



From restitution to revival: A case of commons re-establishment and restitution in Slovenia



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ABSTRACT

Agrarian commons in Slovenia share a common historical origin with other commons from Central European countries. In the twentieth century, commons in some of these countries experienced the process of abolishing traditional management institutions and nationalising their property. During the transitional period in the 1990s, one third of former agrarian commons were re-established and restituted in Slovenia. In this paper, we evaluate the response of three different types of agrarian commons (forest, pasture and agriculture commons) from three different landscapes (Alps, Pannonia and Mediterranean) in the context of the legal framework in which the commons were restituted. We use the upgraded version of Ostrom's design principles to evaluate the ability of the legal framework to enable the robustness of these historical institutions. It is not the first time that governments misunderstood commons and tried to impose rules which are not common to the commons. In the case of Slovenian agrarian commons, we found that the legal framework is too rigid for re-established agrarian commons and thus affects their efficiency in resource governance. Without changes in the legal framework, the present situation can lead to the decay of these historical institutions.

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1. Introduction

Social and political changes in ex-socialist countries of Central and Eastern Europe (CEE) in the 90's included the transition from planning to market system via the processes of privatisation and restitution (Bouriaud and Schmithüsen, 2005). Restitution is defined as a process which addresses dispossession that has taken place under colonialism and/or socialism (Fay and James, 2009). Land restitution brings the past into the present (Larson et al., 2008). In this process we have, on one side, a community of rightful claimants who often have high expectations regarding the valorisation of their restituted property rights, and on the other side, the state as a key actor which is often 'both playing the game and making the rules' (Fay and James, 2009).

As the other CEEs, Slovenia also shifted its political orientation towards democracy and the market economy. One of the set goals in this transition process was to repair the injustices caused by the Yugoslav government's dispossession/nationalisation of properties after World War II (WWII). In Slovenia, in addition to larger properties of different ownership origins, restitution processes have also included agrarian commons' properties and rights. As in Slovenia commons were also restituted in others countries which experienced socialist regimes, such as Hungary, the Czech Republic, Slovakia (Oravska and Chobotova, 2006)

and Romania (Mantescu and Vasile, 2009). Restitution in connection with commons has been studied in different post-socialist countries (Wily, 2000; Cellarius, 2003; Lawrence and Szabo, 2005; Larson et al., 2008). Slovenian agrarian commons share common historical and legal background with some of the CEE countries due to the Habsburg Monarchy land reforms from the 19th century when the territory was part of it.

Common use of land under different political systems and its legal arrangements has a long history in the territory of Slovenia (Britovšek, 1960; Bogataj and Krč, 2014) and has always been problematic to legal theoreticians and governments (Britovšek, 1960) since the principles of the commons are different from those generated by civil (Roman) law traditions.

A Latin proverb says that co-ownership is the mother of disputes. Researchers in the twentieth century developed a theory known as the 'tragedy of commons' (Hardin, 1968). This economic theory is based on the assumption that individuals, acting independently and rationally according to each one's self-interest, act contrary to the group's long-term best interests. The result of satisfying self-interests leads to depleting the common resource. The theory was explained in the case of a pasture open to all where herdsman, on the basis of individual rational economic decisions, depleted the common resource by overgrazing the pasture. The theory was subsequently heavily criticized (Ciriacy-Wantrup and Bishop, 1975; Ostrom et al., 1999). Hardin later explained that his theory refers to unregulated commons (Hardin, 1998).

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Having the 'tragedy' theory on one hand we can find on the other hand the collective restraint (Axelrod, 1984) and the capability of users to come up with their own solutions to the commons problem (Ostrom et al., 1999). There are numerous cases where users crafted long-term, robust and sustainable institutions for governing CRP resources (Ostrom, 1990; Bromley, 1992; Sinha, 2001). To assess the robustness of CRP institutions, the commons governance design principles approach was developed (Ostrom, 1990; Agrawal, 2002; Cox et al., 2010) and this is going to be used as an assessment tool in the cases of analysing the Slovenian agrarian commons' robustness. We understand the robustness as "the maintenance of some desired system characteristics despite fluctuations in the behaviour of its component parts or its environment" as it was defined by Carlson and Doyle (2002) and proposed in the framework which helps to identify potential vulnerabilities of social–ecological systems to disturbances (Anderies et al., 2004).

We presuppose that agrarian commons in Slovenia (Petek and Urbanc, 2007; Premrl et al., 2011; Rodela et al., 2012; Bogataj and Krč, 2014) follow similar principles of natural resources management as other forms of common management described in the theory of commons (Ostrom, 1990) as well as commons from both neighbouring countries Austria (Herbst, 2004) and Italy (Paletto et al., 2013); (van Gils et al., 2014) and worldwide (Oravska and Chobotova, 2006; Hajjar et al., 2013; Lidestav et al., 2013; Lopes et al., 2013; Schusser et al., 2013). Regardless of historical, geographical and socio-economical context of Slovenian agrarian commons we found out similarities between agrarian commons in Slovenia and cases of community forestry (Arnold, 1992) in a concept of local people involvement in a forestry activity and concept of covering individuals', households' or community's forest product needs. Further on we found that similarities in disturbance activities of larger government policies towards local resource institutions (Ostrom, 2009a, 2009b, 2009c) happened in a recent history. Studies of community forestry that address issues concerned with relations between community forestry concept and government policy or legal framework (Ambrose-Oji et al., 2015; Nurrochmat et al., 2015; To et al., 2015; Furness et al., 2015) which we are discussing in this article often conclude with recommendations for government how to improve governance in forest communities.

