

Commons and the legacy of the past. Regulation and uses of common lands in twentieth century Spain

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Abstract: The authors explore the transformation of common lands in Spain in the second half of the 20th Century, when the nation experienced significant structural and political changes. If the 19th Century was defined by privatisation of common lands, the 20th Century experienced slight growth, but there were differences among the regions. Although the legal definition and classification of common lands is fixed, and was determined by the municipal entity, new formulas (such as the *montes vecinales en mano común* regulated in 1968) appeared to solve the tension between the state and local control. Ultimately, flexibility was the main characteristic of the regulations which allowed for adapting uses to a diversity of regional circumstances. Along with the productive and environmental regulations, the use of common lands for social purposes through the distribution of plots for cultivation was emphasised. Nevertheless, at the end of the 20th Century Spanish legislation concerning common lands was more focused on earlier norms than on the future.

Keywords: Common lands, communal plots, legislation, Spain, 20th Century

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I. Introduction

Although many types of common land exist in Spain in present times, most of the works focusing on the history of the commons in this country analyse only the period between the 19th Century and 1936 (the Spanish Civil War), that is usually taken as a watershed in Spanish economic and social history. Hence, the process of survival and adaptation of the commons during the second half of the 20th Century is largely unknown.¹ This topic is important if we consider that social, economic, and political issues underwent major changes from the 1950s on; industrial growth increased sharply and agriculture declined. Spain reached the peak in its industrial labour force in 1977, with most of the population living in cities (Carreras and Tafunell 2005, I, 150). In contrast, the countryside, particularly mountainous areas, suffered a severe loss of population, playing a secondary role in economic growth (Collantes and Pinilla 2011). Spain ceased to be a country of peasants and became a country of urban workers and middle classes. Beginning in the seventies, the transformation included another component related to political changes. After forty years of fascist dictatorship, the Constitution of 1978 opened a new political path for the country. On the one hand, Spain became a parliamentary democracy formally similar to the rest of Western Europe, and was admitted to the European Economic Community (EEC) in 1986. On the other hand, it started a process of rapid political decentralisation with the emergence of new regional autonomous governments entitled to pass regional laws on very different aspects. Taking into account all those deep transformations, the main objective of this paper is to analyse how those changes affected common lands in the country by attempting to answer three main questions: 1) Did these transformations include equivalent changes in the status of common lands? Was its definition and classification altered? 2) Had the size of the commons been reduced or extended? and 3) Did it change the regulations determining management, both at the levels of formal law and local practices?

Changes occurring in Spain during the second half of the 20th Century can be related to the transition from the traditional use of common lands, linked to an organic economy, to a post-industrial economy in which many of these uses (pasture, acorn, firewood, charcoal, hunting) declined, and new ones (recreational, tourism, urban ground, energy) emerged. Several actors can be acting in this process. First, there is the action of external forces and agents, synthesised in the state/market pair. On a more concrete level, there are local communities and their respective internal dynamics. On both levels, formal or informal rules that define uses and management are generated. The state administration, through the legislative process and its instruments of control is the first element we will consider. But, the impact of formal laws and the action of external agents

¹ Only a few works –i.e. Iriarte-Goñi, 2002– make a general overview from the 19th Century to the end the 20th Century, but such a long-run analysis does not allow for in-depth assessment of many aspects.

on the status of common resources depend on mediation by groups and local communities (Agrawal and Yadama 1997). Moreover, respect and recognition of the regulatory capacity of local communities have been identified as key factors for sustainability (Ostrom 1990; Wade 1994; Baland and Platteau 1996; Agrawal 2008). Can the laws issued by the government or parliament be implemented without a minimal recognition and acceptance of local communities? In turn, these communities are also governed by rules, written or informal, developed and reworked by the local administration. If either the state or local regulations are contradictory, there is a situation that legal anthropologists call legal pluralism (Griffiths 1986; Merry 1988; Meinzen-Dick and Pradhan 2001). In such a case, even a high degree of external coercion is not enough to ensure full compliance with formal state law. Local rules may remain operational, except when conflicting interests within the group press for a change in the rules (perhaps, in looking for external support). In brief, far from considering legal production as a top-down process, monopolised by the state, it is important to consider it in terms of inter-legality, that is, “a complex relation between the customary law and the state law using different scales” (Santos 1987, 289). Moreover, the concept of “institutional bricolage” could be useful to explain a “process by which people consciously and unconsciously draw on existing social and cultural arrangements to shape institutions in response to changing situations” (Cleaver 2001). Bricolage practices include aggregation (“recombination of newly introduced institutions and locally embedded institutions”), alteration (adaptation of institutions) and articulation (“claiming of traditional identities and culture and the rejection of newly introduced institutions”) (Koning 2014; Cleaver and Koning 2015). Taking this into account, perhaps Spanish legislation reflects an effort to totally control the management and use of the common lands. Or, alternatively, it may recognise regulatory power for local communities, leaving room for different solutions tailored to different circumstances.

Some of the works studying common lands in Spain over the long-term for the 19th Century and the first decades of the 20th Century have analysed those problems. They highlight the capacity of Spanish society to adapt the general functions and the specific uses of the commons to changes in social and economic terms (GEHR 1994; Iriarte-Goñi 2002; Lana 2008). On the other hand, some works which study rural areas and commons in a historical perspective, emphasise the fact that enforcement of central laws on commons in Spain had been quite lax, allowing different regions with different economic and social features to apply the laws in different ways (Gallego et al. 2010). But, this opens a new series of questions to be answered: did those practices continue in the second half of the 20th Century? What does the analysis of the laws tell us about adaptation in the use of the commons for this period? Are the rules a mere continuation of previous norms? Do they introduce new elements to adapt the uses of the commons to new economic realities and needs?

