Contemporary Issues in Historical Perspective

Same-Sex Couples Creating Households in Old Regime France: The Uses of the Affrèrement*

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I. INTRODUCTION

In recent years, the issue of gay marriage has provoked acrimonious debate in France, as well as in other countries in Western Europe and in the United States. This issue is, however, part of a much wider phenomenon: Western societies are becoming more and more diverse in their household arrangements. “Normal” households are becoming less and less typical. According to the last U.S. census, nuclear families with children dropped to below one-quarter of all households, while “nonfamily households” (a rather pejorative term) consisting of single people or people who are not related to each other climbed to one-third of all households.1 People continue to debate how society should respond to these changes, and in particular whether the law should be changed to recognize these nontraditional families.

Some legislatures and courts have decided that the law should be altered to grant homosexual couples the right to marry on the same basis as heterosexual couples. They have generally argued that this is required because the state should treat all of its citizens equally. This argument has so far been affirmed by a ruling of the Supreme Judicial Court of Massachusetts and by court rulings

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and legislation in the Netherlands, in Canada, and most recently in Spain. Others have argued that while marriage should be reserved for heterosexual couples, homosexual couples should be entitled to contract “civil unions” that would confer some or all of the same rights—such as hospital visitation, inheritance, and tax benefits—enjoyed by married heterosexual couples. This position has been endorsed by the states of Vermont and Connecticut. In 1999, France adopted a law with similar provisions that created the Pacte Civil de Solidarité, or PaCS. Couples joined in a PaCS get most of the benefits of married couples, with some restrictions. Although the debate over the PaCS centered on its application to gay couples, the PaCS as finally constituted was also intended for others, including straight couples and people living together in nonsexual relationships. It thus gave a legal status to all non-nuclear family structures—that is, all families whose rights and responsibilities were not covered by the laws governing marriage.2

Most recent proponents of gay marriage and civil unions have tended to avoid historical arguments, apparently because they feel that the weight of historical tradition is against them. As noted above, they tend to use the language of rights, of liberty and equality. But, in fact, Western family structures have been much more varied than many people today seem to realize, and Western legal systems have in the past made provisions for a variety of household structures. People in those parts of Europe where Christianity began were commonly members of various kinds of non-nuclear families. It was particularly surprising that French commentators during the PaCS debate did not discuss how variable household structures have been historically. Although apparently none of the people who drafted or contested the law creating the PaCS were aware of it, in a certain sense the PaCS was not a new institution. Its provisions resemble an ancient Mediterranean institution commonly called in late medieval and sixteenth-century France the affrètement—in modern French, affrèřement—roughly translated, “brotherment” (the parties were then described as affrèřés). The affrètement was a legal contract that provided the legal foundation for non-nuclear households of many types. Thus affrèments shared many characteristics with marriage contracts, as legal writers at the time were well aware. The affrèřés agreed to form one household, commonly pledging to have but “one house, one hearth, and one purse.” All of their goods usually became the joint property of both parties, and each commonly became

the other’s legal heir. They also frequently testified that they entered into the contract because of their affection for one another. As with all contracts, affrèrements had to be sworn before a notary and required witnesses, commonly the friends of the affrères.³

I first became aware of affrèrements in 1993–94, when I saw such contracts in the records of Nîmes’s sixteenth-century notaries as I researched the origins of Protestantism there. When I returned briefly to the United States, I read a review of John Boswell’s Same-Sex Unions in Premodern Europe, which had recently appeared to a blaze of publicity, including a week of cartoons in Doonesbury. I knew Boswell slightly because I had been a member of an undergraduate student advisory committee to the history department while at Yale and Boswell had been the faculty liaison, so I bought a copy of the book and brought it back with me to France. After reading it, I concluded that the unions Boswell described might be in some sense related to the affrèrements I had seen in the archives. The issues were intriguing, but I had a dissertation to finish, so I put it aside, half thinking that subsequent research provoked by Boswell’s book would answer my questions. But other than a brief discussion in a forum in Traditio dedicated to Boswell’s book, no one seemed to be interested in affrèrements. With some trepidation, I therefore decided to do my own investigating, and I began to look at local and archival evidence from Provence, Nîmes, the regions around Narbonne, Montpellier, Albi, and Con-drieu. This article is the result of my findings.⁴


In *Same-Sex Unions in Premodern Europe*, Boswell published a number of liturgies for *adelphopoeisis* ("brother-making") that he had found, mostly in the rites of the Eastern churches. He concluded that these ceremonies were analogous to marriage ceremonies and that the couples thus united were "probably, sometimes" having sex.\(^5\) The names for the two institutions—*adelphopoeisis* and *affrèrement*—are strikingly similar, and it may yet be that further research will reveal them to be more closely related than we can now determine. I am not trying to suggest, however, that the *affrèrement* was designed as a same-sex marriage ceremony, since most of the time it was not used by same-sex couples. Yet the *affrèrement* was not only for brothers either. Instead, it was a recognition of the social reality that households in the region were tremendously varied and that legal and financial arrangements had to be created that would cover the needs of non-nuclear families. Same-sex couples thus had access to the institution but were not its primary intended beneficiaries. Still, in the Midi in the later Middle Ages and the Renaissance, society tolerated a wide variety of household arrangements. My thesis in this article is that there was no taboo against two men living alone together: amid all the many *affrèrements*, between close and distant relatives, married couples, and married nonrelatives, their arrangements did not stand out. These were small-scale communities where most people knew each other, so such couples had to have some tacit acquiescence from the community, and their contracts gave them very significant legal privileges. But these were far from the full rights implied by the egalitarian language of Spain’s new gay marriage legislation.

Late in my research I read Alan Bray’s *The Friend*, and that work, along with James Davidson’s review of it in *The London Review of Books*, helped me to formulate my thoughts on *affrèrements*. Bray’s research began, and his book begins, with the study of graves—specifically, with a monument to Sir Thomas Baines and Sir John Finch, who became friends while students at Christ’s College, Cambridge, in the 1640s and who were buried there together in 1682. Finch was high-born, Baines was probably not; originally, Baines was Finch’s “sizar,” or personal servant. After Cambridge, they both went to Italy to study medicine together, and when Finch succeeded his cousin and became Britain’s ambassador to the Sultan, Baines went with him. Baines died in Istanbul in 1681, and Finch returned with the body to England before dying himself the following year. In Finch’s monument to Baines in Istanbul, he refers to their relationship as an *animorum connubium*, a marriage of souls.

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\(^5\) Boswell, *Same-Sex Unions*, 189, and more generally 188–90, 271–74.
Their joint monument in Cambridge explains that they were buried together “so that they who while living had mingled their interests, fortunes, counsels, nay rather souls, might in the same manner, in death, at last mingle their sacred ashes.” A single funerary urn stands on top of the monument. Bray shows that joint burials extended from the later Middle Ages into the late nineteenth century: Cardinal Newman, for example, chose to be buried with his friend Henry St. John.6

Bray concludes that such friendships were at least sometimes sexual, pointing to the case of Anne Lister and Ann Walker. In that instance, because we have Lister’s massive diary (written in code), we know that the relationship was also sexual. The community probably also suspected this, since Lister’s political opponents seem to have mocked her for it and conducted something like a shivaree against her. However, when Lister contracted a sexually transmitted disease from Walker (who had contracted it from her husband), her aunt Anne did not understand its source.7 It is impossible to call the Lister-Walker relationship typical: the level of documentation is unique; it occurred in the nineteenth century, much later than most of Bray’s cases; and it concerns two women, which is unusual. In this case, they seem to have achieved “plausible deniability.”

Davidson writes that The Friend was “written in part as a defence” of John Boswell’s Same-Sex Unions, and, Davidson argues, it is a persuasive one: “Boswell, it’s beginning to seem, was on the right track; his overly gay interpretation of same-sex unions is less misleading than the loveless ‘anti-gay’ alternatives offered by his critics.” In Davidson’s view, Bray’s argument allows us to see as one phenomenon what our anachronistic analyses had previously divided:

Bray’s argument that sodomy is not necessarily an element in intense homosexual relationships, even the most passionate and affectionate . . . is a direct challenge to the foundations of much work on the history of sexuality, which has merely substituted for an essentialism of orientation—is so-and-so essentially homosexual?—an essentialism of sex. . . .

The Friend politely ravages the territory of the history of homosexuality, pillaging many of its materials and handing them over to the history of same-sex loving couple-dom, which comes to seem like an alternative and more coherent field of research. For in The Friend the probably sodomitical and the probably non-sodomitical but (never-

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6 Bray, The Friend (Chicago, 2003), 1, 140–42, 290–305, and Oxford Dictionary of National Biography, s.v. “Finch, Sir John.” The DNB entry also includes Baines. In 1988–89, I spent a year at Christ’s College and was in the chapel several times. It is a commentary on how we ignore things that don’t fit our preconceived notions that I never noticed the monument to Baines and Finch, although it is very prominently placed.

they) devoted pairs sit very happily side by side, looking for all the world as if they are part of one story.8

For Davidson, some relationships were sexual, some were not, and there is no reason to characterize them as “essentially” anything at all. Something similar seems to have been the case for affrêlements.

