

Communities' Resistance towards Common Lands: A Communal Property Historically Disputed by Private Entities, Municipalities and The Government.

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Abstract

Common lands are a complementary basis of family owned land, essential for the survival of rural economies, particularly in the inner regions of the country (Portugal). Over time, it has become a subject of discord and has given rise to disputes, not only internally around the private appropriation of communal lands, but also with the Government and municipalities eager to take possession of communal lands that belong to the people that have resisted in various ways. Primarily, this paper will seek, in a synthetic manner, to approach the issue, which has spanned through several regimes, as well as through the ages, giving emphasis on the liberal period, encompassing the First Republic up to the *New State* dictatorial regime, during which some critical situations arose that have been rather well illustrated in Aquilino Ribeiro's novel. Later on, several of the difficulties originated by this problem since the revolution of April 25th 1974 will be presented. These translated into conflicts between social and political players in the centre of the communities about access, ownership and fruition of common lands, as well as in ways of managing the latter, and in the established rapport between commoners and municipalities but mostly with the central Government. Despite the constitutional acknowledgement of common lands as being property of local communities, namely its commoners (as in article 82 of the Constitution of the Portuguese Republic), there are records of private entities, municipalities and the Government attempting to 'rob' the people of those communal rights. Lastly, an analysis will be performed focusing on the most recent legislation established in the Assembly of the Portuguese Republic. This legislation was an initiative of the BE and PCP political parties, with the constructive collaboration of PS. Its background and social-economic and political impact as well as its contribution to the survival of family units and respective communities will be presented. Furthermore, its role in rural development and in the reinforcement of the biodiversity of fauna and flora and, ultimately, in the sustainability of rural ecosystems, namely agricultural and forestry ones will be demonstrated.

Keywords: common lands, rural communities, peasant economy, Portugal.

Introduction

Human beings rely on Nature's natural resources to satisfy their vital needs, to ensure their subsistence, regardless the forms of usage, ownership or fruition, mainly of the land (be it of public, private or of community domain). Nevertheless, in the last decades, collective access to resources, especially natural ones, has raised some concern. This led to a series of studies, from several scientific fields, at an international level (Hardin, 1968; Ostrom, 1990 and 2005; Lopes, 2007) and at a national level (Estêvão, 1983; Rodrigues, 1987 and 2006; Baptista, 1993; Gomes, 2009; Bica, 2006 and 2010). The squandering of natural resources at a global level is generally linked to industrial development and its consumption patterns, which endangers the ecosystems' own sustainability (Filipe *et al.*, 2007, Simões and Cristóvão, 2012).

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Traditionally, it was mostly through family and community aid that the rural populations satisfied some of their needs and solved certain economic and work organization problems, as mentioned by authors as Weber (1978) and Mauss (1993) and, namely in Portugal, O'Neill (1984), Portela (1986), Silva (1990 and 1998), Cardoso (2012).⁴ On the basis of rural economic practices, common lands are communal lands, with their own system and a long history of usage aimed at the collective interest (bush, firewood, pastures, water, lumber) which were carried out and controlled by local rural communities, such being the case in Portugal. This special system is common practice in many countries throughout the globe, although with different terms of management and fruition. In Portugal, the Portuguese Constitution, in its 82nd article, establishes common lands as property of the local communities.

If, on the one hand, common lands are presented as something from the past, on the other hand, they are shaped as a possible and innovative response for the most pressing challenges that we as a society face. It can be said that common lands are currently part of the great challenges that societies face, such as risk prevention, prevention and mitigation of climate changes, environmental concerns, preservation of ecosystems and biodiversity, protection and production of water resources, local economic solutions, short chains in production and food commercialization, among others.

The progressive and relative abandonment or insufficient use of silvo-pastoral terrains, among which are the common lands, is a consequence not only of turning an agricultural society into an urban-industrial one, but also of the absence of agroforestry policies established by national powers. These factors have decisively contributed for the outbreak of forest fires. The representation of the collective space is essentially the ordering of the heterogeneous, given that the space is indissociable from the society that inhabits it. It is in the relationship established between both that the explanation for the types of organisation that it manifests must be sought as “*social organisation was the model of spatial organisation, which is like a decal of the first one*” (Durkheim, 2002:15). This author establishes a linear correspondence between spatial composition, physical proximity of a certain populational group (material density) and the nature and intensity of social relationships (dynamic density). Effectively, spatial organisation mirrors and is reflected in social organisation, in the sense that outlining an internal means represents the identification of a relatively homogeneous populational and social group. It is based on a relationship inherited many generations ago on which one of the pillars of community property legitimacy is built on (Baptista, 2011; Silva, 2014).

