

PEDRO GALILEA

Departamento de Economía, Universidad Pública de Navarra

Campus Arrosadia s/n 31006 PAMPLONA - NAVARRA (SPAIN)

galilea@upna.es; Phone: 34- 948 - 16 97 21; Fax: 34- 948 - 16 97 21

**THE UNSUCCESSFUL PRIVATIZATION OF COMMON PROPERTY IN SPAIN:
FORESTS AND PASTURES (A LAW & ECONOMICS PERSPECTIVE: THE GALICIA CASE)**

Stream: Forestry

Discipline: Economics

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I.- INTRODUCTION

In our paper we will analyse the process of the individualisation of common ownership (forests used mainly for agricultural and grazing purposes) in Galicia, Northern Spain, as a reaction by farmers to Government and legal aggressions. It took a long time to obtain this result, as a consequence of the fierce opposition on the part of farmers to earlier attempts to privatise the resources.

However, we will show how the process of individualisation of property was in the end, paradoxically, the only means of defending common ownership and a new effort to intensify Galicia agriculture, above all in the first third of the twentieth century, before the traumatic upheaval caused by the Civil War.

We will start our presentation by explaining the conceptual framework we use in our paper, taken from the New Institutional Economics and the Law & Economics approach. From this perspective, we will explain the structure of mountains property in Spain in the nineteenth century. We analyse the reforms proposed by legislators (inspired by the neoclassical economic doctrines) and the opposition they met from the users of the resources.

This allows us to show the great divide between legal reforms and practise. Next, we will see the evolution of institutions and several attempts at change on the part of the central legislator. But finally, we will see how the peasants' opposition to privatisation turned into a movement in its favour. Ironically, this happened in a much more socialist context, without State support for these changes.

II.- THE CONCEPTUAL FRAMEWORK: DEFINING COMMON POOL RESOURCES

We will start by clarifying what we understand by "common property resources". We take the concept used in new institutional analysis, by E. Ostrom and V. Ostrom (1977), used also in E. Ostrom, Gardner & Walker (1994).

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Figure 1: Types of good

[Adapted from V. Ostrom y E. Ostrom (1977), p. 12 ;
and E. Ostrom,; R. Gardner y J. M. Walker (1994), p. 7]

In our analysis, we consider as a "common pool resource" (CPRs) the natural or human-made resources in which (a) exclusion is non-trivial (but not necessarily impossible) and (b) yield subtractability or rivalry.

Exclusion may be unfeasible in the sense than many users cannot be denied access. This can be due to prohibitive transaction costs of establishing and enforcing exclusive rights over a resource relative to its value or to a refusal by the state to legitimize and enforce contracts in a particular area. In addition, resource use by any one user precludes use of some fixed quantity of a good by other users.

Individuals jointly using a CPR are assumed to face a social dilemma -commonly referred to as the tragedy of the commons or Prisoner Dilemma game- in which individual resource users overexploit them which leads to outcomes that are not optimal from the group perspective. The common pool problem arises in these situations from an overlapping distribution of rights where acquisition means absolute priority in ownership. When each person has the same right to use the resource and no one has the right to exclude the others, the dominant strategy for each person is to overuse the resource, without regard to the common interest in assuring that the resource is put to its best use.

However, there is abundant literature providing considerable evidence that individuals may evolve and adopt self-governing institutions that enable the resolution of conflicts. The common pool situation could be the result of an initial allocation of property rights, but there no obstacle to the parties themselves -the users- structuring their relationships with each other in such a way as to minimise the common pool problem.

Mountain lands in Galicia can be considered as CPR, as successful one cases. I will try to explain the implications and consequences from these features in the resources evolution.

III.- THE HISTORICAL INSTITUTIONAL FRAMEWORK: THE LIBERAL REFORMS

III.1.- THE ECONOMIC SITUATION. NOTES ABOUT PROPERTY IN SPAIN

The end of 18th century and the beginning of 19th was in Spain the time during which the economy began to overcome a long phase of decline. Demographic acceleration forced the need for new ideas for development policy. Anyway, this trend was common to all European countries. The country underwent a movement away from a regionalized economy -almost

exclusively agrarian, and based on a feudal system- toward an integrated system with commercial agriculture and a growing manufacturing sector, a kind of market economy.

