



The living commons of West Tyrol, Austria: Lessons for land policy and land administration



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ABSTRACT

A right of commoners to pastures existed since the Early Middle Ages in Anglo-Saxon England and the European mainland, including Tyrol in Austria. Lowland commons institutions were largely dissolved by the 19th century; however, in the European Alps contiguous commons remain alive. Some two thousand alpine commons institutions are registered in the Tyrolean parcel cadaster and land registry. A specific study of West-Tyrolean commons (known as Agrargemeinschaft or AGMs), framed by Ostrom's design principles is presented. General lessons for land policy and land administration are extracted. An interview period was split between the Inn valley and the Ötztal. Roughly half are considered independent; others are regulated by the Tyrolean Agricultural Authority. Some AGMs hold the full bundle of land rights: others only hold pastoral and forestry rights. AGMs consisted either of a single cadastral parcel or several contiguous parcels. In the Inn valley villages the pastoral commons were owned by the municipalities, while in the researched Ötztal, AGMs are frequently the full owners of the commons. AGM membership ranges between 5 and 60 farm households. The number of livestock units pastured was in most cases stipulated in approved regulations. Alpine commons larger than 200 ha are also hunting-zones: revenue is collected from the lease of hunting rights. Most of the alpine commons are designated and used as ski-zones. Upper portions of two alpine commons in the Ötztal are state protected natural areas. The number of farms with pastoral rights is declining at District and State level. Key lessons for land policy and land administration include: Ostrom's design principles being a precondition rather than a panacea; commons institutions requiring one clear ownership party; both public and collective ownership producing success; publically owned commons requiring a local representative; small membership numbers being preferable; small shareholdings not being preferable; decentralized governance being beneficial; internal democratic elections being beneficial; internal boundary records being superfluous; explicit sanctions being superfluous; mixed economies being acceptable; and geography being a significant influence on the longevity of pastoral commons.

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Introduction

'The tragedy of the commons' (Hardin, 1968) has informed multilateral land policy for decades (e.g. World Bank, 1975; Feder, 1985; Perrings, 1993; Deininger and Binswanger, 1999; Rohde et al., 2006; MCC, 2012). Hardin opens with an allegory, a pasture 'open to all' used by pastoralists who maximize individual profits resulting in a Malthusian catastrophe. Hardin recommends enclosure as a means of preventing such tragedies. However, empirical evidence of pastoral commons open-to-all and the efficacy of enclosure are not provided (Handy, 2013). In reality, pastoral village commons are often collectively held lands with restricted and individual use rights (De Vries, 1976; Dahlman, 1980; Dickel and

Mietzne, 1999; Weckl, 1968). Pastoral village commons without tragedy are also recorded side-by-side with enclosed, individually held degraded pastures in the same environment (Ward et al., 1998; Rohde et al., 2006). The apparent scarcity of degraded pastoral village commons suggests mechanisms other than enclosure are preventing a tragedy. Socio-political control mechanisms, now recognized as Ostrom's design principles, have been identified by Ostrom (1990). Further, longevity of commons institutions is associated with a modest number of commoners (Wade, 1987). Inspired by Ostrom's design principles, new pastoral commons such as 'community-based natural resource management' (CBNRM) including wildlife commons on pastoral commons (Nature Conservancies) have been instituted, notably in the pastoral regions of southern Africa (Blaiki, 2006; Dressler et al., 2010; NACSO, 2013; Suich, 2010, 2013).

'Commons' is a familiar concept in English and American scientific literature. However, a right of commoners to pastures has

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been practiced since the Early Middle Ages in Anglo-Saxon England and the European mainland (Oosterhuizen, 2011) including Tyrol (Grimm, 1910; Wopfner, 1995). Therefore the use of the Anglo-Saxon term for pastoral commons to represent the numerous local names (Annex) seems conceptually appropriate and practical. These commons consist of three elements, a relatively large parcel, a collective of commoners holding rights to the parcel, and tenure rules outlining the relationship between parcel and commoners. In the northwest European lowland and the Alps, the commoners are often the owners of ancestral farms (Annex). The acreage of the farm parcels defines the use-share in the pastoral commons (*pro rata parte*) and is expressed in animal units (De Vries, 1976; Dahlman, 1980; Dickel and Mietzner, 1999; Vivier, 1998; Holzner, 2007). During the Middle Ages, ownership of all lands including commons was progressively claimed by feudal landlords. Toward the end of medieval feudalism in the 15th century many lowland and alpine commons had obtained written rules and regulations (Slicher van Bath, 1960; Kos, 2009; Casari, 2007; Tagliapietra, 2011; Weckl, 1968). The lowland commons institutions in Europe were largely dissolved in the 18th and 19th century. This dissolution entailed partition of the commons parcel and allocation of a piece of the parcel to each of the commoners. In other cases entire commons are sold as hunting grounds, country estates, conifer plantations, or were nationalized and subsequently transferred to municipalities (Visser, 1975; Whited, 2000). In contrast, in the European Alps contiguous commons are alive. However, tenure information on contemporary pastoral commons appears to be absent, with the exception of the iconic Swiss village (Netting, 1976; Ostrom, 1990). Beyond Europe, alpine pastoral village commons are widespread in the Himalayas (Mohammad, 1989; Jodha, 2008; Bhasin, 2011) and the Andes (Westreicher et al., 2006). In contemporary Africa lowland village commons prevail in savanna and grassland biomes (Kalabamu, 2000). However, the land rights of African, Himalayan and Andean commoners are transferred privately, locally and orally across generations until recently. Demarcation and registration of pastoral commons in Africa commenced in Botswana during the late 1960s and subsequently in neighboring countries (e.g. Kapitango and Meijs, 2010; Malatsi and Finnström, 2011; cf. Kenya, 2007).

