Presentation #5

"Design Principles of Norwegian Commons"

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Legal Traditions

If you look at the history of land law in England you find that rights of common is defined as the right to remove something of material value from the land of another owner. Those who possess such rights of common are called commoners. I think this definition should alert us to an important dimension of the commons: the distinction between ownership of the ground and ownership of the material resources attached to the land.

The Roman law institution of dominium conferred upon the owner of the land absolute powers (or as close as practically possible) over the land and all values attached to it. The old maxim "nulle terre sans seineur" can surely be traced to Roman times. But Romans also knew of common property. The premedieval and medieval societies of Scandinavia as well as Great Britain were more concerned about the material values they could harvest and the personal relations among those with interests in the land than about the ground as such. In feudal society the maxim was "no man without a lord". Most of the land was commons. But tilled land was in some basic sense private property.

As the Roman law ideas spread across Europe the doctrine of dominium came in conflict with the established local traditions of common ownership of land and usufruct rights to its various resources. They also were in conflict with feudal society and the ideas of tenure relations dominant there. I do not think it is a great secret that the development of market economies was closely connected with the gradual victory of the dominium principle. But in the mutual adaptation of Roman and local ideas of law, new legal conceptions were developed to reconcile some of the older concerns. The "dominium" doctrine never became as total as it is presumed to have existed in Roman society. In Norway, dialectic between Roman law and the development of the law of commons has been somewhat different from England's experience, where the rights of common survived in a much clearer way.

Now let us go to the Norwegian commons and look at the various instances of commons. The major dimension differentiating them is precisely ownership of the ground. Today Norwegian commons come in three "flavours" which I call state commons, bygd commons and private commons. "Bygd" is an Norwegian word which doesn't translate well to English. Its original meaning is something like "local community". Because the areas burdened with rights of common were tied to the local community, the bygd became tied to a certain area as

their commons. But during the past 1000 years this has turned around, and today the bygds (in relation to commons) are defined in terms of their rights of common. The bygd is defined as comprising of those farm enterprises who rights of common in the area have called commons.

The defining difference between state commons, bygd commons and private commons is the differences in ownership of ground. In a state common the state is the owner of the ground, in the bygd and the private commons it is the commoners who own the ground. What distinguishes bygd and private commons from a co-ownership is that not all the commoners are owners of the ground. The difference between a bygd and a private commons is that in the bygd commons more than 50 percent of the commoners are owners of the ground and in the private commons less than 50 percent of the commoners own the ground.

The private commons are almost extinct. In an act from 1863, it was stipulated that the private commons should go through a process of land consolidation dividing them into one part private property for the owners of the ground with the rest as a bygd commons. This division has been done in most areas, but some small remnants are presumed to exist. Only one fairly big private commons is known to exist. Here a timber company is the owner of the ground while all the farms of the local community are commoners with rights of the company have no interest in the pasture.

Currently there is also a fourth type of commons under construction. In a recent government report a new kind of commons was proposed for the county of Finnmark. It is a rather complicated legal construction designed to accommodate the reindeer herders, farmers, as well as the local non-farmers. Very briefly it can be described as a hybrid between the state commons and the bygd commons.

The importance of the ownership of the ground and the separation of this from rights of common is that the rights to the ground contain what is called the remainder. All rights that are not positively accounted for as rights of common belong to the remainder. In Norway for example hydro-electric power is one of these remainder rights. It didn't exist 100 years ago. We didn't know about the value of waterfalls until a new technology appeared. This new right fell to the ground owner.

Design principles: -- ownership of ground and remainder -- important for problems of coordination and distribution -- resource specific management -- important for sustainability of production -- power sharing central-local actors -- important for distribution, monitoring and coordination

This separation of ground and remainder from the various specified resources is the first and main principle of differentiation among various types of commons.

A second principle used in the definition of various types of commons is the specification and definition of the resources the various types of entities are allowed to withdraw resource units from. By saying entities I underline that the beneficiary need not be a person. For some basic types of resources the unit holding the right of common is the farm or the reindeer herding unit seen as a legal entities and going concerns.

Resource types seems to be differentiated primarily after the ecological dynamic of their regeneration (forests are different from wild game). This dynamic has implications for how to allocate rights of enjoyment and control of technology used in their appropriation. Secondarily they are differentiated according to economic value. This has implications for who gets allocated the right of enjoyment.

The units exercising rights are selected among the actors of the economic system. They are persons or economic units in the primary industries (farm, reindeer herding unit, fishing vessel). Stockholding companies or other kinds of economic actors have been barred. The conceptualisation of the units able to hold rights in the commons reveal a lot about the political objectives of the society.