In seeking for some clues with which to answer those questions, this article is organised as follows. In Section 2 we offer some conceptual clarifications and

analyse the changing categorisation of the concept of common lands over time. Then, in Section 3, we analyse the problems in quantifying the commons and show its spatial distribution in the 20th Century, in attempting to find the keys to a panorama of diversity. In Section 4, we focus on the main changes in the use of common lands and their regulation. Finally, in Section 5 we present some concluding remarks.

2. Classifying Spanish common lands

Before analysing the historical evolution of Spanish common lands, it is necessary to clarify them conceptually. Following the distinction made by Schlager and Ostrom (1992) on property rights, we consider the operational level (access, withdrawal) as well as the collective choice level (management, exclusion, alienation) to identify common lands. Therefore, we consider as common lands not only those in which local communities have management and exclusion rights, but also those in which they only have operational rights. Most of these lands legally belong to different scales of public administration (state, autonomous regions, provinces, municipalities, infra-municipal entities, and federations of villages), although some common lands have been recognised as a type of collective private property. Some lands are managed by municipalities under supervision of the State. Others are exclusively managed by municipalities and minor administrative entities. Others, as aforementioned, can be controlled by communities of neighbours, with or without State supervision. From the point of view of ground type, most grounds are in Spanish termed *montes*, a broad concept that could include dense populate forests, scrublands, wastelands, pastures, and meadows (and, even some cultivated lands).

The history of legislative classification of the Spanish common lands can be read as the history of the gradual recognition of the existence of commons, and of the gradual realisation of their legal situation at different levels. From the 19th Century on, laws affecting common lands in Spain were developed primarily in the field of forestry legislation, and in legislation on local Government.² The liberal ideas prevailing in Spanish policies in the 19th Century led to a process of privatisation of the commons. For that purpose, liberal laws were taken from the Ancient Regime of the differentiation between *bienes del común de vecinos* (communal assets) and *bienes de propios* (heritage assets). The former were theoretically good for the free use of neighbours of the villages, and the latter were defined by temporal alienation to private agents (usually, hired at public auction), so that the money obtained financed municipal expenses.³ The *desamortización*

² Besides, other sectoral policies could affect the functioning of the common lands, such as the rural development, national parks, and environmental laws. We will examine them in future research.

³ A third type of common in the Ancient Regime were the *baldíos y realengos* (royal waste lands), in that ownership (*dominium directum*) was attributed to the crown, although neighbours were able to access and withdraw (*dominium utile*). This type of land was privatised or became common land or State property during the 19th Century.

(disentailment) law,⁴ started the selling of the *propios*, but as the difference was not absolutely clear in many cases, a good portion of *bienes del común* were also sold. On the other hand, survival commons were only recognised as owned by the municipality and managed by the town council, although in more cases neighbourhood uses could remain.

Nevertheless, opportunities to avoid privatisation were opened, both in forest laws and local Government laws. This was the case of regulations about the protective function of forests from the mid-19th Century (Jimenez-Blanco 2002, 154) and especially of the concept of *Montes de Utilidad Pública* (woodlands of public interest) used from 1901 onward to protect most of the woodlands owned by the State and the municipalities (Calvo-Sánchez 2001). The declaration of public interest was compatible with the maintenance of community uses of the land, but those applications were subject to approval and monitoring by the State Forestry Administration. It also allowed the temporary transfer of forest harvesting to individuals and firms, under the control of the State Forestry Administration, without affecting the communal character of the *montes*, that is, it distorted differentiation between heritage and communal assets (*propios/comunales*). Regarding local Government laws, from 1870 the Government admitted the existence of both the old infra-municipal and supra-municipal entities managing its own common lands (Castro 1979, 174; Mangas-Navas 1984).⁵ Later, in the first decades of the 20th Century, the principle of local autonomy was introduced in the 1924 municipal statute, and this reinforced the power of municipalities to govern their commons. The proclamation of the Second Republic in 1931 offered a new democratic scenario in which common lands assumed an important role in terms of social reform (Robledo 1996; Riesco 2006; Lana and Iriarte-Goñi 2013; Serrano-Álvarez 2014b).

But, what happened in the second half of the 20th Century? With respect to forest laws, the public interest legislation has remained unchanged until the present time and from 1980 onwards has been assimilated into the laws of the autonomous regions.⁶ The *montes* that were not declared public interest nor were privatised remained in the hands of the municipalities, and ended up being called free disposal lands (*montes de libre disposición*), managed by the councils without State supervision. Nevertheless, the main change has been that in addition to “municipal commons”, the legislative process recognised the existence of another kind of commons directly related to local human groups. Forest acts passed in

⁴ The Spanish word *desamortización* refers to the expropriation and privatisation of Church and municipal properties made by the liberal governments during the Nineteenth Century. Although the meaning is not exactly the same, it is usual to translate it into English as “disentailment”. Hereafter, we will use this word to refer to the forced privatisation of common lands.

⁵ At the same time, the liberal State-building process tended to convert municipalities in mere extensions of the central government and, through disentailment, contributed to its chronic financial weakness.

⁶ The concept of public interest and the Catalogue of Public Interest Woodlands were repeated up to the recent 2003 forestry law.