About two thousand commons have been registered in the Tyrolean parcel cadaster since the mid-19th century and in the land registry (*Grundbuch*) since the early 20th century by collectives of farmers (e.g. *Alminteressenschaften*), currently known as *Agrargemeinschaft* - hereafter AGM. Half of these AGMs are independent while the other half is regulated by the Tyrolean Agricultural Authority (TAA; *Agrarbehörde*). Regulated AGMs have no access to civil law courts, but instead to state (*Landesagrarsenat*; LAS) and federal (*Oberster Agrarsenat*; OAS) agrarian tribunals and to the constitutional court (*Verfassungsgerichtshof*; VfGH). Recently, regulated AGMs have been categorized as either AGMs with their own land (typical AGM) or AGMs on public land (*Gemeindegutsagrargemeinschaft*; VfGH, 2008; TFLG-Novelle, 2010). These categories will be referred to as independent versus municipality AGM. The independent AGM holds the full bundle of land rights, whilst the municipality AGM holds only pastoral and forestry rights: other withdrawal rights (*Substanz*) and their revenues are appropriated by the municipality. The withdrawal rights may include hunting, overpass for ski-slopes, ski-lifts, land lease and sale for buildings, telecom towers, access roads and quarries. Estimates on the proportion of AGMs on public land vary from a quarter to 60% (Landtag Tirol, 2011; Tiroler Gemeindezeitung, 2012). The distinction between independent AGM versus AGM on public land and the financial consequences are currently contested in the agrarian tribunals and constitutional court.

In the second half of the 20th century three pan-European trends affect alpine commons, namely the transformation of subsistence

farming, the growth of outdoor-tourism especially in winter, and the expansion of protected areas for nature conservation. As a result, land in the commons is in demand for ski-infrastructure and nature conservation. Farming has been surpassed by tourism as source of income in Alpine valleys. Most commoners are part-time farmers specializing in dairy farming but otherwise directly or indirectly employed in tourism (Agrarstrukturbehebung, 1999). In the meantime, alpine pastures are identified as hotspots of botanical diversity (WWF, 2004; Holzner, 2007) and considerable expanses are designated as Natura2000 areas (cf. EU, 1992).

The lack of empirical information on the contemporary tenure of the European alpine commons invites further research. Empirical information on the commons is scarce and largely deals with 'dead' commons or commons in pre-modern societies and economies. The remarkable longevity of the European alpine commons provides us with an opportunity to extract generalized land policy and land administration lessons for other contexts. Specifically, the commons enable testing of the design principles for sustainable pastoral commons, postulated by Ostrom, for the first time in the context of a dual use of the commons for pastoralism and outdoor-tourism. From a more practical perspective, the Austrian Alps appears a promising research area for commons as their presence, extent, number and boundaries appear extractable from the online cadaster (DKM, 2012). Finally, policy lessons learnt from Tyrolean commons may contribute to the discourse on the new commons, the CBNRM programs worldwide especially the well-published Communal Area Conservancy Program in Namibia (NACSO, 2013), that seem unaware of their parallels in the Alps and vice versa (Dressler et al., 2010; Lapeyere, 2010; Siegl and Schermer, 2008; Suich, 2010, 2013). The remainder of the article is structured as follows: the research design including an outline of Ostrom's design principles is provided; the study areas are described and justified; results are presented under themes relating to the Ostrom design principles; key discussion points are covered; and finally a synthesis of key lessons is presented in accompaniment with suggestions for future research.

Research design

The overarching methodology was qualitative in nature, with some additional quantitative data captured as a result of interview data compilation. Ostrom's design principles aided both data collection activities and subsequent analysis. A case study approach was utilized: documents, interviews, and gray literature were gathered over specific locations maintaining AGMs. The data acquired was synthesized, tabulated where appropriate, and used to undertake the analysis against Ostrom's design principles. The procedure qualitatively revealed levels of adherence to Ostrom's design principles, and also enabled the extraction of generalized land policy and land administration lessons regarding the management of commons.

Among the Austrian states, Tyrol was selected as a research site because about half of its surface, that is three quarters of the farmland is commons and a third of these commons contains winter sports' grounds. West Tyrol shows the highest proportion of alpine pastures held by AGMs (Holzner, 2007). The interview period (08–15 October 2012) was split between the two major valleys in West-Tyrol, the Inn valley and the Ötztal, to allow detection of spatial diversity of commons tenure. Historically (Graf, 1880), the upper Inn valley is known to contain both commons on public land (*Gemeindealmen*) and independent commons (*Interessenschaften*). Within the Inn valley, the Serfaus-Fiss-Ladis area was selected for its extensive alpine commons. The upper-end of the Ötztal was chosen because the Alpine Research Station of the University of

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