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Erling Berge and Lars Carlsson

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Department of sociology and political science
Norwegian University of Science and Technology
N-7491 Trondheim
Norway

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	List of participants	
1	Michael Jones, Department of Geography, NTNU, Trondheim	michael.jones@svt.ntnu.no
2	Venke Olsen, Trondheim	venkeo@online.no
3	Erling Berge, Department of Sociology and Political Science, NTNU, Trondheim	Erling.Berge@svt.ntnu.no
4	Ari Lehtinen, Department of Geography, University of Joensuu, Joensuu	ari.lehtinen@joensuu.fi
5	Tiina Peil, Department of Geography, NTNU, Trondheim	tiina.peil@svt.ntnu.no
6	Gunhild Setten, Department of Geography, NTNU, Trondheim	Gunhild.Setten@svt.ntnu.no
7	Mats Widgren, Department of Geography, Stockholm University, Stockholm	Mats.Widgren@humangeo.su.se
8	Kari Stuberg, Department of Geography, NTNU, Trondheim	karistuberg@hotmail.com
9	Kenneth Olwig, Institute of Landscape Planning, Swedish Agricultural University, Alnarp	kolwig@tiscali.dk
10	David Sellar, Faculty of Law, University of Edinburgh, Edinburgh	eusl23@srv0.law.ed.ac.uk
11	Hans Sevatdal, Department of Land Use and Landscape Planning, Agricultural University of Norway, Aas	hans.sevatdal@ilp.nlh.no
12	Ulf Jansson, Department of Geography, Stockholm University, Stockholm	ulf.jansson@humangeo.su.se
13	Klas Sandell, Karlstad University, Universitetgatan 2, 651 88 Karlstad	klas.sandell@kau.se
14	Katrina Myrvang Brown, Macaulay Institute, Aberdeen	k.brown@macaulay.ac.uk
15	Nuria Oses Eraso, Department of Economics, Public University of Navarra, Pamplona	nuria.oses@unavarra.es
16	Mercedes Pardo, Department of Sociology, Public University of Navarra, Pamplona	mpardo@unavarra.es
17	Andrew Humphries, Colonsay House, Ivegill, Carlisle, Cumbria, CA4 ONR	andrew@humphries.co.uk
18	Frode Gundersen, Department of Economics and Social Sciences, Agricultural University of Norway, Aas	frode.gundersen@ios.nlh.no
19	Audun Sandberg, Bodø Regional University, Bodø	Audun.Sandberg@hibo.no
20	Per Otnes, Institutt for sosiologi og samfunnsgeografi, Universitetet i Oslo, Postboks 1096 Blindern, N-0317 Oslo	p.j.otnes@sosiologi.uio.no

21	Lars Carlsson, Division of Social Science, Department of Business Administration and Social Sciences, Luleå University of Technology, S-971 87 Luleå, Sweden	Lars.Carlsson@ies.luth.se
22	Maud Wedin, Karlstad University, Karlstad	maud.wedin@telia.com
23	Hans Olav Bråtå, Østlandsforskning, Serviceboks, 2626 Lillehammer	hob@ostforsk.no
24	Stig Strandli Gezelius, Norwegian Agricultural Economics Research Institute (NILF), P.O. Box 8024 Dep, NO-0030 Oslo	Stig.Gezelius@nilf.no
25	Morten Edvardsen, Department of Land Use and Landscape Planning, Agricultural University of Norway (NLH), P O Box 5029, N-1432 Aas	morten.edvardsen@ilp.nlh.no
26	Torgeir Lande, Norges Fjellstyresamband, Stortingsgt. 30, 0161 Oslo	torgeir.lande@fjellstyrene.no
27	Helen Sooväli, Institute of Geography, University of Tartu	helens@ut.ee
28	Ingunn Ikdahl, Avdeling for Kvinnerett, Juridisk Fakultet, Universitetet i Oslo	ingunnikdahl@yahoo.no

Preface

The present publication is the result of a workshop organised within the research group "Landscape, Law & Justice" at the Centre for Advanced Study at the Norwegian Academy of Science and Letters, during the academic year 2002-2003.

The research group was headed by Professor Michael Jones, Department of Geography, Norwegian University of Science and Technology, Trondheim, and had the following members Erling Berge (Trondheim, Norway), Ari Lehtinen (Joensuu, Finland), David Lowenthal (London, England, & California, USA), Kenneth R Olwig (Alnarp, Sweden), Tiina Peil (Tallinn, Estonia, & Trondheim, Norway), W David H Sellar (Edinburgh, Scotland), Gunhild Setten (Trondheim, Norway), Hans Sevatdal (Ås, Norway), Mats Widgren (Stockholm, Sweden).

The invited foreign and Norwegian researchers came together to discuss philosophical and theoretical issues concerning justice, law and equity with regard to landscape. The term landscape incorporates a number of differing but overlapping ways in which the complex relationships between human societies and their physical surroundings are conceptualized. The particular focus of the research group was the role of law and custom for the allocation, management and use of common resources. The discussions were organized around three sub-themes:

1. Historical concepts of landscape as an expression of law, justice and cultural practice relating to the community regulation of land and other common resources (cf. the medieval Nordic "landskapslover").
2. Continuity and change in the landscape as a physical and cultural manifestation of human activity and institutions, focusing on the role of legislation and customary law, in a historical and geographical perspective.
3. Legal implications and landscape impacts of environmental policies for the management of amenity resources and perceived common values in the landscape.

About once a month the group invited its members as well as external people to a workshop on a topic within the three sub-themes. During 11-13 March the group invited people to a workshop on "Commons, Institutional Theory, and Landscape". The present publication presents the contributions as they are available at the end of November 2003.

The organisers of this particular workshop is grateful for the generous support of it both from the Centre for Advanced Study by way of support for the research group Landscape, Law & Justice, and from the Norwegian University of Science and Technology by way of support for their employees within the research group. Special thanks go to The Department of Sociology and Political Science, NTNU, for supporting printing of this publication.

Erling Berge, Trondheim,
Lars Carlsson, Luleå,
December 1, 2003

Commons: old and new
On environmental goods and services in the theory of commons[1]

Erling Berge
Department of Sociology and Political Science,
Norwegian University of Science and Technology,

Abstract:
The modern and largely academic and urban initiated concern with environmental protection of landscapes, species, watersheds, biodiversity, ecosystem-services etc. are framed by a language suggesting that the main concern is the protection and preservation of precarious resources of common interests for mankind.

Thus the values deserving the attention of environmental protection seem to be very different from the concerns shaping the evolution of traditional commons: the control of access to and extraction of resources seen as limited but essential for the survival of local communities.

The paper will explore the theoretical differences and similarities of the two types of interests driving the concern for preserving values. It will be suggested that a basic difference lies in the distinction between values where there is rivalry in appropriation and values where there is non-rivalry. It will further be argued that in designing new institutions for managing protected areas, an understanding of traditional commons and how the new values to be protected are different from and interact with the old values will be important to achieve sustainability of resource use within the protected areas.

Introduction

The modern, largely academic and urban initiated concern with environmental protection of landscapes, species, watersheds, biodiversity, ecosystem-services etc. are framed by a language suggesting that the main concern is the protection and preservation of precarious resources of common interests for mankind. Thus the values deserving the attention of environmental protection seem to be very different from the concerns shaping the evolution of traditional commons: the control of access to and extraction of resources seen as limited but essential for the survival of local communities.

With a few notable exceptions (e.g. Bromley 1991 and Yandle 1997) environmental protection and management of common resources are not discussed together. The economic theory of environmental problems and policies is usually discussed as a problem of allocating responsibility for externalities (Baumol and Oates 1988, Devlin and Grafton 1998, Sandmo 2000). The environmental problem is described as consisting of the misuse of a resource currently being in the public domain with open access. The solution is seen to be either imposition of appropriate taxes for matching the use of the resource to its capacity, or it is seen as a problem of privatization, to allocate private property rights to the resource in order to achieve the internalization of externalities. However, in recent

[1] The arguments of the paper were also presented at the conference "Landscape, Law, and Justice" in Oslo 15-19 June 2003, and "Trans-nationalizing the commons and the politics of civil society", Chiang Mai, Thailand, 11-14 July 2003

treatments of "Environmental Economics and Policy" (e.g. Kolstad 2000, Tietenberg 2001) the discussion of property rights is expanded to common property and property rights have become a central concept in the discussion.

The legal discussions of environmental protection are more concerned with balancing rights and duties, but have a very noticeable emphasis on the manufacturing of products[2]. Its modern form originates with the need to control toxic and hazardous waste, but have come to encompass all sorts of public interventions to protect bits and pieces of our natural environment, including the much older tradition of protecting particular wilderness areas (Buck 1996, Weale et al. 2000). Other approaches to the environment-society relations, including studies of the cultural and material processes involved (Beck 1986, Murphy 1994, Smith (ed.) 1999), would seem to be even further from the theory of the commons.

The present paper will argue that the current theory of commons might easily be expanded to environmental goods and services. This will facilitate the discussion of the interactions and interdependencies between the resources of the traditional commons and the goods and services that are the goal of environmental protection. As environmental protection expands into the preservations of values perceived in man made landscapes, the interaction between particular usages of wilderness resources and the particular landscape values become critical. Looking at both kinds of values in a common theoretical framework may facilitate both kinds of resource management. For the present discussion we will talk about old and new commons.

Old and new commons

The old commons of North-Western Europe, whether conceived of as lands 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[3]. Access to and use of the commons were significant additions to the outcome of privately held lands, often yielding goods it would be difficult or unprofitable to provide on privately held lands. The landscapes that grew out of this system by way of privatisation, particular usages, and diversification of control are today highly valued and considered both precarious and in need of protection. Today we can see the old commons as highly sophisticated forms of property rights with a social and political dynamic very different from what we might call ordinary individual private property.

One important fact needs to be emphasised from the start of this discussion: there is every reason to suppose that a particular landscape (seen as a culturally and socially delimited area) may hold several and possibly all of the mentioned goods and services, old as well as new. There is nothing remarkable in this except that it means many special interest groups have to co-exist within the same landscape, and that every interest group wants its special

[2] "The cycle of resources from extraction to recovery is a natural one, but the law's approach to it is curious. Law generally uses a light hand as resources are taken out of the environment. It uses a heavy hand as resources are manufactured into products." concludes Breen (1993:70).

[3] 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"), see Simpson 1986:111-113, and Lawson and Rudden 1982:127-136).
Exactly the same definition will cover what in Norway is called "commons" (almenning). But for the theoretical discussion and for the empirical realities around the world this definition is too restricted.
For the purposes here a commons is any area where a suitably delimited group of people, the commoners, have legitimate rights to harvest of its resources or goods.

interests safeguarded. Those with interests in the old resources are protected by property rights. Those concerned with the new resources have turned to the state to get regulations protecting their interests. The remarkable thing is that they often have gotten, or so it might seem, such special regulations without much consideration of the possible interactions and interdependencies amongst the various resources of the regulated area.
In traditional commons the reasons for keeping some resource as common property are many:

- If there is enough for all with access to the resource there is no reason to incur the costs of enforcing property rights.
- If access to the resource is essential for the survival of a family it would be seen as unjust to deny anyone access to a minimum level of the resources.
- If traditional societies see that there is safety in numbers, maximising the number of people imply resource access for every member of the community.
- If there are technical difficulties of excluding particular persons form access to a resource, keeping it in common may be the only feasible way of managing it.

Thus, both in European history and in contemporary traditional societies, commons abound. In Europe a situation with multiple stakeholders within a common area have since medieval times and until the dominium plenum tradition of property rights became dominant been handled as if the person or group of persons with the highest interest in a particular resource had been awarded property rights to it, and access to legal remedies to sort out the points of conflict with other groups. The fact that different resources with an area had different owners, sometimes with conflicting interests, required a common organisation. The feudal system gave the territorial aspect an advantage that translated 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 privatization of the commons, the inclosure. Unifying the property rights to the resources within fixed boundaries internalised a lot of conflicts leaving only the externalities suffered by neighbours and the questions of justice in relations to those excluded from the land.

But the simple situation (the fee simple) was of course too good to last. New problems appeared as new, environmental goods and services were “discovered”. Instead of the multiplexity of property rights relations of the old commons, a separate sphere of environmental regulations was created, either ignoring old property rights or consciously overruling them. Today the fight is about the relative standing of the different regulations. Which bureaucracy is best able to promote its interests?

However, the societal dynamic threatening the old landscapes are often associated with the powers inherent in the recently established dominium plenum private property regime. As urban society has matured and learned more about the goods and services provided by natural ecosystems in their various stages, a new concern about their management has emerged. The goods and services provided by nature and valued by urban society are in some ways very different from the goods and services valued by rural society and the owners of the old style commons. But in other ways they are similar. The goal of today’s management concerns are the same: sustainability of resources and a just distribution of the benefits.

Comparing resources of old and new commons

Table 1 below gives examples of resources found in the traditional commons and resources in need of environmental protection.

Table 1
Examples of resources, goods and services, identified with traditional commons and environmental protection

Resources of traditional commons	Environmental goods and services
• Timber, Pasture • Game, Fish • Windfalls, Dead Wood • Shrubs, Herbs, Fruits, Resin • Fungi, Vines, Lichen, and Epiphytes • Insects, Honey • Peat, Soil, • Minerals[4] (clay, sand, gravel, stones) • Water • …	• Environment as sink for pollution (including carbon sequestration) • Recreation (landscapes as settings for non-work activities, routes for transition) • Museum landscapes (protected areas[5] with scientific values, landscapes of historic interest[6]) • Symbolic values (landscape elements as vessels for local and national cultural identities, heritage sites) • Biodiversity (ecosystems, species, genes, information and existence values) • Watershed protection (flood control, fresh water supply) • Disaster mitigation (land slides and avalanches) • Local soil and climate management (soil erosion, wind chill, water runoff, air quality) • …

[4] In Norway the allocation of rights to metals and minerals with a specific weight of 5 and above (with a few exceptions) are independent of land ownership as determined by special legislation: Act on mining of 30 June 1972 no 70.

[5] IUCN promotes 6 Protected Area management categories. Recreation is included in the categories. However, it is interesting to note the absence of items like historical monuments or symbolic significance of landscapes or elements associated with landscapes. Presumably this is taken care of by the World Heritage Committee (see note below). The 6 categories are:

- **Strict Nature Reserve/Wilderness Area**: protected area managed mainly for science or wilderness protection
  - Strict Nature Reserve: protected area managed mainly for science
  - Wilderness Area: protected area managed mainly for wilderness protection
- **National Park**: protected area managed mainly for ecosystem protection and recreation
- **Natural Monument**: protected area managed mainly for conservation of specific natural features
- **Habitat/Species Management Area**: protected area managed mainly for conservation through management intervention
- **Protected Landscape/Seascape**: protected area managed mainly for landscape/seascape conservation and recreation
- **Managed Resource Protected Area**: protected area managed mainly for the sustainable use of natural ecosystems

Source: IUCN 1994 "Guidelines for Protected Area Management Categories", IUCN Publications, Cambridge.

[6] The Convention Concerning the Protection of the World Cultural and Natural Heritage was adopted by the General Conference of UNESCO in 1972. The goal of the Convention is to identify and protect the world's natural and cultural heritage considered to be of "outstanding universal value". The Convention creates a list of sites, "the World Heritage List", made up of **natural, cultural, and mixed sites and cultural landscapes**. (see <http://www.iucn.org/themes/wcpa/wheritage/wheritageindex.htm>)

We can simplify the table a bit by focusing on the kind of motivations that sustains human activity within the landscape on the one hand, and, on the other, what level of human activity is required to maintain the landscape.

Table 2
Types of goods and services according to human goals and level of human activity within the same landscape (see below for derivation of table)

	Landscape require sustained human activity	Landscape require almost no human activity
Landscape produces for export	Agricultural area Agriculture, forestry, other extractive activity	Protected areas type I Ecosystem services, sink for pollution
Landscape produces for consumption	Recreation area: Recreation (all types) Museum functions, heritage symbols, scientific knowledge, experience of biodiversity	Protected areas type II: Existence values: wilderness, ecosystems, biodiversity

In this table the resources of traditional commons all fall within the group where the landscape requires sustained human activity and products in principle can be exported. The new environmental goods and services are of three different types.

Looking a bit closer at the resources of agricultural areas and protected areas of type I (where the products of the landscape can be exported) we can note the following characteristics:

- In general the goods derived from these resources are subtractable (private or CPR goods).
- In a commons the right to enjoy the traditional goods are independent of ownership of the ground. This does not preclude that the commoners may own the ground themselves. But also the right to enjoy ecosystem services (or suffer environmental pollution) is independent of the property rights to the ecosystem.
- The problems of equitable distribution of the goods and of ecological sustainability of the resources are the main management problems.

If we take a look at recreation areas and protected areas of type II (where the goods produced by the landscape cannot be exported) we see that there are important differences in characteristics.

- The environmental goods and services of these types are non-subtractable (public or club goods).
- Rights to enjoy these goods are independent of ownership of ground. This does not preclude that the state (or other public bodies) may own the ground over which policy is instituted. If private bodies own the ground, the environmental policy will introduce outside interests in the management of private lands where such interests have not existed. The multiplexity of particular stakeholder interests in the management of lands is reintroduced.
- The main management problem is to get compliance with regulations, including the compliance of the stakeholders in the traditional commons.

To investigate this further we shall look to the theory of the commons for analytical concepts.

Theory of the Commons

Property rights give rules of behaviour, rules of how non-owners shall behave relative to owners, and how owners shall behave relative to non-owners. Property rights can be distinguished from other rights in that they give the holder the maximum of security of tenure and legitimacy of possession a society can afford. In many societies this maximum protection is rather small scale and local, based on customary rules and practice and not enforced by state authorities. Individuals, and collectives as well as the state can legitimately hold property rights to valuable goods and services.

The theory of commons tries to explain why collectives rather than individuals or the state hold property rights to natural resources and goods. Thus the key point of entry is the group of people holding rights together as a group. Some of the main problems discussed are "Why do they hold as a group and not individually? How is it possible to hold as a group without destroying the resource? ("The tragedy of the commons"-debate) Do groups manage resources better or worse than individuals? Such questions lead into some of the core problems of social science: the problems of motivation, the problems of cooperation or collective action, the problems of self-governance, and of good governance.

It is a moot point whether there is <u>one</u> theory of the commons. At present it seems best to describe the situation as several more general theories applied to the problem of governing the use of resources that are or could have been held in common (meaning resources that are, or ought to be enjoyed by several people rather than only one).

Types of goods

The values and goals seen in nature can be reinterpreted in terms of the kinds of goods perceived to inhere in land and renewable resources. These goods can usefully be described as being of four types: private goods, common pool goods, club goods, and public goods.

Table 3 A Typology of Goods

	Appropriators/ users are:	
Resource is	Excludable	Non-excludable
Subtractable	PRIVATE	COMMON POOL
Non-subtractable	CLUB[7]	PUBLIC

Source: adapted from Vincent and Elinor Ostrom 1977.

A resource is subtractable if harvesting or appropriating from the resource by one owner/ stakeholder diminishes the amount available for another. The use of "private" and "public" as labels of goods should not be confounded with the same labels used about stakeholders. Used about goods they are labels denoting an analytical characteristic of a good important for the collective action problems experienced by stakeholders wanting to coordinate their goals. Assuming open access to a common pool resource or free entry or exit from a club, one important implication following from the typology is a distinction between two types of appropriator generated externalities affecting other stakeholders. They are most clearly

[7] "A club is a voluntary group deriving mutual benefit from sharing one or more of the following: Production costs, the members' characteristics (e.g. members' scholarly activities in learned societies), or a good characterized by excludable benefits" (Cornes and Sandler 1986:24) To this last item I would add to "excludable 'but non-rival' benefits". Thus not all clubs need to be based on club goods in the sense used here. But all club goods can give occasion for the creation of a self-governed club just as common pool goods can give occasion for a self-governed commons.

seen in common pool resources with open access and club resources with unrestricted entry and exit.

An activity generates an externality if there is a material consequence for stakeholders not taking part in the activities generating the consequence. In common pool resources the externality is of the queuing type (first come, first served). Queuing causes competition among appropriators and distribution problems between those first in the queue and those last, but does not affect the utility of the good appropriated. Management has to consider the equity in the assignment of slots in the queue in relation to the finite volume of the flow of resource units.

In club goods the externality is cumulatively affected by the last stakeholder to enter or exit the club and will through a crowding (or thinning) process affect the utility of the good for all members of the club (the last drop causing the overflow or the last tread to break causing the collapse). This type of externality produces distribution problems in relation to non-members and causes threshold effects in the utility of the good. Management can preserve the utility of the good by setting the number of club members to something under the threshold (if overuse is the problem) or over the threshold (if the service level depends on a certain minimum number). But also equity problems between members and non-members have to be addressed. Positive externalities from the preservation of some club good, such as watershed protection or preservation of biodiversity are often considered public goods. Distributional and management challenges arise from the discrepancy between costs borne by resource managers and the benefits enjoyed by others ("free riders").

Table 4 The concepts of rivalry/ non-rivalry for benefits and exclusion/ non-exclusion of beneficiary applied to landscapes give us four types goods generated by means of the landscape

	Appropriator or producer necessary (beneficiary excludable)	Appropriator or producer not necessary (beneficiary non-excludable)
Rivalry for benefits (subtractable)	1) Landscape produces goods or services for export by sustained human activity	3) Landscape produces goods or services for export without human activity
Non-rivalry for benefits (non-subtractable)	2) Landscape produces goods or services for local consumption by sustained human activity	4) Landscape produces goods or services for local consumption without human activity

Based on the classification of goods it would seem reasonable to conclude that there ought to be systematic differences among the 4 types of land use areas labelled

1. Agricultural area: mostly private goods: agriculture, forestry, other extractive activity
2. Recreation area: mostly club goods: all types of recreation, landscapes used for information or experiences such as museum, heritage, scientific knowledge, experiences of biodiversity
3. Protected areas type I: mostly common pool goods: ecosystem services, sink for pollution
4. Protected areas type II: mostly public goods such as elements of nature with existence value: wilderness, ecosystems, biodiversity

The case of public access to the Norwegian littoral

Since 1965 we have had an open political and cultural struggle between two powerful groups both interested in using the seashore for recreational purposes: the landowners and all the rest of the population interested in access to the shore areas. Every summer we get a new chapter in the saga of the struggle for control of access to the coastal areas of Norway. People valuing the coastal landscape want to walk along the shore, picnic and bathe, they also want to land their boats and do the same.

Landowners that hold title to a parcel of the coast and value the coastal landscape will want to build cabins close to the sea, quays for their boats, and in general be left alone with their picnicking and bathing. The number of owners relative to non-owners is fairly low. But still in certain densely populated parts of Norway they occupy most of the coast. Many of the non-owning people experience the access to the coastal landscape to be difficult, and of less value for recreation than it might have been if there were fewer owners using the shore. The owners experiencing the non-owning stakeholders feel invaded. In some areas - notably in the Oslo fjord littoral - these two groups of stakeholders have come to clash. The fight is framed as a political struggle around the coastal planning legislation.

The historical basis of the conflict

The two groups of stakeholders in the littoral, the land owners and those exercising their right of access are based on two long traditions defining their customary and legitimate rights. Traditionally private property reach into the water to the shelf of the shore or as far out under water as to a dept of 2 meters measured at ebb tide. The tradition of open access to non-arable lands ("allemannsretten") gives the public access to the coast where such access is seen as unproblematic for the landowner. The customary rights are in both cases formalized in statutory law. For private property rights there are many acts, but its strongest defense may in this case be based on custom and habit. The public right of access is formalized in the Act on out door recreation (of 28 June 1957, no 16). This act secures access for all people to non-arable lands provided suitable observance of owner interests. Thus we can in the littoral of Norway observe two old and well entrenched institutions in direct conflict.

A theoretical interpretation of the conflict

The problems of the use of the littoral can be described as being a result of crowding. In the club of seashore stakeholders, the landowners have filled up the locality to a threshold where their combined activity generates club type externalities for the rest of the group of stakeholders. The approach of this threshold was felt early on in central parts of the country. Already in 1965 an interim act on building along the coast was enacted. This was replaced in 1971 by the act on planning in coast and mountain areas (Act of 10 December 1971 no 103). Current regulations are included in the 1985 Act on planning and building[8]. The problem is that the effect seems to be small to non-existent. Why should it be so difficult to stop building close to the shore? We may note that

1. Private property rights to the shore area have a long tradition, and unlike the Anglo-Saxon world it reaches into the sea. Some landowners erect physical hurdles making access difficult.
2. Non-owners acknowledge the status of private property also along the shore and can overcome the signals of private property to enjoy access to the shore only with difficulty. Often the difficulty lies in the perception and interpretation of physical implements as signals of private property and a concomitant unease of trespassing

[8] Act of 14 June 1985, no 77: §17-2 prohibits building along the shores of Norway up to 100 m measured horizontally from the high tide mark except where approved land use plans exist.

at least personal cultural boundaries of appropriate behaviour. The customary rights of open access do not apply close to houses.

3. Along most of the Norwegian coast the crowding is negligible and the municipal practice of allowing buildings have no great consequences locally. The local social pressure towards another use of the littoral is low. Thus the political understanding of the problem is very unevenly distributed across the electorate. The group representing the general public in the crowded parts of the littoral may not have the clout to institute a stricter enforcement since it according to current legislation will have to apply across the whole country.

Discussion

Let us sum up the theoretical implications of what we have said:

- Recreation in nature is a club good
- Utility is excludable and non-rival but subject to crowding effects
    - There are thresholds for crowding effects
- Maintaining a club with thresholds requires gatekeepers. Who are the gatekeepers in the coastal zone?
    - Land owners
    - Cultural norms

We are all potential members of the recreation club in the coastal zone. Much of our coastline is not accessible at all except for gliding along it in a boat on a nice day. Here we may say that nature keeps all out. Only a small fraction of our coastline is well suited as a recreational landscape. Where entry is possible either by boat or on foot both public regulations and cultural mechanisms take hold.

The general rules governing the usage of the littoral are today the same everywhere, but they are of course applied according to the precepts of the bureaucrat working in the municipality. One might reasonably guess that most of them apply the cultural standards of private property in judging what is reasonable in each case. If one can determine specific values for the thresholds, one might use them to improve on planning and regulation of local governance by making decisions dependent on the value of the degree of crowding relative to the thresholds for suitable sections of the coast.

Public regulations are always founded upon a system of behavioural norms and informal institutions. For club goods we can conceive of these mechanisms as gatekeepers whose task it is to protect the utility derived from access to the club. Since the public regulations evidently do not work the control is left to the informal institutions, and we may ask who has the power to create gates and how do those arriving at the gate react to its presence?

In so far as a gate controlling a recreational club needs some kind of physical presence near the club area the power to create it resides with the land owner. The land owner may in theory need permission from public authorities but this requirement does not have a strong cultural foundation or a strong public enforcement. Few land owners seem to feel bad about putting up the kind of physical implements that most people will interpret as a gate.

Thus the control of access has two aspects to it, the construction of the gate and the perception and interpretation of the gate. Land owners put up physical implements that they know other people will see as hurdles, discouraging access. Against these hurdles stand our feelings about the right to access to the littoral both by boat and on foot. Now, which type of hurdle is most important?

Table 5 below lists what local municipal authorities saw as physical hurdles along the cost of Østfold.

Table 5 Østfold: ca 6000 hurdles were recorded by municipal authorities
(Source: Dagbladet 12 August 2002)

● **Annexes to cabins:**	**11**	● **Flag pole:**	**280**
● **Trailer cabins:**	**40**	● **Shed/ boathouse:**	**306**
● **Jetty:**	**50**	● **Lawn:**	**333**
● **Lighting / lamps:**	**65**	● **Patio:**	**409**
● **Signs:**	**85**	● **Fence:**	**631**
● **Roads:**	**94**	● **Movable objects:**	**815**
● **Portals:**	**114**	● **Stairs/ walkway:**	**818**
● **Cabins:**	**188**	● **Quay/ diving board:**	**943**
● **Railings:**	**238**	● **Others:**	**535**

Why do owners put up devices like these? And why are they interpreted as hurdles? Why do people feel uncomfortable crossing private roads, lawns or jetties? Not all of the constructions are hurdles in the meaning of making passage difficult in any physical sense. Only fences and railings will physically be "hurdles", and even for these some may be easy to pass. The rest can basically be called signs of private property and personal space. They are hurdles because they cry out to the would-be visitor: do not disturb this space. The land owner and the visitor share an understanding about whose personal space this is and what appropriate behaviour consists of. Yet the desire to access the seashore is strong, and people know their theoretical rights. Some call for the police to fine cabin owners who in such ways try to discourage non-owners from exercising their rights. But in general both people and police are reluctant to enforce the legislation. The reaction by both police and people to these kinds of hurdles is a testimony to the strength of our cultural precepts about private property rights, the legitimacy of ownership, and our preference for civilized behaviour in relation to access to land.

Concluding

The effort to institute the all people's rights as being more important than the land owner's rights can not be seen as a success. In the long struggle between the urban interest in open access to the littoral and the traditional property rights interests of landowners it would seem that the landowners are winning. And if the occasional visitor to the shore can win only be giving up on the cultural norms defining civilized behavior in relation to private property, the repercussions in other fields may be too high a price. This may create an occasion for rethinking the problem. To overcome the cultural precepts about private property one might think of creating special rules for the littoral. One needs rules adapted to the existing rules of property rights, rather than rules that largely ignores them. One way of doing this might be to redefine the littoral, or rather the parts of the littoral that is well suited for recreation into a new type of commons. Even if we do not change policy but in the end still manage to protect the coastal zone, a new type of commons may in fact be what the final outcome will be anyway.

But a coastal commons encompassing recreational interests is not quite comparable to the old style commons comprising timber, pasture and wild game. We need to explore further

the differences and how the theory of the commons may aid in the management of the new urban interests in nature.

Applying the theory of the commons to environmental goods and services

Real world goods such as pasture, wildlife, timber, landscapes providing recreation, environmental services, or biodiversity will usually be a mixture of the various types of analytical goods, and thus the property rights to the resource need to solve the particular mix of externality problems found in each case. Problems of exclusion and subtractability, as well as the characteristics of externalities, are shaped in profound ways by the technology used in the appropriation of the good. The particular consequences of using a resource depend not only on the institutions but also on the available technology, including knowledge about how to transform resources into something more desirable.

Stopping/ limiting toxic emissions

While a clean environment can be considered a public good, toxic emissions to the environment from a point source can be considered a common pool resource (of negative value: a bad). It is difficult or impossible to exclude "consumers" individually from suffering the bad. The bad is also additive (analogue to subtractable) in the sense that it becomes worse with increasing deposits of pollution. This is so whether there is only one actor polluting or it is decided by several individuals in uncoordinated actions. Usually it is assumed that there is a threshold for how much pollution the environment can handle by itself (variable by substance and ecosystem). If too many stakeholders put too much pollution into the environment the negative impact (the externality) will escalate and propagate down the queue from the point of emission. Thus those closest to the head of the queue will be worst hit by the pollution.

Protecting/ enhancing ecosystem services

Ecosystem services such as protection against floods, soil erosion, avalanches, and land slides can be considered club resources (of positive value). In the relevant local setting it may be difficult but not impossible to exclude consumers individually from enjoying the benefits of such services. The benefits themselves are non-subtractable. Often such benefits are maintained by one or more individuals refraining from removing material benefits like forest cover or water. If the maintenance of the environmental capacity to provide services is jeopardised, the bad that follows will be a common pool bad similar to the toxic emission. Usually it is assumed that there are thresholds for forest cover and water tables below which there is a rapidly increasing probability of catastrophic reorganisation of the environment with repercussions propagating along the queue from the point of reorganisation. Thus, lack of maintenance of the club good transforms it into a common pool bad.

Protecting/ enhancing recreational, symbolic, and information values:

Landscapes providing recreation are club resources. For recreation you have to enter the landscape to enjoy it, hence exclusion is possible even if difficult. The enjoyment is not subtractable. However, it is subject to crowding. With increasing crowding above some threshold the enjoyment tend to become increasingly diminished. The discomfort is experienced uniformly throughout the club (except for individual variations in tolerance of crowding).

Landscapes giving symbolic values (heritage sites) or scientific information values (nature reserves and other protected areas) are basically public goods as long as their existence values are emphasised. A resource such as knowledge is non-subtractable and there is no rivalry in its consumption unless patent legislation introduces such rivalry. By awarding

patent rights to some piece of information about the genetic diversity the public goods character of the information is transformed into a private good. If one has to visit a particular locality to enjoy the information or symbolic value vested in the landscape it becomes a club good similar to recreation.

Comment
It is interesting to note that environmental goods and services can be seen as club goods as long as they are maintained, but that they transform into common pool bads if the service or good is not provided any more. This means that the theory of commons will be interesting for pollution management. Cleaning up an environment entails the collective action problems studied in the theory of commons. Maintaining the desired level of non-pollution of an environment entails the problems encountered in maintaining a club. For ecosystem services depending on the non-usage or stinted usage of traditional resources such as forests or water, the collective action problems of common pool resources are present in the "production" of the goods and services. The specific persons or groups holding rights to these resources bear the cost. It would seem reasonable that their forgone income were compensated. But since the benefits of the resulting ecosystem goods and services have the character of a club good this entails the problem of free-riding for its production. The costs of production have to be covered in ways avoiding the possibilities for free riding.

This link between traditional resources (water, forest) and the ecosystem services is of general interest. Recreation and biodiversity will for example depend heavily on how traditional resources are utilized. The interdependence of many of the goods and services of different types is in one sense obvious. But is it acknowledged by the legislation? And where it is acknowledged, how is it dealt with?

Property rights to environmental goods and services
Analytical studies of the management of natural resources rely on contributions from many disciplines (theories of collective action, theories of neo-institutional economics, theories of the construction of social reality, theories of cultural evolution, theories of ecosystem dynamics …). Currently they seem to be converging on the study of the creation, maintenance, and transformation of property rights[9] to explain and understand empirical regularities in the rather frequent failures of natural resources management efforts.

We noted above that while an acceptable level of environmental goods and services were maintained they could be classified as club goods. This means that since all members of the club will enjoy the benefits, the problem of crowding has to be monitored and controlled by membership. A club good differs from a pure public good only by being local in relation to the surrounding social system. Local public goods may be produced and managed by either private or public actors. Public actors will usually be able to cover the cost of production by taxing every member of the club. For private producers of club goods a diversity of mechanisms have been identified (Olson 1965, Cornes and Sandler 1986), usually combinations of membership fees bundled with suitable private goods.

For environmental goods and services the efforts or expenditures required to maintain the level of service will in most cases appear as incomes foregone by not exploiting goods like

[9] In the Anglo-American world rights and duties in relation to land and resources are for historical reasons usually referred to as tenure rights. Here they will be called property rights. Property rights will also be taken to comprise the customary usufruct rights to resources as well as the statutory rights and duties enforced by state authorities.

forest or water. These costs are not evenly distributed. Depending on the distribution of property rights to the traditional resources, the level of conflict around the institution of new public regulations will vary. If the club is to be a private undertaking (a private recreation area) the organisation must either include landowners and other stakeholders or in other ways accommodate their interests to align incentives for maintenance and enjoyment. One would expect that environmental goods and services should be the task of local public actors with powers to tax its constituency.

Concluding remarks

At the outset it was assumed that there was a basic difference between values where there is rivalry in appropriation and values where there is non-rivalry. The discussion has basically confirmed this. But perhaps more importantly: the discussion has shown that the characteristic of rivalry is not static. It changes with how the context is defined or interpreted. Genetic information may be a public good or it may be a private good depending on the institutional setting. Thresholds in use or enjoyment may also trigger shifts in the character of a good. The club good of a clean environment may at a certain level of pollution become a common pool bad.

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Commons & Landscape

Kenneth R. Olwig,
Institute of Landscape Planning, Swedish Agricultural University

Commons, institutions and landscape

This essay will argue for the necessity of combining the historical/empirical and the theoretical/institutional oriented approaches to the commons, with an approach that takes cognizance of the commons' enormous symbolic importance to society as an epitome of shared abstract values and democracy. The link between these approaches to the commons lies in the conception of the commons as landscape.

What is the significance of the concept of landscape when analyzing the phenomenon of the European commons as an institution? Where does landscape fit in? I would suggest that the suffix *-scape* provides the connection. The *-scape* in land*scape* has been spelled differently throughout the ages, but it is fundamentally a variant of the suffix *–ship*, which is found in words such as citizen*ship* and town*ship*, not to forget variants of landscape such as the Old Norse land*skapr*, the modern Swedish land*skap* (landskab in Danish), or the German Land*schaft*. In all of these words the suffix can be defined as generating the meaning of an *office* or *institution* in relation to the prefix. A judge*ship* is thus the jurisdiction or office of a judge. A citizen is an individual person, but citizenship is a state which that person shares with other citizens of a publicly constituted institution, such as a New England township. The Germanic and Scandinavian landscape territory was, likewise, such a publicly constituted institution that was analogous to a township, though larger, so that it could, like a county, encompass a number of towns.[10]

Historically, the commons would have been an area in which citizens of such institutions would have used rights in the common land. These rights would be institutionalized through the common, customary, laws of the town or land – a different sort of institutionalization than that generated by statute and state bureaucracy. These rights would constitute an important practical and symbolic expression of one's citizenship within the community circumscribed by the town or land. Rights in land, as a material phenomenon, gave rights in the land as a social phenomenon, e.g. citizen rights in the country. Prior to the institutionalization of the modern state, such rights could not have been expressed, as now, by the statutes and bureaucratic institutions that certify citizenship and issue passports. They were rooted, rather, in one's rights in land. To loose one's rights in the commons was tantamount to loosing one's citizenship. The suffix *–ship*, however, also has broader and more abstract connotations than that of an institution alone.

Generally speaking, the suffix *–ship* has meanings such as *nature, state, condition, quality* and *constitution* and its etymological relationship to *shape* suggests that it is these qualities that shape the phenomena at hand. Fellow*ship* means "the quality or state of being comradely: FRIENDLINESS, COMRADESHIP," and is thus a word that signifies something more abstract than an institution; something related to the human ideals necessary to the existence of the community constituting an institution such as a township. The word itself, in fact, derives from an institution in so far as fellow derives from the Old Norse, *felagi*, meaning someone who was a member of an institution, or association, (*lag*)

[10] The word *land*, in this context, was essentially synonymous with the word country – as in Scot*land*, the country of the Scots. For a discussion of the meaning of –scape and–ship, and land vs. county/country see: (Olwig 2002: 16-20, 43-61).

for the grazing of sheep or cattle (*fe*) in common.[11] Occasionally, we sense the original meaning of the term, as when we are told that only the gowned fellows of an Oxford college have the right to walk on the college's grassy "commons." Though one rarely sees sheep or cattle on a New England town commons, such commons similarly continue, according to the geographer Donald Meinig, to conjure up images of fellowship and communality. Quoting a statement to the effect that "to the entire world, a steepled church, set in its frame of white wooden houses around a manicured common, remains a scene which says 'New England'," Meinig goes on to write:
". . . drawing simply upon one's experience as an American (which is, after all, an appropriate way to judge a national symbol) it seems clear that such scenes carry connotations of continuity (of not just something important in our past, but a viable bond between past and present), of stability, quiet prosperity, cohesion and intimacy. Taken as a whole, the image of the New England village is widely assumed to symbolize for many people the best we have known of an intimate, family-centered, God-fearing, morally conscious, industrious, thrifty, democratic *community*"(Meinig 1979: 165).

It should be noted, when reading Meinig's purplish prose, that New England village centered townships still tend to be working direct democracies, with regular down to earth town meetings in which the citizenry meets to discuss and vote, in common, on the governance of the community.

Symbolic Commons

In New England and Oxford College the grazing function of a commons is but a distant memory. Nevertheless these commons tend to carry meanings that draw upon earlier notions of shared resources and regulatory regimes expressing participatory forms of governance rooted in ancient custom. Examples of this kind abound in Western Society. In Copenhagen as in many European cities, the workers active in the labor movement, parade through the streets on the first of May. Many bear budding branches reminiscent of ancient rites of spring, and all finally congregate at a park called "The Commons Park" (*Fælledparken*). In the 19th century, when the labor movement began, this place was not the manicured park that it is today, but a shaggy commons, and it is possible that many of the workers, fresh from the countryside, would have had memories of rural spring rites, involving festivities on a local commons. Initially, government troops were mobilized to disperse the workers, and the workers had to fight to win the right to meet on the commons. Today, the first of May has become a quasi public holiday, and many of the workers seem to be more interested in the beer than the labor movement, but the whole affair nevertheless continues to express, like the New England Village Commons, notions of grass roots democracy rooted in working commons.

The examples of the New England and Copenhagen commons have a rather clear-cut tie to working commons of recent memory, even if they have been transformed into manicured public parks. The grassy public park landscape ideal, with scattered trees, can, however, also be traced back to one of the most influential genres in Western artistic history, the pastoral (Williams 1973). Though the origins of the pastoral are lost in time, the Roman poet, Virgil, can be credited with establishing its formal elements with his *Eclogues*, a set of lyric poems celebrating the life of ancient Arcadian shepherds. Pastoral themes are also to be found in his *Georgics* that celebrates rural life more generally (and takes the form of a poetic agricultural handbook) and his *Æneid* that celebrates the origins of Rome. The

[11] Fellowship retained this institutional meaning in the archaic sense of "a guild or corporation," and in the still current: "a company or group of equals or associates : UNION, ASSOCIATION" (Merriam-Webster 1968: fellowship). For a fuller discussion of the meaning of fellowship see: (Olwig 2002: 19).

pastoral is built on the widely held classical notion that humankind first became civilized, and human, when it learned to tame animals and to graze them on shared pastures (Olwig 1984). Virgil, indeed, makes it clear that the locus of the pastoral is a common, during an ancient time when all the world was a common and there was "no fence or boundary-stone to mark the fields" (Virgil 1946: 69 [Georgics 1.151–52]).

The present day park ideal is largely inspired by the pastoral artistic tradition as embodied in the English landscape park ideal that flourished in the 18th century. At the same time as many working English commons were being enclosed for intensive agriculture, many estate owners chose to devote a large portion of the lands surrounding the manor house to grassy parks that were explicitly inspired by the pastoral tradition in poetry and graphic art. These parks were seen by many to be expressions of the democratic ideals characteristic of England (see, for example Walpole 1943 (orig. 1782)), and as such, the spread of these parks to continental Europe during the Enlightenment, was a reflection of the inspiration that England gave to democratic thinking throughout Europe (Neumeyer 1947). It was thus no accident that Montesquieu, the great admirer of the English system of tripartite government (executive, legislative and judicial) and author of *Spirit of the Laws* (Montesquieu 1989 (orig. 1748)), created an English style landscape garden around his French estate, *La Bréde*. Such parks, however, can also be interpreted to represent the ideological false consciousness, by which a new moneyed gentry, of often urban origin, sought to naturalize and legitimize the appropriation of working commons, and the theft of the ancient rights of commons from the commoners (Barrell 1972; Williams 1973; Bermingham 1987). One of the most popular English language poems of all time, Oliver Goldsmith's *The Deserted Village*, from 1770, was concerned with precisely this theme:

The man of wealth and pride,
Takes up a space that many poor supplied
Space for his lake, his park's extended bounds,
. . . .
His seat, where solitary sports are seen,
Indignant spurns the cottage from the green (Goldsmith 1966 (orig. 1770); see also Batey 1974).

