

# Societal and Political Problems of Agricultural Associations in Tyrol/Austria: User Rights vs. Ownership

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## Abstract

Parts of the agricultural and forest areas in Tyrol have always been used communally, meaning their use had been open for all members of a community. Since the beginning of feudalism the sovereigns (nobility or clergy) were the owners of the land, but without having a serious impact on the exertion of user rights. Between the mid 19<sup>th</sup> century and the mid 20<sup>th</sup> century ownership of the land changed dramatically, first it passed from the highest level of hierarchy (the sovereign) to the lowest level (the local municipality) and then later, during the 1950s, in many instances it passed from the municipalities to agricultural associations (Agrargemeinschaften) which was comprised of the agricultural users at that time. Through this process about 400 of the total of 1800 to 2000 agricultural associations in Tyrol have become owners of formerly municipally owned land.

Today they are in the centre of debate, as a number of juridical and political quarrels have emerged over their land area. Land use has changed over time and formerly purely agriculturally used land is of high value today. The associations form closed societies which hold substantial amounts of valuable land area and can, as juridical persons, act completely independent from the municipal administration. The enormous structural change of agriculture since the 1950s was not reflected in the static structures of the agricultural associations. This has led to conflicts, (a) within the associations because of non-agrarian majorities, (b) between members of the associations and the village public, because some associations have become unduly rich due to the proximity of their property to the village centres and in particular (c) between associations and municipalities about land resources for communal purpose.

This paper analyses the areas of conflict, which have developed from the transfer of user rights into a static ownership. It explains the reasons in detail and presents the current debate on options to rectify the situation. For regions where such user organisations are currently formed, this paper can provide examples for issues to be aware of, in order to avoid future conflicts.

**Key words:** *agricultural association, ownership, user rights, policy*

## Introduction

Tyrol is one of nine federal states in the republic of Austria. Out of a population of about 700,000 people there are approximately 30,000 to 40,000 (~ 5 percent) members in one of the 1800 to 2000 agricultural associations. For the purpose of this paper the term “agricultural association” is used to describe a legal entity consisting of more than one farmstead which owns pastures, forests or other land resources collectively. Until recently little notice was paid to the agricultural associations in Tyrol. Even now there would be very little public concern over the fact that these

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associations own an estimated part of 20 percent of the land (<http://tirol.orf.at/stories>, download Oct. 11<sup>th</sup> 1007). The topographical relief of Tyrol is very mountainous where only 11% of the total land surface is suitable for permanent settlement. Population density is rather low compared to the total land surface (50/km<sup>2</sup>), but very high compared to the area for permanent settlement (421/km<sup>2</sup>) (Amt der Tiroler Landesregierung 1996). Of the 11% suitable for permanent settlement different functions (housing, commerce, industry, traffic and partly even recreation) overlap. Over the past few years, agricultural associations have hit the headlines of local press, mainly due to local conflicts between them and the municipalities as part of a growing pressure to make their land resources again available for the benefit of the general public. They own forests and alpine pastures, which are of minor interest, but many of them dispose also of valuable land resources for building purposes close to the village centres. Suddenly, triggered by an incident, the public has begun to realise that the membership in these agricultural associations offers advantages to their members which are withheld from other local residents. This applies especially to those agricultural associations, who have property in areas, where land for building and/or infrastructure purposes is in high demand. Like any other private owner, the associations can decide who gets land at which price. Some agricultural associations have become powerful economic and political actors, for example those in possession of water resources, gravel pits of landfill areas. Because of the increasing wealth of some agricultural associations and their members, the public has become more and more discontented with the situation. In response public pressure has been brought to bear on the leading politicians of the dominant conservative people's party (ÖVP), who have to date protected the agricultural associations. The resulting feeling of unfairness raises many questions: How could it happen that a minority have retained control of a large part of a communal resource? Why are some people eligible to become members of agricultural associations and others not? How and why did the agricultural associations ultimately become the owners of the land, when originally they only held user rights for farming and domestic needs for many centuries?

