 BASTIAENS AND DEFORCE, “Geschiedenis Van De Heide”.

100 HENK HIDDINK, *Opgravingen Op Het Rosveld Bij Nederweert 1. Landschap En Bewoning in De Ijzertijd, Romeinse Tijd En Middeleeuwen, Zuidnederlandse Archeologische Rapporten* (Amsterdam: Vrije Universiteit Amsterdam); ALDE VERHAERT et al., “Een Inheems-Romeinse Begraafplaats Te Klein-Ravels,” *Archeologie in Vlaanderen 8* (2001-2002); ARTS et al., “De Middeleeuwen En Vroegmoderne Tijd in Zuid-Nederland”, 32.

101 BASTIAENS AND DEFORCE, “Geschiedenis Van De Heide”; VAN GINKEL AND THEUNISSEN, *Onder Heide En Akkers; THEUWS, De Nederzettingsoontwikkeling in De Middeleeuwen: Een Model En Enige Thema's Voor Toekomstig Onderzoek*, 60.

102 ARTS et al., “De Middeleeuwen En Vroegmoderne Tijd in Zuid-Nederland”.

103 LEENDERS, *Van Turnhoutervoorde*.

104 JAN BASTIAENS et al., *Inheemse Bomen En Struiken in Nederland En Vlaanderen Herkenning, Verspreiding, Geschiedenis En Gebruik* (Amsterdam: Boom, 2007); BASTIAENS AND DEFORCE, “Geschiedenis Van De Heide”; DERESE et al., “A Medieval Settlement”.

Guido Tack has already claimed, the later medieval era was one of the least densely forested periods in our history.¹⁰⁵ Therefore, open spaces that generated sand drifts seemed to already have been a problem during the Roman and early medieval period and did not fundamentally progress during the later Middle Ages. The purple heather fields that have become entangled with the Campine area in our collective memory most probably only developed from the end of the seventeenth century onwards when more intensive plaggen fertilisation was needed and digging for sods became more intensive.¹⁰⁶ Theo Spek has called the open spaces during the Middle Ages, “groene heide” or green heath fields. The landscape was by then dominated by grasses, herbs and heather vegetation with several shrubs and varieties of vegetation.¹⁰⁷

V. Overcrowded or extensive occupation? | Late medieval occupation history

Population tendencies within the Campine area can be labelled as being extraordinary. After the arrival of the Dukes and the positive economic climate of the twelfth century, the late medieval period witnessed a continuous growth. First of all, the population was practically constantly on the rise, with only a few setbacks during the end of the fifteenth century and the Eighty Years' War. The earliest rent registers, for example the one of Bergeijk in 1210, show that during this period only 20 per cent of the land that was to be cultivated during the Ancien Regime had already been exploited or rented.¹⁰⁸ The rent register of 1340, however, shows a staggering 90 per cent of the total cultivable land as being privatised and rented. Simultaneously, the dispersed arable plots were consolidated into larger arable complexes. By the middle of the fourteenth century, therefore, 90 per cent of the land that would be privatised before the eighteenth century as large-scale enclosures, had been achieved.¹⁰⁹ Jean Bastiaensen has collected and analysed all the rent registers of Kalmthout and paints a similar picture. Between 1250 and 1362, the total amount of land rented by peasants more than doubled, while the population nearly increased five-fold. Most importantly, however, was the

105 GUIDO TACK, VAN DEN BREMPT PAUL, HERMY MARTIN, *Bossen Van Vlaanderen, Een Historische Ecology* (Leuven: Davidsfonds, 1993); GUIDO TACK, ERYVYNCK, ANTON, VAN BOST, GUNTHER, *De Monnik-Manager, Abt De Loose in Zijn Abdij 'T Ename* (Leuven: Davidsfonds, 1999).

106 J. BASTIAENS AND C. VERBRUGGEN, “Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen,” *Tijdschrift voor Ecologische Geschiedenis* 1, no. 1 (1996); ERIK THOEN AND ERIC VANHAUTE, “The ‘Flemish Husbandry’ at the Edge: Farming System on Small Holdings in the Middle of the 19th Century,” in *Land Productivity and Agro-Systems in the North Sea Area : Middel Ages - 20th Century : Elements for Comparison*, ed. Bas Van Bavel and Erik Thoen (Turnhout: Brepols, 1999).

107 SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie*.

108 VANGHELuwe, “De Laatmiddeleeuwse Transitie”, 8.

109 Ibid.

augmentation of the surface area under cultivation. In 1250, an estimated surface area of 220 ha was exploited, whereas by 1362 this had increased to 972 ha (see figure 4).

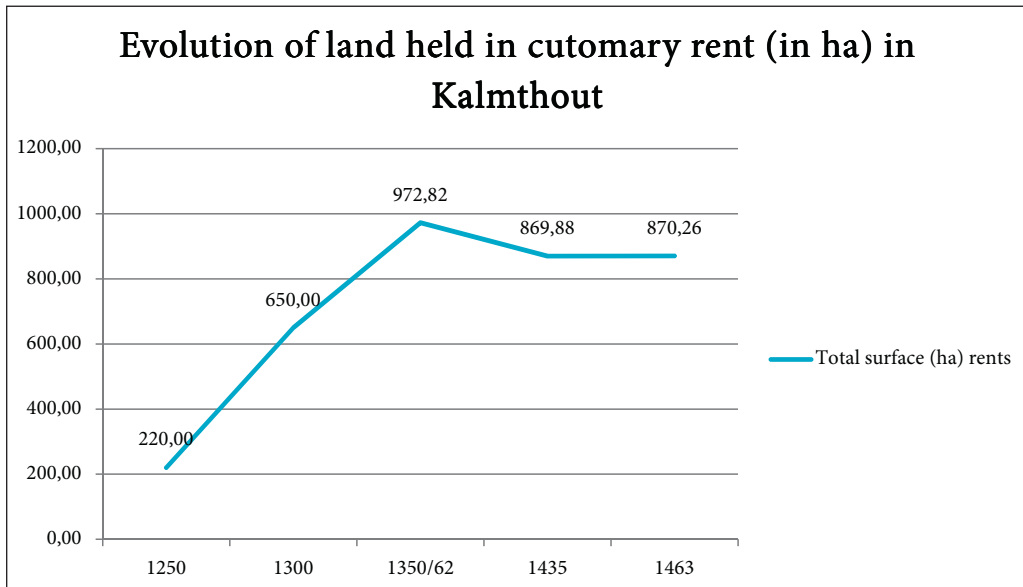


Fig 4 Evolution of land held in customary rent in Kalmthout. Graph based on calculations of Jean Bastiaens.¹¹⁰

This late medieval transition period is therefore the most fundamental in the Premodern history of the Campine area. Because of rapid population expansion, internal growth, agricultural transformations, growing cities and commercial opportunities, Campine villages were transformed from small hamlets or dispersed farmsteads into concentrated nuclei in the brook valleys with arable complexes, meadows and surrounding open waste lands. The fertility of the soil, however, limited the possibilities of exploitation for arable production and pastures, to approximately 25 per cent of the total surface area. The most important changes occurred between 1210 and 1350 when large land reclamations went hand-in-hand with a population rise of more than 100 per cent.¹¹¹ Both the influx of immigrants from the overpopulated County of Flanders or other bordering regions, and the opportunists attracted by the new ruler, the Duke of Brabant, changed the Campine area from a sparsely-populated region into a rapidly developing area (see figure 5).¹¹²

The second phase, between 1350 and 1550, was characterised by an interrupted growth.¹¹³ The late medieval crisis had fundamental and devastating effects throughout Europe and even

110 Rent registers of Kalmthout were analysed by Jean Bastiaensen, Archivist of the village archives of Kalmthout. The total surface area under cultivation in the thirteenth and early fourteenth centuries is an extrapolation by Jean Bastiaensen.

111 VANGHELUWE, "De Laatmiddeleeuwse Transitie".

112 STEURS, *Naissance D'une Région*.

113 VANGHELUWE, "De Laatmiddeleeuwse Transitie"; J. CUVELIER, *Les Dénombrements De Foyers En Brabant (XIV-XVI Siècle)*, 3 vols. (Brussel: Librairie Kiessling et C.P. Imbreghts, 1912).

within the Low Countries. Overall, populations declined, the urban and rural economies dwindled and pests and wars ravaged continuously.¹¹⁴ Nevertheless, as if by a miracle, the Campine society was only mildly affected by this crisis. In Bergeijk, the total amount of households tripled from around 100 to a little more than 300 farmsteads.¹¹⁵ As figure 5 shows, the population did witness a dip from 1480 onwards, but was already restored by 1526. In the other parts of the Low Countries, this decline had already started much earlier and took much longer to restore itself.¹¹⁶

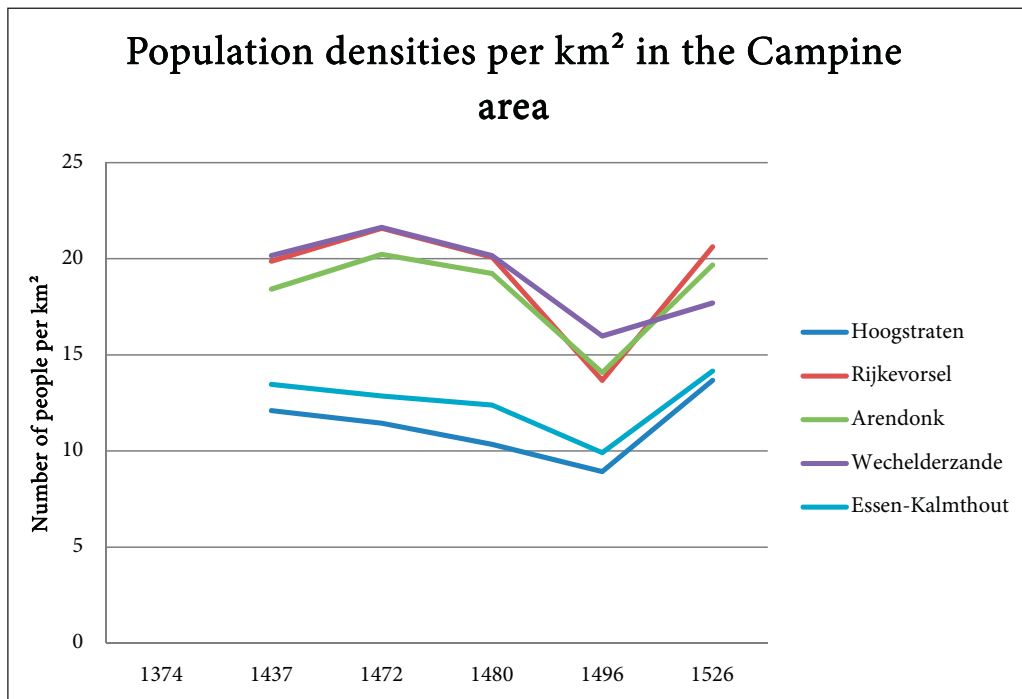


Fig 5 Population density between 1374 and 1565 in a number of representative Campine villages and the city of Turnhout.¹¹⁷

As more than 90 per cent of fertile land was already exploited, expansion became a challenge. Between 1350 and 1526, only 10 per cent extra land was exploited while the amount of

114 WIM BLOCKMANS, "The Social and Economic Effects of Plague in the Low Countries, 1349-1500," *Belgisch Tijdschrift voor Filologie en Geschiedenis* 58 (1980); DOMBRECHT, "Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)"; ERIK THOEN, *Landbouweconomie En Bevolking in Vlaanderen Gedurende De Late Middeleeuwen En Het Begin Van De Moderne Tijden*, vol. 90 (Ghent: belgisch centrum voor landelijke geschiedenis, 1988); ERIK THOEN AND ISABELLE DE VOS, "Pest in De Zuidelijke Nederlanden Tijdens De Middeleeuwen En De Moderne Tijden: Een Status Quaestionis over De Ziekte in Haar Sociaal-Economische Context," *Academia Regia Belgica Medicinæ. Dissertationes. Series Historica* 7 (1999).

115 VANGHELUWE, "De Laatmiddeleeuwse Transitie".

116 DOMBRECHT, "Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)"; DIRK PETER BLOK, ed., *Algemene Geschiedenis Der Nederlanden*, vol. 2, 3, 4 (Haarlem: Fibula-Van Dishoeck, 1977-1983).

117 Source: CUVELIER, *Les Dénombrements*. The surface area of the villages is based on the historical database of http://www.hisgis.be/nl/start_nl.htm

households exploded. According to Jean Bastiaens, the amount of rents kept on rising, even though the total surface area did not (see figure 6). The arable complexes were therefore fragmented, as all fertile land had been privatised and cultivated. All the above-mentioned evolutions resulted in an intensification, commercialisation and enclosure of arable fields.

Year	1699	1463	1435	1362	1300	1250
Number of inheritable rents	734	410	284	232	170	100
Inhabitants	800	1.510	1.440	1.400	850	285
Total surface area (gemet) rents	2.882	2.045,74	2.044,85	2.286,83	1.527,97	517,16
Total surface area (hectare) rents	1226,00	870,26	869,88	972,82	650,00	220,00

Fig 6 Rent registers of Kalmthout analysed by Jean Bastiaensen. Numbers in grey are extrapolations.

The most radical response was to reduce the amount of fallow to a bare minimum and turn towards intensive fertilising, which was achieved by keeping cattle inside and mixing their manure with sods from the common wastelands.¹¹⁸ In order to keep the animals nourished, fodder crops were introduced.¹¹⁹ Finally, the economy changed from one mostly based on arable farming where cattle were dominant, towards a mixed economy which consisted of arable production alongside commercial sheep breeding on the common waste lands for wool, meat and hides.¹²⁰ After a short period of crisis at the end of the fifteenth century, with a temporary population decline and economic downturn, the sixteenth century ushered in a revival which saw population levels, together with economic activity, reaching their former levels.

The fourteenth and fifteenth centuries were therefore actually the culmination point of the population density for the Campine area, the pressure essentially only rising from the beginning of the colonisation period until the fifteenth century. After the small-scale setback, the population recovered quickly and endured until the end of the research period, that is, 1575.¹²¹

118 BASTIAENS AND VERBRUGGEN, "Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen"; SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie*; BASTIAENS AND VERBRUGGEN, "Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen"; H-P. BLUME AND P. LEINWEBER, "Plaggen Soils: Landscape History, Properties and Classification," *Plant Nutrition and Soil Science* 167 (2004); W. VAN DER WESTERINGHE, ed., *Man-Made Soils in the Netherlands, Especially in Sandy Areas ("Plaggen Soils")*, *Man-Made Soils* (Oxford: British Archaeological Reports Limited, 1988).

119 CEDRIC HEERMAN, "Het Abdijdomein Van De Abdij Van Tongerlo in De 15de-16de Eeuw (Met Speciale Aandacht Voor De Pachthoeves Van De Abdij)," *Taxandria, Jaarboek van de Koninklijke Geschied- en Oudheidkundige Kring van de Antwerpse Kempen* (2006).

120 VANGHELUWE, "De Laatmiddeleeuwse Transitie".

121 See chapter V for more information.

Population density (inhabitants/km²)

Areas	Date	Density in the countryside
Flanders	1469	44,9
Holland	1514	47
Brabant	1473	27,3
The Campine area	1472	19
Friesland	1511	17
Veluwe	1526	10
Overijssel	1474-1475	8
Luxemburg	1495	5,2

Fig 7 Population densities within the different regions of the Low Countries.¹²²

Population density, however, is a relative concept. According to the table of population densities published by Wim Blockmans, the Campine area was far less populated than core regions such as Flanders, Holland and the southern part of Brabant (see figure 7). Despite overwhelming densities in Flanders and Holland, a significant proportion of the area witnessed extremely low densities of inhabitants.¹²³ Nevertheless, figures like this can only be fully understood when the ecosystem is taken into consideration. Therefore, given the infertile and fragile ecological circumstances, together with the absence of sufficient arable land, these numbers can be considered quite high especially if we compare the Campine area with the Veluwe, which had a similar ecosystem and commons, the population pressure was significant. During the second half of the fifteenth century, the general malaise pushed population figures back, yet only in moderation, and the upward trend resumed after 1496. Therefore, even though the Campine area might not be the most densely populated region within the Low Countries, pressure on the environment was nonetheless high. Consequently, the region cannot be compared with Alpine communities or Swedish villages, where commons survived because of the undepletable character of the natural resources together with extremely low population densities.¹²⁴

122 Source: WIM P. BLOCKMANS et al., "Tussen Crisis En Welvaart: Sociale Veranderingen 1300-1500," in *Algemene Geschiedenis Der Nederlanden*, ed. Dirk Peter Blok and e.a. (Bussum: Unieboek bv, 1980).

123 Ibid.

124 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

VI. Rye and sheep | Mixed farming

Due to challenging ecological circumstances agricultural strategies in the Campine area were rather limited. It would never become a grain-producing region such as Nord-Pas-de-Calais, or provide the green meadows required to fatten oxen.¹²⁵ Even attempts to fertilise the region by introducing canals and irrigation during the eighteenth and nineteenth century failed.¹²⁶ The acidic sandy soils, together with bad water management, limited the available surface area available for cultivation to approximately 25-35 per cent. These patches of soil were limited to the sandy elevations, furthest from the marshy meadows that were already fully exploited by 1350.¹²⁷ Here rye was the dominant type of grain that was produced. Looking at the tenant registers of the abbey of Tongerlo (figure 8), the largest part of the tenancy was paid in rye, followed by oats, barley and millet.¹²⁸ In some regions buckwheat also became popular, but this was mostly used as a type of fodder crop, rather than as grain for consumption.¹²⁹ Spurrey was another vital crop, mainly sown as stubble after the harvest and serving as green manure. Furthermore it was used as animal fodder, mainly for cattle.¹³⁰

Year	Rye	Oats	Buckwheat	Millet	Total amount of farms
1402	22	5	3	0	22
1415	25	3	2	0	25
1439	27	2	2	0	28
1462	27	0	2	0	27
1490	25	0	2	0	28
1507	29	0	3	0	30
1554	28	0	4	0	29

Fig 8 Lease sums paid in kind by tenant farms of abbey of Tongerlo in the region on Kalmthout and Alphen. Analysis undertaken by Cedric Heerman.¹³¹

125 HUGUES NEVEUX, *Les Grains Du Cambresis (Fin Du XIVe, Début Du XVII Siècles) Vie Et Declin D'une Structure Economique* (Lille: Service de reproduction des thèses université de Lille, 1974); ERIK THOEN AND TIM SOENS, "Élevage, Prés Et Paturage Dans Le Comté De Flandre Au Moyen Age Et Au Début Des Temps Modernes: Les Liens Avec L'économie Rurale Régionale " (paper presented at the Prés et pâtures en Europe occidentale: 28e journées internationales d'histoire de l'abbaye de Flaran, 2008).

126 ERIK VANHAUTE, "De Mutatie Van De Bezitsstructuur in Kalmthout En Meerle, 1834-1910," *Bijdragen tot de Geschiedenis* 71, no. 1 (1988); ERIK VANHAUTE, *De Invloed Van De Groei Van Het Industrieel Kapitalisme En Van De Centrale Staat Op Een Agrarisch Grensgebied: De Noorderkempen in De 19de Eeuw (1750-1910)* (Brussels: Gemeentekrediet, 1990).

127 VANGHELUWE, "De Laatmiddeleeuwse Transitie".

128 CEDRIC HEERMAN, "Het Abdijdomein Van De Abdij Van Tongerlo in De 15de-16de Eeuw (Met Speciale Aandacht Voor De Pachthoeves Van De Abdij)" (University of Ghent, 2003).

129 PAUL LINDEMANS, *Geschiedenis Van De Landbouw in België*, 2 vols., vol. 1 (Antwerp: De Sikkel, 1952).

130 VAN ONACKER, "Leaders of the Pack?", 80.

131 HEERMAN, "Het Abdijdomein", 85.

In order to produce rye, the sandy arable fields required an abundance of fertiliser and common waste lands were therefore required. This was called an infield-outfield system, whereby the infields were intensively cultivated and the outfields functioned as extensive pastures or waste lands, where sheep could graze and sods could be harvested to be mixed with manure so as to produce more fertilisers.¹³² For this, cattle were kept indoors for most of the year so as to maximise the harvest of manure. Sheep dung, however, was superior for fertilising acid sandy soils. Sheep were therefore kept in “kooien” or folds on the heath lands at night in order to collect the dung deposited by them.¹³³

The Campine area, however, did not focus on arable production alone. During the twelfth century, the centre of the habitation had changed from the high sandy ridges towards the lower brook valleys.¹³⁴ Arable fields remained in the same location, but the shift within the territory has led scholars to believe that a transformation towards a mixed farming system with animal husbandry and arable production had taken place. According to Daniel Vangheluwe this adaptation was required because, by 1350, the maximum amount of productive land had virtually been reached and more intensive agricultural practices were required.¹³⁵ As such, plaggen fertilisation was introduced, and more animals were kept to provide manure as well as dairy products, meat and wool, which could be sold so as to supplement the family income made up of grain yields.¹³⁶ Therefore, the meadows (the strips of regularly-flooded grass lands next to the brook valleys), patches of meadow and even the sturdy wastelands were extremely important to the peasant communities. The extent of their presence, however, diverged significantly between different villages. Figures are difficult to obtain for common meadows, but the heath lands could cover between 60 to 90 per cent of the village surface area. These valuable pieces of land, however, were not privatised, remaining common for the largest part of the year, as will be discussed in the next chapter.

VII. Egalitarian society? | Property distribution

The Campine area was a true peasant society, existing of a mix of large common waste lands and private arable and meadows held by small holders. Commons were omnipresent in most

132 ERIK THOEN AND TIM SOENS, “Land Use and Productivity,” in *Land Use and Productivity: Low Countries 1000-1750* (Turnhout: Brepols, 2012).

133 LINDEMANS, *Geschiedenis Van De Landbouw in België*.

134 THEUWS, *Middeleeuwse Parochiecentra in De Kempen, 1000-1350*.

135 VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

136 BASTIAENS AND VERBRUGGEN, “Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen”; VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

Premodern societies, apart from some exceptional regions that had abandoned communal property by the later Middle Ages. Nevertheless, the presence of commons could differ significantly. Within the Campine area a remarkably large quantity of the total surface area remained common throughout the later medieval and Premodern era. During the sixteenth century between 75 to sometimes a staggering 90 per cent of the surface area was common heathland.¹³⁷ This calculation does not even include the common meadows that were open to village herds on a part-time basis. The majority of land, therefore, could not be sold, rented or leased by villagers. The remainder that could potentially be owned or bought was therefore both scarce and crucial.

Private land in the Campine area could be held in many forms. The three most common types were customary rent, fief and leasehold and of these customary rent was the most widespread form. Of all the types of property, this type of land ownership most closely approached full ownership. Peasants paid a fixed sum, either of money or in kind, to the lord in return for complete freedom to manage and use that plot of land. They could sell, divide or inherit pieces of land in customary rent.¹³⁸ Consequently, the large majority of peasant householders had a strong grip on their land and also, therefore, the possibility of developing long-term strategies. The rent that had to be paid was rather low, as these fixed sums were easily degraded because of inflation. All newly privatised, and perhaps enclosed, pieces of land were also registered as customary rent. The lord defined the sum that was to be paid and they were added to the register. Some lords even introduced entirely new accounts, exclusively for the “nova census”.¹³⁹

A type of property that is often overlooked are peasant fiefs. Lords holding entire seigniories as fiefs usually receive most of the attention, but peasants could and did also possess small plots of land as a fief. The most important difference here was not their size, but the fact that a fief could not be divided up through inheritance. The oldest son or - in the case of male heirs being absent - daughter would be granted the land after the death of parents.¹⁴⁰

Lastly, there is leaseholding, the rise of which has elicited some serious debates. The characteristics of leasehold, that is, short-term lease periods with payment in cash, has made some scholars believe that this type of property would lead peasants or farmers to intensify and commercialise production. Lies Vervaet, however, intensified the debate on the capitalistic and profit-driven character of tenant farmers in the medieval Low Countries. While scholars such as Bas Van Bavel, Tim Soens and Erik Thoen have demonstrated that in large parts of the Low Countries late medieval tenant farmers increasingly specialised, commercialised and

137 See figure 15.

138 VAN ONACKER, “Leaders of the Pack?”

139 For example: AAT, Section II, 401, Rent register Ravels, Nova census, 1538

140 VAN ONACKER, “Leaders of the Pack?”, 76.

intensified agricultural production because of the rise of competitive land and commodity markets,¹⁴¹ she stressed the necessity of acknowledging the presence and efficiency of different types of leasehold. According to her, the tenants of the Saint John's Hospital succeeded in securing a steady supply of food and certain raw materials for the abbey's own use. Moreover, the relationship between the abbey and its tenants was on certain occasions rather amicable and loyal, rather than professional and profit-driven.¹⁴² The Saint John's farmers, however, did specialise in either animal husbandry or arable production, even though the commercial aspect was not the main driving factor.

While the relationship between the abbey of Tongerlo and its tenants largely remains concealed, their non-capitalistic attitude certainly matched that of the Saint John's hospital. In addition, Eline Van Onacker, discovered that even Campine peasants, performing their traditional agricultural strategies and relying on commons, leased some pieces of land. Most of the time, they leased plots of land with the same average size as the land held in customary rent (see figure 9).¹⁴³ The only exceptions were the tenant farmers of ecclesiastical institutions such as the abbey of Tongerlo. They leased entire farmsteads that greatly outshone the peasant households in size, although not in composition, as will be discussed in chapter V .

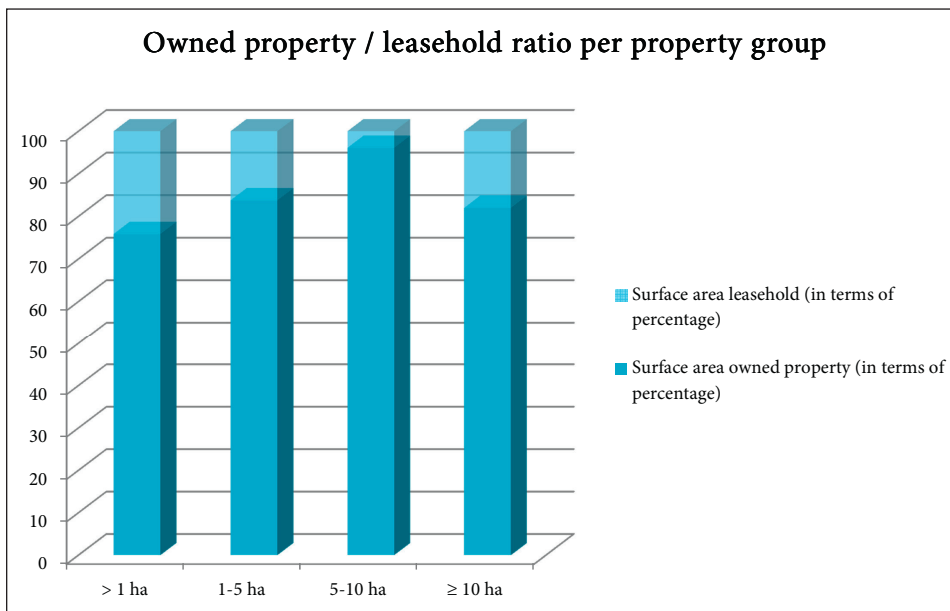


Fig 9 Relationship between customary rent and leaseholding in Gierle, 1554. Table by Eline Van Onacker.

141 SOENS, *Capitalisme, Institutions Et Conflits*; SOENS AND THOEN, *The Origins of Leasehold*; THOEN, *The Rural History*; VAN BAVEL, *Transitie En Continuïteit*; BAS VAN BAVEL, HOPPENBROUWERS, PETER, *Landholding and Land Transfer in the North Sea Area (Late Middle Ages - 19th Century)* (Turnhout: Brepols, 2004); BAS J. P. VAN BAVEL, "Markets for Land, Labor, and Capital in Northern Italy and the Low Countries, Twelfth to Seventeenth Centuries," *Journal of Interdisciplinary History* 41, no. 4.

142 LIES VERVAET, "Het Brugse Sint-Janshospitaal En Zijn Grote Hoevepachters in De 15e En 16e Eeuw: Wederkerigheid En Continuïteit in Functie Van Voedselzekerheid," *Revue Belge de Philologie et d'Histoire* 90, no. 4 (2012).

143 VAN ONACKER, "Leaders of the Pack?"

Peasants relied predominantly on inheritance in order to obtain a piece of private land. Due to population growth, together with the partible inheritance system, this meant that plots of land were increasingly divided and fragmented. Vangheluwe, as well as Jean Bastiaens, have analysed this tendency and saw a significant drop in the average size of plots of land between the thirteenth and sixteenth centuries.¹⁴⁴ This led peasants not only to intensify their production, but also to obtain land through other channels. According to Eline Van Onacker, peasants in the Campine area were definitely active on the land market and pieces of customary rent were as often sold, as was the case in other rural regions within the Low Countries, such as inland Flanders. Every group within society engaged in the land market, buying and selling parcels of land that were often tiny. The highest tax quartiles were over-represented, but not to such an extent that we are able to conclude that investing in private property was a fundamental strategy by rural elites carried out in order to dominate the smaller peasants. The land market was chiefly used as an extra allocation mechanism. As part of a life-cycle strategy, peasants could obtain or sell surplus land when needed.¹⁴⁵ The other option was to, perhaps temporarily, lease a plot of land on occasions when the household reached its peak and more land was required.¹⁴⁶

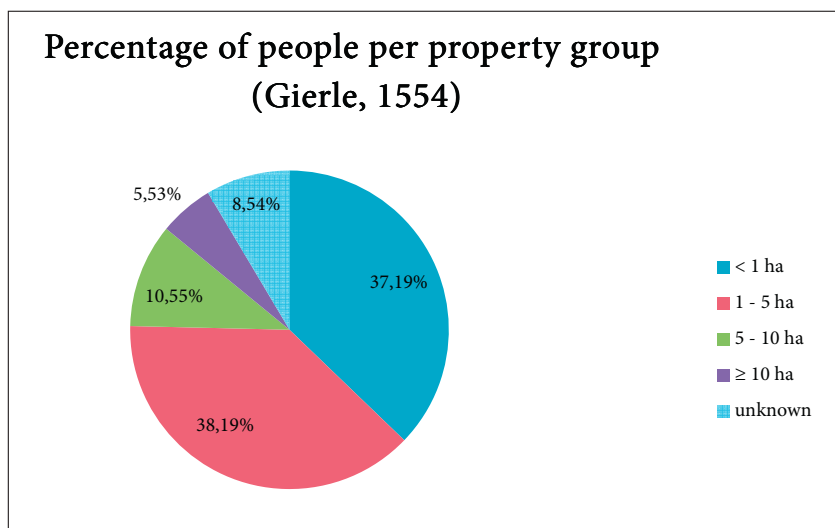


Fig 10 Property distribution in Gierle (1554), graph by Eline Van Onacker.

Despite all these commercial activities on the land market, smallholding remained dominant within the Campine area. As figure 10 shows, the majority of the village population did not possess more than 5 hectares of land and therefore teetered on the verge of subsistence.¹⁴⁷

144 VANGHELUWE, "De Laatmiddeleeuwse Transitie". ; Rent registers of Kalmthout were analysed by Jean Bastiaensen, Archivist of the village archives of Kalmthout.

145 VAN ONACKER, "Leaders of the Pack?", 175; ELINE VAN ONACKER, "De Markt Als Middel. *Peasants* En De Land - En Kredietmarkt in De Vijftiende- En Zestiende-Eeuwse Kempen.," *TSEG* 10, no. 1 (2013).

146 VAN ONACKER, "De Markt Als Middel".

147 See chapter IV for more information about subsistence limits.

In addition, the Campine society was remarkably egalitarian if we take into consideration the gini-coefficients based on the sixteenth-century “penningcohiere[n]”.¹⁴⁸ Eline Van Onacker has calculated that, on average, Campine villages had a coefficient between 0,50 and 0,56. Compared to Premodern societies,¹⁴⁹ such as the Florentine Contado measuring 0,80 or even the Betuwe region in the Netherlands with a coefficient of 0,85, the Campine area was rather egalitarian in nature, particularly if we take into consideration that no Premodern society had ever showed a lower coefficient based on tax or land registers.¹⁵⁰

Nevertheless, a social hierarchy did exist. Within the late medieval Campine area, we are able to distinguish four important groups: the micro smallholders, cottagers, independent peasants and rural elites. Micro small holders were peasants owning less than one hectare of land. They mostly did not own any farm animals, apart from a few households who had one or two cows. They did not meet their subsistence needs and had to rely on rural labour, perhaps seasonal labour in the cities, or on poor relief as a worst-case scenario.

Next, we have cottagers who constituted between 20 and 33 per cent of village communities during the sixteenth century and owned on average between 1 and 3 ha of land. Practically all of them possessed at least one piece of cattle.¹⁵¹ This animal possession had little to do with fattening oxen or producing for the market, rather owning even one piece of cattle could make the difference between having a status of proletarian or independent household.¹⁵²

Independent peasants are the interest group that made the Campine area unique. They consist of peasants labouring over 3 to 5 ha of land. In addition, they are the third main social group when it comes to size. Depending on the area, between 12 to 24 per cent of the village could be labelled an “independent peasant”.¹⁵³ While these middling groups were on the verge of extinction in many regions, often due to the late medieval crisis, one that polarised many societies, within the Campine area they remained strong and very much present throughout the entire Ancien Regime. The distinctive character of these peasants was, however, not their land ownership, but rather their possession of animals. The egalitarian image of the Campine

148 “Penningcohiere[n]” are a form of taxation lists. Users (be it owners or leasers) of all plots of land in a village were recorded in them, with specifications on the nature of the land, its location (although very imprecise) and – every now and then – their surface area. Furthermore, they noted the value of these immovable goods, related to their yearly profit and the tax that had to be paid, notably 100th of its total value.

149 VAN ONACKER, “Leaders of the Pack?”, 87.

150 DANIEL R. CURTIS, “Pre-Industrial Societies and Strategies for the Exploitation of Resources. A Theoretical Framework for Understanding Why Some Settlements Are Resilient and Some Settlements Are Vulnerable to Crisis” (University of Utrecht, 2012), 289.

151 ELINE VAN ONACKER, “Leaders of the Pack? Village Elites and Social Structures in the Fifteenth and Sixteenth-Century Campine Area” (University of Antwerp, 2014).

152 J.M. NEESON, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge: Cambridge University Press, 1993).

153 VAN ONACKER, “Leaders of the Pack?”.

area has most to do with the limitation of the gini-coefficient, which measures only fiscal inequality or differences based on immovable wealth.¹⁵⁴ The Campine independent peasants, however, are distinguishable by their possession of cattle, draft horses as well as sheep flocks. As such they owned the means of production in the form of land and ploughs, together with the possibility of selling surplus wool, milk, hides, butter and cheese on the local and regional markets. Consequently, their slightly larger estates, in combination with these animals firmly secured their subsistence, with a little extra that provided surplus income and it for this reason that they are labelled “independent peasants”.¹⁵⁵

Finally, we have the rural elites, consisting of all peasants labouring over 5 ha of land.¹⁵⁶ Despite their elite status derived from the possession of a surplus of land and more abundant herds of cattle and sheep, they remained real peasants. After all, the large majority never obtained more than 10 ha of land and, as will be argued later, they were not any more commercially orientated than the rest of the Campine communities. The concept of “rural elites” is not only a relative one, this group was exceptional within Campine communities. In the village of Minderhout, for example, Van Onacker did not even encounter one household larger than 10 ha. It was in Gierle that the largest concentration of “large landowners” was discovered, since 6,6 per cent owned more than 10 ha.¹⁵⁷ The composition of this group is, however, more diversified than the other categories. Most were independent peasants plus some extra land, cattle and sheep. These rural elites therefore distinguished themselves predominantly by their socio-political features. As Van Onacker claimed, they were over-represented in the aldermen’s bench, they occupied the most prestigious posts in the village and had the greatest influence on village affairs. Nevertheless, they were certainly not an oligarchy that dominated the peasant households as they always had to accept the presence of all other social layers within the councils and benches.¹⁵⁸ This, however, does not apply to a very different group: the tenant farmers. Tenant farmers, distinguished themselves by the fact that they rented land from external institutions, burgers or lords and held far more land than any other interest group. They were, therefore, the “odd ones out” within the Campine society. Even though Lies Vervaet claims that tenant farmers were incorporated and connected with the village community as a whole via family ties, labour relations and former land owning or leasing,¹⁵⁹ the tensions between the Campine tenant farmers and village communities discussed in the former chapter, do suggest that not all tenant farmers were completely integrated. In addition, these tenant farmers were also the odd ones out because of their uniqueness. Most villages did not even house one tenant farmer and only where ecclesiastical institutions, lords or burghers invested in exploitation centres did

154 Ibid.

155 For more information see chapter IV.

156 VAN ONACKER, “Leaders of the Pack?”

157 Ibid., 91-94.

158 Ibid.

159 LIES VERVAET, “Het Domeinbeheer Van Het Brugse Sint-Janshospitaal Ca. 1280-1580,” (Forthcoming).

such large tenant farmers appear. As such, a concentration in the areas under supervision of the abbey of Tongerlo is notable. In addition, Mary of Hungary attempted to get actively involved in agriculture in the Land of Turnhout, by founding three tenant farms and one which was directly exploited around Turnhout, Arendonk and Ravels.

The most striking feature of these tenant farms was their size (see figure 30). The smallest farm, owned by Mary of Hungary, measured 13 ha, while the abbey of Tongerlo's largest, called "in Vorst", amounted to 82,5 ha.¹⁶⁰ Since their average farms measured around 40 ha, these farmers were the real economic elites within the Campine area- especially given the general dominance of smallholding.¹⁶¹ The same went for animal husbandry. Like the independent peasants, they possessed enough draft animals to plough their land, and in addition herded herds of around 25 pieces of cattle and 90 sheep.¹⁶²

Consequently, it should be emphasized that the immovable wealth was extraordinarily equally distributed between the Campine peasants, with only some exceptional outliers. Nevertheless, the independent peasants and rural elites were able to distinguish themselves through animal possession and political functions within the village structures. While Eline Van Onacker hesitated to call them real "coqs de villages", they were nonetheless able to elevate themselves above the cottagers and micro smallholders, even though their elite status was not entirely secure. As the gap between the two parts of society was small, households could quite easily rise or fall on the social ladder during their life cycle even as the result of minor setbacks.¹⁶³

VIII. Remarkable growth | The economic climate of the Campine area

In general, the later Middle Ages, ranging between the fourteenth and sixteenth centuries, is marked by a long fundamental crisis which occurred during the fourteenth and fifteenth centuries. While the twelfth and thirteenth centuries are acknowledged to be periods of economic growth, with cities growing, trade and guild production blossoming, agricultural

160 Section II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1518.; ARAB, Chambre des Comptes, 5213/1-8 Accounts of the domain of Turnhout 1550-1557.

161 AAT, Section II, 292-293, 1510-1518.

162 For example, the farm "Ter Uytscholen" in Tongerlo, measuring 30.46 ha in total, combined arable land measuring 10.16 ha, with 17.04 ha of pasture and meadows, while owning 16 pieces of cattle, 68 sheep and 7 horses. Source: AAT, Section II, Registers, 206, Lease accounts of the abbey of Tongerlo, 1504-1513. and AAT, Section II, 292-293, 1510-1518.

163 VAN ONACKER, "De Markt Als Middel".

production rising and marginal lands being exploited, the calamitous fourteenth century erased all gains and plummeted all of Europe into a pit of disease, decline and despair.¹⁶⁴

The Campine area, however, experienced an entirely different trajectory. From the twelfth century, it witnessed the same positive trend as the surrounding regions, profiting from the influx of immigrants. Thanks to the developments of the abbeys and the Dukes of Brabant, founding “nova oppida” and granting freedom and rural charters, the Campine area enjoyed a very positive economic climate. Van Gheluwe’s research has demonstrated a steep rise in plots held in customary rent, pointing to a rise in population and economic development of the Campine villages.¹⁶⁵ In addition, the “nova oppida” were granted market rights and as a result guilds started to appear. In Turnhout “het wollewerc” (the cloth guild) was founded and they processed Campine wool.¹⁶⁶ According to Monna, Campine urban centres greatly benefitted from their location near the trade route between Antwerp and the Rhine area.¹⁶⁷ This Campine wool, however, must at first have been exclusively supplied by ecclesiastical institutions. According to Steurs, the Norbertine abbeys had started to invest in sheep flocks from the end of the twelfth century onwards, but peasant flocks did not arrive until 1350.¹⁶⁸

The region’s real ascendance occurred, perhaps surprisingly, during the fourteenth century. The Black Death seems to have had little effect on population numbers and economic activities suggest that a decline was far-off. Van Gheluwe and Jean Bastiaens have pointed to a continued rise in land taken into exploitation and a wide-spread intensification of the agricultural production, to follow the growing needs of the population.¹⁶⁹ One of these changes was the introduction of peasant sheep-holding after 1350. Significant flocks appeared on the common waste lands and their wool, hides and meat was sold on the local markets. Even though the best and highest-quality English wool dominated the production of fine cloth in the big guilds, there had always been room for less high-quality inland wool for the production of second-class products.¹⁷⁰ All guild regulations in Leuven, Mechelen, ‘s Hertogenbosch as well

164 RAYMOND VAN UYTVEN, ed., *Geschiedenis Van Brabant: Van Hertogdom Tot Heden* (Zwolle: Waanders, 2004); R. VAN UYTVEN, “Economische En Stedelijke Groei in Het Hertogdom Brabant Tijdens De 13de Eeuw,” *Brabantse Folklore* 253 (1987); WIM BLOCKMANS et al., “Tussen Crisis En Welvaart: Sociale Veranderingen 1300-1500,” in *Algemene Geschiedenis Der Nederlanden* ed. Dirk Peter Blok and a.o. (Haarlem: Fibula-Van Dishoeck, 1980); BLOCKMANS, “The Social and Economic Effects”.

165 VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

166 J. E. JANSEN, “Bijdragen Tot De Geschiedenis Der Lakengilde Van Turnhout,” *Verslag over het bestuur en de toestand der zaken van de stad Turnhout door het college van burgemeester en schepenen aan de gemeenteraad voorgedragen in zijn zitting van 3 oktober 1921*, no. 58-91 (1921); VERHULST, “La Laine Indigène”; VERELLEN, “Lakennijverheid En Lakenhandel Van Herentals in De 14e, 15e En 16e Eeuw”.

167 A.D.A. MONNA, “De Textielnijverheid in Weert,” *Studies over de sociaal-economische geschiedenis van Limburg* 15 (1970).

168 STEURS, *Naissance D’une Région*.

169 VANGHELUWE, “De Laatmiddeleeuwse Transitie”. Rent registers of Kalmthout were analysed by Jean Bastiaensen, Archivist of the village archives of Kalmthout.

170 BOND, *Monastic Landscapes*; CAMPBELL, *English Seigniorial Agriculture*.

as Brussels, looked to Campine wool for their production. In addition, production centres such as Weert, Turnhout and Herentals flourished, as they combined luxurious as well as less high-quality cloth production.¹⁷¹

The fifteenth century, however, constituted a temporary setback. The majority of the Low Countries was struggling, which resulted in a declining demand. In addition, English wool was increasingly banned for export and used to produce English cloth. As such, the urban markets were flooded with English cloth. In the Low Countries, old and famous production centres such as Leuven dwindled and production was moved to the countryside. Even smaller centres such as Turnhout felt the blow and cloth production declined.¹⁷² Sheep numbers of the abbey of Tongerlo, however, did not immediately decline sharply, instead they remained stagnant, only to experience a small-scale dip together with a downfall of population numbers at the end of the fifteenth century, as shown in figure 11. This stability probably had a great deal to do with the export ban of English wool and the new tendency of cloth guilds to produce new draperies instead of the old-style cloths. For this type of cloth, less high-quality wool was required. As such, Campine wool and inland wool in general was more sought after this century.¹⁷³

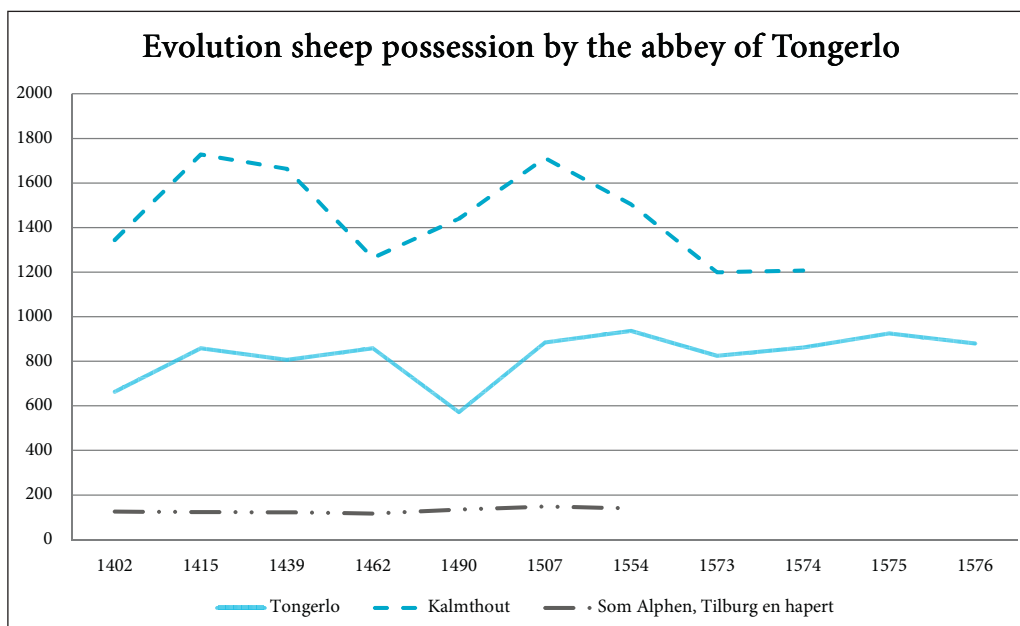


Fig 11 Sheep possession by the abbey of Tongerlo during fifteenth and sixteenth centuries in the region around Tongerlo, Kalmthout and Tilburg.

171 ADRIAENSEN, “Een Zestiende-Eeuws Vluchtelingenprobleem”; MONNA, “De Textielnijverheid in Weert”; ADRIAENSEN, “De Plaats Van Oisterwijk”.

172 VERHULST, “La Laine Indigène”; VAN UYTVEN, *La Draperie Brabaçonne*; HARTE, *The New Draperies in the Low Countries and England, 1300-1800*.

173 VAN DEN HEUVEL, *De Ambachtsgilden Van ‘S-Hertogenbosch*; VAN UYTVEN, “De Omvang Van De Mechelse Lakenproductie”; HARTE, *The New Draperies in the Low Countries and England, 1300-1800*; THIJS, “Van “Werkwinkel” Tot “Fabriek””.

In addition, the cloth industry did not really falter, but rather, transformed itself. Firstly, the production was taken into the countryside, secondly, new draperies, and secondly light draperies became fashionable, and lastly but most importantly, the main axis of cloth production moved northwards. While centres such as Duffel, Weert, Turnhout and Herentals were the most important centres in the fourteenth century, the focal point was replaced by centres in northern Brabant such as Oisterwijk and later on Tilburg and 's Hertogenbosch. The trade routes that were so important after all, gradually shifted to the northern Brabant side.¹⁷⁴

The sixteenth century was, in general, a period of relative stability. Even though Antwerp became the metropolis of Europe as the hub of trade in this century,¹⁷⁵ it did not fundamentally affect the Campine area. Population densities regained the levels seen at the beginning of the fifteenth century, but did not rise any further. The same is true for customary rents and sheep numbers. Fragmentation was on the rise, which led peasants to engage in piecemeal enclosure, but the sixteenth century was not fundamentally a period of exploitation.¹⁷⁶ Apart from sheep flocks in Kalmthout, those flocks belonging to peasants, as well as herds in possession of the abbey of Tongerlo remained stable. Cloth production seems to have remained an activity of importance within the Campine region, as underlined by Jan De Meester's research indicating that several Campine skilled or semi-skilled cloth labourers and journeymen emigrated, in a very gradual stepping-stone motion, from the countryside towards rural centres, and finally to Antwerp.¹⁷⁷

It is not any accident that the end of the sixteenth century also marks the end of my research period. The Campine area was hit hard by the war resulting from the religious struggles. In 1575 several villages were completely destroyed, cattle and sheep were killed or stolen and the passing armies left the region crippled.¹⁷⁸ From that period onwards, a line of demarcation divided the Antwerp Campine area from North Brabant. It remains unclear whether it was the loss of cloth-producing centres, or the financial hit taken due to the eradication of the cattle herds that was responsible for the apparently fundamentally changed social landscape and economic activities in the region. The lamb tithes indicate a continuous reduction of sheep numbers during the seventeenth century and by the eighteenth century, commercial sheep

174 ADRIAENSEN, "De Plaats Van Oisterwijk"; MONNA, "De Textielnijverheid in Weert".

175 LIMBERGER, *Sixteenth-Century Antwerp*; THIJS, *Structural Changes*; VAN DER WEE, *The Growth of the Antwerp Market*.

176 VANGHELUWE, "De Laatmiddeleeuwse Transitie".

177 JAN DE MEESTER, "Gastvrij Antwerpen? Arbeidsmigratie Naar Het 16de-Eeuwse Antwerpen" (University of Antwerp, 2011).

178 SAA, Ancien Regime archives of the city of Antwerp, other governments, Local governments and seigniories, Belgium, Duchy of Brabant, 5 Condition of the villages in the margraviate of Antwerp in 1593.

breeding was limited to just a couple of herds. Because of de-urbanisation and general malaise in the seventeenth century, the heyday of the Campine area seemed to have passed.¹⁷⁹

IX. Peasant power | Village structures and organisation

As stated before, the dukes, and later on also the feudal and ecclesiastical lords, had franchised village communities. Because of this, not only did subjects receive their personal freedom, but villages were also granted the right to form aldermen's benches, administer justice (apart from the most grave offences), and formulate village regulations. What is striking here is that every individual village was bestowed with this power.¹⁸⁰ While in Flanders supra-local institutions often performed these functions and individual villages did not even have a separate aldermen's bench, Campine villagers had the power to fully participate in the management of their village.¹⁸¹

A typical Campine village was governed by a lord, an ecclesiastical institution such as the abbey of Tongerlo in Kalmthout-Essen and Tongerlo, a feudal lord such as the Lalaings in Hoogstraten, or the Dukes of Brabant in the Land of Turnhout themselves. While feudal lords often presided in the village themselves, many lords were absentee landlords. In addition, internal affairs such as controlling the commons and attending court cases were often not of much interest to the lords themselves. Consequently they were represented by a "schout" or bailiff and sometimes even a "rentmeester" or steward who had the lordly prerogatives to preside in court, cooperate with the aldermen to appoint officials and collect fines or determine composited fines. It was also their task to arraign trespassers in court, after which the aldermen could decide on a verdict.¹⁸²

179 VAN UYTVEN, "Brabantse En Antwerpse Centrale Plaatsen (14de-19de Eeuw)"; VAN UYTVEN, "Vorst, Adel En Steden"; BRUNO BLONDÉ, "Domestic Demand and Urbanisation in the Eighteenth Century: Demographic and Functional Evidence for Small Towns of Brabant," in *Small Towns in Early Modern Europe*, ed. Peter Clark (Cambridge: Cambridge University Press, 1995); PAUL M.M. KLEP, "Urban Decline in Brabant: The Traditionalization of Investments and Labour (1374-1806)," in *Rise and Decline of Urban Industries in Italy and the Low Countries*, ed. Herman Van Der Wee (Leuven: Leuven University Press, 1988).

180 In Flanders such village privileges were rare, see: DOMBRECHT, "Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)".

181 Ibid.; ELINE VAN ONACKER, "Leaders of the Pack? Village Elites and Social Structures in the Fifteenth and Sixteenth-Century Campine Area" (University of Antwerp, *ibid.*).

182 KRISTOF DOMBRECHT et al., "The Regional Differences of Office Holding by Rural Elites. A Comparative Study for Late Medieval Flanders and Brabant (14th-16th Century)," in *Hinter Dem Horizont. Projektion Und Distinktion Ländlicher Oberschichten Im Europäischen Vergleich, 17. Bis 19. Jahrhundert*, ed. Dagmar Freist and Frank Schmakel (Munster: Aschendorff Verlag, 2013).

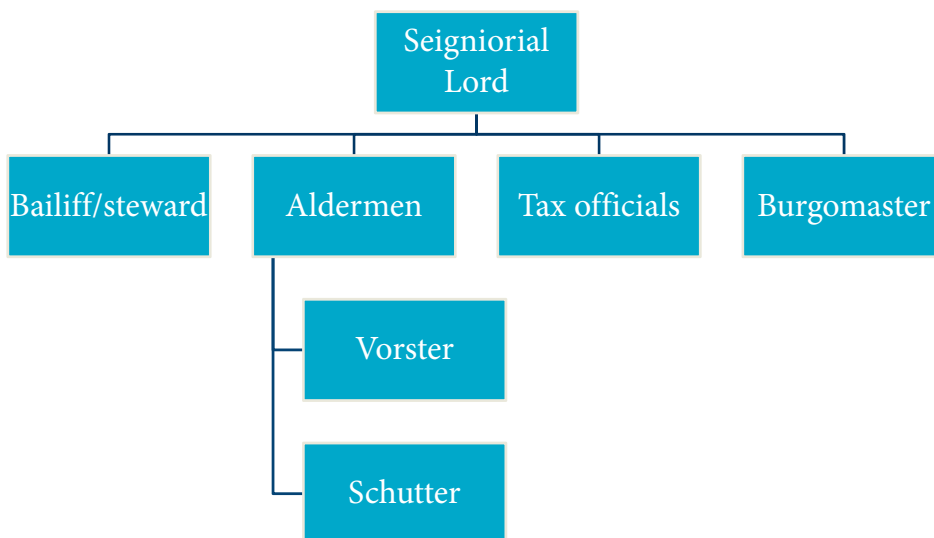


Fig 12 Village structure of the average sixteenth century Campine village.

Next we have the aldermen, or representatives of the village subjects. They were the judges or the aldermen's bench within the village and determined village regulations, together with the bailiff and sometimes villagers' delegates. Even though village governments have sometimes been considered as small-scale democracies, with governing structures from the grass root level on, they were in fact not as common as has often been depicted.¹⁸³ In feudal villages, such as Hoogstraten, the aldermen were appointed by the "drossaard" (or the lordly representative, such as a bailiff). Only in the Land of Turnhout did aldermen co-opt the new aldermen, even though the lord had to give his final blessing.¹⁸⁴ Eline Van Onacker, moreover, has discovered that aldermen were not average peasants. Even though villagers from practically all tax percentiles could and did become aldermen, it was the individuals in the highest percentiles in particular who dominated within the council. Furthermore, these elites or independent peasants retained their position for a longer period and they combined more offices.¹⁸⁵ Moreover, these aldermen not only distinguished themselves from their peasant neighbours by their socio-economic profile, but sometimes even showed a different agenda. As governors of the village, they often acted according to their specific political interests which could clash with those of the ordinary villagers, whether they were elites or cottagers.¹⁸⁶

183 For a discussion concerning this topic see: ELINE VAN ONACKER AND MAÏKA DE KEYZER, "Controlling the Campine Commons," in *Leaders of the Pack? Village Elites and Social Structures in the Fifteenth- and Sixteenth-Century Campine Area.*, ed. Eline Van Onacker (Antwerpen: 2014).

184 W. ROMBAUTS, "Ambten En Bestuursorganisatie in De Vrijheid Hoogstraten En in Het Graafschap En Het Hertogdom Hoogstraten Op Het Einde Van De 17de En in De 18de Eeuw, Vergeleken Met De Vrijheid Turnhout En Het Dorp Lille," *Provinciale Commissie voor Geschiedenis en Volkskunde. Jaarboek 1989-1990* (1992): 94-100.

185 VAN ONACKER, "Leaders of the Pack?"

186 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

Apart from these most visible village officials, a wide range of offices were also available. To control and govern the commons, “aardmeesters”, “vorsters” and “schutters” were appointed. Some villages even had jurors to check the sheep or animals within the village for pests and diseases. To collect the taxes, tax officials were present. It remains unclear who appointed them, but generally each village had between 4 and 6 tax officials who received a kind of wage or reward from the village for their effort.¹⁸⁷ They were, like the aldermen, mostly recruited from the upper layers of society. Then, finally, a village’s social and cultural life was clearly institutionalised which implies that some people were in charge of governing these institutions. The Campine Holy Ghost tables and the church fabric were each led by two masters. The Campine Holy Ghost masters were responsible for the daily government of poor relief, and the church masters for the day-to-day functioning of the church fabric. Every master served for two consecutive years, the first year as an aide, the second year as headmaster. The community were allowed to put forward the names of masters after which the lord could make the final decision.¹⁸⁸ The formal institutions of the late medieval Campine villages were, therefore, led by Campine villagers themselves, but, as argued convincingly by Van Onacker, they consisted predominantly of the independent peasants and elites, rather than cottagers and micro-smallholders.¹⁸⁹

X. Conclusion

The late medieval Campine area was a rather exceptional region within the Low Countries. Existing in the infertile, sandy region to the north of Antwerp, agricultural options were limited. Most importantly, however, this region sailed a fundamentally different socio-economic course when compared to the surrounding regions. Peasants were empowered due to the struggle between the Dukes and feudal lords, for they were granted their freedom and possessed strong property rights and were also granted the privilege of organising themselves and forming village governments and institutions. Consequently they had a strong powerbase and were a force to be reckoned with for the Dukes as well as feudal lords.

In addition, they challenged all the external pressures and influences, as they remained a flourishing yet stable peasant society. From the end of the twelfth century, they experienced an economic up-turn and the population started to rise. Commercial activities were possible because of the appearance and growth of urban centres within and around the Campine area.

187 VAN ONACKER, “Leaders of the Pack?”.

188 *Ibid.*, 263.

189 *Ibid.*

Instead of faltering and being drawn into a late medieval crisis in the fourteenth century, the Campine area reached its peak. Land was further exploited and peasants started to engage in commercial sheep breeding and being active on the markets. Cloth production flourished in centres such as Turnhout, Herentals and Weert. Even though Campine wool or cloth did not reach international recognition, they provided commodities for the local and regional demand for second-rate products.

Apart from a small setback in the second half of the fifteenth century, population figures recovered and the economic climate regained its former levels. Cloth production was transformed from old draperies to new, lighter draperies and the centre of production had moved to the countryside and the more northern centres of Oisterwijk and Tilburg. Because of this flexibility, the Campine area witnessed an advantageous period with a good economic climate, while other regions struggled. By maintaining their peasant character and not adopting more specialised and completely commercialised strategies, they could remain steady and on track. The apparent static character of the Campine area is therefore an image that is undeserved. The region not only transformed itself fundamentally between the twelfth and early fourteenth centuries, it was also able to withstand crisis and maintain its balance of power, while other regions did not. Independent peasants, and even cottagers, maintained their core position within society and were able to retain their mixed farming system which, although it did not lead to the highest economic peaks, did guard them from the worst blows during crises.



THE CAMPINE COMMONS
EXCEPTION OR RULE?

III. THE CAMPINE COMMONS | EXCEPTION OR RULE?

By the later Middle Ages, common wasteland had become rare in the core regions of the Low Countries. Most land that had once been used and managed as formal or informal commons had been subdivided and “reclaimed” during the long period of medieval expansion and population growth.¹⁹⁰ Some restricted common use rights subsisted in many regions on open fields after the harvests or on the fertile wetlands along rivers, and in some places – such as the Gemene Loweide near Bruges studied by Tine De Moor – a more or less extensive common wasteland persisted well beyond the Early Modern period.¹⁹¹ All in all, however, this was an anomaly in a region where private property rights were predominant. That is why the contrast with the Campine area, where up to three quarters of each village consisted of extensive heathlands managed and used as common wasteland, has fascinated scholars.¹⁹²

Until now the image of the Campine commons that has been developed is a rather fixed one. This paradigm has been implanted by romantic nineteenth-century paintings, depicting the area with small picturesque hamlets located near the open fields, which were surrounded by vast, open and infertile wastelands.¹⁹³ Since the Campine area predominantly consisted of both wet and dry sandy soils, agriculture was challenging and it has therefore been stated that a type of infield – outfield production was dominant. The common wastelands were supposed to have functioned as outfields where sods could be harvested and the grazing cattle would produce manure so as to fertilise the infields.¹⁹⁴ According to Tine De Moor the Campine area, together with regions such as Drenthe, het Gooi and the Gemene Loweiden, managed their natural resources in a communal way to cope with market and population pressures as well as with failing state provisions. These communities had therefore gathered and formed common pool resource institutions called “gemeynten” or “marken” that were managed and controlled from the grassroots level.¹⁹⁵ Local byelaws have always been the smoking gun suggesting that community members were the ones calling the shots within the common pool resource institutions, thus fulfilling the required design principle of Ostrom that the majority

190 HOPPENBROUWERS, ed., *Peasants into Farmers?*

191 DE MOOR, “Tot Proffijt Van De Ghemeensaemheijt”. For more information concerning common rights in predominantly privatised and enclosed societies ANNIE ANTOINE, *Des Animeaux Et Des Hommes. Economie Et Sociétés Rurales En France (XIe-XIXe Siècles)* (Rennes: Presses universitaires de Rennes, 1999).

192 See figure 15.

193 The “Kalmthoutse” school was a movement of painters that followed the example of Isidore Meyers and Adriaan Jozef Heymans, who had adopted the style of the French Barbizon painters. The Campine landscapes around Kalmthout and Wechelderzande were their inspiration, which were depicted as vast romantic sceneries in predominantly grey tones. MARINA VAN AERT AND JEAN BASTIAENSEN, *De Kalmthoutse School* (Tiel: Lannoo, 2007).

194 LEENDERS, *Van Turnhoutervoorde*; VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

195 DE MOOR, “The Silent Revolution”.

of the appropriators should be able to steer the management of their commons.¹⁹⁶ Finally, the late medieval Campine commons were reserved for substantial herds of livestock. From the thirteenth or, according to some, from the fifteenth century, these common wastelands were inhabited by immense herds of sheep that roamed freely on the sturdy, purple heather fields.¹⁹⁷ In addition, these communities of users had introduced a moral economy, providing resources for the entire community, but restricted the commercialisation of the benefits in order to prevent over-exploitation.¹⁹⁸



Fig 13 Painting by Leon Delderenne of the School of Kalmthout, depicting the nineteenth century Campine area.¹⁹⁹

For a long time this image of the Campine area was dominant. Nevertheless, it is primarily based on normative sources such as the byelaws and some charters. Even though the value of byelaws for commons research is high, normative sources tend to hide more than they reveal. Written by small interest groups, within a limited timeframe and with particular, limited interests at its centre, they often, more than anything, reflect the idealistic world of one particular group, rather than the actual reality. In addition, byelaws tend to be quite static. Despite the attempts of Angus Winchester and Tine De Moor to show that byelaws were adapted more often than has been assumed until now, it has to be acknowledged that normative sources did not keep up with the actual evolutions and transformations.²⁰⁰ In addition, byelaws often remained deliberately vague or unchanged, because late medieval

196 OSTROM, *Governing the Commons*.

197 THEUWS, *Middeleeuwse Parochiecentra in De Kempen, 1000-1350*; LEENDERS, *Van Turnhoutervoorde*.

198 TINE DE MOOR, "Avoiding Tragedies. A Flemish Common and Its Commoners under the Pressure of Social and Economic Change During the Eighteenth Century," *The Economic History Review* 62, no. 1 (2009).

199 Van Aert and Bastiaensen, *De Kalmthoutse School*

200 ANGUS WINCHESTER, "Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England," in *Rural Societies and Environments at Risk. Ecology, Property Rights and Social Organisation in Fragile Areas (Middle Ages - Twentieth Century)*, ed. Bas Van Bavel and Erik Thoen (Turnhout: Brepols, 2008); DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

interest groups opted to adapt the informal institutions without writing the new rules or conditions down. According to Heather Falvey, English villagers played a dangerous game by relying on custom and informal institutions in order to be able to manoeuvre and adjust their day-to-day actions, despite the fact that it would diminish their legitimacy once they were challenged by an external party.²⁰¹

Consequently it is important to dig deeper and look into sources that reveal more of the actual management and use of the commons than normative sources could ever do. When byelaws, together with rent and land registers, accounts, administrative documents and juridical sources are taken into account, a more detailed perspective appears. Within the late medieval Campine area, this is a genuine challenge, however. Unlike the formalised “marke” organisations in the northern Low Countries, the Campine common pool resource institutions left no sources regarding the commons apart from the byelaws themselves.²⁰² Instead, sources created by the villages, but mostly accounts and registers written down because of fiscal and monetary motives, have to be included so as to gather indirect evidence regarding the commons and their functioning. Despite being time-consuming, Tine De Moor argued, in relation to the eighteenth century, that a thorough investigation of the day-to-day functioning of the common pool resource institutions would deliver more insights if one went beyond the normative framework.²⁰³

Therefore, this chapter, indeed the entire thesis, is predicated on providing an alternative to a narrow perspective on the institutional framework of the commons and looking into the concrete conditions, reasons why, and manner in which Campine communities opted for common pool regimes and institutions, rather than following the road towards commercialised smallholding and private property, as the surrounding regions did. In order to investigate the commons, it is therefore important to always examine the following three dimensions of commons: common pool resources, common pool regimes, and common pool resource institutions.²⁰⁴ First of all, I will describe the chronology of the Campine commons, after which I will assess the vital characteristics of the commons as they were during the later Middle Ages. In order to do that I will assess which resources were managed collectively in the Campine area and which types of property rights were dominant within the communities. Next, I will focus on the common pool resource institutions. I will also distil the possible motives and reasons behind this collective form of organisation, before going on to look into

201 HEATHER FALVEY, “The Articulation, Transmission and Preservation of Custom in the Forest Community of Duffield (Derbyshire),” in *Custom, Improvement and the Landscape in Early Modern Britain*, ed. Richard Hoyle (Farnham: Ashgate, 2011).

202 For an overview of the source material concerning “markegenootschappen” in het Gooi: Kos, *Van Meenten Tot Marken*.

203 DE MOOR, “Tot Proffijit Van De Ghemeensaemheijt”.

204 Ibid.

the workings of the institutions. Who was in charge and how did they manage the commons and the community of users? Were all the design principles that Elinor Ostrom considered indispensable introduced, or were alternatives considered?²⁰⁵ In addition, we have to look beyond the formal institutions and provide an insight into the range of informal and parallel institutions that were dominant in Premodern societies. As a result, this chapter will provide a preliminary overview of the Campine commons as well as the peasant communities using them. As such it will be demonstrated that the Campine communities quite stubbornly pursued their own course, moulding what are generally accepted to be the main and essential design principles into their own model while still managing to keep their model more or less intact up until the late eighteenth century.

I. A history of the commons | The development of common use rights throughout the Middle Ages

The very starting point of common pool resource institutions in this region can be traced back to the thirteenth century. Before collective action was common, since, the vast wastelands, by then more densely wooded, were already used as a common resource.²⁰⁶ In fact, many of the rules and management of the ecological benefits must have resembled those that were formally written down afterwards. Initially, it was thought that common property dated back to the Germanic past, when a type of communal society shared risks and supplemented cultivation with resources from the commons. Marx and Engels have stated that commons were the survival mechanisms of Premodern societies, essential in order to endure uncertainties and exogenous shocks.²⁰⁷ This perspective has, however, been discarded by medieval historians.²⁰⁸ According to Van Looveren commons have their roots firmly planted in the feudal domain structure. A domain consisted of hundreds of hectares of land, containing woods, pasture, arable and uncultivated wastelands. The “servi” or serfs could - in exchange for their services - use those wastelands. Formally speaking, those wastelands remained part of the “communia” which belonged to the lord, yet some use rights attached to them which belonged to the “servi”.²⁰⁹ The fact that both Steurs as well as Bijsterveld have identified the existence of such domains, and demonstrated that they formed the foundation of the pre-twelfth-

205 OSTROM, *Governing the Commons*.

206 E. VAN LOOVEREN, “De Privatisering Van De Gemeentegronden in De Provincie Antwerpen: Vier Case-Studies,” *Bijdragen tot de Geschiedenis* 66, no. 1 (1983).

207 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 20.

208 VERBOVEN, *Bos En Hei*, 32.

209 VAN LOOVEREN, “De Privatisering Van De Gemeentegronden”.

century Campine area, does suggest that this theory could be right.²¹⁰ Charters describing the obligations of serfs in the Campine area are, unfortunately, missing. Furthermore, because late medieval “aardbrieven” or charters granting use rights to the commons belonging to feudal lords were scarce and, in addition, silent about the matter, it is hard to find direct proof of a link with feudal domain structures.²¹¹

By the thirteenth century, however, this informal system came under pressure. Willem Droesen has argued that it was precisely the disappearance of serfdom that was the factor forcing the status of the commons to be redefined. While before the “servi” had enjoyed rights, after serfdom had disappeared rent holders had to reaffirm or negotiate their claims on the uncultivated wastelands.²¹² In addition, as stated in the previous chapter, the power balance within the region was fundamentally disturbed. Due to the arrival of the Dukes of Brabant, the long-term symbiosis that had existed between the local lords and their subjects was profoundly shaken, while at the same time streams of immigrants pushed the local peasant communities to redefine the rules of action within their villages.²¹³

While such changes of population pressure, commercialisation, and urbanisation had led inland Flanders, Holland and Southern Brabant to abolish the commons and opt for privatised and intensified agriculture, the Campine peasants not only maintained their common resources and action, but also formalised their system.²¹⁴ According to De Moor, peasants chose for collective action to protect themselves from the negative effects of population growth, nascent markets and the negative effects of failing states. These outside stimulants had pushed the rural communities, which were risk averse, to opt to enlarge the scale of production, distribute risk, and reduce transaction costs by acting collectively.²¹⁵ Nevertheless, inland Flanders, or even southern Brabant, which were both located within the same market networks and were subject to political structures that were more or less equally receptive to bottom-up institutions, took another path.²¹⁶

210 BIJSTERVELD, *Een Nieuwe Orde*; STEURS, *Naissance D'une Région*.

211 A collection of charters has been published by: H.P.H. CAMPS, *Oorkondenboek Van Noord-Brabant Tot 1312, I De Meierij Van 'S-Hertogenbosch*, vol. 2 ('s-Gravenhage: 1979); ALPHONSE VERKOOREN, *Oorkonden En Cartularia Van De Hertogdommen Brabant En Limburg En Van De Landen Van Overmaas* (Brussels: Algemeen Rijksarchief Brussel, 1989-).

212 W.J. DROESEN, *De Gemeentegronden in Noord-Brabant En Limburg En Hunne Ontginning: Eene Geschied- En Landhuishoudkundige Studie* (Romen, 1927).

213 See chapter I

214 PETER HOPPENBROUWERS, “The Use and Management of Commons in the Netherlands. An Overview,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina De Moor (Turnhout: Brepols, 2002).

215 DE MOOR, “The Silent Revolution”.

216 Similar critiques are formulated by DANIEL R. CURTIS, “Tine De Moor’s ‘Silent Revolution’. Reconsidering Her Theoretical Framework for Explaining the Emergence of Institutions for Collective Management of Resources,” *Journal of the Commons* 7, no. 1 (2013).

Rather than De Moor's assertion, I would argue that it was those local peasant communities which had been granted privileges and held strong claims on their land who were powerful enough to stand up to the Dukes of Brabant, who were constantly seeking to raise money through granting peasants the rights to the commons by eliciting the payment of a one-off sum of money, together with an eternal rent. It all began with Duke Jan I who, in 1288, granted to Litoeyn, near Oss and 's Hertogenbosch, a charter that sold the use rights to the common wastelands for the sum of 210 Leuven pounds and a perpetual and hereditary rent of four penningen of Cologne.²¹⁷ This precedent was followed by his son Duke Jan II who granted the same type of rights via formal charters called "aardbrieven". Under his reign the use of charters peaked as can be deduced from figure 14. Dukes Jan I, II and III were, after all, plagued by a constant threat – namely creditors. As Duke Jan I had struggled from the very beginning to crush the power and claims of neighbouring lords and pretenders, the Brabantine sovereigns were constantly in debt and in search of money.²¹⁸ The struggles between the cities and Dukes Jan II and III only worsened the problems, to the point where every single move had to be financed through loans. In addition, it was also a period when the Brabantine cities were able to obtain their most important privileges.²¹⁹ As a result the core region belonging to the Dukes of Brabant, including the Land of Turnhout and the area surrounding Tilburg, Oirschot and Oisterwijk, received very important claims on their commons underpinned by authoritative legal documents.

217 ENKLAAR, *Gemeene Gronden*, 129.

218 PAUL DE RIDDER, *Hertog Jan I Van Brabant (1267-1294)* (Antwerp: Vlaamse toeristenbond, 1978).

219 PIET AVONDS, *Brabant Tijdens De Regering Van Hertog Jan III (1312-1356)*. *De Grote Politieke Crisissen*, ed. letteren en schone kunsten van België Koninklijke academie voor wetenschappen, 114 vols., vol. 46, *Klasse Der Letteren* (Brussels: Paleis der Academiën, 1984), 37-44.

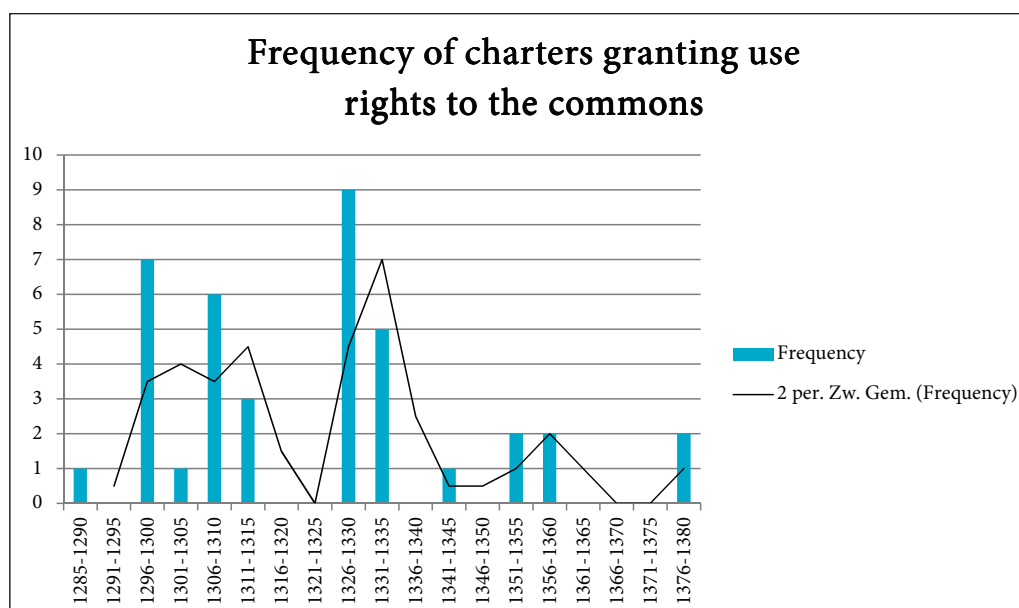


Fig 14 Frequencies of grants of “aardbrieven” during the “long” fourteenth century (reign of Jan I, II and III of Brabant)²²⁰

These institutional powers were always granted to the village governments themselves, which represented the start of the “gemeentes” or “meenten”. Peter Hoppenbrouwers defined “meenten” as user corporations that were closely linked to one specific local village government. In contrast, several provinces within the Low Countries introduced “marken”. “Marken” were the same type of user corporations, but set up and operated separately from general local government.²²¹ These “marken” could range in size and remit from just a tiny part of one village to a collection of several villages. As institutions, they managed the interests of entitled members, in other words, of those who did not necessarily have to be members of the same territorial entity.

These transfers of power were written down in charters called “aardbrieven”. A typical “aardbrief” included several topics. There would be the statement that the use rights to a certain delineated area were granted to the community concerned and the sum that needed to be paid. For example, the village of Bergeik and Westerhoven received a charter in 1331 stating: “*Nos Johannes [] quod nos omnes communitates et wastinas nostras, sitas infra limites seu palos infrascriptos [] bonis allodialibus necnon juribus et jurisdictionibus aliorum dominorum infra dictos palos [] exceptis universis et singulis hominibus nostris villarum nostrarum de Eyck et de Westerhoven ad opus eorum et omnium commorancium infra dictos limites [] ad communes earum usus pro certe prelevio decem librarum grossorum turonensium antiquorum*

²²⁰ ENKLAAR, *Gemeene Gronden*.

²²¹ HOPPENBROUWERS, *The Use and Management of Commons*, 92-93.

et pro annuo et hereditario censu quinque solidorum grossorum".²²² In addition, they were often granted the right to sell certain plots of common land that would yield customary rent for the lord: "*propter nostram et eorum utilitatem vendidimus ab ipsis seu eorum heridibus ad dictam communitatem spectantibus jure heriditario obtinendas et habendas*".²²³ Finally, the Dukes often stated that a guardian, called "vorster", "schutter", "woudmeester" or "aardmeester", had to be appointed to arrest alien trespassers and their animals on the commons. Sometimes the villages were themselves responsible for appointing such an official, while at other times the ducal representatives had the power to do so. In the case of Bergeik and Westerhoven, Duke Jan III stated: "*quod receptor noster de busco presens vel futurus eis ponat et statuatur nomine nostri unum forestarium, qui pecora et animalia aliena arrestare valeat et penam inde levat*".²²⁴

Rather surprisingly, these extended charters nearly all survive as fifteenth- or even seventeenth- or eighteenth- century copies . Even though they are treated as exact copies of their fourteenth century precedents, it is hard to believe this is entirely true, especially when we take a look at certain fourteenth century originals, such as that of Esch for 1301:

"Johannes [] calumpniasset nostros homines parrochie de Eske super quibusdam ericis et wastinas qua vulgariter Craiebrouch, Asghbruuc, Spankelbergh et Coye nuncupantur, impetendo eosdem de premissis et monendo, quod ipsi nostri homines literas, privilegia seu cartas virtute quarum predictas mericas et wastinas possiderent ostenderent et monstrarent quas quidem nostri homines ut asseruerunt, non habebant nec unquam habuerunt, sed quendam censum annuum de predictis bonis nobis et nostris antecessoribus solverunt ab antiquo et super hiis auditis impetitionibus et deffentionibus hunc et inde, tandem dictus noster scultetus eisdem nostris hominibus predicta bona contulerit et concesserit cum quadam nova merica seu wastina jacente inter Craenbroeck ey Asghbroeck duo videlicet bonaria cum dimidio vel circiter continente et vulgariter de dulselt nominata tenenda perpetuis temporibus et habenda sub annuo et hereditario censu quadriginta duorum solidorum annis singulis imperpetuum nobis et nostris heredibus tempore quo nostri census et redditus ibidem persolvuntur, solvendorum; nos collationem et

222 Free translation: "We John, grant all the commons and wastelands situated between the limits and markers here described [] with the exception of allodial or other private goods, to all men of our village of Eyck and Westerhoven for their benefit [] The use right [will be granted] for a "voorlijf" or payment of ten pound "oude groten" and for an annual and hereditary rent of 5 solidus grossorum". ENKLAAR, *Gemeene Gronden*, 24-25.

223 Free translation: "For our and their benefit, they and their ancestors will sell the aforementioned commons keeping in mind the hereditary right". Ibid.

224 Ibid.

concessionem prenotatas juxta tenorem litterarum dicti nostri sculteti, dictis nostris hominibus super hiis traditarum ratificamus approbamus et presentium patrociniis confirmamus."²²⁵

This charter is significantly shorter, and contains fewer details about the management of the commons once they were transferred into the hands of the community. Apart from the financial details, the location and the community as beneficiary, this charter remains silent about the management of the land. If we consider the charter collection of Enklaar in northern Brabant, we can, however, discover several fifteenth-century charters that can be interpreted as a kind of addition to the original summary charters. First of all, charters granting the right to plant trees on the wastelands next to a private property were regularly granted separately, such as to Mierde in 1474.²²⁶ Next, the community of Nistelrode was granted a charter by Duke Jan III in 1328 which states that he confirmed the charter granted by his father but adds stipulations about the official who needs to be appointed in order to catch trespassing animals and individuals.²²⁷ Similarly, it was only during the fifteenth century that the right to sell parts of the commons was frequently granted. The community of Sint Oedenrode, for example, received this right from Charles the Bold in 1468, together with additional rules concerning trees on the land in question.²²⁸ Finally, it should be questioned whether all communities received a glossy charter from the very beginning or, rather, a summary note in the charter registers belonging to the Duke.²²⁹ After all, when Duke Philip the Good demanded written proof of the use rights of all the communities under his direct control in 1462²³⁰, several communities had to testify that they did not possess such documents. The community of Dommelen, for example, stated that: "They had never heard of or known that they or their forefathers ever had any letters or documents of such kind, but they always hoped to have possessed [the commons] without needing a document granting these rights."²³¹ Consequently the charters that have survived until today might be, less a copy of an original thirteenth century charter, than something depicting the final stage of several centuries of reformulating rights and privileges. This process,

225 We John, grant to our people of the parish of Eske, some heath and waste lands, known locally as Craiebrouch, Asghbruuc, Spankelbergh and Coye. He (John) pointed out the promises and called upon our people to show the documents or charter on the basis of which they possess the heat hand wastelands. As they argued, our people did not have and never had possessed these documents. But a yearly tax on these goods has been paid to us and to our predecessors for as long as one could remember, supplemented with taxes and gifts that were demanded. Finally our bailiff has collected and granted these lands together with new heat hand wastelands located between Craenbroeck and Asghbroeck, measuring 2,5 bunder, containing was is locally known as Dulselt. These lands will be held eternally and leased for a yearly and hereditary lease of 42 solidi, for ever to be paid to our heirs at the time when our taxes need to be paid, according to the content of the charter of our bailiff. This charter is handed over to our people and we confirm the content by the witnesses here present. *Ibid.*, 100-101.

226 *Ibid.*, 120.

227 *Ibid.*

228 *Ibid.*, 156-157.

229 ALPHONSE VERKOOREN, *Inventaire Des Chartes Et Cartulaires Des Duchés De Brabant Et De Limbourg Et Des Pays D'outre-Meuse* (Brussels: Hayez, 1910-1988).

230 *Ibid.* Part III 1450-1469, Mai 10th, 1462.

231 ENKLAAR, *Gemeene Gronden*, 59-62.

and therefore the final charter, must have been especially influenced during the second half of the fifteenth century when the central administration re-edited most of the ducal “aardbrieven”.

Other regions were less fortunate, however. Even though the local lords had to follow suit and grant use rights to their communities, they were more cautious in granting charters. Apart from some exceptional communities in northern Brabant, where the feudal lords granted very similar charters, most were not inclined to formalise use rights to the commons in writing.²³² First of all, they did not receive a formal written charter. Next, these agreements often entailed only the use rights, the lords retaining the right to overall control over the commons. If we take a look further at figure 19, we can observe that seigniorial villages in general had a much higher percentage of rules concerning the governance of the commons.²³³ Even though the lords often left the day-to-day management to local communities, they had much more power to interfere via their steward or bailiff. The silent revolution described by Tine De Moor was therefore not as uniform as she claimed.²³⁴ During the later Middle Ages this had barely any practical repercussions, however. All villages used the commons, formulated rules and patrolled the commons to prevent infractions and over-exploitation. When challenged by internal interest groups, the lord or external pressure groups, however, they increasingly struggled to defend their rights which were only based on custom. Those communities that could prove their possession by means of a charter were more secure. Nevertheless, apart from some exceptions discussed in chapter IV, this discrepancy only fully manifested itself during the eighteenth century when the commons were abolished.

The development of the commons went through a phase of rapid transformation between the thirteenth and fifteenth centuries. While the day-to-day use of the commons remained extremely stable, the formal recognition and development of common pool resource institutions significantly strengthened the power base of the local peasant communities and the place of the commons in the Campine area. After this late medieval period of transformation, a long era of stability arose. Additional charters were scarce, and the formal structures and institutions largely remained intact until the eighteenth century when Mary Theresa abolished the commons in 1772.²³⁵ The characteristics that are described in the following pages, therefore apply to the entire late medieval period.

232 Ibid.

233 The category governance contains all rules concerning the officials (appointment, salary, jurisdiction, etc.), the general organisation of the village life (including the obligations and rights of the villagers) and the working of the CPRI's themselves. Seigniorial villages are governed by a seigniorial lord, whom can be ecclesiastical as well as laymen. Examples are: Geel, Hoogstraten, Kalmthout, Huibergen, Oostmalle, Ravels-Eel, Rijkevorsel, Terloo and Zandhoven have the highest percentage of governance rules and are all seigniorial villages.

234 DE MOOR, “The Silent Revolution”.

235 G. DEJONGH, “De Ontginningspolitiek Van De Overheid in De Zuidelijke Nederlanden, 1750-1830. Een Maat Voor Niets?,” *Tijdschrift van het Gemeentekrediet* (1999).

II. Surrounded by heather and sods | Common pool resources

Common pool resources are the first dimension of the commons.²³⁶ These common pool resources are defined by Elinor Ostrom as “natural or man-made resources sufficiently large that it is costly to exclude users from obtaining subtractable-resource units”.²³⁷ According to this definition, all resources including water, air and even sunshine can be considered common pool resources. In general, however, the focus has been placed on common land as this was the most dominant form of communal resources present in Premodern and Modern societies.

In general, three broad categories of common land can be distinguished. The most important and dominant types were common arable, common pasture and common waste. In the Campine area common waste was the most important type. This refers to land used neither for the cultivation of crops, nor for the production of hay, but principally for the grazing of animals or the gathering of fuel, sods, buildings materials etc.²³⁸ As land books, tax registers and rent registers indicate (Figure 15), between 60 to a staggering 87 per cent of the total surface area of Campine villages remained “waste” even during the sixteenth century.

Village	Total surface area (in ha)	Total surface area of private land (in ha)	Surface area of common waste land (in ha)	% common
Kalmthout	11586,23	4292,58	7293,65	58,28
Tongerlo	2044,62	498,34	1546,28	75,63
Lichtaert	2518,20	325	2193,2	87
’s Gravenwezel	1498,78	312,00	1186,78	79,18
Gierle	1775,00	400,00	1375,00	77,46
Wommelgem	1273,69	474,5	799,19	63

Fig 15 Common vs. private land in a selection of villages, sixteenth century.²³⁹

236 DE MOOR, “Tot Proffijt Van De Ghemeensaemheijt”.

237 OSTROM, *Governing the Commons*, 93.

238 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 261.

239 Source: SAA, Ancien Regime archives of the city of Antwerp, other governments, Local governments and seigniories, Belgium, Duchy of Brabant, 5 Condition of the villages in the margraviate of Antwerp in 1593. From now on referred to as SAA, 5 condition. and RAA, OGA Gierle, 344, 1554. ; RAA, OGA, Tongerlo 896, 1569.; AAT, Section II, 373-400, Rent register, Kalmthout, 1518. The surface area of the villages is based on the historical database of http://www.hisgis.be/nl/start_nl.htm

Secondly, common pasture is grass land which is used for common grazing.²⁴⁰ Within the Campine area, half of the privatised land was categorised as pasture.²⁴¹ Nevertheless, only the hay meadows were included in the common pool resources. The hay meadows, which were almost completely privatised by the sixteenth century, remained open for communal grazing after the first hay harvest.²⁴² Depending on the number of streams and brooks per village, the proportion of common hay meadows could vary significantly.

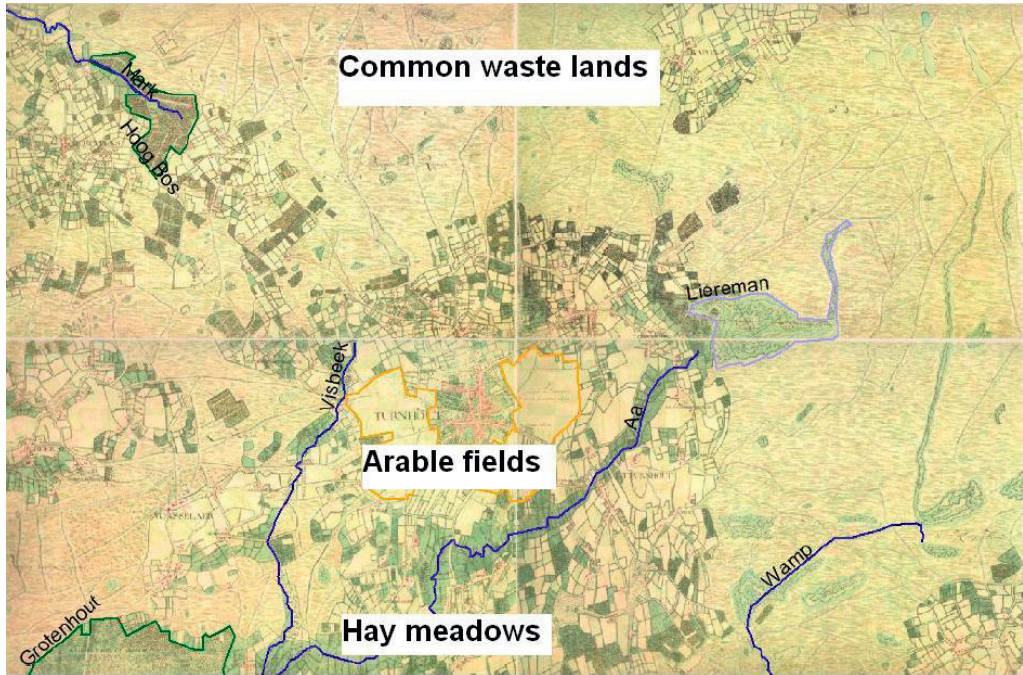


Fig 16 Ferraris map of Turnhout (1771), showing the relationship between arable, meadow and wasteland, which must have resembled the late medieval situation.²⁴³

Finally, there was common arable land or open fields. Common arable refers to land that is primarily used as arable land within an individual or private ownership context, even though collective sowing, harvesting and ploughing could be enforced.²⁴⁴ Literature examining the communal practices on arable lands in England and France is abundantly available. The local byelaws in these regions often explicitly listed data regarding harvesting, opening up enclosures,

240 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 261.