In Europe, over the ages, common rural land has played a fundamental part in rural development. The rural environment is characterized by homogeneous social bonds, which normally are circumscribed to the village's restrict space, thus favouring the existence of a strong mutual knowledge (Carmo, 2009:9) and assistance between the countryside population (at the level of agricultural tasks and neighbourhood), although these forms are in decline (Silva, 1998; Cardoso, 2012). Throughout monarchy, or later during the first Republic, but mainly, under the dictatorial *New State* regime, common lands were the object of heated discussion and of desire among several players with their own interests in mind. Within this context, the following work has as its main goal to refer the changes and difficulties that common lands have gone through. Common lands have been the object of discussion and political discord, mainly in the 19th and 20th centuries. On the other hand, it aims to present ways of intervention regarding the management of communal lands – common lands, identifying the relationship between the interested parties. The role played by the Government and eventual conflicts in the management, use and fruition of the common lands will be discussed, as well as their impact, namely in rural communities, and mainly since the *New State* regime until the present day. To achieve these goals, a bibliographic review has been carried out, by means of selecting some classic and more recent bibliography, as well as specific legislation and other specialized documentation.

1. Common lands: from the Old Regime to the First Republic

In Portugal, historically, the existence of common lands dates back to the first agricultural societies and the beginnings of the existence of the country as a nation with well-defined borders (Oliveira, 2011; Rodrigues, 1987; Baptista, 2010). Collective property suffered its first major attack with the Roman invasions. Due to tradition and Roman rights, common lands began to be appropriated by the great lords, where they established their *villae* and farmed them.

⁴The sense of community, such as defined by several authors since Tonnies (1979) and Weber (1978) to Redfield (1961), suffered changes, giving place to the maximisation of survival strategies, with family or individual based incomes, or to initiatives of a more institutionalized kind, or even to associative forms of an allegedly voluntary basis which, however, are grounded on a community basis, but already weakened or decaying (Cardoso and Silva, 2011).

Among the first references to lands that would have the nature of common lands (Bica, 2010), one may include the statement of Saint Isidoro, Bishop of Sevilla, who refers, during the Visigoth ruling (beginning of the 7th century), there having been left plots in the division of lands. The neighbours' cattle could commonly graze there, calling them *compáscuo*. In the Middle Ages, these lands of common use were subjected to feudal taxes (*montádigo* taxes). However, in some cases, exemptions were granted.⁵

During the Republican period, the population who inhabited the lands reaped benefits from their exploration, by responding to their specific needs. According to traditions inherited from the Visigoths and Romans, or even from indigenous people (Gralheiro, 1990), those populations would progressively appropriate and control the *maninhos*, counties or estates. There was no order or command. They permanently and constantly transformed them, through usage, into common lands of the community of which they were part of, by *presúria* or usucaption (acquiring of a royal right of fruition of land ownership) (*New Larousse Encyclopaedia*, 1994:6868; Silva, 1998:25).^{6,7} Throughout the 12th and up to the 14th century, common lands were expanded by seizing them from their own populations, concession and endowment for common use by kings and feudal lords, usucaption, conquering new lands from the Moorish people and by perpetual or long-term renting (Rodrigues, 1987; Gralheiro, 1990).

The increase of population during the 15th century and its resulting pressure on the land led the *Ordinances Afonsinas* to decree the regulation of the process of privatisation of land, in the form of *sesmaria* (feudal system of endowment of lands for farming). However, it appears that in this process the cases of lands that were commonly used by neighbours for grazing and other purposes, namely in cases of low population density were not included (Bica, 2010:35). Nevertheless, it was during the reigning of D. Manuel I, through the *Ordinances Manuelinas*, that farmers managed to grow crops on some common lands and *reguengas*, in the form of *sesmaria*, for their own benefit, through payment of a tribute (Rodrigues, 1987).⁸

In turn, in the beginning of the 17th century, with the *Ordinances Filipinas*, Noblemen, Lords, Commanders and Prelates were explicitly forbidden of seizing *reguengos* that, by title, were not their own (*Ordinances Filipinas*, n/d). Indeed, these regulations paved the way to the usurpation of common lands, allowing these to be given by *sesmaria* for farming, with the exception of properties belonging to the Church and confraternities. During the 18th century, Central Power acknowledged, by the charter of July 23rd 1766, that municipalities had rights on common lands, authorizing their alienation, although this same charter had forbidden councilmen and municipal officials, officers of justice and people who are usually linked to the ruling of cities, towns and villages from farming municipal lands and own them at any title (Bica, 2003).

It was precisely during this period that the considerable and contradictory problems regarding common lands increased, which in Portugal achieved their full plenitude during liberalism. This was due to the popular forces contribution to the level of intensity of these changes and, on the other hand, to the class that seized power at that time – the bourgeoisie. This class intended to acquire new and greater privileges, starting with this type of property considered to be *the biggest enemy of liberal reforms in agriculture, the biggest setback in the releasing of individual private property* (Abel, 1988:339). At this time, this concept of individual property becomes of paramount importance, since its principle is the release of land from feudal grasp and its individualization (Abel, 1988). Inwardly, this policy was in accord with the ideals of certain rising and enlightened bourgeoisie layers, who saw the traditional countryside practices as an obstacle to economic progress. This new ideology aimed to eradicate common land structures. However, the populations that lived in poverty and depended on common lands to survive strictly objected to this concept and tried to prevent their privatisation.

