

Governing the commons in Portugal

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“Some scholarly articles about the “tragedy of the commons” recommended that “state” control most natural resources to prevent their destruction; others recommend that privatizing those resources will resolve the problem. What one can observe in the world, however, is that neither the state nor the market is uniformly successful in enabling individuals to sustain long-term, productive use of natural resource systems” (Ostrom, 2011, 1).

The aim of this paper is to provide a broad overview on the institutional framework of common lands management in Portugal from 1940 to 2015. It focuses on a field of research in which I have produced others studies (Neto, 1981, 1984, 1986, 1989, 1990, 1997, 2003, 2013)

The theoretical framework is based on the insights of recent works on the topic of commons governance (Moore *et al*, 2002; Demélas, Vivier, 2003), in particular the book of Elinor Ostrom, *Governing the commons. The evolution of institutions for collective action* (Ostrom, 1990).

Historical context

In Portugal, from the 40s to the 60s of the twentieth century, there was a strong offensive against common lands (*Baldios*). This process began with the elaboration of a national cadastral survey of the commons. Based on this survey, the state promoted the afforestation, with pine forests (*Pinus pinaster*), of 500 000 acres of common lands located at the central and northern regions of Portugal.

The communities protested against the nationalization of common lands, but the central government imposed its policy arguing that afforestation would create national wealth (Dulce, 2004). In fact, the main beneficiaries were the industries of pulp, paper and chemical fertilizers. It should be stressed that the choice of *pinus pinaster*, as exclusive plantation, changed the botanical structure of the Portuguese forest, which became more vulnerable to forests fires.

Otherwise, being the common lands a vital support for agriculture and pastoralism, the afforestation the commons provoked a movement of emigration to the cities and to Europe, causing depopulation, mostly in the uplands of the center and north of the country (Neto, 2013).

The communities, however, didn't give up on the commons. The fight against the appropriation of common estates by lords and administrative authorities was rooted in the past (Neto, 2003).

In the context of the Portuguese revolution of April 1974 the people proclaimed: "The commons belong to the people" ("Os baldios são do povo"). With this slogan the commoners claimed that the commons had been their property since time immemorial. They were trying to say: "The commons don't belong neither to the state, nor to the local administrative bodies. They belong to the commoners, belong to the local communities".

Democratic governments accepted commoners' claims and promised the return of the communal areas, appropriated by the state, to the traditional users and usages. At the same time, the legal framework regarding ownership and management of common lands was implemented (Bica, 2004).

The Nature of the commons

There are several different types of commons in Portugal. The vast majority of the common lands is located in the uplands, but also in the lowlands, common enclosed pasture and waste were commons. Their main usefulness was to provide a wider range of resources, such as firewood, fertilizers, bedding for stable animals and construction material. Other

resources gathered were honey and wild fruits. The common uplands were also vital for the grazing of local and transhumant herds (Silbert, 1972).

The traditional uses of commons included arable land as well. This land was divided into was held in long thin strips (“sortes”). Each farmer held a number of strips scattered around a field system. Each farmer cultivated and harvested their own strips. After the crops, or on the fallow periods, such areas were subjected to common rights.

Throughout the history the rural communities had benefited from other collective facilities, such as threshing floors, watermills or bread ovens (Velo, 1953).

All these traditional common practices still remain in use. But the socio-economic transformations that have taken place since 1960s changed the commons usages.

Given that one expressive part of the commons recovered by rural communities, from 1976 onwards, were forests, the exploitation of forest products became one important economic activity. In addition, other uses have emerged such as stone extraction.

It should be stressed that, nowadays, wind generators and communication antennas, which have been installed in the uplands, have provided an important source of income to the commoners.

User rights

The history of the legal framework regarding commons, in Portugal, is a complex issue (Caetano, 1969). However, the legislation published over the last four decades defines, clearly, common lands, commoners and local communities, as follows:

Common lands (*baldios*) are: “the fields owned and managed by local communities”.

“Commoners” (*compartes*) are “the inhabitants of one or more parishes or part of them who according to the customs and traditions, are entitled to the use and enjoyment of the commons”.

“Local community” is the “group of the commoners”.

Lastly, it is important to say that democratic laws recognize equal rights for all commoners.

