

## **A PROLEGOMENA TO "REINVENTING THE COMMONS»**

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The program committee has chosen the theme "Reinventing the Commons". Commons have existed throughout all recorded history as an integral part of the resource management of local communities. With the emergence of the modern state and the capitalist economies, the commons of local communities around the world found themselves in a losing battle with advocates of state ownership or individual ownership. The traditional knowledge embodied in the well established institutional frameworks was not cast in a form understandable to the bureaucrats of the state even in the cases where the bureaucrats might be willing to consider them on their merits. And often enough they were not cast in a form which made them adaptable to a changing environment. To survive, the practical knowledge of the benefits of commons have to be recast in the analytical language of academic disciplines.

However, there is another reason which makes the theme doubly appropriate for a conference on the commons located in Norway. The Norwegian government has recently aptly demonstrated how the loss of old institutions is a creeping ill no one is immune to. In 1992 the Norwegian Parliament repealed a more than 800 year old law of Norwegian Commons. During a major revision of the text of the Commons Act, its oldest and most profound part was deleted. A part of our cultural heritage is gone. This loss needs to be mourned. But the change of words in the act is significant.

Looking at one of our oldest written law codes, we find in the Frostatings Law, written down around 1100, that the very first line in the first paragraph in the section on the Commons, is the same as the one we find in Magnus Lagabøters Lawbook of 1274, in Christian IV's Lawbook of 1604, and in Christian V's Lawbook of 1687. And throughout the numerous changes in the Commons Act during the 19th and 20th century the first line in the first paragraph has been standing unchanged. In 1992 the Norwegian Parliament deleted it, with the approval of those involved, the new act taking effect from 1993.

Why did the Parliament think it prudent to do so, to take away a paragraph which has served us well for more than a 800 years?

To understand that is to understand the necessity for reinventing the commons. The line which was deleted simply says

"The King's Commons shall remain as they have been of old, .....".

What does this mean? That the commons have been unchanging throughout more than 800 years, and that now the government wants to change it? Obviously not. The Commons of Norway have seen as much if not more change than the rest of the Norwegian institutions for utilisation of resources, and if anything the deletion of this line inaugurates a period of less change.

So what is the big fuss all about, then?

I believe that this line in the law of the Commons goes to the heart of the relation between a government and a people. It tells each citizen that the King will protect his rights in the Commons. The rights will remain as people believe they always have been. The line builds the trust of the people in the Rule-of-Law. The line assures them that the King will give them justice if they feel their rights have been violated. Their rights will be restored to the situation as it was before, as it always has been. As it has been of old.

Thus the deletion of the line from the Act is more than cultural vandalism, it speaks of a loss of understanding of how to build trust in a government. It speaks of a lack of understanding for the precarious nature of sustainable utilisation of resources.

The easy repealing of the practical knowledge embodied in the old institutions speaks of the necessity of reinventing the commons. But not only of that. I think we need to reinvent the Rule-of-Law as well.

One of the emerging conclusions from the very diverse work of the members of this association is the importance of the Rule-of-Law for the sustainable use of resources and the ultimate well-being of the people living by these resources.

As an extension of this, I think it will prove fruitful to take as a working hypothesis that the "Wealth of Nations" is founded on the Rule-of-Law, rather than the free competition of economic actors. One may even say that the free competition of economic actors presupposes the Rule-of-Law, and that they can be free only in the sense that Rule-of-Law will give every citizen freedom within the law.

The "reinvention" of the commons is the academic exploration and search for deeper understanding of how and why institutions of common ownership can manage resources in an equitable and sustainable way in a changing environment and benefit the local communities depending on them for their survival.

This "reinvention" is now well along within the research community and our Association is at forefront.