1957 and 1962 distinguished two other specific kinds of *montes* that shared the concept of “neighbourhood”: “*montes del común de vecinos*” (commonlands of neighbours) and “*montes en mano común de vecinos en Galicia*” (neighbourhood-owned common lands in Galicia). These customary lands would be catalogued in the name of the corresponding municipality, while respecting the rights of those neighbours. A specific law passed in 1968 confirmed legal recognition of these common lands, called by the generic term “*montes vecinales en mano común*” (hereafter, MVMC), and defined as those mountains whose “ownership and use belong to the neighbours in each moment members of the community group, without specific quota allocation.” The law created provincial committees (*jurados provinciales de montes*), only in Galicia, in charge of investigation and classification of the lands. What led to the recognition of these atypical public goods were obstacles found by the Patrimonio Forestal del Estado (State Forestry Trust)⁷ in the implementation of its ambitious reforestation program, particularly in the case of Galicia. First, the intense conflict and resistance generated by a coercive policy, and second, the desire to extend the agreements (*consorcios*) with local communities for afforestation, led the State to recognise parishes (and not municipalities) as partners and rights holders (Balboa 1990; Rico-Boquete 1995; Grupo dos Comúns 2006, 85; Cabana et al. 2012; Freire-Cedeira 2013; Soto-Fernández 2014). This recognition was renewed and extended by the democratic regime in 1980 through a law that was intended to “restore to neighbourhood groups, management autonomy and fullness of enjoyment, as owners of the domain,”⁸ with the aim of making logging and livestock breeding more efficient (which anticipated harvesting plans), but also as a way to involve communities in conservation efforts to meet the serious forest fire problem (Cabana 2007). Between 1968 and 1989 almost 4200 mountains (982,310 hectares) were investigated, and 2725 of them (620,018 ha) were classified as MVMC in Galicia (Freire-Cedeira 2014, 431).

Regarding the local Government laws, it was during the Franco regime when municipal property became the object of ad-hoc regulation (*Reglamento de Bienes de las Entidades Locales*, 1955), as part of the attempt of the authoritarian State to control all forms of social life. It takes a binary classification of municipal goods from the municipal law of 1935, distinguishing public use (*bienes de uso público*) from heritage goods (*bienes patrimoniales*). The former could be for public service and use (roads, bridges, canals, streets, squares, parks) for everybody, not only residents. Heritage goods could be *bienes de propios* when constituted as a source of income for the municipal treasury, and *bienes comunales* “when their enjoyment and use is solely for the residents.” This differentiation was rarely used, as many communal assets were leased to individuals in exchange for rent (particularly, in the case of forest harvesting). Notwithstanding, the difference

⁷ The Patrimonio Forestal del Estado was an organisation created in 1935 and refounded in 1941 by Franco’s dictatorship. Its objective was to control exploitation of forests and to promote reforestation.

⁸ *Diario de Sesiones del Congreso de los Diputados*, I Legislatura, 10/6/1980, n° 96, pp.6320–6347.

between *propios* and *comunales* was that the former could be sold, while the latter cannot, as explicitly affirmed in the municipal law of 1945. The Regulation of 1955 introduced a new distinction to facilitate the reversal of the communal assets that had ceased to be used as such for 25 years, and were to be considered as heritage assets. Conversely, heritage assets that had been collectively and freely enjoyed during the same time period could be considered communal assets. Moreover, the Regulation reproduces the idea, expressed by the municipal law of 1945, that both public domain and communal assets were inalienable, and were not subject to state taxation.⁹

This idea was carried over in the Spanish Constitution of 1978 after the dictator died. Article 132/1 continued distinguishing between the public domain (open access) and the commons (which implicitly means not open access), and refers to a future ruling to clarify their legal status. This article ensures the preservation of the communal condition of such property, which cannot be sold, donated (*inalienabilidad*) or seized (*inembargabilidad*) and cannot be converted into private property just because of their continued occupation (*imprescriptibilidad*). This rigid protection leaves an escape route, however. While assets retaining their communal or public domain condition may not be sold, there shall be a procedure to, if necessary, promote its declassification, coming to be heritage assets (*bienes de propios*), and then proceed to their alienation.¹⁰

Finally, in the Municipal Law of 1985, common goods are defined as “those whose use corresponds to the commonality of the neighbours,” that is, they are a “specific singularity” in which ownership corresponds to the municipality and its use and enjoyment to the residents,¹¹ without charge or by paying an annual fee to offset the costs incurred strictly for custody, maintenance, and administration. Once more, this definition was only rarely used because many municipalities rented out their pastures and forests to individuals or firms. The distinction between the two categories of assets was amorphous and favoured the conversion of communal to heritage assets (Pérez-Soba and Solá-Martín 2004, 189–192).

In summary, the legislative definition and classification of the commons have progressed to greater specificity, which increases legal security. It was precisely in the second half of the 20th Century, coinciding with major structural changes in the Spanish economy, when the most progress was achieved. Nevertheless, it must be stressed that the various legislative bodies that have affected the commons (mainly, forest laws and municipal laws) were not well synchronised, resulting in few operational legislative distinctions.

⁹ *Gaceta de Madrid*, n° 307, 3/11/1935; Boletín Oficial del Estado (hereafter BOE), n° 199, 18/7/1945; BOE, n° 195, 14/7/1955.

¹⁰ The 1975 municipal laws maintained the tripartite distinction mentioned above, but changed the classification of common lands from a subtype of heritage assets of the municipalities to a subtype of public domain.

¹¹ *Diario de Sesiones del Congreso de los Diputados*, II Legislatura, 30/10/1984, n° 236, pp. 7389–7391.

3. The challenge of measuring Spanish common lands

A century of land privatisation may have affected, according to GEHR (1994, 132), around 4.8 million hectares (equivalent to 9.6% of the surface of Spain and 41.5% of the public mountains computed in 1859). In contrast, the 20th Century offers an image of continuity. But, how much surface has actually been preserved as such and what does it consist of?