241 RAA, OGA Gierle, 344, 1554. ; RAA, OGA, Tongerlo 896, 1569.

242 “It has been decided and by the village proclaimed with the consent of the bailiff and aldermen, that the hay meadow will be fenced and liberated like all other “vrede beemden”. Before the harvest everyone can collect his hay and nobody will graze his animals as long as more than three individuals have to collect their hay. When everyone has done his harvest the hay meadow will be common. 17th of January 1544.” E.H.A. VAN OLMEN, “De Keuren Van Vorselaar,” *Taxandria* 7 (1910).

243 S.N., *De Grote Atlas Van De Ferraris. De Eerste Atlas Van België. Kabinetskaart Van De Oostenrijkse Nederlanden En Het Prinsbisdom Luik*, ed. Editions racine, et al. (Tielt: Lannoo, 2009).

244 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 261.

the beginning of the communal grazing season, etc.²⁴⁵ Despite the claim of Paul Lindemans that such open fields dominated the Campine area as well, not much evidence supports this statement.²⁴⁶ Open field complexes were most probably completely privatised and enclosed after 1350, thus eradicating communal grazing, sowing, ploughing and harvesting. The debate concerning the extent of juridical privatisations and physical enclosures will, however, be highlighted in chapter VI. The Campine area, therefore, was a common wasteland type. As figure 16 shows, the arable production was concentrated on privatised and mostly enclosed fields, while communal grazing was reserved for the part-time common hay meadows and the vast common wastelands.

III. Communal grazing | Common rights

The commons served a wide variety of purposes for medieval and Early Modern rural communities. They provided a range of supplementary raw materials which peasants and farmers could not produce themselves on their own farms. As a significant part of peasant households did not reach the subsistence level on their private property alone, access to the commons was of vital importance. The maximum amount of grain was derived from private and enclosed parcels of arable land. Since these yields were not enough for most households, it was vital to secure some supplements.²⁴⁷ First of all the commons were needed in order to diversify the peasant diet. According to Heli Huhtamaa peasant resilience was specifically based upon diversifying crops and modes of production, and combining arable farming and animal husbandry was a remedy to counter food crises in particular.²⁴⁸

Late medieval Campine communities had obtained the opportunity to diversify their agricultural activities and graze cattle because local or regional lords had granted the right of communal grazing on the common waste lands and hay meadows. For example, Jan III, the

245 ANTOINE, *Des Animeaux Et Des Hommes. Economie Et Sociétés Rurales En France (XIe-XIXe Siècles)*; ANGUS WINCHESTER, *Harvest of the Hills. Rural Life in Northern England and the Scottish Borders 1400-1700* (Edinburgh: Edinburgh University Press, 2000); WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*; WARREN O. AULT, *Open-Field Farming in Medieval England* (London: Allen and Unwin, 1972); JEAN-MARC MORICEAU, *Histoire Et Géographie De L'élevage Français. Du Moyen Âge À La Ravolution* (Paris, 2005); HANS RENES, "Grainlands. The Landscape of Open Fields in a European Perspective," *Landscape History* 31, no. 2 (2010).

246 LINDEMANS, *Geschiedenis Van De Landbouw in België*; PIET MEYNEN, "Onderzoek Naar Het Gebruik Van De Gemene Gronden in De Antwerpse Kempen: Terlo Als Testcase" (University of Ghent, 2012); G. MOESKOP, "Het Gebruik Van Gemene Gronden in De Antwerpse Kempen Tijdens Het Ancien Régime" (Catholic University of Leuven, 1985).

247 See chapter IV for more information on grain production and yields.

248 HELI HUHTAMAA, "The Great Famine and Food System Vulnerability in Medieval North-East Europe," in *Crossing divides. Annual conference of the American society for environmental history* (San Francisco: 2014).

Duke of Brabant, stipulated in a charter granted to the community of Vechel in 1310 that: “*il donne à cens aux habitants de Vechel pour la pâture de leur bétail [] les terres vagues*”.²⁴⁹ Common grazing was one of the most important communal benefits the Campine communities enjoyed. The only surviving commons account found in the village archives of Zandhoven proves this point. The village registered earnings from the commons, and the income posts they listed consisted of grazing and harvesting peat and heather.²⁵⁰ The indispensability of common pasture has been widely acknowledged and as such the Campine area was certainly no exception.²⁵¹

Grazing was offered to all sorts of livestock, as the quote of Jan III shows. However, not all animals were equal. Within the Campine area animals that grazed on those commons were predominantly sheep, cattle and horses. Cattle were most important for their surplus value, in calorific terms, for the average Campine household. In addition, cows could function as commercial animals to enlarge the family income.²⁵² Cows, however, were not well suited for sturdy, acid heath lands. In order to survive and obtain sufficient yields of milk and meat, more high-quality grassland was necessary. Consequently, common hay meadows were indispensable. According to sixteenth century byelaws, cattle were kept inside for the largest part of the winter after which they could roam freely on the common hay meadows from May onwards. The byelaw of Westmalle, for example, stated that the period of closure ranged from the middle of March until the second day of May, opening afterwards to the village cattle.²⁵³ Others, however, set a less fixed date and stated that it had to remain closed until everybody had collected their harvest of hay which would have occurred around May.²⁵⁴ No restrictions in terms of the access to the common waste was, however, registered.²⁵⁵

Pigs, on the other hand, were rather absent. After cattle, these farm animals were considered a valuable addition to peasants' economy and diet. During the high Middle Ages, pigs were more dominant and could graze in the abundant forests. After the gradual disappearance of those forests, the number of pigs owned by peasants diminished significantly and instead sheep became more dominant.²⁵⁶ Therefore, large herds of pigs were no longer present and

249 “[Jan III] donates, in exchange for rent, the wastelands to the inhabitants of Vechel for the grazing of their cattle”. ALPHONSE VERKOOREN, *Inventaire Des Chartes Et Cartulaires Des Duchés De Brabant Et De Limbourg Et Des Pays D'outre-Meuse*, vol. I (Brussels: Archives générales du royaume, 1961), 227.

250 RAA, OGA Zandhoven, 148.

251 NADINE VIVIER, *Propriété Collective Et Identité Communale. Les Biens Communaux En France, 1750-1914* (Paris: Publications de la Sorbonne, 1998).

252 NEESON, *Commoners*.

253 TH. DE MOLDER, “Keuren Van Oostmalle,” *Oudheid en Kunst* 26, no. 1 (1935).

254 See databases: byelaws

255 *Ibid.*

256 THOEN AND SOENS, “Élevage, Prés Et Paturage Dans Le Comté De Flandre Au Moyen Age Et Au Début Des Temps Modernes: Les Liens Avec L'économie Rurale Régionale”.

“pannage”, or ranging for acorns, was not even mentioned in the byelaws.²⁵⁷ The pigs that remained present, in all probability wandered around quite freely, since it was a requirement to provide these animals with rings through their noses and a wooden construction, or “*kennef*”, around their necks, preventing them from entering sown fields or destroying crops.²⁵⁸ Exact details about their whereabouts are, however, untraceable.

Not long after, the Campine villages became crowded with sheep. They were multifunctional animals for, Bruce Campbell considers them as meat for the poorer classes and they were equally providers of dairy products.²⁵⁹ Most importantly, however, they were commercial animals. Meat, skins, and especially wool were sold on the regional markets. As such, sheep owners could supplement their diet, but also their economic portfolio. Geographically speaking, sheep were concentrated on the common wastelands. Because of the size of the Campine herds and grazing capacity of the Campine soil, sheep needed vast open spaces to wander around and graze. For a large part of the year these animals could probably be found outside. They had to be held in cages during the night and pastured on the heath lands throughout the entire year. In order to limit animal casualties during the winter, a minimal period indoors would, however, have had to be introduced.²⁶⁰ After the cattle had received their privileged share of grass on the hay meadows in late spring, sheep could enter these common meadows as well.²⁶¹ However, since it was sufficient to feed sheep with heather and sturdy grasses, their grazing period and number was limited.

Finally, the Campine area knew a remarkable presence of horses. As will be shown in chapter V, almost 40 per cent of the villages owned at least one horse. Horses were, however, very demanding animals. Performing strenuous labour, they required huge quantities of fodder.²⁶² Despite the rather modest size of plough horses during the Premodern era, John Langdon stated that there is no doubt that horses cost more to keep than cattle, since they required more grain in their diet.²⁶³ Consequently, they were the animals that relied most on the common hay meadows, like cattle, in combination with their additional fodder. Despite the omnipresence of horses in Campine society, their precise whereabouts during the Middle Ages remains rather unclear. At first sight, not a great deal of information about horses is revealed in the local byelaws. Apart from a general prohibition to keeping stallions on any type of common land, horses are barely mentioned. However, since young cattle and horses are often treated in the same way,

257 See databases: byelaws

258 I. HELSEN, “Het Dorpskeurboek Van Retie,” *Bijdragen tot de Geschiedenis* 1, no. 1 (1949); J. ERNALSTEEN, “Keuren Van Gheel,” *Oudheid en Kunst* 26, no. 2 (1935); J. MICHIELSEN, “Keuren Van Brecht,” *ibid.* (1907).

259 CAMPBELL, *English Seigniorial Agriculture*.

260 BOND, *Monastic Landscapes*.

261 See databases: byelaws

262 MORICEAU, *Histoire Et Géographie De L'élevage*, 209.

263 JOHN LANGDON, *Horses, Oxen and Technological Innovation: The Use of Draught Animals in English Farming from 1066 to 1500*, vol. *15 (Cambridge: Cambridge University press, 1986).

and only stallions were explicitly banned from entering the heath lands and meadows, mares would probably have been granted access to the meadows after the hay harvest.²⁶⁴

IV. Tragedy of the commons? | How to prevent over-exploitation?

Common resources were not limitless, however. The Campine area was a fragile ecosystem that was easily brought out of balance by over-exploitation. According to Elinor Ostrom, a congruence between the natural environment and rules of appropriation is vital in order to prevent an ecological disaster.²⁶⁵ Even though it has already been stated that collective action in itself was a strong incentive to reduce the total cattle herd size,²⁶⁶ most scholars have stressed the necessity of additional regulation and management. By and large two options were available: reducing the size of the community of users, or limiting grazing animals or resources to be harvested.²⁶⁷ In most medieval cases, however, a combination of both was introduced.²⁶⁸ Reducing the number of animals is known as “stinting”, and refers to determining a fixed number of animals that every household or entitled individual could graze on the commons.²⁶⁹

Within the Campine area, however, a fundamentally alternative path was chosen. The community of users was not made more exclusive, nor was the number of animals restricted. An entire chapter is dedicated to the paradoxical inclusiveness of the Campine common pool resource institutions, (see chapter IV). Furthermore, despite the fragile ecological conditions and relatively high population densities, Campine communities preferred to strictly regulate the manner and locations of grazing rather than the maximum number of animals allowed (see chapter V). It has been stated that such rules appear only in regions with abundant commons that were practically undepletable.²⁷⁰ Nevertheless, as shown in the first chapter, the population pressure was high and the carrying capacity of the soil extremely low. The Campine wastelands, therefore, did not resemble Swedish forests or Alpine slopes. Overgrazing was

264 FLORIS PRIMIS, “Keuren Der Vreyheyte Van Arendonck,” in *Feestbundel H. J. Van De Wijer, Den Jubilaris Aangeboden Ter Geleghenheid Van Zijn Vijfentwintigjarig Hoogleeraarschap Aan De R. K. Universiteit Te Leuven 1919-1943*, ed. H. Draye (Leuven: Instituut voor Vlaamse toponymie, 1944); VAN OLMEN, “De Keuren Van Vorseelaar”; A. DE CUYPER AND CONSTANT CASIER, *Coutumes Du Pays Et Duché De Brabant: Quartier De Bruxelles* (Brussel: Gobbaerts, 1869-1873).

265 OSTROM, *Governing the Commons*.

266 MCCARTHY, KAMARA, AND KIRK, “Co-Operation”.

267 CHRISTIAN BRUNEL, “L’Élevage Dans Le Nord De La France (XIe-XIIIe Siècles) Quelques Jalons De Recherche,” *Annales de Bretagne et des Pays de l’Ouest* 106, no. 1 (1999): 46; JEAN R. BIRRELL, “Common Right in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century,” *Past and Present* 117 (1987): 37; BOND, *Monastic Landscapes*, 57; WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

268 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

269 WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

270 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

always a threat and it was certainly acknowledged as such by the community members (see chapter VIII). Still, they did not want to fix the number of animals that could be put on the commons per household or in general.

The common hay meadows were the exception to the rule. Being the most valuable parcels of land, the management of those resources was especially strict. In Westerlo, for example, the byelaws declared that: “nobody could bring more than 10 wethers²⁷¹, belonging to themselves or the meadow, unto the hay meadow”.²⁷² Heifers were sometimes limited as well on the common hay meadows called “broeken”. In Arendonk only three, and in Vorselaar four, heifers could be placed in the common hay meadow.²⁷³ Apart from those rare rules, community members could put as many animals on the commons, and most certainly the common wastelands, as they possessed. The renting or buying of cattle or sheep for a short period to fatten them on the common wastelands or meadows was, however, prohibited. The byelaw of Arendonk literally stated: “niemand zal onder het deksel van een pretense koop mogen vreemde beesten of vreemde lieden toebehorende brengen of hoeden in het gemeen broek of op de vroente op de boete van 20 s. [tenzij zij] doen hun behoorlijke eed deze beesten gekocht te hebben zonder arglist”.²⁷⁴

Informal regulations regarding the number of animals could, however, have been introduced and thus escaped our attention. But, As McCarthy had indicated, “the capacity of co-operation is critical. Co-operation has a direct negative impact on stock densities and land allocated to private pastures. Individual incentives to overgraze and encroach on common pastures can be mitigated in communities with high co-operative capacity”.²⁷⁵ In any case, as chapter V and VIII will show, no tragedy of the commons occurred during the late medieval period, even when stocking densities were remarkably high.

Instead the Campine communities were extremely strict when it came to picking locations for the grazing and herding of flocks. As will be shown in chapter VIII, ecologically fragile areas such as sand dunes were strictly off limits to grazing animals, as were peat pits and some public roads. In addition, animals could not wander around freely. Herders, often children, were

271 Male sheep, primarily used for wool production.

272 “Niemand zal meer dan 10 hamelen (mannelijk schaap) in het broek brengen, die tot het broek of hen zelve toebehoren. Die zelfde hamelen zal men doen opstouwen. Indien ter contrarie wordt bevonden zal verbeuren 2 philippus gulden tot behoefte van de heer.” J. LAUWERYS, “Keuren Van Westerloo,” *Oudheid en Kunst* 28, no. 4 (1937).

273 “Men zal in het broek 3 verren (koeien) laten gaan en die zal men brengen voor de wet zodat zij niet aangeklaagd worden. Niemand zal ze stouwen uit de vrijheid op het verbeuren van 1 karolus gulden”. Source: PRIMS, *Keuren*; VAN OLMEN, “De Keuren Van Vorselaar”.

274 “Nobody will, under the pretence of a purchase, bring foreign animals of strange folk unto the common meadow or the common wastelands on the penalty of 20 stuiver, unless they can attest on their honour that they have purchased the animals without guile”. Source: PRIMS, *Keuren*.

275 MCCARTHY, KAMARA, AND KIRK, “Co-Operation”, 236.

required to be present at all times. The village byelaw of Oostmalle stated: “Everyone will guard his sheep with a herder without causing harm to anyone on the commons, or elsewhere”.²⁷⁶ In Zandhoven, the same regulation was introduced, but for all the animals present there as a whole. In case animals were spotted in the wrong place or without a guardian, a “schutter”, being a village official, could catch the animals and keep them locked in a cage, until the necessary fine was paid. Most villages realised that controlling the commons was difficult and shared the responsibility of detecting trespassers with the entire community by coercing everyone to report offences. According to Tine De Moor, this formula of social pressure was the most effective way of preventing and punishing offences.²⁷⁷ In addition, Garnot had stated that such forms of “infrajustice” were as efficient as formal conflict resolution mechanisms in coping with offences.²⁷⁸

V. Brown gold | Sods and peat

Next to grazing, the common wastelands also provided some important additional resources. Despite the indispensability of grazing for practically all peasant households, the additional rights were often as vital. The poorest households in particular did not own any animals and were therefore especially in need of other rights.²⁷⁹ Because of infertile soils, arable plots could only be fertilised through a combination of sods and manure. Those sods were made up of heather clippings and perhaps a little bit of the topsoil.²⁸⁰ A fierce debate concerning the amount of topsoil that was gathered is still ongoing, however, it is most probable that the invasive kinds of sods with humus attached were only harvested from the later seventeenth century onwards.²⁸¹

276 “Iedereen zal zijn schapen door de herder doen bewaken zonder iemand schade te doen hetzij in het bleucken, de vrijheide of elders”. Source: DE MOLDER, “Keuren Van Oostmalle”.

277 DE MOOR AND TUKKER, “Penalty and Punishment. Designing Effective Sanctions for Freerider’s Behaviour on Early Modern Dutch Commons”.

278 GARNOT, “Justice, Infrajustice”.

279 For more information on animal possession see chapter IV.

280 SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie*, 724-736.

281 J. BASTIAENS, “Bodemsporen Van Beddenbouw in Het Zuidelijk Deel Van Het Plaggenlandbouwareaal. Getuigen Van 17de-Eeuwse Landbouw Intensivering in De Blegische Provincies Antwerpen En Limburg En De Nederlandse Rovincie Noord-Brabant,” *Historisch Geografisch Tijdschrift* 3 (1994).

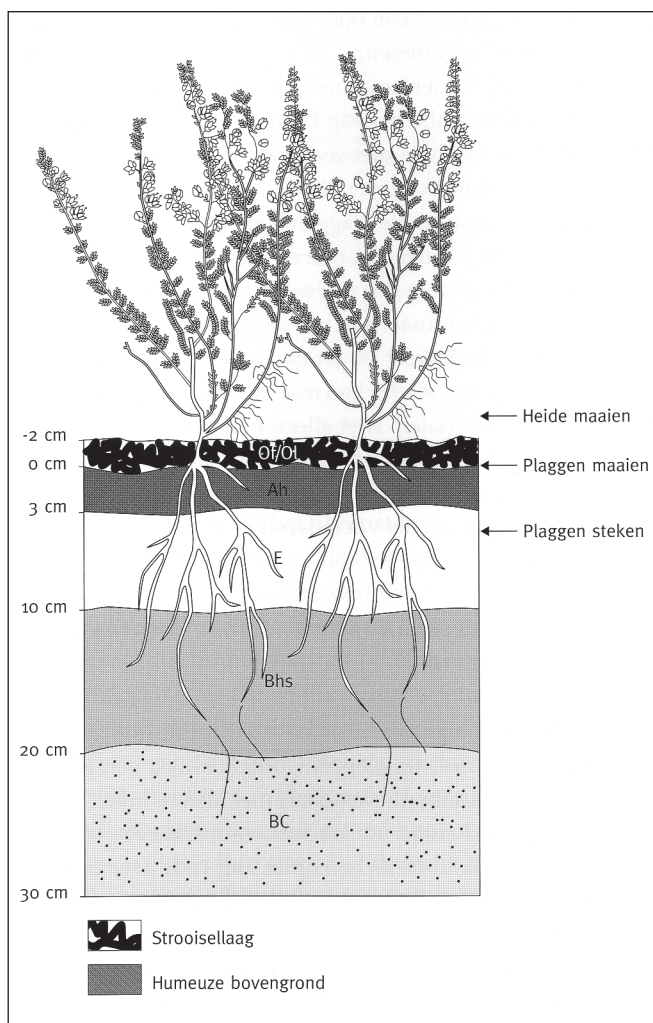


Fig 17 Schematic representation of the difference between mowing and digging for heather and sods.²⁸²

Furthermore, the Campine area had a serious shortage of wood.²⁸³ Guido Tack has claimed that the later Middle Ages was the period with the least wood coverage in our history.²⁸⁴ In comparison with parts of Flanders, the Campine area might nonetheless have been better off as hedges and small shrubberies or woodlands remained, or were maintained, on the commons. Nevertheless, apart from hedges and a number of trees that were planted on the wastelands and behind peasants' yards, firewood was scarce.

Peat, therefore, was one of the most important sources of fuel. Both peat as well as heather clippings were granted in addition to grazing. Every member of the community could collect as much as necessary for their own particular use. This was often called "weekheide". In Geel

282 SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie.*

283 VERBOVEN, *Bos En Hei.*

284 TACK, *Bossen Van Vlaanderen.*

“weekheide” was described as follows: “Nobody of the six hamlets will try to mow more than his “weekheide” between Saint John’s mass and bamisse. Nobody will collect, dig, mow or harvest heather or sods under the pretence of taking a friend’s share”.²⁸⁵ In Arendonk, for example, every inhabitant could harvest 7 voeder.²⁸⁶ In Herenthout the amount was determined by a maximum of 2 days of harvesting by one person.²⁸⁷

This principle also applied to cutting reed, sods, grass, heather and especially peat. Except for the region around Kalmthout and Roosendaal, no vast or thick peat layers were present. Commercial exploitation was limited except for the abbey’s large-scale reclamation in Kalmthout and Nieuwmoer.²⁸⁸ The numerous and scattered moors and peat layers in the other villages remained common for the community members. Since peat was such an important and easily exhaustible resource, the village governments were extremely strict concerning the collecting and cutting of peat and introduced innumerable rules and fines to maintain a sustainable environment and retain sufficient resources. First of all, the village officials, being aldermen, bailiffs, inspectors, or more specifically “aardmeesters”, listed the exact places where peat had to be cut and the exact starting time was announced during Sunday mass. While most villages simply indicated a common moor, the town of Turnhout went a step further and assigned a specific peat pit to each household, which was listed in a kind of journal.²⁸⁹

Wood was an entirely different case and was mostly off-limits to the communities, probably due to its scarcity. In Retie it was bluntly stated that “nobody could cut or hack down any plants made of wood in entire Retie, unless they were standing on their own yards”.²⁹⁰ This was even more strictly prohibited on sandy ridges, where shrubs or trees were planted to fend off sand drifts.²⁹¹ Next to the wood itself even the harvesting of acorns was restricted to the lord. The lord of Ravels and Eel, the prelate of Tongerlo, “reserved the right to beat off or collect the acorns of the oaks on his property”. He did grant the common subjects the right to collect the surplus, even though the harvesting of acorns still hanging in the trees or pasturing with pigs

285 “Niemand van de zes heerdgangen zal voorderen te maaien meer dan zijn weekheide, van sint jansmisse tot bamisse: de ploegers elke week een voeder en de keuters die geen ploeg hebben elke week een kar. De ploegers donderdag en de keuters maandag. En zij zullen gehouden zijn de heide te halen en maaien overdag. [] Niemand zal enige russen, schadden, heide steken, maaien, halen of laten halen onder de pretext van zijn vrienden die geen heide of russen nodig hebben, op de pene van 20 stuivers”. Source: ERNALSTEEN, “Keuren Van Gheel”.

286 PRIMS, *Keuren*.

287 RAA, OGA Herenthout, 3, byelaw.

288 KAREL A. H. W. LEENDERS, *Verdwenen Venen: Een Onderzoek Naar De Ligging En Exploitatie Van Thans Verdwenen Venen in Het Gebied Tussen Antwerpen, Turnhout, Geertruidenberg En Willemstad 1250-1750.*, ed. Gemeentekrediet, *Historische Uitgaven* (Brussels: Gemeentekrediet, 1989).

289 This journal has not survived, however, and we are only familiar with its existence via indirect sources such as: MILO KOYEN, “Keuren Van Ravels,” *Oudheid en Kunst* 41, no. 2 (1958); J. VAN GORP, “De Aartbrief Van Terloo,” *Bijdragen tot de Geschiedenis* 18 (1927). RAYMOND PEETERS, “De Keuren Van Turnhout (1550),” *Taxandria* 29, no. 1-4 (1957).

290 HELSEN, “Het Dorpskeurboek Van Retie”. Similar rules are found in Geel. ERNALSTEEN, “Keuren Van Gheel”.

291 HELSEN, “Het Dorpskeurboek Van Retie”.

remained forbidden.²⁹² In most byelaws, however, the gathering of scrapwood was permitted. Wood was thus not one of the main ecological benefits of the Campine commons. Even though the heath lands cannot be described as being devoid of trees, shrubs or woodland, these were almost treated as forbidden fruits. The fines for the stealing and selling of wood were disproportionally high and were one of the only types of fines that were actually collected by officials.²⁹³ To compensate these restrictions, several seigniories introduced a privilege called “pootrecht”, or the right to plant trees 10 *voet* behind one’s private yard towards the commons.²⁹⁴ Moreover, a lot of arable fields, meadows and private heath fields were enclosed by hedges which delivered the highly sought-after wood. Finally, the wood or coppice from the commons could be sold by village officials, thereby managing the ecological benefits.²⁹⁵

VI. The right to sell | The importance of indirect resources

Commercial benefits deriving from the commons was a complex question that has already been alluded to. According to Tine De Moor, in order to prevent overexploitation, marketing the products derived from the commons was prohibited.²⁹⁶ Resources were scarce and depletion a reality. Since the workings of the market would lead communities dependent on resources to increase production at the cost of sustainability, most common pool resource institutions were believed to have banned marketing of all products derived from the commons. De Moor, for example, has referred to “forbidding the sale of direct (for example, wood and berries) or indirect (for example milk from a cow that had spent some time on the commons) produce from the commons”.²⁹⁷ In reality, however, the Campine story was more complex. It was indeed forbidden to sell all direct produce, meaning resources that were directly harvested from the commons, such as peat, heather, sods, loam and wood. All households were granted the right to take their fair share, but trading shares or selling their part on the local or regional markets was strictly prohibited. Since resources such as peat were only available in limited quantities and were very difficult to restore once they were harvested, the common pool resource institutions held a close eye on a sustainable management, which was at odds with more commercial attitudes. Indirect products, however, were not included in this set of restrictions. The honey

292 KOYEN, “Keuren Van Ravels”.

293 GUIDO VAN DIJCK, “Het Landbouwleven in De Antwerpse Kempen Volgens De Dorpskeuren (Speciaal De Hoofdbank Van Zandhoven)” (Catholic University of Leuven, 1965), 63-68.

294 This corresponds to approximately 5 metres. Calculation from J. BOEN, *Maten En Gewichten* (Antwerp: Drukkery van F. Lamot-Jacobs, 1857); RAA, OGA Arendonk 893, privilege 1449.

295 MEYNEN, “Onderzoek Naar Het Gebruik Van De Gemene Gronden”, 81-84. RAA, OGA Herenthout, vorster account, 1654.

296 DE MOOR, “Avoiding Tragedies”.

297 *Ibid.*, 9.

made from beehives on the heath fields, the milk from cows grazing on the common hay meadows, the wool from the flocks of sheep roaming the waste lands and even the meat or skins from animals kept alive by fodder and grass from the collective pastures could be sold freely.²⁹⁸ As will be discussed in chapter V, Campine peasants could, and actively did, engage in commercial activities and based their strategies predominantly on the commons.

VII. The complexity of property rights | A wide range of private and communal property claims.

Common pool resources were definitely not public resources. Within the medieval period, all land and resources were claimed either by an individual, group, community or lord. What we have to acknowledge is that a claim on land did not necessarily imply an absolute claim to private property. Property in the Ancien Régime has to be considered as a combination of claims and rights on land that can be better described as possession rather than ownership. Rosa Congost and Rui Santos have described property rights as “the bundle of rights to land, such as the right of access, the right of sale and the right of inheritance, but also the right of use and the right of profit, the rights of exclusion, the rights of management and even the right of prestige”.²⁹⁹ This type of possession is, after all, divisible and, furthermore, more than one individual or entire groups could possess such claims.³⁰⁰ In the case of Premodern European societies, these claims were in the hands of the members of the community of users, a delineated group.

Within the Campine area, a second typology described by De Moor *et al* was introduced.³⁰¹ All members of the community had claims on the different types of common land. By members of the community is meant all inhabitants residing within the village and contributing to the village taxes. Immigrants that wanted to become part of the community were increasingly required to demonstrate good behaviour and conduct and also had to pay a one-off sum together with the taxes and burdens that were obligated within the seignior. For example, the community of Arendonk introduced the stipulation: “That those coming from outside the freedom will have to pay for the citizenship and the use of the commons 12 Karolus guilders,

298 None of the byelaws that were analysed showed any restrictions on the selling of these indirect products. See databases: byelaws

299 ROSA CONGOST AND RUI SANTOS, “Working out the Frame: From Formal Institutions to the Social Contexts of Property,” in *Contexts of Property: The Social Embeddedness of Property Rights to Land in Europe in Historical Perspective*, ed. Rosa Congost and Rui Santos (Turnhout: Brepols, 2010), 15-20.;

300 DE MOOR, “Tot Proffijt Van De Ghemeensaemheijt”, 30.

301 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

unless the aldermen decide otherwise”³⁰² Poor households, not being able to contribute,, were however included too. Village poor relief or the common pool resource institutions granted the common use rights to even the poorest members of society. How exactly this extraordinarily inclusive access regime was introduced will be discussed in chapter IV .

Although peasants might have had equal rights to the commons, not every type of common land had equal rights attached to them. Let us first of all look at the common wastelands. Those lands were held in the bare ownership of the local lord. All land that supposedly had no claims attached to it was part of the *bona vacantia* which was a component of the royal domain.³⁰³ As such, the Duke of Brabant - sovereign and lord of the area – also possessed the most remote and unclaimed pieces of land. Via charters or oral agreements, however, all local lords granted in one way or another the use rights on these common wastelands to their subjects.³⁰⁴ For the entire year, they were free to use the commons according to the local byelaws. As such, the lord maintained the bare ownership, but could no longer determine the type of land use, management and control of the commons on his own. The peasant communities, in their turn, could use the heath lands and stipulate regulations, but could not sell or rent the land without consent of the lord. Property and use rights were therefore detached from each other and could be held by different parties. This type of fundamental division between ownership and use rights is what made the commons different from public land or more modern forms of collective property.

The common hay meadows, however, were owned in a different way. By the fourteenth century, most hay meadows were privatised by individual peasants and farmers. They were listed in local rent registers and the village community could no longer determine how they were managed for a part of the year.³⁰⁵ After the first harvest, however, the community of users, that is, the entire village community, possessed the right to put their livestock on the meadows. From the end of May until March, the private owners had to acknowledge the parallel use rights that were possessed by the community. In Oostmalle the byelaws stated that “the hay meadows and “de Aesten” will be freed and fenced from mid-March and the common “broek” from the second day of May until the carnival after the harvest”. “Between that period nobody will drive his cattle in the common hay meadows, either his own or that

302 “Die van buiten die hier in de vrijheid zullen komen wonen zullen moeten betalen voor de burgerij en het gebruik van deze gemeynthe 12 karolus gulden (22 karolus gulden) tenzij de schepenen anders te rade bevonden.” PRIMS, *Keuren*.

303 DE WACHTER, “De Opname Van De Kempen”; DEKKERS, “Brabant Zand”.

304 VERBOVEN, *Bos En Hei*; NICO PAEPEN, “De Aard Van De Zes Dorpen 1332-1822. Casusonderzoek Naar De Kempense Gemene Heide (Deel 1),” *Taxandria, Jaarboek van de Koninklijke geschied- en Oudheidkundige Kring van de Antwerpse Kempen* LXXVI (2004); VAN DER HAEGEN, “Hoe De Kempense Gemeenschappen Hun Aard Verkregen”.

305 For example: AAT, Section II, Rent registers, 341-342, Tongerlo and its surroundings, 1566-1621.; AAT, Section II, Rent registers, 335, General rent registers, 1435-1453.

of others”³⁰⁶ Within the late medieval period, much private land still had some important use rights attached to it that could be possessed by different individuals or groups.³⁰⁷ Despite some attempts during the sixteenth century to abolish these communal rights, the Campine communities retained this system of communal grazing until the eighteenth century apart from some exceptional villages which are discussed in chapter III .

The plots of arable appeared to have been the exception. As stated before, it seems that the system of open fields had already disappeared by 1350. Privatised and enclosed land, however, was never completely free from certain use rights. Since all arable plots were located in large complexes, without roads, most individuals needed to cross their neighbours’ fields to enter their own land. Consequently they were granted right of access to drive their draft animals or carriages through the arable fields and fence openings or gates, as long as those animals were harnessed and controlled, in order to prevent crop damage.³⁰⁸ Even though such passing through fields was quite frequently contested, the practice nonetheless survived. More material concerning those conflicts is treated in chapter VII .

Finally, community members possessed some collective rights over other public spaces. For example, loam could be gathered from certain paths and rural roads. Likewise, cattle could graze on the borders of roads as long as the hedges and fences were not destroyed in the process. These sorts of common rights were often the only rights that survived in regions where commons were practically abolished. For example, in coastal Flanders or the Scheldt Polder region, the outside of the dikes or the vague and uncultivated patches of marshes, were used extensively by community members as well.³⁰⁹ Since these rights were, however, much less clearly defined, they will not be investigated here.

VIII. How to act collectively? | Common pool resource institutions

The third dimension of the commons, are the common pool resource institutions. Douglas North defined institutions as the rules of the game in a society which structure the incentives in human exchanges through formal rules and informal constraints.³¹⁰ Elinor Ostrom gave

306 “Er is geordonneerd dat men in de beempden in het broek en de Aesten zal bevrijden en omheinen te half maart en het gemeen broek de tweede dag van mei. Daarna zal niemand meer mogen stouwen in het gemeen broek, op zijn eigen of op dat van iemand anders”. Source: DE MOLDER, “Keuren Van Oostmalle”.

307 CONGOST AND SANTOS, *Working out the Frame: From Formal Institutions to the Social Contexts of Property*.

308 See databases: byelaws

309 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

310 DOUGLAS NORTH, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), 3-4.

a very similar definition which is fitting for common pool resource institutions. These CPRIs were “the sets of working rules that are used to determine who is eligible to make decisions in some area, what actions are allowed or constrained, what rules will be used, what procedures must be followed, what information must or must not be provided, and what payoffs will be assigned to individuals dependent on their actions.”³¹¹ In her groundbreaking work, “*governing the commons*”, Ostrom put forward eight design principles, that were indispensable for sustainable management.³¹² Institutions therefore possessed powerful agency, steering and moulding human behaviour towards efficient and sustainable collective action. Jean Ensminger, however, paints a very different picture. According to her, institutions did not have as much agency as is often claimed, instead institutions are only instrumental in communities obtaining their goals. As a result she stated that individuals or groups structured institutions towards their own ends by committing resources that would bring about changes in the institutional environment.³¹³ Recently, the institutional approach of Douglas North has been dominant. Communities are investigated through the lens of normative sources of the common pool resource institutions. For this research, however, the alternative approach has been chosen. By starting from the rural communities and their interests themselves, we examine the institutions that managed the communal resources.

IX. Byelaws | The norms and rules

Once the common pool resource institutions were formalised, a fixed set of rules was introduced as well. Even though Miguel Laborda Peman has stated that formalised institutions fundamentally differed from non-formalised institutions,³¹⁴ all evidence points in the direction that formalising did not fundamentally affect sets of rules concerning the commons. After all, Elinor Ostrom has studied practically exclusively non-formalised common pool resource institutions and they introduced remarkably similar rules that were able to sustain the common pool resource institutions for centuries.³¹⁵ The most important transformation occurred during the sixteenth century. Due to the rising pressure from the Habsburg monarch Charles V, local byelaws and regulations were increasingly homologised. In order to be able

311 OSTROM, *Governing the Commons*, 51.

312 1: Clearly defined boundaries, 2: congruence between appropriation and provision rules and local conditions, 3: collective choice arrangements, 4: monitoring, 5: graduated sanctions, 6: conflict resolution mechanisms, 7: minimal recognition of right to organise, 8: nested enterprises. Ibid.

313 ENSMINGER, *Making a Market*, 19.

314 MIGUEL LABORDA PEMAN, “A Tale of Two Commons. Some Preliminary Hypotheses on the Long-Term Development of the Commons in Western and Eastern Europe, 11th-19th Centuries,” *International Journal of the Commons* 7, no. 1 (2013).

315 OSTROM, *Governing the Commons*.

to create more uniform legislation, the state pushed local governments to write down their regulations.³¹⁶ Some villages, however, refer to a date well before the arrival of Charles V which pinpoint the formulation of the byelaws, while other byelaws have only survived through later copies. It is therefore impossible to state exactly when most of the Campine byelaws were written down for the first time. The byelaws used for this thesis appeared over a period from the end of the fifteenth century until the late seventeenth century (see figure 18) .

Village	Date	Village	Date
Vorselaar	1465	Zandhoven	1558-1665
Kalmthout-Essen	1469	Geel	1559
Brecht	1495	Tielen	1595
Wuustwezel	1500	Veerle	1601
Westerlo	1515	Oevel	1611
Turnhout	1533-1550	Kalmthout	1613
Ekeren	1534	Oostmalle	1665
Hoogstraten	1546-1555	Terloo	1677
Kasterlee	1548	Arendonk	16de eeuw
Ravels en Eel	1552	Gierle	
Retie	1554	Herenthout	
Tongerlo	1554	Rijkevorsel	

Fig 18 Overview of the studied byelaws and their publication date.³¹⁷

The byelaws were the normative framework for all of the village affairs and therefore contained more than rules concerning the commons alone. They combined regulations concerning the good order of the village, guild regulations, prevention measures, market rules as well as communal practices, rights and obligations.³¹⁸

316 STEIN, *De Hertog En Zijn Staten*.

317 See databases: byelaws

318 See databases: byelaws

Village	Typology							Total N
	Acces	Com- merce	Gover- nance	Mana- gement	Preven- tion	Rights	Use	
Arendonk	6,0	6,9	3,7	22,2	13,4	0,9	46,8	216
Brecht	3,6	0,0	3,6	21,4	14,3	0,0	57,1	28
Ekeren	3,7	3,7	11,1	29,6	7,4	7,4	37,0	27
Geel	2,8	4,2	14,1	25,4	2,8	0,0	50,7	71
Gierle	17,1	2,4	7,3	26,8	2,4	0,0	43,9	41
Herenthout	7,8	0,0	5,9	25,5	0,0	5,9	54,9	51
Hoogstraten	5,7	11,4	11,4	17,1	0,0	0,0	54,3	35
Kalmthout	0,0	0,0	37,5	62,5	0,0	0,0	0,0	8
Kalmthout- Essen- Huibergen	0,0	3,1	21,9	31,3	12,5	0,0	31,3	32
Kasterlee	9,3	0,0	2,3	14,0	2,3	0,0	72,1	43
Oevel	6,5	3,2	0,0	19,4	3,2	3,2	64,5	31
Oostmalle	1,8	0,0	14,5	18,2	7,3	0,0	58,2	55
Ravels-Eel	2,6	2,6	15,4	12,8	12,8	10,3	43,6	39
Retie	5,5	3,6	3,6	12,7	14,5	5,5	54,5	55
Rijkevorsel	0,0	2,9	14,7	11,8	8,8	2,9	58,8	34
Terloo	3,8	3,8	15,4	26,9	0,0	0,0	50,0	26
Tielen	0,0	0,0	4,8	9,5	4,8	0,0	81,0	21
Tongerlo	0,0	2,9	2,9	23,5	0,0	2,9	67,6	34
Turnhout	0,0	18,2	4,5	4,5	9,1	0,0	63,6	22
Veerle	2,0	8,2	4,1	14,3	6,1	2,0	63,3	49
Vorselaar	6,9	0,0	3,4	17,2	6,9	3,4	62,1	29
Westerlo	8,1	0,0	1,2	25,6	4,7	2,3	58,1	86
Wuustwezel	4,3	1,4	5,7	40,0	12,9	0,0	35,7	70
Zandhoven	0,0	0,0	17,5	45,0	0,0	0,0	37,5	40
Total	4,8	3,6	7,5	22,8	7,4	1,8	52,0	

Fig 19 Types of rules in the byelaws of 23 villages, indicated in the percentage of the total number of rules per village.³¹⁹

319 The category access contains all regulation concerning obtaining access. This included general stipulations concerning the community of users, as well as specific rules regarding access to particular spots, types of land and exceptions to the rules for particular places or subgroups. The label commerce contains all rules regarding the marketing or prohibition of marketing of goods and resources. Governance contains all rules concerning the officials (appointment, salary, jurisdiction, etc.), the general organisation of the village life (including the obligations and rights of the villagers) and the working of the CPRIs themselves. Management resembles the category governance, but includes the detailed regulations concerning the day-to-day functioning of the commons: where to graze, what to harvest, which equipment to use and so forth. Prevention contains all rules that tried to prevent ecological degradation, sand drifts, pollution or floods. The title rights refers to all stipulations regarding specific use rights or privileges the villagers enjoyed. This also contains general rights such as fishing or hunting, together with particular common rights. Finally the category use refers to all rules that determined the practices on the commons: how to mow, where to dig, which plough to use, etc.

For this research I have collected and analysed the byelaws of 23 villages, of which one village had a separate byelaw for the entire seignior, and one for only one hamlet within that seignior, thus constituting 24 byelaws.³²⁰ Even though they represent a myriad of rules and stipulations, they dealt with very specific topics. Firstly it should be mentioned that I have only incorporated the rules pertaining to agricultural practices, the commons and commercial activities in my research, leaving out guild regulations and penal codes. The remaining 1143 rules mainly dealt with the manner in which the commons or the land in general had to be used and what punishments were to be administered if one infringed those regulations. Importantly, however, the large part of rules – 22,8 per cent - can be placed under the category of “management”. The Campine communities were extremely strict in formulating how the community members, had to organise their usage of the land. This management included the appointment of officials, delineating their powers, organising visitations and controls, defining the sorts of punishments etc. Nonetheless, some of the most important aspects were left implicit or extremely vague, of which the access rights were one of the most important examples.³²¹

Even though new institutional economics tends to claim that clear institutions are necessary for an efficient economic system, societies can have a number of reasons and rational strategies for not specifying each and every right and not forming formal institutions.³²² As has been shown for the situation in England, writing customary rights down could have been beneficial in order to define one’s rights. However, leaving them unwritten and vague, and therefore flexible, could also have been in the best interest of lords or their tenants since in that case they could actively use memory, practice and litigation to steer and influence the rules in the direction of their own interests.³²³ It appears that all interest groups in the Campine area, including small peasants, rural elites as well as the lord’s representative, agreed upon the benefits of formulating vague rules and charters and relying on less formal structures. As will be shown in chapter IV and V this gave the interest groups the possibility of transforming their tactics, strategies and entire institutions without having to formally change their normative framework. Introducing purely unilateral interests, or striving for the economically rational option, can be hard to negotiate, monitor and enforce, therefore it is likely that certain valued characteristics, which are easily enforced, are selected and introduced even though they are not the most efficient rules or strategies.³²⁴ The way decisions are made determines what decisions are made.³²⁵ In the Campine area a never-ending negotiation between the formal

320 See databases: byelaws

321 (for the proportion of access rules see Figure 19)

322 ENSMINGER, *Making a Market*.

323 RICHARD W. HOYLE, ed., *Custom, Improvement and the Landscape in Early Modern Britain* (Farnham: Ashgate, 2011).

324 ENSMINGER, *Making a Market*.

325 *Ibid.*

council, lordly control and indirect influence from the cottagers and labourers defined policy. Institutions, as Ensminger has claimed, were mere instruments and could be left behind if more informal structures suited the strategies of the rural communities better.³²⁶ As a result, these interest groups always obtained a common denominator, which could be transformed and re-shaped when needed.³²⁷ Since no fundamental threat from the side of the feudal lords was expected, these informal institutions were able to survive until the eighteenth century. Consequently, byelaws are not the best sources to provide an insight into common pool resource institutions, let alone village communities. As various cases have shown, they only registered a part of the constitutional rules, the most important characteristics often remaining hidden.

X. Not top down nor from below | The managers of the commons

The most important aspect of the common pool resource institutions are, however, the people behind the scenes. When the research-focus has been placed on the actual guardians, monitors or governors, it has often been stated that they stemmed from the grassroots level. This dominant view is derived from one of the main design principles described by Elinor Ostrom. Labelling it as “collective-choice arrangements”, Ostrom stressed that in order to have an efficient and sustainable management of the commons, most individuals affected by the operational rules have to have the opportunity of participating in modifying these operational rules.³²⁸ How they should be included remained rather vague and has led to some weighty discussions amongst scholars. Arun Agrawal, on the one hand, introduced the concept of “environmentality”, derived from Foucault’s conceptualisation of “governmentality”.³²⁹ According to Agrawal, village communities would internalise rules and values that were introduced from the top down, as long as they could participate in local councils. Being included, therefore, did not mean that they would personally have to formulate the rules. Nevertheless, this concept of internalisation has been criticised, as communities were considered to only adopt these norms and values publicly, without really embracing them so as to achieve their own goals. On the other hand, Tobias Haller put the concept of “constitutionality” on the agenda. According to Haller, all members of the community of users would have been required to create what we would call a sense of ownership of the institution-

326 MAÏKA DE KEYZER, “The Impact of Different Distributions of Power on Access Rights to the Common Waste Lands: The Campine, Brecklands and Geest Compared.,” *Journal of Institutional Economics* 9, no. 4 (2013).

327 See chapter IV

328 OSTROM, *Governing the Commons*, 93.

329 ARUN AGRAWAL, *Environmentality: Technologies of Government and the Making of Subjects* (Durham: Duke University Press, 2005).

building process, which we label “constitutionality”, an instantiation of a bottom-up process of institution building. Passively witnessing the formulation of regulations in a council would not do the trick, according to Haller. Rules had to be put forward at the grassroots level in order to be accepted and obeyed by the entire community.³³⁰ The same conclusion is often drawn for historical communities. Byelaws frequently refer to community members gathering and discussing rules, public attendances of town meetings, collective visiting of the boundaries, as well as communal tasks and monitoring. It is often claimed that the question of formulating byelaws and design principles came from a bottom-up process. Tine De Moor, moreover, stated that a broad base of community members participating in the commons as users, monitors or officials, was crucial for the endurance of the system.³³¹

Despite this, historical research portrays a completely different image of communities and their governments. However small a village or hamlet was, it was controlled by a town council with village representatives and/or a local lord and his officials. Even the idealistic “polder model” that was ascribed to the medieval countryside has been denounced by scholars such as Tim Soens. According to him, institutions mainly reflect already-existing power balances and private interests.³³² Like the water boards, common pool institutions have always been portrayed as being extremely “democratic”. In the opening section, several byelaws mention the “*gemeyne ingezetenen*”, or community members, as being present in the formation process, thus strengthening the bottom-up image of the common pool institutions. But is this presence sufficient to prove a true agency of all, and most certainly the least influential, interest groups within the Premodern communities? The lords in the Brecklands of Norfolk, for example, held a strong grip on the management of, and decision-making about, the commons, despite the existence of common pool resource institutions. Despite bottom-up protests, this system was reinforced and survived for more than two centuries.³³³

When looking at the formal institutions, namely the “*gemeynten*” of Campine villages, the bottom-up perspective is predominantly a case of discourse rather than reality. For example, the byelaw of Hoogstraten, a town under the jurisdiction of the family Van Lalaing, stated that “*Het keurboek, statuten en ordonnanties die door de welgeboren heer Antoon van Lalaing van Hoogstraten in 1534 bij goeddunken van de schepenen, gezworenen en gemene ingezetenen*

330 HALLER, ACCIAIOLI, AND RIST, “Constitutionality: Constitutionality: Emic Perceptions of Bottom-up Institution Building Processes”, 6.

331 TINE DE MOOR, “Participating Is More Important Than Winning: The Impact of Socioeconomic Change on Commoners’ Participation in Eighteenth and Nineteenth Century Flanders,” *Continuity and Change* 25, no. 03 (2010).

332 TIM SOENS, “Polders Zonder Poldermodel? Een Onderzoek Naar De Rol Van Inspraak En Overleg in De Waterstaat Van De Laatmiddeleeuwse Vlaamse Kustvlakte (1250-1600),” *Tijdschrift voor Sociale en Economische Geschiedenis* 3, no. 4 (2006): 34.

333 WHYTE, *Contested Pasts*.

van zijn vrijheid van Hoogstraten gesloten zijn geweest”.³³⁴ Even though the introductions of almost all byelaws include a reference to the village communities as being present during the process of formation of the normative basis of village life, the actual power to create rules was largely out of reach for the ordinary peasant. First of all, the lord was often the one who created byelaws, or at least approved them. Even in the case of the village of Gierle, which had purchased the right to manage the commons, the introduction of the byelaw states that “the old byelaw, ordinances and statutes are known for time immemorial within the village as the ordinance handed over by his majesty (the Duke of Brabant)”.³³⁵ If the lord did not directly interfere with the normative base of its seigniories, the responsibility was passed on to his bailiff or sheriff in combination with the local aldermen, who were formally in charge of determining the rules. Within the village of Oostmalle, the byelaws were “made, ordained and chartered by the bailiff and aldermen of the jurisdiction of Oostmalle and approved of by the noble and fine lord Fredericus de Renesse, lord of the village of Oostmalle”.³³⁶ This cooperation between the lord’s representative and the local village government was the most common way of creating village byelaws. Whenever the inhabitants were mentioned as active contributors to this process, in only one particular village they are portrayed as being able to construct the rules themselves. In Terloo, a mere hamlet, a byelaw was written down leaving out all criminal and economic rules and addressing solely questions and rules concerning their commons. Here the introduction quite extraordinarily reads: “Ordonnantie of aardbrief gemaakt bij de gemene ingezetenen van Loo op het gebruik van hun gemeynte en de aard van loo”³³⁷ In all other cases, such as in Hoogstraten, inhabitants had to cooperate with the bailiff and/or the village aldermen, that is if they were allowed to participate at all.³³⁸

Despite the scarceness of archival evidence as to the social background of these lordly representatives and aldermen, it is quite probable that they stemmed from the upper classes of society. In the case of Brecht, the names of the aldermen who wrote down the byelaws are mentioned. When cross-referenced with the tax registers, most of them can be placed on the upper end of the social ladder of the village and, with the exception of Willem Der Muyden who can be placed in the second quartile, all of the aldermen owned estates that placed them

334 The byelaw, statutes and ordinances that were drawn up by the renowned Lord Antoon van Lalaing of Hoogstraten in 1534 by the consent of the aldermen, sworn members and common inhabitants. Source: GUILLAUME DE LONGÉ, *Coutumes D’herenthals, De Casterlé, De Moll, Balen Et Deschel, De Gheel, De Hoogstraten, De Bifferen Et De Putte, Et Feodales Du Pays De Malines, Recueil Des Anciennes Coutumes De La Belgique* (Brussels: Fr. Gobbaerts, 1878).

335 HARRY DE KOK, “De Aard Van Zes Dorpen: Beerse, Vosselaar, Lille, Wechelderzande, Gierle En Vlimmeren. Een Casusonderzoek Van Een Kempense Gemene Heide.” *Post Factum. Jaarboek voor Geschiedenis en Volkskunde*, no. 1 (2009).

336 Keuren gemaakt geordonneerd en gestatueert door de schout en schepenen van de heerlijkheid en jurisdictie van Oostmalle en geaprobeerd door de edele en welgeboren heer Fredericus de Renesse, heer van het dorp Oostmalle. DE MOLDER, “Keuren Van Oostmalle”.

337 Ordinance or “aardbrief” made by the common inhabitants of Loo for the usage of their commons of Loo. Source: VAN GORP, “De Aartbrief Van Terloo”.

338 DE LONGÉ, *Coutumes*.

at the top two quartiles of sixteenth century Brecht.³³⁹ The same perspective is offered by Eline Van Onacker's research, where she has analysed more systematically the social background of aldermen in several Campine villages. Even though the lowest tiers of society could find their way into the ranks of aldermen, the richer section was more influential and over-represented during the later medieval period.³⁴⁰ The bailiff of Ravels, one of the villages of the abbey of Tongerlo, was called Dominicus Vanden Nieuwenhuysse. Not only had he studied both canon and civil law, he was born into a most influential family. Godeschalk Vanden Nieuwenhuysse became prelate of Tongerlo in 1598, while his direct relatives such as Bartel became bailiff of the neighbouring village Weelde and Franciscus was secretary in Ravels. This was a rich, educated and powerful family, engaged in managing all the affairs of the abbey in the area around Ravels and Weelde, where the abbey had received manorial powers.³⁴¹ When both the aldermen, bailiff and common inhabitants had to take part in a meeting regarding the management of the commons, the balance of power was highly unequal. The mere presence of village members during meetings does not prove their ability to produce the rules regulating their commons. As figure 20 shows, the villagers were often needed to confirm the rules, since their consent was required for the maintenance of peace and order in the village, something that was also confirmed by Agrawal.³⁴²

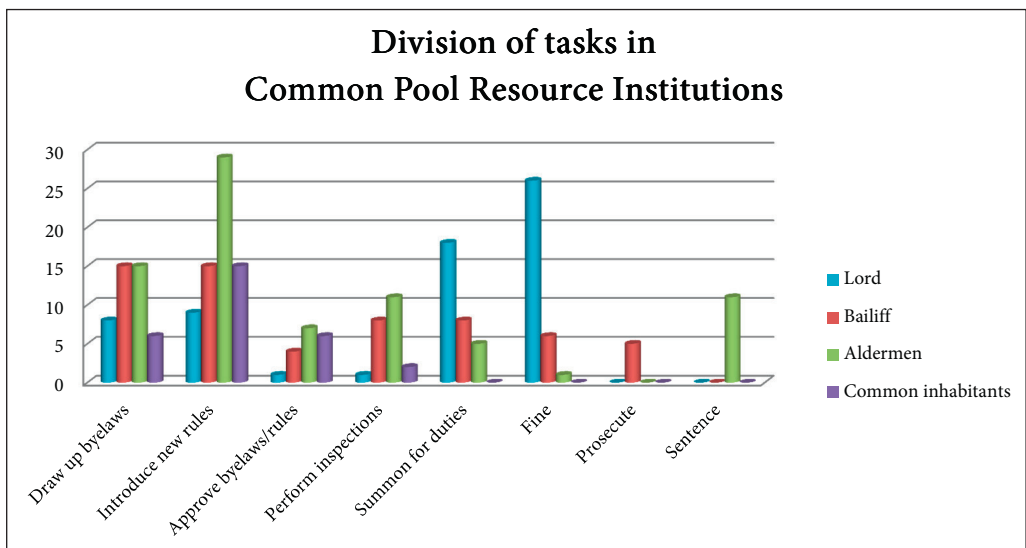


Fig 20 Division of tasks in Common Pool Resource Institutions.³⁴³

339 MICHELSSEN, "Keuren Van Brecht", RAA, OGA Brecht, 2431-2482. Accounts of the ducal (later on royal) aides, 1523-1576

340 VAN ONACKER, "Leaders of the Pack?".

341 HEEMKUNDEKRING NICOLAUS POPPELIUS, *Ravels in Lief En Leed* (Heemkundekring Nicolaus Poppelius, 1980), 12.

342 ARUN AGRAWAL AND CLARK C. GIBSON, "Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation," *World Development* 27, no. 4 (1999).

343 See databases: byelaws

The main power the local villagers had in steering the management of the commons was the introduction of new rules (see figure 20). One rule in the byelaw of Retie shows this clearly: “Whenever seven individuals of the same hamlet come to the lord in order to create a rule that would benefit the hamlet, the lord and four aldermen will be allowed to ordinate this all year through. In case these men vow that it is in the interest of the hamlet, the rule will be found worthy and has to be abided by, just like the other rules that the jurors had made”³⁴⁴. The byelaw of Vorselaar provides proof of this practice. Almost half the village byelaws refer to rules being introduced by the village community, either independently or with the cooperation of the aldermen and bailiff. Nevertheless, both the bailiff and the aldermen possessed exactly the same prerogatives.³⁴⁵ Moreover, as figure 20 shows, this privilege was used far more often by the aldermen than by the villagers themselves. This is especially true when we take into consideration that on almost half of the occasions that new rules were introduced by inhabitants, they can be attributed to one particular village: Vorselaar.³⁴⁶

It is therefore far from true that a formal form of constitutionality existed in the Premodern Campine communities. Rather, the lords and village governments tended to opt - as was the case in urban governments, guilds, and other forms of collective organisations - for a participatory model.³⁴⁷ By being present at the village meetings and granting their explicit or implicit consent, it was presumed the inhabitants would comply with those rules and eventually internalise them. Byelaws therefore demonstrate, especially when they are combined with social sources and tax registers, how the interest groups calling the shots within the formal common pool resource institutions can be pinpointed. References to obligations to be present during the publication of byelaws, the annual village meeting and the communal duties, are therefore illuminating.

XI. Lordly punishments | Judging and fining trespassers

The same hierarchal image appears when we examine controlling and sanctioning activities. According to Elinor Ostrom, the introduction of strict rules which were able to be enforced were

344 “Wanneer zeven personen van een heertgang komen naar de heer om enige zaken die profijtelijk zouden zijn voor de heertgang in een keure gezet te worden, zal men het hele jaar door mogen ordineren en zetten bij de heer en vier schepenen. Indien de mannen affirmeren bij eed dat dezelfde keur naar hun vijf zinnen profijtelijk is dan zal de keure waardig zijn om te onderhouden zoals de andere keuren die bij de gezworenen gezamenlijk gemaakt zijn en onverbrekkelijk onderhouden moeten worden.” HELSEN, “Het Dorpskeurboek Van Retie”.

345 VAN OLMEN, “De Keuren Van Vorselaar”.

346 Ibid.

347 MAARTEN PRAK, *Gezeten Burgers. De Elite in Een Hollandse Stad Leiden 1700-1780* (’s Gravenhage: De Bataafse Leeuw, 1985).

vital in obtaining a sustainable management system.³⁴⁸ As stated by Haller, the involvement of the community in setting the rules, fines and implementing them is indispensable. In modern-day Zambia, a tragedy of the commons was inevitable once the rules and fines were introduced by the state, without any consideration for the local communities.³⁴⁹ Appointing members of the community as guardians and law enforcers would ensure fewer occasions of insurrection. According to Tine De Moor, however, the best way to safeguard an efficient common pool institution, is not to sanction, but to prevent, trespassing by implementing a system of social control within the community of users.³⁵⁰ The ability to implement a purely democratic form of justice and appointing police agents from the community to be judged by that community, was not possible during the early modern period. Important infractions, which had to be sanctioned by high fines, were always the prerogative of the lord.³⁵¹

Most cases were, however, handled by the lord's bailiff and local aldermen. Whenever the bailiff obtained an infraction to the rules, he had to summon the trespasser to the court, after which the local aldermen had to hear and sentence the case. In Geel the function of the bailiff was set out as follows: "De drossaard van de vrijheid van Geel en de schepenen zijn schuldig en behoren de onderzaten recht en justitie te doen. De drossaard is maander in alle zaken en de schepenen rechtens en wijzen".³⁵² Afterwards the bailiff was responsible for determining and collecting the fine.³⁵³ Even though the majority of rules written down in the byelaws mentioned an exact fine, the bailiff mostly determined a composition which took into account the gravity of the offence, the social background of the trespasser, and the fact whether it was a first transgression or not.³⁵⁴ Even though the aldermen were the direct representatives of the village community, selected from among their ranks, the most important figure in the justice system was the direct representative of the lord. Being judged by peers was ensured via the aldermen, but as mentioned before, they were predominantly

348 OSTROM, *Governing the Commons*.

349 TOBIAS HALLER, ed., *Disputing the Floodplains. Institutional Change and the Politics of Resource Management in African Wetlands* (Leiden: Brill, 2010).

350 DE MOOR AND TUKKER, "Penalty and Punishment. Designing Effective Sanctions for Freerider's Behaviour on Early Modern Dutch Commons".

351 See for example Ravels: "Niemand zal ontvreemden of wegdragen andermans heymself, horden oft tuinen of vekens op pene van gecorrigeerd te worden door de heer". "Nobody will steal or carry away another's hedge, fence, bushes or locks, on pain of correction by the lord." KOYEN, "Keuren Van Ravels".

352 The bailiff of the liberty of Geel and the aldermen are owing and responsible for securing justice for the inhabitants. The bailiff is the public prosecutor and the aldermen judges. J. ERNALSTEEN, "Keuren Van Gheel," *ibid.* 26 (1935).

353 D.A. BERENTS, "Taak Van Schout En Schepenen," *Maandblad Oud Utrecht* 45, no. 8 (1972); B.C.M. JACOBS, *Justitie En Politie in 's-Hertogenbosch Voor 1629. De Bestuursorganisatie Van Een Brabantse Stad* (Assen: Van Gorcum, 1986); WALTER VAN DEN BRANDEN, "De Schout of Officier Van De Landsheer Te Lille, Wechelderzande En Vlimmeren. Aspecten Van Het Dorpsbestuur in Het Land Van Turnhout in Het Ancien Régime, Vooral in De Zeventiende En Achttiende Eeuw," *Heemkundige Kring Norbert de Vrijter Lille* (1989); J. VAN ROMPAEY, "Het Compositierecht in Vlaanderen Van De Veertiende Tot De Achttiende Eeuw," *Tijdschrift voor Rechtsgeschiedenis* 44 (1961).

354 JOSÉ-ANTONIO ESPÍN-SÁNCHEZ, "Let the Punishment Fit the Crime: Self-Governed Communities in Southeastern Spain," in *Design and Dynamics of Institutions for Collective Action* (Utrecht: 2012).

the elite of the village which furthermore reasoned according to a form of “managerial logic” instead of following the peasants’ interests.³⁵⁵

Villagers, however, had the possibility of becoming officials, working for the bailiff or the aldermen. Imposing rules is one thing, but actually enforcing them is another altogether. Therefore officials, called jurors and “vorsters”, were appointed to perform the day-to-day tasks. In Ravels and Eel the vorster was appointed by the bailiff and aldermen and “zal zijn boeten van het schutten en aanklagen, innen zo ver deze de grond en bodem aangaan en zal zich niet onderwinden in enige zaken de overheer aangaande”.³⁵⁶ They were the ones catching trespassers, locking up straying cattle and collecting particular fines imposed by the bailiff or steward. In addition, villagers were renowned for their expertise when it came to cattle diseases and containing pestilence. “Good men” from the villages were therefore appointed to make frequent visits to the village stables and checking for sick animals. When precautionary measures had to be taken, their advice would be final. As in Ravels and Eel, these local officials were appointed and instructed by the bailiff and/or aldermen. On some rare occasions, however, the village community could determine who would patrol the commons and set fines. In Terloo, the one village that prescribed its own byelaws, the vorster was chosen by the community of users themselves: “It is ordained by general election of the inhabitants of the hamlet Loo that two common’s masters will be elected to serve two years like the church masters. When their term is over, they will have the opportunity of choosing other members of the community according to their understanding and judgement”.³⁵⁷ Finally, the complete village community was summoned to watch out for any offences and to report them to the local officials or authorities. Even though the vorsters were required to “go around the common wastelands and boundaries every 14 days together and with each other”, controlling every communal activity or straying shepherd was simply impossible.³⁵⁸ In return for their collaboration, villagers could receive a portion of the fine.³⁵⁹

355 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

356 “Will collect his fines from catching cattle and charging trespassers, as long as they concern the land and soil and will not intervene in the lord’s matters”. KOYEN, “Keuren Van Ravels”.

357 “Is geordonneerd dat bij gemene stemmen van de ingezetenen het gehucht van loo dat er altijd 2 aardmeesters gekozen zullen worden om 2 jaar te dienen zoals kerkmeesters. Als hun termijn beëindigd is zullen zij de keuze hebben om uit de gemeente van Loo twee andere uit te kiezen naar hun verstand en goeddunken”. VAN GORP, “De Aartbrief Van Terloo”.

358 “alle 14 dagen tezamen en met elkaar in de heide en rond de palen van Ekeren te gaan” A GIELENS, “Keuren Van Ekeren,” *Oudheid en Kunst* 30, no. 1 (1939).

359 In Arendonk the byelaws stipulated “that everybody is allowed to report [a trespasser] and will receive half of the fine”. “iedereen mag klagen en de breuk voor de helft hebben” PRIMIS, *Keuren*.

XII. Weapons of the weak | Informal institutions

By relying exclusively on normative sources, it would appear that the Campine peasant communities hardly possessed any means of legalising their interests and ideas for managing their commons. The formal institutions were dominated by the local village elites, such as the lord's representative and aldermen. Being the political and economic elite of the village, they often had contrary or conflicting interests concerning the commons, compared to their peasant neighbours.³⁶⁰ The interests of the peasants were therefore not directly translated into the normative framework which regulated village affairs. The village community was formally limited to participate only as an audience, so as to internalise the rules introduced top-down by the local government. Nonetheless, the greatest power of Campine communities was their ability to circumvent formal institutions and create, mould and employ custom instead of the formal framework, whenever it suited them best. These parallel, and in particular informal, institutions operated alongside the institutions presided over by the village government and more often than not ran against the rules and concepts introduced by the lord, bailiff and aldermen. A striking example is the refusal of peasants herding cattle and sheep through the common wastelands to comply with the limits described and indicated by the political elite. The village boundaries, as a symbol of the jurisdiction of a lord, a village, and a common pool resource institution's jurisdiction, were one of the most important issues in communal affairs. David Fletcher has stressed the internalising character of this issue, for an almost sacred aura was attached to village boundaries through the performance of religious processions around them.³⁶¹ Nevertheless, these strict and hierarchal boundaries, introduced and cherished by the village elites as a symbol of their jurisdiction, were repeatedly rejected by the peasants, who favoured boundary zones within which their grazing trails were situated, rather than strict limits. Despite numerous conflicts, renewed visitations, the setting of boundary markers and forcing peasants to acknowledge them, their practices survived for centuries. Until the eighteenth century they defied formal boundaries through their own notion of space, which existed in parallel as well as in opposition to that of the village elites.³⁶²

In addition to these alternative perceptions of space, Campine peasants developed several parallel design principles that coexisted with more formal institutions. Membership of the community of users, appropriation rules and admission requirements were defined and adjusted outside of the formal framework, and could even counteract the normative structure

360 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

361 DAVID FLETCHER, "The Parish Boundary: A Social Phenomenon in Hanoverian England," *Rural History* 14, no. 2 (2003).

362 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

that was described in the byelaws and charters. These topics, however, deserve more attention and will be discussed in the following chapters, and in chapter III and VII in particular.

XIII. Conclusion

From the thirteenth century on, the Campine commons, in their role as resource, regime, as well as institution, reached their full maturity. After a period of deforestation, the common pool resources predominantly consisted of common wastelands, dominated by heather vegetation, peat bogs and sturdy grasslands that provided grazing, sods and fuel. Next, common hay meadows provided hay, indispensable for the cattle that was kept within the stables for a large part of the year. Common arable land, however, was most probably abolished by 1350 and replaced by individually enclosed and privately used fields. Commons distinguish themselves from public goods through their property rights. None of the wastelands, let alone meadows, were a no man's land. The local landlord or sovereign always possessed the basic title, while the village communities were granted the use rights, management and control over the commons. As such, a fundamental separation between property and use rights existed within the medieval Campine countryside. These communal resources were managed and controlled by *gemeenten*, or common pool resource institutions, that coincided with village governments. As such, the village communities introduced rules and norms via homologised byelaws, appointed officials to control the commons and judged and fined trespassers. Despite an often democratic image, these *gemeenten* were not steered top-down, but neither were they steered from below. Instead, it was the aldermen especially, belonging to the upper tier of society and operating according to their own interests, who could counter the smaller peasants, dominating as they did the formal institutions together with the lordly representatives. They were the ones formulating the rules and judging the community members. The villagers themselves were supposed to have created a sense of belonging by being present during village meetings and processions, rather than through participation. Haller attributed too much weight to the community members' level of activity within the formal institutions and their real involvement in managing the commons.³⁶³ Nevertheless, community members were not passive individuals that could be bossed around by the village elites. Instead, by and large, they circumvented the formal institutions and created their own informal ones that functioned parallel with, or even in opposition to, the formal ones. As such, they could realise their interests and still maintain efficient common pool resource institutions.

363 HALLER, ACCIAIOLI, AND RIST, "Constitutionality: Constitutionality: Emic Perceptions of Bottom-up Institution Building Processes".

The Campine commons were the result of particular and local factors that led the different interest groups to act collectively, manage resources communally, and formalise their actions within an institutionalised framework. Despite the fact that very local circumstances have determined the exact characteristics of the Campine commons, they are able to function as an example for further research. First of all, the Campine commons can be compared with similar ecosystems, being infertile sandy regions that gave rise to common wasteland areas. As the Brecklands of Norfolk, and to a lesser extent the Geest region in Schleswig, have functioned as ideal test cases with which to compare Campine features and determine either their uniqueness or normality, the Campine commons themselves could potentially function in a similar way for all other similar ecosystems around the world. It is, after all, still very important to demonstrate that it was not the subsoil that was the most dominant factor in the development of a certain type of common pool regime or institution.³⁶⁴ Rather, the balance of power in relation to property as well as usage factors, together with the ecosystem, determined how the commons were formed.

Most importantly, however, a thorough investigation into the formal and informal institutions, together with an insight into the functioning of the commons within medieval village communities, has shown that a step away from purely normative sources is vital in understanding all facets of Premodern commons. Even though the scarcity of sources is often to be blamed for the lack of such research, even the Campine case, which was particularly devoid of direct evidence, has yielded some important additional insights through often very indirect sources. As a result, this methodology takes a central place within this dissertation, in order to examine the different characteristics of the late medieval Campine commons: inclusion, appropriation, enclosure, conflicts and sustainability.

364 WHYTE, *Contested Pasts*; ALLISON, "The Sheep-Corn Husbandry"; BAILEY, "Sand into Gold"; RHEINHEIMER, *Umweltzerstörung*.



WHO'S IN AND WHO'S OUT?
INCLUSION AND EXCLUSION PROCESSES IN THE CAMPINE AREA

IV. WHO'S IN AND WHO'S OUT? | INCLUSION AND EXCLUSION PROCESSES IN THE CAMPINE AREA

Is exclusiveness the only guarantee to maintain a sustainable development in densely populated and fragile ecosystems? According to Hardin, it was, since he claimed that freedom in the commons would bring ruin to all.³⁶⁵ When extractors were not limited in terms of numbers, or in the way they could exploit a common, a tragedy of the commons would inevitably occur. This doomsday scenario immediately stirred the academic community, and especially Elinor Ostrom, to formulate an alternative model which demonstrated that both local, as well as large-scale communities, were perfectly able to avert a tragedy through the development of a set of design principles in order to avoid the main problems of free riding, trespassing and over-exploitation.³⁶⁶ One of these design principles was a strict demarcation of boundaries, which implied both the delimitation of the community of users allowed to extract resource units, as well as the actual, physical boundaries of the common pool resource itself.³⁶⁷ According to Ostrom, it was vital that the limits were defined via an agreement between the members of the community who used the commons. Later, McKean added the precondition that rules must be constructed in such a manner that a rapid growth of the community of users was impossible.³⁶⁸ For this chapter I will focus exclusively on the delimitation of the community of users.³⁶⁹

Numerous historians have tried to gain a grasp on the sheer scale of claims on land as well as who was able to formulate such claims. By now, several typologies have been formulated, revaluated and corrected. Johannes Renes offered one with 15 categories or typologies.³⁷⁰ According to Tine De Moor, however, Renes often confused typology and evolution of certain common pool institutions, thus painting a picture of common pool institutions as gradually evolving from a general openness towards a very restricted regime. Instead, some communities introduced a “closed system” from the beginning, while others remained open.³⁷¹ Therefore, another typology was formulated in a publication on commons in North-western Europe in the CORN series.³⁷² Four main types of commonly-managed resources were distinguished. First, the rights could be linked with tenancy or ownership of a particular building, farmstead

365 GARRETT HARDIN, “The Tragedy of the Commons,” *Science* 162, no. 3859 (1968).

366 OSTROM, *Governing the Commons*, 15.

367 *Ibid.*, 90.

368 MCKEAN, *People and Forests: Communities, Institutions, and Governance*.

369 For more information about boundary limitations and the prevalence of boundary zones instead of hierarchal limits in the Campine area until the eighteenth century, see: DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

370 JOHANNES RENES, “Dutch Commons: Variety and Change,” in *Rural Landscape between State and Local Communities in Europe, Past and Present*. (Allesandria: 1998).

371 DE MOOR, “Tot Proffijjt Van De Gheemeensaemheijt”, 38.

372 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 252-253.

or plot of land. Second, membership of a community or municipality was required, and common rights were owned by the collective members or commune. The land could be owned by the community itself, or it could remain in the hands of a lord who always retained a certain degree of authority or claim over the commons. Third, a cooperative or association of members (in German a “Genossenschaft” or in Dutch a “markgenootschap”) owned the rights to a material resource. The right could be inherited, but could also be attached to a certain building or estate. Finally, all residents of an extended area, or subjects of a landlord or ruler, could use the common resources. This type was less usual: northern Sweden was one typical example, due to its almost limitless resources and low population density.³⁷³

Nevertheless, a tendency for more exclusive regimes has been noticed. For the majority of European regions, growing population pressure, rising urbanisation and commercial opportunities forced local CPRIs to implement more exclusive measures. Marco Casari, for example, discovered that several late medieval mountain communities in the Italian Alps changed from egalitarian inheritance systems passing on access rights to semi or full patrilineal inheritance systems so as to discourage immigration and mixed marriages which would lead to a large influx of new appropriators.³⁷⁴ More fundamental exclusion waves were, however, possible as well. In Schleswig-Holstein the “*Hüfner*”, or farmers originating from the colonising farmers owning a full farmstead, formally excluded all other community members from using the commons when the population rose due to immigration streams of cottagers and landless labourers after the late medieval crisis.³⁷⁵ A similar pattern is to be noticed in the Brecklands in the county of Norfolk where landlords excluded tenants after the Black Death since sheep breeding was reserved for a very small group of manorial tenants who intensively exploited the open fields and waste lands in order to produce the much sought-after wool.³⁷⁶ Extremely inclusive regimes, granting access to all inhabitants of the surrounding area, are considered an anomaly and were therefore mostly ascribed to extensive commons, such as Scandinavian forests.³⁷⁷

Although countless micro studies have contributed to a map of Europe envisaging millions of different varieties of common pool resource institutions and communities of users, the causal factors behind the formation of a closed or open type of commons are difficult to grasp. The ecological factor is, of course, the first explanation and often the most logical one. Vast commons with almost limitless resources tend to have had an open character. On the other hand, precious resources in densely-inhabited regions were strictly regulated and the

373 Ibid.

374 CASARI, “Gender-Biased Inheritance Systems Are Evolutionary Stable: A Case Study in Northern Italy in the XII-XIX Century”.

375 POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550j.*

376 ALLISON, “The Sheep-Corn Husbandry”.

377 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management.*

access to these commons had to be monitored tightly, in order to prevent an unstoppable inward migration and degradation of the material resources.³⁷⁸ As plausible as this may sound, similar regions could and did develop quite different rules concerning access to the commons. Within the Low Countries, a densely-populated, urbanised, and commercialised region of western Europe, two remarkably similar ecosystems existed, “het Gooi” near Hilversum and the Campine area. Yet the first region developed a system of “markgenootschappen”, while the other had “gemeindes”.³⁷⁹ Moreover, in “het Gooi”, the common rights were reserved for a selection of farms or families which had to be inherited from father to son, whereas in the Campine area the rights of access were given to all members of the community, regardless of their lineage or socio-economic status.³⁸⁰

Others have looked beyond the ecological explanations and have claimed that if the extent of the commons determined how rights to it were appointed, it remained so only as part of a wider constellation of tenure and income opportunities.³⁸¹ The partible inheritance system of small peasant plots could have increased the reliance on common wastelands, or it could have been the other way around: the availability of vast commons could have led to an inclination towards partible inheritance because the commons could supplement the produce obtained from tiny plots.³⁸² In addition, chronology and the presence or absence of lords during the developmental stages of the local institutions and communities could have impacted on the access to the commons. Communities or certain stakeholders, such as the original tenants or farmers, could become quite powerful if they were not hindered by political competitors at the founding stages.³⁸³ If that were the case, small groups of tenants or farmers could introduce restrictions on access by reserving common rights for the original estates and their owners or tenants.

Is a restrictive or increasingly exclusive regime, however, the only way to cope with population pressure, commercialisation or urbanisation? Did all long-term CPRIs implement these exclusive measures either from the start or in periods of increasing pressure? Within this chapter I will argue that institutions were manipulated, on a fundamental level, by interest

378 Ibid.

379 “Gemeindes” are common pool institutions that coincide with the local village government. “Marken” or “markengenootschappen” are common pool institutions that are independent organisations (such as water boards) from the local governments and can include several villages or even regions HOPPENBROUWERS, *The Use and Management of Commons*; Kos, *Van Meenten Tot Marken*. See also chapter II.

380 Kos, *Van Meenten Tot Marken*.

381 WARDE, *Common Rights and Common Lands in South West Germany, 1500-1800*, 205.

382 Ibid., 204.

383 LEIGH SHAW-TAYLOR, “The Management of Common Land in the Lowlands of Southern England Circa 1500 to Circa 1850,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina De Moor (Turnhout: Brepols, 2002); S. BRAKENSIEK, “The Management of Common Land in North-Western Germany,” in *The Management of Common Land in North West Europe, C. 1500-1850*, ed. Martina De Moor, Shaw-Taylor, L., Warde, Paul (Turnhout: CORN publications, 2002).

groups operating within them. By comparing the late medieval Campine common pool resource institutions with other case studies, such as Norfolk and Schleswig-Holstein, I will try to get to the bottom of the development of access regimes. Who had access to the commons, and can we distinguish an evolution through time? What were the real causes for the Campine access regime in the common pool resource institutions? First, I will examine the broader context of the Campine commons and the factors exerting pressure in the region. Next, the common pool resource institutions, and more specifically the formal institutions prescribing the access rights, will come into the picture. These formal institutions will thereafter be placed into perspective by looking at the informal institutions regulating the access to the commons. Finally, I will look at the conflicts, as well as the eventual equilibrium, concerning access that were characteristic of the Campine area.

I. Vast but fragile | Inclusion and ecology

Only few examples of essentially inclusive CPRIs are known within Premodern Europe. In most cases, the vastness or abundance of common pool resources are considered as an explanation for the implementation of such a system. Because of the low population densities in Sweden, together with the immensity of the Scandinavian forests, all inhabitants of a certain area possessed use rights.³⁸⁴ On the other hand, land or its resources in North-western Europe became increasingly scarce, thus leading to more restrictive regimes. The Low Countries were a perfect example of this. From the Middle Ages onwards, the level of urbanisation and population pressure was exceptionally high. As a result, by the thirteenth century, most commons were privatised and exploited, while the remaining areas with common land were strictly managed and reserved for members of the so-called “marken” or “gemeynen”. Most research has been done on the “marken” in the northern Low Countries, where a select group of farmers held a firm grip on the use rights on the commons.³⁸⁵ Whoever wanted to possess a full membership or access to the commons in “het Gooi” had to own or lease an entire farm, which had rights attached to it. In addition, it was only possible to inherit such a farm if one was the surviving spouse’s eldest son. Although beginning as a relatively inclusive system, since it included the majority of the society during the High Middle Ages, the obligation to inherit the right of access through a privileged farm excluded an increasingly larger share of the population particularly once that population grew. Non-entitled community members were therefore created both by immigration, but especially by the rising number of heirs

384 KERSTIN SUNDBERG, “Nordic Common Lands and Common Rights. Some Interpretations of Swedish Cases and Debates,” *ibid.*, ed. Martina De Moor, Leigh Shaw-Taylor, and Paul Warde (Brepols).

385 Kos, *Van Meenten Tot Marken*, 128-150.

from the community of users which could not inherit a share in the commons.³⁸⁶ This was, however, justified because of the fragility of the common wastelands. Despite their apparent vastness, these sandy soils were only able to support a limited amount of cattle or users, before deteriorating into a sand bowl.³⁸⁷

The Campine area was, ecologically speaking, not that different from its northern neighbours. As mentioned before, over-exploitation through intensive grazing, the collecting of sods or cultivation rapidly led to a degradation from a mixed grass and heather ecosystem to a monotone heathland and eventually to uncovered sand dunes which were blown about and threatened those fields which were productive yet limited (see chapter VIII). In addition, the Campine area was not isolated from external pressures experienced by the other regions within the Low Countries throughout the Early Modern period.

As stated in chapter II, population pressure was high from the thirteenth, but especially fourteenth and fifteenth, century onwards. In addition, this pressure was not relieved by a fundamental late medieval crisis as occurred in most other parts of Europe. In addition, the economic climate was positive as well, and the late medieval era was characterised by an intensive exploitation of the commons. The largest herds of sheep the region was to encounter wandered around while peasants mowed and dug for sods and heather clippings, collected loam and harvested peat. Next, the Campine area, as stated before (see chapter II), was located next to over-populated regions which could have generated streams of immigrants. Finally, the system of partible inheritance was dominant in the region. All these factors have already been suggested by other scholars investigating this region in order to explain why either closed or restrictive access regimes were opted for in a particular region. Nevertheless, as I will advance below, such a regime was not used from the beginning, nor did it become more exclusive later on. First, however, I will discuss the formal access rights that existed in the late medieval Campine area.

II. Vague stipulations | Formal access rights

By the late thirteenth and early fourteenth centuries, the Campine common pool resource institutions became formalised. From that time on sources concerning communal rights and activities were created enabling us to deduce the type of community of users. Who possessed

386 Ibid.

387 Ibid.; HEIN VERA, "... Dat Men Het Goed Van Den Ongeboornen Niet Mag Verkoopen. Gemene Gronden in De Meierij Van Den Bosch Tussen Hertog En Hertgang 1000-2000" (Radboud University, 2011).

access rights before the fourteenth century, however, remains uncertain. Given the fact that the common pool resource institutions had their roots in the feudal system, it has been suggested that the rights to the uncultivated patches of land within domains were reserved for “servi” or “serves” of the local lord. When that system was put under pressure because of the arrival of the territorial overlords and new immigrants, all the interest groups saw the benefit of formalising the rights to use, manage and control the commons (see chapter III).³⁸⁸ The arrival of immigrants and the shift in the balance of power between the older, remaining players, forced them to write down some ground rules and formal institutions. Whether this implied an exclusion of entire groups that had previously possessed rights of use, is unclear however. By drawing official village or seigniorial boundaries and binding use and management rights to specific villages, the group of users could have become more limited. On the other hand, the disintegration of the domain structure could just as well have led to more openness to the different social groups present within the village.

Only one factor might suggest that more extensive groups used larger complexes of common land before the thirteenth century: the few remaining intercommons. In Lancashire, the evolution of intercommons towards smaller and individual commons has been described by William Shannon.³⁸⁹ Within the Campine area some intercommons existed as well, such as the “aard van de zes dorpen” in Lille, Wechelderzande, Gierle, Vosselaar, Beerse and Vlimmeren, the common of Poppel and Weelde and the intercommon of Turnhout-Arendonk in the Land of Turnhout.³⁹⁰ Whether they were a kind of survivor of an ancient system, or whether they were the exception to a general rule of individual village commons, is uncertain. Nevertheless, none of the other villages without an intercommon ever referred to official intercommons existing in a distant past when historical antecedents were popular arguments in court cases.³⁹¹ In any case, the creation of formal institutions, called “gemeynen”, was probably a direct way of dealing with the question of management and to delimit the community of users. There are, however, no indications that either a fundamentally larger or smaller part of society possessed rights to the commons during the feudal period compared to afterwards.

Despite the appearance of clarity of normative sources regarding the community of users, it is often difficult to get a clear image of who was entitled, for historians, as well as historical communities. Who was entitled to the commons according to the fourteenth century charters? Even though all charters granted by the Dukes of Brabant, and most of the feudal and ecclesiastical institutions, refer to a community of users, the normative discourse left

388 STEURS, *Naissance D'une Région*.

389 WILLIAM D. SHANNON, “The Survival of True Intercommoning in Lancashire in the Early-Modern Period,” in *The Rural History Conference*, ed. Richard Hoyle (Sussex: 2010).

390 DE KOK, “De Aard Van Zes Dorpen”; J.E. JANSEN, “Twee Aardbrieven Van Turnhout,” *Taxandria* (1905); LEENDERS, *Van Turnhoutervoorde*; VERBOVEN, *Bos En Hei*.

391 See chapter III on exclusion conflicts.

room for interpretation and caused some serious tensions and conflicts between opposing interest groups during the late Middle Ages. For example, on the 4th of December in 1300, the Duke of Brabant granted the common wastelands to his freedom Oisterwijk in return for a unique payment and eternal monetary rent. He granted these commons to “*hominibus nostris nostre ville d’oisterwijk*”. [] “*Concede hominibus nostris predictis quod hominibus alienis usum possint dicte co[mm]itatem prohibere qua nulli licitum sit perfrui nisi solum hominibus nostril de oisterwijk*”.³⁹²

The “*men of Oisterwijk*” is, however, tricky to interpret. First of all, Oisterwijk was one of the quarters of the bailiwick of ‘s Hertogenbosch which included several villages, hamlets and semi-urban centres. It is, however, very unlikely that the entire quarter was granted this charter, especially when one examines the surface area and location of the common wastelands that were granted.³⁹³



Fig 21 The quarters of 's Hertogenbosch (image derived from Mariou Craane).³⁹⁴

Next, Oisterwijk is a town that had received a freedom charter from the Duke between 1212 and 1230. The centre of Oisterwijk, however, had a more complex structure than a small

392 A free translation: The Duke concedes to the men of his freedom of Oisterwijk [the commons between the limits mentioned within the charter]. He concedes to his men that in case outsiders use [the commons] his associates can prohibit the use by anyone, except those of Oisterwijk. VERKOOREN, *Inventaire Des Chartes Et Cartulaires*. Vol. 1 Vol 1. Nr. 202

393 Ibid.

394 MARLOUS LEONIE CRAANE, “Spatial Patterns; the Late-Medieval and Early-Modern Economy in ‘s Hertogenbosch from an Interregional, Regional and Local Spatial Perspective” (Tilburg University, 2013), 92.

village. It was linked to dependent hamlets or villages, among which Haaren, Belveren, Udenhout, Berkel, Enschoot and Heukelom.³⁹⁵ They are considered an entity, at least when it comes to collecting taxes, since the hearth censuses registered all nucleated centres and Oisterwijk together.³⁹⁶ Does “*our men*” refer only to those living in the town of Oisterwijk or to all the dependent hamlets as well?

In addition, who exactly are the “*homines*”? Are these all the inhabitants or households residing in one geographic area, or are these the “*Gemeine Männer*” who Blickle considers those families owning a farm or piece of land and contributing to the village taxes and burdens?³⁹⁷ Even though it is often considered that such terminology was clear and obvious for the relevant parties, the increasing number of conflicts that appeared centuries later, because of conflicting interpretations of these charters, do suggest otherwise. Even though “*alienis*” could be interpreted either in a very strict or broad manner, it does not explicitly mention the exclusion of a specific subgroup within the village, in the most strict sense of the word. In addition, it does not state that any preconditions must be met before access to the commons could be granted. One had to belong to the community, which could include both the centre and depending hamlets, or just the town or village mentioned by name.