Economic writings from the time said that the basically agrarian economy of Spain was seriously distorted. This argument may be true in the main, but the reform writings and policies didn't distinguish between efficient and inefficient institutions. All *Ancien Regime* institutions had to disappear. They based their policies on the prevailing economic ideas of the time. This meant that all common property institutions were considered to be inefficient. This explained why some potentially efficient institutions, such as the common use of mountains lands, were also reformed. Reformers didn't know that some institutions had succeeded in enabling users to govern and manage common property resources successfully.

Let's see some of the main criticisms from these economists to the traditional agrarian system. First, the land was cultivated under a three-field system, quite different from the continental system. This system left two fields fallow each year; during the first fallow year the stubble was used for grazing. One of the reasons given for this allocation of property rights, according to some authors, was the power of the Mesta (the guild of sheepowners). The State sacrificed the interests of arable farmers, and ultimately those of consumers, for the sake of the increased taxes from the privileged sheepowners. It seems that it was easier to tax sheep than agricultural products since these factors were easier to measure and monitor.

In addition, large areas of fertile land were held in mortmain. Other vast tracts could not be enclosed due to the grazing rights of the Mesta guild; as a result, the properties could not be fenced, and the free use of private property on the land was seriously limited (this is another reason, the institutional reason, for the "non exclusion" characteristic of these lands;). To sum up, the definition of property rights was very unclear, as a consequence of the feudal institutions inherited from the past. This was the reason why so few new lands were turned over to agriculture and also for the low level of improvements applied at the time. The new goal of reformers was to create the necessary conditions for the market and this structure of overlapping rights didn't fit in very well.

One of the traditional features of the Spanish agricultural system is the large extension of common property. Nowadays, this is the case of most of the mountains lands in the country. This proportion was more important in the 18 and 19th centuries, when the delay of the agriculture techniques was relevant. What is surprising is the number of similarities to be found between the writings of the 18 and 19th century economists and the famous "tragedy" of Hardin. They suggested that the only way to avoid the inefficiency of resource overexploitation and overgrazing was to create a system of private property rights. Did it work? At least, they tried. Let's see how it was developed and what results were obtained.

III.2.- A SINGULAR STRUCTURE OF PROPERTY

The situation in Galicia (and the whole of Spain) at the beginning of 19th century, as most historians hold, was that agriculture was the most (but not the only) important productive sector.

In Galicia, mountains formed the greater part of the territory -around 75 %- at the beginning of the 19th century. Since these properties were no good for agrarian uses, only 25

% of the territory was agricultural lands. This situation remained the same throughout the nineteenth and twentieth centuries (at the beginning of the twentieth century, the ratio was 66 to 31 %; and today, mountains make up over 60% of the total area). So, mountains and forests were central to the traditional Galician economy - as in all North country regions-.

Natural resources in Galicia were very poor. The wood obtained from the mountains was very little. Forests were not the kind of Canadian forests. People managed to find other activities to feed their families. These specialities will help us to explain how the institutions evolved when reforms were passed (1).

Mountains performed some essential functions in daily life in Galicia. These lands was mistakenly known as "waste lands". Mountains and forests supply many joint products. Peasants attained supplementary harvests on some of these terrains. In addition, mountains provided fodder for grazing animals. And some other uses could be obtained such as fertilisers, timber, ..., all of them managed on a common basis.

We should note that these resources were not open to everyone. Access was allowed only to the villagers, as a private group living in an area. Rules were basically customs and other informal norms maintained unchanged since long times past.

This specific scenario was not completely known and understood by the reformers, who passed reforms in Madrid (the country's capital) far away from the reality reformed. So they met with unexpected opposition from the communities and even from the public authorities in the villages.

III.3.- THE REFORM ATTEMPTS AND THE PEASANT OPPOSITION

Most of these mountains belonged to the private communities living in the area. These property rights had been defined a long time previously, several centuries in some cases, in accordance with the physical and social conditions of the groups of people living there (2).

This large area of land was owned on a collective basis, and was, strictly speaking, neither public nor private. This was known as "propiedad comunal", belonging to a group of people defined by their living in a specific village. There are no individual shares on the property (this lands had no individual owners), the rights were the same for everyone, they were non transferable...; and ownership was extinguished when one stopped living in the village. Most of the mountains lands pertained to this kind of property.

