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Land Ownership and Alternative Land Use Rights in Europe:

Experiences from United Kingdom and Greece

Master Thesis

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Mary Geldimi
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Περίληψη

Η παρούσα εργασία θέτει τη συζήτηση για τον ρόλο των εναλλακτικών προτύπων γαιοκτησίας και δικαιωμάτων χρήσης γης, και τους τρόπους διακυβέρνησής τους, που τα τελευταία έτη έχει αρχίσει να αναγνωρίζεται και να επεξεργάζεται τόσο θεωρητικά όσο και στη σφαίρα της ριζοσπαστικής πρακτικής. Η μελέτη επικεντρώνεται στην ανάλυση των Landed Commons (LCs), στον Ευρωπαϊκό χώρο και συγκεκριμένα στην Αγγλία και την Ελλάδα. Τα Landed Commons σχετίζονται με θέματα γαιοκτησίας και κοινοκτημοσύνης, αποτελούν αντικείμενο διαπραγμάτευσης και είναι κρίσιμα για τη χωρική εξέλιξη των πόλεων, την ανάπτυξη της αγοράς, την πολιτιστική ανάκαμψη και τη δομή της κοινότητας, μέσω πρακτικών δημιουργίας, διακυβέρνησης και υπεράσπισης συλλογικών πόρων. Η ανάλυσή τους αποτελεί εξαιρετικά περίπλοκη εργασία, καθώς ενσωματώνουν στοιχεία από μακρόχρονες ιστορικές, εθνικές, οικοδομικές πορείες, τοπικές παραδόσεις, κοινές αξίες, συστήματα σχεδιασμού, συστήματα πολιτικής γης και διαχείρισης γης. Η μελέτη βασίζεται στην κριτική επισκόπηση της βιβλιογραφίας και στο πρώτο μέρος στοχεύει στην κατανόηση των διαφορετικών Ευρωπαϊκών καθεστώτων ιδιοκτησίας και τις αντίστοιχες διακυβερνητικές δομές στις οποίες ενσωματώνονται τα LCs. Το δεύτερο μέρος της έρευνας επικεντρώνεται σε δύο περιοχές μελέτης, την Αγγλία και την Ελλάδα. Λαμβάνοντας υπόψη ιστορικές, νομικές, οικονομικές πτυχές, πρακτικές σχεδιασμού και διακυβέρνησης επιχειρεί να αναλύσει το περιβάλλον στο οποίο τα LCs μπορούν να ενσωματωθούν ή να συν-κατασκευαστούν, τη δυνατότητα να λειτουργήσουν ως πρακτικές κοινών πόρων και διακυβέρνησης και τις νέες σχέσεις που μπορούν να δημιουργηθούν μεταξύ καθεστώτων ιδιοκτησίας, διακυβέρνησης και συλλογικών χρήσεων.

Λέξεις κλειδιά: Landed Commons, καθεστώτα γαιοκτησίας και κοινοκτημοσύνης, δικαιώματα χρήσης γης, Αγγλία, Ελλάδα.

Abstract

This present thesis aims to raise the debate on the role of alternative land ownership and land use rights, and the ways to govern them, which in recent years has been recognised and processed both theoretically and in the realm of radical practice. The thesis focuses on the analysis of Landed Commons (LCs) in the European milieu, specifically in England and Greece. Landed Commons are models land ownership, thus they are related to land and communal issues and are crucial for the spatial development of the cities, the market development, the cultural recovery and the community structure through practices of creating, managing and reclaiming collective resources. Their analysis is an extremely complex task, as they incorporate elements of long-standing historical, national, structural phases, local traditions, common values, planning systems, land policy systems and land management. The thesis is based on the critical literature review and the first part aims at understanding the different European property regimes and the respective intergovernmental structures into which LCs are embedded. The second part of the research focuses on two country study areas, England and Greece. Including historical, legal and economic aspects, land and planning policy systems and governance dynamics, it attempts to analyse the complex environment within which LCs can be integrated or co-constructed, as well as their ability to act as common resource and governance practices, and the new relationships that can be formed between property regimes, governance and collective uses.

Key words: Landed Commons, property and common-ownership regimes, land use rights, England, Greece.

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Abbreviations

CPR	Common Pool Resources
BID	Business Improvement District
CID	Community Improvement District
OSS	Open Spaces Society
SSSI	Site of Special Scientific Interest
BS	Big Society Agenda
TCPA	Town and Country Planning Act
NPPF	National Planning Policy Framework
RDA	Regional Development Agencies
ESDP	European Spatial Development Perspective
NDP	Neighbourhood Development Plans
NSIP	Nationally Significant Infrastructure Projects
NPS	National Policy Statements
PD	Permitted Development
LRWE	Land Registry England and Wales
HMLR	Her Majesty's Land Registry
VOA	Valuation Office Agency
OS	Ordnance Survey
RTB	Right to Buy
LVT	Land Value Taxation
SVR	Site Value Rating
CIL	Community Infrastructure Levy
CLT	Community Land Trust
CSR	Corporate Social Responsibility
HNSC	Ministry of Planning Settlements and the Environment
YPEKA	Ministry of Environment and Energy
GOK	General Building Regulation
GFSPSD	General Framework for Spatial Planning & Sustainable Development
SFSPSD	Special Frameworks for Spatial Planning & Sustainable Development
RFSPSD	Regional Frameworks for Spatial Planning & Sustainable Development
RTP	Regional Territorial Plan
NTP	National Territorial Plan
UAA	Utilised Agricultural Area
ECFA	Ecclesiastic Charity Fund of Astypalaia island

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1 | Introduction

In the increasingly popular debate over land use and the sustainable governance of the resources, of particular interest are the issues associated to land ownership and land use rights, ranging from the individual, to the communal and public. In addition, also in urban settings, cities have involved or given rise to numerous common assets, placed within the dynamics of state evolution, market development and property regimes. In this context, a prevailing term has been the one of property regimes defining, in most cases, four main types of assets: open access; public property; common property or 'commons'; and private property. According to Boydell et al. (2007: 1087), "property rights provide a coherent legal, economic and social framework for the relationship between people, place and property". Within a property regime 'landed commons' describe in general a shared ownership resource in a stake.[1] Hence, in order to understand the notion of landed commons, it is necessary to investigate their heterogeneous nature as shaped by the conflicting dynamics of private property in different urban and rural contexts.[2]

Obviously, the sense and use of Landed Commons have expanded over time, taking different forms. Their original meaning is based on the way communities managed land that was held in common in medieval Europe. In the feudal system of medieval Northern Europe, landed commons denoted unparceled land that was cultivated "in common by the peasantry", usually with the sanction of the lawful owner, the feudal lord. Later on in Europe, they took the form of collectively administrated woodlands, pastures, or meadows, if not converted into private or public property via the enclosures. The term 'enclosure' has been used in a variety of different ways but in the popular sense has tended to become synonymous with physically dividing and fencing a land plot [Figure 1.0]. However, its historical, legal meaning was rather different; enclosure implied the removal of communal rights, controls or ownership over a land plot and its conversion into 'severalty', that is a state where the owner has exclusive control over its use, and of access to it.[3] The basic distribution of property assets after the enclosures initially corresponded to the system of property rights that had prevailed before. Land could be 'open' (unfenced) but nevertheless held in severalty, or fenced off but 'common'.[4] Legally, the distinction between 'common' and 'severalty' was clear and enclosure was the process by which the one became the other. In the late 1960s and 1970s, the commons were ultimately re-visited as

[1] Sh. Foster, 2011; P. Parker & M. Johansson, 2012.
[2] S. Boydell et al., 2007; S. Boydell & G. Searle, 2014
[3] R.J.P. Kain, et al., 2004
[4] J.M. Neeson, 1993.

part of the sustainability discourse, and by the beginning of the 1990s, till nowadays, the growing trend of privatization of public goods has led to an enlarged resource scarcity in both the environmental and social realms and has prompted calls for more participation, in economic production processes as well as in political and planning decisions.

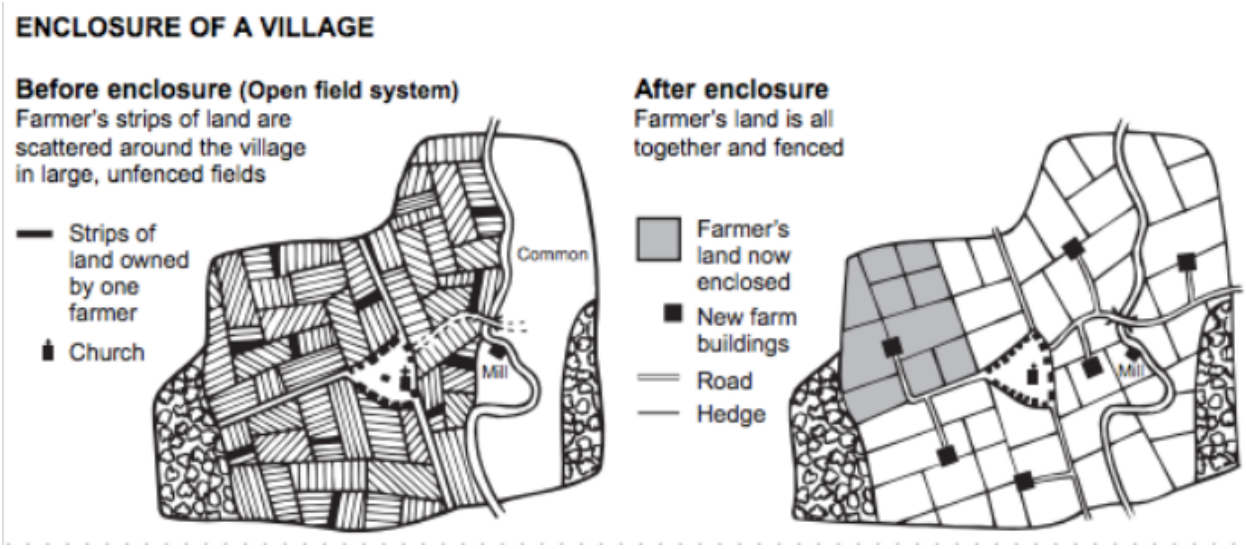

Figure 1.0: Enclosure of a village | Source: infogram.com

Today, there is a growing emphasis on questions of governance, participatory processes, and trust; and there is a groundswell of interest in shared values and moral responsibility. In recent studies, alternative land ownership and land use rights has been the subject of intense interest amongst scholars, as new forms of initiatives have been identified, rooted in the commons' rationale within the rural but mainly the urban context.

This present thesis relates, therefore, to the debate on 'Landed Commons' focusing on the governance of their heterogeneous nature – both in composition and extent in different urban contexts – as a central issue in competition for property rights. As Wily (2011) states, "Landed Commons are sufficiently tangible and finite to indicate that they may be more than common pool resources to which everyone has access, and instead may exist as real and discrete properties, with owners". Thus, landed commons contain public property and private property, over which people have certain traditional rights. However, the subject of the commons does not just relate to a necessary restructuring of property rights; it also poses relations and obligations

between subjects for the realisation of some common interests,[5] hence, practices have emerged that reinvent social institutions in a very original way. Landed commons are dynamic social institutions with the purpose of expanding citizenship, rather than restricting it to a certain land or community; they are a number of collaborative, small and large-scale, common pool resources, managed by groups of users who are able to design norms and rules to collaborate, allocate shared resources, and obtain joint benefits from the resource within a collaborative governance infrastructures. Some examples already been examined by scholars include community gardening, neighbourhood improvement districts, neighbourhood foot patrols, land trusts, and limited equity housing cooperatives but also sanitation, flood control and other public infrastructures. Each of these institutions involve several stakeholders that interact and collaborate in order to manage crucial assets for the community and also to produce socially productive goods that support human flourishing in urban communities.

2 | Theoretical Framework

The Landed Commons paradigm is a very old – yet very new – paradigm of governance and resource-management, with a growing importance on political, economical, social, cultural and individual levels. Commons referred as 'common land', mainly as the form of pastures and meadowland, which was used by several people or households during a certain period. Their use of land was put under severe stress from governments and political circles from the middle of the 18th century on. By the middle of the 19th century, many of the commons in Western Europe had already been privatized.[6] In a general template of governance landed commons have deep roots in human history as a system of self-provisioning, responsible management and mutual support. In other words, this presumes that there is an important role for self-organized governance that both challenges and complements formal government.

Historically, the fact that the commons could be "owned" is mostly crystallised in Garrett Hardin's (1968) thesis on 'The Tragedy of the Commons', which expressed views still quite commonly held today. These are that local communal ownership is tantamount to no ownership, and should be done away with, in order to safeguard the resource, or to lay the foundation for investment in the land. However, it is the continuity yet flexibility of the community as land-owner which keeps customary norms, including those relating to commons ownership. The idea of a community as a landowner is historically well-known to customary law amongst indigenous

[5] M. Kohn, 2004.
[6] T. De Moor, 2011.

populations on all continent. [7] Approaching landed commons, though, does not entail that common lands are necessarily non-private lands, especially those in rural communities. Non-private lands, meaning 'public lands' may include both state lands and lands customarily held and used by communities. Also, a great distinction needs to be drawn between communal lands and owned common properties. "Communal land" tends to be a cover-all designation for situations wherein (i) a whole community land area is referred to, within which there is frequently a mix of individual, family and community-owned estates (commons); and (ii) where, although private individual and family rights to land, the land itself is owned by the community in general. Ostrom, demonstrated that the definition of the commons could be expanded by including a set of elemental principles [see Frame 1]. These principles call for, amongst other things, resources to be handled more responsibly and thus by necessity with more regulation—by the commoners themselves.[8] Her main thesis was that successful commons can be defined amongst other things; by the ability to generate a maximum yield for the totality of commoners, a balanced distribution of resource units to appropriators, and to responsibly handle the particular resource system.Yet, within Ostrom's principles of governance, the issue of scale remains unsolved: how can large resource spaces be administrated just as responsibly by commoners as smaller-sized, traditional common lands where use and access can be monitored easily.

Linebaugh (2008) builds on Marx's analysis of primitive accumulation and compares the medieval waves of enclosure with the waves of privatization in neoliberal economic systems by identifying an ongoing, continuous process of accumulation. From the fact that new resources are continually being privatized, he reaches the conclusion that there is a correlated process of new commons continually being produced, which are threatened in turn by further privatization.[9] He describes this dynamic as the action-bound nature of commons, using the phrase "no commons without commoning," thus expanding the traditional concept of commons by including the act of commoning – in other words, the coordinated social process that first creates the commons and then preserves it.[10] Other approaches to the commons have adopted this important aspect and expanded on it. These components to the commons definition serve to expand the traditional definition of commons from a purely territorial concept.

[7] L.A. Wily, 2011.
[8] E. Ostrom, 1990.
[9] P. Linebaugh, 2008.
[10] Ibid.

Frame 1 | Elinor Ostrom: Eight principles for managing a commons.

1) Clearly defined boundaries: Individuals or households, with right to withdraw resource units from the Common Pool Resource (CPR) must me clearly defined as must be the boundaries of the CPR itself.

2) Congruence between appropriation and provision rules and local conditions: Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, material and/or money.

3) Collective-choice arrangements: Most individuals affected by the operational rules can participate in modifying the operational rules.

4) Monitoring: Monitors, who actively audit CPR conditions and appropriator behaviour, are accountable to the appropriators or are the appropriators.

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

6) Conflict-resolution mechanisms: Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts amongst appropriators or between appropriators and officials.

7) Recognition of rights: External governmental authorities allow local commoners a minimal degree of rights to devise and implement their own rules.

8) Nested institutions: Management of shared property is only successful at the small scale. Larger structures should be split into smaller units.

source: *Ostrom, 1990*

Landed Commons have received different explanations over time, but in their more general sense, commons are about stewardship of the things that we own in common as human beings, ensuring that we protect them and pass them on (undiminished) to future generations. That includes everything from inherited knowledge and culture; the integrity of natural ecosystems, public spaces and community traditions; subsistence commons on forests, fisheries and farming; and countless other shared resources that we morally or legally own. Walljapser (2010), for example, states that commons pertain to everything we share, that is nature and societal creations, which belong to all and, thus, should be preserved and maintained for future generations. For Cheria and Edwin (2011), "commons are the gifts of nature, managed and shared by a community, which the community is willing and able to defend." Hess (2008) posits that, the term 'commons' is "full of ambiguity and rarely defined." Berge (2004) supports that the term 'commons' refers to a basic concept which consists of a strong core speaking to and being understandable for most people, but without clear conceptual boundaries. Traditional research on commons is dealing with the geographical scale and the spatial dimension of the commons, that is natural resource spaces such as fisheries, forestry, marine ecosystems, ozone layer etc. and human-constructed commons represented by irrigation systems, internet etc. According to Dietz et al., (2002) 'Nearly all environmental issues have aspects of commons in them'. Traditional studies of the commons are concerned primarily with what is termed common-pool resources. The management approaches to governing the resources include public property (government), private property (private parties), and common property (local communities), that are different from the open access regime described by Hardin.[11] The general term of commons covers also the common goods as subtractable and non-excludable benefits of common-pool resources, which are, in traditional economic theory, defined as open-access goods. "When an individual uses a common good, he or she subtracts from the total amount of this good available for others to use".[12] Non-excludability and subtractability are seen as the key characteristics of common goods and also common-pool resources as such. These dynamics depend upon the societal and institutional framework; more specifically the commons' property regimes which identify who is included or excluded from their use.

De Moor et al. (2002:255), in their study on the history of European Commons, documented that the different particularities of the institutions that managed landed commons are crucial, and they highlighted that "states gained stronger roles in deciding their sustainability, since localities depended on higher-scale authoritative control and monetary support." Commons managed to

[11] N.A. Steins & V.M. Edwards, 1999.
[12] D.G. Kassa, 2008.

survive longer – from the significant period of privatisation and enclosures – in cases of autonomous local jurisdictions. The case for privatizing property rights in what have hitherto been common property resources rests on the view that having an individual or firm own the resource will lead to the resource being allocated in a more efficient way. Any private property right requires specifying enforceable and appropriate contractual relations.[13]

At the urban-space scale, investigation of the commons can shed light on the common as an urban type of collective use, where urban citizens are establishing a new relationship between both natural and cultural resources and the local commons as a place where these resources see collective use. Dyer-Witheford (2001) argues that commons "is today emerging as a crucial concept for activists and thinkers involved in myriad mobilization around the planet". Collective actions of citizens, neighbourhoods and NGOs and bottom-up initiatives are natural feature of democracy with recent examples involving the occupy movement, critical mass, guerilla gardening, etc.[14] The major element of those actions is that they all express demands for change in the governance of the commons. Hess supports that, "while property rights and the nature of the good may still be important, there is a growing emphasis on questions of governance, participatory processes, and trust; and there is a groundswell of interest in shared values and moral responsibility". [15]

Despite their historical definition (as land on which rural communities possessed and used collective interests according to specific community-derived norms) contemporary forms of commons consist of various types of shared resources, either inherited or produced, material or inmaterial, having recently evolved or been recognized as commons. By this, there are commons without pre-existing rules or clear institutional arrangements;.[16] In contrast to traditional common-pool resources or common property regimes (such as forests, fisheries, irrigation systems, and grazing lands), they are often uncharted territories; they bring together valuable models of how to understand the city as a collective resource and how to use these resources, such as public space, collective housing and energy supply, in a way that shifts the focus from exchange value to use value. As Hess (2008: 2) points out, "tacking new commons over several years has demonstrated that this vast arena in inhabited by heterogeneous groups from divergent disciplines, political interests, and geographical regions that are increasingly finding the term

[13] T. de Moor et al., 2002.
[14] N. Dyer-Witheford, 2001; occupywallst.org; wikipedia.org/wiki/Critical_Mass; guerillagardening.org

[15] C. Hess, 2008.
[16] Ibid.

'commons' crucial in addressing issues of social dilemmas, degradation, and sustainability of a wide variety of shared resources". The resource sectors include scientific knowledge, voluntary associations, climate change, wikipedias, cultural treasures, plant seeds, and the electromagnetic spectrum [Figure 1.1].

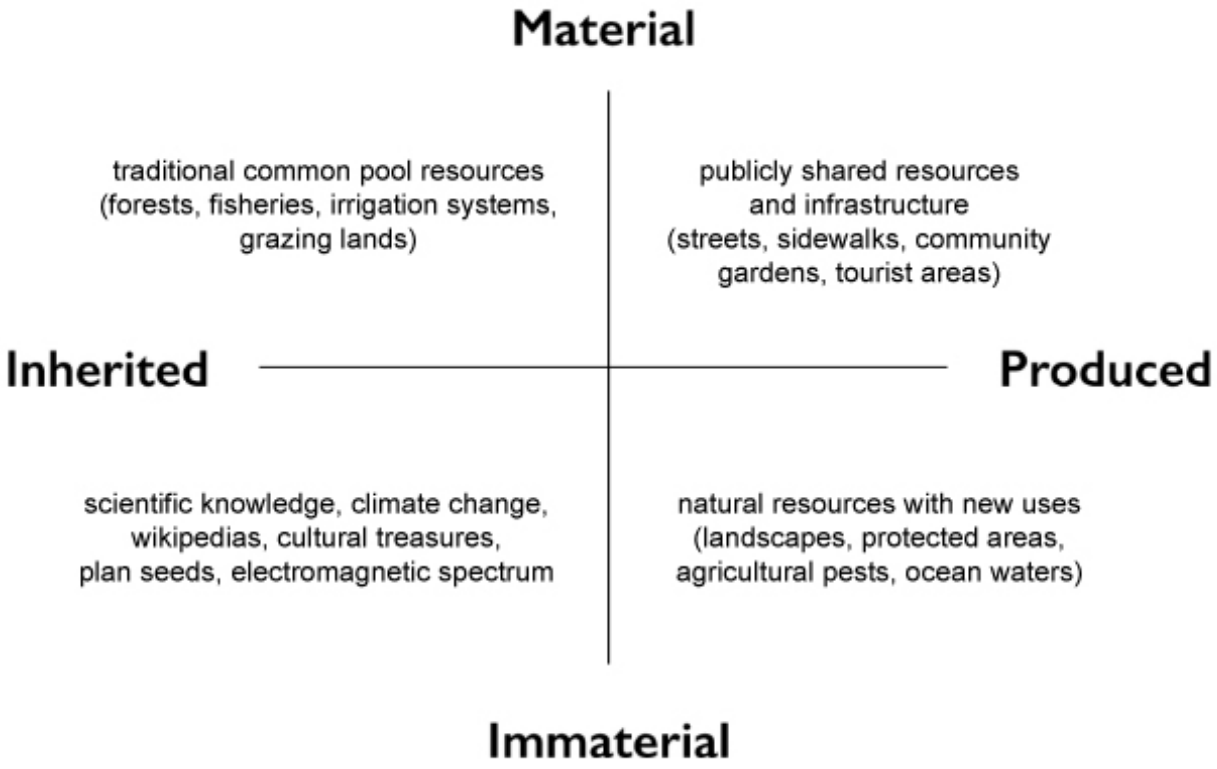

Figure 1.1: Types of Commons | Edited by the author

Other types of contemporary commons are publicly shared resources and infrastructure that have been re-conceptualized as commons, such as streets, sidewalks, playgrounds, urban/community gardens, hospitals, and tourist areas. In the new commons literature, the commons carry a more of a general narrative, and the distinction between common-pool resources and common property regimes is rarely discussed. However, the understanding that the commons is the "shared heritage of us all" is fundamental to much of the new commons literature, which focuses on collective action, planning and legislation policies supportive to the commons and collaborative governance. This is why in the context of this thesis two "counterpoising" examples are used as case studies; UK (England) and Greece. In England, landed commons were assimilated into the manorial system without depending on the public legal system common law, which is a law created by legal precedent; in Greece, commons depended mainly on disjointed rules implemented within the rural context. However, sub-areas of those exact countries may have followed different patterns, often definitive for the future of commons until today.