It is not easy to provide an accurate measure of the area occupied by the common lands mentioned in the previous section, nor is there agreement on the area it occupies. The state seems to have settled for producing statistics tailored to the specific objectives of each of its partial policies (disentailment, forestry, agricultural, municipal, taxation) without proposing a systematic scheme for the figures obtained from each source.¹² This has not necessarily prevented achievement of the goals set by these policies, but it reveals the existence of areas under state control that can be used by local groups.

Table 1 shows some aggregates from sources developed for various purposes. The catalogs of public forests published in 1859, 1862, and 1901 served a dual purpose: privatization of those lands declared alienable (disentailment policy), and the conservation and protection of woodland for those remaining under state or village control. Historians agree that the quality of these statistics is poor, not least because of the short period that the engineers allowed for processing information, but this did not prevent completion of the privatisation policy (to an extent even greater than initially registered) or affect the bases of forest policy (Sanz-Fernández, 1985, 1986; GEHR 1991, 1994, 1999, 2002; López-Estudillo 1992; Iriarte-Goñi 2002; Pérez-Soba 2008). Significantly, strengthening the state by modernising the administrative apparatus, and maintenance of a harsh dictatorship in the middle decades of the 20th Century have not provided unambiguous statistical results in this area.¹³

Forest policy was supported by successive inventories of national forests. The first one (1966–1975) does not provide useful information because it includes both public and private forests that had joined in a consortium with the *Patrimonio Forestal del Estado* in the same figure. The second one (1986–1996) offers more detailed classification but conflates the MVMC among free disposal municipal *montes*. The third one (1997–2007) is the most comprehensive, measuring the extent and type of communal lands, as it distinguishes wooded and treeless surfaces, and extends the classification of private forests to incorporate MVMC

¹² Municipal policy was also supported in the compilation of statistics on municipal property, but these are not useful for the purpose of this section. They do not offer details on the surface occupied by such property but merely monetary valuations of these assets for each of the provinces. Municipal laws since 1924 require municipalities to maintain these inventories with annual updating.

¹³ In another sense the control exercised by the Franco regime on the mountains allows for abundant statistics on other aspects such as the annual production of the mountains, both public and private.

Table 1. Common lands in Spain according to various sources. Surface in hectares and percentage of territory.

Year	000 Ha	%	Source	Remarks
1859*	11,467	23.0	GEHR (1994)	Figure corrected by GEHR
1862*	4652	9.2	GEHR (1991, 1197)	To be excepted from disentailment
1897–1901	7367	14.5	Catálogo (1901) Relaciones (1897)	Total land
1910*	6535	12.9	GEHR (1991, 1197)	Total land
1926	6643	13.1	Sanz-Fernández (1986, 161)	Total land
1966–1975	4005	7.9	1st National Forest Inventory	Wooded
1986–1996	4530	8.9	2nd National Forest Inventory	Wooded
1997–2007	5704	11.3	3rd National Forest Inventory	Wooded
1986–1996	7511	14.8	2nd National Forest Inventory	Total land
1997–2007	8274	16.4	3rd National Forest Inventory	Total land
1972	11,018	21.8	2nd Agrarian Census	Public entities plus communal
1982	12,302	24.3	3rd Agrarian Census	Public entities plus communal
1989	10,868	21.5	4th Agrarian Census	Public Entities
1999	10,620	21.0	5th Agrarian Census	Public Entities

*Basque Country excluded.

and neighbouring societies.¹⁴ The increased surface area detailed in these three inventories reflects the intense reforestation process supported by the State, alone and in collaboration with other public administrations. It further suggests (Table 2) a slight reduction in municipal mountains (from 7 million hectares in 1897–1901 to 6.16 in 1997–2007) made up for by a substantial increase in the land owned by the State and regional governments (from 0.3 million hectares in 1897–1901 to 1.5 in 1997–2007). Most of that increase can be explained by the purchase of the Patrimonio Forestal del Estado, between 1941 and 1970, to reforest huge areas to increase wood production or to protect the slopes around the new reservoirs (Gómez-Mendoza and Mata-Olmo, 1992). The suppression of 1180 depopulated municipalities during the decades of 1960 and 1970 also reinforced this process.

The other statistical source that reports communal surface is agrarian census, which offers even higher figures than the third National Forest Inventory.¹⁵ The census published in 1972 and 1982 contains the highest figures, peaking at 12.3 million hectares, which is almost a quarter of the national territory (Table 3). These figures confirm the high level of concealment present in the mid-Nineteenth

¹⁴ Neighbouring societies (*sociedades de vecinos*) or mountains of partners (*montes de socios*) is an atypical form of collective private property which, in many cases, comes from collective purchases made during the 19th Century to continue collective uses of the forests (Fuentes-Morcillo 2008). The third National Forest Inventory records just 1163 hectares in three provinces (Álava, Guipúzcoa, and Madrid), but it is a minimum, because its existence has been documented in other provinces. See <http://www.montesdesocios.es/>.

¹⁵ Exceptionally, the third National Forest Inventory provides higher figures for communal lands than the agricultural census of 1982 in some provinces (Balearic Islands, Cadiz, Guipuzcoa, Murcia, and Navarre).

Table 2. Common lands in Spain according to forestry statistics (thousand hectares), 1897–2007.