Finally, the byelaws did not provide much extra information except for some small hints that are discussed below. As was demonstrated in chapter III (see figure 19), regulations concerning access were often very limited. All rules that provided a stipulation regarding access to the commons in general, or a specific type of common land, were included in the category access. Nevertheless, the main question as to who the community of users were has never been addressed in the local byelaws. Some byelaws referred to the necessity of contributing to the general village taxes, called “*schot and lot*”.³⁹⁸ In addition, the rules that were included often dealt with very specific questions, such as access to only a limited area of the commons or a type of common pool resource. Finally, these byelaws mostly elaborated on the “*homines alieni*”, that is, outsiders such as members of neighbouring communities or vagabonds. Consequently, it was absolutely clear that non-residents of the village or wandering individuals did not possess access rights.³⁹⁹ Whether subgroups within the village

395 Ibid., 95.

396 CUVÉLIER, *Les Dénombrements*.

397 PETER BLICKLE, *Kommunalismus: Skizzen Einer Gesellschaftlichen Organisationsform* (München: Oldenbourg, 2000).

398 In the village of Westerloo a rule of 1569 states: “everyone who comes to live in the quarter of Westerloo or in the jurisdiction of the ‘buitenbank’ (external law court), will have to contribute to the “*schot en lot*” (general village taxes) and ‘horseman tax’. Those who refuse will be held as foreigners and de facto be excluded from using the commons”. “Iedereen die komt wonen in enig kwartier van de heerlijkheid van Westerloo of onder de buitenbanken die de gemeyn aarden van Westerloo gebruiken, zullen contribuieren in alle schot, lot, ruitergelden etc. indien men weerspannig is zal men hen houden voor buitenlieden de facto geprivéerd van aarden, vroenten en bij overtreding steeds verbeuren 16 stuivers”. LAUWERYS, “Keuren Van Westerloo”.

399 See databases: byelaws

boundaries were excluded or not is therefore challenging to assess. Indirect references do, however, suggest that this was not the case. Cottagers are often explicitly mentioned when it comes to using the commons. For example, Rijkevorsel stated that “Everyone, whoever he or she may be, either plough owners or “cossaten” (cottagers without a plough), are permitted to dig peat for one day every year, without contradiction, and this after the announcement and consent given via the public declaration after Sunday’s mass”.⁴⁰⁰ Concerning the communal rights of landless or poor households, however, the byelaws remain enigmatic.

III. Beyond the normative framework | Het heideboek

Normative or institutional sources are therefore not capable of painting the full picture. Consequently, I will focus on administrative and economic sources, such as the “heideboek” of Zandhoven, in order to supplement the information derived from normative sources. As Tine De Moor has shown for eighteenth-century Gemene Loweiden, theoretical beneficiaries and those actually authorised as community members could diverge fundamentally.⁴⁰¹ The same conclusion can be drawn from the example of the medieval Brecklands in Norfolk. While access to the commons was granted to all peasants, farmers or manorial tenants that purchased the right of fold course, tenants and cottagers were deprived of the possibility of buying such rights from the late medieval crisis onwards. Without changing a single letter of the formal charters or byelaws, the actual access rights were completely transformed and restricted to the lords and their tenants.⁴⁰² Administrative documents such as membership lists, or accounts or indirect evidence via juridical or other economic sources, are the only viable option of getting a glimpse of the day-to-day reality behind the normative framework. For medieval North-western European commons, however, evidence is thin on the ground. While some common pool institutions kept detailed membership lists, others did not, or lost their registers somewhere along the line. Mostly, however, CPRIs that operated alongside

400 Rijkevorsel: “Iedereen wie hij ook zij, een gespan heeft of een cossaat is, zal elk jaar 1 dag turf mogen slaan, zonder meer, na het uitgeven en consenteren bij openbaar kerkgebod”. Herenthout kept it more general and stated that ‘every household of Herenthout will be permitted according to the byelaws to dig peat on the waste lands or commons for two days per person, without one day more’. ‘Elk huisgezin van herenthout zal alle jaren volgens de oude costuimen mogen turf steken op de heide en vroente, twee dagen vor 1 persoon zonder meer’. Geel displays a different perspective, granting access and rights to everybody, however, in terms of the collection of fodder on the waste lands, they did grant a larger share to plough owners than cottagers: ‘Elke ploeg een voerder per week en de keuters per 14 dagen een voerder. De ploegers op donderdag en de keuters op maandag’. ‘Each plough can collect one voeder per week and cottagers every 14 days. Those who plough go every Thursday, while cottagers go on Monday’. RAA, OGA, Herenthout, 3, byelaw. ; RAA, OGA rijkevorsel, 8, byelaw. ; DE LONGÉ, *Coutumes*; ERNALSTEEN, “Keuren Van Gheel”.

401 DE MOOR, “Avoiding Tragedies”.

402 POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550*; RHEINHEIMER, *Die Dorfordnungen*; ALLISON, “The Sheep-Corn Husbandry”.

village governments or introduced restrictive regimes, were forced to write down the preconditions for access rights and therefore had to register the names of the members.⁴⁰³ Most Campine “gemeeyntes”, on the other hand, did not. Luckily, however, one account has survived in the local archives until now, that of the village of Zandhoven.



Fig 22 Map of Zandhoven in 1771-1778 by Count de Ferraris.⁴⁰⁴

Zandhoven was a village located at the heart of the Campine area, next to the Land of Turnhout. Consisting of 81 households, (see figure 23) it was rather small compared to the median sixteenth century Campine village of 122 households, but it had a larger regional importance.⁴⁰⁵ Enjoying the privilege of having the main “hoofdbank” and appellate court next to Antwerp, a large part of the surrounding area relied on the statutes of Zandhoven and lower village courts had to come to Zandhoven for juridical advice and guidance.⁴⁰⁶ Rules applied in Zandhoven were therefore directly adopted by 16 villages, while its juridical range

403 CASARI, “Gender-Biased Inheritance Systems Are Evolutionary Stable: A Case Study in Northern Italy in the XII-XIX Century”; Kos, *Van Meenten Tot Marken*.

404 The maps by Ferraris have been recently scanned on high resolution and can be accessed on: http://www.kbr.be/collections/cart_plan/ferraris/ferraris_nl.html [10/10/2013]

405 This average is calculated thanks to the survey of hearth sizes in 1526 that were collected by Cuvelier including all Campine villages from the categories Geel, Herentals, Land of Arkel, Land of Bergen op Zoom, Land van Rijen, “Vrijheid” of Hoogstraten, “Vrijheid” of Turnhout and Zandhoven. CUVELIER, *Les Dénombrements*.

406 See chapter VI for extra information. E. SABBE, “De Hoofdbank Van Zandhoven,” *Tijdschrift voor Geschiedenis en Folklore* 7, no. 1-2 (1954); VAN DIJCK, “Het Landbouwleven”.

of influence covered over 60 villages within the Campine area.⁴⁰⁷ Whether this was the case for their attitudes to inclusion and exclusion remains unclear, but the likelihood of Zandhoven being an absolute anomaly is rather small.

During the sixteenth century, the village government of Zandhoven created an account wherein all earnings from the common wastelands were registered.⁴⁰⁸ First they listed the names of the inhabitants who paid the annual rent to use the commons. This practice is later on described by different byelaws and is mentioned in court records. The “gemeynntenaren” or common inhabitants as they are called, were required to contribute to the village taxes and burdens, if they wanted to use the commons. The byelaw of Westerlo, for example, stated in 1569 that “everyone who comes to live in the quarter of Westerlo or in the jurisdiction of the “buitenbank” (external law court), will have to contribute to the “schot en lot” (general village taxes) and “horseman tax”. Those who refuse will be held as foreigners and de facto be excluded from using the commons”.⁴⁰⁹ A reference to “schot and lot” was not found, but the “heideboek” did refer to a general tax that needed to be paid. This specific tax, however, appeared to have been very low. A household was either exempt from paying, or contributed 0.5 or 1 “braspenning”.⁴¹⁰ In 1559, the start of the account and the only year that the “heidecijns” was registered, one “viertel” (79.6 litre) rye cost 71 “groten”.⁴¹¹ Knowing that 1 “braspenning” corresponds with 2.5 “groten”, it becomes clear how minimal this amount was.⁴¹² Surprisingly, only 23 names are registered to have paid this “heidecijns”. All of them apparently owned at least a house or even a full farmstead. 13 of the 23 contributors owned a “stede” or house, 9 a “hoeve” or farmstead, while 1 was undefined. 3 households, possessing farmsteads or houses as well, were listed, but did not contribute at all. At first sight this suggests that only a limited

407 The byelaws of Zandhoven were directly adopted by: Zandhoven, Viersel, Massenhoven, Halle, Broechem, Oelegem, Ranst, Rillegem, Borsbeek, Westmalle, Zoersel, Oostmalle, Pulle, Pulderbos, Grobbendonk, Bouwen en Olmen. In addition, the byelaws were closely linked with those of Baarle-Hertog, Sprundel, Groot en Klein Zundert, Warehouse, Nispen, Rozendaal, Meerle, Meir, Minderhout, Buitenbank of Hoogstraten, Weelde, Wuustwezel, Rijkevorsel, Vosselaar, Beerse, Rode-bij-Turnhout, Kasterlee, Gierle, Halle, Lille, Poederlee, Zandhoven, Massenhoven, Lichtaart, Grobbendonk, Viersel, Vorselaar, Oostmalle, Wechelderzande, Zoersel, Vlimmeren, Brecht, Deurne, Borsbeek, Broechem, Hemiksem, Merksem, Oelegem, Schilde, Schoten, Wommelgem, Emblem, Millegem, Ranst, ‘s-Gravenwezel, Wijnegem, Herselt, Herenthout, Kesseland Olmen. SABBE, “De Hoofdbank”. M.W. VAN BOVEN, “De Verhouding Tussen De Raad Van Brabant En De Hoofdbanken Inzake De Appelrechtspraak in Civiele Zaken,” in *Hoven En Banken in Noord En Zuid*, ed. B.C.M. Jacobs and P.L. Nève (Assen: Van Gorcum & Comp., 1994); R. VAN UYTVEN, “Landen En ‘s Hertogenbosch: De Hoofdvaart,” in *Brabants Recht Is... Opstellen Aangeboden Aan Prof. Mr. J.Pa. Coopmans Ter Gelegenheid Van Zijn Afscheid Als Hoogleraar Nederlandse Rechtsgeschiedenis Aan De Katholieke Universiteit Brabant*, ed. Th. E.A.; Coopmans Bosman, J.P.A.; Jacobs, B.C.M., et al. (Assen: Van Gorcum, 1990).

408 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

409 “Iedereen die komt wonen in enig kwartier van de heerlijkheid van Westerlo of onder de buiten banken die de gemeyn aarden van Westerlo gebruiken, zullen contribuieren in alle schot, lot, ruitergelden etc. indien men weerspanning is zal men hen houden voor buitenlieden de facto gepriveerd van aarden, vroenten” LAUWERYS, “Keuren Van Westerloo”.

410 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

411 Data Prices and wages, Robert Allen: <http://www.iisg.nl/hpw/data.php>

412 K. LEMMENS, “Rekenmunt En Courant Geld,” *Jaarboek van het Europees Genootschap voor Munt- en Penningkunde* (1998).

part of the community of Zandhoven could enter the commons. As figure 23 shows, even in 1526 81 households were counted in the village of Zandhoven.

Village	Inhabited houses	Inhabited houses with 2 hearths	Empty houses	TOTAL amount of inhabited houses
Zandhoven	81	/	4	81

Fig 23 Number of houses in Zandhoven in 1526.⁴¹³

Nevertheless, the account continues and lists all the names of those who either collected heather, sods or peat, or paid to put a number of cattle units on the common wastelands. This way, we can reconstruct in which way families employed the common wastelands, but also how many users actively used the commons. I have come to the conclusion that every household that paid to collect heather and peat, or to graze a piece of cattle on the common wastelands, can be labelled “active” participants and entitled members of the community of users. As figure 24 indicates, the number of users fluctuated a bit, but by and large entailed around 79,5 names on average. Considering that the household is the basic entity, and no more than one member per family would pay for the commons, this more than likely refers to 79.5 households. Since tax registers for Zandhoven are missing, we cannot link the names in the “heideboek” to any source that could locate the active users. Consequently, I cannot identify the community of users recorded by the “heideboek”. It is therefore possible that outsiders paid a sum in order to get their right of passage. Tine De Moor found for the “gemene Loweiden”, that “until the middle of the eighteenth century, non-commoners could request the management of the common to let some of their livestock graze for a certain period of time”.⁴¹⁴ To avoid unstable levels of exploitation, the managers of the “gemene Loweiden” attracted outsiders. This was, however, a temporary policy and occurred during the eighteenth century in Flanders when the commons had an entirely different function for the majority of the community than in the Campine area and a substantial sum had to be paid to enter the commons. As a result, only a small percentage of the village community actively used their right to use the commons.⁴¹⁵

In Zandhoven this was not the case, and the byelaws seem to suggest that outsiders were not given a warm welcome. Fines for trespassing animals on the common wastelands were twice as high for foreigners according to the byelaw of Zandhoven.⁴¹⁶ In addition, several Campine

⁴¹³ Source: CUVELIER, *Les Dénombrements*.

⁴¹⁴ DE MOOR, “Avoiding Tragedies”, 13.

⁴¹⁵ Ibid.

⁴¹⁶ G. DE LONGÉ, “Coutumes De Santhoven, De Turnhout Et De Rumpet,” in *Coutumes Du Pays Et Duché De Brabant: Quartier D’anvers*, ed. G. De Longé (Brussels: Gobbaerts, 1870-1878); F. VERBIST, *Costuymen Van De Hoofdrechtbank Van Zandhoven, Uitgave 1664. Keuren En Breuken, Uitgave 1665* (Zandhoven: Gemeentebestuur Zandhoven, 2007).

villages introduced rules to avoid inhabitants of neighbouring villages from entering the commons. In Retie, for example, the byelaw states: “Nobody from Retie or other non-privileged individuals will take, bring, drove or feed any cattle or sheep onto, or on, the commons of Retie belonging to anyone outside the village or an unprivileged person, on the penalty of 3 karolus gulden”.⁴¹⁷ In addition, the account never mentions the origin of the contributors, nor does anybody have to pay a different sum. It is therefore not impossible that outsiders paid to use the commons, but I consider it very improbable since the amount of users corresponds perfectly with the total population of Zandhoven.

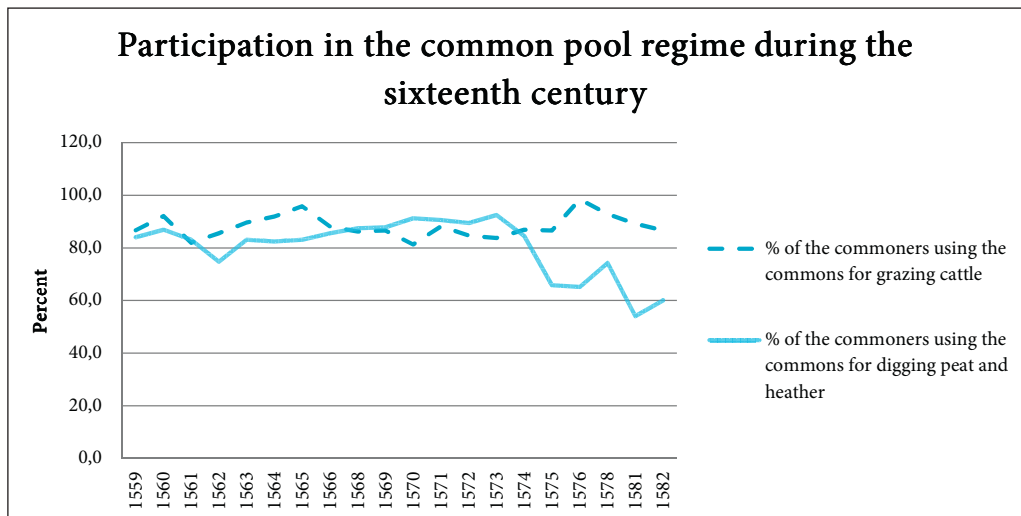


Fig 24 Number of paying members for the common wastelands in Zandhoven between 1559-1582.⁴¹⁸

As 79.5 households were granted access to the commons, this uncovers an apparent paradox about the inclusiveness of the Campine commons. While the normative sources tend to stress the necessity of contributing to village taxes and burdens in order to receive access to the commons, on average 98 per cent of Zandhoven belonged to the community of users and actively enjoyed their privileged position.⁴¹⁹ This is all the more remarkable since the ecological benefits were not free. Despite an absolute silence about entrance fees or contribution taxes in the local byelaws, the “heideboek” of Zandhoven listed the earnings made from the community of users collecting heather and peat or grazing cattle (see figure 25).

417 “Niemand van binnen Retie of andere ongeprivilegieerde zullen geen hoornbeesten of schapen van iemand buiten of andere ongeprivilegieerde aan nemen, brengen, stouwen, drijven, voederen of weiden op enige gemeynte van Retie of zulks laten doen, op boete van 3 karolus gulden”. HELSEN, “Het Dorpskeurboek Van Retie”.

418 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

419 CUVELIER, *Les Dénombrements*. RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

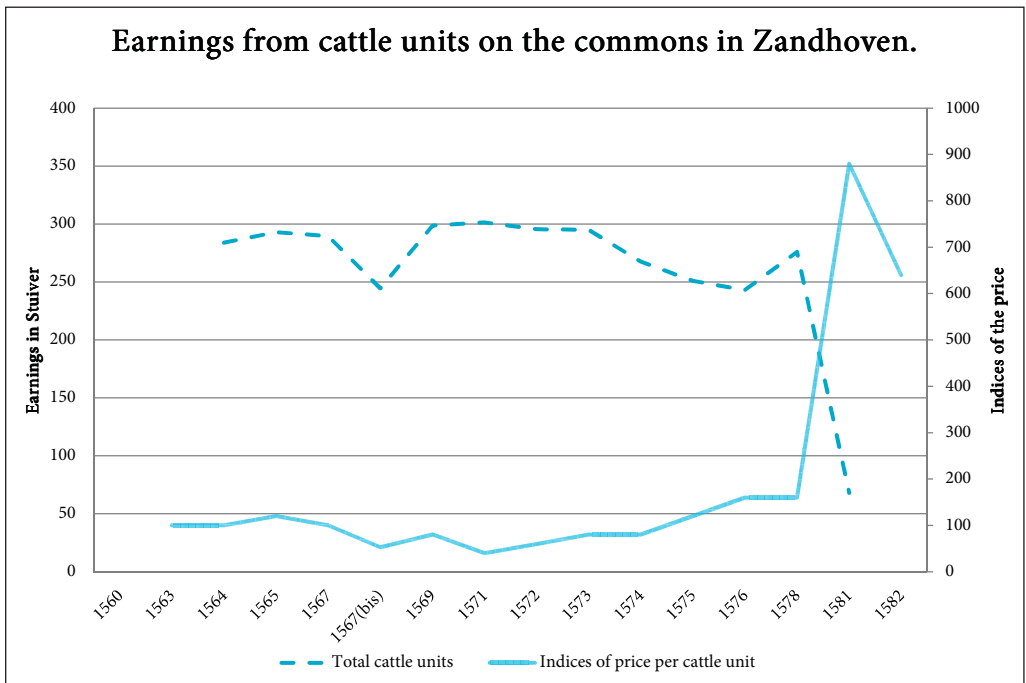
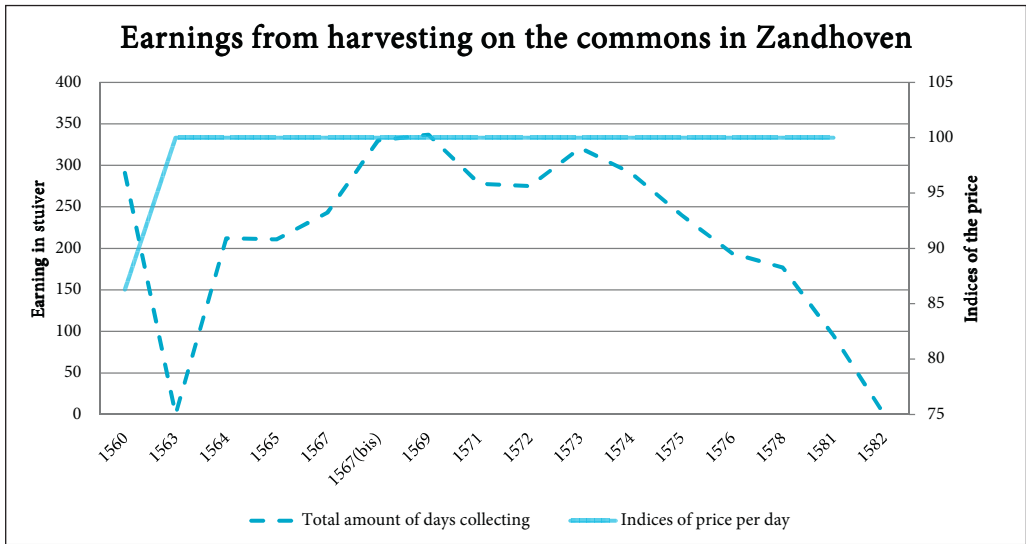


Fig 25 Earnings from harvesting and grazing on the commons by community of Zandhoven, 1559-1582.⁴²⁰

On average a family had to pay 0.6 stuiver or 1.2 groten for every cattle unit they placed on the commons.⁴²¹ In addition, 1.75 stuiver or 3.5 groten was required for a day of collecting heather and peat. Considering that 71 “groten” equals a “viertel” rye⁴²², the price for using the

420 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

421 No information about the composition of these cattle units is given in the account itself. It was deduced, however, via information regarding herd compositions and numbers of Wuustwezel and Wortel, that one horse or cow, or 4 sheep formed one head or unit. SAA, 5, condition.

422 1 viertel rye correspond with 79.6 litre, Data Prices and wages, Robert Allen: <http://www.iisg.nl/hpw/data.php>

commons was not that high. Nevertheless, introducing monetary fees could have the effect of excluding some segments of society. If families were either unable or unwilling to pay, it could potentially restrict the poorest part of the community in obtaining access to the commons. After all, a large part of rural communities within the Campine area could be labelled “poor” during the sixteenth century. According to Limberger, between 20–25 per cent of an average rural, Brabant community was exempt from taxes because of their financial status.⁴²³ If the byelaws were therefore strictly applied, between 16 and 20 families would have been excluded. Even so, the registration rate in Zandhoven approached 100 per cent, and it is certain that a quarter of society was not normatively or practically excluded from using the commons. Consequently, either the fiscal poor were exempt from paying the actual sum, or the village dues were taken care of by the local Holy Ghost table. The findings of Hadewijch Masure and Eline Van Onacker who have studied the Campine poor relief support the latter scenario. In contrast with coastal and inland Flanders, the local Holy Ghost tables (in Rijkevorsel for example), were able to distribute between 47.65 and 62.60 litres of rye per household. If we take only the poor households into account, each family could count on 190 litres or more. Most donations were distributed in kind, but monetary sums were also registered. It is therefore possible that the families who were unable to pay the village dues received help from the local poor relief system. Excluding families from the commons would, after all, increase the possibility that those families would become dependent on poor relief.⁴²⁴ Birtles described this strategy as follows: “property owners with an interest in common land preferred to allow certain use rights over their commons and wastelands rather than face the alternatives, which required far more trouble and expense to them personally”.⁴²⁵

Of course the question of representativeness remains a pressing one. Even though Zandhoven was a rather characteristic village, with byelaws and a juridical system adopted throughout a larger area, these specific rules could nonetheless be unique for Zandhoven.⁴²⁶ In addition, the “heideboek” only offers a limited timeframe and limits the opportunities of analysing long-term evolutions. Unfortunately, no other administrative sources have survived from the sixteenth century.

423 LIMBERGER, *Sixteenth-Century Antwerp*

424 VAN ONACKER, “Leaders of the Pack?”

425 SARA BIRTLES, “Common Land, Poor Relief and Enclosure: The Use of Manorial Resources in Fulfilling Parish Obligations 1601–1834,” *Past and Present* 165, no. 1 (1999): 78.

426 SABBE, “De Hoofdbank”; VAN DIJCK, “Het Landbouwleven”.

IV. Charters and sentences | A glimpse behind the curtain of normative discourses

Normative and administrative sources therefore paint a picture of extremely inclusive, solidary even, common pool resource institutions. All interest groups were granted access to the commons. As the “heideboek” of Zandhoven indicated, this regime lasted at least until the end of the sixteenth century. The question remains, however, was there not more to it than meets the eye? Prudence is, after all, called for, as normative and even administrative sources tend to hide conflicts and discord concerning the general rules. Are conflicts and discussions concerning inclusion and exclusion not hidden behind these types of sources? For the Brecklands in the county of Norfolk, Nicola Whyte showed that a restrictive reality was hidden behind a system of fold course which granted the local tenants the opportunity to purchase a licence to the common arable and waste. Despite the theoretical opportunity for peasants to buy their way in to the commons, the lords reserved all licences for their own manorial tenant farmers. None of the normative sources, however, give insight into this sixteenth century tendency. Only when the manorial lords were impeached for this practice before the manorial courts does the system become apparent for the historian. The court records reveal that, not only were the tenants informally excluded, they also didn’t receive any support, either from the courts, nor via complaints and requests to the king in order to turn these restrictions around.⁴²⁷

As a result, both charters (as the final stage of a conflict), and court sentences, were analysed in order to uncover any underlying forms of discord or conflict. For the earlier period, charters are the only sources available to obtain a glimpse into conflicts and tensions. Showing only the outcome, with little reference to the conflicts themselves and, in addition, being created by lords or institutions such as abbeys, these sources need to be analysed quite critically. After all, they do not portray a neutral picture of village life from the bottom up. Nevertheless, they are the only sources available and offer us a view of the village communities growing to full stature during the thirteenth and fourteenth centuries. During the fifteenth century, charters lost their function as documents conveying the resolution of conflicts and merely recorded transactions, wills and ordinances of a more general nature. Despite the problems linked with charters that were granted by ecclesiastical and ducal institutions thereby giving a rather one-sided and limited view of conflicts, they are nonetheless valuable sources to be taken into account. In order to limit the amount of charters considered in this study, only those ducal charters analysed by Verkooren in the series “Chartes et cartulaires des duchés de Brabant et de Limbourg et des Pays d’Outre-Meuse” and the clerical charters of the abbey of Tongerlo

427 ALLISON, “The Sheep-Corn Husbandry”; WHYTE, *Contested Pasts*.

until the end of the fifteenth century have been analysed.⁴²⁸ In this way, the perspective of both the sovereign lord as well as an ecclesiastical institution can be analysed. Moreover, the sphere of influence of both institutions covers, by and large, the entire area of research. The complete set of charters will be discussed in more detail in chapter VII.

The search for conflicts within the Campine area is not an easy one. While many seignories in England left manorial court records in one form or another, the situation in the Duchy of Brabant is rather dire (see chapter VII). The only two juridical levels which have left sources containing traces of conflicts, tensions and conflict resolutions were the Ducal and therefore sovereign one, together with clerical institutions such as the abbey of Tongerlo. Before the end of the fifteenth century, however, these sentences contain barely any conflicts that are useful.⁴²⁹ The majority of the cases dealt with inheritance conflicts, settlements of debt, and other monetary questions. By the end of the sixteenth century, the Eighty Years' War (1568-1648), and especially the Fall of Antwerp (1585), the political and socio-economic structure of the Campine area and the Duchy of Brabant had changed drastically. It is for this reason that I have opted to end the period of research around 1580. As a consequence, three sample periods were chosen between 1498 and 1580, covering 55 years.⁴³⁰ Because of this strategy, 412 sentences were taken into account, covering a wide range of conflicts originating in and around the Campine area. The sentences from the French-speaking part of the Duchy were not taken into account and neither were the conflicts from the most southern part of the Duchy. This core region of the Duke of Brabant was after all, a fundamentally different social agrosystem and could distort the picture if included in the analysis.⁴³¹ Of these 412 cases, 204 were considered for a thorough analysis, since the other cases contained only a very summary sentence without further information (see chapter VII). Like the charter collection, however, the parties involved and conflicts are discussed more thoroughly in chapter VII.

From this entire corpus of juridical sources, 30 were eventually selected for this particular chapter. All of them stem from the sentences registers of the Council of Brabant between 1494 and 1552. These 30 cases deal exclusively with the matter of inclusion or exclusion from the commons, that is specifically the ways and criteria through which individuals or groups are included or excluded and made "other", and can therefore advance our knowledge concerning the access regime as perceived within the Campine communities themselves (see appendix 1).

428 See database charters and sentences for a full overview of the records that have been used. VERKOOREN, *Inventaire Des Chartes Et Cartulaires*; A. ERENS, *De Oorkonden Der Abdij Tongerlo*, 4 vols. (Tongerlo: St.-Norbertusdrukkerij, 1948). AAT, Section I.

429 RAB, Conseil de Brabant, Archives of the registry, General sentence registers

430 Namely: 1498-1517, 1529-1555, 1574-1580. The choice of these sample years in particular was based on the logic of the order of the archives.

431 NICOLAS DE VIJLDER, "A Macroeconomic Analysis of the Land Market in the County of Flanders and the Duchy of Brabant" (paper presented at the XIVth World Economic History Congress, Stellenbosch, 2012).

V. Portrayed as outsiders | Tenant farmers

Did all interest groups within the Campine area possess and maintain their access rights to the commons as the normative and administrative documents suggested, or was inclusion a more contested issue during the later Middle Ages? Thanks to the juridical sources, it becomes clear that the access of certain interest groups was far from evident. First, tenant farmers of large ecclesiastical institutions, or urban burghers leasing substantial farmsteads and land, were targeted by the “gemeyne ingezetenen en geburen” of certain Campine villages.⁴³² In some cases, such as Kontich near Oisterwijk for example, the “gezworenen” or sworn councillors were the ones leading the charge against the tenant farmers.⁴³³ These tenant farmers were far from being small peasants leasing a plot of land or farmstead. They can be considered to be large land users, leasing full farmsteads and land, not from their neighbours or fellow peasants, but from large landowners originating or residing outside the village or even region.⁴³⁴ While some of the tenants could not be identified, most cases mentioned both the names of the tenants and their landlords. Most of them leased their estates from ecclesiastical institutions such as the abbey of Postel and Sint Jan’s in ’s Hertogenbosch, while others were “poorters” or burghers from cities such as ’s Hertogenbosch themselves.⁴³⁵ Tenants were, on many levels, the “odd man out” within Campine communities.

By leasing enormous plots of land, such as the tenant farms of Tongerlo did (see figure 26), these farmers were giants among dwarfs. Even though the Tongerlo farms probably outshone all other tenant farmers within the region, figures of the ducal tenants show that even the smaller leaseholders possessed farmsteads double or triple the size of the average Campine peasant, who generally owned less than 5 hectares of land and practically never over 10 hectares (Figure 27). According to a few remaining lease contracts, access to the commons was one of the explicitly mentioned benefits.⁴³⁶ Moreover, the conflicts show that, at least prior to the court case, these tenants actually did use the commons together with their opponents.⁴³⁷

432 Translation: ‘common inhabitants and neighbours.’

433 RAB, VB, 598, 68 (1549) Oisterwijk.

434 For more information about tenant farmers see chapter IV.

435 Meesters godshuis van Postel (zommeren) RAB, VB, 553, 10, (end of 15th century), Zommeren.; hoevenaer en leenman in Deurne RAB, VB, 558, 40 (1508) Deurne.; Pachter (Vroenhoven) RAB, VB, 561, 16 (1510) Vroenhoven.; pachters eppegem RAB, VB, 565, 81, (1516) Eppegem.; kerkmeesters van ’s Hertogenbosch (stiphout) RAB, VB, 581, 48 (1526) Stiphout.; Poorter ’s Hertogenbosch (Schijndel) RAB, VB, 586, 94 (1533) Schijndel.; Fabrieksmeesters Sint Jan’s RAB, VB, 581, 48 (1526) Stiphout, Rentmeester Postel (Kerkkasteel) RAB, VB, 583, 274 (1535) Kerkkasteel.

436 ELINE VAN ONACKER, “Coqs De Villages or Ugly Ducklings? Campine Tenant Farmers and the Village Community,” in *Rural History Conference* (Bern: 2013).

437 RAB, VB, 553, 10 (15th century) Zommeren.; RAB, VB, 558, 40 (1508) Deurne (NL); RAB, VB, 561, 16 (1510) Vroenhoven.; RAB, VB, 565, 81 (1516) Eppegem.; RAB, VB, 581, 48 (1526) Stiphout.; RAB, VB, 586, 94 (1533) Schijndel; RAB, VB, 585, 198 (1535) Stiphout.; RAB, VB, 583, 274 (1535) Kerkkasteel.; RAB, VB, 598, 68 (1549) Oisterwijk.; RAB, VB, 598, 13 (1547) Schoten.; RAB, VB, 599, 37 (1550) Oisterwijk.

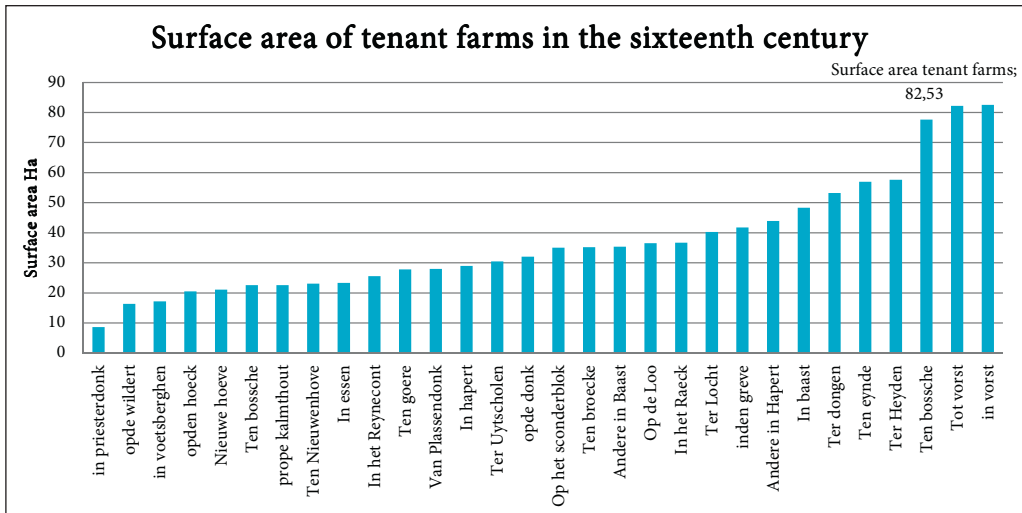


Fig 26 Farm surface areas of the tenant farms of Tongerlo in the regions Kalmthout, Tongerlo and Hapert in 1510. Source: AAT, Section II, 292-293.

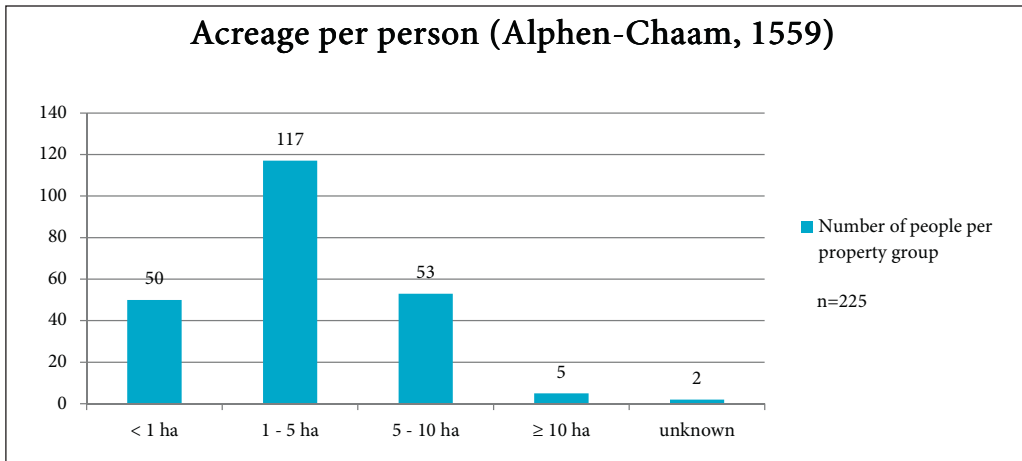


Fig 27 Relative distribution of immovable wealth in Alphen-Chaam, 1559, analysed by Eline Van Onacker.⁴³⁸

Nevertheless, in at least ten villages this type of tenant farmers' right to use the commons was disputed by the village community (see appendix 1). The characteristics of the disputes and the discourses that were used were remarkably similar. First of all, the "gemeyne ingesetenen" had to establish that they were the core community and possessed the right or privilege of using the commons. They therefore referred to the moment they had received their use rights or the benefactor who had granted them those rights. For example, the community of Vroenhoeven pleaded that "in the year of 1307 on Saint Servaes day, Lord Willem of Cramendonck and Lady Elizabeth his wife had legally sold to the inhabitants and their heirs of the hamlet called Bundel by name and surname in a letter their common hay meadows or marsh located in

438 AAT, Section II, 689. Register van het dorp Alphen voor de 100ste penning, 1559-1578

Bundel with all the wood that grew there”.⁴³⁹ The same argument was put forward by the community of Stiphout, who stated that they, as the inhabitants of Stiphout, were granted their “gemeynthe” and not “any other folk”.⁴⁴⁰ Only the members of the community that was mentioned by name consequently received the privilege. In addition they stressed that they were “the meesteren and proprietarissen vander gemeynthen”.⁴⁴¹ As masters and owners of their CPRI, they were therefore entitled to define who was a member of the community of users and who was not. All communities pressing charges against tenants had a very clear-cut idea about the characteristics of those entitled. First of all, members had to contribute to the village burdens, called “schot and lot”, as was mentioned in the byelaws as well. Next, one had to contribute to the “voorlijf”, or annual rent, that had to be paid to the lord, because he still possessed the bare ownership. The community of Stiphout stated that “the inhabitants and landowners of Hoochstrijpe had from ancient times paid the aide and common burdens”.⁴⁴² In addition, every member had to carry out common tasks, such as maintaining the commons, boundaries and fences, planting trees and hedges or clearing out the brooks.⁴⁴³ Finally, one had to live inside the village boundaries. When village communities were granted use rights boundaries were demarcated by markers or poles. Only those families or farmsteads that were located within these physical limits were entitled to the common waste lands.⁴⁴⁴ Both the obligation to contribute to taxes, as well as the requirement to live inside the village boundaries, can be considered surprising. In the case of Zandhoven, for example, the fiscal poor were exempt from paying and could maintain their privilege. They were probably considered “deserving poor” or members of the community because of the other requirements, while tenants were not. Similarly, a strong attachment to physical and strict boundaries can be seen as a bit dubious. The same type of Campine villages, after all, used exactly the opposite argument in the Council of Brabant when it came to conflicts concerning boundary disputes. While village governments demanded the introduction of and compliance with strict and hierarchal boundaries, the “gemeyne ingesetenen” replied that crossing the boundaries with herds of cattle was their ancient privilege and they were unaware of the existence of strict demarcations.⁴⁴⁵

439 “Inden jaere 1307 op sint Servaes dach heer Willeme heere van Cramendonck ende vrouwe Elizabeth sijne huysvrouwe hadden wettelijck verkocht den ingesetenen van Bundel bij naeme ende toename inden brieve daer af sijnde ende huere erfgenamen huere gemeyne beemde oft broeck gelegen tot Bundel met allen den houte dat inden voorschreven weyde oft broecke wassen was”. RAB, VB, 561, 16 (1512) Vroenhoven.

440 “Gemeynthe van stiphout waere gegeven ende gegundt geweest die ingesetenen van stiphout ende nyet eenige andere luyden van enige andere dorpen”. RAB, VB, 585, 198 (1535) Stiphout.

441 “Masters and owners of the commons”. RAB, VB, 585, 198 (1535) Stiphout.

442 “De ingesetenen ende gegueden van Hoochstrijpe hadden van alle ouden tijden die bede ende andere gebuerlijcke lasten gegeven ende betaelt gehadt ende moeten gheven ende betalen”. RAB, VB, 585, 198 (1535) Stiphout.

443 RAB, VB, 585, 198 (1535) Stiphout.

444 RAB, VB, 561, 16 (1512) Vroenhoven.

445 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

Despite some apparent paradoxes, in this particular case the rules for belonging to the community were clear for the “gemeyne ingesetenen”. According to them, this particular type of tenant farmer did not meet all conditions prescribed. One village in particular made a very extensive case against the tenant farmers. This court case is one of the most elaborate and revealing documents to have survived in the sentence registers of the Council of Brabant. Here, the arguments are not only listed as a kind of summary, but the entire plea was written down. The conflict arose in 1535 between the “gemeyne ingesetenen” of Stiphout and the tenants of the “fabrieksmeesters” of Saint John’s in ’s Hertogenbosch. The tenants had won a court case against the common inhabitants of Stiphout in 1526, when they pleaded to maintain their common rights on the common waste lands of Stiphout. The common inhabitants, however, lodged an appeal before the Council of Brabant to re-evaluate this decision. As stated before, they marked themselves out as the community who received the privilege to use and govern the common of Stiphout. It was granted to them alone and “not to any other folk of other villages”⁴⁴⁶. According to Stiphout, the tenants belonged to the neighbouring hamlet of Hoochstrijpe which was under the jurisdiction of Aerle rather than their own: “It was truthful, very well-known and publicly known that the inhabitants of Hoochstrijpe and the private plots of land that were located there did not resort under the parish, justice or court of Stiphout, but under the parish of Aerle”⁴⁴⁷. As a consequence, “the inhabitants and landowners of Hoochstrijpe had from ancient times paid the aid and common burdens, not with those of Stiphout, but with those of Aerlebeke”⁴⁴⁸. The evidence of this was to be found in the rent register of the Duke of Brabant. If it were the case that the tenants and their jurisdiction would have contributed, the rent register would have contained the formula: “in effecte vicum de stiphout et eorum consortes, dwelck daer nyet en stont maer alleenlijck aldus vicum de stiphout”⁴⁴⁹. As governors of the commons, the community of Stiphout could “appoint every year two jurors who had the right, power and burden to maintain the appropriate use of the commons and therefore prohibit the arrival of foreign people and animals”⁴⁵⁰. In the village of Mierlo in 1436, a similar case of trespassing by foreign people was brought before court, which ruled in favour of the village of Mierlo. Finally the “gemeyne ingesetenen” of Stiphout

446 RAB, VB, 585, 198 (1535) Stiphout

447 “Dat het waerachtich waere notoir ende oepenbaer dat die ingesetenen van hoochstrijpe ende die gronde van erven aldaer gelegen ende particuliere persoenen toebehoiren nyet en waeren gelegen noch resorterenden onder die prochie, justicie oft dingbanck van stiphout maer onder die prochie van Aerle”. RAB, VB, 585, 198 (1535) Stiphout

448 “De ingesetenen ende gegueden van Hoochstrijpe hadden van alle ouden tijden die bede ende andere gebuerlijcke lasten gegeven ende betaelt gehadt ende moeten gheven ende betalen [] nyet met die van Stiphout maer met ende onder die van Aerlebeke”. RAB, VB, 585, 198 (1535) Stiphout.

449 “Indien mede gericht inde gemeynte daer questie om waere dwelck neen zoe soude opden voorschreven chijsboeck gestaen hebben ende moeten staen aldus in effecte vicum de stiphout et eorum consortes dwelck daer nyet en stont maer alleenlijck aldus vicum de stiphout”. “In case they were entitled to the common which was the cause of the dispute, the rent register would have listed “in effecte vicum de stiphout et eorum consortes”, which it did not, but just “vicum stiphout””. RAB, VB, 585, 198 (1535) Stiphout

450 “Te stellen alle jaere twee gezworenen macht ende last hebbende die voorschreven gemeynte dbehoirlijcke gebuyck te verzorgen ende donbehoirlijcker gebruik te verhoeden ende die vreemde persoenen ende beesten daer op comende te calengieren”. RAB, VB, 585, 198 (1535) Stiphout

stated that the tenants “did not have the right to the commons, as proven by the authentic letter of the bailiff and vassals of 1446”.⁴⁵¹ The communities of Vroenhoven and Schijndel used the same arguments, but added a more symbolic expression of foreignness of the tenants. The commons were located within “the limits and poles prescribed by their charter, which excluded the tenants”.⁴⁵² Consequently, the tenants were portrayed as outsiders, individuals living at the margins of society in both a literal and figurative sense. The tenants belonged either to a neighbouring community or, worse, were linked to urban or regional institutions rather than the local village community. Remarkably, village communities did acknowledge the enduring presence of tenant farmers on the commons. Nonetheless, their access rights were granted as a kind of favour and not because of any official or formal charter, which was granted to the village communities. The community of Vroenhoven made the argument as follows: “the use [of the commons] by the plaintiffs (tenants) followed only from a plea and the consent of the defendants (community of Vroenhoven) for a short time span or because of clandestine use”. Possessing property in the hamlet “does not imply a lawful possession, privilege or use right for the owners and tenants nor their ancestors in the common hay meadow”.⁴⁵³

The tenant farmers obviously had a completely different opinion and, therefore, definition of membership. According to the tenant farmers, leasing farms held the same right to the commons as renting or owning an estate. For example, Peeters Vanden Berge, tenant of a farmstead in Bundel under Vroenhoven, stated that “the possession and use of the hay meadow called Vroenhoven meadow, is a possession of his and his ancestors by means of their lease, which they have had for over 40 years and as long as there is no memory to the contrary”.⁴⁵⁴ The tenants of Sint Jans in ‘s Hertogenbosch, in addition, stress the fact that they used the commons “eensamentlijk metten voorschreven ingesetenenen van Stiphout”.⁴⁵⁵ The fact that one leases from a citizen or ecclesiastical institution was not considered as an obstacle. In addition, the tenants always stress that they did contribute to the village burdens. For example, the tenants of the abbey of Postel in Kerkkasteel elaborate on this matter. Here the conflict arose between Kerkkasteel and the tenants of Postel, whom they considered to be part of Loon, whose jurisdiction had no possession in the commons according to the community of Kerkkasteel.

451 RAB, VB, 585, 198 (1535) Stiphout

452 “Dat zij [] gemainteneert worden inde possessie vander heyden, broecken ende gemeynen van Schijndel gelegen bynnen die limieten ende palen inde brieven van huere vercrijge gespecificeert met seclusen vanden voorschreven impetranten oft zijne pachters”. RAB, VB, 586, 94 (1533) Schijndel.

453 “Sulcken gebruyck als doe voorschreven impetrant mochte hem seggen te hebben alleene waeren geweest vuyt beden tot zijn versuecken ende bij consente vanden voorschreven gedaeghden voere een cleyne oft cortten tijt oft anderssins heymelic”. “Niet bevonden en soudon worden dat die voorschreven impetranten oft hueren pachteren huys of hoff hadden onder buedel dat oick hij oft zijn pachteren noch sijn voorsaten oft huere pachteren eenige wettelijke possessie oft gebruycke gehadt hadden”. RAB, VB, 561, 16 (1512) Vroenhoven.

454 “Gemainteneerd in de possessie ende gebruyck vanden broecke aldaer geheeten vroenhovenbroeck in welke possessie hij ende sijne voorsaten bij middele van huere pachtingen over 40 jaeren ende soe lange meer vanden behinsele oft contrarie daer af egheen memorie en waere”. RAB, VB, 561, 16 (1512) Vroenhoven.

455 “Together with the inhabitants of Stiphout”. RAB, VB, 581, 48 (1526) Stiphout.

However, the tenants claimed that Kerkkasteel and Loon “bought the commons together and at the same time”.⁴⁵⁶ Therefore, “those of Loon have contributed and paid for the so-called rent, and were thus entitled to the common”.⁴⁵⁷ Even the question of location was mentioned here and does shed some light on the matter of village boundaries. The tenant, after all, stated that “they were resident and that their houses were located between the poles and limits”. In addition, “they were inhabitants of Loon, even though two houses were indeed located outside the boundaries”. They were, however, “the eldest houses or hearths of Loon and just like the other tenants they contributed yearly like those of Loon to the rent that Loon and Kerkkasteel paid”.⁴⁵⁸ Even those tenant farmers that were located outside the strict boundary lines considered themselves as insiders or community members. Apparently they voluntarily contributed a sum of money to compensate for the fact that they were not included in the normal taxes and rent lists. Finally, they stressed the length of time they had been accepted as members of the community and therefore their privilege of using the commons. The tenants in Stiphout, for example, stated that “the use rights of the defendants (tenants) were public and daily for as long as man could remember”. “Those who were pounded before must have been new farmsteads and not those who had contributed from ancient times and who had contributed according to the rules of the charter”.⁴⁵⁹ For the tenants, therefore, location was of much less importance. Physical distance from the community was of no importance as long as the tenants were contributing to the village burdens and doing so for a very long time. Long practices, after all, gave some legitimacy and connection to the community. This responsibility and voluntary contribution was of more importance than mere residence. In addition, they did acknowledge that there was a difference between the “gemeyne ingesetenen” and themselves. Not once did they identify themselves with the peasant community, rather, stating that they used the commons together with them and contributed in an equal manner.

Clearly being a member of the community was not as evident as the administrative and normative sources seem to imply. The big tenant farmers, the odd ones out, socially, economically and geographically speaking, were one of the first interest groups to experience this. The core of Campine village communities, the “gemeyne ingesetenen”, or peasant smallholders, sometimes

456 “De voorschreven gemeynten bij die van Loon en Kastelre tesamen ende gelijckelijck gecocht”. RAB, VB, 583, 274 (1535) Kerkkasteel.

457 “Die selve van loon ende alle anderen inden voorschreven chijs ghelden ende contribuieren [] ende inden gemeynte contentieux gericht waeren als die voorschreven van kerkcastelre”. RAB, VB, 583, 274 (1535) Kerkkasteel.

458 “Zij woenachtich waeren ende dat huere huysen stonden tusschen die voorschreven palen ende limieten [] ende onder die prochie van Loon woonachtich jae die drie huysen vanden selven ende welcke te voeren maer twee huysen en plagen te zijne ende buyten den palen inden voorschreven oepenen brieven hier boven gespecificeerd staende”. “Waeren die oudste huysen oft haardsteden van Loon die insgelijcx die voorschreven gedaeghden contribueerden jaerlijcx metten selven van Loon inden chijs dien van Loon ende Kerkkasteel ons betaelden”. RAB, VB, 583, 274 (1535) Kerkkasteel.

459 “Gebruyck vanden voorschreven gedaeghden waeren openbaerlijck alle dagen over menschen gedenckenisse gedaen ende gecontinueert geweest”. “[zij die] waeren geschut geweest dat moeten geweest zijn nyuwe hoffsteden die nyet mede en hadden van oudts achtervolgende der charten geschoten noch mede en schoten noch en contribueerden inde betalinge”. RAB, VB, 581, 48 (1526) Stiphout

accompanied by their village governors, created an almost xenophobic discourse, portraying the tenant farmers as being outsiders. Unwilling to contribute to the village financial and moral burdens, located at the margins of society and only granted access as a favour, rather than by a formal privilege. It remains to be questioned, however, which definition of membership was accepted in court and therefore seen to be the correct one to be used for sentencing. Even though eleven cases may not be sufficient to analyse an entire ducal policy, the sentences were quite clear. Except for one case, all tenant farmers were granted right of access by the Council of Brabant.⁴⁶⁰ Even though the motive behind a sentence is only scarcely provided, three cases do contain a more elaborate sentence.⁴⁶¹ According to the ducal court, contributing to the village burdens, either through annual rent or a separate contribution by tenants for their right of access, was sufficient to be labelled a member of the community of users. In the case of Stiphout, where some of the tenants were inhabitants of neighbouring villages, their annual and continuous contributions were accepted as a proof of their membership. In Kerkkasteel, the community was convicted since they tried to exclude the tenants while they were located within the village boundaries and did contribute to the village taxes.⁴⁶² Tenants who sued the community of Schijndel, however, were the only ones to lose their case. These tenants did reside in the neighbouring village of Sint Oedenrode and they failed to prove any systematic contribution to the village burdens. The ducal court accepted the argument of Schijndel, who stated that they hired only a piece of the commons, the lease of which could be terminated at any time.⁴⁶³ A community member thus had to systematically prove its membership by participating in, and contributing to, village obligations. In this way even residence in a neighbouring jurisdiction or village could be let go.

VI. City versus countryside | Exclusion of burghers

The next group that deserves attention are urban citizens, “poorters” or burghers. It has to be mentioned, however, that urban citizens in the Campine countryside were exceptional. While Limberger found large quantities of rural land belonging to absentee landowners in the direct surroundings of Antwerp and throughout the entire polder region, the Campine area witnessed only few purchases by burghers.⁴⁶⁴ Nevertheless, they were a minority group and their rights on the commons had to be defined as well. Apparently, their status was less problematic than those of their tenant neighbours as only one court case addressed the direct

460 RAB, VB, 586, 94 (1533) Schijndel.

461 RAB, VB, 586, 94 (1533) Schijndel. RAB, VB, 581, 48 (1526) Stiphout.; RAB, VB, 583, 274 (1535) Kerkkasteel

462 RAB, VB, 583, 274 (1535) Kerkkasteel.

463 RAB, VB, 586, 94 (1533) Schijndel.

464 LIMBERGER, *Sixteenth-Century Antwerp* 172-175; VAN ONACKER, “Leaders of the Pack?”

issue of inclusion or exclusion of burghers. In 1522 the inhabitants and common neighbours of Leende filed a complaint against their lord, Lord of Gaasbeke, concerning the terms for using the commons in the seigniorship. According to the village community, the Lord of Gaasbeke had introduced new terms in return for use rights of the commons. They were required to pay a much larger sum than before and had to perform some additional tasks for the Lord. Moreover, the Lord stipulated that “nobody being burgher of the city of Brussels will be allowed to use the commons in any way”.⁴⁶⁵ The plaintiffs, however, stated that the land of Leende and Heeze had been granted as a fief by the Duke of Brabant. Consequently, the inhabitants and neighbours of that land were citizens of Brabant, which placed them under the protection of the ordinances of the “blijder incomst”.⁴⁶⁶ The Lord of Gaasbeke, however, replied that he held a full fief and could therefore determine the requirements and terms as he wished, which included the exclusion of burghers. Every sixteen years the terms of leasing the commons were discussed and re-evaluated by the lord and community. In addition, he stated that only the burghers themselves, who constituted the majority of the plaintiffs, opposed exclusion. The “gemeyne ingesetenen”, on the contrary, accepted the terms of leasing the commons. After all, he claimed that it was “an ill-founded argument to presume that long-term usage would provide them an official privilege”.⁴⁶⁷ Finally, the ducal court pronounced in its sentence that the Lord of Gaasbeke, as vassal of the Duke, held all rights to determine the terms for receiving the use rights, but declined the condition of excluding individuals, based on them being a burgher of Brussels or having the Saint Peter’s “manscap”, as unseemly.⁴⁶⁸ For the ducal institutions, an exclusion based on the membership of a Brabant city was unacceptable. As long as they leased or possessed estates in the seigniorship, they were granted access to the commons.

465 “Heeren ende zijne officieren van zijnen wegen gewilt dat niemant poirtere wesende onser stat van brusseele die voorschreven gemeynte en zouden moegen gebruycken in eeniger manieren”. RAB, VB, 576, 3 (1522) Leende. The citizens of Brussels were probably “buitenpoorters”, rural subjects that had purchased the “poorterschap” or urban rights of the city of Brussels. For more information on “buitenpoorters” see: ERIK THOEN, “Rechten En Plichten Van Plattelanders Als Instrumenten Van Machtspolitieke Strijd Tussen Adel, Stedelijke Burgerij En Grafelijk Gezag in Het Laat-Middeleeuwse Vlaanderen. Buitenpoortelij En Mortemain-Rechten Ten Persoonlijken Titel in De Kasselrijen Van Aalst En Oudenaarde Vooral Toegepast Op De Periode Rond 1400” (paper presented at the Handelingen Van Het 13de Internationaal Colloquium Spa, 1991).

466 “Tlandt ende dorp van heeze ende van leende werdde te Leene gehouden van ons als Hertoge van Brabant soe dat die ondersaten nabueren ende ingesetenen vanden selven lande waeren ingesetenen des selfs land van brabant ende onsen ondersaten soe dat sij stonden onder onse protectie ende waeren gecomprenheert inde ordinantiën van onser blijder incompst”. RAB, VB, 576, 3 (1522) Leende.

467 “Het soude nochtans ongefundeerd zijn dat zij onder tdecele van desen langen gebruyck zouden willen naemals recht pretenderen te hebben”. RAB, VB, 576, 3 (1522) Leende.

468 “Afslaende die eene vanden voorschreven conditiën als onbehoirlijk bijden gedaeghde doende die pachtinge vander heyden contentieux [] niet rechts plagen met poerteren van brusseele oft sinte peeters manscap van Loeven ende aldaer. RAB, VB, 576, 3 (1522) Leende.

VII. Hamlets versus villages | The importance of charters

The last interest groups that will be addressed here are dependent hamlets or jurisdictions. As mentioned before, practically every village consisted of one main nucleus, together with several smaller hamlets. This was especially the case for centres with a regional importance, as was shown by the example of Oisterwijk. It was an urban centre, but it was perceived as a unity together with Haaren, Belveren, Udenhout, Berkel, Enschoot and Heukelom.⁴⁶⁹ When Oisterwijk received its privilege or “aardbrief”, to use, manage and control the commons, these hamlets were not actually mentioned by name. During the thirteenth and fourteenth centuries, however, hamlets and agglomerations were not as developed as they had become by the sixteenth century. Firstly, because of the population growth these centres grew, but secondly, their jurisdiction and influence grew as institutions such as aldermen’s benches became formalised.⁴⁷⁰ Sometimes these smaller hamlets became practically independent villages, with their own governments and byelaws, as was the case for Terloo.⁴⁷¹ It remains unclear, however, whether they were not mentioned by name because of their insignificance during the thirteenth century, or because of the fact that they were formally not included in the privilege. This vagueness, therefore, led to a great deal of quarrels and conflicting interpretations during the sixteenth century. Eventually, thirteen cases reached the ducal court, thus granting us an insight into the disputes (see appendix 1). It appears that during this century a shift in the relationships between the main villages and their hamlets occurred. According to the dependent hamlets, these main villages suddenly and wrongfully excluded them from entering and using the commons, even though they had used them for centuries. As a result, the main villages had to defend their position and elaborate on their perspective on, and definition of, who was entitled and who was not.

All the main villages were unanimous about one requirement, which was that only villages or jurisdictions which were granted or had purchased a privilege, charter, ordinance or letter from the duke or seigniorial lord of the area, were entitled to the commons. For example, the “ingezetenen ende geburen” van Veghel stressed the fact that “in the year 1310, the day after Sint Peeters day, the parishioners or community under the parish of Veghel, and nobody else, were granted in return of a inheritable rent of 7 pound leuens, the commons or heathlands by the Duke and his successors”.⁴⁷² As a result of these privileges, the main villages could publicly

469 CRAANE, “Spatial Patterns”.

470 LEENDERS, *Van Turnhoutervoorde*. VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

471 VAN GORP, “De Aartbrief Van Terloo”.

472 “Inden jaere 1310 des daeghs nae sinte peeters dage ad vincula den prochiaenen oft gemeynten inder die voorschreven prochie vann vechel wesende ende nyemande anders op een erfelijckje chijs als van 7 ponden leuens hem ende zijne nacomelingen hertogen ende hertoginnen van brabant te betalen verleent die heyden ende gemeynten”. RAB, VB, 553, 63 (1498) Veghel-Schijndel.

use and govern the commons, which was translated into the selling or leasing out of parcels of land, the felling of trees and, of course, expelling foreigners or intruders from the commons. Consequently, becoming members of the community of users could not be granted in any other way. Extraordinary or temporary access could, however, be granted by the community of the main village. Lieshout, for example, acknowledged that “those of Lieshout possessed the power thanks to their charter and that the rent was paid, to grant and give [access] as a kind of grace as long as it pleased those of Lieshout”. “This, however, does not give those of Beke the right to claim any kind of possession all”.⁴⁷³

Finally, there is the issue of location, as was the case for the conflicts between tenants and village communities. Similarly, some hamlets or depending villages were located outside the boundaries of the jurisdiction of the main villages, while others were not. Most main villages, however, did try to develop a definition of their boundaries which would physically exclude their opponents from their jurisdiction. As boundaries were a vague and mouldable feature in medieval and Early Modern Campine villages, they could be stretched and transformed according to needs.⁴⁷⁴ Nevertheless, they made poor arguments in court since the opponents could use the same strategy or pinpoint the weaknesses in testimonies about the boundaries. In the court case between Turnhout and Mierde, for example, one particular boundary marker, “bieseven”, was considered to provide the evidence needed to prove that the community of Mierde was located outside the boundaries defining the commons and community of users in Turnhout. “Bieseven”, literally means rush pool or little mere surrounded by rushes. Mierde, however, testified that “that particular green spot was no pool and there were no rushes for as long as man could remember”.⁴⁷⁵ Court cases concerning village boundaries, for the same reason, could go on for centuries, since no party could ever fully convince either their opponents or the court where the exact location of these vague markers was.⁴⁷⁶ As a result, the inhabitants and neighbours of Veghel used the complete opposite argument against the inhabitants of Creytenborch and Eerde: “Even if it would appear that the opponents resided within the limits, it would not give them the right, title or action to the commons or heathlands, since the commons and heathlands were solemnly purchased by and granted to parishioners of Veghel and nobody else. Boundaries and limits of a village only teach us the extent of the

473 “Die van Lieshout des macht gehadt hadden naevolgende hueren carten ende dat den penningen verleent ende gegeven waere geweest van graciën soe lange als den voorschreven van lyeshout gelieven soude ende niet langer recht. Dwelcke voorschreven van beke egheen recht en gaf om enige indiffirente possessie voer hen allen te allegeren”. RAB, VB, 553, 47 (1499) Lieshout.

474 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

475 “Die voorschreven groen plecken oic egheen ven en waeren noch byesen en droech noch over mensgedenckenisse gedaen”. RAB, VB, 547, 35 (1495) Turnhout.

476 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

area that the buyers had purchased and to what extent they could use them, but it does not teach us who could use the commons”.⁴⁷⁷

Evidently, the dependent hamlets or villages developed a different perspective on the requirements needed to become a member of the community of users. Some of them actually claimed to have possessed the same charter or a similar one.⁴⁷⁸ However, except for one, they were unable to show the charters or refer to the exact date as their opponents could.⁴⁷⁹ As a result, they could try to use the argument that they fell under the jurisdiction of the main village. The hamlet of Westerwijk, under the parish of Hilvarenbeek, attempted this approach. They stated that “they were inhabitants of Westerwijck, which was one of the hamlets under the parish of Hilvarenbeek, which in its turn was granted the commons called Vyester gemeynthe, because of a grant by the Duke of Brabant”.⁴⁸⁰ This was, however, the word of the main village against that of another since these charters did not provide the answer to this dilemma. As a result, practically all the hamlets referred to the ancient old possession or custom. Custom, being the unspoken law or collection of rules and obligations, which was the foundation of medieval and Early Modern rural communities, was considered a viable and lawful argument, even before the court. Despite of the growing importance of the written word and Roman Law, custom was kept alive and determined most of village life, relationships and practices.⁴⁸¹ The standard expression that was used for custom was that they had enjoyed a peaceful possession for over one hundred years or more, so long that there was no memory to the contrary. In addition, there was nobody to be found that had publicly challenged the possession.⁴⁸² The hamlets of Creytenborch and Eerde took the argument even further against the village of Veghel. They claimed that “the property should be granted with such a long possession, even without requiring any other title”.⁴⁸³ They based their claim on the privileges of the Bailiwick or city of ‘s Hertogenbosch which state that “all goods that are

477 “al mochte blijken dat die voorschreven gedaeghden binnen den voorschreven limieten geseten waeren, des men soe en soude dat den selven egheene recht title oft actie moegen geven totten voorschreven vroenten ende heyden achtergestaen dat die selve vroenten ende gemeynthe alleenlijck gecocht vercregen ende verleent geweest hadden den voorschreven prochiaenen van vechel ende nyemande anders”. “Reen ende limieten van eender gemeynthen gaven alleen onderwijs hoe verre dat die coopers sulken gemeynthen gecocht hebben dier mochten gebruycken maer en gaven gheen onderwijs wye die gebruycken souden”. RAB, VB, 553, 63 (1498) Veghel-Schijndel.

478 RAB, VB, 564, 18 (1494) Noorderwijk.

479 See appendix 1

480 “Die ingesetenen van Westerwijck dwelcke een vanden gehuchten onder die voorschreven prochie van Hilvarenbeek waeren hadden vuyt crachte vanden voorschreven vuytgeven nij den hertoge van Brabant die voorschreven vroenten ende gemeynthen geheyen vyester gemeynthe [gecregen].” RAB, VB, 564, 18 (1494) Noorderwijk.

481 HOYLE, ed., *Custom, Improvement and the Landscape in Early Modern Britain*; GRAHAM ROGERS, “Custom and Common Right: Waste Land Enclosure and Social Change in West Lancashire,” *Agricultural History Review* 41, no. 2 (1993); E.P. THOMPSON, *Customs in Common* (London: The Merlin Press, 1991); WHYTE, *Contested Pasts*.

482 ‘Zij in vredelijcker possessien ende genieten gebruycken van over 100 jaeren ende soe lange dat nyemande die contrarie en gedachte geweest hadden ten aensiene van een iegenlijcke ende sonder contradictie.’

483 ‘Inden proprieteyt vercregen mochte wordden bij sulcker langer possessien oic sonder eenigen anderen titule daer toe te behoeven’. RAA, RSG, 553, 63, Veghel-Schijndel.

possessed for over thirty years, are obliged to stay in this possession forever”.⁴⁸⁴ Next, the hamlets were aware of the tricky character of boundaries. After all, several boundaries could be used to prove one’s point. To use the example of Turnhout, it becomes clear that there was a boundary of the Land of Turnhout, one surrounding the intercommons between Arendonk and Turnhout, but also a very strict one just for the agglomeration of Turnhout. Every entity possessed its own documents which could be used and exploited in court. Mierde was already an example of this, but the issue also arose in Netersel. While the community of Netersel claimed that the hamlet of Beke was excluded from the commons because their boundaries drew the line, Beke replied that they based their argument on a sentence “in which no special specification of poles and limits was given”.⁴⁸⁵ Finally, the hamlets stressed the fact that they contributed to village burdens. The villages claiming that they fell under the jurisdiction of the main village stated that they had paid their share for obtaining the commons from the duke or feudal lord, as was the case for Noorderwijk in 1494. The hamlets of Eerde and Creytenborch were, however, aware that they fell under a different jurisdiction. Nevertheless, they perceived themselves as entitled users, and this because they had always paid their dues and aided with the communal tasks. They had some very detailed memories that were recounted in court to prove their case. Eerde and Creytenborch stated that “they had to help the plaintiff with the maintenance of the dike on the other river bank of the river Aa”. In addition, they had helped to clear the river and stop the sand drifts on the commons.⁴⁸⁶ As a consequence, they concluded that “to help carry the burdens’ means to appropriately enjoy and use the commons to which they are entitled together with the villages they help”.⁴⁸⁷

The ducal court, however, had the final say as to which argument was most viable. They sided with the villages holding a charter, “aardbrief” or ordinance that was obtained by the villages from one of the Dukes of Brabant. Of the eight different cases resulting in a final sentence, the eight villages with a charter won (see appendix 1). Location, jurisdictions or contributions to village burdens did not influence the decision. None of the hamlets that could prove their location within the boundaries along with their eternal payments were able to secure their access rights. Certainly the insignificance of the boundary issues is remarkable, since it was defining for the tenants and was used by the ducal court as an argument to formally exclude Eerde and Creytenborch from the common of Veghel. However, it is quite unsurprising that the ducal institutions favoured these villages possessing a charter. First of all, the villages

484 ‘Eenige goeden beseten hadden over 30 jaeren als voeren sijn erve ende propere goet dat die schuldich was ende behoorde daer inne gehouden te worden tot eeuwigen dagen’. RAA, RSG, 553, 63, Veghel-Schijndel.

485 “hen gefondeert op zekere vonnisse egheen besondere specificatie van paelen ende limieten inhoudende waeren”. RAB, VB, 549, 11 (1495) Netersel.

486 “Zij metten voorschreven impetrant moeten helpen onderhouden die lantweren op dander zijden Vanden rivieren geheeten de Aa”. RAB, VB, 553, 63 (1498) Veghel-Schijndel

487 “De gebuerlijcke lasten te hulpen dragen bij ende behoerlijck oic mede te genietene ende gebruyckene der gemeeynten ende daer inne gerecht te sijne met alsulcken dorpen aldaer hij sulcken lasten mede hulpen dragen”. RAB, VB, 553, 63 (1498) Veghel-Schijndel

such as Oirschot or Hilvarenbeek were the “nova oppidi”, or newly founded freedoms of the Duke of Brabant, which paid substantial sums in order to obtain use rights, management and control over the commons. Moreover, in 1462 Philip the Good Duke of Brabant forced all the communities of Brabant to show their original charters proving their “possession” of the commons. Those communities who did not possess such written documents had to purchase them again or for the first time if they wanted to maintain their communal rights (see also chapter III).⁴⁸⁸ The communities that did comply and either re-established their old privileges or legalised their former informal use rights, were therefore rewarded afterwards. Only two communities without formal charters were granted some concessions. In the conflict between Oirschot and Grootbeemd, Grootbeemd was denied access to the commons although it received a piece of the commons for their community alone.⁴⁸⁹ During the conflict between Werbeke and Retie, some individuals were granted mercy. While Retie could not convince the court that the community was entitled to the commons, they had proven that some individuals residing within their jurisdiction were linked to Werbeke from ancient times and therefore their heirs were allowed to continue to enjoy the fruits of the commons of Werbeke.⁴⁹⁰

VIII. An equilibrium | Inclusive institutions

The development of an inclusive access regime, entitling all interest groups of the late medieval Campine villages, was therefore neither evident nor uncontested. Between 1494 and 1552, a rise in conflicts concerning inclusion and exclusion put this type of common pool resource institution under strain. Both large tenant farmers, leasing land from urban burghers or institutions, as well as fellow peasants, were sometimes targeted and considered as unwanted guests on the commons. In order to explain how the system did survive without any fundamental changes or the exclusion of entire interest groups, the model of the sociologist Jean Ensminger can be used. How different interest groups, operating within and (re)creating these institutions, manipulated these same institutions to serve their changing needs remains to be questioned. According to the classical neo-institutionalists such as Douglas North, institutions, embodying the rules of the game in a society, structured the incentives involved in human exchange through formal rules and informal constraints.⁴⁹¹ On the other hand, Ensminger claimed that institutions have barely any agency of their own but, rather, were instruments in the hands of powerful interest groups. In order to obtain their goals, interest

488 VERKOOREN, *Inventaire Des Chartes Et Cartulaires.*, Tome 1450-1469, Cartulaire LXXIII f° 219.

489 RAB, VB, 557, 45 (1498) Grootbeemd.

490 RAB, VB, 564, 35 (1514) Werbeke.

491 NORTH, *Institutions.*

groups therefore change and transform institutions, rather than transforming their actions or goals because of the agency of common pool resource institutions.⁴⁹² Based on the interplay of external socio-economic factors and evolutions in relative prices, different interest groups would alter the institutions regulating their commons, based on their particular ideology, bargaining power and economic interests. The transformation of the institutions does not, however, always follow a path towards the greatest efficiency or economic rationality, rather, it evolves according to the needs of those interest groups with the most bargaining power and resources necessary to subsidise the, often costly, campaigns to change institutions.⁴⁹³ Ensminger was supported by Tobias Haller, who tested the model in several modern-day African CPRIs.⁴⁹⁴

This model can perfectly be illustrated with the case of the Brecklands in Norfolk and the Geest region in Schleswig-Holstein.⁴⁹⁵ In the Brecklands, a relatively inclusive access regime was introduced from at least the eleventh century (see figure 28). Even though landless labourers and the poorest part of society were excluded, small tenants and farmers were able to purchase access to the open fields and common waste lands through the practice of fold course.⁴⁹⁶ Before the Black Death lords were mostly interested in arable production and living off rents and feudal dues which gave tenants the opportunity of exploiting their commercial interests and combine arable production, sheep breeding and wool production.⁴⁹⁷ After the Black Death however, small independent tenant holders were decimated and, because of the falling grain prices, the lords tried and did obtain practically all deserted lands and turned their agricultural strategy from arable production into commercial sheep breeding. Thanks to their dominant position and because of their land ownership and manorial powers, the lords were able to monopolise the fold course rights and exclude tenants from entering into the fold course system.⁴⁹⁸ By taking advantage of changing relative prices and the socio-economic climate, the manorial lords therefore changed the CPRI towards an exclusive regime, in order to pursue their own interests, namely commercial sheep breeding for the European markets.⁴⁹⁹

It was, however, not the prerogative of manorial lords to monopolise access, as shown by the “Hüfner” in the Geest area (see figure 28). Taking advantage of exactly the same crisis period, which occurred later in Schleswig, the Hüfner were able to enlarge their bargaining

492 ENSMINGER, *Making a Market*.

493 Ibid.

494 TOBIAS HALLER, *Understanding Institutions and Their Links to Resource Management from the Perspective of New Institutionalism* (Bern: NCCR North-South, 2007). A very similar perspective is described in the work of Sheilagh Ogilvie: OGIHVIE, “Whatever Is, Is Right”.

495 DE KEYZER, “The Impact of Different Distributions of Power”.

496 BAILEY, *A Marginal Economy*; BAILEY, “Sand into Gold”.

497 BAILEY, “Sand into Gold”.

498 ALLISON, “The Sheep-Corn Husbandry”; WHYTE, *Contested Pasts*.

499 DE KEYZER, “The Impact of Different Distributions of Power”.

power and tip the scale of the distribution of power in their favour. When, later on, the influx of immigrants and population increases led to a serious growth of cottagers and landless labourers, the original farmers were able to change the byelaws and reserve full access to the commons for themselves.⁵⁰⁰ Like in Norfolk, the social distribution of power was highly unbalanced which led to a restrictive access regime once the interest group with the largest bargaining power saw an opportunity to exclude the rest of society.

This, in return, explains why the Campine area developed in a fundamentally different way. As stated in chapter II, within the Campine area socio-economic factors also underwent a significant number of changes throughout the period. Nevertheless, neither political nor rural elites were willing or able to push out the peasants and cottagers and change the balance of power. Peasant smallholders remained the core of the Campine area and mixed farming, with a focus on securing subsistence, remained the underlying strategy. Even though rural elites or manorial lords, such as the abbey of Tongerlo or the Duke himself, could attempt to introduce commercial animal husbandry, resembling that of Norfolk, the common pool regime and institutions remained virtually unchanged. As both the socio-economic circumstances and relative prices changed, the answer for this continuity must be found in the social distribution of power. As stated before (in chapter II), the social distribution of power was rather stable during the late medieval period despite general shifts and transformations in a broader context. The late medieval crisis did not hit as hard as in Norfolk, the Geest region, or even coastal Flanders.⁵⁰¹ As a result, independent peasants did retain their position within society. Consequently, neither a new class of overpowering rural elites, nor a strengthened manorial class came into being. Finally, the peasants possessed far more bargaining power than their Norfolk and Schleswig counterparts because of their rural charters and the presence of a ducal court which was not dismissive of communal rights and common pool institutions. In contrast with the Breckland tenants who lost case after case against their manorial lords, Campine communities or different interest groups were able to avert threats and attacks on the commons. Large tenant farmers provide a perfect example of this. Manorial lords, rural elites and small-scale peasants (both cottagers as well as independent peasants), had found a kind of power balance or eternal triangle which kept their aspirations stable. Extraordinary or invasive strategies were relatively easily countered by forming coalitions with the other interest groups as well as turning to the ducal courts.⁵⁰²

500 Ibid.; POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550*; RHEINHEIMER, *Umweltzerstörung*.

501 BAILEY, "Sand into Gold"; POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550*; RHEINHEIMER, *Umweltzerstörung*; THOEN AND DE VOS, "Pest in De Zuidelijke Nederlanden Tijdens De Middeleeuwen En De Moderne Tijden: Een Status Quaestionis over De Ziekte in Haar Sociaal-Economische Context"; DOMBRECHT, "Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)".

502 This topic will be discussed more thoroughly in chapter VI.

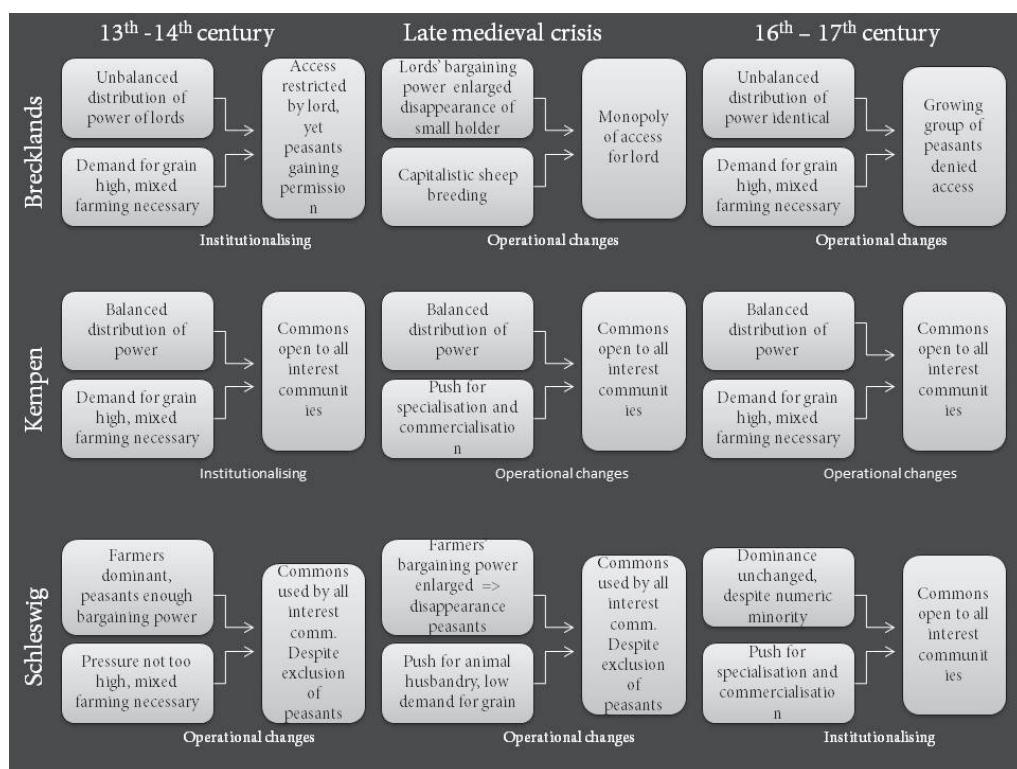


Fig 28 Comparison of influence of social distribution of power and changing relative prices on access rights in the Brecklands, Campine and Schleswig.⁵⁰³

It was only when one particular group had tipped the balance of power in its favour that the position within the commons of other interest groups was threatened. This is well illustrated by the exclusion of smaller hamlets and dependent villages by the main villages, possessing formal charters to use and manage the commons.

Communities such as Veghel, Noorderwijk, Hilvarenbeek and Turnhout were all located in the upper North-West corner of the Campine area and just across the present-day border of the Netherlands. This is not a lucky coincidence, but represents exactly the core area of the Duke of Brabant, where he founded the majority of his “nova oppida” (see chapter II & III). In contrast with those communities in the centre and East of the Campine area, they were granted “aardbrieven” or charters that not only grant use rights to the commons but transferred the right to manage and control the commons to village governments. Even though this had only few practical effects on the daily lives of Campine communities, the charters did affect their bargaining power. Whenever their status or rights were attacked or under dispute, they could rely on a written document, while most other village communities could only refer to custom or an oral testimony. Being fully aware of their juridical privilege and bargaining power, these communities were confident enough to attempt to reserve the common use rights for

503 De Keyzer, “The Impact of Different Distributions of Power”.

themselves and to go to court in case their strategy was challenged. Moreover, they always retained the upper hand during conflicts since they possessed an official document together with enjoying the favour of the Duke of Brabant.⁵⁰⁴ Even though custom was a powerful tradition and a viable argument in court, the rising importance of Roman law implied a weakening position for the communities that could not present similar privileges. Because of this unbalanced distribution of power, the ducal “nova oppida” or privileged villages not only actively tried to exclude other interest groups, but succeeded in their attempt. This was, however, an anomaly during this period, as shown by this map.

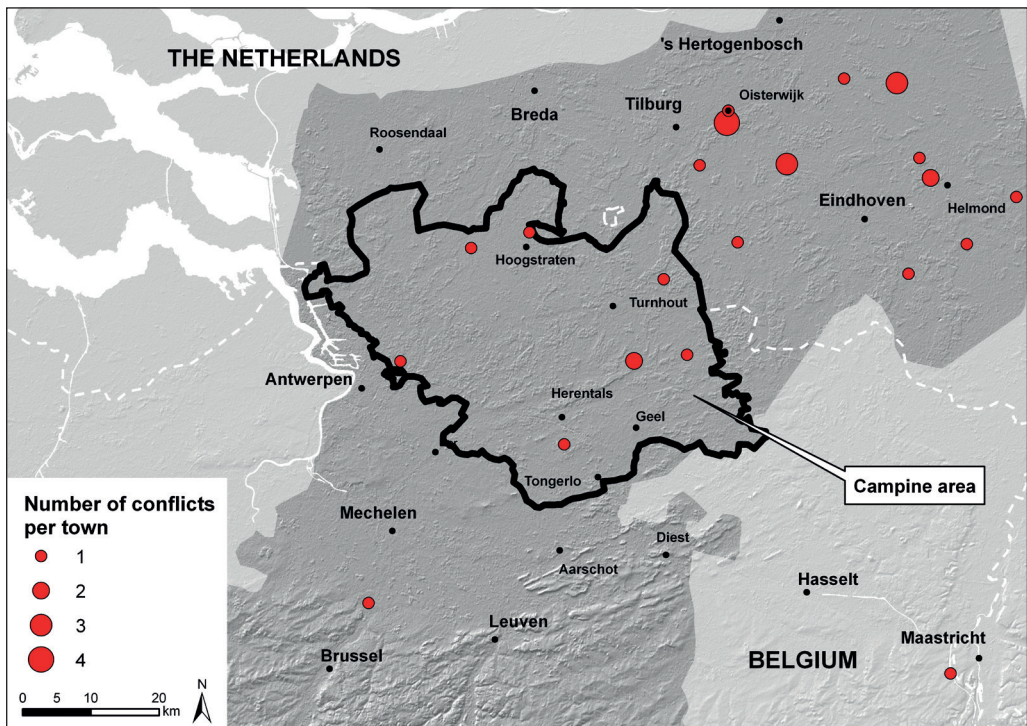


Fig 29 Geographical spread of exclusion court cases before the Council of Brabant. Edited by Iason Jongepier.⁵⁰⁵

IX. Conclusion

While rural communities, throughout Europe, were characterised by rather exclusive or even restrictive CPRIs, the late medieval Campine region remained extremely inclusive. Despite rising population densities, commercialisation and urbanisation on the direct borders of the region, the common pool regime was not only retained, it was institutionalised and the fruits

504 This topic will be discussed more thoroughly in chapter VI.

505 Source material: see appendix 1.

of the commons were enjoyed by all interest groups. The village of Zandhoven showed that during the sixteenth century 98 per cent of the population actively used the commons. Even though 20-25 per cent of society could be labelled as the “fiscal poor”, which normally would have excluded them from obtaining access, even these interest groups at the bottom of the social scale were granted access. This inclusiveness was, however, not evident. Attempts to exclude parts of society or even interest groups from within the village are to be found in the court records of the Council of Brabant. Large tenant farmers, urban burghers as well as depending hamlets were often the target of the core village communities, comprising independent peasants, sometimes accompanied by the village government. As marginal groups balancing on the verge of society, they were often portrayed as literal or figurative outsiders not allowed in the community of users. Nevertheless, since the Campine area had a balanced distribution of power, smallholders, farmers and lords alike were able to influence the decision-making within the village, and the common pool institutions remained quite inclusive. As such they contrasted with several other societies, such as the Brecklands in Norfolk, and the Geest region in Schleswig-Holstein, where one particular stakeholder was able to usurp the government and management of the village or common pool institution, disturbing the equilibrium to such an extent so as to fundamentally alter accessibility, resulting in an often exclusive system.



QUI PROFITAIT DES COMMUNNAUX
LES RICHES OU LES PAUVRES?

V. QUI PROFITAIT DES COMMUNNAUX | LES RICHES OU LES PAUVRES?

In the CORN volume on commons in North-western Europe it was claimed that only regions with vast and virtually undepletable resources, such as the pine forests in the northern parts of Sweden, were able to introduce both inclusive common pool resource institutions as well as unrestricted appropriation rights.⁵⁰⁶ In addition to the restrictive access regimes discussed in the former chapter, therefore, Premodern communities increasingly tried to limit the grazing pressure on common pastures and wastelands by reducing the size of cattle units. Densely populated or valuable pieces of land would be the first to receive such stipulations as an unstinted system presupposes a sufficiency of common land.⁵⁰⁷ Joan Thirsk has underlined this point, as she demonstrated that predominantly upland communities were able to maintain a common pool institution without strict grazing delimitations.⁵⁰⁸ Angus Winchester distinguished two principles that controlled and limited the number of livestock on any common pasture. First, there is the rule of “levancy” and “couchancy” which allowed a commoner to place onto the commons as many animals as he was able to sustain over the winter from the produce of his holding. Second, stinting (or the numerical limitation of grazing rights) could be applied. The first rule was more focussed on equitable access, while the second actively responded to the carrying capacity of the common field. Angus Winchester, who elaborated on regulations introduced by common pool resource institutions, has referred to stinting as a common practice that became increasingly dominant after the Middle Ages, even though as much as 46 per cent of England and Wales remained stint-free.⁵⁰⁹ When looking at the Midlands, the introduction of stints already appeared from the thirteenth century onwards on manorial commons.⁵¹⁰

Nevertheless, it was the Campine area, a relatively densely populated and fragile region - considering the subsoil and that it was located between the most urbanised and commercialised regions of the Low Countries, such as Flanders, southern Brabant and Holland - that introduced a remarkably inclusive access regime together with an unstinted system. The formal byelaws introduced neither “levancy”, nor stinting to reduce or regulate the grazing pressure on the common heathlands during the late medieval period. The pressing question, therefore, remains why the Campine area did not introduce any form of stinting? After all, the neighbouring regions within North-western Europe did so and, furthermore, the Campine

506 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

507 WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

508 JOAN THIRSK, *The Agrarian History of England and Wales, IV, 1500-1640*, vol. 4 (Cambridge: Cambridge University Press, 1967), 22.

509 WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

510 BIRRELL, “Common Right”.

area was not ecologically better off and therefore not able to accommodate fundamentally more pressure.

Therefore, in this chapter, I will posit that an extraordinarily inclusive and unstinted regime, although not necessarily the most efficient nor rational choice, was rather the result of a conscious decision by the different interest groups within the Campine area which served their particular needs. This hypothesis is derived from the model of Jean Ensminger, who stated that institutions were the result of the particular and specific ideology, bargaining power and economic interests of the interest groups present.⁵¹¹ José Miguel Lana Berasain also believed that institutions were the result of a particular balance of power between Premodern interest groups. According to him, the diversity of contexts and points of equilibrium of different societies represent the key to explaining the variety of access and management modes of the common resources. In Premodern Navarra, common resources were utilised in a very unequal manner, since noblemen enjoyed the privilege of using twice as much as the commoners and, moreover, were able to enjoy the fruits of several village commons. The remaining pieces of “open access” commons made the extent of usage directly proportional to wealth. This type of access regime and management of commons could therefore be understood as the point of equilibrium in a complex process of interaction between the natural medium and the surplus detracting powers. It was not designed to repair injustices, but rather to maintain a balance in a vulnerable society. As such, the system endured precisely because of an unbalanced distribution of power that nonetheless was able to reach an equilibrium of sorts. According to Lana Berasain, this system worked because the rural elites were able to dominate the less powerful peasants, yet could also permanently implement the disparities within a legitimate system.⁵¹²

In the Campine area, however, a fundamentally different type of equilibrium to the one Lana Berasain demonstrated in Navarra, was reached. In order to understand how the common pool regime and institutions came into being, I will analyse the interests all the different groups within Campine communities had in the commons. One of the most important questions is therefore: who actually benefitted from the commons? As Tine De Moor has shown for the eighteenth century Gemene Lowijden, the *legal* community of users did not per se overlap with the *actual* community of users of the commons and it most certainly did not necessarily coincide with all the people benefitting from the survival of the commons. Although a large part of these communities had formal access to, and perhaps even used, the commons, they could nevertheless equally have profited from transforming the system.⁵¹³ We must look, therefore, beyond the community of users and dig deeper into their economic

511 ENSMINGER, *Making a Market*.

512 LANA BERASAIN, “From Equilibrium to Equity”.

513 DE MOOR, “Participating Is More Important”.

profile in order to assess their interests into the commons. Secondly, we need to distinguish the different benefits each interest group was able to obtain from the commons. Did all the social layers within society profit from the same ecological benefits or were particular resources only helpful for certain groups? Finally, I will explain how this particular Campine common pool regime and institutions were constructed, based on their combined interests.

I. Peasants everywhere | Different interest groups in the Campine area

As stated in chapter II, the Campine area was a true peasant society dominated by small peasant proprietors cultivating plots of land of between 1 and 5 hectares on average. Despite this apparent equality, Eline Van Onacker has argued that we must distinguish several different interest groups within this peasant majority.⁵¹⁴ As such, we can discern four main social groups each with their own particular needs and interests. First, the micro-smallholders constituted one of the largest groups within late medieval peasant society. As most estates were continuously divided due to partible inheritance, this group had grown significantly between 1350 and 1550. Depending on the village, they made up between 20 and 36 per cent of the population during the sixteenth century.⁵¹⁵ Within this one hectare, a cottage and small garden or arable plot were generally included.

