

Spanish Land Conservation Programs (Custodia del Territorio) as a Mechanism to Protect Agriculture and Biodiversity

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Research Objectives

This study examines the emergence and growth of using voluntary agreements to protect landscapes in Spain. In 2007, Spain began a program of private organizations working with private landowners to preserve agricultural communities while conserving biodiversity and other ecosystem services.

Spain may have more high biological value sites in private hands than in any other European country and has been described as being the most biodiverse country in Europe. Spain has a shortage of public funds for nature, yet many hectares of environmentally and culturally special land. As of 2008, only 39% of protected areas were public lands. Spain cannot simply purchase all the important lands, nor has there been much money going towards conservation historically in Spain where conservation efforts are dominated by public efforts (and public funds are no longer as available as they once were). This confluence of increased attention and recognition of the need for biodiversity conservation coupled with a struggling economy make exploration of viable alternatives that incorporate non-state actors and market mechanisms crucial.

Ten years ago, Spanish National Law 42/2007 created a framework for private land protection: land stewardship (custodia del territorio). The legislative history of this program illustrates that it was inspired directly by the United States experience with conservation easements and land trusts. Since then, nongovernmental organizations designated custodial or stewardship entities (entidades de custodia) have been protecting private lands through land stewardship agreements (acuerdos).

This project details the development of the Spanish land stewardship program and growth in the use of voluntary market-based mechanisms for land conservation. We compare and contrast the Spanish system with the U.S. one it was modelled after. Research into the Spanish program revealed a lot of confusion and misinformation amongst Spanish legal academics, resulting in an uncertainty over who has the power to enforce and oversee the stewardship agreements and what the remedies might be for breach of such agreements. Thus, one of project goals shifted to simply be able to fully understand the legal foundations of the program and clarify the rights and responsibilities associated with it. Additionally, as the program has not been described in English, we also seek to bring information about this program to a broader audience by publishing our research in both languages.

Although modelled after the U.S. system, Spain's land stewardship program is built on fundamentally different ideas of property law as well as different underlying circumstances regarding agricultural land. In the simplest terms, the threat to Spanish agricultural land is not conversion to development as in the United States. In fact, that land is more likely to be left fallow than turned into housing. Absent landowners are common. This means that there may need to be different incentives for conservation. For example, U.S. agricultural landowners often feel financial pressure to sell their land due to high property or estate taxes. Spanish agricultural landowners alternatively may struggle because of a lack of networks and support systems. Both countries seek not just to protect food security but to protect a cultural way of life and thus the agreements have much in common on that score. While the U.S. model has been explicitly hands off, the Spanish program is more likely to not only help with long-term planning but also provide volunteers to help work the land or land-management advice. U.S. ideas about financing may help grow the Spanish program, and Spain's program of active involvement could improve the sustainability of the U.S. system. In other words, we have a lot we can learn from each other.

With the policy reaching its ten-year mark, the time for examination is ripe. Studying development of market-based land conservation mechanisms in Spain has been a unique opportunity. The ability to watch the establishment of a new system like this is valuable for scholars from all over the world as many countries seek to develop market-based mechanisms for land conservation. Being able to compare the older North/Latin American programs with the new European models may offer instructive advice for all.

In our current era of the Anthropocene where humans are negatively impacting the environment beyond levels ever thought possible, the importance of developing strategies to protect both human and nonhuman aspects of the environment is undeniable. This project builds our capacity to do so.

Fulfilment of Objectives

Our goals are on their way to being achieved. If we describe the objective as merely understanding the land stewardship program, that has been achieved. But our goal is to do more and compare and contrast the Spanish program to that in the United States. It has been a struggle to get copies of the Spanish agreements and identify the farmers involved. We hope to be able to actually interview some farmers over the next couple of months that we can talk to about their on-the-ground experiences and motivations for participation in the program. Similar research has already been done in the United States and can help us see how motivations differ and how that might be reflected in land conservation schemes. We also hope to publish at least two peer-reviewed articles (one in Spanish and one in English) and that will take several more months. These efforts are discussed below.

Major Achievements of the Fellowship

The real achievement of this program was gaining a rich understanding of the complexities of the Land Stewardship Program.

An unexpected achievement of this fellowship has been the alliance built between my home institution and my host institution. Universidad Pontificia – Comillas (ICADE) has been tremendously supportive and helpful throughout this project. We are in the process of creating an official agreement for exchange by students and looking forward to greater collaboration among researchers at both our institutions. We believe that both universities have programs that the others would benefit from and that will enrich our students' understanding of the world and enable them to obtain training not available in their home countries. For examples, ICADE students will have access to our environmental, criminal, and cross-border masters in law programs. Buffalo students will have access to their international, human rights, and business programs. We also envision more faculty exchanges and research collaborations such as the one I participated in. In fact, I have already been invited to participate in a research group here seeking ways to promote greater use of electric vehicles.