Questions concerning the formation and the early history of agricultural associations form the first part of this paper. The section following this deals with the transformation of user rights into private property after World War II and the problems associated with that step. The third section presents the current debate on general options to rectify the situation and takes a look at the political efforts to resolve the problems. In the concluding section, we try to relate the relevancy of the developments in Tyrol to other regions (mainly in the developing) world where land tenure is in transformation currently. We assume that the experiences made in Tyrol can serve as "food for thought" to avoid similar conflicting situations in other parts of the world.

## **I. Agricultural associations in Tyrol – formation in earlier times**

Parts of the agricultural and forest area in Tyrol have been used collectively since the colonization of the land, meaning their use had been open for all members of a community. Although the farmers held user rights, the sovereigns (nobility and clergy) were the owners of the land. This ownership structure did not change until the mid 19<sup>th</sup> century, when the sovereigns realised, that this land was more or less useless for them. Although they were the official owners, the commonly used land

was overburdened with a large number of traditional user rights. This had led to an ever increasing number of legal disputes between the users and the sovereigns. Subsequently the sovereigns handed over the property right and the administrative tasks into the hands of the local communities<sup>2</sup>. While this clear decision stopped the previous legal insecurities concerning landownership, it raised a new set of problems. The first and major question was connected to the nature of the “local community” in the mid 19<sup>th</sup> century. There was no clear definition of who belonged to the community and therefore “who” was a potential user of these rights. The text of the law referred to the so called “political authorities” being in charge of administering land use. The mid 19<sup>th</sup> century was a time of rapid change. The mobility of people increased, farms were more frequently sold and bought and the village population structure started to change. Farmers were still the majority but new professions entered the village arena. While the local clergy, of course, like farm and forest labourers had been there for a long time, now teachers, merchants, settled craftsmen and workers in emerging rural industries became new village members. They all raised claims for commonly used resources like firewood, pastures (for their flock of subsistence), wood for construction etc. The emerging struggle over the distribution of commonly used agricultural land led partially to heavy overexploitation, in particular of forest resources. To limit the negative impact, a variety of informal agricultural associations were formed. The increased mobility required a legalisation of the so far unregulated common use of pastures and forests, because the old traditional practices of use had been passed on only orally from generation to generation, without written evidence. In 1883 Austrian law provided guidelines for a statutory framework for all kinds of agricultural associations. On this basis, the regional province of Tyrol followed with the regional legislation in 1909. Meanwhile, the installation of the land register caused confusion. When the registration started in 1897, it reinforced the legal status of all kinds of land. As there were various forms of communally used agricultural land, the registration was inconsistent. Some user associations were recorded as agricultural associations and got a special entry in the land register. Contrary to this practise, other user associations were not recorded at all and the individual users only got a remark in their own registration, entitling them to the use of specific land areas. When it came to provide the agricultural associations with a statutory framework after 1909, the first problem was establishing their correct identification. In 1915, the commission for agrarian operations stated, that the registration of agricultural associations in the land register was very often not correct<sup>3</sup>. Until the end of the Austrian monarchy in 1918 nothing at all had happened to rectify this, and the young Austrian republic was occupied with bigger problems than ensuring the correct registration of agricultural associations.

## **II. The transfer of ownership**

However confusing the legal situation of agricultural associations had been, there had never been a transfer of ownership considered. The ownership held by the entire community was undisputed, the debate was only on the user rights to this resource. The very first attempt for such a transformation happened during the Third Reich of German National Socialist rule. The national socialist ideology of “Blut und Boden

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<sup>2</sup> See: Hofkanzlei-Decret from April 11<sup>th</sup> 1847, para. 3.

<sup>3</sup> Source: Tiroler Landesarchiv, AdTLR, Abt. III b 1, Archivzahl 725 „Agrargemeinschaften Allgemeines“, k.k. Landeskommission für agrarische Operationen an k.k. Lokalkommissär für agrarische Operationen am 5. November 1915.

