

THE PLACE AND RANK OF *IUS COMMUNE* IN THE MEDIEVAL COUNTY OF VR SAR

Abstract

The paper examines the hierarchical role of *ius commune* in the County of Vrsar, a small ecclesiastical jurisdiction in north-western Istria (modern Croatia) during the late medieval and early modern period, based on the 1768 transcription of its statutory collection, which explicitly refers to both *Jus Commune* and *Leggi Communi* as subsidiary sources of law. The legal system of the County was created and maintained by the Bishop of Poreč as a territorial lord, with statutes he issued forming the highest-ranking source, customary law as secondary, and *ius commune* applied only subsidiarily to fill the legal gaps. Unlike Venetian communes in Istria, Vrsar explicitly acknowledged the limited applicability of *ius commune*, though reserved for exceptional cases. The statutes reflect a clear hierarchy of legal sources, while Roman, canon, Roman-canon, feudal, and local customary law also influenced the system, demonstrating the substantive presence of *ius commune* despite its subsidiary formal status. Following Bellomo's and Pennington's definitions of *ius commune*, the paper highlights that *ius commune* represents a shared jurisprudential culture rather than narrowly codified law, functioning practically to resolve normative gaps. Its presence in Vrsar confirms its operative relevance even in small, semi-autonomous and *sui generis* jurisdictions. Vrsar thus provides a valuable microcosm for understanding the real-life application of *ius commune*, showing its interaction with local statutes, customary law, and ecclesiastical authority within a highly structured, context-specific legal order.

Keywords: *ius commune*, *Leggi Communi*, Vrsar, Roman law, Canon law, feudal law, jurisprudence Middle Ages

I. INTRODUCTION

Today, two well-accepted definitions of *ius commune* exist among scholars. Both have withstood the test of time. The first, and older, originates from M. Bellomo and is widely cited: "The fusion of Roman, canon, and feudal law produced a *Ius commune* and a common jurisprudence in Europe between 1100 and 1800".¹ The second is considerably more recent and derives from K. Pennington: "The *Ius commune* was a jurisprudence of norms, concepts, technical terms, and principles that shaped every legal system in Europe to varying degrees from

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¹ Bellomo, M. (1989) L'Europa del diritto comune, according to: *The Common Legal Past of Europe 1000-1800* (1995) p. XI.

the twelfth to the seventeenth century”.² Each, from its own perspective, maintains a shared core. In terms of definition, they complement and build upon one another. They also correct many earlier inconsistencies in the understanding of *ius commune*, particularly its unjustified reduction solely to Roman law, canon law, or even *utrumque ius*.³ Bellomo’s definition closely approximates that of Roman-canon law, which can itself be viewed as a legal stratum forming part of *ius commune* (though certainly it was not its sole component), albeit with the temporal distinction that Roman-canon law emerges in the earlier centuries of the Middle Ages, whereas *ius commune* is largely conditioned by reception.

Medieval law that was universally applied across Europe rested on two foundations. One was civil, reflecting the tradition of Roman law (referred to in the Middle Ages and early modern period as *ius civile*), while the other was spiritual – divine (*divinus*) and manifested through canon law (*ius canonicum*). From the mid-twelfth century onwards, these two systems began to intertwine and exert strong mutual influence, leading to the emergence of Roman-canon law (*ius Romanum canonicum*).⁴

Ius commune represents a system of legal rules, principles, and legal practices shaped in the Middle Ages through the interaction of Roman and canon law, interpreted and adapted by medieval jurists to the practical needs of their time and inevitably influenced by feudal particular laws. As a recognizable legal substance, it was applied throughout the Middle Ages and into the early modern period, with its classical phase generally dated between the twelfth and fifteenth centuries. This period, at its beginnings, witnessed the decline of earlier medieval customary practices, alongside the rise of systematic legal education at universities, and the emergence of trained jurists and medieval jurisprudence grounded in common European legal foundations. The term *commune* emphasized its universal character, contrasted with *particular law*, embodied in divergent and, in territorial sense, fragmentary local traditions and customary law.⁵

The manifestations and significance of *ius commune* (as understood by Bellomo and Pennington) have been extensively researched in Europe, and continue to receive sustained scholarly attention in Roman law studies, general legal history, and national legal histories. Less attention, however, has been devoted to its counterpart – political and legal systems, such as the Venetian one, which, for various reasons (primarily nominal, though at times also quite effective), rejected the application of *ius commune*. More precisely, at least they presented themselves as doing so by claiming their law to be entirely authentic and developed with no influences from outside.^{6,7} Less attention has been paid to the central issue of this paper: the rank of *ius commune* within the hierarchy of legal sources in a specific territorial-political context. That is, its legal force (rank) and its relationship with other sources of law in a given medieval or early modern commune or city-state.

