

## 8: Revisiting Demsetz

### Contextualizing Community–Private Ownership in Western India

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#### Introduction

A discussion on commons involves a property rights framework and therefore in a conversation between economists and anthropologists, one is compelled to encounter Demsetz who has drawn as much on the work of anthropologists as he has of economists to set up his theory of property rights.<sup>1</sup> Demsetz (1967) sets out the economic rationale for the existence of common property and under what circumstances private property rights would replace them (state of technology, market-access and resource value). We will briefly re-visit his work before taking up questions in our own geographical proximity – in Goa, India. In the following section we examine the literature on property rights, redistribution and sustainability. We then describe the dynamics of colonial state extraction, its impact on rural governance structures followed by changes that occurred in the post colonial period before discussing possible explanations for the change in property rights regime in Goa. We conclude with a discussion on the policy implications in the context received theories of common vs. private property and sustainability.

#### *Property rights: common and private*

Demsetz (1967) draws on the anthropological studies of private property evolution among American Indians in the sixteenth and seventeenth centuries. He draws a direct link between the growth of commercial trade in fur and the establishment of private land rights among Native Americans who had traditionally managed hunting grounds as common

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<sup>1</sup> In this schema he precedes a line of distinguished economists who have used anthropological insights to illustrate outcomes in economic theory (see Ray: ch. 4, this volume).

property. Commercial trade raised the value of furs and led to increased hunting. Free hunting, which was previously for self-consumption, now catered to an external market, leading to hunting beyond individual needs of the tribe. This necessitated the creation of private hunting grounds by an arrangement akin to a seasonal allotment system.

Private ownership, however, developed only in those geographical areas where it was economically viable to establish private hunting grounds. Not all areas had extensive supply of fur producing animals (which had a high market price). Some had grazing species requiring large grazing lands for survival. In these cases, the cost of private ownership of land outweighed the benefits and they displayed less developed forms of private land ownership (Demsetz 1967: 353).

The argument suggests that common property will not be able to internalize all the externalities which establishment of private property can. Communal property would not be able to follow a “pay-to-use-the-property” system just as policing expenses may be too high to follow a “pay-him-not-to-use-the-property” system (Demsetz 1967: 355). He concludes that the existence of a certain form of property rights is linked to: (1) existent technology, and (2) market access and values – which for reasons of convenience we will call the Demsetz conditions.<sup>2</sup>

These conditions, however, leave open spaces: Can commons exist even with changes in technology, market access or market value of products? Can communities preserve common property by “pay-to-use-the-property” system or find frugal ways to follow a “pay-him-not-to-use-the-property” system. Can non-market, non-technological changes cause a conversion of common property to private property?<sup>3</sup> And when commons are converted to private property under non-Demsetz conditions does it lead to better ecological outcomes?

At this point we propose to link up the debate of common v. private property with another debate in economics which also has ecological traces – heterogeneity and sustainability. Does asset re-distribution (specifically land or tenancy reforms) lead to an increase in efficiency and cooperation (sustainability) among agents?

### *Land reforms: efficiency, equity, and sustainability*

Asset redistribution, especially land reforms, evokes immense passion in the social science discourse as it does in the arena of electoral politics. The traditional studies in asset distribution are largely linked to land issues because in agrarian societies land has an extra-economic value (Bhaduri 1973).

One view which has received support opines that small farms and productivity are inversely related (monotonically). This empirical observation therefore creates the justification for land (tenancy) reforms on the grounds of both efficiency and equity gains (Banerjee 1999; Bardhan 1973). Farm Management Studies in India as well as other countries have found

<sup>2</sup> See also Deininger and Feder (1998) for a similar argument.

<sup>3</sup> The inherent instability of common properties has been suggested by Hardin (1968) and the limits of collective action (that would be required to maintain common properties) has been posed by Olson (1965). However, Ostrom (2000) points out that despite such strong arguments suggesting failure of commons and collective action, the world around us has numerous instances to indicate the contrary.

the inverse relationship to be empirically valid (Berry and Cline 1979; Besley and Burgess 2000).<sup>4</sup>

The argument revolves around empowerment of asset-less families who farm the land with family labor as opposed to the landed (or absentee landlords) who till the land with the assistance of farm labor (who could be either wage labor or share-croppers). Agency theory suggests that transaction costs (incentive, monitoring and supervision) in non-family based farms could be fairly high, especially in the case of absentee owners and therefore such production systems would have low levels of efficiency (Deininger and Binswanger 1999; Ray 1998).

In a non-family based system, where tenants or sharecroppers are involved, there is constant bargaining between the tenant and landowner over share of produce and distribution of risk. Technology and the mechanism of surplus extraction by the state is a crucial determinant in the balance of power between cultivators, tenants, land owners and the state apparatus.<sup>5</sup>

As the burden of risk is shifted on to the tenant/cultivator, the economy would move to a low-level equilibrium trap. The sharecroppers would put in less effort and the expected output would be lower. In such circumstances, a move from tenant-based farming to owner-based farming is expected to improve yields (and productivity) justifying land reforms (Banerjee, Gertler, and Ghatak 2002). This also ties in well with the property rights school argument that ownership provides adequate incentive for the owner to optimize production and reduce “easy-riding” (Coase 1960).