1.- The historical framework in which to begin analysing the evolution of this situation is the liberal agrarian reform. This "communal" property was disliked by the economists of the time. A law was passed that turned all "comunal" property into "public property". This law, the first serious attack on against the "common pool resources", was passed at the beginning of the period of reforms.

The "new" law only acknowledged two types of property, private and public ownership. The doctrine of ownership, meaning absolute rights over the land and all values attached to it, lay in the foundations of the newly established concept of private property established. This reform was a widespread reform across Europa at that time. As Eirling Berge

said recently "the doctrine of dominium came in conflict with the established local traditions of common ownership of land and usufruct rights to its various resources. They also were in conflict with feudal society and the ideas of tenure relations dominant there" (3). However, in Galicia this reform was only a nominal change, without any real effect. Farmers continued using the resources in the same way, on a common use basis.

Later on, new legislators created a new government institution, the "Municipios", a case of local administration. Every Municipio was formed by several local communities. The mountains were assigned to these Municipios, but in an arbitrary way. This meant that reformers didn't recognise the role of very different smaller bodies which carried out important functions in the management of everyday life. This reform on paper was not to be easily applied. People continued to live as usual. Furthermore, the new local bodies, the Municipios, had been designed in an artificial way - it is said that their design adhered more to geometrical criteria- without any sense of grouping according to the old traditions. It shouldn't be forgotten that legislators were not well informed about large areas so far away from where the centralised policies were applied.

2.- Later on, all public property, in accordance with the new political and economic ideas, was involved in a process of *disentailment*, in an attempt to find more productive uses for these resources. The old common mountains lands in Galicia turned into public property after the law we have just analysed in the foregoing section. So the law effects were nominal only at first time. Now, all these properties could have new owners.

It happened that in the process of disentailment, very little of the new property in Galicia found buyers. The main reason seems to be the high costs of enforcing the titles of the new owners related to the small benefits they could obtain. The process was frequently to remove people who were using these resources from time immemorial and felt morally entitled to use this land as they always had. The influence of the state authorities was very weak and was not able by enforcing the law to legally entitle the new owners.

In addition to that, the list of land for sell was very incomplete. This is further proof of the informational nature of the problem.

The change in the legal condition of the property brought about a change in the owner, from the neighbours of the village to the local public bodies. However, since the lands were mostly impossible to sell and the new owners didn't usually act directly, the way the property was used, on a common property basis, didn't change for a long time.

In my opinion, the (relative) success of the norms and customs traditionally governing the resources, and the failure of the reforms of the central state authorities can be explained, at least in part, in terms of the enforcement costs in each case.

The enforcement of rights can be undertaken by both individual owners and the state. The traditional use of common mountains lands was enforced mainly by social norms (4). On the other hand, the cost of enforcing the new exclusive rights "created" by the new law was very high (5).

The disentailment reform in Galicia also affected some few mountains -a 2 per cent- belonging to the Central State (not the Municipios, the local administration, like the ones we are analysing). These mountains were not traditionally managed in collective way. The main

products obtained from them was timber. They were different in nature to the "mountains comunales", characterized by their joint use on the part of the villagers. The result of disentanglement on these resources was that they were mostly sold. The economic value could be even higher than that of the "comunales" mountains; but the latter were more necessary for daily life and this use can be considered as a title (or a proof) to the property rights over them.

3.- Finally, at the end of the century, State concern for the environment emerged, and as a consequence, the justification for a State forestry policy. A body of Public Forestry Engineers was created. They made plans for reforestation throughout the country. This was an attack on the agrarian and other complementary uses of the "comunales" mountains. Here, as in the other two reforms mentioned, institutional reforms faced strong opposition in Galicia.

At the same time, the process of disentanglement grew more intense. The new list of mountains lands, reelaborated by the Central State, was more complete and the State's capacity to enforce the reforms increased.

As a consequence, the farmers realised the mountains lands they used were in danger. They could be lost. So they started a progressive process of individual appropriations. This occurred at the end of the 19th century and onwards, when, paradoxically, the ideological mainstream was much more in favour of social policies.