In this paper, we analyse reestablishment and restitution processes of agrarian commons and pose the following two questions: 'How has the set legal framework affected the robustness of agrarian commons?' and 'Is there a danger that the commons can become anticommmons due to having a large number of owners?' We assume that the legal framework, set by the government in the re-establishment and restituted law, is sub-optimal since the reactions of members of agrarian commons as well as constant change in the related legislation support our assumption.

1.1. Terminology, history and agrarian commons

The subsequent restitution process brought some changes in land distribution in Slovenia and also changed the proportion of private and public ownership. This especially affected forest ownership. The biggest individual owner of woodland is still the state, though it has significantly smaller shares than before restitution (Medved et al., 2010). Nowadays 73% of Slovenian forests are in private hands (Malovrh et al., 2010). Among private forest owners, agrarian commons are an important type of forest (Premrl et al., 2011) and agricultural land owners (Petek, 2005). Agrarian commons properties consist of forest, pasture, unproductive and agriculture land covering almost 4% of all Slovenian territory (Premrl, 2013) in some regions also up to 13% (Petek, 2005).

There are many words in the Slovenian language connected to the expression 'agrarian commons' and these words reflect the diversity of resources use as well as the diversity of factors from agrarian commons history. All these diverse expressions are now equalised by law (ZPVAS, 1994) due to the adoption of the common legal term 'agrarian

community'. Authors of this paper are not the only ones facing terminology problems to name these CPR institutions in English. Research studies conducted in historically and geographically similar environment (van Gils et al., 2014) found that the use of the Anglo-Saxon term 'commons' (for pastoral commons) to represent the numerous local names seemed conceptually appropriate and practical, whereas others (Schusser et al., 2013) adopted the term 'community forests' for CPR institutions connected with forest. In this paper we decided to use the term 'commons'. Considering theoretical concepts, as well as the possibility of replacing concepts of *political communities/municipalities* and deviation from the former, pre WWII commons where membership was more strictly linked to the local community of users, we found the term 'community' to be inappropriate. Slovenian municipalities have a different concept of managing arable and forest land as it is known from other countries when commons on the public land holds pastoral and forestry rights (van Gils et al., 2014). We will use the term 'agrarian' as an adjective because it demonstrates the agricultural–pastoral origin of Slovenian commons as well as the influence of agrarian reforms of the different political systems and states existing in the territory of contemporary Slovenia. In addition, 'agrarian' also links on the relevance issue of 'agrarian perspective' which emphasises the linkages between local social relations and larger economic and political forces (Sikor, 2006).

The consequence of agrarian reforms was that the lowland commons in Europe were largely dissolved in the eighteenth and nineteenth century (van Gils et al., 2014). This process also happened in Slovenia. As a consequence, only less productive land, intended for grazing and household (fuel) wood supply, remained as undivided common land (Britovšek, 1960) until the nationalisation process. After WWII in the framework of communist agrarian reform, the land in the agrarian commons was nationalised and came under the management of newly founded organisations, such as socialist cooperatives and government forest companies, or it was simply abandoned. Parallel to those changes, rural areas were affected by processes of deagrarianization, urbanization, depopulation and decline of the agrarian population (Klemenčič, 2002).

Slovenia is a country with a civil law rather than a common law tradition. From the legal framework, which is a broad system of rules that governs and regulates decision making, the laws most commonly connected with agrarian commons are as follows: *the Constitution of the Republic of Slovenia, the Law of Property Code (SPZ), the General Administrative Procedure Act (ZUP), the Denationalization Act (ZDen), the Act on Reestablishment of Agricultural Communities and Restitution of Their Property and Rights (ZPVAS) and Agricultural Land Act and Forest Act* as acts related to resources. For the general restitution, ZDen was adopted in 1991, but soon after restitution started a need for *lex specialis* for agrarian commons arose and ZPVAS was adopted in 1994. Based on that act, commons were re-established and the nationalised land was restituted. Ownership rights to re-establish agrarian commons were given to members of former commons or their heirs. In the case where there was no interest among rightful claimants or they were unknown, the remaining share of the property was passed to the local municipality. If there were material or legal restraints present on the property, that part of the property was not restituted and commons have a right to claim financial compensation from the government.

Agrarian commons in Slovenia are not legal entities under civil law as, for example, in Switzerland (Baur and Binder, 2013), nor are they legal entities under public law as in Austria (van Gils et al., 2014). Instead, they are a community of natural persons and legal entities, i.e., members on the basis of an agreement (commons rule) who have common rights, duties and obligations (ZPVAS, 1994). In Slovenian legal order, commons are close to civil-law associations. Ownership of the agrarian common is formed by co-owners' divided or undivided ideal shares under co-ownership (the share of each individual owner is known) or a common ownership regime (the share of each owner is unknown but presupposed equal). The superior law is SPZ, but this law does not recognise the specific form of possessing and therefore

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