### *Equity, privatization, and sustainability*

Much of this literature, however, does not examine the impact of redistribution on ecological sustainability and the problem of institutional transition.<sup>6</sup> When the mode of asset re-distribution is by administrative fiat or by populist political measures, the resultant situation could induce incentive problems. While on normative grounds asset re-distribution may be desired, what is of concern is the ecological consequences especially in fragile zones when common property is privatized and endogenous institutions are replaced by new inorganic ones in which the incentives for conservation may not be optimally configured (Jodha 1986; Mukhopadhyay 2005b).<sup>7</sup> The utility maximising behaviour of lobby groups to use the democratic state with universal franchise to further its own goals needs to be brought into this analysis of CPR.

<sup>4</sup> Assunção and Braido (2005), however, find that the empirical observation of inverse relationship is weak when input use is accounted for while testing for productivity gains.

<sup>5</sup> Evidence from India suggests that the emergence of a monetized economy and a shift in the revenue collection in monetary units during the colonial era changed the character of risk sharing between the state (through its intermediary revenue collectors) and the cultivator. There was a shift from a system of risk and product sharing to monetary rent where the tenant/cultivator bore the entire risk while the landowners (and the exchequer) through a fixed rent ensured their own revenues (D’Souza 2002).

<sup>6</sup> There are exceptions like (Holden and Shiferaw 2002) who argue that security of tenure is a pre-condition for agents to undertake conservation measures.

<sup>7</sup> This is similar to what Agrawal (forthcoming) refers to as the romantic view of commons where an apolitical framework of analysis is used. Role of social institutions such religion and caste could impact on cooperative behaviour because there are side-payments involved (Ray forthcoming).

This is familiar domain for social choice theory – assume that group A and B are contesting to achieve goal X. By themselves they would not be able to achieve it unless they enlist the support of group C who are not interested in outcome X per se but would like to achieve outcome Y which is currently not on either A or B's agenda. Outcome Y however would require institutional change and therefore needs either A or B to push for it. Group B, presumably the new comer in this business promises outcome Y for group C if they support them (B) in achieving X.<sup>8</sup> So both B and C go home happy with respective outcomes X and Y to the detriment of A. If institutional reform and change in property rights regime can be achieved by legislative fiat then all a significant group has to do is ally with another one (with which it has no apparent conflict of goals) to achieve its desired outcome at no economic cost to either group. Political processes involving universal franchise can therefore be used for democratic reform but these need not necessarily lead to long run ecologically sustainable outcomes.<sup>9</sup>

The effect of such changes is compounded when there are exit opportunities. For example, after land redistribution or tenancy reform alternative economic opportunities may emerge which could entice the farmer off the field. Agriculture may no longer provide sufficient incentive to the new beneficiaries while the old owners stand disenfranchised (Mukhopadhyay 2005b). If there are high initial costs for the collective good then small farmers in the presence of an imperfect credit market would face a low productivity cycle – the so-called Olson effect (Baland and Platteau 1997). It could defeat the very purpose of tenancy reform – to increase efficiency of farm output due to reduced incentives of the gainers in farming. The effective land area under agriculture may also decline along with the potential increment in productivity. It might impede adoption of new technology and thereby reduce the long run growth in agriculture. Two possible consequences of reform could be reduction in (potential)<sup>10</sup> output and conservation.

Dayton-Johnson and Bardhan (2002) suggest that the relationship between inequality and conservation could be non-linear – an “inverted-U” – similar to the expanded notion of the “Kuznets” curve. When wealth is more equally distributed we might witness greater cooperation subject to a threshold. Those below a given threshold level of wealth will have a dominant strategy of non-cooperation while others above the threshold level would cooperate if they find others adopting a cooperative strategy. A cooperative outcome would fail if the proportion of those below the threshold is high (Baland and Platteau 1997). Sethi and Somanathan (ch. 7, this volume) suggest that cooperative outcomes are more likely when group size is bigger because the number of reciprocal agents (as opposed to utility maximizers) would be greater thereby increasing the possibility of achieving a critical mass of co-operators.

<sup>8</sup> It is being assumed that there is no conflict in the achievement of X or Y.

<sup>9</sup> When seen in conjunction with Olson's (1965) argument that emergence of collective action, especially in large groups is difficult if not impossible, it is no surprise that an existent equilibrium disturbed by exogenous factors could have an adverse impact on collective effort.

<sup>10</sup> We use term the potential because in the new scenario there may not be an actual decline in output. However, due to non-adoption of new technology, the potential gain in production is compromised and the economic loss, therefore, is the non-attainment of a feasible higher output. The lower financial strength of new beneficiaries could also affect the amount spent on soil conservation thereby affecting long term sustainability.