Cottagers formed the second group and they represented between 20 and 33 per cent of village communities during the sixteenth century. This group owned, on average, between 1 and 3 ha of land with approximately the same composition of dwelling and land as the micro-smallholders. These cottagers invested in arable fields, pasture and meadows.

The group defining the Campine area most clearly were the independent peasants. In large parts of Flanders, it was precisely this middle group that disappeared during the later Middle Ages, making way for societies made up of a select group of large farmers and small cottagers.⁵¹⁶ In the Campine area, however, this interest group maintained its central position.⁵¹⁷ Just like their cottager neighbours, they held their land in customary tenure with a perfect mix of arable land, pasture and meadows. According to Eline Van Onacker, these three groups

514 VAN ONACKER, "Leaders of the Pack?".

515 Ibid., 91-94.

516 THOEN, A 'Commercial Survival Economy'; REINOUD VERMOESEN AND ANNELIES DE BIE, "Boeren En Hun Relaties Op Het Vlaamse Platteland (1750-1800)," *Tijdschrift voor Geschiedenis* 121 (2008); DOMBRECHT, "Plattelandsgemeenschappen, Lokale Elites En Ongelijkheid in Het Brugse Vrije (14de-16de Eeuw)".

517 See chapter I.

resembled each other to such a great extent that they interchanged with each other constantly. The differences between the micro-smallholders, cottagers and even independent peasants were, after all, not written in stone, and households could quite easily rise or fall on the social ladder. During the life-cycle of one household it was possible to belong to all of the three categories. While a young couple starting out together may have had to struggle and begin life together with only a tiny parcel of land, they could nonetheless come to belong to the micro-smallholders or cottagers. Thanks to the inheritance and the additional leasing of a few plots of land, they were able to raise their social and economic standing to the rank of independent peasant. Afterwards, however, old age could bring about a change their status all over again.⁵¹⁸

Finally, there were the rural elites. All peasants labouring over 5 ha of land can be referred to as rural elites, although most of them, in fact, continued as peasants. After all, the large majority never obtained more than 10 ha of land and, as will be argued, they were not more commercially orientated than any of the other communities in the Campine area. Not only is the concept of rural elites a relative one, they were an exceptional group within Campine communities. In the village of Minderhout, not even one household larger than 10 ha was encountered by Van Onacker. It was in Gierle that the largest concentration of “large landowners” was discovered, since 6,6 per cent owned more than 10 ha.⁵¹⁹ The composition of this group is, however, more diversified than any of the other categories. Most were independent peasants who owned some extra land, cattle and sheep. Consequently they have exactly the same socio-economic profile as the average independent peasants and they developed a similar attitude towards the commons.

This, however, does not apply to a very different socio-economic group: the tenant farmers. By tenant farmers I do not refer to peasants who held land in leasehold who were of course also present in the Campine area. Approximately 20 per cent of land in sixteenth century villages was leased.⁵²⁰ Nevertheless, most of them only held the same amount of land as those that had customary rent. They are, therefore, considered as independent peasants or cottagers. Tenant farmers distinguished themselves by the fact that they rented land from external institutions, burghers or lords and held far more land than any other interest group. They were therefore the “odd ones out” within the Campine society as most villages did not even house one single tenant farmer. Only in places where ecclesiastical institutions, lords or burghers invested in exploitation centres did such large tenant farmers appear. As such, a notable concentration of these tenant farmers existed in the areas under supervision of the abbey of Tongerlo.⁵²¹ The

518 VAN ONACKER, “Leaders of the Pack?”

519 *Ibid.*, 91-94.

520 *Ibid.*

521 For extra information on the tenant farmers of the abbey of Tongerlo: HEERMAN, “Het Abdijdomein Van De Abdij Van Tongerlo”.

focus will therefore be centred on these tenant farmers because only traces of them remain in the archives.

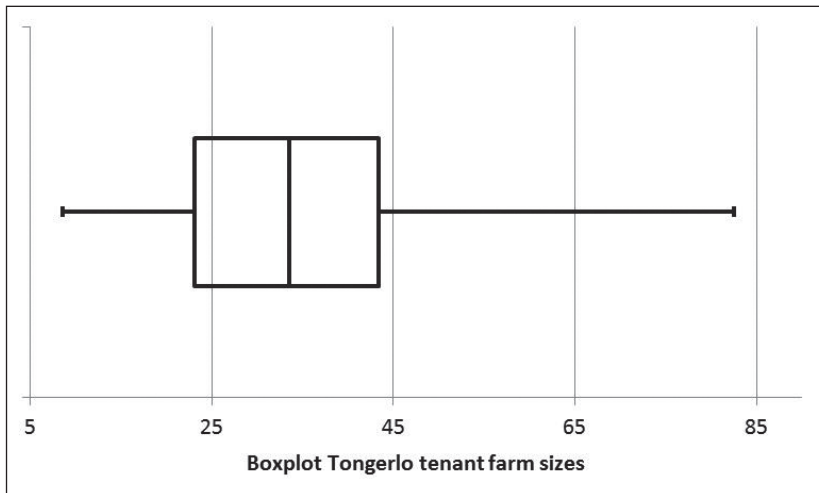


Fig 30 Boxplot showing the size of Tongerlo tenant farms in the sixteenth century.⁵²²

The most striking feature of these tenant farms was their size (see figure 30). The smallest farm measured 8,6 ha, while the largest, called “in Vorst” belonging to the abbey of Tongerlo, amounted to 82,5 ha.⁵²³ Thanks to exhaustive accounts, land registers and farm descriptions, we can now see a detailed image of the agricultural exploitation of the abbey emerging. Since their average farms measured around 40 ha, these farmers were the true elites, economically speaking, within the Campine area - especially given the general dominance of smallholding.⁵²⁴

Basically, the Campine area consisted of true peasants, apart from a minority of tenant farmers leasing extremely large farms relative to the average land holdings in the late medieval Campine area. Eline Van Onacker has already demonstrated that the apparent similarities due to the extent of land holding, in fact masked significant differences in their socio-economic profiles as well as their status within the village. The different interest groups did ultimately distinguish themselves due to their political activities, cultural engagements, and their animal possessions in particular.⁵²⁵ What remains unclear, however, is whether or not these groups had fundamentally different interests regarding the common wastelands and meadows. How did the interested parties – both with and without animals - regard the commons, and how did they try to steer the common pool institutions in order to address their particular needs?

522 Data collected from the farm descriptions of the abbey of Tongerlo of 1510-1518. AAT, Section II, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

523 AAT, Section II, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

524 Ibid.

525 VAN ONACKER, “Leaders of the Pack?”.

II. Cattle possession | Social independence and reliance on common meadows

Before examining the different interests of the various groups within the social strata of the Campine area, it is necessary to undertake an analysis of the animals they possessed. Despite the lack of detailed animal counts before the seventeenth century, there are some exceptional sources that provide insight into the animal possession of Campine peasants during the sixteenth century. The first source is a general inquiry into the economic position of Campine communities before the Eighty Years' War undertaken by the central government which wanted to have a full overview of the damage and destruction that had been caused by the war in the surroundings of Antwerp. To this end, villages were required to provide basic information about their wealth, property and the economic climate before and after the war.⁵²⁶ As this source was created after the troubles, and also in order to prevent the government from collecting every debt and rent due to them from the devastated villages, the precision of this source is, however, contestable. Nevertheless, it would be a shame to squander this source and leave it unexamined since the results can be compared with other sources. Wortel was one of the villages that gave a full overview of the animals that were owned by the villagers.

Wortel	Percentage of households
Cattle owners	31,67
Horse owners	41,67
Sheep owners	65

Fig 31 Distribution of animal possession in Wortel in 1575, according to the general inquiry of 1793.⁵²⁷

Communities were required to register cattle units before and after the destruction of 1575. In Wortel they claimed that before the destruction in 1575, 65 per cent of the community owned at least one cow (see figure 31).⁵²⁸ If this source is indeed correct, this would mean that probably none of the micro-smallholders, and only some of the cottagers, possessed any animals. The most detailed and reliable sources, however, appear just at the beginning of the seventeenth century. Both Brecht, as well as Rijkevorsel, left behind records of animal counts created during the inventory of the village. In 1608, 105 households in Rijkevorsel owned at least one cow. Considering that Rijkevorsel counted 525 individuals around that time, and the average household counted 5 persons, this means that in all likelihood nearly every household

526 SAA, 5 condition, 1593. This bundle contains a wide range of documents, mostly concentrating on economic parameters such as livestock, population figures, ploughs and so forth.

527 SAA, 5 condition, 1593.

528 Ibid.

possessed a cow.⁵²⁹ Nevertheless, this picture should be nuanced by looking at Zandhoven. As stated in chapter IV, this village left a detailed record that listed all the community members who paid a fee in order to place a certain number of cattle on the commons. Here at least 10 households did not declare placing even one head of livestock on the commons. Out of 76 households, 65 declared at least 0,5 “hoofden” or cattle units. Based on my findings on the presence of bovine cattle in the Campine area, I estimate that such 0,5 units referred to one head of cattle, and therefore 85 per cent of all households possessed one cow.⁵³⁰

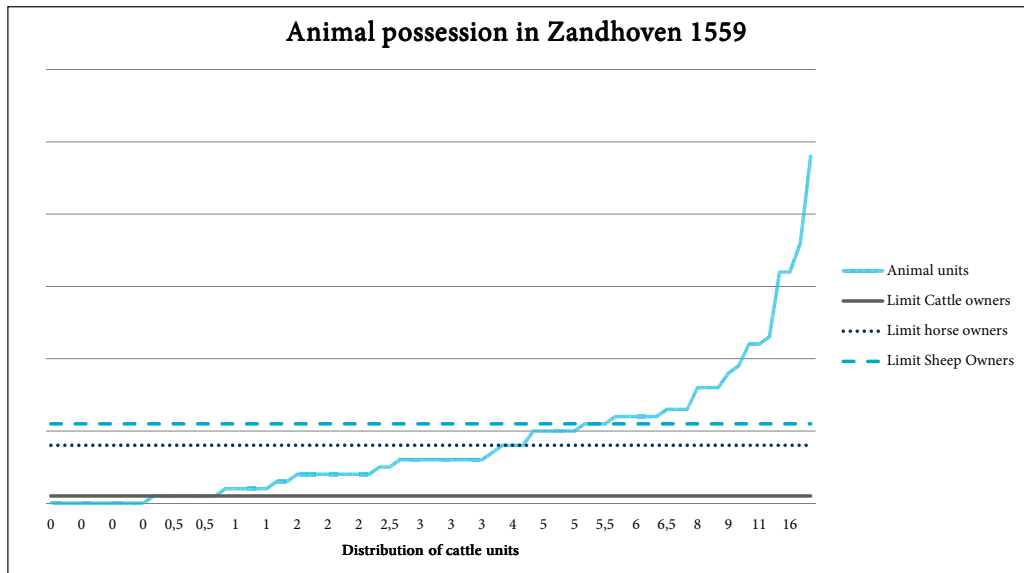


Fig 32 Estimated animal possession of Zandhoven peasants according to the "heideboek".⁵³¹

If between 100 and 85 per cent of the village possessed a head of cattle, then even some of the micro-smallholders and all the cottagers must have owned one too. Acquiring a head of cattle was probably a necessity for these micro-smallholders and cottagers, since possessing them

529 RAA, OGA Rijkevorsel, 3141-3149, animal counts, 1608. CUVELIER, *Les Dénombrements*. Analysed by Eline Van Onacker. A. COSEMANS, *Bevolking Van Brabant in De XVIIde En XVIIIde Eeuw* (Brussel: Paleis der Academieën, 1939).

530 RAA, OGA, Zandhoven, 148, "Heideboek", 1559-1581. RAA, OGA Rijkevorsel, 3141-3149, animal count, 1608. SAA, 5 condition.

531 The curve shows the general distribution of cattle units in Zandhoven, while the horizontal lines indicate the estimated limit of the different types of animals. 65 of the 76 registered households listed at least 0,5 heads of cattle. Therefore 85 per cent of the village owned at least one animal. Thanks to the animals counts of different villages, such as Wortel and Rijkevorsel, we know that the large majority of peasant households owning even the tiniest parcel of land possessed at least one cow, but almost never listed a horse or sheep (see light grey line). I therefore estimate that 0,5 cattle units equalled one head of bovine cattle. By looking at the example of Rijkevorsel, we can deduce that households owning sheep possessed 5 times as many sheep than pieces of livestock. Therefore, 5 sheep equalled 1 head of livestock that could either be a horse or bovine cattle. These findings, together with our knowledge of average sheep and horse ownership derived from Wortel and Rijkevorsel, has led me to calculate that the top 41 per cent of Zandhoven's livestock owners who listed 4 cattle units owned at least one horse (see dotted line) and 31 per cent owned a flock of sheep (see striped line), which consisted of a minimum of 5 animals. Sources: RAA, OGA, Zandhoven, 148, "Heideboek", 1559-1581. ; SAA, 5 condition, 1593.; RAA, OGA Rijkevorsel, 3141-3149, animal counts, 1608.

could have made the difference between being able to survive as peasant and becoming a land labourer or having to move to an urban centre. As Neeson claimed, the ownership of and potential gains to be made from of one head of cattle during the eighteenth century was worth almost half as much as the wage of a fully employed male agricultural labourer.⁵³²

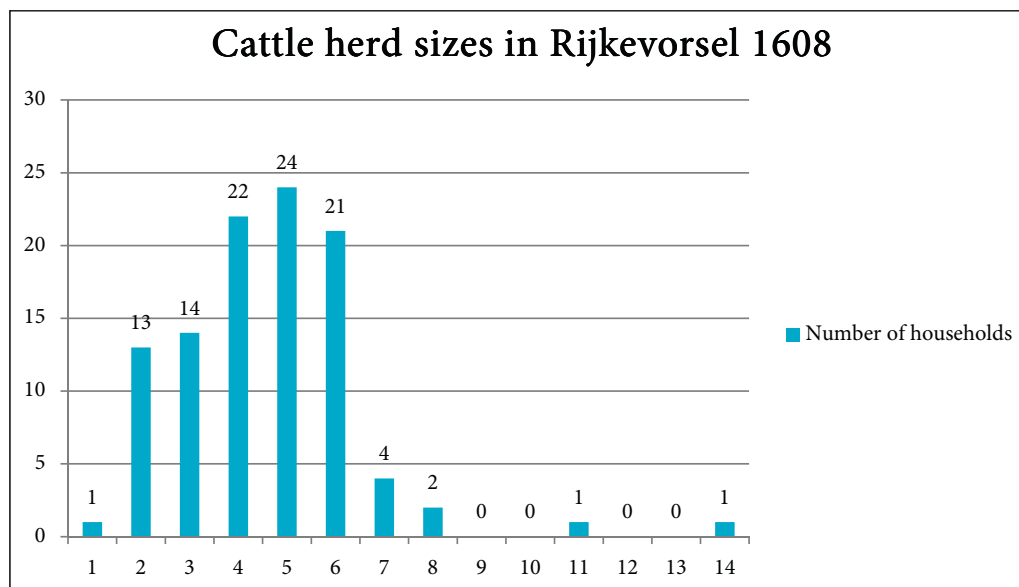


Fig 33 Cattle herd sizes in Rijkevorsel in 1608.⁵³³

Both the “heideboek” as well as animal counts of villages such as Rijkevorsel indicate that an average Campine household possessed a significant number of animals. Even cottagers and micro-smallholders could own up to four cows, while independent peasants and rural elites, for their part, owned between four and seven pieces of cattle (see figure 33). In the “heideboek” of Zandhoven, the upper stratum of society registered between 4 and 24 cattle units, each unit representing two pieces of livestock.⁵³⁴ The total size of cattle herds belonging to independent peasants is more difficult to grasp. The “heideboek” of Zandhoven is our only source, one that hides the exact number of animals behind a general cattle unit. Based on my calculations⁵³⁵, however, cottagers could own herds of up to six pieces of cattle. Even though

532 NEESON, *Commoners*. L.J. HAMMOND AND HAMMOND BARBARA, *The Village Labourer, 1760-1832* (Stroud: 1995); HUMPHRIES, “Enclosures”.

533 RAA, OGA Rijkevorsel, 3141-3149, animal counts, 1608.

534 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

535 Based on the animal counts of Rijkevorsel, I have estimated that the bottom socio-economic stratum of the community did not possess any sheep or horses. As such, the cattle units referred only to bovine cattle. Again, considering the animal counts of Wortel and Rijkevorsel, I have been able to asses that the cattle units could not consist of bovine cattle only, but also existed of horses and sheep. I have therefore determined the composition of the cattle units by calculating that the upper stratum must have had 3 units or 6 pieces of cattle which were deducted from the total number of cattle units. Most Campine households, even the elites, did not possess more than 2 horses as indicated by Loenhout. Therefore, it is possible that possessing only one unit could refer to one consisting of draft animals. Finally, the remaining units were dived by 5 in order to calculate the amount of sheep owned by each household. RAA, OGA Rijkevorsel, 3141-3149, animal counts, 1608.

we see the number of units steadily rising further up the social ladder, as demonstrated in the “heideboek”; independent peasants most probably did not invest in ever-larger herds of cattle, instead diversifying and enlarging their livestock herd with horses and sheep. Therefore, the average independent peasant must have possessed between 5 and 8 pieces of cattle.⁵³⁶

To keep cattle well-nourished, however, peasants needed sufficient and quality fodder. While sheep could roam the barren wastelands and graze heather and sturdy grasses, cattle needed more nutritious grass and hay to stay alive.⁵³⁷ Consequently, even a number of micro-smallholders possessed a parcel of meadow consisting of wet pastures that generated hay. While in Alphen only 2 per cent of the micro-smallholders owned a parcel of meadow, 10 per cent of their counterparts in Gierle possessed one.⁵³⁸ These hay meadows were by far the most expensive, productive and valuable pieces of land in the Campine area. In Loenhout, in 1602, a hay meadow cost an average of 525 stuiver per bunder. In comparison with arable (245 stuiver/bunder), pasture (216 stuiver/bunder) and poor grazing land (208 stuiver/bunder), this amount was huge.⁵³⁹ Eline Van Onacker has found similar high values for Wuustwezel in 1581, while Gierle and Tongerlo show average values.⁵⁴⁰ Even these peasants, dangling at the bottom of the social ladder, invested in a mix of arable, pasture and even meadows.

In order to feed those herds of cattle, however small, the average peasant household was nonetheless unable to provide all the required fodder. According to Moriceau, Premodern farm animals were fed far less than our modern animals are. He suggested that they received approximately a third of the fodder we feed our animals today, which was just enough to keep them alive.⁵⁴¹ Only cattle kept for commercial purposes, such as the oxen fattened for urban meat consumption, would probably have received better fodder and larger quantities.⁵⁴² As such, he calculated that the average cow would need to receive 625 kg of dry mass fodder (75 per cent of one kg of hay corresponded to dry mass) during the winter months. If the cows were kept inside for most of the year as happened in the Campine area, this amount was much greater however.⁵⁴³ Estimating the yields of grass and hay is, however, much more challenging. Anna Dahlström attempted to provide some calculations regarding the region

536 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

537 LINDEMANS, *Geschiedenis Van De Landbouw in België*.

538 VAN ONACKER, “Leaders of the Pack?”.

539 RAA, OGA Loenhout, 3823, Land book, 1602.

540 VAN ONACKER, “Leaders of the Pack?”, 95-96.

541 MORICEAU, *Histoire Et Géographie De L'élevage*, 209.

542 WILHELMINA MARIA GIJSBERS, *Kapitale Ossen: De Internationale Handel in Slachtvee in Noordwest-Europa (1300-1750)* (Hilversum: Verloren, 1999); CARSTEN PORSKROG RASMUSSEN, “Innovative Feudalism : The Development of Dairy Farming and Koppelwirtschaft on Manors in Schleswig-Holstein in the Seventeenth and Eighteenth Centuries” *Agricultural History Review* 58, no. 2 (2010).

543 MORICEAU, *Histoire Et Géographie De L'élevage*, 209.

of South-central Sweden.⁵⁴⁴ Based on her calculations, I have attempted to estimate what the average Campine meadow, pasture and heathland would provide. Given the soil quality, which was a little worse than that of South-central Sweden, I suggest that the average meadow provided 1200 kg of dry mass, a pasture 520 kg and, finally, a heather patch 100 kg.

Given the fact that these micro-smallholders owned less than one hectare of land, of which probably a maximum of half was pasture or meadow, they were unable to feed a cow all the year round. Eline Van Onacker has posited that 43 per cent of land belonging to meadow-owning micro-smallholders was meadow and they were therefore able to sustain 0,8 cattle units. Cottagers possessed more meadows and in fact, of all the interest groups, invested most heavily in private meadows compared to their total private estate. However, these meadows were only ever 23 to a maximum of 40 per cent of a cottager's total acreage, thus being able to sustain between 1,3 and 2,2 cattle units.⁵⁴⁵ Remarkably, independent peasants were not better off and despite their significantly larger herds of cattle, they did not own more meadows, limiting them to 2,1 and 2,7 units. Finally, the rural elites really outshone the other interest groups since they had purchased enough meadows to feed between 4 and 7 cattle units.⁵⁴⁶

As Campine herds transcended the actual carrying capacity of the private hay meadows, they required additional grazing. This, in the Campine area, was secured through the right of access to common pasture on the private meadows after the first harvest in May (see chapter III). For the micro-smallholders and cottagers especially, this common right was indispensable. Owning either only a tiny piece, or no meadow at all, the communal right of gaining access to the entire common meadows would probably have been sufficient for micro-smallholders and cottagers to keep their livestock alive. The independent peasants and rural elites were equally able to provide their livestock with additional fodder by entering the common meadows. Nevertheless, they might even have benefitted more from enclosing the common meadows permanently and only maintaining the common wastelands. After all, hay meadows could generate more than one harvest of hay, if it was not opened up to the village herds after the first harvest. Since they owned large parts of these commons, they would therefore have received more fodder than when participating in the communal system. One way elites could have profited from communal systems more than through private property would have been to monopolise these communal rights for the small elite interest group, as was the case in the Brecklands in Norfolk, where only the biggest manorial tenant farmers were able to purchase the right of fold course.⁵⁴⁷

544 ANNA DAHLSTRÖM, "Pastures Livestock Number and Grazing Pressure 1620-1850. Ecological Aspects of Grazing History in South-Central Sweden" (Swedish University of agricultural sciences 2006).

545 VAN ONACKER, "Leaders of the Pack?", 99.

546 Ibid., 99-100.

547 ALLISON, "The Sheep-Corn Husbandry".

III. Sheep possession | Commercial opportunities thanks to the common wastelands

The Campine heathlands were however dotted with thousands of creamy bundles close proximity revealed as sheep. Sheep are often, quite logically, intertwined with heathland in the minds of many. Sources in this period even tried to spread that image actively, for example, Olen stated in the general inquiry of 1593 that “elke ingesetene”, or every inhabitant, was a sheep-owner. The flocks wandering around on the common heathlands were in any case huge. In Loenhout, a village of 1500 inhabitants, 3200 sheep were found and in Wortel, a tiny village of some 300 people, 877 sheep could be encountered.⁵⁴⁸ Other sources confirm the image of a sheep-ridden society. According to Eline Van Onacker the village of Alphen housed 2619 lambs in 1514.⁵⁴⁹ Based on the most moderate assessment, this implies that at least 4074 sheep were present in the village.⁵⁵⁰ A 1553 record of the collection of lamb tithes for the villages of Essen and Nispen mentions the presence of 1597 lambs, corresponding with – at least – 2484 sheep.⁵⁵¹ In the early seventeenth century, the village of Brecht accommodated 1573 sheep⁵⁵² and in Rijkevorsel 2352 sheep could be encountered.⁵⁵³

As stated before in chapter II, sheep were, however, not a constant element in the Campine area. Before 1350 it is hard to imagine that substantial flocks inhabited the Campine wastelands. Even though Frans Theuws stated that the Dukes of Brabant had introduced commercial sheep breeding in their territory from the thirteenth century,⁵⁵⁴ Karel Leenders has shown that only some flocks, belonging to ecclesiastical institutions, could be found in the Campine area during the thirteenth century. Peasants only introduced sheep in large numbers after 1350, when the agricultural system was fundamentally transformed.⁵⁵⁵ Leenders is supported in his view by Vangheluwe and Spek, who link the appearance of sheep breeding with the intensification process of the agricultural system, after the large exploitation wave between 1150 and 1350.⁵⁵⁶

548 SAA, 5, condition, 1593.

549 AAT, II, 688, Lamb tithes in Alphen and environment, 1514.

550 In order to reconstruct the number of sheep, I started from the number of lambs, using a 0,9 ratio, based on the analysis of Eline Van Onacker and Filip Van Roosbroeck, which was more or less consistent with the findings of Wim Blockmans: WIM BLOCKMANS, “De Rendabiliteit Van De Schapenteelt in Brabant Tijdens De 15de Eeuw. Het Voorbeeld Van Het Domein Te Vossem Van Het Brusselse Apostelengodshuis,” *Bijdragen tot de Geschiedenis* 53, no. 3-4 (1970): 117.

551 AAT, II, 806, Lamb tithes in Nispen and Essen, 16th and 17th centuries.

552 RAA, OGA Brecht, 2540A, Animal counts, 1605.

553 RAA, OGA Rijkevorsel, 3141-3149, Animal counts, 1608.

554 THEUWS, *Middeleeuwse Parochiecentra in De Kempen, 1000-1350*.

555 LEENDERS, *Van Turnhoutervoorde*.

556 VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

But who actually owned these sheep? Moriceau states that only farms with as many as 4 ploughs were able to maintain a “true” flock of sheep.⁵⁵⁷ Moreover the quality of animals was directly linked to the size of the farm. While peasants owned a meagre number of cows, pigs or sheep, only the wealthy peasants possessed milk or beef cows, or sheep with high quality wool. Bruce Campbell has put forward an even stronger argument: he claims for sixteenth-century Norfolk, that “sheep were now disproportionately a landlord animal”.⁵⁵⁸ These statements, however, do not apply to late medieval Campine communities. Even independent peasants owning less than five hectares of land possessed significant flocks of sheep. Animal possession was therefore not directly linked to immovable wealth, as was attested before. Nevertheless, not all interest groups within the Campine communities possessed sheep. Despite the large quantities of sheep wandering around in the Campine area, sheep were reserved for the better-off peasants, namely the independent peasants and rural elites (see figure 34). As the general inquiry has shown for Wortel, 19 out of 60 households possessed a flock of sheep in 1575.⁵⁵⁹ The same percentage can be found for the village of Zandhoven. As indicated in Figure 32, 31 per cent of the total population possessed at least one sheep.⁵⁶⁰ Sheep were therefore animals owned mostly by the elites of the Campine area. Nevertheless, no fundamental gap between these sheep owners and cottagers existed because, as stated before, their status could change easily .

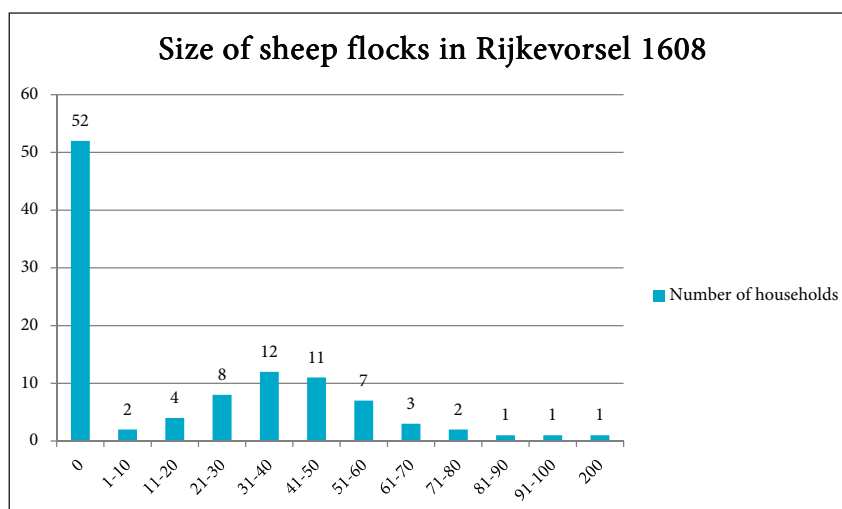


Fig 34 Size of sheep flocks in Rijkevorsel in 1608.⁵⁶¹

Families who owned sheep immediately possessed a flock rather than some individual animals as was the case with cattle. In Wortel, a family owned 48.7 sheep on average which was similar to Rijkevorsel in 1608, where the average flock counted 45.23 animals

557 MORICEAU, *Histoire Et Géographie De L'élevage*.

558 BRUCE M. S. CAMPBELL AND MARK OVERTON, “A New Perspective on Medieval and Early Modern Agriculture: Six Centuries of Norfolk Farming C.1250-C.1850,” *Past & Present*, no. 141 (1993).

559 SAA, 5, condition, 1593.

560 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

561 RAA, OGA Rijkevorsel, 3141-3149, Animal counts, 1608.

(see figure 34).⁵⁶² Such amounts of sheep have triggered quite some attention. First of all, sheep could be held simply for their manure which was indispensable for fertilising sandy soils as manure was always the sticking point for Premodern farming societies. In the sheep-corn region in Norfolk, therefore, countless sheep wandered around on the open fields and brecks, being temporary cultivated and extensively used pastures or arable fields out into the wastelands. As acid, sandy soils benefit from sheep dung rather than from cattle manure, these ecosystems were increasingly stocked with herds of sheep.⁵⁶³ Regardless of the importance of manure, however, sheep were first and foremost kept because of their wool, hides and meat. The Norfolk peasants and later manorial lords were mostly eager to sell the wool.⁵⁶⁴ The same was true for the Campine peasants. Sheep were kept in “schaapskooien” or folds which enabled the peasants to collect their manure and redistribute it on their small fields.⁵⁶⁵ Herds of over 45 sheep, that were barred from the arable fields were, however, predominantly kept for their commercial value (which will be discussed further on).

Even though sheep were far less demanding in terms of the type and quantities of fodder,⁵⁶⁶ sheep herds of around 40 sheep were a challenge for the Campine peasants. In order to sustain their substantial flocks of sheep, they became reliant on the commons and more specifically the vast common heathlands. Each sheep required at least 500 kg of dry mass per year according to Moriceau.⁵⁶⁷ Possessing over 45 sheep, meant that every independent peasant had to provide a staggering 22464 kg of dry mass. Despite the fact that we do not know exactly the exact composition of an independent peasant’s estate, it is clear that it was impossible to generate this amount of dry mass from less than 5 ha of private property, especially when only half was pasture or heathland. In fact the difference was so great, that purchasing enough private pasture was simply impossible for these independent peasants. The grazing capacity of these heathlands was, after all, extremely low, and vast, extensive fields were necessary to maintain a substantial herd of sheep permanently. The comparative advantages of working with common wastelands were therefore significant. The yields from sheep herding were simply insufficient to make the transformation from extensive grazing on practically free common wastelands to intensively managed private pastures profitable. By maintaining vast, open and diverse heath and grasslands as common wastelands, the village herds could easily wander around so as to allow the other parts to recover. In addition, the peasant households did not need to

562 SAA, 5, condition, 1593. ; RAA, OGA Rijkevorsel, 3141-3149, Animal counts, 1608., analysed by Eline Van Onacker.

563 ALLISON, “The Sheep-Corn Husbandry”; CAMPBELL, “The Regional Uniqueness”; OVERTON AND CAMPBELL, “Norfolk Livestock Farming”; EDWARD I. NEWMAN, “Medieval Sheep-Corn Farming: How Much Grain Yield Could Each Sheep Support,” *The Agricultural History Review* 50, no. 2 (2002).

564 BAILEY, “Sand into Gold”.

565 LINDEMANS, *Geschiedenis Van De Landbouw in België*.

566 MORICEAU, *Histoire Et Géographie De L'élevage*.

567 *Ibid.*, 209.

invest in fencing, controlling and maintaining their private fields. The Campine case seems to confirm Clark's argument that purchasing the land in order to enclose and improve it enough to transform it into good pasture was in itself such a large investment that Premodern peasants did not really profit from such a manoeuvre.⁵⁶⁸ Consequently, it was the independent peasants who had most to gain from the survival of vast common wastelands, uninterrupted by temporary incursions of arable or pasture.

IV. Arable and plaggen fertilisation | Symbiosis between private land and common wastelands

Despite the focus on common wastelands and meadows in this thesis, the basis for a peasant household remained arable land. As stated before in chapter II, most peasants held private land as inheritable rent and therefore possessed strong claims, practically resembling ownership, on their private fields. Still, possessing strong claims to land did not necessarily mean possessing sufficient amounts of land. A large part of these peasant communities were not able to meet the subsistence level from their arable production alone. In inland Flanders, the average sandy field delivered around 1326 litres of rye per hectare.⁵⁶⁹ The harvest was, however, reduced because tithes needed to be paid and a part also had to be reserved for sowing the following year. Taking into consideration that Campine soil was most probably even less fertile and that plaggen fertilisation, not the practice of convertible husbandry, was common (see chapter II), the Campine fields would not have had higher yields. The average household of five, however, required between 1250-1375 litres of rye.⁵⁷⁰

Calculating how much an average field yielded and what the real maximum caloric value was for the Campine peasants is quite difficult and relies on estimates. One estimate, based on the "penningcohier" of Gierle as depicted in Figure 35, suggests that more than half of households in Gierle were unable to reach the subsistence level. Nick Van Den Broeck, who has focussed on the Land of Turnhout, has a slightly more positive view however. By taking into account the tithes, seeds for sowing, dues, rents and taxes, he concluded that only peasants owning over 2,5 ha were relatively safe and could produce sufficient grain supplies to sustain their

568 GREGORY CLARK, "Commons Sense: Common Property Rights, Efficiency, and Institutional Change," *The Journal of Economic History* 58, no. 1 (1998).

569 THOEN, *Landbouweconomie En Bevolking*.

570 LEO ADRIAENSSEN, *Staatsvormend Geweld: Overleven Aan De Frontlinies in De Meierij Van Den Bosch, 1572-1629* (Tilburg: Stichting Zuidelijk Historisch Contact, 2007).

family, even with fluctuating weather conditions.⁵⁷¹ As such, around half of society would have been self-sufficient, even though variations per village are significant.⁵⁷² Certainly none of the micro-smallholders and barely any cottagers can be placed in the category of these self-sufficient households.

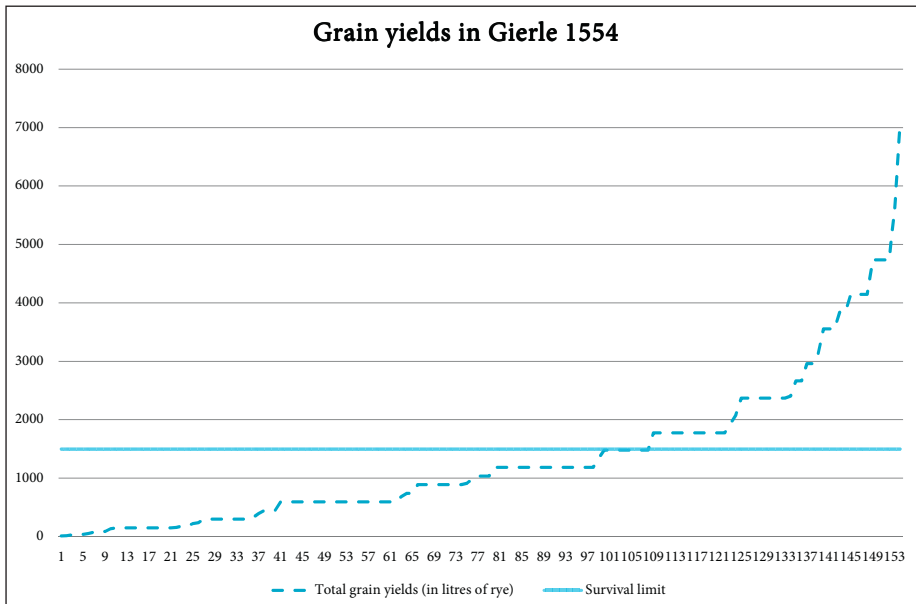


Fig 35 Subsistence limit, calculated by Eline Van Onacker.⁵⁷³

Consequently, they needed to supplement their grain yields and, according to Eline Van Onacker and Hadewijch Masure, these households could count on the local poor relief system to do so. Since the difference between the different interest groups was small, and families did both rise and fall easily on the social ladder, the distributions were relatively large.⁵⁷⁴ In addition, they relied heavily on the extra benefits that were provided by the commons, both wasteland as well as meadows. First of all, they required pasture for their cattle units, as discussed before, but in addition they also depended on their rights to dig peat for fuel, collect scrap wood, search for berries, or other food supplies. Fishing, or hunting was forbidden, yet the common heathlands provided some important additions to the family diet.⁵⁷⁵

For these micro-smallholders and cottagers, however, one of the most important common rights was the right to dig or cut sods. Since they possessed barely any animals, fertilising their

571 NICK VAN DEN BROECK, “Graancrisis in De Kempen. De Invloed Van Sociale Allocatie Op Het Vorstelijk Domein Te Turnhout. (1470-1490)” (University of Antwerp, 2013).

572 ELINE VAN ONACKER, “Leaders of the Pack? Village Elites and Social Structures in the Fifteenth and Sixteenth-Century Campine Area” (ibid.2014), 91-94.

573 RAA, OGA Gierle, 344, Pieces concerning the 10th and 20th penny taks (penningcohier), 1554. Analysed by Eline Van Onacker.

574 Ibid.

575 See databases: byelaws

fields in order to obtain the much-wanted highest possible yields was difficult. Without an intensive kind of fertilising of these fields would have been subject to diminishing returns.⁵⁷⁶ Since manure represented the stumbling block of Premodern rural societies,⁵⁷⁷ however, the Campine peasant relied on a particular system of plaggen fertilisation (see chapter III)⁵⁷⁸ which required human waste or animal manure, together with heather clippings or sods from the common wastelands.⁵⁷⁹ For this specific type of infield-outfield system - where the infields or arable fields were intensively used and cultivated and the wastelands functioned as a reservoir for the collection of sods and extensive grazing of herds of cattle and sheep - all peasant households, whatever their economic status, were dependent on the common wastelands and their common rights to cultivate their private infields.

All community members were able to collect as much as they needed for their own particular use.⁵⁸⁰ This was often called “weekheide”. In Geel “weekheide” was described as follows: “Nobody of the six hamlets will try to mow more than his “weekheide” between the Mass of St John and the Bamisse. The farmers owning a plough will receive one “voeder” every week and the cottagers not owning a plough a carriage load each week. The farmers will go on Thursday, and the cottagers on Monday. Nobody will collect, dig, mow or harvest heather or sods under the pretence of taking a friend’s share”⁵⁸¹ What is remarkable here is the distinction between farmers and cottagers regarding the amount of heather and sods that could be harvested. In most villages, apart from in Geel and Rijkevorsel, the same maximum amount was introduced for all community members. The byelaw of Tongerlo even expressed the equal rights of every household by stating that nobody could collect more than could be dug in one day by one man, which was the equal share of each household.⁵⁸² In Arendonk, for example, every inhabitant could harvest 7 voeder.⁵⁸³ In Herenthout the amount was

576 VAN BAVEL AND THOEN, *Rural History and the Environment*, 18.

577 THOEN AND SOENS, *Land Use and Productivity*.

578 BASTIAENS, “Bodemsporen Van Beddenbouw”; BASTIAENS AND VERBRUGGEN, “Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen”; M.J. CONRY, “Plaggen Soils. A Review of Man-Made Raised Soils,” *Soil and fertilisers* 37 (1974); J.C. PAPE, “Plaggen Soils in the Netherlands,” *Geoderma* 4 (1970); VAN DER WESTERINGHE, ed., *Man-Made Soils*.

579 For more information about the distribution of urban waste: PIETER DE GRAEF, “The Sprawl of Urban Manure” in *ESSHC* (Vienna: 2014).

580 See databases: byelaws

581 “Niemand van de zes heerdgangen zal voorderen te maaien meer dan zijn weekheide, van sint jansmisse tot bamisse: de ploegers elke week een voeder en de keuters die geen ploeg hebben elke week een kar. De ploegers donderdag en de keuters maandag. En zij zullen gehouden zijn de heide te halen en maaien overdag. [] Niemand zal enige russen, schadden, heide steken, maaien, halen of laten halen onder de pretext van zijn vrienden die geen heide of russen nodig hebben, op de pene van 20 stuivers”. Source: ERNALSTEEN, “Keuren Van Gheel”.

582 “2 januari 1800 niemand zal in de toekomst mogen rus of schadden hakken of laten hakken op de sterschotsheide, tenzij zijn gelijke portie voor ieder huishouden, zoals een man op 1 dag kan afhakken, maar niet anders dan werd geordineerd door de heer en de schepenen. Zij die geen inboorling zijn van tongerlo zullen ook niet mogen hakken tenzij hij daar eigenaar of leenman is van de heer van tongerlo en zal hetzelfde geconfiscieerd blijven telkens men ter contrarie bevonden wordt, bovenop de boete van 10 stuiver”. Source: AAT, *Bundel Tongerlo I: Rules for the village of Tongerlo*, Copy.

583 PRIMIS, *Keuren*.

determined by a maximum of 2 days of harvesting by one person.⁵⁸⁴ In general, therefore, every household possessed equal rights, regardless of the amount of land they cultivated. As such, these micro-smallholders and cottagers had an advantage in regard to the independent peasants or rural elites whom owned more arable fields. Despite the equal shares, in reality not all households took the same amounts of sods. The “heideboek” of Zandhoven, registered the sum to be paid per day of collecting sods and reveals a remarkable variation in the amount of days a household actually purchased. While some households registered up to ten days of collecting heather clippings, others did not pay for one. Since we cannot link the names in the “heideboek” to tax registers or other administrative sources, it is impossible to define the socio-economic background of these households, however, it is possible to analyse the case of widows. Apart from widow Maycx, none of the widows between 1559 and 1562 purchased days to collect heather, while most did put cattle on the commons and bought the right to dig for peat.⁵⁸⁵ It has to be acknowledged, however, that the “heideboek” of Zandhoven represents an exceptional case where these common rights had to be purchased. It could, therefore, be unrepresentative especially since the Holy Ghost table probably provided certain benefits free of charge when a household was listed as “poor”.

The independent peasants were the first to reach a secure level of yields and can therefore be called “independent”. First of all, the majority of this group possessed enough land to reach the subsistence level. Due to the diversity of their crops, rotation cycles and the combination of animal husbandry and arable production, they even remained quite resilient towards weather abnormalities, failing crop yields and crises. After all, food system vulnerability, due to a limited amount of crops and alternative cultivations, is acknowledged as one of the main causes of Premodern subsistence crises.⁵⁸⁶ Second, and perhaps even more important, they possessed their own means of production, namely ploughs.

The general enquiry ordered by the central government that was discussed earlier also reported on plough distribution. For the village of Loenhout, only 79 households out of 267 did not own “half a plough” (see figure 36). According to this source, a plough equalled two horses to draw the span. That means that only 30 per cent of the village did not possess a horse to labour the fields. This calculation is, however, exceptionally substantial and can most probably be explained by the interests of the village of Loenhout. In order to escape further taxes, burdens and the recovery of debts, these villages might have exaggerated their losses, but also their former economic levels, in order to gain the pity of the government.

584 RAA, OGA Herenthout, 3, Byelaw.

585 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

586 HUHTAMAA, “The Great Famine and Food System Vulnerability in Medieval North-East Europe”; GUIDO ALFANI, “The Famine of 1590s in Northern Italy. An Analysis of the Greatest System Shock of the Sixteenth Century,” *Histoire et Mesure* 26 (2011).

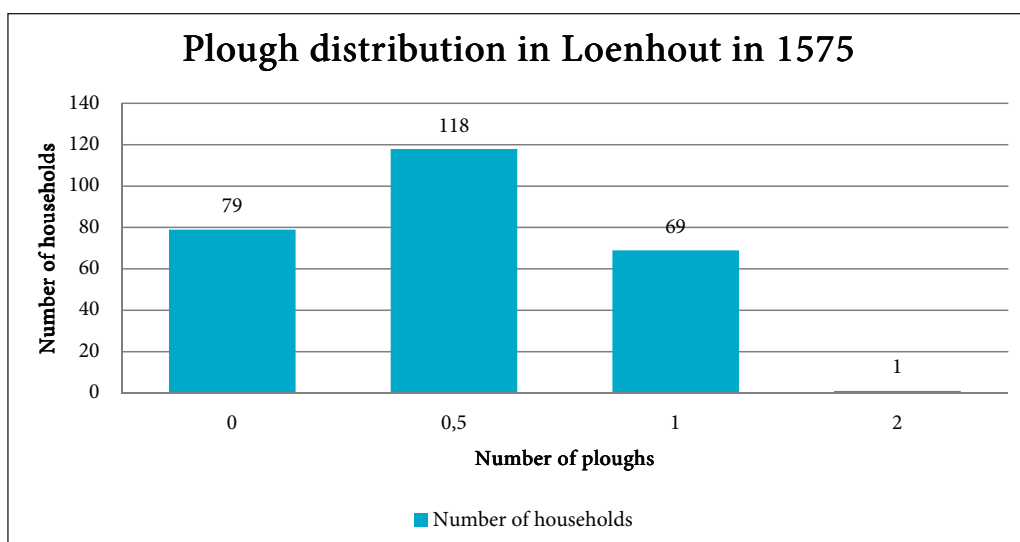


Fig 36 Plough distribution in Loenhout in 1575 according to a general enquiry by the central government in 1593.⁵⁸⁷

Village	Number of ploughs <1575	Cultivated arable in ha	Ploughs per 10 ha
Bonheiden	62	390	1,59
Lichtaart	88	325	2,71
's-Gravenwezel	40	312	1,28
Schoten and Sint-Job-in-'t-Goor	90	682,5	1,32
Wommelgem	73	474,5	1,54

Fig 37 Plough distribution in a selection of Campine villages before 1575.⁵⁸⁸

Other villages reported more moderate figures such as the villages of Boenheiden, Lichtaart, 's Gravenwezel, Schoten and Wommelgem which reported between 40 and 90 ploughs, or 80 to 180 horses per village. When we calculate the total acreage of cultivated land, derived from that same report, we get a picture of the amount of ploughs per ha (figure 37) and all those villages appear to show an average of 1,5 ploughs per 10 ha.⁵⁸⁹ When we look at other animal counts, which merely state the amount of horses instead of literally referring to draft animals, we get a similar picture once more. The “heideboek” of Zandhoven suggests that 41 per cent of the village owned at least a horse (see figure 32). Consequently as much as 40 per cent of the Campine villagers owned at least half a plough and could therefore easily pair up with their neighbours in order to plough the land.⁵⁹⁰ It goes without saying that the rural elites,

587 SAA, 5, condition, 1593.

588 Ibid.

589 Ibid.

590 RAA, OGA Zandhoven, 148, “Heideboek”, 1559-1581.

and most definitely the Campine tenant farmers, reached - surpassed even - the subsistence level and possessed the required draft and haulage animals as well. The cottagers and micro-smallholders, therefore, were the only interest group that did not possess their own plough nor draft animals. Nevertheless, according to Erik Thoen, all farms under 3 ha could easily be managed by spade, rather than by plough.⁵⁹¹

These amounts - and especially the distribution of horses in the Campine area - were truly exceptional. In general horse ownership was confined to the rural elites. For example, in inland Flanders, Reinoud Vermoesen and Annelies De Bie discovered that horses were concentrated in the hands of a small group of large landowners, which could therefore create a relationship of dependency between them and the surrounding small peasants, as these peasants needed to hire horses for ploughing. During the eighteenth century the rural communities polarised even further.⁵⁹² Being able to pair up horses, without relying on the rural elites, gave the independent peasants a strong power-base within the community as the horizontal relationships were cultivated at the expense of vertical dependency relationships. That base was even strengthened since horses were most probably used to enlarge these peasants' portfolio of economic activities. Horses were, in any case, as useful for transport as they were for ploughing.⁵⁹³ The Campine area was located around the major roads and transport lines towards the northern Low Countries and Aachen, not to mention regional and local roads connecting the Brabantine urban network.⁵⁹⁴ Local products could therefore easily be transported and, furthermore, peasants could supplement their income by transporting goods up and down these trade routes. In Antwerp, the majority of these transporters were listed as originating from the Campine area.⁵⁹⁵ As the arable yields were rather limited, extra income from trading, proto-industrial activities or commercialising products derived from the commons were a welcome addition.

As such, all interest communities were able to cultivate their private land, without relying on the means of production or credit from rural elites. The common wastelands, on the other hand, were more indispensable. Micro-smallholders and cottagers especially relied heavily on the sods derived from the common wastelands, as the fertilisation of their arable plots was of the utmost importance and they certainly did not possess sufficient cattle units to cope with this alone. In addition, the independent peasants and rural elites also required additional fodder particularly in order to sustain their draft and haulage animals. Although horses were

591 THOEN, *Landbouweconomie En Bevolking*.

592 VERMOESEN AND DE BIE, "Boeren En Hun Relaties Op Het Vlaamse Platteland (1750-1800)".

593 For more information about horses: LANGDON, *Horses, Oxen and Technological Innovation: The Use of Draught Animals in English Farming from 1066 to 1500*; CAMPBELL, *English Seigneurial Agriculture*, 127.

594 BART BALLAUX, "Transport En Economische Ontwikkeling in Het Hertogdom Brabant Gedurende De Lange Zestiende Eeuw" (University of Antwerp, 2006); ADRIAENSEN, "De Plaats Van Oisterwijk".

595 BALLAUX, "Transport En Economische Ontwikkeling".

fed grain in addition to hay and grass,⁵⁹⁶ these independent peasants and rural elites most definitely profited most from the commons because of communal grazing.

V. Commercial peasants | Entering the urban markets, without depending on them

These mixed farming strategies displayed by micro-smallholders, cottagers and independent peasants, lead us to the question of their objectives. Were they commercially orientated or did they focus on subsistence farming? This continues to be a topic of great interest and a highly debated issue. Peasants, and most certainly those peasants operating in so-called traditional societies, have often been considered risk and market averse. They tended to focus on subsistence farming with an involvement in the market that was as minimal as possible. Robert Brenner, who has influenced recent debates significantly, asserted that: “[peasants] diversify to make sure they secured what they needed to survive and market only physical surpluses, rather than specialise to maximise exchange value”⁵⁹⁷ Only in situations where peasants are compelled towards the market will they change their strategy and adopt a commercial attitude.⁵⁹⁸ None of the scholars depicting peasants as market averse, however, claim that peasants were completely autarkic. Markets were omnipresent and ample proof has shown that rural products from those peasants arrived at urban centres.⁵⁹⁹ Nevertheless, it has been claimed that the main objective of the peasants was to reduce their market involvement to a bare minimum.⁶⁰⁰ This paradigm has most certainly been portrayed by historians of the commons. Commercialisation was supposed to have had negative effects on the sustainability of the commons, as market pressure pushed community members to over-exploit or even free ride on the commons. Therefore one of the main objectives of the common pool resource institutions was supposed to have been to limit commercial strategies, by stinting animals and prohibiting the marketing of products derived from the commons.⁶⁰¹

596 LANGDON, *Horses, Oxen and Technological Innovation: The Use of Draught Animals in English Farming from 1066 to 1500*.

597 ROBERT BRENNER, “The Low Countries in the Transition to Capitalism,” in *Peasants into Farmers? The Transformation of Rural Economy and Society in the Low Countries (Middle Ages - 19th Century) in the Light of the Brenner Debate*, ed. P. Hoppensbrouwers and Jan Luiten van Zanden (Turnhout: Brepols, 2001), 281.

598 Ibid.

599 PIOTR GUZOWSKI, “Markets and Peasant’s Life Cycle in Poland 15th and 16th Centuries,” in *ESSHC (Glasgow: 2012)*; WILLIAM N. PARKER AND ERIC L. JONES, eds., *European Peasants and Their Markets: Essays in Agrarian Economic History* (Princeton: Princeton University Press, 1975).

600 ALEXANDER CHAYANOV AND DANIEL THORNER, *A.V. Chayanov on the Theory of Peasant Economy* (Madison: Madison Wisconsin Press, 1986); MICHAEL POSTAN, *Essays on Medieval Agriculture and General Problems of the Medieval Economy* (New York: Cambridge University Press, 1973).

601 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*, 10; VAN ZANDEN, “The Paradox of the Marks”.

Yet, even for the medieval period, the image of peasants has changed. Larson, for example gave an apt definition. He described peasants as “*primarily small-scale agricultural producers, who controlled the means of production and who used these means directly to provide for their own subsistence or use. [I] Their activities were integrated into the market economy, even if production for that market was not the main goal and they did not become dependent on markets*”.⁶⁰² According to Larson peasants were active in the market, but the vital difference with other actors was their independence from the market, not their willingness or reticence towards the market.

Moreover, private property was not a precondition for engaging in commercial activities. In the medieval Brecklands, small tenant holders were the first actors to commercialise sheep breeding and export wool, while herding their sheep flocks in the communal fold courses, traversing the open fields, brecks and common wastelands.⁶⁰³ The same perspective was defended by Eline Van Onacker who labelled the Campine peasants as eager participants in the market, but only within the boundaries of a traditional and non-specialised peasant society. Commodities could be marketed to generate a surplus income, but that cash income was not the main source of income for sustaining the family or maximising profit. This unwillingness to fully transform the rural system to a specialised and market-dependent economy was, however, not the result of failing market institutions, as these were as efficient as those of their neighbours,⁶⁰⁴ rather it was due to the socio-economic structure of Campine society itself. First of all, these peasants had such strong claims on their land, their own means of production, long-term agricultural strategies and the possession of strong common rights all of which protected these peasants from being compelled towards the market by the seigniorial or rural elite in order to generate cash income. Secondly, they opted to participate in the market, without transforming their agricultural strategies, which would have led to higher profits in growth years, but would result in fundamentally deeper crises when the economic situation worsened. Finally, their traditional system was efficient enough to provide the basic necessities and allow the production and selling of any surplus products.

Therefore even medieval peasants, operating in traditional societies with extensive commons, were active players in the market. In the Campine area, however, especially the independent peasants and rural elites operated in those markets. Even though cottagers and micro-smallholders were active players in the land and labour markets, commodities were marketed

602 PETER LIONEL LARSON, *Conflict and Compromise in the Late Medieval Countryside : Lords and Peasants in Durham, 1349-1400* (London: Routledge, 2006). See also: Warde

603 BAILEY, “Sand into Gold”.

604 For an assessment of the formal market institutions see: VAN ONACKER, “De Markt Als Middel”.

largely by the independent peasants and rural elites.⁶⁰⁵ The most famous commodity derived from the Campine area was, of course, wool.

Late medieval communities themselves did not object to commercial practices either. Even though several scholars have stated that the marketing of products derived from the commons was prohibited, this does not apply to most indirect products, but only to depletable resources (see chapter III). Almost all byelaws in the Campine area prohibited the selling of peat, loam or heather from the commons. Nevertheless, similar rules or prohibitions are not encountered when it comes to animal products. Hides from cattle and sheep, wool, milk, cheese, beeswax and meat were products that were directly linked with the common wastelands or meadows, but that could be sold on local and regional markets without any restrictions.

Sheep in particular were commercial animals because they provided wool, dairy products, hides and meat. While wool has received the most attention, the importance of sheep for dairy products, hides and meat in particular was of equal importance to these peasants. As the accounts of the tenant farmers of Tongerlo suggest, the amount of cash earned from selling a few sheep approached the sorts of profits derived from selling wool.⁶⁰⁶ An average sheep cost 40 schelling and the earnings derived from wool sales per flock fluctuated around 238 schelling, therefore even selling just 6 sheep per year would approach the earnings made from wool. We do not, however, have any estimates of sheep sales by peasants.

Wool yields and profits	
Average quantity of wool per sheep in “steen”	0,16
Price of wool per steen in schelling	33,13
Average flock size	45
Wool yields per average flock in steen	7,2
Cash earnings per average flock in schelling	238,54
Average wage of a mason per day in schelling	2
Amount of days’ wages a skilled mason could receive from the earnings	119,27

Fig 38 Estimates of wool yields, based on prices and quantities of wool sales in Turnhout by Willem Wils between 1553-1556.⁶⁰⁷

605 Selling surplus milk, cheese and perhaps even beef, was also possible for these cottagers, however, this falls into the category of diversifying and engaging in the market to survive, as Brenner stated. BRENNER, “The Low Countries in the Transition to Capitalism”.

606 AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.

607 Information on flock sizes and number of sheep that were shorn derived from: AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513. Estimates of the price and quantities based on the accounts of Willem Wils, ARAB, Chambre des Comptes, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557. For more information see Appendix V. Steen = Measurement: Boen, Maten En Gewichten.

Wool did, however, leave more paper trails. Based on the records of Willem Wils, the manager of the ducal sheep in Turnhout, for example, I have been able to assess how much a peasant could potentially earn from his flock. As the average sheep produced 0,16 steen of wool and practically all sheep were sheared by Campine peasants, owning a flock of sheep could potentially earn an additional income equal to 119 days of wages as a skilled urban mason (see figure 38).⁶⁰⁸ The records of Willem Wils, however, did show that earnings did not equal profits. It is more than likely that these peasants had to invest a portion of these earnings in order to purchase animals, some fodder and supplies, while probably up to a third of the herd had to be replaced each year.⁶⁰⁹

It is very likely that the independent peasants sold wool to traders from urban centres. As the records of the steward of Turnhout suggest, Campine sheep breeders even conducted business with traders from Herentals, Hoogstraten, as well as Sint Truiden.⁶¹⁰ Inland wool was, after all, a highly valued commodity. Even though English, and later Spanish, wool were of higher quality, inland wool was used by all of the urban craft guilds, since these guilds did not produce only the highest quality cloth for international trade. It was Adriaan Verhulst who firmly stated that inland wool did indeed play its part in medieval cloth production. He claims that inland wool used to be very popular in the early stages of cloth production (up until the middle of the thirteenth century) and reclaimed part of its position in the fifteenth century when shortages of English wool emerged and new drapery techniques came into being. He even mentions Campine wool, but mostly focuses on the wool produced by the immense flocks of the abbey of Tongerlo. Still, he also states that even “normal” Campine peasants sold their wool on the regional markets.⁶¹¹ After all, the importance of average quality wool should not be underestimated. Even in England, most of the wool produced in enormous quantities and exported to the continent was of rather poor quality.⁶¹² The market for non-luxurious products was, after all, much larger than that of high quality cloth. A quick scan of the cloth guild regulations of some Brabantine cities such as Antwerp, Brussels, Leuven, Lier and ‘s Hertogenbosch shed more light on this enigma. In these “regulations” several entries mention the use of Campine wool.

608 ARAB, *Chambre des Comptes*, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557. Wages based on the series of Robert Allen, derived from: VAN DER WEE, *The Growth of the Antwerp Market*.

609 ARAB, *Chambre des Comptes*, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557. CAMPBELL, *English Seigniorial Agriculture*.

610 ARAB, *Chambre des Comptes*, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557.

611 ADRIAAN VERHULST, “De Inlandse Wol in De Textielnijverheid Van De Nederlanden Van De 12de Tot De 17de Eeuw: Produktie, Handel En Verwerking,” *Bijdragen en Mededelingen Betreffende de Geschiedenis der Nederlanden* 85 (1970): 6-18.

612 BOND, *Monastic Landscapes*; CAMPBELL, *English Seigniorial Agriculture*.

City	Stipulation
's Hertogenbosch	Anyone who wants to produce broad cloth, must make it from English wool and of good Campine wool
Antwerp	Cloth from Retie and Duffel (two villages in the Campine area)
Brussel, Mechelen & Lier	We do not process Zeeuwsche wool, lamb's wool, Brabantine wool or "blootwool", but only the finest and most exquisite Campine wool
Leuven	This inland wool came from the immediate surroundings, where some drapiers such as Ard Vinke possessed some flocks, but the best was without doubt the fine Campine wool, which was – for regular cloth – mixed with fine English wool in 1513 and in the fifteenth century was used for this purpose on its own

Fig 39 Guild regulations of Brabantine cities mentioning Campine wool.⁶¹³

When these traditional cloth centres started to dwindle during the fifteenth century, however, the Campine peasants were able to shift towards more northern urban centres such as Oisterwijk, 's Hertogenbosch and, later, Tilburg.⁶¹⁴ In addition, Campine wool was supposed to be processed in the countryside itself. Marlous Craane stated that almost all the wool produced in the Campine area was used in rural textile production and not in the town of 's-Hertogenbosch.⁶¹⁵

These independent peasants were therefore able to supplement their household income by engaging in the market. They did not, however, blindly follow the ups and downs of those urban markets. When, during the fifteenth century, the imports of English wool were banned, Campine peasants would have been able to transform their farm structure and agricultural strategies to specialise in sheep breeding and wool exporting. After all, this important shift had occurred in the Brecklands in Norfolk during the later medieval period once English wool had gained importance as an export product.⁶¹⁶ Nevertheless, no significant fluctuations

613 VAN DEN HEUVEL, *De Ambachtsgilden Van 's-Hertogenbosch, 74 year 1403*. "Item soe wie brede laken maken wil, dat hi die maken sal van engelscher wolle ende van uytdragender goeder kempenscher wollen, die daertoe goet is,..." FLORIS PRIMIS, "De Statuten Van De Antwerpsche Lakengilde in Het Begin Der 16de Eeuw," *Koninklijke Vlaamsche academie voor taal- en letterkunde* (1939): 37 year 1532 . "... de retiesche en duffelsche lakens ...". THIJS, "Van "Werkwinkel" Tot "Fabriek"", 504 year 1567. "nyet en syn verwerckende zeeusche wolle, lampwolle, brabantse wolle noch blootwolle, dan alleenlyck de fynste ende best vuytgelesender kempesche wolle". VAN UYTVEN, *Stadsfinanciën*, 345. "... Deze inlandse wol kwam uit de onmiddellijke omgeving waar sommige drapiers als Ard Vinke kudden bezaten, maar de beste was ongetwijfeld de fijne Kempische wol die voor gewone lakens met fijne Engelse wol mocht vermengd worden in 1513, maar in de XVe eeuw zelfs hiervoor alleen gebruikt werd..."

614 ADRIAENSEN, "De Plaats Van Oisterwijk".

615 CRAANE, "Spatial Patterns", 94.

616 BAILEY, "Sand into Gold".

in sheep numbers could occur aside from the late fifteenth-century downfall. They supplied the inland wool that was constantly needed to produce second-rate cloth for internal demand without trying to follow the fluctuations of the cloth industry.

The same goes for cattle, even though source material is quite scarce in order to demonstrate this. Once more we have to rely on lease registers to estimate the importance of cattle breeding as a commercial activity in the Campine area. The average peasant, especially cottagers and micro-smallholders, were not fattening oxen or orientated towards milk and cheese production. Specialisation in one type of commercial activity was not what these peasants were looking for. Instead, owning cattle was most probably one of several of these small peasants' survival techniques taken on in order to secure their subsistence. Nevertheless, households owning up to 7 or 8 pieces of livestock could have marketed some of their produce on the local and regional markets.

VI. Tenant farmers | No enemies of the common pool regime

Campine peasants were orientated towards mixed farming, combining arable production with animal husbandry while also relying on the common pool regime in one way or the other. The question remains, however, how the true rural elites - namely the abbey's tenant farmers who leased up to 82 ha of land - organised their agricultural practices and what their relationship with the common pool regime was (see figure 30). In general, tenant farmers have been considered as the opponents of common pool regimes. The fact that numerous cases of forced enclosures, de-population occurred, and large-scale land transformations were instigated by feudal lords throughout the medieval and Early Modern period, has enforced this image. The feudal lords' tenant farmers were considered to be their partners in crime. However, while the lords enclosed the land, their tenant farmers were the ones who leased and managed the newly founded or enlarged farms. In contrast to the traditional peasants, they had the advantage of scale and the ability of investing huge amounts of capital allowing them to run a commercial, specialised or even capitalistic enterprise.⁶¹⁷ Scholars such as Bas Van Bavel, Tim Soens and Erik Thoen have also demonstrated that in large parts of the Low Countries late medieval tenant farmers increasingly specialised, commercialised and intensified agricultural production because of the rise of competitive land and commodity markets.⁶¹⁸

617 ALLEN, *Enclosure and the Yeoman*.

618 VAN BAVEL, *Transitie En Continuïteit*; VAN BAVEL, *Manors and Markets*; SOENS AND THOEN, *The Origins of Leasehold*.

Despite the fact that these large farms were leased and, it can be assumed, managed in a highly specialised and capitalistic way, different forms of leaseholding existed. Lies Vervaeet, for example, has questioned the former paradigms and nuanced the debate regarding the presumed capitalistic and profit-driven character of tenant farmers in the medieval Low Countries. According to her, the tenants of the Saint John's Hospital sought to secure a steady supply of food and certain raw materials for the abbey's own use. Moreover, the relationship between the abbey and its tenants was at certain points quite amicable and loyal, rather than professional and profit-driven.⁶¹⁹ The Saint John's farmers, however, did specialise in either animal husbandry or arable production, even though the commercial aspect was not their main driving factor.

While the relationship between the abbey of Tongerlo and its tenants largely remains hidden, their non-capitalistic character matched that of the Saint John's leaseholders. They were required to provide the abbey with the indispensable goods so that the ecclesiastical community could be sustained. In contrast to specialisation, however, the tenant farms of Tongerlo retained a mixed farming strategy. The more arable land a tenant farmer leased, the more pasture was also present (see figure 40).⁶²⁰ Moreover, farmers did not even opt for one type of grain, but combined several species, of which rye, oats and buckwheat were the most dominant varieties.⁶²¹

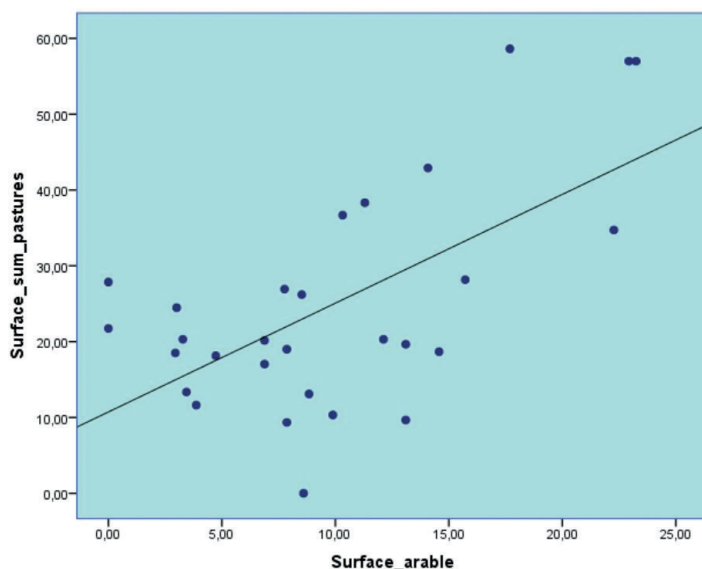


Fig 40 Relationship between total surface area of arable land and pastures of the abbey's tenant farms in Kalmthout, Tongerlo and Hapert in 1510.⁶²²

619 VERVAET, "Het Brugse Sint-Janshospitaal".

620 See Appendix III.; AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

621 AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.

622 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

The same went for animal husbandry. Considerable amounts of cattle, horses and substantial flocks of sheep were present on almost every farm.⁶²³ The tenant farmers were, however, not the owners of their livestock but had a specific contract with the abbey, called “*Kempisch stalrecht*”. This system can be compared to share-holding, since half of the herd was owned by the tenant farmer and half by the lessor, or landlord. The costs and benefits derived from these herds were split in half by both parties. As a result, each year a steward of the abbey had to be present to witness the shearing and division of the animals, after which a new herd was composed and registered.⁶²⁴ Via this exploitation system, the abbey and her tenants owned between 1000 and 1600 sheep per seigniority and kept herds of more than 250 pieces of cattle. As shown in Figure 41, the average flocks were big, but not proportionally when compared to the independent peasants’ herds. Owning incredibly large farms, measuring over 5 to 16 times as much land as the typical peasant, they “only” possessed herds double or triple the size of their peasant neighbours.

Village	Average amount of sheep per tenant	Average amount of cattle per tenant
Kalmthout	90,06	20,94
Tongerlo	78,46	16,31
Hapert	113,5	24,13

Fig 41 Average herd sizes in the different siegniories of the abbey of Tongerlo in 1510.⁶²⁵

As with the composition of their farms, the tenant farmers’ animal husbandry strategies mostly resembled those of the Campine peasants’ rather than those of the capitalistic tenant farmers. The key word here is “diversification” for when one looks at the cattle herds, for example, they demonstrate that it was not the abbey’s intention to produce one particular product (see figure 42). Some farms do show a slight over-representation of one kind of cattle, but to label those farms as being “specialised” would be a step too far.

Cattle numbers	Vaccas/ milk cows	Pecora / bovines	Boves/ oxen
Total amount	347	243	389
Average per tenant	7,71	5,40	12,55

Fig 42 Cattle herd composition at the Tongerlo tenant farms in 1510.⁶²⁶

623 For example, the farm Ter Uytscholen in Tongerlo measured 30.46 ha in total, with combined arable land of 10.16 ha, 17.04 ha of pasture and meadows, including the ownership of 16 pieces of cattle, 68 sheep and 7 horses. Source: AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.; AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

624 HEERMAN, “Het Abdijdom”, 68-76.

625 AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.

626 Ibid. See also Appendix IV.

The tenants possessed equal amounts of dairy cows and oxen, together with herds of cattle, consisting of heifers, calves and beef cattle. This differs from the general tendency to invest either in dairy cattle or the fattening of oxen, so as to export either high quality beef or dairy products.⁶²⁷ An aversion to far-reaching specialisation, however, did not preclude a commercial attitude. These amounts of cattle were not introduced only in order to secure the tenants' or abbey's subsistence. While large parts of the rural products such as grain, cheese, wool and even wax were directly diverted to the abbey through lease paid in kind,⁶²⁸ any surplus could be marketed. Even though exact revenues have not been found, the earnings derived from animal skins and meat could be impressive. Cedric Heerman stated that between 10 and 20 per cent of the Tongerlo cattle herd was sold every year. Price data for leather or animal skins have not survived, but as an average head of cattle could be sold for 17,3 schelling, the abbey was potentially able to generate up to 1591,6 schelling which was the equivalent of 864578,3 litres of rye (see figure 43).

Products	Price per unit (Schelling)	Sold units	Total revenue (Schelling)	real revenues (in litre of rye)
wool	0,43	4050	1741,5	930158,1
mutton	1,9	1012	1922,8	1063582,5
beef	17,3	92	1591,6	864578,3

Fig 43 Estimated revenues derived from the tenant farms of the abbey of Tongerlo.⁶²⁹

The most central markets for cattle in the Campine area, seem to have been Geel, Turnhout and Hoogstraten (see figure 44). Annual fairs and large-scale markets such as the Easter market in Geel, were in particular places frequented by sellers and buyers from a large area. Whereas markets provided the main opportunities for buying and selling staple food, fairs were the place to buy and sell livestock and bulk goods.⁶³⁰ Merchants and butchers from as far as Hainaut arrived at these central places to purchase Campine cattle.

627 JAN DE VRIES, *The Dutch Rural Economy in the Golden Age, 1500-1700* (New Haven: Yale University Press, 1974); RASMUSSEN, "Innovative Feudalism"; GIJSBERS, *Kapitale Ossen*.

628 AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.

629 AAT, II, 206, Lease accounts of the abbey of Tongerlo, 1504-1513. Heerman, "Het Abdijdom". ARAB, *Chambre des Comptes*, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557.

630 CRAANE, "Spatial Patterns", 90.

Cattle buyers	Amount	Origin of cattle buyers	Amount	Location of transaction	Amount
Butchers	6	Hainaut	2	Geel	5
Merchants	2	Loenhout	1	Hoogstraten	4
Politicians/judicial	2	Antwerp	2	Turnhout	8
Unknown	20	Weelde	1		
		Zeeland	1		
		Korssendonk	1		
		Turnhout	1		

Fig 44 Buyers of cattle from Willem Wijs, between 1553-1557.⁶³¹

The most profit, however, was to be made from the tenant farmers' furry friends: sheep.⁶³² As shown in Figure 45, sheep were the most numerous inhabitants of the Campine villages and dominated the herds of the tenant farmers. On average, Tongerlo tenant farmers owned 90 sheep.

Village	Number of farms	Number of sheep	Average amount of sheep per tenant
Kalmthout	16	1441	90,06
Tongerlo	13	1020	68
Hapert	14	1589	113,5
Total	43	4050	4050

Fig 45 Sheep possession of the abbey of Tongerlo during fifteenth and sixteenth centuries in the regions of Tongerlo, Kalmthout and Tilburg.⁶³³

Apart from a small crisis in the second half of the fifteenth century, the abbey consistently owned huge flocks of sheep and was the first and foremost sheep owner in the Campine area throughout the late medieval era (see chapter II). Like the cattle units, these thousands of sheep point towards a commercial attitude. Sheep were sold for their meat, skin and wool. The same markets were visited in order to sell these products (as was the case for cattle and beef), but not butchers but shoemakers were the most frequently registered artisans.⁶³⁴ If we use the same calculation method as was used to estimate the earnings of peasants, the abbey could have made over 480000 denier from their sheep flocks.

631 ARAB, *Chambre des Comptes*, 5213/1-8, *Accounts of the domain of Turnhout, 1550-1557*.

632 See for example Appendix V.

633 HEERMAN, "Het Abdijdomein".

634 ARAB, *Chambre des Comptes*, 5213/1-8, *Accounts of the domain of Turnhout, 1550-1557*.

These tenant farmers were therefore a peculiar group. Looking at the composition of their estates, they resembled the independent peasants, however, the scale on which they could operate was fundamentally different. They were truly large-scale farmers, with extensive herds that were, on the one hand, used to provide the basic necessities for the abbey of Tongerlo while, on the other, they could engage in the regional markets and trade with a wide range of merchants and artisans. Oddly enough, size did not matter in the Campine area, when it came to becoming independent from the commons. Even though the ratio of land versus cattle units was far better for these tenant farmers as had been the case for the independent peasants, they were still incapable of generating sufficient fodder to maintain these flocks on their private pastures and heathlands.⁶³⁵ This rational usage of the commons by the ecclesiastical institutions and their tenants was not that peculiar however. In Norfolk, for example, manorial lords pushed their small tenant holders out of the communal fold course system so as to monopolise the communal fold courses themselves.⁶³⁶ In addition, Campbell discovered that most abbeys herding the famous flocks of sheep for international export used the common pastures and wastelands. They operated along the communal rules and even introduced stints for their ecclesiastical flocks.⁶³⁷

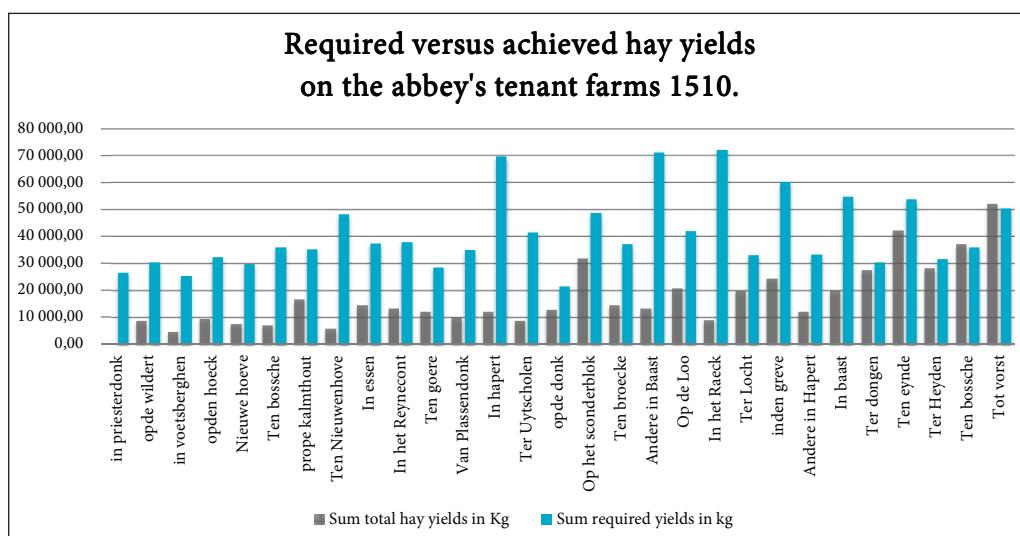


Fig 46 Required versus achieved hay yields of the tenant farmers of Tongerlo in 1510.⁶³⁸

Looking at the pastures, yields and cattle units (see appendix II), it becomes clear that on average only 43 per cent of the required yields were actually achieved. Looking at Figure 46, however, this meant that certain farms actually possessed nearly enough private property to cope, while others could not even provide 10 per cent of the required hay yields. Moreover,

635 Information concerning the achieved and required yields of the tongerlo tenant farms: see appendix II

636 WHYTE, *Contested Pasts*.

637 CAMPBELL, *English Seigniorial Agriculture*.

638 See appendix II

their commercial activities were insufficient to cover all the costs that would accompany a transformation from an estate relying on the commons to a self-sufficient farm. Purchasing enough pastures, turning infertile and sturdy heathlands into productive, hay-producing fields, enclosing land and paying higher rents would squander their entire potential earnings. Willem Wils, after all, made such an attempt. Supported by Mary of Hungary, pastures were obtained by a large-scale enclosure of the commons of Turnhout in 1550. Despite the fact that he did not even need to buy the plots of wasteland, the costs required to manage the estate were so huge that practically no profits were made and the entire operation was abandoned after only 8 years. This enclosure experiment will, however, be discussed in more detail in the next chapter.

VII. The common denominator | Inclusive, diverse and unstinted

In the end, all interest groups wanted to safeguard their interests and those were ultimately based on limited and depletable resources. The micro-smallholders and cottagers shared most of their interests. As small landholders, they were predominantly in search of resources to complement their private property, in order to survive as independent households. They required peat and scrap wood as fuel or for appliances and heather clippings and sods for fertilising their infields from the common wastelands. As they invested in cattle to supplement the insufficient grain yields and to produce manure, they also came to be in search of fodder. Their private meadows were absolutely insufficient, which made them dependent on the common meadows. Thanks to access rights to the privately owned meadows, the micro-smallholders and cottagers were able to graze their cattle on the entire “broeken” or hay meadows, which secured their required yields of fodder.

Then again, if we engage in some counter-factual history, would the micro-smallholders and cottagers have benefitted more from a division of the commons and, in particular, the common wastelands? As most of their problems were caused by a lack of land, privatising and exploiting the commons and turning them in semi-permanent pastures or brecks could have been a solution for them to achieve the subsistence level. Even though the common wastelands were unsuitable for abundant arable production, the system of brecks - temporary cultivated and extensively used pastures or arable fields out into the wastelands - as had existed in the Brecklands in Norfolk, could have been an option.⁶³⁹ A similar system, called convertible husbandry, was dominant in inland Flanders. Here sandy soils were fertilised and yields increased, since fallow was abandoned in favour of switching between arable production

639 BAILEY, *A Marginal Economy*.

and pasture. As such, animals' manure could improve the land or the land could recuperate thanks to the introduction of fodder crops such as clover.⁶⁴⁰ Nadine Vivier, after all, argued that it was the smallest peasants in particular who favoured the division of the commons, as the prospect of fair divisions would be an answer to their hunger for land.⁶⁴¹ In the sixteenth century, neither the voices of micro-smallholders nor cottagers were directly heard, but once the eighteenth-century physiocrats tried to abolish the commons, they were often put forward as the main reason for not dividing and privatising the commons despite the fact that only the village elites and independent peasants filed formal complaints.⁶⁴² They were, however, responsive whenever their interests that had developed within the common pool regime were threatened. An example is the conflicts that arose when rural elites attempted to enclose the meadows permanently and other members of the community, probably including these cottagers and micro-smallholders, reacted quite fiercely. This is, however, handled in more detail in the next chapter.

The independent peasants, however, were more focussed on the common wastelands than the common hay meadows. Possessing significant amounts of private meadows as they did, they could probably provide sufficient fodder for their cattle if they were able to generate a second harvest of hay on enclosed private meadows. As such, the independent peasants were most probably not the main supporters of the communal access rights to the private meadows. Access to the common wastelands was, however, indispensable. As a result, these independent peasants were the main champions of the Campine vast common wastelands that dominated the common pool regime. If the commons were to be abolished, they would not be able to maintain their position within society as they would no longer have been able to maintain flocks of sheep which represented the fundamental basis of their socio-economic position. In fact, sheep breeding and retaining huge herds would simply become impossible for peasants and even tenant farmers. Finally, the common wastelands, were important in providing sods to fertilise the arable fields. Even peasants owning up to 7 pieces of cattle were still eager to find more fertiliser for their sandy fields. The supporters of a communal system were therefore not necessarily the poorest members of society. As Christopher Dyer stated for the thirteenth century Midlands, successful attempts at maintaining communal practices, whether open fields or common pasture, had to rely on the support of the more established and better-off part of the village community otherwise the legitimacy of the movement and its striking power would have been reduced.⁶⁴³

640 THOEN AND SOENS, "Élevage, Prés Et Paturage Dans Le Comté De Flandre Au Moyen Age Et Au Début Des Temps Modernes: Les Liens Avec L'économie Rurale Régionale".

641 VIVIER, *Le Conflict Autour Des Biens Communeaux*.

642 PETER CALUWÉ, "Inbreuken Op De Commons. Lokaal Verzet Tegen De Achttiende-Eeuwse Ontginningen in De Kempen: Een Analyse Op Basis Van Juridische Thoonen" (University of Antwerp, 2011).

643 DYER, "Conflict in the Landscape".

These interests were shared by the Campine tenant holders. In fact they would probably have been much less inclined towards common grazing rights on the hay meadows as they possessed the largest share of these hay meadows in private. In addition, they did not own as many bovine cattle, relatively speaking, in regard to the private property they owned as the independent peasants. They would therefore probably be able to feed their cattle on their private estates alone. Their flocks of sheep, however, were too big to sustain on private heath fields and pastures alone. In order to secure their commercial sheep breeding projects they were very much dependent on the survival of vast common wastelands. If they had been required to invest in enclosing, maintaining and enforcing heath fields, the benefits of their commercial activities would not have been sufficient.

One would therefore imagine that one of their main aims was to exclude one another. The rural elites in particular, or perhaps even the independent peasants, could have benefitted from excluding the small peasants or poorest households in order to reduce the ecological pressure. After all, this was exactly what happened in Schleswig-Holstein after the late medieval crisis. As the independent peasants, or “Hüfner”, were dominant and could define the rules themselves, they monopolised the communal rights and formally excluded cottagers and landless labourers.⁶⁴⁴ Despite some unsuccessful attempts, it has by now become clear that this did not occur (see chapter IV). As stated before, the balance of power between the different interest groups prevented such a domination by any one interest group, with exclusive measures as a consequence. Another option would have been to influence the common pool resource institutions in such a way that the communal institutions and regime would be transformed to suit the interests of one respective interest group influencing it. This was exactly what Jean Ensminger described in her model.⁶⁴⁵ In contrast with the dominant view of the new institutional economics, institutions were instrumental and were transformed to suit the needs of the different interest groups. The institutions themselves barely had any agency in steering the behaviour of society. By tweaking the different aspects of the common pool resource institutions and regime, the various interest groups would try to safeguard their main interests.

The choice to abstain from introducing stints is one of these particular Campine options. As Angus Winchester stated, limiting grazing pressure through the introduction of stints, was to be expected. In fact, he wondered why not every region had introduced such stipulations.⁶⁴⁶ The Campine area, was exactly the sort of area where one could have expected stinting to be introduced. Commercialisation was not prohibited, the subsoil was fragile and over-

644 POULSEN, *Landesausbau Und Umwelt in Schleswig 1450-1550*; RHEINHEIMER, *Umweltzerstörung*; RHEINHEIMER, *Die Dorfordinungen*.

645 ENSMINGER, *Making a Market*.

646 WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

exploitation a constant threat. In addition, micro-smallholders as well as cottagers could have benefitted from restricting cattle or sheep herds. Since they were limited in terms of how much they could enlarge their herds beyond quite moderate numbers and because they depended on ecologically diverse wastelands and abundant meadows in order to cut sods, dig peat, collect food supplies and graze their cattle, it would have been in their best interests also to limit the herds of the independent peasants and rural elites, so as to prevent the wastelands from over-grazing. Nevertheless, a stinted system was not introduced during the late medieval period.

If we take a look at the local byelaws, which are the only sources available for this analysis, only 14 rules out of 1143 deal with the question of a maximum amount of animals allowed.⁶⁴⁷ Not one village, however, introduced a fixed number of a specific type of animal in their entire seignior. Those rules mostly concerned particular places within the village, where one type of animal could be restricted (see figure 19). The hay meadows especially were protected against over-grazing. For example, Westerloo limited the amount of sheep in the reeds next to the brook to six animals, and in the common hay meadows a maximum of 10 “hamelen” or male sheep were allowed.⁶⁴⁸ In Arendonk a maximum of three pieces of cattle were allowed per household on the common hay meadows. By the seventeenth century, in 1662, however, they had changed the rule and required a minimal amount of private land in order to graze a head of cattle on these meadows.⁶⁴⁹ In Tiel, the number of bovine cattle was reduced to one on the commons, yet sheep received no such limitations.⁶⁵⁰ Finally, Geel did introduce a system of “levancy” since they stipulated that “Nobody could bring more sheep unto the hay meadows during the summer, than they had been able to feed during the winter.”⁶⁵¹ Again these limitations did not apply to the common wastelands, but only on the most valuable hay meadows. A rule that was actually applied was the prohibition to accept, lend or hire animals from outsiders, that did not possess access rights, so as to graze them on the commons. In Veerle, for example, the byelaws stated that “nobody would herd more sheep than he possesses himself.”⁶⁵²

647 See databases: byelaws

648 LAUWERYS, “Keuren Van Westerloo”. Similar rules are found for the villages of Veerle and Vorselaar.

649 PRIMS, *Keuren*.

650 RAA, OGA Tiel, 28, Byelaw.

651 “Dat niemand van enige heerdgang ’s zomers meer schapen in het broek zal houden dan hij ’s winters gewijnteed heeft op verbeuren van 10 stuivers telkens”. ERNALSTEEN, “Keuren Van Gheel”.

652 AAT, *Bundel Byelaws, Veerle and Oevel*, Copy

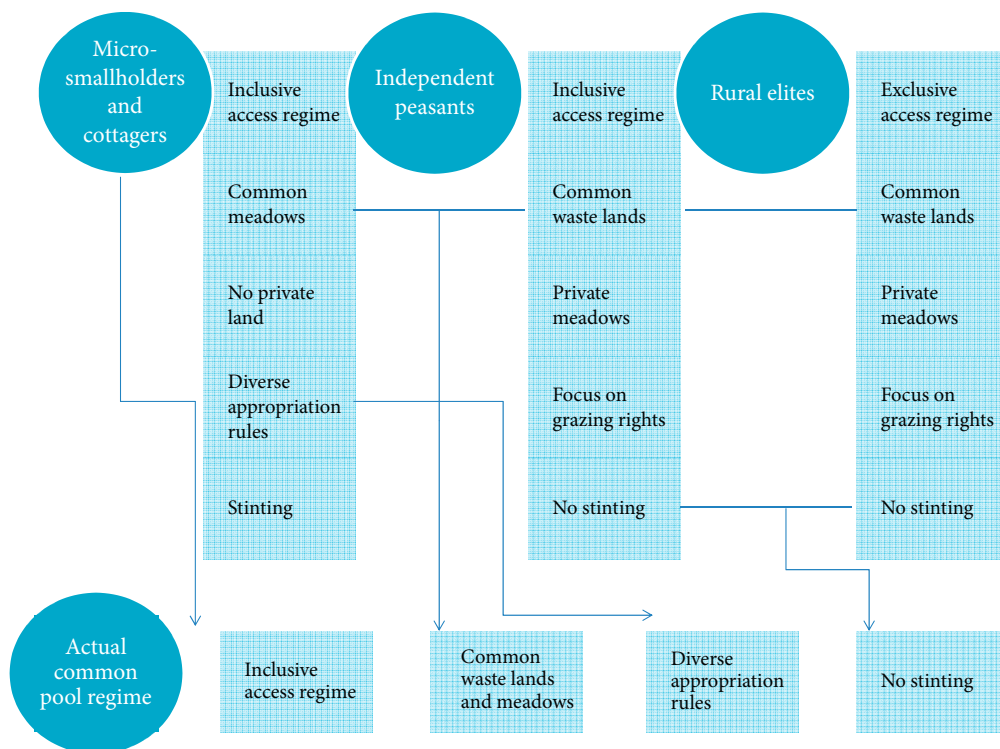


Fig 47 Diagram depicting the interest groups' interests and the actual common pool regime, suggesting which group was able to influence which aspect of the CPRI.