3 | Landed Commons

3.1. _ Historical to Contemporary Forms of Landed Commons

As mentioned, Landed Commons were defined as land on which rural communities possessed and used collective interests according to specific community-derived norms, which are variously referred to as customary or indigenous tenure regimes but not necessarily legally owned. Their nature is clarified by two distinctions between: [17]

a) Open access common pool resources and commons. Common pool resources are usually being defined as un-owned and unbounded resources available for public use, while commons are discrete land areas over which a known community is acknowledged locally as the owner.
b) Communal lands and commons. Communal lands refer to whole customary domains, including both parcels over which individual and family possession is established, and lands within the domain that are collectively owned and are usually referred to as "the commons".

Commons in area represent an immense resource of up to 8.54 billion hectares of 65% of the global land area. The largest area of the commons falls within sub-Saharan Africa, with 1.78 billion hectares;[18] this extent of commons is arrived at by excluding lands most likely to be privately owned, in the sense of being locally or legally acknowledged as being the property of individuals, families, companies, or other individual legal entities. Permanently cultivated lands, urban areas, planted forests, are excluded. This leaves a vast residual area of forests and rangelands, where cultivation is rarely permanent or is conducted on the basis of acknowledgement that the community, not the farmer, is the landowner.[19] On their research upon the commons of North-Western Europe, Tina de Moor et al. (2002:18), emphasize a three-fold typology: (a) common arable, common fields and open fields; (b) common meadows and common pastures; (c) common wastes [Figure 1.2]. As the authors support (and this is the interface between the case countries under consideration of that thesis), 'commons' may refer to the fact that the land has and is used by several people or households during a certain period (in distinction to land used by only one person or households throughout the whole year), whereas the suffix (arable, meadow, woodland, forest) refers to the principal use of land.[20] [21] In the case

[17] Wily, supra note 7.
[18] Ibid.
[19] Ibid.
[20] De Moor et al., supra note 13.
[21] T. Dietz et al., 2003.

of *common arable* and *common meadow*, the owners were private individuals or bodies. On *common waste*, *common pasture* or *common woodland*, the land itself was very often owned by private individuals, or the state, and the commoners enjoyed specified *use-rights* over the land.

<table>
<tr><th>Type
(click type for specific description)</th><th>Appearance</th><th>Ownership</th><th>Common rights</th><th>Rules (incl. sanctioning)</th></tr>
<tr><td>Common arable</td><td rowspan="3">Arable land</td><td rowspan="4">Private land</td><td>Open after the harvest/in years when the land was uncultivated</td><td rowspan="5">Limits on commercial activity with resources obtained from the commons

Limits on the amount of resource units that users can take and the harvesting/use methods

Restrictions on the timing of access to the resources

Enforcement of collective exploitation/regulation of the management</td></tr>
<tr><td>Common field</td><td rowspan="2">Croprotations</td></tr>
<tr><td>Open field</td></tr>
<tr><td>Common meadow</td><td>Grassland (producing hay)</td><td>Open to grazing after the harvest</td></tr>
<tr><td>Common pasture</td><td>Grassland</td><td rowspan="3">Collectively-owned
Commoners themselves: assemblies of users/committees
Collective institutions: communes, community of commoners...
Administrative bodies: parish, municipality, manor/seigniorial court...
Family / clan / tribe</td><td>Grazing</td></tr>
<tr><td>Common waste</td><td>Uncultivated land</td><td>Grazing, gathering wood, gorse, heather, bracken, peat...</td></tr>
<tr><td>Common woodland</td><td>Woodland</td><td>Grazing, gathering wood, other usages</td></tr>
</table>

Figure 1.2: Types of Commons | Source: collective-action.info

In many occasions, commons can be specified through the specific rights attached to them, rather than the nature of the lands themselves. Ostrom and Hess (2010), identify three types of communal rights that by inference can extend to the urban commons: (i) *common property regimes*, where members of a clearly defined group have access to a resource with a legal right to exclude non-members; (ii) *open access regimes*, that allow anyone free and equal access to a resource, and; (iii) *common pool regimes*, that function as a hybrid, where there is common ownership but it is too costly or impractical to exclude people through physical or regulatory boundaries. Access to common lands, as the threshold for people to enjoy rights to commonly-managed resources, is a crucial element. Thus, it comes in direct contradiction to the argument of Hardin (1968), who has mainly described the 'tragedy of the commons' based on open-access lands. De Moor et al. (2002: 252) define, also, four patterns of enjoying rights on commons, based on their aforementioned research in North-Western Europe:

- Tenancy or ownership of a particular building, farmstead or land-holding;
- Membership of a commune or a municipality. In those cases common rights were owned by collectivities of citizens, or members of the communes, who exercised those rights as a group rather than as association of individuals, who had rights within the juridical areas of the commons.
- Being part of a co-operative or association of members with rights to a material resource.
- Residency and/or citizenship in an area. At those periods it was quite often that all residents in an area had rights. This was mostly the case of large and virtually inexhaustible commons.

Landed commons exist also in the urban territory, as the openness of cities, and the urban agglomeration that results, is a 'double-edged sword' for many communities.[22] Cities are being shaped and reshaped to meet simultaneously the increasing demands of rapid urbanization,[23] and bring with it the threat of dispossession and displacement from places of deep attachment and meaning for residents.[24] In these contestations over city and space and resources, the commons claim has a distinctly normative flavour: the issue is not the consumption of an open-access resource, which results in either negative or positive spillovers, rather than a question of distribution and, specifically, of how best to "share" the finite resources of the city amongst a variety of users and uses.[25] The interpretation of urban spaces as a part of the greater resource space makes it possible to translate the traditional relationship between nature, the commons,

[22] Sh. Foster & C. Iaione, 2016.
[23] weforum.org; jrf.org.uk
[24] U. Mattei & A. Quarta, 2015.
[25] J. Gehl & A. Matan, 2009.

and the village over the contemporary city. According to Foster and Iaione (2015), city space is a highly contested space and it has been the key element of many urban movements and policy debates, within the rapid urbanization that takes hold around much of the world. Amongst the most prominent sites of this contestation include efforts to claim vacant or abandoned urban land and structures for affordable housing and community gardening/ urban farming, the occupation and reclamation of formally public and private cultural institutions as part of a community movement and the rise of informal housing settlements on the periphery of many cities around the world.

Therefore, landed commons within the urban context have the potential to provide a framework and a set of tools on governing or managing resources to which city inhabitants can claim to as common goods, without privatizing them or exercising monopolistic public regulatory control over them. Many scholars are beginning to recognize the complexity of landed commons,[26] for example, Foster and Iaione (2016) contend that any articulation of landed commons needs to be grounded in a theory of property, or at least "a theory about the character of particular resources in relationship to other social goods, to other inhabitants, and to the state".[27] This is especially necessary given the centrality of property law in resource allocation decisions that affect owners, non-owners and the community as a whole.[28] According to David Super, "property law has a major role in addressing widespread economic inequality by protecting those goods most essential to the well-being of a broad swath of society, rather than just protecting the goods that are disproportionately held by the wealthy".[29] As long as large segments of the population lack the security that property rights provide, he argues, many social problems will remain quite intractable.[30]

Under the contemporary compact cities paradigm of sustainability, common spaces have become increasingly important and increasingly contested. Given that, landed commons can be understood as a set of spaces that each has their own distinctive mosaic of predominant perceived property rights, each of them is highly dependent on their microspace context.[31] This reciprocity is not contained within a select closed community. Several municipal charters on

[26] M. Dellenbaugh et al., 2015; C. Borch & M. Kornberger, 2015.
[27] G.S. Alexander & E.M. Peñalver, 2009.
("Systems of property have as their subject matter the allocation among community members of rights and duties with respect to resources that human beings need in order to survive and flourish" and thus "whenever we discuss property, we are unavoidably discussing the architecture of community and of the individual's place within it.").
[28] Ibid.
[29] D. Super, 2013
[30] Ibid.
[31] Kohn, *op. cit,* p. 196

commons have included articles that encourage the establishment of institutions, foundations but also entities such as a Community Land Trusts (CLTs) to manage community housing, with general objectives. In cities and neighbourhoods characterized not by growth but rather by shrinkage and decline, many neighbourhoods contain significant swaths of vacant land and vacant structures. Property becomes vacant typically as a result of a combination of factors including population loss, disinvestment, and abandonment. Much of this property is also located on land or in neighbourhoods formally regulated by the local government but where the zoning designations governing the property are largely irrelevant because the future use of the property is uncertain. In other words, the land or structure is transitory, both in the sense that the land has been abandoned and not yet reclaimed (at least not formally in terms of transfer of title), and because the land is moving away from a past use and towards a future use that is unknown and unplanned.

Reclaiming and preserving land, instead depends upon, and fosters, collaborative relationships and social ties created between the users and the resource, shaping in turn particular georgaphies.[32] [33] Common spaces are said to facilitate the development of social capital amongst its networked participants, which in turns produces a host of other goods such as public safety, recreational opportunities, green space, and other critical resources for neighbourhood residents, particularly in disadvantaged neighbourhoods.[34] They are created as an element of a significant neighbourhood planning in the midst of economically and socially fragile communities and this transformation of small spaces into productive land uses is a largely endogenous effort.[35] A characteristic of the community spaces as commons is that they often enabled and operated in cooperation with local authorities. A challenge emerged in this context is the need to conduct a balancing act so as to crowd out civic engagement by overmuch governmental presense, yet maintaining enough governmental engagement to avoid pitfalls of collective management such as lack of accountability.[36] Local governments can stand helpers to this project of neighbourhood planning by solving problems that may arise from time-consuming, bureaucratic and organizational diffuculties; even become major providers of technical infrastructure and knowledge.

[32] I. Voicu & V. Been, 2008.
[33] N. Blomley, 2016.
[34] Ibid.
[35] Sh. Foster, 2012
[36] P. Parker & M. Johansson, supra note 1.

3.2. _ Planning Policy and Land Use Dynamics

"Planning cannot escape its relationship to property rights"
(Jacobs & Paulsen, 2009, p. 141)

On the relation between planning and property, scholars argue that planning is inextricably entangled with private property, both practically and conceptually.[37] Planning also affects property rights, to the extend that it empowers landowners to do certain things or prevents them from doing others.[38] In this sense, Jacobs and Paulsen (2009:135) support that "planning is fundamentally about the allocation, distribution and alteration of property rights". The main arguments, though, about planning is that while it deals primarily with land, it is not a form of economic, social or political planning; its declared focus is the spatial organisation of what is called 'land use'.[39] However, the point on this statement is that when planning operates through a 'land-use' lens it classifies spaces according to the function or use to which they are put, additionally it is more possible to create a more direct relationship to private property.[40] Thus, land use attaches planning to property in a specific and particularly consequential manner. The outcome of this connection entails the construction of a relationship between planning and property, which focuses on regulation of spaces, seeking to enroll private property in order to achieve desired objectives.[41] Blomley (2016: 353), suggests that "structuring planning's relationship to private property through the frame of land use, may continue to have contemporary relevance. This can be seen in terms of what land use does in regard to property, and in terms of what it cannot do".

Planning policies are institutional systems rooted within different planning cultures across Europe. They can be considered as a grounded set of legal rules for carrying out spatial planning and regulating land use development.[42] Moreover, on the basis of the set of rules of such systems, different planning policies come about in order to implement planning objectives which respond to social needs of different times. Planning systems and land use policies orientations constrain the way public and private cooperation takes shape, and are highly determinant for the sustainable role of the Landed Commons within the urban and rural contexts. Studies on the interrelation between Landed Commons and planning policies have been rather limited, as

[37] B. Davy, 2012; D.A Krueckeberg, 1995; B. Needham, 2006.
[38] A. Alterman, 2010.
[39] Krueckeberg, 1995, *op. cit.*
[40] Blomley, supra note 33.
[41] G.C. Bowker & S.L. Star, 1999.
[42] B. Needham, 2000.

scholars focus mainly on issues of institutional forms, cultural contexts, sustainable development and planning traditions. What is mainly needed here is the re-examination of the relationship between planning and public/private interests in the use of land, which would lead to an efficient and just planning system. A key element of this thesis is that it relates to the discussion on the concept of planning and property regimes, in order to understand their diversity and complexity, in a perspective that focuses on the issues of land ownership and land use rights involved in the *commons* analysis. Each of the case counties examined on this thesis has, historically, shaped different planning policy and property management characteristics; the detailed explanation of these characteristics is provided on the respective sections of the landed commons' analysis in the UK and Greece.

4 | Problem Statement of the thesis

4.1. _ Aim of the thesis and research questions

Landed Commons can be defined in different disciplines, such as state evolution, market development and property regimes. Revising the commons discourse in two European countries helps to clarify what approaches on the common's definition predominate in these different disciplines. In general terms, landed commons in Europe are territorially confined and are perceived as land whose ownership has been subject to rights of common, held by individuals over the same area. Their analysis is an ultimately complex procedure, as they incorporate elements of diachronic historical, national and structural phases, local traditions, common values, planning policy systems and property management systems.[43]

The aim of this thesis deals with the development of the governance of the commons within the European context, thus Landed Commons are placed specifically within the dynamics of two selected countries: United Kingdom and Greece, two countries with dissimilar concepts on common land, property and land use rights. The framework, which is set for the selection of these countries, is based on the fact that each of the case counties has, historically, shaped different institutional structures and Spatial Planning frameworks. Furthermore, they belong to different 'Families of Legal Systems', considered as the basis on different dynamics emerged in relation to the Landed Commons. Hence, there are five 'families' of planning systems in the European arena: (i) the British family, for England (ii) the German family, (iii) the Scandinavian family, (iv) the Napoleonic, where Greece belongs, and (v) the family of the eastern European

[43] INDIGO, 2014.

countries.[44] Additionally, five legal-administrative systems,[45] in the European Union, are indicated [presented in Figure 1.3]. These primarily constitute of:

_ British Common Law (England and Wales, Ireland, in many respects also Scotland);

_ Nordic Law(Denmark, Finland and Sweden, Iceland and Norway);

_ Germanic/Central European Law system (Austria, Germany, Switzerland), and;

_ The system of Civil Law of Code Napoleon countries (France, Belgium, Italy, Luxembourg, Spain, Greece, Spain and the Netherlands);

_ Eastern European countries law, which is considered to be a transition.

These legal-administrative systems to a large extent influence the way legal rules and law for planning systems are constructed.

Thus, these country cases consist of diverse historical patterns of socio-political, institutional and economic development and planning policy systems with different effects on the respective systems of the governance of landed commons patterns. Understanding these contrasting elements will contribute to answer the following research questions:

a) How broader property regimes and governance dynamics in the British and Greek contexts affect sustainability and development of alternative land use rights if not landed commons.
b) Which are the elements, from the two case studies, which act as facilitators or obstacles to such process.

[44] P. Newman & A. Thornley, 1996.
[45] Ibid.

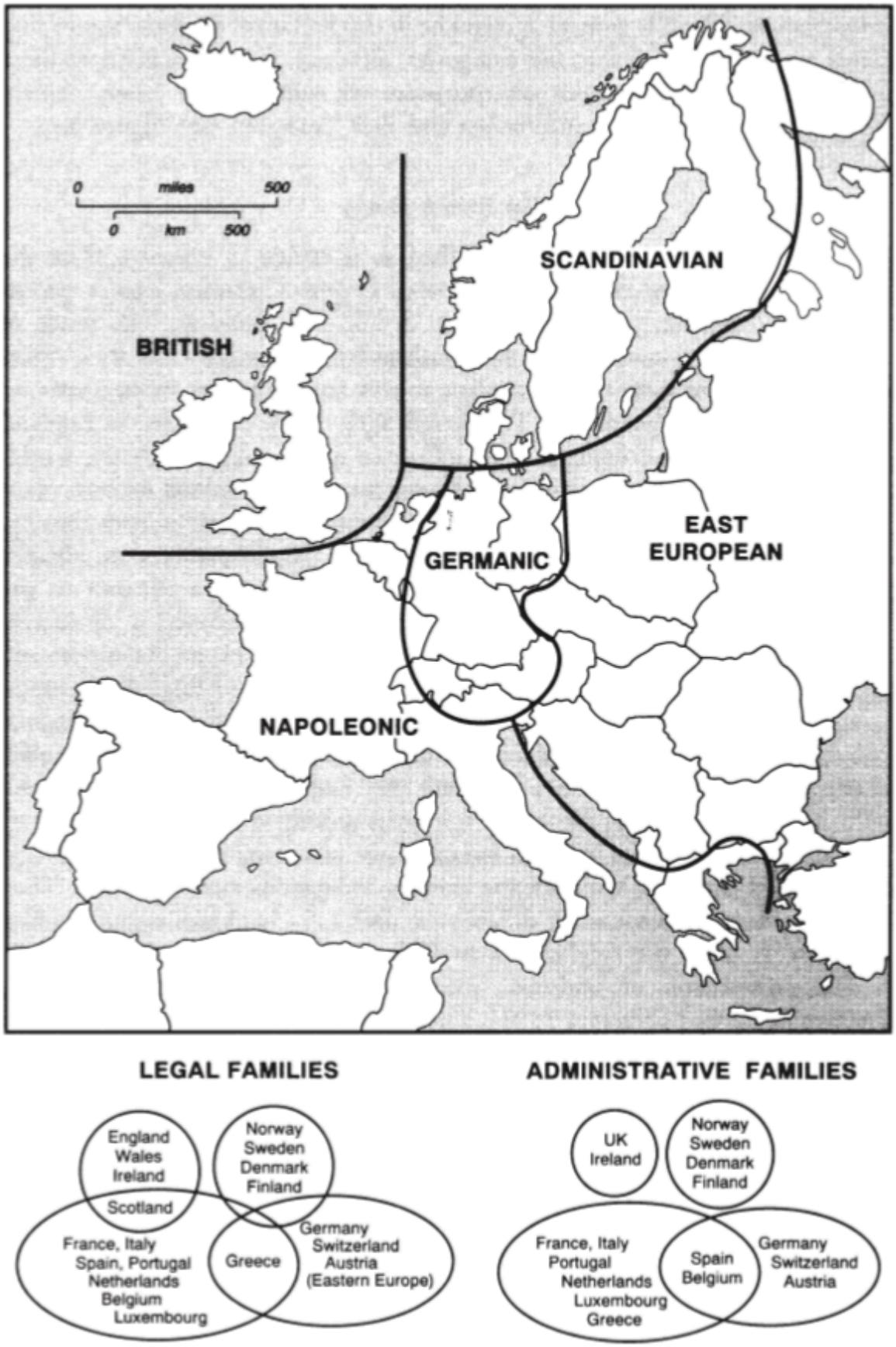

Figure 1.3: The legal and administrative families of Europe

Source: Newman & Thornley, 1996: 29

4.2. _ Methodology

The thesis explores the use of differentiated ownership and governance modes in United Kingdom and Greece in a conceptual way, through literature review. Its purpose is to examine alternative concepts of land use and ownership along with the different governance practices of each country. In order for the research questions to be answered, a framework of key elements-domains is being structured, which will contribute to the understanding of the landed commons' function. These key elements consist of:[46] a) basic definitions and history of the commons, and its evolution within a legal institutional framework that is related to the commons; b) existing features of the legislative system in support of the commons; c) the planning policy system; d) the cadastre and land registration system; e) to date land policy and property management systems; f) the land and real estate taxation policy and; g) governance institutions in support of the landed commons.

Those dynamics often derive from the past, not only of the traditional commons themselves, but also from the broader socio-political context they integrate in. By analysing United Kingdom and Greece, this thesis addresses the peculiarities of landed commons, their existence and their potential development. Hence, it introduces the discourse on land property and (shared) property rights and provides the basis for an analysis of the different governance regimes, the current evolution of landed commons, and the major governance challenges. As will be identified in the following sections, each country is characterised by particularities of history, socio-economic patterns, institutional entities, and different structures of governance; the UK is characterised by a huge historical tradition, legislation, land policy and governance systems in support of landed commons, while in Greece the overwhelming socio-political power and the small fragmented land ownership, that prevails to date, had led to a rather underdeveloped system of property and land use rights.

[46] INDIGO, 2014.

5 | Case Studies

5.1. _ Commons in Europe

Europe carries a strong lineage in common property institutions, however, the social, economic and technological changes being occured since the industrial revolution, have certainly challenged the use and the management of landed assets.[47] The role and significance of Landed Commons has been historically shaped by composite socio-economic and institutional trajectories, and evolved in specific social formations and spatial settings. According to De Moor et al. (2002), since the medieval times, common land was a key component for the organisation of agrarian societies in many areas of the European territory, as part of a wider agro-system, thus their dissolution has been a major political issue. By the end of the 18th century, landed commons have increasingly received opposition and were considered as a rather inefficient way of resource management. By the end of the 19th century, most historical commons in the northwest of the European continent had been largely eliminated. In some other places, the traditional commons for grazing and agriculture have received new functions.[48] As Berge and Carlsson (2003) state, "the old commons of North-Western Europe, whether conceived of as land or rights, are remnants of the pre-medieval land use system where significant use rights were held jointly by the local population and managed by their customs".[49]

The fact that different resources within an area had different owners, sometimes with conflicting interests, required a common organisation. The feudal system gave the territorial aspect a leverage that was construed into ownership of the ground in the early modern state. The advantage of the ownership of the ground was extended to its ultimate end in the landed commons' disintegration and their subsequent privatization via the enclosures. The Enclosure movement has been a pan-European phenomenon, but it developed its most extensive and violent forms in the United Kingdom (and in colonial contexts), thus it has concentrated most of the analytical interest by the major historians of the long-standing UK tradition. In England the enclosure movement began in the 12th century and was completed by the end of the 19th century. In the rest of Europe, enclosures did not appear until the 19th century and have had an exceedingly varying pattern and intensity of uses that were directly associated to the formation modern nation-states. In those times of legal reform towards the establishment of absolute

[47] T. de Moor and G. Bravo, 2008.

[48] E. Berge, 2005.