		1897–1901	1926	1986–1996	1986–1996	1997–2007	1997–2007
		Total	Total	Wooded	Total	Wooded	Total
Public interest	State	274	–	826	1188	764	938
Public interest	Villages	5339	–	3260	5383	3982	5753
<i>Public Interest</i>	<i>Total</i>	<i>5613</i>	<i>5016</i>	<i>4086</i>	<i>6571</i>	<i>4746</i>	<i>6691</i>
Free disposal	State	45	–	–	–	388	558
Free disposal	Villages	1702	–	445	940	271	408
<i>Free disposal</i>	<i>Total</i>	<i>1747</i>	<i>1627</i>	<i>445</i>	<i>940</i>	<i>659</i>	<i>966</i>
MVMC	Total	–	–	–	–	317	618
Total	Ha	7360	6643	4531	7511	5722	8275
	%	14.6	13.1	9.0	14.8	11.3	16.3

Sources: Relaciones (1897) and Catálogo (1901); Sanz-Fernández (1986, 161); 2nd National Forest Inventory; 3rd National Forest Inventory.

Century statistics that were the basis for the disentailment policy. It also casts doubts on the comprehensiveness of the 20th Century statistics. Adding to the confusion, the agricultural censuses of 1989 and 1999 reduced this to just over ten million hectares.

How can we reconcile such disparate results? The answer is that the objectives, the concepts, and the criteria in these statistics are not uniform. Thus, forest statistics have mainly focused on the public interest woodlands and in those susceptible to reforestation, omitting the lands where reforestation was not possible.¹⁶ Their objective is aimed at protecting public interest woodland, distinguishing it from the free disposal lands to identify those belonging to different levels of the state administration (differentiating central and regional administration of municipal) and private individuals, and measuring the extent of consortia included in the State forest administration for afforestation and forest exploitation.

The statistics corresponding to the agricultural policy have the virtue of attempting to measure the entire surface of the nation, and classify it according to various criteria, among them the legal status of the land owner and the system of land tenure. Thus, the second agricultural census, in 1972, introduced a double distinction for land owned by public entities “which can be a source of revenue for the administration” (*propios*), and “exploitations of municipal domain whose use and enjoyment belongs only to neighbours, as is the case of the MVMC” (*Censo agrario de España* 1972). These nuances are later lost, as the post-1989 censuses

¹⁶ The second National Forest Inventory informed of 1,177,524 hectares of non-forest lands (crops, unproductive) that are not included in the figures of Table 2. The State and regional governments owned 99,056 of them and the rest pertained to the municipalities.

Table 3: Classification of the Spanish common lands between *Propios* and *Comunales* according to the Agrarian Censuses, 1972–1999.

	1972		1982		1989		1999	
	Nº	000 Ha	Nº	000 Ha	Nº	000 Ha	Nº	000 Ha
1. Municipalities	–	–	7181	5527	–	–	–	–
2. Other Public Entities	–	–	6276	4649	–	–	–	–
Total Public Entities	13,352	9050	13,457	10,176	15,901	10,868	14,622	10,620
Percentage of territory	17.9		20.1		21.5		21.0	
3. Communal	5338	1968	6570	2125	–	–	–	–
Total Common Lands	18,690	11,018	20,027	12,301	–	–	–	–
Percentage of territory		21.8		24.3		–		–

Sources: Censo Agrario de España, 1972, 1982, 1989, and 1999. Tables relating to the legal condition of the entrepreneur.

are limited to identifying heritage assets, classifying the communal assets in a confusing residual category of “Other legal status.”¹⁷ The most complete figures seem to be in the agrarian census of 1982, which also offer a distinction within the heritage assets among those belonging to the municipalities and of other public entities (state, provincial councils). This census is of added interest for differentiating land tenure between those communal lands that were enjoyed without distinction by the community and those that were individually operated by any of their members in the form of *suertes* or plots for temporary and free use (see Table 6).¹⁸ Taking 1982 as a reference, Map 1 shows the geographic distribution of common lands.¹⁹ The most notable feature is their concentration in the northern third of the peninsula, which is less prominent in some eastern and southern provinces.

4. The uses of the commons and its regulation

In discussing the use of commons, we analysed some of the paragraphs of the Regulation (*Reglamento de bienes de entidades locales*) of 1986 from a historical perspective. We should note that the division of responsibilities among the different levels of government has remained intact. From the mid-19th Century, the initiative for regulatory change was enacted by the State, which tried to alter land use through legislation, according to a series of objectives, commented on

¹⁷ The surface registered under the label “Other legal status” rose from 157,317 hectares in the census of 1982 to 2,735,681 hectares in 1989.

¹⁸ It was noted in the census that: “It is included in this section the common lands when the employer is not the communal entity itself but a neighbour member of it that manages lands of communal origin that have been delivered in plots, so only he can use it and without charge” (*Censo agrario de España* 1982, 26).

¹⁹ We have deduced in each one of the provinces the surface of lands bought by the Patrimonio Forestal del Estado until 1980 (Gómez-Mendoza and Mata-Olmo 1992:43–44)

below. However, the State has never had the capacity to fully monitor compliance to its own standards, thus a significant part of the regulations were established in institutional settings at the local level (Serrano-Álvarez 2014a). In this context, what is the most striking impression about the Regulation of 1986 is that there are different routes for using and managing these assets, and these can be adapted to different socio-economic backgrounds.

The regulatory measures that were established from the mid-19th Century sought to deal with three aspects which were economic (commodification of land use which would remain as communal), environmental (conservation and regeneration of mountains for the beneficial effects they could have on public health and for the economy itself), and social (use of the commons as a mechanism to create specific land allotments, specially designed to alleviate low income groups in rural areas). The first two aspects have been analysed in other works, hence we will only summarise their main ideas and compare them with the Regulation of 1986. The social aspect, based mostly on the paragraphs on communal lots for cultivation, is less known and we shall provide some unpublished data on this.