Would a change in ownership in any way alter outcomes? A large part of the redistribution debate relates to reallocation of assets or goods in the individual domain even if mediated by the state. But is a similar affect to be expected if this redistribution involves common property? What happens to sustainability when we move to greater homogeneity by privatising common property?

Contrary to received wisdom (at that time) on commons, Demstet (1967) and Alchian and Demsetz (1973) argued that even when there are externalities, privatization is an efficiency enhancing measure.<sup>11</sup> Owners of the resource would be able to internalize all the costs and benefits. Much of the external costs, which are not accounted for under community ownership, will be internalized under private ownership – especially individual ownership.<sup>12</sup> If there is a polluting agent in the neighborhood, then as long as there are property rights protecting the resource being polluted, the cost of that pollution would be internalized. The Coase theorem informs us that it does not matter what the initial allocation of resources or assets is, whether a state or market exists or not, because rational individuals will reach an efficient outcome by a process of bargaining, as long as transaction costs are low.<sup>13</sup>

As far as the management of natural resources is concerned, especially in developing countries, experience shows that privatization may not always lead to efficiency gains, especially when contracts are incomplete, or there are non convexities (Seabright 1993; Grossman 2000). Even when property rights allocation is secure in private hands, if the private discount rate exceeds the social discount rate, degradation would proceed quicker than socially desirable (Dasgupta and Maler 2004). Under such conditions, a self-governing local community with commons might have a more efficient production locus than if private property rights are established (Ostrom 1990).<sup>14</sup>

We explore these issues in the context of the agrarian transition in Goa in the last four decades and study a traditional village institution called the *comunidade* (or *gaunkari*), and its role in maintaining ecological sustainability<sup>15</sup> in Goa, a small coastal state in India. We take a bird's-eye view of four and a half centuries of colonial rule (1510–1961), four decades of post-Independence phase and attempt to understand the impact of institutional change on preservation of public works that contribute to soil conservation.<sup>16</sup>

<sup>11</sup> “If private rights can be policed easily, it is practicable to resolve the problem by converting communal rights into private rights. Contrary to some popular notions, it can be seen that *private* rights can be socially useful precisely because they encourage persons to take account of *social* costs” (Alchian and Demsetz 1973: 24, emphasis in original).

<sup>12</sup> This is in contrast to the arguments posed favoring social cost benefit analysis as a superior method of ranking projects than private cost benefit analyses which do not account for externalities that private may create.

<sup>13</sup> Coase (1960) becomes relevant since Arrow–Debrue outcomes hold in the absence of externalities.

<sup>14</sup> Agrawal (forthcoming) and Ray (forthcoming) in this volume summarize the extensive literature on the conditions necessary to sustain collective action and the interested reader is referred to these papers.

<sup>15</sup> By ecological sustainability we imply the maintenance of recovered lands in their current status of agricultural land use and by conservation we imply undertaking protective measures (embankment maintenance) from unintended flooding by tidal waters (similar to Holden, Shiferaw, and Wik 1998).

<sup>16</sup> Goa was a Portuguese colony till 1961 whereafter it joined the Indian union. In 1987, Goa received statehood (after being a Union territory in the interim period).

### *Comunidades as a land management institution*

Land management in rural Goa has traditionally been the responsibility of a community institution called the *comunidade* (or *gaunkari*) one of the oldest endogenous resource management institutions (not dissimilar to the village republics in many other parts of India, e.g., Wade 1992).<sup>17</sup> These village-level organizations owned the cultivable lands of the village and leased them out to individual cultivators by periodic auction. The highest bidder would acquire the right to till the auctioned parcels for the period of the lease (Pereira 1981).

The land leases were transferable by inheritance but there were restrictions on transfer by sale or change of land use for purposes other than contracted with the *comunidade* at the time of the lease (which constitutionally had to be agricultural).<sup>18</sup> As tax demands from the colonial state increased, as probably did the demographic pressures, the barren and uncultivated lands on the periphery of the village were leased out for a fixed rent. In some areas after 25 years, the lessee was entitled to ownership of the land. The perceived reason for this is on the one hand to provide an incentive to the farmer to develop the land and on the other to allow the village to increase the area of productive land (D'Souza 2000: 114).

The *comunidade* supervised all the lands of the village under the jurisdiction of the village associations and the rents collected were used for public works. Surplus rent was distributed equally among all *gaunkars* as dividends (*jonos*). Membership to the *comunidade* was, however, bounded on two counts: gender (male) and descentence. Only male descendants of all original settler families were entitled to be *gaunkars*. A major part of their assets were the lands (*khazans*) recovered by reclamation from marshes and the tidal waters with the help of *bunds* (embankments).<sup>19</sup>

In later years the *gaunkars* allowed inclusion of other skilled and semi-skilled persons in the *comunidade* for community development. Those who financially helped the *gaunkars* were called "interested participants with limited interest" (*accionistas*). Others were also absorbed as groups or communities and given rights over certain earmarked lands (*componentes*) and could be of either sex. This presumably was permitted on two strategic counts: one to give the institution social stability and also to keep membership from falling below the minimum required.<sup>20</sup>

<sup>17</sup> The traditional village organization of Goa was called the *gaunponn* – *gaun* (village) and *ponn* (organization), and renamed as *comunidades* by the Portuguese. The *comunidades* were responsible for construction and maintenance of roads, drainage and irrigation systems, public security as well as judicial and religious institutions (Pereira 1981). The *comunidade* system was substantially different from the *zamindari* or *jajmani* system seen in the British part of colonial India.