The focus of this paper is the position and rank of *ius commune*, i.e. its legal force within the statutory system of the County of Vrsar. This was a small and typically feudal territorial-

² Pennington, K. (2015) Reform in 1215: Magna Carta and the Fourth Lateran Council, p. 124; Pennington, K. (2024) Ancient, Medieval, and Early Modern Concepts of the *Ius commune*.

³ Pennington, K. (2024) Ancient, Medieval, and Early Modern Concepts of the *Ius commune*, par 3.

⁴ Stein, P. (1999) Roman Law in European History, pp. 49-50; Berman, H. J. (1983) Law and Revolution: the Formation of Western Legal Tradition, p. 126; Uzelac, A. (2003) Teret dokazivanja, pp. 45-46.

⁵ Van Caenegem, R. (2002) European Law in the Past and the Future, pp. 22-25.

⁶ Povolo, C. (2013) Liturgies of Violence: Social Control and Power Relationships in the Republic of Venice between 16th and 18th Centuries, pp. 518, 534; Knapton, M. (2013) The Terraferma State, p. 98.

⁷ Leicht, P. S. (1958) Lo Stato Veneziano e il diritto comune, p. 209. Leicht provides a quotation of a certain Venetian jurist: *Nullis legibus Caesareis subiecta, propriisque legibus orta*.

political unit located in present-day Croatia, on the western coast of the Istrian peninsula (north-western Adriatic), corresponding to the modern settlement and municipality of Vrsar. From late antiquity through the Middle Ages and until 1778, *plenum ius* was continuously held by the Bishop of Poreč, who acted as its count, supreme civil owner, and ruler. The history of the County of Vrsar is well documented and, from the High Middle Ages onward, relies on Roman-canon institutional categories.

The County comprised a small territory of only 15.96 square kilometers and approximately 500 inhabitants in the second half of the seventeenth century, which, due to its limited size, allows a comprehensive insight into all its legal determinants and facilitates a thorough understanding.⁸ At the same time, it was a territorial-political entity that continuously resisted Venetian rule, although it was almost entirely surrounded by Venetian communes and territories. Yet, as an ecclesiastical entity, it simultaneously adopted, in its own specific way, Venetian paradigms of governance, thereby following Venetian perspectives also in legal-political terms, including those concerning *ius commune*. This paper analyses the explicit statutory regulation of the application of *ius commune* in the County of Vrsar.

II. STATUTORY REGULATION OF THE COUNTY OF VRSAR AND THE MODE OF APPLICATION OF THE *IUS COMMUNE* – LEGAL SOURCE

The legal (statutory) order of the County of Vrsar was shaped by the Bishop of Poreč (as supreme ruler, civil owner, and feudal lord) through the issuance of regulations (*statuti*) and orders (*ordini*) for his subjects, and to a much lesser extent through decisions (*decreti*) and commands (*comandamenti*).⁹ In doing so, he relied predominantly on medieval canon law, adopting certain canonical institutions known at the universal level, and adapting them to the needs of civil order in Vrsar, thereby rendering them autochthonous and, at least formally, civil (not of canonical origin) in nature. Thus, a purely canonical institution, previously belonging exclusively to the spiritual/canonical sphere, with minor modifications, would become a civil institution of a specific commune regulated by its statutory law.¹⁰ A direct, comprehensive, and authentic insight into a particular territorial dimension of the application of medieval canon law is provided by the legal collection of the County of Vrsar.¹¹ The Bishop of Poreč appears as the sole and exclusive creator of county law. He created it independently and directly, almost never delegating such authority to any county official, not even to the highest ones, such as the general vicar or, later, the Vrsar administrator. He did so without recognizing any external legal influences, except for general and particular canon law.¹² The regulations (*statuti*) and orders (*ordini*) constituted autonomous, *ad hoc*, and particular, *per se* enacted abstract sources of law. The Bishop adopted them through certain procedures and publicly promulgated them either in written form or by oral proclamation (most likely on Sunday, just after the central Holy Mass, when all would gather in the church). Consequently, the Bishop originally enacted individually,

⁸ Uredbe i naredbe za obdržavanje u Kaštelu Vrsar i njegovu kotaru (2017) pp. 58-60, 71-74.

⁹ Milotić, I. (2018) Učinkovitost i ekonomičnost u rimsko-kanonskome postupku *in civilibus* s osvrtom na *Statuti, et ordini da osservarsi nel Castello d'Orsera e Contado* (1609. i 1768.), pp. 765, 771-772.