II. THE HOUSEHOLD IN MEDITERRANEAN FRANCE

Household structures in southern France, and in Mediterranean Europe more generally, were extraordinarily varied in the Middle Ages and in the early modern period. Nuclear families were far from being universal, or even the ideal. Furthermore, non-nuclear families came in many different forms. Households could be multigenerational, linked vertically with grandparents or other elderly relatives, parents, and children living under one roof. Members of a household could also be linked “horizontally,” with two or more adults and their children (if any) living together. In modern French these horizontal households are usually called frères, that is, “brotherhoods.” The term implies that the model for these household arrangements is that of two or more brothers who have inherited the family home on an equal basis from their parents and who will continue to live together, just as they did when they were children. Not all family arrangements were common in all regions. Some parts of southern France abounded in “vertical” arrangements, usually referred to as “stem families,” and in some regions horizontal households were entirely absent. André Burguière has suggested a similar distinction, using the term familles-souches for stem families and familles communautaires for all other households.9 There were also households where some or all of the members had no ties either of marriage or of blood. Some were quite small, consisting of two people, while others included upward of one hundred men, women, and children. In a society with such a variety of households, same-sex couples living


same-sex couples creating households in old regime france

for france, probably the two most well-known recent discussions of non-nuclear households are in an article by antoinette fauve-chamoux in the histoire de la population française and in jean-louis flandrin’s families in former times, which, although older, is more complete. both authors recognize that there were considerable variations in the structure of southern french households in the early modern period, although flandrin is much clearer on exactly how common those non-nuclear households were. based on studies of localities in the périgord, in the rouergue, and in provence, flandrin estimates that in the late seventeenth and early eighteenth centuries, “between 32 and 43 percent of households were of the extended or multinuclear type,” while only about half were nuclear (the rest were almost exclusively single-person households). by comparison, the percentage of such households in england was negligible. a recent study of the gévaudan (the modern département of the lozère) concludes that two-thirds of all families there were nuclear, one-quarter were familles-souches, and about 7 percent were either frères or combination familles souches-frères.10 the area of france with non-nuclear households extended from bordeaux to nice and from the loire (and sometimes even further north) to the pyrenees. within large portions of this region, non-nuclear families were sufficiently common that they were almost as widespread, and presumably almost as “normal,” as nuclear families. non-nuclear families were not a deviation, but an almost equally common alternative to the nuclear family structure. this, as others have recognized, is a mediterranean pattern: in renaissance florence, for example, about 19 percent of all families were polynuclear, with about 5 percent frères and the rest multigenerational. in the region around pisa, the statistics were similar to those in provence and rouergue: just over half of the families were nuclear, a bit more than 10 percent were single people, and the rest were extended, whether horizontal or vertical.11


11 david herlihy and christiane klapisch-zuber, tuscans and their families: a study of the florentine catastro of 1427, yale series in economic history (new haven,
Perhaps the most well-known examples of complex horizontal households were those of the Jaults and other complex family communities in the center of France that were discussed in a recent monograph by Jean Chiffre, a French geographer, and summarized by Antoinette Fauve-Chamoux in the *Histoire de la population française*. Beginning in the fifteenth century, large family complexes developed. Each nuclear family within the larger group had its own small room to itself, but meals were prepared and served in a central building. The communities had up to about one hundred members, including groups of families with children as well as single people, many of whom were more or less closely related but some of whom were not and had elected to join the group. These communities were particularly common in the Auvergne, the Nivernais, and the Morvan, and some survived into the beginning of the twentieth century. These large family complexes continually renewed themselves, growing and shrinking over the generations but preserving their central buildings, lands, and corporate character. Daughters who married outside the group were dowered by the community, but if widowed they were entitled to return, and widows of male members of the community were likewise permitted to stay. Aged members who could still work did so, but otherwise they were supported by the common funds. These communities usually (but not always) elected one of their number to be their head and to represent the community to the outside world. Such communities were not exclusive to the Auvergne: in the late fifteenth century, there is a reference to a household of ten couples, totaling seventy people, in the region of Caen, in Normandy. In modern terms, these communities rather resemble an Israeli kibbutz.

Alain Collomp has analyzed highly patriarchal multigenerational households in Alpine Provence. This was a region of partible inheritance, although firstborn sons tended to inherit a disproportionate share. Sons frequently received a *donation entre vifs* from their parents when they married, of the same size as their wives’ dowries. (A *donation entre vifs*, or *inter vivos* donation, a gift among living persons, is a contract that obligates one person to give a specified sum of money or piece of property to someone else.) Both sides of the family thus contributed equally to the formation of the new household. But this relatively egalitarian system was, by its very flexibility, prone to create.

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arguments and legal disputes, and therefore it tended to reinforce the authority of the father as head of the family. He tended to act as an arbitrator between the children while he was still alive, and they almost never remained under one roof after his death. Roman law reinforced this social structure because it gave parents very wide discretion about how to dispose of their property after their death, thus also emphasizing their authority.\(^\text{14}\)

In much of southwestern France, although the legal system generally followed Roman law principles, local custom and customary law insisted on primogeniture in order to preserve family lands intact. One child, either the eldest son or the eldest child, depending on the region, was entitled to all of the land that had been in the family for multiple generations; other children could only inherit land and money that had been acquired recently. Sometimes—if the eldest son became a priest, for example—another child could be substituted as the heir. The heir had the right to be married in the family house, while other children did not. Younger children could be married off to the heir of another family; otherwise their marriage choices were distinctly restricted, and it appears that they tended to marry later than their favored siblings. The other children sometimes lived with the heir, helping around the house, and heirs also frequently lived with their parents. As a result, in the eighteenth century, for example, between 20 and 30 percent of families in Béarn were extended. These extended families were quite hierarchical; the heir headed the household. It should be noted that in order to enforce this system, local customary laws had to override Roman law. Laws enforcing primogeniture necessarily restricted the right of parents under Roman law to dispose freely of their estates in their wills and prevented them from selling their lands. Even in cases of necessity, when land had to be sold (for example, for a daughter’s dowry), local customary law provided that other family members had the right (usually within one year) to buy it back at the same price. The result of these provisions was that multiple parties had claims to most land; clear ownership rights did not exist, and sales were thus very difficult. All of these provisions violated basic Roman law principles, and they made affrèments legally impossible.\(^\text{15}\) In other words, because people in the region had


\(^{15}\) For statistics on Béarnais extended families, see Christian Desplat, *La vie, l’amour, la mort: Rites et coutumes XVIe–XVIIIe siècles* (Bayonne, 1995), 232. For a description of the land/family system in the region, see Anne Zink, *L’heirat de la maison: Géographie coutumi ère du Sud-Ouest de la France sous l’ancien régime* (Paris, 1993),
firm ideas about how the family should be organized that were not well served by Roman law principles, they developed a set of local customs that were. What is impressive is that the different systems of the southwest, of Provence, and of the Auvergne could coexist within essentially one legal framework, Roman law. The southwest is the exception that proves the rule: its local inheritance rules were intended to constrain the inherent freedom and flexibility of the Roman law system.

III. The “Affrèremement”

Having described the varieties of household arrangements that were common in premodern southern France, we can turn to the principal subject of this article, the horizontal, egalitarian households that were legally regulated by affrèremements. The need for such legal arrangements came from the propensity of people to decide to form common households outside the nuclear family.

The most important study of the institution of the affrèremement in France, by Roger Aubenas, focuses on Provence in the late medieval period through the sixteenth century. It defines an affrèremement as “a contract by which two or more persons, brothers or relatives, or even strangers, declared that they would combine their goods, unite to possess them in common, and engage to live together ‘ad unum panem et vinum’ [sharing one bread and wine] like brothers.” As Aubenas’s description implies, such households stereotypically consisted of two or more brothers, with their wives and children, but were also quite frequently composed of other relatives, or even nonrelatives, as discussed below.

Affrèrements appear to derive from the Roman institution of the consortium, which also united a group of individuals, usually related by blood, into a community sharing living arrangements. Initially consortia were not regulated by contract but rather arose “naturally” from the formation of a joint household. (In this they resembled sociétés taisibles, discussed below.) Each member of the consortium had the power to act on behalf of the group, and every member was equally entitled to the group’s earnings; the consortium could be


dissolved by agreement among the parties or after the death of one of the parties. One Roman jurist comments that the consortium is another kind of societas, or partnership, and it appears to have evolved in that direction, judging by some statements of Cicero. Exactly how and why the institution survived and evolved into the affrèremens of the late medieval period is somewhat conjectural, since documentation is scarce, but there seems to be little doubt among scholars who have studied the question that the consortium is indeed the ancestor of the affrèremement. The hypothesis receives considerable support from the geographic distribution of affrèrements, since they were more prevalent in southern France, where the role of Roman law was greatest. Furthermore, when early modern notaries described the origins of the affrèrement, they cited the discussion of consortia and societates in standard Roman legal sources, including Ulpian, Paulus, and others cited by Boswell. To that degree, affrèrements share more with adelphopoeisis than a name with the same meaning; the institution discussed here and the one Boswell considered have some common antecedents.

The geographical extent of affrèrements and similar contracts was quite wide, both in France and elsewhere in Mediterranean Europe. To begin with France, one way to get a sense of their extent is to examine local coutumes, which frequently mention them. In the French legal system, Roman law furnished general principles, but many regions, especially in the northern half of the country and in the far southwest, compiled local exceptions and modifications to them. These compilations, called coutumes (customs), were originally oral, but over the course of the fifteenth and sixteenth centuries they were compiled in writing and sometimes emended or regularized at the same time.