<sup>18</sup> The sale of *comunidade* land apparently could take place only by way of public auction of its entire property and assets when the respective *comunidade* became bankrupt, other exceptional circumstances, or when the membership fell below the minimum required (Pereira 1981).

<sup>19</sup> In 1967, the total land area owned by the *comunidades* was estimated to be 36,624 hectares. The amount of reclaimed (*khazan*) lands was estimated to be 18,000 hectares. Of this, the *comunidades* owned 6,386 hectares while private ownership was about 2,500 hectares. The remaining 9,000 hectares belonged to either religious institutions (temples and churches) or the government. The *comunidades* also controlled 440 hectares of rivulets in seven talukas (GoG 1967a: 306; 1992: 26).

<sup>20</sup> A cluster of villages, for purposes of administrative efficiency was organized into a *Mahal* which was supervised by a judge and a council. In Tiswadi e.g., the *mahal* council consisted of 8 villages and in Salcete it consisted of 12 villages. Some believe that before villages became independent units, the *mahals* acted as the lowest tier of administrative unit (Velinkar 2000: 130).



There is little known about the origins of the *comunidades* and the early history is unclear. In the pre-Portuguese period the *comunidades* are believed to have enjoyed considerable autonomy in administrative, financial as well as judicial powers. Two possible reasons could be cited for the autonomy enjoyed by these local institutions. First, most pre-colonial rulers were not based in Goa and so indulged in revenue farming, which were also auctioned as a tax on gross produce. The *comunidades* were only responsible for fulfilling the tax demands of the ruler and were left untouched in their mode of functioning thereby acquiring relative autonomy.<sup>21</sup> Second, these rulers did not last long enough to change the basic character of these institutions or interfere with its internal functioning.<sup>22</sup> The Portuguese colonization lasted for 450 years (1510 to 1961) and had significant impacts on the *comunidades*.<sup>23</sup>

In the next section we discuss how the fortunes of Portuguese colonial rule impacted on the *comunidades*.

<sup>21</sup> Over time as the complexity of the *gauponns* increased so did the rules and regulations. From customs and conventions emerged a set of rules and regulations called "Mandavoli." It set up the rents, irrigation charges, distribution of rents, personal share of each *gaonkar*, grants for temples, and areas constituting each *vangor* (clan). It is said that in the early times, every decision of the *gauponn* was taken unanimously. If there was a single dissenting voice (veto), the item was dropped. However, subsequently, this veto power seems to have been eroded by fresh regulations issued in 1745 (Velinkar 2000: 129).

<sup>22</sup> A brief summary of the different kingdoms which ruled over Goa and Konkan is listed below (Xavier 1993).

*Until mid-thirteenth century: Kadamba rule*

Mid-thirteenth century to 1294: Yadavas (of Devagiri) who conquered the Chalukyan Empire

1294 to 1367: Allauddin's invasions into South India

1367–1469: Vijayanagar empire brings Goa under its fold

1469–1488: Bahamani kings (Mohammed Shah III)

1488–1510: Adil Shah (Split in Bahamani dynasty, Adil Shah gets Goa)

1510–1961: Portuguese colonial rule.

*Old conquests*

1510 March 1: A. de Albuquerque takes over Goa. Yusuf Adil Shah retaliates and takes back Goa.

Nov. 25: A. de Albuquerque retakes Goa. Initial conquered area: Island of Goa and the 4 adjacent islands of Chora (earlier name Chudamani), Divar (Dipavati), Vamsin and Jua.

1543: Bardez and Salcete added to Portuguese control

*New conquests*

1763: Ponda (from the Marathas)

1764: Kepem and Canacona (from rulers of Sonda)

1781–8: Pernem, Sattari, and Bicholim (from Bhonsales of Sawantwadi).

<sup>23</sup> The financial obligations of the *comunidade* apparently were limited till they sought help from the Kadamba rulers to stop infiltration of Muslim invaders by the sea route in 1054. In return they agreed to pay the sovereign a protection tax called *coxi vordo* – tax given of free will [GoG 1964: 23]. During the phase when Goa came under the Bahamani dynasty (1469–1510), there seems to have been a steady rise in imposition of land taxes. In fact, when Afonso Albuquerque was seeking support for his campaign against Adil Shah, he promised to bring down the taxes if the local population helped him (de Souza 1981: 120). Soon after establishment of the Portuguese reign, Afonso Mexia (Superintendent of Revenues and Taxes) through the *foral* of 1526 established a fixed rent for the 31 villages of Tiswadi which had to be collectively paid. The responsibility of payment lay with the 8 main villages who had to pay up even if there was default by other villages. In case any village defaulted on the payment, the land lease of the village was auctioned but the *comunidades* did not lose their lands ownership rights and could reclaim their right to auction lands by payment of full dues (D'Souza 2000: 112).