¹⁰ Jaramaz Reskušić, I.; Milotić, I. (2021.) Crimina protiv spolnog morala u vrsarskoj pravnoj zbirci kanonska narav i rimski uzori (kanonska pravila kao izvor statutarnog prava, p. 155.

¹¹ Ibid, p. 154.

¹² Uredbe i naredbe za obdržavanje u Kaštelu Vrsar i njegovu kotaru (2017). The whole section of this monograph is dedicated to the echoes of diverse legal traditions which reflected in the statutory rules of the County of Vrsar.

each as a separate act. A collection of these acts was first published in 1609 in Udine under the title *Statuti, et ordini da osseruarsi nel Castello di Orsera, & suo Contado, ordinati dall'Illustrissimo, & Reuerendissimo Vescouo di Parenzo, Conte, & Signor de ditto luoco* at Pietro Lorio's printing house.¹³ However, for the purposes of this study, more relevant is its supplemented transcript from 1768, which contains rules from earlier periods and explicitly regulates the application of *ius commune*. The statute was written in the Istrian-Venetian idiom, closely related to modern Italian (rather than in Latin, as might be expected).¹⁴

At the very beginning of this statutory collection, in the proem (paragraph 2), a conceptual distinction is made between universal laws (*leggi universali*) and common laws (*leggi communi*). This reflects a distinction between categories belonging respectively to *ius divinum* and *ius civile*. Universal laws (*leggi universali*) are the universal, general, even ecumenical laws of the Church, constituting its general legal order and possessing the highest legal force. These sources of universal canon law are given priority of application.¹⁵ They belong to divine law (*ius divinum*). Universal canon law refers to the body of law that, by its content and scope, applies universally to the entire Church. In terms of hierarchy and legal authority, it takes precedence over particular legislative acts issued by the Bishop of Poreč, thereby establishing a normative framework within which local or diocesan regulations must operate.¹⁶

Common laws (*leggi communi*), which represent the central subject of this paper, are of civil provenance and reflect the application of *ius commune*. Their presence in various sections of the statute indicates the rules of civil origin. These conceptual distinctions mirror the dual paradigm underpinning the European continent, shaped by two legal strata (canon and Roman law), alongside feudal law, which was highly particular, substantially inconsistent and institutionally amorphous.

The application and rank of *ius commune* are addressed in principle in the concluding provisions of the statute:

*Dichiarando in oltre, che in qualsivoglia statuto penale sotto genere maschino, intendiamo di comprendere ancora il femminile, ed inqualun[que] caso viene disposto nelli presenti statuti, debba cessare il Jus commune, acorche da quello venisse disposto in contrario. E dove verrà disposto nelli presenti Statuti, Vogliamo, che si debba osservare la consuetudine solita di questa Giurisdizione, e che quella si possi allegare ancora nella decisione delle cause, purché dell'allegante venghi provata. E dove non disporrà il statuto, e mancherà la consuetudine, in tal caso si dovrà osservare quanto viene disposto delle Leggi Commune.*¹⁷

The English translation is as follows:

It is declared, among other things, that in every penal provision, although the masculine gender is mentioned, the feminine is also implied. In regard to any case regulated by these ordinances,

¹³ Di Lenardo, L. (2009) *I Lorio: editori, librai, cartai, tipografi fra Udine e Venezia (1496-1629)*, pp. 257-258; Comelli, G. (1956) *La Stampa a Udine nel Seicento*, Udine, pp. 12-22. All decisive typographical data are contained on the title page of the printed version of the codification. It is there that it can be ascertained that, in 1609, the work was printed in Udine by the printer (typographer) Pietro Lorio (*Presso Pietro Lorio*).

¹⁴ Budicin, M. (1982-1983) *Statuti, et ordini da osseruarsi nel castello di Orsera et suo contado*, pp. 237-271.

¹⁵ The collection preserved in a 1768 transcript explicitly refers, in the first paragraph of rubric no. 39 of the civil section, to the simultaneous application of civil and canon law, whereas rubric no. 13 of the civil section prescribes the exclusive application of canon law with regard to the calculation of consanguinity

¹⁶ Gross, K. (1930) *Udžbenik crkvenoga prava Katoličke Crkve*, pp. 18-22.