For the legal history of the affrèremement, see Gaudemet, Les communautés familiales, 68–83. This work, not cited by Brown or Boswell, includes full citations to the legal literature. On the geographical extent of the affrèremement, see esp. Aubenas, “Réflexions,” 3, which points out that Pierre Imbart de La Tour, Les origines de la Réforme, 4 vols. (Paris, 1905–35), 1:483, found similar documents in the archives of the Yonne, the Loiret, and the Cher, northern regions where Roman law was far less influential. Imbart de la Tour comments that “ce collectivisme familial fut très puissant.” To understand how sixteenth-century jurists understood the legal history, see, for example, Jean Papon, Instrument du premier notaire, 3rd ed. (Lyon, 1585; orig. ed., 1576), 127–44, which may be usefully compared with Boswell, Same-Sex Unions, 97–104. Boswell (101) wants to distinguish the consortia and societates from collateral adoption, arguing that only the latter created the unions he is concerned with and commenting that “these were well-known and available to anyone who needed to establish an ordinary business or inheritance relationship” (101). Given the overlapping nature of the institutions, this seems to me to make a distinction where there is none. Furthermore, I am not sure what an “ordinary” inheritance relationship is. I suspect that Boswell’s confusion stems from missing much of the secondary literature: without it, he tried to piece together the story himself from the primary sources.

For a summary treatment of these issues, see the entries for “Droit coutumier” and
Judging from mentions in customs, the Loire, the Midi, and the center (Nivernais, Bourbonnais) seem to have been the heartland of these associations. Over forty years ago, Roger Aubenas summarized the local studies that had accumulated and pointed out that in France historians had found “artificial fraternities” in the regions of Nîmes, Lodève, Albi, Provence, Quercy, Roussillon, Périgord, Limousin, Narbonne, Auvergne, and Guyenne, and in the départements of the Yonne, Cher, and Loiret. These included both Catholic and Protestant regions. Aubenas also summarized the literature from other European countries, including Spain, Italy, and the Balkans.19

Many people with widely varying degrees of relationship entered into affrèrements. So, for example, in 1606 in Ambialet (now in the département of the Tarn in southwestern France), two brothers, Pierre and Jean Alary, “in good health and prosperity of their bodies and understanding”—which, as M. J. Roumegoux comments, is reminiscent of the language used in wills—“in consideration of the great love and fraternal affection which they bear and have borne to each other in the past, having lived and worked in common all their life, have been brothered (affrairés) together. All that they have and that they will acquire henceforth shall be common amongst them. They and their family will live together for eating and drinking, making one table, one house, one fire.”

Affrèrements, as will be seen, commonly use this language of fraternal affection, and such affection is indeed what the parties normally give as the reason for their decision, if they give a reason at all. Because the agreements had such profound consequences, they usually provided for certain contingencies. The Alarys’ agreement specified that they would both dower all of their daughters and work the same land. Pierre was already married, but the agreement provided that if Jean married, his wife’s dowry would become part of the common fund.20
If brothers were the most stereotypical parties to affrèrements, other relatives also commonly used them. In 1554, for example, Pierre Jauffre, an innkeeper from Aix, and Berthélemy Brousse, Jauffre’s wife’s son (from a previous marriage), entered into an affrèrement that was to last for six years and that also provided that they would ask their friends to arbitrate any disputes. It appears that this agreement was part of a larger process of setting up their household arrangements, since they made this arrangement at the same time that Brousse entered into a marriage contract with Honorade Saulveur.21 Similarly, on March 20, 1407, Jean Laudas and Guillaume Baynac, first cousins from the region around Albi, entered into an affrèrement contract in which they agreed that everything they owned, owed, or acquired would be held in common and that they would live and eat together.22 One very early reference to an affrèrement is from a cartulary of the abbey of Valmagne (Hérault) dated January 1178, dealing with a disputed inheritance among relatives. Pons Rainon demanded some fiefs that were part of the chateau of Marseillan from his two uncles Raymond Bernard and Veirenc. They replied that he had signed an affrèrement with them and had sworn to uphold it. Rainon had no right to complain that he had not received his inheritance, since by entering into an affrèrement with his uncles he had made them all part owners of the property.23 Thus affrèrements were contracted among close relatives, relatives by marriage, between relatively distant relatives, and between relatives of different generations.

Affrèrements among nonrelatives are particularly surprising, given their effects on inheritance. One of the few studies in the last thirty years to mention affrèrements is by Elizabeth A. R. Brown and was published as part of the forum referred to above evaluating John Boswell’s Same-Sex Unions. She confines her discussion of the frequency of affrèrements between nonrelatives to a footnote, where she comments that her source, Aubenas, provides only a “sole example” of an affrèrement between nonrelatives.24 She thus appears to be arguing that affrèrements of this type were rare and unimportant. In fact, most in-depth studies of notarial contracts in Mediterranean France prior to 1600 have reported examples of nonrelatives signing affrèrements and, indeed,
have commented on their frequency, and most standard ancien régime treatises and modern histories of French law also refer briefly to their existence. Affrêrement contracts, because of the inheritance issues involved, normally mention the wives of the affrêres, if they had them, and it is clear that in many cases the affrêres were indeed married. In these instances we cannot assume that familial love brought the two men together, nor does it seem logical to infer a romantic or sexual relationship between them. Instead, friendship seems the most likely motivation for their decision. Still, the existence of affrêments among unrelated men who were married helped create a context in which unrelated men who were not married could form affrêments without opposition. Although unmarried unrelated men are more the focus of this article, it is therefore still worthwhile to underline how common affrêments were among married unrelated men by giving a few examples from various parts of France, mostly near the Mediterranean. The example Brown mentions concerns a contract between Jacob Elziari and Jacob Martin, concluded on the last day of December 1443, in Aix. The two farmers (laboureurs) created a perpetual affrêrement including all their goods with the obligation to live a common life, and they specified that their wives and families were included in the contract. They agreed not to end the affrêrement except by mutual decision; the party that first asked for a dissolution would have to pay a penalty. The contract between Jean Bru and Guillaume Belloc of Saint Nazaire (Aude), agreed on December 27, 1521, also makes it clear that their wives were included, as does that of Johan Teysseyre and his wife Johana Cavaliera with Ramond Alari and Peyrona Johannya, concluded in Caylus (Tarn-et-Garonne) in 1551. The same is true of an early affrêrement between Hugonin Baratier and Jean Erglese in 1397 in Mauguio (Hérault) and of the affrêrement between two weavers from Lodève, Raymond Cros and Hugues Champion, in 1462. Inevitably, however, it is not always clear in a contract whether the affrêres were single or not. Consider the case of Antoine Chauvin, who entered into an affrêrement with André Gros near Digne in the late fifteenth century. We know that he left children, since afterward, when the children were grown up, they asked that the affrêrement be dissolved and the property divided between them and Gros, who had been their tutor. However, Gros’s role suggests that they had no mother living, and it is therefore highly probable that the two men in fact lived alone with Chauvin’s children. What is not clear is whether Gros

and Chauvin originally lived together with Chauvin’s wife, or whether the two men only moved in together after her death (or after she left the household). Other cases of *affrêrements* among nonrelatives can be found in late fifteenth-century Redessan (Gard) and in thirteenth-century Rousillon.\(^{26}\) To summarize the examples above, *affrêrements* among nonrelatives can be found from every modern département on France’s Mediterranean coast from Toulon to the Spanish border, as well as elsewhere in Provence and the southwest.

When seeking to understand why people used *affrêrements*, historians have generally looked at the timing of their spread. Temporally, *affrêrements* appear to have been used very early in European history. There are examples from Spain as early as the eleventh century.\(^{27}\) In France, there are numerous examples from the High Middle Ages, but *affrêrements* greatly proliferated after the mid-fourteenth century. It appears that the custom spread to Provence from Italy. Many commentators, noting the coincidence in timing, have suggested a link between the rise of the *affrêrement* and the collapse of Europe’s population following the Black Death, beginning in 1348. In this troubled era, it was easy for people to rent or buy land, and therefore there was comparatively little incentive for them to work as laborers for others. In an era of labor shortage, small plots were inefficient. It made sense for people to join together to work their lands collectively, and the *affrêrement* was the most convenient legal instrument to formalize these arrangements. Aubenas noted that foreigners in Provence, many of whom settled in the region because there was much vacant land as a result of the plague, frequently formed *affrêrements.*\(^{28}\)

This rise of the “communitarian spirit,” as Jean Hilaire has termed it, can perhaps be seen in northern France as well, specifically—borrowing from Alan Bray—through funerary art. Although the results are not probative, they are suggestive. Tombs, as we have seen in Bray’s work, are one of the ways people indicate their sense of themselves and how they relate to their families. For northern France, there is an invaluable set of tomb images, the Gaignières

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TABLE 1
DISTRIBUTION OF MULTIPLE TOMBS BY TIME PERIOD

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<td></td>
<td>Cases</td>
<td>Percent</td>
<td>Cases</td>
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<tr>
<td>Pre-1347</td>
<td>786</td>
<td>92</td>
<td>720</td>
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<tr>
<td>1348–1499</td>
<td>609</td>
<td>78</td>
<td>478</td>
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<tr>
<td>1500–1700</td>
<td>610</td>
<td>83</td>
<td>508</td>
</tr>
<tr>
<td>Total</td>
<td>2,005</td>
<td>85</td>
<td>1,706</td>
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collection, published thirty years ago. It comprises over two thousand images of French tombs, compiled before the French Revolution. These have been exploited by art historians for a number of purposes, most obviously for the history of costume. But it is also possible to look at who was buried with whom. Most people were buried alone, but 299 tombs (about 15 percent) contained more than one body. Of the 299 group tombs, 92 percent were cases where people were buried with their spouse or another relative. Of the two dozen cases that involved nonrelatives, a few involve two unrelated men. (These are discussed in Section III.) Sometimes these burials seem to be the choice of the person buried in them, occasionally that of their heirs or executors. Interestingly, multiple tombs were not a constant throughout time, as shown in Table 1.