*The colonial era (1510–1961)*

The transition in *comunidades* has to be understood in the context of the politics of colonization and inquisition – demands for administrative revenue and support for religious institutions.<sup>24</sup> Afonso Albuquerque established the Portuguese reign in 1510 and it lasted till 1961 – about 450 years.<sup>25</sup> The Portuguese empire followed a rigorous religious policy in all its colonies during 1540–1640 as part of its arrangement with the Roman Catholic Church and the main support for the new Christian institutions came from the state.<sup>26</sup> Through the sixteenth century to mid-seventeenth century the Portuguese sea-borne empire controlled the sea trade between Asia and Europe.<sup>27</sup> The revenues it earned as customs duties in Goa were able to substantially contribute to its liabilities for meeting church expenses.

After the mid-seventeenth century the colonial government went through a difficult financial period. Portugal lost its sea supremacy to the Dutch, leading to a decline in revenues from customs duties. It was also engaged in frequent wars with other rulers on the

<sup>24</sup> This found reflection in most policies of the government including internal administration of the *gaunkaris*. Interference in the functioning of the *comunidades* (in 1573) went to the extent of forbidding *gaunkars* (of Salcete) to convene meetings or pass resolutions without the presence of Christian *gaunkars* (Xavier 1993: 67). Some authors like D'Costa (undated: 46), assert that the emergence of private individual property in Goa was a contribution of the Portuguese colonial policy. While there is little historical evidence to support this assertion, it is more likely that the proportion of private property expanded during the Portuguese colonization. The first attempt by Afonso de Albuquerque to integrate the Portuguese into the Goan society was by way of encouraging inter-marriages between Portuguese soldiers and widows of slain Muslim and Hindu soldiers. In addition to the land grants, Albuquerque is said to have gifted a horse and a house. Prior to this private property was said to be limited to the house plot (Xavier 1993: 7). While he did not interfere in the working of the *gauponns*, he allowed those villages which made land grants to these couples to forgo their *coxi vordo* (voluntary contribution to the king). The second big boost to private property rights came during the period of the Inquisition. The state confiscated (1) all temple lands, (2) private lands of those who did not convert to Christianity, and (3) Christians who did not conform to the edicts of the Inquisitorial authority. One part of the confiscated lands went to Christian missionary institutions as private property grants. A second part was given to new converts to seek their cooperation. A third part was allocated for tenancy.

<sup>25</sup> The Portuguese occupation can be divided into two distinct phases, separated by almost two centuries. The sixteenth-century occupation (Old Conquest) of 3 *talukas*: Ilhas, Salcete, Bardez; and eighteenth-century occupation (New Conquest) of 6 additional talukas: Pernem, Sanquelim, Ponda, Sanguem, Quepem, and Canacona.

<sup>26</sup> In 1540 all the temples of Ilhas taluka were destroyed and soon after the Portuguese governor wanted to take over these lands in Ilhas taluka for the financial support of the new Christian organizations that emerged in Goa. The temples were important beneficiaries of *Comunidade* lands. The then Acting Governor of Goa called for a consultation with the leading *gaunkars* of Ilhas regarding the future of the temple lands. The temple lands earned about 2,000 (silver) *tangas brancas* and obviously attracted the attention of the revenue offices of the colonial government. The *gaunkars* suggested that since these lands belonged to the village *comunidades* the lands should revert to the respective villages. In February 1545 the Governor, Martin Afonso de Souza transferred ownership of these lands to the College of St Paul. The apparent reason was that these temple lands were not taxed. The villages however remained saddled with the payment of the tax of the now confiscated temple lands despite losing their temple lands. However, a settlement was reached whereby the lands remained with the village but the rent was passed on to the Catholic institutions for their maintenance (Xavier 1993: 123).

<sup>27</sup> In 1574, the total land revenue of the Portuguese colony (Old Conquest areas of Island of Goa, the *talukas* of Ilhas, Bardez, and Salcete) was 88 million *reis*. Of this amount, 15.5 million was spent on churches. Interestingly, there seems to be no evidence of any religious tax till 1640. By 1707, we find evidence of villages being forced to meet expenses of church repairs. In 1745, a half *tithe* was re-introduced in addition to the existing taxes. Shastry (1987: 38) points out that earlier when this half *tithe* was imposed on village communities, they protested. The half *tithe* was repealed but an additional tax of 5 percent was introduced on the quit rent (*foro*).