¹⁷ *Statuti et ordini da osservarsi nel Castello d'Orsera e Contado ordinati dall'Illustrissimo e Revenderissimo Vescovo di Parenzo Conte e Signor di detto Luoco Monsignor Leonardo Tritonio L'anno MDCVIII (1609)*. Diocesan Archive of Poreč, Collection of Statutes, Statute of Vrsar, 1609 (transcript from 1768). *Conclusione delli Statuti d'Orsara*, Rub(rica) 67: par 2.

general law, as well as anything that would determine otherwise, is to be disregarded. Where provided for in these ordinances, we wish that the legal custom belonging to this jurisdiction be observed and that it may be invoked in legal decisions, provided that it is proven by the party invoking it. In cases where the statute regulates nothing and no legal custom exists, what is prescribed by general law shall be observed.

However, even in some (albeit few) individual provisions, reference is made to the application of the *Leggi Communi*. For instance, in the part concerning the regulation of the commencement of the service of the administrator of the County of Vrsar, the individual statutory rule (which is of an administrative-legal nature) stipulates something entirely different compared to the cited general regulation on the application of *ius commune*.

...

Dovendo il mede(si)mo Governatore, che pro tempore sarà tenere purgata, e retta questa Nostra Giurisdizione d'ogni sorte d'houmini facinorosi, e di mala vita con tutti quei modi, che sarà possibile, e punire li delinquenti, e le persone rissose, e scandalose conforme disposizione delle Leggi comuni, e delli Nostri Statuti. [Dell']¹⁸

The English translation is as follows:

...

The administrator, who shall hold office for a specified term, is obliged to keep this our jurisdiction entirely free from all manner of offenders and persons of depraved conduct, and to punish criminals, quarrelsome individuals, and scandalous persons, in compliance with the provisions of general law and our ordinances.

The *Leggi comuni* are placed in this particular text before the *nostri statuti*. Presumably, as inferred from the general provisions in the concluding section of the statutory collection, the order should be reversed, since, by virtue of their legal authority, the *Leggi Communi* are hierarchically inferior to the Bishop's statutes. Were it not a matter of inconsistency in drafting, this would imply that the *Leggi Communi* are a hierarchically superior source of law compared to the statutes, and consequently, in this particular provision, they would represent the general canonical law of the Church rather than the *ius commune*. The latter seems unlikely, although it should not be entirely ruled out.

Reference to the *Leggi Communi* is also noticeable in the criminal section of this legal collection (*Parte Criminale*):

Quando, e per qual delitto sia luoco alla Captura de Rei

Rub(rica) 59:

Per qualsivoglia delitto per occasione, del quale verrà imposta in vigore da presenti Nostri Statuti, o delle Leggi Communi pena corporale, o peccuniaria al delinquente applicata al Fisco, o Camara Nostra, sarà luoco alla Captura del Reo.

...

The English translation is as follows:

When and for what crime there exists authority to apprehend the accused
Rubric 59.

For any crime committed at any time, for which, under the force of our valid ordinances or general laws, a corporal or pecuniary punishment is prescribed for the perpetrator and payable to the treasury or our exchequer, there exists the authority to apprehend the accused.

Even in this instance, the *Leggi Communi* are placed subsequent to the Bishop's statutes, thereby affirming that they are regarded as a source of inferior legal force.

¹⁸ *Ibid.*, Rubrica 1: par. 5.

III. ANALYSIS OF THE APPLICATION OF *LEGGI COMMUNI* IN THE COUNTY OF VR SAR

From the cited provisions, one can deduce with precision the hierarchy of legal sources in the County of Vrsar, and thus the place and rank that the *Leggi Communi* held among them. This offers a unique, clear, and structured insight into *ius commune* in a medieval and early modern semi-sovereign entity, whose head was a high-ranking ecclesiastical official.

It follows that the ordinances (*statuti*) issued by the Bishop of Poreč (and his other general acts) were the highest-ranking legal sources. Nothing contrary to them was valid in the County of Vrsar, even if a lower-ranking source of law (such as the *Leggi Communi*) was invoked. Such an arrangement is neither unusual nor unexpected for the medieval and early modern periods, reflecting a lawmaker who presents himself as sovereign. His sovereignty, as both civil owner (having *dominium eminens*) and feudal lord possessing *plenum ius*, derives from the Bishop's exclusive right to legislate. He further strengthens and legitimizes his absolute authority by claiming to act independently, without adopting or acknowledging any external influences, although the reality was quite different.