Follow-Up Work

The nineteen weeks of my fellowship really served to lay the groundwork for a series of connections and collaborations that I anticipate lasting the rest of my career.

I anticipate further collaboration with faculty at ICADE and Carlos III University (and potentially a few others). My research project examined a relatively new concept for Spain, and few academics really understand the system. Yet, it brings together ideas from both public and private law. Thus, in investigating this area I worked with legal scholars from several disciplines. This expansion helped me build connections with scholars from Universidad Autónoma de Madrid, Universidad Complutense de Madrid, Carlos III, and Universidad de Murcia and could potentially lead to several papers and future collaborations amongst and between this group.

I anticipate at least two scholarly publications from this research initially. We already have one planned for the annual legal journal published by ICADE. We hope to write this in Spanish. Additionally, we plan to write a paper in English to publish in an American law journal. The system we are studying is modelled after one that is well developed in the United States yet the Spanish have taken some

significantly different approaches. As of yet there are no articles aimed at the U.S. audience that adequately describe the system and the Spanish approach. We believe that such a description would be valuable to researchers, planners, and agriculturalists in many countries and hope that a combination of English and Spanish language publications will enable us to share this information and develop further relationships internationally with others seeking ways to protect land, particularly for agriculture, forestry, or biodiversity.

Benefit to Society and Development of Agricultural Policies

Worldwide, conservationists and agriculturists are acknowledging that they have overlapping goals. Many studies demonstrate the benefit of agricultural land in environmental protection. Additionally, studies have shown that changes in agricultural and forestry management techniques can improve the sustainability of the systems while helping with both climate change mitigation and adaptation. Unfortunately, simply acknowledging and understanding that link has not automatically yielded greater protection of agricultural landscapes or increased use of sustainable management practices. This had led both public and private organizations to create systems to promote and facilitate land protection and stewardship.

One way to protect agricultural land is by subsidizing farmers or offering direct government incentives for continued production. This can occur alongside land-use planning that prevents other uses of the land and curbs agricultural conversion. In some cases, this may be adequate. The pressures differ in Spain however, where agricultural land is not lost to suburban sprawl (for the most part) but mostly suffers from rural abandonment. Thus, a Spanish program to protect and promote sustainable agriculture must do more than prohibit non-agricultural uses. The economic crisis in Spain, however, did not help things. The government did not have money to invest directly in protecting farmers and foresters. A similar pattern emerged in the United States not explicitly due to a lack of funds but a lack of interest in government regulation of land. Into the fray stepped private organizations that identified the problems of land protection and sought was to address those problems.

This research then highlights the potential role of private organizations in meeting the societal goals of environmental protection and preservation of sustainable agricultural sites. This comparative study highlights different of private arrangements. At their most basic, we see agreements where the landowner agrees not to convert the land to non-agricultural use. These are popular in both the United States and Spain. Yet, in Spain many of the agreements go further spelling out rules and roles in sustainable management. The Spanish can learn from the U.S. model, which used tax incentives to grow the program beyond foreseen proportions. It also uses long-term (often perpetual) agreements ensuring protection over the long term. Moreover, the use of perpetual agreements means that the protections can play a role in meeting obligations of the Kyoto Protocol and the Paris Agreement that are part of international efforts to combat climate change.

U.S. conservationists can learn from the Spanish model which often takes a more active role in ensuring sustainable management of the land with agreements containing details about sustainable management practices. The Spanish agreements are also more likely to have more hands-on involvement of the non-profit organizations involved and even harness the power of volunteers to help with working the land.

Publicizing the variety of approaches to land conservations can lead to the diffusion of new agricultural protection policies. The societal benefits to protecting agricultural land reaches beyond the direct benefits to rural environments to include biodiversity protection, carbon sequestration, and provision of other ecosystem services.

Connection to CRP Objectives and Research Themes

Our project fits in well with the general aims of the CRP and the specific theme of Managing Natural Capital for the Future.