The British access movement of a century ago, which was often led by the worker's movement, was inspired by such ideas of unjust loss, and was in this respect a deliberate attempt to regain, through mass-trespass, what was believed to be ancient institutional rights of commons (Rothman 1982). This movement, though controversial, had an evident impact through the establishment of national parks in Britain (Hill 1980; Darby 2000), just as similar labor oriented movements had an impact on the establishment of the *Allemands* right of common access to open land in Scandinavia. The movement, however, was broader than this, and it also included less radical organizations, such as Lord Eversley's "Commons, Forests and Footpaths Society" (now know as the "Open Spaces Society"), which was able to effectively use English common law to argue for the preservation of common land as parks, particularly in urban areas (Eversley 1910; Clayden 1985). A contemporary visitor to London's Hampton Heath, or the Peak District National Park, is likely to forget that the area was or is a working common, but the idea that cities and nations ought to have shared common landscapes, in which the larger citizenry have rights of access, owes to a heritage of ideas going back both to Virgil's pastoral, as well as to more recent experience with working commons as a legal and economic institution.

The Commons' Semiotic

This discussion of the transformation of the meaning of the commons landscape toward greater abstraction, in which it gains a symbolic character, suggests that our study of commons, institutions and landscape ought to take cognizance of the fact that the commons is not simply an institution, but also a symbol of the human ideals and values necessary to the maintenance of such institutions. I would argue, in this vein, that the study of the commons necessarily must encompass both the institutional and the symbolic dimensions of the commons. Semiotics, I believe, could provide model through which to understand the integration of these dimensions.

A common semiotic model involves the analysis of symbolic meaning by dividing a symbol into a triad (see diagram).[12] The 1) *signifier* may be a text, painting or landscape design that expresses a more abstract, signified meaning. The landscape painting thus 2) *signifies* more abstract notions related to the *nature*, *state*, *condition* or *quality* of the land. The English landscape garden park, for example, was seen to be a "natural" style of gardening because of the way it expressed the nature of the land, particularly in relation to the democratic nature of the society that shaped this land. The same could be said of the manicured commons found in New England villages or in contemporary Copenhagen. All of these landscapes *refer*, however obliquely, to the historical institution of a working commons -- the 3) *referent* in semiotics. Thus, even though grazing animals may not be present, their teeth replaced by the blades of lawn mowers, everything from the morphology of the clipped lawn with its scattered, full crowned shade trees to its shared usage can be traced to the historical existence of the institution of the working commons.

Research on the commons, it might be argued, tends to focus on different points on the triad sketched above. Studies from the humanities will thus tend to focus on the relationship between the *signifier* and the *signified* meaning. They may, for example, study the Jeffersonian democratic ideal in the context of an approach to the pastoral tradition in the arts in which the rarified world of Arcadian poetry will be more significant than the institutions and practices that characterize actual grazing on a commons (e.g. Marx 1964). Historians and geographers, on the other hand, will tend to focus on what has here been termed the *referent*, the actual historical phenomenon of the productive working commons. As empirical scholars they may well pursue their studies without much concern for the pastoral tradition and other manifestations of the symbolic significance of the commons, or for theoretical models of the commons, since they are concerned with places that have been historically defined as commons (e.g. Hoskins and Stamp 1963). Finally, there are the sociologists, anthropologists, economists and ecologists who are primarily interested in modeling institutions and regimes by which common pool resources can be managed. For them the historical commons tends to be used as an analogy for more general nomothetic principles concerning the way various public, private and individual property regimes effect the management of common pool resources. The historical commons thus tends to function more as an metaphor suggesting a likeness or analogy, than as the point of departure for study (*metaphor*: "A figure of speech in which a word or phrase denoting one kind of object or action is used in place of another to suggest a likeness or analogy between them -- as in the ship plows the seas or in a volley of oaths)" (Merriam-Webster 1968)), and its larger symbolic meaning in the arts tends to go unremarked. This approach grew up largely in the wake of Garrett Hardin's seminal essay "The Tragedy of the Commons" published in *Science* in 1968 (Hardin 1968; Feeny, Berkes et al. 1990). I would argue, however, that these three foci in academic research should be combined. The study of the commons ought to be rooted in an understanding of the shifting relationship between the

[12] I describe this model at greater length in: (Olwig 1993).

symbolism of the commons, and the evolving historical commons, if a theory of the commons that adequately explains its social and economic significance is to be generated. This means that the three approaches outlined above must take serious cognizance of each other when studying the commons. This issue can be illustrated through a brief examination of Hardin's "The Tragedy of the Commons."

For Hardin the commons ostensibly provided a metaphor to which he applied a logical, mathematical, argument, intended to show the inevitable tragic depletion of shared common pool resources, as opposed to privately owned resources. Both his critics and supporters have tended to adopt his discursive framework, in which the historical commons ostensibly functions primarily as an analogy for more generalized models of various property institutions and regimes. The fact of the matter, however, is that Hardin's text was, as he has revealed elsewhere, informed by a sophisticated knowledge of both the highly symbolic overtones of his metaphor, and by a long standing historical discourse developed by defenders of enclosure and opponents to what we now think of as social democracy (Hardin 1959; Hardin and Baden 1977). "The Tragedy of the Commons" falls, I would argue, within a literary sub-genre termed the "negative" pastoral by Raymond Williams, in which the ideal qualities of democratic sharing, normally identified with the commons, are reversed and turned on end (Williams 1973; see also Olwig 1981). The power of Hardin's article to influence debate within history and geography, economics, anthropology and sociology, as well as amongst politicians and resource managers, derives, I would argue, from his ability to mobilize the symbolic, the historical and the metaphorical meaning of the commons. If one is to approach this theory critically, one must do so from the same comprehensive discursive terrain.

Commons theory

In my view, an adequate theory of the commons must be rooted in a critical understanding of the symbolic dimensions of the commons as well as its history as a concrete referent for that symbolism. Though the landscape of the commons often tends to be economically marginal, it is socially and symbolically central.[13] The importance of lands grazed and otherwise utilized in common for the social and physical reproduction of agrarian society helps explain, I believe, its long-standing symbolic role. Rights in the commons, be it for grazing, the plucking of berries and the gathering of kindling, or for riding and fox hunting, were central to the establishment of one's rights, membership and standing in the larger community, and hence to one's right to its protection and fellowship.

Today, as the agricultural significance of the commons wanes, and as the urbanized populace expands, we are faced with a conflict between what might be perceived as a "new" recreative and symbolic commons, versus an "old" productive commons. There is certainly something to this, because people with historical, local rights of commons do not

[13] The intensive production of agricultural goods for market exchange has largely taken place on the demarcated cultivated infields of the farm, which were primarily at the disposition of the individual farmer. The size of a farmer's herd was tied to the size and fertility of the farmer's infield. The meadowlands, and outfields, which were grazed in common, played an important role, on the other hand, in the reproduction of the herd, and in the reproduction of the fertility of the infield (through the input of manure), as well as for social reproduction, because they were a source of a variety of subsistence products that were of particular importance to the landless poor – e.g. as a source of fuel, berries, honey, small game etc. Though the exploitation of such resources served practical ends, their collection also constituted a form of recreation, as did the various seasonal festivities held in such areas (for a presentation of the recreative, symbolic and psychological importance of the commons to the rural poor, as expressed in the poetry of John Claire, see: (Barrell 1972)). For the wealthier, landed segments of society, on the other hand, these areas provided an important recreational and social resource as the locus of high status recreational activities such as hunting, riding, etc.

necessarily understand the legal principles by which outsiders may demand the right of access to their fields, and they may also worry about the practical consequences of such access for their agricultural use of the land (Edwards 1995). These tensions are nothing new. They reproduce in new form, rather, centuries of conflict surrounding the commons as a locus of community identity and cultural capital within a changing and evolving historical relationship between the symbolic and economic dimensions of the commons. In this sense, the modern well-to-do urbanite, seeking to buy property on an historical common with a wild moorland view, where his daughter can ride her horse, and he his Range Rover (both suitably clad in a Barbour oilskin), is following in the footsteps of generations of estate owners, who prized natural views and exclusive forms of recreation. The rambler, on the other hand, who assiduously trespasses by foot on this urbanite's rural land, is likewise following in the boot steps of countless commoners before, who have sought to defend perceived ancient customary rights of common (Pithers 1991; Ashbrook 1992).

The contested character of the commons, I would argue, has less to do with tensions between differing property institutions, than with a conflict at the abstract symbolic level of social ideals, between the institution of property itself and its symbolic opposite, the pastoral commons. The fascinating thing about the classic commons is thus that it is nominally the property of the Lord of the Manor, but the lord need not have use rights to the commons. Property rights and use rights are thus two different things. Whereas property can be sold under legal statute and title, use rights are customary and rooted in an ever changing practice rather than title or deed, and cannot be sold as such. Customary rights are, in principle, unwritten and subject to constant revised in the light of current practice.[14] Property, on the other hand, as the dictionary tells us, is: "a :something that is or may be owned or possessed : WEALTH, GOODS; specifically : a piece of real estate ('the house . . . surrounded by the property' --G.G.Weigend) b : the exclusive right to possess, enjoy, and dispose of a thing : a valuable right or interest primarily a source or element of wealth : OWNERSHIP ('all individual *property* is . . . a form of monopoly' -- Edward Jenks) c : something to which a person has a legal title" (Merriam-Webster 1968: property). Use rights in the commons are the symbolic antithesis of such property rights in that they historically have belonged to a community, not an individual or a corporate body. It is the symbolic antithesis of property and its attendant association of exclusivity. The trespassing urban rambler thus may not have specific customary use right to a particular village's common, but as the descendent of rural commoners, the rambler may feel a symbolic use right, and given the way customary rights are constantly being reinterpreted in the light of current practice, the rambler may even gain a general use right – as has happened with the Scandinavian *Allemands* right mentioned above.

It is the antithesis between that which is private, and that which belongs to the community that explains, I would venture, the commons' symbolic importance, and this is why they are so socially and politically contested, whether they are historical commons or whether they are modern commons-like constructions, such as Antarctica, to which much of the aura and

[14] Customary rights are normally first given legal written form if there is a legal conflict. I thus have the customary use right to walk from my Danish summer home to the beach on a path across a neighbor's private land. In earlier times this right was to enable access to the common resource of the beach sand as a building resource, but today it is a right of access to a common recreational resource, and it is no longer permitted to take sand. I will not gain the written legal title to cross private land unless this right is contested and adjudicate through a court case, or I agree to pay for this right (in which case it ceases to be a customary right). I cannot sell the right to walk on my neighbor's land, which accrues, gratis, to residents of my village, nor can I sell the recreational use right to the beach, which is open to the communality of the entire public (for a discussion of customary rights see: Olwig 2002: chapter 2).

discourse of the commons has accrued. The study of the commons will thus necessarily implicate larger social and political ideals, and this is why the commons' social importance is best understood when combining concrete, historical/empirical and theoretical, model oriented approaches, with approaches that take cognizance of the commons' enormous symbolic importance to society as an epitome of shared community values and democracy.

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Managing Commons across Levels of Organization

Lars Carlsson
Division of Social Science, Department of Business Administration and Social Sciences, Luleå University of Technology

Abstract
Co-management has proven effective for sustainable management of natural resources. However, contemporary research indicates that in many cases local communities of resource users have develop sophisticated systems of collaboration, not only with the State but also with numerous other actors. These experiences also show that the State is no unity meaning that a community can establish different types of relations with different units of "the State". In this article the *concept co-management network* is launched as a way to label, and thereby to get a better understanding of these webs of collaborative agreements. It is conjectured that co-management networks normally are developed over significant periods of time, that they in essence nurture cross-scale institutional linkages, and that these characteristics enhance capacity building for better natural resources management. Finally, it is suggested that more research, which would explicitly employ the idea of co-management networks should be conducted.

Key words: co-management, cross-scale linkages, capacity building, network approach

1. Towards New Models of Co-Management [15]

Natural resources do not only generate income and welfare, they also provide a number of non-monetary values, for example, forests to hike in, waters to sail on, streams for angling, holy places for worship, and so forth. Thus, management of natural resources, such as forests, is typically a matter of simultaneous provision and production of both public and private goods. Common sense tells us the best actor to provide public goods, e.g. nature reserves, is "the State", while private goods, such as timber, is considered a responsibility for private actors.

Contemporary research regarding sustainable use of natural resources, has given new insights that challenge the idea of the State as the primary provider and safeguard of fresh air, pristine forests, and floundering fish. Traditional management systems seem to have much to teach that might be useful for contemporary management of common-pool resources (CPR)[16] (Bromley, 1992; Feeny, Berkes, McCay and Acheson, 1990; Holling, 1986; Holling, Gunderson, and Peterson, 1993; Ostrom, 1990, 1996).

There is a growing literature, which deals with the so-called linking problem, i.e., the relations between social and ecological systems (Berkes and Folke, 1998; Berkes, Colding and Folke, 2003). The aim has been to search for and theorize around linking arrangements that have been proven successful for long-term utilization of common-pool resources. In the same vein the benefits of, so called, *co-management* have been discussed. The basic idea is that it would be possible to deliberately arrange management systems where, for example, a community of people manages the appropriation, access, and maintenance of a resource together and in collaboration with public authorities.

In this article it is argued that, for sustainable management of natural resources as well as for the aim of introducing co-management as a useful alternative to the prevalent

[15] I would like to thank Professor Fikret Berkes for fruitful comments on a first version of this article.

[16] "The term 'common-pool resource' refers to a natural or man-made resource system that is sufficiently large as to make it costly (but not impossible) to exclude potential beneficiaries from its use" (Ostrom, 1990:30). A CPR problem (dilemma) occurs when outcomes are suboptimal and when "given existing institutional and constitutional arrangements [it exists]at least one set of coordinated strategies that are more efficient than current decisions and are 'constitutional feasible" (Gardner, Ostrom and Walker, 1990:336).

management systems, the very concept of co-management should be reconceptualized. This paper is organized as follows: In the next section the concept of co-management is discussed. In section three the underlying ideas and shortcomings of mainstream images of co-management will be discussed, in particular the image of the state. Section four contains an illustrative example of collaborative management that does not easily fit the popular image of the concept. Section five, finally, concludes the paper by proposing ways to refine the concept of co-management.

2. The Concept of Co-Management

In the extensive literature on co-management, the phenomenon is discussed with reference to a number of contexts. However, it has been argued that "co-management cases have accumulated faster than they have been analyzed" (Berkes, 2000:12). Thus, there is a need to reflect upon the phenomenon, to discuss the concept of co-management as well as its theoretical underpinnings. This is the undertaking in the subsequent sections of this article.

Collaborative management, or co-management, has been defined as "the sharing of power and responsibility between the government and local resource users," (Berkes, George, and Preston, 1991:12). According to other authors, co-management can be understood as "a situation in which two or more social actors negotiate, define and guarantee amongst themselves a fair sharing of the management functions, entitlements and responsibilities for a given territory, area or set of natural resources (Borrini-Feyerabend, Farvar, Nguinguri and Ndangang, 2000:1).

The term 'collaborative management' (also referred to as co-management, participatory management, joint management, shared-management, multi-stakeholder management or round-table agreement) is used to describe a situation in which some or all of the relevant stakeholders in a protected area are involved in a substantial way in management activities. Specifically, in a collaborative management process, the agency with jurisdiction over the PA [protected area] (usually a state agency) develops a partnership with other relevant stakeholders (primarily including local residents and resource users) which specifies and guarantees their respective functions, rights and responsibilities with regard to the PA. […] Collaborative management regimes and other similar arrangements can and do operate also in territories that do not have a protected area status, and can apply to virtually all types of natural resources. Forests, fisheries and coastal resources, grazing lands, wildlife and even non-renewable resources (e.g., oil and mineral deposits) are included in existing management agreements among various parties. […] We understand here 'management' as a process by which a site […] is identified, acquired and declared; relevant institutions are built and/or enter into operation; plans are designed and implemented; research is undertaken; and activities and results are monitored and evaluated, as appropriate. (Borrini-Feyerabend, 1996:8)

Pinkerton utilizes two different models to conceptualize co-management between, what she calls, folk managed systems and the state. A "*horizontal* continuum from nearly total self-management to nearly total state management [and a] top-down, *vertical* 'contracting out' model of state management" (Pinkerton, 1994b:322–25, emphasis added). The same logic can be used to analyze co-management between other types of private and public actors; "the State" can be any public authority and the counterpart can have a number of appearances.

The horizontal model would describe co-management only as a matter of co-operation, or division of labor, between public and private actors. For example, a community of farmers might co-operate with forest authorities, thus, constituting a system of co-management. As a result of this agreement, farmers will get the services they need, for example, in the form

of the drafting of GIS-based management plans or protection from intruders while the authorities receive income for the services they provide. This model assumes that property rights are vested in either party.

According to the vertical model, in which the State is supposed to hold the legal and moral authority, co-management is characterized by devolution of rights. Using the same example, in principle, state authorities decide how forests should be managed while the farmers are given the right to act freely only if they achieve some desirable results. For example, they might be required to maintain the forest in a certain way, replant when they harvest, not run a logging enterprise in ecologically sensitive areas, etc. The State might also "contract out" tasks and let the community handle the management on its behalf.

Most types of agreements can be understood by the characteristics of these models. In Figure 1 they are combined in a way that any admixture might be described as an instance of co-management. For example, co-management arrangements of type *A* are more "state oriented" than those of type *B*. This way of reasoning has proven fruitful for analyzing a number of problems that are associated with management of CPRs (Pinkerton, 1989, 1994a).

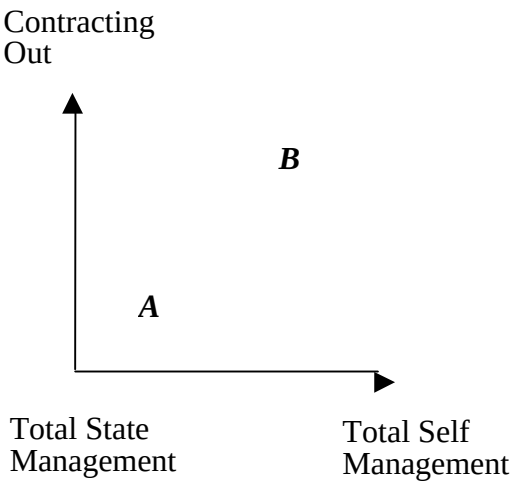

Figure 1. Dimensions of co-management.

For example, it has been discussed "[u]nder what conditions […] an accommodation of systems to the State and the market take place without destroying the benefits of folk management?" (Pinkerton, 1994b: 321). Too close co-management with state authorities might "strip [the folk system] of political power," while co-opting by the market may lead to "shedding [the] obligations to be accountable to sound resource management and equity within the folk community" (p. 321). This argument states that the agreements are too far to the right on the x-axis in Figure 1. The idea is that total self-management might leave the field open for some destructive mechanisms of the market, for example, that powerful companies buy, or in other ways dictate the conditions for the use of the local resource. Also, excessive fraternization with the state, on the other hand, might reduce the local community to a tool for public policy. This argument states that such agreements are too far to the left on the x-axis in Figure 1.

Like Pinkerton, also Berkes, George, and Preston (1991) stress the fact that co-management has to be looked upon as a continuum from a simple exchange of information to formal control or partnership. Where on this scale the "optimum" is located is impossible to decide. Generally, such judgements depend on how one considers the trade-off between different criteria for success. For instance, it is likely that high economic efficiency will be achieved at the expense of redistribution and equalization among users (see also Ostrom,

Schroeder and Wynne, 1993: 116 ff.). Since it is implicit that co-management presupposes that parties agree on the arrangement it has also been emphasized that co-management should be seen as a process rather than a fixed state (Beck, 2000:4)

However, research about forest commons, about fisheries, or natural parks (Carlsson, 1999; Rova, 1999; Weitzner, 2000) indicate that these tools ("scales") for discussing systems of co-management between a community of resource users, the State and other actors, must be further developed.[17] Existing concepts have problems in capturing the complexity and variation in contemporary systems of government, which in many cases are tailored to adapt to the complexities of ecosystems. For instance, within the same resource system different management tasks can be subject to different couplings and agreements with the state. In fact, it can also be the case that different parts of "the State" have different agreements or collaborative connections with the same community. These circumstances indicate that, a reconceptualization of the image of co-management is desirable. This is the topic of the next section.

3. Co-management as a Means of Establishing Cross-Scale Linkages.

The concept of co-management is built on the assumption that some coherent public actor or unit, typically the State, co-operates with some equally unified private actor typically a local community of resource users. This image can be questioned, however. First, it does not reflect the complexity of contemporary governance systems (Pierre and Peters, 2000). Secondly, it may keep us from appreciating how communities of resource users, such as forest commons, tend to develop rather sophisticated systems of relations that span across different scales of organization.

Generally, the State can be understood with the use of different types of definitions. *Organizational definitions* consider the State to be particular configurations of governmental units while functional definitions refer to its function, such as, the maintenance of social order in society (Dunleavy and O'Leary, 1987). A third *mosaic* alternative would be to apply a network approach, i.e., to employ "a decentralized concept of social organization and governance" (Kenis and Schneider, 1991:26).

In most policy areas, different governmental units participate in a number of organized activities, which can be understood as issue networks, implementation networks, policy communities, etc. The network approach does not presuppose that the State is any predominant actor or that political, administrative hierarchy, by definition, structures a policy area. Thus, the policy outcomes of network activities depend on how the networks are structured. To summarize: the network perspective can be distinguished by its (a) nonhierarchical way of perceiving the policymaking process, (b) its focus on functional rather than organizational features, and finally (c) its horizontal scope (Carlsson, 2000:505).

Usually, policy networks are mapped by means on bottom-up methods meaning that empirical problems and problem solving activities, not political decisions, serve as the guiding principle. One straightforward way of summarizing this bottom-up methodology is to say that the analyst basically asks two questions: 1) what is the problem to be solved? 2) Who participates in the problem solving process? (Carlsson, 1996; Sabatier, 1986)

By adopting this approach we acknowledge the fact that the State simultaneously can adopt a number of attitudes and appearances that sometimes are contradicting (Carlsson, 1995,

[17] This is explicitly discussed in Carlsson L. and F. Berkes (2003). *Co-management Across Levels of Organization: Concepts and Methodological Implications.* Lead paper prepared for the Resilience panel at the Regional Workshop of International Association for the Study of Common Property (IASCP), "Politics of the Commons: Articulating Development and Strengthening Local Practices", Chiang Mai, Thailand, July 11-14, 2003.

2000). According to this view, the State can hardly be conceptualized as a unity,[18] something that has been discussed long before the network approach became a part of political science (McIver, 1947; Lasswell, 1956; Lindblom, 1965; Ostrom, 1985:14). However, the mainstream image of co-management is built on the image of the State as a unity, as it has been outlined above.

In a seminal article Ostrom, Tiebout and Warren (1961) have stressed the importance of distinguishing between the production and provision of a good. For example, it is a well-known fact that a public agency might provide a good while a private actor (like a group of fishermen) handles the production. Also this insight has implication for the image of the State in relation to co-management. For instance, one can ask if the presumed co-management agreements with the State are based on *provision* or *production* of goods and services. We should also clarify if we talk about *public* or *private* goods. When it comes to public goods the distinction between production and provision is quite important. "The organization of provision [...] relates primarily to consuming, financing, and arranging for and monitoring the production of goods and services" while production has to do with the "manufacturing" of products and services (Ostrom, Schroeder and Lynne, 1993: 75). Without elaborating further on this topic, it is essential to note that the processes of production and provision are associated with different types of transaction costs. It means that in essence co-management agreements have different qualities depending on the type of goods that is involved and whether these are produced, provided, or both (and by whom).

In the next section an example will be used in order to support the idea that co-management systems are often much more sophisticated than is generally assumed. The example also illustrates that the notion "the State" might as well be a "misnomer" for a more complex system of governance (V. Ostrom, 1985:14). The example also demonstrates.

4. Co-management, an Empirical Example

The Swedish community-managed forests have demonstrated a remarkable viability and have succeeded in adapting to industrialized society. This has been accomplished as a result of the development of a rich web of co-management agreements with different types of actors (Carlsson, 1999). Thus, the Swedish forest commons are used to illustrate the main message of this article, i.e., that co-management often is a more complicated enterprise than might be anticipated. This paper is built on the presumption that this is true for many types of commons not only in modern industrialized society. [19]

In Sweden community managed forests, called forest commons, are organized in the following way. Each farmer possesses an individual share in a collectively owned forest area that can be as big as 60.000 hectares. Since the shares coincide with the properties (farms), companies can also hold shares. Research has revealed that these units have succeeded fairly well to keep up with modern forest management and no signs of "the tragedy of the commons" can be detected (Carlsson, 1999). A special law (Swedish Code of Statutes, SFS 1952:167) regulates the community-managed forests, their organization, some of the activities, and the role of state control. In addition, the commons have their own bylaws. To summarize: the whole system is *guaranteed by the State* and the order is codified in laws and regulations.

A chairman and a board elected by the shareholders govern each forest common. The law requires a person with higher education in forestry to be associated with the common. This forest manager manages the forest according to laws and rules and, ultimately, the wishes of the owners. A compulsory forest management plan supplies the framework for the forestry activities. The profit from the commons is distributed as cash amounts to the

[18] For example, already in the 1980s it was shown that in Sweden more than 80 public authorities were eligible to produce statutory rules (Lane et al., 1988: Ch. 2).

[19] For another example, see Rova and Carlsson, 1999.

shareholders (proportional to their shares) or as subsidies ("contributions") to the shareholders but also for general purposes in the district. Subsidies are often dedicated to support the forestry of the farmers (the shareholders). For example, they are paid per forest plant or according to the size of draining areas. In some commons all economic yields are reinvested in the district in order to run water a purification plant, a local sawmill, or to maintain roads. In short, the commons participate in authoritative allocation of goods (benefits and burdens) in society, the latter referring to a standard definition of politics. As we shall see, a sophistic system of co-management has been developed.

Collaboration with State Authorities: The commons have built alliances with several authorities involved in enforcing the Nature Conservation Act and the National Silvicultural Act, with mutual benefits. State employed and locally stationed forest rangers are responsible for all forestry-related controls. The commons purchase their services for forest inventory and assessment services, and for helping control the distribution of their own subsidies amongst community members. By paying state authorities for this service, the commons do not have to bear all the costs of maintaining their own control system. They also protect themselves from future disputes with authorities regarding the demands for biodiversity, the preservation of protected biotopes, etc. Who is to blame the commons when the State has done the job?

Another type of agreement has to do with the implementation of forest policy. Farmers are no longer required to have written forest management plans for their own private lands. However, by means of subsidies the commons encourage them to draft such plans. Thus, the commons have an agreement with State forest managers for bringing this service to their shareholders. Since details in the management plans must be orally explained to the individual farmer, state officials get extraordinary opportunities to spread and implement state forest policy among private forest owners. The value of this type of face-to-face implementation could hardly be underestimated.

Collaboration with private companies: When forestry was a manual enterprise, all commons had their own staff of loggers. Today there are virtually no manual loggers left in Swedish forestry. The commons have faced significant pressure to adjust to these changes. One method of dealing with technological change is to externalize harvesting costs. Thus most commons practice stumpage sale. In this way, the buyer defrays the cost of technology, and of its improvement and renewal. Where no market for stumpage sales exists, delivery agreement and renewal felling contracts are common. These agreements can be based on harvesting with the commons' own machinery, but generally most commons have kept their machinery ownership to a minimum. The commons have also adapted in other ways through other forms of mechanization and a reduction in personnel.

Collaboration with the Sámi: The majority of common forests are located in areas in which reindeer herding by the indigenous Sámi people is practiced. The Silvicultural Act # 20 stipulates that consultations must be held with the Sámi before any logging can be performed on lands they use for all-year-round grazing. The commons have negotiated with the Sámi before constructing roads, harvesting, etc. Since different groups of Sámi have different historical locations and patterns of moving their herds, one basic problem for the commons is to decide which groups they would regard as 'concerned parties' or stakeholders. They have solved this problem by letting the Sámi people themselves decide which group they regard as concerned by a particular logging operation. This co-management of the commons seems to function quite well. Since 1971 there has been only one appeal against a logging decision made by a common. Since the commons agree to adjust their activities to reindeer herding, relations with the Sámi have been remarkably free from conflicts.

Collaboration with the Guarantor of the Rule of Law: One problem with the Swedish commons forests is the increased number of remote owners. In general, the commons have

adopted the principle that every farm owned by more than two persons must appoint a deputy. This person votes on behalf of the others at the assembly meetings and is also the recipient of the annual cash amounts or other types of support from the common to the single farm. This principle is based on law that is aimed at facilitating the relation between the state authorities and the farmers, *not* between the commons and their members. The commons have simply decided that the law also is convenient for their purposes and as a result they have reached an agreement with the state forest service authorities.

Geographical cross-scale linkages are established in different ways. The forest commons have established an umbrella organization aimed at promoting their joint interests. This organization functions as an interest group and a policymaking organization for the commons in relation to public authorities and other actors that may affect their activities. The umbrella organization also has the role of facilitation exchange of information among its members and to spread information concerning technologies of forest management, etc. For instance, representatives of the commons participate in annual forest excursions that are held on the premises of single commons in different parts of the country. At these occasions, experts may be invited to discuss new forest management techniques or a common might demonstrate how it has chosen to manage its forest. In short, all these activities serve the purpose of linking the forests commons geographically. As a by effect many types of information are exchanged something that makes it possible for the commons to coordinate their activities and promote joint interests.

Other types of agreements are more implicit. For example, in six of the commons companies possess more than 40% of the shares and as a consequence they have the legal rights to appropriate a significant part of the yield. In none of the commons, however, do companies execute their rights in proportion to their holding of shares! This is due to deliberate efforts by the commons to mitigate the effects of the development. Companies are obviously willing to pay this price for keeping good relations with farmers in districts in which they operate. Also this solution can be understood as one type of collaboration agreement in the web of agreements that has been developed. In addition, the commons have developed systems of co-management with local public institutions – schools, non-profit making organizations, etc.

Another example is the practice that allows farmers not to fulfill duties that are regulated by law. For example, the commons are still required to inform and send documents to the county board regarding harvesting, economy, etc. Some of the commons are in fact formally required to deliver their income to the county board and then to apply for the amount of money they want to distribute or reinvest. Even though the law stipulates this, it is not practiced any longer. Other rules they simply escape from. For instance, some of the commons are not allowed to endow their individual shareholders with cash amounts but by renaming a cash amount a "general subsidy for forestry purposes," the rule is circumvented. The authorities accept this as some kind of unwritten agreement.

There are also a number of other collaborative agreements that could be added to the picture, such as, agreements between a number of communities regarding joint forest management, cooperation with environmental groups, tourist entrepreneurs, etc. However, for the sake of argument, the examples provided might serve as sufficient illustration.

Together, these examples also constitute a good illustration of the mixed or negotiated economy with floating borders between different sectors (Nielsen and Pedersen, 1989). Thus, it is logical to assume that in such societies co-management is arranged accordingly. Obviously the owners of the commons have succeeded in navigating the complexity of modern governance. In fact it has been conjectured that the (many-headed) co-management system, briefly sketched above, that has been developed has been possible because the farmers has retained their "time and place knowledge".[20] This has reduced transaction costs,

[20] See, Hayek, 1945. For an application of the concept see, Ostrom, Schroeder and Wynne, 1993:49 pp.

something that might explain the relative success of the Swedish forest commons (Carlsson, 1999:14 pp.).

5. Co-management Networks

The principal features of the previous example are illustrated in Figure 2. In the example, a community is supposed to manage a natural resource, for instance a forest. All management systems consist of a number of tasks, illustrated by A – F in the figure. To manage these tasks a number of relations, or agreements, might be established with various public hierarchies (illustrated as pyramids in the figure) comprising something called "the State". Thus, in the example the State consists of all types of public agencies, from the central level of government down to the local municipality. Of course, there are also tasks that are managed by the community itself. The left part of Figure 2 indicates that some management tasks might be subject to collaborative agreements with companies and other private actors.

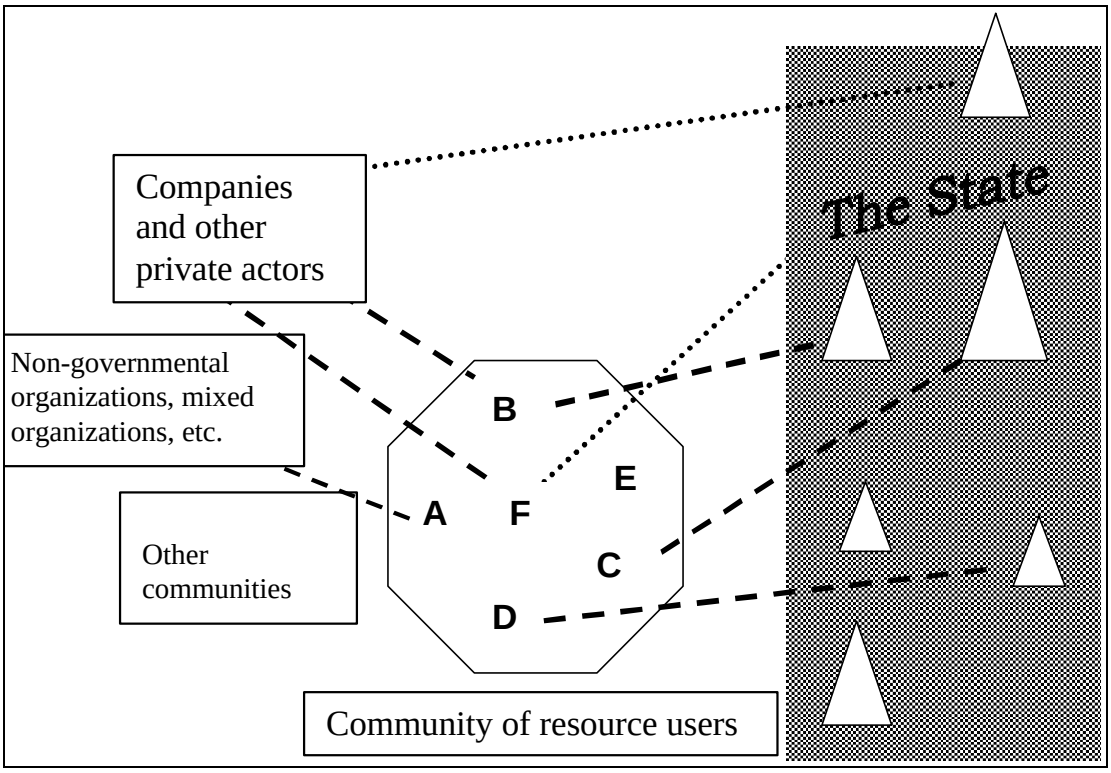

Figure 2. Example of a co-management network.
The picture would become even more complicated if one incorporates semi-public authorities, quasi non-governmental organizations, non-governmental organizations, etc. that also might have collaborative relations with the community under focus. Together, the whole system can be understood as a co-management network, a structure, consisting of a number of couplings with a multitude of different units, such as, commercial agreements (in our example both with companies and state authorities), legal relations, contracting out agreements, monitoring agreements, enforcement collaboration, and information exchange. Collaboration agreements among single commons, such as those among the Swedish forest commons, would make the picture even more complicated.

However, there are two more features that add to this complexity, namely the physical attributes of the resource under focus and the institutional arrangement that applies to the single community (not indicated in Figure 2). For example, due to its ecology, a boreal forest requires other management strategies than a tropical rain forest; woods in the Swiss

Alps are different than those on the Siberian taiga, and so forth (Imperial, 1999; Ostrom, Schroeder and Wynne, 1994). Also communities are obviously different, they are organized in various ways, they have different history, culture, etc. To a great extent, attributes of the physical world have shaped the institutional arrangement that has evolved. The implication for the image of co-management is that the rich variety of common-pool resources and an even greater multitude of socioeconomic systems (linked to these systems) are likely to be associated with even more complicated co-management arrangements than has been described above. Many systems are so familiar to us that we do not see the "beauty" of their complexity. To get a better understanding of such systems, more research that explicitly applies a network approach is required (Carlsson, 2000). What are the implications of such an approach?

6. Implications for Research

An integrated part of contemporary research about natural resource management, as well as the concept of co-management, is the idea of power sharing. For example, all instances of collaborative agreements between a community of resource users and the State are, presumably, based on some kind of division, or sharing, of rights and responsibilities. This is not a matter of dispute, however. The basic arguments in this article intend to move the discussion further. Firstly, it is emphasized that co-management is not only a set of agreements between the State and a, likewise unified, counter part, like a community of users but a web of relations across different levels of organization.

Secondly, since both ecological and institutional systems are multifarious and complex it can be assumed that most systems of co-management show the same characteristics. One way of mapping such systems is to start with a list of tasks that are to be performed to manage the resource. Two general questions can serve as guidance for the research: What management tasks are to be performed and what are the problems to be solved? Who will participate in, or put restrictions on, these activities and related problem solving processes? The advantages of starting the analysis with the tasks are twofold. The tasks serve as the guiding principle that leads the researcher to find a relevant unit of analysis, the co-management network. It also has the effect that one appreciates that power sharing is the result, not the start, of the process. This also supports an observation by many researchers, that co-management is the result of extensive deliberation and negotiation a process rather than a fixed state.

Finally, it should be emphasized that the idea of searching for co-management networks also call attention to another important feature of natural resources management, the importance of developing cross-scale institution linkages (Berkes and Folke, 1998; Berkes, 2002). What becomes obvious by studying a co-management network, such as the one discussed earlier in this article, is that the web of agreement that has been developed, is the result of activities over an extensive period of time. The network consists of relations that connect central levels of decision making to those of local choice, past events to present, and one geographical area to another. These types of cross-scale systems have proven essential for the prospect of, so called, capacity building, understood as "the sum efforts needed to nurture, enhance and utilize the skills and capabilities of people and institutions at all levels – nationally, regionally and internationally" (Berkes, 2002; Olsson, 2000).

7. Conclusion

Co-management has proven to be a popular solution to many problems associated with management of common-pool resources. However, before suggesting co-management as a general remedy for various CPR problems, one must ask if the call for co-management is

caused by the fact that power has been taken away from the local community in the first place. If so, for example contracting out might as well be an attempt for state authorities to increase the legitimacy of their domination. To offer a co-management agreement might, in fact, be a means of codifying the existing situation. Thus, co-management is not good or bad *per se*.

In most literature, co-management is analyzed along two dimensions, *horizontal*: from self-management to state management and *vertical*: contracting out from the State. In this article another approach has been launched, *a mosaic model* characterized by a combination of different strategies *and* a fragmented state. These webs of relations have the quality of linking units and organizations across different levels of organization. Based on an example, it has been argued that it is often more appropriate to describe such co-management arrangements as networks, i.e., webs of agreements forming a system of relations to public authorities, companies, and other actors. This insight calls for a reconceptualization of the image of co-management. The introduction of the notion co-management network is an attempt to do this.

However, more research is needed to give better empirical support for this idea. Social network analysis, in combination with policy analysis, provide a number of useful tools that have proven useful to get a better understanding of complicated institutional arrangements with different types of actors involved (Carlsson, 1996, 2000; Scott, J. 1994).

Local communities, such as the shareholders of the Swedish forest commons, have noticed that the State is not homogenous, something they have used to their advantage. Generally, communities, which can utilize this fragmentation of state power, have great opportunities to create co-management systems that substantially enhance the ability to manage natural resources in a sustainable way. Such systems, well tailored, help to reduce transaction costs and make management cheaper. However, creating co-management networks requires that the architects of these have a substantial local knowledge. Hence, it is unlikely that such arrangements can be created from above. Local communities stripped of power have few opportunities to create appropriate co-management networks. It is likely that a substantial degree of self-governance is needed to accomplish this.

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The Institutional Geography of Swedish Commons – The Case of Grimstens Hundred in Central Sweden

Ulf Jansson
Department of Human Geography, Stockholm University

In the debate on commons over the last 30 years the starting point has often been Hardin's seminal paper *The Tragedy of the commons* from 1968. This view has been challenged over the years, mainly within the discussion that can be labelled common-pool resources (CPR). This discussion has however focused very little on the geography of the commons. A growing and interesting discussion on institutional geography partly connected to actor-network theory engage both the geography and the social organisations. This paper is an attempt to bring the historical geography of the commons in Sweden into this discussion.

Today very little of the Swedish landscape is communally owned and used, but this was not the case in the early-modern period. As a matter of fact the majority of the land was prior to the 1600's not completely in private hands; it was jointly owned and used by groups of farmers. This is an aspect that is easily forgotten if we focus our attention only on the taxed and intensively used lands, i.e. the fields and meadows. The commons made up a substantial area of Sweden during the late medieval and early-modern period. There are no reliable estimates of the absolute or relative size of commons in Sweden during older times, but taking into account that most forests in Sweden were held in common, and the fact that forests today cover 55 percent of the country (Skogsstatistisk årsbok 2003 p. 53). I think it is safe to say that more than half of the area, maybe as high as 80 percent, was jointly owned and managed lands in southern Sweden. Commons were of different types and sizes. The commons that belonged to the hundreds (Sw. *häradsallmänning*) were partly taken over by the state during the late 17th century but later handed over to the landowners again in the 19th century. The village commons were divided by the villagers and became private property in the late 18th or the early 19th century. In the north of Sweden new commons were created particularly during the 19th Century (Lilljenäs 1982). The action taken by the State and the subsequent response and activity in the local communities constitutes the essential part of this paper.

Large areas were thus commons prior to the enclosures in Sweden in the 18th and the 19th centuries. The commons were as mentioned above of varying kinds. It could be a small commons that was used by all the farmers in a village or hamlet. This is maybe the ordinary use of a common in English, but the concept used for commons in Swedish, *allmänning*, is rarely used for this type of village commons. I will in the following call these village forests. There were however other types of commons in Sweden during the early-modern period, areas that were used by all landowners in a parish or a hundred (Sw. *härad*). The hundreds predate the parishes that were not created until Christianity had been firmly rooted in the 11th or 12th centuries. It seems that some areas were used commonly by all farmers in a region (Sw. *landskap*) but they are not as well studied and our information about them is scanty. There was another type of commons, which will be in focus in this paper. It is the forests that were shared between several villages, hamlets and farms. These forests are known as *skogelag* (literally a group of people bound together by a forest) in the 18th century, they have been studied by Clas Tollin (Tollin 1986, 1999).

This paper is divided into three sections. The first consists of a theoretical discussion that deals with the spatial and temporal aspect of commons. I will then make a brief overview of the history of the commons in Sweden that obviously draws heavily on previous work. This will provide a condensed Swedish forest history and a backdrop for the discussion on the studied area. Finally I will give some empirical examples, using cadastral maps and legal documents, from a parish called Viby in Grimstens hundred the province of Närke in central Sweden with a focus on the 16th and 17th century. I will emphasise one

interpretation that will focus on local institutions, the need for a common area for discussions and the actions taken by the state vis-à-vis these local institutions. There has been an enormous increase in studies dealing with commons, both in an absolute way and in a more theoretical way. We are now talking about the importance of saving the whales on the high seas or preserving the ozone layer as global commons. In the last decade or so the discussion has been strong within environmental studies and in political science. I will emphasise the need for historical as well as spatial dimensions to this field of investigation. The concept of institutional geography could be used in this way.

Institutions

The unavoidable starting point for all overviews is, as already mentioned, the influential paper by Garret Hardin from 1968. His argument is that collectively used areas will be overexploited and the individual user will not behave responsibly for the sustainability of the area. The area will eventually be plunged into an ecological catastrophe. These powerful words of Hardin have been criticised by a number of scholars. The basic erroneous assumption is that the situation is not a commons but rather an area without regulations and rules, an open access-resource. Hardin himself has agreed that this is the case in a later article, but the words from 1968 still seem to linger on within some areas of research today, mostly though in studies within the natural sciences.