The Bishop did not create just any law, but codified legal rules of the highest legal force, and thus of the highest hierarchical rank. From this perspective, the County of Vrsar shows strong analogies with the Venetian Republic, which nurtured a similar understanding – that only Venetian magistrates, based on their broad discretionary authority, even bordering on arbitrariness (*arbitrio*), could create Venetian law. According to this conceptual framework, only the Venetians themselves created Venetian law – it did not draw upon any external influences.¹⁹

In Istria, only the Venetians created Venetian law. They were doing it by denying any connection with the former authority of the Patriarch of Aquileia (which had inherited the Roman and Roman-canonical legal tradition) and by attempting to sever all links with the Holy Roman Empire, as well as with the County of Pazin and the Church, which to a greater or lesser extent had preserved *ius commune*. According to F. C. Hodgson, the Venetians found the private-law concept of Roman law unacceptable, as it prioritized the individual and individual (private) interest as the legal subject, whereas the entire socio-political concept of Venice and its governance relied on the individual commune and the particular communal system, where the individual was insignificant and public (communal) interest was paramount.²⁰ For this reason, Venetian law was predominantly public in nature, whereas the greatest value of Roman law lay precisely in private law. The very character of Roman law did not suit the Venetians, since it was universal in scope, while Venetian authority found its principal foundation in the medieval, comprehensive particularism – that is, within local (communal) frameworks.²¹

The Bishop of Poreč in the County of Vrsar held the same stance, although it is evident that his statutes, apart from situational logic and feudal law of local provenance, were shaped under the strong influence of the universal law of the Catholic Church and Roman law, and occasionally even Venetian law. This is reflected in terminology, semantic expressions, and in terms of the institutional instruments, many of which did not originate spontaneously in Vrsar.

¹⁹ Merryman, J. H. (1985) *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, p. 20.

²⁰ Hodgson, F. C. (1901) *The early History of Venice from the foundation to the conquest of Constantinople A.D. 1204*, p. 344.

²¹ Leicht, P. S. (1958) *Lo Stato Veneziano e il diritto comune*, pp. 203-211.

Although the Bishop's statutes should be viewed as legal sources created by the Bishop himself, similar to Venetian law to a certain extent, they possess two dimensions in Vrsar: nominal and substantial. Nominally, they are exclusively the legal acts of the Bishop, free from any external influence. Yet, when considered in terms of content (substantially), they reveal layers of legal strata reflecting, in part, the direct application of Roman law,²² and canon law, followed by medieval Roman-canonical law, as well as feudal law from the first (early medieval/Carolingian) phase of colonate development.²³ The layers of law in question are reflected not only in substance but also even in terminology, which evidently derives from Latin and was rendered into the Istrian-Venetian dialect as the official language of the County of Vrsar.

For example, in the Vrsar legal collection, *ius commune* is mentioned under the expression *Leggi Communi*, yet only in one instance (in the cited part of the final provisions) it is explicitly referred to as *Jus Commune*. This likely reflects either an inconsistency or a copyist's (or translator's) oversight, where the Latin term remained in one place while it was replaced elsewhere by *Leggi Communi*.

As a second formal source of law in the cited final provisions of the Vrsar legal collection, customary law is mentioned (it represents a body of law intended to fill legal gaps). Consequently, customary law applies where no corresponding Bishop's decree resolves a particular issue. Where a legal custom exists, subjects may invoke it only if expressly provided by a statute, ordinance, or similar source; i.e., only if such sources of law refer to it. Where a legal gap exists due to the absence of a regulating decree, customary law appears to be applied directly, although the cited provisions do not explicitly address this scenario. Overall, it follows that customary law is hierarchically subordinate to the Bishop's decrees.

This formal perspective on customary law obscures the fact that the overwhelming majority of laws in medieval municipalities on the eastern Adriatic were of customary provenance, while codified rules were markedly a minority source. Most often, as likely in the County of Vrsar, codified rules substantively reflected local custom. However, because customary law was uncoded (i.e., unobjectified), it is impossible to determine its full content or fully grasp its role and significance, which was certainly substantial.

Leggi Communi, as a legal source in the final provisions of the Vrsar legal collection, are invoked where legal gaps exist that are neither addressed by Bishop's decrees nor capable of being filled by customary law. This represents a legal situation for which Vrsar law provides no normative solution – either because no existing rule could subsume the particular case or because the existing rule is overly general. The application of *ius commune* and other legal substrata in the County of Vrsar is therefore considered solely for the purpose of filling these gaps. In other words, *ius commune* is applied with subsidiarity in Vrsar and, according to the indicated hierarchy of legal sources, ranks below the decrees and ordinances of the Bishop of Poreč and