Most of the regulations that were established on the commons from the mid-19th Century related to their economic valuation, in order to reconcile the rights of all residents for the exploitation of common lands through the transfer of certain uses to third parties. In the case of the public interest woodlands, this reconciliation was attempted via the Forests Harvesting Control (*planes de aprovechamiento forestal*) and the Forests Management Plans (*planes de ordenación forestal*) (Iriarte-Goñi and Lana 2013). In both cases local uses were reduced and were also subject to the supervision of the Forest Administration, and even taxed at 10% of their value. All this generated numerous conflicts between municipalities and concessionaires regarding land use (Iriarte-Goñi 2005). Subsequently, Franco's regime strengthened regulations for the exploitation of communal forests in order to manage and enhance their production (GEHR 2003). The regulatory authority suggested for this was the consortia, as an agreement between local municipalities and the newly created Patrimonio Forestal del Estado. The consortia were authoritarian in nature, which removed an important part of the control of land from local people (Rico-Boquete 2003). Finally, the Regulation of 1986 carried forward a process of decentralised regulation for any economic land usage and returned an important part of the decision-making role to local authorities. It also established the legislation for each autonomous region, and the economic regulations for use of the commons varied substantially from region to region, depending mainly on the economic potentials of woodlands.

Beyond forestry production, regulations established to adapt common lands to any new economic uses have not been sufficient. The only real exception is in the building sector which, since the mid-20th Century, was included within the regulations, albeit somewhat generically. In 1955 the Regulation allowed for establishment of a fund on municipal ground, bound to urban growth and called Patrimonio Municipal del Suelo (Ground Municipal Trust), making it mandatory

in cities with over 50,000 inhabitants and in provincial capitals.²⁰ In addition to the acquisitions that the council could undertake in this regard, the Patrimonio Municipal del Suelo automatically incorporated municipal property that was declared suitable for urban growth planning.²¹ Moreover, the Regulation of 1986 reduced from 25 to 10 years the term necessary to change the classification of common lands to heritage assets if they were not being used as such, and the change in classification is automatic for urban plans and projects of building and services.²²

It is obvious that communal lands have not been a hindrance to the expansion of urban development. In fact, a disaggregated comparison of the surface of heritage and communal assets in the agrarian censuses of 1972 and 1982 reveals significant changes (Table 4). Meanwhile, in Galicia and also in other provinces of the north coast, the communal area was expanded as a result of the change in classification of municipal property to MVMC, in the provinces with greater urban expansion, communal assets decreased while increasing heritage assets. This is true at least for the provinces of the Mediterranean coast and the Balearic and Canary Islands, which experienced a mass tourism boom that was strongly associated with housing.

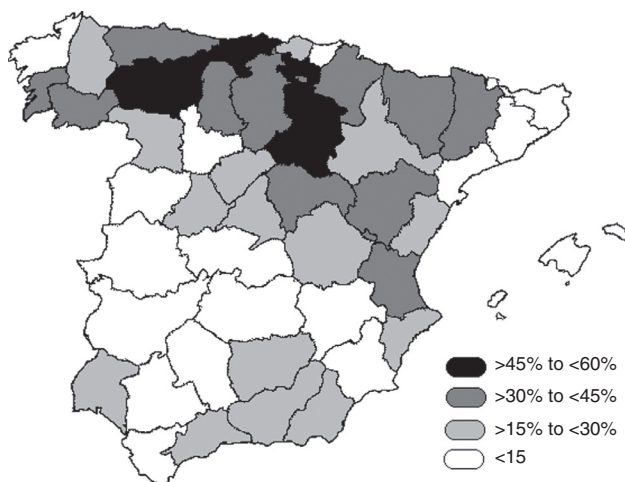
The second regulatory aspect has been associated with environmental legislation. Spain is a country with geographical features (very steep slopes and irregular water courses) which carry serious problems of erosion. Hence, the legislation has shown a clear preference for reforestation as a means to secure the soil, prevent floodwaters, and landslides. Further, since the mid-19th Century, a series of laws attempted to promote the reforestation of woodlands for conservation.²³ Municipalities were forced to keep their woodlands reforested, and they were even threatened with expropriation if they did not reforest these areas, as indicated by the Forest Administration. Nevertheless, the extent to which these measures were adhered to was very limited, both due to the lack of the State's capacity to enforce the laws and also because of the absence of any means with which to conduct large-scale reforestation. In addition, the expansion of tilled areas and the continual use of organic fuels (firewood and charcoal) in rural areas contributed to this deforestation, at least up until the Civil War. From then on, the forestry model imposed by the Franco regime implemented an ambitious forestry plan that focused clearly on economic aspects. It regarded reforestation as a means to encourage the exploitation of timber and to protect the catchment areas around the large reservoirs that were being built from the 1950s onwards.

²⁰ The Patrimonio Municipal del Suelo (Ground Municipal Trust) was established in order to "prevent, channel and develop urban sprawl, both economically and technically" (BOE 1955, No. 195, § 13–15). In some cases it gave birth to a sort of landholding corporation.

²¹ BOE 1986, n° 161, art° 8(4) and 16.

²² BOE 1955, n° 195, art° 8. BOE 1986, n° 161, art° 100.

²³ Forestry Act of 1863, Reforestation Act of 1877, the enactment of the Forest Conservation and Reforestation Act of 1908. See Mangas-Navas and Rico-Boquete (2013).



Map 1. Common lands in Spain according to the Third Agrarian Census (1982), as a proportion of the territory by province (%).

Table 4. Changes in the surface of *propios* and *comunales* according to the agrarian censuses of 1972 and 1982, by geographic areas (thousand hectares).