mainland. Both these contributed to the decline in financial capability of the colonial government in Goa. It is during this time that we see an increasing financial reliance of the government and the Church on village communities (Shastry 1987: 35; Souza 1981: 119). By the mid-eighteenth century the colonial government had taken control of the finances of the *comunidades* and no expenditures could be undertaken without sanction of the government except for funds allocated to “divine cult and church repairs” and for emergency repairs of the embankments (*bunds*). The *comunidades*, in order to maintain their control over lands and meet the tax demands had to resort to borrowing both from members of the village as well as outside which led to the creation of a category of *associantes* who were not necessarily *gaunkars* but now acquired a stake in the financial well-being of the *comunidade* with the issue of shares that earned dividends.<sup>28</sup>

There was constant acrimony between the state and the church too regarding the distribution of resources that each could get from the village communities.<sup>29</sup> The local government would often complain to the crown that churches were undertaking unnecessary repairs and imposing the costs on the villages which were therefore unable to pay state dues. The extensive tax imposed and the massive withdrawal of resources from the *comunidades* in the eighteenth century left them severely indebted.<sup>30</sup>

<sup>28</sup> *Comunidades* raised money and resources from *gaunkars* as well as *foreiros* (later settlers who could not participate in the village administration) and were issued *tangas* (shares) in exchange for the loans. These shares were non-transferable till the seventeenth century (GoG 1964: 25). Based on the decree of 1880 (and Regulamento 1882 executed in 1888), all alienable claims on *comunidades* such as *tangas*, *melagas*, *arqueiras*, etc. (different forms of *interesses*, financial interests or claims) were converted into shares of only one type having a nominal value of Rs. 20 in 1882 (GoG 1967a: 43 and Pereira 1981: 41). Shareholders still did not get equal status as *gaunkars* in village affairs especially in leasing of *comunidade* plots which at that time could only be leased by the *gaunkars*. In 1904, under pressure from the *culcharins* and *cuntocares* (outside shareholders who were not original descendants of *gaunkars* but admitted to the *comunidade* later), the government issued a new code whereby they acquired equal status with the *gaunkars* as regards lease of plots belonging to *comunidades* (GoG 1967a: 43, 53). In June 1735 the Portuguese government issued new rules by way of which non-*gaunkars* (outsiders: *cuntocares*) were allowed to bid for the lease of paddy fields but only through the *gaunkars*. In case of disputes between the *comunidades* and their members, the government would adjudicate.

<sup>29</sup> The reasons for acrimony were also because the state government suspected that the church officials were colluding with groups of *gaunkars* who used this route to siphon off monies of the *comunidades* for their own betterment. Being assigned for “divine cult,” this money was not taxed by the state nor could the allocation be questioned. This phenomena became so widespread that in 1711 a vice-regal order was passed whereby all village resolutions dealing with financial allocations had to be approved by the Viceroy’s office. This was ratified by the King of Portugal in 1719 (Shastry 1987: 41–2).

<sup>30</sup> The Island of Goa had an accumulated debt of more than 425,000 *ashrafis*. The annual interest was estimated to be 21,000 *ashrafis* while their annual income was estimated at 155,000 *ashrafis* (Shastry 1987: 43). Even though the *comunidades* faced impoverishment, the church organizations became increasingly prosperous. In 1759, some of the church organizations gave loans totalling 350,000 *xerafins* to the General Assemblies of village communities as well as individual village communities to meet their tax obligations to the colonial state by mortgaging their lands (de Souza 1981: 123). Trading was banned as far as the religious orders were concerned. However, under guise of exchanging surplus, members of the church engaged in trading and this helped the church accumulate large assets. But due to restrictions on their trading activities, they concentrated their efforts on the domestic economy – especially the village lands. The Jesuits were able to substantially increase the output of the lands they cultivated. The church had three sources of revenue: (1) endowments and legacies including its profits from shares it held in the *comunidades*; (2) profits from participation in trade; (3) profits from farming.

As *comunidades* became economically burdened with increasing taxation *gaunkars* started trading on communal lands. They framed rules whereby the communal lands could only be leased to *gaunkars*. They would then acquire tenancy rights over these fields at nominal charges and sub-let them at higher rents (called *Alca*). A whole set of “middlemen” emerged who survived on *Alca* and 90 percent of the land came under tenant cultivation D’Costa (undated: 51).<sup>31</sup>

Data available for the decade prior to implementation of the Tenancy Acts indicates that these institutions were able to disburse dividends to their members after allocating for embankment maintenance (GoG 1967b: annexure no. 8, 22–3). In the next section we take up the transition of the land management system in the post-colonial period.

### *The post-colonial period (1961–)*

Goa joined the Indian union in 1961 and this marked a significant departure in the dynamics of local governance that followed. Over time, the structure of the village had changed and the number of tenants and laborers had increased in the village and therefore the *comunidade* as a village unit of governance had become non-representative. Decision-making in a democracy could not justify the sustenance of a non-representative institution to manage village affairs involving both *gaunkars* and non-*gaunkars*. The *panchayat* system, which was prevalent in the rest of India when Goa joined the Indian union, was introduced in Goa in 1963–4 and this encroached upon the jurisdiction of the *comunidades*. The *panchayat* was designated to be the local government institution in place of the *comunidades*.