Common Pool Resources

Elinor Ostrom is one of the researchers that have spent quite some time to questions on commons (Ostrom 1990). She studies institutions within a tradition of political science and economics. She has in an interesting way turned the argument up side down. The basic concept is Common-Pool Resources (CPR). These CPRs are central to the understanding of handling the resources and the environment. Most studies in this field define institutions in this way following the works of Ostrom and her colleagues. In order for a common to function it needs to follow certain demands. Ostrom calls them design principles (Ostrom 1990). Elinor Ostrom and Sue Crawford have been working on a grammar for decoding the commons. The institutions need, according to them, a set of rules, norms and shared strategies.

“The institutional grammar introduced here is based on a view that institutions are enduring regularities of human action in situations structured by rules, norms, and shared strategies, as well as by the physical world. The rules, norms, and shared strategies are constituted and reconstituted by human interaction in frequently occurring or repetitive situation.” (Crawford & Ostrom 1995 p. 582)

Without going into details this set of conditions, that could be formal or informal, need to define who is allowed to use the land, what type of usage it is, how much each user is allowed to use and something that states what will happen if the rules are not followed. This definition of institutions is very similar to Giddens definition of system (Giddens 1984).

The examples within the CPR-framework come from a wide range of regions and field of activities, where a majority of the studies deal with distribution of resources in developing countries. The original studies on commons deal with local institutions, but subsequently global issues were also incorporated into the framework (Buck 1998).

The CPR-theory has been used within different scientific disciplines when questions on sustainability are in the forefront, but the core of the literature is probably economics, ecology and political science. I will firstly address the question whether historical studies can be of importance in our understanding of commons and then move on to discuss the spatial relevance of such studies.

Historical studies

Many studies within the CPR-framework are based on models or are entirely theoretical. They also tend to study the situation of a common at one period of time and not to follow its changes over time. Surprisingly many have the conclusion that Hardin was wrong. No ecological crisis emerged; the local institutions managed to avoid this by creating rules and limit the human use of the resource.

There are empirical examples on real catastrophes, i.e. tragedies, in commons but most of the can be viewed as situations were open-access is at hand, that is there was no control over the resources. There is also a critique against the CPR-theory. One of the critical views focus on the fact that many studies just one more time concludes that Hardin was wrong. Another critical remark is that that the CPR-theory or framework is not suited to study changes or the emergence of commonly owned areas (Stens, Edwards & Röling 2000 p. 2-3). Attempts have been made to modify the theory in that direction.

Studies on third world countries, that dominate the field, have from time to time a historical perspective but rarely any solid empirical material for a longer period of time, say, further back in time than the last 100 years. A not too uncommon result is that the local institution has managed to handle a situation with declining resources, i.e. the CPR does work. Studies on institutions over a longer period would result in a more complex picture. Lars Carlsson has with reference to forest commons made some interesting observations on local institutions (Carlsson 1999, 2001). One of his results is that these local institutions seem to work regardless of the political organisation on a higher level. They seem to be adaptive to new political situations, be it the present democratic system, the medieval feudal organisation or the despotic early modern one.

Historians in Europe have also been attempting to adopt an institutional approach, using CPR-theory when it comes to studies on commons (De Moor, Shaw-Taylor & Warde 2002). To combine a historical perspective with an institutional approach would be rewarding.

Institutional geography

The theoretical discussions on commons both within the CPR-framework and as a whole often lack a spatial aspect. The focus has been on organisation, structure, and decisions on use of the resources within the purview of the institution. There are however some studies with a CPR-theory that includes remote sensing and GIS (Richey 2001).

In the wake of Giddens and others, geographers as well as other social scientist have embraced institutions as a concept. Institutions have been perceived either as fixed structures that people find themselves in or as something that society has constructed to organise their lives. Within historical geography in Sweden institutions have not been discussed as much as in neighbouring subjects such as economic history or sociology. It is however fair to say that early studies on village life and rural organisation by David Hannerberg often implied institutions. One basic argument was often that local societies were capable of resolving difficult questions and creating elaborate solution for distributing equal rights to land (Hannerberg 1977). It is obvious that more recent studies on landscape, i. a. Sporrong 1985 and Windelhed 1995, used theoretical arguments from the Property Rights School, which are based on institutional economics, via Dahlman (1980) and Dodgshon (1980), has had influence on the results. However the discussion never was theoretically detailed.

Within geography there is presently an increased focus on institutions. Chris Philo and others have in Geoforum collected a number of articles that focus on *institutional geography*. The studies are heterogeneous but with a focus on combining spatial aspects, as presented in the post-modern debate and institutions as they are used in economics. This is a worthwhile point of departure that needs to be explored further. One of the interesting

things that are brought up in the introduction is the need for a common space for discussions. There is a study by Deidra Boden (1994) that Philo and Parr (2000) uses. Boden studies the use of languages in various situations organisation organise local practices. Boden that bases here study on Gidden's theory of structuration emphasises the meeting and implicitly space.
During the 1990's the concept of place has been given a central role within human geography and other social sciences. The history of the concept has been studied by William Casey (1997) and will not bee thoroughly explored here but this is the place to comment on the connection between common lands and place. The concept of location in Greek was either *topos* or *plateia*, from p?at??: wide, flat. *Plateia* or the Latin *platea* was an open square, a common place, etymologically a wide street surrounded by private houses (Howrath 2001 p. 57). These roman squares, or places, got into the Roman and Germanic languages as: e.g. plaza, piazza, Platz, plats, plass, plads and place. These squares were according to Roman law *res publica*. This is the point of Hénaff and Strong (2001). They discuss the need for a common place for discussions based partially on the fact that these squares were the birthplace of the modern democracy in classical times.
I will not pursue this discussion any further here but simply conclude that the concept of place was used for something that was used collectively for a group of people. It is hence not unreasonable to us place in context of commons, rather the opposite. It must be stated here that the roman places were not *res privatae*, as the commons that we are to study here but belonged to the state, i.e. they were *res publica*.

The history of commons in Sweden
In the early regional laws from the 13th and mid-14th centuries as well as in the laws covering the entire kingdom from the 1340's, the texts mention commons belonging to a hundred or an entire region. In the oldest of the regional laws from Västergötland, the only thing mentioned in the law is the commons belonging to the entire province. This could imply that commons belonging to a hundred are of earlier date (Ihrfors 1916 p. 50).
On a later stage the commons used by an entire parish was created. This however could not have happened before Christianity and the construction of parishes was completed. This would have occurred before the end of the 12th century (Brink 1990). During the 10th and the 11th centuries the king often claimed one third of the commons in southern Sweden, Götaland (Ihrfors 1916 p. 45). During the later parts of medieval period, the crown was claiming ownership of uninhabited areas of northern Sweden. Gustav I stated during the early 1500's that "all properties that were inhabited belonged to God, the King and the Swedish Crown." (Betänkande 1915 p. 2). From the late 16th century the crown said officially that the crown had full property right over the commons.
Researchers, legal historians and others have often claimed that this was not a legitimate demand from the crown. And that it can be considered to be nothing less then a confiscation of property. In court rulings at the time something called double ownership was discussed, that is the king or the crown actually owned the entire country and that all other properties rights were of a second nature. This resulted in a transition from a situation were the farmers and landowners could manage the commons themselves to a situation were the local representatives of the crown were completely in charge.
The process of creating parish commons from commons belonging to the hundreds continued during the 19th century. In the legal and political discussions during the 17th and 18th century the two types were never clearly differentiated (Betänkande 1915). According to the forest law of 1734 the shareholders of the parish commons were allowed to divide the land amongst them, and this happened relatively often during the 18th century. There were also conflicts between seigniorial estates and the local farmers, especially in the 17th

century when colonisation and use of these types of lands was greater than before (Sundberg 2000).
The commons belonging to the hundreds were, during the 17th century transformed into crown commons. In central and middle Sweden most of these commons were treated as all other crown lands. The crown commons were successively abolished during the 1800's, and in the later part of the 19th century the crown or state forests were sold to private landowners. This also meant that the farmers got their commons back, if it had not already been sold or leased out to the expanding iron industry such as blast furnaces and hammers. The farmers got full property rights back after it had been taken away during at least 200 years.
A large proportion of these commons that belonged to the hundreds quickly got sold to various buyers. It could be someone in the local community or an entrepreneur for example from a sawmill. This decline in forest commons was stopped by a legislation that made it illegal for the commons to reduce its original area. This has led to a somewhat surprisingly effect that the area of forest commons in central and southern Sweden has increased during the 20th century, and continues to do so. The modern commons work as modern forest corporations were all farmers that belonged to the now ancient district of the hundred have "shares" in the commons and there is a board that governs the activities in the forest.
Apart from the more commonly known commons there were other types of communally owned forests, the so-called *skogelag* that apparently were to be found in southern Sweden (Tollin 1986, 1999). For an overview in English on commons in Sweden see Sundberg (2002).

Viby parish in Grimstens hundred

Grimstens hundred in Närke consisted of two complete parishes and smaller parts of other parishes. It is clear in this case that there is a mismatch between the younger division into church parishes and the old juridical division into hundreds. The major parish is called Viby, and will be the area of investigation. During the 16th century a part of the medieval parish was added to a newly established chapel, that during the 17th century became a full church parish. This new parish originally called Boderna (roughly meaning shielings or huts) later renamed Ramundeboda. There was a small medieval convent in this area. The convent belonged to the antonites and was located very strategically at a passage were most travellers had to pass when going between Western Sweden and the Mälar Valley in the medieval period. Today both the railroad between Stockholm and Göteborg as well as the main highway E20 still runs through this forested area.
The prehistoric settlement, as indicated by the Iron Age cemeteries from the 9th and 10th centuries, is usually found below the fault-line on the sediments. This is also the general impression of the medieval situation as well. With the exception that a number of single farms were located on a row just above the escarpment, and a few more are scattered in the forested areas (see figure 2).
A substantial part of the area is in the hand of the nobility during the medieval period, which makes not completely representative for the Swedish situation. Quite a few of the farms have been donated to various convents in the vicinity, mostly Cistercians. Some hamlets and farms belonged to Karl Knutsson Bonde.[21] Some of his lands were inherited and others he acquired in other ways. A part of this estate became part of the permanent crown land belonging to the future kings. Only a handful of farms were freehold (Brunius 1980 p. 187–188).
In the southern parts of Viby parish there was relatively much forests, especially above the marine limit, terrain consisting of mainly till. The majority of the farms were located in the

[21] Karl Knutsson Bonde was born in 1409 and was king during three seperate periods: 1448–1457, 1463–1465 and 1467–1470.

low-lying areas covered in fertile clays. Separate farms today own most of the forests. There are two large commons that belong to all the farmers in the old historical region of the hundred. One in the west (Västra Tiveden) that in 1841 covered an area of 3,180 hectares and a smaller area in the east (Östra Tiveden) covering 348 hectares (Hanson 1971 p. 66). The ownership structure is a result of the enclosure or land reforms in the 18th and 19th centuries. One interesting observation is that almost all of the forests that are now privately owned were previous to these land reforms also owned by groups of farms in several hamlets and villages. The number of owners or stakeholders could vary in different jointly owned forests. One forest had for instance 17 different owners, but some had only three or four. The forests were known as "marker" (literally ground or land c.f. German "Marken") or simply "byaskogar" (the villagers' forests). Clas Tollin has previously noted that some of the forests in Viby parish were jointly owned, but a complete study shows that the forests, with some exceptions, were all owned by farmers from more than one village.
One interpretation in accordance with arguments made previously by Clas Tollin, is that these large commonly owned areas once belonged to on big domain, a prehistoric settlement that was later divided into several of the medieval villages and single farms. In one case this is a very plausible interpretation. It concerns the forest called Skävimarken. It was jointly owned by a hamlet called Skävi and the single farm Björstorp. Björstorp could very well be a later settlement established in the forest in Skävi.

In the case of Onsvimarken this type of interpretation is much harder to make. The hamlets Odensvi, Ybby, Lybby and Tystinge have no apparent spatial or temporal relation to one another. The farm Lindhult, inside the forested area and the single farms Kalvslätt and Frotorp could be interpreted as a later established settlement. Place-names ending in *-torp* indicate that it is a newly established farm. Frotorp however is known already in 1331 and Kalvslätt from the 15th Century (Brunius 1980 p. 186). Furhtermore most of the above mentioned farms and hamlets that are stakeholders in Onsvimarken have Iron-age cemeteries, which would imply an older history on the site.

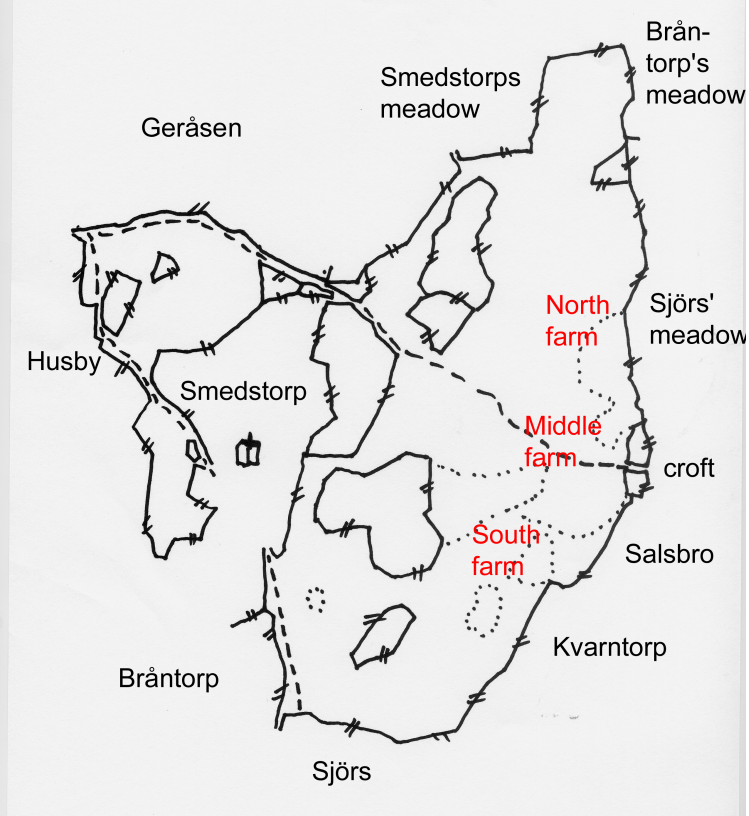

Figure 1. In the forest Husbymarken one can see several place-names that indicate older settlements. Parts of the forest is known as North farm (Norra gården), Middle farm (Mellangården) and South farm (Sörgården). This can be interpreted as place-names belonging to a deserted farm in the area. During the 16th century a settlement called *Sörtekirkio is noted in the records, since this is south of the church this might be it (LSA S68-43:3, 1897).

In one case in the so-called Husbymarken, it is possible to interpret the settlement changes in such a way that the forest at

least in parts consists of an abandoned hamlet or farm. In the forest one can se different place-names such as: Norrgården (The North farm), Mellangården (The Middel farm) and Sörgården (The south farm). These place-names can not bee interpreted in a simple and straightforward manner but one possible interpretation is that these place-names denote an earlier settlement in this location. There are no existing farms within these names in the surrounding hamlets that could indicate that these forests belonged to farms with these names. A further indication is that the historian Jan Brunius has found a not located abandoned settlement called Sörtekirkio, roughly meaning: south of the church. This farm was recorded as deserted in the early 16th century, but it could be a settlement that had been abandoned during the 14th or the 15th centuries (Brunius 1980). The area Husbymarken is located to the southwest of the church whereas the farm Nordankyrka is located to the north. This is not a positive proof that this was the case, but it is an indication that forests could be created on deserted farms and hamlets. During the last 15 to 20 years, studies on present-day forests indicate that a large proportion of the forests in southern Sweden had in prehistoric times been settled (Mascher 1993, Pedersen & Widgren 1998).

The local court (häradsting)

One important source material is legal documents related to the local courts, in Swedish *ting*, that treated amongst other things also matters concerning the commons that belonged to the hundred. There are records from 1611 but there are some gaps in the series of books. The first ledger consists only of fragments that cover the period 1611 to 1612. It is furthermore damaged and very hard to read. From 1644 there are continuous records from 1644 to 1700. Normally the court convened two or three times a year if nothing exceptional happened. The records are sometimes very detailed about the different parties' views and witnesses are often heard about the situation today and in older times, especially to clarify customary rights not present in any written materials.

When it comes to activities in the forests in general and especially the commons most cases deal with illegal logging of "royal trees", i.e. oak and other trees with nuts or fruits. The first sentence is from 1647 when 14 farms are mentioned where oak, Swedish whitebeam, beech, hazel, currant bush (tree), apple-tree and hawthorn were illegally cut down by land-owners and others (ULA Dombok, Grimsten 1).

The neighbours Nils from Spjutmåsen and Peder from Solberga, both farms in Snavlunda parish, just to the south of Viby were in 1644 accused of cutting 57 and 30 trees respectively in the commons. They defended themselves and said that they had permission from a man called Bengt, who lived in Stavkärr, on the other side of the parish-border, i.e. in Viby. Apparently Nils and Peder had previously lent Bengt a horse and this was the payment. The two loggers were convicted to 10 and 6 Dsmt. But also Bengt, which had moved to another farm, was fined 3 Dsmt because he was not allowed to use or allow others to use the commons without consulting the other stakeholders (ULA, Dombok Grimsten 1).

A good example of how questions about use of the commons were resolved can be found in 1645 when the councillor of the realm Seved Bååth requested to cut down 30 trees in the commons from the landowners at the local court. His offer was that if he was allowed this, the stakeholders could free of charge use his sawmill. The court reaches the decision that Bååth can take the 30 trees if the landowners in the hundred are allowed to use the sawmill for a year (ULA, Dombok, Grimstens härad 1, 1645). In this case there is no exchange of money, but it is still a compensation for the lost timber.

Colonisation

New settlements were established during the 16th and 17th centuries on the commons and in the forested areas as such in Viby During the late 1500's there was a colonisation of both

the commons and the jointly owned forest. In some cases there were Finns that established new farms.[22] The colonisation was by all standards modest in Grimsten hundred. In the neighbouring Kumla hundred Lars-Olof Larsson has observed some colonisation of common lands (Larsson 1983 p. 134–136)

In 1645 we can also find a dispute of a newly established croft called Bäckatorp that was located on the border between the commons belonging to the hundred and the jointly owned forest belonging to the farms and hamlets in the south-west. Erik Eriksson, a local official (Sw. *länsman*) based in the crown common, is the one addressing the problem. He means that Bäckatorp is not established in the jointly owned forest but in the crown common. This is also the first time that the concept of crown common is used in Viby. Erik argues that the establishment of this settlement is neither beneficial for the crown nor the landowners in the hundred. This is an interesting line of argument. Here one can see that there is a concern both for the crown, probably the diminished forest, and the wellbeing of the farmers, probably their ability to pay taxes. This is seen in a large number of official documents from the time and even back to the mid-16th century. The situation seems to be a bit unclear, but the court rules that Bäckatorp gets 6 years freedom from taxes, and it is henceforth regarded as a legitimate settlement (ULA Dombock Grimsten 1). It is very common in early-modern Sweden to get a tax-reduction for the starting period of a new settlement. This is along the policy to increase the number of farms and thereby increasing the incomes of the state.

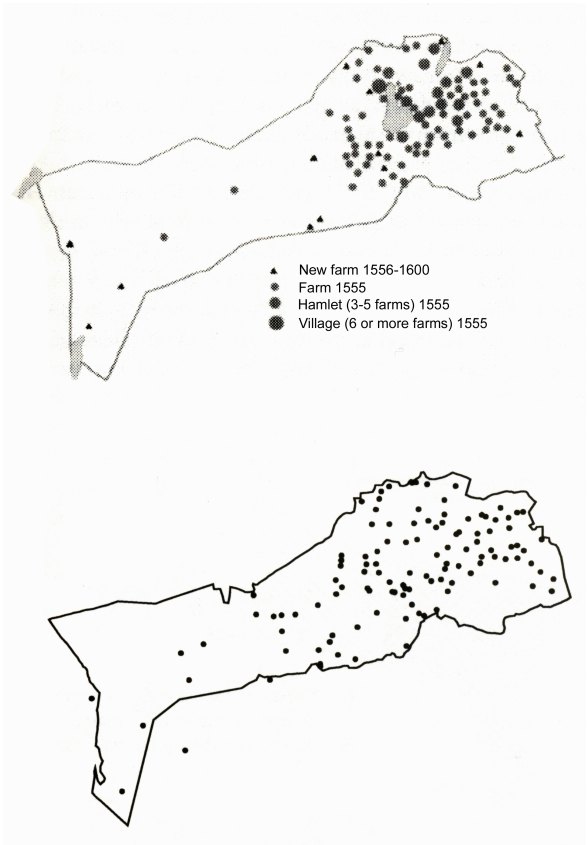

Figure 2. Settlement in Viby parish 1556 to 1600 (above) and in 1699 (below). Some settlements have not been located in the map from 1699. Source: Brunius 1980 and tax registers from 1699.

[22] For an overview on Finns see Bladh 1995 p. 83–89.

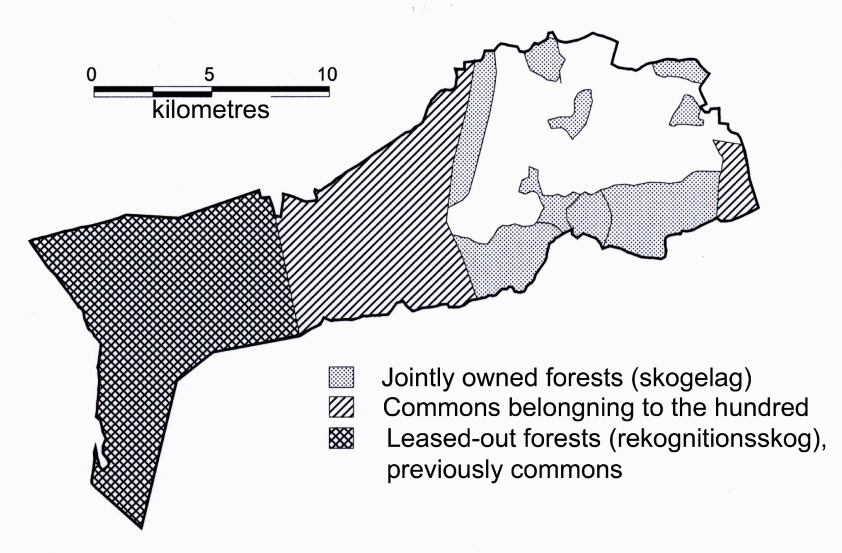

Figure 3. Commons and jointly owned forests in Viby parish circa 1700. The extension of the forests has been generalised an as seen in figure 2 several settlements were located inside the commons to the west.

During the 17th century there were new settlements in the commons and in the part that became a leased-out forest (Sw. *rekognitionsskog*), but most were located in what was left of the commons. It is during the 1650's that the colonisation takes off in the area (table 2).

unit	1652	1684	1699	unit	1652	1684	1699
1 freehold	1	1	2	1 crown	43	46	51
1/2 freehold	2	2	3	3/4 crown			1
1/4 freehold	12	13	12	1/2 crown	6	8	8
1/8 freehold	6	1	1	1/4 crown	11	28	34
freehold meadow	1	2	2	1/8 crown	8	7	
freehold mill	1	1		Newly established crown-croft	2	1	
1 noble	84	82	75	not taxed			10
1/2 noble	4	4	4	crown "utjord"			1
1/8 noble	1	1	1	crown meadow	4	5	8
noble "utjord"	2			crown mill	6	6	6
				totally	194	208	219

Table 1. Settlement in Viby parish, including Öja fjärding (a small area that is often in the cadastral material associated with Viby). In the categories of smaller crown-settlements 1/4, 1/8, newly established and not taxed are predominantly found in the commons. The change of "full" farms "1 noble" and "1 crown" is related to the confiscation of noble

property and the creation of mansion on these noble farms. Utjord is an uninhabited area that someone pays taxes for. (RA, Jordeböcker Örebro län 1652, 1684, 1699).

year	number
1600–1619	-
1620–1639	3
1640–1659	6
1660–1679	9
1680–1699	10 (oskattl 1699)

Table 2. Years for different new farms when they were put into the tax-register in Viby parish according to records from 1650, 1688 and 1699. The year is not the time when they started to pay taxes but when they were established. Most new farms got several years of tax-exemption.

The use of the forest during the 17th century

One important change was when blast furnaces and hammers were located in the commons during the 17th century. Two entrepreneurs Anders Boij and Anders Nilsson got permission to establish two hammers in 1643. The activities expanded during the century and several new hammers were built. Anton (Antonius) Boij, the son of Anders Boij, leased a large proportion of the commons. This type of forest called rekognitionsskog still belonged to the crown but was leased out to sawmills and different metal-works. By obtaining the commons Anton Boij could secure the charcoal.[23] Boij later during the 1670's and 1680's acquired more farms from the crown (RA, Jordebok, Örebro län, 1699).

Illegal charcoal-burning and swidden-cultivation was relatively commons during the 1660's and 1670's in the legal documents. The year 1669 a long row of farmers were summoned to the court because they had cut clearings in the forest for slash and burn cultivation as well as charcoal-burning. The farmers claimed that they were doing this in their jointly owned forest but the forester meant that this was in the doing tit in the crown and hundreds commons (ULA, Dombok, Grimstens härad 1, 1669). It is of course the opportunity to sell charcoal to the blast furnaces and hammers that gives people an increased incitement to produce these products. At the same time the taxes increased during the period so both landowners and the farmers that paid rents to a landowner had to increase their income.

In the 1660's it became more common for farmers to cut in the commons whereas in the earlier period it was mostly crofters that were charged for illegal logging. In one case the farmer had even sold illegal timber from the commons to the local judge (Sw. *härads-hövding*). The farmers apologise and say that they have not fully understood the forest law of 1664, but this law has been read for them at church so they are sentenced according to it (ULA, Dombok, Grimstens härad 1, 1664). The legislation on forests in 1664 meant that heavy restrictions were imposed on the farmers. Successively more restrictions were added during the latter half of the century (Eliasson & Hamilton 1999).

One other somewhat surprising effect is that local officials were allowed to establish shielings and crofts in the crown commons in order to compensate their lack of forest close to their farms. The local judge was in 1644 allowed to create a shieling for transhumance in the commons because he had very little pasture on his farm (ULA, Dombok, Grimstens härad 1, 1664).

[23] RA, Jordebok, Örebro län, 1688. The church in Bodarne was paid by the then knighted von Boij. For monuments and field evidence of iron-production in the area see Skyllberg 1998 p. 195–200.

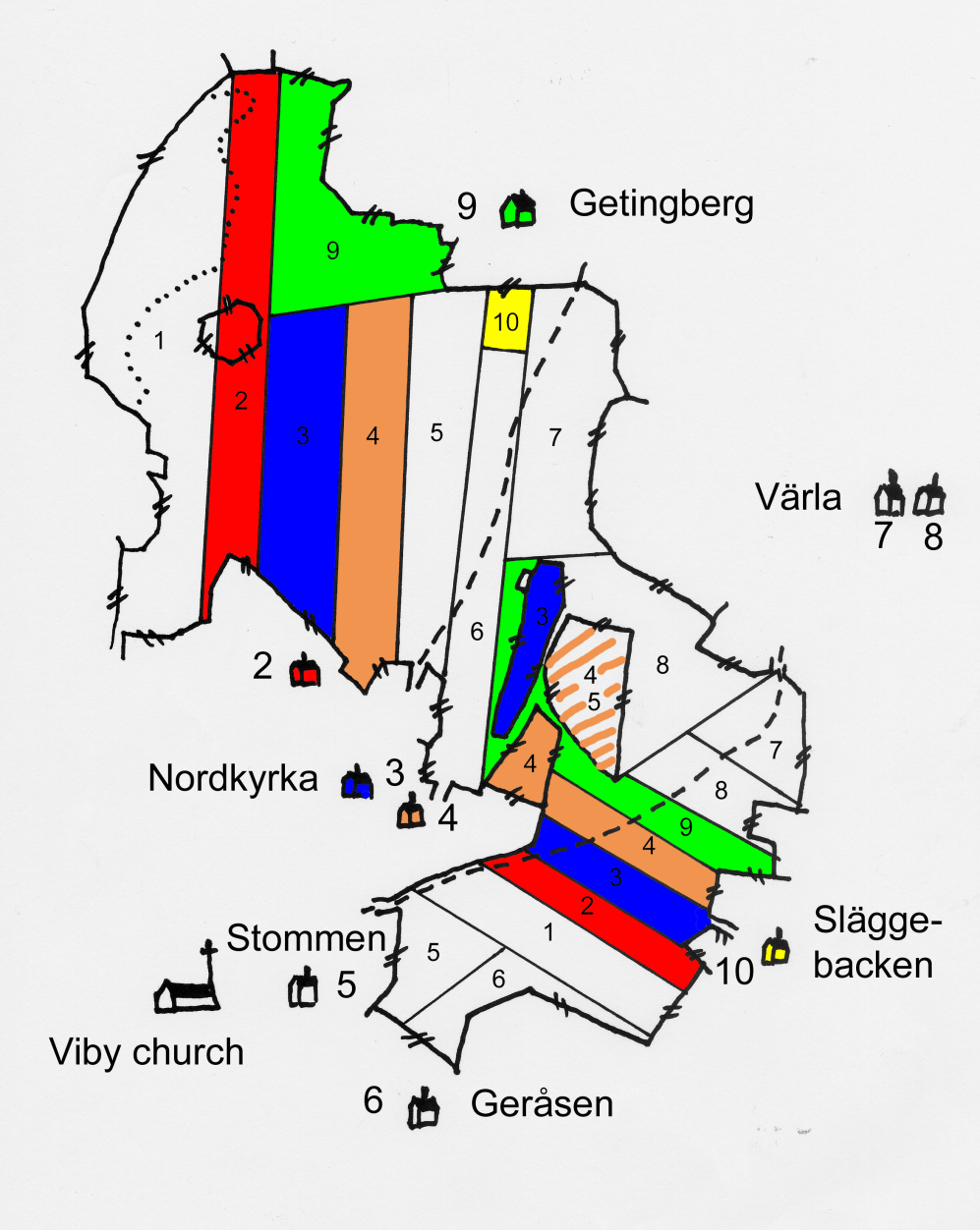

Figure 4. When the forests were divided among different farms and hamlets this is often the result. The maps shows Nordkyrkeskogen (The forest north of the church) where this process took place during the mid-1700 (Source: LSA 68-83:1, 1756).

Concluding discussion

We can assume that the farmers, that were predominantly not owners of their farms in this region, had some customary rights to the commons and prior to the mid-17th century the made sure that no crofters or squatters were using the forests too much. Officials such as crown-foresters were during the 17th century increasingly being the ones policing the forests. At that time landowners, be it a farmer or a nobleman, were the ones that were controlled and accused of use of the king's land. The local institution had lost its control of the resources and the local people no longer cared for the commons and its sustainability. The tragedy of the commons came when the state intervened. Ronny Pettersson has made a similar interpretation in connection to the land reforms in the 19th century. The transition itself from one system to another resulted in an overexploitation of the forest (Pettersson 1995).

The Crown had all the time since the medieval period attempted to limit the common space, and the place, for the local institutions by proclaiming that all uninhabited lands belonged to the king. During the early medieval period large proportions of the commons were effectively donated to monasteries. In the rhetoric used by the kings during the 16th century this view that the forests belonged to the crown was obvious but in reality this probably did not mean that much apart from some new settlements established on the commons. During the 17th century the crown enforced its power and the use of the resources were limited and later on even the property-right was attacked. The local common became a crown common and in some cases it was leased out to private entrepreneurs. The local institution had by that time ceased to exist and their place to discuss had eluded them. This process can be interpreted in various ways. It can be seen as a predecessor to many of the forest land-reforms were all farmers got separate parcels of land instead of a communally owned and managed forest. This can in its turn be seen as a necessary factor for the modern agriculture and the capitalisation of land.

Another interpretation is that this is a deliberate attempted by the crown to actually limit the local institutions as such. To deal with a consolidated strong local institution consisting of farmers can be problematic for the crown. By reducing their legitimacy when it comes to the commons also their political and social power will be reduced. Fernandez (1987) makes a similar interpretation concerning immaterial values in Asturia in Spain. Apart from the change in use of resources, often a decline, the social relations change a great deal when a common land is dissolved.

During the described period a new group of people had gained control of the management of the forests, the professional forester that worked both as a police and a prosecutor in the local courts, apart from managing the forests.

The local institutions that had previously managed the forests had ceased to work and their place, the commons, had eluded them. In this case the commons were not, as in classical Greece a place (*plateia*) to meet at but a place to discuss about. The meetings and discussions amongst stakeholders were reduced by the fact that the decisions were taken by the crown-officials. Discussions as the ones concerning Seved Bååth´s sawmill in the 1640's were not found in the records during the later part of the century.

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The Right of Public Access in Sweden. A History of Modernization and a Landscape Perspective.

Klas Sandell
Research Unit for Tourism and Leisure,
Department of Geography and Tourism, Karlstad University

The Evolvement of the Right of Public Access

A brief remark about the modernization process and the evolvement of out-of-doors and nature-tourism...
Therafter:

- About Public Access in Practice:
- Some themes among the early recreationists

- "Our wonderful native land" ("Vårt härliga fädernesland")
- About the Swedish Tourist Association and national mobilization

- "Through the railroad" ("Genom öppnandet af järnvägen")
- About transports and infrastructure

- "The right to roam" ("Färdselrätten")
- About that the basic right of public access goes without saying

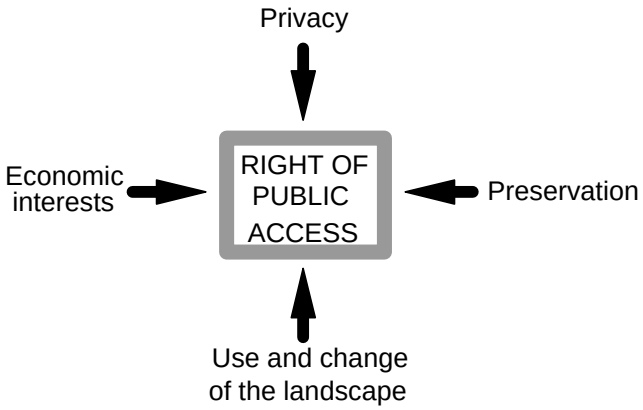
- "The need of lodging" ("Kvartersväsendet")
- About food och accommodation

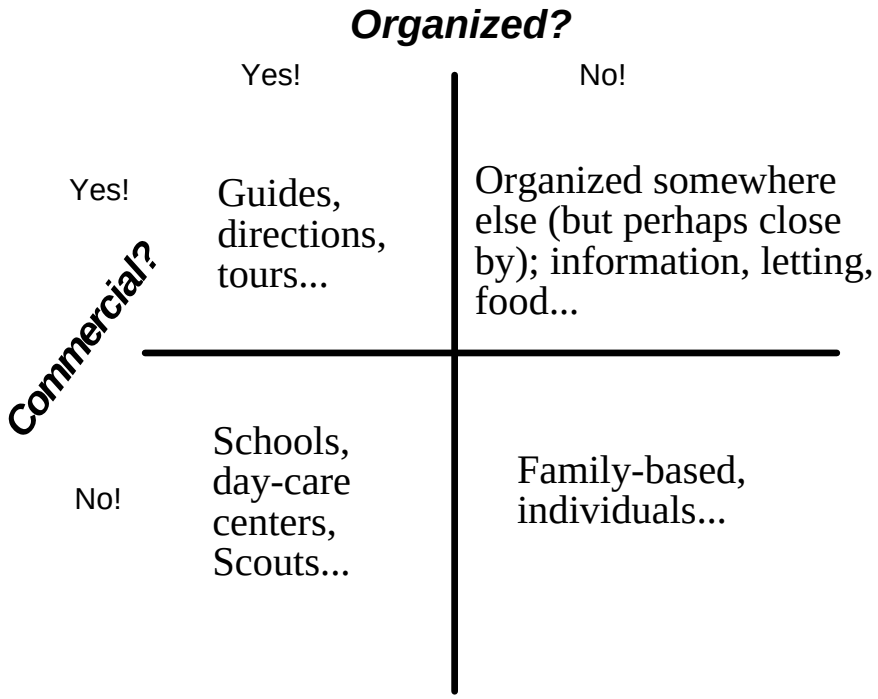
- "Plain and simple establishments" ("Mindre, enkla anläggningar")
- About a well-balanced accessibility

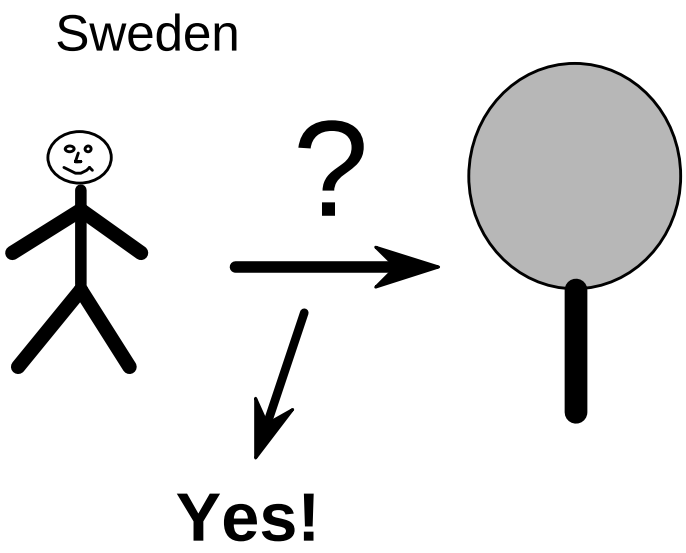
Some Characteristics of the Current Right of Public Access

The "*allemansrätt*" (the Public Right of Access to the Countryside), which means that everyone has the right, within certain restrictions, to move freely across private land holdings, pick mushrooms, flowers and berries etc., is a basic element in the Nordic outdoor tradition. Also to some extent it seems reasonable to see the tradition as a means of recognising and supporting the needs and interests of the landless. The survival of this right up to the present day is probably largely attributable to the fact that Sweden has a sparse population. Also, the tradition of freedom for the farmers and the Germanic tradition of legislation (as opposed to the Roman) have been raised in support of the current position of the right of public access in the Nordic countries....

In summary, the right of public access in Sweden is in common law and can be seen as the "free space" between various restrictions, mainly: (i) economic interests; (ii) people's privacy; (iii) preservation; and (iv) the utilisation of the landscape. For example, camping for not more than 24 hours is generally allowed, traversing any ground, lake or river, swimming, lighting a fire etc. are permitted wherever the restrictions mentioned above are not violated.


Privacy
Economic interests
RIGHT OF PUBLIC ACCESS
Preservation
Use and change of the landscape


Organized?
Yes!
No!
Yes!
Commercial?
No!
Guides, directions, tours...
Organized somewhere else (but perhaps close by); information, letting, food...
Schools, day-care centers, Scouts...
Family-based, individuals...