(blood-and-soil) ranked the farming population highly as the genetic backbone of “Aryan race”<sup>4</sup>. Farmers therefore received massive support by heavily subsidised machinery, seeds and livestock as well as financial aid for infrastructural improvements like farm buildings or roads. In order to keep the agricultural production at the highest possible level, specific programs were established for the mountain farmers, who were perceived the “refreshers of German blood” (Siegl 2005, 161). During the dictatorship some of the privileges were made possible by a juridical “reinterpretation of valid law in the National Socialist spirit” (free translation from Jabloner et al. 2003, 27). In this atmosphere the very first transfer of ownership of formerly commonly used land took place in favour of farmers.

After World War II a structural change of the village set up took place. Before, villages had consisted of a village centre and several hamlets (“Ortsfraktionen”), where each hamlet had its own administration. After 1945, these hamlets were not re-established as independent administrative entities. Consequently they fell under the governance of the village centres, also in respect to use of the common agricultural land. The farmers of the hamlets would have had to hand over the management and control over their common land to the central village. Naturally the farmers in the hamlets would not accept this, as there were many old rivalries and hostility between hamlets and villages. Therefore farmers sought for a means to maintain control over their traditionally commonly used land resources. During this time, in the late 1940s and during the 1950s, the farmers’ representatives held significant political power in the provincial government. Consequently these farmers’ representatives exerted pressure to transfer the ownership from the village municipalities to agricultural associations systematically. There are still ongoing disputes on the legality of these transactions. There is a common understanding that this process of transformation happened at the very edge of legality, at the very least. Nevertheless, between the 1940s and the 1990s out of the total number of 1800 to 2000 agricultural associations 399 of them became owners of the formerly municipality-owned communally used land<sup>5</sup> (Information, Sonderausgabe Agrargemeinschaften I/08). These are the ones in the centre of public dispute. The rest of 1400 to 1600 are associations which manage collectively land resources (like alpine pastures) which had been never in the ownership of municipalities, but were always privately owned by individual farmers before.

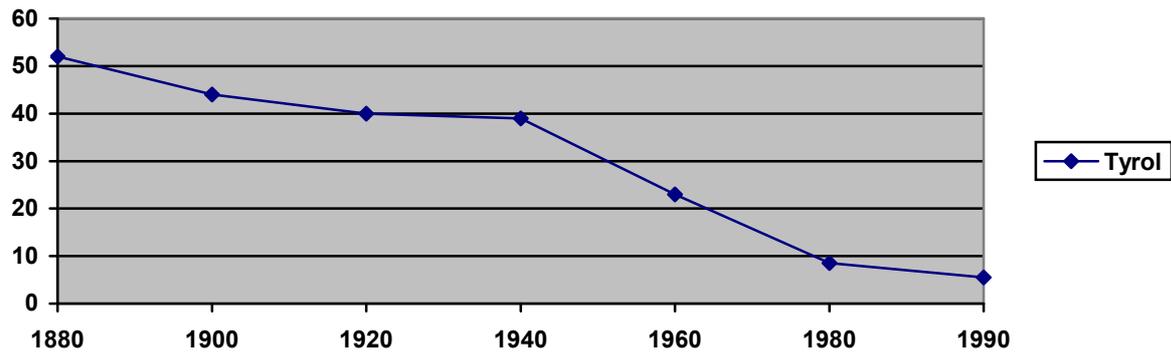
### **III. The consequences of the transformation of user rights into ownership**

The problems of agricultural associations are closely related with the structural change of agriculture in Tyrol. The decrease of the importance of farming for the general population started with the industrial revolution when non-farm employment became possible. This resulted in the growth of cities and the integration of farming into market structures. The farmers in mountain areas could not compete with those in more advantaged areas, and the development of the farming sector became more and more interrelated with other economic sectors.

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<sup>4</sup> Source: Monatsberichte des österreichischen Institutes für Konjunkturforschung 13 (1939), Nr. 7, p. 204.

<sup>5</sup> See *Information*, Sonderausgabe Agrargemeinschaften I/08.