Issues of land distribution (security of agricultural tenure) became significant, especially after Goa joined the Indian union in 1961. The demands for land reform and “land-to-the-tiller” were made part of the change in the institutional structure of governance. The popular elected government riding on a wave of reformist agenda abolished the annual auction of lands owned by the *comunidades*.

It legislated to give security of tenancy rights, stopped eviction of tenants and gave the *Mundkars* the right to buy their house sites (the Goa, Daman, and Diu Agriculture Tenancy Act 1964, the Goa, Daman, and Diu Mundkar (Protection from Eviction) Act 1975).<sup>32</sup> To

<sup>31</sup> By 1735 (*Regiment*) there is evidence of existence of arbitrators which is indicative of disputes regarding rents (D’Souza 2000: 117). The *Assento da Relacaco* (1786) records discussion about conflict resolution between the crown and village communities. These disputes must have been quite widespread as the Decree of 1836 abolished the post of Village judges (which ended all judicial powers of the *comunidades*) and placed judicial responsibility on the district judge (D’Souza 2000: 118). The dynamics of the village organizations is reflected in the series of official notifications that were issued. After the *Regiment* of 1735 and the *Assento* of 1786 came the *Regiment* of 1871 (8 articles), Decree of 1880, Regulations of 1886 (465 articles), Code of *Comunidades* 1905 (750 articles), Code of 1933 (873 articles) and finally the Code of 1961 (660 articles). In 1905 the agrarian chambers were abolished and the powers of the chambers were transferred to the Administrator of village *comunidades* (D’Souza 2000: 118–20).

<sup>32</sup> According to the Royal Decree of 1901 (24 August) the *mundkar* is defined as “an individual residing in a dwelling settled in another’s rural property mainly with the aim of cultivating or for looking after the property” (quoted in GoG 1967a: 283). The *munddcarato* system prevailed largely as a verbal agreement between the landlord and *mundkars* and sometimes as unwritten conventions followed over generations. Properly drawn up contracts were rare (GoG 1967a: 282).

substitute the *comunidade* and its responsibilities with a new beneficiary institution, formation of a Tenant's Association was made mandatory as per the Tenancy Act (1964) and Rules and Regulations (1975). These laws completely altered the relations between the state–local governments and the power structure within the village. The role of the *comunidade* declined as its financial powers were withdrawn. There are at present 223 *comunidades* in Goa however they are a mere shadow of their past.

The Tenants Associations, which on the other hand were state engineered, did not deliver in terms of provision of public goods – maintenance of embankments for soil conservation. Of the 138 Tenants' Associations reviewed by the Agricultural Land Development Panel in 1992, the majority were found to be defunct (GoG 1992). Unfortunately, the *panchayats* which have universal membership have no direct incentive to take over the agrarian tasks of the *comunidades* nor do they have the financial buoyancy (Mukhopadhyay 2005d). This resulted in reduced maintenance of the embankment structures even though the state decided to institute a special agency for overseeing the same.<sup>33</sup> In the post-colonial period there has also been a large out-migration from rural Goa especially to the Gulf which has impacted on land use and maintenance (Mukhopadhyay 2005b; 2005c).

The consequence of the institutional change simultaneous with the exit of *gaunkars* from the agrarian management system has led to:

- 1 greater homogeneity and privatization in land ownership due to the tenancy legislation, which may be desirable on normative grounds (Mukhopadhyay 2005b);
- 2 decline in the maintenance of public works leading to salinity effects and fallowing of land indicating sustainability problems (Alvares 2002; de Souza undated; GoG 1992; 2000; Mukhopadhyay 2005a; 2005b; TERI 2000) – an undesirable consequence which could undo the positive social benefits that homogeneity might have generated.

#### 4 Imperative for Institutional Change

The question that crops up then is, why did the property rights regime undergo change in Goa in the immediate aftermath of liberation from colonial rule? Demsetz (1967) had identified three factors which determine the switch from community ownership to private ownership: technology, market access and value of the resource. In the interregnum of transition from colonial to independence none of these seem to have changed.

We must qualify our statement here. Land values must have changed in the period between 1510 to 1961. Since there were no major changes in technology of production in the first half of the twentieth century – till the time of the Green Revolution – there is no reason to believe that productivity would have gone up and therefore land values. In fact, post securitization of tenure we do not see adoption of modern agrarian technology in

<sup>33</sup> The Soil Conservation Division created in 1969 was responsible for overseeing the maintenance of embankments (GoG 1992: 55). The expenditure (in current prices) on embankments by this division has gone up from Rs 0.69 million (in 1962) to Rs 4.16 million (in 2000) however, in real terms, the actual expenditure on embankments has actually declined drastically (Mukhopadhyay 2005b).