These demonstrations of total discontent by farmers were shown through several complaints and petitions presented at the Courts. Also, the acts of destruction of walls, fences, and sidings were frequent, whenever the common lands were appropriated by landlords (Rodrigues, 1987; Silbert *cit. in* Silva, 1998:28).

⁵*Montádigo* was a figure during the Middle Ages, in which the use of uncultivated lands for grazing, not being individually seized, was subject to payment of the respective tax to the owners of the feudal rights on the land in question (Bica, 2010).

⁶According to Portugal Villa Nova, “*Maninhos* are privately owned uncultivated lands, used in common by a group of inhabitants, by decree, renting or deadline established by a landlord” (Rodrigues, 1987:19). However, over time, the distinction between *maninho* and common land faded away, eventually increasing the disuse of the term *maninho*.

⁷*Presúria* – special title in which noblemen were granted certain lands conquered to the infidels, during the Christian reconquering and territorial formation of Portugal; claiming or reconquering through the use of weaponry; legal ownership of a land” (as in *Dicionário de Língua Portuguesa*). These lands, called no man's lands, after the defeated parties' departure, were seized by noblemen or by the Crown, being, in the latter case, designated as *realengas* (Silva, 1998:25).

⁸The kings' private properties were called *reguengos* (cf. Gralheiro, 1990:24).

After the liberal revolution of 1820, “*the process of disamortisation became almost as a simple transfer of rights on the land – partially mediated by the liberal Government – from the Church, especially from extinct religious orders and the Crown, to new landlords and literate. These, who had access to expropriated land nationalised at a low price, would keep living on rents and become part of the aristocracy*” (Silva, 1998:28). According to the same author, liberal power ignored certain expectations farmers had, allowed for the individual appropriation of lands and the increase of rents, partnerships and taxation, similar to the situation lived during the Old Regime. Therefore, farmers did not support the liberal regime and saw it as a new offense to their interests, given the tax increase and reduction of communal lands (Silva, 1998:29).⁹

Over the centuries, common lands were the object of “new” approaches and tensions, whether by the Government’s own intervention, by the pressure exerted to change the economic production mode, or even by popular resistance, mainly from parcel farmers (agricultural community). However, it is during the transition period, between 1820 and 1910, that the greatest level of conflict in the struggle for common lands is noticeable. Despite liberal reproach against common lands, the people who were entitled to them kept resisting, succeeding in their intentions mostly in the regions north of the river Tejo (Bica, 2010).

For the “liberal power“ it was important to gather land and acquire new privileges, taking back common lands as much as possible (common land disentailment), in order to form a landowner property and reinforce the Southern landowner class, while in the North the orders were to afforest common property. Thanks to resurgence and popular petitions, it was possible to avoid fully afforesting of common lands in the North. But it is precisely Mouzinho da Silveira who objects “*against the collective resistance of people to the individual appropriation of community property*”, in Decree nr. 12, of April 1832, of his own authorship. In 1850, common lands started to be managed by municipalities and parish councils, with alienation rights, whereby many common lands were sold, rented and mainly usurped by local heads (Abel, 1988).

It was in 1886 that the *Forest Services* were created. These were restructured in 1901 so as to integrate the Forest System throughout the whole national territory. Two years later, in 1903, the regulations for this regime were published, which encompassed the Government’s forest policy for the most part of the 20th century. At the beginning of the 20th century, Portugal was not very industrialised. Its agriculture was unproductive and uncompetitive, and the country depended on foreign food products. In the Northern regions of the country, in its majority, family farms were small, whereas in the South there were large properties, with a considerable number of permanent or temporary farm workers (Silva, 1987 and 1998; Lopes, 2011).

In short, we can say that, from a structural point of view, in the period under consideration, there are three major problems involving the issue of common lands: disentailment, subsequent liberal revolution, afforestation and internal colonisation (Estêvão, 1983). The disentailment of common lands, its division and individual appropriation to transform «uncultivated» lands into cultivated ones, was a movement that became more pronounced particularly since August 1869 lasting until 1932. According to the initial assumption, this policy of disentailment was applied to «uncultivated» surfaces, which were not individually appropriated and from which no one took advantage. From then on, and a bit throughout the whole country, a strong movement of appropriation and alienation of common lands emerged. With the implementation of the Republic, the issue regarding common lands and the interests of countryside populations were not solved, leading to a reduction of communal lands, its individual appropriation and the creation of new taxes (Silva, 1998).

It is estimated that the forest area in Portugal, between 1875 and 1938, suffered an increase of about a million and eight hundred thousand hectares. However, in this period, the significant boost that stimulated afforestation was caused by private entities that, with more or less importance, pushed for the increase in dimension of the properties, the *montadigo* (tax paid for cattle grazing) of the South. In contrast, in the Northern and Centre regions of the country, the pinewood area was increasing, predominantly, by initiative of small property owners (Radich and Baptista, 2005).