These concepts of commons and commoners have been underlying the distinction between public, private and common property, although this distinction has not always been clear in Portuguese legal texts (Bica, 2003). Thus, throughout history, mostly in the 19th and 20th centuries, the non-distinction between public and common property supported an irregular intervention of the central and local governments on the common lands (Neto, 1993, 2003).

Management of the commons

Management by the commoners

In accordance with the preamble of the Decree-law 39/76, the legal framework concerning the commons aimed at promoting the “institutionalization” of “local forms of democratic organization”. This way, central authorities encouraged the self-governance according to the following institutional framework:

An assembly of commoners (compartes) composed by all users.

A governing council (conselho diretivo) composed by three, five or seven commoners elected by the assembly for a term of two years.

A supervisory committee (comissão fiscalizadora) composed by five commoners elected by the assembly for a term of two years.

The assembly of commoners defined rules affecting the use of the common lands and decided upon all-important matters. In turn, the governing council executed the decisions taken by the assembly of commoners. The supervisory committee was responsible for monitoring the execution of the norms.

It should be stressed that the Portuguese law, made after the Democratic Revolution, recognizes to local governance institutions a large degree of autonomy in managing the commons, according to customary laws.

Over the last decades, cooperation has been promoted between the commoner's assemblies and the central, regional or local authorities, in matters associated with technical or juridical support.

Others management forms

When communities haven't claimed the exclusive management of the commons, the law establishes other management forms such as: the partnership between the state and the communities or the exclusive administration by the parishes.

In this situation the management of the commons is given to a governing council, composed by four commoners and one government official. When the communities did not organize themselves, or were discouraged by the parishes, these ones claimed the commons management. The reason for the interest of the parishes in the management of those lands, was the notorious monetary income provided by them.

An overview of the commons management system in Portugal

From 1976 onwards 483 uplands communities organized themselves, built institutions for collective action, according to the democratic institutional and legal framework and recovered the management of the common lands (Rodrigues, 1986). Meanwhile, a national association was created, named BALADI, whose function was to coordinate the associative movement of the commons.

In the book *Governing the commons. The evolution of institutions for collective action* Elinor Ostrom presents a set of seven "design principles" for characterizing the CPR institutions. Elinor defines "design principles" as "an essential element or condition that helps to account for the success of these institutions in sustaining the Common Property Resources (CPRs) and gaining the compliance of generation after generation of appropriators to the rules in use" (Ostrom, 2011, 90).

There aren't case studies available to support strong conclusions about the Portuguese management of commons resources along the past decades. Despite this, we can identify some of those principles, such as:

1. *“Individuals or households who have rights to withdraw resource units from the CPR must be clearly defined, as must boundaries of the CPR itself”.*

Despite the territory of Portuguese communities of commoners doesn't always correspond to an administrative area, the boundaries are clearly defined and controlled by the inhabitants who, according to the customs and traditions, are entitled to their use and enjoyment.

2. *“Congruence between appropriation and provision rules and local conditions”.*

The assemblies of commoners have been granted a large autonomy to make provision rules according to the commoner's will and the customary usages.

3. *“Most individuals affected by the operational rules can participate in modifying the operational rules”.*

The Portuguese law requires the commons management to be in accordance with use plans (*planos de utilização*) proposed by the governing councils and approved by the assembly of the commoners that is always the main decision maker.

4. *“Monitors, who actively audit CPR conditions and appropriator behavior, are accountable to the appropriator or are the appropriators”*

In the Portuguese case the commons are monitored by a Commission composed by five commoners.

5. *“Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of the offense) by other appropriators, by officials accountable to the appropriators or by both”*

We haven't empirical evidence about the application of this principle.

6. *“Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.”*

The conflicts resolution concerning commons, among commoners or between commoners and local or central authorities is costless in the Portuguese courts.

7. “*The rights of appropriators to devise their own institutions are not challenged by external governmental authorities*”.

Over the past decades external authorities have preserved the rights of appropriators and the management autonomy of the communities.

Finally, it should be stressed that the Portuguese experience, throughout the last decades, concerning management of commons, provides two contrasting situations: a not successful, or even disastrous, state intervention occurred before 1974 and an experience of self-governance of communities with reasonable degrees of success concerning sustainable communitarian management of resources, direct democracy and citizen participation.

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