The appropriation process means of protecting traditional uses (though, in a new individual regime after appropriation) from the individualisation brought in by the reforms. This process can be summed up as an accommodation of reality to the law. Since the law didn't recognize the reality, when the law -and the State- was stronger, this accommodation was the only way to maintain some rights on the resources. The state forestry policy affected mainly to the public properties, so the only way that people can avoid the state intervention was to turn these properties into private properties, independently how they uses them.

Nowadays, the situation is mixed. Some of the communal uses continue to prevail in the daily life of farmer communities. But some others disappeared as a consequence of the process of privatisation. In any case, the residual rights are public most of the times.

III.4.- EFFICIENT MANAGEMENT OF CPRS BEFORE THE REFORM: AN EXPLANATION FROM A TRANSACTION COST PERSPECTIVE

Reforms considered common properties, in general, as inefficient institutions. However, we can not discard the possibility that these practices on common properties were efficient practices, in contrast to Douglass North's theories (6).

This economy based on a mixture of uses of common mountains, with large herds of cattle and flocks of sheep, could not easily be managed in a different way. Reformers defended private property to avoid conflicts between neighbours, as a way of fomenting agriculture. However, the costs of exclusion (by fencing or in any other way) must have been very high when compared with the slight benefits to be obtained.

Conventional economic theories arguments may be acceptable, but they failed to take reality into account. Farmers set up institutional arrangements to avoid overdevelopment of

the resource and to regulate its use, organising themselves, establishing credible commitments, monitoring each others' behaviour, and imposing sanctions on those who break their commitments.

From a transaction cost approach, we should note that one of the key variables thought to hinder successful contracts are bargaining or negotiation costs. The extreme case is when individual using a CPR can not communicate. It is possible to predict they can not establish agreed-upon rules and strategies, so a suboptimal use of the resource is likely to occur. The incentives toward excessive resource exploitation will not be deterred.

Theory recognises that bargaining costs increase as the number of participants in the resources (as users or owners) grows. One of the key bargaining issues is the distribution of benefits from the resource. Most CPRs, as in the case of the mountains lands we are studying, users were very numerous.

However, a key variable in analysing the question is usually forgotten, namely, the homogeneous or heterogeneous of economic agents participating in the resource. In our case, the condition of villager in the same area ensures a high level of communication and it seems to be that homogeneity was prevailing among all the villagers users of the resource. To sum up, customs and informal rules ensure that management and transaction costs are kept low.

The group ability to resolve conflicts arising over the resource seemed to be very high. Several facts confirm this idea. In the first place, it was a rural society, based mainly on long-term customs. Influences leading to a market economy in all parts of the country affected this region only some time later.

Secondly, agents sharing a common resource usually make some capital investments before making allocation decisions that determine the size and distribution of a commonly held surplus. There is a direct relationship between the value of the investments and the ability of the groups to resolve their conflicts (7), assuming that regulation, contracts or customs (all kind of rules governing the resource) are necessarily incomplete. In case of Galicia initial capital investments were zero, since the mountains are a natural CPRs, and the optimal solution should be easier to reach. Only some investments in maintenance can be considered as such.

We analysed some of the rules governing these resources. This analysis was made in many cases from indirect documents since it happened these agreements were mostly maintained as a verbal understanding. This is yet further proof, I think, of the close relationships in the societies we are analysing.

In these cases, when agreements were put down in writing, the incompleteness of these rules was emphasised. This was due to what was in most cases a conscious decision not to add rigidities in future relations. Customs and other informal institutions will go to make up for most of these shortcomings. In addition, when important changes come about, this incompleteness facilitates the adoption of new rules (8).

CONCLUSIONS

Economists usually make their analyses under the assumption that private property rights exist. This is a not real situation in most cases. In the case we analyse, the process is just the contrary. The definition of property rights was the result and not the cause of the reform. This led us to consider institutions (and "common property resources", where private property rights are not perfectly defined) as a mechanism to reduce uncertainty in social interactions. We can view "common property institutions" in this sense, as institutions created to impose constraints on human interaction in order to reduce the existing transaction costs.