These property owners gradually succumbed to the pressure caused by the new industries related to forest exploration (sawmills and paper pulp factories). Nevertheless, mostly it was the Government with its policies that considered that the growth of the forestry areas was the solution for the country’s industrial take-off, assuming that Portugal had a “forest vocation” (Devy-Vareta, 1993).

⁹In the Minho region, in late 18th century, rent added about 60% of net income, whereas in the 14th and 15th centuries it oscillated between 30% to 40% (Silva, 1998).

2. Common lands in the *New State*

Portugal, not only in the beginning but also in the mid-20th century, was mostly an agricultural country. The land was the unquestionable element for seizing the structuring of agricultural production and, largely, the relationships of power in the fields (Silva, 1998; Cardoso, 2012). Agriculture was the most relevant economic activity regarding employment, which in 1938 generated a third of the gross domestic product (Baptista, 1993). Poverty and decay, not only in the rural world but also in the city, created instability, displeasure and even upheaval in several sectors of Portuguese society, providing the conditions for the Military Coup of May 28th 1926. This resulted in an authoritarian political regime, which immediately abolished fundamental civil and political liberties, using repression and terror, and granting powers of alienation of common lands to City Halls and Parish Councils. That power of alienation in practical terms, was to the satisfaction of a certain political group, using common lands as a means of political and economic pressure. In addition, the *New State* would later enforce the most repressive campaign against communal lands, reserving more than four hundred thousand hectares of common lands for afforestation, putting an end to the traditional use of these lands by rural communities (Rodrigues, 1987; Gralheiro, 1990).

According to Estêvão (1983), it is between 1932 and 1938 that a new policy for common lands is effectively created, by not only the production of specific legislation, but also through the implementation of the Internal Colonization Board, created by Decree-Law 27.207, November 16th 1936.¹⁰ The submission of common lands to the forest regime during the *New State* was not peaceful. Force was applied, threats were made and political persecution was used many times to impose the exploration of common lands on highlanders' properties (Gralheiro, 1990).¹¹ With this anticommunity momentum, there is a drastic reduction of ovine and caprine cattle, as well as a reduction of natural pastures in favour of areas cultivated with grains, intensive farming and bovine cattle breeding and fattening (Rodrigues, 1987). This situation, worsened by the prohibition imposed by the Forest Services of grazing flocks and the absence of investment to absorb surplus labour, forced the emigrant flow of the 50s and 60s and subsequently the depopulation of the inner regions of the country.

Between 1960 and 1970, the Portuguese farming population diminished about a third. This was due to exogeneous factors related with the demand for labour force in the international market, as well as to socioeconomic and regional differences in the Portuguese society, which presented internal limitations, such as the lack of employment and of satisfaction of basic needs (Cardoso, 2010:107).¹²

¹⁰By action of the Internal Colonization Board (ICB), there was a promotion of the valuing of uncultivated spaces for the expansion of forest activity, and a wide mapping of common land area in the country was created. After six years, ICB realized, still in this endeavour, that there were no replies received from 46 town halls and 724 parish councils from the mainland and islands and that from the information that was sent it was verified that there are 347 252 hectares common lands in the mainland and 57 000 hectares in the islands. Such areas might not have been in line with reality, due to the fact that the inventory that was carried out not being a thorough and rigorous one (Estêvão, 1983; Gralheiro, 1990). From the legislation established between 1932 and 1938, we must refer the Decree of February 28th 1932, Decree of December 8th 1932, Decree of April 1st 1933, Decree-Law of January 13th 1934, Decree-Law of January 25th 1934, Decree-Law of January 26th 1934, Decree 27.207 of November 16th 1936, Decree-Law of April 3rd 1937, and Law nr 1971 of June 15th 1938, which grant the legal grounds for the delivery of wastelands to forest services (Estêvão, 1983).

¹¹With the creation of the administrative code in 1936, common land kept being divided into municipal and parish council ones and, simultaneously, regarding their social usefulness and cultural suitability, they are classified as *indispensable* or *dispensable* to common public fields, being the latter subdivided into *suitable* or *unsuitable* for farming and, also, another group, the *arborized* intended for afforestation. Common lands considered indispensable to common public fields would keep maintaining the same purpose. However, in this classification, it was up to the ICB to determine which areas were considered dispensable to common public fields.