²² In the collection whose transcript dates to 1768, the provisions of Roman-law provenance in the civil section are as follows: dowry (section no. 13), *fiscus post omnes* (no. 13), declarations of last will (no. 13), substitutions in inheritance law (no. 13), donation in contemplation of death (*donatio mortis causa*) (no. 13), minors (*minores*) (no. 14), judicial procedure and procedural institutions (nos. 19, 20, and 21), alienation in fraud of creditors (*alienatio in fraudem creditorum*) (no. 20), sale under the hammer (*venditio sub hasta*) (no. 25), pledge (*pignus*) (no. 25), supplication (*supplicatio*) (no. 40), appeal (*appellatio*) (no. 41), and default proceedings (no. 41). In the criminal provisions, the influence of Roman law is discernible in the following: the age threshold of criminal responsibility (no. 9), the regime of urban walls (no. 24), possession of things (no. 42), *vis ac metus* (no. 42), and the concept of the legal/juristic person (no. 67).

²³ Marušić, B. (1960) Istra u ranom srednjem vijeku, p. 9.

below local customary law. Thus, it constitutes a third-tier (lowest) legal level, resorted to only in necessity –when no other legal substratum can resolve a specific situation.

A distinctive feature of the Vrsar legal collection is that it explicitly mentions *ius commune* and explicitly regulates its place, rank, and mode of application. Unlike Venetian municipalities in Istria, which, under the influence of socio-political and legal concepts of the Venetians, formally rejected the application of *ius commune*, in the County of Vrsar, *ius commune* could be applied, albeit very restrictively, only to fill legal gaps, as a tertiary source of law (after codified and customary law). However, the influence of legal determinants constituting the *ius commune* in Vrsar came from the direct application of canon and Roman-canon law, and from the practice of incorporating specific solutions from Roman, canon, and Roman-canon law into the decrees and ordinances issued by the Bishop of Poreč. In this way, in the Vrsar territory, these components effectively formed the primary (hierarchically highest) source of law.

From the relevant quotations of the Vrsar legal collection, one can observe, on the one hand, the Bishop's reluctance to resort to *ius commune* and, on the other hand, the clear necessity of doing so in certain specific and presumably rare situations. *Leggi Communi* function as a sort of *ultimum remedium* – the ultimate recourse in situations that are not legally regulated but for which a solution exists within the general legal tradition. The explicit regulation of their application represents a challenge to the myth that a medieval ruler (sovereign) creates law solely within his territory, that the law of such territorial-political units is entirely autonomous, and that it constitutes the sole law. While explicit reference to *ius commune*, even as a subsidiary, lowest-tier source of law, occurs in the County of Vrsar, in surrounding Venetian cities and municipalities—within their statutory regulations—such practice is entirely absent.

In the Vrsar legal collection, for instance, in the case of *Leggi Communi*, another recognizable principle of medieval and early modern *ius commune* is evident. It does not abolish *statutum locale* nor local customary law. It does not contradict them (*non vado contra*), nor does it operate outside them (*praeter*) statutory or customary law. There is an explicit provision that for any situation governed by Bishop's decrees, general law must be set aside, along with anything that might establish otherwise (*caso viene disposto nelli presenti statuti, debba cessare il Jus commune*). In the Vrsar legal collection, however, *ius commune* functions as a supplement, filling the *lacunae*, and it was likely also used to overcome antinomies and ambiguities arising from codified Bishop's decrees or customary law as such.²⁴

In this sense, *Leggi Communi* must be understood as a measure of necessity in certain exceptional situations and as a means of overcoming a legal impasse. The fact that the application of *Leggi Communi* is explicitly and precisely regulated in the statutory law of the County of Vrsar indicates that situations requiring its application did indeed arise in practice (for had this not been the case, such a provision would not exist). However, in such a small territorial-political entity with a very limited population, instances invoking the application of *Leggi Communi* could not have been frequent, nor numerous in overall terms.

The authors particularly emphasize that the provision concerning *Leggi Communi* was not incorporated into Vrsar law through any external statutory sample from the surrounding area, such as those that commonly circulated among autonomous communes in the Adriatic region,

²⁴ That these are typical features of *ius commune* can be seen from the following: Van Caenegem, R. C. (2002) *European Law in the Past and the Future: Unity and Diversity over Two Millennia*, pp. 48-51.

including the territory of Istria.²⁵ It is, in these territorial terms, an original, self-standing, and unique provision of the Vrsar legal collection. This does not, of course, imply that it had no model; rather, such a model cannot be identified. The prototype was most likely, judging from the Latin expression *Jus Commune*, drafted in the Latin language. This *a priori* suggests that it did not originate from an environment in which the Venetian language, the Istro-Venetian dialect, or any other Romance idiom distinct from administrative Latin prevailed, nor from any area that could in any conceptual sense have been shaped by Venetian influence.