	Provinces Nº	1972		1982		Differences (000 Ha)	
		<i>Propios</i>	Communal	<i>Propios</i>	Communal	<i>Propios</i>	Communal
Galicia	4	702.8	124.2	254.1	564.7	-448.7	+440.5
Northern Coast	4	565.6	263.1	534.8	294.0	-30.8	+30.9
Inland	27	6168.9	1434.8	7310.9	1240.6	+1142.0	-194.2
Mediterranean C.	12	1458.4	113.5	1908.9	25.6	+450.5	-88.0
Islands	3	153.9	33.1	167.5	0.3	+13.6	-32.7
Total	50	9049.7	1968.7	10,176.2	2125.1	+1126.6	+156.5

Sources: Agrarian censuses of 1972 and 1982.

Obviously, such an ambitious plan affected the regulations of the communal lands, forcing local authorities to reforest under the threat of expropriation. The regulation also encourages establishment of private consortia, always under the technical direction of forest administration and closely related to exploitation of forest products.²⁴ The Act of 1986 meanwhile adheres to the obligation to

²⁴ The power granted to individuals to promote these consortia by the law of 1955 was extensive, since a request to that effect could only be dismissed by the council if the municipality undertakes reforestation itself within a period of one year (BOE 1955, nº195, artº 39/3)

reforest 25% of the cleared woodlands, but this reforestation appears to be aimed at conservation rather than production. From 1950 the forested area in Spanish common lands has grown, but much of the new areas planted during the Franco era are mono-specific plantings of pine trees with low biodiversity levels and the usual hazard of fire.

The use of commons related to any social aspect is less well-known. In fact, most of the literature regarding the history of commons in Spain emphasises the process of “de-commonisation” (Ortega-Santos 2002), including privatisation and the transfer of rights to individuals or enterprises through leased contracts, along with its negative social effects. Nevertheless, this vision is not inconsistent with the survival or strengthening of some social functions. In the first place, one part of the revenues from leasing the commons was used for social purposes. But, here we want to highlight a distinctive process based on the distribution of communal plots of land (usually, known as *suertes*) to be used for cultivation or tree planting, which was particularly the case in a few regions.

The allotment of commons for cultivation among the neighbours was generally associated with the expansion of cultivated areas that occurred in Spain from the 18th Century. However, since the agrarian crisis of the late 19th Century, this began to take on more of a social character (Lana 2008). Yet, the municipal laws of 1870 and 1877 provided for the possibility of the distribution of communal lots, not only in proportion to the number of families and the number of people, but also in proportion to the tax quota (*cuota de repartimiento*), which effectively meant more communal resources went to the more affluent.²⁵ However, this changed in the 20th Century. The distribution of lots in the Regulation of 1986 followed a double criterion of proportionality, directly proportional to the number of family members, and inversely proportional to their economic wealth. The direct proportionality in this rule (significantly higher for larger families) can already be found in the Municipal Statute of 1924, and its inspiration comes from social Catholicism, which influenced early social reform measures, beginning in 1907. The inverse proportionality standard (significantly lower or no lots at all for the wealthy) is indebted to the political dynamics of the thirties and is part of the radical-democratic and socialist tradition that drove the 1932 land reform.

The results of this distribution of plots for the whole of Spain are not clear. In the first third of the 20th Century, they were important in many areas of the Middle Ebro Valley (Iriarte-Goñi 1996; Sabio 2002). The Second Republic saw the allotment of commons (prior to the recovery of those which had infringed on townships in the 19th Century) as a complementary course for the distributive land reform (Lana and Iriarte-Goñi 2013). However, the exact proportions and the specific features that this process could have achieved have not left a clearly documented trail. Despite this, data from the third agrarian census show that the

²⁵ *Gaceta de Madrid*, 1870 (8/21/70, Article 70), 1877 (No. 277, Article No. 75). Compatibility between the distribution of common allotments and commercial agriculture has been well attested for the case of south-western Germany (Grüne 2011). See also, Beltrán-Tapia (2012).

allotments (*suertes*) have continued to be maintained throughout the second half of the 20th Century. As shown in Table 5, at the time the communal plots reached a total of 206,817 hectares exploited by 51,753 farmers, 6658 of those farmers depended entirely on common lands, and another 9346 farmers cultivated on land, of which over 50% was under this regime. In relative terms, these data appear to be modest. Only 2.3% of farmers in Spain enjoyed these allotments, and this only accounted for 0.31% of the total territory. However, these ratios are considerably higher in north-western provinces (León, Oviedo, Lugo, Palencia, Santander, A Coruña), and especially in the Mid Ebro (Navarra, Zaragoza, Teruel), where the percentage of farms with commons plots had grown considerably, compared to the total average. The case of Navarra is unusual, and may be explained as the result of a historically autonomous administrative system (*Fueros*) that allowed for the management of land distribution on a regional level (Lana and Iriarte-Goñi 2006). No data exist for the allotments that show their development at earlier or later dates.²⁶

But, what were ultimately the social effects of these individual distributions in usufruct? There were several effects. Table 6 classifies these allotments according to the size of farms that exploited common land. On the one hand, a large percentage (60%) of small farms of less than ten hectares actually exploited a minor proportion of the plots (22%). On the other hand, farms over 50 hectares in area represent only 7% of this category, but monopolised around 34% of common plots. In other words (and we must not overlook the role that the allotment of common lands may have had on the preservation of small exploitations), there are very marked differences regionally: it seems clear that larger farms have had greater access to the allotments of common land, thus leading to a situation that, in principle, seems to undermine the social purpose of the allotments.