¹²The 20th century had the largest "exodus of emigrants": between 1964 and 1974, about 131 thousand people emigrated to Germany and 423 thousand to France between 1955 and 1974, which, together with about 450 thousand illegal emigrants, resulted in about a million emigrants, that is, 10% of the total population and 25% of active population (Annual Emigration Bulletin, 1973; Cepeda, 1988:117; Silva, 1998: 281-282). Regarding the geographical source of the migratory movements and the social origin of emigrants, between 1986 and 1989 would have emigrated to Brazil about 310 thousand Portuguese People, from which more than a third was from the Minho region (Goldey *cit. in* Silva, 1998: 281) and, in most cases, were farmers (Feijó *cit. in* Silva 1998:281). It is important to also refer that the destiny of Portuguese migrations has changed since the 50s of the 20th century. While in this decade about 82% of Portuguese people have emigrated to South America, mainly to Brazil, being residual in European countries, in the 60s, 17,4% emigrated to South America, 18,2% to the USA and Canada and 61,8% to Europe, from which more than half emigrates to France (Godinho, *cit. in* Silva 1998: 281).

The application of the *Forest Populating Plan* (1938-1968) had its repercussions in the economy and lives of highlanders. It caused changes in some of their centuries-old traditions and community habits, mainly in the field of grazing (reduction of cattle) and in the modifying of cultural practices, contributing to the economic reduction of income in the rural communities.¹³ Indeed, if the agricultural system in pastoralism still prevailed in agriculture before the afforestation period of common lands (1938-1945), it is precisely after that massive intervention that its relevance diminished the family activity and income. According to Devy-Vareta (2003:451), between 1940 and 1960, 360 thousand hectares common lands were submitted to forest regime, besides the works of preparation for more 300 thousand hectares. The concern in not leaving any surface of land without practical use, together with the policy of fighting the subsistence crisis (Estevão, 1983), took place within the scope of an authoritarian policy of the *New State*, which submitted common lands and their community fruition to the forest regime, presenting itself with features of illegal appropriation by the Government.

With the purpose of reinforcing the legal instruments of repression against the people, the *New State* created a new *Forest Policy Service Regulation* (D.L. 39.931, of November 24th 1954). With this decree, forest officials were given the status of forest rangers, with the right to use and carry a firearm, provided by the Government. These officials could not be criminal defendants without previous permission from the Government, even after having left the service. Their official reports relied *on faith in judgement until otherwise proven*, in case they could not arrest the perpetrators while committing the crime.

The *New State* wanted to afforest common lands to extract raw-material for industry, correct rivers and streams' flow, defend meadows and ports, increase exportations, reduce importations and occupy rural populations. Thus, since the 30s and until the 40s and 50s, common lands, which had always been used for the good of the communities and from where each community took a vital part of its livelihood, would be “expropriated” and used for afforestation.

The relationship between the Government and the rural population was not a peaceful one. High landers vigorously objected against the afforestation of common lands. As it stands on the *Forest Populating Plan*, in the explanatory report of law 1971, of 15.06.1938 (Radich and Baptista, 2005; Bica, 2010), it was expected that Northern rural populations would resist against the spoliation and occupation of common lands by Forest Services. It was precisely during the 50s that novelist Aquilino Ribeiro published the book “When the Wolves Howl” (Ribeiro, 1958), in which the author, already stigmatised by the dictatorship of the *New State*, would be the victim of an arrest warrant and the seizing of all published copies of the book. Aquilino Ribeiro heavily criticises and exposes the tyranny and arrogance of the Government, which ignored the whole transfer cycle of resources and power that common lands provided. Effectively, the bush was removed from common lands, where it served as a bed for barn animals, and together with their excrements provided manure for fertilising the lands, being this traditional fertiliser used by small countryside farmers. In some regions, and through the system of crop rotation after land clearing or burning practices, some parts of common lands would also serve for growing cereals, especially rye. Common lands would also provide firewood and brushes for fireplaces and bread ovens, coal for local use and for the inter-regional market and, in some cases, stone for buildings and land marking, wood for building houses, corrals, carts and other equipment, water for fountains and streams for watering crops, among others.

That being said, afforestation of common lands, deeply shaking the villages' economy, began eroding an old way of living – pastoralism – and led to an increase of the level of emigration, a phenomenon that, in these highlands, brought upon a new way of life (Baptista, 1975 and 2011; Silva, 1998; Cardoso, 2010). However, the pastoral regime still persisted according to the system of *vezeira* until the 80s and 90s, which is a way of grazing rationalised in harnessing collective resources (Silva,1998:116).¹⁴

¹³ The Forest Populating Law (Law nr. 1971, of 15.06.1938) determines all the generic terms of afforestation in all forest perimeters already established before 1936. According to the National Program for the Valuing of Communal Lands, of 2011 (MADRP), 91% of all officially recognised communal lands in 1940 were located north of the river Tejo, with 66% in the districts of Viseu, Guarda, Vila Real, Bragança and Coimbra. The largest extensions of these territories were located in the district of Vila Real, followed by Viseu and Viana do Castelo which, as a whole, had an area of common lands of 236 983 hectares, that is, 58,1% of all the common lands in the country.