The actual common pool regime and institutions that had developed after the thirteenth century was a compromise between those different or rather clashing interests as indicated in Figure 47 . The micro-smallholders and cottagers were able to secure inclusive common pool resource institutions: the survival of common hay meadows for the entire community, together with a diverse range of appropriation rights on the common wastelands. They, nevertheless, were not able to steer the common pool resource institutions towards a stinted system, where the upper stratum of society would be restricted in their commercial strategies. The independent peasants and rural elites consequently accepted an inclusive access regime and common hay meadows, but enforced the acceptance of unstinted common wastelands so as to graze their extensive flocks of sheep in order to engage in commercial activities (see figure 47). To compensate for this unstinted system, the regulations were extremely specific concerning where and how to exploit the commons, how to maintain a sustainable management and how to prevent ecological disasters and control the commons. This, however, was a decision that counteracted other regions' strategies. In the CORN series concerning commons it was stated that only in areas with vast or practically undepletable common resources like, for example, the woods of Sweden, such inclusive and unrestricted regimes could be introduced.⁶⁵³ Even the powerful and commercial abbeys in England introduced stints to limit the access of their

653 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

flocks of sheep to the commons⁶⁵⁴. In addition, all other know gemeyntes, marken and common pool resource institutions introduced either restrictive measures or coped with grazing and appropriation pressure by limiting the amount of animals or time that the community of users could profit from the communal resources.⁶⁵⁵

As with the access regime, however, none of the stakeholders were powerful enough to impose their claims or interests on the other members of Campine society. The micro-smallholders and cottagers might have been the poorest group within the village, but were nonetheless tightly connected with the independent peasants and constituted the large majority of the village. Unrest within this category could have had large-scale consequences, as will be shown in chapter VII. The independent peasants may have had the loudest voice on the aldermen's bench and different councils of the village,⁶⁵⁶ but they were not the sole administrators and managers of the common pool resource institutions. They had to cope with the presence of the micro smallholders and cottagers, together with the rural elites, or even seignorial lords. As Birtles stated, it is often less troublesome for the elites and proprietors of a community to grant access than to bear the consequences and costs that would result from refusing the poor segments of society access to the commons.⁶⁵⁷ It has, after all, been suggested that precisely the presence of powerful, although not dominant, landlords was often necessary to counter more exclusive tendencies.⁶⁵⁸ Finally, the rural elites might have had the advantage of size and economic capital, but they did not obtain socio-political dominance over the other interest groups. They were only a very limited group and most barely owned more property than their independent peasant neighbours. Especially the tenant farmers, leasing the largest farms and generating the most earnings, were often quite isolated within the village and this minority position meant they could therefore not effectively influence the decision making processes within the village (see chapter V). As Garnot stated, they required the consensus of a larger group within the community so as to be able to steer the village.⁶⁵⁹ In addition, extreme infractions on behalf of one interest group were met with resistance - whether informal, symbolic or via the court - and fended off.⁶⁶⁰

654 CAMPBELL, *English Seigniorial Agriculture*.

655 WINCHESTER AND STRAUGHTON, "Stints and Sustainability".

656 VAN ONACKER AND DE KEYZER, *Controlling the Campine Commons*.

657 BIRTLES, "Common Land".

658 PAUL WARDE, *Ecology, Economy and State Formation in Early Modern Germany* (Cambridge: Cambridge University Press, 2006).

659 GARNOT, "Justice, Infrajustice".

660 PETER ARNADE, "Crowds, Banners, and the Marketplace: Symbols of Defiance and Defeat During the Ghent War of 1452-1453," *The Journal of Medieval and Renaissance Studies* 24, no. 3 (1994); BIRRELL, "Common Right"; DYER, "Conflict in the Landscape"; HILTON, *Bond Men Made Free*; STEPHEN HIPKIN, "'Sitting on His Penny Rent': Conflict and Right of Common in Faversham Blean, 1595-1610," *Rural history: economy, society, culture* 11, no. 1 (2000); MÜLLER, "Social Control".

As a result, a social equilibrium was reached in the Campine area. Local communities used their negotiation skills very effectively through informal and symbolic actions, village meetings and, if necessary, through legal action to safeguard their access to the commons. As will be argued in chapter VII, the ducal court often favoured the claims of the peasants over the elites or even lords, thus forming a powerful defence for the peasant communities. In this way access to the commons was a negotiated compromise which presented the best option for all parties involved considering the presence of competing stakeholders, which could be called the one common denominator. In order to maintain the option of negotiating and re-evaluating this common denominator, the interest groups refrained from eternalising the appropriation rules into relatively fixed and delineated written rules. Instead, they opted to leave most regulations implicit and allow for some evolutions and transformations. Even though Angus Winchester has demonstrated that byelaws were not written in stone, written, normative texts do have an almost sacral and permanent character which could be used against any given interest group at any one point.⁶⁶¹ As a result, rules concerning the amount of animals allowed, the way they had to be herded and when they could be introduced were exceedingly vague. This did not result from a general vagueness on the part of the Campine byelaws regarding access rights, appropriation rights and maximum herd sizes.

VIII. Conclusion

During the later Middle Ages an extraordinary Campine common pool regime that combined an unstinted and diverse management of its common resources, together with an inclusive access regime, was created. Marching against the general European tendencies to either restrict the amount of appropriators or otherwise limit the amounts of resources to be exploited or the number of cattle units to be put on the commons, Campine communities chose to implement this particular common pool institution. As Ensminger and Lana Berasain have stated, this was the result of a specific balance of power or point of equilibrium. This equilibrium did not necessarily have to result from the most economic or ecologically rational choices, but rather reflected the complex interactions of the different interest communities within society. As Lana Berasain has demonstrated, a very unbalanced distribution of power in the kingdom of Navarra led to an unbalanced distribution of benefits derived from the commons. This unjust system, however, did not lead to the disappearance of the commons, nor to an unsustainable

661 WINCHESTER, *Harvest of the Hills*; WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*; HOYLE, ed., *Custom, Improvement and the Landscape in Early Modern Britain*.

management, but was able to reach an equilibrium on both a social as well as an ecological level.

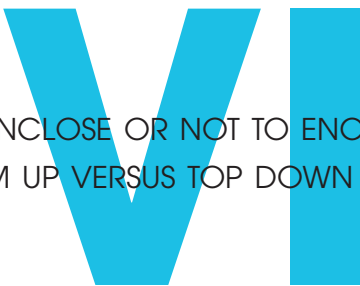
In the Campine area, a very similar situation of sustainable development had arisen, however, as the result of a fundamentally different point of equilibrium. It was precisely the balanced distribution of power between the different interest groups, namely the micro-smallholders, cottagers, independent peasants and rural elites, that ensured that every interest group was able to secure their interests, without harming the other groups. Since their interests balanced each other's interests out, they were required to invest in both well-managed, diverse and ecologically stable common heathlands and meadows, as well as inclusive access regime.

The micro-smallholders and cottagers required, above all, the survival of communal grazing after the harvest on the private hay meadows in order to feed their one or two cattle units. As the possession of cattle could make the difference between becoming an independent household or falling into dependency on wage labour or poor relief, this communal benefit was vital. In addition, they would favour the survival of the vast common wastelands so long as they were not reserved for sheep, but if the harvesting of peat, collecting of scrap wood and collecting of food supplies was permitted. As they owned only a single or at most a couple of animals, they would have supported the introduction of stints in order to diminish the pressure on the commons, but were open to complying with the pursuits of the other interest groups so as to maintain their own main interests.

The independent peasants and rural elites, even including the tenant farmers, were supporters of the common pool regime as well. The rural poor and elites were certainly no natural opponents when it came to benefitting from the commons. Indeed, the late medieval Campine commons do not demonstrate a clear dichotomy between poor benefitters and rich opponents of the commons. As has been shown by scholars such as Nadine Vivier and Nicola Whyte, rural elites could in some conditions also profit from communal resources and actively use them in order to achieve their commercial goals. In order to engage in commercial sheep breeding, the Campine independent peasants and rural elites relied heavily on the vast common heathlands due to the fact that they were unable to provide sufficient fodder without having to make unprofitable investments. As wool, and especially wool of a lesser quality, was a raw material much sought after by those cloth guilds producing products for the local and regional markets, these peasants were able to supplement their household income, but without changing their mixed farming strategy entirely towards a specialised and market-dependent system. They delivered wool to the local and regional markets or merchants, but without following the whims of the market which was quite unstable during the later Middle Ages. Their reliance on the common hay meadows was much smaller than was the case for the

micro-smallholders and cottagers as they could equally have benefitted from enclosing these fields permanently and obtaining a second harvest of hay. In addition, they would probably have favoured restrictions on access to the commons, thus excluding the poorest part of society in order to limit ecological pressures on the land. Nevertheless, they had to secure an unstinted system to protect their commercial interests.

These often contradictory interests, together with a balanced distribution of power, is what brought this particular common denominator, or equilibrium as Lana Berasain has called it, about. As these peasants were fully aware that a division of the commons was impossible in the given circumstances, they opted for defending their second best interests which would allow them to maintain both their peasant estate and survival. As such, they struggled to keep the meadows - largely owned by the independent peasants and rural elites - common after harvest and to secure that the common wastelands would not be reserved for grazing. As will be discussed in more detail in the next two chapters, by forming a majority within the village and having sufficient power to form collectivities and fight for their rights via informal and formal forms of justice, they were able to protect their rights, without hindering the independent peasants and rural elites. These latter groups in their turn accepted the interests of the poorest part of the village, as long as their commercial opportunities were not obstructed. They therefore opposed the introduction of stints and over-exploitation of the common wastelands by digging sods and peat. The survival of a common pool regime, therefore, could also be obtained through a balanced distribution of power.



TO ENCLOSE OR NOT TO ENCLOSE?
BOTTOM UP VERSUS TOP DOWN ATTEMPTS

VI. TO ENCLOSE OR NOT TO ENCLOSE? | BOTTOM UP VERSUS TOP DOWN ATTEMPTS

When we think about enclosure, the first image that springs to mind are the hedges and walls which emerged within the former open fields of central England which were forcefully introduced by seventeenth century manorial lords and their tenants.⁶⁶² Next, we envisage angry mobs of peasants filing complaints or attempting to destroy the enclosure infrastructure.⁶⁶³ In the case of the Campine region, a wave of enclosure occurred during the eighteenth century when Maria Theresa abolished the common wastelands in 1772 because of the physiocratic philosophy that extensive heathlands should be turned into productive arable land.⁶⁶⁴ This ordinance was, however, followed by a stream of protests by peasants from local communities.⁶⁶⁵ The long-held view of a dichotomy existing between rich opponents and poor supporters of communal property has now been discarded. Even though benefits were not distributed equally, both the fiscal poor, cottagers, independent peasants as well as large farmers could benefit from communal ownership and the management of natural resources, depending on the layout of the common pool regime and institutions (see chapter V). Nevertheless, this does not preclude the existence of actors within society who believed that they would benefit equally, or even profit, from privatising and enclosing those commons for their own particular use. When looking for those actors, landlords are often the main suspects. Mostly living from their estates via rents, dues and taxes, landlords' earnings could be increased by enclosing arable fields or meadows which resulted in higher rents. Several scholars have demonstrated that rents rose significantly in the Midlands in England immediately after the big waves of enclosing open fields.⁶⁶⁶ Nonetheless, Gregory Clark has argued that rising rents not only occurred due to privatisations, but also because of a more general rising of prices and agricultural improvements that were not linked with the privatisations as such.⁶⁶⁷ In addition, Nicola Whyte has stressed that lords could even be the champions of open field systems, as has been shown for the late medieval and Early Modern Brecklands in Norfolk. Being involved in capitalistic sheep breeding via the customary practice of fold course, the manorial lords in

662 ALLEN, *Enclosure and the Yeoman*; HUMPHRIES, "Enclosures". R.I. HODGSON, "The Progress of Enclosure in County Durham, 1550-1870," in *Change in the Countryside: Essays on Rural England, 1500-1900*, ed. H. S. A. Fox and R. A. Butlin (London: Institute of British geographers 1979); SHAW-TAYLOR, "Parliamentary Enclosure".

663 HEATHER FALVEY, "Voices and Faces in the Rioting Crowd: Identifying Seventeenth-Century Enclosure Rioters," *The Local Historian* 39, no. 2 (2009); HIPKIN, "Sitting on His Penny Rent".

664 VAN LOOVEREN, "De Privatisering Van De Gemeentegronden".

665 CALUWÉ, "Inbreuken Op De Commons".

666 JACK J. PURDUM, "Profitability and Timing of Parliamentary Land Enclosures," *Explorations in Economic History* 15, no. 3 (1978); G.E. MINGAY, *English Landed Society in the Eighteenth Century* (London: Routledge and Paul, 1963); DONALD N. MCCLOSKEY, "The Open Fields of England: Rent, Risk and the Rate of Interest, 1300-1815," in *Markets in History: Economic Studies of the Past*, ed. David W. Galenson (Cambridge: Cambridge University Press, 1989).

667 CLARK, "Commons Sense".

the Brecklands fiercely opposed peasant efforts to enclose their arable fields in order to be able to continue grazing their manorial sheep herds on the open fields, brecks and wastelands.⁶⁶⁸

Historiography shows, therefore, that pinpointing one interest group as the main driving force is difficult to achieve. While in one region during a certain timeframe, lords granted charters, privileges and byelaws providing access and control over the commons to their communities, their successors could turn out to become the greatest opponents of communal rights. Equally, peasants were most often supporters of communal systems, yet could just as well plead for the division and enclosure of commons. Therefore, we cannot simply refer to enclosure as a fixed process driven by the same type of interest groups. Instead we need to focus on the different types of enclosure and the actors behind those diverging movements. In what context did peasants, lords or urban citizens agree or even take the initiative to enclose or privatise land? To answer this, I will analyse the different perspectives of the various interest groups within the Campine area between 1250-1580 – with an emphasis on the fifteenth and sixteenth centuries - and assess how these attitudes changed through time and, furthermore, how these attitudes related to each other. For the Campine area, I will argue that there were two distinct periods with specific forms of privatisation and enclosure movements, both with their own interest groups as defenders or opponents of the commons. In addition, the focus will be on the ecclesiastical and sovereign lords as they were often the crucial players when it came to enclosure. Although they presented the greatest threat to the commons, they were also ultimately the key factor in why the Campine common pool regime survived until the beginning of the nineteenth century.

I. What's in a name? | Enclosure or privatisation?

The concept of enclosure has become common knowledge even though its exact definition is often obscure. This has largely to do with the fact that this British concept, derived from a very specific situation, is projected on a wide range of similar processes throughout the world despite the fundamentally different characteristics of those local circumstances. Enclosure, in its most simple definition of the word, is the closing off of any type of land, either by a fence, hedge, ditch or similar structures. Enclosure, however, has been strongly linked to the combined process of fencing off individual plots of the open fields as was characteristic of the

668 WHYTE, *Contested Pasts*.

largest part of England.⁶⁶⁹ While before tenants could privately lease, rent or own a parcel of arable land, it remained unenclosed by a fence or hedge so as to allow animals to graze and manure these fields after the harvest or during the fallow period.⁶⁷⁰ Enclosure is therefore not a synonym of privatisation. The enclosure movement in England between the seventeenth and nineteenth centuries was not a privatisation movement, but rather a transformation from communally organised and managed agricultural land, to a more individualised and commercialised approach. As such, the concept of enclosure is linked to communities with predominantly open fields held as communal assets that underwent fundamental changes from the Early Modern period onwards.⁶⁷¹ Nevertheless, the concept of enclosure has been adopted to refer to a variety of enclosure movements, some of which refer to the fencing of already privately owned land, while in other cases it implies the privatising and enclosing of land which was formerly owned, managed and controlled by a community, institution or group. Since the Campine area is quite different from the English open field system and the periods and methods of privatisation and enclosure were divergent,⁶⁷² it is important to define these concepts within this particular situation.

Even though privatisation and enclosure often went hand-in-hand, it is important to not confuse those concepts and define them very clearly. Privatisation, therefore, refers to the buying, leasing or the renting of land which was formerly part of the “bona vacantia” or communal land owned or managed by a community or common pool resource institution. Enclosure, however, is the action of closing off property, either common or private land, from the surrounding environment with a hedge, ditch, fence or other delineation. For the entire timeframe with which this study is concerned, the entire Campine area had already been claimed by a seigniorial lord, sovereign ruler or ecclesiastical institution such as an abbey.⁶⁷³ As the lords did not actively use the wastelands of their territory, they were granted to the village communities. Nevertheless, the bare ownership always remained the privilege of the lord (see chapter III) and, as such, privatisation was the prerogative of the lord. Every individual

669 ALLEN, *Enclosure and the Yeoman*; JON S. COHEN AND MARTIN L. WEITZMAN, “Enclosures and Depopulation: A Marxian Analysis,” in *European Peasants and Their Markets. Essays in Agrarian History*, ed. William N. Parker and Eric L. Jones (Princeton: Princeton University Press, 1975); HEATHER FALVEY, “Crown Policy and Local Economic Context in the Berkhamsted Common Enclosure Dispute, 1618-42,” *Rural History* 12, no. 02 (2001); HODGSON, *The Progress*; DONALD N. McCLOSKEY, “The Economics of Enclosure: A Market Analysis,” in *European Peasants and Their Markets. Essays in Agrarian History*, ed. William N. Parker and Eric L. Jones (Princeton: Princeton University Press, 1975); SHAW-TAYLOR, “Parliamentary Enclosure”; MICHAEL TURNER, *Enclosures in Britain 1750-1830* (London: The Macmillan press LTD, 1984); IAN WHYTE, “Parliamentary Enclosure and Changes in Landownership in an Upland Environment: Westmorland, C.1770–1860,” *Agricultural History Review* 54, no. 2 (2006).

670 RENES, “Grainlands”.

671 HODGSON, *The Progress*; McCLOSKEY, *The Economics of Enclosure*; NEESON, *Commoners*; SHAW-TAYLOR, “Parliamentary Enclosure”; TURNER, *Enclosures in Britain 1750-1830*; WHYTE, “Parliamentary Enclosure and Changes in Landownership in an Upland Environment: Westmorland, C.1770–1860”.

672 RENES, “Grainlands”.

673 VAN DER HAEGEN, “Hoe De Kempense Gemeenschappen Hun Aard Verkregen”.

wanting to privatise a plot of land, needed the permission of the landlord of that area. During the entire later Middle Ages, the privatisation of land meant that it had to become part of the “cijnsgoed” of the lord. The peasant or farmer, therefore, started to pay a new kind of rent, called “nova census”, which was registered in the rent registers next to the other, older rents.⁶⁷⁴ To physically enclose land, however, did not require a formal agreement from the lord. Even though it is not stipulated in the byelaws, it seemed that both the village community, as well as the lord, could grant the right to enclose a parcel of land.

Since all the newly privatised parcels of land had to be noted down in the rent registers, those sources are invaluable for this part of the research. In order to trace long-term evolutions, continuous sets of rent registers were a requirement. Therefore, two case studies have been analysed in detail: the village of Tongerlo and Kalmthout-Essen.⁶⁷⁵ In addition, Turnhout has provided some extra material, so as to compare the results.⁶⁷⁶ We can trace privatisations by looking for the term “uutfanck”, which refers to a plot taken out of the commons, or search for “nova census” registers, listing the new plots precisely. Unfortunately, only the abbey of Tongerlo was meticulous enough to create such new registers, while most manorial lords, as well as the Duke of Brabant, introduced new entries in their older registers. The registers of Kalmthout-Essen of 1518 and Ravels of 1538 are therefore the most important and valuable sources for understanding the privatisation process within the Campine area.⁶⁷⁷ The problem with rent registers is their level of detail. As their main goal was to list the rents received by lords from their subjects, it mostly describes the name of the rent holder, the name of the plot, sometimes a measurement of the surface area in question, and the sum that had to be paid, either in kind or money. The location is only rarely mentioned, and even then it remains limited to a rough description of the neighbourhood, hamlet or place within the arable fields in which it is situated. Moreover, the exact date when it was first privatised cannot be detected. An estimation, based on its appearance in the registers, is possible, however, as it is often a scribble in the margins in a register covering a decade or more, makes it difficult to pinpoint the exact date. Finally, these rent registers only mention whether the parcel is privatised, but not its enclosure. As the lord did not receive an extra sum or rent due to the fact that the land was enclosed, it was of no importance to be entered into the register.

674 Example of a nova census: AAT, Section II, 377, Nova census Kalmthout-Essen, 1518 and the new rents in registers are described by VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

675 For the village of Tongerlo the rent registers of the following years were analysed: AAT, II, General rent registers, 1362-1374.; AAT, Section II, 334, General rent registers, 1430-1434., AAT, Section II, 335, general rent registers, 1435-1453, AAT, II, 341, Rent registers of Tongerlo and its surroundings, 1529-1565.; AAT, II, 342, Rent registers of Tongerlo and its surroundings, 1566-1621. The rent registers of Kalmthout were analysed by Jean Bastiaens for the following years: AAT, II, general rent registers, 332, 1362.; AAT, II, general rent registers, 335, 1435.; AAT, II, general rent registers, 337, 1463.; AAT, II, 373, Rent register of Kalmthout, 1518.

676 AAT, II, 342, Rent registers of Tongerlo and its surroundings, 1566-1621.

677 AAT, II, 401, Rent register Ravels, Nova census, 1538.; AAT, Section II, 377, Nova census Kalmthout-Essen, 1518.

It has therefore been important to look for additional information, which was found in the archives of the abbey of Tongerlo and the ducal archives. The abbey of Tongerlo left some extensive registers listing their entire estates and especially their tenant farms. From the sixteenth century onwards, these descriptions become extremely detailed.⁶⁷⁸ They not only illustrate the name of the tenant, the plot of land and its value, but also a more detailed location, a measurement of the surface area, the land use and, in one register, even whether it was enclosed or not. This provides us with some valuable information about the enclosure rate, which is precisely what is missing from all other sources. Despite the fact that only a dozen farms, belonging to the abbey of Tongerlo and located in and around Tongerlo, could be investigated,⁶⁷⁹ these detailed accounts are gold dust in terms of getting a glimpse into the enclosure grade, which otherwise would have been completely absent. In addition, the abbey created different registers for old rents and new rents for the villages of Kalmthout-Essen and Ravels.⁶⁸⁰ As they actively stimulated the privatisation and enclosure of large plots of moors and peat marshes in those areas, they found it worth while creating an extensive administration. The same applies for the Duke of Brabant. The rents the Duke derived from the commons were extremely low because of inflation, however, the rents that could be collected from newly privatised plots of land were much higher, which led to a stimulation of that process and a thorough registration by the quarter's stewards. Finally, large-scale privatisations and enclosures represented important seizures in the history of the Campine villages, which left their traces in the archives.⁶⁸¹ Finally, privatisations can be traced in a more qualitative way, via juridical sources. Charters and entire court files regarding privatisations, enclosures, conflicts and new rules in these demarcated areas have been found for both the abbey of Tongerlo and the Duke of Brabant.⁶⁸²

II. Open field or enclosures? | Campine arable land during the later Middle Ages

Due to the prevalence of English historiography, all eyes have been fixed on the period from the end of the sixteenth until the eighteenth century as the main era of enclosure. According to Gregory Clark, the Midlands experienced an early wave of enclosure during the Tudor period, while the most important period for enclosures in entire England stretched from

678 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

679 Ibid. Farmsteads located in Tongerlo.

680 AAT, II, 373, Rent register of Kalmthout, 1518., AAT, II, 401, Rent register Ravels, Nova census, 1538.

681 ARAB, Chambre des Comptes, 5213/1-8, Accounts of the domain of Turnhout, 1550-1557; ARAB, Chambre des Comptes, 4955-4966, Accounts of the domain of Herentals, 1424-1478.

682 See databases: juridical records

the seventeenth century until around 1850.⁶⁸³ The first period between 1550 and 1750 was characterised by the enclosure of traditional plough land and common pasture in the lowlands, by commercially motivated landlords and their tenants in response to market tendencies. Open fields were enclosed and individual strips consolidated into larger blocks so as to engage in convertible husbandry and more intensive techniques. After 1750, the remaining fell and wastelands in the uplands and more marginal areas, were enclosed in order to provide new land for cultivation and pasture.⁶⁸⁴ Nevertheless, even in the British Isles, other periods experienced some fundamental transformations concerning common pool regimes as well. During the thirteenth century, the combination of high population pressure, rising market demands and urbanisation, created the perfect circumstances to push manorial lords to enclose their land, and commercialise via intensified arable production or, more commonly, animal husbandry.⁶⁸⁵ Equally, in thirteenth century Staffordshire, communal forests, used for grazing and felling or the collecting of wood, were increasingly enclosed once wood shortages rose and profits in commercial forestry were looming.⁶⁸⁶ Wastelands and marginal lands used as communal pasture, to dig peat or collect wood, were often (temporarily) privatised and enclosed so as to give in to land hunger and food shortages.⁶⁸⁷ More often than not, the incentive for these privatisation and enclosure movements has been attributed to manorial or landlords, sometimes in collaboration with a few large tenant farmers. Anticipating the opportunities to be made out of rising rents or commercial activities, they reversed the communal privileges and eradicated common use rights on their property.⁶⁸⁸

In the Campine area, the thirteenth century was also the scene of large-scale privatisations. Because of rapid population expansion, as discussed in chapter II, internal growth, agricultural transformations, growing cities and commercial opportunities, Campine villages were transformed from small hamlets of dispersed farmsteads into concentrated nuclei in the brook valleys with arable complexes, meadows and surrounding open wastelands. While the twelfth-century villages covered only about 20 per cent of the total area that would become exploited during the Premodern period, 90 per cent of that acreage was reclaimed by the mid-fourteenth century.⁶⁸⁹ It has to be stressed, however, that only around 25 per cent of the total surface area was privatised and exploited as arable land, meadows or pastures.⁶⁹⁰ Even though the fertility of the soil was an important factor for this limitation, I will argue in the next pages that this strategy was mostly based on both the natural environment as well as the consensus that was

683 GREGORY CLARK, "Common Sense: Common Property Rights, Efficiency and Institutional Change," *Journal of Economic History* 58, no. 1 (1998).

684 HODGSON, *The Progress*.

685 BIRRELL, "Common Right"; DYER, "Conflict in the Landscape".

686 BIRRELL, "Common Right".

687 DYER, "Conflict in the Landscape".

688 PURDUM, "Profitability".

689 VANGHELUWE, "De Laatmiddeleeuwse Transitie", 8.

690 See figure 15 in chapter III.

reached between the different interest groups within Campine communities regarding the use and management of ecological benefits during the late medieval period. This late medieval period witnessed, therefore, the most fundamental transformation regarding privatisations in the Premodern history of the Campine area.

The enclosure rate of these private arable plots, however, remains unclear before the sixteenth century. Most scholars have agreed that these arable fields were organised as open fields once the dispersed arable plots were consolidated into larger arable complexes.⁶⁹¹ Hans Renes even claims that evidence has been found to prove that the late medieval open fields could have had much older core lands which dated back to the High Middle Ages.⁶⁹² Whether these arable complexes really functioned as open fields, with communal sowing, ploughing, harvesting and determining the land use in large unenclosed fields, remains open to debate however. The communal organisation cannot be demonstrated due to a lack of evidence, nonetheless, the open character of the landscape was very probable as core unenclosed patches seem to have survived until the eighteenth century, as depicted on some maps of Ferraris dating back to 1777.⁶⁹³

By the sixteenth century arable complexes come into the picture, however, thanks to some scarce registers describing tenant farms and byelaws.⁶⁹⁴ These sources, in contradiction with the dominant paradigm, show a rather enclosed landscape (see figure 48).

Land type	Total number of fields	Enclosed fields	Percentage of enclosed fields
Arable fields	81	63	78
Meadows	98	11	11
“Blok” or pasture	30	28	93
Woodlands	25	0	0
Heath fields	52	29	56
Pastures	67	27	40

Fig 48 Enclosure rate of the abbey of Tongerlo’s tenant farms in Tongerlo during the sixteenth century.⁶⁹⁵

Even though it is widely assumed that the Campine area organised its arable complexes as open fields until the seventeenth or eighteenth century, this is highly contestable.⁶⁹⁶ First of

691 LINDEMANS, *Geschiedenis Van De Landbouw in België*; SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie*; VANGHELuwe, “De Laatmiddeleeuwse Transitie”; RENES, “Grainlands”.

692 RENES, “Grainlands”.

693 See, for example, figure 49 or S.N., *De Grote Atlas Van De Ferraris*.

694 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.; See databases: byelaws.

695 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

696 LINDEMANS, *Geschiedenis Van De Landbouw in België*.

all, most scholars rely on literature regarding similar regions such as Drenthe,⁶⁹⁷ or to the one reference to open fields in the magnus opus of Paul Lindemans. Nevertheless, Lindemans found only proof of an open field system around Brussels.⁶⁹⁸ In addition, the tenant farm descriptions created by the abbey of Tongerlo in 1510 and 1539, reveal an altogether different picture. These registers meticulously described their tenant farms in the areas surrounding Tongerlo, Alphen, Beers, Bergijk, Broechem, Duffel, Kalmthout, Ravels and Tilburg.⁶⁹⁹ For the tenant farms in and around Tongerlo, not only are the land use and surface area recorded, but also whether the individual plot was surrounded by a hedge or ditch. As shown in figure 48, a staggering 78 per cent of all arable fields were enclosed by a hedge or ditch.

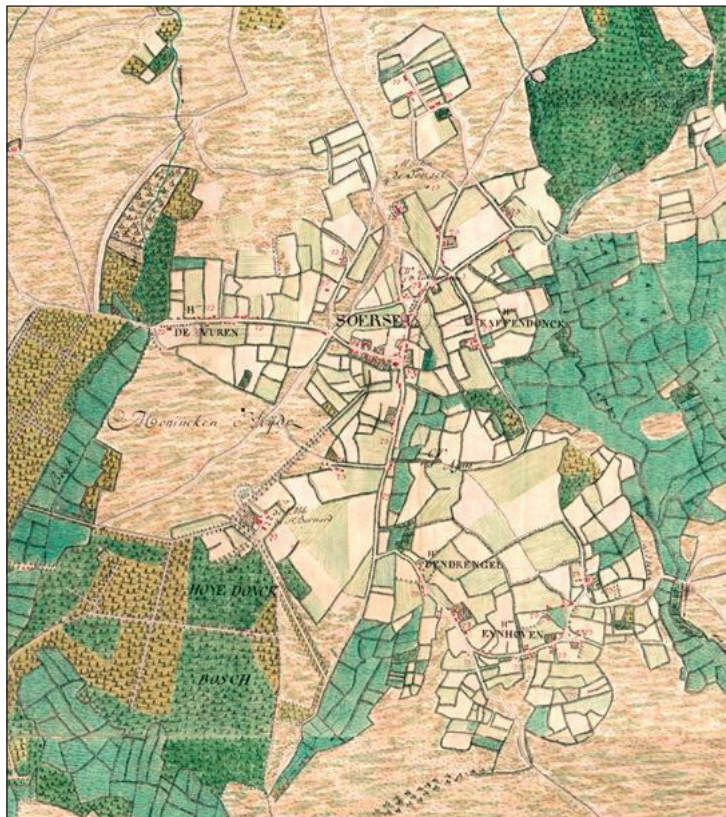


Fig 49 Ferraris map of Zoersel.⁷⁰⁰

In an open field situation, one could expect a large hedge surrounding the entire complex, one which could be opened at crucial locations to allow grazing cattle to enter. Individual

697 SPEK, *Het Drentse Esdorpenlandschap. Een Historisch-Geografische Studie*.

698 LINDEMANS, *Geschiedenis Van De Landbouw in België*.

699 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600. Farmsteads located in: Tongerlo, Eindhout, Oevel, Zoerle, Wiekevorst, Oosterlo, Veerle, Meerhout, Hapert, Eersel, Wippenhout, Westerhoven, Bergeijk, Oostelbeers, Middelbeers, Tilburg, Alphen, Teteringen, Broechem, Mol, Massenhoven, Oelegem, Nijlen, Brecht, Kalmthout, Beers, Bladel, Loon, Mierlo, Chaam, Nieuwmoer, Duffel, Ravels, Oelegem, Viersel, Venloon, Udenhout, Goerle.

700 S.N., *De Grote Atlas Van De Ferraris*.

enclosures were detrimental to open field agriculture and could therefore indicate that at least by the beginning of the sixteenth century the unenclosed fields were transformed into a bocage landscape. The introduction of hedges, in addition, would have benefitted the struggle against sand drifts (see chapter VIII) and fit the transition towards a more mixed and intensive agriculture, where cattle remained in the stables and sheep roamed the wasteland.⁷⁰¹ Dating this enclosure movement is, however, troublesome. Large-scale maps showing estates or villages in detail appear only from the end of the sixteenth century for ecclesiastical institutions, while other regions remained undepicted until as late as the eighteenth century.⁷⁰² The estate registers of the abbey deliver a date ante quem the hedges were created, yet not a single clue exists as to when they were introduced.⁷⁰³ Looking at the fundamental transformations from the 1350s onwards,⁷⁰⁴ and taking into account the fact that the first byelaws do not refer to any open field practices such as communally sowing, ploughing, opening of the fences for the communal herds or similar practices,⁷⁰⁵ leads me to suggest that they must have been introduced from the end of the fourteenth century onwards. Other common pool resource institutions, after all, did continuously refer to such communal actions.⁷⁰⁶ Moreover, two villages directly attest of the prohibition of communal practices after harvest. The village of Tielen noted in their byelaw of 1595, that the arable fields, together with all other plots, had to be closed the entire year.⁷⁰⁷ Rijkevorsel stated “that nobody will herd or graze his horses, cattle, sheep or other animals on stubble fields unless with the consent of the owner, on the penalty of 5 stuiver per horse or cow, or 0,5 stuiver per sheep”.⁷⁰⁸

In order to distinguish the actors behind the privatisation and enclosure movement, most studies tend to look at the disputes that resulted from those transformations. According to Dyer, thirteenth-century smallholders, often together with local elites, raged against lords and large tenant farmers, as they restricted the possibility of them grazing their cattle on the wastelands without having to invest.⁷⁰⁹ In Staffordshire, Birrell discovered similar disputes. When lords sought profits, the common forests were privatised and enclosed for communal herds, which led to serious strife.⁷¹⁰ In the Campine area the situation was rather different. In contrast with the English regions studied by Birrell and Dyer, the Campine area had not yet

701 LINDEMANS, *Geschiedenis Van De Landbouw in België*; VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

702 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

703 AAT, II, Registers, 292-293, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653, 1239-1600.

704 VANGHELUWE, “De Laatmiddeleeuwse Transitie”.

705 See databases: byelaws

706 AULT, *Open-Field Farming*; WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*; WINCHESTER, *Harvest of the Hills*.

707 “gepubliceerd ten eerste zo is geordineerd en gemaakt dat men de akkers en andere velden binnen thielen toehouden zal over het jaar”. RAA, OGA Tielen, Byelaw, 28.

708 “niemand zal op ander lieden hun erf of op de stoppel zijn paarden, koeien, schapen of andere beesten mogen hoeden of laten weiden zonder consent van de eigenaar, op het verbeuren van 5 stuiver per paard of koe, 0,5 stuiver per schaap en 's nachts dubbel”. RAA, OGA Rijkevorsel, 8, Byelaw.

709 DYER, “Conflict in the Landscape”.

710 BIRRELL, “Common Right”.

reached its maximum arable capacity, so that wastelands and grazing rights did not become threatened by privatisations or enclosures. Since the region was sparsely populated and the majority of the fertile land was still unexploited, this privatisation wave was performed by the indigenous and immigrating peasants themselves (see chapter II). Lords and peasants shared the same interests in this period. Seeking to enlarge their income through rents, taxes and dues, attracting peasants to exploit and therefore rent and cultivate land, this privatisation movement was most certainly supported. The lords benefitted from the new rents they could levy, yet were not active in enclosing and consolidating land themselves. They did found some extra tenant farms in the area,⁷¹¹ but this did not hinder other peasants obtaining land, as tenant farms were extremely scarce. Despite the lack of evidence of any serious strife between the different interest groups, this fundamental transformation of both the natural environment as well as property claims and common use rights, must have been accompanied by negotiations and tensions, which were ultimately solved thanks to efficient conflict resolution mechanisms.⁷¹²

III. Progressing enclosure | The hay meadows

Attesting the existence of an enclosure movement of the arable fields has proved a difficult task due to the scarcity of source material, however, later enclosures have left more traces. During the sixteenth century, the common meadows were targeted. They were private plots of land that remained common for most of the year. Only during spring were the meadows enclosed so as to allow the hay to grow. For example, the village of Westerlo wrote down in its byelaw of 1554: “that everybody will hang and maintain a praiseworthy “veken” or sign on the moat of the hay meadow called *schaapswas* in the south near Zoerle, like the way those of Herselt ordained. It will start from the time that the meadows will be closed till they are reopened again, on the penalty of 16 stuiver”.⁷¹³ According to the byelaw of Oostmalle, this period of closure ranged from the middle of March until the second day of May.⁷¹⁴ Others, however, set a less fixed date and stated that it had to remain closed until everybody had collected its harvest of hay.⁷¹⁵ May,

711 HEERMAN, “Het Abdijdomein Van De Abdij Van Tongerlo”.

712 For more information about conflict resolution mechanisms, see chapter VI

713 “Men zal wel en loffelijk onderhouden en hangen een veken op de oude vest van het broek of daar geheeten het *schaapswas* in het zuiden naar zoerle, zoals die van Hersel geordineerd houden. Beginnende van de tijd dat het broek gesloten wordt tot de tijd dat het met de gemeynte weer open gaat, op de boete van 16 stuivers. Dit veken zal onderhouden worden door de zeven heerdgangen die de straat en Liese gebruiken van alle oude tijden tot nu”. LAUWERYS, “Keuren Van Westerloo”.

714 TH. DE MOLDER, “Keuren Van Oostmalle,” *ibid.* 26, no. 1 (1935).

715 Gierle: “vanaf nu voortaan zal niemand enige beesten in de broeken stouwen zo lang daar de lieden hooi of gras hebben in staan of hun beesten daar in hoeden of tuieren, op het verbeuren van 3 stuivers brabant”, VERBIST, *Costuymen Van De Hoofdrechtbank Van Zandhoven, Uitgave 1664. Keuren En Breuken, Uitgave 1665.*

however, is probably the period when the fences were opened for the communal cattle. By the sixteenth century, however, this practice was put under pressure. Hay meadows, providing valuable hay as fodder for cattle that was kept inside, were the most expensive and sought after plots of land in the Campine area.⁷¹⁶ Such fields, not grazed by communal herds, were therefore able to provide more harvests of hay than just the first portion in May. As such, hay owners increasingly pressured the common pool resource institutions to limit these common rights and abandon collective grazing. These pleas, however, only had a fundamental effect in some cases. The village of Wuustwezel, for example, added a new rule in 1563 to their byelaw, stipulating “the hay meadows will remain free for the entire year.”⁷¹⁷ The word “free” refers to the liberating of the land from communal grazers. In addition, the village of Oostmalle stated that “Indien iemand zijn beempden wil bevrijden en verbeteren, dit zal mogen doen zonder aanzien van iemand”⁷¹⁸ An entire enclosure of the meadows did not necessarily occur, rather individual community members were allowed to enclose their particular field if they considered it in their interest.⁷¹⁹ Even so, the village of Vorselaar, explicitly introduced a new rule in 1544, stating that the meadows would have to remain common after the harvest.⁷²⁰

This enclosure attempt did not pass without consternation.⁷²¹ Enclosing one meadow does not, of course, fundamentally change the common use rights of the other community members, but in some cases they could disturb the performance of the privileges of certain community members. In the case of Peter Pynaerts in Turnhout, the enclosure of a meadow prohibited him to use his “erfweg”. An “erfweg” was a road crossing the field of a neighbour, which could be used to reach a field or the road. Even though the plot was completely private and communal use was often forbidden all year round, that one neighbour could use the road, since his right to use his own land had to be secured. He assessed that “he and his ancestors had possessed the privilege to cross the meadow for as long as nobody could remember the opposite and

716 In Loenhout in 1602 a hay meadow cost, on average, 525 stuiver per bunder. In comparison with arable (245 stuiver/bunder), pasture (216 stuiver/bunder) and poor grazing land (208 stuiver/bunder), this amount was huge. RAA, OGA Loenhout, 3823, Land book, 1602. Eline Van Onacker found similar high values for Wuustwezel in 1581, while Gierle and Tongerlo show average values. VAN ONACKER, “Leaders of the Pack?”, 96-97.

717 16 mei 1563 de heer philips vander meeren heeft geordineerd dat alle beempden het gehele jaar door vrij zullen staan. Source: K.C. PEETERS, “De Wuustwezelsche Dorpskeuren (XVe - XVIIe Eeuw),” *Verlagen en mededelingen van de koninklijke Vlaamsche academie voor taal en letterkunde* (1932); K.C. PEETERS, “De Wuustwezelsche Dorpskeuren (Xve-Xviie Eeuw),” *Wesalia, Tijdschrift voor Plaatselijke Geschiedenis en Folklore* 8, no. 1-2 (1933).

718 “In the case where anybody would want to liberate and improve its meadows, he can do so without any consideration for others.” DE MOLDER, “Keuren Van Oostmalle”.

719 In my particular sample of byelaws, only one village refers to a permanent enclosure of the common hay meadows. Nevertheless, the juridical sentences that follow in the following paragraphs demonstrate some additional evidence of developing enclosure. See databases: byelaws

720 “Er is gesloten en door de gemeente overgedragen bij consent van de meier en schepenen dat men het broek zal omheinen en bevrijden zoals de andere vrede beempden en dat men in hetzelfde broek zal mogen voor de oogst hooien en dat niemand zijn beesten daar in zal stouwen zolang er 3 lieden hooi in het broek hebben. Als de lieden hun hooi daaruit hebben zal het wederom gemeen zijn. Dit zou drie jaar duren om dit mede te proeven. 17 januari 1544” source: VAN OLMEN, “De Keuren Van Vorselaar”.

721 RAB, VB, 565, 9 (1509) Turnhout.

any restrictions were completely new”⁷²² The privilege to cross a neighbour’s field belonged to customary law. Even though these customs came under pressure by the eighteenth century, such claims based on customary law were powerful in practise.⁷²³ As such, all cases regarding this topic were sentenced in favour of the individuals claiming their communal rights.⁷²⁴

In Koersel in 1512 a different type of conflict arose. A group of meadow owners had apparently enclosed their meadows even though the common pool resource institution of the village had not decided to turn the meadows into private property on a full-time basis. Therefore, the village community decided it was improper to enclose those particular meadows, destroyed the fences and drove their cattle into the meadows. Consequently the group of meadow owners took their complaint to the Council of Brabant and asked to restore their private rights and punish the trespassers. They testified that they were in possession of the land and therefore had always used these meadows privately. The village community of Koersel replied that all private meadows were still common after harvest and they therefore had the right to graze their cattle. In this case the court favoured the owners and granted them the right to enjoy the meadows privately even after the first harvest.⁷²⁵ In 1514, a very similar case occurred in Westerlo. With practically the same arguments in a similar situation, the ducal administration decided that the inhabitants of Holken were correct and could therefore use the meadow once the harvest was removed.⁷²⁶

Hay meadows were thus gradually being transformed from private property that was unenclosed (apart from the communal fence around the entire complex), towards a system resembling arable fields. It was, however, not a harmonious process, supported by all interest groups. Despite the lack of information concerning the social background of these hay owners enclosing their land, it appears that they cannot be labelled as being average peasants. Eline Van Onacker has demonstrated that even small cottagers invested in hay meadows, but stressed the fact that it was predominantly the independent peasants and rural elites that owned the majority of the hay meadows (see also chapter II).⁷²⁷ The litigants discussed

722 Ibid.

723 HOYLE, ed., *Custom, Improvement and the Landscape in Early Modern Britain*; PETER KING, “Legal Change, Customary Right and Social Conflict in Late Eighteenth-Century England: The Origins of the Great Gleaning Case of 1788,” *Law and History Review* 10 (1992); ROGERS, “Custom and Common Right: Waste Land Enclosure and Social Change in West Lancashire”; THOMPSON, *Customs in Common*; NICOLA WHYTE, *Inhabiting the Landscape. Place Custom and Memory, 1500-1800* (Oxford: Oxbow books, 2009); WHYTE, *Contested Pasts*; WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*.

724 RAB, VB, 557, 63 (1507) Mechelen.; RAB, VB, 565, 9 (1510) Turnhout.; RAB, VB, 581, 11 (1534) Meldert; RAB, VB, 581, 19 (1534) Retie; RAB, VB, 594, 98 (1541) Veerle; RAB, VB, 595, 103 (1545) Unknown; RAB, VB, 595, 121 (1545) Putte; RAB, VB, 595, 67 (1546) Aarschot; RAB, VB, 595, 58 (1548) Berlecom; RAB, VB, 602, 225 (1549) Wijnegem.; RAB, VB, 597, 8 (1549) Zeelst.

725 RAB, VB, 563, 76 (1512) Koersel.

726 RAB, VB, 564, 53 (1513) Oplinter.

727 VAN ONACKER, “Leaders of the Pack?”, 99-100.

here show a similar profile. Owning several hectares of meadow, puts them at the top of the Campine society hierarchy. As will be discussed in chapter VII, these were the only individuals wealthy and powerful enough to appear before the Council of Brabant and able to reach the final stage of the juridical process: the sentence.⁷²⁸ Only a limited segment of society, therefore, supported this evolution. Cottagers and smaller independent peasants, after all, relied heavily on communal grazing. Enclosing those scarce meadows for their cattle could have had disastrous effects. Nevertheless, the extent to which the hay meadows were enclosed must have varied greatly between villages. In Tongerlo only 11 per cent of all hay meadows were surrounded by a hedge or ditch (see figure 48), suggesting that there was only one large communal fence rather than individual delimitations. As all the byelaws of my particular sample (apart from Wuustwezel and Oostmalle) still referred to communal practices in their seventeenth century editions, the practice must have survived, perhaps on a smaller scale, in several regions.⁷²⁹ Communal protests, as will be demonstrated in chapter VII “Struggle for the commons”, were after all rather successful.

IV. Piecemeal privatisations | The peasants' search for land

The steep decline in privatisations and stagnation after 1450, has led most scholars to state that the Campine area remained virtually unchanged from the later medieval period onwards.⁷³⁰ Nevertheless, without fundamentally affecting the common pool regime and institutions that had come into existence around the fifteenth century, the subsequent centuries did witness some privatisation and changes. Land hunger did push peasants to enlarge their landed property, even though they probably obtained only marginal returns.⁷³¹ Rent registers describe these privatised plots as “uitfanck” or literally: plots taken out of the common heathlands and locate them as “een inslag voor zijn stede/land”, meaning a plot adjoining their rented land.⁷³² These were, therefore, not privatised and enclosed plots somewhere out in the vast common wastelands, but simply extensions of their land into the commons. They therefore do not resemble, for example, “brecks”, being temporarily cultivated and enclosed fields, as could be

728 Peasants did appear in court, yet had to form collectives in order to be able to bear the costs. See chapter VII.

729 See databases: byelaws

730 ASTRID DE WACHTER, “De Toepassing Van Wereldsysteem-Analyse Op Geografische Streken. Twee Casestudies: De Kempen En Noordelijk Ghana” (University of Ghent, 2002); VAN DIJCK, “Het Landbouwleven”; H. WILLEMS, “De Ontginningen Van De Antwerpse Kempen in De Achttiende Eeuw” (Catholic University of Leuven, 1962).

731 Production margins: “production is bounded by natural elements and by the limits on the amount of land that could be used, colonised and/or reclaimed for agricultural production - in other words by the limitations of the land as production factor. In addition the land was limited and subject to diminishing returns: extensive margin of cultivation”. VAN BAVEL AND THOEN, *Rural History and the Environment*, 18.

732 See for example AAT, Section II, Rent registers, 341-342, Tongerlo and its surroundings, 1566-1621.

found in the Brecklands of Norfolk,⁷³³ as these Campine “uitfancks” became fixed references in the rent registers.

Privatisations Ravels	Surface area in ha	Privatisations Kalmthout	Surface area in ha
Sum	18,74	Sum	68,88
Average	0,24	Average	1,25
Mode	0,02	Mode	1,17
Median	0,14	Median	0,63

Fig 50 Privatisations selected out of rent register of Kalmthout-Essen of 1518 and Ravels 1538.⁷³⁴

Privatisation Tongerlo	Surface area in ha
Sum	50,7
Average	1,1
Mode	1,3
Median	0,975

Fig 51 Privatisations selected out of rent register of Tongerlo of 1566-1621.⁷³⁵

These privatisations cannot be dated exactly or located on a map. Often the size of the plot is not even mentioned. Finally, the term “uitfanck” or privatisation is not always used. Therefore, I combed through the rent registers of Ravels (1538), Kalmthout Essen (1518) and Tongerlo (1566-1621), and selected all plots of land which referred to heathland or pasture that formerly belonged to the wastelands, “blokken” which are enclosed pastures and plots called “uitfanck”.⁷³⁶ This only gives a very preliminary estimation of the privatised land, but it presents the only option available for this type of research.⁷³⁷ As shown in figure 50 and figure 51, describing the privatised plots of Ravels, Tongerlo and Kalmthout-Essen, only a limited amount of land was privatised, and the average field size fluctuates around 1 ha, with a median value of 0,14, 0,63 or 0,97 ha. In Ravels the plots were even smaller. As such, these results correspond with the former statements of Vangheluwe and Bastiaensen, who showed that new clearances of wastelands

⁷³³ BAILEY, *A Marginal Economy*.

⁷³⁴ AAT, II, 373, Rent register of Kalmthout, 1518.; AAT, II, 401, Rent register Ravels, Nova census, 1538.

⁷³⁵ AAT, II, 341-342, Rent register of Tongerlo and its surroundings, 1566-1621.

⁷³⁶ AAT, II, 401, Rent register Ravels, Nova census, 1538.; AAT, II, 373, Rent register of Kalmthout, 1518.; AAT, II, 341-342, Rent register of Tongerlo and its surroundings, 1566-1621.

⁷³⁷ The estimations give the absolute minimum amount of land that was privatised, as several plots were described without any surface area measurement.

remained limited after 1350.⁷³⁸ Claiming plots of 0,63 ha, in addition, do not suggest large-scale privatisations or enclosures of commercial farmers or lords trying to transform the common pool regime. Rather it indicates that the peasants themselves opted for piecemeal privatisations in order to expand their cultivatable land. After all, only about 50 to 68 ha of extra land was privatised of a total surface area of 11586ha for Kalmthout or 2044 ha in Tongerlo, therefore this was only a marginal phenomenon (see figure 52).

Village	Total surface area in ha	Total surface area of private land	Surface area of common wasteland	% common
Kalmthout	11586,23	4292,58	7293,65	58,28
Tongerlo	2044,62	498,34	1546,28	75,63

Fig 52 Extent of private and common land in a selection of Campine villages during the sixteenth century.⁷³⁹

After the most important exploitation period, further privatisations were therefore not initiated by Campine peasants. Both cottagers as well as independent peasants relied on their small plots of land and their access to the commons, without attempting to fundamentally change the common pool regime by privatising vast new areas. In addition, no evidence of serious attempts by tenant farmers to privatise or enclose are witnessed neither. In the Midlands in England, however, it was precisely these tenant farmers - in combination with their manorial lords - who instigated the enclosure process.⁷⁴⁰ They were bound either by short or long-term leases that had to be paid in cash. Consequently, they had to commercialise and intensify, so as to be able to pay rising leases as competition on the land market rose. According to Brenner, this was the reason why tenant farmers steered away from traditional field systems towards more intensified convertible husbandry.⁷⁴¹ As shown in the previous chapter, however, tenant farmers relied heavily on the common wastelands to graze their herds of sheep and collect sods from the common wastelands. As Clark had stated for the open field villages in England, the cost of privatising and enclosing land, large enough to support similar agricultural ventures, would have been too large to bear.⁷⁴² Maintaining a common pool regime was therefore often a very rational decision, even for the wealthier parts of society.⁷⁴³

738 VANGHELUWE, "De Laatmiddeleeuwse Transitie"; JEAN BASTIAENSEN, "Landbouwstatistiek Uit De 14de Eeuw," *De Spycker* (1990).

739 As a start the surface areas of Kalmthout and Tongerlo were derived from the most ancient statistics available on the website www.hisgis.be. Afterwards the known cultivated areas were subtracted. Source: AAT, II, 373, Rent register of Kalmthout, 1518.; AAT, Section II, Registers, 292, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653.; RAA, OGA Tongerlo, 896, Pieces concerning the 10th and 20th penny taks (panningcohier), 1569.

740 ALLEN, *Enclosure and the Yeoman*.

741 For an extensive debate see: T.H. ASTON, PHILPIN, C.H.E., ed., *The Brenner Debate: Agrarian Class Structure and Economic Development in Pre-Industrial Europe* (Cambridge: Press Syndicate of the University of Cambridge, 1985).

742 CLARK, "Commons Sense".

743 Ibid.

V. Inter-community struggles | The case of the Oosterwijk wastelands

In 1548 a series of conflicts within the territory of Oosterwijk developed. The communities of Kerkeind and Gestel complained that a part of the commons, called Oosterwijkse gemeynte, had been enclosed by community members of the “vrijheid” or “freedom” of Oosterwijk.⁷⁴⁴ Nonetheless, “they had for over 30 years [] apart from the disturbance, had the peaceful possession of the commons called the Oosterwijkse gemeynte together with the inhabitants of Oosterwijk, Haren and Belveren.”⁷⁴⁵ Consequently, the community members of Oosterwijk had illegally enclosed those plots of land and the Council of Brabant should prohibit such behaviour according to Gestel and Kerkeind. The opponents, however, claimed that they “had received on Saint Barbara’s day in 1300 from Duke John, Duke of Lotharinge and Brabant the commons of Oosterwijk, with the condition that they and their descendants could use them for their best interest.”⁷⁴⁶ In the end, still in 1548, the court favoured the inhabitants of Oosterwijk as they could prove their possession by the charter.⁷⁴⁷ The conflict, however, did not end there. A year later both parties appeared again as the conflict had got out of hand. According to the aldermen, burgomaster, inhabitants and good men of Oosterwijk “those of Oosterwijk had the authority, consent and full power to sell or tax their commons in the future.”⁷⁴⁸ After all in 1434 they had obtained the permission to sell 60 bunders of wastelands. Nevertheless, the inhabitants of Gestel did not agree and, after the tensions had risen to a crucial level, they opted for symbolic acts of violence. “Hendrick Godtscouwen, Goessen van Deurne, Gheeraert van Laeck, Imbrecht de Turte, Mathijs Duycx and over 80 more evil-spirited persons, all inhabitants of Gestel, came armed with sticks, halberds, pitchforks, shovels and other arms on the commons called Oosterwijkse gemeynte, near the plantation called Zwanenberg next to Bogaert Vanden Schatten over the bridge on one of the parcels of land that was sold by the petitioners long ago [] and destroyed with force the ditches and fences

744 The word ‘freedom’ here denotes a settlement which had charters but which was not allowed to have town-walls, gates or other such defences. CRAANE, “Spatial Patterns”, 40.

745 “dertich ende meer jaer zoe dat ter contrarie egheen memorie van menschen en was hadden geweest ende behoudelijck die turbatie hier inder geruert noch waeren ende behoiren te blijven in peyselijck ende vredelijcker possessie vel quasi van zekeren gemeynte geheeten gemeynlijck oosterwijcsche gemeynte hebbende die metten ingesetenen van oosterwijc haren ende belveren tsamender hant ende indifferentelijck gebruyckt huer koeyen, schapen ende andere beesten daer op gedreven, heyde daer op gemaect ende torf gesteken ende voirte getrocken ende gehadt alle de prouffijten min oft meer dan die andere hueren medeplegene”. ARAB, VB, 596, 111 (1548) Oosterwijk.

746 “1300 op sinte berbelen dach hadden van wijlen hooger memorie hertogen janne hertogen van lotrijke van brabant ende vercregen die oosterwijcsche gemeynte met conditie ende voerweerde dat zij ende huere nacomelinghe huere meeste prouffijte daer mede soude moegen doen ende disponeren daer af nae huerlieden geliefen”, ARAB, VB, 596, 112.

747 ARAB, VB, 596, 111 (1548) Oosterwijk.

748 “dien van oosterwijck auctoriteyt consent ende volle macht gegeven was, om dien toecomende tijde te moegen vercopen becommenen oft oick belasten huere voorschreven gemeynte”, ARAB, VB, 596, 112 (1548) Oosterwijk.

of the sold plantation in contempt of the princely concession and ordinance”.⁷⁴⁹ According to the community of Oosterwijk this action was unheard of, as the plots had been rightfully privatised and the rents had been written down in the registers. Therefore such action to restore the common use was a novelty and should be forbidden by the court. Unfortunately for them, the court was unreceptive to their complaint and stated that there were no grounds for them starting a lawsuit.⁷⁵⁰

Therefore, the individual that had privatised the land himself filed a complaint in 1549. Joes Woutersen, an inhabitant of Oosterwijk, came to court to plead that the court should grant him the right to use his land in private. Again the community members of Gestel stated that they possessed the communal rights on the common wastelands. In the end, again the court favoured the community members of Gestel and stated that Joes Woutersen had no valid reason for starting a court case.⁷⁵¹ Finally, Joes Woutersen appeared again in 1550 to oppose the officials of the village of Heynssen. These officials had caught animals belonging to Joes Woutersen and two other individuals when they grazed the remaining commons. Nevertheless, they stated that it was their ancient right to graze the commons, like the other community members. As a result, the court favoured Woutersen’s claim and stated that the officials had illegally caught the animals and should give them back.⁷⁵² This, therefore, is a perfect example of how the equilibrium between the different interest groups was achieved. The court defended the right to privatise parcels of land, but at the same time favoured the peasants trying to claim their communal rights, even through violence. Therefore, the community members of the “vrijheid” of Oosterwijk, had successfully privatised parcels of land, even though the communal aspect of those lands, was much more difficult to eradicate. In the end the court often favoured communal grazing, prescribed by custom.

749 “hendrick godtscouwen goessen van duerne gheeraert van laeck imbrecht de turte mathijs duyxc ende meer andere quaetwilligen wel tachtentich ende meer in getale al tsamen ingesetenen van gestel ende meer in getale al tsame ingeseyenen van gestel gestockt ende gestaeft met hellebaerden gaffelen scappen ende andere wapenen te comen opde voorschreven oisterwijcsche gemeynte ter plantsien genaempt zwanenberch achter ... aldaer voirts omtrent den bogaert vanden schatten over de bantbrugge ende op zekere andere stuck voer die dyese bijde voorschreven supplianten jaer ende dach geleden vercocht om metten penninghen daer af comende gedaen te worden achtervoegende hueren lesten octroye hebbende met fortse ende groote insolente die grechten ende beheynselen vanden vercochten plantsien vuyter oisterwijcschen gemeynten genomen omme geworpen ende geslicht raductus ... ende vuytwerpene het plantsoen bijde coopers vanden voorschreven parcheelen geplant in verachinghe vanden voorschreven princelijcke ordonnantie concessie ende octroyering”. ARAB, VB, 596, 112 (1548) Oosterwijk.

750 ARAB, VB, 596, 112 (1548) Oosterwijk.

751 ARAB, VB, 598, 68 (1549) Oosterwijk.

752 ARAB, VB, 599, 37 (1550) Oosterwijk.

VI. Large-scale privatisation movements | The abbey of Tongerlo

It has become clear that peasants were, in contrast with the generally accepted view, not per se against enclosure or privatisation, and that lords were not the main driving forces in carrying them out between the thirteenth and fourteenth century. From the late fourteenth, and especially during the fifteenth and sixteenth centuries, the Campine lords' attitudes changed. It is, however, vital to state that there was not one uniform strategy towards commons shared by all different types of lords, present in the Campine area. Nor did all lords have an unwavering policy. In general, lords were not involved with active agricultural practices and most of them did not even have farms that were managed by tenants. Consequently, those lords were not seeking to enclose land, rather they supported new rents and incomes resulting from peasants' initiatives. Like the case of the Midlands in England, it was the select club of lords who wanted to get involved in commercial agriculture, that championed the privatisation, consolidation and enclosure of land.⁷⁵³

In many regions, ecclesiastical institutions such as abbeys and chapters were among the wealthiest and most powerful landlords. In contrast to what is often assumed, ecclesiastical institutions could develop very active policies of estate management even after the Black Death.⁷⁵⁴ For example, in the high Middle Ages, the pioneers of a commercial animal husbandry were clerical estates. Both abbeys and the Count of Flanders in maritime Flanders transformed the dunes and salt marshes near the North Sea coast into sheep pastures. According to Erik Thoen and Tim Soens this commercial production of wool actually fuelled the rise of cloth industries and simultaneously the rise of cities in the twelfth century.⁷⁵⁵ In England both Cistercian and Benedictine abbeys were the most important wool exporters to the continent. Thanks to direct demesne exploitation, these abbeys owned as much as 3000 sheep per manor⁷⁵⁶ and the Premonstratensian abbey of Tongerlo in the Campine area implemented a similar strategy. While most peasants were still predominantly focussed on arable production, the abbey already invested in extensive sheep herds from the end of the twelfth century onwards.⁷⁵⁷

753 ALLEN, *Enclosure and the Yeoman*.

754 See, for example, the Saint John's hospital in Bruges: VERVAET, "Het Brugse Sint-Janshospitaal ". For the case of England: PHILIP SLAVIN, *Bread and Ale for the Bretheren: The Provisioning of Norwich Cathedral Priory, C.1260-1536* (Hertfordshire: University of Hertfordshire Press, 2012); DAVID STONE, "Medieval Farm Management and Technological Mentalities: Hinderclay before the Black Death.," *Economic History Review* 54, no. 4 (2001); DAVID STONE, *Decision-Making in Medieval Agriculture* (Oxford: Oxford University Press, 2005).

755 THOEN AND SOENS, «Élévage, Prés Et Paturage Dans Le Comté De Flandre Au Moyen Age Et Au Début Des Temps Modernes: Les Liens Avec L'économie Rurale Régionale «.

756 BOND, *Monastic Landscapes*.

757 DE WACHTER, "De Toepassing Van Wereldsysteem-Analyse «.

The abbey's extent of sheep possession rose strongly during the following centuries until the middle of the fifteenth century, going on to stabilise on that level after the late medieval crisis during the second half of the fifteenth century (see chapter II). This commercial animal husbandry, however, did not lead to any fundamental privatisations. Like the manorial lords in the Brecklands, they enjoyed the fruits of communal grazing rather more than investing in private pastures.⁷⁵⁸ Tenants' herds wandered on the common wastelands next to the village herds. As such they distinguished themselves from the manorial lords of the Brecklands because they respected, voluntarily or not, the communal rights of their subjects. Few conflicts between the abbey and their subjects have been unearthed, except for a case in Kalmthout where an attempt to abolish communal rights was fiercely objected.

In the year 1544 the abbot Arnoldus Van Diest and his fellow priests of the abbey of Tongerlo, granted a certain Hubrecht De But the right to turn 1149 gemeten or 482,58 ha of heath- and wasteland, belonging to the common wastelands of Kalmthout-Essen, into privatised land.⁷⁵⁹ This Hubrecht appeared to have been a rich Antwerp lawyer who was rather keen on investing in immovable property. In sixteenth century Antwerp, he cooperated several times with Gilbert Van Schoonbeke to invest in real estate, allotment projects and immovable wealth.⁷⁶⁰ Nevertheless, the community members of Kalmthout and Essen were convinced that the wastelands surrounding the villages had always been and remained unenclosed and common to all the community members. Seven witnesses, all over 60 years old, issued a written statement saying that as long as they had lived the wastelands had always been seen and used as common and unenclosed land.⁷⁶¹ Unfortunately, the abbey had a different perspective and regularly granted parcels of land to individuals.

By 1624 the conflict resurfaced when the abbey published a charter prohibiting the community members of Kalmthout and Essen using the commons, a matter, if transgressed, which would be enforced by the bailiff.⁷⁶² Unsurprisingly, a law suit was initiated and at first the abbey won the case. The abbey acknowledged that the peasant communities were allowed to use non-privatised parcels of wastelands, although stated that digging for peat was not allowed

758 BAILEY, *A Marginal Economy*; ALLISON, "The Sheep-Corn Husbandry".

759 AAT, IV, Fund of Kalmthout-Essen-Huibergen, 324, Privatisation of a piece of the commons by Hubrecht de But, 1544.

760 Born in Brussels in 1518 out of the marriage between the lawyer Cornelis and Marie van Oolen. In 1541 he married Mechtelt de Vogeleer, daughter of Adriaen and Adriana Boots. They both received large estates in the regions surrounding Antwerp and Breda as dowry. H. SOLY, *Urbanisme En Kapitalisme Te Antwerpen in De 16de Eeuw: De Stedebouwkundige En Industriële Ondernemingen Van Gilbert Van Schoonbeke* (Brussels: Gemeentekrediet van België, 1977), 152. In Antwerp he also purchased goods from the Abbey of Baudeloo in Antwerp, source: CAROLINE LUYPAERS, "'Le Goût Pour Les Spectacles Est Tellement Devenu À La Mode...'" Spektakelcultuur in Het Achttiende-Eeuwse Antwerpen" (Catholic University of Leuven, 2001), 27.

761 This document is not dated, but most probably it has originated in 1544 together with the enclosure. AAT, IV, Fund of Kalmthout-Essen-Huibergen, 322, Privatisation of a piece of the commons by Jan Godens, 15th century.

762 AAT, IV, Fund of Kalmthout-Essen-Huibergen, 325, Abolishment of communal rights, 1623.

and, as such, community members had acted against the rules of the byelaw. As evidence, the abbey meticulously referred to the byelaws and all the charters and privileges proving that the abbey was the landlord and therefore could decide on all matters regulating and managing the seignior. It was confirmed that a blind eye may at times have been turned towards illegal use, nonetheless the communities did not possess official rights. In this particular case the Council of Brabant supported the abbey and prohibited further harvesting of peat by the communities of Kalmthout and Essen.⁷⁶³ Consequently a new charter was published by the bailiff on the door of the church that it was forbidden to dig peat and heather sods, as defined by the byelaws. The community of Kalmthout-Essen, however, did not leave it at that. In 1627, they themselves filed a complaint before the Council of Brabant requesting that they retain their right of using the commons, “as was custom for as long as nobody could remember the opposite”. In the end, they did receive the court’s ruling which granted them that right.⁷⁶⁴ The abbey, as landlord of the area, therefore had the right to privatise and enclose parts of the commons, however, restricting the peasants’ access to the remaining common wastelands was a step too far, even for the powerful abbey.

This attempt to abolish communal rights was, however, not an isolated event, rather it fitted in the abbey’s policy of privatising and enclosing land in the region around Kalmthout-Essen. This was, after all, a rather extraordinary region because large parts of the soil consisted of peat layers. Peat was one of the most valuable fossil fuels since, by the later Middle Ages, the majority of woodlands had been cleared in the entire Low Countries.⁷⁶⁵ In Flanders, the exploitation of peat started much earlier, but once those peat layers became increasingly scarce, Brabantine reserves came into the picture.⁷⁶⁶ Starting from the northern part of the peat layers (around Rosendaal), Flemish and Brabantine investors began exploiting the moors and peat fens commercially. By the fourteenth century, the abbey was actively engaged in the process, with a peak of activity occurring during the fifteenth and sixteenth century.⁷⁶⁷ Channels were constructed to drain the peat marshes and transport the peat towards Rosendaal and Antwerp. In contrast with large parts of Holland, it was not the individual peasants exploiting small plots of peat behind their farmsteads, rather, wealthy and powerful investors obtained

763 AAT, IV, Fund of Kalmthout-Essen-Huiberghen, 326, Juridical advice for the abbey of Tongerlo concerning the communal use rights, 1624-1628.

764 “Vonnis waer in het gebruyck der vruente tot Esschen ende Calmpthout gewesen wordt ten possesseren tot faueur vande gemeynte aldaer laetende den prelaet van Tongerlo in sijn geheel ter petitioir. 1628 27 september”. AAT, Section IV, Fund of Kalmthout-Essen-Huiberghen, 328-329, Sentence regarding communal use rights in favour of the community of Kalmthout-Essen, 1623-1628.

765 BASTIAENS AND DEFORCE, “Geschiedenis Van De Heide”; TACK, *Bossen Van Vlaanderen*.

766 LEENDERS, *Verdwenen Venen*.

767 *Ibid.*

grants to exploit huge blocks of peat in one go.⁷⁶⁸ The region around Nieuwmoer deserves particular attention. The region was already incorporated into the abbey domains as two farmsteads were located on the Blijenberg, next to a large swamp or moor. While at first the most accessible moors were exploited, more challenging fens such as this one were handled from the middle of the fourteenth century onwards. The first concession, measuring 65 ha, was granted in 1331 to Dibbouts and Van De Putte, two entrepreneurs from Antwerp. The extraction really lifted off from 1430 onwards when 78 hectares of peat bogs were privatised. Local peasants probably rented small plots of approximately one roede (or 0,00329 ha) or tried to dig for peat in the commons, but their share in the commercial exploitation was rather limited. Once the canal was dug resulting from the urban investors' incentive, an area of more than 1000 ha was exploited.⁷⁶⁹ To give a full overview of the extent of peat extraction in the area, Leenders calculated that more than 10000 canals were dug and at least 2,3 million m³ was cut or dredged.⁷⁷⁰ Detailed and rare registers of this process have been preserved, granting an invaluable insight into this highly organised and capitalistic enterprise.

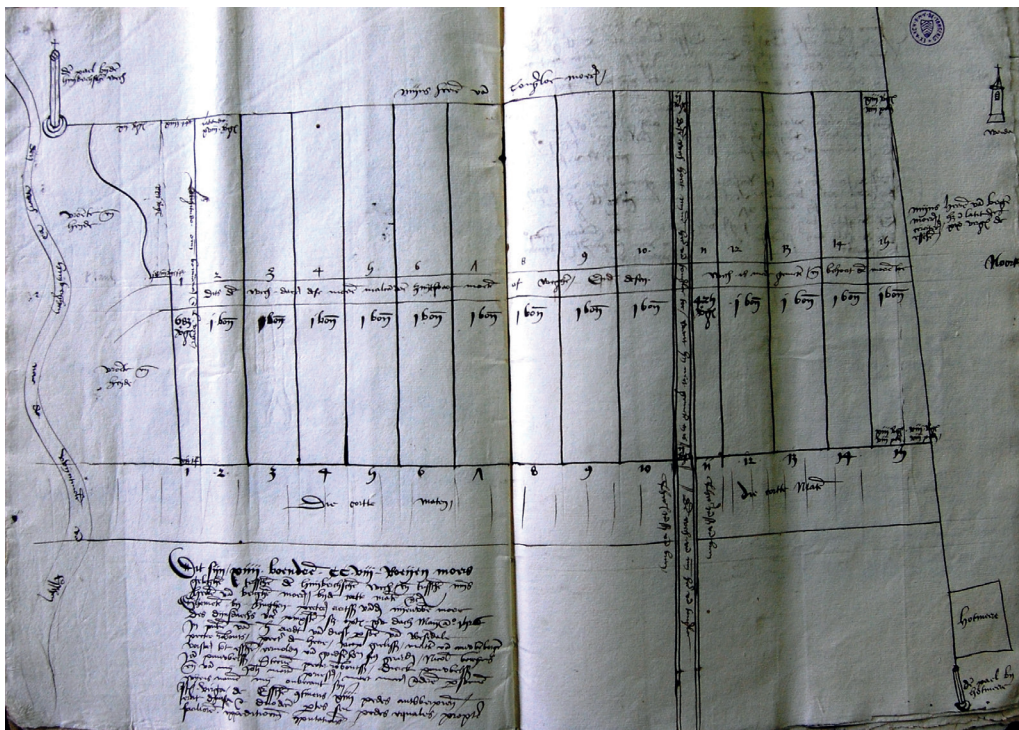


Fig 53 Folio from the nova census of Kalmthout-Essen, depicting the peat concessions near the "huybergse weg".⁷⁷¹

768 For more information on peat extraction in Holland: CHARLES CORNELISSE, "The Economy of Peat and Its Environmental Consequences in Holland During the Late Middle Ages," *Jaarboek voor Ecologische Geschiedenis* (2005-2006); PETRA VAN DAM, "Sinking Peat Bogs: Environmental Change in Holland, 1350–1550," *Environmental history* 6, no. 1 (2001).

769 LEENDERS, *Verdwenen Venen*.

770 KAREL A. H. W. LEENDERS, "Nieuwmoer," *Calmphoutania* 40, no. 1 (1988).

771 AAT, II, 377, Nova census Kalmthout-Essen, 1518, f^o 9.

During the fifteenth century, the cabins which housed peat labourers were transformed into more permanent settlements and the agglomeration of Nieuwmoer was born. The investors were granted concessions which gave them the right to dig for peat, yet once this black gold was exploited and sold, the land reverted to the possession of the abbey. Consequently the land was leased or rented by peasants. The abbey actively tried to transform the land that was returned when the concession had finished into productive agricultural land.⁷⁷²



Fig 54 Vandermaelen map of Nieuwmoer⁷⁷³

This commercial process, however, did fundamentally affect the extent and outlook of the Kalmthout commons. In 1518 alone, 70 hectares of moor and heathland was privatised and

772 LEENDERS, "Nieuwmoer".

773 Topographical map of Belgium (1850-1854), Ph. Vandermaelen, scale 1:20 000 (Nationaal Geografisch Instituut/ National Geographical Institute), N°26 Calmthout 3.

registered in the rent registers of Kalmthout-Essen.⁷⁷⁴ In addition, 90 hectares of peat was given into concession in the same timeframe, mostly around Hotmeer.⁷⁷⁵ The total surface area exploited between 1300 and 1600 has not been calculated, but as indicated by the map of Leenders, the area affected was huge (see figure 55).

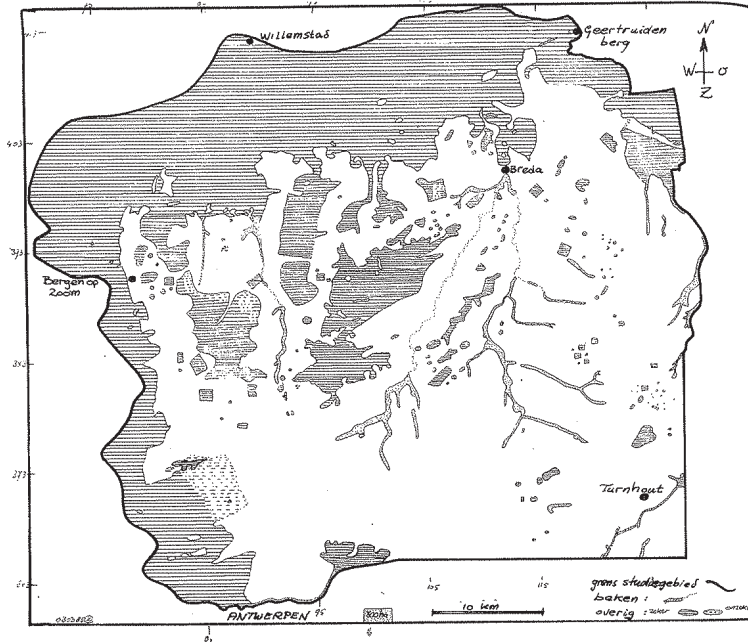


Fig 55 Location of peat bogs between Willemstad, Geertruidenberg, Antwerpen and Turnhout according to Leenders.⁷⁷⁶

Whereas some, and probably most, parts of the former peat bogs were given back to the communities as common wastelands after the peat had been extracted, the areas around Nieuwmoer for example were transformed into private, enclosed and exploited fields and pastures.⁷⁷⁷ As such, large parts of the commons were effectively privatised with the incentive of the abbey. As stated before, Kalmthout and Essen, cannot really be seen as a representative case, for the valuable peat was a trigger for a privatisation wave. Nevertheless, in Ravels, another seigniory partly owned and governed by the abbey of Tongerlo, 43 hectares of heathland were also privatised in one year without the presence of any peat layers.⁷⁷⁸ Therefore, the abbey of Tongerlo actively encouraged and supported privatising the commons as it increased their rents and spurred their commercial opportunities. Tempted by the prospects of increased privatisations and the abolishment of communal rights, they even tried to change - in a

774 AAT, II, 373, Rent register of Kalmthout, 1518.

775 AAT, II, 377, Nova census Kalmthout-Essen, 1518

776 LEENDERS, *Verdwenen Venen*, 118.

777 Apart from the land that was registered as arable, pasture or meadow, the remaining waste lands were not all transformed into tenancies. As the village of Nieuwmoer possessed the same rights to the commons as the community members of Kalmthout, Essen and Huibergen did, the remaining uncultivated patches of land, must have been restored as common waste lands.

778 AAT, II, 401, Rent register Ravels, Nova census, 1538.

fundamental way - the common pool regimes of their subjects in Kalmthout, although with little success. Because peasant communities actively cooperated and explored their juridical options as an interest group, they used all their options available to halt lordly intrusions. As the case before the Council of Brabant in 1624-1627 shows, these peasant protests in order to maintain their customs and common rights, were often a success, resulting in the survival of the common pool regimes and institutions. This topic will, however, be explored further in chapter VII

VII. The Dukes of Brabant | Temperamental partners

The Dukes of Brabant, however, had a very indecisive and unpredictable attitude towards the commons, shifting between institutionalising and protecting communal rights to forced privatisation, enclosures and commercial exploitations and back again. As stated in chapter III the Dukes of Brabant Jan II and III actively used a “commons policy” to enlarge their power to the detriment of the other political players such as the feudal lords of the Campine area. Looking at the charters issued by the ducal administration, several villages had obtained their commons between 1236 and 1337 (see figure 14).⁷⁷⁹ Consequently, annual fees of 40 schellings, for example, entered the treasury.⁷⁸⁰ Due to inflation, however, those yearly fees quickly changed into small sums. Simultaneously the Dukes of Brabant were replaced by the Dukes of Burgundy who, in turn, were succeeded by Habsburg monarchs. During that timeframe, their needs, interests and policies changed frequently, however, the search for money was a constant factor.⁷⁸¹ It has often been argued that rent increases represented the main objective of landlords during the Premodern period.⁷⁸² By encouraging privatisation, the Dukes could increase their incomes from their Campine domains. However, because those rents would fall in conjunction to inflation (as did the original rents for the entire commons), it would not have contributed significantly to the treasury. Nevertheless, from 1358 onwards, the new Duke and Duchess, Wenceslas and Jeanne, accepted the pleas within their communities to sell parts of their commons and to settle their debts, in return for new rents being paid to the Duke. For example, Wenceslas and Jeanne approved the sale of 132 hectares of commons by

779 Lier, 28 June 1236; Herenthout, 28 June 1247; Oosterwijk, 4 December 1300; Vechel, 5 August 1310; Liempde, 7 May 1326; Bergeijk and Westerhoven, 24 September 1331; 's Hertogenbosch 9 December 1337; Source: VERKOOREN, *Inventaire Des Chartes Et Cartulaires*, Vol 2, N° 81, 98, 202, 227; Vol 203, N° 226, 234, 254.

780 Ibid.

781 STEIN, *De Hertog En Zijn Staten*; AVONDS, *Brabant Tijdens De Regering Van Hertog Jan III*; DE RIDDER, *Hertog Jan I Van Brabant (1267-1294)*; DE WACHTER, “De Opname Van De Kempen”; DEKKERS, “Brabant Zand”; VAN UYTVEN, ed., *Geschiedenis Van Brabant*.

782 PURDUM, “Profitability”. While Clark defends the opposite position: CLARK, “Common Sense”.

the aldermen and jurors of Oosterwijk in order to settle their debts.⁷⁸³ The Duke, in return, received a fixed sum per hectare of privatised land, as was stated in a similar case in Lier.⁷⁸⁴

Philip the Good was the Duke with the greatest liabilities the Campine area ever witnessed. In his search for money and funds, he constantly changed his attitude towards the commons in order to secure as many earnings as possible. First, he approved the selling of 195 ha of wastelands near Tilburg and Goerle in order to cover the costs suffered by them resulting from a law suit which took place before the Council of Brabant against the village of Beek concerning those commons.⁷⁸⁵ The village of Kerk-Oerle was also involved because that village had requested the sale of 20,8 ha in 1436 for the same reason. Gradually dismantling the commons was, however, not per se the Duke's main objective. When earnings could be found by granting common land to new communities and villages, Philip the Good formalised those actions by creating charters just as easily. Consequently Waalwijk and Oosterwijk were re-confirmed in their communal rights in 1441 and 1449,⁷⁸⁶ while Oorderen and Wilmarsdonk were granted new parts of common land in 1458 even though they were actually in the polder.⁷⁸⁷

In 1462, however, Philip the Good found a far more effective way of securing profits from the Campine commons. Via his steward of 's Hertogenbosch he published a charter where all the "cities, "vrijheden", villages, ecclesiastical institutions and individuals"⁷⁸⁸ "Were ordered that everyone that holds a common, heathland, moor or gemeynthe, obtained from us in the shire, shall bring between now and St John's day an authentic copy or vidimus of the charter which they supposedly own."⁷⁸⁹ If they failed to do this, their rights to the commons would be lost to the Duke and, as a result, the Duke had the right to "sell or grant the land to the highest bidder."⁷⁹⁰ If it was the case that a charter had been lost, communities were able to reaffirm their privilege by paying an additional sum and this was certainly no idle threat. On April 21st, the Duke published a new charter forcing the steward of 's Hertogenbosch to "procéder à la saisie des communaux dont les preuves écrites de leur droit à la jouissance n'avaient pas été produites par les localités après nommées en ajournant celles-ci devant le

783 Wenceslas et Jeanne pour aider les échevins et jurés d'oosterwijk à payer les dettes dont cette commune et franchise est chargée leur permettent de vendre 100 bunder, sans plus de leurs terres communes. VERKOOREN, *Inventaire Des Chartes Et Cartulaires*, Vol 3, N° 219.

784 Ibid., Vol 3, N° 130.

785 Ibid. Vol 3, 19th of March 1436

786 Ibid. Vol 3, 22nd of August 1441, 16th of June 1449

787 Ibid. Vol 3, 22nd of August 1458

788 ARAB, Chambre des Comptes, cartularies, MS diverse 5E, f° 219-220, cities, freedoms, villages, ecclesiastical institutions and individuals.

789 "gebieden dat alle die gheene die eenige vroenten heyden moeren oft gemeynthen in uwen voorschreven ambachte houdende zijn onder titule van vercrige dat zij daer af hebben van ons [] brengen of seynden tusschen dat ende sint jans dach baptiste naemaels naest comende copie oft vidimus autenticke van alle hoeren brieven ende bescheyden die zij daer af hebben" ARAB, Chambre des Comptes, cartularies, MS diverse 5E, f° 219-220.

790 "vercoopen oft terve uit te gevenden meeste daer om biedende" RAB, VB, 557, 45 (1498) Grootbeemd.

conseil de Brabant”.⁷⁹¹ This new ordinance fits into Philip the Good’s general policy during this period. By examining the charters and ordinances ordered by Philip the Good between 1455 and 1470, we can see that he ardently tried to gain a better grasp on the earnings made from his domains in the Low Countries. Between 1457 and 1463, seven general ordinances were published concerning the control of the general Brabantine auditors and their accounts. Philip demanded annual accounts to be delivered by his officials in his realm together with a reorganisation of his extraordinary earnings.⁷⁹² In 1498, during a conflict between the inhabitants of Oirschot and Grootbeemd, this large-scale enquiry was referred to. Apparently a parcel of common land in their neighbourhood had been publically auctioned despite the community of Oirschot claiming to have bought that parcel of land for the cost of 150 guilds and 40 flemish groats in addition to a yearly fee of 20 old royal groats.⁷⁹³ The community of Grootbeemd objected, however, since they had used those commons for over 100 years without every experiencing any opposition by anyone. They referred to undisturbed use rights even after the announcement of the Duke saying they had received that right from the Dukes of Brabant in the year 1326 as they had bought 68 bunders of waste- and woodlands. In addition, they had received 45 bunders of land in 1322 from the Lord of Helmond. In the end, however, the Council of Brabant favoured Oirschot as they could show prove of their purchase in 1465.⁷⁹⁴

It was Philip the Good, therefore, who created the biggest shock-wave to hit the late medieval Campine communities and commons. By requiring written documents proving the “possession” of the commons by Campine communities, several villages who had been allowed to use the commons only through an oral agreement lost their claims on the commons. Grootbeemd is a particular example of this problem. As shown in chapter III, access to the commons was usually only granted to the main village rather than to all dependent hamlets individually. Philip the Good’s objective of selling and privatising the commons, as had been stated in the charter, was probably not entirely fulfilled however. The communities were all eager to show their written charters, and the parcels of common land that were sold were probably mostly obtained by communities going on to being used in common, as happened in Oirschot. Not one reference could be found to large parcels of former common land being sold off to private investors seeking to buy and transform common wastelands. Instead, communities rallied the money needed to acquire the waste lands, so as to secure their common pool regime or enlarge their own commons. The main result of this, therefore, was the shifting of power

791 “To take possession of the commons where no written proof of the use rights had been produced by the localities named below having been summoned to bring these to the Council of Brabant”. VERKOOREN, *Inventaire Des Chartes Et Cartulaires*, 1450-1469. 21/04/1464.

792 JEAN-MARIE CAUCHIES, *Ordonnances Générales De Philippe Le Bon 1430-1467, Recueil Des Ordonnances Des Pays-Bas* (Brussels: Federale overheidsdienst justitie, 2013), n° 31, 32, 34, 35, 37, 40.

793 RAB, VB, 557, 45 (1498) Grootbeemd.

794 Ibid.

and privileges from smaller hamlets towards the main villages rather than a privatisation or enclosure movement. This power balance is discussed more thoroughly in chapter IV.

VIII. Mary of Hungary | Maecenas of the most commercially orientated exploitation

Under the rule of emperor Charles V, the Habsburg Netherlands was governed by his sister Mary of Hungary. In addition, she was the Lady of Turnhout, direct landlord to the core area of the Campine area.⁷⁹⁵



Fig 56 Mary of Hungary painted by Jan Cornelisz Vermeyen

Under her rule, a more active involvement in the management of the ducal domains and earnings was clearly felt. This was manifested through encouraging, one could say practically forcing, the privatisation of parcels of land from the “gemeynthe” of Turnhout.⁷⁹⁶ Between 1436 and 1475 several plots were registered as being privatised, however, in 1540 the administration

⁷⁹⁵ DE KOK, *Turnhout*.

⁷⁹⁶ This fitted into a more general policy of pushing for greater control over the region generally. For more information see: BLOCKMANS, *Keizer Karel V. De Utopie Van Het Keizerschap*; ERIK AERTS et al., *De Centrale Overheidsinstellingen Van De Habsburgse Nederlanden (1482-1795)* (Brussels: Algemeen rijksarchief, 1994); H. DE SCHEPPER, “Vorstelijke Ambtenarij En Bureaucratisering in Regering En Gewesten Van ‘S Konings Nederlanden, 16de -17de Eeuw,” *Tijdschrift voor Geschiedenis* 90 (1977); MAARTEN VAN DIJCK, “Tussen Droom En Daad. De Beperkte Invloed Van De Centrale Overheid Op De Rechtspraak in Antwerpen En Mechelen Gedurende De 15de En 16de Eeuw,” *Justitie- en rechtsgeschiedenis: een nieuwe onderzoeksgeneratie* 3 (2008).

complained that 250 bunders or 325 ha still needed to be privatised. Unsurprisingly, around 1549 several plots of dug heathland peat lands were registered.⁷⁹⁷

The second strategy, however, was the most far-reaching and invasive. Like the manorial lords in the Brecklands, the Governess decided that an active commercial enterprise was to be pursued in her domain. As such, Mary of Hungary founded or obtained four farmsteads called the “coninginne hoeve” and the “putterij”, located near Arendonk, Oud-Turnhout and Ravels. Three of them, called the “putterij” were leased to tenant farmers.⁷⁹⁸ A special case was Willem Wils however, who was responsible for the direct exploitation of a farm measuring 10 ha in the name of Mary of Hungary. As a result, far more detailed accounts of his estates are available. Not only the quantity of animals were registered, but also how many were bought and sold, how many animals were born or died and the earnings he made from the wool, hides and animals themselves. More important, however, is the fact that even the expenditures were also registered (apart in the starting year), since all the expenses were covered by the Ducal administration. From the beginning of the period of exploitation in 1550, Willem Wils was able to invest large sums. He started with as many as 900 sheep and, as a result, he was able to secure 70000 denier of earnings that year which corresponded to 100000 litre of rye (see figure 57).