Source: compiled out of data by Penz (1997)

**Fig 1: Long - term decrease of agricultural employment in Tyrol (percentage of people employed in the agricultural sector)**

The figure 1 above shows that the farming population in Tyrol has decreased steadily since 1880. The most drastic decrease happened after World War II and continued up to about 1980. In Tyrol industrialisation had less serious impacts on the decrease of farming than in other regions, as there were not so many alternative sources of employment and no large-scale industry developed. Around the turn of the century up to the First World War the beginning of summer tourism brought the first chance of multiple employment, which resulted in a stabilisation of the farming population. Between the First and the Second World War, Tyrol was impacted by the world economic crisis which meant an increased lack of employment possibilities which prevented migration to town. The main change came with the enormous economic growth rates in the post war area after 1948, which induced mechanisation wherever possible and resulted in a high rate of non-farm employment. In Tyrol, this economic development was fuelled by the booming tourism industry.

At the time when the property of communally used land had been changed, Tyrol was still an agriculturally defined region. At least one third of the population lived directly from agricultural production. Soon after World War II, the population structure began to change dramatically. In a couple of decades the agricultural sector shrank to a minority of a few percent.

The consequences of the transfer of user rights into ownership are numerous. The number of farms has gone down from 28,000 after World War II to less than 17,000 (Agrarstrukturhebung 2005), a change not reflected in the static structures of the agricultural associations. In most agricultural associations the active farmers are in a minority by now. However, membership is connected to the ownership of a farm holding; therefore the number of members remained constant, even if they are no longer farmers. The membership in agricultural associations was and is not hereditary from parents to children; it is connected to the farmstead. Agricultural associations are closed societies, which means neither exit nor entrance is possible. In the case of a sale of a farmstead, the membership in the agricultural association is transferred to the new owner. The only feasible possibility for a membership to expire is the permanent abandonment or destruction of the farmstead. This is a rather hypothetical case in a region where settlement space is limited. On the other hand

the owner of a newly established farm, with a new farmstead has no legal title to become a member in an agricultural association. Membership is only possible if the general assembly decides to admit the new farmer.

At present, in average 50 to 66 percent of the members have nothing to do with farming any more (Bürg 1998), but are still eligible, because of the ownership of a farmhouse, regardless if this farmhouse has been converted into a family home or for instance a bakery. Of course, the fields of interest of farmers and non-agricultivists diverge. The first group tends to reinvest the profits, for instance for the purchase of collectively owned machinery, whereas the second group prefers the payout of profits like shareholder value to the members.

Whereas 50 or 60 years ago no-one questioned the transfer of ownership because the members needed the resources for exerting their farming profession and almost everyone involved somehow profited from an agricultural association, today, after the shrinking of the agricultural sector from 33 to 4 % it is difficult to understand for non-members why they are excluded, while many members, who have nothing to do with agriculture are still eligible to agricultural associations. It is even more difficult to understand when eligible members of these associations have been living in another part of the world for decades or even have for one or two generations and still obtain payouts of profits from an agricultural association in Tyrol.

But differences did not only loom within the members of agricultural associations but even more between the associations and the municipalities respectively the public. When the change took place, most of the long-term developments could not be foreseen and were not thought of. There was virtually no opposition and hardly any disputes arose during the early years. Later on the public realised the considerable disadvantages for those outside of the agricultural associations due to a change in argumentation. Originally, the commonly used land was in use of every member of a community. Acting on old rules, each member was entitled to settle the household requirements (Haus- und Gutsbedarf), for example taking firewood, wood for fences, construction timber for roof trusses, forest litter for bedding and feeding animals etc. Once the individual needs were covered, all surpluses fell to the municipal administration where it served several purposes, for example feeding of the poor, construction of school buildings, preservation of the church, roads, etc. After the transfer of the legal ownership to the agricultural associations, not only the access to the resource was restricted to the members of the association but the surpluses of the commonly used land were no longer at the municipalities' disposal, except a small compensation. Sometimes the municipality holds a few shares in the agricultural association.