¹⁴ Common grazing lands are those which are exploited by the inhabitants of a community, regardless of how they do it, when they individually lead their herd there and when they wish to do so, and in the manner, which is more advantageous to them. All this is done in community, that is, the inhabitants integrate their herd in a “common flock” or *vezeira*, supervised or grazed by a shepherd designated in turns, among all the cattle owners (Estevão, 1996). At a local level, common lands have been playing a fundamental role in agriculture, namely in maintaining livestock species, in particular bovine, ovine and caprine.

Facing the absence of the country's agro-industrial development, until the mid-20th century, the countryside economy still maintained a certain autonomy, and it was in the villages' framework that agro-pastoral and handmade activities took place, based in an enormous dedication and mutual aid between family members and neighbours, which Silva (1998:121) defines as *community schemes*. Even so, the abandonment by workers and small and poorer peasants in the 60s and 70s led to the fact that those who remained behind obtained better wages and reduced the pressure regarding land. Afterwards, much of the uncultivated land was afforested with the support of the Government.

3. Common lands after the revolution of April 25th 1974

With the revolution of April 25th 1974, there was a window of hope regarding management of common lands, in which the Government abandons the totalitarian management which had been enforced by the *New State*. From the outset, the Agricultural Reform Program included the restitution of common lands to their users, with the first sign of that being the publication of the first Law of Common Lands (Decree-Law 39/76, of January 19th), which established the mechanisms and terms of restitution of common lands to local communities – commoners.¹⁵

Even before the publication of the first laws in 1976, there was a movement of commoners, made up frequently in *ad hoc* commissions, demanding from the established powers the publication of laws that ensured the returning of lands, taking into consideration possession, use, fruition and administration of common lands (Rodrigues, 2006). According to Gralheiro (1990), the Decree-Laws nr 39/76 and nr 40/76, of January 19th, are the answer given to the populations, as a direct result of their claims and struggles for communal lands.¹⁶ Right after the publication of this legislation, which was acknowledged by the people as good and just, the highlanders' anxiety was noticeable, making up of about 600 Assemblies of Commoners across the country and electing as many Governing Boards, basically in the North and Centre regions of the country.¹⁷ Most of the Assemblies of Commoners chose the terms established on paragraph b) from article 9 of DL nr 39/76: "*in a regime of Association between Commoners and the Government, through a Governing Board made up by four Commoner selected by the Assembly and a representative of the Ministry of Agriculture and Fisheries*".

The preference for these terms is based on a set of duties and responsibilities determined by the Government, in the forest management plan, as legal, technical and financial support to Assemblies of Commoners (Rodrigues, 1987). Nonetheless, this new paradigm had its days numbered, since its restraints were felt from the onset, namely the insufficient democratization of some structures of the Governments' devices and many Forest Administrations, which defrauded the expectations of the highlanders, consequently, the Assemblies of Commoners, since the expected support was in reality translated into hindrances.¹⁸ In other words, it was intended to avoid at all costs the establishing of new Governing Boards and try, by wear and exhaustion, to lead to inactivity those that had already been established. With the evolution of social and political life, there are demonstrations from groups of interest against the democratic management of common lands (local chiefs, numerous local municipalities, large cellulose companies, World Bank), which, through several converging processes and by using inefficiency arguments, sought to stop the full enforcement of Common Land Law.

A short time after, Law nr. 79/77, of October 25th, granted new management powers to local municipalities, through article 109. After knowing of this deliberation of the Assembly of the Republic, thousands of commoners rebelled and protested once again so as to defend common lands, being the above mentioned law revoked, in November 29th 1977, leading again to the prevailing of the legislation of 1976 (Rodrigues, 1987; 2006). This controversy lasted in time and space, whether through associative movements of common lands, whether through Assemblies of Commoners and Governing Boards, that, between 1976 and 1993, had a troubled life affected by the continuous and persevering attempts to destroy this method of democratic administration.

¹⁵ "It is said that common lands are all lands used in community and exploited by inhabitants of a certain parish, or parishes, or some part of them" (DL n° 39/76, art.1). It is precisely through this law that common lands are no longer submitted to forest regime, a claim that dates back to the 60s of last century.

¹⁶ These Decree-Laws, which were prepared during the 5th Interim Government, of General Vasco Gonçalves, were only published in the 7th Interim Government's term, under the Presidency of Admiral Pinheiro de Azevedo and Jurist António Bica as Secretary of State for Agricultural Restructuration.

¹⁷ These Assemblies were distributed in the following manner: 132 in Viana do Castelo, 193 in Vila Real, 70 in Viseu, 58 in Bragança, 26 in Braga, 10 in Porto, 27 in Aveiro, 75 in Coimbra, 2 in Guarda, 2 in Leiria, 2 in Castelo Branco and 1 in Lisbon (Rodrigues, 1987: 61).

¹⁸ For example, abusive interferences in the lives of many Assemblies of Commoners, the non-ratification of elections of many Governing Boards, freezing of bank accounts and constant bureaucratic demands.