This ambiguity is also found in the general terms that the Regulation of 1986 gives for neighbourhood uses. If it advocates general and non-discriminatory use, there are also exceptions. The Regulation of 1986 clarifies that the right to use and enjoy the commons also extends to neighbours, regardless of sex, age, or marital status, including foreigners residing in the municipality. But, it adds an exception that allows municipalities to require certain conditions of “bonding and attachment or permanence” (*de vinculación y arraigo o de permanencia*) to access wood deals or wood cuts, according to local custom. The clue was given by an advisory Forest State Council (*Consejo Forestal*) in 1930 which justified that “traditional customs should continue to prevail because they are of vital interest to public forest conservation.”²⁷ This was to achieve more effective management of forest policy by recognising and providing leeway to local communities.

²⁶ In the censuses of 1989 and 1999, common plots are expressly included in the residual category “Other tenure regime”.

²⁷ Royal Decree of 8/4/1930 (BOE 1930, n° 99). The idea had been raised again in 1948, with wording that clearly inspired the 1986 Regulation (BOE 1948, n° 360).

Table 5: Common lands distributed in plots (*suertes*) and exploited individually by common-holders in Spain 1982.

Province	Number of farms with common land tenures				Surface area of plots	
	A	B	C	D	E	F
	Nº	Nº	Nº	%	Ha	%
Navarra	2489	2135	12,161	30.4	32,871	3.11
Zaragoza	1680	1467	4983	9.1	30,975	1.79
León	107	735	5284	9.2	20,629	1.32
Oviedo	76	749	3463	4.8	15,401	1.45
Lugo	61	813	5836	7.9	10,424	1.06
Palencia	56	202	1100	7.2	10,228	1.27
A Coruña	42	359	1143	1.1	7680	0.97
Teruel	43	126	1733	6.5	7288	0.49
Santander	539	1039	3372	10.3	7232	1.36
Badajoz	220	293	872	1.5	6972	0.32
Ciudad Real	118	99	834	1.5	6551	0.33
Other provinces	1227	1329	10,972	0.7	50,566	0.14
SPAIN	6658	9346	51,753	2.3	206,817	0.31

A=number of farms with all their land in common tenancy; B=number of farms with more than 50% of their land in common tenancy; C=total number of farms with common tenancies; D=farms with common tenancies as a proportion of the total number of farms; E=surface of common lands distributed in plots (*suertes*); F=common plots as a proportion of the territory.

Sources: Censo Agrario de España 1982.

Table 6. Spain, 1982. Distribution of common plots (*suertes*), classified by size of farms.

Size	Farms with common plots		Common plots		Average
	Nº	%	Hectares	%	Ha/Farm
0.1–1 Ha	4094	7.9	1288	0.6	0.31
1–5 Ha	17,207	33.2	21,250	10.3	1.23
5–10 Ha	10,525	20.3	23,781	11.5	2.26
10–20 Ha	9497	18.4	38,546	18.6	4.06
20–50 Ha	6804	13.1	51,118	24.7	7.51
50–100 Ha	2635	5.1	35,521	17.2	13.48
100–500 Ha	970	1.9	25,049	12.1	25.82
> 500 Ha	21	0.0	10,263	5.0	488.71
Total	51,753	100	206,816	100	4.00

Note: Farms are classified by size, taking into account all the land at the disposal of the farm (owned, leased, sharecropped, etc.)

Source: Censo Agrario de España 1982.

In brief, the general regulation, which is very clear with respect to the free and egalitarian character of the allocation of common plots (*suertes*), did not prevent the privileged enjoyment of large plots locally by some common holders. Thus,

the equal distribution of small farming plots predominates in some provinces, while in others it appears to be a few groups of local notables who retain plots of large areas of forest or arable land. In this case, too, the local rules giving advantage to specific interests outweigh the general legislation.

5. Concluding remarks

Common lands in Spain have not only survived the major structural change that the country experienced in the second half of the 20th Century, but have been reinforced by legislation. After liberal economics advocated privatisation of most common lands in the 19th Century, in the 20th Century the legislative process first limited the scope of privatisation, and gradually recognised the importance of communal ownership, and providing increased legal security. While such changes have not been radical, they have accumulated over time through law. What happened to the MVMC is a good example of the recognition of communal property as an entity that does not necessarily coincide with state or municipal property.

Common lands have been an object of legislation that is mainly related to forest law and local government law. Changes in these areas have taken place independently, and their parallel evolution has led to some major malfunctions, such as the fact that forestry statistics and statistics relating to local administration have different classifications and different numbers on the surface area of commons. Another important dysfunction is the distinction between heritage assets (*proprios*) and communal assets (*comunales*), which has remained in local government legislation from the Ancient Regime to the present time, but without clear boundaries over the centuries. Furthermore, this distinction has not been taken into consideration, with respect to individuals and firms, for forest exploitation. Our argument here is that this type of dysfunction between parallel legislative bodies has actually led to flexibility in the survival and use of the commons. To this must be added the fact that the regulation of their use has been maintained over time in overlapping spheres (State, local, and also regional). In this scenario of multiple levels, the specific results for survival of common lands and their use have been very different, depending on how the various interests have been articulated and the ability of the agents to act on each of these levels.

Flexibility has also been used to adapt the functionality of the commons over time. The point is that economic, environmental, and social regulations have not been directed at promoting innovation, but have occurred afterwards as adaptations to a changing socioeconomic background. Regulation of the functions has also undergone a process on superposed planes. The basic legislative forms emanated from the State, and have been transformed over time, depending on the nature of the State (authoritarian or democratic) and the State's basic objectives for common lands in each period. But, the State never achieved total control of the commons; it had to share it with municipalities and local groups in a process of conflict that could have different results depending on the internal features

of society. There were opportunities for “institutional bricolage” in Twentieth Century Spain. The legal texts themselves reflect in their words the legacy of the past.

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