The problems increased when some agricultural associations received an ever increasing surplus, not connected to agricultural use. The common lands were usually forests and pastures of lower agricultural value, often alpine pastures. Even valuable property near a village centre does not include automatically, that the agricultural associations are generally wealthy. A large part is protection forest, where no economic profits can be gained. But a handful of agricultural associations were lucky, especially those owning pastures close to the centres of settlement, where property value has increased enormously during the past few decades. Parts of this land were used for building sites. Here the ownership of the agricultural

association had the added benefit that one owner could dispose of a large area which could be mobilised for building purposes at once, whereas other landowners would have had to consider who wanted to keep the most suitable parts of the building area for their own or the descendants' future use. Some associations made money with gravel pits, others with landfill possibilities, others again by renting their property to parking lots or restaurants at service areas of the Autobahn.

Also tourism development contributed to this uneven distribution of wealth. Some agricultural associations developed skiing areas themselves; others receive considerable rent for their land resources used by the tourism industry. The public began to become aware of the fact, that this money could benefit the entire village community, if the municipality were still the owner of the land. Envy and the feeling of unfairness carried the dispute into the public domain.

The disposal of land resources led also to the situation that the municipality had to organise their needs in relation to these agricultural associations. This led to power struggles. Farmers who saw themselves as the minority in their village discovered the possibility to exert their power and asked high prices if land was needed for communal purposes (like communal buildings, recycling stations for wastes, areas for water reservoirs, etc.) Again anger arose about paying for something which had been considered the public property of the village before. Some mayors even state that the chairmen of agricultural associations are even more powerful in the village than they are, depending on the extent of land an association controls (Glaser 1981). Where scarce land areas are in the hands of the agricultural associations, a number of juridical and political quarrels have emerged about land resources for communal purpose. This kind of conflicts started to become noticeable in the 1970s, when some mayors began to question the very reduced property of their municipality, but their concern remained more or less an internal dispute within the ruling pro-agrarian people's party (ÖVP).

The current debate was started in 2005, when a mayor of a small village made his frustration with the status quo public. The political opposition (Green Party) and some of the press exploited the story which caused quite a stir. Soon it was clear that the leading party (ÖVP) had to react and that the debate would not calm down until the next provincial elections in 2008. At first the farmers' representatives tried to play the story down but when even officials of their party one by one uncovered details (for example the former highest civil servant of Tyrol in a TV interview broadcast on July 19<sup>th</sup> 2005) the ÖVP was manoeuvred into a defensive position. They argued for the status quo with the standing formula "ownership has to remain ownership", no matter how it had been acquired. An internal power struggle between the agrarian fraction and their opponents within the party, hushed up for many years, became open.

#### **IV. Proposed solutions**

The discussion carried on between two antipodes: Maintaining the status quo on the one hand and revocation of the transfer of ownership ("Wiedereinsetzung in den vorigen Stand") on the other hand. Neither of the opponents could enforce their claims without concessions. Both extreme positions were unrealistic: Maintaining the status quo was in consideration of the advanced public discussion as good as political suicide and revocation of the transfer of ownership would have provoked

serious constitutional concerns. Between those two extremes, a number of new ideas were voiced. For instance, members who were no longer active farmers should have to hand over their share to the municipality (<http://www.tirol.com/politik>, download Oct. 11<sup>th</sup> 2007). This proposal would have meant that only active farmers would be eligible to hold shares in agricultural associations. At one blow there would have been a decrease of members to an extent of 50 to 66 percent and this land would have fallen back to the municipalities. This proposal, while having a good chance for public approval, was blocked by the dominating party (ÖVP). Officials from each political leaning appealed to the agricultural associations to accept their responsibility for village development. The press spoke of “political injustice” (<http://www.tirol.com/wirtschaft>, download Oct. 11<sup>th</sup> 2007), but the farmers’ representatives did not give in, in spite of the growing number of law suits started over the agricultural associations. The political representatives cling to the status quo, in order not to lose the farmers as a political clientele and as loyal voters. Concessions are only made under enormous public pressure carried out in smallest steps possible. An amendment to the law concerning the agricultural associations (TFLG-Novelle LGBl. 13/2007) did not effect a major restructuring but just opened a possibility to enlarge the share of the municipalities up to 20 %, if they demand a completely new partition of the association. An arbitration board was suggested by the provincial government to mediate between the municipalities and the agricultural associations, but a compendium with the valid rules and guidelines for this board is still missing. The discussion has not finished yet, but the public’s impression is that the farmers’ representatives will do everything to slow down the reform process.