The enemies of common lands persisted in two main goals: *the opening of common lands to legal trade and transferring the administration of common lands to Local Municipalities*. However, supported by Law 68/93, of September 4th, the administration of common lands continued being carried out by the people, creating new Assemblies of Commoners. It was in 1978, in Coimbra, in a large farmers meeting, that the National Confederation of Farmers (NCF) was founded, establishing among its main goals the defence of Common Land Law and the support to Governing Boards. With this purpose, it was subsequently created, in 1979, a department of common lands (Rodrigues, 1987). The period between 1993 and 2006 was characterized by a soothing legislation, even if municipalities kept trying to appropriate common lands. The Municipalities were always in conflict with many communities and tried different ways of pressuring the Central powers and the Assembly of the Republic with the purpose of changing the Common Land Law, claiming direct or indirectly, the end of Assemblies of Commoners (Rodrigues, 2006).

Currently, the economic, social and environmental importance of community spaces is acknowledged. Nevertheless, there is an absence of active management and lack of investment in those lands, thus compromising the villages' future (Carvalho, 2011). In this regard, it is important to refer the interview given by the Secretary of State of Forestry, in 2012, stating that the management of common lands (where the State is, in many cases, co-manager), must revert towards the Municipalities or Intermunicipal Communities' responsibilities, arguing that "*Rural abandonment was very negative. We have to revert this situation and the best way is prevention. (...) Managing of woods and common lands might be done at an intermunicipal level*" (Público Newspaper, October 22nd 2012).

The recurrent attempts of governmental entities in appropriating common lands or delegating their management municipalities, has raised voices in protest. The managing entities of Assemblies of Commoners and of representative organisations (BALADI –National Federation of Forestry and ACBW–Association for Cooperation between Common Lands), demonstrate their disagreement and intervene so as to avoid that the management of common lands becomes the Municipalities and Intermunicipal Communities' responsibility.

4. The new legal framework of common lands in service of local economies

According to data from the General Agricultural Census of 2009 (NSI, 2011), between 1989 and 2009 the area of common lands has increased 79 338 hectares. In Mainland Portugal, according to Monteiro (2011), there are about 1088 units of common lands, under two administration terms: done exclusively by commoners or in a regime of association between them and the Government, where these are represented by Governing Boards or by Parish Councils. It is verified that the representation of commoners is mostly done by Governing Boards, under the terms of administration in regime of association between commoners and the Government, existing in this regime 600 units of common lands, 198 exclusively done by commoners and represented by Governing Boards, 244 where the commoners representative is the Parish Council in regime of association between commoners and the Government, and 46 composed of commoners represented by the Parish Council.

Despite these types of land exist throughout the whole of Portugal, that has an area of about 500 thousand hectares, they are however predominant in the North and Centre regions of the country, in a relationship of articulation with small agricultural properties, and family and mountain farming (Oliveira, 2011; Carvalho, 2017). In that sense, it is also worth noting that, in a jointly fashion, these communal lands have been defended, not only at a national level, but also by some cooperative initiatives between Galicians organisations of common lands and other regions from Spain and other European countries (Baptista, 2011). To this end, the National Federation of Common Lands (BALADI) promoted the 1st European Congress of Community Areas.¹⁹ The main goals of this congress encompassed knowing the community realities of the different European countries and regions, as well as to find the best way to defend, value and develop this ancient form of property. Considerations taken during this meeting unequivocally clarified the extraordinary importance of these communal lands, besides their sociological and economic wealth, their biocultural interest, their political and legal meaning, and their positive impact in the populations, countries and regions' development. It can even be stated that, without communal lands, Europe would be, today, a much poorer continent.

¹⁹This Congress took place in Vila Real, in September 2011, at the UTAD, with representatives of several countries and regions from Europe, namely from Spain, Scotland and Italy, countries that are more identified with more community and public areas. This event is an historical milestone in the defence of community areas in Europe. It was the first great initiative to gather several players, namely universities, technicians and experts in several natural resources from different countries, linked to common lands.

More recently, Law 75/2017, of August 17th (Regime applicable to common lands and other means of community production) was published. This is a political action relevant for the recovery of the right to community property, which makes possible for commoners to dissolve the regime of administration of common lands with public entities (for example, with Local Municipalities).²⁰ This means that, from this new legal framework, and considering a period of transition, it is possible to revert situations of co-management between commoners and the Government to a regime of exclusive management by commoners or Governing Boards, but the termination of this co-management must never go beyond the year 2026 (as in article 46).

In the meantime, at the Universidade de Trás-os-Montes e Alto Douro (UTAD), in Vila Real, on July 2nd 2017, the 6th National Conference of Common Lands took place. During this conference, organised by BALADI–National Federation of Common Lands, it was acknowledged that the above-mentioned law is an important historical step in the struggle against the attempts of usurpation of community properties by the Government and private entities, as referred by several representatives of the organisations that attended said conference.