[49] In English jurisprudence rights of common were said to be rights to remove something of material value from lands owned by somebody else. These rights were called "profits-à-prendre" rights. Some of these rights are of ancient origin and are said to be inalienable (appendant) from the dominant tenement (the commoners land). Others, usually of more recent origin, were seen as alienable (appurtenant) from the commoner's land. Some could be attached to a particular person, in which case it was alienable (a right held "in gross").

private property and growing individualism, the very *raison d'être* of landed commons was at stake.[50] The Enclosure movement largely focused on areas of high population expansion and intensive livestock production, representing an area of around one-fifth of the land area.[51] For Kain et al. (2004), the process of enclosure, taking place both in a formal and informal way[52], involved two processes: a property re-organisation movement (field and meadow land) and a reclamation movement (common and waste), movements which were not contemporaneous. As an overall trend, landed commons were placed within the dynamics of: state evolution, the market and the formation of private property regimes. These dynamics all over Europe gradually marginalized landed commons, placing them in a position of limited significance within the dominant property regime. In many respects it is beyond a matter of dynamics related to nation building and the formation of property rights, which in principle stipulated the generation of shared social values and in turn jurisdiction and codification structures. At a lower level these in turn produces distinct property regime and land administration systems.

Today, landed commons can be viewed as highly sophisticated forms of property rights with a distinct social and political dynamic different from what we might call ordinary individual private property.[53] Within the urban and the rural context there are many resources in the European region still managed in common by user associations or by community institutions.[54] Examples include pastures, forests, irrigation systems, water management and other natural or man-made resources. A number of new common resources have also been developed, involving transportation and communication infrastructures, public urban areas, leisure areas and several other fundamental resources, often been studied under the generic label of the "new commons". In legal terms, though, the situation is more complex, as in most European regions large tracts of historically commonly-hold land are becoming privatised. All this are important and cannot be undermined and, thus, it is required to built an understanding on the current situation by focusing on the problematic around Landed Commons, on existing and newly emerging ones.

[50] T. de Moor, 2008.

[51] O. Rackham, 1986.

[52] Formal enclosures include both parliamentary enclosures – which derived their authority from either a private act of parliament or from one of the General Enclosure Acts passed from 1836 onwards – and formal agreements. The most straightforward informal enclosure, although often the most difficult to achieve, was 'unity of possession'.

[53] Berge & Carlsson, 2003.

[54] Poklembovái et al., 2012.

5.2. _ Landed Commons in UK

5.2.1. Basic Definitions within the Legal Institutional System

England holds a long-standing history on landed commons, which lasts from the Early Middle Ages until today. Landed commons have been the outcome of major transformations experienced by land tenure systems, under the effects of broader historical, socio-economic and political evolutions. For centuries, villages were the dominant landholding units and English agriculture depended on common land, a land that was privately owned, by manorial lords, but to which others enjoyed the legal right of access (the term "commoner" originally meant someone who had access to common land).[55] Life organized around the commons was relatively democratic, egalitarian, and self-sustaining – especially compared to the urban life that succeeded it – albeit small-scale agriculture could be arduous and unpredictable.[56] One of the first accounts can be found in the Domesday Book of 1086, which includes references to areas of common pasture. Over a period of 500 years, common land evolved, as being distinct from other types of land, and was subject to 'rights of common', which belonged to individuals (often defined as living in certain properties, or in a certain area, e.g. a village or a parish), i.e. the 'commoners', as the ownership of the land remained private. This means that tenure had both a collective and an individual utility. All occupiers of common-field land and many cottagers shared the right on common grazing over common fields and wastes, or the right to collect wood or turf. In forest and fen manors, and others with substantial uncultivated commons or well-defended customs, even the landless found pasture and collected fuel, food and materials. Often the rights have died out, and a common land has no commoners; or if the commoners exist they no longer exercise their rights, however, this does not stop the land from being a common.[57] Waste land was also accessible to local inhabitants. It was universally understood that common and waste land were to be used for planting crops, grazing livestock, gleaning, foraging, and sometimes hunting and fishing; they also provided wood and turf that could be used as fuel.[58]

De Moor at al. (2002), highlight a regional segregation of historical common lands in England; Northern England consists of mostly pastoral communities of uplands and Southern England of lowland commons, such as open-field farming areas.[59] In Northern England, basically on the period before the enclosures, the greater part in the commons landscape was rough grazings on the fells and moors, but there existed also common arable and meadows in the valleys. In

[55] Neeson, 1993.
[56] Ibid.
[57] Berge, 2015.
[58] E. Rosenman, 2012.
[59] L. Shaw-Taylor, 2002.

Southern England, three principles of common land are highlighted: *common arable*, *common meadow*, and *common waste*.[60]

England is arguably the country where the classical perception of enclosures is found. In England the enclosure movement began in the 12th century and proceeded rapidly during the late fifteenth and seventeenth centuries (1450–1640); further gathering pace in the eighteenth and early nineteenth centuries (1750-1860) and was completed by the end of the 19th century. Before the enclosures, land ownership was personally claimed for the ruling monarch and parceled up and distributed to the nobility in return for military service in common with much of Western Europe.[61] At the basis of this feudal hierarchy was the manorial lord who oversaw and lived off a local system of open-field strip farming involving land-owning yeomen, tenant farmers and, until the 15th century, serfs whose labour was directly exploited by the lord.[62] Underpinning the feudal village economy, however, was common right, that is customary privileges enjoyed by village landowners, their tenants and certain cottagers that included grazing livestock on fallow and harvested land and the village commons, which had been enshrined in English law by the Magna Carta of 1215.[63] For the landless, meanwhile, whether labourers, artisans, small tradesman, the unfortunate, immigrants or squatters, survival came through a more precarious form of what Linebaugh (2008) calls 'commoning' through accumulated traditional rights or outright trespass on wastelands and forests, for free fodder, fuel, building materials, berries and herbs.[64] The physical geography of enclosure was central to the new legal settlement of private property rights that held precedence over traditional rights to share land. The privatisation of medieval public space—the open fields, meadows, commons and wastelands—fenced off places of cooperative labour, social interdependence and commoning from the general population. Dispossession and displacement were not simply the consequences of enclosure, they were its very essence, and led to both the commodification of labour power and the commodification of space as a highly valuable asset that could now be commercially exploited for private gain.

Despite the prevailing trend of common property regime, which has been towards their demise, there is a number of landed commons (mainly historical) that have survived to the present day, covering approximately 9% of the land area of Western Europe. In the UK, there are around

[60] Ibid.
[61] P. Anderson, 1974.

[62] S. Hodkinson, 2012.
[63] Neeson, 1993, *op. cit.*
[64] Linebaugh, supra note 9.

8,675 registered units in common land, covering over 550,000[65] hectares of common land that survive today, accounting for some 4% of the land area in England and 12% in Wales.[66] Commons in England include some of the most important and diverse landscapes. There are 7,000 commons covering nearly 400,000 ha [Figure 1.4]. Most common land by area is associated with the uplands of northern and western England, and 37% of land above the moorland line is common. Conversely, most commons by number (22% of the total) are found in South-Eastern England, near and within large centres of population. Eighty eight per cent of common land is nationally or internationally designated for environmental reasons, and virtually all provides a statutory right of access on foot.[67]

Over a century ago, common land was first discussed as an important environmental and recreational resource, rather than just an agricultural one.[68] Formed in 1865 to protect commons from enclosure, the Open Spaces Society (OSS) claims to be the oldest environmental group in the UK. In 1958, the Royal Commission set up to review the condition and legal protection on common land, identified common land as the 'last reserve of uncommitted land'.[69] Developing an effective means for actively sustaining these areas has been of increasing concern for over 20 years.[70] Common land is distinct from other freehold land, due to its complex system of property rights, which places it in the position of being arguably the most pronounced example of multi-functional land. [71]

[65] There are 396,800 hectares of common land in England and 175,000 hectares in Wales contained in around 8675 separate commons.
[66] C. Short, 2008; landmark.org; http://contestedcommons.s3-website-eu-west-1.amazonaws.com/index.html; Countryside Council for Wales (CCW) 2013; Foundation for Common Land 2017.
[67] foundationforcommonland.org.uk;
[68] Short, 2008, *op.cit*.
[69] Royal Commission 1958.
[70] Common Land Forum 1986; Department for Environment Transport and the Regions (DETR 1998); Department of the Environment, Food and Rural Affairs (DEFRA 2016).
[71] J. Aitchison & G. Gadsden, 1992.

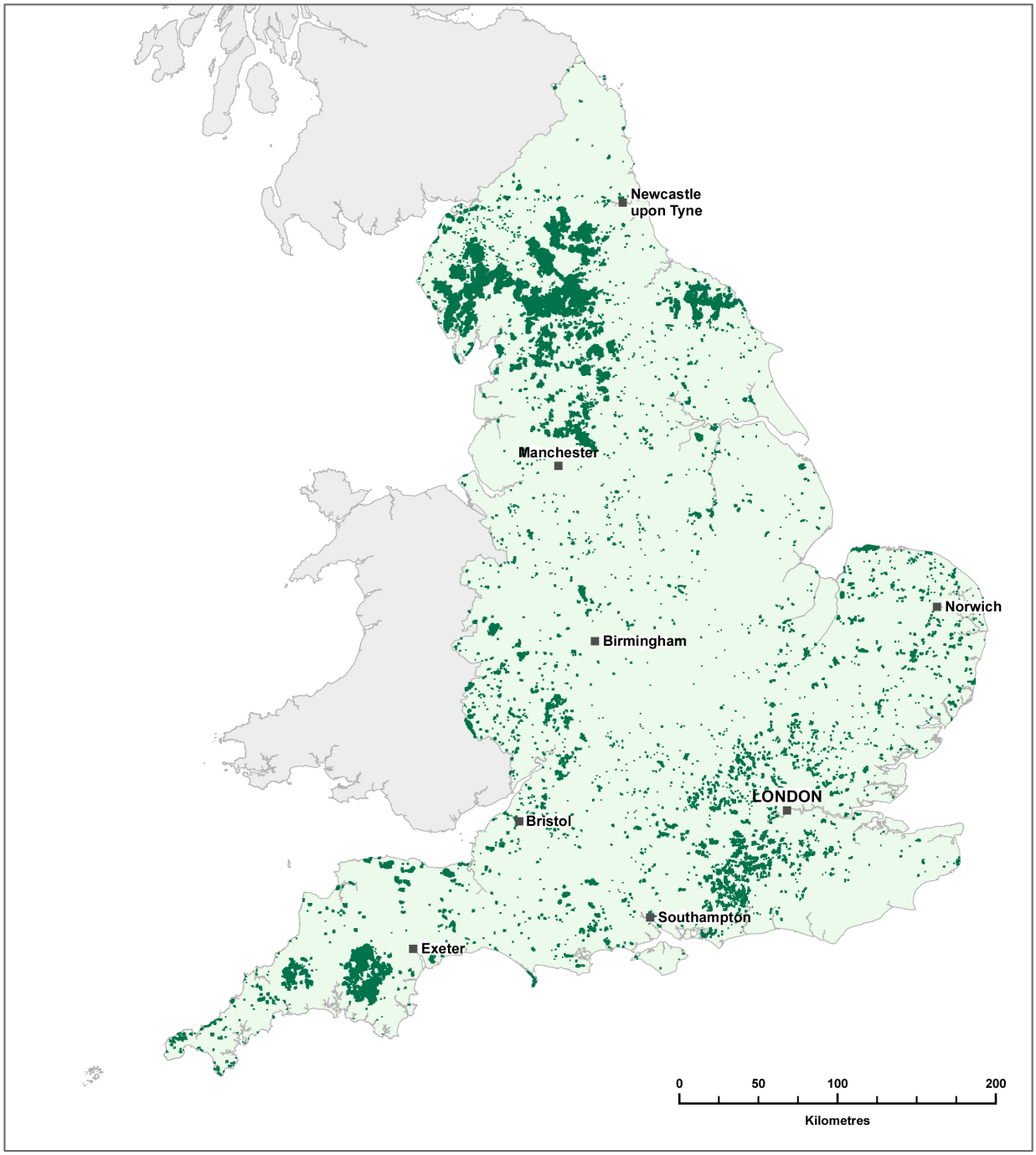

Figure 1.4: Registered Common Land in England and Wales, 2017

Source: magic.defra.gov.uk

5.2.2. Legislative System in support of the Commons

While there is not a straightforward answer to the question 'what is common land', it is clear that common land is distinct from other types of freehold land because of the complex set of property rights.[72] Regarding the legal system within which commons and common pool resources were exploited over Europe, there is no single definition of the term 'common land' or 'common rights', as different forms of common use and property regimes exist, which depict the land ownership systems' transition as the outcome of political and socio-economic evolutions. In the case of England, the basic definition is highlighted between the ownership over which common rights were exercised and the nature of the common rights themselves.[73] Common lands had mainly the status of 'manorial waste', that is waste ground belonging to a manor or landed estate, the ownership of which has been vested in the lord of the manor; as such, a common's regulation was part of the governance of the manor to which it belonged. Landed Commons in England, Winchester (2002: 36-39) advocates, existed and operated within a "manorial legal framework" and common rights "were appendant to the land holding within a manor". Therefore, 'tenancy' has been a key element in the governance of the commons within the English legal landscape, albeit, not all rights of common were available to all members of the manorial communities. The manors were main actors for governing the commons; they were an essential part of the open-field system of the period and they quite often covered areas of more than one settlement and field system [Figure 1.5]. This has led to a set of bylaws that were developed in local level, in order to govern common lands and common rights mostly on behalf of manor courts. At that time, customary law – a law made in manor court, derived from the mores, values and traditions of indigenous ethnic groups – had an important role, based on the need for locality and flexibility of regulatory decisions.[74] The oldest example of the English commons dates back to 1511, and the legal context of common land in England differed from that of most commons elsewhere in Europe in that it was privately owned land, over which third parties had use rights. As circumstances around commons have changed over time, the need for new regulations, or for adapting the existing ones, was caused. However, this could not be implemented, at will, by those in charge of the daily management of the common.

[72] Aitchison & Gadsden, supra note 71.
[73] T. de Moor et al., 2016.
[74] Shaw-Taylor, supra note 59.

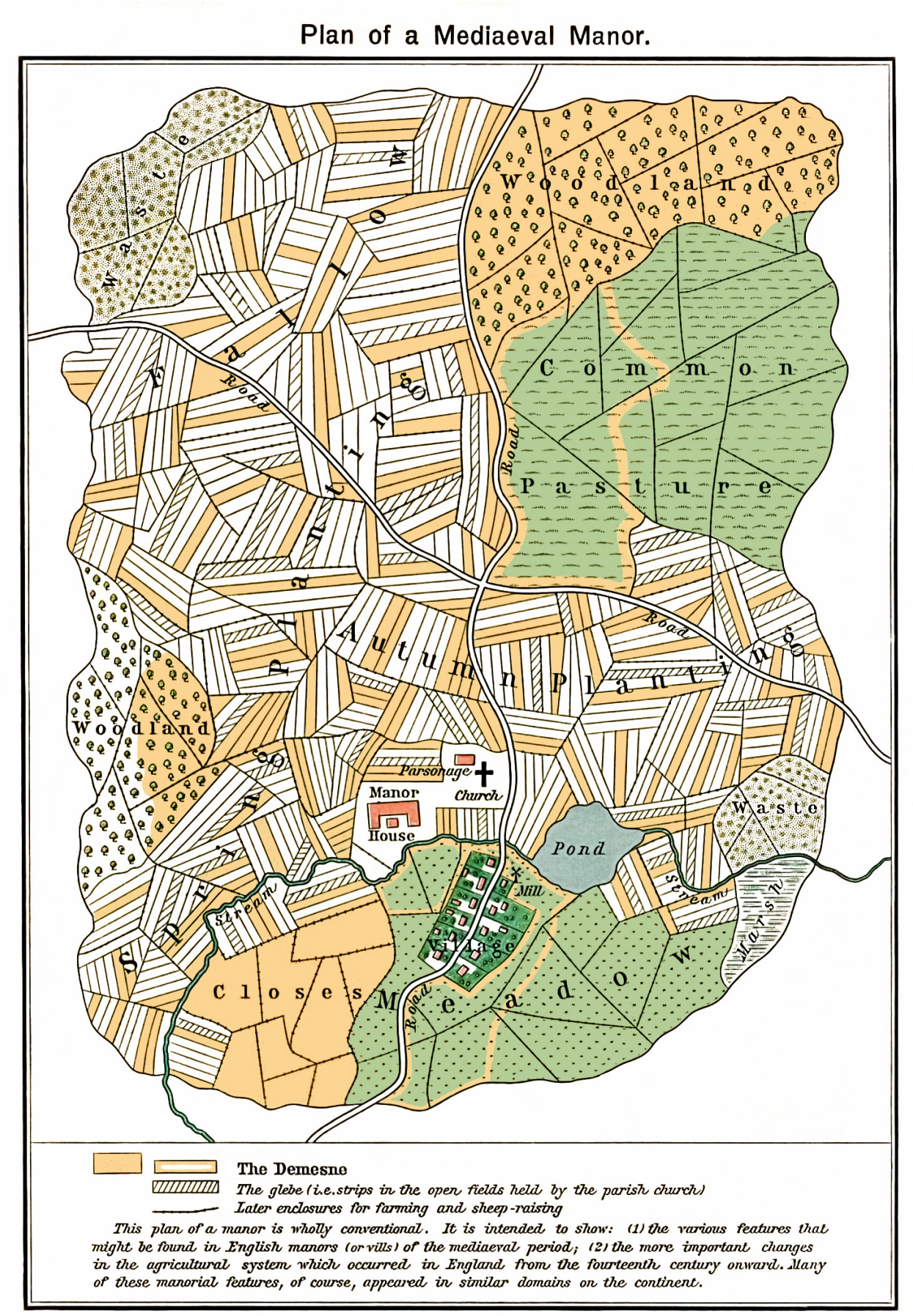

Figure 1.5: Generic map of a medieval manor, showing strip farming.
Source: William R. Shepherd, "Historical Atlas" (1923) at Wikipedia.org

One popular misconception on landed commons is that sometimes they are used as a term for any land in public ownership or to which everyone has access. It is neither. Land must be legally registered as a common to enjoy such status. Although this is usually the case, there is now a public right to access to nearly all common land under the Countryside and Rights of Way Act 2000,[75] but it is not automatically so. The laws as applied to common land are of the same as for any other piece of private land, except for certain people who possess commoners' rights, this is a complex and very locally variable part of the law. Today all commons are registered, either by the local county council; the London borough; the metropolitan district, or other unitary authority office. However, there are plenty of areas called commons, which do not have common status - the name is not a good way to identify a common. Common land is an important nature conservation asset, hence, almost all the commons in England and Wales support semi-natural vegetation. Much of this is of high nature conservation value reflected in the proportion of commons designated as Sites of Special Scientific Interest and under EU Directives. Around 55% of common land in England was (as of 2006) designated as a Site of Special Scientific Interest (SSSI)[76], and only 63% of this land was in favourable or recovering condition - much lower than the 73% average for all SSSI land in England.

The evolution of collectively managed assets and their related institutions has been diversified over time, and the legal position concerning common land has been confused, but recent legislation, that aims to support existed landed commons, has sought to remove the legal uncertainties in order to form an asset for building new policies on the protection of landed commons. Landed Commons predate parliament (or even the monarchy) and are a legacy from the times when land was mainly 'wild' and ownerless, thus, the manorial system appointed owners but the peasantry kept their customary rights. Landowners' rights to 'approve' common land, were confirmed by the *Commons Act of 1285*, also known as 'the statute of Westminster the second' - that is, to fence off surplus common land beyond what was required to meet the commoners' needs and turn it to more profitable agricultural use. This was a frequent source of conflict between landowners and commoners until the practice of approvement was finally

[75] The purpose of the Act is to create a new statutory right of access on foot to certain types of open land, to modernise the public rights of way system, to strengthen nature conservation legislation, and to facilitate better management of AONBs. There are provisions for local authorities to establish byelaws and give greater powers of enforcement to a variety of relevant bodies. It seeks to balance the new rights with responsibilities on all parties, and codes of practice have been produced to explain these to landowners and users.
[http://naturenet.net/law/crow.html]

[76] Under the Wildlife and Countryside Act 1981 (amended 1985) the government has a duty to notify as an SSSI any land which in its opinion is of special interest by reason of any of its flora, fauna, geological or physiographical features. In Northern Ireland some areas are designated as Areas Of Special Scientific Interest under the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, but as this is essentially the same thing (although there are some important differences), this page is mostly relevant to both designations.

regulated under the *Law of Commons Amendment Act of 1893*, which has now been abolished. By the mid-nineteenth century many common rights had been eradicated by enclosures but some survive to the present day. The *Commons Registration Act of 1965* attempted to record all common lands, owners and rights. Unfortunately, many failed to be registered at that time and disputes have arisen as a result. Some commons have become de-registered because of loopholes in the Act. The Commons Act 2006 made some changes to the registration and management of the commons.

The Enclosure movement took place in many different ways but these can be classified into two broad categories: 'formal' and 'informal'. Formal enclosures include both parliamentary enclosures, and formal agreements.[77] The most straightforward informal enclosure, although often the most difficult to achieve, was 'unity of possession'; if an individual succeeded in acquiring the whole of the land and common rights in a manor, township or parish, then any communal rights or controls ceased to operate, since there was no one to exercise them.[78] Through time, a set of legislative actions was developed, which had a positive effect on Landed Commons: The passing of the **Inclosure Act 1845** which aimed at ensuring total enclosure, even though never fully implemented, was a key element for the next legislative systems to be implemented;[79] The **Metropolitan Commons Act 1866**, protected many commons around London, in the public, rather than the agricultural, interest as 'green lungs' for the whole population.[80] [81] The **Commons Registration Act 1965** attempted to both define and register all common land, specifically including land which had, at some time in the past, been subject to rights of common as well as land that retained rights of common, as the public benefits from all common land were seen as very important; The **Countryside and Rights of Way Act 2000**, some 35 years later, ensured that the public would have a right to access to all registered common land; The **Commons Act 2006** – the latest piece of common land, which has replaced previous pieces of legislation – was passed, aiming to protect common land and to promote sustainable management into the twenty-first century.[82] The Act deals with issues of

[77] Parliamentary enclosures derived their authority from either a private act of parliament or from one of the General Enclosure Acts passed from 1836 onwards. Formal agreements were drawn up in written form and signed by all the parties.

[78] Unity of possession could take a great deal of time to achieve, as it was necessary to wait for tenants to leave and leases and copyholds to run their term, although pressure could be applied.

[79] Ch. Short, 2000.

[80] P. Clayden, 2003.

[81] Since that date, there have been a number of further pieces of legislation that ensure the special status of common land in England and Wales covering over 550,000 hectares[81], representing 4% of the land area in England and 12% in Wales.[81] However, this only includes the land that was registered under the Commons Registration Act in 1965 and so the area would be larger if areas of commons with local legislation that predated the 1965 Act were added.

[82] Legislation.gov.uk

management[83] and governance[84], as well as attempts to resolve outstanding issues concerning registration.[85] The need to tackle those issues arises from a number of environmental threats that have been identified.[86] As Short (2000: 124) emphatically affirmed, wherever common land is present there is always more than one interest or function, consequently "there is always a relationship on which this governance and management is based" that makes the situation more complex than the conventional owner occupier and landlord and tenant systems." The quality and nature of this relationship determines the stability and effectiveness of the governance and management and therefore the level of environmental management or neglect.