Contrary to the dispute over ownership, the *use* of agricultural land has never been in question. It is commonly understood that the farmers should cultivate and utilise communally used land like they always did since the early settlement. Even the existence of agricultural associations as such is accepted and approved. Most of the mountain pastures could not be cultivated otherwise than by agricultural associations. The crucial point was and still is the transfer of ownership, which was pushed by the leading politicians in order to keep the farmland in the hands of the farmers with the intention to maintain the political control over a considerable part of the province.

## **V. Lessons to be learned**

Common property resources are currently under discussion in many countries of the developing world, mainly with the argument of proper resource management, drawing on the widely cited paper “the tragedy of the commons” (Hardin 1968). However, as some authors rightly point out, the argument is built on a confusion between common property and open access regimes (see amongst others Olstrom 1999). Even if the effects on natural resource management and on the increase of agricultural productivity are highly contested (for a literature review on this matter see for instance Heltberg, 2002), a formalisation of current user rights is advocated as providing legal security to poorer parts of rural society. However, the debate hardly ever touches the possible effects of structural change on changes of ownership in these presently agrarian societies. As our example demonstrates the transfer of user rights on common property resources into ownership rights is a crucial step which is difficult to reverse once effected. A resource once open to all, although often in its use regulated by internal rules, suddenly becomes the ownership of a privileged few.

Even if the privileged few emerged only later with the change of the land use from agriculture to more profitable land use forms, nobody can foresee which form of land use will become profitable or when. While the user right is fixed to a certain land use form (grazing, forest use for construction, fencing, firewood etc.) the ownership does not restrict the use to a certain profession or activity. With the change of society from an agrarian to a non agrarian, the demand on land use changes obviously.

There is a certain probability that such changes will happen also in parts of the developing world due to population pressure and economic differentiation. For instance tourism development is advocated widely as a panacea to rural problems. As we know tourism, especially eco-tourism, is inter-dependent on land resources for its successful functioning. Tourism development has been fuelling structural change in Tyrol as described above. It is likely that similar processes will take place in other parts of the world. It is even likely that the rate of change might be faster than in Europe.

While the transfer from user rights to property in Tyrol happened gradually over almost a century, such processes happen currently all around the developing world far more quickly.

Formalisation of land ownership in a land register is the first step. Often the ones drawing up the legal system are not (and cannot be) fully knowledgeable of the user rights exerted in a given traditional society. The danger is even greater then, that misunderstandings and misinterpretations happen. Often the formalisation of user groups and the registration of land titles on them are advocated as a means to secure their rights. But if the complex matrix of interwoven multilayered individual and collective user rights cannot be pictured in a simple land register inevitably some groups will win while others will lose. In our case the interests in individual property of the user group was ranked higher than the public interest. This shows that very often the fact of formalisation alone carries power shifts in itself. Formalisation also requires the drawing of boundaries between who is in and who is out of the group. If the boundaries are fixed too static the next possible source for future conflicts emerges. Finally the transfer of the user rights to private ownership allows change to the patterns of use to the most profitable one without taking into account societal or sustainability considerations. In this respect it is even counterproductive to the intention of sustainable resource management as requested in the "tragedy of the commons".

The major conclusion to be drawn from our case study can therefore be to separate user rights from ownership. While the later should be retained by the entire community, the former should be regulated and restricted to the traditional forms of agricultural and domestic use. Regulation and formalisation of user rights requires intimate knowledge of societal organisation and should not be left to persons who come from a different cultural background. It needs a participatory framework and a long term process to avoid similar problems as we identified them in Tirol/Austria.

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