The above mentioned law has established the integration of means of community production and allows to consider managing common lands in a more democratic and autonomous framework of commoners, in which is clearly defined, among others, concepts such as “common lands”, “commoners”, “set of common lands”, “means of community production” and “universe of commoners” (as in Article 2). In its article 7, it is clear that the concept of commoners, where it is applicable the criteria of “(...) residency in the area where the properties are located, with regard of the use and traditions acknowledged by local communities...” With this, a certain ambiguity disappears when in comparison with the previous law (Law nr. 68/93, of September 4th, changed by Laws nr. 89/97 and 72/2014), which considered commoners equivalent to constituents. Another relevant aspect is the one of promoting sustainable local development, in the form of cooperation, as a way of economically revitalising resources from common land areas (quarries, water, wind, fishing, hunting, wood, plants, honey, among others), as a community property and in favour of local and supportive economy²¹.

With this new law, the Government no longer profits from the revenue of appropriating common lands (as in Article 50). This is a new opportunity for the approximately 1000 units of common lands, which are expected to be supported by more competent technical qualifications and to assume a greater responsibility and acceptability, namely in the component regarding public policies, including financing in the budget board of the next Programs of Rural Development. Lastly, it is now considered that there is an excellent opportunity for the development of democratic and participating ways of the population in favour of a more supportive local economy (Carvalho, 2017; Miranda, 2016) rebuilding around the common land “the community identity and the *local bond* of commoners with the land of ‘all’” (Baptista, *cit. in* Carvalho, 2017:viii). The sense of complementing individual economies is cast aside, favouring a path towards becoming a part of a local economy for the collective benefit.

5. Conclusion

Being considered by populations as vital lands and serving as a complement for local economies and agricultural systems practiced in the mini agrarian agricultural structure, over the years common lands were coveted by several socio-political and political players, including several post April 25th governments. Currently, the common lands are not confined to agriculture, but also provide other services to local supportive economy.

Common lands and communal lands, present in several ways of production since feudalism up to capitalism, have been an object of centuries-old political dispute throughout several political regimes (monarchic, republican and democratic), along with their different and, sometimes, sophisticated approaches. On the other hand, populations from these same lands, the communal lands, have known how to resist to the countless attempts of management interference and even, in some cases, usurpation of said common resources by groups of interest, aided, or not, by governmental authorities.

²⁰This new law is the result of the current political conjecture in the Assembly of the Republic and the understanding between political parties PS, PCP, BE and Partido Ecologista - *os Verdes* -, with votes against from PSD and CDS-PP and abstention from PAN; it revokes Law 68/93 of September 4th, which made possible *legal trade and the passing of the administration of common lands to Local Municipalities*.

²¹Besides, these lands play a relevant role in generating water resources and in the protection and safety of populations regarding erosion and land displacement, besides other functions as production of oxygen and reduction of carbon dioxide.

In this perspective, older players, namely monarchs, noblemen, lords, commanders and prelates – considered the old “enemies” of common lands by their associative representatives – were replaced, already in the 18th and 19th centuries, by liberals who authorised alienation and transferred the jurisdiction of common lands to City Halls. This offensive, however, did not take place only during the monarchic period, but also during the republican regime. If the First Republic did not solve the problem, it was worsened during the authoritarian *New State*, whose impact was felt on rural and highland populations, through the creation of repressive Forest Services and the implementation of the Forest Populating Plan, with the goal of afforesting communal lands.

Through the carried out historical overview of common lands, we have acknowledged that these lands have suffered major transformations in their structure, jurisdiction, management, ownership and use. Common land areas have shown to be important in the lives of the populations, mainly of those that, being linked to agriculture, depended almost exclusively of common lands to survive. However, the role played by common lands changed over the last decades, going from areas of grazing, bush and firewood, to areas which were afforested by intervention of the Government. That afforestation caused major repercussions in the populations’ lives, mainly populations that inhabited mountain areas and saw changes in the activities practiced there, since the so-called immemorial times, especially agro-pastoral ones.

This one was joined by other great historical, social and political milestones in the quest of common lands, namely what happened after the revolution of April 25th, 1974, by which the community property of those areas was acknowledged. The Decree-Law nr 39/76 and the recent Common Land Law, Law nr 75/2017, are part of the most recent history and are based on the returning of these communal lands to the populations, doing justice to ownership, use, fruition and administration of common lands. Assemblies of Commoners were created, and Governing Boards were elected all over the country. Yet, civil unpreparedness, lack of qualifications and rural exodus caused a weak adhesion of the populations towards constitution acts and functioning of the Assemblies of Commoners. In conformity with the law, these difficulties were overcome, in most cases, by delegating tasks in Parish Councils.

Common lands, being part of the forest area, are nowadays at the centre of considerable challenges (risk prevention, prevention and mitigation of climate changes, environmental problems, etc.) which societies and governments wish to address. Thus, regarding the solutions found for management, fruition and ownership of common lands, it would always be fundamental to include and satisfy desires and funding of the necessary means, with an updated concern: developing democratic and participating ways of the populations, in favour of a local and supportive economy.

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