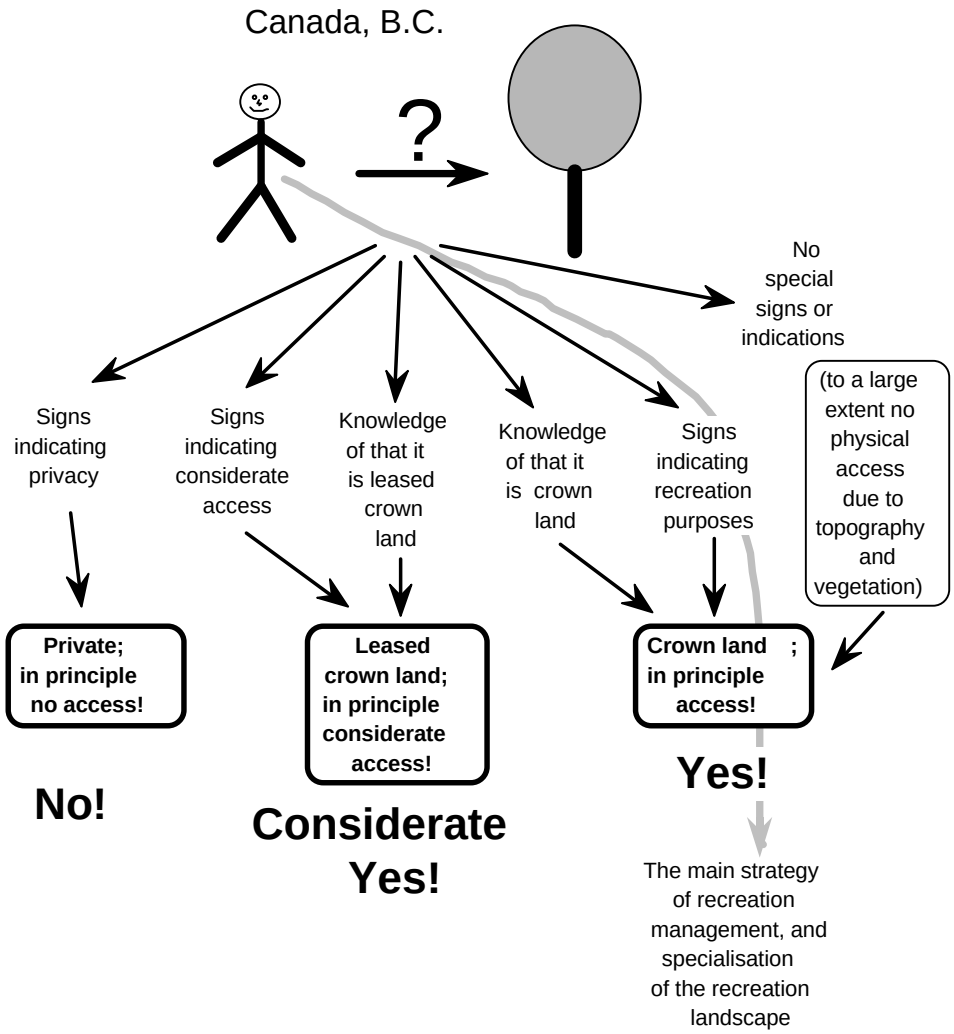


If physical access
(topography, vegetation)

and

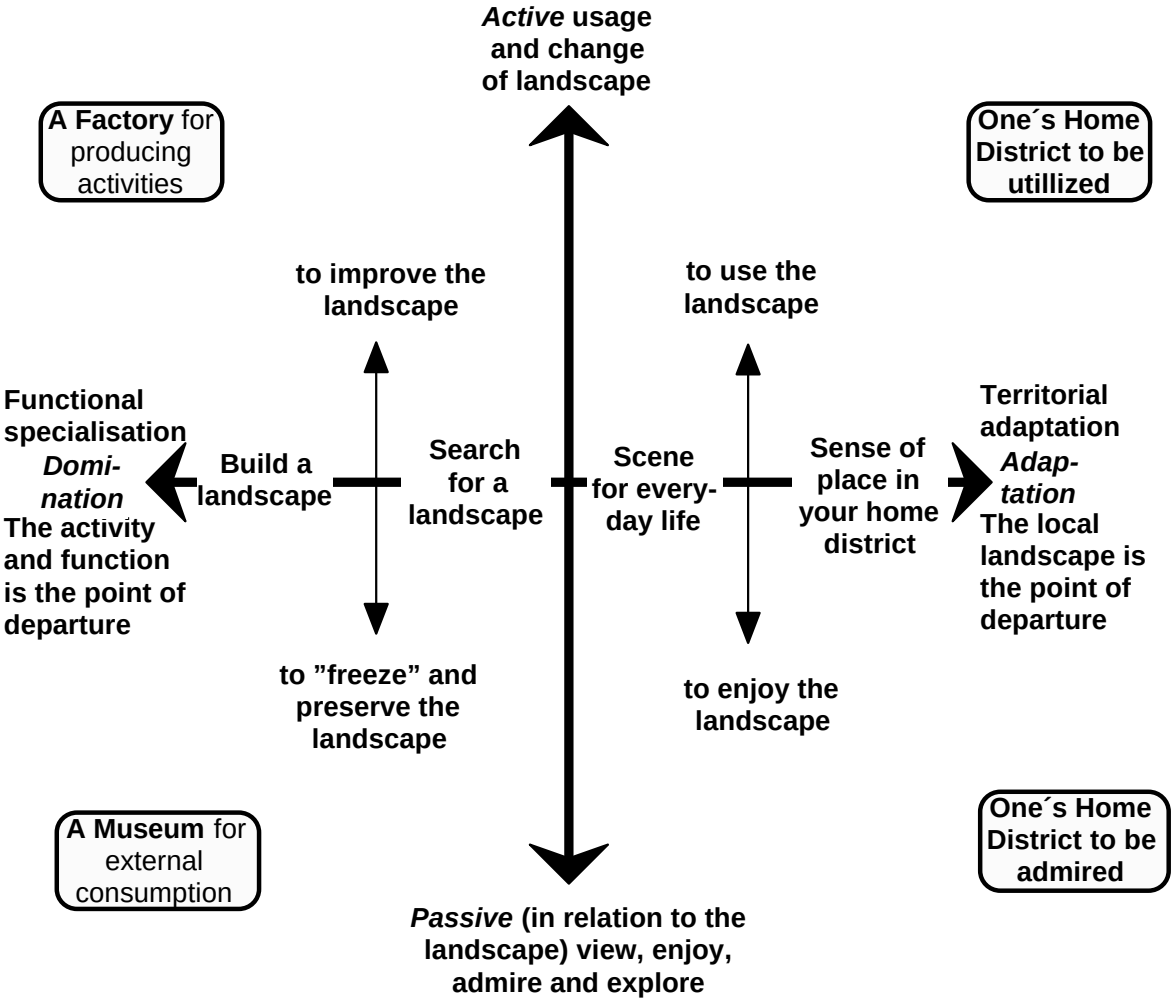
If it not will endager:
- Privacy
- Preservation
- Economic interests

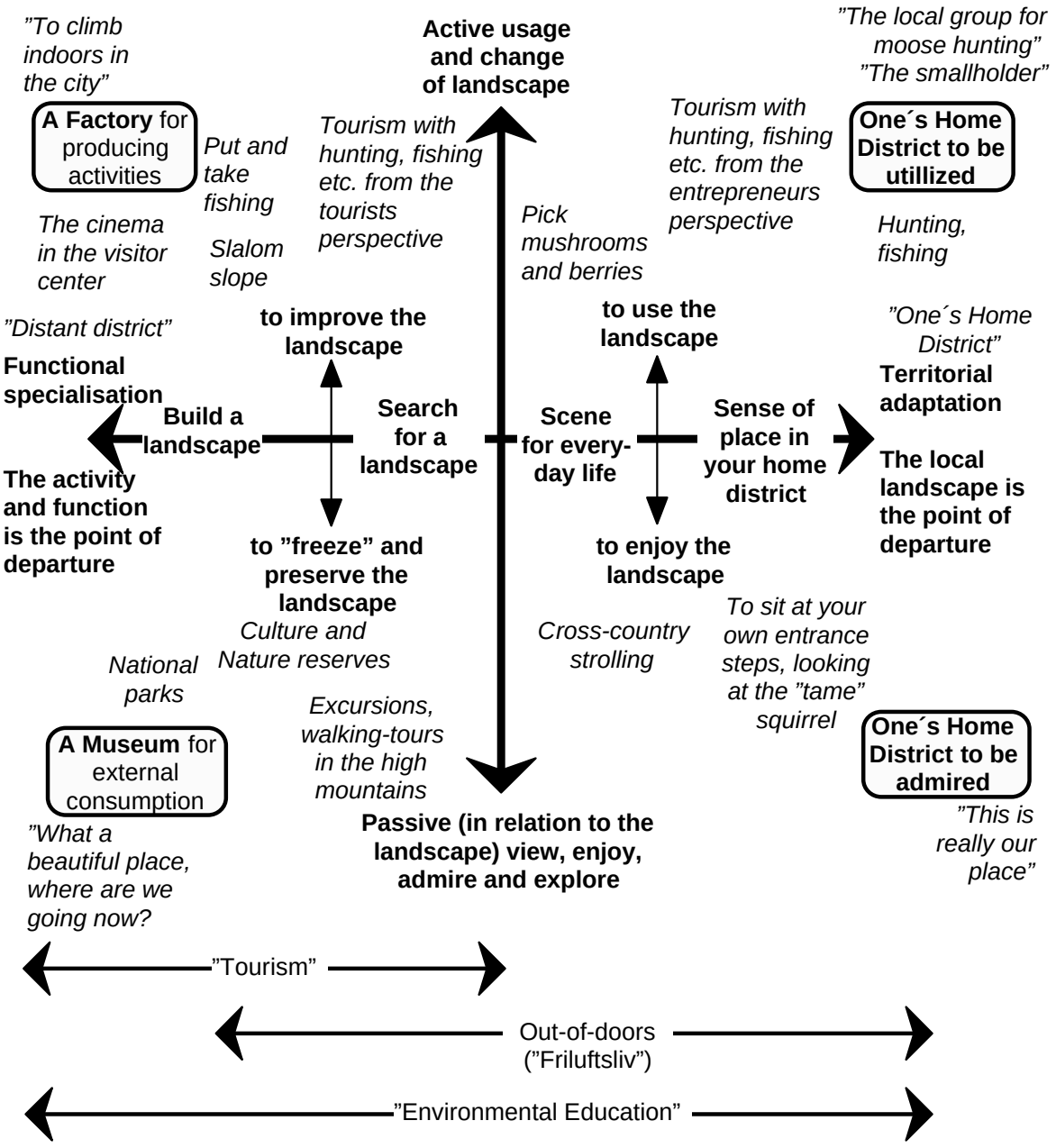
The public access to the rural landscape in Sweden as based upon the "free space" of the right of public access.



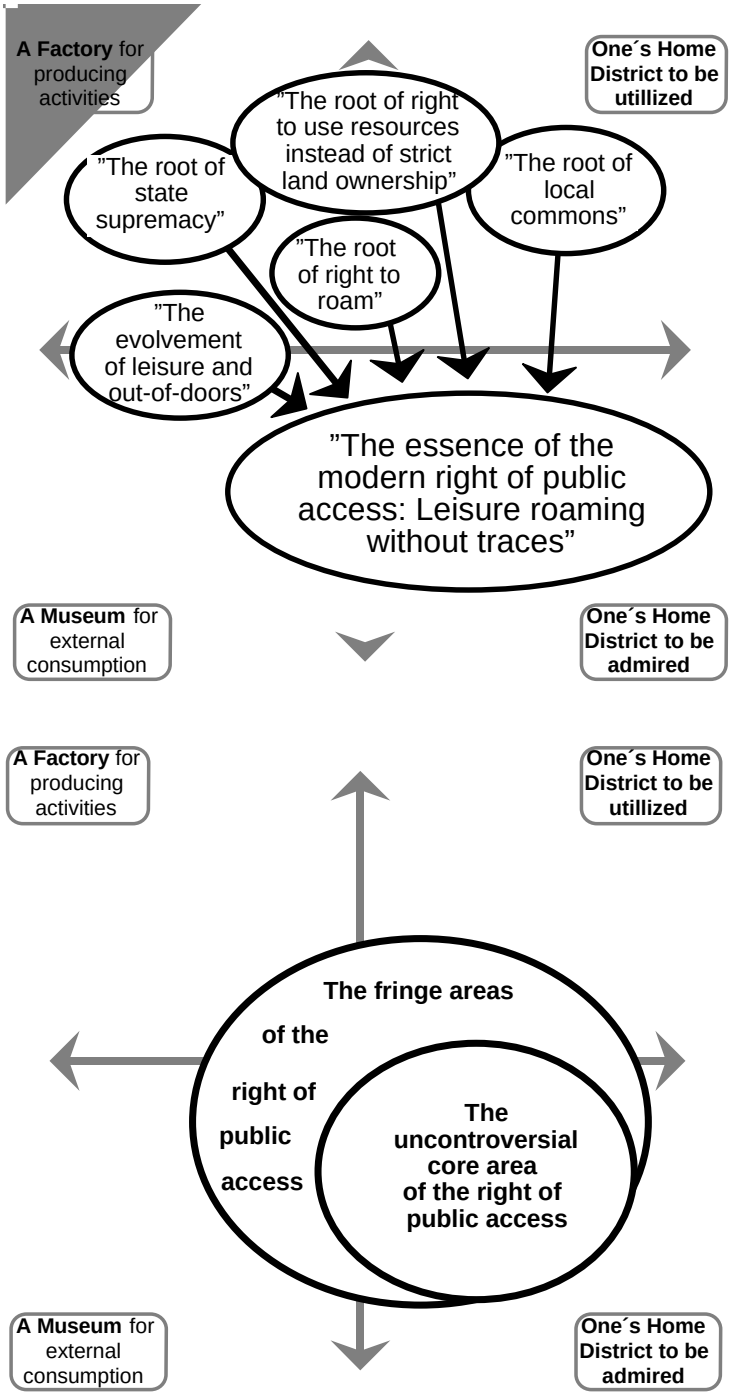
Recreational access in British Columbia, Canada illustrated by the conditions of land tenure related to degree of access as constrained by topography and management strategies.

A Conceptual Framework of Ecostrategies

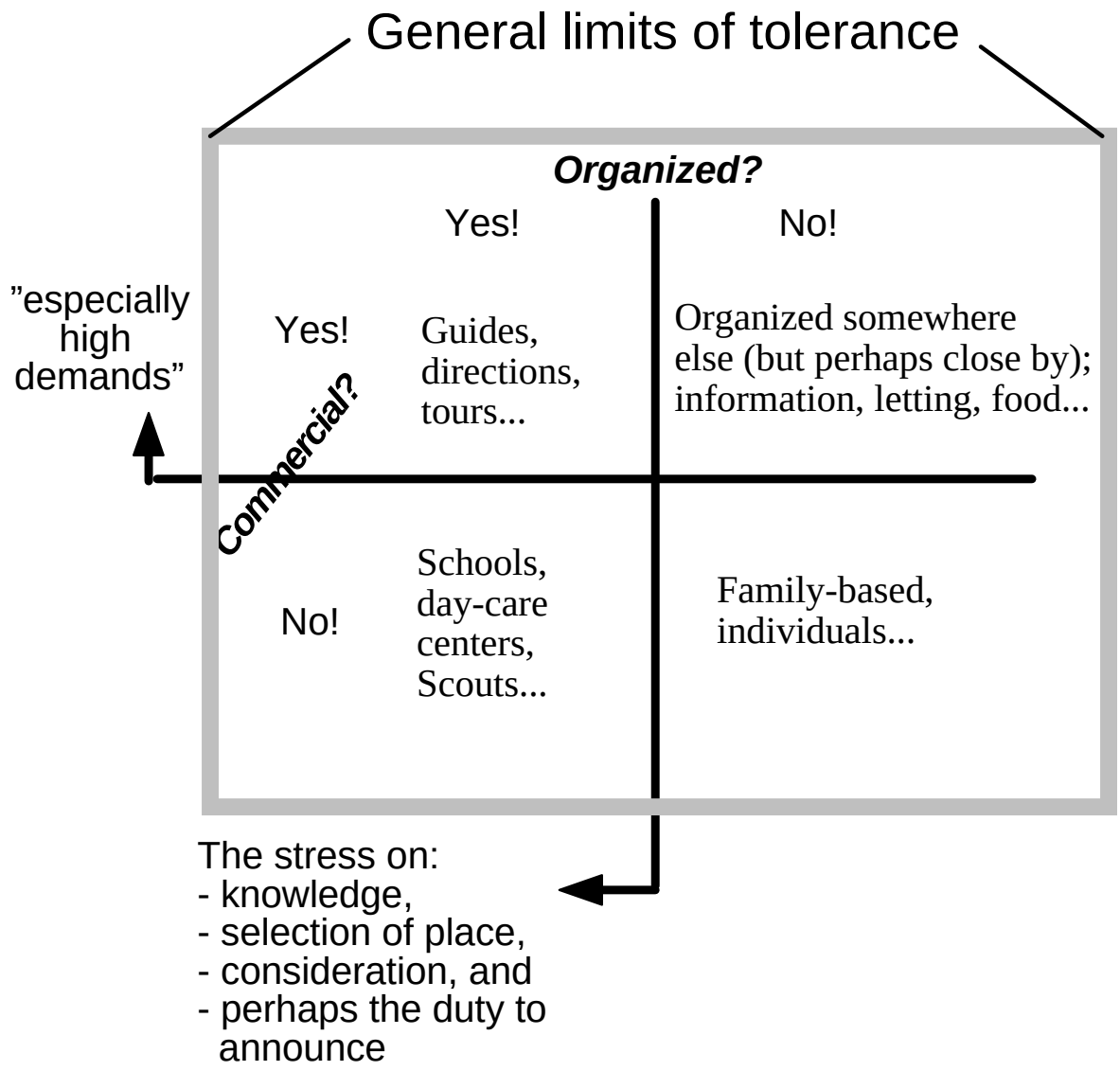

Active usage and change of landscape
A Factory for producing activities
One´s Home District to be utillized
to improve the landscape
to use the landscape
Functional specialisation
Domi-nation
The activity and function is the point of departure
Build a landscape
Search for a landscape
Scene for every-day life
Sense of place in your home district
Territorial adaptation
Adap-tation
The local landscape is the point of departure
to "freeze" and preserve the landscape
to enjoy the landscape
A Museum for external consumption
One´s Home District to be admired
Passive (in relation to the landscape) view, enjoy, admire and explore


"To climb indoors in the city"
Active usage and change of landscape
"The local group for moose hunting"
"The smallholder"
A Factory for producing activities
Put and take fishing
Tourism with hunting, fishing etc. from the tourists perspective
Tourism with hunting, fishing etc. from the entrepreneurs perspective
One´s Home District to be utillized
The cinema in the visitor center
Slalom slope
Pick mushrooms and berries
Hunting, fishing
"Distant district"
to improve the landscape
to use the landscape
"One´s Home District"
Functional specialisation
Build a landscape
Search for a landscape
Scene for every-day life
Sense of place in your home district
Territorial adaptation
The activity and function is the point of departure
The local landscape is the point of departure
to "freeze" and preserve the landscape
to enjoy the landscape
Culture and Nature reserves
Cross-country strolling
To sit at your own entrance steps, looking at the "tame" squirrel
National parks
Excursions, walking-tours in the high mountains
A Museum for external consumption
One´s Home District to be admired
"What a beautiful place, where are we going now?
Passive (in relation to the landscape) view, enjoy, admire and explore
"This is really our place"
"Tourism"
Out-of-doors ("Friluftsliv")
"Environmental Education"

Two tentative illustrations of the right of public access analysed in the conceptual framework of different ecostrategies; first with regard to historical elements and roots constituting its essence and thereafter its current content in terms of its relatively uncontroversial core area and its much more debated fringe areas.



Some Current Challenges



Some proposals with regard to the Swedish Right of Public Access

It is important to note – as a multi-purpose use approach to landscape – that a prerequisite for the right of public access is that you can "read" the landscape. It is "the landscape" that tells you what is – and what is not – allowed, e.g. the way the land is being used may indicate how sensitive it is for people walking on it, and the weather tells you how safe it is to make a camp fire.

The economic value of the ecostrategy of "passive (in relation to the landscape) view, enjoy, admire and explore" is increasingly important in terms of e.g. tourism, adventure and out-of-doors.

Also it is important to note that the current right of public access in Sweden even though mentioned in the constitution is not defined in the law besides the "left-over" perspective mentioned. Therefore the position, content and role of the right of public access clearly are linked to habits, socialisation, education etc.

Perhaps:

- In law define the **core** of the right of public access?
- Introduce an **insurance** against damage for the land-owners paid by the tourism industry?
- Exclude the combination of **organized and commercial** use from the right of public access?
- Try to link the "size of the free space" of public access to **residence**, giving the locals more access than e.g. tourists?
- Make it easier to get in **contact** and make a deal with the landowners collectively when necessary?
- Make it **easier to "read" the landscape** with the help of better maps, temporary local restrictions and GPS based information systems?
- Involve the right of public access even more strongly (e.g. in the schools) into the **environmental education** as an important aspect of illustrating human ecology?
- "**Export**" the right of public access as a specific meaning of landscape and a landscape management tool to be implemented to various degree in other countries?

Some examples of relevant own texts

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Sandell, K. 1998d. The Public Access Dilemma: The Specialization of Landscape and the Challenge of Sustainability in Outdoor Recreation -In: Sandberg, A.L. & Sörlin, S. (eds.), Sustainability – the Challenge: People, Power and the Environment. Black Rose Books, Montreal, pp. 121-129.

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Forest Finns vs. Swedish Commons

Maud Wedin,
Karlstad University

Background

- The Savolax expansion 1400-1500
- Svidden cultivation as a general
- Svidden cultivation made by forest Finns; spruce forest, slash- and burn, forest rye
- Svidden ”culture”: Access to land more important than ownership, using large areas
- Extended expansion to Scandinavia, first Sweden, later Norway and even the colony New Sweden. Also migration east and southwards (religion)
- Reasons for migration (push-): Civil war, war against Russia, deterioration of climate, overpopulation, taxation (noble people who were granted land as reward for instance Ruovesi and Rautalampi) (and pull) the search for new svidden areas. Two choices: change the way to support themselves or migrate. The state asked for new settlements, gave about six years of freedom from taxation. (The Swedish colonization policy)

Commons in Mellannorrland

- The Swedish farmers lived in the sediment areas along the rivers and the coast, where land was easy to cultivate
- The farmers were owners of “hemman” (roughly farms) and paid taxes according to amount of land and incomes. The land of each farm was delimited and marked by legal boundary sets, but normally the forest areas were included.
- To each village there was a certain amount of land that belonged to all farms together, “commons”. The villagers had the right to use these commons within certain rules, for instance to gather firewood and timber, berry picking, fishing and hunting.
- The forests close to the farms were used as summer grazing areas, often young women stayed for the whole summer with the cattle (sw. fäbodar)
- The forests more distant were used for extensive hunting, fishing and during iron age for low technique iron making

Who owned those forests between the farming areas? The farmers claimed that they were the owners due to “time immemorial” and therefore that was a “common law” (sedvanerätt). The King Gustav Vasa claimed that the commons belonged to the state. In 1542 he wrote a letter addressed to all inhabitants of Gästrikland, Hälsingland, Medelpad och Ångermanland:
”/…/ (the farmers) claim ownership of forests more than 40 to 50 km (away from the farms), even though they have neither right nor reason to, because all land that is not inhabited belongs to God, Us and the Swedish crown (state) and nobody else.”

Gustav Vasa skriver ett brev 20/4 1542 till bönderna som anser sig vara ägare till skogsmarken i sina socknar. Brevet är riktat till menige man i Gästrikland, Hälsingland, Medelpad och Ångermanland:
”/…/ (bönderna) förmena sig vara ägande uti skogarna, de där ville ägna under sig fyra eller fem mil, eller till äventyrs mera in på skogarna, där de dock varken rätt eller skäl till hava, förty att sådana ägor, som obyggda ligga, hörer Gud, Oss och Sveriges krona till och ingen annan.”

Det anses att Gustav Vasa stödde detta påstående på det s.k Helgeandsholmsbeslutet från 1280[24]. Riksdagen ska då ha erkänt kronans rätt till all mark som inte var uppodlad. Styffe[25] hävdar att beslutet är en förfalskning från 1500-talet. Även andra har betvivlat äktheten, men ändå har man använt det för att befästa kronans rätt till ödemarkerna. Begreppet kronoallmänningar myntades av Gustav Vasa.

1580-1640 Getting access to land - colonization

- getting a letter of permission (sw. torpebrev), with certain regulations
- buying forest land from farmers (not always allowed)
- buying "hemman" in the Swedish village to get access to common forest land (for instance in Jämtland)
- settling abandoned farms (even administrative/fiscal abandoned due to unpaid taxes)
- offering summer grazing "service" (sw. vallvaktare)
- marriage into a Swedish peasant family with a "hemman" (seldom)
- a grant for certain services to the state, for instance establishing inns along routes or becoming royal hunters

1640-1700 Bans against swidden cultivation

- 1647 there was a general ban against all slash- and burn. Still some "legal" colonization and svidden cultivation was allowed in vacant areas (far from mines)
- 1664 the bans became more severe and even threats about death penalties was proclaimed from authorities. Illegal settlement buildings should be burnt and the harvest was confiscated

Consequences:

- Migration to New Sweden.
- Forest Finns in Bergslagen moved to Värmland and Norway.
- Big differences between different Forest Finn areas (the more distant from authorities the less obedient to the laws)

1700-1800 Switching from swidden cultivation to agriculture farming

- a kind of consolidation, taxpaying "hemman"
- a law 1789 (Gustaf III's revolution) finally gave the right to all farmers to be the "owner" of a "hemman" (concerned both ownership and usufruct ("nyttjanderätt") access to hunting and fishing)
- the praxis of "rekognitionsskogar" (demarcation of state owned forest) concerning mining companies (started already 1683)
- mining companies and industry owners trying to get access to "hemman" in forest Finn areas or at least trying to get the right to taxation of the Finns (and thereby forcing them to make charcoal).
- a switch from slash- and burn to agriculture farming
- assimilation into Swedish society began

1800-1900 Overpopulation, poverty and changes

References

…

[24] Stenman 1983, s.25ff, might be 1282?
[25] Styffe 1864

The environment as a common good in the time of globalization: its conceptualization and social perception

Mercedes Pardo, José M. Echavarren, and Eliana Alemán[26]
Public University of Navarre (Universidad Pública de Navarra).
Department of Sociology.

Abstract:
It is usual to consider the environment as a common good, but we are far from having a clear definition of either of them: the environment and the common. Both vary according the scope of the analysis (world, national, regional, provincial, local), the different societies, and the diverse elements included, and so vary the social perception and action on the environment. On the other hand, new and increasing demands from the environment as a common good, as it is the case of preserving biodiversity or landscape among others) might clash with traditional commons. Societies face now a challenge to compatibilize traditional commons and the new common: the environment. In order to study the idea of the environment as the new common is relevant to pay attention to legal conceptions and issues related with property rights. A conceptual and historical clarification of the sense and meaning of *common* is required. In this paper the conceptual problematic of the term common for the case of the environment is analyzed, and the change in its social perception within the process of industrialization and globalization. A case study of Navarre (Spain) show how people conceive Nature in terms of common good.

The environment as a common good

Nowadays, when we think of the environment clearly it includes elements such as trees, air, water... and the surrounding physical constituents where we live. But all these "physical" phenomena have their social definitions, as resources (economic, recreation, preservation...), as legal space (establishing norms in the political arena...), as a space for social organization, as a psychological space (where work, pleasure of learning takes place), among others. All these definitions are going to confer on the environment a socio-historical value. Thus, the environment is composed by both the physical and the social means, in their interrelations, including the complete relation of the external, physical and biological conditions where an organism lives. On the other hand, the mainstream way of dealing with the environmental problems that of is trying to achieve compatibility between human needs and those of the natural environment. In order to reach this goal, it is necessary to take into account both natural and social systems in their interrelation, in an integrated way.

On the other hand, it might seem that defining the environment as a common good goes without saying. Nevertheless, it is necessary to think deeper about this issue to find out if *common* is an inherent characteristic of the concept 'environment' or a social construction that becomes evident during the time of globalization. Our interest here more than establishing whether the environment is a new common (universal) pertains to focusing in on this phenomenon looking at the various ways it is perceived. Of the various factors impacting this perception are most importantly the social distribution of knowledge and the institutionalization of certain meanings, for which it is necessary to rely on judicial typology as a source of interpretation.

The meaning of *common* changes as well depending on the physical context, such as local, national, global, and on the different elements involved, such as history, tradition, and law.

[26] Mercedes Pardo is a professor of Environmental Sociology at the Universidad Pública de Navarra (UPNa) in Spain; José M. Echavarren is a researcher and PhD student of Sociology at UPNa, and Eliana Aleman is a lawyer and PhD student of Sociology at UPNa.

For this, there is not just one meaning of common goods; people assign various. It is important to reflect on the kind of good to which we refer when we talk about the environment, and whether to consider the environment as a *new common*. To analyze these issues, we will follow Erling Berge (2002) who points out that common pool goods are not defined by who is the owner of the goods but how these goods are appropriated.

On the whole, the elements composing the biosphere (water, air and soil) could be considered common as everybody can get access to them and no one should be able to appropriate them as abiotic system. On the other hand, the biotic subsystems produce benefits to all humankind, no matter where people live. Nevertheless, the interrelation between the abiotic and biotic system and the social system affects the meaning of *common*, particularly in the way a community incorporates such a relation.

Berge points out three ways of understanding common goods: 1) by the usage of the goods that can be found in the common pool resources, 2) by ownership, which can be of several kinds of groups, and 3) by the property rights that are held by the owners to keep the free access to the resources (Berge 2002: 3). Following this classification, the usage of the environment is different depending on diverse factors. Some resources can be used or consumed without damaging them (for instance, the air we breathe). Even so, the quality of the air is different depending on the places and the activity as not everybody gets access to good quality air. Taking into account the way goods are appropriated we find that some goods of the environment can be used without appropriation, as it is the case of air. On the other hand, other natural resources must be appropriated for use, because their usage diminishes their quality or quantity (gas, for instance, or wood). What it is clear is that environment's goods can be appropriated without a direct usage. It means that some people can limit the use of a given resource by others, or force them to use it in a specific way. Clean air, for instance, can be bought a thousand of kilometers away from where a community dwells in order to "compensate" the pollution that this community produces. In a strict sense that community has not appropriated that good, rather this community defines how this particular good must be kept in a particular way.

Thus, it is important to take into account the use of a particular good as well as the person(s) who benefits from it. In the above example, where a community pays for clean air as a compensation for the pollution this very community produces, can be said that this is a selfish usage of this good (air), as this community can use this good although it implies a damage (through pollution) seeking its own interest, and at the same time this community prevents other people to get access to that good on behalf of the "humankind benefit". There is a hidden conflict between a selfish aspect and an (apparently) altruist one that eventually are complementary. Due to the special characteristics of some natural goods (like air) of the environment, it is irrelevant to conceive limits to determine who owns a share of it and what use can be taken from it. Although national borders exist, they are meaningless in environmental terms[27] to some extent. The existence of national borders can be used to ask for certain rights of usage, like the aerial space that a country has sovereignty to.

The indivisibility of some of the components of the environment is something relevant for its consideration as a common. But even the divisible aspects of environment are so related to the rest of the system that a small change in some of them will have important consequences for the whole (the sulfur dioxide pollution, causing acid rain and its consequences, for instance).

[27] National borders in environmental matters are irrelevant because pollution can not be stored behind these lines. Acid rain, global warming or ozone depletion is produced in national terms. Each state can choose to protect the environment or to decrease its level of pollution. The efforts that every State do to improve its environment and to minimize pollution is very relevant and is helpful in global terms.

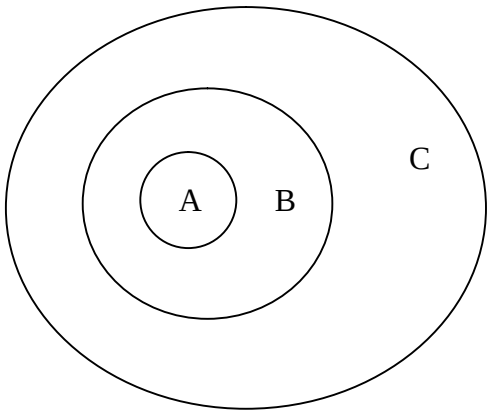
Natural resources must be carefully managed in the framework of the general interest. The use of natural resources by a small part of the population must be analyzed and judged taking into account the global interest of society and global ecosystem. Particular interests, no matter whether they are held by individuals or communities (a village, an ethnic community, a whole society, etc. as it is the case of traditional communal) will always be in conflict with the higher interest of protecting the environment.

With regard to property, common goods can be property of different kinds of people that hold different rights to its access and consumption. Berge points out that common pools can be differentiated (among other criteria) by property indivisibility. Some commons can be split into shares that can be sold, but others have to be exploited in a combined way, as they can not be split. Special attention must be drawn to the ownership as well as to the way legal rights of the common are held. This analysis asserts two issues: the sort of owners and the way in which these property rights on common pool are held.

Linking this idea to the environment, it could be stated that the common pool of Earth has been split into as many shares as countries. In addition, each country defends the private property of some natural resources as well. Countries have rights on their realms (namely sovereignty) although they are not the only owners as private property exists linked to individuals or groups on some goods and resources.

Following this idea, there are several dimensions of the use of the environment. Some social spheres divide administratively the environment to be managed, appropriate and protect it (or damage it as a side effect). In every sphere we could find subjects holding legitimate rights (as long as they hold property titles) but those rights will always be "selfish" (so to speak) when compared with a higher good.

This could be shown in the following graphic:



The rights of A (a person or a group of people) within the natural common pool, although they are legitimate from the A's point of view, must take into account the interests of B that might collude and limit these rights. Likewise, C's rights and interests are of a higher importance and in case of conflict B should stop the exploitation of the natural resource. This graphic shows the way a good, which can be property of an individual or a group placed on a piece of land and on which an exclusive right is held on behalf of a community (no matter its size), can happen to be very limited if it is examined from a higher point of view.

In the area of Law, Leon Duguit (1894) includes a 'social function' in considering the exercise of private property rights. That is to say even though one has ownership of such a good, ownership implies use but not abuse, attaching limits to the exercise of such a right. Because of this, in some circumstances there are limits to property and duties to the owner, even in private property, in favor of general interests. In some circumstances, various duties in relation to the private property are created to guarantee the communal interest. A

way for this 'social function' to be implemented is when an owner is forced to use big extensions of land in a proper way, for instance, assuring that this land must be productive.
However, in the case of public ownership (state or local administration) it is assumed that there will be a collective use even though the collectivity does not owns this land. For example, the State may be the owner of a forestland situated in a locality, allowing use by inhabitants and visitors on it for hiking or enjoying the landscape. It may also occur that the State restricts the use in favor of a greater benefit - forbidding the extraction of its resources in order to maintain balance in the ecosystem[28], or closing it to human entry so that there is no damage from such activity.
Hence, the existence or non-existence of limits on the exploitation of resources does not depend on who is the owner of the land but on the particular context. The questions here are: Who defines what is a more advisable benefit for the land? How can we define this? For instance, is the carrying capacity of a particular territory the most important benefit to take into account? Or is it the interest most of the people share that really matters? These questions require clear definitions.
The term *common* will also mean different things depending on the context. Regarding the environment, 'common interest' and 'common patrimony' mean something different, and it is questionable what makes some aspect of environment to be a *common*. The root of the meaning of *common* for the case of the environment could come from its own characteristics, or from its connotations, for example in a normative way. The concept *common* has a different meaning also when defining the common aspect of the environment. The idea underlying *common patrimony* is that it belongs to "all of us" (so to speak), i.e., nobody is the owner of this particular good, but everyone is owner of it as long as they belong to the community. When a national park[29] is said to be part of the national heritage it means that it does not belong to one person rather to all the citizens, which can use its resources and space when they want. But when a national park is said to be part of the national heritage the most important meaning is that the Nation as a community can exert rights on this property, i.e., to use the good in the way they want.
On the other hand, the idea of *common interest* can exclude other implications that the concept 'property' holds, but independently of who owns the property, the use of that good must be to everyone's enjoyment. It entails the idea that the use of the property (no matter who is the legal owner) must benefit to "all the people". It means that a private property can guarantee the common interest. For instance, a community can be the owner of a natural good (e.g. a natural area) and "use" it in the way they want but must keep it well

[28] It can be instructive here to explain some categories of the Navarre Law 9/1996, June 17. There are a) Integral Reserves: small spaces, ecologically important, that are legally created in order to achieve the integral preservation of the whole set of ecosystems that they contain. By doing this, destruction, transformation, deteriorating action, perturbation and denigration of the places are avoided. b) Natural reserves: spaces that hold high ecological values that are legally created in order to achieve the preservation and improvement of particular forms or geological phenomena, species, biotopos, communities or ecosystems. This allows its evolution according to its own dynamics. c) Natural sites (enclaves): spaces that have certain ecological or landscape values. These spaces are declared as such in order to preserve or improve them but it does not mean that controlled human activities are not allowed as long as these activities help to maintain those values. d) Natural areas of leisure: spaces that hold natural values or that are valuable in landscape terms that are places where people choose to spend their leisure time, as long as it is compatible with the conservation of nature and environmental education.

[29] For the legislation in Navarre, Natural parks are natural areas with little transformations from human exploitation or occupation, that because of the beauty of its landscapes, the representatively of its ecosystems or the uniqueness of its flora, fauna or geomorphic formations, have ecological, aesthetic, educational and scientific values that worth an important attention. Natural parks might include inside its limits some other categories cited above (integral reserves, natural reserves, natural sites, leisure natural areas, protected landscapes).

maintained. This community holds all the rights linked to ownership, as long as this community protects this landscape to assure the benefit of everyone who wants to enjoy it.
Nevertheless this explanation can not be applied on a broader scale, as the rights that might clash from different realms are not compatible. The concept of sovereignty is a good example. A state that has sovereignty on a territory can freely use the resources within its boundaries as long as it has not signed an international treaty limiting its powers to do so. It could also happen that a good of this State is considered to be a common good, which satisfies global interests. In this example, it might happen that the common interest of a particular state differs from a "global interest". In order to solve this issue the international legal system has introduced the term 'common interest' recognizing the sovereignty of to state on its territory, but always protecting (or exploiting) some key resources on behalf of humanity.
The concept of *common patrimony* is harder to grasp and define in an international context. In this context what does it mean that a particular good belongs to all of us as a common patrimony of humanity? How can it be properly used? The first point to make clear should be the possibility of the expropriation of a good (in order to be expropriated by humankind) that is its patrimony deriving from its particular legal owner (for instance, the State). On the other hand, on practical grounds it seems evident that not everyone could manage this common good. Who could be the proper agent to manage it? Another country? An international board? Or maybe simply the one who could guarantee the "best" possible management.
Thus, the concept of *common* at the international level can be understood in two ways. It can be understood as natural areas or natural resources within the realm of any State (like oceans) and it can be understood too as resources located under the sovereignty of a particular country but at risk for its inappropriate management. In this case, an international board must act in order to preserve the natural area for the common interest of humankind. This is a source of hidden and manifest conflicts between rich countries, which can afford expensive measures to protect the environment, and poor countries that might be forced to disregard this measure for the sake of income. Usually, these countries do not welcome the idea of 'common patrimony', as they would be literally expropriated. This point of view could change if some economic compensation was given or measures were taken guaranteeing its use in the interest of the world community.
The concept of *common good* can be linked to the benefit of a particular community. Some theoretical perspectives as the communitarism model are based on the ideas of "community" and "common good", and define the public realm from the adscriptions associated to common social properties. As a consequence, the distance between the public and the private is erased. They work in a holistic schema where it is supposed that the common pre-exists and surrounds the individuals. Nevertheless, it is clearer to understand the idea of a common interest managed by the State where the State has the duty of manage it beyond particular interests. We do not intend to go deeper into the difference between public and private interest. Nevertheless, to analyze the subject we deal with here, we will follow Pécaut's thinking of the public space as an intermediate space: civil society (that can adopt very different forms) holds it but do not mix with it. The public issue means, in fact, to define a common horizon that needs some sort of institutionalization of civil society itself. Thus, for Pécaut, some procedures are needed in order to let generalization of particular points of view and the rules of confrontation between different perspectives. It means that a *common good* needs a process like this in order to be so.
Nevertheless, this can be discussed as the rights of citizen that were raised against totalitarianism. Getting deeper into the definition of public and private realms, there are three interrelated levels: the individual, the community and the State.

The person and citizen bill of rights was developed to protect the individual from the unlimited power of the state. Basically what happened was that some limits were built for the State not to overwhelm the individual, leaving a space where the individual could enjoy freedom. In addition, the State must be an active factor in the development of society on the whole and guarantee people's rights as well as their chance to fully exploit their potential. The relation between individual and state is also mediated by the concept of community. A community is a group of individuals inside a state. Nevertheless, the concept of 'community' and 'common good' for its members is left behind in the Middle Ages. In the Middle Ages social relations were strongly mediated by the land, and people were attached to the land. When the modern state rises, social relations got rid of the land subjection. The growing importance of modern state and individualism also changes the meaning of borders of a community. An important consequence of it is a process of de-territoriality of individuals, when people is pushed out of their lands to go to work in cities and the links between people and their lands fades away.

Often the limits of a state do not coincide with the limits of a community. Thus, boundaries that were easily perceived by the members of a community are disappearing gradually meanwhile the politic boundaries of States are built up. This change produces a reaction that proves that the organization juridical-political called State and community is not co-extensive. Rather, the State tries to gain power and control on many communities, which will be transformed by the State in order to be more efficient in their work. Because of this, new political-administrative divisions take place at that moment. In many places, those divisions do not correspond to traditional divisions held by historic communities.

This change affects to individual perception as members of a community, a process that logically influences their identity. Because of this, the community symbols are replaced by symbols of the State (for instance, the national flag or the national anthem). But what it is interesting is to highlight what happens with the relations and links to territory. The links to a territory can be of different sort: as a space to dwell or as an environment to develop the sense of belonging and personality. We are more interested in the last sort of link. This change affects to the identity of the community. The changes in identity and social perception of communities also influence the interpretation of the *common environment*. A change in the interpretation of *common* in relation to environment will have as a consequence a change in the interpretation of common property too.

After the change that overcame and weakened communities, the meaning and usage of common property in a community changed in several ways. One of the choices for a common space was to be transformed into private property, where the legal owner of the title of property could use it as they wanted. Another possibility could be to become a public good, becoming property of the State or some of its political-administrative divisions but also including the chance for the community use and/or exploitation.

Nevertheless the issue is more complicated than it appears. In the first possibility there is no more problem, but in the second possibility two issues arise. On the one hand, an important issue to take into account is the kind of "title" through which the inhabitants of a place are related to their land and the rights that are linked. If they are not the owners of the land it is not possible that they can have "free access" to that good. Nevertheless, they could use that good because it is a public good, and yet it is difficult to assert in any case if we face an "use" or an "usufruct" ("usufruct" should be the right to access to the benefits of a good without implying property of that good).

We can distinguish three levels of property: property itself; use; usufruct. For the case of the environment, the issue is far more complex as we do not mean just a territory, but many other aspects. Because of this, the use or enjoyment of the benefits of a natural good raises a number of questions.

Thus, we do not talk just of a forest and considering the possibility of cutting timber. We talk also of the interaction of timber as part of the biotic system, as landscape, as a source of inspiration for a poet, as part of the history of folklore and many other things. The social perception of the environment will always change, which will affect the idea of *common*. It is possible to mark limits of property on a territory and it contains, but is it possible to delimit its use and the benefits that can be taken out of it? Is it possible to fall down trees in a little forest property of a collectivity when, for instance, this behavior affects the rest of neighbors' rights to enjoy the landscape? At his point, we consider different choices and benefits.

This discussion leads to other issues that, although they look of juridical essence, they have important ethical consequences, as well as political and on the whole about different ways to perceive and understand the world. There is a basic question here. What is the most important common good? Is it possible to rank?

We do not intend to answer to these capital questions. Anyway, it is important to remember that this discussion involves some aspects related to the development of the identity of individuals and collectivities. Likewise, one of the issues that has helped to create in a certain way the sense of belonging to a global community is the environment, as long as it has been perceived as a good that belongs to all humankind and that reinforces the links that tie us as members of a same context of living.

Usually it is taken for granted that the State has defined that *common good*, and that democracy has played an important role defining it as the interest of the whole society. Nevertheless, the state can emphasize the rights and interests of particular social class, ethnic or religious group. This issue leads to take into account the international regime of the environment.

Because of this, the environment is the 21st century *new common*, whose protection pushes us to think collectively. The growing environmental interdependence of the states has forced to revisit the concept of 'common'. Nowadays the concept of *common* has been de-territorialized. The pictures of the Earth taken from the outer space in 1969 allowed realizing the side effects of industrialization all around the planet. From that time on a social discourse began to be created talking about the necessity of common action to solve the global problems, particularly environmental problems.

The processes about environment issues carried out the celebration of three world conferences on the Earth, Stockholm (Sweden) in 1972, Rio de Janeiro (Brazil) in 1992 and Johannesburg (South Africa) 2002. The conference held in Rio de Janeiro was of special importance because it was held in a moment of changes in the international context and when new trends like globalization appears. Thus, the "global village" will give new stimulus to the idea of common. The perception that all belong together to the global village called Earth re-inforces and points to new challenges.

This happens to be a thorny issue because it meant limiting the power of states on their own territory. The problem is far from easy to solve since economic and security interests are at stake when considering sovereignty. The issue is also problematic inside countries, because the borderline between private and common property is not that clear as the World Commission on Environment and Development notes. The fact is that ecological interactions and flows cross through private properties and do not care about legal jurisdictions. In a mountain, for instance, when a particular farmer uses water he directly affects to the water that farms located below will use.

Following the World Commission on Environment and Development, the agrarian traditional systems did concern about some aspects of this interdependence and gave certain control to the social community over the natural resources (water, timber, and soil). This system of management and control of natural resources did not necessarily avoid growing and expansion although it could limit the acceptance of new technical innovations.

But modernity has undermined the traditional way of doing and has settled enclosures, limiting powerfully common rights and free access of communities to certain natural resources as well to prevent groups and individuals from the making decision process.
Thus, the World Commission on Environment and Development in its report to Rio de Janeiro conference introduces the term *common* several times in various ways. In fact the title of this report is "Our Common Future". For the Commission the connection between economic and ecological issues are clear, precisely because the model of development known until now that only takes into account economic profit and forget the costs that are consequence of that economic growing, is being questioned. At this respect, the most important cost of economic growing is the ecological cost.
The Commission (1987) focused its attention in the growth of population, energy resources, species extinction, genetic resources, industry, and human settlements. When considering animal and vegetal species and genetic resources, the commission shows concern for the richer areas of the world (which are the poorest economically in many cases). This Commission proposes a net of bigger protected areas all around the world that should be surveilled by an international body. The Commission proposes to subscribe an act of species convention, which declare them universal resources and common patrimony. The Commission proposes to governments to sign a "Convention on Species" where, for instance, animal species may be declared universal resources, and even that animal species may be declared common patrimony. Clearly the Commission says that the species and natural ecosystems will be soon considered important aspects that have to be conserved and administered for the benefit of humankind. As a consequence, the international political agenda will add the task of preserve species.
When the Commission talks about common spaces, it says that the traditional ways of national sovereignty cause particular problems when "world spaces" and shared ecosystems (oceans, outer space, Antarctic) must be managed. Nevertheless, this issue is a very problematic one, as these areas are of great importance for the natural global equilibrium as well as they are strategic points. A proposal of the Commission for the management of the geosynchronic orbit gives account of how the administration of the common is perceived. The Commission proposes, as a way to manage common resources and to extract its value on behalf of common good, to give them to an international board that gave permissions to organizations. This is a similar solution as the one adopted by the International Authority of Sea Depths.