Through the Vrsar statutory template, it may be concluded that its provisions reflect a linguistic foundation rooted in classical Latinity, that is, in the elegance and precision of contemporary legal expression,²⁶ but which is partially concealed and partly distorted through the transmission of Latin texts and legal concepts into the Istro-Venetian dialect. At the time of the codification and promulgation of the statutory rules in the County of Vrsar, namely in the seventeenth and eighteenth centuries (thus in the fully developed early modern period), such influences could have reached Istria only from the central territories under Habsburg rule (and thereby forming part of the Holy Roman Empire). Then, from the legal circles of northern Italian cities outside Venetian dominion, and, ultimately, from the Church itself, including the Papal States, that is, under the influence of universal canon law.

Leggi Communi, or *ius commune* in the County of Vrsar, does not present itself as a body of positive legal rules. It is neither enacted law nor, *in ultima linea*, positive law. At the same time, when the Vrsar legislator refers to it—by employing its technical legal designation—it is assumed that all addressees are aware of what is meant and of the substantive meaning of this legal source. In legal circles and among legal practitioners, it constitutes a well-known concept that does not admit relativisation. In our view, the meaning of *Leggi Communi* is entirely consistent with Pennington's description, which reads as follows: "Jurisprudence is the key phrase in Bellomo's and my definitions. The *ius commune* was not a set of positive laws, Roman, canon, or other. It was a jurisprudence that was created by the jurists who had studied at the law schools in Europe from 1100 to 1650. They studied the same books, written in the same language, Latin, and dealt with the same concepts, norms, and problems. They had different opinions about many aspects of the texts they studied, but they left law school with a common set of norms and a common background in jurisprudence".²⁷

IV. THE ORIGIN OF THE RULE ON *IUS COMMUNE* IN THE COUNTY OF VRSAR

The rule on *ius commune* in the County of Vrsar is attested in a text dated 1768, preserved as a transcription of an earlier, now unknown source. Consequently, its origin is undoubtedly significantly earlier than the date of the surviving manuscript. In the printed edition of the Vrsar legal collection from 1609 (whose content is considerably more modest and concise

²⁵ This is a phenomenon known as so-called proto-statutes. These were foundational statutory templates, typically the statutes of larger urban centres, which served as models and sources for the drafting of local statutory regulations in smaller communes that were, in various degrees, dependent upon them. The influence of proto-statutes is reflected in terminology, structure, legal formulations, language, and even in the literal adoption or more or less extensive adaptation of individual provisions. Examples of such influential statutes include those of Dubrovnik, Split, Zadar, and others.

²⁶ Jaramaz Reskušić, I.; Milotić, I. (2021.) *Crimina protiv spolnog morala u vrsarskoj pravnoj zbirci kanonska narav i rimski uzori (kanonska pravila kao izvor statutarnog prava)*, p. 160.

²⁷ Pennington, K. (2024) *Ancient, Medieval, and Early Modern Concepts of the Ius commune*, par. 3.

compared to the 1768 transcription), there is no mention of *ius commune*, or of *Leggi Communi*. This latter observation, however, reflects a strictly formal and narrowly administrative perspective.

Nevertheless, from a philological standpoint and in terms of legal terminology, as well as when the normative structure of the Vrsar legal collection is examined in a substantive and institutional sense, it becomes apparent that these are rules of profoundly medieval provenance—indeed not originating from the later phases of the Middle Ages, but rather from its earlier stages. Thus, for example, the Vrsar legal collection indicates that the colonic system (*colonatus*) of an early medieval (Frankish) model persisted continuously within the County. More significant diplomatic material referring to Vrsar emerges from the second half of the twelfth century. Although, in a strictly chronological sense, the County of Vrsar belongs to the Late and Early Modern period, in its essence and characteristics, it remained a deeply medieval feudal universe throughout its entire existence (until 1778). This is not merely in the sense of belonging to the Middle Ages chronologically, but socially, politically, economically, and legally, it aligns even with the earlier phases of the high medieval period. Therefore, formal chronology in the case of the County of Vrsar is entirely irrelevant and inapplicable as a category for any substantive judgments regarding law.

Moreover, a distinction must be drawn between the formation of the codification of law and its publication, on the one hand, and the creation of individual ordinances enacted casuistically by the Bishop of Poreč, on the other. The codification and publication of 1609, as well as those of later periods, do not imply that the rules themselves originated at that time; rather, they indicate only that pre-existing rules were assembled into a coherent whole and, as such, constituted a codification. Although there is no direct or explicit evidence to this effect, a qualitative analysis of the legal content and institutional framework indicates that the Vrsar collection, for the most part, belongs precisely to the classical period of the *ius commune*.