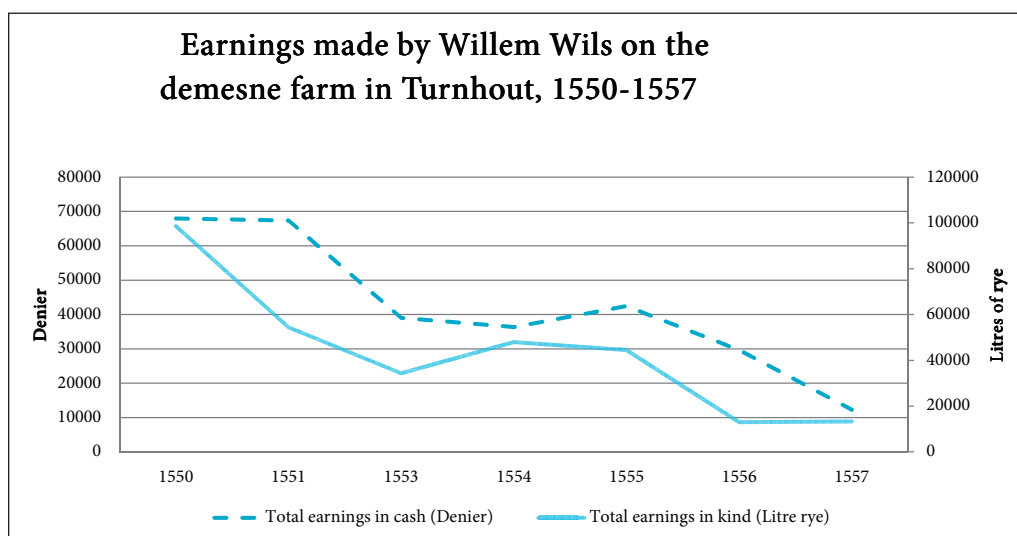


Fig 57 Earnings made by Willem Wils on the demesne farm of Mary of Hungary in Turnhout, 1550-1557.⁷⁹⁹

797 ARAB, Chambre des Comptes, 5212, Account of the domain of Turnhout, 1549.

798 The first was Ghijsbrecht Vervoirt inhabiting the farm near Oud Turnhout, measuring 28 ha of land, for which he paid 56 karolus gulden. On that farm he kept 150 sheep, a horse, 2 draft oxen, 4 cows and 6 calves. The second was the farm near Ravels, leased by Adriaen Heynkens, measuring 13 ha for which he paid 27 karolus gulden. He did not possess any horses, but kept 100 sheep, 2 draft oxen, 3 cows and 4 calves. Finally we have Simoen Kenis leasing a farm of an unknown size near Arendonk for 50 karolus gulden, owning exactly the same amount of animals as Ghijsbrecht Vervoirt. ARAB, Chambre des Comptes, 5213/1-8 Accounts of the domain of Turnhout 1550-1557.

799 Ibid.

Costs, however, were just as substantial as earnings. The farm only measured 10 ha and apparently was not well equipped. Even in the first year after the very start, Willem Wils was required to invest large sums to keep the estate running. First of all he needed additional labour to sow the fields, mow the meadows and tend the animals. In addition, the pastures were completely insufficient to support the livestock. Even though the animals could graze on the common wastelands as all tenant farmers could, Willem Wils hired some supplementary pasture, a barn and sheep till. On top of this he also had to purchase manure, animal equipment, ploughs, carts and large quantities of animal fodder. In 1554 these expenses amounted to no less than 30764 deniers (see figure 58).

Expenses	Cost in denier
Purchase of hay	1139
Grasses	2620
Rental of pasture	732
Purchase of cattle	4863
Purchase of straw	4287,6
Purchase of feed	13533,5
Purchase of manure	470
Purchase of harness	0
Barns	0
Wages	3119
Total	30764,1

Fig 58 Expenses made by Willem Wils for his animal husbandry on the demesne farm of Mary of Hungary.⁸⁰⁰

As a result Mary of Hungary had to act. In 1552 she pushed the aldermen of Turnhout and Arendonk to grant her a part of the wastelands that her forefathers had given to those communities. The aldermen wrote a charter stating: “that it was her majesty of Hungary and Bohemia’s wish, as Lady of Turnhout, that a certain quantity of commons would be exploited as farm land”.⁸⁰¹ Therefore they granted her 260 ha of wastelands that could no longer be used by the members of the community who were subject to the standard fine for trespassing. Her tenants, however, were to contribute to the village taxes and therefore were able to use the remaining commons. Although the charter was issued by the aldermen of the “vrijheden” of Turnhout and Arendonk, the incentive for this large-scale privatisation would probably not have stemmed directly from them. Despite the fact that villages and cities had

800 Ibid.

801 “goede begeerte vanden majesteyt vande coninginne van hongarien end evan bohemien regente, als vrouwe van turnhout van zekere quantiteyt van vroenten ten eynde die tot hoeven landt ende andere culturen gelabeurt te worden” ARAB, Chambre des Comptes, Administrative files, “Cartons”, 83/2, 37B.

privatised plots of common land allowing them to collect enough money to settle debts, this transaction apparently did not provide Turnhout and Arendonk with many advantages. The plots of wasteland were privatised and most probably enclosed, since trespassing was fined. Any discontent was, however, immediately suppressed given the fact that no court records or sources reveal any tensions. The relative silence may have been due to the fact that communal rights were not eradicated entirely because they could not - or did not – ultimately prevent communities performing their communal activities on the surrounding commons.

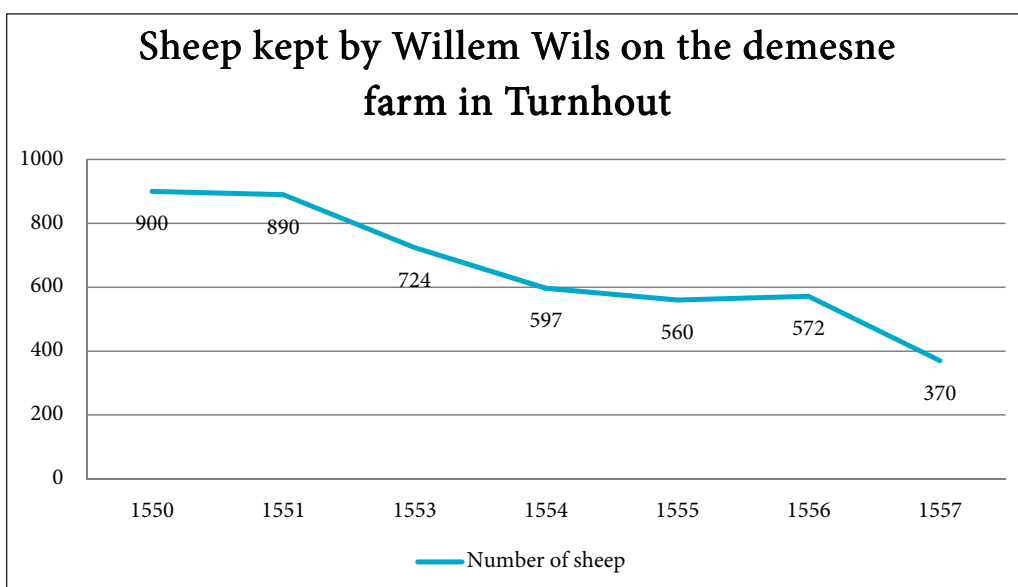


Fig 59 Sheep kept by Willem Wils on the demesne farm of Mary of Hungary between 1550-1557.⁸⁰²

Despite this more or less forced act of kindness, Willem Wils was unable to maintain a profitable estate. From the very start the quantity of animals declined, as did earnings. The costs of keeping such an intensive, capitalistic estate running, even on a plot of more than 260 ha of land, were simply too high. This is immediately visible in the amount of sheep held by Willem Wils. Enthusiastically starting with 900 sheep, the number had already dropped to around 600 in 1554, only to plummet to 370 in 1557 and to disappear entirely a year later (see figure 59). In 1556 a final act of despair caused the community of Turnhout and Arendonk to grant an additional parcel of 12 ha of wasteland. Nothing could save the enterprise however, and later that year Mary of Hungary was forced to acknowledge the facts, returning the land to the aldermen of Turnhout and Arendonk by stating: “We restitute the 144 bunder that we received from the “vrijheden” Turnhout and Arendonk in the state that it was before it was

802 ARAB, Chambre des Comptes, 5213/1-8 Accounts of the domain of Turnhout 1550-1557.

granted by those “vrijheden”, so as to use them in common as before, to graze animals and mow, without any further claim from us or our descendents.”⁸⁰³

Mary of Hungary and Willem Wils had probably learned the lesson that during the Ancien Régime in the type of ecosystem present in the Campine region, a capitalistic enterprise, focused on animal husbandry on a parcel of transformed and privatised wasteland, was not a very profitable strategy. As Clark stated for the Midlands in England, transformations required large-scale investments in the form of labour as well as capital which was not returned via higher yields.⁸⁰⁴ As a result, the manorial lords in the Brecklands maintained the communal fold course system, whereby the manorial tenant farmers monopolised the concessions of folds. They could therefore profit from the vastness of the area they were able to graze and did not need to invest in enclosures or tolerate the communities on the commons. Finally, these farmers, together with the manorial lords, got away with it because the balance of power had tipped in their advantage. Protesting peasants were halted by the juridical courts as the manorial lords were nearly always favoured and therefore strengthened their position.⁸⁰⁵ In the case of Turnhout and Arendonk, the power of resistance and underlying tensions cannot be underestimated, as will be shown in chapter VII. When the books did not register any profits therefore, the vision of a successful enterprise had vanished and Mary of Hungary returned to Spain, the experiment was called off, and the 260 ha of land was reinstated as commons.⁸⁰⁶

IX. Conclusion

Indicating who the champions and opponents of privatising or enclosing land in the Campine area were is a rather difficult task. Depending on the timeframe or even specific circumstances, the different interest groups changed their attitude towards privatisation and enclosure. Even though peasants have always been depicted as the strongest opponents of privatisation and enclosure of both arable and wastelands,⁸⁰⁷ the Campine peasants were in fact the initiators

803 “welcke voirseide hondert vierenveertich bunderen wy de voirseide vryheyden van Turnhout, ende Arendonck restituieren als vooren tot sulcker naturen als die te vooren waeren eer die voirseide vryheyden ons die gegeven ende gegunt hadden om die selve te gebruycken soe wel int gemeyne voeren ons als voeren onse gemeyne ondersaten beesten te beweyen, mayen ende gebruycken sonder ons ofte onse naecomelingen enich besunder recht meer aen oft in te behouden, aen doen hanghen”. ARAB, *Chambre des Comptes*, Administrative files, “Cartons”, 83/2, 37B.

804 CLARK, “Commons Sense”.

805 WHYTE, *Contested Pasts*.

806 ARAB, *Chambre des Comptes*, Administrative files, “Cartons”, 83/2, 37B.

807 DYER, “Conflict in the Landscape”; FALVEY, “Voices and Faces in the Rioting Crowd”; HIPKIN, “Sitting on His Penny Rent”.

of large-scale privatisation and later enclosure of the arable fields. By 1350 90 per cent of the land that would be exploited and privatised until 1750 had been transformed from common land and dispersed plots to vast arable fields, concentrated near the new village centres. When exploitable land was still abundant and a common wasteland regime remained available, these peasants were not averse to privatising land at all. Furthermore, they even shared common interests with the feudal and sovereign lords of the area. This consolidation of arable land and the large-scale renting of formerly ambiguous wastelands offered long-term inheritable rents to these landlords. These political elites were, however, not as actively involved in this process as their counterparts in the Midlands in England or the Provence of France.⁸⁰⁸ As an active agricultural strategy was not their main concern, they were happy to profit from the new rents but probably steered the reorganisation of the exploited land without any further involvement in their evolution.

The same goes for the enclosure movement, the fencing of individual plots of arable land by hedges. As enclosing land did not lead to an extra rent or fee, the lords were essentially uninterested. The peasants, however, had reached the maximum capacity of exploiting new land which required them to intensify and transform their agricultural practices. This meant keeping cattle inside, fertilising plots intensively and abandoning fallow as much as possible. They therefore also needed to keep the animals out of the arable fields. Similarly, the threat of sand drifts pushed them to introduce hedges around nearly all the individual plots of land, a process which had nearly finished by at least the sixteenth century. From that time onwards, peasants no longer supported large-scale privatisations or enclosures and from the sixteenth century onwards, therefore, peasants only engaged in piecemeal privatisation and enclosure by adding some tiny extra plots to the private property. This was mainly due to land hunger resulting from increasing subdivisions of land. The villages of Ravels, Kalmthout and Tongerlo were able to privatise between 20 and 70 hectares of wastelands without the slightest opposition. Both peasants and lords accepted this process since they did not fundamentally disturb the common pool regime in general.

There were, however, enough competitors trying to change the system to their advantage. From the fifteenth century onwards, when the main privatisation and enclosure wave had ended, different interest groups came to the fore. Firstly, the village elites, being independent peasants owning at least 5 ha of land of which 1-3 ha of meadows, lobbied to turn private meadows into enclosed meadows, free from communal grazing after the harvest. With mixed success some of these rural elites were able to introduce such enclosures and all year round

808 DYER, "Conflict in the Landscape"; BIRRELL, "Common Right"; H.M. DUNSFORD, HARRIS, S.J., "Colonization of the Wasteland in County of Durham, 1100-1400," *Economic History Review* 56, no. 1 (2003); YVES GRAVA, "Seigneurs Et Paysans En Provence. La Résistance Paysanne À L'exploitation Seigneuriale Sur Les Rives De Letang De Berre (XIe-XVe Siècle)," in *Histoire Et Société: Mélanges Offerts À George Duby* (Aix-en-Provence: 1992).

private use, however, in general, a communal system of grazing after the harvest of hay was able to survive.

The abbey of Tongerlo was the most active landlord when it came to the privatisation and enclosure of land. This was largely due to their possession of some exceptional regions that included thick peat bogs suitable for commercial exploitation. Once Flemish sources of peat were practically depleted and the infrastructure of peat exploitation in Roosendaal was brought to the south during the fourteenth century, the abbey actively pushed for the privatisation of the wastelands by granting concessions to urban investors. Even though the land that returned after exploitation, was used as common wastelands again, significant parts had nonetheless been transformed into private, enclosed agricultural land, such as the new agglomeration around Nieuwmoer. In addition, the abbey enthusiastically embraced privatisation, and perhaps pushed peasants to do so, as even in villages such as Ravels 43 ha of land were registered as new rents in only one year. Attempting to eradicate the communal use in Kalmthout, however, proved a step too far. Community members opposed the action and were able to avert it.

During the same period the Dukes of Brabant, being the sovereign lords of Burgundy and later Habsburg monarchs, continuously tried to enlarge their income. They did not per se oppose the commons, or the survival of common pool institutions, indeed, if they were able to extract money through reaffirming the privileges of their “vrijheden” and villages they were even willing to enhance communal rights and institutions. Wenceslas and Jeanne did, however, start to accept the rents of sold commons in order to fill their treasury. Philips the Good attempted to draw much larger sums by requiring all villages, “vrijheden” and cities to show their written charters, something many did not possess because oral traditions were very common. This was not a rational attempt to abolish commons and turn them into private property. After all, communities were given the opportunity to purchase new charters, as a lot of them did. The only result was that the main villages were able to enlarge their power towards dependent hamlets and smaller villages. It was Mary of Hungary, the sister of Charles V, governess of the Low Countries and Lady of the Land of Turnhout who actively privatised over 260 ha of common land by forcing the communities of Turnhout and Arendonk to part with their common heathlands in 1552. By experimenting with demesne farming and tenant farms to introduce highly commercial animal husbandry in the region, she turned former extensively used wastelands in private pastures. The experiment, however, failed almost immediately. The investment required to set up such an estate, even on 260 ha of land, was simply too great for the returns they managed to obtain as Willim Wils was forced to learn quite quickly. Therefore, in what must be one of the very few examples in European history of a complete undoing of the privatisation of common wasteland, the land was returned to Turnhout and Arendonk in order to remain common afterwards.

The bottom line is that the common pool regime that had ultimately been created during the thirteenth and fourteenth centuries, was able to withstand both external as well as internal shocks and attacks. Despite rising urbanisation, population pressure, commercialisation, none of the late medieval interest groups were able to turn the system around and abolish, or fundamentally transform, the common wasteland regime. Without becoming a static region with conservative strategies and infrastructures, the majority of the interest groups within the Campine commons were nonetheless able to avert any attempts made by either powerful lords or local competitors to enforce their policy through their ability to form alliances with each other.



STRUGGLE FOR THE COMMONS
FORMAL AND INFORMAL CONFLICT RESOLUTION MECHANISMS

VII. STRUGGLE FOR THE COMMONS | FORMAL AND INFORMAL CONFLICT RESOLUTION MECHANISMS

As the former chapters have indicated, conflicts were everywhere. Despite the common denominator or social equilibrium that was achieved, different interest groups continuously tested new strategies to obtain their interests at the cost of other groups. Conflicts between and within interest groups, as well as between individuals, were frequent and reveal a reality that is far from the original conception of the community as a harmonious entity, portrayed by Blickle for example.⁸⁰⁹ It is now more common to describe Premodern communities as conflictual and constantly negotiating entities rather than peaceful and static groups.⁸¹⁰ It has, however, also been generally accepted that conflicts were not mere arbitrary and pernicious acts resulting in violence and strife. Although Premodern communities were litigious, they created and engaged in a wide range of conflict resolution mechanisms.⁸¹¹ According to Miriam Müller, we cannot perceive conflicts or even certain forms of violence and ritualised actions as pernicious, but should consider them rather to be a form of negotiation and community building. By refusing to perform labour duties for the manorial lord, peasants uttered their objections against lordly extractions and excessive dues. Müller stated that because of their bargaining position, formal negotiations were out of the question, leaving symbolic action, subordination and ritualised violence as the only option for “discussing” terms and conditions with their lords. Although differing opinions could be discussed, when this option failed, the generally accepted way to show a grievance was to take symbolic action.⁸¹² Despite the rise of

809 BLICKLE, *Kommunalismus*.

810 DYER, *Everyday Life*; DYER, *The Political Life of the Fifteenth-Century*; HILTON, *Bond Men Made Free*; R.H. HILTON, ASTON, T.H., ed., *The English Rising of 1381* (Cambridge: Cambridge University Press, 1984).

811 ARNADE, “Crowds, Banners”; WIM BLOCKMANS, “Revolutionaire Mechanismen in Vlaanderen Van De 13de Tot De 16de Eeuw,” *Tijdschrift voor Sociale Wetenschappen* 19, no. 2 (1974); JAN DUMOLYN, “Criers and Shouters. The Discourse on Radical Urban Rebels in Late Medieval Flanders,” *Journal of Social History* (2008); DYER, “Conflict in the Landscape”; RICHARD GODDARD, JOHN LANGDON, AND MIRIAM MÜLLER, eds., *Survival and Discord in Medieval Society: Essays in Honour of Christopher Dyer* (Turnhout: Brepols, 2010); JELLE HAEMERS, “A Moody Community? Emotion and Ritual in Late Medieval Urban Revolts,” *Urban history* 5; MICHAEL HANAGAN, LESLIE PAGE MOCH, AND WAYNE TE BRAKE, eds., *Challenging Authority: The Historical Study of Contentious Politics* (Minneapolis: University of Minnesota Press, 1998); C. HOLMES, “Drainers and Fenmen: The Problem of Popular Political Consciousness in Seventeenth Century,” in *Order and Disorder in Early Modern England*, ed. Anthony Fletcher, Stevenson, John (Cambridge: Cambridge University Press, 1987); HENRY LANDSBERGER, ed., *Rural Protest: Peasant Movements and Social Change* (London: MacMillan, 1974); BRIONY A.K. McDONAGH, “Subverting the Ground: Private Property and Public Protest in Sixteenth-Century Yorkshire Wolds,” *Agricultural History Review* 57, no. 2 (2009); M.; WOLFF MOLLAT, P., *Ongles Bleus Jacques Et Ciompi: Les Révolutions Populaires En Europe Aux XIVe Et XVe Siècles* (France: Calmann-Lévy, 1970); KATRINA NAVICKAS, “Moors, Fields and Popular Protest in South Lancashire and the West Riding of Yorkshire 1800-1848,” *Northern History* 46, no. 1 (2009); WILLIAM TEBRAKE, *A Plague of Insurrection: Popular Politics and Peasant Revolt in Flanders, 1323-1328* (Philadelphia: University of Pennsylvania Press, 1993); CHRISTIAN WOLLSCHLÄGER, “Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries 1549-1984.,” *Law and Society Review* 24, no. 2 (1990).

812 MÜLLER, *Conflict*; MÜLLER, “Social Control”; MÜLLER, “Arson”; MARTIN DINGES, “The Uses of Justice as a Form of Social Control in Early Modern Europe,” in *Social Control in Europe: 1500-1800*, ed. Herman Roodenburg and Pieter Spierenburg (Ohio: Ohio State University Press, 2004).

a negative perception of peasant resistance or insubordination, inter-peasant strife and local acts of violence that did not threaten the authorities seems to have remained acceptable, at least during the sixteenth century.⁸¹³

This positive evaluation of conflicts (as opposed to the earlier opinion that conflicts were a detriment to society) tends, however, to ignore the important differences between conflicts due to regional and socio-economic divergences. Even though every conflict can be interpreted as a negotiation, some regions were able to have constructive discussions, while others fought battles that were sure to be lost. When we consider the Brecklands in Norfolk, it becomes clear that conflicts arose from an unbalanced distribution of power. The manorial lords had come to monopolise the communal fold course rights and exerted their power so as to over-exploit the peasants' fields. As a consequence, these peasants reacted mostly via informal, but sometimes also formal, conflict resolution mechanisms in order to defend their interests. Nevertheless, the courts did not often favour their pleas, instead tending to strengthen the position of the manorial lords via sentences that could function as official documents against the claims of local communities.⁸¹⁴ Similarly in the Waasland area North East of Antwerp, absentee landlords and large-scale tenants were eager to embank formerly flooded polders next to the river Scheldt. Instead of recreating the old village structures with similar jurisdictions, communal rights and boundary demarcations, they chose to design a completely new structure, with land distributed according to a rational grid and newly divided jurisdictions. Former communal rights were eradicated. Despite several attempts by local communities to save their extensive use rights to the vague and unreclaimed lands outside the dikes, the courts always favoured the dominant lords and urban investors.⁸¹⁵

The bargaining power of peasant communities in Premodern Europe could, therefore, diverge fundamentally, even between neighbouring regions. While some communities were able to obtain or maintain communal rights or privileges, others encountered increasingly dominant political elites, which could change their situation entirely. It is therefore of vital importance to dedicate more attention to these regional differences in terms of how conflicts originated and in which way they were handled. How did the Campine peasants manage to defend their interests vis à vis the political elites or between opposing interest groups? What kind of conflict resolution mechanisms did peasants have at their disposal in order to settle their disputes? Did they have to rely on informal and local institutions, or did the Campine peasants resort to a wide range of conflict resolution mechanisms? In addition, the question of how the choice for one form of justice over another was made will also be discussed. The focus here will be

813 PETER BLICKLE, "The Criminalization of Peasant Resistance in the Holy Roman Empire: Toward a History of the Emergence of High Treason in Germany," *The Journal of Modern History* 58 (1986).

814 WHYTE, *Contested Pasts*.

815 SOENS, *De Spade in De Dijk?* DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

on the way justice was engaged with by the Campine peasants. Finally, the question of which arguments and strategies were used by the different interest groups in order to win a case will be examined.

By analysing the charters of the abbey of Tongerlo and the Dukes of Brabant, together with the sentence registers of the Council of Brabant, I have analysed how conflicts were resolved by different interest groups.⁸¹⁶ Even though only sources of the formal court system have survived, traces of informal conflict resolution mechanisms have also emerged via the sentence registers. Since Garnot stated that these informal systems were at least - or even more - important than the formal channels, I will address these informal conflict resolutions first.⁸¹⁷ Next, the formal resolution mechanisms such as local village aldermen's benches, urban courts as well as the sovereign court - namely the Council of Brabant - will be discussed. Kagan described a legal revolution in Early Modern Castile, stressing the rise of conflicts brought before sovereign councils and the litigiousness of the middle sections of society and I will therefore assess whether the Campine peasants were similarly active in the sovereign courts or whether, as Maarten Van Dijck has argued, they relied mostly on local incentives and violence to settle disputes.⁸¹⁸

I. Conflicts all around | A legal revolution?

As the previous chapters have demonstrated, no fierce conflicts or outbursts of violence against lords, communities or institutions occurred throughout either the late Middle Ages or the Early Modern period. This did not mean that conflicts were entirely absent. As discussed in chapter IV, disputes regarding access to the commons were in fact frequent and could last a long time. Larger villages possessing charters actively tried to eliminate dependent hamlets by denying them access to the commons. In addition, a select group of large tenant farmers, leasing land from ecclesiastical institutions or urban burghers, were often treated as outsiders meaning they were frequently on the verge of losing their claims to communal rights. Next, chapter VI showed that despite the absence of a true undermining of common pool regimes and the endurance of the system until the eighteenth century, attempts to alter the system and at least privatise and enclose some parts of the Campine area were real. Although piecemeal enclosure was tolerated by village communities, privatisation and enclosure hindering other

816 See databases: Juridical records

817 GARNOT, "Justice, Injustice".

818 KAGAN, *Lawsuits*; RICHARD L. KAGAN, "A Golden Age of Litigation: Castile 1500-1700," in *Disputes and Settlements. Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 2003); VAN DIJCK, *Towards an Economic Interpretation*.

community members' rights or threatening the common pool regime in general, were often greeted with resistance. This in return led to a wide variety of conflicts, varying in terms of the time they took and the actors involved. Despite this abundance of conflicts, considered as one of the worst threats to the existence and endurance of CPRIs, the Campine commons survived.⁸¹⁹ In this chapter, focussing on informal and formal conflict resolution mechanisms, the role of such institutions in enabling this survival will be investigated.

At first, historians mostly paid attention to the infamous sovereign formal courts when studying legal and judicial history. Nowadays, however, other forms of justice besides the institutional court system have increasingly received attention. Both scholars investigating common pool institutions, as well as historians studying Premodern communities, have emphasised the importance of alternative systems of conflict resolution.⁸²⁰ Seigniorial courts were far from independent from seigniorial influence and interests. These courts were feared because of their ability to impose fees and fines. According to Robert Stein, the financial situation of the Dukes of Brabant, and later the Burgundian rulers, pushed the local judicial officials to cut costs and increase earnings which had detrimental effects on the legal security of subjects as well as the objectivity of local courts and bailiffs. The image of the corrupt bailiff even became a popular theme in literature and art.⁸²¹ For this reason, a great deal of conflicts were resolved outside of the regular judicial system. Benoît Garnot has labelled these alternative systems *infrajustice*, *parajustice* and *extrajustice*.⁸²² According to Garnot, high level courts frightened most members of society because of their elitist character, high fines and torture practices.⁸²³ Therefore, most people turned towards semi-institutional or completely informal forms of justice.

Infrajustice is the most well-known concept and served as an alternative for both criminal as well as civil conflicts. *Infrajustice* required a certain level of organisation and was based on social consensus on at least the local level. The rules were determined within the community and had to comply with moral and social obligations shared by the majority. In order to work,

819 PASCAL C. SANGINGA, RICK N. KAMUGISHA, AND ANDRIENNE M. MARTIN, "The Dynamics of Social Capital and Conflict Management in Multiple Resource Regimes: A Case of the Southwestern Highlands of Uganda," *Ecology and Society* 12, no. 1 C7 - 6 (2007); BLAKE RATNER D. et al., "Resource Conflict, Collective Action, and Resilience: An Analytical Framework," *International Journal of the Commons* 7 (2013).

820 NICOLE CASTAN, "The Arbitration of Disputes under the 'Ancien Regime'," in *Disputes and Settlements. Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 2003); GARNOT, "Justice, *Infrajustice*"; P.L. LARSON, *Conflict and Compromise in the Late Medieval Countryside: Lords and Peasants in Durham, 1349 - 1400* (Routledge, 2006); CRAIG MULDREW, "The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England," *The Historical Journal* 39, no. 4 (1996); MÜLLER, *Conflict*; WILLIAM M. E.A. ADAMS, "Managing Tragedies: Understanding Conflict over Common Pool Resources," *Science* 302 (2003); SANGINGA, KAMUGISHA, AND MARTIN, "The Dynamics of Social Capital and Conflict Management in Multiple Resource Regimes: A Case of the Southwestern Highlands of Uganda"; DINGES, *The Uses*.

821 STEIN, *De Hertog En Zijn Staten*, 166-167.

822 GARNOT, "Justice, *Infrajustice*".

823 *Ibid.*

the conflict had to be treated and solved in public as social pressure was vital for infrajjustice. The process could become more formalised, however, as notaries were often involved in order to write the final conclusion or transaction down.⁸²⁴ Crucial in this form of conflict resolution were mediators as well as a kind of ritualised process of hearing both sides, negotiating and making amends and promises publicly. Garnot, however, claims that these formal and semi-formal conflict resolution mechanisms were only the tip of the iceberg and suggests that we must look beyond even these types of justice, despite a lack of material sources.

The next alternative form of justice, according to Garnot, was parajjustice. While justice and infrajjustice both operated in the public sphere, this was a more private manner of solving problems. The best example of parajjustice was the practice of revenge. The first type of revenge that comes to mind is the family vendetta. For this type of justice, large crowds, third parties or officials were not necessary, indeed, they were unwanted even and the main goal was to return to the social equilibrium which existed previously.⁸²⁵ It did not necessarily have to consist of a violent kind of revenge between individuals however. Taking back land, destroying fences, replacing boundary markers or similar actions could also constitute types of revenge. Since parajjustice was by definition private and oral, it is extremely difficult to find traces of this practice. Garnot, however, claims that revenge was of far greater importance in Early Modern European societies than is currently acknowledged.

Finally, there is the concept of extrajjustice. Whereas all other types of justice attempted to solve a particular problem and restore the social equilibrium, extrajjustice was the exact opposite and had no intention of really solving any problem. Instead, one could react by committing a criminal act or by ignoring an infraction, indeed the latter happened frequently. Whenever the opposing party was too powerful or circumstances prohibited an efficient reaction, individuals or interest groups could choose not to react. The same applies when an entire community was responsible for the infraction, such as a village committing fiscal fraud towards the government.⁸²⁶

Communities, therefore, had a wide range of options open to them for solving their differences outside the formal justice system. Moreover, these semi-formal and informal alternatives to justice have increasingly been seen as the most efficient way of resolving conflicts.⁸²⁷ Nevertheless, as Garnot stated, internal cohesion and a shared concept of justice was required for it to work. When a particular issue was contested within a village, such forms of infrajjustice or even parajjustice were out of the question when settling a dispute. Therefore,

824 Ibid.

825 Ibid., 113-114; P. HOPPENBROUWERS, "Bloedwraak En Vete in De Late Middeleeuwen," *Tijdschrift voor Geschiedenis* 123, no. 2 (2010).

826 GARNOT, "Justice, Infrajjustice", 114-115.

827 MÜLLER, "Social Control", 32.

Garnot claimed that formal courts were required as well. By examining who frequented the formal courts and for what type of conflicts, I will try to assess whether this hypothesis is correct in relation to the Campine area.

The most accessible and logical first step involved the local councils called the village aldermen's bench (see structure in figure 60). These benches acted as notaries, judged voluntary law and criminal cases. From 1350 onwards, most Campine villages possessed their own aldermen's bench, although some villages still shared one.⁸²⁸ Others, however, had to wait for a new round of formalising local courts which occurred under the jurisdiction of Philip the Good.⁸²⁹ Nevertheless, cases were only recorded on "the role" from the late sixteenth century onwards, while most communities did not even possess written transcriptions before the Early Modern period.⁸³⁰ When the plaintiff or defendant wanted to file an appeal for a sentence given by the local aldermen's bench in a civil case, they could go to the regional "hoofdbank" or court of appeal (see figure 60). For the majority of the region within our area of research, this court of appeal was Zandhoven, while the other parts mostly went to Antwerp, 's Hertogenbosch, Leuven or even more local benches such as Helmond or Sint-Oedenrode.⁸³¹ Even though criminal cases could not be subject to an appeal,⁸³² by the fifteenth century civil cases could be brought before all levels of justice right up to the sovereign court which in the case of the Campine region was the Council of Brabant.⁸³³ The Council actively tried to enlarge its jurisdiction as a court of appeal from the moment of its foundation onwards.⁸³⁴ Before the arrival of the Burgundian rulers, an appeal beyond these urban courts appears to have been rare. This changed rapidly, however, due to an incentive on the part of the Burgundian royals.⁸³⁵ The competence of the Council of Brabant was extensive. Most of the Council's prerogatives were defined by law, however, large parts were nevertheless subject to custom and tradition. Cases ranging from *lèse majesté* to ordinary debt claims and inheritance disputes were settled here.⁸³⁶

828 LEENDERS, *Van Turnhoutervoorde*.

829 HOPPENBROUWERS, "De Middeleeuwse Oorsprong".

830 B.C.M. JACOBS, "Procedureregels En Procespraktijk in Staats-Brabant," in *Voortschrijdend Procesrecht. Een Historische Verkenning*, ed. C.H. van Rhee, F. Stevens, and E. Persoons (Leuven: Universitaire pers Leuven, 2001).

831 JACOBS, *Justitie En Politie*; M.J.H.A. LIJTEN, *Het Burgerlijk Proces in Stad En Meierij Van 's Hertogenbosch 1530-1811* (Assen: Van Gorcum, 1987).

832 JACOBS, *Justitie En Politie*.

833 PH. GODDING, "Appel Et Recours À Chef De Sens En Brabant Aux XIve Et XVe Siècles: Wie Hoet Heeft, Die Heeft Beroep," *Tijdschrift voor Rechtsgeschiedenis* 65 (1997).

834 Ibid.; STEIN, *De Hertog En Zijn Staten*.

835 Ibid.

836 EDDY PUT, *Inventaris Van De Raad Van Brabant. Deel 1 Archief Van De Griffies* (Brussels: Algemeen rijksarchief 1995).

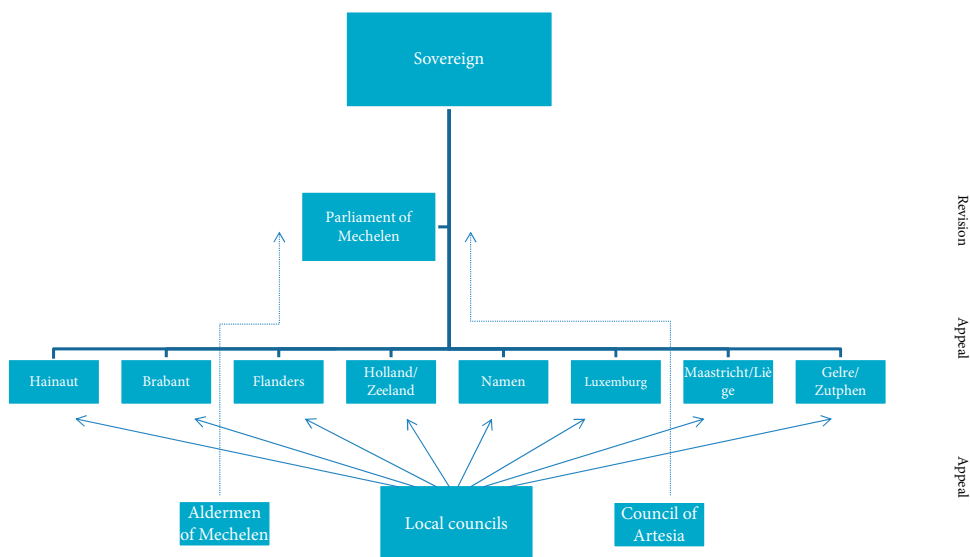


Fig 60 Juridical structure of the Low Countries ca. 1475, according to Robert Stein.⁸³⁷

The popularity of royal or sovereign courts has been a fashionable topic among legal historians. Inspired by Richard Kagan, the litigious tendencies of the middling sections of society has received a great deal of attention.⁸³⁸ According to Kagan, the development of royal institutions such as courts fitted into - and even enhanced - a legal revolution that was on the rise in sixteenth-century Spain. In local tribunals peasants had little chance in defending their interests against their seigniorial lords or other powerful elites. In contrast, the royal courts had a reputation for independence and even showed a readiness to curb the powers of their political opponents which in turn empowered and stimulated the peasants to plead before these royal courts.⁸³⁹

The same image was conveyed by Hervé Piant for the Early Modern royal court of Vaucouleurs in France and by Martin Dinges for Early Modern Europe in general. As jurisdictions often overlapped, actors had a range of choices and used this freedom to have their case adjudicated at a court that was most likely to favour their interests. Judicial pluralism gave inhabitants the opportunity of weighing the pros and cons of each court and to choose the one they considered the best option. Their choice could be based on a number of factors including legal costs, the judicial culture, geographical distance or political ideology.⁸⁴⁰

837 STEIN, *De Hertog En Zijn Staten*, 160.

838 KAGAN, *Lawsuits*; KAGAN, *A Golden Age*; CHRISTOPHER W. BROOKS, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge Cambridge University Press, 2004).

839 KAGAN, *Lawsuits*, 99.

840 HERVÉ PIANT, *Une Justice Ordinaire: Justice Civile Et Criminelle Dans La Prévôté Royale De Vaucouleurs Sous L'ancien Régime* (Rennes: Presses Universitaires de Rennes, 2006), 212-224; DINGES, *The Uses*.

Lately, the Low Countries have received their share of attention as well. Le Bailly has presented the same kind of legal revolution for the southern Low Countries as Kagan did for Spain. From the late fifteenth century onwards, with a peak during the sixteenth century, a dramatic proliferation of litigation in the new sovereign courts appeared.⁸⁴¹ According to Maarten Van Dijck, the Council of Brabant attracted a huge amount of civil cases from the very start in 1431, increasing six fold even within the first decade of its existence.⁸⁴² According to Robert Stein, the rise of Burgundian regional institutions, such as the Council of Brabant, was not the result of ducal ambition alone, but from an interaction between the subjects and the lord.⁸⁴³ This thesis has also been put forward by Martin Dinges who suggested that the authorities could hardly have realised simply their own concept of justice when the most prominent sections of the population pursued different interests.⁸⁴⁴ Local bailiffs and aldermen were notoriously biased and prejudiced. The arrival of these Burgundian institutions were therefore welcomed as a solution, and also as an improvement to the legal security of the citizens of the Low Countries. This, together with a relatively low cost of starting and even finishing a trial, could explain their popularity.⁸⁴⁵ According to Maarten Van Dijck, a court case that managed to reach the stage of passing a sentence could amount to a third of the annual wage of a skilled labourer.⁸⁴⁶ Stein's research revealed that a case before the Council of Holland could, on average, cost 8 pounds, which was probably a sum that only skilled labourers or wealthier groups could afford.⁸⁴⁷

Concordance concerning the legal revolution, as defined by Kagan, Piant and Vermeesch, does not exist however. Van Dijck states that alternative forms of justice were not only dominant, but always preferred to sovereign courts. According to him, rising states tried to impose hierarchal justice systems and limit the jurisdictions of lower and, especially, urban courts. Nevertheless, they did not invest in criminal courts, with the result that barely any criminal cases were brought before appellant courts any higher than the urban aldermen's benches. Even though civil courts were the pet projects of the Burgundian and Habsburg monarchs, they introduced high entrance fees and judicial costs soared as the procedure developed.⁸⁴⁸

841 MARIE-CHARLOTTE LE BAILLY, "Langetermijntrends in De Rechtspraak Bij De Gewestelijke Hoven Van Justitie in De Noordelijke Nederlanden Van Ca. 1450 Tot Ca. 1800," *Pro Memoria* 13 (2011).

842 VAN DIJCK, *Towards an Economic Interpretation*, 73.

843 STEIN, *De Hertog En Zijn Staten*.

844 DINGES, *The Uses*, 161.

845 STEIN, *De Hertog En Zijn Staten*.

846 VAN DIJCK, *Towards an Economic Interpretation*.

847 STEIN, *De Hertog En Zijn Staten*.

848 VAN DIJCK, *Towards an Economic Interpretation*.

II. Jurisdictions and records | Showing the variety of conflict resolution mechanisms

In general, the amount of medieval juridical sources that have survived is limited. In comparison with England, where extensive manorial court records dating back to the thirteenth century are available, local juridical sources from the Low Countries are much more scarce. First of all, as aldermen's benches of the Campine area were only formalised during the fourteenth century, records started much later. In addition, many records - apart from those from late fifteenth- and early sixteenth-century - did not survive. Despite these factors, the number of records concerning real conflicts is still disappointing. Even though aldermen's benches did act as village courts, resembling the English manorial court system, their written records mainly deal with their "jurisdiction gracieuze": their activities as official "notaries" registering deeds, inventories, obligations, credit transactions and so forth.⁸⁴⁹ The aldermen's registers of Gierle (1513-1558) and Rijkevorsel (1465-1585) were analysed for records of conflicts but they hardly bore any results, leading to the decision to leave an extensive search for village aldermen's registers behind.⁸⁵⁰ These registers not only lacked written transcriptions of cases that would have been brought to court, but also any proof that a sentence was passed, namely the listing of fines or "composities".⁸⁵¹ By the sixteenth century, rural benches were starting to register their juridical cases on "rolls", but for our selected case studies, no such registers were found.⁸⁵²

Finally, it remains highly unclear what the exact jurisdiction of these local benches would have been. The only certainty we have is that an aldermen's bench was deemed competent to make judgements on conflicts regarding property situated in their territory. For cases relating to personal requisitions, the bench in the defendant's place of residence was responsible.⁸⁵³ Whether they were allowed to judge complex cases regarding communal rights, enclosure and inclusion remains unclear. Even though most of the cases can be interpreted as conflicts over

849 JACOBS, *Procedureregels*; LIJTEN, *Het Burgerlijk Proces*.

850 Even though a separate register listing civil cases could have existed and may now be lost, it would be extremely unlikely that it was precisely these registers that have gone missing for all Campine villages, whereas the deeds and obligation conflicts survived. Conflicts could also be found in "koopacten" as Heidi Deneweth has discovered, however, these sources are not available either for the Campine area. For more information on aldermen registers: CHRISTIAAN VAN BOCHOVE, HEIDI DENEWETH, AND JACO ZUIJDERDIJN, "Real Estate and Financial Markets in England and the Low Countries, 1300-1800," in *CGEH Working Paper Series* (2013). The registers that were analysed were: RAA, OGA Gierle, 349 & 350. Registers of the bench of aldermen, 1512-1558., RAA, OGA Rijkevorsel, 145-180, Registers of the bench of aldermen, 1465-1609. These registers were examined by Eline Van Onacker for her analysis of rural land markets and credit transactions. VAN ONACKER, "Leaders of the Pack?", 165-167.

851 A "compositie" is the Dutch term referring to a fine that was not the official fine, defined by law, but one resulting from a negotiation between the official and the defendant. VAN ROMPAEY, "Het Compositierecht in Vlaanderen Van De Veertiende Tot De Achttiende Eeuw".

852 JACOBS, *Justitie En Politie*.

853 LIJTEN, *Het Burgerlijk Proces*.

land and possessions in the seignior, it is possible that the settlement of such conflicts was out of the aldermen's realm. City courts of Leuven, 's Hertogenbosch and also Brussels have revealed similar shortcomings. Their jurisdiction, in general, is described as being extremely diverse and included all cases that dealt with the general functioning and performance of the realm.⁸⁵⁴ Therefore, it is very likely that they considered themselves equipped and responsible for dealing with conflicts regarding commons and communal rights. The fact that we do find traces of such conflicts being discussed in subaltern courts does suggest that this was indeed the case (see below). Normative sources, describing the jurisdiction of rural, urban and even sovereign courts, are notoriously vague regarding such privileges and jurisdictions.⁸⁵⁵ Urban courts or regional "hoofdbanken" functioned predominantly as courts of appeal or to issue a "hoofdvaart" however.⁸⁵⁶ A "hoofdvaart" is a procedure by which an appellate court must review a lower court's decision or a request for a court to review the decision of a government official. This review is not a re-trial, but rather solicits the reviewing court to consider only the record of the earlier decision in order to see whether that record justifies the decision made. After a sentence of such a "hoofdbank" or appellate court, no appeal could be made except for a request for a "reformatie" or revision by the Council of Brabant.⁸⁵⁷ The sovereign lord had decided that all courts of appeal or "hoofdbanken" retained their "competentio primae appellationis". Consequently they became the courts of appeal for cases sentenced in the subaltern courts. In addition, they had received the "privilegium reformationis", meaning that no other court other than the Council of Brabant could handle an appeal against their sentences.⁸⁵⁸

Just like the rural benches, only by the sixteenth century did urban courts leave behind records of sentence registers, however, these have not been analysed here due to a lack of time.⁸⁵⁹ Since the existence of records of cases from Campine communities seeking guidance or filing an appeal are needles in a haystack, the decision was made not to take this intermediary level into consideration and can only be analysed by examining references within the sovereign sentences. Several cases referred to former court cases which had been held before the urban courts.⁸⁶⁰

854 JACOBS, *Justitie En Politie*.

855 Ibid.; JACOBS, *Procedureregels*.

856 A "hoofdvaart" refers to the action whereby aldermen of a village or seignior go to the aldermen's bench of the mother town in order to find a solution where doubt exists concerning a conflict, or if the local statutes remain silent concerning an issue thereby making them unable to pass a verdict. JACOBS, *Justitie En Politie*, 120. This practice resembles the writ of certiorari. RAB, VB, 557, 63 (1507) Mechelen.

857 Ibid.

858 W. VAN BROECKHOVEN, "Enkele Toelichtingen Bij De Herdruk Van De Cronyken Van Gheel," *Jaarboek van de Vrijheid en het Land van Geel* 4-5 (1965-1966): 122.

859 Eline Van Onacker examined the aldermen's registers of the city of Turnhout, reaching the same conclusion that could be derived from village registers, namely that barely any conflicts were formally resolved before the aldermen's bench. SAT, 973-1025, registers of the bench of aldermen, 1444-1600.

860 See databases: Sentence registers

Therefore, only the charter collections of the Dukes of Brabant and the abbey of Tongerlo were relied upon in this research, together with the sentence registers of the archives of the clerks, an institution of the Council of Brabant that was founded around 1430.⁸⁶¹ For the earlier period, charters are the only sources available that allow us to get a glimpse of conflicts and tensions.⁸⁶² In order to limit the amount of charters examined to a manageable level, only those ducal charters published by Verkooren in the series “Chartes et cartulaires des duchés de Brabant et de Limbourg et des Pays d’Outre-Meuse” and the clerical charters of the abbey of Tongerlo, until the end of the fifteenth century were analysed.⁸⁶³

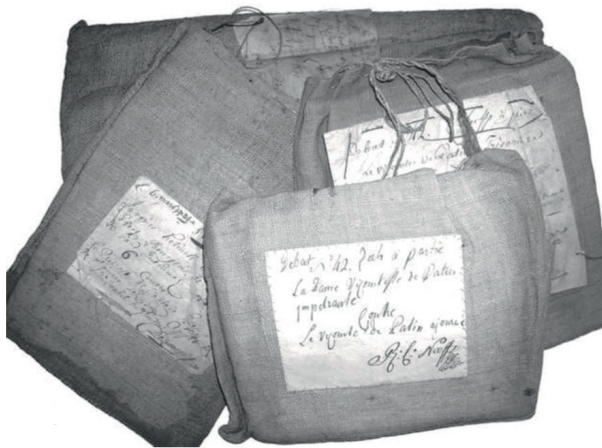


Fig 61 The different stages of a court case were collected in sacks like the ones above (18th century).⁸⁶⁴

The first sentences that have survived date from 1436. These oldest sentence registers contain not only sentences, but also procedure acts such as letters of attorneys, pledges, etc. From 1473, they were reduced to “pure” sentence registers, containing only the verdicts of juridical cases.⁸⁶⁵ The biggest flaw in these sentence registers, in terms of research value, is their limited content, as they only registered sentences, that included only the end stage of a conflict (the most costly part of all the stages being paid for). As Griet Vermeesch has stated, these sentence registers can only be considered the tip of the iceberg since most plaintiffs or defendants only filed a complaint as a sort of threat, without seeing it through to the end.⁸⁶⁶ According to Martin Dinges, there is a great discrepancy between the number of accusations in cases taken

861 See databases: Juridical records

862 For a discussion on the usefulness of charters for this type of research, see chapter III.

863 VERKOOREN, *Inventaire Des Chartes Et Cartulaires*; ERENS, *De Oorkonden Der Abdij Tongerlo*. AAT, Section I.

864 MICHEL OOSTERBOSCH, “Archief of Niet? De Procesdossiers Van De Grote Raad Voor De Nederlanden Te Mechelen,” in *Hoge Rechtspraak in De Oude Nederlanden*, ed. Hugo de Schepper and René Vermeir (Maastricht: Shaker Publishing BV, 2006), 65.

865 PUT, *Inventaris Van De Raad Van Brabant. Deel 1 Archief Van De Griffies*.

866 GRIET VERMEESCH, “Explaining the ‘Legal Revolution’ and the ‘Great Litigation Decline’. Processes of Social Change and Changing Litigation Patterns in Early Modern Europe.”; GRIET VERMEESCH, “Access to Justice. Legal Aid to the Poor at Civil Law Courts in the Eighteenth-Century Low Countries,” *Law and History Review* (2014); BROOKS, *Pettyfoggers*.

to court than those actually tried.⁸⁶⁷ Nevertheless, as the full juridical court records (see figure 61), together with the rolls describing all cases that entered the court, have been destroyed completely they are the only source available to us.⁸⁶⁸ Despite being only a summary of the entire court case including the most basic arguments (many of which were not even always highlighted), these sentences do give us a full overview of the cases that were sentenced in the Council of Brabant.

The timeframe selected for this research was 1498-1580, as has been stated in chapter IV.⁸⁶⁹ All the cases in the selected sample years were analysed so as to pinpoint all cases concerning Campine villages, their common land, communal rights, agricultural strategies and jurisdictions. These cases were, however, far from representative for the entire body of sentences registered by the Council. A register counting approximately 300 sentences per record, on average contained only 2 or 3 cases that could be withheld.⁸⁷⁰ As stated by Vermeesch and Van Dijck, the majority of cases were civil ones and, more specifically, ones dealing with inheritance conflicts, debts, obligations or rents.⁸⁷¹ The limits of the research area were not applied strictly as cases from the northern Netherlands, Limburg and the boundary zone of southern Brabant were also analysed whenever communal affairs were discussed. As a result of this strategy, 412 sentences and charters were examined covering a wide range of conflicts originating in and around the Campine area.⁸⁷² The sentences from the French speaking part of the Duchy were not taken into account and nor were the conflicts from the most southern part of the Duchy. Southern Brabant and what is now Walloon Brabant were, after all, fundamentally different social agrosystems and could distort the picture if included in the analysis.⁸⁷³ Of these 412 cases, 204 were analysed more thoroughly, since the other cases contained only a very summary sentence without further information.⁸⁷⁴

The Council of Brabant is a good starting point from which to search for conflicts, even at a local level, as it quickly became one of the most important courts of appeal.⁸⁷⁵ Even though urban

867 A large part of the plaintiffs only filed a formal complaint so as to enter into the next step of the conflict and to be heard rather than really wanting to receive a formal sentence. DINGES, *The Uses*.

868 STEIN, *De Hertog En Zijn Staten*; GODDING, "Appel Et Recours".

869 Namely: 1498-1517, 1529-1555, 1574-1580. The starting point was chosen due to the fact that before 1498 only a limited amount of sentences contained more than a short verdict, without any additional information. The end date corresponds with the end of my research timeframe. The choice for precisely these sample years was based on the sequence of the archives.

870 RAA, Conseil de Brabant, Archives of the registry, General sentence registers

871 VAN DIJCK, *Towards an Economic Interpretation*; GRIET VERMEESCH, "The Clientele of an Eighteenth-Century Law Court. An Analysis of Plaintiffs and Defendants at a Small Claims Court in the Dutch City of Leiden, 1750-1754." (Under review).

872 See databases: Juridical records

873 DE VIJLDER, "A Macroeconomic Analysis of the Land Market in the County of Flanders and the Duchy of Brabant".

874 See databases: Juridical records

875 STEIN, *De Hertog En Zijn Staten*; GODDING, "Appel Et Recours"; C.H. VAN RHEE, F. STEVENS, AND E. PERSOONS, eds., *Voortschrijdend Procesrecht. Een Historische Verkenning* (Leuven: Universitaire pers Leuven, 2001).

courts were successful in protecting their jurisdiction in granting deeds, issuing ownership contracts and settling conflicts concerning these topics, they were increasingly challenged as a court of appeal in other domains (see figure 62).⁸⁷⁶ Even though hierarchies between the different courts were formulated in the sixteenth century, as stated before, there were always options to avoid the rules. Local courts, of course, functioned as judicial institutions for local crimes, offences and civil cases, but once a case left the level of the local court plaintiffs could “shop” around. Whether or not Campine individuals or interest groups went to Turnhout, Zandhoven, ‘s Hertogenbosch, Leuven or Antwerp, was something defined by jurisdictions but was also highly dependent on the issue at stake and the interests of the parties involved. As stated by Monballyu, sovereign courts often handled cases that could also be included in the jurisdiction of subaltern courts.⁸⁷⁷ Since the Brabantine inhabitants were often looking for options to avoid the biased local and urban courts, they eagerly sought out legal advice of the regional councils.⁸⁷⁸ The Council of Brabant, however, did not force these communities to use the Council as opposed to local courts. The jurisdiction of the Council of Brabant included these types of conflicts, but they were not able to bring those cases before the court if the litigants opted to plead before another court.

In addition, and more importantly, the Council of Brabant handled cases directly in the case of certain parties such as cities, villages, abbots and ecclesiastical estates, hospitals, poor tables, dukes and duchesses, counts and barons. As Harald Deceulaer has demonstrated, villages, cities and ecclesiastical institutions had the privilege of entering the sovereign court even without filing an appeal.⁸⁷⁹ In addition, sovereign courts were able to “reserve” some issues which would normally be judged by other courts (see figure 62). Monballyu discovered that the Council of Flanders had acquired the right to judge over “bezitsvorderingen” or possession claims. Two types of possession claims were acknowledged. The first was a complaint in the case of novelty, which referred to cases where an owner who had been in possession of land for more than one year and a day was disturbed by a third party, through, for example, intrusions, violations or attempts to seize the property. The second involved cases of maintenance where an individual or group could file a complaint if they felt threatened from being excluded from their property.⁸⁸⁰ It appears that the Council of Brabant possessed similar rights, since 65 of the 204 cases that were analysed referred to a case of maintenance.⁸⁸¹ Next, they reserved

876 PH. GODDING, “Les Conflits À Propos Des Lettres Échevinaux Des Villes Brabaçonnnes,” *Tijdschrift voor Rechtsgeschiedenis* 22 (1954).

877 J. MONBALLYU, “De Gerechtelijke Bevoegdheid Van De Raad Van Vlaanderen in Vergelijking Met De Andere ‘Wetten’ (1515-1621),” in *Hoven En Banken in Noord En Zuid*, ed. B.C.M. Jacobs and P.L. Nève (Assen: Van Gorcum & comp., 1994).

878 STEIN, *De Hertog En Zijn Staten*.

879 HARALD DECEULAER, *Inventaris Van Het Archief Van De Raad Van Brabant, Processen Van De Gemeenten, 1601-1700* (Brussel: Algemeen Rijksarchief, 2013).

880 MONBALLYU, *De Gerechtelijke Bevoegdheid*.

881 See databases: Sentence registers

certain types of issues for the Council of Brabant such as jurisdictional conflicts between officeholders of the court, or officials appointed by the court, namely the bailiffs, stewards, notaries and land surveyors.⁸⁸²

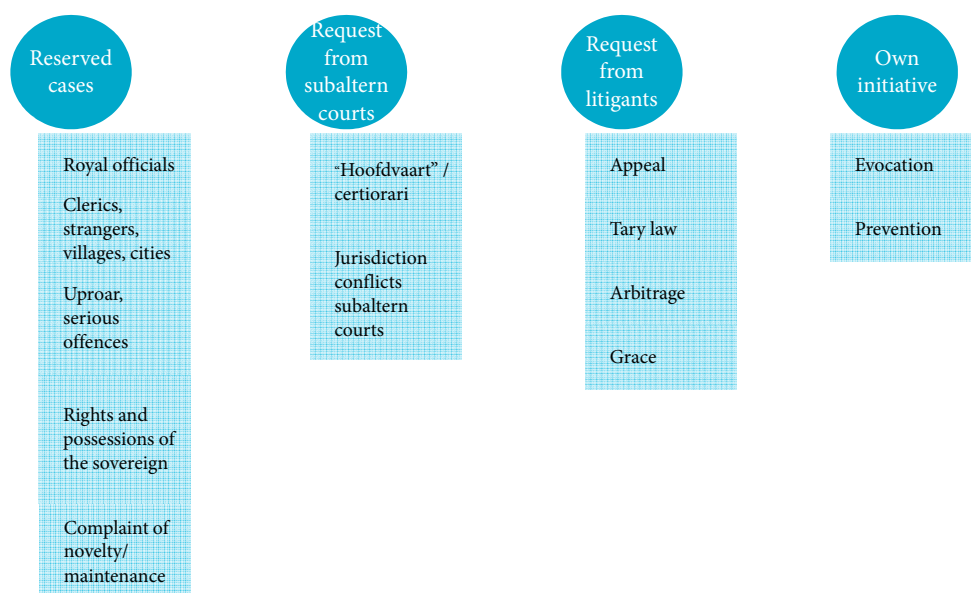


Fig 62 Jurisdiction of the regional courts, such as the Council of Brabant, according to Robert Stein and Monballyu.⁸⁸³

As such, villages that wanted to protect their communal rights or commons could file a complaint directly before the Council of Brabant as long as they acted as the village community as a whole or they could file a case of appeal before the court if they considered the local sentence unjust. Similarly, the abbey of Tongerlo or other ecclesiastical organisations could use the sovereign court to settle their disputes. Finally, even individuals who felt threatened in relation to their property rights could count on the Council of Brabant. Consequently, these sentence registers are invaluable sources for reconstructing Campine conflicts concerning the commons.

III. Symbolic action and mediation | Informal conflict resolution mechanisms

Overall, few traces of local conflict resolution mechanisms are to be found. This comes as a surprise since Campine communities were well-organised and rural courts were created to

882 DECEULAER, *Inventaris*.

883 MONBALLYU, *De Gerechtelijke Bevoegdheid.*; STEIN, *De Hertog En Zijn Staten*, 169.

resolve tensions formally.⁸⁸⁴ The lack of conflicts recorded in formal registers can be explained by a multitude of factors. To start with, these communities invested enormous amounts of time, effort and money in maintaining the peace in the first place.⁸⁸⁵ When we take a closer look at the byelaws, from the very start the village government appointed village officials who were in charge of controlling, patrolling and solving problems within the village. In Arendonk, for example, an “aardmeester” was assigned so as to delimit all the pits for digging peat in order to prevent illegal digging or discussions concerning appropriation rules.⁸⁸⁶ Next, the “vorster”, who was responsible for catching stray animals and trespassing herdsmen, was also responsible for patrolling the commons and actions of the community members. In addition, sworn officials, inspectors and “commons’ casters” all acted as representatives of the community to maintain the peace on the commons and made sure rules were abided by. For example, the village of Ekeren described their responsibilities as follows: “the vorsters will be responsible for patrolling the borders together every 14 days”.⁸⁸⁷ If they would not attend to their duties, they themselves would have to pay a penalty.⁸⁸⁸ They were given a hand by the community members who were themselves obliged or encouraged by the byelaws and officials to keep an eye on their neighbours and report incidents.⁸⁸⁹

Apart from maintaining the peace, these officials precisely also functioned as indispensable mediators, solving conflicts before they could deteriorate and lead to a formal court case.⁸⁹⁰ Consequently, the opposing parties could settle their disputes without having to rely on the formal court system where entrance fees and fines were a certainty. Because of their official status, these mediators gave a certain level of legitimacy to this form of conflict resolution. Since the other community members were present as witnesses or even plaintiffs, the collective and public nature of their arbitration made sure that the conflict could be solved via ritualised actions and that the final conclusion or alternative penalty could be witnessed by the community and both parties involved. Even though we have no written proof of these mechanisms, the absolute lack of registered fines or sentences in both aldermen’s registers,

884 LEENDERS, *Van Turnhoutervoorde*.

885 MULDREW, “The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England”; ANNE BONZON, “Les Curés Médiateurs Sociaux Dans La France Du XVIIe Siècle,” *Revue d’histoire de l’Eglise de France* 97, no. 238 (2011); DINGES, *The Uses*.

886 In Kasterlee, the function of “aardmeester” was already described in 1548. J. VAN GORP, “Het Keurboek Van Casterlee,” *Bijdragen tot de Geschiedenis* 18 (1927). In Arendonk the first reference to an “aardmeester” appeared somewhere around the seventeenth century, even though the label “officer” that was more currently used could also have referred to such functions. As will be discussed in chapter II, already in the middle of the sixteenth century, officials were employed to protect the heathlands and villages from drift sands which was the prerogative of aard- or sandmasters. PRIMS, *Keuren*.

887 “De vorsters zullen gehouden zijn alle 14 dagen tezamen en met elkaar in de heide en rond de palen van Ekeren te gaan”. GIELENS, “Keuren Van Ekeren”.

888 Ibid.

889 See databases: Byelaws

890 For extra information on mediators: GARNOT, “Justice, Infrajustice”; MULDREW, “The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England”; BONZON, “Les Curés”; DINGES, *The Uses*.

bailiff accounts and even vorster accounts that have survived, suggests that informal ways were a preferred way of handling conflicts.⁸⁹¹ According to Dinges, up to two-thirds of all plaintiffs preferred an informal to a formal setting when discussing a conflict.⁸⁹² Despite the obligation of all village officials to register fines and submit these documents for control to the ducal auditor's office, there are practically no conflicts or even fines to be found throughout the fifteenth and sixteenth centuries. Apart from some records relating to the stealing and felling of trees (something that was vigorously controlled),⁸⁹³ as well as criminal cases, all these records remain silent concerning conflicts and resolutions.⁸⁹⁴ Even though the possibility exists that separate registers for conflicts existed and have been lost to us, it is more likely that local officials and community members did not want to settle their disputes "on the record". By the sixteenth century, local communities were urged by sovereign governments to write regulations and court cases down, but most communities only started doing this – and hesitantly so – by the end of the sixteenth century. By that time the first court rolls started to appear.⁸⁹⁵ It is therefore more than likely that a parallel system of infrajustice was the dominant way of resolving conflicts.

The only type of local conflict resolution mechanisms we can truly trace the functioning of are boundary disputes. Boundaries were determined and ratified in charters and byelaws, but they needed to be publicly visited and controlled via ritualised performances in order to become accepted.⁸⁹⁶ Despite such efforts to avoid disputes, discord concerning boundaries was common. A striking example is a conflict between the abbey of Tongerlo and a neighbouring lord of Bergen op Zoom over the right of pasture on the commons belonging to the seigniorship Kalmthout-Essen in 1440. A century after the original delineation of the commons, tensions began to arise regarding the exact location of two boundary markers on the heathlands. Both local villagers and the ruling elite of Putte claimed that they possessed the right to graze their animals on the piece of heathland in question. According to the aldermen and the Lord of Bergen op Zoom, they possessed plots of private property in Putte meaning that the area could be used as grazing ground for their sheep. Kalmthout and the abbey of Tongerlo, on

891 The aldermen's registers and bailiff accounts that were analysed are: RAA, OGA Gierle, 349-350, registers of the bench of aldermen, 1512-1558.; RAA, OGA Rijkevorsel, 145-180, Registers of the bench of aldermen, 1465-1609.; ARAB, Chambre des Comptes, 12977, Account of the bailiff of Zandhoven, 1626-1770.; ARAB, Chambre des Comptes, 12951-12952, Account of the bailiff of Herentals, 1412-1577.; RAA, OGA Herenthout, 160, "vorster account", 1653.

892 DINGES, *The Uses*.

893 Trees growing on the common wastelands and streets were the possession of the lord and could therefore not be felled by community members. Because this was an important lordly privilege, infractions were more severely punished.

894 RAA, OGA Gierle, 349 & 350, registers of the bench of aldermen, 1512-1558.; RAA, OGA Rijkevorsel, 145-180, registers of the bench of aldermen 1465-1609.; ARAB, Chambre des Comptes, Account of the bailiff of Zandhoven, 12977, 1626-1770. ARAB, Chambre des Comptes, Account of the bailiff of Herentals, 12951-12952, 1412-1577.; RAA, OGA Herenthout, 160, "vorster account", 1653.

895 JACOBS, *Justitie En Politie*.

896 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

the other hand, claimed that two fens, Schommersputte and Bollaartsmeer, were the official boundary markers according to the foundation charter of Kalmthout-Essen. Since the Lord of Bergen op Zoom doubted these boundary markers, witnesses and officers of the seigniority and neighbouring villages were ordered to be present at the visitation of the common boundaries and had to declare which natural or man-made elements were the rightful boundary markers.⁸⁹⁷ Therefore exactly the same process to prevent conflicts was used to overcome discord. Only when these forms of infrajjustice failed, as was the case for Bergen op Zoom and Putte, was the matter taken to court. Even then the court often decided mediators had to be appointed who were required to perform a field inspection, hear witnesses and follow a boundary visitation. When this last attempt at mediation was unsuccessful a final sentence was given by the court, in this case the sovereign Council of Brabant.⁸⁹⁸

Mediators were very important in medieval and Premodern conflict resolution strategies.⁸⁹⁹ Local neighbours, village dignitaries, officials and clergymen were essential in solving daily disagreements. In addition, more formalised institutions relied on mediators or third parties in order to solve disputes. Especially the earliest charters of both the Duke of Brabant as well as the abbey of Tongerlo show the necessity of mediators. Practically all conflicts between seigniorial lords were solved with the help of arbitrators, appointed by the seigniorial lords themselves, the ducal administration or the court.⁹⁰⁰ Often a sentence was not written down as the dispute was often settled via these mediation sessions. For example, in 1213 the Lord of Wezemaal and the abbey of Tongerlo chose eight arbitrators of noble birth to solve a disagreement amongst them concerning landed property and possessions. The charter does not refer to the conclusion or other forms of conflict resolution. By stating that the conflict was handled by these mediators, the issue was closed and no formal sequel was needed.⁹⁰¹ The same goes for the abbey of Tongerlo and the Lord of Duffel and Geel, who appointed Gerard, Lord of Boutersheem and Jan Bac Berthout of Tilburg to decide on the matter of the sterschot common, claimed by both parties.⁹⁰² Instead of relying completely on the court, they undertook to resolve the conflict themselves and wrote that promise down into a charter, leaving the final decision to the eight arbitrators whom they considered appropriate for making a decision about their disagreement. When we take the charter collections into consideration, this process of semi-formal conflict resolution with appointed arbitrators was especially dominant among the lordly class until the fifteenth century. Whether it truly

897 AAT, Section IV, Bundle Kalmthout-Essen-Huibergen, 101-104, Court records concerning boundary dispute between the abbey of Tongerlo and the Lord of Bergen op Zoom, 1439-1440.

898 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

899 PIANT, *Une Justice Ordinaire*, 204; BONZON, "Les Curés"; CASTAN, *The Arbitration*; LARSON, *Conflict and Compromise in the Late Medieval Countryside: Lords and Peasants in Durham, 1349 - 1400*.

900 See databases: Charters Verkooren.

901 ERENS, *De Oorkonden Der Abdij Tongerlo*, n°67.

902 Ibid.N° 1116, 14th of June 1361 Abbey of Tongerlo vs Lord of Duffel and Geel

disappeared as form of justice, or became hidden because of the changing nature of charters, is a matter which remains open to debate.⁹⁰³

Finally, forms of parajustice are to be found as well.⁹⁰⁴ Rural communities had their particular ways of squaring their accounts with trespassers or opposing interest groups regarding property and privileges. Like forms of infrajustice, these acts of revenge were not registered unless these informal acts of conflict resolution were not accepted and the opposing party took the issue to court.⁹⁰⁵ During the sixteenth century, hay meadows that were already owned privately increasingly became enclosed in order to safeguard multiple harvests of hay by the private owner. As stated in the chapter VI, divergent opinions concerning enclosure often led to conflicts. Within the selection of sentences collected from the Council of Brabant,⁹⁰⁶ 11 cases dealt with the question of fences and enclosures.⁹⁰⁷ Resorting to the court was, however, often not the first option. In five cases, a reference is made to alternative ways of solving the issue, namely the destruction of fences, ditches or hedges constructed in order to enclose the fields.⁹⁰⁸ In all these cases, the owner of a plot of land, meadow or pasture, complained in court that they owned, leased or rented this landed estates and therefore possessed the privilege of enjoying the fruits of their land, without interference. Their opponents, however, claimed their “possessie” or right to collectively graze the meadows or pastures after harvest.

The same goes for common roads passing through fields or pastures. Neighbours often possessed the right to cross the adjacent plot of land in order to reach their property or the village road network. To safeguard one’s production, peasants sometimes tried to prohibit crossing by placing fences or hedges. While these disputes could be solved before any recourse to court, both individuals as well as groups of community members opted to re-establish the equilibrium by performing the ritualised act of destroying fences. For example, the case Willem Hendrickxsoon van Brussel, inhabitant of Mierlo, brought before court in April 1554. According to him, his family had purchased a hay meadow called “Molenbeemd” located in Helmond more than 70 years ago, so long ago that nobody could remember it being any other way. Since he was the full owner, he had enclosed and “liberated” the plot with ditches and hedges. Nonetheless, a group of people including Willem Diericxsmets, Jasper Vrancken, Jan Frans Peeterssoen, Ambrosius Jan Dreycker and their accomplices, had violently destroyed

903 In the sentence registers of the Council of Brabant, court officials are often appointed to hear both sides in their community itself, but of genuine mediators, no evidence exists. Database

904 MÜLLER, *Conflict*; MÜLLER, “Arson”.

905 Because of the extent of the database, the evolution of the acceptance of resistance and symbolic action cannot be measured. Regarding this topic see BLICKLE, “The Criminalization”.

906 N= 119.

907 RAA, VB, 556, 85 (1505) Putte; 560, 33 (1510) Kontich (NI); 578, 38 (1531) Putte; 579, 132 (1532) Helmond; 582, 41 (1533) Unknown; 583, 105 (1534) Kasterlee; 590, 87 (1540) Rixtel; 590, 15 (1541) Rixtel; 588, 177 (1541) Vilvoorde; 595, 63 (1546) Valkenborch; 602, 51 (1554) Helmond.

908 RAB, VB, 578, 38 (1531) Putte; 579, 132 (1532) Helmond; 588, 177 (1541) Vilvoorde; 595, 121 (1545) Putte; 602, 51 (1554) Helmond.

the ditches and removed the hedges planted there with force, finally driving their cattle and sheep into the meadow.⁹⁰⁹ Similar actions were carried out by neighbouring peasants due to the implementation of unjust roadblocks on local land. A certain Mathijs Verpoerten, inhabitant of Westerlo, professed to have the right to cross the road and gate of the farmstead of Rombouts van Aken, steward of Mechelen. When he was refused passage by means of a closed gate, he forced his way through and carried four loads of wood through the gate. When Rombouts van Aken later locked the gate by key, Mathijs Verpoerten destroyed the lock and continued to pass through the gate.⁹¹⁰

As these cases were traced via the sentence registers of the Council of Brabant, the strategy of restoring the status quo via direct action or revenge did not always work. Moreover, several of these cases could be handled directly by the Council of Brabant as they were considered cases of maintenance, where the owner was threatened as a proprietor.⁹¹¹ Nevertheless, ritualised fence-breaking and cattle-droving have been described in several communities in Premodern Europe, and to such an extent that it can be considered a dominant practice and was seen as a justified manner of showing discontent. Christopher Dyer has described the destruction of fences during the thirteenth century enclosure riots as common practice, an accepted way to react against (alleged) illegal enclosure.⁹¹² Similarly, Miriam Müller described cases of arson or insubordination as accepted conflict resolution mechanisms. Symbolic action was, after all, accepted and well-defined steps existed in the process of reconciliation or settlement of any conflict.⁹¹³ Even though the Habsburg monarchs were increasingly sensitive towards acts of violence or insubordination by peasants during the sixteenth century,⁹¹⁴ the sentences of the Council of Brabant seem to support both Müller's and Dyer's theses. Even though violent action was used and private property destroyed, the court twice decided in the favour of the violators.⁹¹⁵ On the remaining three occasions, the court stated that the enclosing of land was correct and therefore no infractions were allowed.⁹¹⁶ They did not, however, object to the behaviour of the opponents, rather discarding their argument that the enclosure or road block was illegal. The practice must, therefore, have been far more common than the five disputes found in the registers would suggest. Probably a warning, such as breaking of a fence or destroying of a hedge would result in a new phase in the conflict resolution whereby the dispute could be discussed or mediated.

909 RAB, VB, 602, 51 (1554) Helmond.

910 RAB, VB, 595, 121 (1545) Putte.

911 MONBALLYU, *De Gerechtelijke Bevoegdheid*.

912 DYER, "Conflict in the Landscape"; BIRRELL, "Common Right".

913 MÜLLER, *Conflict*; MÜLLER, "Arson".

914 BLICKLE, "The Criminalization".

915 RAB, VB, 579, 132 (1532) Helmond ; RAB, VB, 588, 177 (1541) Vilvoorde.

916 The reason why this enclosure was deemed legitimate by the court is not specified in this sentence. RAA, VB, 578, 38 (1531) Putte; RAB, VB, 595, 63 (1546) Valkenborch. ; RAB, VB, 602, 51 (1554), Helmond.

The late medieval Campine communities were therefore quite efficient in dealing with their conflicts on a local and informal level. Even though the extent of such actions is difficult to assess, it must have been the dominant way of dealing with issues within the community and day-to-day strife.⁹¹⁷ Several scholars have stressed the fact that informal practices were exercised on a more extensive scale than formal procedures.⁹¹⁸ However, as they relied on social consensus, shared norms and rules, and the willingness of both parties to accept these forms of ritualised conduct, a significant number of conflicts could nevertheless not be settled in this manner. Whenever different communities, parties with very imbalanced distributions of power, or political elites (especially the ruling elites themselves) were involved, the possibility of working with local mediators and ritualised actions became scarce.

IV. Rural and urban aldermen's benches | Local formal courts

Thanks to the sentence registers of the Council of Brabant, some scarce evidence can be found relating to the workings of lower courts. Cases appearing before the Council after an appeal regarding a sentence given in urban courts or “hoofdbanken” such as Zandhoven, only started from the fifteenth century onwards.⁹¹⁹ 16 cases refer to previous steps in the judicial strategy before they entered the highest court of the Low Countries. The few cases I was able to track down are in line with their primary function as substitute notary's office, namely dealing with conflicts concerning landed property and rents together with village responsibilities such as roads and membership.⁹²⁰ For example in 1499, the guardians of the Holy Ghost table of Helmond and Henrick van Deurne, quarrelled about a hay meadow. While the guardians claimed the full possession of the meadow, Henrick van Deurne had cut off the hay and used it as his property. Apparently the hay was seized, even though Henrick van Deurne claimed the meadow resided under his landed property. Consequently Henrick Van Deurne pleaded before the “vierschaar” or aldermen's bench of Asten, so as to recover his alleged harvest. The conflict could, however, not be resolved in this way and therefore ended up in the Council of

917 MÜLLER, *Conflict*.

918 VERMEESCH, “Explaining the ‘Legal Revolution’”, 2; PIANT, *Une Justice Ordinaire*; ANNE BONZON, “Les Curés Médiateurs Sociaux. Genèse Et Diffusion D'un Modele Dans La France Du XVIIe Siècle,” *Revue d'histoire de l'Eglise de France* 97, no. 238 (2011); JOHN BOSSY, ed., *Disputes and Settlements. Law and Human Relation in the West* (Cambridge: Cambridge University Press, 1983); MULDREW, “The Culture of Reconciliation: Community and the Settlement of Economic Disputes in Early Modern England”; GARNOT, “Justice, Infrjustice”.

919 GODDING, “Appel Et Recours”.

920 RAB, VB, 553, 13 (1499) Unknown; 555, 13 (1502) Noorderwijk; 557, 63 (1507) Mechelen; 560, 33 (1510) Kontich (NL); 565, 9 (1510) Turnhout; 564, 5 (1513) Oplinter; 585, 1 (1531) Vechel; 581, 33 (1531) Wechelderzande; 586, 19 (1537) Olmen; 591, 7 (1538) Herentals; 586, 104 (1538) Wijnegem; 587, 3 (1539) Chammont; 588, 177 (1541) Vilvoorde; 593, 219 (1544) Unkown; 595, 134 (1546) Oirschot; 598, 331 (1547) Kontich (nl);

Brabant.⁹²¹ Similarly, in 1507 a dispute between Janne vander Zevenen and the Holy Ghost masters of Sint Peter of Mechelen arose in Boenheiden. While vander Zevenen had possessed his estates for over 70 years and had always used the road that passed through his land, his neighbour and the defendant made use of the war and destruction in Brabant so as to close off the road and prohibit access to Janne vander Zevenen. This issue had already passed the aldermen's bench of Putte, before they filed their case in the Council of Brabant.⁹²²

In addition, we can also trace their function as a "hoofdbank".⁹²³ This was the case for the villagers of Oplinter against the aldermen and "good men" of Oplinter in 1513. One individual, Henrick Maes, the son of an inhabitant of Oplinter, who had always contributed to the village taxes, wanted to remain a member of the community but was considered an outsider by the village government as he was no longer a resident of Oplinter because he had moved to Tienen. Firstly, the issue was raised before the aldermen's bench of Oplinter (containing the defendants themselves). Unsurprisingly, they favoured the defendants, causing Henrick Maes to turn towards the aldermen of Leuven to issue a "hoofdvaart". Even though the sentence stated that Henrick Maes was considered a member of the community, thanks to his father's contributions, the conflict endured. It therefore resulted in a case that appeared before the highest court.⁹²⁴ Wouter Versant and his accomplices originally went to the village court of Wechelderzande in order to resolve a disagreement concerning a plot of land with Aert Stevens and Elizabeth Stijnen. When the defendants disputed the sentence, however, they took their case to the court of appeal in Zandhoven so as to correct the alleged false conclusion.⁹²⁵ Similar cases can be found in Olmen, where Jacop Lemmens turned towards the appellant court of Zandhoven to issue a "hoofdvaart"⁹²⁶, and rent disagreements between inhabitants of Noorderwijk were filed immediately before the feudal court.⁹²⁷ As stated before, villages could therefore turn to the local aldermen's benches and even urban courts to settle their disputes regarding their commons. "Hoofdbanken" or courts of appeal such as this were the first place to go, after the local aldermen's bench. Complex issues such as inclusion and exclusion, however, are not encountered on this level. Apart from issues that corresponded with the main tasks of these benches, namely to regulate and settle issues regarding property, possessions, jurisdictions and offences, Campine peasants showed a remarkable preference for the Council of Brabant. After all, plaintiffs could skip the regional level and go straight for the sovereign court, as will be demonstrated in the next paragraph.

921 RAB, VB, 553, 13 (1499) Unknown.

922 RAB, VB, 557, 63 (1507) Mechelen.

923 See databases: Juridical records

924 RAB, VB, 564, 6 (1508) Putte.

925 RAB, VB, 581, 33 (1531) Wechelderzande.

926 RAB, VB, 586, 19 (1537) Olmen.

927 RAB, VB, 555, 13 (1502) Noorderwijk.

V. The Council of Brabant | The place to discuss commons

Oceans of ink have been dedicated to assessing the importance and popularity of the sovereign courts in the Low Countries and neighbouring regions. Maarten Van Dijck stresses that sovereign courts were the least popular and were only used as a final option to resolve issues. To him, the introduction of these sovereign courts were mainly a top-down initiative, one not welcomed by the large majority of the population except for the wealthy merchants or nobility who could settle high-end debates about inheritance and transactions through them.⁹²⁸ Oscar Gelderblom proposes a similar argument when he looks at merchants in the late medieval and Early Modern cities of the Low Countries. Mediators and local urban courts were mostly favoured as they met all the requirements of the merchants, moreover the sovereign courts were too slow and not more efficient in settling commercial disputes.⁹²⁹



Fig 63 View of the court of Brabant and Nassau in Brussels.⁹³⁰

928 VAN DIJCK, *Towards an Economic Interpretation*.

929 OSCAR GELDERBLOM, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250-1650* (New Jersey: Princeton University Press, 2013).

930 Source: State institute for cultural heritage, <http://beeldbank.cultureelerfgoed.nl/afbeelding/20408663>

Robert Stein, however, has stated precisely the opposite. According to him, the arrival of central, sovereign courts played into the hands of several interest groups within the Low Countries. According to Stein, the top-down introduction was accompanied by a bottom-up appreciation of these courts for settling disputes. They provided the ability to shop around for courts something that would benefit the interests of those groups that were not served in the local, urban or seigniorial courts.⁹³¹ Similar conclusions have been formulated by Richard Kagan and Hervé Piant. Kagan describes Early Modern Spanish society as a litigious one with a firm legal reflex.⁹³² Despite the moral objections against juridical strife, a wide range of conflicts were settled before the formal courts. This, however, did not mean that individuals were highly litigious, dragging every opponent into court. Most of these humble litigants appeared only once in court so as to defend their interests. In addition, he considered the trend towards the frequent involvement of royal courts as a legal revolution, whereby these courts could be used by the middle classes and rural communities as they constituted an alternative for the biased seigniorial and urban courts.⁹³³

It appears to be that for the Campine peasants and communities the Council of Brabant was a welcome institution. The Campine peasants were an absolute minority group that appeared before the Council of Brabant. Most of the litigants were wealthy families, merchants and individuals quarrelling about inheritances, debts and properties.⁹³⁴ Nevertheless, the aim was to examine Campine communities' strategies for settling disputes. By looking at the sentence registers of the Council of Brabant, a bias towards that Council naturally appears almost immediately. Nevertheless, a quick scan through the types of conflicts that Campine individuals, groups or communities brought before the sovereign court does show that they deliberately opted for this court.

Figure 64 indicates that surprisingly "ordinary" cases, that could easily have been dealt with by local aldermen's benches and regional courts, were in fact settled before the Council of Brabant between 1498 and 1580. Eight per cent of all cases selected treated the issue of roads crossing fields, 16 per cent handled violation of private property and ten per cent examined enclosures.⁹³⁵ As stated before, the Council of Brabant increasingly attracted these prerogatives from the fifteenth century onwards. Nevertheless, these top-down initiatives would not have been successful unless they had been supported or welcomed by those involved as Martin Dinges has claimed.⁹³⁶

931 STEIN, *De Hertog En Zijn Staten*.

932 PIANT, *Une Justice Ordinaire*; KAGAN, *Lawsuits*; KAGAN, *A Golden Age*.

933 BROOKS, *Pettyfoggers*; KAGAN, *Lawsuits*.

934 RAA, Conseil de Brabant, Archives of the registry, General sentence registers

935 See databases: Sentence registers

936 DINGES, *The Uses*.

Campine conflict themes in the Council of Brabant

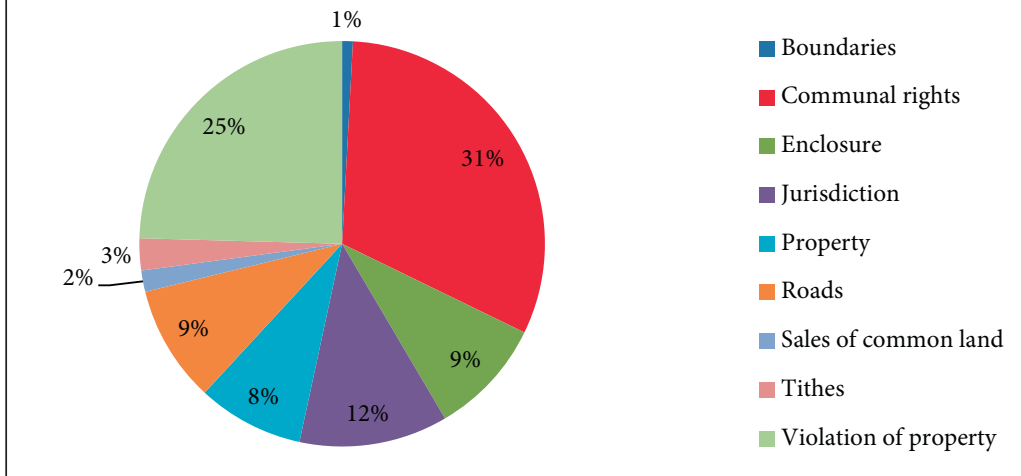


Fig 64 Typology of my selection of 119 cases brought before the Council of Brabant by Campine inhabitants or communities.⁹³⁷

The very calculated actions on the part of Campine litigants is shown in the following case. In a conflict in 1546 that involved a group of inhabitants, aldermen and sworn councillors of Oirschot on the one hand, and the aldermen of 's Hertogenbosch on the other, the plaintiffs opposed a sentence passed by the court of 's Hertogenbosch concerning the privatisation of common land, because “it is unbecoming and not permitted for anyone to plead before a subaltern court regarding the possession of or use rights on common land granted by the Duke in our land of Brabant. Instead this has to be discussed and solved before the Council of Brabant”⁹³⁸ Here the plaintiffs could have referred to the “reserved” cases of the Council of Brabant, but commons or the “bona vacantia”, were not formally listed as reserved cases. Since commons were the responsibility of village governments, however, one could argue that these village affairs were directly permitted and even reserved for the sovereign court.⁹³⁹ These Campine inhabitants and communities, rationally and voluntarily opted to plead before the sovereign court to discuss these issues.

⁹³⁷ See databases: Sentence registers

⁹³⁸ RAB, VB, 595, 134 (1546) Oirschot. “dat nyemade en betaempde noch en was gepermitteert eenige actien oft interdictien aengaende der possessien ende gebruycke van gronden van erven binnen onsen voorschreven lande van brabant gelegen te intenteren voere enige subalterne gerichten ende bezondere nyet aengaende eenige vroenten oft gemeynen tegen on oft onsen voorsaten hertogen van brabant gecocht ende vercregen maar behoorde die nae alle oude gewoonten beleydt ende gesleten te worden in onsen voorschreven rade in brabant aldaer die cognitie daer af met seclusie van allen ouden behoorde ende gewoonlijke waere te geschieden”. See also RAB, VB, 585, 1 (1531) Meldert.

⁹³⁹ MONBALLYU, *De Gerechtelijke Bevoegdheid*.

For the majority of the cases, it is difficult to assess whether they were cases of appeal or cases that were brought before the Council in the first instance.⁹⁴⁰ In at least 18 cases, a direct link to a former proces before a subaltern court can be detected.⁹⁴¹ It is most probable, however, that the majority of the cases were a type of appeal, even though it was not explicitly mentioned in the sentence.⁹⁴² After all, these sentences were summaries of disagreements which did not include all the details of the evolution of the conflict. In 65 cases, however, it is possible to state that the Council of Brabant was the first institution where these particular cases were sentenced. As Monballyu stated, cases of maintenance were reserved for the Council and settled disputes where proprietors felt threatened that they were losing their grip on their property. Searching for the concept maintenance, provided those 65 hits.⁹⁴³ All of these conflicts dealt precisely with the violation of property and were either started by, or involved, village communities or ecclesiastical institutions as litigants (see figure 64). Therefore 32 per cent of all cases selected refer to incidents whereby the litigants decided that their preferred court for settling disputes was the Council of Brabant.⁹⁴⁴ This does not rule out the conflict already having been handled via informal conflict resolution mechanisms, yet it does exclude courts such as Zandhoven, Antwerp and 's Hertogenbosch.

Despite the quite “ordinary” and arbitrary appearance of these conflicts, they practically all relate back to the issue of the survival of the commons. Since I have left out conflicts concerning debts, inheritences, sales etc., this might come across as a bias of the selected cases, nevertheless, issues such as the location of fences, the timeframe of the enclosure of the meadows, the function or jurisdiction of village officials managing the commons and the amount of animals on the common wastelands or meadows, are completely lacking in the cases not examined here.⁹⁴⁵ The day-to-day management of the commons was never the subject of these disputes, nor was the jurisdiction of the CPRIs.⁹⁴⁶ Disputes concerning roads all dealt with the issue whether or not an individual or group was hindered in terms of his communal right of passage, or treated occasions when an individual complained about the existence of such rights. Violations of property were not mere criminal offences equal to the stealing of hay or grain harvests, rather they were conflicts arising from the private and enclosed character of

940 GODDING, “Appel Et Recours”.

941 RAB, VB, 549 (1495) Netersel.; RAB, VB, 553, 13 (1499) Unknown.; RAB, 555, 13 (1502) Noorderwijk.; RAB, VB, 557, 63 (1507) Mechelen.; RAB, VB, 560, 33 (1510) Kontich (NL).; RAB, VB, 565, 9 (1509) Turnhout.; RAB, VB, 564, 5 (1515) Oplinter.; RAB, VB, 585, 1 (1531) Vechel.; RAB, VB, 581, 33 (1531) Wechelderzande.; RAB, VB, 585, 198 (1535) Stiphout.; RAB, VB, 586, 19 (1537) Olmen.; RAB, VB, 591, 7 (1538) Herentals.; RAB, VB, 586, 104 (1538) Wijnegem.; RAB, VB, 587, 3 (1539) Chammont.; RAB, VB, 588, 177 (1541) Vilvoorde.; RAB, VB, 593, 219 (1544) Unknown.; RAB, VB, 595, 134 (1546) Oirschot.; RAB, VB, 598, 331 (1547) Kontich (NL).