Social perception of the environment as a common good

The interpretation of the environment (mainly "natural" areas) as a common (collective and public) good of human society - whose "utilization" can be articulated in economic, symbolic, aesthetic, health (physical and mental), leisure and social identity – is supported by social factors mainly in the XIX century. Four of the most important are the politics of the hygienist theories; the increasing importance of the environmental values; the creation of the first natural parks; and the extension of tourism to social classes other than the wealthy.
The hygienist movement in Europe and America was concerned about the urban illnesses of the working class that resulted from the increasing size of cities following industrialization. Another goal to meet at the same time was to prevent antisocial behavior. They backed the construction of urban parks in the lower income neighborhoods to decrease congestion and improve air quality (Thomas 1983). The urban higher classes (following the nobility) maintained the custom of gathering in parks, in practice since the 17th century. The construction of parks in working class areas legitimized access to natural areas by all social classes. In the 19th century access to natural areas on the part of urban population was already seen as a social need.

In the European tradition the awareness for Nature is a recent phenomenon. The pre-Indo-European animist traditions and their surviving thread in Celtic and Germanic religions are the antecedent of a more respectful relationship to Nature. Animism considers that all human being (and some non-human) have a spiritual essence, and because that the exploitation of Nature is interpreted as a violent act[30]. When the catholic religion expanded throughout the continent, it became an instrument to legitimize the European social structure. Catholic religion also constitutes an explanation of the Society / Nature relationship as promotes more efficient land exploitation, as deprives the natural environment of its spiritual dimension (White 1967). Christianity assumes features more anthropocentric than Hebrew doctrine does, for its early contact with the classical Greek ideas. Though the orthodox thought among the classic Greek thinkers is anthropocentric, there were some ecocentric authors as is the case of Pythagoras. In Christian doctrine there does exist some exceptions to the anthropocentric mainstream perspective, mainly Saint Francis of Assisi, some Irish and Gaelic saints, and the "desert fathers"[31].

In the Middle Age natural spaces were associated with those most apart from human influence and as areas inhabited by witches and devils[32]. These areas were thought to house pagan[33] practices and sinful costumes. The respect for animals, as the prescription to not produce pain to them unnecessarily, is understood in a different way than currently: at the time, it was assumed that a person who mistreated animals would end up causing pain to humans as well.

After the XVIIth century, there is a change in the perception of Nature with the consequence of less sensibility toward the environment. The classical European interpretation of Nature is based on an organic metaphor, where the environment was basically considered as a living system (non-conscience) made up of living beings (Collingwood 1945), where the ecosystem appears as a number of organs composing the "natural body".

Following Descartes' and Bacon' writings among others, the metaphor explaining Nature changes toward a mechanistic one, where the ecosystem is interpreted as a clock gear[34]. In this interpretation of Nature a person should not feel compassion for a machine; they should not feel remorse for attacking and exploiting the natural environment (Thomas 1983). By this time, there are writings saying, for example, that animals are not able to feel pain, and Bacon points out that for Nature to reveal its secrets it must be tortured (Merchant 1983). Very likely, these ideas were not shared by people in rural areas – closer to animals – and some pagan behavior more ecocentric, in current terminology, would remain. The attitudes toward Nature begin to evolve to more respectful ones with the industrialization and growth of cities in the XVIIIth century in the United Kingdom and in the XIXth in the rest of Europe. With urban development, many times too rapid as to prepare basic infrastructures – adequate sewage – new problems and social conflicts emerge (or at least on a large scale) which produce a nostalgia about country life. New artistic and social currents come about as in the case of Romanticism, producing an idealization of both Nature and rural life. The nineteenth-century nationalist movements point out the

[30] For that, rituals to calm down the spirits are celebrated when hunting or foresting.

[31] The "desert fathers" are the first hermits in wilderness, ranging from the IIth century AD. They are usually involved in stories with animals (Bratton 1988).

[32] Fear to wilderness can be trace back in ancient Greece as well. The word "panic" comes from the god "Pan". Pan was a god of Nature who used to stroll all around the forests and kill the human beings he met. He was considered to have animal instincts too. The agriculture goddess, Demeter (her Latin name was Ceres, and it is the root of the word "cereal") was depicted as a more friendly being.

[33] The word "pagan" comes from the Latin "pagus", that means village.

[34] God would be the clockmaker.

importance of the natural environment for the community identity[35]. Sociologists devote an important part of their theoretical production in the time to treat urban problems, where the city is considered a source of conflicts[36] and of social and moral disorders. Wealthy people devote more and more of their time and money to rest in spa resorts located in natural areas; more gardens are designed in urban spaces and rural territories of the aristocrats; the first national parks are created[37]; tourism to natural areas is developed for middle class sectors; and the number of pets increases – phenomena that condition the ulterior sensibility toward Nature.

The existence of pets (animals with no utilitarian aim) in human communities is old. The dominant classes had the custom of having pets, behavior more common among women[38]. With the emergence of colonialism, buying exotic animals (mainly colorful birds and monkeys) becomes the fashion among the aristocracy and high bourgeoisie. This development of pet commerce takes place at the end of the XIX century, following the increasing consumption power of the urban social class. "Today the scale of Western European pet-keeping is undoubtedly unique in human history. It reflects the tendency of modern men and women to withdraw into their own small family unit for their greatest emotional satisfactions. It has grown rapidly with urbanization; the irony is that constricted, garden-less flats actually encourage pet-ownership. Sterilized, isolated, and usually deprived of contact with other animals, the pet is a creature of its owner's way of life; and the fact that so many people feel it necessary to maintain a dependent animal for the sake of emotional completeness tells us something about the atomistic society in which we live. The spread of pet-keeping among the urban middle class in the early modern period is thus a development of genuine social, psychological, and indeed commercial importance."(Thomas 1983: 119).

With the run of industrialization, the only contact with animals for many urban people were their pets, which were characterized by being sociable and dependent from humans, contrary to the majority of animal species. The development of roads and the generalization of the automobile in industrialized societies, together with postwar economic growth, produced mass tourism. As a consequence, leisure space is considered as a common good (see for example Schmithüsen et al 1998). Tourists think they have, as users, the right to have the natural environment they "consume" in good quality. Thus, there is a conflict on the interpretation of the physical environment between the rural inhabitants (mainly a productive one) and the urban groups who have more access to tourism. Some current public policies on the environment, designed from cities, are the expression on this idea, where the main emphasis is on limiting rural activities in order not to affect the idea of Nature held by the urban sphere.

Environmental concern takes the shape of a human stewardship of Nature. This view interprets the environment as a communal space belonging to mankind. Thus, Human society considers itself to be the manager of Nature for its own sake, interprets Nature as the new communal, and turns it into a natural park. Nature, like a natural park, is a space deeply affected by human activity. The development of industrialization has direct or indirect consequences on the whole planet. The social and economic activity of human beings affects the global ecosystem, either through deforestation or toxic emissions into the atmosphere. Even the most distant animal species show traces of human action, such as chemical substances in blood (Cronon 1983), although some ecosystems have been more

[35] An example in Navarre is the article by the Navarrian thinker Arturo Campión "El último tamborilero de Erraondo", analyzed in López (1996).

[36] Nevertheless, Marx thinks urban conflict as a necessary step to achieve a higher social level. According to this, urban conflict can be positive.

[37] The first national park is Yellowstone (USA), created in 1872.

[38] Hunting dogs can not be considered pets.

affected than others. The difference between Nature and a natural park relies on the different character of human influence. In Nature, human influence is a side effect of economic development, whereas human action in a natural park is part of a planned strategy of environmental management. Destruction and (more or less) radical alteration of environment are the traditional human actions on Nature, transforming an ecosystem into a more economic productive territory (e.g. a wheat field or a fabric). The opposite process takes place in a natural park, where human action aims to develop a new Nature. By doing this, a new space dependent on the human community is created, and the plants and animals dwelling there are pets in a natural environment. A natural park is a zoo without cages. Animals are prohibited to be fed by visitors in zoos, so as they in natural parks. This tendency to feed wild animals (as well as other similar behaviors) is the consequence of idealized interpretations that visitors share about zoos and natural parks. These interpretations of what Nature is and what are its processes shape a hyperreal Nature (following Jean Baudrillard). A hyperreal Nature means a more perfect Nature than its original model. Hunting individual animals when it was needed was the way in Yellowstone[39] to control the number of the herbivorous community until the 70's. Similarly managers tried to erase the depredator population (mainly wolves) that would act as a natural demographic control of herbivorous animals[40]. Hyperreal Nature implies a re-creation of Nature following a human interpretation guided by biological criteria but also by hidden social criteria, as any other human interpretation.

Social perception of Nature and environmental concern changes in time and space as a consequence of the different definitions of Nature held by human beings. Although it might look otherwise, Nature is a social construction and an elusive concept with no clear borders[41]. Human beings need to categorize the outer world in order to behave in an efficient way. One of the elements of the outer world societies interpret and categorize is Nature. Human populations mark the boundaries of the concept "Nature" and project a positive or negative feeling on it, in order to guide individual behavior. Environmental concern takes place when a given society starts valuing Nature in positive terms. In any society there are subgroups that can hold opposite ideas about what Nature is and how to deal with it.

Western society has traditionally distinguished two realms in its analysis of the world: Society and Nature. From the Ancient Greece through our days, philosophers and social scientists have developed a whole range of concepts and categories that are derived from this very first dichotomy: artificial and natural, human being and animal, civilization and barbarism, tamed and wild, etc. This categorization of the world has allowed (and pushed) the supremacy of rationality by identifying reason as the proper human attribute which distinguishes human beings from animals. This dichotomy has supported western civilization's supremacy and has legitimized imperial practices. Nature is the 'Other' against which 'We' define ourselves. Western society uses the concept of Nature to define itself. If Nature is understood as the space of wildness, material, danger or animal, human society (as it's opposite) is understood as civilized, intellectual, spiritual, a safe space, and what is truly human. As Merchant (1983) shows, this definition of Nature is linked with femininity, as a space creator of life, and a passive force[42], which needs human action to develop. This dichotomy of natural and human world creates two pure poles of the human

[39] Yellowstone has been taken as an example of park management all around the world.

[40] This policy stopped in 1972, but could perfectly be applied again. This policy created an example of hyperreal nature.

[41] Loveloy distinguishes sixty different meanings of "Nature" in English (Loveloy, 1935).

[42] The passive conception of Nature overlooks the aggressive part of plagues, storm, natural fires, earthquakes and so on. Likewise, the interpretation of feminin gender as passive is biased by the patriarchy.

and natural realms. Following this interpretation, the purest human space is the city, and its opposite is wilderness, as the purest form of Nature.

Anthropologist show that the very concept of wilderness does not exist for some human groups (Evernden 1992). Many communities of hunters and gatherers do not make any conceptual difference between tamed and wild Nature because they do not harvest the land. For this people, human society belongs to Nature. Nevertheless, for other groups wilderness is of great importance. USA and Australia, for example, have interpreted their creation as countries in terms of struggle against wilderness. This conception of wilderness is rooted in their idea of nation. In USA appears the myth of the "frontier man" (a person who lives in isolation and constant struggle against Nature), which has an important role in the development of a "national character". In Australia a special "bush ethic"[43], linked with independence and freedom (Nash 1982) tales this place. The British colonists interpreted the existence of vast territories in Africa as the evidence of the laziness of African folk. This "laziness" showed the superiority of the British culture and was used as a legitimization of conquest (Short 1991). The concept of wilderness is rarely applied in Europe. In Europe the cattle raising tradition and the alteration of the environment as a consequence is very old. Agriculture, first in the Mediterranean basin and then in the rest of Europe, was very important and deeply transformed the territory to such an extent that it is now difficult to find wilderness. From this point of view, the European colonists in America, Africa or Australia perceived the environment as truly wilderness. They did think of the native folk as "environmentally neutral". At first, this conception of local folk as "environmentally neutral" was pejorative, it was considered to be the evidence of their underdeveloped culture. Nowadays, the myth of the "good ecological savage" is a positive idealization that overlooks the impact of social practices on their environment, which has altered their territories for thousands of years.

Wilderness as the purest form of Nature is a social construction. In the definition of Nature a process of projection (of fears and desires) of the human community takes place. "As we gaze into the mirror, it holds up for us, we too easily imagine that what we behold is Nature when in fact we see the reflection of our own unexamined longings and desires. For this reason, we mistake ourselves when we suppose that wilderness can be the solution to our culture's problematic relationships with the non-human world, for wilderness is itself no small part of the problem"(Cronon 1986: 69). Nowadays the idealization of Nature is a guide for the social relations of society itself. Following this idea, social relations must imitate natural principles, like equilibrium or harmony that it is said to exists in Nature. By doing that, a more properly human community would result, as well as a more environmentally sustainable society. This point of view is based on the false assumption that a natural way of social organization exists, and that it is possible to know it through Nature. On the one hand, it is based on a social discourse of Nature in terms of harmony and equilibrium, when in the natural world these elements coexists with their opposites, being all of equal importance for the ecosystem. In fact, if human communities organized following the example of animal communities, there would not be a place for environmental concern, because living beings tend to multiply and colonize the maximum space available regardless to sustainability.

Nature is an objective reality as well as a social concept. Reality exists beyond social interpretations. Nature has been altered materially so that a social construction of Nature in material terms exists as well as a Nature socially constructed in conceptual terms. Human beings have affected environment and they still do. Every society has had an impact on its environment (although this impact depends greatly on its technological level). The first deforestation can be traced back to Neolithic times, and some authors think that most of the actual savanna is a consequence of human actions (for example, Sauer 1963). Likewise, the

[43] The "bush" is the most typical Australian landscape.

first human massive extinction of animal species took place in the Pleistocene, when human technology developed greatly (Martin and Wrigth 1967). Before the rise of humankind other massive extinction happened. It must be taken into account that animals and plants alter the environment too. The difference between human and animal alteration of environment is that human beings are the most extended species on Earth and that our technological capacity has enabled us to affect the whole planet in an intense and short timed way.

Because of this, many idyllic landscapes are the direct consequence of human action. "He [Aldous Huxley] was discoursing on a favorite topic: Man's unnatural treatment of nature and its sad results. To illustrate his point he told how, during the previous summer, he had returned to a little valley in England where he had spent many happy months as a child. Once it had been composed of delightful grassy glades, now it was becoming overgrown with unsightly brush because the rabbits that formerly kept such growth under control had largely succumbed to a disease, myxomatosis that was deliberately introduced by the local farmers to reduce the rabbit's destruction of the crops. Being something of a Philistine, I could be silent no longer, even in the interests of great rhetoric. I interrupted to point out that the rabbit itself had been brought as a domestic animal to England in 1176, presumably to improve the protein diet of the peasantry." (White 1967: 1203). Social relations affect Nature, because the distinctions between natural and social are merely conceptual.

Natural environment, like commodities, hides the social relations that have created it. This hiding of the social production of Nature has a consequence: the "naturalization" of this very place of Nature, overlooking the social structure and social processes that have shaped a particular environment[44]. The "naturalization" of Nature takes place when the historic processes are not taking into account. Then, Nature is imagined by society as a space in eternal equilibrium, historyless, where natural processes guarantee harmony in the ecosystem. It is a similar explanation to that of the "invisible hand" of Neoclassic Economy. But Nature is, like the market, a reality in constant change. In fact, the more equilibrated an ecosystem is, the more dependent is. A good example is lawn, a space in almost perfect equilibrium, but at the same time a space very dependent upon human care. Natural spaces managed by human beings used to be places with a high level of equilibrium. Equilibrium means the control of forces inside a system, and this means that this system is unable to evolve. Equilibrium is a human concept very appreciated in modern society. The idea of equilibrium in society as well as in Nature is an unreal conception that is based on a teleological view of life. Social discourses based on these principles use the idealized example of Nature to legitimize their social goals.

Social practices are part of the environment and the forces of its evolution, although sometimes, human community uses its influence to prevent changes in a given environment. This is an important fact to be taken into account in the management of natural areas. "And if we pretend to preserve the state that some interesting environments present in a given moment, we are in certain way taken an antiecological decision, because Ecology implies change and constant evolution. This is why for some people simple protectionism of natural areas is very distant ideologically from ecologism. Ecologism pretends (rather than doing Archeology) to assess to the future generations their right to use, enjoy and overall, *producing* this planet. In reality, this *capacity for production* is the essence of protected spaces. But Amazon jungles and other inhabited territories, in the rest of the places, their actual shape is the consequence of interactions of human communities that have dwelled and exploited during hundred or thousand of years. Only very special spaces such as mangrove swamps or coralliferous atolls could be the exceptions that prove the rule." (Bangor 1999: 104). If a natural area is to be preserved, an analysis must be made

[44] The English enclosures, for example, are the result of a reorganization of land property that has as a consequence a process of prolentarianization of rural peasants.

as to the human dependence on this territory. Usually, local communities shape their natural surroundings unconsciously through their everyday social practices, mainly work and leisure activities. Changes in social or economic structure of these communities, or new legislation (such as the creation of a natural park) have consequences for the environment, which can affect the appearance of this space. The usage of a particular natural space by its human community defines part of its physiography. Because of this, changes in the "consumption" of a natural space must be analyzed carefully in order to avoid unintended consequences that affect negatively the environment. On the other hand, it is not acceptable that any human action on the environment is correct just because the environment is a product of it. The toxic emissions of human activity affect the environment too, like cattle rising or agriculture, but not all of them are equally legitimate.

The criteria with which to evaluate different actions are social. It means that different social groups can think of economic affairs as more important than biological sustainability when evaluating the necessity of altering a natural space. It is very difficult to take into account the interests of Nature, because Nature is a social construct resulting from social projections. Every kind of animal has its own interest different of others. The legitimization of the human actions on Nature is the consequence of a social consensus, i.e., which has changed from the past and will change in the future. Nowadays there exists a growing social pressure that takes shape in the ecological discourse and tries to deslegitimize human activities such as hunting or intensive exploitation of land or the creation of new power plants whose emissions can damage the environment. The practical decisions of the ecological doctrine have consequences on the natural environment and imply the selection of a natural landscape among many others.

There exists a common cultural model of Nature in western industrial societies. The globalization process exports lifestyles and a socioeconomic structure that tends to homogenize social discourse. Mass media and cinema productions have an important role in this globalization of thinking, the definition of the environment and its problems. The international summits help to develop the official environmental discourse and legitimize certain policies. Part of this knowledge filters down to society. For example, the concept of sustainable development has been very popular since the Rio Janeiro UN Meeting in 1992. On the other hand, the new social movements have their own view of environmental problems and a particular proposal for a new relationship with Nature. The new social movements have an important role integrating lay society in environmental matters. Social Sciences also are a source of the definition of environment that society holds. Although it might seem that the influence of Social Science's theories about the environment is scarce, some theories and authors have got to affect the public interest. Arne Naess's writings (a philosopher), for example, have shaped the tendency known as Deep Ecology that has influenced greatly the environmental movement (see Naess 1994). Also a social scientist such as Murray Bookchin has been read and given attention by the lay society. His writings have helped to create the movement known as Social Ecology (see Bookchin 1988). The Gaia hypothesis developed by James Lovelock has created a popular conception about nature (Lovelock 1983). In Sociology, Ulrich Beck's lay version of his Society of Risk now is in political agendas all around the world as well as in the public domain (Beck 2002). A very well known concept of Social Sciences related to Nature is that of "the ecological footprint", designed from a pedagogical perspective (Wackernagel and Rees 1996). Important contributions of Asian cultures, mainly from China and India, are disclosed in the environmental discourse of current industrialized societies. From the 60's European interest in Asian topics has increased, ranging from Buddhism to music. In the 70's the movement known as New Age linked with environmental movements, shows this Asian influence. But this interest in Asia does not mean a connection with their know-how, but a partial translation of their interpretation of Nature; it merely isolates some useful aspects.

The social perception of Nature represents the way in which people interpret what previously has been defined as Nature or natural. The cultural models of this definition of Nature offers a guide of what items must have a place to be considered nature. The social perception of it is structured in concentric circles. The inner circles contain well-established conceptions of Nature that a society holds. For this reason, these conceptions are "naturalized". Some of the conceptions of these inner circles are based on local toponyms or climate conditions, as the ideas of Nature of a society depend to some extent on the physical make up of its surroundings. Beyond these inner circles there are others whose explanations of Nature share a more recent character. They emerge from a debate about Nature that replaces the old understanding. Because of its novelty, this discourse is not totally "naturalized", as it would be if it were in the inner circle. It is likely that the two, the new and the old, will struggle for supremacy. The outer circle is made of individual opinions derived from personal experiences, traits of character, peer groups (which includes social, cultural or political affiliations), emotional reactions to recent news relating to environment issues, and the psychological process of minimizing risks.

An important factor influencing social perception of the environment is the specific toponym of a place where a person has been socialized, or where they have spent the recent years. The interpretation of a space is made out from other similar experiences. A person, then, compares a particular natural space with other natural spaces he or she has known in his or her life. If the new space to be assessed is similar to the one a person has been socialized in, the probability of a positive evaluation is higher. This positive reaction is due to the fact that a known environment enables a person to handle the situation. Sometimes familiarity is not a decisive factor to assess a positive social perception by the population with respect to a natural setting. Persons must integrate the physical environment in their cultural universe. When a person does so, then part of his/her identity depends on this landscape and a higher valuation is likely. When the symbolic contact with a natural setting (animal species, vegetables, and mountains...) is high, the value of Nature for a given human community increases. This happens because the interpretation of Nature becomes a self-interpretation when a community has interiorized it. Nature has stopped being the *Other* and becomes part of *Us*.

Case Study: social perception of the environment as a common good in Navarre (Spain)

The perceived problems[45] define aspects of the environment for a given community. What is to be conceived as the environment is a complex issue that changes in time and space. Because of this, it is important to analyze the environmental problematic of local communities, for this will provide clues to understand both their conception and social perception of the environment.

Navarre is a northern province of Spain on the border with France. The population is around half million inhabitants, most of them living in the capital, Pamplona. The extension of the province is 50.357 square kilometers. Although the province is small in size, it has one of the highest incomes per capita in Spain and held considerable importance in the Middle Ages. At this time Navarre was an independent kingdom. Because of its small size, the feudal structure did not have a great hold on Navarre and most of the land belonged to the king rather than the aristocracy, and rural villages had big extensions of territory as common pools. In fact, almost half of the land in Navarre is communal (common pool in Ostrom, 1977, terms). We can distinguish four different geographical areas in Navarre. 1) The Ribera Navarre is in the south. The climate is dry; the villages are bigger (around 1.500 inhabitants) and mostly agrarian. 2) Middle Navarre is a more humid territory and the most industrialized part of the region. 3) Villages in Northern Navarre are

[45] There exist some other problems that are not perceived by the population but still affect them, of course.

smaller (at about 300 inhabitants); it is a forested area where people mostly work in the primary industry. 4) Pamplona, the capital of Navarre, where half of the population of the province dwells.

In the Ribera Navarre (southern Navarre), the most important problematic is related to water, given that there is a high probability of droughts which affect the water quality. Desertification is a major issue, as well as water waste or the failure of reforestation policies. Therefore the environmental concern is mostly identified with water. Another major issue for this community is noise impact. Close to these populations there is a military base that is a source of noise that people are bothered by.

The area is characterized by being a windy area, which has resulted in the location of a fair amount of wind turbines to produce electricity[46]. The visual impact of these turbines is high, and the social perception of these aeoloic farms is twofold, a negative and a positive one. On the one hand, many people (belonging to Ribera Navarre) think of wind turbines as a drawback for the visual landscape and as noise polluters. For the young people these wind turbines do not save energy but just produce more. At the same time, they are opposed to wind farms as they feel their location has not been negotiated with the local population[47]. On the other hand, wind turbines are positively interpreted because Navarre is a leading region in Spain in wind energy production. Wind turbines are seen by this population as another evidence of human action on the environment, as is the case with roads.

To sum up, in the Ribera Navarre the common good par excellence is the water. Landscape is thought by many people as part of their common good, and for that they are opposed to the development of wind farms.

In Middle Navarre there is a strong presence of wind farms too. This is interpreted as being mainly an aesthetic problem as in the Ribera Navarre. In Middle Navarre there is far more vegetation than in the south, for this reason (and because it is quite close) it is a weekend destination for many tourists from Pamplona, the capital of the region. The people of Middle Navarre see tourists as an element of disturbance and consider them dirty and noisy. Alongside with this, they show concern about the situation of the forests, which are becoming a "rubbish damp" due to a lack of clean up. This shows that the Middle Navarrian population thinks of the forest clean up as a responsibility of the national administration. On the contrary, in Northern Navarre (Navarrian Mountain) people show more concern about their forests and think they have a responsibility to take care of them.

Economic growth in Middle Navarre is due in part to closeness to Pamplona. This growth has negative consequences on the environment. People see this negative influence, but on the other hand, they think of factories as a very important factor for their welfare. A value conflict takes place between environmental and pro-development values. The result is a desire for a moderate but continuous development. The older population of the area stresses the importance of environmental education aimed at the young population and the negative consequences of modern development. They have worked in agriculture, and therefore they show more concern about environmental issues than young people who work in factories and share an urban way of life do. In fact, wind farms are interpreted by a portion of the young population as a chance for more job opportunities.

The people from the Middle Navarre do not show any special concern for a common natural good. The common good that the landscape represents can be affected if the economic consequence is great. The lack of a clear idea of common natural good has as a consequence that the rate of environmental concern is the lowest in Navarre. The interest in

[46] Navarre is the region in Spain with the highest production of wind energy.

[47] Nevertheless, no one says anything about bird mortality caused by wind farms as a reason to oppose wind farms, as ecologists do.

waste recycling is high, but this is not a result of the concern in preserving the natural common good but of a particular life style.

The environmental problems perceived in Pamplona (the capital) are different, mainly due to the size of the city and the concentration of services and important infrastructures. The problems of public transport are considered as environmental problems. It is thought that deficiency in public transport has negative consequences on the environment because it means a higher rate of toxic emissions to the atmosphere. If public transport were more efficient, people think a higher percentage of Pamplonese would stop using private cars. Thus, toxic emissions and noise would drop in Pamplona. Noise pollution is one of the major themes for Pamplonese environmental issues. Also urban cleanness is an important environmental issue. The Pamplonese population considers that the city is quite clean, but this is due to the fact that many resources are spent in its cleaning rather than being the result of a popular concern for it.

In the surroundings of Pamplona there are many wind turbines too. Here the public interpretation is negative on visual terms. But unlike other areas in Navarre, in Pamplona people also talk about the bird mortality these wind turbines cause. This might be a consequence of the vast number of environmental organizations in Pamplona.

A success for the City Council in environmental issues is the rehabilitation of the river Arga. It was very dirty before, and now the population acknowledges the bettering of the situation. The natural common good for the Pamplonese population is the city as a whole. Air, noise, clean streets, and the river are elements of Pamplona's environment. The original idea of interpreting Nature as a common pool is an urban one, and because of it we can find such a holistic interpretation of the Pamplonese environment. It is the only population in Navarre that stresses the importance of clean air as an important environmental factor[48]. In addition to Pamplona, the Pamplonese population considers distant areas as part of its environment. This is due to the tradition of visiting rural places on the weekends. Natural parks are in part the result of urban pressures and as a leisure alternative for urban groups. The Pamplonese population thinks that the role of television should be more important in creating an environmental concern.

People from Northern Navarre hold a high degree of environmental concern. This is an area of large forests and high mountains (the Pyrenees). Forests belong to the symbolic universe of local communities. They respect and are proud of them. They share a high degree of environmental information and a critical judgment of the administration environmental management. Hunters make the woods dirty, although they are considered far better than urban tourists (*dominguero*[49]) are. Recycling is considered here in a different way than in the rest of Navarre. In the rest of Navarre people consider that the management of wastes is efficient and that they are leaders in Spain. On the contrary, the people of Northern Navarre think that the measures are not efficient and more work must be carried out. As the research shows, this area presents the highest rates of recycling in Navarre. Another aspect of Nature as a common good is the concern for green areas in towns. Some groups consider it a necessity to develop green areas, whereas others think there are enough green areas in the surrounding woods and for that investing financial resources on this issue would be a waste. The first group of people wants to develop a typical urban infrastructure to "raise the status" of the village. The other group thinks that instead of bringing green areas inside the town or the village, people should take more care of the surrounding Nature, and bring it into town by reinforcing the town's links with Nature.

[48] And this is not a consequence of a bad air quality. On the contrary, Pamplonese population stresses the quality of its air.

[49] "Dominguero" is a word that comes from "domingo" (Sunday). A dominguero is a person who only visits places on Sundays.

The link between Society and Nature is made explicit in some areas of Northern Navarre. This is a consequence of the growing number of natural parks in the area. The rules of these parks do not allow local people to exploit the forest as they have traditionally. These new rules are not legitimate from the point of view of these people. In this sense, they ask Administration to consider human beings also as part of the environment. They say, for example, that cattle keep paths clean, and timber cutting is a way to avoid natural fires. On the other hand, they say that sustaining rules like these is an economic disaster for the people living around natural parks. Natural parks are a common good for the Navarrian population as a whole although it might negatively affect to local people. It is a conflict between common and particular interest. This conflict can be analyzed from another perspective. It is a conflict between different views of a common pool, between a traditional communal and a new communal. It represents different ideas about how to manage common pools. The problem is far from easy to solve.

Northern Navarrans are proud of their environment and consider it a privilege to live there, although their economic development is slower. The common natural good for this population are in the first place their forests and in second place their rivers. They complain about the state of their rivers.

A decisive factor in the social definition of the environment is the ranking of priorities that society develops about the environmental problems that perceive. In a postindustrial society, problems are worldwide. Beck's Society of Risk is a society worried by issues that traditionally science used to solve. Nowadays these issues are out of control.

Legitimacy of social actors involved in environmental issues is important, as well as legitimacy of social institutions designed to deal with these problems and the environmental policies that result. Legitimization processes are very complicated. Social institutions gain or lose influence and legitimacy in society. In the Middle Ages, the Catholic Church could have had the legitimacy to deal with an environmental crisis like ours, but now its perspective of the problem is not important for the overwhelming part of the population. The role of Science has overcome that of the Church. However, Science has lost part of its legitimacy, creating a conflictive situation where there is not an institution that can take control of the situation. This is one of the factors of the crisis of postmodernity in advanced societies. On the other hand, scientists are increasingly asked to express their opinions on environmental issues.

Summing up, the cultural background of a given society affects the social perception of people about Nature. Culture is a set of concepts useful to deal with the world on the whole and with nature in particular. Culture also stores all knowledge of previous generations about Nature. The contact with other cultures can bring an interchange of knowledge that can affect the conceptualization of Nature and a culture's material interaction with the environment. Culture plays an important role in categorizing and defining the environment. Obviously, this categorization affects their way to perceive the environment. Social agreement about natural beauty also affects social perception about Nature. Some landscapes can be considered awful and frightening and some centuries later an example of beauty. The Ribera Navarre has traditionally been considered a poor landscape[50]. Now its dry landscape summons tourists from all over Spain and France. Culture also can affect people to think of their environment only in economic terms.

The material relation that a society keeps with its environment is an important issue to explain the social perception of Nature. Human communities establish a good relation in symbolic terms with their source of resources. Many farmers (especially old people) feel emotion about their lands and keep on tilling a poor land (as in the case of Ribera Navarre) partly because of this. This is the case of Ribera Navarre and its dependence on water.

[50] Selfportrait of Navarre.

The mode of production of the society influences the way people perceive their physical surrounding. In a hunters and gatherers society, the relation with Nature tends to create an interpretation of a logical continuity between Nature and Society.

An example of the interaction between industrial societies and Nature is the location of a factory in the rural setting or in a place nearby the city. In Ribera Navarre to locate factories in natural settings is seen environmentally negative. People think companies are not environmentally concerned as they only seek their direct economic benefit. Their proposals always stress on the necessity of raising "green fees" that "ecologically bad" companies should have to pay.

The people of the Middle Navarre hold a very different environmental perception about companies. This area is increasing its income through investments and factory production. Because of this, people accept more easily an environmental harm as a trade off for job opportunities. Even so, they think companies should be both monitored and given incentives not to pollute instead of limiting factory production. In this respect, people also distrust transgenic products for the resulting dependence on multinationals.

In Pamplona people think that some foreign firms located in Navarre, like Volkswagen, are cleaner. To accomplish the goal of companies being more environmental concerned, they propose developing a "green market". They think the government should help companies to become "greener" rather than penalize them.

The people in Northern Navarre hold a high environmental concern and for that the important issue relating factories is their location. In this area, environmental issues are more important than economic development. They think that the environment has improved greatly in the last decades. Nowadays there exist more environmental rules helping to improve the environment. Northern Navarrans think of managers as individuals that only seek personal benefit, lacking environmental concern. They do not count on companies to defend the natural commons of the local community because their only goal is to produce economic benefits. This population trusts in the government to deal with environmental issues and guarantee the protection of their common natural good. They think that the institution in charge of the territory must seek everybody's interests rather than particular benefits, since the territory offers common benefits to the whole community. To say the least, they do not share Hardin's conception of management.

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The Commons in Navarra: Urbasa-Andía-Limitaciones

Nuria Osés Eraso
Universidad Pública de Navarra

1. Introduction. Property Rights in Navarra.

Navarra is a region situated in the north of Spain. It has an extension of 1,042,100 hectares (10,421 Km^2). The population of Navarra has increased considerably in the last century: in 1900, Navarra has 307,669 inhabitants while in 2000 the population was over half a million (543,757 inhabitants)[51].

We can find different types of property rights over land in Navarra. Generally speaking, when people talk about such property rights, they usually make a distinction between private land and common land. But this distinction can go a little bit further. There exist different types of right holders in Navarra that are related with the different authorities of the local administration: the State, the region of Navarra, the municipalities and the citizens. So, we can distinguish between four different categories of property right over land (Cuadrado (1980)):

- Lands from the State (*Montes de Estado*).
- Lands from Navarra (*Montes de la Provincia).*
- Lands from the municipalities (*Montes de los Pueblos*).
- Lands from the citizens (*Montes de los Particulares*).

The lands from the state that originally belong to the kingdom of Navarra belong to the Community of Navarra since 1987 (R.D. 334/1997)[52].

Usually, when we talk about the commons in Navarra we refer to the lands that belong to the State, the lands that belong to the local government of Navarra and the land that belong to the municipalities. The study of these lands is important as they represent nearly half of the surface of this Spanish region, as we can see in table 1.

Table 1: Common Land in Navarra.

	Hectares	%
Total Area	1,042,100	100
Common Land	490,000	47.02

Source: Floristán Samanes (1995)

The importance of the commons varies across Navarra. In the North the commons are 50.8% while in the south and in the middle of Navarra, the extension of the commons is 35.5% and 34.9% respectively. We can find different essays (Iriarte Goñi (1997, 1998)) that try to explain why the commons have survived in Navarra although the pressure for privatisation was quite strong in the middle of the 19th century[53].

[51] See Figure 1 to see where Navarra is situated.
[52] Information about this transmition of property rights, that affect more that 26,000 hectares, can be found on Salcedo Izu (1989) and Eraso (1989)
[53] Ley 1-V-1855 sobre desamortización de bienes pertenecientes a corporaciones civiles y al Estado.

These common lands can be use as grazing areas, as forest areas or for agricultural purposes. Different resources can be obtained from these lands: pasture, wood, firewood, leaves, fern, snow…

There are different ways of appropriating these resources. Nowadays, there exists a law and a subsequent regulation that compile all these different methods[54]. For example, in the case of common land that is good for agricultural purposes we find priority uses, direct adjudication, adjudication by auctions and direct use by the local authorities. Something similar happens with the use of pastures and firewood. Nevertheless, there exist a high flexibility in order to accept the diverse customs, by-laws or decrees develop by each village over time.

As the common land in Navarra is so extended and diverse, in the following, I will put my attention in one of these common land: Urbasa and Andía, which have been till recently, state commons. I will analyse who are the actors entitled to appropriate, what are the goods the actors appropriate, how do the actors go about appropriating and what are the actors allowed to do with the good appropriated. I will also analyse the effect that the exploitation of Urbasa and Andía has had on the landscape of these territory.

2. Urbasa and Andía.

The mountain range Urbasa-Andía is located in the western part of Navarra, in a mid-position between the humid north-western area and the mid-western Navarra. The mountain acts as a natural borderline and also as a veritable weather divide between two bio geographic European areas: the Euro Asiatic-Atlantic and the Mediterranean. To verify this you only have but to travel over the surroundings northern and southern fringes. In the southern border, the scenery at the Guesalaz and Yerri valleys is a reflection of Mediterranean Navarra. By the same token, the predominant landscape in the Améscoas is one of cereal crops. In the northern area the outlook changes: in the Arakil corridor there is a landscape made up of meadows, while the heights appear covered with beech woods and oak groves[55].

The mountain range has an average altitude of 1,000 meters and covers a total area of 20,799 hectares whose breakdown is as follows: *Andía Range*, 4,700 hectares, *Urbasa Range*, 11,399 hectares and *Mount Limitaciones*, 4,700 hectares[56].

Although rainfall is abundant in this area, Urbasa-Andía's soil is not good for agricultural purposes but it is excellent as a forested and cattle raising zone. Beech woods constitute the natural vegetation cover of this mountain range, giving way to oak groves in the South. There is also a high diversity of animals, amphibians, reptiles, birds and mammals.

2.1. Property rights in Urbasa and Andía.

Urbasa and Andía have been till recently considered as state mountains. In Navarra, the kings use to entitle the inhabitants of the nearest villages the rights to use the state mountains but Urbasa and Andía constitute a special case as all the inhabitants of Navarra have rights to use and enjoy the products of these lands (Floristán 1979).

Navarra's inhabitants are allowed to use, freely and with no charge, all the different products that can be extracted from this area: grass, water, pasture, wood, firewood, coal, fern, leaves,

[54] Ley Foral de Comunales de 28 de mayo de 1986; Reglamento de Comunales de 28 de julio de 1988.
[55] A description of the area and same nice pictures can be found in Itúrbide (1998).
[56] The whole area together with the Urederra River was designated as a Natural Park in 1997 (Ley Foral 3/1997 de 27 de febrero).

manure and snow. It is said that Urbasa and Andía are entitle with "*servidumbres*". Among these, the most important are:

- Cutting wood and firewood, both for building purposes and heating.
- Taking the cattle to graze and water.
- Building huts and folds for shepherds and sheep.
- Fern and leaves harvesting.
- Collecting of manure and snow stored in caves.

The last ones, known as minor uses, are all times practices whose importance have declined over the last years. Nowadays the principal activities in this area are the forest and the grazing ones. Besides this, the area has of late been used for leisure activities.

These rights are based on ancient customary law, and it doesn't exist legislation defining these rights. There was only one restriction, based also in customary behaviour: Navarra's inhabitants can use and enjoy the products of this area provided that the land is use to meet their needs rather that to make a profit. For example, they cannot sell the products they obtain. I will like to emphasize that:

1. People from Navarra can use and enjoy all the wood and firewood that they need (for heating, for building, for reparations, for making agricultural tool,…) but they can never sell and buy them.
2. People from Navarra can take any type of herds to graze and water in Urbasa and Andía, with no time-limit and with no charge, provided that the herds are of their own.
3. These rights are over the whole area of Urbasa and Andía.

Navarra's inhabitants have always defended their rights over Urbasa and Andía. And we find evidence in all the complaints that different villages and citizens and even the authorities of the region, put on the tribunals (court) in order to defend these rights.

2.2. Defending the rights.

2.2.1. Defending land integrity: Mount Limitaciones.

Urbasa and Andía is such an extended area that, over the years, different people and institutions have tried to appropriate part of this land. And Navarra's inhabitants have defended their rights. (Floristán 1979).

Urbasa has a natural continuation on the *Encía Range* that belongs to the Basque Country. The border between these two ranges is not clear and people from the Basque Country try to encroach upon the land[57]. In 1561 the local court asks the king for monitoring the area to avoid these actions.

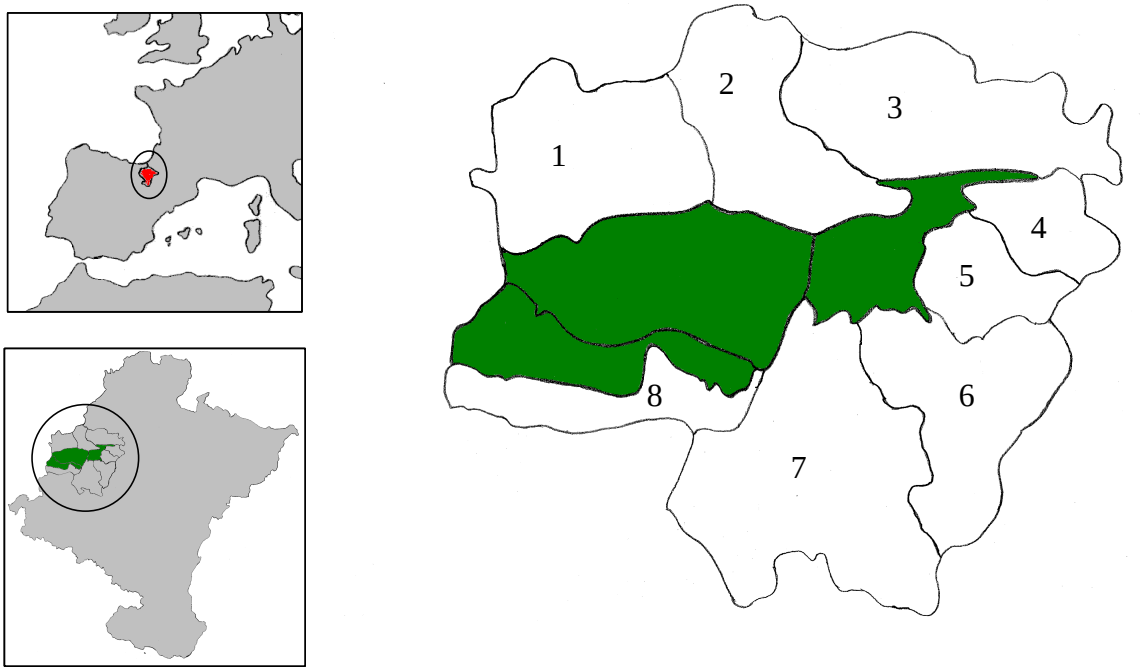
Surrounding villages also attempted to appropriate part of this territory. Historically, the peaces of a common land whose use was reserved to certain nearby villages were call limitations. Certain villages as Améscoas in the south and Echarri-Aranaz, Ergoyena and Burunda in the north try to obtain limitations from Urbasa and Andía. Even a particular make an attempt to appropriate 296 ha. In 1666, the authority of Navarra appears disappointed with all these limitations, because they were harmful to the livestock of Navarra as less grazing

[57] As Floristán (1979) points out, probably this happens also the other way round.

land was available. Finally, all the limitations but one, turn back to be again the commons of Navarra.

The only limitation that survives is what we actually call *Mount Limitaciones*, a stretch of land situated in Urbasa's southern side. In Mount Limitaciones, the organisation clearly differs from that of Urbasa and Andía. Améscoas' valleys, in the south border of this Mount, have exclusive rights to use an enjoy the products of this land. The first written reference that confirm this right appear in 1411 and the rights have been maintained till now. This stretch of land is clearly delimited from the surrounding area (Urbasa) by a stone wall. You can see the situation of this mount and the valleys that have access to it in Figure 1.