Today, much of the survived common land is rural and as such marginal in character, but these landscapes have historically been, and continue to be, of vital importance to commoners and the communities, with exceptional conservation value and a long history of land use and regulation. Some of those most iconic surviving commons are urban, hence providing much-needed green spaces in town and cities.[87] Therefore, considering the legislation of these surviving common property regimes, and their spatial extend and marginal situation, it is essential to establish their actual and potential role into contemporary rural and urban circumstances.[88] Thus far, all the UK-related analysis of common property regimes has focused on commons in England and Wales, where most communal land tenure was supplated between the seventeenth and nineteenth centuries contemporaneous with the expansion of population, urbanization and the market economy, supported by specific legislation.[89]

[83] The physical and economic activities and day-to-day activities associated with these.
[84] The decision making structures, mechanisms and systems of administration which influence the management activities.
[85] Updates and replaces the system for registration of common land and town or village greens, and of rights of common exercisable over such land.
[86] C. Short & M. Winter, 1999.
[87] Ibid.
[88] K.M. Brown, 2008.
[89] Short & Winter, 1999; Short, 2000; Edwards and Steins, 1998.

5.2.3. Planning Policy System

Contemporary studies, in terms of urban development, support that the UK's planning system[90] can be regarded in general as private sector-led. Despite common assumptions to the contrary, planning, as policy and practice, has always been related to other key components of state governance such as investment and taxation. This is reasoned to the fact that the understanding shaped around the planning and development system in England considers that most development is undertaken by private interests or by public bodies acting very much like private interests, thus, the planning system generally seeks to shape private sector development proposals.[91] Additionally, the UK's planning system – as one of the five families of the European planning system – is characterised by great flexibility; the projects are adapted on a case-by-case basis and are shaped particularly at the level of local government. The trend towards greater partnership between central government and local authorities, which has prevailed in England, has affected urban planning with more collaborative approach to urban generation and more importance given to plans.[92] Furthermore, UK's urban development is considered to contain clearer divided roles between the private sector in terms of task, responsibilities and the risk and revenue attribution, based on Anglo-Saxon principle of dividing public-private domains. In essence, the urban planning system in the UK can be positioned as a land use management model, the nature of which is that it is primarily concerned with the regulation of the use of land and property.[93] Briefly, all these studies have focused mainly on issues regarding state organisations, cultural structures and traditions, institutional and planning systems and so on; thus, a systematic compilation of the interrelationships between spatial planning, land use rights and property patterns is of significant importance.

The more mainstream concept of landed commons within the urban context has a very different ideation of space and planning. The "urban" is widely taken as a synonym for the "local", and the city is understood as an "entity", at times also including aspects of density and scale.[94] On the context of 'urban localism' there is a striking amount of underused and misused common spaces, which shows the extent to which the value of landed commons as a public space is underestimated. The privatisation of landed commons is a process that occurs side by side with centralised planning governance. However, planning systems – with socio-economic crisis

[90] Even though the four constituent parts of the UK – England, Northern Ireland, Scotland and Wales – have their own legal framework for planning, they all share a common basis. This makes it legitimate still to refer to the United Kingdom planning system.
[91] V. Nadin and D. Stead, 2008; D. Bowie, 2016.
[92] Newman & Thornley, supra note 44.
[93] S. Dühr et al., 2010, p. 182.
[94] Dellenbaugh et al., supra note 26.

impacting the way provisions are delivered – are gradually being structured to allow communities to shape local environments through collective governance, based on empirical knowledge.[95] The planning system in the United Kingdom is long established and politically secure. It involves a duty on local governments to produce development plans, and all planning rights and duties are contained in legislation, as there is no written constitution. Britain's legal style on planning has evolved from the tradition of English Common Law; a system of case law that has gradually built up decision by decision. Ownership of land (dominium) is the all-inclusive real right (property right). In the continental systems,[96] there is but one all encompassing ownership right; ownership cannot be divided in different ownership right though there are 'precursor rights' such as possession. Under the common law, feudal theory still holds on in land law: In England and Wales only the Crown can enjoy ultimate ownership in the legal sense; all other landowners hold from the Crown. This holding right is called an 'estate'. However, there are no practical services deriving from the ultimate ownership of the Crown. The only difference lies in the possibility of a limited duration of the estate. Accordingly, there are two main kinds of UK law: Acts of Parliament, also known as statutes, and statutory instruments, which flesh out how a statute will work.

In England, the main Planning Acts currently in force are:

_ *The Town and Country Planning Act 1990 (TCPA, 1990)*; which consolidated previous town and country planning legislation and sets out how development is regulated.

_ *The Planning and Compulsory Purchase Act 2004*; a spatial law, currently functioning alongside the existing TCPA, which made changes to development control, compulsory purchase and application of the Planning Acts to Crown land.

_ *The Planning Act 2008*; which sets out the framework for the planning process for nationally significant infrastructure projects, provided for the community infrastructure levy.

_ *The Localism Act 2011*; which aims to decentralise power by handing additional rights to local communities.

a) National planning policy

On the national level of planning policy, The *National Planning Policy Framework* (NPPF) (which replaced much of the former Planning Policy Statements) sets out the UK Government's planning policies for England and how it expects these to be applied. The NPPF must be taken into account in the preparation of local plans and is a material consideration in planning

[95] C. Ratti & M. Claudel, 2015.

[96] The Continental System (or Continental Blockade) was a foreign policy of Napoleon I of France, against the United Kingdom during the Napoleonic Wars.

decisions. The purpose of the NPPF is to contribute to the achievement of sustainable development, by focusing on three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways: a) an economic objective; b) a social objective, and c) an environmental objective.[97] These three significant objectives contribute to the achievement of sustainable Landed Commons by promoting an effective use of land, while protecting and enhancing natural, built and historic environment in support with strong, vibrant and healthy communities – with accessible services and open spaces that reflect current and future needs – within a responsive and competitive economy.

b) Regional planning/ strategies

According to Nadin and Stead (2008:12), in England, there is "no elected regional government, although a number of regional institutions have been developed to help deliver greater synergy between central and local government". Regional planning in the UK was not well established until recently, however, since 2004, it has gained more attention in urban planning.[98] Regional planning in the UK has a rather chequered history. The 1944 Abercrombie plan for the London region, which led to the establishment of the Green Belt and the first generation new towns is world-renowned. However, following the introduction of comprehensive development plan coverage at the county level in the landmark Town and Country Planning Act, 1947, the practice of regional planning lapsed. There were sporadic attempts to revive the tradition, particularly in the London region, but, without an elected level of regional government anywhere in the UK, there was no sustained interested in promoting at the regional level. The 1947 Town and Country Planning Act completely altered the form and structure of the planning system and it established the basis for an effective land policy, with payment of compensation and collection of betterment relating to changes in the value of land. The Act imposed a development charge (in practice set at 100 per cent) upon development value accruing to land by virtue of planning permission or otherwise. The intension was that the existence of the charge would result in market transactions taking place at current use value. Hence, it was not a conventional tax or even a charge, because no impost set at 100 per cent of the value arising from an activity can be expected to generate any serious revenue in a voluntary market. Further, there has always been a split at central government level between regional policy – that is national policy that differentiates between regions – and regional planning – that is the planning for individual regions.

[97] Ministry of Housing, Communities and Local Government, 2018.
[98] E., Heurkens, 2012.

There are currently three main bodies in the English regions:

- Regional Chambers, mainly consisting of delegated members of the local authorities in the region;
- Regional Development Agencies (RDAs), appointed by the Secretary of State consisting of representatives from business interest and local government in the region; and
- Government Offices for the Regions, which represent the regional dimension of central Government policies.

The RDAs[99] are intended to bring together regional chambers and stakeholders and have 4 main tasks:

- analysis of the regional economy;
- framework for economic development;
- action plan for the RDAs own economic work; and
- framework for delivering national programmes.

The reason for the growing importance of planning at the regional level is based on a number of interrelated factors, including: the growing scale of daily life (particularly in the major urban regions); the increasing need to integrate the planning of urban and rural areas, and; more pluralistic societies in which national policies might be less effective.[100] The increasing divergence amongst local policies (driven by community wishes) and national policies (driven by global concerns) is of particular significance. Regional planning might be an influential factor in the pursuit of Landed Commons' sustainable development, as it mediates between local and national interests.

c) Local Development Plans

Local governments in the UK do not have powers and responsibilities, based on a constitution, as these are determined by central government.[101] In fact, planning system at the local level now operates in much the same way as originally intended in 1947. For the major part of the United Kingdom the National Planning Policy Framework (NPPF) directs that each Local Planning Authority[102] should produce a Local Plan for its area. According to the NPPF, Local Plans should be aspirational but realistic; they should set out the strategic priorities for the area and be drawn up over an "appropriate" time scale, normally a 15-year horizon. The Local Plan should

[99] The RDAs were established in 1999, with aim to prepare regional economic strategies.
[100] J. Zetter, 2004.
[101] Ibid.
[102] In England, Local Planning Authorities are District Councils, London Borough Councils, County Councils, Broads Authorities, National Park Authorities and the Greater London Authority.

be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area.[103]

Enquiring about the modus citizens of the UK can appropriate community development through the landed commons, the Localism Act 2011 is, by many, an example of collaborative planning framework, which aims to: devote more power to communities for local development; open up social services, for communities to innovatively co-produce services influencing their development, and; promote social action, with individuals donating their time, resources and skills to support community development. The Localism Act 2011 acknowledges the limitations of the centralized governance system in the UK and sets a collaborative planning model focused on the "potential for more locally-led innovation to address social issues."[104] It also focuses on community empowerment, opening up public services and social action. The 2011 Localism Act, provides the legal framework for the neighbourhood planning powers and the duty to cooperate with neighbouring authorities. Localism, in its broad sense, has been a research subject for many scholars. Hildreth (2011:73) defines it as "a process of bringing decision-making closer to citizens to enable them to participate more effectively in shaping the public policy decisions and service outcomes that impact upon their lives". According to MacKinnon et al. (2010: 2), localism has been a recurrent political project, "within neo-liberal strategies of government", especially prominent in the UK after the attempts for revival it has experienced since the Thatcher years. A defining characteristic of the Localism Act is the identification of 'local charities, social enterprises and voluntary groups' as responsible for the provision of services, neighbourhood planning, and local decision-making.[105] Additionally, it is composed of different rights, these being:

- Right to Bid: gives communities the priority to buy identified community assets, including public spaces, providing "support for the development of Community Shares to raise local money to finance community assets." [106]
- Right to Challenge: "allows voluntary and community groups, charities, social enterprises, parish councils, local and fire and rescue authority staff to bid to run

[103] The Local Plan will be examined by an independent inspector, whose role is to assess whether the plan has been prepared, in accordance with the duty, to co-operate and other legal requirements. The Secretary of State has powers, under Section 21 of the Planning and Compulsory Purchase Act 2004, to modify a Local Plan at any time before it is officially adopted, if they believe that it is "unsatisfactory". The Secretary of State can also direct that any plan be submitted for approval. Local Plans can be reviewed in whole or in part to respond flexibly to changing circumstances, but if this happens, must be open again to public consultation and examination if a material change is to be made.

[104] Civil Exchange, 2015.

[105] DCLG, 2011: 11

[106] Civil Exchange, 2015, *op. cit.*

authority services where they believe they can do so differently and better. This may be the whole service or part of a service." [107]

- Right to Build: "allows local communities to undertake small-scale, site-specific, community-led developments." [108]
- Neighbourhood planning: allows communities to have influence over decisions made on plans set by local Councils [see: Gospel Oak in Frame 2]. "Communities can shape development in their areas through the production of Neighbourhood Development Plans, Neighbourhood Development Orders and Community Right to Build Orders." [109]
- Right to Reclaim Land: allows communities to ask that obsolete or underused land is reactivated through beneficial uses. This might involve change in land ownership, meaning that the community might be entitled to acquire obsolete land.[110]

Neighbourhood/ community plans

The UK Government has introduced a "duty to cooperate" with neighbouring authorities, (set under the 2011 Localism Act and the National Planning Policy Framework) in order to ensure that cross-boundary planning within England continues. This means that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in the NPPF. This duty must be reflected in any Local Plan. Neighbourhood forums and parish councils can establish general planning policies for the development and use of land in a neighbourhood. These are called **Neighbourhood Development Plans (NDP)**. Policies produced in a neighbourhood development plan cannot block development that is already part of the local plan. What they can do is shape and influence where that development will go and what it will look like. Neighbourhood Development Plans do not take effect unless there is a majority of support in a referendum of the neighbourhood.[111] They also have to meet a number of conditions to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy). The conditions are:

- they must have regard to national planning policy;

[107] UK Government: https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities

[108] UK Government: https://www.gov.uk/government/publications/community-right-to-challenge-statutory-guidance

[109] http://www.rtpi.org.uk/planning-aid/neighbourhood-planning/

[110] https://www.gov.uk/government/publications/2010-to-2015-government-policy-localism/2010-to-2015-government-policy-localism

[111] If proposals pass the referendum, the Local Planning Authority is under a legal duty to bring the neighbourhood plan into force. Once it is in force, it becomes part of the legal framework and planning decisions for the area must be taken in accordance with it, as well as the Local Plan for the wider area.

- they must be in general conformity with strategic policies in the development plan for the local area (i.e. such as in a core strategy); and
- they must be compatible with EU obligations and human rights requirements.

London also has its own plan, the *London Plan*, prepared by the Mayor of London.

Neighbourhood Development Orders/ Community right to build orders

In addition to providing for Neighbourhood Development Plans, the *Localism Act 2011* also allows communities to produce *neighbourhood development orders* and *community right to build orders*. The Local Planning Authority must provide support.

A **Neighbourhood Development Order (NDO***)* effectively gives communities planning permission for development that complies with the order. It removes the need for a formal planning application to be submitted to the Local Planning Authority. *Neighbourhood development orders* can be used to permit a specific development, or a type of development. They can grant planning permission for things such as, new houses, a new shop or pub, or permit extensions of a certain size or scale across the whole neighbourhood area.

Part of the Neighbourhood Development Order is the *Community Right to build Order* , which is a type of neighbourhood development order. It is an order, which gives permission for small-scale, site-specific developments by a community group, without the need for planning permission.[112]

In general, NDPs and NDOs as part of the a wider development management process, help communities to redefine the issues where planning really makes a contribution to the local area and lead to active partnership working with the council. That process would bring together local residents, businesses, landowners and developers to share ideas and build consensus about what needs to be done within the local community.

[112] For more information: https://www.gov.uk/government/publications/2010-to-2015-government-policy-planning-reform/2010-to-2015-government-policy-planning-reform#appendix-2-neighbourhood-planning

Frame 2 | Camden Borough: Gospel Oak

Studies on Gospel Oak, an inner urban area in the London Borough of Camden, have revealed many forms of deprivation and the area has been the focus on regeneration spending on rebuilding and community projects. Gospel Oak, is an area with poor administration, which is defined by a collection of housing estate blocks, and embraced by vast and underused public spaces. It was supported by the Camden Council and the Glass House Community-Led Design, to work collaboratively on the design of the neighbourhood.

In 2010, Camden Council approved a number of sites for regeneration in the Gospel Oak neighoubourhood, as part of a 15-year community investment programme. This programme, herein referred to as the Camden Plan, aimed for community participation in the establishment of regeneration priorities, following the general aims of the Big Society agenda. What also needs to be highlighted here is that a group of residents appealed to the council to be involved in the process of redeveloping their homes. Such types of (re)claiming the urban commons is a valuable contribution to the discourse on future solutions for cooperation, reciprocity, and the inclusion of the direct democracy rule in action situations that can be an impulse towards creation of societies more equal and effectively responsive to the citizens' needs.

sources: Mazzuco Croso, 2016; Łapniewska, 2015; theglasshouse.org.uk

5.2.4. Cadastre and Land Registration System

All European states have some competent national authority for registering ownership and charges of land, for which we use the term "land register". In the diverse legal systems of the two country studies of this thesis, the authority is called:

_ "Land Registry", in England and Wales

_ "Ypothicofilakia", in Greece[113]

In England, in one register there are two different methods of registering: the old registration of deeds and the new registration of titles. The UK does not have a cadastre; land law does not have a concept of ownership of the land itself but rather of rights over land.[114] Technically, it is not a registration of the land itself, but of the estate in the land, that is seen (under the Common Law) as holding right to the Crown, which is the only absolute owner. However, for practical purposes, this does not make any difference. There are two types of taxes, those for agricultural land and for real estate, which have been created to enable the government to fulfill specific

[113] Land register within one legal system in Greece is a newly acquired territory.

[114] R. Grover, 2008.

functions, and are considered to some scholars as two types of cadastre. Although the modern Land Registration Act indicates that the new system of registration is based on a complex registration of land, Vozarikova (2010) supports that the "land registers in fact serves only as register of titles to land. The land itself was in England registered only during the 11th century for tax purposes."

The formal registration of a land parcel, all around the world, is an act of privatisation, irrespective of the procedure adopted. Therefore, by exclusion, land titling should be a guide to non-private and potentially community-owned lands. In practice there are many constraints:

_ Accurate information on the extent and nature of titled land is difficult to access in most agrarian economies, the main sites where commercial pressures are being felt.

_ A large part of untitled lands are government lands (*de jure* or *de facto*), not community properties. Few governments bother to issue title deeds for lands which they own as their private property or which fall under their controlling authority.

_ Lands such as forests and rangelands, which are generically most likely to be commons, are least well covered by titling. Most title deeds in developing countries are urban entitlements.

_ Some titled lands may be owned by communities. The orthodoxy that private land equals individual property is giving way to more flexible norms allowing communities to be registered landowners.

In general the basic role of the land registration system is to;

_Secure propriety rights, i.e. any type of right derived from the institution of property right (property right of any kind; individual rights; collective rights; easements, leasing, mortgage, formal and informal possession etc.)

_Sustain all kind of transaction in land and immovable assets, i.e. conveyance of any kind of rights in real property.

_Provide information for a wide range of purposes.

_Provide the system (mechanisms) within which formal property units are established.

The UK has faced a huge pressure upon land and land use, as till recently was one of the most crowded countries in the European Union, which makes it especially difficult to find land for new development. Unlike much of the continental Europe, the UK has experienced little major redistribution of land ownership since the dissolution of the monasteries in the 16th century, apart from the temporary growth of state land ownership in the 20th century, some of which was reversed during the 1980s. Land ownership, although sometimes regarded as a continuum or spectrum, can be divided into three basic types:

a) Private property, held by individuals and other legal entities. The state guarantees the right to property (under the First Protocol of the European Convention on Human Rights), but such rights may be removed by compulsory purchase, and are limited by the statutory planning system. Within the past decade the potential of private land tenure security for reducing global poverty has been promoted through the UN-Habitat Global Campaign on Secure Tenure, the Global Land Tools Network, and the Commission for Legal Empowerment of the Poor.
b) State land, controlled by public bodies, which may be central, regional or local authorities or parastatal bodies.
c) A range of land rights, that can be loosely categorised as communal or 'third sector'.

Land tenure is also distinguished legally as being either freehold or leasehold. The Law of Property Acts 1922-25 converted feudal land tenure into a simpler system, creating the fee simple absolute in possession (freehold), and the term of years absolute, a leasehold interest for a specified period of time.

The land registration in England, in the 20th century was a continuation of a rather slow move towards a comprehensive land register. The relationship between land ownership, population and land use has been little explored,[115] while the planning system, which allocates land uses, is largely blind to matters of land ownership.[116] The land administration system is built around the notion of proprietary estates, meaning the relationship between the landholder and his land.[117] The prime source of land ownership data in the United Kingdom is the Statutory Register of Title, held respectively by the Land Registry (England and Wales) (LREW), the Registers of Scotland, and the Land Registers of Northern Ireland. None of these have geographically comprehensive data on land ownership (although they have that aim), since all land is not yet registered, nor do they publish aggregated data, for example on types of ownership and average sizes of land ownership parcels; thus, the exact distribution of ownership between the three main tenure types is not known.

The United Kingdom has a wide diversity of real property laws stemming from legislation including the Law of Property Act 1925, the Settled Land Act 1925, the Land Charges Act 1972, the Trusts of Land and Appointment of Trustees Act 1996, and finally the Land Registration Act

[115] Despite the fact that the continuing concentration of landed wealth in the UK has been criticized by many.
[116] R. Home, 2009.
[117] Grover, *op. cit.*

2002. The Law of Property Act 1925,[118] deals with estates, trusts, co-ownership of land, contracts and conveyances, formalities, leases and tenancies in outline, and burdens such as mortgages, easements and covenants, and also important definitions.[119] Land registration in England is currently governed by the Land Registration Act 2002 (repealed and replaced the Land Registration Act 1925), aiming to combat the uncertainties evolved around the previous Act. The Land Registry[120] (as the government database where all land ownership and transaction data is held for England and Wales) consists of:[121] a) Her Majesty's Land Registry (HMLR), whose main duty is to maintain a register of title to, and interest in, land; b) the Valuation Office Agency (VOA), which provides to the government the valuations and property advice needed to support taxation and benefits; The Ordnance Survey (OS), used as a mapping agency, that creates, maintains and disseminates geospatial and cartographic data and products.

On the Landed Commons' registration, common land was until recently regarded, in global discources on land, as a vestige of the past bound for extinction.[122] In recent years it has been rediscovered and promoted and lately there has been increased UK policy interest in community ownership or management of land and buildings, thus the community development trusts become more mainstream. Common land, while mostly privately owned, has legal protection, with statutory registers maintained by local authorities.[123] Large communal land-owners include the National Trust, the Royal Society for the Protection of Birds, and the Wildflife Trusts etc. The start of Commons Registration occurred almost fifty years ago, when the commons and greens registers in England and Wales were created, following the Commons Registration Act 1965.

The most recent changes in commons' registration were made by the Commons Act 2006.[124] However, as the Commons Registration Act is still in power, there exists a bifurcated registration system, with some commons being governed by the 1965 Act and some by the 2006 Act. Registration as a commons is significant because it protects the land from future development,

[118] The Law of property Act 1925, is the most enduring element of the Birkenhead legislation of 1925, i.e. the property legislation of 1925, named after the Parliamentary promoter the Earl of Birkenhead, then Lord Chancellor.
[119] P. Sparkles, 2003.
[120] The land register comprises: a) Property register, which identifies the location of the property, its extent, and any rights that benefit the land; b) Proprietorship register, which specifies the quality of the title, the names and addresses of the legal owners; c) Charges register, which includes details of mortgages and financial burdens, but not of the amount involved.
[121] https://www.elra.eu/land-registries-cadastres-in-europe-england-wales/
[122] R. Home, 2009: S105
[123] Clayden, supra note 80.
[124] https://www.legislation.gov.uk/uksi/2014/3038/contents/made

and any intervention on land requires the consent of the secretary of state. Once registered, common land will become a protected open access resource in perpetuity. Moreover:[125]

- The land will be subject to any registered rights of common, which means that third party rights can be exercised over the land.
- There is a right of public access on foot to "access land" under Countryside and Rights of Way Act 2000, which includes all registered common land under section 1 of that Act.
- Members of the public have rights of access for air and recreation over metropolitan commons and certain other commons.
- It is an offence to drive over common land without lawful authority.
- There may be restrictions on the owner's ability to develop and use the land.