Looking at the table, the most significant difference appears to be in the period after the Black Death (1348–1499), when the percentage of multiple burials is distinctly higher than before or afterward: the percentage of tombs containing more than one person rises from 8 percent to 22 percent, before falling back a bit to 17 percent in the period after 1500. A chi-square test is not really appropriate here, since this is not a random sample of the population of France. The data were gathered from about one hundred and fifty northern French churches. Large churches and major cities are probably overrepresented, and clearly only the wealthy were likely to have tomb art made to memorialize them. Nonetheless, if the sample is taken to represent the population of the wealthy in northern France, a chi-square test shows significance at a .001 level. In this period, more people seem to have disliked the idea of


30 Ibid., plates 164 and 636, for example, which consist of two wives of one husband—presumably he chose to have them buried together.
lying alone in their graves. This timing seems to correspond well with the rise and decline of affrèrements, as will be discussed below, and also corresponds well with the period when blood brotherhoods were most common in England, according to Bray.

Connected with the notion that affrèrements, as well as other communitarian arrangements, became more popular as a way to manage land in the era after the Black Death because labor was hard to find, a number of commentators have suggested that affrèrements were therefore predominantly rural. Affrèrements do appear to have been somewhat less common in cities. In the contado of Pisa, on average, about 8 percent of households were “horizontal,” but there were significant differences depending on occupation: about 9 percent of men with rural occupations were in affrèrements, but the figure is only about 5 percent among tradesmen’s families. In the Gévaudan, Philippe Maurice also found lower rates of horizontal families in cities, especially the larger cities of the region, but as noted earlier even in Florence about 5 percent of households were fréreches. Thus, such households were somewhat more prevalent in rural areas, but they were common enough even among artisans and among urban dwellers, and they existed in cities such as Geneva, Sion, and Nyon, for example. While there is probably a good deal of truth to the argument that affrèrements spread as a response to the effects of the Black Death, this is only part of the explanation for their prevalence. Furthermore, the Black Death does not, of course, explain why affrèrements were more common in Mediterranean France than in northern France or elsewhere in northern Europe. Legal differences may be responsible in part, but cultural differences also need to be considered.

IV. The “Affrèrement” and the Law

The first hurdle to understanding the legal basis of affrèrements is terminological. Different kinds of documents, written at different times and places, tend to use different, overlapping terms for these contracts, which is somewhat confusing. They frequently refer to consortia, communities, societies, or associations, as well as to affrèrements. Sometimes they were referred to as sociétés taisibles (or tacites), that is, unwritten associations, because they were presumed to arise tacitly when brothers continued to live together after the death of their father. Some coutumes specified that if two brothers continued to live on land inherited from their father, without subdividing it, for a year and a day, they established a société taisible. Confusingly, some major com-

31 Aubenas, “Le contrat”; Klapisch-Zuber and Demonet, “A une pane,” 45, 50; Maurice, La famille en Gévaudan, 167; and Gaudemet, Les communautés familiales, 90.
mentators use the term *tacit* generically, even when referring to contracts that were in fact written down. The modern term *frèreche* was also used sometimes in Provence in the period under discussion. In the thirteenth to sixteenth centuries, *affrèrem* tended to be used in the actual contracts and closer to the Mediterranean; *société* was more commonly used in legal treatises, in later centuries, and farther away from the sea. Contracts in the regions around Ni- mes, Montpellier, Mende, Narbonne, and Aix all used *affrèrem*, for example. In medieval Italy, it was called a contract of *affratellamento*. In twelfth-century Toulouse, notaries used the term *fratrisca*; such communities generally were created as a way to look after minors. In sixteenth-century Condrieu, contracts specified that the parties would *associés et affraîrés*, terminology similar to that used in early sixteenth-century Périgueux, where the parties agreed that they *se associaverunt et affreyraverunt*. This usage was also found in the Albigeois. But when Jean Papon of Lyon wrote a guide for notaries in the sixteenth century, he used the term *sociétés*, as did Claude Ferrière’s seventeenth-century manual. So did the *Encyclopédie* of Diderot and d’Alembert. Over the course of this period more and more Roman legal texts were rediscovered and then printed, and legal scholars therefore became more and more knowledgeable about the Roman legal tradition. In the earlier part of the period, practice was much more fluid and based on local custom. As Jean Hilaire explains it, it was notaries, by their formulas, who were the guardians of the tradition, and they exercised their profession “without the assistance of a good familiarity with Roman law.” Since *affraîrmentum* is not a standard Latin word, while *societas* is, the gradual replacement of *affrèrem* by *société* was probably a part of this general trend.

*Société* meant something very different five hundred years ago than it does today, something more like “community.” In modern French, *société* and the related word *associé* are business terms, roughly equivalent to the English

32 Denis Le Brun, *Traité de la communauté entre mari et femme*, avec un *Traité des communautés* ou *sociétés* tacites, new ed. (Paris, 1734). Other sources, including the *Encyclopédie* (15:259), do state that *sociétés tacites* were not regulated by contracts. For the term *taisible*, with references, see Viollet, *Histoire du droit privé*, 801.


“corporation” and “partner” (as in partners in a law firm). While the English term partner can be ambiguous (“Is her partner joining us?” could refer to someone who shares an office or a bedroom) the French term associé is not. So it might seem as though referring to someone as your affrère might have a very different connotation than referring to him as your associé. This may have been true at the time, but since legal treatises normally refer to sociétés and not affrèremens it is hard to be sure. This discussion will therefore be confined largely to the meaning of société and its Latin equivalent societas. The crucial concept is that of communauté de biens, or “community of goods.” Members of the same société shared their property. Early modern jurists were quite clear that there was a profound link between all kinds of partnerships. Denis Le Brun, for example, in the eighteenth century, wrote that “there is no one who does not acknowledge that there is a great connection between the conjugal community that is formed by marriage . . . and the communities or tacit associations that are discussed in this Treatise, both of which Communities are regulated in part by the same principles.”

Le Brun’s book was considered the standard for the era—the Encyclopédie of Diderot and d’Alembert, for example, cited it for readers desiring further information on the subject. The Encyclopédie’s own article on “société” says the same thing equally clearly in its very first sentences: “Société (Jurisprud.) signifies in general a union of several persons for some object that brings them together. The most ancient of all sociétés is that of marriage, which is of divine institution.” As a more modern treatise puts it, “Companies, associations, communities, partnerships, in the old law, were constructed according to the same type as family communities.” Just as a marriage contract established community of goods between the spouses, with the special reservation of the wife’s dowry, so too did sociétés. In that sense, it is not surprising that local coutumes frequently discussed the legal issues involved in the two kinds of contracts side by side. In the coutumes of Orléans, compiled in 1509, chapter

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35 Le Brun, Traité de la communauté, 14. In French: “Il n’y a personne qui ne convienne qu’il y a une grande connexité entre la communauté conjugale qui se forme par le mariage, soit qu’elle s’établisse par un contrat particulier qui en précède la célébration, ou qu’elle s’acquière de plein droit par la célébration du mariage en vertu de la seule disposition de la Coutume du domicile du Mari, et les Communautés ou Sociétés tacites dont il est parlé dans ce Traité, les unes et les autres de ces Communautés, ou Sociétés se règlent en partie par les mêmes principes.”

36 For the bibliographical reference, see the end of the Encyclopédie article on “Communautés,” 3:724. For the quotation on sociétés, see 15:258. In French, it reads, “Société (Jurisprud.) signifie en général une union de plusieurs personnes pour quelque objet qui les rassemble. La plus ancienne de toutes les sociétés est celle du mariage, qui est d’institution divine.” I consulted the Encyclopédie using the ARTFL database.

9 is entitled “De communauté d’entre homme et femme mariiez,” while chapter 10 is “De société.” In the coutume of the county of Maine, part 16 is devoted to “community of goods,” with the various paragraphs discussing marriages and sociétés subsumed under that general heading. In Touraine, the coutume (compiled 1507) stated that “community of goods does not take place except in marriage, unless it has been contracted”—that is, in a société. (The purpose of this clause is to prohibit sociétés taisibles.) Of course, most businesses in this period were family businesses.