The Vrsar legal collection explicitly refers both to *Leggi Communi* and to *Jus Commune*. This is a rare occurrence, since, according to K. Pennington, no ancient, medieval, or early modern jurist used the term *ius commune* in the sense in which it is commonly employed today, nor for the phenomena to which it is now applied. In the Middle Ages and the early modern period, the term was not institutionally fixed or formally defined; rather, it denoted a body of generally accepted and almost self-evident principles, concepts, approaches, maxims, rights, dicta, and legal rules that had become established within medieval jurisprudence and were consequently subjected to juristic analysis.

These elements constituted, among other factors, a source of law, albeit almost always of a subsidiary nature. It may be assumed that *Leggi Communi* and *Jus Commune* in the County of Vrsar refer precisely to the kind of content described by Pennington.

V. CONCLUSION

The County of Vrsar was a *sui generis* medieval and early modern jurisdiction characterized by institutional continuity. It was not a classical feudal state, but rather a micro-entity governed by the Church, in which the Bishop of Poreč acted as its civil head. Although any neglect of the spiritual dimension of authority would be methodologically incorrect, it must nevertheless be emphasized that the Bishop here also appears as any other medieval (feudal) lord and landholder. These factors exert a decisive influence on the manner in which political authority relates to the *ius commune*. Wherever a pronounced ecclesiastical element is present in

the formation of a legal order and the construction of a communal system, the potential for the application of the *ius commune* is a priori significantly greater. This is precisely the case in the County of Vrsar, particularly when considered in relation to its wider environment, which largely consisted of communes recognising Venetian authority and in which, accordingly, there was no space for the *ius commune*. The Catholic Church is universal (*catholica*), which implies its universality and, consequently, its capacity to preserve and foster unity irrespective of territorial divisions, including unity in a legal sense. Such unity cannot be achieved through an exclusive reliance on particularisms (both civil and canonical) and local customary law, but also requires those elements that constitute legal unity in Europe, which the *ius commune* undoubtedly, to a certain extent, provides.

However, in assessing the role and significance of the *ius commune*, including the Vrsar *Leggi Communi*, one must avoid exaggeration or overstatement. The Bishop of Poreč remains, after all, a civil ruler (count) who must continuously safeguard territorial sovereignty and his status as sovereign, without allowing integration into the Venetian sphere. In this respect, he constructs the legal order of the County of Vrsar largely along Venetian models (including its external presentation as self-standing and autonomous), yet with certain significant and necessary deviations conditioned by the specificity of his office, the nature of his authority, and his belonging to the universal Church. Whatever the Bishop may be, his very office implies universality. In such constellations, it is neither impossible nor surprising that, in constructing the local legal order, he occasionally allows recourse to the common European legal heritage embodied in what he understands as *Leggi Communi*. Such recourse, however, is rare, limited to cases of strict necessity, and most likely exercised with considerable caution. The very fact that such practice is reflected in explicit statutory provisions demonstrates its practical existence. In essence, the recourse to the *ius commune* as a subsidiary source of law of the lowest hierarchical rank represents a necessity arising in order to overcome deadlock situations caused by legal *lacunae*.

In substantive terms, *Leggi Communi*, or the *ius commune*, carries precisely the same meaning as elsewhere in Europe, as described by Bellomo and Pennington. However, its reference and application are partly conditioned by the specificity of this small and *sui generis* entity. It surely represents a certain anomaly within the broader dichotomous division of Istria, split between the Venetian sphere of influence, encompassing two-thirds of the peninsula (and most of the coastline), and the Habsburg sphere, located primarily in the interior and partly on the eastern coast of Istria. In such a context, and given its nature, the County of Vrsar offers insight into a highly specific legal microcosm, which explains the equally rare explicit reference to the technical term *Jus Commune* in the Vrsar legal collection.

The County of Vrsar may not represent a paradigmatic medieval entity (such as the Venetian Republic, the Habsburg Monarchy, or other major European states of the period, or even city-states). This is just because it was a *sui generis* and, in wider terms, a fully irrelevant ecclesiastical entity of medieval type with a small territory and limited population. Nevertheless, everything relating to the *ius commune* in its statutory regime fits fully and consistently within the manner in which this legal stratum functioned during its classical period – from the twelfth to the fifteenth century. The County of Vrsar, therefore, constitutes a first-class analytical framework and territorial basis for understanding the phenomenon of the *ius commune*, although not in a doctrinal (theoretical, abstract) sense, but from the perspective of its concrete realization as a functional and practically operative source of law.

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