5.2.5. Land Policy and Property Management System

No discussion of the development process of landed commons in Britain would be valid unless it started with the primary element of that process – land. Therefore, highly interrelated with Landed Commons is a land policy as a complex of socio-economic and legal prescriptions that dictate how the land and the benefits from the land are to be allocated, thus it implies a coordinated state or actions, which control, acquire and manage landed assets. A key interest involved, then, will be *landowners*, or the *landed interest*, including amongst others the Crown, financial institutions, farm owners, individual landowners, public corporations and private companies.[126] Landowners have a crucial role in providing land for development and therefore are heavily concerned with the level of profit (and taxation) to fall on land and also ownership and compensation rights under state purchase. Property relations in England derive from a feudal system of very considerable antiquity whose vestiges are still evident in the early twenty-first century.[127] Property, and subsequently property rights regime, may be seen as a bundle of basic rights, namely the rights of possession, use (usus), fruition (usus fructus) and alienation of the subject of the right.[128] These rights, however, may or may not belong to the same holder. Property always requires a formal title and necessarily depends on the legal system. The full

[125] Wily, supra note 7.
[126] A. Cox, 1984.
[127] The principle of feudal tenure was that there was only one absolute landowner in the person of the sovereign, who granted land to his nobles to use it for the time being, in return for services rendered, and in turn the nobles granted others the right to work the land. Several people might have an interest in a particular parcel of land, but none could claim an absolute right to use or dispose of it.
[128] C.J. Webster & LWC Lai, 2003; K.J. Gray & P.D. Symes, 1981.

property includes the right to exercise possession.[129] The very idea of a "right" is always a legal concept and as such it requires a legal or conventional order. Legal/ *de jure* rights, defined as rights protected by law, are provided by a legal order; *de facto*/ economic rights may refer either to faculties (appropriation) socially accepted (conventionally protected) as to effective usages and customs, and are defined as the ability to gain from the use or transfer of a resource by any kind of sanction including *de facto*[130] and customary rights and individual force. A private property right traditionally means the right to use a resource, to enjoy derived benefit from it (for example, by renting it out), the right to alienate it (to sell it) and the right to exclude others from using it. Modern law and economics theory sees property as a bundle of rights that can include non-exclusive (collective) rights. It also allows for the idea that there are degrees of rights, depending on the degree of effective excludability.[131]

In property theory, the key element is the trilogy of ownership forms – private, commons, and state property. Booth (2012), supports that: (a) private property, is a complicated idea to pin down precisely; (b) commons property, has been the residual category, used by many theorists for the description of a regime that is not private or state property, and; (c) state property, also sometimes called collective property, can be defined as a property regime in which "material resources are answerable to the needs and purposes of a society as a whole, whatever they are and however they are determined, rather than to the needs and purposes of particular individuals considered on their own."[132] A state property regime is similar to a commons property regime in that no individual stands in a specially privileged position with regard to any source, but is distinguished from commons property in that the state has a special status or distinct interest – that of owner of all resources, able to include or exclude all individuals according to the rules of

[129] M. T.Z.,Mello, 2016.

[130] Property rights can be either de facto or de jure. By de facto we mean that the property rights are specified by first person (an individual claims the land) or second person (a group assigns rights or norms emerge) while de jure rights are specified by a government with recognized authority. Both de facto and de jure rights may be enforced by first person (self-enforcement); second person (norms or rules of a group, club or association) or third party (private militias or government). When land is relatively abundant, informal de facto property rights may arise to limit dissipation, entice entrants, and yet avoid conflict. As land becomes scarcer, settlers have the incentive to form a commons arrangement to exclude outsiders and thereby limit the potential dissipation from the resource. As entrants become increasingly heterogeneous with respect to endowments, de facto commons arrangements may not suffice to limit dissipation, and claimants have an incentive to lobby the government to turn their de facto claims into de jure property rights with government enforcement. But, the economic rents may not be sufficient for property rights to emerge because political rents may vary from the economic rents.
http://www.nber.org/papers/w15264.pdf

[131] C.J. Webster & LWC Lai, 2003; K.J. Gray & P.D. Symes, 1981.
[132] Booth, 2002, *op. cit.*

that particular state.[133] Common Pool Resources are composed of a *resource system*, which generates a flow of resource units or benefits from these systems over time[134], and they may be subject of different kinds of property regimes, i.e. they may be owned by governments, communal groups, by private individuals or firms, or used by all without restrictions. However, the property regimes are not limited to full private or open access, as there are several intermediate alternatives of assigning exclusive rights to more or less delimited groups of people. Even a public property (i.e. an area belonging to the state) or an open access system (related to public goods) can admit different regulatory regimes that grant some rights to individuals (e.g. property-rights based regulation, etc). On the other hand, even a totally private property system may be limited by other's rights, or by state regulation. The rules of property regime must be understood in their diversity – and from both legal and economic standpoints (*de jure* rights and *de facto* rights[135]), noting that there may be an intersection between them. The rights over a resource (or an asset) should not be considered as something monolithic, but as a bundle of more or less broad power or faculties. Hence, it is important to identify: each single right over the resource; the individuals or groups that hold those rights (and the exercise of fact); the decision-making processes on the use of the resource.

Therefore, the UK land policy system, as part of the national policy of the country, is generally related to economic development, social justice (considering the needs of different sectors and social groups) and equity; it can promote the provision of security of tenure, improve access to credit, land reform and land titling, land use planning and real property taxation. Some tools that relate to such policies over landed commons are public acquisition of land, expropriation and land allocation policies, value-capture mechanisms, and community land trusts (CLTs) along with governance structures for managing land.

[133] Ibid.

[134] Lakes, rivers, fishery stocks are examples of common pool resource systems, while water, and fish are resource units from a CPR.

[135] If the source is the state legal system, Schlager and Ostrom say there is *de jure rights* – enforced by a government, with lawful recognition by legal system. If the rights are defined and enforced by the resource user themselves, they are designed as *de facto rights*. De jure and de facto rights are not mutually exclusive; both can co-exist, conflict or be mixed in real world.

5.2.6. Land-Real Estate Taxation Policy

Britain has a long and unsatisfactory history of attempts at taxing the value of land, which is created by the community, called *'value capture'* or *'betterment'*. Betterment, is defined as unearned land value brought about by any particular development and by urbanization in general. It is the accumulated value of agglomeration economies (positive externalities, urban economies of scale, etc.) accruing to a piece of land, including value added by the owner/developer of the piece of land and value added by others. Betterment can accrue to the State in three ways: by *recoupment*, *set-off* and *direct charge*. Recoupment or excess condemnation is, as the latter term implies, the expropriation of more land than is needed for an undertaking with a view to its resale at a profit.[136] Since the former cannot happen without the latter and rarely has much intrinsic value without the latter, betterment is generally regarded as a publicly created value (the value of agglomeration economies, which are positive externalities). Betterment is generally recognised in the UK as "the increase in land value which results from actions other than those of the land owner i.e. the increase in land which is created by the community and which can be (a) positive e.g. in the grant of planning permission or the provision of infrastructure and other environmental benefits, or; (b) negative e.g. in the imposition of development restrictions on adjoining land".[137] Thus, betterment is additional value attaching to land, which can be realized on sale or on the grant of a lease, to the extent that the market reflects such advantage. However, as a value, which is created by the community, it has been argued that such value belongs to the community and not to the land owner. Compensation, can be defined as the value of social costs (off-site costs or negative externalities) created by a developer or land user. It is a notional value—the value of uncosted factors in the development process, unless it is exacted by some instrument by the community that bears such costs (by taxation or payment in kind for example), in which case it becomes an accounting value.[138] Currently the taxation of betterment in the UK is selective both in terms of when it occurs and whom it affects. Indeed, they are generally not recognised as such, being present as or subsumed within other kinds of statutory roles. These are:

_ set off; it is limited by (i) the fact that the owner has a claim for compensation, and (ii) the amount of compensation claimed.

[136] N. Lichfield & O. Connellan, 2000.
[137] Ibid.
[138] S. Lee et al., 2013.

_ capital gains tax;[139] the provisions of the UK's capital gains tax legislation requires a taxpayer to account for up to 40% on any 'profit' realised on the sale of an asset including landed property.

_ rates and council tax;[140] the imposition of an annual charge payable to the local authority on all taxable units (called hereditaments) in the UK can be construed as a tax on betterment to the extent that betterment is reflected in the net annual rental value of non-domestic hereditaments and domestic hereditaments.

Taxes on land and property have strong historical ties to local taxation, and they play a role in financing local government. Moreover, taxes on land value capture the benefits of taxation on landed assets (local, national, regional) and these patterns, under which such taxes are distributed, could act as an incentive or an obstacle for the sustainability of landed commons. As taxes will not continually improve themselves through the competition of the marketplace, one proposal for improving property taxation goes by the designation *"Land Value Taxation"* (LVT), which has been something of a national concern. Land Value Taxation, carrying both a particular and generalised meaning, refers to levying annual taxes on specific parcels of land in order to gather revenue for local government, which in Britain is locally referred to as *site value rating* (SVR). In essence, it is an attempt to redistribute the rates burden (i.e., the extant British property tax) and collect local government revenues on a more equitable basis. The generalised meaning of LVT includes, in addition, policies and measures aimed at recouping to the community (i.e. betterment) some proportion of the increases in land value that can be attributed to community activity that generated development.[141] The difference between LVT and other forms of property taxes around the world rests upon the fact that the tax is on land itself, contrary to the main form of extant property tax, which is based on assessing the combined value of land, buildings and improvements thereon rather than on the land per se.

In 2010, the English planning system introduced a procedure for capturing the social costs of development, after two previous attempts to reform the system of planning agreements.[142] This most recent attempt was enacted as the Community Infrastructure Levy (CIL), which is geared specifically to meeting infrastructure needs, in support of local communities, as a function of

[139] Capital Gains Tax (CGT) is the tax levied on the sales of an asset such as a business, a second property, shares or a heirloom.

[140] Council tax – an annual tax imperfectly related to the value of domestic property – is the main tax base for local government, though the majority of local government income comes directly from central government.

[141] Connellan, supra note 154.

[142] Barker, 2004; Lee et al., 2013.

local development values.[143] This follows a period of about 20 years, when rights over urban land value uplift created by development were ambiguously stated in law and subject to decentralized, piecemeal negotiation in practice. CIL is a levy that local authorities in England and Wales can choose to charge on new developments in their area and this tool can be of major significance for the sustainability of landed commons. It is not mandatory, but local authorities, which choose to fund infrastructure in this way, must publish a scale of charges that is in accordance with a national scale and reflects local conditions. The Community Infrastructure Levy has shifted the emphasis from a tax on land to a tax on the profits of development [see the example of Borough of Camden in Frame 3]. Where the burden of taxes of this kind falls has always been much debated, however, the fact that planning obligations, and by extension, CIL, are simply alternative means of instituting a betterment tax, cannot be doubted.[144]

Frame 3 | Borough of Camden

Over 6 per cent of homes in the London borough of Camden were unoccupied in 2012, on a full time basis. According to Sharon Ede, the vast majority of these properties, namely 'ghost houses' were second-home investments rather than owner-occupied residences. Though a "ghost house" tax could be seen as imposing on private decisions, it is, in fact. a counterbalance to an existing policy and rent-seeking regimes that allows speculators to seek capital protection and appreciation by 'parking' wealth in residential real estate investments.

In December 2012, Camden approved a policy to charge an extra 50 per cent in property tax rates to owners of houses that had been unoccupied for more than two years. This tax was a policy priority for the Borough, and although it could be seen as a counterbalance to a rent-seeking regime that favored speculators. Less than a year after the policy was adopted, the number of vacant homes fell by 34 per cent.

sources: *Camden.gov.uk; "Sharing Cities: Activating the Urban Commons"; theguardian.com*

[143] Booth, 2012, *op. cit.*
[144] Ibid.

5.2.7. Governance Institutions and Landed Commons

The debate about whether governments have power to influence all the policy decisions, which they might desire, or whether they are constrained, is evident in British social and political science writing. Recent studies of the role of government in Britain, by both elite and pluralist writers, have concentrated heavily on the pluralistic nature of the decision-making system and the relative independence of governments to decide on policy for themselves. One major area in British policy-making is the question of the role for the state in the governance of landed commons and property development. The divergent views are held about the role of the state in relation to two different but interconnected issues: 1) the level at which the state should compensate landowners who lose their right to develop land or whose land is acquired, either by agreement or by compulsion, for essential public or community purposes. 2) Whether or not (and at what level), the state should seek to collect increases in land values (i.e. betterment); whether they are created by the state, the landowner or the natural progression of society. To support this shift in the social and production domain requires policies and institutions to produce incentives for the ecologically sustainable behavior of individuals and landed commons.

Over the last decades, a new strategy of governing, called "collaborative governance" has developed, in reaction to previous governance failures, and has received considerable attention in urban affairs, public management and environmental management research.[145] This mode of governance is important, because it brings multiple stakeholders together in common forums with public agencies to engage in consensus-oriented decision making. Collaborative governance, as a new management paradigm, has emerged as a response to the failures of downstream implementation and to the high cost and politicization of regulations.[146] One key element of intervention through collaborative governance aims at favouring the creation of forms of public-private non-profit partnerships for the use, protection and care of the local common goods. The reference model should be found in English experience of Community Land Trusts (CLTs), which involves contractual or institutional forms of collaboration between different local stakeholders (i.e. individuals, associations, NGOs, local businesses, citizens, residents, merchants, estate landowners etc) and with local authorities. Community Land Trusts (CLTs) are a model of land ownership and community-led housing, part of a broader movement for local autonomy and collective ownership; set up and run by ordinary people to develop and manage homes as well as other assets. CLTs act as long-term stewardship of housing, ensuring that it remains genuinely affordable, based on what people actually earn in their area.

[145] C.W. Kaye-Essien, 2016.
[146] C. Ansell & A. Gash, 2008.

The CLTs can be seen as a governance arrangement able to foster the introduction of a new conceptualization of urban development. It is a "social invention"; the initiative, mainly, comes from neighbourhood/ community development organizations, designed to solve problems with land ownership.[147] As Iaione (2015:215) documents, "the community land trust, created as the governance output of a process that introduces collaborative devices in the urban plan, can be a structure able to promote collaboration between the five actors of collaborative governance".[148] The idea behind the CLT is that it should be able to ensure successful affordable homeownership goals and, more importantly, contribute to other neighbourhood improvements. On a more global level, CLTs aim to shift the control of land from the hands of private development to the shared community at large.[149] Community Land Trusts models ranges from Garden Cities and tenant co-partnerships, through co-ownership societies, cooperatives, co-housing, mutual homeownership societies, and community self-build.[150] Their key function is their capacity to "lock in" the value of land and assets, to protect commonwealth from private expropriation, thus they resonate with the notion of commons.[151] A selection of case studies in this thesis, in which Community Land Trusts (CLTs) were identified includes: the Granby Four Streets CLT in Liverpool, the first of the Urban Community Land Trusts, which grew out of a need for affordable housing and a response to dysfunctional housing policies; the Middlebrough CLT, which proposes redevelopment of the city's housing hand in hand with addressing inequalities, particularly through their emphasis on local labour and apprenticeships, and; the Letchworth Garden City, by Ebenezer Howard who mainly devised the CLT mechanism, in 1903, under the name of *"co-operative land society"* [Frames 4, 5, and 6]. Community Land Trusts came out in England of the Tory government's Localism Act which was meant for village halls, rural places. These mechanisms were chosen as a way to solve issues in predominantly rural areas in the south of England.

147 J. Meehan, 2014.

148 "The five pillars of collaborative city – problem-solving orientation, participation by stakeholders in decision making, provisional solutions, accountability that transcends traditional public/private roles and a flexible, engaged agency – aim at being the cornerstone of a "living together" approach by fostering urban lifestyles based in civic duties and shared social norms, as well as collaborative services, mobility, and urban planning." (Iaione, 2015)

149 National Community Land Trust Network, http://www.communitylandtrusts.org.uk/

150 M. Thompson, 2015.

151 P. Conaty & M. Large, 2013.

Frame 4 | Middlesbrough Community Land Trust

After the collapse of the council's Housing Market Renewal plans large areas of the city centre have been left vacant or derelict. Middlesbrough CLT is a non-profit company that aims to work with local people in order to revitalize communities.

They have been refurbishing empty properties in the city centre since 2011, for community use, proposing an alternative redevelopment model emphasising on local labour and apprenticeships. Working with the Middlesbrough Council, the CLT secured the transfer of ownership of three properties that were earmarked for demolition. Their relationship with Endeavour Housing Association led to some initial funding to cover the legal costs of the housing transfer plus a Service Level Agreement (SLA) with the registered provider for them to manage the properties on their behalf. The CLT already owns 5 formerly empty properties in the city, while it has been awarded for community engagement in July 2013 (TPAS award).

sources: *middlesbroughclt.org.uk*, *communitylandtrusts.org.uk, tenantcentral.org.uk*

Frame 5 | Liverpool: Granby 4 Streets

Granby 4 Streets started life, in 2011, as a community-run market and guerilla gardening group, in a neighbourhood broken up by successive demolition plan as part of the Liverpool's ongoing process of economic and social transformation 'Housing Market Renewal Initiative'. McBane (2008) points out, that Liverpool was the first British city to build pubic housing in 1869 in response to squalid "back-to-back" tenement housing conditions, later pioneering the UK's first resident-led, housing co-ops, and the largest community-led housing trust operating today, the Eldonians.

Over time, this evolved into a CLT with a strong vision: to reinstate their streets as a thriving, vibrant multi-racial, multi-cultural area. They have been given the freehold of 10 properties in the area by Liverpool City Council, and will refurbish these as permanently affordable housing. With the help of local activities, architects and social investors, the organization managed to engage the Liverlpool City Council as well as housing associations and cooperatives in the Community Land Trust scheme. In this scheme, the local community owns land and leases some parcels and buildings for various uses and development projects, keeping control over prices and ensuring long-term affordability and community benefit. The multi-phase development and innovative training programme make this a strong holistic regeneration initiative for the area. The CLT has also built a strong relationship with the local authority out of a more challenging beginning and has plenty of learning to share with the movement.

sources: McBane, 2008; *cooperativecity.org; world-habitat.org;*

Frame 6 | Letchworth: the First Garden City

The idea and historical movement of Letchworth Garden City, particularly its image of self-sufficient, cooperative satellite towns with ample green space, has maintained relevance to contemporary issues of urban form, social organization, public health, and environmental sustainability. The Garden City's land-tenure model of tenant co-partnership blended elements of a tenant cooperative and limited divided company, attempting to balance interests between the community, tenants, and landlords. A ninety-nine-year leasehold system was considered favorable to selling the land outright because it allowed rents to be revised each century to account for increased land values, providing a greater degree of control over land use and the ability for landlords to rebuild worn-out buildings at lease termination. Tenants had the option to choose a ten-year lease, which would have allowed for the city to capitalize more rapidly on improved land values; however, in self-interest, almost all tenants chose the ninety-nine-year lease to lock themselves into lower rents. In 1995, the Garden City Letchworth Heritage Foundation was established, a not-for-profit organization that finances itself, which aimed mainly "to create rental value through the development of this portfolio, generating commercial revenue and recycling the surpluses for the public benefit of local communities."

The real value of Letchworth Garden City is related to the distinctive form of land ownership. It's central idea was that of a Community Land Trust (CLT), a mechanism that keeps land ownership in the hands of the community while allowing housing and other buildings to be sold or leased to individuals. The collective ownership of the land also generated revenues through housing rentals and business leases. In turn, the community managed to finance schools and hospitals, thus, everyone, not just investors, could benefit. For decades the economic value generated by Letchworth's infrastructures – water, sewerage, gas, electricity, roads, schools, hospitals – were mutualized to benefit all of its inhabitants. This helped the city to become relatively self-sufficient. The social model of the Garden City concept was applied to the capture value created within the town and the reinvestment of it back into the town for the benefit of the community. Today more than 33,000 people live in Letchworth, on land that belongs to the CLT.

sources: Lewis, 2013; O'Sullivan, 2016; Hall, 2014; Hall & Ward, 2014; Birchall, 1995

From UK's case analysis [in short, see Table 1] it is evident that in England there exist a cohort of institutional frameworks, planning and real estate policies, land taxation systems and cooperative governance in support of landed commons, all of which have been developed as an outcome of the country's long tradition in institutional designs on common pool resources. References related to the efficient management of landed commons and the achievement of their long-term sustainability can be found in the English experience of Community Land Trusts (CLTs), which involve institutional forms of collaboration between different stakeholders and local authorities.

Table 1: England | Horizontal Reading	
Basic Definitions within the Legal & Institutional System	Landed commons have been the outcome of major transformations experienced by land tenure systems, under the effects of broader historical, socio-economic and political evolutions. Common land was subject to 'rights of common' which belonged to individuals, as the ownership of land remained private. Tenure had both a collective and individual utility.
Legislative System in support of the Commons	The evolution of landed commons and their related institutions has been diversified over time, but a recent set of legislative actions was developed, in order to remove the legal uncertainties and form an asset for building new policies on the protection of landed commons.
Planning Policy System	Long established and politically secure, based on the British-family system. It can be positioned as a land-use management model; projects are adapted on a case-by-case basis and are shaped particularly at the level of local government. Neighbourhood/community planning policies set by public bodies and neighbouring authorities, that shape and influence the development of landed commons. Collaborative planning framework, focusing on community empowerment, opening up public services and social action.
Cadastre & Land Registration System	UK does have a Cadastre; technically registration is not about the ownership of the land itself but on the estate of the land. The most recent changes in the commons' registration were made by the Commons Act 2006. Once a common land is registered it will become a protected open access resource in perpetuity.
Land Policy & Property Management System	The land policy system is part of the national policy of the country, generally related to economic development, social justice and equity. Some tools related to such policies over landed commons sustainability are public acquisition of land, expropriation and land allocation policies, value-capture mechanisms and community land trusts (CLTs) along with governance structures for managing land.
Land-Real Estate Taxation Policy	Long and unsatisfactory history of attempts at taxing the value of land created by the community. Taxes on land value capture the benefits of taxation on landed assets and can act as an incentive or an obstacle for the sustainability of landed commons. Community Infrastructure Levy (CIL) is a recent procedure for capturing the social costs of development and support local communities.
Governance Institutions & Landed Commons	"Collaborative governance" bring multiple stakeholder together in common forums with public agencies to engage in consensus-oriented decision making. One key element of intervention through collaborative governance aims at favouring the creation of forms of public-private non-profit partnerships for the use, protection and care of landed commons. References can be found in Community Land Trusts (CLTs), which are a model of land ownership and community-led housing, part of a broader movement for local autonomy and collective ownership.

5.3. _ Landed Commons in Greece

5.3.1. Basic Definitions within the Legal Institutional System

In Greece, fiscal imbalance and the socio-economic recession of 2008 have influenced the public sector in terms of social welfare, labour market and property development. Land ownership and property rights regimes have undergone some critical changes, exhibiting a new dynamic, which governs the relationship between landed property development and the market.[152] Additionally, the last few years in the context of the economic crisis, a number of city initiatives emerge in Greece, thus, Landed Commons (within the urban context) are mostly connected with common space as expressed in the case of social movements in the city, social uprisings, squattings, social centers and self-organised ventures in the last three decades.[153] Therefore, in the increasingly interconnected and multicultural world of the twenty-first century, it is inevitable to look at the complexities of social formation and identity beyond the strict political group of citizenship of the ancient Greek 'polis', the city-states.