Most commentators made a distinction between sociétés universelles and sociétés particulières—that is, between universal associations and limited associations. Thus, Claude Joseph Ferrière—nephew of the Claude Ferrière mentioned above and also an eminent French legal commentator—explained: “A société is therefore universal, or particular: a société universelle is that which is composed of all the goods of the partners, or all which they may acquire, whether by inheritance or otherwise, with the effect of making them common among the partners. A société particulière is that which is composed of a part of the goods of the partners, to arrange some transaction or trade, with the effect of sharing the gain or the loss that will have occurred when the société ends.” Similarly, Claude Ferrière described “particular” societies as “societies among merchants” and divided them into several categories. Thus, a société existed on a spectrum: some were more restrictive, with tighter bonds of association and more goods held in common, while others were less encompassing.

Along the Mediterranean coast, in the heartland of the affrèremont, the close relationship between affrèremonts and marriages was carried to an extreme: notaries began to draw up “contracts of marriage and affrèremont,” where heterosexual couples contracted affrèremonts with each other as part of their marriage contracts. In Nîmes, for example, such contracts only rarely included a specific dowry: the dowry was always tous et chacun de ses biens (each and every one of her goods). The bride gave all of her goods to the household.

38 Bourdot de Richebourg, Nouveau coutumier général, 3:746–47, 4:518–19, 612. In French, “Communauté de biens n’a lieu qu’en mariage, si elle n’a esté convenancee.” On the close conceptual links between affrèremonts on the one hand, and marriages and business partnerships on the other, see Hilaire, “Vie en commun.”

39 Ferrière, Dictionnaire de droit et de pratique, s.v. “Société” (2:902). In French, the quotation reads, “La société est donc universelle, ou particulière: la société universelle est celle qui se fait de tous les biens que les associés ont, ou qui leur peuvent échoir, tant par succession qu’autrement, à l’effet de les rendre communs entre les associés. La société particulière est celle, qui se fait d’une partie des biens des associés, pour faire quelque négoci ou trafic, à l’effet de partager le gain ou la perte qui se trouvera au temps que la société sera finie.”

40 Ferrière, La science parfaite, 257.

41 Hilaire, “Vie en commun,” makes this point.
Thus the effect of such marital affrêrements was to eliminate dowry, because in an affrêrement the affrêrés held all of their goods in common. Instead of a dowry and an augment dotal (the husband’s contribution to the dowry, generally one-half or one-third the size of the wife’s), the two parties exchanged inheritance rights. People thought of dowries as a protection for women, since although the husband had the right to manage the dowry and use its income, he was only the trustee of the principal, which was to return to her or her family, along with his augment, should either spouse die. Normally, in Nîmes, the marriage-cum-affrêrement contracts specified that the spouse who died last got the whole of the joint estate, except that the spouse who died first had the right to dispose of up to five livres tournois (pounds) by will. This enabled the spouse to leave a remembrance gift to a relative, or a little money to charity. The affrêrement probably helped some women to marry who might not have been able to otherwise, but it did so by putting all of their assets into their husbands’ hands. It was therefore only really attractive to women who did not have a lot of property to lose—it was used largely by poor couples. Most of the husbands were agricultural laborers (travailleurs). Thus tous et chacuns de ses biens really means “not very much.” A good example of this is an unusual document, a “marriage and cancellation of affrêrement” between Michel Bonnaud and Claude[e] Mazelete in 1558. They had previously entered into a marriage and affrêrement. Mazelete’s parents were dead. Her employer, Jacques Borellon, and her cousin, Antoine Pestel, were concerned because she had assets, but her husband “had no goods under the sun.” They got Bonnaud to agree to cancel the affrêrement and to make them trustees for Mazelete’s assets. With the affrêremen canceled, those assets became dotal goods, legally protected from the husband’s spoliation. If Mazelete died last, however, according to the new contract she would inherit what little he owned and everything he might acquire. Women with assets generally had no good reason to enter into affrêrements; at the same time, women with no money found them useful. But these contracts appear to have died out in the late sixteenth century.

42 Hilaire, Le régime des biens, 293–305. For Nîmes marriages-affrêrements that have been microfilmed, see AD Gard IIE vol. 246, fol. 49v (April 22, 1554); 247, fol. 245 (July 28, 1555); 248, fol. 257v (October 27, 1557), fol. 440 (March 13, 1557/58); 249, fol. 159v (October 4, 1558—this is the marriage and cancellation of affrêrement referred to in the text); 251, fol. 63 (June 22, 1552); 252, fol. 81v (June 13, 1563), fol. 242v (August 9, 1563); 253, fol. 271 (November 25, 1563 includes a dowry); 254, fol. 13 (January 2, 1564 [sic]), fol. 56v (June 4, 1564). Some others from the mid-sixteenth century include AD Gard IIE vol. 266, fol. 456v (January 25, 1552/53); 293, fol. 1 (April 27, 1553); 294, fol. 68v (August 7, 1554); 295, fol. 161v (December 3, 1555); 296, fol. 23v (April 27, 1556); 308, fol. 83 (April 5, 1561). Incidentally, tous et chacuns de ses biens meant something entirely different in ordinary marriage contracts,
Since affrêments assigned some or all of the property of the affrêrés to the group, it also affected each member’s ability to bequeath property to his or her heirs. After all, what had been the affrêrés’ individual property was now the group’s, collectively. Sometimes the affrêrement contract would make provision for the eventual deaths of the affrêrés, and these provisions varied. M. J. Roumegoux has noted that in the region around Albi in the seventeenth century, affrêments among spouses tended to be replaced by mutual wills, and similar phenomena have been observed elsewhere.43 Quite frequently, each affrêré was bound to make the other his universal heir if he died without children, cutting off other possible beneficiaries: two yeomen (laboureurs) did this in Régusse (Var) in 1501. In other cases, the affrêrement ended at the death of one of the affrêrés, and each one, or their heirs, became entitled to an equal share of the property of the affrêrement.44 When people chose to enter an affrêrement of the first type, in effect they announced that they were cutting off their other heirs from any portion of their estates. Even without an affrêremen,t the relatives had no recourse. Under Roman law, the affrêrés had absolute control of their estates—but the affrêrement prevented them from changing their minds later, unless they dissolved the affrêrement first. Of course, if someone entered into an affrêrement with little or no property, this consideration was purely theoretical. Similarly, if the affrêrés were a married couple with children, they had the same heirs, so the affrêrement did not act to redirect the estate from where it would have gone naturally. But otherwise it seems reasonable to suppose that the affrêrés who executed such a clause felt a stronger tie to each other than to parents, siblings, and other relatives who would otherwise inherit.

Some regions, including the Nivernais, limited the permissible scope of those that did include dowry provisions. In these cases, since all of the wife’s goods were protected because they were her dowry, the women were sometimes much more well-to-do. A fair number of them were widows, who came to the marriage financially independent. For an extreme example of how tous et chacun de ses biens can represent large sums of money and property in marriage contracts that are not affrêments, see AD. Gard IIIE46 vol. 086, fol. 32r (February 23, 1562/63), the contract for Dominique Bernard, écuver, and Michelle de Combas. She promised to give him a métairie if she predeceased him; the exact amount of land involved is unclear, but his augment was 2,000 livres, implying a dowry of about 4,000–6,000 livres, which was enormous (in my database of all Nîmes marriage contracts for 1550–1562/63, the highest dowry is 5,000 livres). Marriages-affrêments also appear to have existed in the Auvergne: see A. Chassaigne, “Les communautés de famille en Auvergne” (PhD thesis, University of Paris, Faculty of Law, 1911), 63.

affrèremens. The customs of the Nivernais provided that if a member of the household received an inheritance in land, it was not community property, although inheritances in goods were. Similarly, a house built using the funds of the household belonged to it, unless the house was on land inherited by one of the parties, in which case the house belonged to him or her, although the household was entitled to be reimbursed for the house’s value. Even these provisions were only valid if the parties did not make specific provision otherwise.\textsuperscript{45} So in this, too, the affrèremen was highly adaptable to individual needs.