942 GODDING, “Appel Et Recours”; STEIN, *De Hertog En Zijn Staten*.

943 See databases: Sentence registers

944 See databases: Sentence registers

945 See databases: Sentence registers

946 All cases that are labelled as jurisdictional cases in Figure 64 deal with claims against unjust actions by officials, or lords disputing the jurisdiction of officials.

land. As was discussed in chapter VI, piecemeal enclosures were accepted, yet those actions that hindered or limited the other community members in the communal practices were contested and often led to the violation of the alleged private property. Finally, communal rights in all their aspects were dominant. It was here that the concept and survival of the commons as institutions and regimes were discussed (see figure 64).

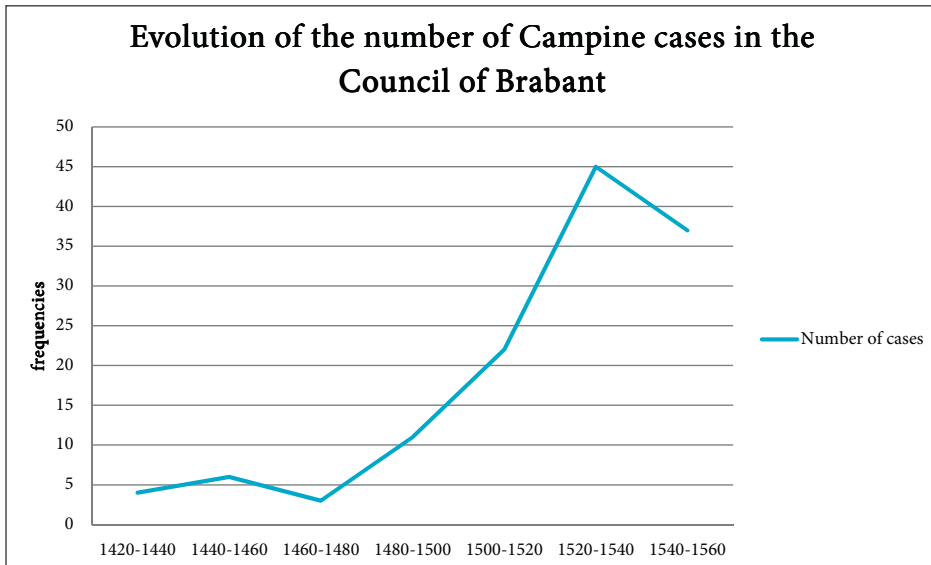


Fig 65 Evolution of the number of cases brought before the Council of Brabant by Campine inhabitants that were sentenced between the foundation of the Council in 1430 and 1560.⁹⁴⁷

Campine inhabitants therefore did actively use the Council as part of their strategy to defend their interests regarding common pool regimes and institutions. In addition, they did this quite quickly after the foundation of the Council as figure 65 shows and a true lift-off in terms of the number of cases brought to it was experienced after 1460. First of all, according to Robert Stein, this is due to the fact that the Council of Brabant was only able to establish itself firmly as a court of appeal from 1470 onwards.⁹⁴⁸ The fact that peasant communities actually appeared in the Council, however, has largely to do with their active strategy of entering this particular court. It was a time when peasant families possessed their largest flocks of sheep and could participate most actively in the markets, as discussed in chapter II and V. In addition, population densities were at the highest level they were to reach during the late medieval period. While these surges in conflicts could therefore be explained as the reflection of a system reaching its ecological and social limits, it could equally point to the rising agency of peasants actively defining and defending their interests in this changing society. As independent peasants they had reached a position based on their strong property claims to tiny plots of private land, together with the privilege of being able to access vast common wastelands and meadows. So as to maintain

947 See databases: Sentence registers

948 STEIN, *De Hertog En Zijn Staten*.

that position, a constant negotiation via informal and formal channels was essential and could therefore explain the rising of the presence of these independent peasants in court.⁹⁴⁹ The dip towards the end of the time-scale depicted is most likely explained by the unrest caused by the Eighty Years' War that had already started by then.

VI. Rich or poor? | The social profile of litigants

Disputes concerning the Campine commons were therefore voluntarily discussed before the Council of Brabant. The question remains, however, who was behind this legal revolution. Was it the rich elite who could afford such court cases, dragging poorer groups with them into court, or did the Campine peasants themselves act as litigants? After all, the selection of sentences examined here only shows the conclusion of all cases. The number of indictments dropped before a final verdict was reached was surprisingly high and far surpassed the number of procedures resulting in formal convictions.⁹⁵⁰ Are we, therefore, dealing with rural elites being active in these cases or were average peasants also involved? According to Richard Kagan, in Spain the rise in legal cases heard before royal or sovereign courts was partly due to the growing percentage of the middle sections of society seeking guidance in order to resolve their conflicts in these formal courts. He stressed the fact that peasants and urban dwellers must have understood litigation. Most cases started without the help of professional advocates or solicitors, proving the plaintiffs were no ignorant countrymen duped and befuddled by the complexity of the court, but rather, they were shrewd individuals, well-acquainted with the use of the courts.⁹⁵¹ Thanks to the abundance of courts, many with overlapping jurisdictions, peasants had a choice as well as bargaining power.⁹⁵²

Like Kagan, Hervé Piant has emphasized the exceptionally large presence of groups of people from the middling sections of society within high level courts. While elites were obviously the most litigious group in absolute and relative numbers, the average citizen or country dweller was also well-represented. Thirty per cent of all litigants consisted of craftsmen and labourers, which accounts for their average weight in society.⁹⁵³ Late medieval and Early Modern courts were, however, never all-inclusive. The landless, migrants or truly “marginal” members of society were almost never plaintiffs and, in general, seldom appeared before court. Despite the obligation of court officials to offer their services for free to the poor, the legal agency of

949 VERMEESCH, “Explaining the ‘Legal Revolution’”.

950 DINGES, *The Uses*, 156.

951 KAGAN, *Lawsuits*, 89.

952 DINGES, *The Uses*.

953 PIANT, *Une Justice Ordinaire*, 109.

this lowest tier of society was extremely feeble.⁹⁵⁴ According to Piant, the richest part of society was over-represented because their position forced them into conflicts concerning loans, obligations, inheritance and possessions, but it was the middling groups who were the real legal experts. Being rich enough to own possessions, but not enough to be able to afford losing a case and paying the fines imposed by the court, they needed to become well-acquainted with legal procedures, laws and loopholes in order to defend their interests as well as possible.⁹⁵⁵

Such arguments have now come to receive quite some support from scholars. Julie Hardwick labels the local courts of seventeenth century Nantes and Lyon as “people’s courts”. The majority of litigants belonged to “working families” from urban commercial milieus. Those families typically were on the front line of the uncertainty of the Early Modern economy and dependent on liquid assets stated that the dominant part of the large group of litigants had a modest social-economic profile and belonged to the so called higher and lower middling groups.⁹⁵⁶ It was especially the lower-to-middling groups of society who made abundant use of law courts. Thanks to their profession or possessions, they were economically independent yet constantly on the verge of losing this independence.⁹⁵⁷ Indigent families usually made little use of law courts and it was mostly the middling sections of society and the middling peasants or small peasant proprietors who frequented court.⁹⁵⁸

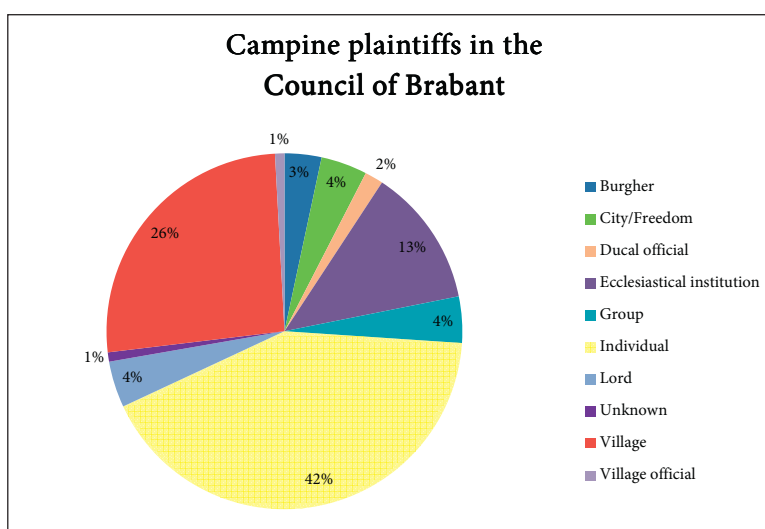


Fig 66 Campine plaintiffs in the Council of Brabant between 1498 and 1580 (n=119).⁹⁵⁹

954 Ibid., 108.

955 Ibid., 110.

956 JULIE HARDWICK, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009)

957 VERMEESCH, “Explaining the ‘Legal Revolution’”, 11.

958 JULIE HARDWICK, *Family Business: Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press, 2009)

959 See databases: Sentence registers

For the Campine area, a thorough socio-economic background check of all the litigants that reached the stage of sentencing within the court has proved to be impossible. Focussing on figure 66 and figure 67, which show Campine plaintiffs and defendants, reveals the striking presence of groups and communities together with the vague category of individuals. As the Campine area and its direct surroundings were included in the selection of cases, the total geographical span is quite large. Unfortunately, practically no cases that were selected corresponded to any of the villages that were extensively investigated. I am therefore unable to link social or economic sources, such as tax or rent registers or estate books, with the juridical cases.⁹⁶⁰ This does not, however, mean that we cannot paint a general picture of their social background. Based upon the scarce information given in the sentence, together with the socio-economic knowledge obtained about the Campine area, a general estimation can be created.

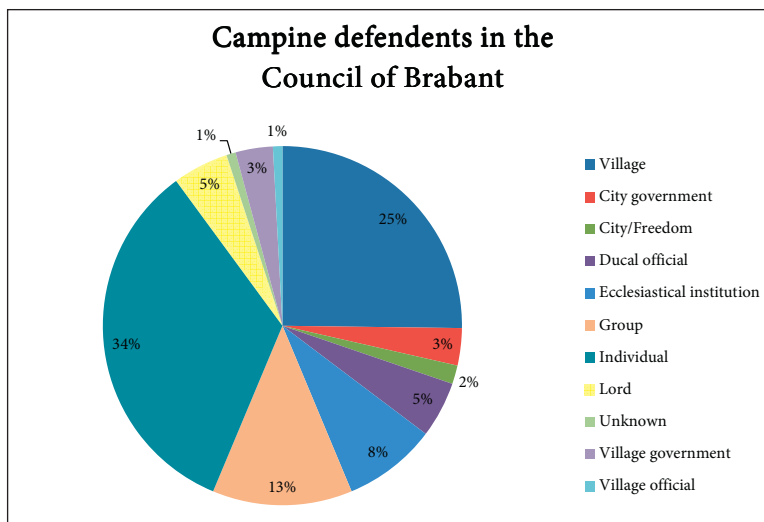


Fig 67 Campine defendants in the Council of Brabant between 1498 and 1580 (n=119).⁹⁶¹

As can be deduced from figure 66 and figure 67, a large chunk of cases were taken up by those where at least one of the parties was an individual. Except for their names and place of residence, actors were only seldom introduced with any more detail. Professions, property, age or family situation were nearly always left out. The only exception are the few tenant farmers who pleaded before the court to maintain access to the commons, as discussed in chapter IV. Since their “otherness”, in terms of being a tenant of an outside institution, was the main reason for the conflict arising, it was mentioned in the final sentence. Despite the lack of knowledge about their exact background, the summary sentences do allow a general estimation of the individual’s position within society. As shown by Figure 68, only a limited range of conflicts were ever settled before the sovereign court by individuals.

960 Ibid.

961 Ibid.

Type of conflict	Number of sentences
Tithes	1
Judicial issues	2
Jurisdiction	3
Property	4
Common rights	8
Roads	10
Fencing	10
Destruction or violation of private property	23

Fig 68 Table showing court cases involving individuals originating from the Campine area by theme (1480-1580)⁹⁶²

One of the main issues was private property and the violation of it (see figure 68). These parties, therefore, possessed or leased enough private property to make it worthwhile coming to the highest court in order to discuss any differences concerning this property. For example, Elizabeth, the widow of Pieters van Ostaden, filed a complaint against Jan Verwijnen for the destruction and violation of her property. Her husband had purchased the estate over twenty years before and was in possession of the legal proof of that sale. They had been in peaceful possession of it ever since and had used the farmstead and land in Rijsbergen. They had ploughed, sown and enclosed the land as they wished and nobody, according to their plea, had the right to object. Nevertheless, Jan Verwijnen had driven his livestock onto the land and pastures, felled trees and dug peat, all against the wishes of Elizabeth.⁹⁶³ After pleading before the Council of Brabant, an official was sent to Rijsbergen to declare that widow Elizabeth was in full possession of the estate and to order Jan Verwijnen to abstain from violating or using the property again. Jan Verwijnen, however, claimed to be entitled to the farmstead and land himself, and demanded that the case of Elizabeth be declared void and unacceptable. In the end, Elizabeth and her solicitor did not return to court and Jan Verwijnen did win the case.⁹⁶⁴

Most cases dealt with similar issues such as this. After an inheritance, the expiry of a lease contract or cases of unclear property claims, individuals or groups of people often contested the private status of property, often forcing their way into it, claiming it to be either theirs or held in common. The plaintiffs had to be of a certain social standing in order to bear the costs that followed from such a court case. In the case of the widow Elizabeth, not only did she lose her claim on the land, she had to suffer the consequence of going to court and receiving a sentence by paying all legal fees.⁹⁶⁵ The same goes for common rights (see figure 68). Most conflicts arose between fairly wealthy peasants or tenant farmers who had often

962 See databases: Sentence registers

963 RAB, VB, 582, 253 (1535) Rijsbergen.

964 For more information about women's agency in court: STRETTON, *Women Waging Law*. Source: RAB, VB, 582, 253.

965 RAB, VB, 582, 253 (1535) Rijsbergen.

used or possessed certain land for a long period on the one hand, but on the other were considered to be outsiders. For example, in 1533 Janne Palm, burgher of 's Hertogenbosch, claimed to have possessed a farmstead in Sint Oeden Rode called "aan d'eerde". He had always kept animals, as had his ancestors before him, and so did his tenant farmers who were all allowed to drive the cattle onto the commons, being meadow and heathland adjacent to the farmstead. The commons were supposed to belong to the inhabitants of Schijndel. For over 60 years they had peacefully used their grazing rights, however, the sworn officials of Schijndel who acted in name of the inhabitants, had now caught the animals and refused to grant him access to the commons. Even though the court had complied with his wish to receive access to the commons, the sworn officials and inhabitants of Schijndel claimed that these tenants had not been incorporated into the community of Schijndel and therefore did not possess the right to use the commons. In the end the court favoured the community of Schijndel and excluded Janne Palm from having access.⁹⁶⁶ As an outsider, Janne Palm could not count on any success when using the informal judicial canals such as *infrajustice* because the majority of the community had teamed up against him. As a result, he turned to the ducal court so as to maintain access to the commons. Relying on the fact that the Duke of Brabant was the one granting the use rights to community members, his case had a good chance of being approved. This strategy of moving to the sovereign court by tenant farmers was not a hopeless cause as most tenants' access rights were in fact, contrary to the example of Janne Palm, affirmed and secured as seen in chapter IV.

This group of litigants, therefore, is exactly what Kagan would have called the most important group of actors in court.⁹⁶⁷ They possessed or leased land sufficiently large to risk a third of an annual labourers wage - as Maarten Van Dijck has stated⁹⁶⁸ - but desperate enough to defend their interests and property in order to maintain their independent status. As such, they had to fight for their position and found their way to court to settle these differences. Due to the privilege of being able to bring a maintenance case before the Council of Brabant, such cases were relatively abundant. As Ratner stated, not all groups could benefit from *infrajustice* as their social background placed them outside the inner group of the community.⁹⁶⁹ Consequently they opted for different arenas of action and tried to settle their conflicts in formal courts. The poorest part of society did not leave any traces as individual plaintiffs or even defendants in the sentence registers of the Council of Brabant as practically all cases dealt in one way or another with a substantial amount of landed property. This does not preclude their presence in the first stage of a court case in the Council. We are therefore dealing with the upper 30 per cent of society, the independent peasants and middling tenant farmers, that still needed

966 RAB, VB, 586, 94 (1533) Schijndel.

967 VERMEESCH, "Explaining the 'Legal Revolution'"; KAGAN, *Lawsuits*; BROOKS, *Pettyfoggers*.

968 VAN DIJCK, *Towards an Economic Interpretation*, 78.

969 RATNER D. et al., "Resource Conflict".

to maintain their position as the risk of falling to the lower status of a cottager was never that far off.⁹⁷⁰

VII. Peasants in the Council of Brabant | Teaming up to enter court

While Van Dijck has claimed that the costs relating to taking a grievance to court were too great for lower the middling groups of society and poor households, forcing them to rely on violence and alternative forms of justice,⁹⁷¹ it appears, on the contrary, that the Campine peasants developed other ways in order to participate in court. Even though the starting cost of entering a case at the Council of Brabant might not have been too high, as Dinges stated, the cases presented here all reached the final stage of a sentence and therefore came to a substantial sum.⁹⁷² In addition, the sovereign court, dealing with complex civil cases, using parts of customary law but employing predominantly juridical jargon and using references to Roman law, made the court a difficult maze in which one could easily get lost. The greatest weapon of the weak, or the “action resources” as Ratner has called them, was their ability to adapt themselves to the system.⁹⁷³

Instead of individually defending one's interests, peasants formed collectives. Social networks were, according to Ratner, the most important attributes one could have at one's disposal during a conflict.⁹⁷⁴ The first and most obvious interest community that could be formed was that of the village community. After all, as a village community, they received the right to skip the subaltern courts and immediately plead before the sovereign court.⁹⁷⁵ Moreover, while it has already become clear that membership of this community was something fluid and complex, often disputed and redefined (see chapter IV), the concept of community was vivid and real. Forging such a village community, and investing in a communal identity, did provide substantial benefits for its members. During the eleventh century, these village communities had been able to demand rights and force feudal lords to grant “vrijheden”, charters and respect certain basic rights. By the thirteenth century, they were able to form

970 VAN ONACKER, “Leaders of the Pack?”

971 VAN DIJCK, *Towards an Economic Interpretation*.

972 DINGES, *The Uses*. In the Low Countries the cost of an average case reaching a sentence was 8 pounds or 1/3 of an annual wage of an urban skilled labourer according to STEIN, *De Hertog En Zijn Staten*; VAN DIJCK, *Towards an Economic Interpretation*.

973 RATNER D. et al., “Resource Conflict”; JAMES SCOTT, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

974 RATNER D. et al., “Resource Conflict”.

975 MONBALLYU, *De Gerechtelijke Bevoegdheid*.

village governments, co-define byelaws, sit in village courts, appoint officials and manage the village affairs. Consequently, when conflicts arose, joining forces was an important strategy.

Peasants therefore entered courts, not as individuals, but as a village community. Calling themselves the “ingezetenen ende gemeyne geburen” or “inhabitants and common neighbours”, they painted a picture of a harmonious, uniform and undivided interest community. This did not necessarily mean every inhabitant was involved or even agreed on the cause, but a substantial part or core of the community put themselves forward as representatives of the community, therefore laying claim to a communal identity. In 1522 the conflict between the village community of Leende and Maximiliaan van Horne, Lord of Gaasbeek and Leende is an excellent example.⁹⁷⁶ The plaintiffs introduced themselves as the “ondersaten, naburen en ingesetenen van Brabant” and the “gemene naburen en ingezetenen van Leende”. According to them, the Lord of Leende had crossed a line and did the community a serious injustice by altering the conditions of the use of the commons. The Lord of Gaasbeek and Leende replied that it was absolutely true that the community had used the commons for over 100 years, but that it had never been granted the possession of the commons. More interesting is his condemnation of the plaintiffs. According to the Lord of Gaasbeek and Leende, the plaintiffs had acted without the consent of church wardens and majority of parishioners of Leende. The case was brought before court by a minority of six sworn officials and their accomplices without any support from the other community members. After all, the community had paid the new aide and had agreed to the terms imposed by the defendant.⁹⁷⁷ Appearing before court as a village community, and not simply a group of individuals, was considered important and was believed to strengthen the legitimacy of their case as well as give them access to the ducal court. For that reason this minority tried to do so, but was exposed.

When it came to defending common rights, belonging to and presenting oneself as the village community immediately enlarged the interest community’s bargaining power. 30 per cent of the plaintiffs and 33% of the defendants presented themselves as such communities (see figure 66 and Figure 67). Even though, at certain times, different interest groups within the village community would battle each other, they would form a coalition and present themselves to the outside world as a harmonious entity if external threats appeared.

At times, agreement between different interest groups within a village community was impossible. As has been shown in chapter IV, different hamlets within one jurisdiction could dispute each other’s right to the commons. In such situations, it became rather difficult to come forward as a unified entity. One of the strategies in those situations would have been to form a group nonetheless with, either a clear identity, and/or similar interests. In the case of hamlets

976 RAB, VB, 576, 3 (1522) Leende.

977 RAB, VB, 576, 3 (1522) Leende.

opposing main villages (discussed in chapter IV), the geographical - but also jurisdictional - identity was chosen. In the case of hamlets, they presented themselves as a sub-group, yet one incorporated within the larger jurisdiction so as to maintain their shared communal rights. Main villages, however, defined themselves in precisely the opposite manner, as independent entities that possessed their separate privileges, jurisdictions and identities which prohibited hamlets from claiming any rights to, or possession of, the commons once granted to the main village.⁹⁷⁸

Sometimes, however, such clear demarcations were challenging. If that were the case, peasants could plead before court as a group of individuals. For example, in 1512 Jan Liebens, Janne Hillen and their accomplices, all possessed a hay meadow in the “broek” of Koersel and filed a complaint against the inhabitants of Koersel. They claimed that every one of them and their ancestors had been in the peaceful possession of those meadows for over two, possibly sixty or even one hundred years, or for as long as anyone could remember. The inhabitants of Koersel, however, claimed that the meadows had to be open to village cattle from the harvest month until mid-May. As such, they forced their cattle onto the meadows on a daily basis, thereby doing injustice to the plaintiffs. To add legitimacy to the claim, they all gave a particularly detailed list of their landed property by stating the surface area and position of their hay meadows.⁹⁷⁹ These individuals, therefore, cleverly constructed a discourse that emphasized their status as land owners, one that had clear property rights that should not be disturbed in any way.

At times, however, this deliberate construction of an interest community cannot be witnessed particularly when groups of individuals were the defendants. They were often referred to as individual x, y, or z and their accomplices. In lawsuits concerning the destruction of fences and the deliberate violation of private property, such summary references to individuals prevailed. These cases, however, do demonstrate that peasants waging a lawsuit right up until the moment a sentence was passed, often did not react nor pleaded as individuals (see the percentage of groups in Figure 66 and Figure 67) As was the case with infra- and parajustice, the legitimacy of one’s claim was often augmented when performed in plain sight and in a group.⁹⁸⁰ If one person destroyed a fence, it might be perceived as a simple criminal fact, but if a collective of inhabitants appeared in public and destroyed a fence, it was deemed a symbolic action against that enclosure. The same went for courts. If one person objected against an enclosure, it could be considered as a single disgruntled opponent, however, if a group of owners, inhabitants or commoners filed a complaint, or defended their case against the

978 See chapter III for more information.

979 RAB, VB, 563, 76 (1512) Koersel

980 MÜLLER, *Conflict*; MÜLLER, “Arson”.

plaintiff, their bargaining power was significantly enlarged. In addition, the risk of weathering court fees and fines was shared by a larger group and therefore made more bearable.

Finally, different interest groups could back each other up if they had shared interests. The best example is the political elites of Campine villages and the average inhabitants. They often appeared before court as a unity and presented themselves as the village community. In other cases, however, they introduced themselves separately.⁹⁸¹ Even though it might seem obvious, village governments cannot be considered as the natural ally of its inhabitants in every case. As has been demonstrated with boundary conflicts, village aldermen and bailiffs acted according to a certain “rationale of governing”. Despite the ruling elites and the independent peasants sharing socio-economic backgrounds resembling each other closely,⁹⁸² village aldermen manifested divergent opinions to those of their neighbours when it came to jurisdictional issues such as boundaries for example. While they too possessed herds of animals,⁹⁸³ they did not share the view of the other independent peasants that boundary zones were more useful than hierarchal limits.⁹⁸⁴ In addition, tenant farmers who were portrayed as outsiders and therefore not entitled to the commons often did not defend their case on their own, but teamed up with their landlords.

The precise social profile of these plaintiffs and defendants remains obscure. Since they operated as interest groups, it is even harder to truly distinguish their background. Nevertheless, if we look at the functioning of a village community, outside the court, it becomes clear that certain groups tended to take a leading role. As Eline Van Onacker has demonstrated, all social layers of society could, and did, obtain political functions such as that of alderman, church warden, tax collector and so forth. Nevertheless, certain well-established families or the more wealthy peasant, originating from the upper three tax deciles of society, did have a more fundamental grip on the management of the village.⁹⁸⁵ The same goes for village meetings where certain leading figures who were often older, wiser, responsible community members, could leave their mark on the discussions and conclusions made about village affairs.⁹⁸⁶ Cottagers and smallholders (those without any herds of sheep or cattle), would therefore have been part of these village communities operating in court, but their agency to determine the agenda, arguments, interests or causes, would probably have been more limited. The group with most attributes would therefore have been the independent peasants, namely the upper 30 per cent of the community and the village governors. In addition, groups such as the hay meadow owners of Koersel would probably have had an even higher average social standing. In the

981 RAB, VB, 585, 1 (1531) Meldert.

982 VAN ONACKER, “Leaders of the Pack?”.

983 Ibid.

984 DE KEYZER, JONGEPIER, AND SOENS, “Consuming Maps”.

985 VAN ONACKER, “Leaders of the Pack?”.

986 DYER, *Everyday Life*; DYER, *The Political Life of the Fifteenth-Century*

case of Koersel, most peasants owned between 1 and 3 bunders of meadow.⁹⁸⁷ The fact that meadows were the most valuable land, combined with the fact that the average peasant only possessed around 1 to 5 ha, does suggest that we are looking at the higher middling groups of Campine society (see Chapter V).

Hardly any references to individual smallholders are to be found in these sentence registers. If peasants were able to join forces and act as communities, form interest groups or team up with other interest groups, they could fully participate in the formal judicial system. Maarten Van Dijck, however, has a valid point when claiming that financial or cultural barriers did exist.⁹⁸⁸ Even though peasants were indeed smart enough to find their way to court and they could indeed reach the first stage of a court case in the Council of Brabant, develop a judicial strategy, construct a legal discourse and defend their interests among schooled jurors and elitist officials, they were often not able to make it on their own. Consequently, only when an individual found support among his fellow community members or was able to form an interest community with like-minded spirits, was it possible to finish a case in court. Even though the poorest sections of society could start a court case as a threat to the opposition or as a next step in the conflict resolution, they were not able to call their opponents' bluff or benefit from a formal verdict which was one of the main reasons for opting for the ducal court in the first place. The higher middling groups or upper part of peasant society did, on the other hand, have individual access or could enter together with an interest community. Their juridical agency was the most powerful therefore.

VIII. The image of the Duke and his court | Motives for going to court

Why did these Campine peasants want to resolve their conflicts before the Council of Brabant? As stated before, a debate regarding the popularity of the central courts endures. On the one hand, the appearance of courts and sovereign councils has been considered a top-down initiative while, on the other hand, benefits for both the inhabitants and political elites such as lords, cities and inhabitants has been stressed.⁹⁸⁹ The choice by Campine peasants to go beyond village aldermen's benches is quite obvious. When discussing the issue of access to the commons between two communities, often involving the aldermen themselves, both parties

987 RAB, VB, 563, 76 (1512) Koersel.

988 VAN DIJCK, *Towards an Economic Interpretation*.

989 CHARLES TILLY, *Coercion, Capital and European States, Ad 990-1992* (Cambridge: Wiley-Blackwell, 1992). VAN DIJCK, *Towards an Economic Interpretation*; STEIN, *De Hertog En Zijn Staten*; KAGAN, *A Golden Age*; LE BAILLY, "Langetermijntrends"; STRETTON, *Women Waging Law*; HARDWICH, *Family Business*.

were aware that a neutral statement was impossible in the village court. For example, four references in the sentence registers can be found stating that they brought the issue before the highest court precisely because the judges of the local court were also involved and therefore the conflict could not be settled either locally or before the village aldermen's bench.⁹⁹⁰ Whether it was disputes concerning roads, fences, property, access rights, common land and jurisdictions, aldermen or lordly representatives such as the bailiff were always involved parties in one way or another. As such, it is logical that opposing parties tended to ask for an appeal in a different court. Moreover, when village inhabitants struggled against their own village government (as was the case with boundary conflicts), taking the matter to another institution was a rational choice. In addition, urban courts had their own logic and interests that did not really favour Campine village communities. The city of 's Hertogenbosch, for example, often initiated attempts to force the rural surroundings into a dependent relationship or their citizens were often involved in enclosure cases against neighbouring hamlets.⁹⁹¹ As a result, the court of 's Hertogenbosch would, for a large part of the Campine society, be considered biased. The Council of Brabant, beacon of ducal power and justice, appeared popular among Campine communities. This image of the Burgundian rulers as the alternative to corrupt bailiffs and aldermen is seen clearly in a tale that became quite popular in the fifteenth century. In this tale a bailiff had stolen a cow from a poor household that had refused to sell it to him. To complain about this matter, the poor farmer went to Count Willem III and pleaded for justice. The Count ordered that the farmer be compensated and stated that the bailiff's punishment for failing towards the Count would be much more grave. The bailiff was, in the end, sent to the executioner. A powerful image of the avenging ruler was therefore created.⁹⁹²

Even though Stein has claimed this image was dependent on the aura of objectivity that accompanied the sovereigns, I would argue that this was not necessarily the case. In my assessment, it was precisely the image of the Duke of Brabant not as a transcendent, just and neutral ruler, but as an involved party, with his particular interests, such as curbing the powers of the subaltern courts, that was the main reason Campine peasants and communities took their case to the highest, most expensive and furthest court. Even though the Dukes of Brabant were unreliable partners, and their interests could shift from opposing ecclesiastical institutions and feudal lords, towards embracing the nobility,⁹⁹³ they were still the most obvious political actors the Campine peasants were able to turn to (see chapter II and III).

990 RAB, VB, 585, 1 (1531) Meldert.; RAB, VB, 564, 6 (1508) Putte.; RAB, VB, 586, 104 (1538) Wijnegem.; RAB, VB, 595, 134 (1546) Oirschot.

991 J.P.A. COOPMANS, "De Onderlinge Rechtsverhoudingen Van 's-Hertogenbosch En Het Platteland Voor 1629," *Bijdragen tot de Geschiedenis* 58, no. 1-2 (1974); JACOBS, *Justitie En Politie*; M.M.P. VAN ASSELDONK, *De Meierij Van 's-Hertogenbosch: De Evolutie Van Plaatselijk Bestuur, Bestuurlijke Indeling En Dorpsgrenzen, Circa 1200-1832* (Oosterhout: Leonard, 2001); HEIN VERA, "Rechten Op Woeste Gronden in De Meierij Van Den Bosch," *Post Factum. Jaarboek voor Geschiedenis en Volkskunde*, no. 1 (2009).

992 STEIN, *De Hertog En Zijn Staten*.

993 VAN UYTVEN, "Vorst, Adel En Steden".

Their strategies, in the end, seemed to have been worthwhile. The Burgundian administration did not always favour peasant communities or particular claims, such as the maintenance of common rights, however, neither did they do the opposite. Fence disputes, for example, show that the Duke was not necessarily opposed to the violent destruction of fences as a reaction against alleged unlawful enclosures. Furthermore, claims that meadows had to be open after harvest did often receive a positive sentence. Those undertaking enclosure, however, did not necessarily need to fear the ducal court would constantly favour protesting communities, individuals or groups and the same tendency could be found with regards to other types of conflicts. The ducal administration often had a positive attitude towards common property, custom and common use rights.⁹⁹⁴ The real outcome, however, depended largely on the case itself and very specific circumstances as no correlation between certain arguments and sentences can be found. Everybody could, therefore, plead at the court and have a good chance of being heard fairly.⁹⁹⁵

The only group that can be pinpointed as being disproportionately favoured by the Council of Brabant, were the main ducal villages possessing formal charters dating back to the fourteenth century. As described in chapter IV, these communities possessed greater bargaining powers than their dependent small hamlets and practically won every case against these small hamlets, thereby removing their access rights even though they had probably used them for centuries. As ducal centre that had recently purchased or re-confirmed their ducal charters (see chapter III), they had the best chance of winning a lawsuit by going to a ducal court and therefore opted for these ducal courts rather than other institutions. As was demonstrated in relation to inclusion conflicts, those communities who were held in favour by the Duke in the form of written charters presented their disputes before the Council of Brabant more frequently. When visualised on a map, a clear concentration of inclusion conflicts discussed in the Council of Brabant can be detected in villages within the Duke's main land.⁹⁹⁶ While such premeditation cannot be demonstrated as clearly for other when we examine the content of the sentences for other types of conflicts, the geographical pattern reveals a very similar pattern.

994 On the matter of custom in general see: MICHAEL GOLDMAN, "'Customs in Common': The Epistemic World of the Commons Scholars," *Theory and society* 26, no. 1 (1997); HOYLE, ed., *Custom, Improvement and the Landscape in Early Modern Britain*; KING, "Legal Change"; THOMPSON, *Customs in Common*; WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*.

995 See databases: Sentence registers

996 By this I mean the "Land of Turnhout" where he was the direct landlord, and the region between Tilburg and Helmond and the current Dutch-Belgian border, where the Dukes had founded several "nova oppida".

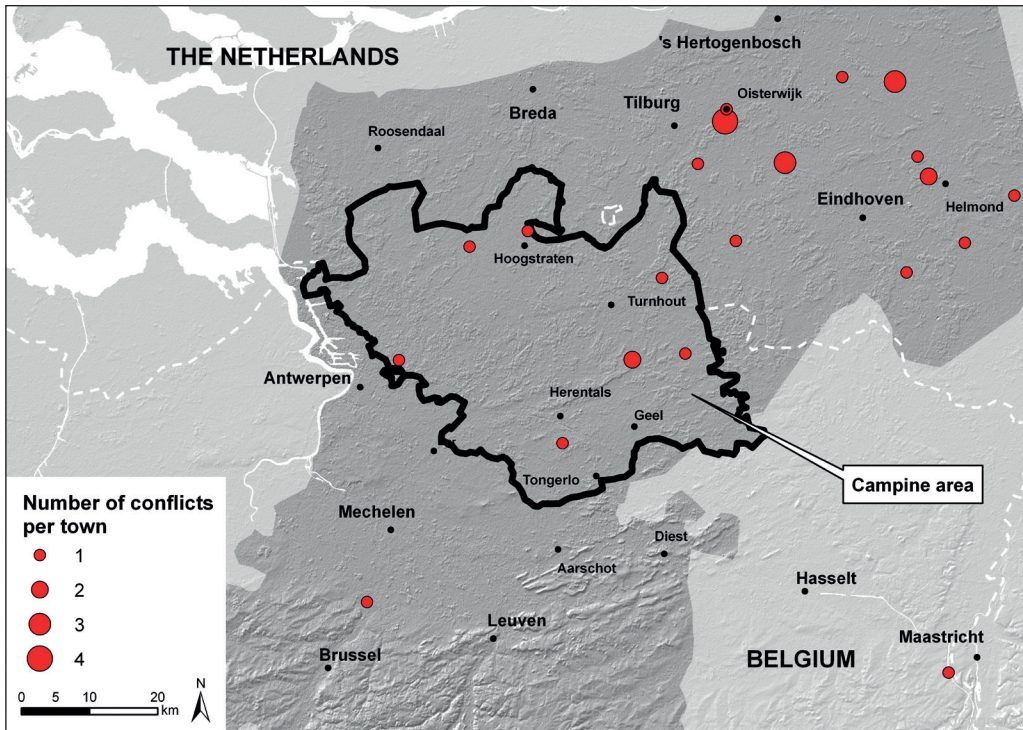


Fig 69 Map of the jurisdiction of the Council of Brabant, indicating selected and analysed cases in regard with their position towards the Campine area as defined in this thesis.⁹⁹⁷

The regions near Brussels, Herentals, Turnhout, Weelde, and especially Eindhoven, Helmond, Oosterwijk and Tilburg show a large concentration of conflicts (see figure 69). An ecological argument could be put forward as this axis corresponds largely to a geographically delineated area with typical, dry and fragile characteristics. Nevertheless, the concentration of conflicts in the loamy part on the southern border of the research area does not correspond to this image. While the possibility exists that their local institutions were less efficient in dealing with internal and external conflicts, the explanation has probably most to do with the litigants' objectives and status. First of all, this upper corner had the largest concentration of rural towns and urban centres in the area. Oosterwijk especially was engaged in a range of conflicts with the rural villages and hamlets in its surroundings. Nevertheless, the dominant type of conflicts arising there were issues of inclusion and exclusion as well as communal rights' conflicts and these also occurred in the smallest centres, such as Isschot near Kasterlee.⁹⁹⁸ I would suggest, therefore, that this concentration can largely be explained due to the fact that this was the axis of power and influence of the Duke. Communities under the rule and protection of the Duke assessed their situation and, as a result, opted for the sovereign council more often than their Campine neighbours.

997 Based on database of the sentence registers, made by Iason Jongepier.

998 RAB, VB, 594, 134 (1540) Isschot.

Next, Campine peasants could and did opt for the sovereign court because of its accessibility. Griet Vermeesch has claimed that from the seventeenth century onwards, the gap between elite culture and discourses and the common inhabitants and peasants enlarged, as has been shown for elite culture and lifestyle in general.⁹⁹⁹ In the fifteenth and sixteenth centuries, however, the judicial system did not frighten peasants. First of all, in the regional councils the practice of hiring a “procureur” or solicitor was quite dominant, according to Robert Stein.¹⁰⁰⁰ According to Kagan there were three kinds of legal experts that appeared alongside litigants. First, the advocate, a university-trained lawyer helping the client with legal concepts and strategies. Next, the attorney who was a procedural expert helping litigants find the best strategies to succeed in court. Finally, the “procureur” who functioned as a legal agent to ensure that the lawsuit proceeded as planned, without providing real legal advice.¹⁰⁰¹ Godding described the difference between an advocate and solicitor as a counsellor pleading in court compared to a representative of the party who provided administrative advice but not legal expertise.¹⁰⁰² Robert Stein, however, has claimed that the “procureurs” were experts in common law and could speak on behalf of their clients in case of their absence.¹⁰⁰³ In at least 63 sentences, a “procureur” was explicitly mentioned. Considering that a sentence was only a summary of the main arguments rather than a full overview of the entire lawsuit, most references to the actions of the “procureur” will probably have been left out.¹⁰⁰⁴ Nonetheless, finding 63 references in all types of conflict is a good indication that peasant communities, as well as individuals, groups or lords, made use of these procedural experts to guide them through the mazes of the court. Schooled lawyers, however, only appear four times, of which one is referred to only as having the profession of an advocate without really claiming one of the parties had hired a lawyer.¹⁰⁰⁵ On every occasion any of the plaintiffs hired one, they were all as individuals appearing in court to defend their private property or to secure their access to the commons.¹⁰⁰⁶

It has to be stressed, however, that these solicitors were no legal experts and therefore had no part in creating and formulating the legal strategies and discourses used in court. The proposition put forward by Kagan, that peasants were anything but ignorant countrymen, befuddled by the complexity of the legal process,¹⁰⁰⁷ is certainly true for Campine peasants as well. They cleverly constructed suitable identities and coalitions, composed legal arguments befitting their particular case and adopted their statements, strategies and concepts

999 VERMEESCH, “Explaining the ‘Legal Revolution’”.

1000 STEIN, *De Hertog En Zijn Staten*, 171.

1001 KAGAN, *Lawsuits*, 52.

1002 PH. GODDING, *Le Conseil De Brabant Sous Le Règne De Philippe Le Bon (1430-1467)*, 123.

1003 STEIN, *De Hertog En Zijn Staten*.

1004 See databases: Sentence registers

1005 RAA, VB, 559, 1 (1509) Tilburg; 576, 3 (1522) Leende (only brief reference to a lawyer); 582, 253 (Rijsbergen); 598, 331 (1547) Kontich.

1006 Ibid.

1007 KAGAN, *Lawsuits*.

regarding their final goal. While communities often stressed custom, rituals and unwritten practices against a lord possessing charters and privileges, they changed their tactics against neighbouring communities, by presenting reverse arguments and dismissing long-standing practices. Similarly, peasant communities could, within one lawsuit, vigorously defend village charters and documents, while negating them entirely in a different conflict. For example, the community of Kalmthout referred to their charters and bylaws in order to defend their rights in relation to the abbey of Tongerlo by trying to absolve communal rights on the peat-rich commons around Nieuwmoer,¹⁰⁰⁸ while claiming they had never heard of those charters listing the seigniorial boundaries in a conflict concerning boundary transgressions.¹⁰⁰⁹ These rural middling groups were therefore shrewd enough to enter court and employ adapted and tactical discourses in order to win their case. In addition, the costs were not insurmountable. Civil procedures were, however, costly. Plaintiffs had to pay for every sentence and costs increased at every stage the lawsuit entered. On average, a lawsuit would have cost a third of an annual wage of a master mason in Mechelen, according to Maarten Van Dijck.¹⁰¹⁰ Robert Stein has stated that on average, a case before the Council of Holland cost 8 pounds. He attested that skilled labourers were indeed the first social group that was able to pay such a sum, while unskilled labourers or small cottagers were not.¹⁰¹¹ For an individual peasant, focussing on subsistence farming with only a minimum of commercial activities, these costs were difficult to bear. By forming collectives, however, the entrance fees and fines were much less of an obstacle. A group of 10 proprietors, owning between 1 and 3 bunders of meadow could take their chance in court. Since the exact legal costs and socio-economic backgrounds of the plaintiffs and defendants remain obscure, it remains difficult to gain a clear picture of the impact thereof on the Campine litigants.

IX. Conclusion

Behind the façade of efficient and unrestricted and inclusive common pool resource institutions, conflicts and tensions are mostly hidden. Nevertheless, quarrels concerning the management and use of the Campine commons existed between the different interest groups. Even the most basic design principles, such as inclusion and exclusion and boundaries, were

1008 AAT, Section IV, Fund of Kalmthout-Essen-Huiberghen, 325, Abolishment of communal rights, 1623.; AAT, Section IV, Fund of Kalmthout-Essen-Huiberghen, 326, Juridical advice for the abbey of Tongerlo concerning the communal use rights, 1624-1628.; AAT, Section IV, Fund of Kalmthout-Essen-Huiberghen, 328-329, Sentence regarding communal use rights in favour of the community of Kalmthout-Essen, 1623-1628.

1009 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

1010 VAN DIJCK, *Towards an Economic Interpretation*.

1011 STEIN, *De Hertog En Zijn Staten*.

subject to discussions. Throughout the late medieval period, however, these conflicts or tensions were not able to disrupt the social cohesion in any fundamental way, nor was one interest group able to introduce their interests at the cost of the other groups. In contrast with the Brecklands in Norfolk, where peasants wanted to safeguard their interests vis à vis the manorial lords who were supported by the local and even royal courts and were always overruled by their power, Campine peasants were able to fend off intrusions via different conflict resolution mechanisms.

First of all, Campine communities invested serious time and effort into maintaining the peace. Community members and village officials were required to keep an eye on their neighbours and to interfere when infractions were encountered in order to keep the peace and solve conflicts without having to resort to the local aldermen's bench. Maintaining order and preventing tensions was therefore one of the main priorities of these Premodern communities.

When prevention failed, formal courts were not necessarily the logical choice, however. As Martin Dinges, Benoit Garnot and Miriam Müller have stated, informal channels to discuss and settle disputes were preferred.¹⁰¹² Even though I did not have the opportunity of analysing whether two-thirds of all conflicts were settled via informal conflict resolution mechanisms, the formal sentences do provide evidence of peasants relying on forms of infrajjustice and parajjustice as defined by Benoit Garnot.¹⁰¹³ To show a grievance concerning alleged illegal enclosures through the ritualised destruction of fences or hedges was an accepted step in the process of settling a dispute. Another option was the introduction of mediators whereby the conflict could be discussed in a semi-public sphere until a compromise or settlement was reached.

Certain individuals or groups could, however, not rely on such informal conflict resolution mechanisms. Forms of infrajjustice or parajjustice required a setting whereby the community had a shared concept of what was just and how a conflict could be resolved. In addition, both parties had to be accepted members of society in order to settle disputes. Therefore, if tenant farmers were targeted by the village community and excluded from using the commons, or if different interest groups within a village (or two different villages) had fundamentally diverging opinions concerning communal property or communal rights, such informal mechanisms were insufficient. The Campine peasant could therefore turn towards their local rural aldermen's bench, urban councils and eventually to the Council of Brabant. Even though a certain hierarchy did exist, and particular cases were the prerogative of a certain court, the Burgundian royals had created several loopholes and extended the jurisdiction of the Council of Brabant so as to include several prerogatives of subaltern courts.

1012 DINGES, *The Uses*; GARNOT, "Justice, Infrajjustice"; MÜLLER, *Conflict*.

1013 GARNOT, "Justice, Infrajjustice".

As such, Campine peasants were able to shop around and opt for the court which would provide the most efficient, or rather, beneficial juridical guidance or sentence for their particular case. Therefore, while peasants did go to local aldermen's benches and urban courts in first instance, or to ask for an appeal or advice, major issues concerning the survival of the commons or the basic design principles of the common pool resource institutions appeared surprisingly often at the Council of Brabant and even made it to the final stage. Even though I was not able to analyse all cases that were started, it appears that the Council of Brabant was accessible for the average Campine peasant just as Kagan, Piant and Brooks had stated for other European sovereign courts.¹⁰¹⁴

Immediately after the Council of Brabant had reached its position as most important court of appeal in 1470, the amount of cases instigated by Campine communities or peasants soared. They rationally and voluntarily settled their disputes on this sovereign level because the image the Burgundian rulers had of being more benevolent and trustworthy judges enticed them to this highest level to settle their conflicts concerning the main design principles of the common pool resource institutions and enclosure. Especially ducal villages, located within the Duke's axis of power, attempted to file cases in the Council of Brabant as their odds of winning were higher.

Not everybody, however, had individual access to the Council of Brabant or could reach the final stage of a sentence. While the rural elites and wealthier independent peasants were able to afford a court case on an individual basis, most peasants developed the strategy of forming collectives and appear in cohorts as a group or community. This enhanced their visibility, power and legitimacy. In addition, it gave them access to enter court immediately, thereby skipping unwanted levels of justice. Campine peasants were therefore able to negotiate all aspects of their commons on all levels and through different forms of justice, which secured the endurance of the common denominator.

1014 BROOKS, *Pettyfoggers*; KAGAN, *A Golden Age*; PIANT, *Une Justice Ordinaire*.

WINN

ALL WE ARE IS DUST IN THE WIND
THE CONSTANT THREAT OF SAND DRIFTS

VIII. ALL WE ARE IS DUST IN THE WIND | THE CONSTANT THREAT OF SAND DRIFTS

As we have seen, late medieval Campine communities may have been able to reach both a social, economic and political equilibrium, however, were they ultimately successful in securing a sustainable environment and avoid a “tragedy of the commons”?¹⁰¹⁵ Did their strategy to opt for more informal institutions and compromises between the interests of the different social groups within society benefit the natural environment, or was it at the cost of the ecological equilibrium? The consensus seems to have emerged that these late medieval communities failed in this. The period has been identified as one when the environment was significantly degraded and sand drifts scourged both the Campine area and similar ecological regions such as het Gooi, the Veluwe and Drenthe.¹⁰¹⁶ In fact, not only were sandy inland regions afflicted, but those sand dunes along the coast as well. Over-exploitation and slack management caused sand drifts, together with major floods.¹⁰¹⁷ Archaeological finds of medieval arable land covered by sand provide living proof of the devastating actions of previous societies. Nevertheless, new research and especially new methods of dating sand deposits, namely optically stimulated luminescence (OSL) dating, has altered our perspective on Premodern sand drifts. While societies before the late medieval period were considered quite harmless to their environment, since the population pressure and intensive agriculture practices were considered to have been less intrusive, their impact is now also entering the picture. Jan Sevink Eduard Koster, Bas van Geel and Jakob Wallinga, for example, have recently discovered that near Hilversum in het Gooi, late Neolithic communities that lived around 3000 BC would have been able to start a major drift sand phase.¹⁰¹⁸ In addition, also the Roman settlements and early medieval hamlets have encountered devastating drifts.¹⁰¹⁹

Nevertheless, the late medieval period is still believed to have been the culmination point of these sand drifts and ecological disturbances. Several studies, focussing on either historical

1015 HARDIN, “The Tragedy of the Commons”.

1016 VAN ZANDEN, “The Paradox of the Marks”; JAN SEVINK et al., “Drift Sands, Lakes, and Soils: The Multiphase Holocene History of the Laarder Wasmeren Area near Hilversum, the Netherlands,” *Netherlands Journal of Geosciences* 92, no. 4 (2013); VAN GINKEL AND THEUNISSEN, *Onder Heide En Akkers*; VAN MOURIK, *Landschap in Beweging*.

1017 SOENS, *De Spade in De Dijk*; TIM SOENS, “Threatened by the Sea, Condemned by Man? Flood Risk, Environmental Justice and Environmental Inequalities Along the North Sea Coast 1200-1800,” in *Environmental and Social Justice in the City. Historical Perspectives*, ed. Geneviève Massard-Guilbaud and Richard Rodger (Cambridge: The White Horse Press, 2011). BEATRIJS AUGUSTYN, *Zeespiegelrijzing, Transgressiefasen En Stormvloed in Maritiem Vlaanderen Tot Het Einde Van De XVIde Eeuw* (Brussels: Algemeen Rijksarchief 1992); SOENS, *De Spade in De Dijk?*

1018 SEVINK et al., “Drift Sands”.

1019 VERHAERT et al., “Een Inheems-Romeinse Begraafplaats”; DERESE et al., “A Medieval Settlement”; HEIDINGA, *The Birth of a Desert; the Kootwijkerzand*; EDUARD KOSTER, *De Stuijzanden Van De Veluwe: Een Fysisch-Geografische Studie*. (Amsterdam: Fysisch-Geografisch en Bodemkundig Laboratorium, 1978).

data or OSL methods, have proven that sand drifted continuously during the late medieval period.¹⁰²⁰ This focus on the presence of drift sands, however, distracts our attention from the main question concerning whether or not the environment was fundamentally disturbed and threatened occupation and use of the region. After all, recent tendencies within the field of ecological history have shown that we must discern between natural events and human disasters. While certain ecosystems and landscapes generate specific natural events that are able to create a “landscape of risk”, such events do not necessarily have to lead towards a disaster.¹⁰²¹ Following Tierney, it is important to pay attention of the social causes of disasters and consider which societies were able to detect hazards as foreseeable episodes, and which did not.¹⁰²² Disasters, such as a mortality crisis, substantial loss of land, massacre of livestock, etc., are endemic to certain societies that were not organised to resist shocks. In order to assess the disastrous character of sand drifts therefore, geological and OSL studies such as those in the Laarder Wasmeren, Kootwijkerzand, Pulle and Lille, should dedicate more attention to the exact location, intensiveness and devastating character of the drifts rather than merely analysing when these drifts happened.¹⁰²³ While Heidinga and Koster were able to identify that the village of Kootwijk had to be deserted around the tenth century because of the sand drifts that covered the arable fields and homesteads,¹⁰²⁴ convincing evidence of similar destructions in the late medieval period is missing. This is all the more remarkable since, by the thirteenth century, historical documents registering loss of earnings due to loss of land, were present.¹⁰²⁵

This chapter will therefore focus on the evidence relating to the cover sand that was deposited during the young Dryas period and the occurrence of sand drifts between the last Ice age and the late medieval period. In addition, studies on similar regions such as the Veluwe and het Gooi will be used as additional evidence to understand sand drifts, as OSL dating studies are still thin on the ground in the Netherlands and Belgium. Afterwards, this geological and ecological information will be analysed from an historical perspective. Especially these late medieval drifts will be central. The question will focus on the distinction between natural events and human disasters. “Events are recognizable by virtue of their relatively sudden onset and the causalities, damage and disruption they cause”. Disasters, on the contrary, can be labelled

1020 DERESE et al., “A Medieval Settlement”; SEVINK et al., “Drift Sands”; JAN M. VAN MOURIK AND W.A. LIGTENDAG, “De Overstoven Enk Van Nabbeget,” *Geografisch Tijdschrift* 22, no. 5 (1988).

1021 UWE LÜBKEN AND CHRISTOF MAUCH, “Uncertain Environments: Natural Hazards, Risk and Insurance in Historical Perspective,” *Environment and History* 17 (2011); KATHLEEN J. TIERNEY, “From the Margins to the Mainstream? Disaster Research at the Crossroads,” *Annual Review of Sociology* 33 (2007); DIANA M. LIVERMAN, “Vulnerability and Adaptation to Drought in Mexico,” *Natural Resource Journal* 39, no. 1 (1999).

1022 TIERNEY, “From the Margins”, 509.

1023 SEVINK et al., “Drift Sands”; HEIDINGA, *The Birth of a Desert; the Kootwijkerzand*; KOSTER, *De Stuijzanden*; DERESE et al., “A Medieval Settlement”.

1024 H.A. HEIDINGA, “De Veluwe in De Vroege Middeleeuwen: Aspecten Van De Nederzettingsarcheologie Van Kootwijk En Zijn Buren” (University of Amsterdam, 1984); HEIDINGA, *The Birth of a Desert; the Kootwijkerzand*; KOSTER, *De Stuijzanden*.

1025 AUGUSTYN, *Zeespiegelrijzing*.

a social affair.¹⁰²⁶ The way societies organise themselves and interact with nature determines whether or not a sustainable development or rather a disaster is created.¹⁰²⁷ As a result, it is important not only to analyse the environment and direct reactions to hazards or disasters, but also to look at the social context, to fully grasp the causes and effects of natural induced events such as disasters. According to Bas Van Bavel and Erik Thoen we have to investigate the role of property rights and the importance of the social context, including political power, influence, norms and traditions and beliefs held by various segments of society.¹⁰²⁸ Were these drifts destructive natural events that hit unprepared late medieval Campine communities, lacking in resilience, by surprise and were therefore disastrous? Or were they foreseeable manifestations, that were effectively managed and could therefore not fundamentally disturb the cultivation and occupation of the region, with a sustainable environment as a result?

Finally, I will try to explain what made these Campine communities resilient (or not as the case may be) towards sand drifts and land degradation. Until now, quite a number of models have been put forward to explain why historical communities were able to cope with natural events and disasters. Ostrom stressed the importance of commonly managed resources via common pool resource institutions, Daniel Curtis stated that the socio-economic layout of the society was determinant and labelled egalitarian persistent and dynamic societies as most resilient, while Rosa Congost, Rui Santos, Susan Hanna and Tim Soens have put property rights forward as an explanation.¹⁰²⁹ Therefore, our knowledge of the Campine property relations, socio-economic lay-out and common pool resource institutions will be re-visited to explain which factors were decisive for the late medieval Campine area.

I. The classical perspective | Aeolian depositions and late medieval sand drifts

One of the most basic characteristics of the Campine area remains the dominance of sandy soils (see chapter II). During the last Ice Age, dating back 114000 – 10300 years and especially

1026 TIERNEY, "From the Margins", 509; FRANZ MAUELSHAGEN, "Flood Disasters and Political Culture at the German North Sea Coast: A Long-Term Historical Perspective," *Historical social research* 32, no. 3 (2007); VAN BAVEL AND THOEN, *Rural History and the Environment*, 16.

1027 TIERNEY, "From the Margins", 520.

1028 VAN BAVEL AND THOEN, *Rural History and the Environment*, 37.

1029 OSTROM, *Governing the Commons*. CURTIS, "Pre-Industrial Societies". CONGOST AND SANTOS, *Working out the Frame: From Formal Institutions to the Social Contexts of Property*; SUSAN HANNA AND M. MUNASINGHE, eds., *Property Rights and the Environment. Social and Ecological Issues* (Washington DC: Beijer international institute of ecological economics and the world bank, 1995); SOENS, *De Spade in De Dijk*; TIM SOENS, "Flood Security in the Medieval and Early Modern North Sea Area: A Question of Entitlement?," *Environment and History* 19, no. 2 (2013).

the young Dryas period, also known as the Loch Lomond stadial (12,700-11560 BP), these wind-borne sand deposits were introduced, and defined the Campine's superficial geology and structure.¹⁰³⁰ In fact the Campine area is only a tiny part of the cover sand belt that was created during that period, ranging from the Brecklands in England till present-day Russia.¹⁰³¹ According to Jan Sevink, these cover sands can easily be distinguished from sand drifts as the boundary was marked by the presence of an earliest paleosol.¹⁰³² Afterwards these cover sand belts were overlaid by vegetation. The vegetation was initially most probably open heathland vegetation, followed by a period where woodlands were dominant. In het Gooi, Sevink has analysed the pollen spectrum and saw a predominance of *Pinus* and *Corylus*.¹⁰³³ The presence of pine forests (which was supplemented with a mixed forest later on) was detected in the Campine area as well.¹⁰³⁴ Consequently, the cover sands were consolidated and remained stable. The circumstances required to initiate the drifting of the cover sands are the presence of top layers of loose quartz, together with fairly dry conditions, extensive open spaces, wind and uncovered soils.¹⁰³⁵ Therefore, as long as the vegetation covered the sand layers beneath, no re-sedimentation or drifts could occur.

When the vegetation, however, was destroyed or degraded, these original sand layers or uncovered top soils could easily start to drift. In addition, once a sand dune had become active, it regenerated itself quite easily, so that it was difficult to stop the process and consolidate it again. Holocene sand drifts were a continuous process in the entire cover belt area. According to Koster, local re-sedimentation by wind of terrestrial deposits, resulting in so-called drift sands, occurred on a large scale from the beginning of the Neolithic period up to the present mainly in the western part of the sand belt.¹⁰³⁶ Only fairly recently has it been established that the topsoil was uncovered enough to create major drifts from the late medieval period onwards. Due to the expansion and intensification of agriculture through the use of grazing herds and plaggen fertilisation, the woodlands and, later, even heather vegetation was degraded to such a degree that sand drifts started to threaten the region.¹⁰³⁷ In addition, the growing number of roads and pressure from increased levels of transport, have been considered as being detrimental.¹⁰³⁸ This, after all, is the dominant vision, portrayed both by historians as well as

1030 KOSTER, *Origin and Development*.

1031 Ibid.

1032 SEVINK et al., "Drift Sands", 250.

1033 Ibid.

1034 BASTIAENS AND DEFORCE, "Geschiedenis Van De Heide". BASTIAENS et al., *Inheemse Bomen*.

1035 KOSTER, *Origin and Development*.

1036 KOSTER, *Aeolian Environments*, 145.

1037 K. BEERTEN, K. DEFORCE, AND D. MALLANTS, "Landscape Evolution and Changes in Soil Hydraulic Properties at the Decadal, Centennial and Millennial Scale: A Case Study from the Campine Area, Northern Belgium," *Catena* 95 (2012); VERA, "... Dat Men Het Goed"; JOSEF FANTA AND HENK SIEPEL, eds., *Inland Drift Sand Landscapes* (Zeist: Publishing, 2010).

1038 AUGUSTYN, *Zeespiegelrijzing*, 260-261.

geologists and archaeologists.¹⁰³⁹ The periods prior to the later Middle Ages were considered ecological stable periods.¹⁰⁴⁰ According to Hein Vera, several rent registers and charters indicate that sand-drifting became an acute problem from the fourteenth century onwards. Rent registers listed fields covered with sand and charters from the Duke of Brabant reveal threats against communities that failed to stop the drifting of sand, between the fourteenth and fifteenth centuries.¹⁰⁴¹ For the provinces of Overijssel, Groningen and Drenthe, Jan Luiten Van Zanden has outlined a similar picture. Examining the disappearance of wood coverage in those regions, Van Zanden stated that it resulted in serious deterioration of the environment particularly during the sixteenth century. The main causes, according to Van Zanden, were a rising population which could not be halted by the Marks (CPRI's), as well as the failure to manage or apply rules effectively. Consequently, sand drifts were considered a later medieval and Early Modern phenomenon that was only halted in the eighteenth century.¹⁰⁴²

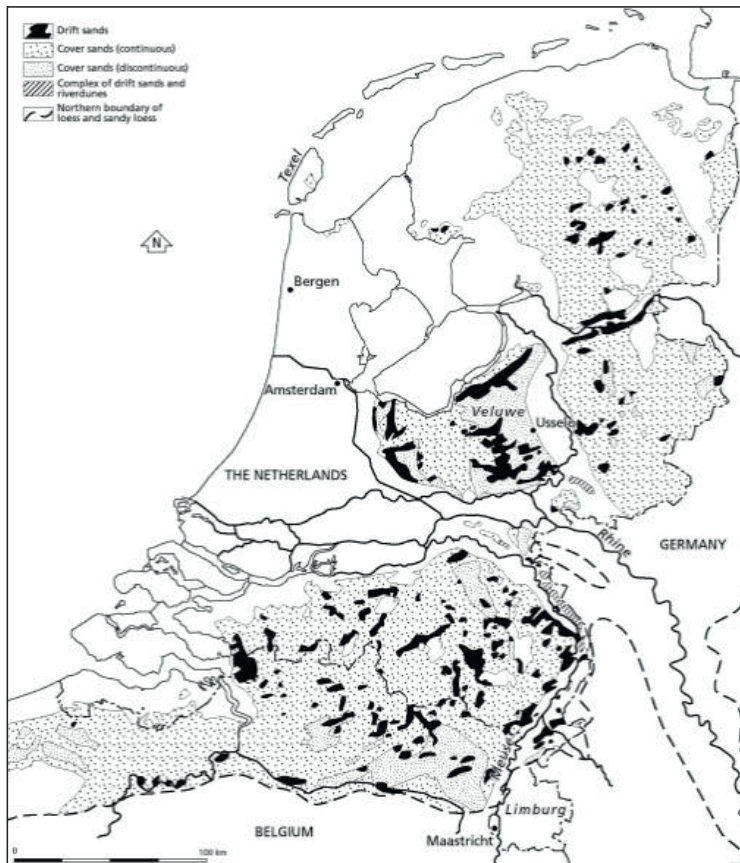


Fig 70 Map of the Low Countries showing Aeolian deposits. Source: Koster¹⁰⁴³

1039 ANNA BROERS, "Drift Sand Activity Phases in Nw Europe," (Wageningen University, 2014).

1040 DERESE et al., "A Medieval Settlement", 340.

1041 VERA, "... Dat Men Het Goed".

1042 VAN ZANDEN, "The Paradox of the Marks".

1043 Ibid., 27.

This image largely corresponds with a more general opinion about late medieval communities and their destructive attitude towards their environment. For coastal Flanders, sand drifts and the degradation of coastal dunes have also been a hotly debated issue. Just like in the inland areas, it is the late medieval period between the thirteenth and fifteenth centuries that has been labelled disastrous because of sand drifts.¹⁰⁴⁴ According to Beatrijs Augustyn, the old coastal dunes were created during the last Ice Age, after which they stabilised until the high Middle Ages, since the rural communities and the Count of Flanders limited their occupation and agricultural activities to the zone behind the natural flood defence line.¹⁰⁴⁵ The original sturdy vegetation of European beach grass had by then turned into the climax vegetation: birch woodlands.¹⁰⁴⁶ From the thirteenth century onwards, however, the Count of Flanders founded several cities precisely in the Dunes. Oostende is one of the best examples of this. Both habitation and pastures were transported into the dunes and sheep had largely made way for cattle at this time. Finally, the cities had to be connected by roads, which led to intensive transport levels. Consequently, the cover vegetation was degraded and, in the case of Oostende, the dunes were even levelled. This resulted in large-scale sand drifts with the creation of new dunes more inland. These uncovered and drifting dunes were no match for the infamous storm floods that were prone to hit the North Sea coastline, resulting in several floods such as the Vincentius flood of 1334 which washed away the greater part of Oostende.¹⁰⁴⁷ In the near surroundings, several other villages and hamlets were either covered by drift sands or flooded because of a degradation of the dunes.

II. OSL | New methods, new results

This classic image of inland sand drifts in the cover sand belt is, however, largely due to a lack of evidence and the presumption that intensive exploitation must have been the cause for the sand dunes that we can still witness today. Dating the exact period when sands started to drift has been extremely difficult until now. Sites without archaeological elements or organic matter suitable for carbon dating have remained a mystery. One has had to rely on the presence of peat layers or charcoal to perform precise ¹⁴C dating.¹⁰⁴⁸ AMS ¹⁴C dating had solved some of the problems due to the fact that specific plant remains could be dated. Nevertheless, such remains are largely limited to peat layers and intercalated peat layers that are quite rare in

1044 SOENS, *De Spade in De Dijk*; SOENS, *Threatened by the Sea*; SOENS, "Flood Security in the Medieval and Early Modern North Sea Area: A Question of Entitlement?".

1045 AUGUSTYN, *Zeespiegelrijzing*.

1046 *Ibid.*, 290-292.

1047 *Ibid.*, 273.

1048 CASTEL, "Late Holocene Aeolian Drift Sands".

dry drift sands.¹⁰⁴⁹ New techniques, however, may well have provided a solution. Thanks to optically stimulated luminescence (OSL) studies, sand layers on their own can be dated quite accurately.¹⁰⁵⁰ While in 2007, Koster remained sceptical as to the accuracy of these tests, advances have been made and OSL techniques have been consistently used to date sand drifts and quartz layers.¹⁰⁵¹ Consequently, the image of an increasing pressure on the ecological environment prior to the late medieval period must be revised.

Jan Sevink and his colleagues have studied the Groot Wasmeer near Hilversum in the region het Gooi which is, ecologically speaking, extremely similar to the Campine area and have discovered that the prehistoric period was not as stable as presumed. The sand dune is located in the former wet and swampy part of the heath lands surrounding the hamlets and villages near Hilversum. After being open and wet for the period after the last Ice Age, the region eventually became wooded.¹⁰⁵² Their most striking conclusion was that ericaceous vegetation was predominant from very early in the Holocene period onwards. The earliest Holocene soil that was buried by drift sand occurred around 6500 BC. A major drift sand phase, however, is to be located around 3000 BC, exactly when the first intensive period of land exploitation took place. The main causal factors seem to have been grazing and burning of the vegetation for exploitation.¹⁰⁵³

Later periods witnessed very similar processes. According to Verhaert, Roman settlements also encountered sand drifts, as indicated in the village of Ravels, within the Campine area.¹⁰⁵⁴ During an excavation of a burial place in Ravels-Weelde it was discovered that the entire site (as well as a nearby fen), had been covered by a sand layer and that was big enough to protect the graves present at the site from disturbances in later periods.¹⁰⁵⁵ Roman settlers, therefore, already exploited the area to such an extent that a significantly extensive area was uncovered and became victim to raging winds so strong as to create sand drifts. After a period of relative abandonment and stabilisation when the forests and vegetation were partly recovered, the early Middle Ages witnessed a renewed exploitation period (see chapter II). By the seventh and eighth centuries, the high sandy ridges, best suited for arable production, were again reclaimed and large unenclosed fields were created.¹⁰⁵⁶ Despite the absence of large sheep herds and plaggen fertilisation, the exploitation was intensive enough to clear the surrounding

1049 SEVINK et al., "Drift Sands", 246.

1050 For more information: ANN WINTLE, "Luminescence Dating of Quaternary Sediments - Introduction," *Boreas* 4 (2008).

1051 KOSTER, *Aeolian Environments*, 153; DERESE et al., "A Medieval Settlement".

1052 SEVINK et al., "Drift Sands", 253.

1053 *Ibid.*, 260.

1054 VERHAERT et al., "Een Inheems-Romeinse Begraafplaats".

1055 *Ibid.*

1056 It is likely that the late medieval open fields could have dated back to much earlier exploited fields as described by RENES, "Grainlands".

forests for the collection of construction wood and create pasture for livestock. Even though these settlements were considered to have been harmless for the environment, the studies of Van Mourik and Derese suggest otherwise. In a recent excavation of a site in Pulle, in the Campine area, Cilia Derese and her colleagues discovered an abandoned habitation site near present-day Pulle. The site was certainly inhabited from 430-600 CE, 640-780 CE and 770-900 CE, according to carbon dating and scarce pottery shards.¹⁰⁵⁷ Traces of Iron Age habitation on the site have even been encountered.¹⁰⁵⁸ More in-depth information is given in a report by Nele Eggermont et al.¹⁰⁵⁹ In the excavated site, several traces of pole pits, huts and wells have been discovered, suggesting that this was an inhabited site.¹⁰⁶⁰ Proof of late medieval habitation is, however, missing. Instead the layer was covered by a 40 cm thick layer of drift sands (see figure 71).

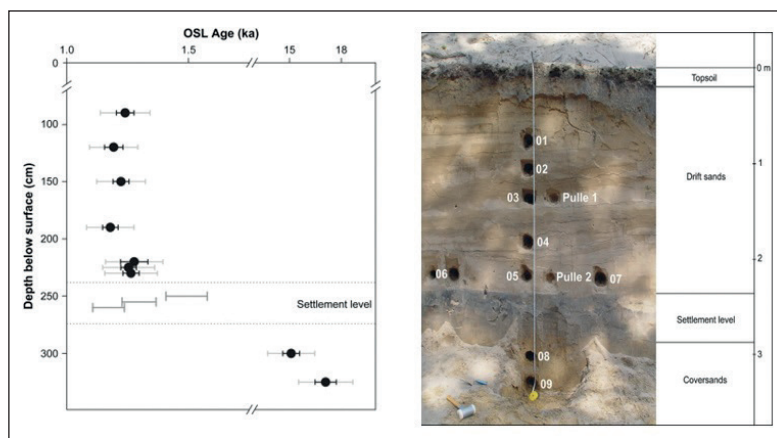


Fig 71 Plot of the optical and radiocarbon ages against the depth below the surface and photograph of the investigated dune profile, showing the location of the samples collected for optical dating. Source Derese et al.¹⁰⁶¹

After OSL dating, it was discovered that the entire layer had approximately the same age, indicating that Pulle witnessed a short period of sand drifts, covering this part of the habitation, which would have forced the inhabitants to leave the site.¹⁰⁶² The early medieval hamlets, therefore, had reclaimed vast and unenclosed arable fields so as to induce sand drifts that threatened even early medieval villages. The same process was witnessed in a comparable region in the Veluwe in the Netherlands, called Kootwijkerzand. During the last century, a deserted and completely covered village was discovered in one of the surviving sand dunes called Kootwijkerzand. Since this site was not burdened by modern habitation, a thorough investigation was possible. It appeared that the site was inhabited from around the year 700 after a long period of desertion after the Roman occupation. By the ninth century, the hamlet

1057 DERESE et al., “A Medieval Settlement”, 337.
 1058 EGGERMONT et al., “Nederzettingssporen”, 11.
 1059 Ibid.
 1060 Ibid.
 1061 DERESE et al., “A Medieval Settlement”, 338, 340.
 1062 Ibid., 340.

was greatly expanded and large arable complexes were reclaimed from the surrounding wood- and wastelands. This large-scale reclamation, in combination with a period of serious drought, however, created the sand drift that would eventually cover the entire village. Arable production became impossible, wells were destroyed and the inhabitants had to move elsewhere.¹⁰⁶³ Koster, however, does not believe the medieval optimum was an extremely dry period, and refers to over-exploitation as one of the main causes for sand drifts.¹⁰⁶⁴ This brought Derese to the conclusion that the early medieval period can no longer be considered as a stable period, one with only minor sand drifts.

III. The late medieval period | Disasters or natural events?

Nonetheless, it is still widely accepted that the major sand drifts occurred during the late medieval period, from the thirteenth century onwards.¹⁰⁶⁵ After all, the Campine area witnessed a sustained growth after the thirteenth century, which lasted until the second half of the fifteenth century. In most parts of Europe during the “calamitous fourteenth century”¹⁰⁶⁶, populations declined, urban and rural economies dwindled and pests and wars ravaged continuously.¹⁰⁶⁷ In the coastal region, the combination of thirteenth century growth and intensification, had created the worst drift sands and floods ever recorded.¹⁰⁶⁸ The fifteenth century showed a rather modest recuperation, only to be followed by a renewed crisis during the second half of the century. Nevertheless, miraculously, the Campine society was only mildly affected by this crisis. As a result, the culmination of the ecological pressure reached in the fourteenth century continued during the fifteenth century. Both population pressure, arable production, cattle grazing and sod collecting ensured a high level of ecological pressure (see chapter II). At that time, given their technological, demographical and agricultural limitations, they had reached their “production margins”. “The boundary of production is bounded by natural elements and by the limits on the amount of land that could be used, colonized and/or reclaimed for agricultural production - in other words by the limits of the

1063 H.A. HEIDINGA, “Indications of Severe Drought During the 10th Century Ad from an Inland Dune Area in the Central Netherlands,” *Geologie en Mijnbouw* 63 (1984); H.A. HEIDINGA, “De Veluwe in De Vroege Middeleeuwen: Aspecten Van De Nederzettingsarcheologie Van Kootwijk En Zijn Buren” (University of Amsterdam, 1984); J.M. VAN MOURIK, “Het Stuifzand Van Heeswijk-Dinther,” *Geografisch Tijdschrift* 21, no. 4 (1987); VAN MOURIK, *Landschap in Beweging*.

1064 KOSTER, *Aeolian Environments*.

1065 DERESE et al., “A Medieval Settlement”; BROERS, “Drift Sand”.

1066 After the title of Tuchman’s book: BARBARE TUCHMAN, *A Distant Mirror. The Calamitous 14th Century* (London Macmillan, 1979).

1067 THOEN AND DE VOS, “Pest in De Zuidelijke Nederlanden Tijdens De Middeleeuwen En De Moderne Tijden: Een Status Quaestionis over De Ziekte in Haar Sociaal-Economische Context”.

1068 AUGUSTYN, *Zeespiegelrijzing*.

production factor land”.¹⁰⁶⁹ If the land was cultivated despite the carrying capacity already having been reached, communities had to cope with diminishing returns (see chapter II).¹⁰⁷⁰ According to Jan Luiten Van Zanden, this unstoppable immigration and population growth were the most devastating phenomena for the commons.¹⁰⁷¹ Consequently, these were the perfect circumstances to induce an ecological or Malthusian crisis.

As a result, one would expect that hazardous sand drifts only increased from the eighth century onwards, to culminate in a true disaster by the end of the fifteenth or sixteenth century. At first sight, geological studies do confirm this image. Sevink, for example, witnesses that the sand dunes of the Groot Wasmeeer continuously drifted between the fourteenth and fifteenth centuries.¹⁰⁷² Historians portray the same image, as stated before. Historical evidence, however, is thin on the ground. Vera relies on scarce evidence within a limited amount of rent registers and charters.¹⁰⁷³ These are, however, sources that only appear from the fourteenth century and therefore give only a periodisation *ante quem*. Rent registers list all plots once granted by the duke or lord, even though they were lost because of sand drifts. Nevertheless, they can date back to the very beginning of exploitation of the region when the lord got hold of these lands. Furthermore, Jan Luiten Van Zanden links historical evidence of population pressures, intensive agricultural practices and the presumed malfunctioning of the common pool resource institutions with the acknowledgments that sand dunes were referred to in charters and are visible on historical maps and exist in the present landscape.¹⁰⁷⁴ Geological evidence, however, must provide the final answer to the question.

On an excavation in Mol, in the southern part of the Campine area, near the Nete valley, Beerten and his team performed several diggings and discovered that within the wastelands near Mol, sand continuously drifted and relocated itself between 1400 and the eighteenth century.¹⁰⁷⁵

1069 VAN BAVEL AND THOEN, *Rural History and the Environment*, 18.

1070 Ibid.

1071 VAN ZANDEN, “The Paradox of the Marks”.

1072 SEVINK et al., “Drift Sands”, 259.

1073 VERA, “... Dat Men Het Goed”.

1074 VAN ZANDEN, “The Paradox of the Marks”.

1075 BEERTEN, DEFORCE, AND MALLANTS, “Landscape Evolution”.

Sample	Unit	Depth (cm)	Moisture content (%)	U-238 (Bq/kg)	Th-232 (Bq/kg)	K-40 (Bq/kg)	Dose rate (Gy/ka)	D_e (Gy)	Age (ka BP)
OSL1	5	35	10 ± 5	6.0 ± 0.4	4.6 ± 0.3	126 ± 6	0.75 ± 0.03	0.26 ± 0.02	0.34 ± 0.03
OSL2	5	50	10 ± 5	5.3 ± 0.4	4.6 ± 0.3	121 ± 5	0.71 ± 0.03	0.26 ± 0.02	0.37 ± 0.04
OSL3	4	85	10 ± 5	5.2 ± 0.4	4.2 ± 0.3	121 ± 6	0.70 ± 0.03	0.30 ± 0.02	0.43 ± 0.04
OSL4	3	105	10 ± 5	4.3 ± 0.3	3.9 ± 0.3	110 ± 5	0.65 ± 0.03	0.28 ± 0.03	0.44 ± 0.05
OSL5	2	125	10 ± 5	6.1 ± 0.4	5.0 ± 0.3	122 ± 6	0.72 ± 0.03	0.37 ± 0.02	0.51 ± 0.05
OSL6	1	150	15 ± 5	8.1 ± 0.4	6.8 ± 0.4	172 ± 6	0.88 ± 0.04	15 ± 1	17 ± 1

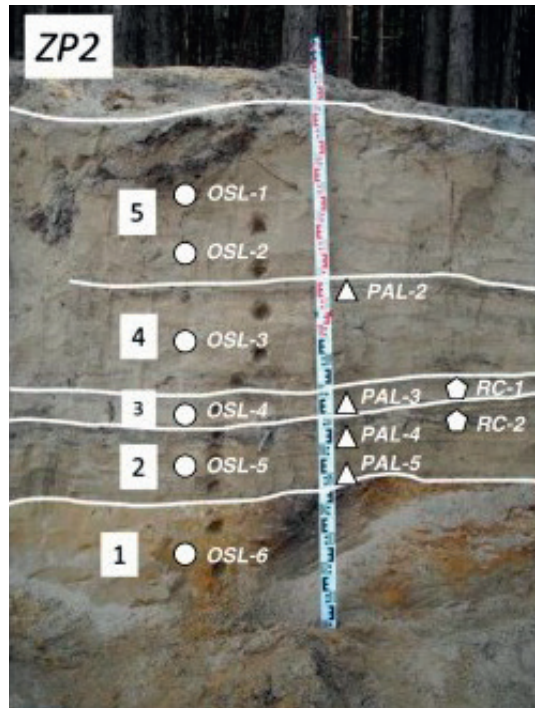


Fig 72 Details of profiles and OSL dating of Mol excavation. Source: Beerten et al.¹⁰⁷⁶

Unlike the village of Pulle, that witnessed a very short event, covering at least part of the habitation with one layer of sand, the profile of the sand dune in Mol was multi layered.¹⁰⁷⁷ In the same village, fine layers of sand were also found in the plaggen layers of the arable fields.¹⁰⁷⁸ Next, the village of Lille showed a similar process, as fine quartz was found mixed with the plaggen soils. The plaggen soils are most probably late medieval, but no significant results on the exact period of the drift sands could be obtained.¹⁰⁷⁹ Finally an ongoing investigation into the village of Vosselaar, near Lille in the Land of Turnhout, is undertaking the analysis of the “houtwal”, or sand dune, caught in the hedges adjacent to the ancient arable fields, right next to the church of Vosselaar. The OSL results are not yet available, but it appears that sand

1076 Ibid., 75 & 81.

1077 Ibid.

1078 Dixit Jan Bastiaens from the Flemish Heritage Institute (VIOE).

1079 Ibid.

was deposited in the hedges surrounding the arable fields and therefore grew into a dune following the shape of the arable fields of Vosselaar. As this dune is captured in the wooden enclosure of the arable fields, it must date from the late medieval period or after.¹⁰⁸⁰

Sand drifts were therefore certainly a significant risk during the late medieval period, as they must have been in the early medieval period. We could therefore certainly speak of a “region of risk”.¹⁰⁸¹ Nevertheless, I would suggest that to claim that they worsened from the thirteenth century onwards is difficult to prove. The early medieval sites that were discovered showed proof of arable fields and farmsteads, huts and wells that were covered by thick layers of sand. Even though the village of Kootwijk was most probably the site of one of the worst disasters, which cannot be projected onto all early medieval settlements even though the case of early medieval Pulle does show that the centre of the village, as well as farmsteads and fields were under threat. By immediately reclaiming large parts of the sandy ridges and organising them in an unenclosed system, the perfect circumstances were created for the wind to stir up the sandy fields and create unstoppable drifts. As a result, communities were unable to protect themselves and, within a short time span, parts of the cultivation or even habitation had become destroyed.

The late medieval sand dunes, however, display a fundamentally different pattern. First of all, we do not have evidence for abandoned or destroyed villages after 1000 AD. Historical documents would certainly report major incidences such as that. For example, Beatrijs Augustyn discovered such sources for the coastal dune villages and cities. When late medieval communities had uncovered most of the old dune belts near the Belgian coast, sand drifts caused the creation of new dunes more inland and hamlets to be covered. By the fourteenth century, the dunes were so degraded and uncovered that floods, such as the Vincentius flood of 1334 and the Saint Elisabeths flood of 1404, swept away entire villages, fields and polders as far as 15 kilometres from the coast.¹⁰⁸² Such disastrous events did not go unnoticed in the written records. Charters as well as chronicles reported the events, and rent or tithes registers showed the loss of earnings.¹⁰⁸³

1080 Ibid.

1081 MAUELSHAGEN, “Flood Disasters”, 133.

1082 AUGUSTYN, *Zeespiegelrijzing*, 325.

1083 Ibid.

Parishes	Land loss by sand drifts and tidal waves (ha)	Sand-covered villages
Knokke	3,5	Ten Vijfhuuse
Knokke	44,2	Staerte
Heist	35,4	De Panne
Blankenberge	88,5	
Wenduine	35,4	Harendike
Wenduine	22,1	
Wenduine	8,8	Vogheldike
De Haan	663,7	Scoone doorpen
Bredene-Oostende	265,5	
Oostende-Middelkerke	132,7	
Total	1300	

Fig 73 List of the sand-covered or flooded parts of coastal villages between Knokke and Middelkerke during the later Middle Ages, according to Beatrijs Augustyn.¹⁰⁸⁴

In the late medieval Campine area, however, no such evidence is encountered. The few toponyms mentioned by Hein Vera cannot really be dated.¹⁰⁸⁵ The earliest registers that have survived already mention some fields as being covered by sand, however, these lost fields, could already be centuries old.

In addition, the sand dunes investigated in Mol, Lille and Vosselaar, are all located either in the wastelands surrounding the hamlet and its arable plots or right next to the wooden fences or hedges which protected the arable fields for cattle but most probably also from sand drifts.¹⁰⁸⁶ In the Groot Wasmeer in het Gooi, the dune is also located far from the centre of the hamlets and villages in the area.¹⁰⁸⁷ While comments over the location of the dunes, might come across as splitting hairs, it is vital to distinguish between natural events that occurred in the cover sand belt region once the environment had been exploited and cultivated, and a disaster that is beyond human control and threatens the presence and occupation of the local population. The sand discovered in the plaggen soils of the arable plots of late medieval communities such as Mol and Lille was evenly dispersed within the plaggen layers, suggesting that the sand was continuously ploughed into the other layers. Cultivation was therefore permanent and not fundamentally disturbed by a surge of sand. In addition, large-scale sand drifts, depositing thick layers of sand, have not been discovered. As the layer sequence of Mol demonstrated, constant re-sedimentation of thin layers of sand occurred.¹⁰⁸⁸ As Koster

1084 Ibid., 329.

1085 VERA, "... Dat Men Het Goed".

1086 BEERTEN, DEFORCE, AND MALLANTS, "Landscape Evolution"; Dixit Jan Bastiaens.

1087 SEVINK et al., "Drift Sands".

1088 BEERTEN, DEFORCE, AND MALLANTS, "Landscape Evolution".

claimed, existing sand dunes, were lasting entities that could barely be halted and continued to drift on a small scale.¹⁰⁸⁹

The sand drifts that took disastrous forms, however, did return, but only from the eighteenth and nineteenth centuries onwards. Jan Van Mourik performed an excavation of a sand dune covering the “enk” or open field of Nabbegat located in the village Zeeland between ‘s Hertogenbosch and Nijmegen. While Van Mourik was able to assess that sand drifted quite continuously throughout the Premodern period, arable fields were only covered during the nineteenth century.¹⁰⁹⁰ In addition, Cilia Derese has suggested that the eighteenth and nineteenth centuries were a period of time consisting of heightened drifts,¹⁰⁹¹ covering even arable fields.

IV. A remarkable resilience | Communities and their struggle with a risky environment

In contrast to previous studies, I would therefore advance the argument that late medieval sand drifts were continuous drifts, but not necessarily disasters. Campine communities knew the risks and problems connected with living in a cover sand belt and acknowledged the presence of sand drifts as foreseeable episodes.¹⁰⁹² According to Franz Mauelshagen, strategies for coping with risk environments are based on the expectation of repetition drawn from the experience of repeated disasters.¹⁰⁹³ It has been assessed that natural hazards and catastrophes have a history: “They are anticipated long in advance and they are remembered, often for a long time after the actual event takes place”.¹⁰⁹⁴ Having learned from the first swift and irreversible drifts from the early Middle Ages, late medieval Campine communities adapted their agricultural practices and infrastructure. Knowing that uncovering the cover sands could trigger the process of drifting, the strategy of working with large open fields was abandoned (see chapter II & VI). Instead, a type of bocage landscape was created through the introduction of hedges and wooden fences around practically every plot of arable.¹⁰⁹⁵ This would not only keep the cattle off the land, but would protect the arable from being covered or start to drift itself. Vast spaces of open land, vulnerable to strong winds were, after all, a

1089 KOSTER, *Aeolian Environments*.

1090 VAN MOURIK AND LIGTENDAG, “De Overstoven Enk Van Nabbegat”.

1091 DERESE et al., “A Medieval Settlement”.

1092 Regarding such collective knowledge and subcultures of disaster: GREG BANKOFF, “The ‘English Lowlands’ and the North Sea Basin System: A History of Shared Risk,” *Environment and History* 19 (2013).

1093 MAUELSHAGEN, “Flood Disasters”, 134.

1094 LÜBKEN AND MAUCH, “Uncertain Environments”, 1.

1095 See chapter VI for more information.

precondition for drifting. Next, the common wastelands, consisting of sturdy grasses, heather and shrubberies, were reinforced with the implementation of the strategic planting of trees, bushes and shrubberies on the dunes and fragile drift sands which were introduced by the village communities.¹⁰⁹⁶ Even though they could not stop the sand indefinitely, they were able to protect their valuable arable fields and prevent large-scale drifts, threatening entire villages, as was the case with the “houtwal” near the village of Vosselaar.

I will, therefore, argue that the Campine area was built, both literally and figuratively speaking, for resilience. This is what Franz Mauelshagen has called “a landscape of coping”. In a region of risk, a specific type of cultural landscape had to be created in order to manage that risk.¹⁰⁹⁷ As stated before, communities constructed an infrastructure to prevent drifts. The common wastelands were planted with trees and shrubberies. Practically every village government obligated its inhabitants to help with the planting and maintenance of these plantations.¹⁰⁹⁸ The villages of Retie, Kalmthout, Ravels, Geel and Arendonk all refer to small plantations or wooded areas, called “*heibossen*” (heather forests), that were constructed on the wastelands in order to prevent or limit drifts.¹⁰⁹⁹ From at least 1554 onwards, but probably also before that date, the community of Retie could appoint two men who were responsible for the protection of the community against the sand and planting trees.¹¹⁰⁰ In addition, once a year community members were required to perform communal tasks such as controlling boundaries, clearing ditches and brooks, but also maintaining woodlands planted on the common heathlands. The byelaw of Ravels and Eel, for example, stated that “the wood, needed to stop the sand, will have to be repaired by everyone on the punishment of 6 stuiver”.¹¹⁰¹ Besides, several villages had received the right to plant trees on the commons, ten foot behind their private land.¹¹⁰² This “pootrecht” secured their basic needs for timber, but equally functioned as a barrier against drifting sand. Beatrijs Augustyn saw the same measures introduced for the planting of European beach grass in the coastal dunes, although the failure to actually apply and abide by those rules was put forward as one of the main reasons why the sand drifts could not be halted.¹¹⁰³ These rules were all formally written down by the sixteenth century, however, as the

1096 See databases: Byelaws

1097 MAUELSHAGEN, “Flood Disasters”.

1098 These preventive measures against sand (but also the regulations to counter cattle plagues) are listed under the title prevention in figure 74.