On studying the history of the archaic and classical periods of the Greek world, one of the first claims one makes is that, alongside the polis, a plethora of other social and communal formations existed in the Greek world, which may or may not have had an overtly political character. These formations may have provided an alternative focus of communal organisation for the ancient Greek world, and are met in the existence of various examples of community formation found in the various attestations of *koina* throughout the Greek world. *Koinon*, a substantive adjective meaning "a common thing", was extremely versatile, being used as a federal organization; a synonym for the polis, or; as a private or voluntary organisation.[154] Thus, a *koinon* can be loosely described as a term signifying a variety of forms of communal organization. In its primary meaning it refers to the collective unity of the people, but in some cases it means an active community of citizens and non-citizens being engaged in political decisions together. This implies a form of relations and networks of power beyond our usual dual opposition between citizens and non-citizens in the Greek polis, which, in turn, implies a certain degree of access to political participation and therefore power for the non-citizens.[155]

Certain forms of political performance, and therefore a certain degree of poltical power, existed in groups and communities; the most familiar is the form of federal organisation or state,

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[152] P.M. Delladetsima, 2006.
[153] Ch. Tsavdaroglou, 2016.
[154] E. Mackil, 2013.
[155] C. Chrysopoulou, 2015.

sometimes translated as 'leagues'. Those *koina* were about the move beyond the strict political boundaries of citizenship in the political decisions of the communities, that is communities interacting and creating new political entities or cooperations between the communities for the creation of a new state with a range of powers. On the other end of the spectrum of political power associated with 'state' practices, *koina* had the form of private or voluntary associations of individuals, whose members could be citizens or non-citizens.[156] In most cases such *koina* were a unique form of communal organisation that blended together citizens and non-citizens, thus creating networks of associations and power that often transcended political boundaries and political-social hierarchies. In other cases, they had essentially a form of political, in the sense of the polis, organisation. It has long been noted that the word *koinon* could be used as the direct equivalent of the word polis or as an alternative for the term *demos*, the people. In this sense, the word *koinon* has the primary meaning of a community, which may then be further determined by the addition of the genitive plural of the ethnic or other noun. 'Koina', as private associations were a quite widespread phenomenon in the Greek world, which expanded during the Hellenistic period (third and second centuries BCE), emphasizing the aspect of community (by the term *koinōnia*) and conveying the sense of a shared state or a governing together (by the term *sympoliteia*); similar is *koinē politeia,* "a common polity," clearly an elaboration of the simpler, older *koinon.*[157] Such *koina*, imitated the political mechanisms of the polis in terms of structure, nomenclature, and powers. They did have, however, one striking difference with the world of the polis: that of membership. Many private associations were open to non-citizens and even slaves.

The time tracking of changes in land ownership and land use rights is directly related to the historical and political developments of a place. Land ownership and land use rights in the ancient Greek world was bound up with political rights and status in complex ways, with many poleis (city-states) retaining a property qualification for service in certain magistracies and membership in civic councils. Land distribution and access to landownership had a significant impact on the evolution of the Greek polis, as the land was concentrated in the hands of a small elite, with non egalitarian political consequences. Many scholars have put focus on the extent to which states used their power to achieve reliable access to resources, especially grain, through either imports or imperialism. The guarantee afforded by poleis to private-property rights was a fundamental precondition for the development of market exchange, for it is only when producers

[156] That is, foreigners, both metics and aliens, and sometimes even slaves, as well as male and female members, though in Athens at least, membership seems to have been both mostly male and citizen-centred.
[157] Mackil, supra note 176.

are secure in their property rights that they feel free to dispose of their surplus in the market.[158] A koinon, thus, created a highly advantageous economic system for its citizens and member communities. A crucial aspect of the it's development was the increasingly complex interaction with the economic affairs of its citizens, including intervention in economic crisis and dispute, and the more frequent exercise of the state's ability both to regulate exchange and to collect taxes from its citizens in order to fund the common undertakings of the state. Taxies were levied on individuals, whether by a koinon or by its member poleis; in this respect they are broadly comparable to the taxation structures of autonomous poleis. In the Hellenistic period, the taxes levied on sacred land (telos), in the territory of member poleis of the third century, are considered by some scholars as the basis of the tax assessment for a polis. An individual who chose to lease such land could simply have shouldered the tax burden associated with the property, an arrangement akin to tax farming in a situation in which the levy was irregular.

Property rights have their origings in Ancient Greece· during that time, the protection of property rights was not based on a fully institutionalized regime with specific written rules, however, this does not mean that property rights were not somehow protected. Private property in land was protected by custom, being *de facto* transferred from generation to generation without a 'contract' or any other type of legal title because trespassing private land was a very rare phenomenon.[159] Zimmern (1931:288) argued that the continuous usage of a specific part of land by a specific individual became a de facto part of his land ownership, whereas Forrest (1966) describes this proto-regime of private property securitization as an undisputable property and not an undisputable right. Property rights have evolved, along with changes in warfare and city-states during the Archaic and Classical periods, becoming more secure and specific, based on contracts. Their protection was further reinforced due to the increase of the population and the necessity for new arable land to be cultivated by the new incoming workforce. Borders were established in order to effectively confront cases of trespassing of land. The situation towards the establishment of the protection of property rights seems to have been linked to shifts or power between the various social groups living in the city-states. [160]

[158] In Voiotia, everyone had the right to purchase property through the territory of the koinon. However, if citizens of member poleis did not themselves have rights of intermarriage and property ownership throughout the territory of the koinon, the highest magistrates of the koinon could bestow on a foreigner rights that affected all member communities but they did not themselves share. The existence of property rights in the Hellenistic Achaian koinon is clearer. Under the Achaian regulation, all who were citizens of a member polis of the koinon enjoyed the right of property ownership.

[159] E. Economou & N. Kyriazis, 2017.

[160] C.H. Lyttkens, 2006.

Land claims in contemporary Greece are relevant to the 19th-century Ottoman Law – generally distinguished between public and private lands as well as land held by charities – which was in place throughout the territories conquered by the Ottoman Empire. The new nation of Greece initially became the successor to the Ottoman territories in 1830, later extending its sovereignty to other territories occupied by the Ottoman Empire. Whereas, upon succession, all public land came into the ownership of the Greek state by reason of capture conquest – as well as some private land that was confiscated and sold during the preceding armed rebellion – the same was not true with respect to privately owned land.[161] The interval from the seventeenth to the nineteenth century is the period in which the dissolution of most common pastures, nomadic and settled, is historically recorded. Those common pasture groups were active in the mountainous areas of the Northern part of Greece (the regions of Thraki, Macedonia, Ipiros and Thessalia) and the whole Balkan region, as well as in some Aegean islands (including Crete, Naxos, and Syros). Nomadic forms of common pasture were the so-called "tseligkata" of Sarakatsani.[162] Sarakatsani never had a unified piece of land, nor did they never own any land; even until the early twentieth century, they were grazing their sheep in leased grasslands, while moving towards the mountains in the spring and towards the plains in the autumn.[163] The tseligkata were informal institutions of governance, which ensured the optimal use and management of the pastures, resulting in their preservation and longevity. They were organised on a collective basis of self-management by local groups of breeders, who – by establishing appropriate and operational rules of use and setting up a framework for control and enforcement of these rules – managed to ensure the sustainable management and protection of the resource. With the expansion of the cities and the development of trade, tseligkata passed from the first stage of self-preservation to the second stage of increased production for trade.[164] The movement of tseligkata and its establishment was facilitated by a set of laws, related to land use, which was formed during the Byzantine era and was maintained by the Ottoman Empire. Their function was based on unwritten principles, thus customary law, according to which all members had the same rights and obligations.[165] After the independence of the Northern part of Greece in the late

[161] I. Bantekas, 2015.

[162] The word "Sarakatsani" derives most probably from a Turkish expression that means "he who leaves the woods", while the word "tseligkas" is of Slavic origin and indicates "the leader of the clan".

[163] L. Arseniou, 2005.

[164] P. Arvanitidis & F. Nasioka, 2016.

[165] The leader of this form of common pasture was not elected; the succession in the leadership was hereditary, with the exception of some rare cases, in which when the inheritor was considered as inadequate, the member who had the most animals used to become *Tseligkas*. Amongst the duties of the leader were the leasing of appropriate grassland and the supply of additional animal feed. The supplies and sales were all common for the members. The distribution of the profit was done twice a year, and a part of it was kept for medical care, lawyers' fees for protection over agricultural damages, and reserve. Three of the most important customs and moral principles of tseligkata clans were the intermarriage, the solidarity, and the autonomy.

nineteenth and early twentieth century, the contribution of the livestock sector to the national economy remained important. Nevertheless, in the 1950s, the Greek state started to implement anti-agricultural policies, which caused severe damage to the sector.[166] The so-called "distorted modernisation" is considered as the main cause for the dissolution of many common pastures, including *tseligkata*. Many Sarakatsani with their families abandoned the life of the nomads and the mountainous areas, and moved to permanent settlements closer to the cities.[167]

The establishment of the Ottoman Empire was a definite and radical solution to the conflict between big landowners and small farmers. The land is generally owned by the State and the peasants own family parcels allocated to them by the State. Between the State and the peasants are the tymarians (the officials of the administration), which are charged with the collection of taxes. Rural land parcel, although belonging to the peasant with full inheritance right, are always inalienable. The State attributes the agricultural surplus through taxes. Therefore, if the landowner typically owns the land (since the individual private property is non-existent to the Ottomans), he is in essence a *de facto* owner.[168] Notwithstanding that the land was nationalised and private property was abolished, we should note two exceptions according to which Ottoman law admitted that a small percentage of Ottoman land did not belong to the Sultan: (a) the *vakoufia*, that is land dedicated entirely to the monasteries and the churches[169] and (b) the *moulkia*, which were full-ownership small properties of plantations, donated by the Sultan to individuals, as a reward for exceptional service. The various tax arbitraries of the Byzantine period have been replaced by three basic legal taxes: a) the *dekati*[170] (mainly on cereals and oil); (b) the *toll tax* on non-Muslim citizens and; (c) the *customs duty* on the exported goods.

In general, Ottoman diversity allowed the coexistence of three superseded rights in the same territory: 1) the subordination of the State to the inalienable possession of the estates. 2) the landowner received, from the same estate, 1/2 or 1/3 of the net product, as a "prize" of the land, and 3) the peasant on the same estate always enjoyed the real right of the "tessarouf", which protected him against a possible expulsion. The most widespread view in modern historiography on the national land distribution law of 1871 is that it aimed at enhancing small ownership and

[166] For instance, the prices of the livestock and agricultural products were decreased to such extent - in order to be competitive in the national and international market - that the quality standards decreased as well, while a big part of the rural population migrated to the urban centers for employment.
[167] Arseniou, *op. cit.*, p. 135-136.
[168] K. Vergopoulos, 1975.
[169] Many of these institutions also practiced charitable work.
[170] Ten equal parts of agricultural production, one part was taken by the representative of the Ottoman authority. In essence, dekati was not a tax, but a right to property, because all the land was property of the Sultan.

that, in the period after 1871, national land was mainly distributed to the growers who already owned them. The distribution of 1871 is often seen as the second of the three phases of a "undivided" rural reform that evolved from 1821 to the Interwar:

1_ The first phase recognizes the period from 1821 until the first years after the establishment of the Greek state. During this phase, national lands were created and publicly preserved.

2_ The second phase involves the passing of the distribution laws of 1871 and their gradual implementation, which lasted until the beginning of the 20th century.

3_ The third and final phase relates to agricultural reform, the legislative framework of which formed between 1911 and 1926, and its implementation lasted until the end of the interwar period and in some cases until the beginning of the 1950s.

The aim of the reform was the liberalization of the land market and the strengthening of the institution of private ownership in general. Also, in some cases where profitability prospects existed, national land was acquired by wealthy bourgeoisie.[171] In the last quarter of the 19th century, the objective of the Greek state, was the dissemination of the institution of individual property and liberalization of the land market from its traditional ties - something that is radically different from the protection of small property.[172] The 1871 reform did not provide for a protection mechanism for small family parcels; on the contrary, in the context of the Venizelist reform (which was in fact aimed at enhancing small agricultural property) the core of the family parcel property was inalienable and its transfer explicitly prohibited – in general, significant restrictions were placed on the functioning of the land market. The main direction for tackling the shortcomings of small property, followed by the Venizelist reform, was to merge the peasants into cooperatives, who were also given the building facilities and the common grazing of the expropriated estates.[173]

The history of modern Greek land ownership before 1917 Agraria Reform can be summed up on two major issues: a) the issue of “national lands” and b) the issue of the “tsiflikia”, which were concentrated mainly in the northern provinces of the country. The first issue dominated land ownership relations between 1828 and 1881 and the second was a major problem during the period 1881-1917. The *tsiflikia* were mainly an expression of private power over large land and appeared initially as a “permanent agreement” between the land-owner and the farmer: the first offers the land and the second the work. The issue of ‘tsiflikia’ along with the reform of 1917,

[171] A. Fragkiadis, 2008.

[172] This was implemented both in "old" Greece (where the revolution of 1821 left behind the legacy of national lands) and in the newly acquired Epirus-Thessaly.

[173] Fragkiadis, *op. cit.*

though never a primary issue, was the reason for the development of a great reflection on the mechanism of Modern Greek society.

The issue of National Lands

The Independence of Greece from the Ottomans, in 1828, introduced the Roman-German legal framework. This not only caused a wide dissatisfaction with the plurality of cultivators who until then enjoyed the courtesy of the Ottoman institutional domination, but also brought about a series of new complications on the issue of land ownership. Similarly, the absence of a land registry was a symptom of the difficulties caused by the introduction of new ideas on land ownership in the country. The declaration of the 1828 Independence, raised the big problem of the land ownership of the "national lands", succeeded by the issue of the tsiflikia which appeared with the annexation of Thessaly and Arta in 1880 and the annexation of Macedonia and Epirus in the Balkan wars of 1912-13, which speeded up plans for agricultural reform.

Regarding, therefore, the issue of national lands, the distribution laws could apply only to areas of perennial plantations (Achaia, Ilia, Trifollia, Messinia). The economic interest in acquiring private land was extremely large, but the holdings of national land distributed were limited in relation to the needs of the market. Therefore, in these same areas of perennial merchant plantations a new problem has been created, which has gradually increased significantly. Due to the lack of satisfactory supply of private land, several people began to illegally plant on the national land they had in their possession. The so-called "nationally-owned" plantation were created. There was a big ambiguity surrounding the ownership rights of these plantations, and this problem gradually became explosive and culminated in 1862 with the debate on a law that provided for the distribution of nationally owned plantations between the state and the implanters, which has never been applied. The solution to the problem of national land was given by the law of 1871 which regulated the issue of the transfer of national lands to private individuals, while at the same time stipulating that the implanters could redeem, on fairly favorable terms, the national lands on which they had carried out the plantations.

In essence, the Greek State privatized landowneship relations on the basis of Roman-German capitalist law, in order to frustrate the formation of the large estates and the social strata of bestial landowners within agriculture. The peasants of the national lands were suddenly found to be landless not because of a supposed "survival" of the feudal Ottoman relations, but precisely because of the radical abolition of these relations. The laws on the privatization of national lands presupposed something similar to the British enclosures, namely the radical transformation of

land-use methods, which in turn required the freezing of significant inflows of capital and labor. By intervening in the supply of land, the only factor that was in abundance nevertheless, the legislation on the transfer of national lands was not sufficient to cause the desired transformations when other conditions did not run simultaneously, such as availability of capital and labor, sufficient demand for agricultural products.[174]

5.3.2. Legislative System in support of the Commons

Landed Commons are sources that are made available to the public for use by them under intended purpose. In Greece, common land is mainly recorded as agricultural land (pasture land), and its management was different from the English landed commons, in the sense that it was explicitly and legally linked to the local political organization – located within the boundaries of a village, subjected to its inhabitants enjoying political rights in the village organization, and regulated by all of them via their participation in the village council. Within this rural context, the example of pasture land not only falls into the category of common land but is also faces major degradation problems today, due to problems of credible landed assets of the resource. The long-term absence of an integrated, modern and efficient institutional framework for the management of these lands, which yields tangible property rights either to the state or to individuals, leads steadily to the degradation of rural landed commons and ultimately to their destruction. Pastures are treated as open access resources and are freely used by the flocks of each area. Their inappropriate use is attributed to the mountainous and semi-mountainous nature of land (which makes policing a particularly expensive process), but also to their vague ownership, namely the absence of clear property rights. To address this situation, an effective and operational institutional framework and a credible land ownership and land-use rights policy (which would respect the needs of livestock farmers and would protect the pastoral and forest ecosystems of the area) is required. One of the main points of such a policy, to support the sustainability of rural landed commons, is to provide clear property rights and establish a governance structure that would confront the existing landed issues.

The landed commons literature is thin on the urban framework, however, a basic feature of the common use is the service of the public interest.[175] Anything that is used by more people to serve their private interests (for example space left between two neighboring properties) is not considered a commons. The content and scope of the common use depends on the intended

[174] Fragkiadis, *op. cit.*

[175] Civil Code: Articles 966, 967 and 968.

purpose, the adequacy and the number of persons involved, and the broader the circle of persons involved in it, so the public interest is served. In particular, things of common use are, "*waters with free and endless flow, streets, squares, seashores, harbors and coves, floating rivers, large lakes and their banks*"[176] and every citizen has the right to use them, a power that derives from the right of personality.[177] Use in commons is entitled to make a wider, indefinite, but not necessarily unlimited number of persons. Everyone's right to use is delimited in relation to the right of others. In any case, the speculative exploitation of the joint venture is not included in the content of the joint use. Landed commons, unless they are owned by a municipality or a community or the law does not otherwise specify, belong to the state. This provision introduces a statutory reservation where it may lead to different rules governing the ownership of communal property, without thereby precluding the recognition of the right of ownership to private individuals.

Legislation on town planning includes a range of tools that are used to ensure common spaces within the urban fabric. The main features of these tools are that: a) they are mechanisms for securing urban land, which are considered necessary for the pursuit of urban planning policy; b) they apply only to urban areas, i.e. no emphasis is placed on the physical designation of land uses. Thus, in the landed commons legislation there is a sphere of power of Administration not only of the State but also of the Local Authorities. This power / competence is public law and includes mainly care for the observation and maintenance of the commons. The character of a property as a common use may give rise to: (1) The act of the competent administrative authority, which is in accordance with the provisions of the town plan and includes it in the urban plan of the town plan, thus the process of expropriation and payment of compensation is required; 2) The will of the owner, which is manifested by a legal transaction. For the renunciation of ownership, in order for the space to be a commons, a statement by the holder is required, drawn up by a notarial document and submitted for transcription. Urban expropriations have been the main legislative and general applicability tool for securing common spaces over the last 50 years in Greece. However, the imposition of expropriation as the most burdensome instrument resulted in the deprivation of land ownership rights. The acquisition of common spaces, as a consequence of the expropriation, has led to an impasse in urban planning, degrading the environment of the country's settlements.[178]

[176] Civil Law- Property Law, Article 967: http://www.fa3.gr/nomothesia_2/nomoth_gen/19-Dikaio-embragmato.htm
[177] Civil Code: Article 57.
[178] D. Christofilopoulos, 2002.

The notion of "commons" in urban planning legislation, i.e. the parts of terrain characterized as non-buildable and made available to the public for free use, is relevant. However, the concept of communal things is wider than the concept of communal spaces, which are: *"the common use of free spaces defined by the approved urban plan or shared in any legal way"*.[179] Therefore, urban planning legislation applies to landed commons that have acquired this status, as communal areas designated by the relevant urban plan and the consequent expropriation thereof or, on the other hand, according to the provisions of the Civil Code.[180]

Common spaces and common land belong to the public property of the state and serve the public interest directly or indirectly. The purpose of their creation is to ensure the protection of the residential environment and its further upgrading, as well as to meet the needs of a town planning unit or a wider area of more settlements. These spaces are available for the free use of citizens as well as for the servicing of the buildable areas and cannot be built for any use. The landed commons of a city are defined as streets, pedestrianized streets, squares, parks and gorges, and gardens. Any construction work and generally any temporary or permanent installation in these areas is prohibited except for specific exceptions (serving common needs, landscaping, beautifying). The basic legislative means and tools for securing communal spaces are the following:

1) Traditional tools

_ Neutral expropriation

_Self-compensation

_ Building conditions: loggia and grass

2) New flexible tools

_ Land and money contributions (extensions)

_ Right of preference (land bank) or free transaction

_ Unified Uncovered Spaces and Active Urban Block

_ Building Factor Transfer

_ Social Building Factor

_ Implementation of land contributions to renovations

The concept of common space (including also streets and squares) appears for the first time since the founding of the Greek state, in the 1835 *"Royal Decree on hygiene, city and community*

[179] Law 4067/2012, Article 2, para. 39: https://www.kodiko.gr/nomologia/document_navigation/117459/nomos-4067-2012

[180] Civil Code 3056/1991, Article 966.

building", which contains general rules for the organization and the layout of activities aimed at the hygiene of cities. The N.D. 1923, the first planning law in Greece, provides for *"the creation of communal spaces in the drawing up of town plans"*, while the following important law (947/79), includes the *"free spaces"* in the general uses of land, without defining them in particular. According to this, the forest areas in the residential area are also included, provided that their forestry character is preserved and are characterized as grazing, while at the same time the construction of their parts is for public purposes. The land uses defined in the R.D. 23/1987, *"Categories and Content of Land Use"*, set the free common spaces (squares, parks, gorges, roads, etc.) at a special urban planning category. These spaces include squares, parks, gorges and streets as special town planning functions. As with other urban planning, there is also a rule prohibiting land use change in order to ensure the protection of the urban environment's viability.

The Greek Constitution (Article 24) identifies a common approach to the natural and cultural environment, the protection of which is the right of the citizens and the obligation of the state. It also mentions the compulsory ownership of properties in the planning of an area in order to ensure this area for common spaces. Reference is also made to the prohibitions to change their use or to reduce their surface, which are based on the urban acquis and the right of the inhabitants not to deteriorate living conditions. Only the redevelopment of communal areas is permitted when it serves urban planning purposes and the abolition of communal space while being replaced by a building site which is shared.[181] The creation of public communal spaces emerges as the responsibility of state planning. Basic procedures for the creation of the commons include land expropriation and land levy to landlords in areas recognized as residential, which is also one of the most important innovations of Article 24 of the Constitution. In the modern legal order, property also includes social obligations, as its absolute character has been mitigated and its social content has been recognized.[182] The reference to the term "general interest" makes it legitimate to impose increased restrictions on the exercise of the right to property.

The post-war buildings architecture, combined with the current town planning regulations that support a continuous building system, has created a compact structured front. The blind facades of the buildings were constructed in an out-of-the way and treated without a clear design line.

[181] In order for an area to be recognized as a residential and to be activated for urban development, the properties included therein must, without compensation from the institution concerned, make available the land necessary for to create streets, squares and spaces for general uses and purposes, as well as the cost of carrying out the basic communal urban planning works as defined by law. Additionally, free land resulting from the redevelopment of residential areas is available for the creation of premises or disposed of to cover the costs of urban regeneration.