Not all affrèremens ended as a result of the death of one of the parties. Unlike marriages, affrèremens were simply contracts, and the affrèrés could also agree to dissolve the contract. Frequently, contracts included provisions for how to end them. Affrèremens could be ended at the demand of one party, although the contract occasionally restricted this, usually by specifying that whichever party was the first to demand a dissolution would have to pay a penalty. Otherwise, when an affrèremen was dissolved, all of the property was divided equally. In rare cases the contract would specify an uneven distribution, presumably because one of the parties brought substantially more assets to the partnership.\textsuperscript{46}

Affrèremen tended to stress the unity and affection that bound the affrèrés. Furthermore, as Jean Hilaire comments, the affrèremen was “rigorously egalitarian in its principle.”\textsuperscript{47} After all, as noted earlier, the defining phrase of an affrèremen is that the two affrèrés agree to live ad unum panem et vinum. This phrase recurs in affrèremen contracts written in French, sometimes modified to un pain, un vin, et une bourse—one bread, one wine, and one purse. In Italy, contracts used the same phrase: a une pane e uno vino. The reference to sharing the same bread and wine was an archetype, implying a sharing of all other goods as well as these most basic items of food and drink. By mentioning the foods by which Jesus symbolized his unity with his disciples, the notaries who drew up the contracts may also have been trying to indicate the holy character of the bonds of love that united the members of the new household. An affrèremen from the region around Narbonne carries this emphasis on unity to an extreme, stating that the affrèrés will create “one residence, [one] habitation, one hearth, one purse, one bread, one wine, eating and drinking and [consuming] the other necessary victuals together, each one in one family and household.”\textsuperscript{48} An affrèremen between brothers-in-law in Condrieu

\textsuperscript{47} Hilaire, \textit{Le régime des biens}, 256.
\textsuperscript{48} Cayla, \textit{Essai sur la vie}, 259: “una demora, habitatio, ung foc, una borsa, ung pan,
similarly mentioned that they would share “one house, and warm themselves at one fire.” Some authors of contracts, particularly those between unrelated people, also felt obliged to explain why the affrères were choosing to create this association, presumably because there was no natural, familial reason why they should live together. Instead, the affrères explained that they were doing so because they liked each other. For example, in the affrèremen contract between Elziari and Martin mentioned above, they explained that they were becoming affrères because of the “pure affection and sincere affinity” between them. One indication that such phrases may accurately represent the views of the parties, rather than constituting the notaries’ boilerplate, is that model contracts do not include these phrases. Jean Papon’s description of affrèremen includes material considerations: he comments that each party has “his part of the profit and loss” (chacun a sa part du profit, et sa part du dommage), but he also suggests that these relationships are “natural,” an expression of normal human tendencies toward companionship: “Man [is] naturally social, and cannot live conveniently without the intercourse in which God, Sovereign of Nature, has wished to join him with his peers[]. [Man] can say that he will not find any contract . . . that he desires more than a société, whether from faith, use, or necessity.”

He added that the institution has “honor and has in it a certain holiness” and that it comes from “affection deliberée.” Similarly, F. B. de Visme commented that “there are few contracts where good faith is as necessary as in a société, because it produces a species of brotherhood between the partners (associés). It is a very useful, reasonable, and necessary contract, which forms a link of friendship and perfection between strangers who live like brothers, and very often better.”

49 AD Rhône, 33/1690, fol. 130v (September 24, 1591), affrèremen between Antoine Guilhiau and Estienne Sater.
50 See the models in Aubenas, “Le contrat,” 513, 515.
51 Papon, Instrument du premier notaire, 127, 136, 143. In French: “L’Homme naturellement social, et qui ne peut vivre commodement sans le commerce dont Dieu auteur souverain de nature l’a voulu conjoindre avec ses pareils, peut dire, qu’il ne trouve de tous contracts, dont le droit des hommes luy a fait ouverture, autre, qu’il doyve plus desirer, que celui de sociéité, soit de foy, usage, ou necessité,” and (commenting on crimes committed by a member of a société), “elles sont indignes du nom social, qui est nom d’honneur et a en soy quelque saincteté.”
52 François Benoît de Visme, La science parfaite des notaires, ou Le parfait notaire, contenant les ordonnances, arrêts & réglements rendus touchant la fonction des notai-
De Visme’s description is distinctly similar to how Anne Lister described her relationship with Ann Walker in September 1832 (see above). According to Lister’s diary, Walker remarked that their relationship “would be as good as a marriage,” and Lister replied, “Yes, quite as good or better.”53 De Visme’s implication is that sociétés were essential to the proper function of society. They created associations in which the parties could aspire to have a “perfect” relationship, in precise harmony with each other. An affrèremment was thus an opportunity to create a family that was an expression of pure individual sentiment, since affrèrés could pick their “brothers,” while actual brothers had no such choice. Lister’s comment that the relationship of the two women might be better than a marriage appears to derive from different, but related, concerns. After all, especially in Lister’s wealthy social sphere, many women could not choose their husbands either.

Most historians, concentrating on the economic implications of affrèrements, have not made much of the language of affection used by many contracts. In many cases the words may refer to platonic affection, since the verb aimer is notoriously flexible in meaning. It is worth noting, however, by way of comparison, that husbands who made bequests to their wives in this period frequently used far less effusive language than that used in affrèrements. It was common enough for a man to explain a special legacy to his wife by saying that it was in exchange for the “agreeable services” she had provided—a somewhat utilitarian phrase—or as Antoine Maltraict, a Nîmes notary, put it more sympathetically in 1558, for the “agreeable services . . . and the love which she bears him.”54

V. “AFFRÈREMENTS” BETWEEN SINGLE MEN AND THE HISTORY OF HOMOSEXUALITY

Emmanuel Le Roy Ladurie, in The Peasants of Languedoc (1966), was the first historian to suggest that some affrèrements were same-sex unions, although his remarks have not received a great deal of attention. Le Roy Ladurie

toutes sortes d’actes, suivant l’usage des provinces de droit écrit, & de celles du pays de droit coutumier, 2 vols. (Paris, 1771), 1:662. This is a revision of the earlier work of the same title, cited below, by Claude Ferrière, later revised by his son Claude-Joseph. In French, the quotation reads, “Il y a peu de contrats où la bonne foi soit si nécessaire que dans la société, puisqu’elle produit une espèce de fraternité entre les associés; c’est un contrat fort utile, raisonnable et nécessaire, qui forme un lien d’amitié et de perfection entre des étrangers qui vivent comme des frères, et très-souvent mieux.”

pointed to the case in 1446 of Jean Rey of Alès (Gard), whose wife, “a bad woman,” left him. But Rey had a friend, Colrat, and they had “affection, affinity, and love for each other from the heart.” They therefore contracted an affrèrément. They did agree that if Rey’s wife returned and conducted herself like “a good wife,” they would take her back. In the interim, if either died without issue, the other would inherit their joint estate. Le Roy Ladurie comments that the contract, pointing as it does to “a marital breakup and a strong masculine attachment,” was “not without ambiguities in this instance and in certain others.”

Nor is this case unique, although such cases were a small minority of affrèrements. Philippe Maurice’s study of the Gévaudan mentions men with different last names making affrèrements, but it does not specify whether they were married or single. Affrèrements also occurred in the region of Narbonne: when Jean Blanquière and Jean Fabre of Saint-Nazaire entered into an affrèrément, on February 22, 1524, it appears that Jean was unmarried and young—between twenty and twenty-five years old—because he required his mother’s permission to sign the contract. Similarly, Guillaume Viguier of Ginestas (Aude), who contracted an affrèrément on January 13, 1533, with Bernard Fabre, was also underage, although for some reason no permission is recorded in the contract. Guillaume and Bernard committed to using their friends as arbitrators if they quarreled. Pierre Auque and Jean Massac, of Malhac (Aude), may indeed have quarreled, since they agreed to end their affrèrément on August 31, 1521. Again, Massac was between eighteen and twenty-five; he gave his former affrère a piece of land in compensation.

Another intriguing case comes from sixteenth-century Nîmes. It is possible that this is not even an affrèrément, but it appears to be an attempt to create the mutual inheritance rights that affrèrements did, this time between two men, apparently distantly related: Julien Davy, seigneur de Perron, and Robert Ymbert, seigneur de Sebeville-Montreuil. The evidence consists of three contracts: a donation entre vifs and two wills. As mentioned above, several regional studies have found that such mutual wills were used as a form of affrèrément.

55 Emmanuel Le Roy Ladurie, The Peasants of Languedoc, trans. John Day (Champaign, IL, 1974), 35, citing Hilaire, Le régime des biens, 272, who gives a very full extract of the contract in a footnote. The Latin original of the quotation is “inter se habeant magnam affectionem dilectionem et amorem (cordealis).” Neither Brown nor Boswell cite this case, although it is briefly alluded to in Peter Laslett’s “Introduction” to Household and Family in Past Time, ed. Peter Laslett and Richard Wall (Cambridge, 1972), 14. Brown comments, in the Traditio Forum, 279, that she believes that Evelyne Patlagean, in 1978, was the first scholar to link homosexuality to affrèrements, specifically adelphopoiesis.

56 Maurice, La famille en Gévaudan, 174, affrèrément of Jean Brossos and Pierre Toret, 1448.

57 Cayla, Essai sur la vie, 155–59.
Both men were apparently strangers to town; the contracts specify they were from the Cotentin in Normandy, as their titles would indicate. All but one of the witnesses were students at Nîmes’s University and College of Arts, which suggests, since witnesses were commonly friends of the parties, that Davy and Ymbert were students as well. The other witness, not surprisingly given the elevated rank of the parties, was one of Nîmes’s elite, a member of Nîmes’s présidial court. In the inter vivos gift, Davy gave Ymbert, whom he describes as his “relative and friend” (parent et amy), all of his worldly goods, reserving one thousand livres tournois to himself. The wills make each the universal heir of the other, although each mentions that he has a brother, who presumably would inherit in the absence of these testaments. It is difficult to imagine any reason other than mutual affection for the two men to write such wills; neither was the natural heir of the other, and financial motives seem precluded by their exalted rank. The documents do not state that the two men were setting up a joint household, but the circumstances point in that direction.58

Beyond affrèremont contracts, there is other evidence that suggests there were same-sex loving couples in France. As in England, funerary art commemorated unrelated couples. About 2 percent of the monuments in the Gaignières commemorate unrelated people, usually in pairs. In some of these cases, the deceased were both clergy of the same monastery or cathedral chapter, but in others there is no apparent reason for them to be buried together. It is hard to say much about these graves without further research, but at least on the face of it, it is somewhat surprising that Mathieu de Herville, grand prieur of Saint-Denis, would choose to be buried with Regnaud Maillaud, prieur of Reuilly, or that Léger du Moussel would choose to be buried with Olivier Bourgeois (both of these monuments are from the fifteenth century).59 Bray’s monuments appear not to be a purely English phenomenon.