In some contexts, "common property institutions" can be seen as cooperative solutions in a game theory example. This is possible in a game in special circumstances such as a repeated game, when the players have information about others players' past performance and when there is a small number of players. Local experience can produce diverse mental attitudes and institutions with a very different degree of success in solving the problem.

In close relation to the above conclusion, this study shows the role that informal or social norms play in managing institutions; a much more relevant role, in some cases, than that of formal rules applied without the general consent of society.

VI.- APPENDIX: THE MESTA -THE GUILD OF SHEEPHERDERS- AND CONFLICTS WITH PEASANTS

One of the major impediments to Spanish agriculture, always quoted, was the rights of the sheepowners. The reform analysed tried to remove all the obstacles to agriculture and one of the most important was the Mesta.

The wool of its Merino sheep, only existing in Spain, was prized throughout Europe. It was a great demand in the Low Countries and other European centres of the textile industry. The sheepmen followed the practice of trashumance, that is, the movement of flocks between mountainous summer pastures and lowland winter pastures.

These practices, the trashumance, were no peculiar to Spain. It was practised in every part of Europe that had mountainous areas unsuited for arable culture. However, the Spanish systems was unusual both for the length of its sidewalks and for its organisation. At this point, I must tell that Galicia was no so affected by these policies as other regions, as Castilla, but the evolution of the institution could also be useful to explain the goals of reformers and legislators. We show again how this reform policies are based more in (economic) theories than on real facts.

The financial mismanagement of the Spanish Crown turn into some State interventions occasioned by its fiscal needs. Royal favouritism in behalf of the Mesta, the sheepowners guild, is always mentioned. This favouritism culminated in a decree that reserved in perpetuity for sheep pasturage all land on which sheep had ever grazed, regardless of the wishes of the

owners. By such measures, the government sacrificed the interests of the cultivators, and ultimately those of the consumers, for the sake of the increased taxes from the privileged sheepowners.

This fiscal interpretations has been the only one maintained until very recently(9).The main point was their consideration of the Mesta and their privileges as an inefficient institution since it helped reverse the trend toward enclosures and gained privileges that allowed it to pay minimal rents for pasturelands. However, some new interpretations have arised. They argue that because of the conflict between pastoral and agricultural interest and the absence of reliable fences, the decrees of Spanish monarchs helped, rather than hindered, the allocation of economic resources. The kings played a role as zoning authorities allocating resources to the highest valued used.

This situation changed when other European countries manage to find other high quality wools. In addition, the demographic growth caused an increased of the prices of cereals, so new lands were used for agriculture uses. From this perspective, the Mesta privileges disappeared only when they were not anymore efficient. It is needed to study the institutions before judging them.

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NOTES

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(1) Both the institutional structure -a non market economy- and the reforms ideology in 19th century Galicia are quite similar to both aspects in most African economies, as Chimère Diaw suggested in the 7th IASCP Conference, which strong the implications from the paper are not only a historical case.

(2) The historical aspects of this section are based mainly in Artiaga and Balboa (1991, 1992).

(3) Berge (1997), pp. 9-10.

(4) Alchian (1977), pp. 129-30, underlines this social norms: "The rights of individuals to the use of the resources (i.e., property rights) in any society are to be construed as supported by the force of etiquette, social custom, ostracism, (and formally legally enacted acts...).. Many of the constraints... involve the force of... social acceptance, reciprocity, and voluntary social ostracism for violators of accepted codes of conduct".

(5) Eggertsson (1990), p. 35: The cost of enforcing rights "is reduced when the public generally entertains social norms that coincide with the basic structure of rights that the state seeks to uphold"

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(6) D. North use the Spanish allocation of property rights as a paradigmatic case of inefficient allocation and results, specially related in the conflicts between agriculture and cattle, as we will see below.

(7) S. Hackett, D. Dudley y J. Walker (1995).

(8) This system apart from formal rules (laws) was not understood by positive legislators from the time. It should be note than some of this institutions exist nowadays. Customs play an important role in some Spanish law systems, especially in Galicia -and in Navarra, when a custom has more weight than a law, unless there is express indication to the contrary-.

(9) All the spanish literature and some of the most relevant economic historians as D. C. NORTH (1981), pp.. 150-1; D. C. NORTH y R. P. THOMAS (1987), pp.. 9-11.

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