The third principle is the way of sharing power between the state and the commoner. Its origin goes back at least to the 11th century. At that time the King of Norway was elected by the commoners and he was given certain powers to go with his office. Mainly it was activities in war. But he was also given some rights of coordination among the commons. The first one, I think, may have been the right to give settlers permission to settle in the commons and make their home there. From that time on the kings powers, gradually generalised to state power, has grown in bounds and leaps, but also with significant setbacks. Sometimes the government has taken some powers from the commoners, at other times, when the government was busy elsewhere, the commoners have taken rights back or gotten themselves new rights through prescription. Today the relations between state and various types of commoners are formalised. The difference in governance between state commons and bygd commons is substantial. The state has no particular powers for decision-making in the bygd commons but quite large in the state commons. The interests of the ground owner in the state commons is managed by the company STATSKOG, and the management and coordination of the interests of the commoners have been delegated to the local municipalities in their "mountain board".

Goals

In the design of the institutions governing the commons I think there is a particular concern about the distribution of benefits, about equity. There is also a concern about the economic performance of the commons and about stinting the usage or more generally about the sustainability of the resource.

Judging from the first known written law from the 12th century, their only concern was equity and the procedural implications of that. Later on, from about the 18th century, concern about limiting the removal of timber was read into the law and from our century a concern about the sustainability of wild game populations was introduced. The concern about economic performance dates from the 19th century.

Problems of management:

Coordination of activities -- definition of units holding rights -- distribution of harvest -- depends on geographical location of commoner -- sustainability of production

It's not easy to reconcile the various goals, but one already mentioned technique used for some of the rights of common is to tie them to units such as a farm or a reindeer herding unit. Other rights are tied to persons in various ways. The rights of timber are for example tied to the farm while the rights of hunting are tied to the farmer and the persons in his household. Defining a farm as the unit enables to exercise rights in the commons, suggest a concern with the viability of the farm as an economic enterprise as well as a practical mechanism (at least for farms) for stinting the usage of the commons.

Seeing a farm or a reindeer herding unit as capable of holding some rights of common is tied to the stipulation of inalienability of the rights of common. The idea is strengthened with the stipulation that the rights cannot be enjoyed to a larger extent than what the farm or herd needs. A farmer cannot take more timber than he can use in building or repairing the houses on his farm. This limitation was originally introduced in 1687. At that time the goal of the King was to keep more of the timber for himself. There is no indication that the intention was to use the rule as a conservation measure. But in the 1730s or 40s the rule came to be seen by managers of the "King's commons" as very useful in their effort to recreate good forests (and hence improve the economic result for the King).

A second basic mechanism in the design is the differentiation of rights of common according to geographical location. When persons are defined as the units holding rights, the groups of persons are often limited by geographical boundaries. These may be the boundaries of the household running the farm business, the "bygd" where the farm is located, the local municipality where rights are to be exercised or the state of Norway. A few rights are given to any person which legitimately can visit the commons (i.e. with a right to stay in Norway long enough to visit). The way rights are limited can be interpreted as a compromise between considerations of equity and probability of overuse.

Each rabbit or grouse does not have high economic value and hunting them to extinction is difficult. But too many hunters will pose a hazard for both the

hunters and the surrounding community. Some limitation is in order. Limiting the hunting to the persons living in the bygd is one solution. Fishermen on the other hand do not represent any particular danger to the surrounding community qua fishermen. Fishing can be allowed for all living in Norway.

Big game has high economic value and hunting to extinction is not particularly difficult. Here restrictions need to be more severe. Even limiting the rights to the household of the cadastral unit is not enough. A problem of coordination requires special legislation and monitoring.

The more recent ideas about resource management has not been integrated with the legislation on the commons, but has been laid down as resource specific rules applying to all lands whether commons or private lands. One reason for such a system of crosscutting management rules might be the variations in size of the area needed to manage a resource effectively. Variations in rules for various types of game illustrate this. The increasing number of large game in the present century may be seen as a result of this approach even if it is not the only causal factor.

The goals and various design principles and mechanisms used to achieve the goals create a rather complex web of regimes. I will mention a few just to give you an indication of what the result is.

There are particular rules for the enjoyment of housing timbers, fuelwood, pasture, housing in the commons, fishing, and hunting of small game, beavers, lynx, and big game. These rules are further cut across by the resource specific management regimes. There are several levels of decision making and various ways of sharing power is part of the gradient.

Common pool resources are defined as resources from which it is difficult or relatively costly to exclude users and with rivalry in consumption are usually seen as suitable for common property regimes. If there are considerable measurement costs of reproduction and harvest, the argument for common property is even better.

Comparing forest commons and private commons in contemporary Norway we must conclude that it is not more difficult to put a fence around the commons, nor is it more difficult to measure their reproduction or observe harvesting.

So why do forest commons exist in such large quantities in Norway?

I could suggest a couple of hypothesis; one reason might have to do with the long cycle of life of the forest in terms of human generations. Because of this there needs to be a stability of interest in the management of the resource across generations. This is difficult to achieve successfully with individual property. In a commons where several family farms are commoners and owners

of the ground, the probability of finding a good manager is better than in a single household.

Across generations and the of the forest the greater availability of management talent for forest commons suggest that they are likely to outperform most private forests even if there in each generation will be a few private owners doing better. I think this makes forests an interesting common pool resource.