1099 HELSEN, “Het Dorpskeurboek Van Retie”; ERNALSTEEN, “Keuren Van Gheel”; MILO KOYEN, “Keuren Van Ravels,” *ibid.*41 (1958); GERARD MEEUSEN, “Keuren Van Esschen, Calmpthout En Huybergen,” *ibid.*23 (1932); PRIMIS, *Keuren*; P.J. VERHOEVEN, “Keuren Van Calmpthout,” *Oudheid en Kunst* (1907).

1100 The oldest version of Retie’s byelaws dates back to 1554, but oral regulations predated this first written document. HELSEN, “Het Dorpskeurboek Van Retie”.

1101 “Het hout ook voor indien het nodig mocht wezen om het zand te stoppen, zal iedereen komen en repareren op alle mogelijke manieren, op de straf van 6 stuivers”. KOYEN, “Keuren Van Ravels”.

1102 See for example: RAA, OGA Rijkvorschel, 12, Charter granting the right to plant trees, 1609.

1103 AUGUSTYN, *Zeespiegelrijzing*.

institutions predated this homologation these preventive strategies were probably older (see chapter III).

All these tasks were supervised by the *gemeentes* and this leads us immediately to the Campine CPRIs (see also chapter III). As Ostrom predicted, commons were not left unmanaged and the communities formed institutions for collective action that would regulate the appropriation of common resources. As Tine De Moor has claimed, several of these Early Modern communities did introduce seven main design principles which were deemed necessary to prevent a tragedy.¹¹⁰⁴ In general, the Campine area seems to have conformed to these principles. The strongpoints of the Campine CPRIs were the recognition of their right to organise collective action (see chapter III) and their conflict resolution mechanisms (see chapter VII). Monitoring and sanctions were provided as well. The village governments appointed fixed officials that controlled the commons and caught trespassers, so as to bring them to justice. Although these sanctions were not executed via formal courts (even though the byelaws stated it should have been), forms of *infrajustice* and *parajustice* were used and often proved to be equally effective.¹¹⁰⁵ These officials operated according to village byelaws which were created following semi-collective choice arrangements.¹¹⁰⁶

1104 DE MOOR, "Tot Proffijt Van De Ghemeensaemheijt".

1105 See chapter VI

1106 VAN ONACKER AND DE KEYZER, *Controlling the Campine Commons*.

Village	Typology														
	Acces		Com-merce		Gover-nance		Mana-gement		Pre-vention		Rights		Use		Total N
	To-tal	% sand	To-tal	% sand	To-tal	% sand	To-tal	% sand	To-tal	% sand	To-tal	% sand	To-tal	% sand	
Arendonk	6	0	7	0	4	13	22	23	13	34	1	0	47	4	216
Brecht	4	0	0	0	4	0	21	17	14	25	0	0	57	0	28
Ekeren	4	0	4	0	11	0	30	25	7	0	7	0	37	10	27
Geel	3	0	4	0	14	20	25	17	3	50	0	0	51	11	71
Gierle	17	0	2	0	7	0	27	0	2	0	0	0	44	0	41
Herenthout	8	0	0	0	6	0	25	0	0	0	6	0	55	4	51
Hoogstraten	6	0	11	0	11	0	17	0	0	0	0	0	54	5	35
Kalmthout	0	0	0	0	38	0	63	20	0	0	0	0	0	0	8
Kalmthout- Essen-															
Huiberghen	0	0	3	0	22	0	31	30	13	25	0	0	31	20	32
Kasterlee	9	0	0	0	2	0	14	50	2	0	0	0	72	6	43
Oevel	6	0	3	0	0	0	19	33	3	0	3	0	65	5	31
Oostmalle	2	0	0	0	15	0	18	20	7	50	0	0	58	13	55
Ravels-Eel	3	0	3	0	15	0	13	40	13	40	10	0	44	6	39
Retie	5	0	4	0	4	0	13	14	15	75	5	0	55	20	55
Rijkevorsel	0	0	3	0	15	0	12	0	9	33	3	0	59	5	34
Terloo	4	0	4	0	15	50	27	29	0	0	0	0	50	15	26
Tielen	0	0	0	0	5	0	10	0	5	100	0	0	81	0	21
Tongerlo	0	0	3	0	3	0	24	13	0	0	3	0	68	0	34
Turnhout	0	0	18	0	5	0	5	0	9	0	0	0	64	0	22
Veerle	2	0	8	0	4	0	14	0	6	0	2	0	63	3	49
Vorselaar	7	0	0	0	3	0	17	20	7	0	3	0	62	0	29
Westerlo	8	0	0	0	1	0	26	23	5	0	2	0	58	8	86
Wuustwezel	4	0	1	0	6	0	40	21	13	33	0	0	36	12	70
Zandhoven	0	0	0	0	18	0	45	0	0	0	0	0	38	0	40

Fig 74 Percentage of rules dealing with sand drift prevention per type of rules in the byelaws introduced by a selection of Campine villages.¹¹⁰⁷

Regarding sand drifts, however, most important was the communities' awareness of the necessary congruence between appropriation rules and local conditions. The majority of local byelaws dealt with appropriation rules and they showed an extraordinary knowledge of the possibilities and weaknesses of their region. They realised that uncovering sand was one of the

¹¹⁰⁷ See databases: Byelaws

worst threats and therefore almost every village tried to prevent this. Rules regarding general management and maintenance made up a significant part of the bylaws, as shown by figure 74.¹¹⁰⁸ First of all, the areas where loose sand dunes were located were forbidden territory for practically all types of agricultural actions. As the byelaw of Arendonk states, “signs were placed by the steward and aldermen [to indicate the sand] and nobody can “steken, vlaggen or maaïen”¹¹⁰⁹ on the penalty of 24 stuiver.”¹¹¹⁰ Similar rules were applied in Kalmthout in 1469 where it was prohibited to make pitholes or dig in sand drift-prone areas.¹¹¹¹ In Geel, the area called Larum, existing of sand dunes, was planted with trees. In this particular area no wood was allowed to be felled, nor peat dug or heather mown.¹¹¹²

Digging for sods and mowing were considered to be especially harmful by late medieval communities, as this would remove the sturdy vegetation both covering and retaining the sand. Therefore, even the equipment used for mowing was prescribed. In Westerloo, for example, it was stated that nobody could use either a long short or a long scythe.¹¹¹³ Moreover, harvesting of heather vegetation or peat was limited to only certain amounts on the entire wastelands. Every household had the right to mow once a week, but not more. This could only be done by the family members themselves and hired labour was forbidden.¹¹¹⁴ All the heather that was mown had to be removed and pits covered immediately. Digging for sods, meaning uncovering the soil, was always prohibited except with the permission of an official and only for building purposes.¹¹¹⁵ The intensive kind of plaggen fertilisation, using both vegetation as well as organic layers, were more characteristic of the eighteenth century than of the later Middle Ages.¹¹¹⁶ Campine communities were, therefore, highly aware of the problem posed by sandy soils and adopted themselves to the circumstances. They knew what sand drifts could potentially cause and sought to protect themselves against it on an institutional level.

1108 I have categorised rules regarding general management and maintenance as ‘management rules’ while regulations dealing directly with prevention towards sand are contained in the column called ‘prevention’.

1109 Gradation of the depth or intensity of mowing. ‘Steken’ refers to collecting sods with a layer of organic soil attached to it, while ‘vlaggen’ stands for cutting the vegetation to the bare soil, and finally ‘maaïen’ refers to mowing in a normal sense, leaving both the soil as well as the bottom of the vegetation intact.

1110 “er is geordineerd dat niemand in de baleman tussen de tekens die door de rentmeesters en de schepenen daar zullen worden gezet zal mogen steken, vlaggen of maaïen op de boete van 24 s” source: PRIMS, *Keuren*.

1111 “Item dat niemand putten of kuilen mag maken of graven op de vroente, waardoor het zand vliegend zou worden op de breuk van 3 grote oude”. MEEUSEN, “Keuren Van Esschen, Calmpthout En Huybergen”; P.J. VERHOEVEN, “Keuren Van Calmpthout,” *ibid.* (1907).

1112 J. ERNALSTEEN, “Keuren Van Gheel,” *ibid.* 26, no. 2 (1935).

1113 J. LAUWERYS, “Keuren Van Westerloo,” *ibid.* 28, no. 4 (1937).

1114 For example in the village of Veerle it was stated that “Nobody will be allowed to harvest more sods than that one man can dig in one whole or two halve days”. “Niemand zal meer russen slaan op de gemene heide dan een man kan slaan op 1 dag of twee halve dagen” AAT, *Bundel Byelaws, Veerle*

1115 In Arendonk the byelaw reads: “Nobody will make peat pits on the commons, unless the supervisors has been called for and has indicated a location”. “Niemand zal turfputten slagen op de vroente en gemeente, tenzij hij eerst tot de keurmeesters komt die hem dan zullen wijzen waar hij die turfput slagen zal”. PRIMS, *Keuren*.

1116 BASTIAENS AND VERBRUGGEN, “Fysische En Socio-Economische Achtergronden Van Het Plaggenlandbouwsysteem in De Antwerpse Kempen”; THOEN AND VANHAUTE, *The ‘Flemish Husbandry’ at the Edge: Farming System on Small Holdings in the Middle of the 19th Century*.

V. Social structures | The impact of a balanced society

Institutions for collective action, however, cannot fully explain the level of resilience of a society. As the projects of Angus Winchester and Tine De Moor have shown, CPRIs are remarkably similar and introduced practically the same type of rules everywhere in Europe. Nonetheless, outcomes in terms of environmental, social and economic resilience were highly divergent. In the Brecklands, in the county of Norfolk, for example, formal institutions could not prevent lords from monopolising the rights of fold course and overexploiting the open fields, outfields and wastelands with their manorial sheep herds. Despite countless complaints by local cottagers and tenants of the devastating effects and loss of yields on their private land, the manorial lords invested in commercial sheep breeding for their own profit, while degrading the environment, hampering arable production, and limiting the small tenants in their attempts to engage in subsistence farming or commercial activities.¹¹¹⁷ Here the highly unbalanced distribution of power and growing gap between the different social strata of the Brecklands communities was to blame for this unsustainable management and diminishing resilience. Similarly, the charters, ordinances and rules introduced by the Count of Flanders for the villages in the coastal dunes had next to no effect on the management of the fragile dune slopes. Despite similar types of rules, namely regulations seeking to create a congruence between appropriation and the local circumstances and grant plant rights and duties, the dunes were increasingly degraded. The dune masters, appointed to control the actions of the appropriators, were also of no effect, due to the fact that they themselves were the tenants leasing pastures in the dunes without further control from bottom up or top down.¹¹¹⁸

In the late medieval Campine area, however, such a widening gap between interest communities or the faltering of formal or informal regulations and control did not occur which was highly beneficial for the Campine environment. First of all, the exclusion of poor groups within society, has for certain contexts been described as detrimental to the environment as they would attempt to exploit their environment to the maximum in order to survive.¹¹¹⁹ This was, however, prevented by the Campine communities, through the inclusion of poor households and providing basic relief in order to limit free riding and degrading activities. As stated in chapter IV the Campine area showed an extraordinary inclusiveness as all social layers of a village were granted access to the commons and relied upon them for subsistence farming as well as commercial opportunities. Even though taxes were normally a requirement, poor

1117 ALLISON, "The Sheep-Corn Husbandry"; BAILEY, *A Marginal Economy*; BAILEY, "Sand into Gold"; DE KEYZER, "The Impact of Different Distributions of Power".

1118 AUGUSTYN, *Zeespiegelrijzing*; SOENS, *De Spade in De Dijk*; SOENS, "Flood Security in the Medieval and Early Modern North Sea Area: A Question of Entitlement?"

1119 W. NEIL ADGER, "Social and Ecological Resilience: Are They Related?," *Progress in Human Geography* 24, no. 3 (2000).

households, being excluded from general taxes, were granted access by the village government or poor relief system. This strategy fits in a more general policy of the Campine Holy Ghost tables of supporting the village poor. Eline Van Onacker and Hadewijch Masure have shown that the Campine elites not only collected and distributed more money towards the poor, but also acted in a manner so as not to create a pool of cheap labourers due to an awareness that the barrier between the elites and cottagers or poor households was rather thin.¹¹²⁰ The case of Zandhoven, moreover, has indicated that 98% of the village actively used the commons on a yearly basis. The poor were therefore fully incorporated, in order to regulate and steer their appropriation, rather than forcing them into a clandestine circuit.¹¹²¹ The village poor, of course, had no interest in the commons for grazing rights since they owned no cattle, however, digging peat, collecting heather and looking for building material could make a huge difference to the family budget. As such, they could rely on charity via donations and access to the commons, which would prevent them from forcing entry and undertaking over-exploitation. Such illegal actions, after all, meant an immediate exclusion from the Holy Ghost table and as such probably also from the commons as well which was a heavy penalty.¹¹²²

Next, the peasant communities were able to maintain a firm grip on the management and control of the commons. The manorial lords in the Brecklands, on the contrary, could act according to their own particular interests and as such degraded arable land, as their main concern was pasture for their sheep and economic resilience presided over social and environmental resilience. In the coastal dunes, pastures were leased by a limited amount of large-scale, and commercially orientated, tenant farmers who were at the same time the officials controlling the appropriators.¹¹²³ None of the Campine interest groups, however, would benefit from degrading the commons to the extent that they would turn into real wastelands, in other words, existing of poor heather plains and drifting sand dunes. First of all, sheep were easily fed, but the more diverse the vegetation was, the better. As sheep could most probably not enter the arable plots after harvest, the wastelands represented their final option.¹¹²⁴ In addition, they too benefitted from sustainable commons, covered by shrubberies, woodlands, fens and loam pits, as purchasing these benefits from the market would hamper their opportunities as well. Next, both rural elites as well as independent peasants were engaged in mixed farming, requiring large amounts of fertilisers for producing sufficient yields for their own subsistence. Consequently they needed to maintain large parts of the commons available for mowing and

1120 VAN ONACKER, "Leaders of the Pack?"

1121 See chapter III

1122 For example the village of Kasterlee decided that "Wie van enige hagen hout af snijdt, het zij wilgen, berken, tuinen of ander heimsel afbreekt, zal verbeuren naar inhoud van het mandaat. Als het gedaan wordt door schamele lieden zullen zij een heel jaar gepriveerd worden van de Heilige geest proeven". "Whoever cuts or breaks wood from a hedge being willow or birch, will lose the wood. If it is done by poor folks they will be deprived from the Holy Ghost tables for a whole year". VAN GORP, "Het Keurboek Van Casterlee".

1123 AUGUSTYN, *Zeespiegelrijzing*.

1124 See chapter IV

collecting sods, which was impossible once the threat of sand dunes was too high.¹¹²⁵ Finally feudal lords, abbeys nor the Duke of Brabant showed real interests in exploiting the commons in such a manner that sand drifting could become viral (see chapter V & VI). The strict rules of the abbey of Tongerlo towards tenants and investors exploiting peat, so as to fill up pits and prevent degradation of the soil, indicate that their awareness was similar to that of the local communities.¹¹²⁶ This stands in stark contrast with the rural elites – urban investors, the Count, abbeys and lords - of coastal Flanders, studied by Tim Soens.¹¹²⁷ As urban investors in particular tended to invest in short-term gains, the ecological degradation of the region was considered an unavoidable side effect. In the Campine area, however, both peasants as well as tenant farmers followed a more long-term and sustainable strategy, and furthermore their willingness for new and short-term investments in neighbouring regions was less obvious.

VI. Property relations | The key for long-term strategies

The attitude towards the environment therefore largely depends on the social context, economic interests and as stated by Susan Hanna and Bas Van Bavel on property relations of the local stakeholders.¹¹²⁸ While on the one hand scholars state that efficient property rights can only be exclusive, transferable and enforceable,¹¹²⁹ others claim that a dichotomy between common and private property must be discarded, when it comes to sustainability.¹¹³⁰ Communal property could be sustained on an equal level as private or state property.¹¹³¹ The same vision is portrayed by Bas Van Bavel and Erik Thoen: “No single way of formulating property rights in itself guarantees sustainability: neither state rights, nor private property rights exchanged via the market or common rights are favourable in se. The long-term effects depend on the exact formulation and the social context and the balance between the various groups and interests/goals involved”.¹¹³² The most important condition, according to Hanna is that “the design of property right regimes is to be congruent with societal objectives for economic performance, equity, and ecological maintenance. Objectives for long-term use of the resource must be specified within the regime so that expectations of resource users and the society at large remain consistent”. “A further requirement is to ensure that the incentive

1125 See chapter IV

1126 NICK VAN DEN BROECK, “Surplus-Extractie of Sustainable Development Door De Abdij Van Tongerlo. Een Case Study Van De Turfontginning in De Regio Essen-Kalmthout” (University of Antwerp, 2012).

1127 SOENS, *Threatened by the Sea*.

1128 VAN BAVEL AND THOEN, *Rural History and the Environment*; HANNA AND MUNASINGHE, eds., *Property Rights*.

1129 T.H. TIETENBERG, *Environmental Economics and Policy* (Boston: Prentice hall, 2006).

1130 HANNA AND MUNASINGHE, eds., *Property Rights*.

1131 OSTROM, *Governing the Commons*.

1132 VAN BAVEL AND THOEN, *Rural History and the Environment*, 38.

structure of rules reflects the long-term sustainability goals for the ecological system, such as long-term tenure and protection from the tyranny of short-term decisions.”¹¹³³ The same vision is portrayed by Tim Soens for the medieval coastal regions of the North Sea area. According to Soens, coastal communities could be highly efficient in managing the water and preventing floods as long as the population existed of largely smallholders, possessing strong property rights on their rather small-scale holdings, labour was cheap and all community members were responsible for maintaining the dikes, while depending and benefitting from the preventive acts themselves. Being small peasants with long-term property claims, investing in sustainable development and preventing inundations was the best strategy, as they had to secure both their own as well as their children’s future as peasant producers in that polder region. From the later Middle Ages onwards, however, this social balance was tipped in the opposite direction and absentee landlords came to obtain the majority of land. Consequently, the land was owned by investors and laboured by short-term tenants. The risk for these investors was minimal, as they did not reside in the area and short-term profits were of more importance than long-term management. Peasants had lost their claim on the land as semi-proprietors, and were reduced to short-term tenants, which limited their opportunities and willingness to invest in dike management. Therefore, inundations multiplied with serious environmental repercussions for the area.¹¹³⁴

Late medieval Campine society was largely based on common property rights together with private property that had common rights attached to them. This was, however, not an inefficient nor unsustainable system. These property rights, like the ones Hanna described, were congruent with societal objectives and created strong power claims for the peasants, so as to protect them from the necessity of acting according to profit-driven and short-term decisions. As such they resembled pre-1300 peasant societies in coastal Flanders, but did not witness a transformation towards a polarised society with short-term leases and absentee landlords. As indicated in chapter II, “cijnsgoed” or inheritable rent was the dominant type of property in the Campine area. Even though leaseholding did exist, most peasants only leased a small plot, in a long-term life-cycle strategy,¹¹³⁵ while relying on long-term and inheritable rent for most of their private land. Tenant farmers, leasing their entire estate were present as well, but they were the odd ones out.¹¹³⁶ As argued by Eline Van Onacker, however, the large majority, that is, 80-90 per cent of the Campine villages lacked such larger tenant farms held from ecclesiastical institutions, lords and burghers.¹¹³⁷ In addition, these peasants, both labourers, cottagers as well as rural elites, were all granted access to the commons (see chapter IV). As such, their access was secured for a long time and possible threats to exclude them,

1133 HANNA AND MUNASINGHE, eds., *Property Rights*, 19.

1134 SOENS, *De Spade in De Dijk*; SOENS, *Threatened by the Sea*.

1135 VAN ONACKER, “De Markt Als Middel”.

1136 See chapter I

1137 VAN ONACKER, “Leaders of the Pack?”, 165-175.

or withdraw their communal rights, were effectively countered via several juridical and infrajudicial levels (see chapter VII).

This particular combination of long-term claims on small plots of inheritable property together with firm use rights on the commons which were required for everyone's subsistence and additional commercial opportunities, created a situation where it was in the entire communities' interest to safeguard a sustainable development of these common wastelands. This was ensured through abiding by the rules, catching and punishing trespassers and investing in preventive measures such as planting trees, hedges and covering sand dunes. In contrast with the coastal communities peasants with more life-cycle strategies and long-term investments, were not, after all, forced to change towards more short-term actions, as they possessed the means and power to fend off such pressures. The fact that the sand drifts became more destructive during the eighteenth and nineteenth centuries, does suggest that the abolishment of the commons, large-scale land redistribution¹¹³⁸ and economic transformation had disturbed this attitude towards the environment. This type of society could rely on a strong sense of communal responsibility, which would strengthen the impact of social control. According to Tine De Moor, this form of infrajustice was far more effective than harsh punishments and high fines. The longevity of CPRIs significantly increased where rules were enforced by social control and pressure of neighbours, rather than external courts or formal fines.¹¹³⁹ The fact that practically no fines were formally registered may be an indication of this.

VII. A commercial society? | Market activities without dependence

Finally, commercial strategies are important as well. More often than not, market dependence is considered a risk to sustainable development, especially when a resource-dependent community focuses on one particular resource or product. By clearing mangrove forests in South-East Asia or South America in order to breed fish for commercial markets, for example, coastal communities have put themselves at risk for serious floods.¹¹⁴⁰ Similarly, the Brecklands in Norfolk were threatened by capitalistic sheep breeding resulting in the soil being degraded

1138 VANHAUTE, "De Mutatie Van De Bezitsstructuur".

1139 DE MOOR AND TUKKER, "Penalty and Punishment. Designing Effective Sanctions for Freerider's Behaviour on Early Modern Dutch Commons".

1140 ADGER, "Social and Ecological Resilience", 348. PETER PARKS AND MANUEL BONIFAZ, "Mangrove Deforestation and Mariculture in Ecuador," in *Property Rights and the Environment. Social and Ecological Issues*, ed. Susan Hanna and Mohan Munasinghe (Washington: Beijer International Institute of Ecological Economics, 1995).

by the over-exploitation of the land, which resulted in lower yields.¹¹⁴¹ Consequently, several scholars, studying Early Modern CPRIs have stated that commercialising resources obtained from the commons was often prohibited. This was one of their main strategies to prevent over-exploitation and degradation.¹¹⁴² Van Zanden, on the contrary, claims that a lack of commercial spirit was exactly the reason why peasant communities were unable to prevent soil degradation, which then resulted in sand drifts. The institutions for collective action, called “marken”, introduced the indispensable design principles, even though they were unable to prevent the community of users expanding and enforcing the rules they had created. Monitors were not motivated, and in periods of crisis, their power dwindled or even disappeared completely. Only when they started to treat the commons as a commercial opportunity during the seventeenth century, by demanding entrance fees and charging appropriators per unit of cattle or day of collecting resources, the CPRIs were able to turn the tide and obtain a level of sustainable management.¹¹⁴³

I would like to suggest that a more nuanced approach towards commercialisation is required and one cannot confuse commercialising ecological benefits derived from the commons with the commercial management of the CPRIs. Within the Campine area, and in most CPRIs in the Low Countries or neighbouring regions, commercialising resources obtained through the commons was regarded with suspicion. Nevertheless, all indirect products (such as wool, milk and hides) were free to be sold by community members (see chapter IV). This commercial attitude, moreover, existed from the very beginning and was never prohibited by the local byelaws. In addition, Campine communities did not even introduce maximum quotas for cattle or sheep that could be placed on the communal grazing grounds.¹¹⁴⁴ Despite this freedom, Campine peasants did not bring hordes of sheep onto the commons, over-grazing the wastelands into mere sand bowls. According to McCarthy, engaging in collective action immediately restricts individual peasants from over-stocking and has a negative effect on herd sizes.¹¹⁴⁵ This, together with the limited amount of meadows available for winter fodder and the strategy of the Campine peasants to maintain a form of mixed farming, reduced the average herd size to approximately 30-40 sheep per peasant household and maximum 90 sheep for a large tenant farmer. The records of the Tongerlo tenant farmers, do show that commercial gain was an objective, as both meat, wool and hides were sold on local markets as well as regional centres such as ‘s Hertogenbosch and Hoogstraten (see chapter V).

The Campine peasants were, however, not market dependent. It is acknowledged that all peasant societies have been commercially active, but while some communities merely took

1141 WHYTE, *Contested Pasts*.

1142 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; VAN ZANDEN, “The Paradox of the Marks”.

1143 VAN ZANDEN, “The Paradox of the Marks”.

1144 See chapter IV

1145 MCCARTHY, KAMARA, AND KIRK, “Co-Operation”, 236.

advantage of their opportunities in order to supplement their subsistence farming with a little surplus and cash income, others opted to focus on commercial activities entirely in order to sustain themselves. The Campine peasants, and more specifically the independent peasants and tenant farmers, can be placed somewhere in the middle. Reinoud Vermoesen has called this former strategy the “peasant continuum”, indicating that peasants opted for all sorts of activities from subsistence to market integration, without tipping towards either of the two sides.¹¹⁴⁶ Wool and sheep were sold and peasants could make quite a profit from this, nevertheless they did not blindly follow the fluctuations of the markets, as the total amount of sheep indicate. Campine peasants, therefore, reached their golden age, but they did not enlarge their herds to a maximum or shift their mixed farming towards capitalistic sheep breeding, rather, they reacted quite moderately to this rising demand. As a result, they did not falter when demand decreased because of the troubles during the sixteenth century. Some authors have called this strategy “risk averse”, while others refer to it as a “risk prevention”. Daniel Curtis compared persistent versus dynamic communities and stated that persistent societies looked rather traditional, since they maintained fixed strategies and did not alter them according to external push and pull factors, while dynamic societies, such as Holland during the Golden Age, precisely secured a living through dynamically changing agricultural or commercial practices according to changing market circumstances. Both were equally resilient, as long as their social structure could be labelled egalitarian.¹¹⁴⁷ Late medieval Campine society, therefore, balances on the verge of what Daniel Curtis has labelled an “egalitarian persistent and dynamic societies”. They exploited their resources to the full, without ever fully becoming market dependent and maintaining, yet constantly transforming, their mixed farming system to best suit and cope with their natural environment and social structures.

Campine communities were able to do this without having to resort to commercially managed CPRIs, relying instead on a moral economy. Access was granted to all full community of members, even though the community was expanding and poor households made up 25 per cent of society. In addition, charging for placing animals on the common wastelands was known to occur in the Campine area, as Zandhoven has proved (see chapter IV). These entrance fees and charges per day for collecting heather and per cattle unit were, however, so small that practically every household was able to pay these sums. They were more a means to secure a steady income for the CPRI than to limit community members from entering the commons or limiting their herds, as 98% of the village actively used the commons.

1146 REINOUD VERMOESEN, “Markttoegang En Commerciële Netwerken Van Rurale Huishoudens” (University of Antwerp, 2008), 23-25.

1147 DANIEL R. CURTIS, “Pre-Industrial Societies and Strategies for the Exploitation of Resources. A Theoretical Framework for Understanding Why Some Settlements Are Resilient and Some Settlements Are Vulnerable to Crisis” (University of Utrecht, 2012).

VIII. Conclusion

Disasters are inherent in the social order of certain societies due to either a lack of preparedness, or the failure to properly react to threatening natural hazards. Late medieval Campine society, however, was fully aware of the risky environment and effectively altered their strategies and infrastructure to cope with this situation. While sand drifts were a constant and hazardous risk, threatening to cover villages and productive land, true disasters had been halted by the later medieval period. Sand continued to be re-sedimented and to drift, but did no longer threaten villages and infields as had happened in Pulle and Kootwijkerzand in the early medieval period. To become resilient towards natural hazards, societies required a certain blue print to reduce risks. As such, I would argue that weather conditions, such as droughts, the medieval optimum etc. were only of minor importance. Much more important were institutional arrangements, property structures, power balances and commercial strategies. The coastal dunes, located in the same climate zone and weather conditions, reached their most disastrous period during the late medieval period, while the Campine sand drifts were at their worst well before and after the late medieval period. Late medieval Campine society consisted of a majority of small peasant proprietors that possessed strong claims on both their private lands as well as the surrounding common wastelands. These peasants used this land for subsistence farming combined with commercial activities, however, without becoming dependent on the market, rather so as to supplement the family income. Moreover, all interest communities relied on the maintenance and sustainable development of the commons and arable fields for their survival. Consequently, it was in everyone's interest to invest in long-term strategies and limit ecological risks. As such, they engaged in collective action and created CPRIs so as to regulate appropriation as well as monitor and sanction trespassers. As this awareness was shared by the larger part of society, social cohesion and pressure greatly enhanced the enforcement of those rules. In order to reduce hazardous sand drifts, late medieval communities invested time and effort to plant hedges and fences around practically every arable plot as this would reduce the impact of the wind on the infields themselves, while keeping the sand from entering the arable plots from the wastelands. As such, they had abandoned the open field system and created a sort of bocage landscape. In addition, communal tasks included planting woodlands on the sand dunes and the remaining land, which consisted of heathlands, was not allowed to be uncovered by digging for sods. As a result, the Campine area was quite literally, but more importantly also figuratively speaking, built to reduce risks and this attempt was a successful one.



CONCLUSION
EXPLAINING THE SUSTAINABILITY OF INCLUSIVE COMMONS

IX. CONCLUSION | EXPLAINING THE SUSTAINABILITY OF INCLUSIVE COMMONS

Against all odds, the late medieval Campine commons proved to be ecologically sustainable and socio-economically successful. Despite its location within the most urbanised, commercially orientated and densely populated area of the Low Countries, the region was able to avert a “tragedy of the commons” and develop a sustainable policy, maintaining the ecological value of the environment for its future generations.¹¹⁴⁸ Hardin has stated that communal property inevitably leads to over-exploitation and environmental destruction. When we consider this particular Premodern society his theory can be proved wrong. This conclusion does, however, come as quite a surprise although not in terms of communal management. Indeed Elinor Ostrom has argued convincingly that collective management and common resources could be as efficient as private or state-driven initiatives.¹¹⁴⁹ Until now, however, it has generally been accepted that the Campine area, together with similar ecosystems such as the Veluwe and Drenthe in the Netherlands, was subject to ecological degradation, leading to deforestation, and eventually even disastrous sand drifts. According to Jan Luiten Van Zanden, only a substantial commercialisation of the use of resources together with management could save the heathland ecosystems from depletion.¹¹⁵⁰ The “environmental collapse” perspective was supported by several historians and archaeologists studying deforestation and sand drifts that occurred in the Campine area or similar ecosystems located within the cover sand belt region. Due to over-exploitation, growing population pressures and intensive road networks, the late medieval Campine area was supposed to have witnessed a surge in sand drifts which provided proof that it was an ecosystem pushed beyond its limits.¹¹⁵¹

Nevertheless, thanks to new dating methods such as optically stimulated luminescence (OSL), it appears that sand drifts were certainly not only a late medieval phenomenon. It has been demonstrated that even late Neolithic communities living 5000 years ago caused sand drifts to occur.¹¹⁵² Moreover, the most disastrous sand drifts that have been uncovered in the Campine area date back to the ninth century CE. By uncovering the soil in order to create arable fields without enclosures, exploit forests and graze their livestock, serious sand drifts started to cover parts of the village and arable fields, resulting in the forced abandonment of a part of the settlement of Pulle.¹¹⁵³ By the thirteenth century, sand continued to drift although it did not

1148 HARDIN, “The Tragedy of the Commons”.

1149 OSTROM, *Governing the Commons*.

1150 VAN ZANDEN, “The Paradox of the Marks”.

1151 DERESE et al., “A Medieval Settlement”.

1152 SEVINK et al., “Drift Sands”.

1153 HEIDINGA, “De Veluwe”; HEIDINGA, *The Birth of a Desert; the Kootwijkerzand*; DERESE et al., “A Medieval Settlement”.

cover increasingly larger areas, nor did it fundamentally threaten village centres, arable fields or the agrosystem in general. As was assessed in chapter VIII, Campine peasants had adapted their way of life to cope with these “landscapes of risk”.¹¹⁵⁴ By introducing hedges to surround individual plots of land, planting trees and woodlands on the sand dunes, prohibiting grazing in fragile regions and rigorously controlling these regulations, they were able to contain the sand dunes, prevent disasters and even obtain a level of sustainable management.

I. Efficient institutions | Agent or instrument?

The basic question to be answered is: how did these Campine communities overcome the challenge of over-exploitation? According to Elinor Ostrom, the implementation of efficient institutions provided the key to success in preventing such over-exploitation. Strict rules with regard to the community of users and the allocation of resources are often deemed necessary for a long-term, “sustainable” management of common pool resources.¹¹⁵⁵ Thanks to such an institutional framework, with strict rules, social control and graduated sanctions, the behaviour of society would be altered and free-riding, over-exploitation and trespassing reduced.¹¹⁵⁶ This point of view, is very much that of “New Institutional Economics”, one that is dominated by the belief that institutions arise and survive because they are economically (or in this case also ecologically) efficient.¹¹⁵⁷ This perspective has also been adopted by some historians, particularly a cluster of historians operating within the “Collective Action Network”, who believe that the creation of formal common pool resource institutions was the most efficient way of dealing with a scarcity of resources and rising population pressures, commercial activities and imperfect markets.¹¹⁵⁸ After all, in a large area, covering most of North-western Europe, remarkably similar institutions and regulations set up to manage natural resources sprung up. Tine De Moor has called this development the “silent revolution” of institutions for collective action in the late Middle Ages. While engaging in the market as individuals with private property could entail high profits and economic gains, it also entailed risk. Introducing institutions for collective action and managing resources, skills or even threats such as floods in a communal manner was a way of avoiding risks or spreading the costs of a crisis across the community, benefiting from the advantages of scale and reducing

1154 MAUELSHAGEN, “Flood Disasters”; BANKOFF, “The ‘English Lowlands’”.

1155 OSTROM, *Governing the Commons*; DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

1156 OSTROM, *Governing the Commons*.

1157 NORTH, *Institutions*.

1158 For all information concerning the “Collective Action Network”, see: <http://www.collective-action.info/>

transaction costs.¹¹⁵⁹ In short, it was believed to be the most rational and efficient way of operating given the circumstances. In addition, the formal aspect of these institutions was considered important. In the article “A Tale of Two Commons”, Miguel Laborda Peman and Tine De Moor argued that those common pool resource institutions that were accepted and legitimised organisations possessing formal charters had a fundamental advantage when compared to the more informal common pool resource institutions of eastern Europe for example. This was due to the fact that they were better equipped and were able to manage and protect the resources and their regime more efficiently.¹¹⁶⁰

There are, however, two problems with this point of view. While institutions are important and provided important and necessary frameworks, their role is often overestimated. Firstly, the hypothesis that these institutions encompassed an autonomous or “immanent” agency, enabling them to steer communities towards sustainable management, has been disputed by Jean Ensminger. According to her, these institutions were in fact instruments held in the hands of different interest groups within society, used in order to obtain their goals. The way institutions were designed was mostly based upon the bargaining power, interests and ideology of the different subgroups, rather than evolving out of any immediate reactions to particular economic or ecological situations. As such, the institutions that eventually developed were not necessarily the most efficient nor rational option open to these communities in terms of managing the allocation of resources. Rather, they benefitted the interests of various subgroups within them.¹¹⁶¹ The same perspective is shared by Sheilagh Ogilvie who stated that institutions could very well survive through their ability to distribute large shares of a limited economic or ecological pie to certain interest groups, rather than being efficient for the whole economy.¹¹⁶²

In the Campine area, common pool resource institutions called “gemeynen”, reflected the actual balance of power within these communities rather than the most efficient way of dealing with scarce resources. In the late medieval period, and especially in the Low Countries, population densities were high and the pressure to intensify production – either through the demand of urban markets or due to patterns of reproduction within peasant communities – was large.¹¹⁶³ As a result, many common pool institutions opted to reduce the allocation of resources or to limit the amount of users. In several regions, both measures were evenly

1159 DE MOOR, “The Silent Revolution”.

1160 LABORDA PEMAN AND DE MOOR, “A Tale of Two Commons”.

1161 ENSMINGER, *Making a Market*. This perspective was supported by TOBIAS HALLER, “Understanding Institutions and Their Links to Resource Management from the Perspective of New Institutionalism,” *NCCR North-South dialogue 2* (2007); HALLER, ed., *Disputing the Floodplains*.

1162 OGILVIE, “Whatever Is, Is Right”.

1163 VAN BAVEL, *Manors and Markets*.

applied.¹¹⁶⁴ Within the Campine area, however, no such restricted or exclusive institution was introduced or developed over time. All members of the community, one that was based on place of residence, were allowed and indeed did use the commons in very diverse ways as well as being permitted to graze as many animals as they considered necessary on the common wastelands. This peculiar combination was the result of a compromise between the varying interests of the different social layers present within Campine villages, on which I will elaborate further below.

Secondly, Premodern institutions for collective action were not as uniform as has previously been asserted. Despite the resemblance of the charters, regulations and designs of the institutions as portrayed by normative sources, different societies also developed quite divergent common pool resource institutions. Thanks to the work of Erik Thoen, Bas van Bavel, Tim Soens and other rural historians working in their tradition, it has become clear that even within the relatively restricted area of the Low Countries, rural societies could diverge quite fundamentally.¹¹⁶⁵ Due to differences in social property relations, the environmental setting and market dynamics, even neighbouring regions with similar characteristics started to differ significantly from the later Middle Ages onwards. Thoen has labelled these different regions “social agro-systems” and the same can be applied to institutions for collective action. Divergent institutions were developed according to the different socio-economic and political constellations of a region.¹¹⁶⁶ Whether we look either only at the inclusiveness or restriction of allocation, a multitude of different forms of institutions existed. Even regions with ecosystems and resources which highly resembled each other, formulated different answers to manage and control natural resources. Due to the bargaining power of the different interest groups based on social property relations and power structures, the Campine area developed its particular set of institutions just as other regions took their distinct path.

1164 CASARI, “Emergence of Endogenous Legal Institutions: Property Rights and Community Governance in the Italian Alps”; WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*; WINCHESTER AND STRAUGHTON, “Stints and Sustainability”; DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; DE MOOR, “Homo Cooperans”.

1165 SOENS, *De Spade in De Dijk*; SOENS AND THOEN, *The Origins of Leasehold*; THOEN, A ‘Commercial Survival Economy’; THOEN, ‘Social Agrosystems’; VAN BAVEL, *Transitie En Continuïteit*; VAN BAVEL, *Manors and Markets*.

1166 THOEN, ‘Social Agrosystems’

II. Determined by nature? | Environmental conditions and their agency

Apart from institutions, the natural environment itself is often pinpointed as being the most important factor in explaining why certain institutions were introduced and sustainable management was obtained and maintained. An inclusive and unrestricted management was deemed possible because of the extent of the common wastelands combined with low population densities.¹¹⁶⁷ First of all, as stated in chapter VIII, the Campine ecosystem was not any more robust towards ecological degradation than other regions. When overexploited, the environment was quickly degraded and sand dunes occurred. Secondly, the region was less densely populated or urbanised than Flanders or Holland, but given the fact that only 25 per cent of the territory could be exploited and the sandy soils were fragile, relative population density was actually quite high.

In addition, the subsoil and environment were not decisive in terms of the type of society or institutions that developed. The subsoil does, however, influence the type of agriculture a society could have. If the Campine area had had subsoil such as that of Scheldt polder clay, the Holland peat bogs or Haspengouws loam, the situation would have been entirely different. Nevertheless, very similar ecological systems or equally infertile and challenging regions in Europe displayed fundamentally different common pool resource institutions.¹¹⁶⁸ The most important cases for comparison are the Brecklands in Norfolk and the Geest region in Schleswig-Holstein. As these regions had practically the same ecosystem as the Campine area – thanks to their location in the cover sand belt, with a dominance of wastelands and sturdy heather vegetation – a comparison between the three regions is revealing in terms of the drivers and causes behind the evolution of common pool resource institutions.¹¹⁶⁹

In the Brecklands in Norfolk peasant lease holders had a mixed farming system, producing grain on their open fields, together with breeding sheep that could be grazed on the stubbles and fallow after harvest as well as on the brecks and wastelands, as long as they purchased the right of fold course. These folds were temporary enclosures, in which the sheep could be put to graze, while their dung could fertilise the fields onto which the folds were placed. The crisis in the fourteenth century resulted in small tenants being decimated. Profiting from this temporary setback in terms of the number of tenants and the strength of the village community, manorial lords took the opportunity of enlarging their estates and power and

1167 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*; THIRSK, *The Agrarian History of England and Wales, IV, 1500–1640*.

1168 VAN BAVEL, *Manors and Markets*.

1169 BAILEY, *A Marginal Economy*.

turning towards commercial sheep breeding instead of relying on rents that had plummeted. As a result they ended up monopolising the right of fold course for their own large tenant farmers, thereby resulting in the exclusion of the small tenants. Since manorial lords over-exploited and disrupted the open field system, peasants agitated for the abolishment of the fold course system, but without any success.¹¹⁷⁰

A very similar exclusion mechanism can be observed in the Geest region. Here the “Hüfner” or farmers, possessing a privileged and full farmstead, were the ones that could exclude cottagers and landless labourers. Taking advantage of the same late medieval crisis, the “Hüfner” ameliorated their position within society and were able to dominate the common pool resource institutions. While beforehand cottagers and labourers had been permitted access, although not formally, they were officially banned during the sixteenth century when their numbers rose and the “Hüfner” attempted to defend their benefits and interests. As most of Europe experienced rising population pressure and increasingly scarce resources, such restrictive evolutions, have been seen as a logical development.¹¹⁷¹ However, in the late medieval Campine area such exclusive tendencies did not take hold. Consequently, comparable ecosystems organised their society and managed their environment in fundamentally different ways.

III. Everyone on board | Inclusiveness and dependence

The reasons for the Campine peasants’ ability of maintaining their communal property and managing their natural resources in an inclusive and unrestricted way, should be explained instead by looking at social property relations, economic interests and the distribution of power during the later Middle Ages.¹¹⁷² The survival of the commons and the implementation of this particular inclusive and unrestricted communal management system resulted from the interests of the different subgroups within society, namely the micro-smallholders, cottagers, independent peasants and rural elites. As stated in chapter V, all of them relied heavily on the commons, but in fundamentally different and even contradictory ways. The richest part of society, namely the rural elites and independent peasants, required vast and

1170 NICOLA WHYTE, “Landscape, Memory and Custom: Parish Identities, C. 1550-1700,” *Social History* 32, no. 2 (2007); WHYTE, *Contested Pasts*; ALLISON, “The Sheep-Corn Husbandry”; BAILEY, *A Marginal Economy*; BAILEY, “Sand into Gold”.

1171 RASMUSSEN, *An English or a Continental Way*; RHEINHEIMER, *Umweltzerstörung*; RHEINHEIMER, *Die Dorfordnungen*.

1172 This method has already been applied by Tim Soens for late medieval coastal Flanders: SOENS, *De Spade in De Dijk*; SOENS, *Threatened by the Sea*; SOENS, “Flood Security in the Medieval and Early Modern North Sea Area: A Question of Entitlement?”.

extensive wastelands in order to graze their unrestricted flocks of sheep of between 45 and 100 animals, so as to be able to sell wool, meat and hides on the local and regional markets. Together with their arable production, these commercial activities provided a way of securing a diversified, resilient and complementary family income. Even though it has often been stated that commercial activities were prohibited or seriously hindered in a communal regime, in the Campine area it was allowed and, moreover, was even a precondition for these elites and independent peasants for engaging in the market. Without the common wastelands, their commercial strategies would not have been possible. While this upper layer of the community was opposed to the limitation of the number of animals on the wastelands, they were inclined to try and exclude smallholders and reduce communal rights on the private hay meadows (which ensured the survival of their herd in winter times). Micro-smallholders and cottagers, on the contrary, possessed barely any animals, apart from a few heads of cattle. As they balanced on the verge of subsistence, they relied on the commons for survival therefore requiring access to the privately owned hay meadows in order to feed the few cattle they had, in combination with the right to harvest sods on the heathlands, so as to fertilise their tiny arable fields. Limiting the pressure on the environment and allowing such diversified agricultural practices would lead to the support of a restriction of the size of cattle and sheep herds by peasants.

Although they had to concede on some points, both groups realized most of their aims and the actual result of this compromise was an inclusive and unrestricted institution. Firstly, at least until the sixteenth century, the entire community, including cottagers, poor households as well as independent peasants and rural elites, had access to the common wastelands and hay meadows. This was exceptional, since most European common pool resource institutions granted access only to a particular segment of society.¹¹⁷³ As stated before, for the case of the Brecklands and Geest regions, the landless or even smallholders were often excluded.¹¹⁷⁴ As demonstrated in chapter IV by one extraordinary piece of evidence – a tax list of the village of Zandhoven detailing access to the commons - 98 per cent of the village community actively used the commons in one way or another by digging peat, collecting heather or grazing cattle or sheep.¹¹⁷⁵ Secondly, this inclusive system withstood the late medieval and Early Modern period, despite several external push and pull factors potentially limiting entitled households.

Next, a mixed farming system, consisting of privately owned arable fields together with a very diversified use of the common meadows and wastelands was introduced. As stated in chapter VI, it was the peasant smallholders and independent peasants who had opted to privatise,

1173 CASARI, "Gender-Biased Inheritance Systems"; KOS, *Van Meenten Tot Marken*; WHYTE, *Contested Pasts*.

1174 LEIGH SHAW-TAYLOR, "Labourers, Cows, Common Rights and Parliamentary Enclosure: The Evidence of Contemporary Comment C. 1760-1810," *Past and Present* 171 (2001).

1175 RAA, OGA Zandhoven, 148, "Heideboek", 1559-1581.

enclose and intensify production on their tiny arable fields. Thanks to sods derived from the common heathlands, this intensive routine had become possible. Animals were, however, the key to survival, social distinction as well as commercial profits. Normally, communities located within densely populated, commercial and urbanised regions, had very restrictive regimes that limited the amount of animals on the common meadows and wastelands.¹¹⁷⁶ Such a limitation in terms of quantities of livestock, was called “stinting”. This policy became increasingly popular in most European regions from the fifteenth and sixteenth centuries onwards and several scholars have stated that mostly upland regions, or areas with vast commons such as Sweden, refrained from introducing such restrictions because of the extent of their wastelands.¹¹⁷⁷ Campine communities, nevertheless, supplemented their inclusive institutions with practically unrestricted systems regarding grazing, despite their location within one of the most densely populated and urbanised regions in the world. Products derived directly from the commons that were easily depleted and challenging for the environment became restricted. Every household received its fair share of heather clippings, peat bogs and loam, which was enough for their own subsistence and could not be sold internally or on the rural or urban markets. Animals and particularly sheep were a completely different matter as indirect products that the commons delivered, that is, cheese, meat, milk, wool, hides or bee wax, could be sold freely. In addition, no stints or limits on the number of animals, either sheep or cattle, were introduced on the common wastelands that were accessible full-time. Only a limited amount of villages introduced maximum numbers of cattle or sheep on the common hay meadows that were only accessible part-time, being as they were the most valuable parcels of private land to which communal rights were attached.

This system endured during the entire later Middle Ages. Even though commercialisation and the lure of profits could have pushed rural elites to launch a full-scale assault on the commons in terms of maximum exploitation, so as to intensify and specialise their agricultural practices, such an enclosure movement did not arise. Only few attempts were made to alter this system that had developed by the fourteenth century. The most important actor to attempt to reduce communal rights, privatise and enclose wasteland was the abbey of Tongerlo. As the abbey had obtained the seigniorship of Kalmthout-Essen, located within valuable peat marshes that could potentially be exploited to provide Antwerp, Breda and 's Hertogenbosch with the much needed peat as a fossil fuel, it launched a firm assault on the common waste lands within their territory. After a long-lasting conflict with peasant communities, they were forced to acknowledge their defeat and allow the peasants to use the remaining common wastelands for grazing and the digging of peat. In addition, parts of the exploited peat bogs returned to common wastelands when all the resources were extracted. Secondly, Mary of Hungary, as Lady of Turnhout, in 1550 attempted to introduce a Breckland-style commercial sheep breeding centre in the

1176 DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

1177 Ibid.; WINCHESTER AND STRAUGHTON, “Stints and Sustainability”.

surroundings of Turnhout. The communities of Turnhout and Arendonk became obliged to donate a huge piece of their common wastelands to Mary of Hungary. In one farm, directly exploited and managed by Willem Wils, 900 sheep were introduced. Enormous investments in infrastructure, additional fodder and material were made, nevertheless the initiative failed. Earnings barely covered costs and within eight years the direct exploitation was given up and the waste lands returned to the community of Turnhout and Arendonk. In order to privatise and transform enough land to allow the capitalist breeding of sheep on such a scale, too great an investment was required.

IV. Common denominator | A balanced distribution of power

In the case of the Brecklands in Norfolk, the Geest region in Schleswig-Holstein and, in fact, in most parts of Europe, the interests of smallholders were more difficult to defend after the late medieval crisis. During the economic crises of the fourteenth and fifteenth centuries coupled with the immense mortality rates during this period, rural elites, lords and so-called “coqs de village” often ameliorated their position within society to the detriment of smallholders.¹¹⁷⁸ In the case of the Brecklands, lords took advantage of the havoc caused by the Black Death in order to enlarge their landed estates, push remaining smallholders into a dependency relationship and transform their rent-seeking strategy into capitalistic sheep breeding. When the population started to grow again and the economy recovered, they had consolidated their position to such an extent that they monopolised communal rights, thus excluding the peasants.¹¹⁷⁹ In contrast, within the late medieval Campine area the institutions and common pool regime that had developed reflected the compromise that had been reached between rural elites and smallholders. As I argued in chapter III, this was the result of the strong bargaining position of the smallholders vis à vis the political and economic elites (that is, tenant farmers, village elites and even lords) which was based upon their strong and stable property claims and ability to form collectives. Due to the relatively late arrival of a territorial overlord in the form of the Duke of Brabant during the twelfth century and the power struggle with the local nobility, peasant communities were “empowered” through their right to form village governments as well as the low customary rents. As the late medieval crisis only manifested itself in a modest way in the Campine area, peasant smallholders maintained their position and strength, while in most European regions it was exactly these peasants who saw

1178 MARC BLOCH, “Les Plans Parcellaires En France,” *Annales d'Histoire Économique et Sociale* (1929); FRANÇOIS MENANT AND JEAN-PIERRE JESENNE, *Les Élités Rurales Dans L'europe Médiévale Et Moderne: Actes Des 27es Journées Internationales D'histoire De L'abbaye De Flaran, 9, 10, 11 Septembre 2005* (Toulouse: Presses Universitaires du Mirail, 2007); SOENS, “Polders Zonder Poldermodel”; SOENS, *De Spade in De Dijk*; WHYTE, *Contested Pasts*.

1179 WHYTE, *Contested Pasts*; ALLISON, “The Sheep-Corn Husbandry”.

their position deteriorate. Consequently, throughout the fourteenth and fifteenth centuries, they continuously strengthened their position by purchasing and obtaining more privileges and even saw their communal management formalised by both the sovereign as well as local lords. On the contrary, the rural elites and lords were not able to enlarge their bargaining power. The local lords had lost much of their feudal dues and powers and were obliged to leave a large part of village organisation and management to village governments and were unable to convert inheritable rents into short-term leaseholds. In addition, barely any lords actively engaged in exploiting and managing their estates via tenant farmers. Finally, rural elites, including the largest independent peasants and the few large tenant farmers, were able to outshine the smallholders in terms of size, but were unable to dominate the social and political aspects of village life. As Chandra Mukerji had demonstrated, only when a group was able to dominate the political, economic and cultural life of a society, could they impose their interests on others.¹¹⁸⁰

As a result, they had to reckon with each other when developing institutions that were to manage the natural resources and village life. Institutions for collective action were therefore not the result of equal and similar interests. The different subgroups pursued rather contrasting goals, which might have led to exclusion. Nevertheless, not one group was powerful enough to defend its own particular interests to the cost of those of other social groups. As Birtles has demonstrated in relation to England, every interest group has to weigh up the potential costs of excluding the opposition. If Campine smallholders were to be targeted, the social equilibrium, would have been fundamentally disturbed, probably resulting in far-reaching consequences for all parties involved. As a result, they needed to reach a compromise, equilibrium or, as I have called it, a “common denominator”, in other words, a system that combined the most important interests of each subgroup while not fundamentally hampering any other group.

V. Negotiation and compromise | The importance of informal institutions

Finally, the question remains to what extent such a common denominator was actually reached. It was certainly not a logical consequence that only such a particular construction, encompassing the various interests, could result. It was actually a constantly negotiated and redefined compromise between groups with entirely different goals. As these groups were in

1180 CHANDRA MUKERJI, “Cartography, Entrepreneurialism and Power in the Reign of Louis XIV,” in *Merchants and Marvels: Commerce, Science and Art in Early Modern Europe*, ed. Pamela H. Smith and Paula Findlen (New York: Routledge, 2002).

favour of flexibility for redefining their position and goals, they preferred informal to formal institutions to organise village life and communal action. Although Angus Winchester and Tine De Moor have attempted to show that these formal institutions and their regulations were adapted more often than has been assumed until now, it has to be recognised that normative sources did not keep up with actual evolutions and transformations.¹¹⁸¹ Therefore the normative framework often remained deliberately vague or unchanged, because late medieval interest groups opted to adapt the informal institutions without writing new rules or conditions down. According to Heather Falvey, English villagers played a dangerous game by relying on custom and informal institutions in order to be able to manoeuvre and adjust their day-to-day actions for it would diminish their legitimacy once they were challenged by an external party.¹¹⁸² Therefore, the importance of formalised written confirmations of the common pool resource institutions – the so-called “aardbrieven”, “vroentebrieven” or “markebrieven” – should not be overestimated. Only a part of Campine communities appeared to have received such formal “constitutional” documents, while the majority had to rely on oral agreements. Next, these charters were not the glossy, detailed and clear documents that now survive. These are Early Modern versions, combining several shorter and often vague stipulations regarding use rights, the privilege to appoint officials and the right to sell parts of the commons. The few original charters that have survived are mere references to the acquisition of the right to use common wastelands, which left a great deal of room for interpretation. In addition, several communities claimed not to possess a written document at all even though they had received the formal agreement of the Dukes Jan II or III (see chapter III).

The power of peasants was based on three fundamental factors. First, their ability to circumvent formal rules and behave according to their own informal institutions. Formal Campine common pool resource institutions, endowed by local or sovereign lords, were dominated by the political elites such as aldermen, but also the lordly representative or even the lord himself. As shown in chapter III, the byelaws were created by the aldermen together with the bailiff. Even though inhabitants could make a request to introduce new rules, according to thirteenth and fourteenth-century charters the power to manage and control the commons was placed in the hands of the upper 30 per cent of the village together with the lord. Smallholders would not have been able to defend their interests via these institutions. The weakest members of society possessed an important weapon: their ability to operate according to more informal rules determined more by the interests of the peasants themselves.¹¹⁸³ Fines, for example, were not recorded nor collected as was stipulated, but rather took place via compositions and oral agreements with the lower officials. The formal boundaries of the commons were neglected

1181 WINCHESTER, *Statute and Local Custom: Village Byelaws and the Governance of Common Land in Medieval and Early-Modern England*; DE MOOR, SHAW-TAYLOR, AND WARDE, eds., *The Management*.

1182 FALVEY, *The Articulation*.

1183 SCOTT, *Weapons of the Weak*.

and boundary zones were preferred.¹¹⁸⁴ In addition, the number of animals placed on the commons was mostly arranged via informal agreements and custom, since the byelaws did not even write formal regulations down.

Therefore, it is important to acknowledge and stress the parallel existence of informal and formal common pool resource institutions. If one looks only at byelaws or charters, the institutions' governing bodies – existing of aldermen and bailiffs in the Campine region – and regulations are clearly defined and implemented. Nevertheless, if one looks beyond the normative sources, a far more complex and often contradictory picture appears. Therefore, byelaws should not provide the main source of investigation into common pool resource institutions, let alone a rural society in general. Socio-economic and juridical sources are needed in addition to the picture painted by normative sources and to discover what only the prescribed normative situation was and what actually happened on a day-to-day basis.

Secondly, the success of these informal practices implemented a very efficient way of negotiating and dealing with conflicts. As demonstrated in chapter VII, negotiations could and did get out of hand and serious topics that fundamentally divided communities did occasionally arise. Nevertheless, the majority of disputes and conflicts were dealt with via forms of infrajjustice.¹¹⁸⁵ Most conflicts between opposing parties were already settled before reaching a formal conflict resolution mechanism such as a court. Several officials, appointed to control and patrol the commons, were vital players in maintaining the peace and making sure that the day-to-day use of the commons followed the rules determined by the community. When a particular issue was unable to be solved in the community itself, either because there was no consensus or one of the parties was considered an outsider, late medieval Brabant society provided ample conflict resolution mechanisms in order to solve the disputes. The Burgundian rulers' new fifteenth century sovereign courts were especially popular for discussing issues related to the survival of the commons. As the sovereign Council of Brabant had extended its jurisdiction to sentencing cases on appeal or ones that in the first instance were normally the privilege of subaltern courts, rural communities of the Campine area perceived these courts to be the best institution to settle disputes concerning the survival of common pool regimes and institutions. Indeed, the number of Campine cases concerning the commons saw a strong rise from 1470 onwards. Consequently, all different interest groups were able to obtain access to these ducal courts and every subgroup had a good chance of winning their case. This even included smallholders and cottagers, even though they were less likely to be able to obtain a sentence on an individual basis in the sovereign court, but were able to organise and associate themselves into collectives that were able to engage in a

1184 DE KEYZER, JONGEPIER, AND SOENS, "Consuming Maps".

1185 BONZON, "Les Curés Médiateurs"; GARNOT, "Justice, Infrajjustice"; MÜLLER, *Conflict*.

lawsuit successfully. Not one interest group within Campine society was fundamentally able to augment their position to the cost of the other groups.

Finally, the survival of the institutions for collective action and, at the same time, sustainable management, was based on the fact that everybody was included and benefitted from such a survival. As all the interest groups possessed strong property claims on private land and had also received powerful communal rights, they were able to, and benefitted from, developing a long-term strategy. The absence of a profit-making imperative resulting from fully competitive lease-, labour and capital markets, made it worthwhile for different interest groups to construct a society focussed on reducing risks and determining rules that were obeyed by all parties and, furthermore, to follow this path for centuries. Therefore, an inclusive and unrestricted regime did not necessarily provide a direct path towards a “tragedy of the commons”. Such inclusiveness was an advantage rather than a liability, as long as all parties involved could count, in one way or another, on the management of the commons and benefit from its resources.

VI. Marginal economy? | Re-evaluation of a region

These findings urge us to reconsider the development of institutions for collective action. We need to look at the different factors, and also regional ones in particular, that lead societies to adopt different strategies and institutions. A more comparative research approach is therefore needed, not in order to formulate a model to cover all societies, but to differentiate drivers and influences that help explain regional divergences. In addition, however, it impels us to look beyond institutions for collective action and re-evaluate our perspective on regions such as the Campine area, generally called “marginal economies”.¹¹⁸⁶ The dominant paradigm distinguishes between broadly two types of societies. The first are the forerunners of innovation and economic growth, such as Cambresis, coastal Flanders, Holland, the Gelders region, and eastern Norfolk, for example. According to Bas Van Bavel, this development started in the late medieval period, when these regions introduced highly capital intensive economies and industries, flexible factor markets and absolute property rights. These developments were followed by increasing proletarianisation, the rise of wage labour and an accumulation of means of production in the hands of entrepreneurs. Consequently they were on the path towards a modern capitalist economy, with unprecedented economic growth. In some cases economic success was followed by ecological distress, as was proven by the example of Holland

¹¹⁸⁶ BAILEY, *A Marginal Economy*.

and coastal Flanders.¹¹⁸⁷ Furthermore, other regions were considered to be traditional and stuck in a standstill. Due to inflexible factor markets, inefficient property rights that notably included communal property, and the dominance of risk averse peasants as well as paralysing power imbalances, they were unable to reach that stage of success.

But can we define success merely by looking purely at the extent of economic growth and whether or not a society was on the path towards capitalism? Are those forgotten regions really that unsuccessful? Indeed, it has recently been demonstrated by Daniel Curtis that such persistent, yet egalitarian, societies were remarkably resilient towards crises.¹¹⁸⁸ This is most certainly supported when we consider the case of the Campine area, for they successfully ensured the movement of sands was harnessed and occurred as natural events thereby averting the threat of devastating sand drifts. In addition the late medieval crisis, one that scourged most of Europe, affected them relatively mildly. Still, the image of conservatism and lost potential lingers on, albeit undeservedly. The Campine area was one of the few regions that witnessed an almost continuous positive economic climate from the twelfth century onwards, with remarkably few demographic setbacks (even in the wake of the Black Death). At first, growth occurred through the claiming and the exploitation of land, and later through the intensification and diversification of production. Peasants, as well as farmers, engaged in the market that was based mainly on the common wastelands. Without the presence of such vast and communally managed heath fields, commercial sheep breeding would not have been possible. These peasants were therefore active players in local and regional markets while at the same time refusing to become dependent on them. By maintaining a mixed and unspecialised economy, they sacrificed high profits as well as the doubtless accompanying strong fluctuations of the market in favour of securing their survival and continuity. Therefore I would like to finish with a metaphor, one that compares the Campine area with the piece of lumber in the stream portrayed on the cover of this study. The rapids and stream convey the regions surrounding the Campine area in the late medieval period, ones that rushed headlong towards agrarian capitalism. The Campine area is represented by the piece of lumber which looks as if has been turned into stone. However, this lumber has not been affected by sclerosis or a standstill. Campine peasants and elites deliberately chose to go along neither with private property and market dependence, nor with polarisation and exclusiveness. Ultimately it brought economic and ecological success to this society during the later Middle Ages. It constantly renegotiated and redefined its position, balancing on the currents, while never fundamentally changing its course.

1187 VAN BAVEL, *Manors and Markets*.

1188 CURTIS, "Pre-Industrial Societies".



X

Appendix

X. APPENDIX

I. Inclusion and exclusion | Selection of court records of the Council of Brabant

Out of the 412 sentences and charters of the abbey of Tongerlo and ducal administration that have been analysed, 30 specific court records have been selected concerning inclusion and exclusion conflicts. This table gives a short representation of the conflicts and the parties involved, in order to complement the information provided in chapter IV.¹¹⁸⁹

Village	Date	Plaintiff	Defendant	Theme	Sentence
Westerwijk	1494	Hamlet of Westerwijk	Hamlet of Biest	Hamlet demands use rights on commons, but is excluded	Court excludes hamlet, but grants a parcel of land in return
Mierde	1495	Freedom of Turnhout	Village of Mierde	Village demands to be able to participate in intercommon but is excluded	Court excludes Mierde
Netersel/Beke	1495	Village of Netersel	Village of Beke	Village demands use rights on commons but is excluded	Courts excludes Beke
Veghel	1498	Village of Veghel	Group inhabitants of Creytenborch & Eerde	Hamlets under Veghel demand use rights on commons, but are excluded	Court excludes hamlets, as they reside under another jurisdiction
Oirschot/Grootbeemd	1498	Village of Oirschot	Village of Grootbeemd	Both communities claim use rights on common	Oirschot receives use rights, but Grootbeemd is granted a parcel of land
Beke/Lieshout	1499	Village of Beke & Aerle	Village of Lieshout	Both communities claim use rights on common	Court excludes Beke

¹¹⁸⁹ RAB, Conseil de Brabant, Archives of the Registry, General Sentence Registers, 1498-1517, 1529-1555, 1574-1580.

Zommeren	End 15th c.	Masters of the abbey of Postel	Village of Zommeren	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Richelle	1502	Church of Aken & Inhabitants of Richelle	Reynere van Arkenteele (bailiff)	Village demands use rights on forest, but is excluded by the city	Court maintains the use rights of Richelle
Oirschot/ Grootbeemd	1502	Village of Oirschot	Village of Grootbeemd	Conflict concerning the extent of their commons	Procedural error
Deurne (North Brabant)	Beginning 16th c.	Village of Deurne	Inhabitant Helmond and fiefholder in Deurne	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Tilburg/ Hilvarenbeek	1509	Group of Hilvarenbeek	Freedom of Tilburg	Village demands use rights on commons but is excluded	Request for written proof
Vroenhoven	1512	Tenant	Village of Vroenhoven	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Werbeke/ Retie	1514	Hamlet of Werbeke & Hodonk	Group of Retie	Village demands exclusive use rights and excludes neighbouring village	Village receives exclusive use rights, apart from a limited group of neighbours
Eppegem	1516	Tenants	Bailiff	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Leende/Heze	1522	Village of Leende	Lord of Gaasbeke	Village objects to changing requirements to use the commons by the Lord	Court decides that the Lord can change the requirements, but cannot excluded urban burghers
Stiphout	1526	Churchmasters of 's Hertogenbosch	Village of Stiphout	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Veghel	1531	Village of Veghel	Burgher and aldermen of 's Hertogenbosch	Urban burgher demands use rights to the commons	procedural error
Schijndel	1533	Burgher of 's Hertogenbosch	Village of Schijndel	Tenant farmers become excluded	Court excludes tenant farmer, because of outside residence

Stiphout	1535	Village of Stiphout	Masters of Saint John's in 's Hertogenbosch	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Kerkkasteel	1535	Village of Kerkkasteel	Group inhabitants of Loon and Steward of Postel	Neighbouring farmers become excluded	Court maintains use rights of neighbouring farmers
Oirschot	1536	Freedom of Oirschot	Inhabitants of Woensel	Enclosers demand use rights to the remaining commons	Court excludes enclosers
Isschot/ Grootheze	1540	Village of Grootheze & Kastelre	Hamlet of Isschot	Hamlets demand to be able to participate in intercommon but are excluded	Court excludes hamlets
Oisterwijk	1547	Hamlet of Haren & Belveren	Freedom of Oisterwijk	Hamlets object to the cities decision to enclose land	Court stops enclosure
Kontich (North Brabant)	1547	Tenant and owner	Jurors of Kontich	Tenant farmers become excluded	Court excludes tenant farmer
Schoten	1547	Tenant	Abbot of Villers (owner)	Tenant farmers become excluded	Court maintains use rights of tenant farmers
Oisterwijk	1548	Freedom of Oisterwijk	Group of inhabitants of Kerkeind	Hamlets demand to be able to participate in intercommon but are excluded	Court favours city against claims from hamlets
Oisterwijk	1548	Hamlet of Kerkeind	Freedom of Oisterwijk	Hamlets demand to be able to participate in intercommon but are excluded	Court favours city against claims from villages
Gestel	1550	Tenants	Jurors of Gestel	Tenant farmers become excluded	Court excludes tenant farmer

II. Animal fodder | Required versus achieved yields

Based on the abbey of Tongerlo's farm descriptions and lease accounts of the first half of the sixteenth century, I have tried to estimate the relationship between the yields of animal fodder that were actually obtained and required. Thanks to the estimated yields and fodder

requirements that Anna Dahlström and Jean-Marc Moriceau have calculated I have estimated the total fodder yields and livestock's fodder requirements of every tenant farm of the abbey of Tongerlo. When we compare both figures, it appears that on average only 40% of the required fodder was generated on the private land that was leased by the tenant farmers.¹¹⁹⁰

Name Farm	Cattle units	Surface tenant farms	Sum total hay yields in Kg	Sum required yields in kg	Saldo	% produced yields versus required yields
in priesterdonk	36,5	8,6	0,00	26.642,00	-26.642,00	0,00
opde wildert	41,75	16,36	8.811,83	30.596,00	-21.784,17	28,80
in voetsberghen	35,75	17,21	4.717,15	25.397,00	-20.679,85	18,57
opden hoeck	44	20,53	9.553,53	32.468,00	-22.914,47	29,42
Nieuwe hoeve	40,25	21,09	7.687,81	29.969,00	-22.281,19	25,65
Ten bossche	39	22,6	7.322,36	36.222,00	-28.899,64	20,22
prope kalmthout	47,75	22,6	16.865,48	35.381,00	-18.515,52	47,67
Ten Nieuwenhove	49,25	23,08	5.902,26	48.305,00	-42.402,74	12,22
In essen	52,25	23,3	14.539,54	37.676,00	-23.136,46	38,59
In het Reynecont	40,5	25,55	13.365,71	38.103,00	-24.737,29	35,08
Ten goere	28,5	27,84	12.111,26	28.728,00	-16.616,74	42,16
Van Plassendonk	36	28	10.125,59	35.175,00	-25.049,41	28,79
In hapert	80	28,99	12.255,39	69.737,00	-57.481,61	17,57
Ter Uytscholen	40	30,46	8.826,56	41.644,00	-32.817,44	21,20
opde donk	30,5	32,02	12.990,88	21.650,00	-8.659,12	60,00
Op het sconderblok	49,75	35,05	32.015,26	48.928,00	-16.912,74	65,43
Ten broecke	35,75	35,21	14.586,81	37.268,00	-22.681,19	39,14
Andere in Baast	84,25	35,37	13.401,15	71.191,00	-57.789,85	18,82
Op de Loo	47,5	36,52	20.848,11	42.052,00	-21.203,89	49,58
In het Raeck	80,25	36,68	9.119,06	72.234,00	-63.114,94	12,62
Ter Locht	34,75	40,25	20.049,80	33.307,00	-13.257,20	60,20
inden greve	82,75	41,77	24.520,13	60.361,00	-35.840,87	40,62
Andere in Hapert	45,75	43,88	12.224,77	33.510,00	-21.285,23	36,48
In baast	62,75	48,31	20.194,96	54.764,00	-34.569,04	36,88
Ter dongen	31	53,22	27.680,34	30.625,00	-2.944,66	90,38
Ten eynde	52,25	56,99	42.455,64	53.930,00	-11.474,36	78,72
Ter Heyden	32,5	57,64	28.379,22	31.642,00	-3.262,78	89,69
Ten bossche	39	77,62	37.302,40	36.222,00	1.080,40	102,98
Tot vorst	57	82,2	52.116,89	50.625,00	1.491,89	102,95

1190 AAT, Section II, Registers, 292, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653.; AAT, Section II, Registers, 293, Tenant farm descriptions of the abbey of Tongerlo, 1239-1600.; AAT, Section II, Registers, 206, Lease accounts of the abbey of Tongerlo, 1504-1513.

III. Farm descriptions | The 16th century tenant farms of the abbey of Tongerlo

The following table shows the sixteenth-century composition of the Tongerlo tenant farms together with the size of sheep and cattle herds.¹¹⁹¹

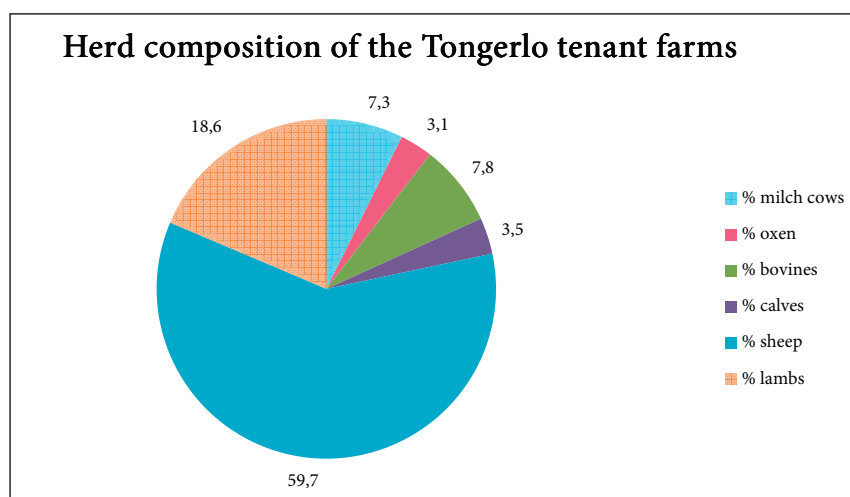
Dorp	Name Farm	Surface tenant farms	Surface Farm building and garden	Surface meadows	Surface hay meadows	Surface heath fields	Surface arable land	Surface wood	amount of pecora	amount of oves
Kalmthout	in priesterdonk	8,6					8,6		9	74
Kalmthout	opde wildert	16,36	0,86	6,02	3,46	2,15	3,87		11	87
Kalmthout	in voetsberghen	17,21			2,8	6,55	7,86		11	59
Kalmthout	opden hoeck	20,53	0,22	2,8	5,38	2,15	9,89		11	96
Nieuwmoer	Nieuwe hoeve	21,09	3,01	5,59	2,6	5,16	3,44	1,29	8	93
Tongerlo	Ten bossche	22,6		2,29	3,6	7,21	8,84	0	7	84
Kalmthout	prope kalmthout	22,6	0,86	10,97	6,88	3,89	0	0	12	107
Tongerlo	Ten Nieuwenhove	23,08	0,33	9,66	0	0	13,1	0	11	85
Essen	In essen	23,3	0,43	13,82	4,32		4,73		16	97
Tongerlo	In het Reynecont	25,55	1,97	8,52	5,24	6,55	3,28	?	7	66
Tongerlo	Ten goere	27,84	0,98	6,71	5,08	7,21	7,86	0	3	66
Tongerlo	Van Plassendonk	28	6,55	4,09	4,59	9,83	2,95	0	2	100
Hapert	In hapert	28,99	1,66	1,15	7,21	11,79	6,88		19	164
Tongerlo	Ter Uytscholen	30,46	3,28	5,24	3,28	8,52	6,88	3,28	8	68
Kalmthout	opde donk	32,02	1,09	11,41	3,47	9,6	3,01		10	50
Tongerlo	Op het sconderblok	35,05		4,59	20,47	2,8	0	7,2	11	91
Tongerlo	Ten broecke	35,21	0,33	6,22	7,21	5,24	14,57	1,64	6	71
Baast	Andere in Baast	35,37	0,33	0	8,52	11,79	12,12		20	177
Tongerlo	Op de Loo	36,52	0,5	7,53	11,46	0,66	13,1	3,28	9	94
Beerse	In het Raeck	36,68	1,96	1,96	3,93	20,31	8,52		16	173
Tongerlo	Ter Locht	40,25	0,66	20,31	4,22	14,41		0,66	5	79
Kalmthout	inden greve	41,77	0,86	13,37	11,41	2,15	7,76	1,31	25	167
Hapert	Andere in Hapert	43,88	?	2,62	5,9	19,65	15,72		13	95

¹¹⁹¹ AAT, Section II, Registers, 292, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653.; AAT, Section II, Registers, 293, Tenant farm descriptions of the abbey of Tongerlo, 1239-1600.

Baast	In baast	48,31	2,62	1,31	11,79	23,58	10,32	1,31	22	83
Tongerlo	Ter dongen	53,22	0,66	29,8	6,55	1,97	11,3	2,95	11	0
Tongerlo	Ten eynde	56,99		3,93	28,17	2,62	22,27		10	85
Tongerlo	Ter Heyden	57,64	0,66	30,13	6,55	6,22	14,08	0	4	74
Tongerlo	Ten bossche	77,62	1,31	35,04	10,15	13,43	17,69	0	7	84
Tongerlo	Tot vorst	82,2	0,65	35,37	21,62	0	22,93	1,64	39	0
Tongerlo	in vorst	82,53	0,66	35,37	21,61	0	23,25	1,64	39	0

IV. Livestock | Herd compositions during the sixteenth century

The abbey of Tongerlo left some extraordinarily detailed lease registers, containing animal counts present on the sixteenth century farms. As such the composition of the livestock can be deduced. This particular pie chart has been based on the count performed in 1573.¹¹⁹²



V. Direct exploitation | The enterprise of willem wils in Turnhout

Between 1550 and 1557 Mary of Hungary had engaged in a direct exploitation under the supervision of Willem Wils on her estates between Turnhout and Arendonk. Having received a huge piece of common heath lands to exploit privately, they introduced over 900 sheep.

¹¹⁹² AAT, Section II, Registers, 292, Tenant farm descriptions of the abbey of Tongerlo, 1510-1653.

Their accounts show the earnings made from their enterprise. The following table gives an overview of the yields and earnings made from their commercial sheep breeding centre.¹¹⁹³

Year	1550	1551	1553	1554	1555	1556	1557
Exploitant name	willem	willem	willem	willem	willem	willem	willem
Exploitant surname	wils	wils	wils	wils	wils	wils	wils
Amount of sheep	900	890	724	597	560	572	370
Purchased sheep			25	74	162		125
Deceased wether	10	16					
Deceased sheep			60	11	22	68	9
Sold sheep	0	392	50	131	159	203	86
Price per sheep in schelling		40					
Price per sheep in stuiver							11,8 (average)
Sheared sheep			639	564	552	441	
Wool yields in steen	152	151	93	89	102	61	
Wool yields in kg	142,88	141,94					
Wool yields per sheep in kg	0,16	0,16					
Wool yields per sheep in steen		5	7		3	5,5	
Sold wool in steen	138						
Buyers wool			Jan Goynaerts from sint tryuden	Jan Goynaerts from sint tryuden	Goynaert henrick theeus	Jan van Zelle from Herentals	
Price per steen in schelling	27	37	34,5		34		
Total schelling	471,9	468	270,9	252,5	294,9	206	

¹¹⁹³ ARAB, Chambre des Comptes, Accounts of the domains, 5213/1-8 Accounts of the domain of Turnhout 1550-1557.

XI

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- Book 593, N° 214, May 1541, Mierlo, Joes Snoecx vs Priest Jan de Costere and fellows
- Book 593, N° 30, May 1541, Isschot, Henricx de Proest, Jans Huysmans and Gielis van Ysschot of Isschot vs Village of Grootheze
- Book 594, N° 98, August 1541, Veerle, Widow Johanne vander Straten vs Marien vander Thommen and tenant Janne Colijns
- Book 590, N° 15, August 1541, Rixtel, Village of Aerle, Beke, Rixtel and Helmond vs Lord Wynande van Breyel Knight, Land commander van Baillien, vander Biesen of the German order of Our Lady of Jerusalem
- Book 588, N° 177, November 1541, Vilvoorde, Peter van Lyere vs Tomas Chenue
- Book 589, N° 48, December 1542, Unknown, Abbey of Saint Bernaerts vs Hubrecht de Ketelere, Adriaen Gestelere and fellows
- Book 597, N° 251, June 1543, Meldert, Beys vs Vande Velde
- Book 591, N° 46, June 1544, Dielegem, Warande master of Brabant and Abbey of Dielegem vs Steven vanden Steene
- Book 593, N° 219, December 1544, Unknown, Marcelis Claessens vs Henrick Hoze
- Book 602, N° 71, April 1545, Aken, Burgomaster, aldermen and council of Aken vs Bailiff aldermen and Village of Mothsem
- Book 594, N° 28, April 1545, Diest, Henricks Roggen vs Jan van Boeckel and Jan Baecken
- Book 595, N° 121, June 1545, Putte, Zoetmont vs Mathijs Verpoert

- Book 595, N° 103, July 1545, Unknown, Janne van Floeshem, Janne de Bijl, Janne Roelants and fellows vs Clare Mathijs
- Book 597, N° 26, August 1545, Aarschot, Aldermen, Chruch masters, Holy Ghost masters and Village of Landorp vs Abbey of Saint Geertruyde
- Book 596, N° 323, August 1545, Pedeland, Widow Claes Wouterssoen vs Adriaen Wouters
- Book 591, N° 113, 1545, Aken, Burgomaster, aldermen and council of Aken vs Burgomaster, bailiff, aldermen and village of Mothsem
- Book 595, N° 67, July 1546, Aarschot, Abbey of Sint Truiden vs Lord Schoenhoven
- Book 595, N° 63, October 1546, Valkenburg, Widow Matheeus Gruysen vs Jan Savelants and fellows
- Book 597, N° 27, December 1546, Schaarbeek, Village of Schaarbeek vs Jacop Broman and Steward of abbey of Heilem
- Book 595, N° 134, December 1546, Oirschot, Janne Aertsen, Henricke Hoppenbrouwers and fellows, aldermen, jurors and village of Oirschot vs Aldermen of 's Hertogenbosch
- Book 598, N° 7, March 1547, Oisterwijk, Jurors and village of Haren and Belveren vs Bailiff burgomasters, aldermen, jurors and city of Oisterwijk
- Book 598, N° 331, March 1547, Kuntich, Cornelis Lambierts vs Jan Fricx, Jan vander Gheeten, Mathijs van Coolhem and fellows
- Book 595, N° 91, August 1547, Schoten, Deans of Our Lady of Antwerp vs Gregorius de Alva
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- Book 597, N° 64, July 1548, Diest, Henrick Torrekens inhabitant of Diest vs Trudo Skeysers
- Book 597, N° 284, October 1548, Wommelgem, Laureys Wrage vs Bailiff Wommelgem
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- Book 598, N° 68, September 1549, Oisterwijk, Joessen Wouterssen vs Mathijsen Wijns and Janne Claes
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- Book 602, N° 76, October 1550, Breda, Cornelis Ablijn, Jan de Hertog vs Count of Nassau
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- Book 602, N° 51, April 1554, Helmond, Willem Henrickxsoon of Brussel inhabitant of Mierlo vs Willem Diericxsmets, Jaspar Vrancken, Jan Frans Peeterssoen, Ambrosius Jan Dreycker and fellows

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Nederlandse Samenvatting

De late middeleeuwen waren het toneel van een steeds toenemende verstedelijking, commercialisering en doorgedreven specialisatie. Deze transformaties zorgden voor een toenemende druk op rurale samenlevingen. Terwijl sommige gemeenschappen besloten om in te spelen op deze trends door over te schakelen op privé-bezit, commerciële productie en gespecialiseerde landbouwstrategieën, met een concentratie van bezit in de handen van rurale elites en loon- en marktafhankelijkheid als gevolg, voeren andere regio's een eigen koers. Doorheen noordwest Europa opteerden verschillende regio's ervoor om grondstoffen en land op een gemeenschappelijke manier te beheren, via geformaliseerde instituties. Algemeen werd aangenomen dat in gebieden met een hoge bevolkingsdruk, sterke verstedelijking en fragiele ecosystemen, deze instituties strenge exclusiemechanismen en gelimiteerde gebruiksrechten zouden introduceren, zodat het ecosysteem niet onder te hoge druk, zou komen te staan. De laatmiddeleeuwse Kempen verleenden echter quasi ongelimiteerde graasrechten op de gemene heidegebieden aan alle leden van de gemeenschap. Tegen alle verwachtingen in leidde deze inclusieve houding niet tot de gevreesde "tragedy of the commons", maar waren de Kempense gemeenschappen in staat om een duurzaam beleid te voeren en tegelijk een positieve economische conjunctuur te bereiken.

Tot op heden beschouwden onderzoekers geformaliseerde instituties voor collectief beheer als de belangrijkste causale factor voor een duurzaam beleid. Deze burgerinitiatieven, die gesteund en gelegitimeerd werden door de Brabantse hertogen en Bourgondische vorsten, beheerden via zelfregulering en sociale controle de gemene gronden en zouden hierdoor de sleutel geweest zijn om overexploitatie en overtredingen door gebruikers tegen te gaan. De Kempense instituties voor collectief beheer waren echter eerder instrumenten in de handen van de verschillende belangengroepen, in plaats van het meest rationele en efficiënte antwoord te bieden op groter wordende externe druk en een kwetsbaar ecosysteem.

De combinatie van een inclusief systeem met de toestemming om ongelimiteerde kuddes te laten grazen op de Kempense heidegronden vloeide voort uit de specifieke sociale constellatie van de laatmiddeleeuwse Kempense gemeenschappen. De dorpsgemeenschappen bestonden voor de overgrote meerderheid uit kleine "peasants" ofwel onafhankelijke landbouwers met slechts een klein lapje grond van ongeveer 1 tot 3 hectare. Terwijl deze groep in Europa onder druk kwam te staan tijdens de laatmiddeleeuwse crisis en hierdoor hun machtsbasis zagen slinken, konden de Kempense peasants zich handhaven en hun dominante positie bestendigen. De rurale elites daarentegen konden zich dankzij hun dieren- en landbezit of pachtrelaties verrijken, maar waren niet in staat ook een sociale of politieke dominantie ten opzichte van de armere bevolkingslagen te consolideren. De gemene gronden speelden een

essentiële rol in de overlevingsstrategie van deze peasants, wat verklaart waarom zij naar een inclusief en divers gebruik van de gemene heidegronden en graaslanden streefden. Om overexploitatie tegen te gaan, was een restrictie van de grootte van de kuddes echter in hun rechtstreeks belang. De elites daarentegen ontwikkelden commerciële strategieën en waren daarom afhankelijk van het recht op het grazen van uitgebreide schaapskuddes op de gemene gronden. Om een te grote druk op de heidegebieden te voorkomen, zou – voor deze groep – de exclusie van de kleine peasants een oplossing kunnen geweest zijn. De specifieke Kempense machtsverhoudingen zorgden er echter voor dat beide partijen tot een compromis moesten komen. Ze opteerden daarom voor de grootste gemene deler van hun belangen en creëerden instituties die zowel toegang verleenden aan de hele gemeenschap en het mogelijk maakten onbeperkte kuddes te laten grazen.

Dit ogenschijnlijk irrationele compromis was uiteindelijk succesvol in het tot stand brengen van een duurzaam beheer en het genereren van een positieve economische conjunctuur door drie belangrijke factoren. Ten eerste betekende inclusie niet enkel het verlenen van gemene rechten aan de gehele gemeenschap, maar ook het verlenen van macht, verantwoordelijkheid en toegang tot het besturen van de gemeenschap aan alle bevolkingsgroepen. Hoewel de kleine peasants amper tot geen formele toegang hadden tot de instituties en dorpsbesturen, waren zij in staat via informele en parallelle instituties en gemeenschappelijke acties hun stempel te drukken op te beheer van de gemene gronden. De regels werden van onderuit bepaald en hierdoor geïnternaliseerd, wat de naleving ervan sterk ten goede kwam. Ten tweede bezaten de Kempense peasants en rurale elites sterke bezitsclaims op hun cijns- of privégrond en op de gemene heide- en graaslanden. Hierdoor hadden zij baat bij het uitwerken van een lange termijnstrategie en waren ze niet gedwongen te kiezen voor schadelijke en degraderende handelingen die vooral gericht waren op overleven of korte termijn winsten nastreefden. Ten slotte waren de Kempense gemeenschappen goed georganiseerd op het vlak van conflictpreventie en -bestrijding. Via sociale druk, bemiddelaars of symbolische acties kon de overgrote meerderheid van de spanningen en conflicten omtrent de gemene gronden reeds intern verholpen of zelfs voorkomen worden. Wanneer er echter conflicten tussen verschillende gemeenschappen of tussen de meerderheid van een gemeenschap en enkele marginale groepen van de samenleving ontstonden, hadden de Kempense gemeenschappen of bevolkingsgroepen toegang tot verschillende meer formele conflictresolutie-mechanismen, met de Bourgondische Raad van Brabant als een van de voornaamste rechtbanken om het voortbestaan van de gemene gronden te bediscussiëren. De overleving van de Kempense gemene gronden en een inclusief en niet-restrictief systeem, was daarom te danken aan het feit dat de gemene gronden de basis vormden van de belangen van alle verschillende bevolkingsgroepen.

Deze bevindingen dwingen ons om de laatmiddeleeuwse Kempen in een ander daglicht te plaatsen. Terwijl deze regio voordien als een conservatieve en eerder achtergestelde regio werd beschouwd tegenover commerciële en kapitalistische regio's zoals Kust-Vlaanderen, Holland en Gelderland, gaf ze blijk van een eigenzinnige maar succesvolle koers. Door vast te houden aan gemeen bezit en een inclusieve maatschappij wisten de Kempense gemeenschappen een positieve economische conjunctuur te behouden tussen de twaalfde en zestiende eeuw, met een verbazende resistentie tegenover de laatmiddeleeuwse crisis. Bovendien creëerden ze een ecologisch duurzaam beheer, terwijl de omliggende regio's economisch gewin dikwijls bekochten met ecologische rampen zoals overstromingen.

Is inclusiveness in the commons and sustainability a paradox? Late medieval and Early Modern rural societies encountered ever growing challenges because of growing population pressure, urbanisation and commercialisation. While some regions went along this path and commercialised and intensified production, others sailed a different course, maintaining communal property and managing resources via common pool resource institutions. To prevent overexploitation and free riding, it was generally believed that strong formalised institutions, strict access regimes and restricted use rights were essential.

By looking at the late medieval Campine area, a sandy, infertile and fragile region, dominated by communal property and located at the core of the densely populated and commercialised Low Countries, it has become clear that sustainability, economic success and inclusiveness can be compatible. Because of a balanced distribution of power between smallholders and elites, strong property claims, a predominance of long-term agricultural strategies and the vitality of informal institutions and conflict resolution mechanisms, the Campine peasant communities were able to avert ecological distress while maintaining a positive economic climate.