Figure 1.- Urbasa, Andía and Limitaciones

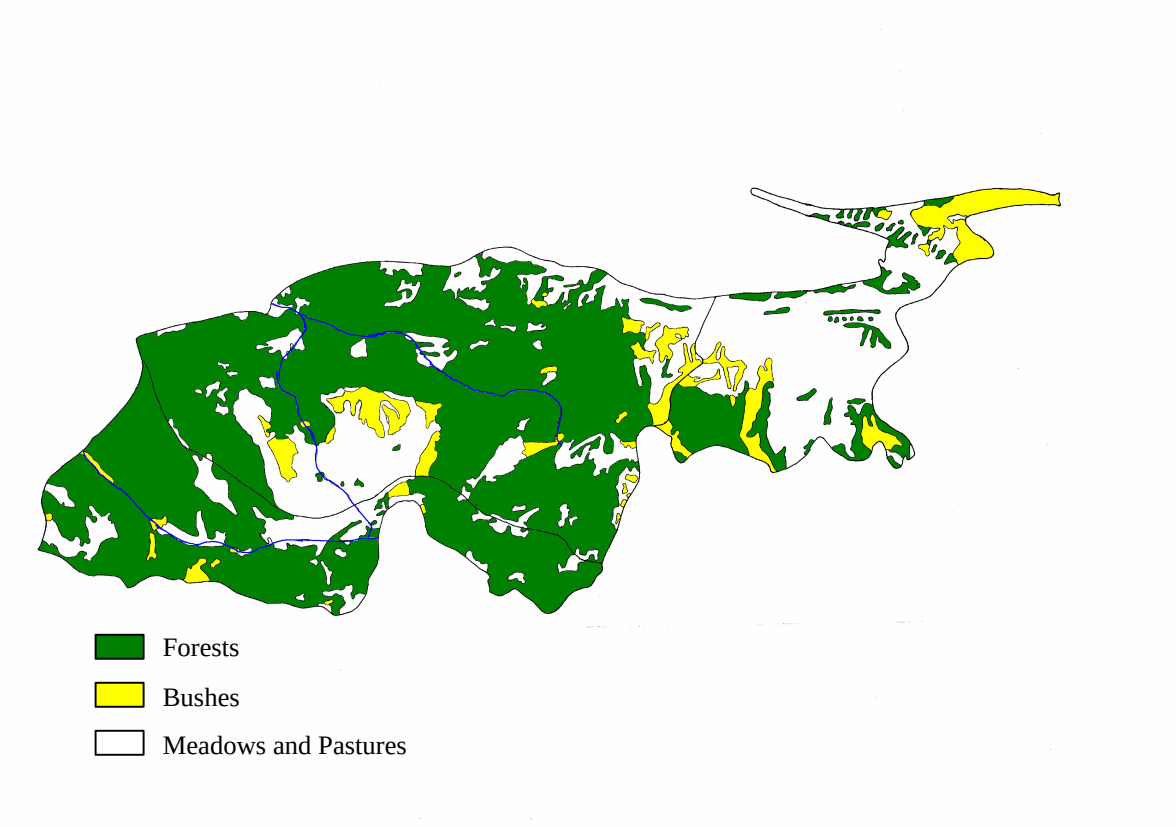


1. Burunda
2. Aranaz
3. Araquil
4. Ollo
5. Goñi
6. Guesalaz
7. Yerri
8. Améscoas

There exist a "Junta'" that control the uses of all the resources of Limitaciones. There is also a by-law[58] that says who is entitled to appropriate and what can be appropriated. All the inhabitants of the Améscoas can cultivate 5 *robadas* of land in Limitaciones as well as enjoy pastures and wood (or money nowadays). There exists a control of the herds grazing there as the owner must ask for permission and must pay a fee for every animal that is going to graze in the pastures of Limitaciones[59]. The "Junta" is also in charge of the reforestation of the mountain and has encouraged the timber exploitation, closing many areas to the herds. The income obtained with the timber exploitation is divided among the Améscoas inhabitants (the "suertes").

[58] Ordenanzas para el disfrute y conservación del Monte Limitaciones, 26 de Junio de 1986.
[59] The fee is 25 pesetas (0.15 euros) for every sheep and 100 pesetas (0.60 euros) for every cow.

Figure 2. Urbasa-Andía-Limitaciones: vegetation cover.



2.2.2. Defending the uses.

The uses of Urbasa and Andía are almost unrestricted representing an opportunity for an anarchic exploitation of the ranges. Civil servants and the state try to limit these rights but they find the strong opposition of all Navarra's inhabitants. Similarly, some villages and valleys from Navarra surpass their rights finding also the opposition of part of the community (Floristán 1979). Let's analyse what happen with the most important ones: grazing activities and forest activities.

We have already seen that *people from Navarra can take any type of herds to graze and water in Urbasa and Andía, with no time limit and with no charge, provided that the herds are of their own*. Civil servants try to limit these rights imposing taxes to those who have their herds grazing in Urbasa and Andía. The Courts sanction the civil servants recognising the right of all Navarra's inhabitants to take their cattle to Urbasa and Andía with no charge. This happened, for example, in 1580 and 1586 (Floristán (1979)). Something similar happened with the "rights of way" that certain villages try to extract from the herds that go across their land in their way to Urbasa and Andía. Further, grazing in Urbasa and Andía is still completely free (Moreno (1995)). Civil servants also try to rent pastures to foreign farmers but the Courts again showed that these actions were against Navarra's rights.

In the 19th century, they try to forbid the presence of goats in Urbasa and Andía but people from Navarra started to complaint[60] so that goats were not forbidden till 1963.

At the beginning of the 20th the authorities also try to oblige farmers to use shepherds in order to facilitate the reforestation of certain areas. New complaints made the authorities change: instead of being an obligation, the use of shepherds is just recommended.

[60] Remember that any type of cattle can graze in Urbasa and Andía.

Forest activities find similar problems. As we know, *people from Navarra can use and enjoy all the wood and firewood that they need (for heating, for building, for reparations, for making agricultural tool,…) but they can never sell and buy them.* Again civil servants tried to restrict these rights forbidding Navarra's inhabitants to cut down firewood. But the Courts show that these actions were against Navarra's rights.

Navarra's inhabitants also surpass their rights buying and selling wood and firewood, some of them even earning their living with this activity. Other members of the community give notice of the abuses to the authorities. Floristán (1979) shows a great number of examples of these abuses from the 16th century till the end of the 19th century.

3. Comparing the landscape in Urbasa-Andía-Limitaciones.

Nowadays, and according to the last studies about the resources available in Urbasa, Andía and Limitaciones[61], the landscape is clearly different in these three mountains. Limitaciones is mostly cover by beech woods and oak groves; more than the 78% of these 4,700 hectares are cover by forest. Similarly, Urbasa is cover by forest in a 69% while Andía appears rockier with only a 14% of wood stock. See table 2 for more information.

Table 2. Landscape in Urbasa-Andía-Limitaciones.

	Urbasa	Andía	Limitaciones
Total area	11,399 ha.	4,700 ha	4,700 ha
Forest	7,892 ha. (69.23%)	663 ha. (14.11%)	3,676 ha. (78.21%)

Source: Plan de Ordenación de los Recursos Naturales de Urbasa y Andía (1996), Plan Rector de Uso y Gestión de Urbasa y Andía (2002).

The wood stock in Urbasa is estimated to be around 74.24 m^3/ha. while in Limitaciones is 149.24 m^3/ha. There is no wood stock in Andía. The same study shows that the actual possibility of Urbasa is 1.09 m^3/ha/year, a small one if we consider that its natural conditions allow for a possibility similar to the one estimated for Limitaciones, 2.1 m^3/ha/year.

How can we explain these differences? We can consider intrinsic factors such as natural conditions: characteristic of soil, weather,… as well as extrinsic factors like human ones. Different authors have disregarded the first one, as intrinsic factors are quite similar for the three mountains. So, we will have to look for the differences in the human factors.

Limitaciones is a special case. We have already seen that there exists a “Junta” that managed the use of this land. This “Junta” has enhanced the exploitation of this mountain as a forest area, keeping just a small space for grazing activities.

More difficult is to explain the differences between Urbasa and Andía[62]. I think is a good point to start looking at the people that has actually used these lands. It is well known (Floristán (1979), Moreno (1995)) that although all Navarra's inhabitants are entitled to use and enjoy these resources not all of them have traditionally use these rights. The use is proportional to the proximity to the ranges. The ones living in the surroundings benefit from these natural resources more often. They use these lands as a grazing zone and to collect wood and firewood. Is there any difference between the villages that surround Andía and the

[61] For futher information see Plan de Ordenación de los Recursos Naturales de Urbasa y Andía (Decreto Foral 267/1996, de 1 de julio and Plan Rector de Uso y Gestión de Urbasa y Andía (Decreto Foral 340/2001, de 4 de diciembre).

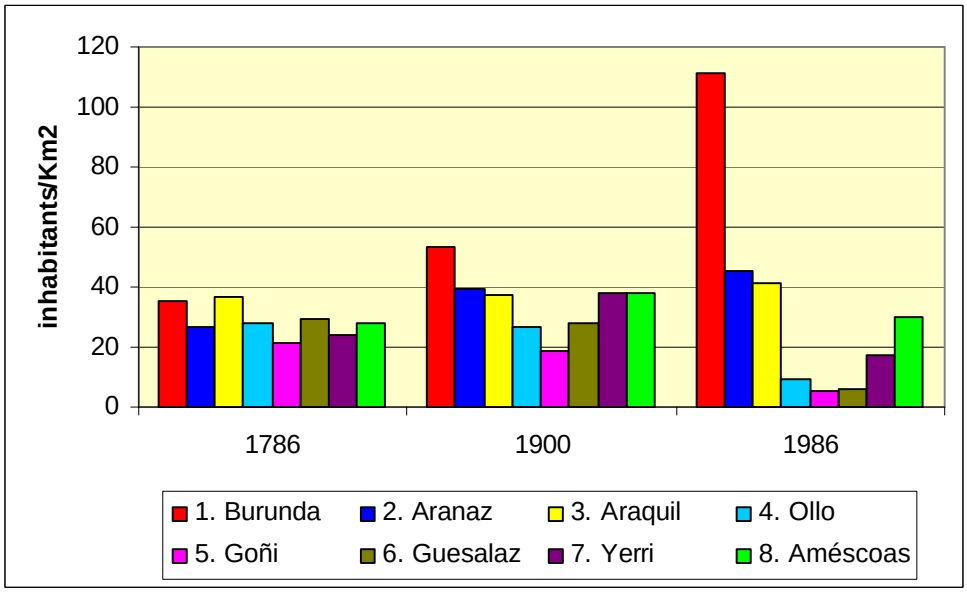
[62] For an economic model that tries to explain these differences see Osés-Eraso (2000).

ones that surround Urbasa that can help as to explain the differences between these ranges? Let us make a description of different factors such as the population density of the area, the different uses of the soil in these villages or the distribution of private land among owners.

1. Population density.

Are north valleys less populated that the south or the east ones? Nowadays they are clearly more populated areas but in the 18th or 19the century the population density was quite similar over the whole area. See Figure 3 for more information about the population density of the villages that surround Urbasa and Andía from the north to the south.

Figure 3. Surrounding villages: population density



2. Private and common land in this villages.

Have these villages their own common land? The proportion of land that is common property varies from that 75% in the north to around 50% in the south. See table 3.

Table 3. Surrounding villages: common property land.

Villages and valleys	Common Property Land (%)
1. Burunda	75.30
2. Aranaz	75.41
3. Araquil	63.38
4. Ollo	66.90
5. Goñi	67.80
6. Guesalaz	51.53
7. Yerri	46.75
8. Améscoas	66.61

Source: Gran Enciclopedia Navarra

3. Different uses of the soil.

Forest and pastures cover a great percentage of the land of all the villages that surround Urbasa and Andía. Nevertheless, the percentage of cultivated land is more relevant in the southern villages that in the northern ones. See table 4 for a complete description of the different uses of the soil in this area.

Table 4. Surrounding villages: soil use.

Villages and valleys	Cultivated Land (%)	Meadows & Pasture (%)	Forests (%)	Other uses (%)
1. Burunda	7.51	24.88	63.19	4.43
2. Aranaz	13.71	11.17	71.50	3.62
3. Araquil	20.73	15.53	60.16	32.70
4. Ollo	15.70	49.30	32.70	2.30
5. Goñi	20.10	30.30	47.40	2.20
6. Guesalaz	29.74	36.80	31.09	2.37
7. Yerri	46.60	19.61	31.44	2.36
8. Améscoas	18.92	13.61	64.60	2.88

Source: Gran Enciclopedia Navarra

4. Distribution of private land.

The villages that surround Urbasa and Andía have achieved different distributions of the private property lands among owners. The private lands are more equally distributed among owners in the north of Urbasa than in the valleys and villages that surround Andía. These can be observed in table 5 were we have calculated the Gini Index[63]. This data are also represented in Figure 4 where the corresponding Lorenz curves are depicted. In this figure, the doted line represents the equal distribution.

Table 5. Surrounding villages: private land distribution.

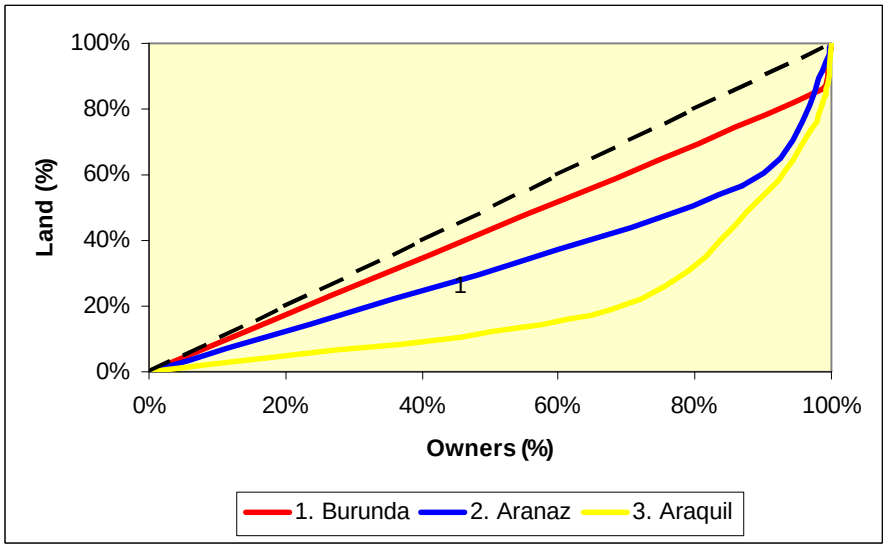
Villages and valleys	Gini Index
1. Burunda	0.07
2. Aranaz	0.20
3. Araquil	0.30
4. Ollo	0.38
5. Goñi	0.30
6. Guesalaz	0.35
7. Yerri	0.39
8. Améscoas	0.23

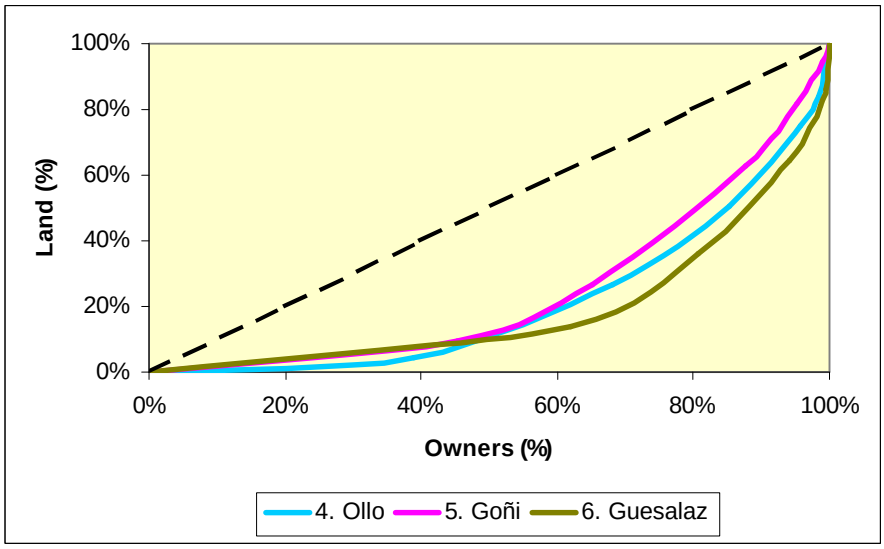
Source: based on Floristán 1979.

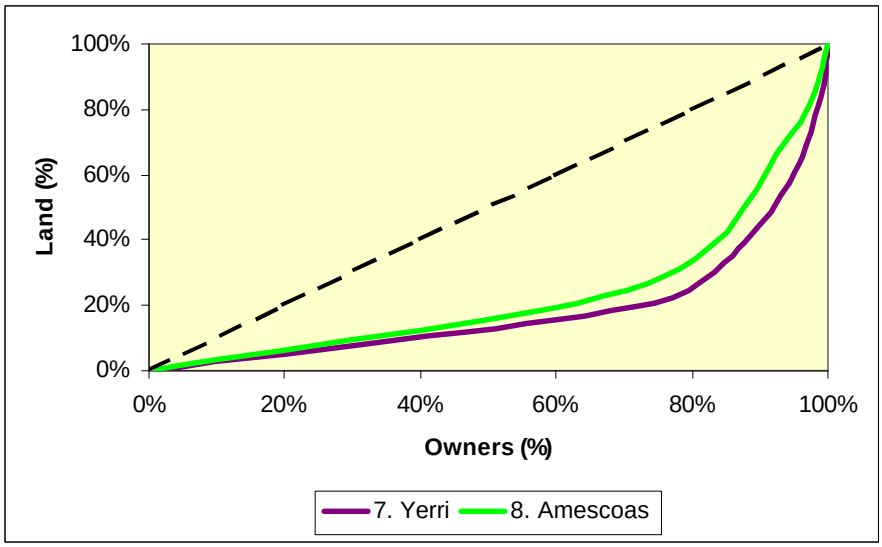
Why this distribution? It could be based in the *inheritance systems* developed in these areas. The villages situated around Urbasa range developed an inheritance system based in equal distribution of family land among all the siblings (García Sanz-Marcotegui (1985)). In the other hand, the villages that surround Andía developed a different system consisting in not breaking family plots (Bielza de Ory (1972)). Consequently, one child, usually the eldest son, inherited the family lands. Under this institution, younger sons have two options either leave the community and look for a job or use communal resources to earn their living.

[63] Remember that the Gini Index take values between 0 and 1 being 0 the value for an equal distribution.

Figure 4. Surrounding villages: private land distribution.







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Norwegian Commons: History, Status and Challenges.

Hans Sevatdal and Sidsel Grimstad
Department of Land Use and Landscape Planning,
Agricultural University of Norway

-"The commons shall remain as they have been from old times, both the upper and the outer"

- "Saa skal Alminding være, saasom den haver været af Gammel Tid, baade det øverste og yderste -"

From the Norwegian Law 3-12-1 of 1687.

1 Introduction

The Norwegian Commons comprise different properties under state common, parish common and farm common ownership located in vast areas of forested and mountainous lands of Norway. These commons have changed and evolved, some have disappeared, some have been dissolved, and some have been created or recreated. Some commons, namely the so-called "State commons" are of very ancient origin, while another type, the so-called "farm commons" normally are much younger. But even if they are of different age and different origin, under different ownerships, (state, private, parish or farm ownership), the use rights that the local community have had in the commons have largely persisted since they were first recognized in the laws in the middle ages. The origin of the use rights may even go further back in history.

This paper will look at the Norwegian Commons with the following focus:

- How these ancient institutions have evolved during the last 200 years
- The interests of the different stakeholders and the ensuing conflicts up to the present
- How the institutions managing the commons have adapted to the changes in the Norwegian society from agrarian towards an industrialised and more urbanised country

By investigating the history and the privatisation and formalisation processes the commons have undergone, we are able to see how the institution has been able to adapt to changing economic and political environments. It illustrates the tension that has been and still is between the central power and the local community concerning the state commons. These tensions are however only one aspect of conflicts relating to the commons; at times there were equally high tensions between different local communities and also between various stakeholders within local communities**.** But maybe the most important is that it shows that the institution of the commons has persisted for nearly a thousand years, and that it may exist side by side with "ordinary" private and public ownership of land. It can also adapt and modernise into becoming an important voice of the local community in local and central politics.

It has also been a goal of this research to provide documentation of one example (of many) of the thriving existence of common property ownership in modern western countries, showing that this ownership form is not an "archaic" or outdated form that only exists in poorer developing countries. Furthermore the report shows that the commons have not been a stagnant form of ownership, but has changed and still changes according to the tendencies particularly in the rural/agricultural sector. It discusses some of the modern time challenges for the commons in society.

2 Terms and Concepts

In the following section the concepts and terms will be explored using Bruce (1998) and Sevatdal (1989).

Tenure derives from the Latin Term of holding or possessing, and land tenure means the terms of which something/land is held, the rights and obligations of the holder. Land tenure is a legal term that means the right to hold land rather than the simple fact of holding land. One may have tenure but not taken possession of the land.

Property is said to be a bundle of rights, where the various rights might belong to one person, or to several different persons or groups.

A land tenure system is all types of tenure recognised by a national and/or local system of law taken together. A land tenure system cannot be understood except in relationship to the economic, legal, social and political systems that produce and influence it. Tenure systems are characterised by country or type of economic system, as formal (created by statutory law) or informal (unwritten customary), and as imported or indigenous. One may also say that the tenure system is simply integrated into most other aspects of a society.

Tenure reform describes legal reforms of tenure whether by state or local communities. Tenure reform is different from land reform. Land reform involves the redistribution of landholdings and changes the agrarian structure, while tenure reforms leaves people holding the same land, but with different rights.

Security of tenure can be defined in different ways according to what type of criteria is considered important. From a legal point of view, security of tenure is achieved when one has confidence in the legal systems, and that these will imply if appropriate. From an economic point of view security of tenure is achieved when the security of tenure relates to the time needed to recover the cost of an investment made on the land (for instance tree-planting). When tenure is too short or uncertain for investments, economists say the landholder lacks security of tenure. A third point of view is that security of tenure could only be obtained when land is held in fee simple.

The concept "commons" is a difficult one to give a precise definition. By and large a commons is a (more or less well) defined area wherein landholders (some or all) of a locality, or the local residents as such, have rights to activities such as grazing stock, cultivation, building of summer farms, extracting forest products like timber, fuel-wood, etc. But there may also be specific rights and specific resources belonging to (or utilized by) all members (residents) of a local community, regardless of their relationship to landholding and farms. Hunting and fishing rights are typical in this respect in a Norway. Historically the commons (at least some of them) in Norway was probably not so much a form of ownership as it was a pattern of legally guaranteed use; the members of a locality are free to use the land simultaneously or collectively. It is also important to understand that the use rights connected to an agricultural unit, be it a freehold, a tenant or a crofter farm, are connected to the unit as such, and not the actual person holding the unit. The basic elements in the concept of Norwegian "commons" are on the one hand a more or less well defined land area comprising different resources, on the other a defined local community. The phrasing is often that "the commons so and so belong to local community so and so." It should also be kept in mind that the concept of "commons" as used here the different resources and the land as such in the commons discussed here are owned somehow by somebody.

In this paper we will explore three types of commons in Norway; 1) State commons, 2) Parish commons and 3) Farm commons. The difference and peculiar features of each of these three types of commons will be discussed in detail later, suffice to say here that the terms "State", "Parish" and "Farm" used here indicate the actual ownership to the "land", actually the "ground" itself. We also want to stress that there are other areas and other resources as well that with some justification could be termed "commons" or "common resources" in a more general sense. For example the costal waters and the fisheries, certain large inland lakes, certain types of pasture practices etc.

Resources with access by everybody are not common property, - they are common, but not property – and should therefore be defined as "open access resources". The commons are not subject to open access, but on the other hand they are more open than individualised property, and more open than land owned jointly by some individuals (Rygg and Sevatdal 1994).

Possession of land and use of resources may have legal consequences. If someone openly and in good faith, possesses land for a long time without owners' permission, and without the owner taking any kind of action, western law will eventually accept the possessor as the owner. This is prescription, or prescriptive acquisition of land, "hevd" in Norwegian. In Norway the period of time land has to be held before prescription has varied, but is now 20 years. There is however another, vaguer but related form of prescription, which is of more relevance to our topic. That is the so called "alders tids bruk", which literally can be translated as "use of old". The basic principle is quite simple that if somebody (person, group, the state etc.) has effectively possessed (used, claimed etc) something for a long time (time immemorial), this fact, if properly proven, has legal consequences.
In addition there are many varieties of co-grazing arrangements, or co-farming on specified land that may traverse real boundaries. These types of co-ownerships are most often strictly related to one type of use of a specified land (grazing, hunting, fishing, logging etc).

3 History of the Commons

3.1 Some aspects of general history related to the commons

The commons have no history of their own; the history of the commons is part of the general rural history. To understand the origin, development and the present status of the Norwegian commons it is important to understand the geographic and climatic context of the country as well as the settlement patterns and farming systems and livelihood strategies that farmers developed during different historical periods. It is also important to understand the basic trends in economic and political history, of which the development of the commons is deeply embedded. Livelihood strategies would not only be dependent on resources available, population density, technology, markets and so on, but also on the state and how it performed or did not perform its ownership, its regulating power and of laws regarding land.

3.1.1 Topography, Population and Farming Systems

The territory of mainland Norway is 324.000 square kilometres. Only 3% is arable land, 25% is productive forest under the timber line, less than 1 % is urbanised land, the rest approx. 70% are mountains, bogs and lakes. (Sevatdal 1999). Norway has, compared to most other European countries, always had a small population compared to the total land area.

Year	Arable land (ha)	Population	Persons with main income from agriculture	Export of Timber (m3)	Number of cattle
1800	n.a.	883,500	710,252	1,164,000	644,000 (1835)
1900	980,000	2,217,970	991,177 (1910)	2,000,000	950,000
1990	1,040,000	4,393,833	66,264	1,187,000	965,000

Table 1. Change in population, arable land, persons with main income from agriculture, timber export and number of cattle the last three 200 years in Norway.
(SSB 2000a, SSB 2000b, SSB 2000c, SSB 2000d, SSB 2000e)

In 2002 the population was 4,52 million (SSB 2002). Around 75% live in urban or semi-urban communities, while 25% live in rural communities. However, as can be seen from table 1, population has increased more than fourfold whereas currently the persons with main income from agriculture is less than 10% of what the number was in 1800. Other interesting figures are the export of timber that had a non-presedented high in 1900, whereas the number of cattle

increased up to 1900 and has since remained stable, although the number of farms and farmers has decreased by more than 75%.

Even if farming in Norway may seem precarious (rough terrain, harsh climate, poor soils and so on), this does not mean that the rural societies were poor, it simply means that most farmers would have to find substantial other ways of feeding the family and make a living. This could take the form of both subsistent and commercial activities – quite often in combination. They would harvest from the mountains, forests and sea, engage in timber logging, transportation and sawmill work (from the sixteenth century onwards), producing tar, fuelwood, and charcoal, the latter two for mining and metal industry. It is especially significant that *both* commercial and subsistence aspects were important for the development of the commons, quite often in the form that the market opportunities created shortage and competition for resources in the commons, thus facilitating change – for example individualization in the form of subdivision and privatisation of the commons. In the eighteenth and especially the nineteenth centuries rapid population growth – which before the second half of the ninetieth century largely had to be absorbed by the rural communities – seem to have been a great "mover" of competition in the resource extraction.

In many coastal areas commercial fishing has been very important right from the late Middle Ages. Further the harsh winter climate obliged the farmer to utilise the non-cultivated areas for grazing, while growing and gathering fodder in the mountains for the animals to survive during winter. In short; the so-called "farmer" in Norway has been anything but a farmer in a strict agricultural sense, he has always been a "jack-of-all-trades", as opportunities arose. However, it should always be kept in mind that ecological conditions like climate, soils, terrain, natural resources, but also transportation facilities and market opportunities vary enormously in Norway; from south to north, from east to west, from coastal to inland, and from the lowlands to the high alpine mountains.

In Norway we assume that the predominant settlement pattern was composed of single farmsteads. Each farm could be very large in land area; most of which was not cultivated. The farm would thus comprise three categories of land;

- the in-fields, arable and semi-arable land for annual cultivation of human and animal food,
- two categories of out-fields, the nearest more productive areas which would comprise productive forest and the best grazing and fodder harvesting areas, and
- the mountainous/alpine outfields (above the timber line) which would be suitable for summer grazing, hunting and fishing and some other collecting/gathering.

Ownership and use rights to these three types of land can be describes as more and more joint the further away from the farm and less cultivated the land is. In general the in-fields would be considered private land and for private use only. Whereas the further away from the in-fields of the farm one would come, the more collective ownership forms one would get.

3.1.2 Tenure Systems

Up through to the late Middle Ages, the land tenure system in Norway developed into two basic forms; freehold and leasehold. Freehold land was held without other obligations than paying taxes to the Crown (State), duties - like *tiende* (10% of the crop) to the Church, and sometimes also certain contributions to local public authorities. Leasehold meant that land was rented by a user (a tenant, most often the farmer) from the owner (a monastery, a bishop, the archbishop, state/monarchy, nobility, or quite simply a private landowning person) for a specified period of

time. The tenant would have to pay rent to the landowner, in addition to tax and duties to state and church, but it is important to note that the relationship between tenant and owner was basically a free economic and legal arrangement, governed by contract. There was no significant social stratification between leasehold and freehold farmers. Tenancy was the dominant form from the Middle Ages right up to the second half of the eighteenth century. The nature of tenancy changed in different ways during this period, here it suffice to mention that the renting period tended to become lifelong for man and wife combined, and even in practice to be extended over generations – an heir entered into the tenancy of his parents for example. In fact a tenant could convey the holding over to a successor by contract, but the landowner had to give his consent. The point that should concern us here is that Norwegian rural history shows an extraordinary degree of continuity in many respects, but also in the relationships between family and farm. It is not unusual that the same family has been living on the same farm for several hundred years. Another fact that contributed to this continuity is that the majority of farmers became freeholders during the eighteenth and nineteenth centuries simply by buying the farms they already possessed as tenants.

During the sixteenth, seventeenth and right up to the second half of the eighteenth century the state was the dominant landowner in Norway. Before the reformation, in 1537, the church and all its different branches, was the dominant landowner, owning close to 50% of all rural property. During the reformation, all of this came under the Kings control, and most of the property belonging to the monasteries and the archbishop, were outright confiscated and became state property. This “transaction” had in itself little or no direct impact on the commons as such, but together with the property the king already possessed, both as ordinary owner, and as the “owner” (under special conditions) of the state commons, it gave the state a dominant landowning position, particularly concerning outfields; forests and mountains.

From the middle of the sixteenth century and onwards there was a growing international market (Holland, England) for timber products. The timber export caused a tremendous increase of the value of the forests, especially those forests situated close to good harbours along the coast and to rivers that could be utilized for transport down to sawmills by floating the timber logs. The sawmills, powered by waterfalls, led to suitable waterfalls becoming equally valuable. The right to use of waterfalls, was controlled by the King, their use was dependant on royal licence. From the seventeenth century and onwards a lot of small – mostly costal - towns grew and thrived based on this and other industry, trade and shipping as well. About the same time a mining and subsequent metal industry (iron) developed. All in all, many rural areas became involved in market economies in various ways, all of which created a demand for forest products, and hence put a stress on the forest commons.

During the eighteenth century a very strong and rapid increase in cattle raising took place, due partly to population growth, market opportunities etc, putting a similar stress on the pastures in general, and especially the summer grazing (by establishment of summer farms) in the mountain commons.

The modern industrialization period in Norway should be mentioned; it took place from the second half of the nineteenth century and the first decades of the twentieth, and was based largely on development of hydroelectric energy. The potential sources for such energy; waterfalls, rivers, lakes and subsequent whole watersheds, most of which were to be found in the mountains, and many in commons, became very valuable.

The recreational and conservational period, in which we now seem to be living, and its impact on the commons, should also be mentioned. The outfields in general, and especially the mountains,

have become the playground of the modern urbanised man. Recreation based on mountain cabins, hotels and lodges used both in summer and winter, hunting, fishing and hiking have become very popular, causing income opportunities for local people and landowners as well as tensions among various interest groups and right holders. Most of our national parks, being established in a rapid pace in the last two decades, have been located in state commons, causing a lot of tension. Especially, as they create few or no job opportunities, while at the same time putting a lot of restrictions, not on traditional use, but on new income-earning opportunities.

3.1.3 Legal and Political History related to the Commons

When discussing issues that would have had an impact on the commons there are a few aspects of legal and political history that should be covered.

First of all, one basic principle in the legislation concerning the *relationship between various stakeholders* in the area of property right, tenure and the parties in the commons can be summarised as follows: *The legal relationships between the parties in the property rights regime have "always" been, and still is, based on the principle of freedom of contract.*

This means that many aspects of the laws apply only *if the parties involved do not decide otherwise* by agreement and contract, orally or written, explicit or implicit. So even if the law says that the relationship should be so and so, this does not necessarily mean that the parties cannot enter into a binding contract deviating from the law. It might simply mean that if they do not decide otherwise, *then* the statutes in the law should be applied, if necessary by court rulings and subsequently enforced by the proper authorities on behalf of the "winning" party. It also means that if they do not all agree, then the law will have to be applied, in many cases even if only one out of many disagree.

It is easy to see that this principle is paving the way for a wide variety of local solutions, and also to realise what an important role customs and traditions play in this field. One might say that the institutional framework is partly created locally. It is largely this principle, and the interplay it creates between local and central "legislation" that gives the regime of common property such viability in Norway – the parties themselves are free – and responsible – to find a proper solution, but the central legislation guarantee that some sort of solution will eventually be found. This is because in most cases there is a possibility to bring the case before an independent authority, a court, a board or a commission of some sort, the land consolidation court being a typical example. In most cases this independent body will have two functions in dispute resolution; it will create an arena for negotiations, it functions as a mediator, but it can give verdicts as well. But in the *case of a verdict, the statutes in the law have to be applied*, and in any case court proceedings take time and it costs money – at least for the loosing party - but quite often for all. But it should of course be remembered that negotiated solutions are not free of costs either – the transaction costs are omnipresent.

There is however another aspect; the importance of being recognized, both locally and legally (formally in the case of a court case) as a rightful party (claimant).

In the political history of Norway an important factor was the union with Denmark from 1380 to 1814. It is impossible to say to what extent this influenced the history of the commons – i.e. if the commons would have developed differently under a domestic national monarchy. The governmental legislation concerning property, tenure and the commons were strictly Norwegian and very different from the Danish.

Indirectly the union might have had some impact, as the civil servants tended to be of Danish or German origin (but becoming "Norwegianised" during the generations), the state ruled by the Danish Monarchy was a multinational one; comprising mainly German, Danish, Norwegian and Icelandic populations, but also smaller groups like the Sámi, the Faroes and Inuits on Greenland.

But it is evident that the policies and actions of this monarchy had a strong impact on the commons in a multitude of ways, directly and indirectly, as the actions of any government would have had, being it national or not. Some few of the most important aspects should be mentioned here. Briefly these aspects could be visualized in terms of roles, some of which being in opposition to each other; the State as a landowner and land *seller*, the State as a protector of the forests, the State as an enhancer (and even manager) of industry, beside its more general function as a lawmaker and enforcer.

As mentioned above, the State was the dominant landowner from the reformation in 1537. In 1660, after disastrous involvements in Continental and Scandinavian wars, the state was in practice bankrupt, and started selling off land. This is the starting point of the process that eventually led to the abolishment of the old tenancy system, and to almost total farmer ownership. The sales had a grand scale; all crown land – i.e. most of the property in two very large counties in the north of Norway, the present day Nordland and Troms counties, were conveyed to one of the large creditors of the Crown. If or not the very large commons in this area were included in the sales became very much disputed between the state and the buyer and his successors during the consecutive hundred years. Successive sales of crown land, also of state commons, followed in the eighteenth and the beginning of nineteenth century.

Preserving the forests became a governmental issue as early as the late sixteenth century, motivated by the naval needs for timber of certain qualities for shipbuilding. Later on the justification for forest preservation changed according to various situations, but this aspect was always there, partly nationwide and partly regional. The way the justification for ownership and management of forest commons was handled up through history has been illustrated by a case from Langmorkje Almenning (commons) presented in table 2.

The mining and related industries developed in the late sixteenth century, were heavily enhanced, promoted and even managed by the State. The technology at the time required enormous quantities of wood, inflicting shortage, and in some places devastation of forests. This called for governmental actions of various sorts, which also included the forest commons.

The government showed far less interests in the mountain commons, as these were considered to neither comprise valuable resources (on the part of the State), nor was there a dangerous depletion of resources. When the rapid increase in cattle feeding and grazing took place in the eighteenth century and onwards, causing shortage of pastures, competition, struggle and a multitude of court cases both between and inside local communities, the state and its civil servants were not well suited to cope with this situation. The laws were partly outdated, the very concepts and legal situations were partly unfamiliar for many civil servants – originating and educated as most of them were far from the local realities, traditions and customs. In many cases this led to a "privatisation" of commons, in the sense that huge tracts of former state commons lost their status as state commons, and became individual or joint property by private persons obtaining land for cultivation and summer-farms. This privatisation process could take different form. One form could be struggles between various groups of individuals or local communities over specific resources like for example pastures, ending up in a court case were the final judgement in favour of one of the parties were applied not only to the resource in question, but also to the land itself. Another could be persistent exclusion by a strong party of other claimants – the State included.

Table 2.
"Who can best take care of the forests in Langmorkje State Commons ?"
A history of forest management in Langmorkje State Commons (Located in a mountainous area in Northern Gudbrandsdal – Central Norway) (Fritsvold 1999)

Period	Event and justification	Result
1700-1800	Logging rights in Langmorkje Kings Commons sold to private persons by the King	Degradation of the forest
1821	Act prohibits sale of state commons. Justification was that the State is better suited to take care of the forests than private persons or the community	State maintains ownership over the commons as such – but it is still a common
1854	The State wants to sell the commons to farmers/communities, advised so by local authorities. The justification was that the forest was in such poor condition that they would not even serve the need for the local population.	The price is decided and negotiated with elected delegation from the community.
1859	The State turns around and does not want to sell, instead puts the commons under state administration. The reason being that the Forest inspector does not believe that communal ownership will improve the condition of the forest.	State keeps ownership and enforces state management over the forest in the commons. It maps all forest values.
1912	The Municipality submits a request to the State to buy and take over Langmorkje State Commons.	This is rejected by the State as it does not want to cause a precedent of local governments taking over State/Public grounds. It also is sceptical of that income benefits only one municipality, and maybe only benefits a few people in the municipality.
1948	The State wants to enforce modern forestry in the commons, such as more cooperative logging practices, using the Forest Act from 1863. It also wants to get out of the administration of the commons, which only gave the States problems and arguments. The commons board fights to get the full ownership of the commons ground, but the State rejects.	State orders Langmorkje Commons to be managed as a Parish Commons while maintaining ownership of the ground. The farmers with use rights in the commons are requested to elect a board, and pay for the administration and professional forest management of the commons.
1948-present	Langmorkje Commons Board has since been running the commons as a Parish Commons. It must manage the commons in such a way that the state does not want to take over the forest resources again. (i.e. no more profit than to supply the local community with their needs (tax and work) and within environmental standards for alpine logging practices.	A sawmill has been built, in 2000 returning 1.3 mill in local taxes and 3.2 mill NOK in State taxes. Provides work for 20 local people. 30% of the commons has become national park.

3.1.4 Patterns of Rural Settlement

The very concept of commons is somehow closely linked to the concept of "local community", and it is therefore necessary to have some idea of what a "local community" might be, hence the importance of settlement patterns, as the two are closely linked.

At a local level there are three important terms that can describe both a local society and a settlement unit as well.
1) The smallest settlement is called a *grend*, maybe a reasonable English translation would be "neighbourhood". This unit – grend or neighbourhood – which always comprise several farmsteads may have evolved from one single larger farm unit, by successive subdivisions into farmsteads.
2) The next – and larger unit - is called a *bygd*. Often a bygd today has a centre (road crossings, shops, school, church and so on) and contains several *grender*. A *bygd* can also in English be described as a parish, and in the following we will be using the term parish commons, for the commons that is *owned* by a *bygd*, not to be confused with a state commons that *belong* to a bygd, the difference being that in the latter the use rights is exercised by a bygd, while the ownership rest with the state.
3) The last unit is the municipality or *kommune*, which is an administrative entity that normally comprises more than one *bygd* and always many *grener* and today has a sort of "urban" centre. The three different settlement units/local societies are holders of different rights in the different types of commons. (Sevatdal 1996).

The rural areas in Norway were predominantly single farmsteads, enhanced strongly following the Black Death (1349) and successive plagues, leading to a great settlement recession of rural habitation in the fourteenth and fifteenth centuries. From the 17th century the settlement patterns have been marked by the successive subdivision of farms through generations, developing clustered village-like rural communities, particularly in coastal and fjord areas. In the second half of the 18th and first half of 19th centuries the villages changes considerably due to a process of land consolidation. This process included among other things, consolidation of scattered plots and strips into single blocks of land for each farmer, rearrangement of management and use practices of land held in common, and also in many cases relocation of farmhouses from farm clusters to a new separate block of land. New farmsteads were established at a certain distance from old farmhouses.

The notion of a village and/or community, which in most countries easily can be defined both through actual settlement pattern and history, has always been somewhat difficult to define in the Norwegian countryside. Instead we should imagine a combined "agroforest" landscape with small clusters of houses and farms between. Small local urban centres have emerged all over the countryside in the last century, but we do not call them "villages" mainly out of tradition, but also because they do not as a rule, contain agricultural activities. They are instead called *tettsted*, literally "densely build places" implying a small conglomeration of habitation.

3.2 The Emergence of State and Parish Commons

On the background of the above general history we shall now try to outline the origin and evolution of three different types of commons, i.e. 1) the state commons, 2) the parish commons and 3) the farm commons. The state and parish commons are so closely linked that they will be discussed in the same chapter, while farm commons will be discussed in the next.

It should be stressed however, that the choice of these three types of collective arrangements of rights and ownership to land and its resources, to be included in the English term "commons", is by no means obvious. The literal translation of the English "commons" into Norwegian is

"allmenning", and would comprise two forms; the State commons (statsallmenning) and Parish commons (bygdeallmenning). This is too narrow in the present context. At least another very extensive form of collective rural arrangement of ownership and rights, should be included; the so-called "realsameie" – here termed "farm commons" in English. There are other forms as well that could probably have been included, for example the traditional Sámi reindeer grazing (herding) right in certain areas, irrespective of the actual ownership to the land itself. It could be termed "Sámi reindeer grazing commons". Other "commons" could be termed "hunting commons", "fishing commons", "and sheep grazing commons", "wild berries commons" and so on. All these (and others) are omitted here.

Central features of the present legislation (on state and parish commons) can be traced right back to a period when huge tracts of forests and mountains were not objects of ownership, but remained areas for joint usage for the farms in the neighboring parish. The right of common is supposed to have been a basic right for everybody (in Norwegian "allemannsretten" or "all men's right"), leaving each individual free to any use he/she might choose; cut trees, send cattle for grazing, hunt and fish etc. Naturally the use of the area was dominated by the people in the adjacent parish, and gradually the notion developed that the resources belonged, with exclusive right, to the local people, Rygg and Sevatdal 1994.

Certain uses of land lead to the establishment of certain ownership and tenure patterns, which then influence further development of land use and vice versa, certain types of ownership promote certain types of land use. Often the ownership patterns lag behind, meaning that certain ownership and tenure patterns can endure for a long time after the land use that created them in the first place has vanished. However in practical terms, sociologists have found that up to the 19th century, the Norwegian agrarian society was so marked by different forms of co-ownerships and co-uses, that one can almost state it as being a co-owner society, Reinton 1961.