[182] The social restrictions on ownership are expressly set out in Article 17 (para. 1, 6 and 7) and in Article 24 (para. 3, 4, 5 and 6) of the Constitution.

This has led to the emergence of uncovered spaces of house estates with no specific use. Uncovered spaces, which are common spaces that belong to the residents of the buildings surrounding the uncovered spaces, make up, according to the General Building Regulation (G.O.K.) at least 30% of the building square. These unstructured surfaces, however, are predominantly untapped areas and sources of contamination. The unification of uncovered spaces has been foreseen in the General Building Regulation by Law 1577/85 in Article 13, according to which: 1) Common (shared) spaces are all kinds of roads, squares, forests and, generally, all free – to be common used spaces, defined by the approved alignment plan or been shared in any other lawful way; 2) community spaces are the premises of a settlements, which according to the approved alignment plan, are intended for the construction of community-public utilities. The Law is still in force and is characterised as an *"Active Block",* but there are no examples of application. Also, Law No 1337/83 in Article 30, on *"Neighbourhood Planning Committee",* defines the relationships and capabilities of residents of a wider area for decision-making. The Neighbourhood Planning Committee, attempted to introduce a collective process of assessing the quality of life in the city and intervening in the basic choices of land use plans. It failed to thrive mainly because it did not meet the support of local authorities.

Social arrangements between citizens, corporations, and the government vary significantly across countries of different legal origin. Common law countries rely more heavily on private market outcomes, in contrast to civil law countries, where the state plays a stronger coordinating role in factor markets.[183] The efforts of many economic actors to improve their social and environmental performance, and their commitment to sustainable development, is expressed, in most Western countries, through the Corporate Social Responsibility (CSR), as a common business practice. Corporate Social Responsibility is a type of international private business self-regulation.[184] In the context of CSR, a country's legal regime determines how "public goods" should be provided by the private sector (corporations), through regulations and rules, firm discretion, or government involvement in business.[185] Within the framework of Greek businesses, corporations such as the TITAN Cement Company, have integrated the Corporate Social Responsibility (CSR), and the principles of sustainable development, into its operations as a good-business practice [see Frame 7].[186] In this concept, Corporate Social Responsibility is defined as: (a) caring for the company's employees; (b) respecting and supporting local

[183] H. Liang & L. Renneboog, 2017.
[184] https://en.wikipedia.org/wiki/Corporate_social_responsibility
[185] M. Kitzmueller & J. Shimshach, 2012, in Liang & Renneboog, 2017.
[186] http://www.titan.gr/en/corporate-social-responsibility/csr-and-sustainable-development-at-titan/

communities; (c) being an active member of society, and; (d) committed to sustainable development.

Frame 7 | Land allocation by TITAN Cement Company

At the end of the 1990s, the TITAN Cement Company has allocated privately-owned land, adjacent to the facilities of the company's factory of Drepano in Achaea, to inhabitants of the neighbouring settlements. This land allocation occurred as a voluntary commitment of the company to embed Corporate Social Responsibility within its operations.
Forty-eight acres of land were allocated to the inhabitants, for cultivating olive trees and exploiting the production of olive oil. As the basic prerequisite of this enterprise, growers had to offer 30% of their production to Titan Company, with the aim of donating it to community organisations, institutions and poor families in the area. The allocation of land was consistent with the company's overall policy from protecting and conserving the biodiversity of the areas in which it operates.

source: *titan.gr*

5.3.3. Planning Policy System

Planning policy in Greece has been identified as an essential prerequisite for balanced spatial development and public administration;[187] along with legal and administrative systems it has historically been influenced by French and German models. According to Newman and Thornley (1996), the Greek planning system belongs to the Napoleonic family of planning systems within the European landscape, and is characterised by a high degree of centrality. The key element of the Napoleonic planning framework is that there is a hierarchical system with a distinction of tasks per level of planning, where the national and local levels hold the greatest power.[188] Similarly, the Greek planning legislation is based on the French one, in terms of structure and content, but its' centralized planning model causes a rigid design system and, consequently, the provision of common/communal spaces. This is also reinforced by the non-clearly defined and complex legislative system, the inadequate administration structures and the lack of policies, leading to the inability in acquiring adequate common spaces.

[187] K. Serraos et al., 2016.
[188] Newman & Thornley, supra note 44.

According to the Greek Constitution, spatial planning at any territorial level is the responsibility of the State. For landowners affected by planning regulations, the Constitution specifies also their development rights and duties, including the obligation to participate, without compensation, in the disposal of land required for public spaces and public utilities, and to contribute towards the expenses for the provision of basic public urban works.

The organisation of the Greek territories was accomplished in the first decades after World War II, in the virtual absence of a restrictive regulatory framework concerning spatial planning of productive activities, social facilities and urban development.[189] This had a serious impact on Greek territorial organisation, such as regional and local disparities, although this was also the result of their historical reasons, environmental degradation in urban areas and, in some cases, in coastal and island areas, as well as widespread unauthorised development, especially housing.[190] The first town planning legislation came into force under the Law Decree of 1923 and is partially in operation. The legislation defines a hierarchical structure of different types of plans, reflecting the spatial scale at which plans operate (national, regional, local), without, however, having a strict correspondence with the existing levels of government. Urbanization of new areas was made in two steps, (a) the compilation of the urban planning system; (b) sporadic implementation of the study, according to the interest of the individual owners or the municipality. This approach was not considered to treat all owners in the whole area under urbanisation in a fair and equal way, since the plan was applied without a land reallocation procedure; each owner did not contribute with land according to a percentage of their total orginial parcel area, but according to the specific needs for common space in the very narrow neighbourhood of their land parcel.[191]

a) National level

Spatial planning in Greece is a fundamental tool for decision making to define strategy for land development and to secure economic growth, social stability, environmental protection and quality of life. It is ruled by a unified legislative framework and regulations that are the basis tools, together with the Hellenic Cadastre and the land-real estate taxation system, aiming to create sustainable settlements which will be well integrated into the natural environment and the cultural heritage of each area.[192] At the national level, the main institution responsible for urban and regional planning is the General Secretary for Regional Planning and Urban Develpment, of

[189] Serraos, supra note 187.
[190] Ibid.
[191] C. Potsiou & H. Mueller, 2008.
[192] Ibid.

Ministry of Environment and Energy (YPEKA). Spatial planning is implemented through two instruments that contain the guidelines for the development, organisation and management of the national territory: [193] (a) the "General Framework for Spatial Planning and Sustainable Development" (GFSPSD), which constitutes practically a National Territorial Plan (NTP), for the whole country; (b) the "Special Frameworks for Spatial Planning and Sustainable Development" (SFSPSD), which constitutes Special (sectoral) Territorial Plans (STP), for specific issues of national interest. The GFSPSD is as multi-sectoral plan containing the general guidelines for the organisation, management and development of the national territory, according to European and international spatial policies adopted by Greece.[194] These guidelines cover the following main aspects:[195]

- Main national development poles and axes, as well as international gates of the country.
- Technical infrastructure - especially transportation networks of national importance.
- Productive sectors.
- Metropolitan areas, as well as other important urban agglomerations. Relations with their regions, structure of the urban systems, development of mountainous, rural, coastal and island areas.
- Management of national resources, as well as protection of national natural and cultural inheritance.
- Creation of viable administrative and development spatial units.

The SFSPSDs specify the general guidelines, set by the GFSPSD, with regard to the spatial structure of the following aspects of national importance:[196]

- Main sectoral economic activities
- Networks and spatial distribution of technical, social and administrative services, as well as knowledge and innovation infrastructure.
- Special areas (coasts, islands, mountainous and lagging zones, environmental protection areas and critical environmental, developmental and social problem zones).

Urban planning models appear in the 1960s and 1970s as part of the Athens Regulatory Plan and concern the proportion of outdoor areas in relation to the population. In 1983, models for green areas and free communal areas are drawn up by the Ministry of Planning, Settlements and the

[193] Law 2742/99
[194] K. Serraos et al., 2005.

[195] ISoCaRP 2002.
[196] Ibid.

Environment (HNSC), in the framework of the specifications of the Urban Reconstruction Enterprise (PEA).[197] Areas in this category concern:

1. Common areas, namely 'common spaces' defined by the approved urban plan. Common spaces are areas for the subsistence, recreation and transport of pedestrians and wheeled vehicles such as roads, streets, gentle streets, pedestrian walkways, cycle paths, squares, greenery, and playgrounds.

2. Free spaces of urban and suburban green areas. These areas are spaces outside approved urban plans and are meant to create green and recreational lungs in order to preserve the natural environment. In these areas, except for mild recreational activities, the following functions are allowed provided they are approved by urban planning:

_ Small sports facilities

_ Recycling corners

_ Agricultural, forestry and other agricultural holdings

_ Urban agriculture

b) Regional level

By the decades of 1980 and mainly 1990, regional administrations and local authorities were given more power and planning responsibilities through a process of decentralization. In this framework regions were entrusted with several planning responsibilities: elaboration, approval, amendment, revision, monitoring and control of different types of urban plans; approval of zones for the transfer of floor to area ratio and approval of general building regulations in the case of non-residential buildings. Three planning instruments service planning purposes on a regional level:

- The "Regional Frameworks for Spatial Planning and Sustainable Development" (RFSPSD), which constitute practically Regional Territorial Plans (RTPs), and provide the directions for regional spatial planning following the guidelines of the GFSPSD and SFSPSDs.
- Special Spatial Plan, for areas to be protected outside the statutory town plans.
- Regulatory Plan (Master Plan), for urban regions, metropolitan areas and large urban centres, which provides the guidelines for General Urban Plans.

[197] Presidential Decree Plan "Categories and Content of Land Uses", Article 08-7, refers to Free Spaces - Urban Green.

c) Local level

The main instrument on the local basis is the General Urban Plan, which regards municipal or commune territories, affecting cities, towns and urbanised areas. The term 'urban plan' refers to a formal set of rules and plans, which define the zoning and building regulations to be applied on both the private plots and the plots selected for common use and common benefit activities. The General Urban Plan, defines the location, size, and boundaries of all areas dedicated for urban development, and the zoning regulations for the urban and suburban areas of the Municipalities, or the compilation of the "Plan for the Spatial and Housing Organisation of the Open City" study (at the same scale) for all urban parts and their connecting areas of the Municipalities, which have smaller populations. The role of local authorities in the production and approval of local plans in mostly advisory, while its main responsibilities are concerned with the implementation of town plans and the delivery of building permits and other licenses.

From the above it is obvious that the concept of landed commons in Greece is defined by an extensive legislative and planning-policy framework, which, however, indicates ambiguity and inadequacy. Planning standards are not defined based on criteria, principles and values, nor do they take into account the specificities of each region. Additionally, no community participatory planning system has been established, such as a neighbourhood planning that would give communities planning permission for the landed commons' development (as it was seen in the UK's case analysis). Instead, town planning legislation is a complex and contradictory framework (since many times the newly adopted legislation does not explicitly repeal the old one[198]) and is inflexible in its administrative application. The administrative governance system has led to a rigid urban planning and hence to the impossibility of implementing flexible tools for securing the sustainability of landed commons.

5.3.4. Cadastre and Land Registration System

Greece lies at the antipode of the English land-registration cases, holding both a Land Registration and a Cadastre. The overwhelming socio-political power of small land ownership has led to a rather underdeveloped and lagging (behind other European states) land administration system. Land Registries are the main authoritarian instruments responsible for land registration. They were created in 1853 and have always been considered as a judicial institution. The Hellenic Cadastre was introduced in 1995 (Law 2308/1995) and is not yet completed. In some territories, the land registration system is different, such as some islands of

[198] For example Law 1337/1983 and 947/1979.

the Dodecanese, which have kept under the Italian government a system of "Land book" German/ Austrian style, known as the *Dodecanesean Cadastre*. This system was kept in place after sovereignty had been transferred to Greece. Currently there are two systems in force relating to land registration: (a) traditional Land Registries, which operate a person-based system (system of registrations and mortgages) and (b) interim Cadastral Offices, which function under a property-based system, the cadastral system. Both systems are operated by the existing Land Registries, which have been proven to be perfectly capable to adjust to the new cadastral system situation and to even improve it by performing a big part to the corrections needed. Traditional Land Registries function under the system of registrations and mortgages, which is a person-based deeds system.[199] The Napoleonic Civil Code and its provisions on the system of "conservation des hypothèques", served as a model for the introduction of this system in the middle of the 19th century. The property must be described in the deed in detail (address, boundaries, surface etc.). However the boundaries are not conclusive neither are they guaranteed by any other authority. The principal functions of the Land Registry are: a) to register deeds relating to property rights (notarial deeds, court decisions, administrative acts) according to the principle of publicity governing, under the Greek law, all transactions on real estate, and b) to provide information on legal rights and limitations existing on immovable property.

The Greek cadastral project is unique in its conception at least on European level; never before in a country, which already possessed a land registration system, had occurred such transition from a person-based to a property-based system by means of re-registration of already registered property rights based on citizens' declarations of rights and not on information kept in the Land Registry. However, there is much need for this cadastre to be transformed into a multi-purpose one, in order to serve purposes like urban planning, taxation and the like. The existing Cadastre covers a very small percentage of the country's territory, does not comprise buildings (since only plots are being surveyed), forest maps, coastal zones etc. and does not contain reliable (legal or technical) information about either public or private properties. The goal of the project is the development of a holistic, systematic and always up-to-date collection or registrations, which consist of the geometric description and the ownerships status of all the real properties of the Country, overseen and guaranteed by the State. Almost twenty years after the beginning of the cadastral project, results of land registration have showed that approximately 50% of the property recorded in the system so far is claimed by state as "forest land", although private interests have possessed the land for several decades. According the law of 1945, which is still in

[199] The system of registrations and mortgages, implies that all registrations are being made under the name of the owner/beneficiary of the property rights in personal folios existing in the Land Registry.

force, any piece of land, characterized as "forest land" on the aerial photos of 1945, should be considered to be publicly owned land unless there is a chain of deeds going back to 1884 that proves that the current possessor owns lawfully that piece of land.

The Greek governance aspires to create a cadastral project that would be a major and traditional means of recording land ownership regimes across the entire country. Efforts, however, have been fruitless thus far. The lack of an active land register in Greece results in difficulties in the implementation of tools that support the sustainability of landed commons, since the cadastre provides reliable information on the current land ownership regimes, the existence and completion of which would be a means of preventing legal disputes between land owners and the administration.

5.3.5. Land Policy & Property Management System

The implementation of landed commons' acquisition tools leads to planning interventions, which are not only visible in space, but also in the citizens' relationship with space; the latter is reflected in the citizens' property rights over the land they own. Property management and planning systems on communal areas imposed restrictions on ownership, in favour of the public interest, including the welfare of the inhabitants. Therefore, different land ownership regimes on different constitutional and administrative arrangements in each country, and the implementation of planning tools for the acquisition of common land, have a great impact on property rights, depending on the meaning given by the current legislative and property management system. The emergence and the evolution of property rights is one of the basic elements for socio-economic development and the existence of a clearly defined system of property rights is crucial as a mechanism in favour of the well functioning of a modern economy. Property rights in Greece evolved gradually, but were already firmly established and secured in the Classical period, as the basic ingredients and advantages of forming democratic federations.[200] The land ownership status of the landed property in general (cultivated land, forests, grassland, pastures, etc.) is up to date in all phases of the evolutionary trajectory of the Neohellenic State until these days. The "National Lands" issue, which mainly concerned cultivated land, was one of the top issues in Greek contemporary history, that caused, until finally settled, social unrest and political rebellions, which were a function of political decisions, disputes and confrontation. The land ownership issue of forests, terrestrial or natural ecosystems, is essentially related to all the disputes of land ownership between the state and individuals, including the Church. As such, it

[200] Economou & Kyriazis, supra note 159.

has been influenced by the way the state of Greece has historically recognised the property situation in the departments extracted from the Ottoman Empire. Despite the legal interventions of the Hellenic State since its establishment to date, the ownership of forest and grasslands has not been definitely settled, due to the different land ownership regimes of these lands created by the gradual integration of large areas in 'Old Greece' following international Agreements and Protocols (Thessaly and Arta, New Countries, Ionian Islands and Dodecanese) and their ratification by Ottoman Laws.[201] These lands were essentially parts of public land that became private; national land that had been shared amongst the warriors as full-fledged spoils and those under islamification, and; taxable land, i.e. land of states which belonged to non-Muslims who paid as tax part of the income from cultivation. The full demesne of these lands belonged to their owner.

Therefore, the state of land ownership in modern Greece has its roots in the Turkish occupation, during which the rural areas of the country belonged to the Ottoman Empire, as well as the Greek landowners and the monasteries. The first official approaches to spatial planning start by the time of the Greek nation's liberation from the Turkish yoke, as efforts aiming at the reconstruction of the country. The first "City Plans" (of Patras in 1828, of Pylos in 1829, of Athens in 1830, of Naplio in 1834, etc.) were drawn without the existence of a legislation on town planning. The state's intervention, concerning the construction of buildings rather than town planning was limited to the laying down of police regulations rather than provisions of a town planning act, related to regulations on each individual building rather than the urban tissue.[202] The 1920s period was signaled by the adoption of the Presidential Decree of 1923 on "City Plans, Large Villages and Agglomerations of the State and their construction", which constituted (with some alterations) the basic legislative framework of urban planning for half a century. Based on this specific urban planning, the Greek territory was divided in: a) areas included in the City Plan (with an approved street layout plan), b) agglomerations which existed before 1923 without an approved street layout plan, governed by their own institutional regime, and c) areas "not included in the city plan", that is agglomerations that were not included in the street layout plan and existed before 1923, regulated (inefficiently) by a Presidential Decree.[203]

The period after the end of the Second World War is characterized by the government's efforts to restore the natural and, most importantly, the structured environment. The decade of 1950-60, a

[201] According to the Ottoman Laws, the land of pure property was transferred after death by ownership and, in the case of a childless landlord, it was included in the State's property as public land.
[202] E. Stamatiou, 2002.
[203] A. Aravantinos, 1997, p. 96.

period of reconstruction and planning restructuring for Greece, was affected by a significant change in the country's demographic composition due to the influx of rural population to the cities, mainly Athens, and the immigration wave. At the same time, there was a gradual abandonment of the countryside and a shrinking of the agglomerations. The new legislation, regarding the adoption of the General Building Regulation in 1955 – which led to the maximum exploitation of land and the increase of built volume – in tandem with some economic measures, encouraged land speculation and urban tissue deterioration in Athens, with building additions and extensions.

The Constitution of 1975 comprised some general principles and guidelines regarding the protection of natural and built environment, along with the planning restructuring of the country. As Stamatiou (2002: 152) emphatically affirmed, the Constitution of 1975 "underlines the specification for a frame of adjustments towards the establishment of a land property policy, given the existing social structure". Socio-economic conditions along with inefficient institutions "led to the option of self-housing and acquisition of the minimum urban land, initially in order to immediately solve the housing problems". The main outcome of this condition was "the sprawl of the urban space and the pursuit of profit from the incorporation of surplus value due to land urbanisation".[204] At the same time, through some other provisions, such as the social role of ownership and its participation in town planning, town functionality, government's care for the acquisition of property etc, some guidelines concerning spatial arrangement had been determined.[205] The most characteristic expression of this new concept was the foundation of the Ministry for Housing, Planning and the Environment in 1980, which in 1985 was reorganised and renamed Ministry for the Environment, Regional Planning and Public Works.[206] In the early 1990's, legislation on private planning was adopted. Only a small amount of proposals were materialised, since they were not subsumed in wider regional planning.

Real estate in Greece applies in individual and legal entities, the latter being distinguished in those of Associations, Public Law bodies (Municipalities and Communities) and Societies or Legal Entities governed by Private Law. Forest sites are exclusive property of the State, as opposed to rural and urban sites, which can be private.[207] Furthermore, there are some specific cases as identified by the Law 4280/2014 titled *"Environmental improvement and private urban development – Sustainable urban development – Forestry law provision"*, under which, in

[204] D. Rocos, 1981.
[205] Ibid.
[206] Stamatiou, supra note 202.
[207] Rocos, *op. cit*., p. 55.

heavily burdened urban centers, the state is entitled to acquire private land and to attribute it to the community as a new forest and green spaces. This area is classified as a protected area – a suburban park and its management is entrusted to the services of the State and the local authorities.[208] According to the Civil Code (Article 966), *"public buildings, areas of public use and all sites serving public, communal or religious purposes are not private property objects, therefore not considered as objects for transaction."* Public use property belongs to the State, unless it belongs to a Municipality or Community, or otherwise stated by Law. Concerning the legal status of ownership, the greatest part of tillable land belongs to individuals.[209] Cooperative properties are not found in the majority of the administrative regions. Of the land tenure status, the distribution is mainly private holdings, followed by those of various types of tenure status, share farming and, finally, rented.[210]

The constitutional evolution of property rights is interwoven with an absolute and strictly individual nature of serving the private interest. Traditionally, in the Greek legislative framework, the 'right to property' was mainly protected in real estate rights over immovable property, land use, pledge and mortgage, and particular land ownership rights. The persistence of this case-law on the protection of *right in rem*, serves different and traditional values of the Greek society, in which economy depended on the land ownership and the traditional occupations of agriculture and livestock, thus there was an inseparable connection between individuals and the property of land, in a country where the industrial growth has been far from being developed in relation to the rest countries of the West.

5.3.6. Land-Real Estate Taxation Policy

Land taxation system has evolved by adjusting to historically changing social composition and demand trends, leading today to a large amount of taxes on landed property and construction.[211] The taxation of real estate in Greece, was initially established by the Legislative Decree of 1923 as capital tax and is applied in accordance with the tax ability to pay and utility special turn. In practical terms, it is used more so in terms of cash and less as a way of a policy process concerning land.[212] Some real estate taxes in force are (a) the Annual real estate income tax by Law 4045/1960; (b) the Tax on real estate partition, exchange and transfer by Law 1587/1950, which had laid the foundations of a "value objective definition system" of taxable real estate

[208] https://www.taxheaven.gr/laws/law/index/law/620
[209] Ibid.
[210] Stamatiou, *op. cit.,* p. 153.
[211] Delladetsima, supra note 152.
[212] P. Zentelis, 2000, p. 27.

value for urban areas; (c) The Large property tax by Law 2459/1991; (d) The Real estate fee by Law 2130/1993; (e) The Value Added tax by Law 1642/1986, for the taxation of real estate appreciation and; (f) Incidental Taxes, imposed on value of the real estate value or on its rent for incidental needs.[213]

The real estate value used for taxation, expropriation or selling off purposes is assessed through different valuation and pricing methods resulting in contradictions and discrepancies. Since 1985, the taxable values on which taxes are imposed are called "objective values" and are calculated according to the "Real Estate Values Objective Calculation System", a Mass Taxation System assigned with base (zone) values within Municipalities, as well as few basic quality factors augmenting or reducing the initial values. This system provides for a minimum value of real property according to objective criteria (such as position, size, public facilities in the area, age of a building, etc.), and it has been imposed so that the tax authorities have a reference minimum value in imposing taxes in relation to land. To date, not all areas in Greece have been valued, so in some areas (mainly rural) the tax authorities make estimation of the value according to similar transactions or other available data. Moreover, the new Greek real estate tax system (ENFIA), introduced amidst austerity, has resulted in many people non declaring their land, which has led either to the land appropriation via usability by others or to oldest traditional versions of land use, such as those of common pastures.