Looking at the contracts alone, there is considerable evidence that the affrèrèses were using affrèrements to formalize same-sex loving relationships. Whether these were sexual relationships or not is usually impossible to determine, and—as will be discussed further below—is to some degree irrelevant.

58 AD Gard IIE1 vol. 246, fols. 59, 78, and 79 (May 5, 1554). The witnesses were Jehan d’Albenas, docteur et droits, conseiller du roy au présidial; Jehan Bastide, escolier, natif de Thiviers, diocèse de Limoges; Anthonie Borrel, escolier de Brezès, diocèse de Thurin en Piedmont; Loys Forment, escolier de Naves, diocèse d’Uzès [now Ardèche]; Jacques Langloys, escolier de Cherbourg, diocèse de Co[u]llofences en Normandie; Claude Marques, escolier de Salbac, diocèse d’Embrun; Anthonie Romany, escolier de Ceyne, diocèse d’Embrun; Honorat Thorard, escolier de Goffaron, diocèse de Fréjus.

59 Adhémar, “Les tombeaux,” plates 1007 and 1134. See also AD Gard, IIE2 vol. 320, fol. 472v (September 21, 1556), the will of François Bernard, a bookseller, who asked to be buried near Leonard Duvyot, also a bookseller.
To recapitulate briefly, the *affrères* were single unrelated men choosing to form a single household, pooling all of their economic resources, making each other their heirs, and declaring their love and affection for each other. The effects on inheritance are particularly striking, and suggestive of strong mutual attachment. For single men, their natural heirs would normally be their collateral relatives. But once they entered an *affrèremen*, their *affréré* would normally inherit, and their close relatives would be excluded, as in the case of Rey and Colrat. In these cases, the *affrérés* had to feel closer to each other than they did to their brothers.

The language of friendship and affection that commentators use when discussing *affrèremens*, and the language used in the contracts themselves, seems to belong to the category that David Halperin has labeled “friendship or male love.” As Halperin notes, citing Montaigne in particular, such friendships have frequently been celebrated through the ages. Montaigne’s words are a good entry into the thinking that lay behind these associations, since he was after all writing in the Midi in the sixteenth century. In the essay “Of Friendship,” Montaigne first introduces the subject of his friendship with Étienne de La Boète and describes it in terms of brotherhood: “Truly the name of brother is a beautiful name and full of affection, and for that reason he and I made our alliance a brotherhood.” Immediately after praising his friend, Montaigne distinguishes his friendship first from marriage and then from “that other, licentious Greek love [which] is justly abhorred by our morality”—although after saying it is “justly abhorred” he proceeds to praise it in several significant respects. Montaigne was thus clearly worried that close, egalitarian friendships between men could be interpreted sexually.60 Montaigne never uses the term *affrèremen*, and his use of the term brother is thus generic, not specifically tied to the institution that is the subject of this essay. Nonetheless, Montaigne seems to conceive of his relationship to his friend similarly to the way *affrérés* understood their relationship.61

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61 Michel de Montaigne, “Of Friendship,” in *The Complete Essays of Montaigne,*.
My conclusion about affrèremens is thus similar to Bray’s, or to George E. Haggerty’s. Haggerty has argued that “love” is the way to describe such friendships—accepting all the ambiguities that the English word, like the French aimer, implies. Affrèremens covered a wide variety of cases, but in all of them the affrèrês had to have the ability to get along in a remarkably intimate relationship. In some cases, such as with siblings, the affrèrês had the advantage of having known each other for a long time; in others they did not. In any case, if they did not love each other they were putting themselves in considerable economic jeopardy, not to mention the emotional costs. In the case of unrelated unmarried men, I suspect that some of these relationships were sexual, while others may not have been. It is impossible to prove either way and probably also somewhat irrelevant to understanding their way of thinking. They loved each other, and the community accepted that. What followed did not produce any documents. Certainly, church monuments were not going to state explicitly that connubium referred to a sexual union—but heterosexual monuments were unlikely to refer directly to sex either. It was not seemly, nor would it be so today.

It might be argued that any ambiguities in such arrangements are only in the eyes of modern beholders, since sodomy was a capital crime. But early modern institutions were hardly hegemonic. As Julia Gaisser has shown, Renaissance editions of Catullus, even for schoolboys, were replete with explicit homosexual commentary. Likewise, the state’s laws against homosexual acts

63 Julia Haig Gaisser, Catullus and His Renaissance Readers (Oxford, 1993), 86. For example, Catullus 48 is a love note to his boyfriend Iuventius. Partenio, one of the major commentators, simply summarizes the poem, saying, “He writes facetiously and amorously, that no amount of the kisses of the most beautiful boy Iuventius could satisfy him.” Gaisser concludes, “So far from being frightened by the obscene, Renaissance critics understood it and reveled in it—indeed, the obscene passages in Catullus were explained more frankly and explicitly in the period 1480–1520 than they would be for the next 450 years.” A useful source for Catullus commentaries is C. Val. Catulli. Albii Tibulli. Sex. Aur. Propertii. Opera Omnia Quae Exstant. Cum Variorum Doctorum Virorum Commentariis, notis, observationibus, Emendationibus, et Paraphrasibus: unum in corpus magno studio congestis: quorum Catalogus pagina ab hinc octava exhibetur. Cum Indice rerum et verborum copiosissimo. Lutetiae [Paris]: Ex officina Typographica Marci Orry, via Iacobaea ad insigne Leonis salientis MDCIII [1604]. This is a compilation of many of the early commentators: Antonio Partenio, Palladius Fuscus, Achilles Status, Antoine Muret, and Joseph Scaliger. I was able to consult this volume at the Folger Shakespeare Library. Quotation from C. Val. Catulli,
were relatively unenforced. Aragon is a good example of this. There, the Inquisition was in charge of trying sodomy cases, and as a result the records are particularly good, since the Inquisition had a very high standard of scrupulousness in its interrogation procedures and its record keeping. A recent study has concluded that there were about five hundred cases, involving about one thousand men, between the late sixteenth century and 1700: fewer than ten men were prosecuted per year, in a kingdom with a population of over one million people. In Aragon, the death penalty was applied in only about 10 percent of the cases, although approximately another 30 percent were sentenced to the galleys, which was perhaps worse. It should be noted that only men convicted of anal sex with ejaculation inside the other person's body, and repeat offenders who had not ejaculated, were punishable by death. In France, sexual crimes were not well differentiated—sodomy and bestiality were considered under the same rubric—although one important legal scholar, Jean de Coras, felt that the passive partner should not owe any penalty. Alfred Soman has compiled figures for cases before the parlement of Paris from 1564 to 1639. One hundred and four people were charged with bestiality and one hundred and seven with sodomy—one or two people per year. Since the population of the region subject to the parlement of Paris was at least six million, this is a much lower rate than in Aragon. One should not conclude from these figures that sodomy was not occurring. Rather, early modern police forces did not have the capacity to search out and prosecute sodomy, even had they so desired. There were few police, and evidence was hard to obtain. Prosecutions only occurred in the most notorious cases, or if victims complained. All of this suggests that legal attitudes were somewhat relaxed.

ad loc. (122). (The poem is numbered 49 in this edition.). The Latin reads, “Facete atque amatorie scribit, se nulla osculorum Iuvenci venustissimi puero copia saturari posse.”


65 Alfred Soman, “Pathologie historique: Le témoignage des procès de bestialité aux XVIe–XVIIe siècles,” Actes du 107e Congrès national des Sociétés savantes (Brest, 1982), reprinted in *Sorcellerie et justice criminelle: Le parlement de Paris (16e–18e siècles)* (London, 1992). I calculated population figures for the parlement of Paris from Dupâquier, *Histoire*, 68 (total population figures for old-regime France at thirty-year intervals, based on current boundaries), 76–77 (population of the généralités in 1700), and David Potter, *A History of France, 1460–1560: The Emergence of a Nation State* (New York, 1995), 116 (map of the parlement’s jurisdiction). In 1700, the region had a population of 7.7 million, but this needs to be reduced by 10–20 percent to take
Assuming that European society in the sixteenth century abhorred homosexuality, historians have sometimes tied themselves into knots to avoid reading homosexuality into medieval and early modern texts. A case in point is Theodore de Bèze, later Calvin’s chief lieutenant and successor in Geneva. As a young man, he wrote a verse in Latin explaining how he was forced to give himself to his girlfriend Candida despite his preference for his boyfriend Audubert because she would be so upset if she lost him. In later years, Catholic opponents regularly lambasted him for this poem. Diarmaid MacCulloch has suggested that de Bèze was merely “trying out his skills as a writer of fashionable classical verse,” but this ignores the plain meaning of the text.66