As the commons are of very ancient origins and such aspects as topography, climate, settlement patterns, and economy vary immensely in Norway it is difficult to classify them in a homogenous group. Due to the use rights and ownership patterns emerging through time, it is said that each individual common must be studied separately to get a true and precise understanding of its legal situation. However, a major distinction can be made between the forest and the mountain commons, as their use and value have been very different up through the years. While the mountain commons were for grazing, hunting and fishing, the forest commons, for several centuries, were a great source of export income and therefore also of conflict. The use rights in the forested commons were therefore more strictly protected by the local population and also quickly limited by the owners (The King limited local people's access in 1687, by defining that they were only allowed to take timber according to the need on the farm, not for income by sale).

When examining the historical processes leading to the present situation in the commons, it is interesting to look at this process from different angles. From one side it can be seen as the King/State protecting (or enlarging) its own ownership rights, whereas it also had an element of protecting the local populations' use rights. Thirdly the process also had an element of defining who would be best suited to manage Norwegian natural resources.

Until well into the 11th century, the current area of Norway was under the rule of several different kingships and assemblies: *ting*. The oldest laws in Norway emerging from these assemblies, the regional laws (*landsdelslovene*) state clearly the use rights of all adjacent farmers in the commons. From the 11th century, Norway was united under one King, and from the end of the fourteenth century in union with Denmark. The first general book of laws for all of Norway is from 1274. In the 13th century the King, i.e. the State became the overruling owner of the

commons, while the communities had the right to use the commons. According to the Law of 1274, parts of the commons land could only be given away for private use in the case of cultivation; such as the establishment of new farmsteads and enlarging existing ones. It was only the King/State that could give away land for cultivation in the commons to a person. This person did, not normally become owner (freeholder) of the land, but became a tenant under the King. In these cases, the community lost the use rights to this land, the King became owner of a tenant farm, and the tenant farmer got full use rights in the remaining commons. But the King could also sell such a farm to the tenant or others, it was not because the farm was established in a commons it became a tenant farm, it was because it was established in the *Kings* commons. These mechanisms do raise the question of how large an area could be privatised, and hence excluded from common usage rights in this way. The medieval legislation had a rather practical/methaphorical attitude to such problems; the land could be privatised in any direction as far as a *snidil* could be thrown by a man, a *snidil* being a rather heavy knife used for cutting branches of leaves from trees for fodder. As we see – it was in fact not much land that could be privatised this way by each new farm – but many small farms could be established.

A main principle governing the commons has been that the use of the "commons shall remain as they have always been, both the upper and the outer… (Norwegian Law of 1687, section 3-12-1, announced by the King Christian V)". In the same law the addition of the following rule reduced the local population's possibility to obtain income from the state commons forests; "the communities can only cut the timber they need for their own consumption of firewood, building material and farm works".

This rule still applies, and can be analysed as an attempt to prevent communities degrading their forest, but it can also be seen as an attempt for the King/State to reserve its right to exploit the remaining timber for the State's/King's income. The latter factor was probably the most important as expansive logging for sale was booming in the 16th century. It can also be seen as part of a policy to ensure the so-called town privileges, where inhabitants of the towns were granted exclusive rights to purchase timber from the farmers, with the intention to create a wealthy middle class in the towns – which was achieved to the detriment of the communities' rights in the commons.

As mentioned above in the 16th, 17th and the first decades of the 18th centuries, the Danish-Norwegian Kingdom was engaged in Continental and Nordic wars, which put an extremely heavy burden on the state budgets – and the tax payers. This led to the privatisation (after 1660) of some of the commons, primarily the forested commons, as these were the most valuable. The privatisation occurred in different forms; the State/King sold commons to rich private owners, in some districts under protest and upheaval from the communities. These areas were named *private commons*, as the ground was held in private ownership, while the use rights of the adjacent communities would be maintained. In some areas the protest and collective action of the communities led to a division of the private commons into two parts, one part was reserved for the communities and their right to the natural resources in the area and became a so-called parish commons, the other part became under direct private ownership (sometimes the private ownership was shared between more than one owner and became so called Private Commons). In other places the communities themselves jointly bought the commons directly from the State/King and thereby transformed the area directly into Parish commons (*bygdealmenning*). In some cases the commons would be sold on the condition that the commons should be subdivided between the new owner and the commoners.

A last process leading to the privatisation of the commons, were a clause in the Norwegian Law of 1687 indicating that if a person had settled on commons land and he was not charged within

30 years, the land he had settled on and cultivated would become his to own. This is a process of prescriptive acquisition. In some cases this can be seen as a form of land-grabbing as it led to well-off farms or groups of farms gradually obtained private ownership, to the detriment of the use right of the community and also to the State/King.

The reason for this process happening must be seen as a result of an increased competition in the use of the commons as grazing areas, vague laws and regulations and also a weak administration that had little knowledge of the "unwritten" customary and traditional laws of the use of the commons. Since the administration during periods throughout history has been largely dominated by outsiders in relation to the local community, partly by officials from Denmark and the German part of the domains of the monarchy, in any case from an administrative elite (of Danish, Norwegian or German origin) distinct from the local community, they might have been easier to convince by powerful local personalities than if the officials had been from Norway. At least this has been a popular and widespread view – but hard to prove.

Box 1 is a folksong from the 19th century, about the Kings men, leading to impoverishment of the rural areas. The song vividly illustrates the tension between the farmers and the Kings men. However, these days, most historians agree that if the farmers had lived under a national Norwegian monarchy, chances are that the King would have taxed them considerably harder. During the union with Denmark, Norwegian farmers were generally taxed much less than the Danish farmers.

Box 1

Old folksong from Rølldal (Rogaland County)	
I Rølldal der e det friske gutar Dei rir på hestane til dei stupa Der var ein kremmar Han heite Knut Han arma Rølldal og Odda ut Og Odda ut	In Rølldal there are frisky boys They ride their horses till they fall There was a trader By the name of Knut He made Rølldal and Odda destitute And Odda destitute
I byden der er da fine fruor Dei sauma gullbad'n pau många huvor Og ka da kosta i Aust og i Vest Da kjedne me inni fjordane best I fjordane best	In town there are fine ladies They sow golden bands on many bonnets And what it costs in East and West Only we in the fjord feel best In the Fjords Feel best
Ja Kongens storfolk ja da er friske guta Dei rir pau hitfolkjet te dei stupa Her endar viso mi og vel e da Fe utan hovu eg kankje ga Eg kankje ga	Yes the Kings noblemen, they are frisky boys The ride on local folks till they fall Here my song ends and that is well As without a head I cannot walk I cannot walk
Fra "Hundre tonar frau Hardanger" innsamlet av Geirr Tveitt fra 1800-tallet	*From " Hundred tunes from Hardanger" collected by Geirr Tveitt from early 19th century*

In 1821 there came a law that stopped sale and division of land from the commons. However due to the pressure to use and sell the logging rights in the forest commons, this law was revised in 1848, leading to the sale of large forested areas.

In 1857 the first specific law for the Forest Commons was passed. It described how the local community should elect a board to manage the forest resources in the commons, and also to seek professional forestry advice when undertaking logging. This was the first law that legally recognized and formalised a local management body to be established for the commons and that would organise and protect the communities collective use rights in the forest. The act also finally made it illegal to sell the forest commons. However this law only regulated the forested commons (the most valuable areas).

This was complemented in 1860 by a law – the Forest Law – that established a State Forest Management Institution to guide and assist in the development of sustainable forestry practices.

In 1863 an enactment demanded that all Private commons should be subdivided into the private owner's property on the one side and the local community with use rights in the commons on the other. This would form the basis for a Parish Commons to be established. This enactment was carried out within few years and today there are just one or two known Private Commons left.

In 1920, the "Mountain Act" was approved by the Parliament. This act concerned the commons located in the mountainous areas. It required the communities to elect a Mountain Board for each commons located a mountain area. This board would be required to establish rules, management and enforcement of grazing, fishing and hunting rights in the areas. The Mountain Board would comprise one representative from the Local Government and two representatives from the farms with use rights in the commons. This was considered an important institutionalisation of local power and control of the commons, a view that has been proved highly justified since then, and is restated in the present "Mountain Act" of 1975.

Throughout the 19th century, several governmental commissions were appointed to investigate and advise on the borders, ownership and use rights of different state commons. However, most of these were restricted to one local area and had only a mandate to give advice. The gradual development of the systems for land registration pushed this process forward as it required a clearer delineation between State commons and other types of private and public land when registering property information.

In 1908, however, a particular law was introduced, the law to clarify the legal rights of the State in the mountainous areas. This law appointed a special judicial commission, the so called "Mountain Commission", which had the power of a court, with the following mandate; a) to determine the boundaries between State commons and ordinary private/public land, b) to determine if a certain area was state commons or not, and c) to pass judgement in disputes concerning use rights to the common. The commission was active until 1954 and by then most borders between State commons and ordinary private/public property in Southern Norway had been decided. The dominant method they used besides studying documents was to hear witnesses, first and foremost on the use of land as far back in history as possible. The minutes of these very detailed recorded witnesses are a very important source of information about land use, (Rygg and Sevatdal 1994).

The Mountain Commission did not work in the northern part of Norway, which means that the legal situation in the mountains in the counties of Troms and Nordland was not clarified in the same way. The development in these two counties and the northernmost county in Norway – Finnmark - as well, deserves some special attention in our discussions here – because it brings some vital issues and conflicts related to the commons into a "modern", i.e. a present day setting, which might be of some general interest.

Let us start with Nordland and Troms. By an act of June 7th 1985 a new judicial commission, "Utmarkskommisionen" (The "Outfield commission"), was set up for Nordland and Troms. Its mandate was almost the same as the commission for southern Norway from 1908, but it also had an explicit mandate to clarify, if necessary by judgement, the "nature" of the States' ownership over the mountains in these two counties. Huge areas in these counties were claimed, by the government, to have lost the status of commons they once might or might not have had, and been converted into state owned land of a special category, which left the state with a much stronger ownership position than in the state commons, in fact more or less equivalent to ordinary private ownership. Local communities, municipalities and most pronounced farmer associations, argued that these areas were and had always been State *commons*. Some rulings of this commission, especially two cases (Skjerstad 1991, Rt. 1991 p. 1311 and Tysfjord 1996, Rt. 1996 p. 1232) that ended up in The Supreme Court, settled the matter as a *legal* problem. The Supreme Court concluded that these areas are State commons, there is no such thing as a "special category" of state ownership in these two counties. But of the original use rights in commons, only the grazing right remains as a proper right of commons. The local population might have other rights as well, but those other rights have another legal basis; they are not rights of commons. But even if the legal dispute as such seems to be settled, the conflict and issues are still far from settled. The main opinion of the local communities, especially on municipal level, is that the "Mountain Act" should govern these commons as well as other state commons, and a municipal "Mountain Board" should be established as an instrument and arena for local interests. The Government has rejected this, even if the legal aspects seem obvious – and it is hard to accept that, and see why the local communities in those counties shall be denied the rights granted in Mountain Act. The alternative to a municipal Mountain Board is simply status quo – no local organizational body at all.

The answer to this governmental attitude is to be found on the political – not the legal - arena, and illuminates one aspect of the mixed legal/political nature of conflicts that might accrue in the State commons. The point is that a special interest group, the Sámi reindeer herders, whose grazing area might comprise several municipalities, and in this sense operate externally in relation to at least some of the local communities are influential on governmental level and prefer to promote their interests on this central level, undisturbed by municipal authorities of any kind. For the time being the case seems to be at a deadlock, even if some municipalities are in the process of establishing "Mountain Boards" in spite of the governmental denial.

Finnmark has an altogether different legal history concerning land ownership from the rest of the country. In many other respects this county – which is northernmost and largest county in Norway, the land area consisting largely of uncultivated land – is different, most notably in its demographic and political history. We need not go into the political history very much; it suffices to say that the national boundary aspects between Norway and Russia, later also Sweden and Finland, at times have dominated the politics. The boundaries between the national states were successively settled from the Middle Ages, the last unsettled boundary on land, not at sea, as far as Norway is concerned (between Norway and Russia), was fixed in 1826. The maritime boundary is still unsettled and disputed.

As for demography we can, with some justification, distinguish between three ethnic groups; Sámi, Norwegians and Kvens, the latter being people of Finish origin. Finnmark has the largest Sámi population of all counties – but they are still a minority in Finnmark as a whole, and also in most municipalities in the county, a fact of some signification in our presentation of problems related to land ownership and commons. But is should also be stressed that the present population is very mixed through intermarriages for many centuries.

The Sámi people were originally hunters, fishers etc, but kept domestic reindeers on a small scale for various uses. Later on – from the 17th century onwards, more large scale reindeer herding practices developed among some Sámi inland groups, leading to a nomadic lifestyle, with the reindeer grazing in the coastal areas during summer and in the mountains in the winter. The great majority of Sámi however, predominantly living in fjord and costal areas and river valleys, developed further their mixed culture based on fishing and hunting, small scale husbandry farming, handicraft (for example boatbuilding) etc.

The massive influx of Norwegians took place in the Middle Ages, notably in 12th and 13th. Centuries, based on market oriented fisheries (stockfish) in typical costal settlements. The migration of Kvens into Finnmark took place in the 17th century onwards. In the course of the 18th century and onwards, farming practices based on animal husbandry developed. Most notably among the Kvens, as they brought farming knowledge with them from their places of origin. It should definitely be remembered, that farming in these almost semi - arctic environments, except for special favourable areas, has always had an auxiliary character compared to fishing – commercial and subsistent - hunting, reindeer husbandry and other occupations. But all the groups needed and utilized the various resources in the outfields, in a typical mixed economy.

From the Middle Ages we may say that there was some sort of commons in Finnmark. The Sámi population had their traditional property rights arrangements, the Norwegians had their arrangements in their costal settlements, and the prevailing attitude in the government was undoubtedly that the land was some sort of State Commons. As farming developed, and also for other reasons, i.e. for protection of the forests, a vital and scarce commodity, the local administration felt the need for more "orderly" – as they saw it - property rights to be established. This resulted in an act on property right issues in Finnmark, dated June 3.rd 1775, by far the most important legislation concerning property rights in the county. It was based firmly on the notion of the land as a state commons, and one aim was obviously to promote "ordinary" stable settlements, and to this end individual registered property rights to farms and other settlements were introduced. However, most of the resources were to remain in common, this principle was expressed in section 6, in the form of restriction on possible privatisation, and deserves to be quoted: "*De herligheter, som hidindtil have været tilfælles for hele bygder eller almuen i Almindelighet, være sig Fiskeri i Havet og de store Elve, samt Landings-steder og deslige, forblive fremdeles til saadan allmindelig Brug*". Translated: "Those resources, which previously have been common for local communities or the public at large, being fishing in the ocean and the large rivers, places for landing and the like, shall remain in such public use". This principle is still valid, and comprises more than 95% of the land. Special rights for reindeer herding were not mentioned in this act.

However, in the course of the rest of the 18th and the 19th century the governmental attitude changed from regarding the land as commons to the views that practically all lands in the county (which is approx. 40.000 km^2) – were more or less ordinary State property – but still with well defined collective and individual user rights for different local groups. The difference between those to types of State ownership might not seem terribly important, but in fact it is. This difference has several aspects, suffice to say that the ownership to a commons is a kind of limited, residual right; it is the rights to whatever is left when the local needs are satisfied. There also follows that the in State commons the local community has municipal board with certain powers.

At present most of the land in this county is owned and managed by the State according to this view, based on a special legislation with special rights for local groups, also for nomadic reindeer herding.

In the second half of the 20th century, and especially from approx. 1970 and onwards, there has been a growing tension and activity among Sámi ethnic groups to promote interests based on ethnicity; interests related to language, culture etc, and also ownership rights to land. The Norwegian Government has ratified the UN ILO Convention of Indigenous People, giving the Sámi this status. This has greatly enhanced their cause.

In the 1980-s a separate Parliament for the Sámi People in Norway was established, by some acclaimed internationally as a protector of indigenous peoples' rights. However, the Sámi parliament is said to represent the powerful Sámi-clans and particularly the reindeer herders, while the less powerful and maybe more vulnerable groups of the Sámi population are not represented. Further, when the Sámi-electorate was to be registered, totalling approx. 10.000, it showed that a substantial part of the Sámi-population live in the capital, Oslo, far from the resources being discussed in the Sámi-parliament. To put this figure in perspective the total population in the county of Finnmark is approximately 75.000.

As for the land rights question, an advisory commission of specialists together with local and political representatives from different groups, "the Commission for Sámi rights" have finalised an extraordinary voluminous work, and a legal proposition based on this work is just passed from the government to the parliament. The outcome is by no means obvious, as the case is very controversial, especially at the local levels in Finnmark, but some special type of commons seems to be the most likely solution. It is interesting to note that the most controversial issue relates to what sort of organization (body) should exercise *the ownership* right at county level (today the ownership right rests with the State), not so much the user rights. The proposition creates a special sort of "company", controlled by a board were 50% of the members are appointed by "Sametinget" (the Sámi Parliament), the other members being appointed otherwise. The Sameting demands a majority control in this board.

This faces us with a classical problem where historical deemed injustice towards a minority people has led to a situation where global conventions pushes the nation state to take measures to rectify the situation. The process of determining the land ownership situation in Finnmark is in the middle of these difficult issues. It does not become simpler as the majority of the local population, very often of Norwegian or mixed Norwegian/ Sámi/ Kven decent and ethnicity, question the fairness that a local Sámi minority and Sámi people outside the local community should have a decisive say in resource use locally. They also observe that the resources are not fairly distributed within the most active and powerful Sámi group in these questions – the reindeer herders. The land disputes in Finnmark raises issues of importance and contention both at a global, a national and at local levels. It is also clear that the outcome will be examined at all these three levels.

3.4 The Emergence of Farm Commons

The third type of commons, and by far the most numerous one, occurs when a number of farms have joint ownership over mountain and forest areas (non-cultivated), here in English termed "farm common land". In Norwegian this phenomenon has several different names in different regions, (hopmark, felleskap, jordsameie, realsameige), but the essence is that large or small areas in the outfields (forest, mountains, river and lakes, coastal shorelines etc) are owned jointly, *not by persons but by farms*. Another way of describing this type of collective ownership is to say that a property unit, i.e. a farm, may comprise one or several individually owned parcels and b) a certain percentage (share) of an area, were other farms also have shares. The shares may vary greatly between the farms, for instance in a commons with 11 owners, one may own 50

percent, the other 10 co-owners may have 5 percent each in the common area, in addition to the individually held parcels.

These types of commons are quite numerous in rural areas, far more numerous than State and Parish Commons, however little is known about their number, organisation, present functioning and the total area they own jointly (see statistics in appendix 1). This lack of exact statistics may seem strange, but stems from three basic facts:

1) Farm commons do not constitute cadastral entities as State and Parish commons do. The cadastral unit is a *property* unit, *including* the share in a farm commons, and our statistics are based on this "combined" unit, not the different elements that make up such a unit. Hence the farm commons are not registered as such, they are not (at present) visible in the land records, and their number and area are not captured in the land records and statistics.

2) There have been laws regulating farm commons far back in history, but these laws have always been, and still are, based on the principle of freedom of contract, which means that the legislation is applied only if the parties do not agree to arrange the usage, conflict solutions, organization etc, otherwise, i.e. by contract or by tradition. And both experience and research show that they quite often do decide otherwise, hence their organisation, management and other practises are not "captured" by the law.

3) The number of active farms have decreased drastically in Norway for the last 50 years, from approximately 200.000 to less than 60.000 active farm units, while at the same time the number of "agricultural" property units remain fairly stable. This means that the majority of such properties, and consequently also shareholding units in farm commons, are owned by "not" farmers. The traditional farming practises, usage and management of farm commons have therefore largely become obsolete, and we do not know (in statistical terms) what new forms may have developed.

By and large farm commons originated in two different ways:

1) By subsequent subdivisions of a large farm area comprising cultivated land, forests, mountains and so on, into smaller farmsteads, but without physical division of the outfields like mountains, forests etc. One may say that this type of joint ownership often evolved from incomplete subdivision practices. It could start by one farm being divided between two tenants, with different size shares in the farm. In the beginning the proportional share is only applicable to the in-fields (arable land). However as the outfield resources became more profitable (logging, hunting and fishing rights), the proportional share that was used for the infields, was used for the sharing of resources in the outfields as well. This resulted in a farm commons comprising only one original farm, and usually a relatively small number of shareholders, but the arrangement of sharing of various types of resources may have resulted in a very complicated situation. For example the various resources may be shared in various proportions, some resources may be subdivided physically, some may be held jointly, some may be used individually, some may be used collectively, and so on.

2) Through a process of jointly acquiring of ownership to land in such a way that the acquired land became the property, not of the actual physical persons, but by the farmsteads they possessed this type of origin and subsequent subdivisions often resulted in large farm commons and a large number of shareholders. The acquisition could take place through joint purchase (often from state commons), but also by legal actions based on old usages. The share and use will for all types of resource exploitation depend on the original sharing of "payment" at the time of

purchase or other arrangement (contracts) established at the acquisition, and subsequent subdivisions that may have taken place later. The property rights may originally have been attached to the original buyers as persons, but as time went by these rights became legally fixed to the farmsteads in question. More common is that the rights from the beginning were attached to the farm unit and would thus be inherited, sold and exchanged as part of the farm. For this way of establishing farm commons the same practice of division of resource use according to original shares might not always be applicable for new types of resource use.

As the farm units eventually became freehold farms, in the course of the 18th and first half of the 19th centuries, and both agriculture and forestry became more cost-intensive and market oriented, the farm commons in the in-fields and productive forests under the timber-line became rare. They were usually dissolved through land consolidation or otherwise in the course of the nineteenth and first half of the twentieth centuries. Joint use of grazing and fishing/hunting rights in the forests prevailed, and farms commons in the mountains were seldom dissolved – these lands were maintained as farm commons. This does not mean that there were no changes. Different arrangements evolved, like diversified rights to different resources in the same farm commons. An example from Setesdal shows one farm having the fuel wood rights, while a second had the fodder harvesting rights and a third the right to take out fence-poles in a deciduous forest held as farm commons. Other cases show that one farmer may have the right to all the timber in a farm common, while the grazing rights were open to all farms in the commons. As one can see the historical division of shares thus decided for the extraction of resources from a far larger area than it was originally intended (Mykland 1998).

There seems to be a tendency that in areas where there historically was a higher rate of freehold farmers (isolated and small scale farming areas along the coast and mountainous inland), and less degree of tenants and crofters, the occurrence of farm commons and private property of the outfields is predominant. In areas with a higher rate of tenants and crofters in Eastern and Central Norway and areas around the bigger cities of Oslo and Trondheim, the occurrence of parish commons and state commons are more predominant. The reason could be that in the latter areas the tenants and crofters had the same use rights as the freehold farmers in the commons, and thereby an incentive to maintain this privilege. There was no great incentive for the tenants and crofters to fight for State Commons being converted to private ownership or farm commons, as these privatisations would benefit the landowners and freehold farmers only (Sevatdal 1985).

As one can see, it will be very important to understand the way such farm commons have been established, as therein lies the contractual agreement between the parties regarding use and utilisation of the area for the generations to come. These contractual agreements will even be instrumental to regulate use of new resources not thought of at the time of the signing of agreement.

3.5 The Land Consolidation Courts

The phenomenon of Land Consolidation should be mentioned. The first modern enactments on Land Consolidation date from 1821, and the establishment of a permanent and specialised court – the land consolidation court – dates from 1859. This legislation and court have been – and still are – very important institutions in the issues discussed here. The main tasks were to undertake consolidation of highly fragmented land, and dissolve (individualise) farm commons, when requested by at least one of the parties involved and deemed necessary by the court. The act has a clause about land held in common, that it should be both cost-effective and create appropriate condition for future usage to enter into the legal process of dividing such land into private properties. Therefore the consolidation process converted most farm commons in in-fields and highly productive forest areas into individual property. Whereas, for other out-fields, especially

mountains, low productive forests in a commercial sense, pastures, lakes and rivers etc., the cost of splitting up was higher than the cost of maintaining joint ownership, and there were also often no gains for future usage in dissolving the commons. On the other hand, there were quite often – and there still is - two other services from the land consolidation courts that have proved very important in farm commons, may be they are crucial for the survival of this type of commons; the solving of legal disputes and rearrangement of use practices. The legal procedures in the land consolidation court are cost-efficient, highly based on mediation, but the court has the power to pass judgement and enforce solutions if necessary. It establishes (institutionalises) an independent, objective outsider that can be called upon by any party, and it creates an arena for negotiations and mediations, and has a duty to help in formalizing the solutions.

4 Current Status and Management

4.1 Introduction

It would have been ideal to summarize the status of the commons with a comprehensive table with the basic statistics. This is not possible for several reasons. As we have shown the issue concerning State Land versus State Commons for the three northernmost counties' is not yet settled. Furthermore the farm commons are not registered in any formal register, and are hence not captured in any statistics. However, in order to understand the extent both in area and farms involved of the commons a few approximations have been made.

If we do not include the resent events in the three counties in North Norway, Nordland, Troms and Finnmark, and a resent court ruling that seems to have converted a commons in central Norway (Røros) from state commons to ordinary state property, there are altogether 195 State Commons, totaling 26.600 km^2, out of which 2000 km^2, or 7% is productive forests. The number of farms with right of use is 20.000. Equivalent figures for Parish Commons are 51, in addition comes 7 State Commons managed as Parish Commons, totaling 5.500 km^2, out of which 1.700 km^2 or 31% is productive forests. The number of farms with right of use is 17.000. No such figures are available for farm commons, but both area and number of shareholders would certainly be larger then the other types combined.

No estimate can so far be made for "potential" state commons in Nordland, Troms and Finnmark counties, but the total area under State ownership in such a way that they are potentially commons is maximum 20.000km^2, in Nordland and Troms, and 38.000 in Finmark, totaling 68.000 km^2.

Sum total of these figures, current and potential "state commons" of some sort adds up to 100.000 sg. km, which is close to one third of the total area of mainland Norway. To this should be added the farm commons.

The state commons have much less productive forest than the parish commons. Partly because they lie above the tree-line, so that large areas are bare mountains and glaciers. Approximately 15% of the state commons are glaciers. Most of the national parks, reserves and other protected areas lie in the state commons or other state grounds with no private property title to it.

Of the parish commons a considerable part can be defined highly productive forest with considerable income-earning potential. Whereas for the farm commons the areas owned jointly are mostly high mountain area above the tree-line, used for grazing and lately also for developing areas for leisure cabins/mountain tourism.

4.2 Current discussions around use rights

The two basic qualities that individuals must possess to have rights in state and parish commons are residency in the local community and/or ownership or leasehold to a farm in the local community to which the commons "belong". Only two decades ago the standard norm would be that most of the property units in local community were an active farm, and the requirements for having user rights were residency *and* being a farmer. This has changed, as the number of active farm units have decreased dramatically.

In farm commons this is different, here the use rights is directly linked to shareholding, or in other words; ownership (or leasehold) of a farm, or at least to a piece of land, i.e. a property unit that once constituted a farm – which "own" a share in the commons. The difference becomes quite clear if we compare two farms, one having a use rights in a state or parish commons, the other farm has a share in a farm commons. Let us assume that both farms are abandoned, neither the houses nor the land are used for farming purposes any more. The use rights in parish and state commons are then lost for the owner, he has no rights there any more. The situation will be different for the owner of the abandoned farm with a share in the farm common. His right will prevail wherever he lives or whatever he does; it is a genuine ownership right that goes with ownership to the property unit, and is not linked with either residency or with farming activities.

It is easy to see that these use rights, depending on actual farming activity, may cause tension and debate in a period when demographic and occupational patterns in the rural areas are undergoing great changes, see table 1. The number of farms has dropped by more than 65 % the last 50 years. The speed of which this process is happening also seems to accelerate. It is however important to note that most of these farm units have not disappeared. They still exist as physical units in the landscape, they are permanent settlements for households in the rural areas or houses for recreational use, and therefore as ownership units many of their needs for use rights in the commons are still there. But as the agricultural activity might have been abandoned altogether or kept at a low level, they hardly are active farming entities any more. Whenever possible the agricultural land has been leased to active farmers in the community.

Only an extremely low share of abandoned farms has been sold out of family and amalgamated fully with other, neighbouring farms into larger farming property units.So far the same practices seem to be followed for abandoned as for active farms; the properties are conveyed to successors in close family, most typically children.

There are several reasons for this historical continuity in terms of ownership, one is the special Norwegian allodial law, "odelslov" and "åseteslov" that in practical term give members of close family prerogative (in a certain priority) to succession. Other reasons might be the taxation system with low property taxation, the relative attractiveness of a rural lifestyle and the availability of off-farm employment in some rural areas. This leads to a situation where an increasing number of persons**,** who do not live in the community and certainly do not farm, possess ownership and other rights to rural land in general, and also to farm commons. One can imagine a scenario where rural resources are being passed out of the ownership and control of the local community. The allodial law and kinship values and traditions, which were supposed to keep ownership of farms in the hands of the farming population, in the present situation produces exactly the opposite result because it is a right for *landowning* families, not of *farming* families, Sevatdal 1996.

For use rights in state and parish commons, the reduction of active farms produce other results, as the maintaining of these rights are dependent on some level of active farming. What should be

understood by such concepts as “active farming” and “agricultural property unit” thus become very important – and controversial.

The other side of this coin is that use rights in commons can be reactivated if farming practices are taken up again.

Some important qualifications should however be made here; neither disappearance nor reintroduction follows automatically; decisions to this effect have to be taken by the proper authorities in both cases. This leaves some possibilities open for varied local practices.

In areas close to larger urban areas, this has led to conflict, see the example from Gran Parish Commons (see table 3), where inheritors or city people easily can keep or buy an old farm in the rural area, while living and working in the city. The Commons Board has several times tried to exclude the units with less than a certain level of agricultural land, but has so far been overruled in the courts.

Table 3: A history of ownership and use rights in Gran Parish Commons*
(* Gran commons was until 1906 part of a larger Hadeland Commons), Narvestad 2000, Sevatdal 1985.

Period	Event	Formal owner	Use rights
Middle ages		No formal owner?	Everybody in adjacent communities?
1274	First general Norwegian Law acknowledges the commons and the use rights of the local community Most farmers are tenant farmers, however, this does not limit their use rights in the commons	King?	Freehold farmers and tenants
1537	Reformation (Norway from Catholic to Lutheran) The State/King becomes the great landowner, also of the Hadeland Commons	The King/State	Freehold farmers and tenants
1600 - 1800	Increased demand for timber and charcoal nationally and for export makes the forested commons valuable and the Kings and the local community's income-earner	The King/State	Freehold farmers and tenants
1668	King sells Hadeland Commons to private person, with clause that he may buy it back at any time and at the same price	Mr. Jacob Didrichson	Freehold farmers and tenants
1683	King buys the Hadeland commons back	King /State	Freehold farmers and tenants
1683-1750	King sells Hadeland commons to a series of private persons.	Private Owners	Freehold farmers and tenants
1687 1700-1800	King Kristian V's Norwegian Law states that the local community may only use their rights to resources (timber) in the commons for their own needs (not for sale) From tenancy to farmer freehold ownership, subdivision of farms and emergence of crofters, Norwegian "husmenn", a type of small holding, dependant "tenants" under a farmer.	Private owners Owner can sell timber for income.	Freehold farmers and tenants can only extract what they need for maintenance houses etc. pasture and fodder for animals.
1758	Hadeland commons sold from private person(s) to local farmers (this happened as there was a rumour that the King would soon buy the common back)	Freehold farmers	Freehold farmers, tenants and crofters
1759-1775	King uses his right to buy back the commons, the following legal process however takes 16 years, and was formalised by the Supreme Court in 1775	The King/State	Freehold farmers, tenants and crofters
1782	Hadeland commons was split up and sold out to different persons, mostly rich persons from Kristiania (now Oslo)	King/Private owners build sawmills	Freehold farmers, tenants and crofters

1863	The Forest Act (1863), makes it illegal to sell common land, it also states that those with use rights should have enough forest area for their future needs.	King/private	Freehold farmers, tenants and crofters
1865 - 1875	Royal decree commission decides to divide Hadeland commons. Ruling made final in 1875 by the Supreme Court, after private owners had appealed the commissions conclusions. The commission concluded that the future needs would be 90,000 m3 forests. The freehold farmers and crofters got 46,000 ha of woodland of which 37,000 ha was productive forest. The private owners got 35% or 37,000 ha of forest.	Private owners' part becomes private property. Freehold farmers' part becomes a parish common.	1143 freeholds farms, 1,555 crofters and 554 summer farms inside the commons. Owners are freehold farmers, but crofters have equal use rights.
1875-1906	Conflict between use rights and sale of timber, splits the Hadeland Commons in 6 smaller commons. Six parish commons established of which Gran Commons was 30% of the total area.	Freehold farmers	Freehold farmers, crofters and tenants
1913	Conflicts around who should have use-rights. Supreme Court decides that only units that have needs for agricultural purposes may perform their use-rights in the commons Use rights were recognised down to lots with only 500m2 of agricultural area.	Freehold farmers	Freehold farmers, crofters, and residents on former farms with plots over 500m2. The crofter group disappearing turned into small freeholders.
1923	Use rights were suggested limited to lots with more than 4,000m2 agricultural lands. But not implemented.	Freehold farmers	Freehold farmers, crofters, and residents on former farms.
1990-2001	Urbanisation and reduced agricultural activity among units with use rights. The Commons Board decides that 62 small properties with land sizes less than 3000m2 should lose their use rights. The Commons Board won the following court case, by ruling in The Supreme Court in 2001, Rt. 2001 p. 213	Freehold farmers	Freehold farmers and residents on former farms

4.3 Legal Framework

As stated earlier, one important legal principle governing the property right regime, and also the commons, is the freedom of contract amongst the parties, within the framework of mandatory laws and regulations. For example, a use right in a commons cannot be separated (alienated) from a farm by contract, but the farm, including the rights in commons, may be rented out etc. Other laws and regulations, concerning land use and transactions of property rights and tenure arrangements within the "Public Regulation Regime" may restrict the freedom of contract, i.e. environmental regulations/laws, regulatory laws on fishing, hunting and reindeer-herding and other laws that regulate either national or municipal interest. Within these - and other - frameworks owners and right-holders may enter into any form of contractual arrangements as long as they agree among themselves. This might be contrary to other countries where the management and governing principles are mandatory through detailed laws.

Although the Norwegian Laws governing the commons do suggest a way to organise the management and division of property rights, the commons boards have a wide liberty to handle these issues in a different way as long as they agree among themselves. This is most pronounced for farm commons. One can thereby say that legislation concerning relationships, rights and duties between the parties is, to a large extent applied in cases of disagreements and disputes between the parties, and if parties do not make other arrangements.

The legislation provide models for organisation, administration and procedural rules for making decisions, with special regard to efficiency and balance of power between various groups of rights-holders, i.e. majority and minority groups, owners versus holders of use rights and so on.

In case of conflict, the legislation provides for independent authorities to be called upon from one or several parties. Typically such authorities would be special courts like the Land Consolidation Court or special "legal commissions" at local level, called "skjønn". Decisions in such bodies would by and large be enforceable like ordinary court decisions.

There are two important groups of legislation and underlying enactments concerning the commons:

1. Specific laws regulating the different types of commons:
    - State Common Land is regulated by the current Enactment on Mountain Commons from 1975 and on Forest Commons from 1992
    - Parish Common Land 1992
    - Farm Common Land 1965 and 1978
    - State Common Land in Finnmark 1965
2. Specific rules and laws regulating the use of a particular resource within the commons; pasture, forestry, fishing and hunting etc.
    - Reindeer Herding 1978
    - Usufruct Rights 1968
    - Hunting 1981
    - Fishing in lakes and rivers 1992
    - Pastures 1961

The general principles concerning the relationship between the parties in a commons can be summarized as follows:

- Each shareholder has a right to use the commons according to: 1) his/her share or 2) his/her need, paying due respect to the fact that the others have the same right.

- In farm commons the share of each shareholder is determined by ownership, in parish and state commons the shares are determined by need.
- In cases of scarcity; all are obliged to reduce (adjust) their extraction somehow, i.e. proportionally to their share or need.
- In cases of surplus; it is generally accepted – in practice- that in such cases some parties may increase their extraction of resources above their relative share.
- The actual use may be on an individual or on a cooperative basis, according to; what is considered practical, tradition, personal relationships and so on. By and large this is left to the parties to decide themselves. Some of the users may form separate cooperative groups.
- Some resources like hunting, fishing and pasture may for practical reasons be organised and actually used on a cooperative basis, even if they are individually owned.

4.4 Management and Administration

A summary of the management and administration of the different commons is attached in annex 1.

4.4.1 State Commons

The state commons (as public property) has to be managed and administered in order to accommodate several different groups of interest;

- the local community to which the commons "belong"
- defined farms or groups of farms within the local community
- the State
- the public (the population of Norway)

The resources to be managed in the state commons today are:

- forest (timber and fuelwood)
- pasture (sheep and cattle grazing)
- secondary summer farms with pasture (*seter*)
- grassland for hay and silage production
- fishing
- hunting
- tourism and recreational uses
- hydroelectric power

The legal status of the different parties is the following. The rights to traditional utilization of the resources in the area belong to a specific local community. Each right-holder can not use more than according to the households needs, i.e. nobody can take anything away from the state commons and sell it. The exception is game and fish harvested from the area (although not the rights to fishing and hunting), and also the selling of milk and meat from animals that have grazed in the area (although not the right to sell grazing rights to non-right-holders). What may remain of resources when the local needs are satisfied belongs to the state. This is defined as the state having ownership to the ground. With the practical implication that when all traditional, customary and positively stated rights have received what rightfully belongs to them, there might still be something left, and this “something” belongs to the owner of the ground. The implication of this principle is that any new exploitations of the ground belong to the one who owns the ground. This is the case for hydro-electric power, and for the long-term leasing of property for recreational cabins. For these activities the state has the right to develop and receive income, sharing it 50/50 with the kommune (municipality) where the commons is located.

The use rights to activities connected to farming are reserved for the farming population, while everyone living in the municipality has equal rights to some sort of hunting and fishing. The public, i.e. everyone living in Norway, also has access to certain limited types of fishing and hunting.

The management of the state commons is divided in three:
1. Statsskog SF, which is a paragovernmental agency legally organized as a special type of "company" wholly owned by the state, (the minister of agriculture in person makes up the general assembly), takes care of the ownership interests of the state, that is to manage all forestry and logging, cultivation, road works, gravel/stone-mining, water-management (also for hydropower use), development and rental/lease of properties for leisure cabins/tourism. Statskog SF also supervises most other activities that go on in the state commons.
2. In commons that predominantly are above the tree-line (with no or little productive forests) a Mountain Board (*Fjellstyre*) - one for each municipality, manages all issues concerning other uses of the state commons, such as hunting, fishing, grazing and other natural resources use issues. The Mountain Board is elected by the municipal council. But according to law the majority of the board should be persons living in the local community.
3. In commons with productive forests, these forests have a separate Commons Board (*allmenningsstyre*) that is elected by those who have the rights to the wood. This board makes all decisions concerning the collective use of the resources.

Statskog SF shall manage the state forests and mountain areas in compliance with the current law given by the Parliament. The first decade after the establishment of the forerunner of Statskog SF, The Directorate for State Forests (DSF), most emphasis was given to make the forestry activities profitable. The income would be used for the management of the forests; the remaining profit would be split in two, one part to the State and the other to establishing a fund for future development. As from 1969 management has given less attention to the profit earning in the forest, and more in the management of the vast non-forest/mountainous areas.

In 1981, the Parliament issued a White Paper 57 (1980-81) on goals and activities for the (then) Directorate for State Forests (DSF) under The Ministry of Agriculture. In this the state as a provider and manager of public goods was given a much stronger emphasis, and in the DSFs Annual Report of 1981 the following main goals for its activities are listed:

- DSF shall manage state property efficiently in order to obtain a satisfactory economic result. At the same time the importance of the state properties to the public welfare shall be emphasized, thereby requiring a strong focus on environmental management and due emphasis on the outdoor leisure activities performed in the area. The resources shall be maintained and may be developed further.
- When it comes to the management of forests and mountain areas, DSF shall:

- Ensure that planning of resources and areas comply with what is to the benefit for the society as a whole, the communities adjacent to the property and for the state as owner of the property
- Accommodate public use of the property for recreation and leisure activities. The DSF is obliged to find a balance between the different interest/parties and their uses of the property, while also maintaining a reasonable profit from the property.
- in the case of purchase, sale or lease of property seek to improve the total use of the area, while using market prices
- in the forestry activities seek to have long term and sustainable economic results, and manage the business on market terms, maintain the forest according to good management practices so that long term and sustainable production is achieved, and also to ensure full-time employment for staff.

The Mountain Boards are responsible for managing all issues concerning other uses of the state commons, such as hunting, fishing, grazing and other natural resource use issues. There is an elected Mountain Board in each municipality. There are five members of the Mountain Board, and according to the requirements stated in the Mountain Law from 1975, at least three of these should be resident in the local community. The Mountain Boards main responsibility is to ensure that the commons are used in a way that promotes local communities' business interest and protects and safeguards the natural resources in the area and the use of the commons for leisure-use.

The Mountain Boards have joined in an umbrella organization, called the Norwegian Mountain Board Association (*Norges Fjellstyresamband*). This association has undergone a modernization process and become a stronger and more united organization. Together with other community and/or landowner organizations it has managed to get the views and interests of local communities forward in political processes and thereby become a force in some aspects of national politics.

The Mountain Boards are responsible for organizing the supervision and control of the mountain resources, seeing that they are used according to the laws on fishing and hunting as well as environmental protection. Each mountain board has to recruit a mountain ranger who is responsible for management and controlling of fishing and hunting rights, environmental monitoring and management, information towards the public, maintenance and accommodating for public use of the state commons. The Mountain Board issue fishing and hunting licenses for the public. The overall policies and guidelines for the issuing of these are exercised by the Directorate of Nature Management and also by the Norwegian Mountain Board Association. Further many of the state commons have mountain lodges that one can hire for overnight accommodation while trekking in the mountains.

There is a group of State commons that should be mentioned; state commons that are managed as parish commons. There are 7 such commons and the reason they are managed as parish commons is that the level of logging in these commons does not exceed the needs and uses by the local community, therefore they are called "deficit-commons", meaning that they give no surplus. In other words there is no excess timber for the State to exploit after the local community has taken what is rightfully theirs. So with relation to the management of the forestry component of these commons they have according to the law been given the right to manage themselves as a parish commons. (Langmorkje is one of these commons, see table 2).

4.4.2 Parish Commons

The parish commons are not public/state property, but are according to the law formally owned by at least half of the farms (not farmers) that have use rights in the commons. This is a very formal legal definition, introduced in 1863, for most practical purposes one may say that a parish commons is owned by active farms that of old have had use rights in the commons. It follows that if a farm stops functioning as a farm, it loses the use right in the commons, and probably also its ownership right to the commons, even if the law is not quite clear on the last point. On the other hand these rights may be reactivated when taking up farming again.

The parish commons were previously regulated in a number of different laws. A new comprehensive "Parish Commons Act" was passed by Parliament on 19th June 1992, and entered into force in 1993. Based on earlier court rulings, several rules of principle were established:

a) The concept of a farm and its importance for the eligibility to use rights in the commons, – according to the act a property unit in the parish which features and actual uses the property in an

agricultural way has the right of common. (It is not a condition that the holding is large enough to sustain the livelihood of a family)

b) The concept of the parish or community is still somewhat unclear as it is often stated that the parish is the unit that have right of commons. However, in the act it is now stated that the boundaries for the parish has to be based upon available information on usage of sufficient old age. Administrative boundaries, past or present, are in principle of no relevance, although they often follow these boundaries.

c) The right of common cannot be disclaimed from a farm, -even the owner has no right to disclaim the right from his/her own farm.

d) The principle that the right of common is linked to the farm and not to the person/farmer, -this is important as this regulates the extent and quantity of resources that the farm can actually take out of the commons. The quantities are restricted to the actual need of the farm, not the desire of the farmer. Increases in the farms production will thus increase the need for resources in the commons.

e) The principle that a farmer may claim that all the needs on the farm should be met by resources from the commons, independently of what other resources the farmer has elsewhere, (Rygg 1993, Rygg and Sevatdal 1994).