5.3.7. Governance Institutions and Landed Commons

The emergence of a network of self-organised societies operating in various sectors of commerce, trade, production and social services (health, education, care for the homeless, etc.) marks a turning point in the existing social economy in Greece during the socio-economic crisis, as a response to vital social needs under the pressure of the enormous economic collapse. But it also brought about a qualitative shift in the historical operation of cooperatives and social enterprises that now functioned within a wider movement and attracted greater emphasis on self-organisation and social solidarity. Disjointed examples of governance of common pool resources are viewed mainly in the form of rural commons; in some cases, the functioning of these rural commons exists to date, such as the example of the Ecclesiastical Charity Fund of Astypalaia island [Frame 8]. As in other European regions during the Early Modern period, the use of common lands by the rural population was the linchpin of the cultural and institutional system on which the organization of rural communities was based. Common lands served not only an

[213] Delladetsima, *op. cit.*

economic function; they also played an eminent role in strengthening community cohesion and reinforcing the original bonds between inhabitants.

Frame 8 | Ecclesiastical Charity Fund of Astypalaia Island in the Dodecanese

The Ecclesiastical Charity Fund of Astypalaia (ECFA) was founded in 1820, under the auspices of the Church and is still an active and important institution for the local insular community.

ECFA uses part of its revenues from the ecclesiastic estates to provide financial or other types of aid to poor inhabitants of the island. Existing documents and byelaws describing the operation of the foundation underline that the financial aid to the poor is controlled and limited, whereas it is primarily attempted to provide work and land for cultivation and pasture. In this direction, ECFA assigns the cultivation of fields, the management of farmlands, pastures and other property assets to several inhabitants. The revenues are redistributed to poor Astypalaians, to local churches, to students who cannot afford their studies, to people that are incapable to work, and to elderly and orphans. It further supports the provision and improvement of public utilities in the island and mandate fields to local authorities for the construction of schools and houses.

Although fully recognized by the ottoman authorities, ECFA underwent and survived several economic, social and religious pressures under the Italian and English occupations. Since 1957, the management of ECFA is described by a National Law (number 84/13-05-57), which recognizes the institution as a Legal Entity operating under Private Law on the basis of its traditional and historical status. There is a seven-member administrative council consisting of five elected members, the Mayor and the metropolitan bishop. Its members are potentially all the inhabitants of the island and the ones over 21 years old have the right to be elected in the administrative council. ECFA has its own cadastre, where real estate donations, property assets as well as possessed animals are registered.

sources: Stavlas, 2005

Within the urban context, landed commons often reflect the economic impact of planning regulations as they are a reason for conflict of private and public interests, leading to their impairment. The way land use planning has been implemented in recent years, as well as the general land policy, have redefined the city's functioning as a potential for social interaction, while the relations between the city and the citizens have been revised. The existence of the overriding interests that lie behind, the fervor of the legislative initiative from the satisfaction of intense social pressures, the need to legitimize already established situations, and the more general practice of land management over the past decades, have resulted in a shrinking of the prospects of public space. In Greece, for example, the problem caused by the lack of landed

commons, in the form of public common space, has been intensified and, to a certain extent, has taken on a new shape over the last fifteen years, especially after the Olympic Games. New political practices have been implemented in this context, the main elements of which are the commodification and privatization of land, private and public sector partnerships, and better conditions for private investment. This problematic situation has created, as an alternative perspective, action by citizens to protect and strengthen the public space. The lack of common spaces has led to a logic of self-organization in place of inefficient state policies and local authorities. Social movements for the city and the environment, although usually starting from the local, are at least interwoven with the ecological problem. Such example is the set up of a "Coordinating Committee of Associations and Movements to protect free spaces and quality of life in Athens" (and the surrounding municipalities).[214] The abundance of city movements to claim free spaces is a non-negotiable indicator of increased awareness and action by locals in favor of their recovery. Not only inefficient policies have been followed by the state but also extremely destructive in terms of public space and the rights of the individual over it. The lack of public spaces is therefore related to social, economic and environmental issues. However, the majority of landed commons, in Greece, had mainly the character of protest events, opposing the alteration of public and communal character of some space. Just one-third of the protest had a contentious character, in other words, it sought to convert a space into a communal-public one.[215] This could lead us on the assumption that there was no significant development of a wider reason and a similar practice of questioning, as the protest had a more “defensive” content.

Many shared resources in the urban setting are not directly managed by government; Instead they comprise forms of cooperative management where groups of actors step in fill a vacuum in governance.[216] One of the cases that illustrate these forms of governance is neighbourhood gardens, or community gardens.[217] The value of community gardens often lies in creating social capital, as they may provide tangible instantiation of social capital in a neighbourhood, but also an important focal point for developing cooperation on a broader set of community issues.[218] Additionally, gardening (and the space of the garden), has a strong relationship to privacy, autonomy and control. Yet, it also connects to the public dimensions of property and the structure of neighbourhood planning policies.

[214] http://www.asda.gr/elxoroi/
[215] K.I. Kavoulakos, 2009.
[216] Parker & Johansson, supra note 1.
[217] Foster, supra note 1.
[218] Sh. Foster, 2006.

In terms of neighbourhood-planning and decision-making policies, there are not any well-defined examples within the Greek context, in constrast to England, where there is plentiful material. In an overall trend, neighbourhood planning has arisen in the international arena due to the necessity of sustainable urban planning and the increased importance of the neighbourhood as a "first degree" design. A spatial reference unit in this design is the geographically defined neighbourhood, in many cases with unclear boundaries. There are cases in which the physical or artificial elements of the environment are preserved as limits, and others in which a neighbourhood is considered to be every urban unit based on demographic characteristics. A key element in this design is the involvement of residents, as well as the goal of further developing the neighbourhood. Regarding neighbourhood implementation in Greece, recent and ongoing examples of landed commons exist as guerilla gardenings and pocket parks. Pockets parks are a new category of communal urban green spaces between the neighbourhood park and the private green. They can function as bioclimatic lodgments in the urban fabric and at the same time as intermediate social spaces. They are usually formed on empty plots, as in the case of the Pocket Park in Thessaloniki [Frame 9], in contact with the street or on the interior of the building blocks. Various groups of locals are also involved in the formation or the maintenance of the site.

Frame 9 | 'Pocket Park' in Thessaloniki

The Pocket Park in Thessaloniki is the product of the "Svolou's Neighbourhood" Initiative, an ongoing and active urban movement, engaged with issues of community-building and place-making in the development of an urban experiment in the historical and commercial centre of the town, which aimed to the development of "a place of connection, exchange and socialization to and from the neighbourhood".

This bottom-up neighbourhood initiative was founded in 2013, by an informal group of locals and shopkeepers, and by that time their main action was a collective dinner, namely the "Spring's Dinner", influenced by respective cultural practices that have taken place in Barcelona. This pilot urban experiment created a more fertile ground for establishing a new neighbourhood identity, by combining various local and socio-cultural attributes, and gradually led to the next participatory action of the Initiative, which was the creation of a pocket park. The perspective of the participatory planning has been a way to create a community-managed park, with the involvement of the user as a decisive role, having alongside a direct cooperation with the state bodies. In October 2017, the members of the Initiative sought a meeting with the Deputy Mayor of Engineering to present their proposal – a 70-page scientific study – in order to come up with possible space concession solutions. This unoccupied urban gap was owned of 30% in the municipality of Thessaloniki and 70% in the public company "Building Infrastructure SA". After various actions and a comprehensive letter from the Municipality on the Building Infrastructure, the site was given to become a park.

source: *mmu.academia.edu/GeorgeChatzinakos*

In short, landed commons in Greece have not yet been the subject of systematic study, despite their on-going indirect involvement with them at a theoretical and a practical level. Most attempts to reclaim landed commons do not include cooperation with competent intergovernmental bodies. Within the institutional framework, there is a clear lack of community participatory planning, hence systems of alternative ownership and land use rights cannot easily be integrated into the existing planning system and land policy system. Additionally, the highly elaborated legislative framework, the centralized planning model – which causes a rigid design system – the lack of an active land registry systems, and the concentration of responsibilities on state power are a trammel on the implementation of tools and policies that safeguard the sustainability of landed commons [see Table 2].

Table 2: Greece | Horizontal Reading	
Basic Definitions within the Legal & Institutional System	Common land is mainly recorded as agricultural land. Commons, unless it is owned by a municipality, or a community, or the law does not otherwise specify, belongs to the state and serves the public interest directly or indirectly. The purpose of their creation is to ensure the protection of the residential environment.
Legislative System in support of the Commons	Highly elaborated legislative framework and concentration of responsibilities on state power are a trammel on the implementation of tools and policies that safeguard the sustainability of landed commons.
Planning Policy System	Based on the Napoleonic family, in terms of structure and content, characterised by a high degree of centrality. Complex and contradictory framework, inflexible in its administrative applications. Lack of neighbourhood/ community participatory planning.
Cadastre & Land Registration System	Efforts, on the creation of a cadastral project as a major means of recording land ownership regimes across the entire country, have been fruitless so far. The lack of an active land register results in difficulties in the implementation of tools that support the sustainability of landed commons.
Land Policy & Property Management System	The land ownership status and property rights have evolved gradually. The constitutional evolution of property rights is interwoven with an absolute and strictly individual nature of serving the private interest. Forest areas are exclusive property of the State, rural and urban sites can be private.
Land-Real Estate Taxation Policy	The real estate value used for taxation, expropriation or selling off purposes is assessed through different valuation and pricing methods resulting in contradictions and discrepancies. The new Greek real estate tax system introduced amidst austerity has resulted in many people non declaring their land, which led either to the land appropriation via usability by others or to oldest traditional versions of land use, such as common pastures.
Governance Institutions & Landed Commons	Not yet familiar with the concept of the governance of the commons, nor there is any experience in setting up wider collectives to negotiate urban issues. Most attempts to reclaim landed commons do not include cooperation with competent intergovernmental bodies. Landed commons exist mainly in the form of city movements, guerrilla gardening and self-managed urban gardens.

6 | Conclusions

Revisiting the landed commons discourse of the past decades helps to clarify what approaches to defining commons predominate in the different disciplines. In history, philosophy, sociology, economics, political science as well as geography and city planning, questions about commons' community-based production process are on the agenda all over. Thus, landed commons are being described – on the basis of their historical development – as highly complex and contradictory systems of organisation that never actually disappear, but must always be fought over fresh. Social and political transformations have made landed commons newly relevant, and will have an even exacerbated impact on the urban challenges we can expect to face in the future. Current urban issues, such as the increasing cultural and social segregation, the population growth and/or the decline in European cities, are leading to a state of bewilderment about what purposes can or should be served by common open spaces. These circumstances, in which planners can no longer presume the existence of a supposedly homogenous general common space, but must instead negotiate with diverse groups of users, are fuelling calls for alternative models of producing urban space. Considering these qualities, an updated form of the landed commons could be an urban type of collective use that represents a socio-political and spatial alternative to existing forms of urban space production.

This thesis particularly highlights the importance of alternative ownership land use rights and, in the evolution of the societies, enabling conditions for the sustainability of the commons. These conditions are based on case studies of collective management of landed commons in England and Greece. England holds a long tradition in institutional designs on common pool resources, while in Greece landed commons have not yet been the subject of systematic study, despite their on-going indirect involvement with them at a theoretical and a practical level. The two identifying characteristics of common pool resources – non-exclusivity and deductibility – show that what is considered to be "common" as a "collective resource" depends on the value and institutional system of the time-frame of reference. The hypothesis originated from the case studies, is that state participation does not cause the end of landed commons' institutions, but instead causes a general redefinition of who could use these lands and how these lands could be used. These transformations were not simple top-down impositions, but the results of conflicts and negotiations within local communities and between them and the central government.[219]

[219] G. Bonan, 2016.

Iaione (2015) emphatically affirms that commons are public because they have mainly been put in some public administration's keeping, until now. However, this does not necessarily translates to formal ownership forcedly be public; landed commons can exist either in private or in public hands.[220] He continues by advocating that landed commons "only exist because they are part of a qualitative relationship with one or more subjects".[221] The "common" nature of landed commons comes from the fact they are closely connected to an area's identity, culture, traditions and/ or they are directly functional to social life development of communities settled in that area.[222] Given their common nature, they are characterized by a necessity to guarantee universal access and use and by the inescapable need for involving community members and anybody who has deeply cares for the common goods' survival, care and conservation in decisions and actions that regard them. Mattei (2011: 52), on his point of view, supports that landed commons become relevant as such only if they add "theoretical awareness of their legitimacy to a procedure of conflict, for identification of some qualitative relations that involve them. Therefore, landed commons have come to this way because of presumed ontological, objective or mechanic characteristics that would characterized them.[223]

In the twentieth century, the issue of individual or collective well being of citizens has been primarily addressed in its physical dimension. It was observed that the spatial dimension inevitably influences the quality if citizens' daily life and their forms of interaction and sharing. In fact, cities represent the primary physical space by which we must ensure conditions of individual and collective welfare, exercise of the rights of citizenship and the possibility of coexisting differences. The protection and preservation of landed commons, inextricably implicates with social inclusion policies, and the functionality of the local services respect to the welfare of people who live and are part of a certain community is self-evident. What is also increasingly clear is the connection between welfare policies and spatial dimension. Redistributive inequalities, social conflicts, situations of personal distress manifest themselves in their most dramatic representation in the city. On the spatial level, therefore, the increasing retreat of governmental regulation and provision and a growing privatization of public goods have led to an enlarged resource scarcity in both the environmental and social realms and have prompted calls for more participation, at all levels of society, in economic production processes, as well as in political and planning decisions. In addition, it has manifested actions to preserve and create new open spaces, both rural and urban, that function as landed commons accessible to

[220] C. Iaione, 2015.
[221] Iaione, *op. cit.,* p. 175.
[222] Ibid.
[223] U. Mattei, 2011.

everyone. Movements like ‘Occupy’, ‘Direct Democracy’, or the ‘Right to the City’ amount to collective practices of resistance and appropriation that can also be related to concrete urban space or rural space. In this field of contradiction – between communities calling for increased participation in processes of planning and spatial production on one side, and ongoing privatization of urban habitats on the other side – it becomes even more urgent that we focus on developing and describing landed commons as concrete spatial models capable of being experienced and recognized for the organization of community life.

Examples of collective management of landed commons in Greece are quite distinct from the cooperative management of the respective landed common resources in England, such as Community Land Trusts cited earlier (as paradigms of successful landed commons). In Greece there is a clear lack of community participatory planning, hence systems of alternative ownership and land use rights cannot easily be integrated into the existing planning system and land policy system. Organizations such as CLTs could possibly be developed within the Greek context, but in this case, cooperative governance between citizens and the state is essential. As mentioned, England approaches differently the landed commons as opposed to Greece, which seems to be trying to place rural commons within the urban context in a more ‘untamed way’. Evidently, in England there exists a cohort of institutional frameworks, planning and real estate policies, and land taxation systems in support of landed commons and their cooperative management. Perhaps this is related to the fact that England keeps a long history on the commons’ issue. Thus, all the English case studies included in this thesis analysis share a common feature: their longevity. They are all in place for several years, therefore, their degree of resilience was considerably high. Beyond longevity, however, the English landed commons analysed in this thesis exhibited the active participation of the commoners in their management and governance mechanisms.

Over time, there has been an increased UK policy interest in community ownership and management of land, hence, the governance of the commons become more mainstream, in the form of collaborative governance – a new management paradigm, which brings multiple stakeholders together in common forums with public agencies to engage in consensus-oriented decision making. In Greece, examples of the management of landed commons involve economic actors who do not own private property but provide public services, selling goods and services at affordable prices in convenient public spaces (unless excluded from these spaces by local government), thus, landed commons within the urban context, exist in the form of city movements, guerilla gardening and self-managed urban gardens, also community initiatives, which started as attempts to claim the right to the city, as well as a reaction to the ongoing

privatisation. However, the history of the evolution of commons' governance in general has provided tangible paradigms of commons whose success is based on mutual cooperation between residents and intergovernmental actors. That said, one understands that we need to focus on creating a spatial model capable of collaborating between citizens and local administration.

Overall, in urban areas compared to rural areas, there are fewer common pool resources to be collectively managed; the competition for scarce resources is more intense and the threat of privatisation of – or eviction from – open source or public land is also more intense. This is because, in urban areas, local government should regulate the use of public space but, instead, often colludes with private interests in limiting access. This is not to deny that as cities expand geographically they compete for rural land and resources, but it must be recognised that the definition and the managing of landed commons have to be approached somewhat differently in urban areas than in rural ones. Greece is not yet familiar with the concept of the governance of the commons, nor there is any experience in setting up wider collectives to negotiate urban issues, as (unlike England) no policies in support of landed commons have been created. Most attempts to reclaim landed commons do not include cooperation with competent intergovernmental bodies. However, this does not really mean that landed commons have not appeared yet in Greece, nor that there is no need to create such specific policies. There have certainly been a number of actions that directly or indirectly and to a significant extent affect the issue of landed commons. The sum of these elements, one might argue, is a *de facto* common's policy. For others, the absence of a policy could be politics themselves; a *laissez faire* policy. Additionally, and contrary to England, the highly elaborated legislative framework and the concentration of responsibilities on state power are a trammel on the implementation of tools and policies that safeguard the sustainability of landed commons. The adoption of German- and Napoleonic-family models, recommends mainly an issue of formal co-optation of planning tools that cannot be effective enough at a practical level. In practice, the landed commons' acquisition tools are being implemented inadequately for a number of reasons, such as the governance system, which appears particularly centralized, in the form of a holistic public intervention. What is missing is mainly the transfer of responsibilities to the municipalities and the collaborative governance with the individuals, which accordingly entails the autonomy of adopting provision that include the implementation of tools in support of landed commons, which should be in line with the guidelines and the instructions from higher levels of administration. This enhances cooperation and participation between all levels of planning. Planning holds a dynamic, intrusive, character and the administration has the ability to impose the choice of the least

onerous means of acquiring communal spaces for both property and financial interests, and (by choosing either institutionalized or informal tools) balance the private and public interests.

To a large extent – while social concerns have long appeared – the absence of actions and social initiatives that would strengthen the demand for civilian cooperation with intergovernmental bodies is maintained by the prevailing view that Greece cannot prosper such cooperation, as the state is not in favour of the citizens. This has led to the occupation of public spaces, with squatters mainly claiming the formation of their own way of life, whereby individuals become social subjects. The practice of occupation is, thus, in the direction of creating collective forms of communication, habitation and action. However, as they do not hold established expression in the physical space, they are characterised by a strongly nomadic, hubrid, occasional and ephemeral character. Nevertheless, until now, there are few attempts that seek to articulate the spatialities of landed commons within the multiple systems of governance and land ownership. In Navarinou Park, for example, a different approach for free space and green space in the city is attempted, as far as the organization of the space itself and its functions are concerned. At Platonos Academy, a different structure of economy and the relationship with outdoor space and the community is tested. Regarding the occupation movement, there are two major trends in general, of the movements and theories in regard to landed commons. One argues that landed commons should seek to develop and expand in order to create a large alternative enclave that will gradually lay the foundation that undermines the state and the market, while maintaining autonomous. The second trend suggests that the development of micro-operations in a larger system requires, nowadays, state interventions claiming for funding and favorable regulatory arrangements, as well as a market-to-market relationship. In Greece, the first trend is currently prevailing, although experiences from abroad have shown that the possibilities for autonomy of the landed commons' ventures are almost non-existent, thus a cooperative relationship is required, with a parallel effort to influence the state.

Today, landed commons play a central role in the practices and performance of place-based social identities and community values. Distinctive forms of landed commons work to establish place-based senses of community and can be mobilized to maintain and contest individual and collective identities, and to advance the attainment of political or economic goals. The idea of land commonly owned and managed speaks to a 21st-century sensibility of participative citizenship, and peer-to-peer production. In theory, at least, landed commons are full of radical potential to implement social innovations in European city-regions. In the current contradiction field – between communities calling for increased participation in processes of planning and

spatial production on one side, and ongoing privatization of urban habitats on the other side – it becomes even more urgent that we focus on developing spatial models capable of being experienced and recognized for the organization of community life. One key element of successful intervention aims at favouring the creation of forms of public-private non-profit partnerships for the use, protection and care of the landed commons.

Therefore, in the face of the new features of the contemporary city, seems to emerge even more the need to take action on the multiple dimensions of landed commons, through the detailed survey of its forms and the recognition of the value of landed assets within the complex planning process. The declinations and the different speeds with which United Kingdom and Greece embed landed commons are due to the diversity of these specific European landscapes, all of which cannot be planned and managed in the same way at the various administrative level involved in the commons' governance, and the planning traditions. Issues related to the efficient management of landed commons and the achievement of their long-term sustainability have been occupied by scholars of various specialities over the last decades. In order to reinforce their efficiency, it is necessary to establish an appropriate governance structure that defines, distributes and controls land ownership and land use rights on the stakeholders concerned. Clearly, the institutions developed in historical landed commons were unique in expressing the specific social, cultural, political and economic conditions of the time, and so they can hardly be tranferred or reporoduced over time. However, these experiences can be a solid basis for discussing, designing and implementing new structures for the governance of landed commons. One of the success factors on that is the existence of a formal institutional (legal) framework that would clearly define property rights and enforce them by providing incentives for proper use, management and sustainability of landed commons. This thesis aimed to contribute to the discussion about the role of landed commons within the European governance system, specifically England and Greece, and by analysing their institutional design it intended to demonstrate that land use rights should be seen as alternatives to the risks and uncertainties of the new land-ownership and market environment, having the aim of adapting spatial strategies to their demands and stabilizing social and economic relationships.

Obviously, different understandings of a common resource lead to difficulties in governance,[224] thus, cooperation from the bottom is increasingly necessary to deal with the issue of landed commons and govern processes that public authorities are no longer able to face and solve. This often happens because of guilty inertia, or even sometimes because of evident inability and lack

[224] Parker & Johansson, supra note 1.

of resources, but more often because the problems are so complex, branched and rapidly evolving to prevent the public traditional administration from gaining any more skills, resources, knowledge or speed to provide an adequate response to the needs of an ever-changing society. Thus, politics and public administration should urgently be thinking their role and focus on the community interests. The management of landed commons would arguably be best achieved by a local, community-based, body supported by intergovernmental institutions. The reference model could be found in the English experience of Community Land Trusts (CLTs), which involves contractual or institutional forms of collaboration between different local stakeholders (i.e. individuals, associations, NGOs, local businesses, citizens, residents, merchants, estate landowners etc) and with local authorities. Institutional arrangements for land use policies should keep a balance between protecting the interests of the landowners, local priorities and the wider public interest, and between short-term priorities and possible future needs. At present, private incentives, in local land markets and planning institutions, are not always aligned with the declared objective of common land policies. This makes conflict and delay endemic in the governance system. Land use and planning policy systems, as well as the fiscal system (particularly the local tax system), can also contribute to use and manage landed commons more sustainably and to unlock greater value for people and the economy, now and in the future.

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