This work seeks to directly improve policymaking in agricultural and environmental conservation. Worldwide, we are seeing a growth in land conservation and agricultural protection coming from private organizations. In some cases (e.g., the United States), private organizations are stepping into protect and promote agricultural land because there has been inadequate political will to do so through public regulatory avenues. In other cases (e.g., Spain), a dearth of public funding has led to a rise of private organizations stepping in to protect public values. Regardless of the initial reason for the growth of the private involvement in agricultural and environmental land conservation, the government has facilitated the growth of the private movement through legislation. In the United States, the federal government created tax incentives for private land conservation and the individual states followed by clarifying traditional property law rules to allow for such private long-term action. Inspired by the United States, ten years ago Spain passed a law at the national level seeking to encourage long-term land conservation by private action. The land trusts or land custodians in both countries work with private landowners on tailor-made agreements to help protect the land and promote sustainable agriculture (or other natural or cultural heritage uses like forestry or open space).

While these programs have similar underlying desires of protecting landscapes and promoting sustainable agriculture, the types of agreements that they use differ in their level of management and duration. Until recently countries using these mechanisms have not actually collaborated or cooperated with each other to discuss best practices or explore creative opportunities. We firmly believe that this is a mistake. Cataloguing and describing the land conservation strategies across countries can contribute to the knowledge base for sound agricultural policymaking. For example, Spain's approach has departed significantly from the U.S. model (which Spain based its program on) by extensive use of shorter term agreements and a dearth of funding. The U.S. program runs based on the availability of tax breaks and payments to landowners. Yet in Spain, the program is successfully growing without such an extensive economic investment. This is in part based on different land conditions and needs of farmers but describing and assessing the array of possibilities will help not only these two countries but countries around the world that are deploying or considering deploying similar strategies (e.g., Australia, Canada, Chile, Fiji, Kenya, New Zealand, Papua New Guinea). We also believe that publishing our research in both English and Spanish will help us reach a broader audience and expand the conversation. We hope to present our findings at the annual land conservation conference organized by the Land Trust Alliance in the United States as well as the second meeting of the recently formed International Land Conservation Network. We believe that this work can help set the stage for both deeper and broader conversations about land conservation internationally.

This research is clearly linked to the theme of Managing Natural Capital for the Future as it addresses one of the overarching challenges of food security, sustainability, and agriculture. This project examines programs to not only help protect agricultural land but also improve management of such lands. The stewardship agreements crafted in Spain represent a collaboration among landowners, civil society, and other stakeholders to promote sustainable use of agricultural land and promotion of agricultural economies while protecting ecosystem services. These agreements have the ability to implement best practices for protecting soil health, biodiversity, and minimizing water use. Moreover, this program situates Spain well for meeting carbon sequestration requirements within the global climate accords as well as protecting biodiversity in compliance with both EU laws and international treaties like the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species (CITES). It creates credible and enforceable restrictions on the land with third-party enforcement

of the terms. These are the types of mechanisms that many countries are looking to in their desire to battle environmental harms and comply with international obligations.

Satisfaction

This fellowship conformed to my expectations. It gave me an opportunity to spend time in another country helping me to better understand their land conservation systems while also sharing information about our approaches in the United States.

At this point, it is hard to say what the impact of this fellowship might be on my career. It has already helped me secure a small travel grant from my home institution to cover some travel costs to interview sites. Also, having a prestigious fellowship on my CV will undoubtedly help me in times of promotion or if seeking to change institutions. The real benefit was a bit different though. This fellowship gave me time to explore a new project and write while also building new relationships. This will create richer work and hopefully help promote land conservation and stewardship goals in the United States, Spain, and elsewhere.

The practical challenge that I encountered is that I should have really began the program with a stronger command of the Spanish language. I have usually been a quick study with languages and took a semi-intensive course upon arrival in Spain. Yet, the complex legal vocabulary combined with the heavy usage of Catalan in key source documents made things more difficult than anticipated. By the end of my fellowship, I finally reached a level proficiency to navigate complex legal documents and the work will continue. Thus, the fellowship was an unqualified success for me, but simply more challenging than I had anticipated.

Because all researchers will have different projects and countries have different conditions, it is hard for me to suggest what would be better for the program overall. Requiring either language proficiency or enabling language study might be helpful and goes a long way into building relationships with host institutions and countries even if not needed directly for the research project. It would also be nice to feel like I was part of a community of fellows. Perhaps a listserv or facebook page for fellows would be helpful for people to share ideas and experiences.

Advertising the CRP

I learned about the CRP from a former Fellow, Adena Rissman of the University of Wisconsin. I have never met anyone else who has heard of the program, and it is not widely advertised. I have since shared it with many people who I think might be good fits for the program. I think perhaps the program could reach out to university grant offices to make sure it is on their lists of potential awards and perhaps advertise in pertinent journals. In my field (environmental law and policy), there is one particular listserv that is used for circulating information like this. Also, I think maybe a symposium of fellows would help spread the word or maybe requirements that fellows help advertise the program. Putting aside some funding for researchers to present or disseminate their research afterwards could be helpful.