**Table 8.1** *Taluka*-wise distribution of tenants and *gaunkars*<sup>a</sup>

No.	<i>Talukas</i>	No. of tenants in 1963	Resident <i>gaunkars</i> and shareholders	Total no. of registered <i>gaunkars</i> and shareholders
1	Tiswadi	6,025	3,457	8,870
2	Salcete	11,017	4,956	12,473
3	Bardez	9,494	14,128	25,003
4	Mormugao	1,601	790	2,090
5	Ponda	1,350	1,357	2,321
6	Bicholim	641	1,022	1,290
7	Pernem	41	0	0
8	Quepem	165	85	107
9	Sanguem	146	80	106
10	Canacona	67	63	133
11	Satari	4	29	38
	Total	30,551	25,967	52,431

<sup>a</sup> Pernem is a peculiar case because all the *comunidades* of Pernem forfeited their lands and there is no inscription of *gaunkars* in this *taluka*. During the Portuguese colonial rule, Pernem was the territory bordering the Maratha lands and the charge of the entire land area in this *taluka* was given to the Ranés to protect thereby disenfranchising the *comunidades*.

Source: GoG 1967b: annexure 6, pp. 18 and 19

Goa in the same manner as in other parts of rural India where Green Revolution technology allowed quantum leaps in agricultural production. In terms of market access, there could not have been any major changes either since Goa was a trading post which in the first place brought the Portuguese to *Goa Dourada*. So Demsetz conditions do not seem to be the reasons why the commons were privatized.

What then could possibly explain this need for shift in the property rights framework? The answer probably lies in the changed procedure of government-formation – from colonial to electoral democracy. In the post-1961 era, with elected governments becoming the order of the day, any political party would rationally seek to corner the largest number of votes. The issue which seemed to carry the day in Goa at that time was related to landownership.

Is this a mere conjecture or is there evidence to back this claim? The distribution of tenants vis-a-vis Gaunkars in Goa prior to enactment of the Tenancy Act (1964) presents an interesting picture (table 8.1). In 1963, on the eve of Tenancy legislation, the number of resident *gaunkars* and shareholders (25,967) happens to be much smaller than the number of tenants (30,551) aggregated across the state.<sup>34</sup> In fact, if one were to exclude just

<sup>34</sup> The *talukas* which are exceptions to this are Bardez, Ponda, and Bicholim. In Ponda and Bicholim, however, the difference is marginal.

one taluka (Bardez) from these calculations, then the tenants add up to 21,057 and resident *gaunkars*/shareholders are only 11,869 (just about 50 percent of the tenants).<sup>35</sup>

Electorally, the political compulsions for land reform become strategic.<sup>36</sup> Beneficiaries of the land reform also included the *mundkars*, for whom data was not available (since they worked on private lands) and therefore are not enumerated here. The number of potential beneficiaries, therefore, is actually larger than the tenants' numbers indicate. It is no surprise that the Maharashtrawadi Gomantak Party (MGP) which brought in these changes had an unbroken run of electoral wins for seventeen years.<sup>37</sup>

Is this of any consequence to the discussion on the commons? In contrast to Demsetz who suggested that changes in market access/values and technological change push the move from common property to private property, in the case of *Gaunkaris*, evidently it was the imperative of electoral politics that drove the establishment of private rights over community lands and had little to do with technology or market values. As suggested by Agrawal (ch. 3, this volume) it has more to do with the external social and political institutional changes which were critical in determining the shift in property rights regimes in Goa.

## Discussion

This chapter brings to fore a few issues that have been of concern to "commons" studies. First, the Demsetz conditions do not close all the factors that determine regime change. The overarching social and political framework can be crucial in determining what kind of property rights regime would prevail. Second, equity enhancing measures while desirable for economic, ethical or moral grounds needs to be carefully examined when it is being done by dismantling an organic institution and by privatising common resources which require contribution from members or users for its sustenance. A simple foisting of new institution even if democratic may face the classic collective action problem that the literature is well aware of. In Goa, the parcelling of lands earlier managed by a community institution led to negative ecological outcomes. The new owners of the land have been unable to replace the *Comunidades* in their task of coastal zone management. This could be due to factors caused by lack of prior history of cooperation. In the euphoria of asset distribution, institutional incentives were not studied, as cooperation was expected to automatically emerge among beneficiary farmers. This demonstrates that emergence of collective action is difficult even when homogeneity is achieved, if appropriate institutional mechanisms do not evolve simultaneously and organically.

<sup>35</sup> One must point out here that in table 8.1 the total number of registered *gaunkars* and shareholders outnumber the tenants. Does that nullify our argument? It must be remembered that the tenant enumeration is only of a single male person in the tenant household. For the *gaunkars* though, every male member of the family is listed. So, if every household is assumed to have had at least two or three male members then the number of tenant beneficiaries becomes much larger. The number of tenant beneficiaries then is greater than the *gaunkars* (even when we include the non-resident members).

<sup>36</sup> The population in 1961 was 0.58 million.

<sup>37</sup> In the current political scenario, MGP has lost its electoral charm amongst its constituencies. In the last decade they have become increasingly marginalized with an emergent BJP (a rightist nationalist party) taking over their traditional support base. The number of representatives they were able to send to the state assembly have also declined considerably.

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