Understanding attitudes is tricky, but in this case compiling the facts of behavior is even more so. It would be interesting to know how prevalent nonprocreative sex acts were in premodern Europe, whether homosexual, heterosexual, or solo. How did the percentage of people who masturbated change over the course of European history? Or the percentage who had oral sex? Unfortunately, although these are valid historical questions, they are unanswerable, and virtually guaranteed to remain so, for periods prior to the twentieth century. Nonprocreative sex left few records prior to modern public opinion polling. Historians are compelled to write the history of same-sex loving couples—whether those couples were having sex or not—because that is all the evidence we have permits. It would be rash to come to a firm conclusion, given the current state of our knowledge, but it seems likely that the ambiguity of the affrèremens described here and of the same-sex couples chronicled by Bray is not accidental—it was built into the structure of the institution. Couples could not proclaim that they were going to break the law, just as engaged couples did not proclaim that they were committing fornication, even though the practice was common. Historians should not assume that in this period same-sex loving couples were celibate any more than they assume that Catholic priests were.67

population growth into account. For Jean de Coras’s comment, see Guy Poirier, L’homosexualité dans l’imaginaire de la Renaissance (Paris, 1996), 50. He is of course a famous character as a result of Natalie Z. Davis’s The Return of Martin Guerre. See also George Chauncey, “‘What Gay Studies Taught the Court,’ The Historians’ Amicus Brief in Lawrence v. Texas,” GLQ 10, no. 3 (2004): 509–38, which points out that the amicus brief’s main point was that “medieval and colonial sodomy regulations . . . were concerned . . . with a wide, inconsistent, and historically variable range of nonprocreative sexual practices” (510), and not with homosexual acts as such.


67 On clerical celibacy, see Steven E. Ozment, The Reformation in the Cities (New Haven, CT, 1975), 59; Merry E. Wiesner-Hanks, Christianity and Sexuality in the Early
The history of affrèremens has much to contribute to the larger debate on the history of same-sex friendships, both in future research and in the present state of knowledge. In southern France, affrèrement contracts between single, unrelated men seem to disappear in the sixteenth century. Something similar seems to happen in England, since sworn brotherhood apparently dies out. As Davidson notes, “only the tombs provide continuity into the early modern period.” But instead of dying out, in fact the institution was transformed. At this point, as Davidson summarizes Bray, “the Western version of the same-sex wedding seems to become a prerogative of the English. England became a last refuge of traditional Christianity, Bray argues, preserving old European forms of ritual kinship that elsewhere in the West were ravaged by rampant Protestantism and finished off by the Council of Trent (1545–63).”68 But it is also possible that such unions persisted informally elsewhere, just as they did in England; in the absence of any research on the topic, there is no way to know. It does appear that the later Middle Ages and the early sixteenth century were the apogee of affrèremens and similar arrangements, in Britain and on the continent, but surely if we wish to probe the reasons why this was so we need to know much more than we do. One of the difficulties of Bray’s account is that it posits a largely unbroken continuity in the institution it describes from the medieval period through the late nineteenth century—that is, until the definition (as a pathology) of “homosexuality.” No pioneering book can exhaust its subject, but future research should attempt to delineate how the institution changed. A lineage is comforting, but I suspect that further research will show that same-sex couples have both a history and a geography and that the sixteenth-century transformation will prove significant. In Britain, a greater percentage of people lived in nuclear families than in most other parts of Europe, so it seems plausible that, like other non-nuclear family forms, same-sex unions will also prove to have been more common elsewhere.

Bray’s account is a thick description of a relatively limited number of cases, and the documentation is frequently limited as well. This is understandable. In England, because of the nature of the legal system, finding evidence must have been very difficult. Affrèremens have the convenience of being found in notaries’ registers, a standard source. It should be possible to reconstruct something of the life of such couples; how much tax they paid, who their friends and neighbors were, and so forth. Bray, it is true, had textual evidence that, so

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68 Davidson, “Mr and Mr”; Bray, The Friend, 91.
Far, we lack for *affrèremnts*. Future researchers will have to try to pull literary examples out of the many source collections. It will be rare to have all of these records come together in a single case, but future investigations into *affrèremnts* will be useful precisely because they offer a way to find examples of such couples, and combined with other evidence we may be able to get a sense of their daily lives and of the economic and social effects of their unions. The archival work required is immense, but at least the evidence exists.

*Affrèrement* contracts are in some ways similar to funerary art, but in other ways there are important differences. They are similar since they are both public professions of relationship—and, as such, invite the approval of the community. Most people would seek such approval only if they were reasonably certain that it would be granted. The gravestones required the priest or churchwardens to agree; the contract, the notary and witnesses. In one respect, however, the gravestones were much less dangerous, since, in the unlikely event that anyone had thought to use them as evidence for a sodomy prosecution, the parties were already dead. More broadly, they memorialized a relationship that had lasted for an extended period, and the parties therefore presumably already had a sense that it had been tacitly accepted by the community. People entered into an *affrèrement* at an earlier phase of their relationship; the parties expected to live together for many years to come. In that sense, it was a somewhat bolder act. Blood-brother ceremonies are in this sense more akin to *affrèrements* than to commissioning shared headstones. Their disappearance at the close of the medieval period may thus represent a change in public opinion, a declining tolerance for such relationships. In order to survive, same-sex loving couples had to privatize their rituals, proclaiming their relationship only after they were dead.

**VI. CONCLUSION**

Laws do not just restrict; they also enable. Roman law was developed to cover a multitude of cases across the entire Mediterranean; it therefore had to incorporate a great deal of flexibility. It was inherently cosmopolitan. But the differing social structures not only caused Roman law to develop an open architecture; the legal system, once codified, also took on a life of its own and permitted Mediterranean society to retain its diverse household structures.

Just as with legal constraints, we should not overestimate the importance of social constraints. Historians have frequently emphasized the exceptional importance of family relationships in the medieval and early modern period and of the tight family bonds thus created. While there is a good deal of truth to this picture, we should also remember that such relationships were reciprocal and that they liberated family members as well as restrained them. You could be greatly assisted by family, friends, and community—but at the same time
they needed you. As long as people fulfilled their obligations to help others, differing opinions—on religion, for example—were frequently acceptable. A sixteenth-century French Catholic would be highly reluctant to turn in a Protestant relative to the authorities, for example.\footnote{See, e.g., Raymond A. Mentzer, Jr., Blood and Belief: Family Survival and Confessional Identity among the Provincial Huguenot Nobility (West Lafayette, IN, 1994).} The severe limits on the power of the state only encouraged these tendencies. If someone was tempted to make such a denunciation the authorities would be unlikely to do much about it, since they lacked the personnel to act effectively, as the low rate of sodomy prosecutions shows. Attitudes toward sex and bodily functions were more relaxed because, on the one hand, family members lived in intense proximity to one another, and, on the other, because if they objected there was not much they could do about it.

Seeing the first signed paintings and the first diaries in the fifteenth and sixteenth centuries, nineteenth-century historians viewed the period as the birth of individualism. Similarly, beginning in this era, Western Europeans more and more came to expect private spaces: separate beds, separate bedrooms, fewer extended families. More recently, following Michel Foucault, many historians have argued that in the early modern period people became subject to more and more subtle, powerful, and insidious control. They generally concur that in the period 1550–1660, when affrêrements were in decline, religious institutions became increasingly powerful as a result of the Reformation and changes in the Roman Catholic Church. (This was paralleled by increasing state power, as measured by rising tax revenues, for example.) These developments seem at first to be at odds with the rise of individualism. At the same time, there may have been a relationship between these two trends. Under increasing scrutiny from society, encouraged by the church, people were being urged to live less intimately, and they may have been happy to follow that advice so that they might have more freedom from prying eyes. Modern individualism may have developed in part because people wanted to offset a more oppressive environment.

In the later Middle Ages and the Renaissance, attitudes toward sex were more relaxed than in subsequent centuries; homosexual acts were seldom prosecuted, and the revival of classical learning meant that many literary works with strong homoerotic content were highly prestigious. All of this coincided with a society that tolerated a wide variety of household forms and whose legal system was extremely flexible in accommodating them. In some cases—notably in the Provençal households studied by Collomp—this flexibility has been seen as reinforcing patriarchal authority. Although there is some truth to this, historians have lost sight of the larger picture: fundamentally, the Roman law of inheritance gave people tremendous freedom. When it came time to
make their wills, people were not obligated to follow primogeniture, partible inheritance, or any other rule. In such circumstances, it is less shocking that single unrelated men could sign *affrèvements*. In any case, the existence of such contracts poses a problem of interpretation. Prior to the 1960s, anywhere in the West, if two single men had sought publicly to enter into such a contract it would have caused a scandal. Most people would have assumed that the couple were in a sexual relationship. But four to six centuries ago, such contracts were legal and, although uncommon, occurred regularly without attracting any unfavorable commentary in the surviving records. The very existence of *affrèvements* shows that there was a radical shift in attitudes between the sixteenth century and the rise of modern antihomosexual legislation in the twentieth. The thesis of this article is that in the later Middle Ages and in the Renaissance, people accepted such couples and did not regularly discuss or categorize them on the basis of which ones were having sex and which were not. If we examine the Western past, we do not necessarily find that society invariably upheld “traditional family values.” There was also a long tradition of quiet tolerance. Today, France, in the form of the PaCS, has recreated something like the *affrèvement* to cope with society’s current need to accommodate its laws to its many household forms. It is perhaps a distant echo of that tolerant period, five hundred years ago.