Of other changes that were introduced after the political negotiations over the act, were the decision to give each farm two votes (one for husband and one for wife), the procedures for election were simplified, and the employees of bigger parish commons were given the right to have one representative on the board (Rygg 1993).

This Act tidied up and homogenized the management structure of the commons, as this had been highly variable from one commons to the other. The act regulates the election of the Parish Commons Boards and the boards' duties, accounting and auditing procedures, the election procedure and the Agenda for the General Assembly. It also requires a forestry plan to be developed and a qualified forest manager to be recruited and be responsible for the management of the forest resources.

The parish commons is managed and administered by a Commons Board who is elected by and from the users and owners of the commons property. If there is any difference in views between users and owners of the parish commons, both parties shall be represented in the board. The management of the Parish Commons is under the supervision of the Ministry of Agriculture through an appointed Forestry Inspector. If the commons board or a single owner/user of the commons does not act according to the rules in the act or the plan and rules developed for the specific commons, they or he/she can be charged and fined and the use-right to the commons can be taken away for a period of time.

According to the act each board shall make rules for the use of the commons, which must be approved by the Ministry of Agriculture, after having been laid out for open inspection by the commons owners/users for 4 weeks. Once the rules are approved by the Ministry, these are binding for the board and the owner/users of the commons.

According to the Act, an annual general assembly (AGA) must be held among the user/owners of the commons. The AGA has limited powers, and resolutions from the AGA are only advisory to the Board. The AGA has however the power to elect the board in bi-annual elections, to decide on the allowances for the board members, and the appointment and remuneration of auditors. The Ministry has the right to be present during AGA's of the parish commons, though without the right to vote.

All forested commons must have a qualified forester as a manager for the forest resources. There must be a forestry plan (logging and maintenance plan) which includes regulation of the use and management of the commons in areas such as fishing, hunting, grazing, logging and detailed accounts of how the forest resources are divided to the owners/users as well as the use of profit from the forestry activities.

The management of these activities is supervised by Statskog, and has to comply with the Forest and Environmental Laws as any management of forest. Most of the bigger parish commons run their own sawmill. The use rights to the forest-resources will in these commons be given as reduced price for the user/owners when purchasing timber at the sawmills.

The commons are required to keep accounts that must be audited by an authorized auditor. The profits from activities in the commons must first be used to secure and improve the commons with the view to the optimum exploitation of its productive capacity and provision for the future needs of the commoners. The profits can thereafter be used for;

- Establishment, maintenance and possible development of secondary industries and businesses in connection with the operation of the commons
- Provision of funds for various activities related to the environment and recreation
- Provision of funds for discount and subsidy arrangements
- Establishing a fund for special purposes
- Support for community projects within the district the commons belongs to
- Cash distributions, subject to the approval of the Ministry

In addition, the profits can be used within the framework of normal commercial businesses. Many parish commons run big commercial sawmills timber manufacturing and peat extraction businesses, some also own and run timber-ware shops, mills and input-supply organizations.

Through the possibility to redistribute wealth stated in the act, there are considerable amounts of resources that are channeled from the income of the commons back into the local economy. And as such the commons have had considerable impact in the provision of employment and business promotion/support in the local communities. In addition many commons have taken on community well-fare activities, such as the building of community assembly halls, providing electricity to the community and other activities beneficial beyond only the user/owners of the commons.

Also the structure and continuity provided by the board of the commons, leads to a greater focus on long-term use of and investment in the commons (Norsk Allmenningsforbund 1996, Finsveen 1998, Haug 1998).

The Parish Commons have established an umbrella organization; the Norwegian Commons Association, which has 35 Parish commons and 5 State commons managed as parish commons as members. The objective of the organization is to: ensure and protect the interests of the users and owners of the commons against the public, government and society in general. It also promotes collaboration between commons and to strengthen the professional management of the commons.

The association has provided support to regional cooperation and the emergence of a common forestry industry in some areas. It also collaborates with other organizations and most of the parish commons are members of the Norwegian forest cooperative association.

4.4.3 Farm Commons

Farm commons are currently mostly found in high lying (mountainous) out-fields, from somewhere near or in the tree-line of the conifer trees (barskoggrensa) and into the alpine mountain areas, i.e. mainly the summer-grazing and summer-farming areas. In these areas the economic interest lie in hunting, fishing and development of leisure cabins (Sevatdal 1989 and Mykland 1998).

The Act on Joint Ownership from 1965, comprises general legislation on joint ownership as such, but has regulations for farm commons as well in section 1 it is stated explicitly that the regulations in the law are applied only if other regulations do not follow from contracts or other legal arrangements

Farm common land cannot be split from the farm it belongs to. However part of the farm commons may be subdivided if the farm that has use rights in the commons is also subdivided.

The Act further states that the land held in common shall be used as it was intended at first. Decisions should be made by majority vote. A majority can also decide to establish a board to manage and administer the commons. If parties in a farm common cannot agree on how to organize themselves a court decision may force the parties to organize according to the act.
The Act is non-mandatory, indicating that any agreements made between the parties will, as long as they are not illegal, overrule the Acts descriptions. This is why there is a wide variety of practices and organisational models, according to the type of resources that are predominant, local traditions and social and community relations.

Since there is little knowledge about how the farm commons actually are organised and there does not exist any register showing their extent; the following descriptions is taken from a recently published MSc-thesis by Siri Mykland, (Mykland 1998). She studied 18 farm commons in Setesdal (a valley in Southern Norway). She showed that out of 18 farm commons, none followed the organisational set-up described in the Farm Common Act from 1965, and all of them were different from each other. This finding shows the importance of the principle of freedom of contract.

Another general conclusion from her work was - not surprisingly - that in the case of bountiful resources in the farm commons, the level of conflict is low, whereas if the resources are limited or one or several of the parties exploit one resource to the detriment of other, the level of conflict increases. Interestingly, there does not seem to be any similar increase in conflict with increasing number of parties in the farm commons. This is also the case when a new income-earning activity is introduced (recreational cabins). In these instances the conflict solving can either be done formally through the court system by a special type of procedure in the Land Consolidation Court. Or as is often the case, the shareholders in the farm commons eventually settle the dispute themselves, which often leads to very complicated ownership and use-right conditions.

Mykland found that it was the level of prospective income from a resource in the farm commons that determines the degree of formal structures to manage the resource. Furthermore other laws than the Act on joint ownership would enter into force and regulate the management of the resource, such as the Act on Hunting from 1981 and the Act on Fishing in lakes and rivers of 1992. These acts have both led to the farm commons being forced to organize themselves better in order to vocalize and maintain their hunting and fishing rights in their area.

Since the most valuable resources in the commons had separate and fairly well-organized bodies, the parties did not see the benefit of organizing a separate commons boards. Mykland found that

most decisions were made informally, and little was written down. However most of the parties in the farm commons stated that they wanted to maintain the flexibility that the current Act allows, as this makes management less formal and less time-consuming. These factors were considered important within a local community context.

The internal social dynamics and the lack of formalized organization and rules in the farm commons may also make them vulnerable to others gaining rights in their territory through so-called prescriptive acquisition (*hevd*). Mykland found that the parties in the farm commons let other non-parties have unlimited access to grazing inside their territory, explaining that it would not be acceptable behavior ("stingy") if they started formalizing and asking payment for this activity.

But as rural Norway is changing, with a substantial migration from rural to urban areas, leaving farms uninhabited and used as leisure cabins by inheritors who live in the city, the conflict between permanent and visiting residents in the local community might increase. In Myklands work, she showed that several permanent residents questioned the holiday residents' rights in the commons, and also pointed out that they were not willing to undertake duties (being board members) or share in costs necessary to improve the commons for farming purposes. Another conflict was a generational conflict, were the old generation would look back at the good old times and not enter into new ventures, while the young generation looked ahead and wanted to invest and initiate new income-earning activities. At the same time there was an overall understanding that the old generation had valuable knowledge about how agreements and rights concerning use of the commons had developed.

4.4.4 The Commons in the Land Registers

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

There are several requirements for setting up a well-functioning land registration system; the system should consist of units that are relevant for administration and unit holders, it should contain relevant information about the units. In order to be useful it needs regular and reliable updating. It should be cost-efficient; the cost of collecting the data should not be excessive in comparison to the use of the data. The systems and the collection of data need to be done in an honest and efficient way. And lastly the system should be simple enough to promote use.

In Norway (as in most countries) the registration system has two parts:
a) The Cadastre which contains information about property units, maps and records over property units and it also is the key entry into the register and access to information.
b) The Legal Register which is concerned with rights and transaction of rights, and contains information about titles and titleholders, legal rights, easements and usufruct rights.

The Commons entail special challenges when it comes to include them into the registration system, especially the Legal Register. Since these units are owned and used jointly or separately, and often by different right-holders according to different internal agreements, they are not easily registered as the right-holders have what can be described as a bundle of rights, and the bundle will comprise

different rights according to the right-holders share or need and also according to mutual internal agreements. Obtaining a total overview of the rights involved is often a very difficult process, and through a reduction process of registration one might lose rights that might otherwise be usufruct rights within the bundle.

At present both the state commons and the parish commons are registered as property units. But the boards of these commons are obliged by law to keep updated records (registers) of the properties (farms) that have use rights. This seems to function quite well. The problem is the farm commons. They are at present not registered – simply because our land registration system is based on property units, and the farm commons are not property units, it is the farm plus the share in the commons that constitute the property unit. This creates a lot of problems, especially informationwise in mountain municipalities where very much, even most of the total area is made up of farm commons.

A special law on Land Registration is under preparation that proposes to include registration of the farm commons, at least in the cadastre part of the system (NOU 1999-1). According to Mykland (1998) the farmers were more negative than positive towards this proposal, as they feared that it would lead to more bureaucracy and rigidity in their actions. They did however see that in certain instances it would be beneficial that the actual agreements and division of shares were registered and formalised in order to settle disputes. A proposition to this effect will probably be passed over to the Parliament in fall 2003.

5 Future opportunities and challenges

5.1 Discussing the concept of "commons" and "ownership to commons".

In the previous chapters we highlighted some important aspects of the commons in Norway. We will start this final chapter by looking a bit more deeply into the very concept of commons, to make two points; one is that there are other types of ”commons” as well, the second is to discuss the meaning of ”ownership” to commons. The underlying issue is that the meaning of the very concept of “commons” is somewhat problematic, so far we have included what in Norwegian is termed “allmenninger” and “realsameier”, both understood as physical objects, i.e. land as entities that can be envisaged as (large) “plots” in the field, and polygons limited by boundaries on a map. In the same way we have conceptualised particular local communities as right-holding subjects in themselves, or comprising groups of farms or groups of peoples as right-holders in or to this land entity. We have also shown that we have to distinguish between those who have a "right of commons" on the one hand, and the "owner" on the other. In farm commons these are the same juridical or physical entities (farms), while in State commons, they are not. Parish commons may fall somewhere in between. So we have three entities here; the commons as a territory, the local community and the owners.

One important aspect is that the rights of the users are delimitated in a so called "positive" way; a right to pasture is a right to pasture, nothing else, a right to timber is a right to timber only and so on. What then of the residuals - and especially what about "new" types of resources that might come into being? It follows logically from this way of delimiting the rights in commons, that all residuals, i.e. what remains when the "positive" claims are satisfied, are the property of the owner. In fact it might be a reasonable way of defining ownership in the commons; the right to the "remainder", both old and new. The states historical claim in the 17th century for the surplus timber not needed for local use, and for the ownership of the potential for hydroelectric power around 1900, both in

State commons, are good examples. Both resources in the end became property of the state after disputes and court rulings.

This is our present way of conceptualising these property right arrangements, which are in line with current legal terminology. It is however not necessarily the only way, nor does it capture all types of commons, we have to add two additional concepts; the functional commons and commons created by pooling.

The point with a functional commons is that *particular resources* are being held legally in common. One may say that the different resources on the same piece of land constitute an ownership object each. In our case we would say that this or that resource is held in common, or just constitute a commons, for example a pasture commons, a forest commons, a fishing commons, a hunting commons and so on. In a legal sense it means that the "ownership" to the resource in question is jointly held. This is in fact the old, traditional way of thinking about property rights in general in the outfields in Norway; that each resource is an object of ownership itself. This notion prevailed right up to the end of the nineteenth century and even longer in many rural areas, and has greatly influenced the development of the commons. Especially so because in this conceptualisation there is no room for ownership to the ground in itself; the ground as such has no value, and is not a special object of ownership; it is the resources that have value and are objects for ownership. How the transition from this traditional view to the current dominating view came about is a long and somewhat cumbersome history that does not need to be told here. Suffice to say that the current "modern" view came to dominate under influence of principles derived from Roman law and legal theory, gradually during the nineteenth century.

In our presentation of the Norwegian commons there are two points here: As the present de facto ownership situations found throughout Norway has been created in an evolutionary process during many centuries, there is a lot of such "functional commons" to be found, most typically concerning pasture; "sambeite" and "hopmark" are two terms for this. The second point concerns the tension and the conflicts between the State and the local communities for dominance over the state commons. It is easy to see that the present "modern" view would enhance the view of the state of being the legal owner of all residuals, both old and new.

Beside such cases of "functional commons" we also have a lot of commons that may be termed "de facto commons", in the sense that individually owned resources are used jointly. The legal bases are normally some sort of contractual arrangements, but the "contracts" might be very informal - often almost an old tradition and practical arrangement without any written documents. The typical examples would be pasture or hunting, where the actual legal rights to these resources are subdivided in small, but dysfunctional plots. "Dysfunctional" in the sense that another resource, most typically the forest (timber) have been the deciding factor for subdivision practises. Even if all other resources were legally subdivided in the same way, it might well have been an underlying understanding that the actual use should remain in common.

5.2 Understanding the conflicts.

The concept of "conflict" is here used in a broad sense, signifying some sort of specified interests, which might be opposed to each other. Conflicts in this sense are a normal and continuing state of affairs in commons, in our view there is no such thing as a final solution; conflict is inherent in the very core of common property. Let us summarise some of the conflict lines, past and present, related to the Norwegian commons:

a) Between local users of the same resource, conflicts may typically accrue in cases of scarcity of the resource in question. Historically that has been the case for grazing and for forest products. Today, conflicts over such resources are generally of no great importance, except for Sámi reindeer grazing (herding) in Finnmark and some cases of fencing, one may say that at present there are very little conflict between traditional users of traditional resources, simply because of the general decline in agricultural activity. But there might be conflicts between owners of farm commons related to different usage of the common as such, for example between those who want to use the hunting rights themselves, and those who want to develop the area for commercial recreation and sell their hunting rights commercially.

b) Between the owner and the local society. This is the almost classical conflict between the state and locals about the different issues, but especially the residuals - old and new - in the state commons. This conflict is brought to a (temporary or final?) conclusion in the state commons in the south of Norway. In the two counties of Nordland and Troms in north of Norway this conflict has been about the very existence or not of state commons. That conflict was "won" by the locals, but is followed by the struggle of the locals to have a Mountain Board representing local interests - not as much for protection of traditional use rights like pasture, but simply to represent local interests in general. As we have shown this case is not settled yet.

c) Between the owner and special interest groups, and between groups locally. This type of conflict is most profound in Finnmark today, between the state as owner, and some groups of the Sámi. The overall conflict picture is very complex, as ethnic groups, local societies and a powerful interest group - the Sámi reindeer herders - do not co-incident. One may say that the "land question" in this county is a conflict with many aspects and conflicting lines. The reindeer herding segment of the Sámi does not have identical interests with local communities. What makes this conflict so difficult to handle is the fact that it has become a symbolic issue, and it can not be easily solved by for instance just leaving more power and control to the local communities. The public at large, at county level, is also an active stakeholder in this game. Thirdly – and this conflict dimension might be potentially present many places –the real issue seem not to be traditional use rights, but pure and simple ownership and control of land. As such the arguments seemingly over traditional use rights in reality might be manoeuvring for future control of other resources. Conflicts over traditional uses in itself could many places – to our minds – have been solved relatively easy.

d) Who belongs to the local community? As the agricultural sector is rapidly changing, with the number of persons actually involved in farming practices rapidly decreasing, there will be a continual discussion of who should maintain their use rights in the commons. This would be most problematic in areas close to larger cities where there would be a process of small farms being sold or inherited as residential or holiday houses while the farmland would be leased to a fulltime neighbouring farmer – if there is any left. Should the hobby farmer maintain the use rights in the commons? So far the rulings in the high court have said that they should as long as they live permanently in a farmstead with agricultural activity. If allodial laws change and instead of inheritance of farms the smaller/or bigger farms are sold on the free market, which many have promoted to counter the depopulation of the rural areas, there will be a change in the local communities as there will be an influx of non-locals to the societies which will maybe create tensions as they do not know the history and unwritten rules of the local communities. The commons institutions ability to welcome and integrate the new-comers will be determining for thriving local communities. Ways to promote this process should be explored and researched.

e) Between locals and the general public. As general public becomes more of a user of the commons for leisure and outdoor activities, there is a need to find other ways of getting income

from these activities and making them attractive for such activities. The tasks of the commons board and the managers change from logging and grazing management to tourism management. The degree to which the local communities manage to take part and reap the benefits of this change in the population depends on their ability to see and act on these new trends in society. Further the local populations need and want might be in strong conflict to what the “city-tourists” want and seek. The latter wanting untouched nature and the former wanting to use the area for farming purposes. To strike a balance between these two will probably be the most important for the survival of vibrant commons in the local community. There has been several instances were national laws and policy concerning environmental protection has reduced the use rights in a state commons without the local community receiving any compensation. Further many national parks are located in the state commons, and new ones are being proposed. These will lay restrictions on the local communities use rights in these areas, while leaving it more difficult for them to develop income-earning activities in the area. In other cases the laws governing local and regional planning of development initiatives will also reduce the local communities’ influence on their own situation.

The underlying issue in some of these conflicts may be the fact that the value of traditional usage is decreasing, while the value of the remainder - which now rest with the central government in *state land* and *state commons* - is increasing, at least in relative terms. The locals see that the value of their share of the commons deteriorate, while the value of the share of state and general public increases, and they feel frustrated. A sense of loosing control with their "own" land resources in the outfields is rather profound in many rural areas, both for this and other reasons. The developments in *farm commons* and *private land* add to the frustration; more and more land is owned by absentee owners as people leave the countryside but retain the ownership.

5.3. Challenges and research ideas

Challenges for future developments depend on the perspective of the various stakeholders and actors; it will of course always be a challenge for any stakeholder to promote his own interests. But the commons are not dominated by conflict and competition only, there are shared interests and opportunities as well. It is not the aim here to explore challenges for the different actors, but rather to point to some more general issues.

In our view commons are very important types of "ownership" in Norway; if we did not have them we would have to invent them! Not only from the perspective of efficient land use and resource utilisation considerations, but also for fair distribution of ownership; in many cases subdivisions in small inappropriate and inefficient holdings would be the alternative to maintain a fair and even distribution.

The overall challenges for the local societies - for the commons to remain a viable arrangement of ownership rights etc. - seem to be:

1) Their ability to adapt to changing and varying demographic, social and economic conditions in the local societies, especially to include most of its members in utilisation, benefits, management and responsibility.
2) To keep the "natural" conflicts at levels where they can be handled locally, and above all to maintain, develop and redevelop conflict solving mechanisms at lowest possible costs, both in monetary terms and socially.
3) From a more "selfish" perspective it would be an obvious challenge for the local community to have a larger share in future benefits accruing from new types of land use, uses and benefits not presently comprised by traditional uses.

Interesting research issues could be developed related to these challenges. A key issue would be the study of institutional frameworks, especially with the aim of finding institutional framework designed to promote (enhance) solutions by *negotiation*, and their ability to reduce transaction costs.

For the central government, its administrative bodies and the parliament the challenges seem to accrue from its different roles, three of which are visible here: 1)landowner, 2)law maker 3)promoter and caretaker of the interests of the general public and special interest groups at different levels outside the local community. The developments in the counties of Nordland and Troms provide a good example of the difficulties of harmonisation of these roles and the resulting frustration and conflicts. A very interesting research question would be to compare the performance of central authorities as a provider of institutions related to farm commons and parish commons, where the state have no ownership interests, with state commons.

Little is known about the actual informal institutions managing the farm commons. More research should be done in this area, both to examine the efficiency of the institutions and also to examine whether there are legal or other ways that can aid the efficiency of these types of commons, (Sevatdal 1999).

In a broader picture the institutional perspective should be extended to 1) how to promote and develop the potentials of the commons, and 2) conflict solving issues in commons in general. How do institutional frameworks – both formal as well as informal – really function to generate and to solve conflicts?

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Annex 1: Summary sheets on current status of State, Parish and Farm Common Land

VARIABLES	STATE COMMON LAND	PARISH COMMON LAND	FARM COMMON LAND
Type of Land	7% productive forest, the rest mountain areas above the timber line	31% productive forest, the rest as state common land	Predominantly mountainous areas
Area	26.622 km2	5.500 km2	No statistics available
Number of Commons	195	51	No statistics available
Number of Shareholding Farms	Approx. 20.000	Approx. 17.000	More than 50.000, but no better statistics available
Land owner (title to the ground)	The State	Local (predominantly) farming community	Certain groups of farms
Access to Resources			
a) Pasture, secondary summer farms, cultivation	Local farming population, according to need	Local farming population, according to need	The shareholders only, according to their share
b) Wood and Timber	Local Farming population according to need. The rest to the State.	Local farming population according to need. Surplus is sold, profit distributed to the farms	The shareholders only, according to their share
c) Hydro-electric power (income from this)	The State	Local farming population	The shareholders according to their share
d) Hunting /Fishing	Everybody in the local community/whole population	Everybody in the local community	The shareholders according to their share

VARIABLES	STATE COMMON LAND	PARISH COMMON LAND	FARM COMMON LAND
Management : Decision making body on all overall questions such as commercial logging, hydropower, national park, environmental concerns	1. Statskog SF	Elected local board, Commons Board (Allmenningsstyret)	The majority of the shareholders, according to their share or an elected board. The Land consolidation Court.
On issues regarding hunting, fishing, grazing and tourism in the commons.	2. An elected municipality board (Mountain Board/Fjellstyret)		
On issues related to the rights holders logging for own needs	3.An elected local board, Commons Board (allmenningsstyret)		
a) Dominant type of use	Individual	Collective	Individual
Alienation of rights of land	Rights cannot be sold; farms can get land for cultivation (reclamation). The common as such can not be subdivided, and rights cannot be separated from the farm	The same as state common land	Shares can only be sold together with the farm, or part of the farm. Subdivision can be made by the Land Consolidation Court.

Three Cases of Bygd Commons

Frode Gundersen,
Department of Economics and Social Sciences,
Agricultural University of Norway

[Those interested in Gundersens presentation should write to
Frode Gundersen,
Department of Economics and Social Sciences,
Agricultural University of Norway
N-1432 Ås, Norway]

Commons for whom?
New Coastal Commons on North-Norwegian Coasts

Audun Sandberg
Bodø Regional University, Bodø

There are dramatic events taking place on North-Norwegian Coasts during this period. On the surface this appears as a surprising shift in the opinion of the coastal population in crucial questions. One such fundamental question in coastal areas has been the issue of Norwegian membership in the European Union, where the opinion is tilting from opposition tied to fishing rights for wild fish towards support tied to marketing access for farmed fish. But underneath this there are other long term processes that might enable us to explain why the once crucial issue of local resource control now seems to be of less importance than it was in 1972 and even as late as 1994. This paper is an initial attempt to outline what is going on in a typical resource-dependent region when the fundamental institutional relations are changed. In doing so, it does not utilize contemporary concepts like privatisation, individualization, re-feudalisation, or other ideologically based constructs as explanatory factors. Rather it is using basic property rights as useful representations of an important analytical link between the biophysical world and the social world. By tracing the effects of different designs of property rights on both natural stocks of fish and on coastal ecosystems, and on social systems like coastal communities, firms, corporations and political parties, we might come nearer to possible explanations of seemingly surprising events.

The fundamental assumption here is that the attempts at a more "rational" resource management for wild marine fish have had unintended consequences. Over the years this benevolent political gesture has become much like a Trojan horse for coastal communities. Hidden inside precious gift that modern resource management regimes were to the coastal population, there are three dangerous soldiers: one is the soldier of increased social rigidity that rises from increased ecological uncertainty, the second is the soldier of inefficiency and lack of innovation that results from the accumulation of inequality, and the third soldier is the danger of unsustainable use of coastal ecosystems and ecosystem services.

The long transformation of North-Norwegian Coasts

The institutional history of the North Norwegian Coasts can be traced back to 1105, when a letter from the 3 sons of King Magnus gave the sea-commons back to the Håløyg population for their use to be as free as in the days of St. Olav (✞ 1030). During the following 700 years this pledge was supplemented by a Royal *fárbann* during Hanseatic and Danish rule. This prohibition of foreign and external ships in North-Norwegian waters gave room for the slow evolvement of the Lofoten regional commons institution and a number of smaller "coastal commons" with intricate self regulatory institutions. Most of these "traditional" regulations were in the form of input regulations, where the days at sea, the areas used and the permitted gear were agreed to and controlled in various ways. These commons were, if not completely open, characterised by easy access for new young entrants and migratory fishers from neighbouring districts (Namdalen/Trøndelag, etc.).

With the adoption of the doctrine of the Mare Liberum in the 17th century, and accelerated development of fishing gear technology, the fish resources came under increasing pressure. Both North Sea interests and Russian interests (Pomor) were active in periods of open access during the 19th century to try to get historical rights before "enclosure". Thus there was building a pressure for a search for a more "rational resource management system" than the old coastal commons institutions. A clearer definition of unshared property rights was strongly advocated as "the final solution" to the recurrent problem of over fishing and empty seas. The Law of the Seas

finally gave the nation-states the sovereign jurisdiction and *de facto* property rights over fish resources in the 200 mile extended economic zone outside the coasts in order to facilitate rational resource management and to avoid further tragedies of the open access regime. But although this "nationalisation of a natural commons" and the "quota of the nation" (TAC) ended the institutional void in fisheries, the problem of property rights at the sub-national level still remained unsolved. Should fish stocks remain a common property for each and every coastal community or for all fishers? Or should the logic of unshared and exclusive property rights be extended to the regional and local level? As it is well known to all Europeans, the chosen property rights design after two decades became individually owned quotas, the IVQs and the ITQs. In most cases these were also transferable in some way or another and could thus be used as collateral for operational credit or new investments in catching capacity. It is difficult de determine whether the choice of property rights design was conscious and based on political or ideological aims, or whether they were the outcome of a bewildered process with irreversible steps. Whatever the true objectives were, the outcome of the process was a massive enclosure of the coastal commons, a privatisation and accumulation of the rights to wild fish and an exclusion of new entrants to the traditional occupation of fishing along the North-Norwegian coasts.

The property rights to coastal ecosystems for aquaculture have undergone a parallel transformation to those of the wild fish stocks. Most aquaculture enterprises started as community type experiments where local northern entrepreneurs in the true Schumpeterian sense kept salmon in cages against the explicit advice from southern experts. These entrepreneurs took risks and developed the technology needed for the salmon farming industry with the wholehearted support from the coastal communities. The local ownership of rights to use certain "locations" meant that potential profit from utilizing local ecosystems would remain in the community. The local ownership was also legally protected in the first pioneer period, later the temptation to harvest the entrepreneurial profit became too tempting and intense lobbying was successful in removing these limitations to ownership transfers. The end result is clearly visible today, where most ownership of aquaculture locations is sold out of the coastal communities and is accumulated on the hands of a few distant and vertically integrated sea farming corporations. This "corporate occupation" of a large portion of coastal ecosystems and its heavy usage on these ecosystem services would not have been politically possible without the initial phase of local entrepreneurial activity. Now the same strategy for ecosystem acquisition and transfer/accumulation is tried for the farming of cod, but the success of such a repetition is not guaranteed. In addition to the occupation of sea area by aquaculture plants and their "buffer zones", state activity to protect remaining marine areas has accelerated. Some of this activity is based on a desperate hope to save some pristine channels for the remaining stocks of "free salmon" to roam and reach their childhood river. A number of coastal protection areas, salmon protection zones and marine parks are thus being established, often against strong opposition from the aquaculture business. Thus the amount of "free coasts" has decreased dramatically during the last two decades. This is one of the major reasons why community-based fisheries projects or marine cultivation has not been possible to implement; to an increasing extent coastal areas are either occupied by outside licence-holders or they are protected by the state. A large research programme, the PUSH programme, has developed scientific basis for stock enhancement of crucial stocks and sea ranching designs which would be suitable for community based enterprises. However, property rights and the institutional framework that has evolved during the last 3 decades gradually preclude such collective solutions for cultivating marine environments. When in addition the wild fish stock of coastal waters is tied up in quotas that to an increasing extent have become accumulated on outside hands, the coastal communities are also gradually loosing access to their traditional wild fish resources. The combined effect of these two slow processes of institutionalisation of new "rules of the game" is a widespread discontent among northern coastal communities with the political authorities, notably with the Ministry of

Fisheries. A number of high profile protest actions from coastal fishers and coastal municipalities in the North are based on such discontent and frustration. But alongside the discontent is also a sense of helplessness which is shared among coastal dwellers and politicians alike, that the institutional developments have their own course beyond the control of governance. Small changes of basic property relations have started profound processes that produce results which in turn take the key actors by surprises. How could this happen?

Why this shape of our coast?

The background for the current institutional straightjacket is again to be sought far back in history. With a low level of harvesting technology, the "coastal commons" that had developed for wild fish fisheries and for utilization of coastal environments for salmon farming were loose constructs. Access was easy, monitoring was lax and sanctioning was sloppy as long as there were a perceived abundance of both wild fish and fresh coastal ecosystems. With the first crisis in wild fish fisheries; the collapse of the Northern herring in the 1960s, both resource managers and scientists started the search for more "rational" resource management paradigms. The ideas that offered themselves during the period between 1970 and 2000 were mostly ideas based in the various paradigms of "New Public Management". If the resource manager could only "get the incentives right", the rest of the task would be easy; the stakeholders would act in their own interest in such a way as to preserve the resource in the best possible state. Recurrent crisis in several important species of fish, notably in the important Northern Cod, accelerated this search. In one fishery after the other, and most often against fierce opposition from the defenders of the old commons, quotas were introduced either as vessel quotas or as individual quotas. The original idea was that these quotas could be auctioned or in other ways could fetch a price in a market, thus they would provide an incentive for the quota holders to maintain the resource in the best possible way. In short, a quota system was advocated as the best way of achieving a long-term maximum sustainable yield from wild fish resources. Alternatives to quota systems could have been conceived, like an elaboration and sophistication of the age-old commons system, binding the stakeholders into more credible commitments towards the overall sustainability of the resource. But at the time, the individually owned quota was advocated as the "only solution" and more complex property rights designs were not seriously contemplated. The effects of this lack of fantasy in institutional design is now beginning to show, quotas have a tendency to accumulate on few hands, to become delocalised and to exclude new and young entrants to fishing.

Coastal ecosystems were also "commons" where local communities had some degree of control over the use of coastal resources. Local fishing grounds, egg and down islets, wild salmon-trap places, herring net places, seith storage places etc. were used and respected according to tacit agreements. With state licensing for salmon farming and recently for the farming of other species of fish, these local agreements are disrupted and a sense of individual ownership of localities was introduced. When the constraints on ownership were lifted so that non-locals could own aquaculture licences, a process of accumulation of licences on fewer and fewer hands started. The typical pattern has been that every time the "salmon cycle" has been in a slump, and bankruptcies have loomed, a further concentration of licenses have appeared. Since individual business ownership has to be non-discriminatory in the larger EEA-zone, foreign forms have also entered North-Norwegian coasts as owners. The price if the licence is not only tied to the strategic importance of the aquaculture firm being acquired, but also the ecological quality of the locations in its portfolio. It seems like good locations with sufficient depths and good currents that continually sweep the cages clean can fetch a higher price. This is because healthier environments are more profitable, a disease-free environment gives more stable production and lower insurance fees. But any particular locality is depending on a larger area, an archipelago or a fjord system, in order to function optimally in relation to aquaculture. On the other hand a

keystone locality "commands" a larger ecosystem and often leaves its "ecological footprints" far beyond so-called buffer zones. This means that other aquaculture operations cannot start using the same ecosystem services without reducing the quality for all operators.

The result of the state licensing policy is that the ecosystem services of a larger area has acquired a price in a market and can be bought and sold and accumulated on non-local and non-national hands. In many cases local communities, where the aquacultural entrepreneurial activity originated, are excluded from aquacultural activities and are unable to take control over these localities and use local resources to for local job-creation. Like in fisheries, this has resulted in massive political frustration among local politicians, and a sense of helplessness, most explicitly stated as a demand for the state licence fee for new aquacultural localities to be replaced by a municipal licence fee. This fee would then be perceived as a payment to the local community of the ecosystem services rendered by the local coastal ecosystem – or in some cases as compensation for a reduced ecosystem quality that has to be endured by the local population. Such demands have so far not been heeded by the central Norwegian government, coastal resources are persistently being defined as national property and national governance is deemed necessary if the full value potential of Norwegian marine cultivation (estimated to 240 billion NOK p.a.) shall at all be realised.

The final element explaining the contemporary picture of the northern coasts is the fact that the state is also the lead agency in protecting coastal and marine areas. This is often motivated by international agreements (EU, UN or IUCN) where member states have committed themselves to protect certain %-ages of various types of landscapes in the territory. Thus the national conservation strategies can most appropriately be seen as part of a larger globalisation process where environmental globalisation affects local communities directly. In the province of Nordland alone, as much as 74 coastal conservation areas have been proposed, in addition to a number of Marine Protection areas. A marine protection area or coastal protection area is usually an area where traditional coastal activities can continue, but where aquaculture, sea ranching, or other modifications of ecosystems are prohibited. Usually certain restrictions can also be applied, like prohibitions to disturb nesting birds, prohibitions against certain fishing gear etc. These restrictions will usually be designed by state environmental officers and based on biological or ecological considerations. The plans for these numerous protection areas have caused fierce opposition from coastal municipalities, who now feel that elected local government is loosing the last remaining control over their own coastal resources; it is international treaties and environmental bureaucrats that to an increasing extent decide what use they can make of their own coasts. To a large extent this local discontent is fuelled by local aquaculturalists – or would-be aquaculturalists – who see some of the keystone localities "taken" by the conservation interests and the area for aquaculture seriously diminished. But also other parts of the "fishing segment", the professional fishermen are afraid that the increased powers granted to environmental authorities shall hamper their mobility and operations and their ability to use the most efficient gear to catch their own quota. Although the wild fish fishers and the conservationist objectively should have the same interests in protecting important spawning and recruiting areas they have often been the major antagonists in a long battle over "use or protection" of the North Norwegian coastal areas.

From Coastal Freedom to Coastal Enclosure

The long process of closure of the coast has by some been termed a "refeudalization" of Northern Coasts. Some feudal land-lords and the Catholic Church had considerable control over harbouring and boarding facilities as well as transport and marketing facilities, together with power over taxation and the spiritual well-being of the coastal population. Still the fishing operations and the use of coastal ecosystems was characterised by freedom, or at least easy

access for the coastal population during most of the Middle Ages. So in many respects, there has never been a typical feudal situation and consequently it does not make sense to use the term "refeudalization". There is a marked difference between the ancient system of mighty sea-lords with both power and jurisdiction over land, sea and landless tenants - and the appearing contemporary coastal institutions described above. The fundamental difference is the crucial role of the state as both distributor of wild fish quotas, licensing authority for aquaculture and the guarantor of protected coastal areas. The total effect on the coast of state coastal policies is, however, the sum of effects of several sector policies. Especially the fisheries sector and the environmental sector have for a long time had difficulties in coordinating their policies and their strategies. Thus the coastal communities are also faced with a fragmented state that tends to provide only piecemeal and ad hoc solutions. As shown above, a number of the institutional designs applied by the fisheries sector have led to "coastal enclosures", the accumulation of crucial property rights on fewer and more distant hands and the resulting exclusion of large groups of the local coastal population from both wild fish fisheries and the aquaculture industry. Seemingly small changes in the basic property rights have over time had a number of unintended consequences: The multitasking, easy switching, flexible and robust coastal fisher has been replaced by the single tasking, specialized, capitalized, rigid and vulnerable quota holder. And the entrepreneurial and locally committed aquaculturalist has been replaced by the vertically integrated, international fish farming corporation with few innovative capacities apart from cost-cutting.

Thus the overall effects of the grand project we termed the "rationalisation of the coastal and marine resource management system" has become something like an unwanted straightjacket which nobody seems able to free themselves from. The new property rights, the quotas and the marketable aquacultural licences are "sticky" and have a tendency to live their own life before they eventually take the main actors by surprise. The contemporary rationality of the coastal resource management system is therefore more of an unwanted "iron cage" than a reappearance of a feudal system. A change in this system therefore requires a fundamental change in basic property rights, as is proposed by several northern politicians. However, it is not sufficient to transfer the quota and aquaculture licensing authority to the Northern provinces and keep the basic rationale of the system. A changed rationale would to a greater extent have to take into consideration that all coastal resources have both the subtractability characters of private goods and the considerable exclusion costs of public goods. Therefore regional or local institutions for governing coastal resources cannot be built on simple constructs like a single-specie quota or a site licence alone. Such institutions must be robust, that is they must be designed to avoid both resource tragedies as well as social exclusion. Experience shows that in order to achieve this, institutions must be strong, often quite complex and built on a credible commitment from all users of a coastal resource.

A special type of coastal enclosure gives some indications of possible paths the state can follow in its attempts at devolution of resource governing authority to regional levels. These are the coastal protection areas and the Marine Parks. These are often considered to have a wider circle of users than has been customary in other resource management issues on the coast. This extended group of stakeholders usually cover both urban and rural populations and both professional fishers, leisure fishers as well as hikers, kayakers, ornithologists, aquaculturalists and natural and cultural landscape conservationists. The relevant users would also typically include user groups not only from the municipality of the proposed area or park, but usually also user groups from neighbouring towns. In some of the more recent National Park processes, the involvement of such stakeholder groups have been thorough and the degree of commitment from these user groups to a "sustainable use" of the protected area have been considerable. The

experience from these protection-area processes points towards new avenues in managing coastal resources.

The fundamental paradigm for such a commitment is agreement about an ecosystem approach to the governing of coastal resources. This means an acknowledgement from fishers and aquaculturalists of their dependence on a constant flow of ecosystem services from the wild coastal environment. But it also means an acknowledgement from conservationists and leisure users of the importance of continued use and living culture in preserving an attractive cultural landscape on the coast. Thus for the first time, some of these processes are faced with the challenge of managing both pristine, conserved, enhanced and farmed coastal ecosystem elements simultaneously. This means in addition to an ecosystem approach, also a clear specification of different access, harvesting and exclusion rights on part of the various stakeholder groups. And it means that management rights and co-management duties must be clearly specified among the various user groups, who once the constitutional by-laws for the Coastal or Marine Park are established, must make credible commitments to adhere to these. All this preconditions are probably necessary in order for the state to hand down the management rights to the users of a complex coastal environment. However, before doing that, the state also has to obtain guaranties that no user group will attempt to alienate the coastal resource to outside interests, but will remain committed to use and manage it together.

Such a governing model, based on an ecosystem rationale, but with a specification of access, harvest and exclusion rights and a credible commitment of all user groups to management task, but without alienation rights, is the classic definition of a Commons: A Coastal Commons for people living and using the coast.

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A Tale of Two Commons

Per Otnes, Institutt for sosiologi og samfunnsgeografi, Universitetet i Oslo

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New Challenges for Old Commons: the implications of rural change for crofting common grazings

Katrina Myrvang Brown, Socio-Economic Research Programme, Macaulay Land Use Research Institute, Craigiebuckler, Aberdeen, UK

1. Introduction

This paper concerns the way in which 'old' common property institutions cope with and respond to 'new' challenges posed by postproductivist rural change. Common property regimes were once widespread throughout much of the Western European landscape but the prevailing trend over the last few centuries has been towards their demise. The interrelated pressures of population growth, commercialisation, industrialisation, successive rounds of enclosure legislation, and an academic and cultural privileging of individual forms of property, have all conspired to effect the extinguishment and erosion of communal resource rights (North & Thomas, 1973; Dahlman, 1980; De Moor et al. 2002). Nevertheless, a number of these 'old commons' have survived to the present day in countries such as Norway, Spain, Portugal, Italy, Switzerland, Scotland, England, Wales, and Ireland.

Crofting common grazings constitute the most prevalent form of historically enduring common property regime in Scotland covering 7% of its total land area. However, like all rural areas in Europe, the context in which they are situated is becoming increasingly postproductivist in character, reflecting a general shift in emphasis from a dominance of production-oriented agriculture and forestry towards a growing valorisation of more consumptive aspects (Marsden *et al*, 1993). On one hand, global economic forces and policy changes have made it increasingly difficult for producers to maintain profitability, particularly in marginal areas where commons are most frequently found. On the other hand, changes in affluence and societal values have catalysed concern for issues such as animal welfare, food quality, conservation, aesthetics, environmental quality, access and recreation (Winter, 1996; Marsden, 1999). Linked to both of these drivers is a twofold demographic trend, comprising the simultaneous in-migration of urbanites and out-migration of farming offspring (Ilbery & Bowler, 1998).

Despite these new challenges posed by postproductivist rural change, however, there has been little systematic study of the role and operation of common property institutions such contexts. This is surprising considering that common grazings constitute a significant part of Scotland's rural resource, and particularly considering the recent resurgence of interest in common property regimes and commons issues in both policy and practice in Scotland. Firstly, what can perhaps be conceived of as 'new commons' institutions are increasingly being created as communities mobilise themselves to take collective ownership or management of local natural resources. This trend has now been endorsed in the form of a community right-to-buy mechanism featured in the Land Reform (Scotland) Act 2003. Secondly, the expansion in ownership of land by CARTs (Conservation, Amenity and Recreation Trusts) in the UK might also be seen as an example of 'new commons' institutions. Thirdly, and intimately related to the first two points, there are the 'newly perceived commons' comprising a range of possible benefits from natural resources that are difficult or inappropriate to commodify and assign private rights to, such as ecosystem services, visual landscapes and cultural heritage. Their less tangible nature can lead to tensions between different individuals and groups regarding access to, and control over, natural resources, but in this respect property rights with a communal element can play a profound role in mediating the way people engage with such resources.

The delineation of these 'new commons' adds a sense of urgency to the goal of understanding better the relationship between common property and the socio-cultural, economic and

environmental landscape. Historically enduring commons such as crofting common grazings provide a valuable opportunity to investigate the way in which common property rights are claimed and exercised by individuals and groups and the implications of changing rural circumstances. To this end, the aim of this paper is to elucidate the legal and *de facto* institutional circumstances of crofting common grazings in Scotland, and provide a preliminary assessment of how they figure both with the prevailing trends in rural areas, and with common property theory.

The remainder of the paper is in four main sections. The first discusses some of the different ways of conceptualising common property rights for natural resource management, focussing on two key approaches. After providing some geographical and historical background of the empirical case of crofting common grazings, the second section gives a detailed exposition of the legal delineation of common grazings rights. The third section provides a brief account how these common property rights are exercised in practice, utilising the results of a recent empirical investigation. The final section discusses the issues raised by a consideration of historical commons in the light of contemporary rural change. This will include some theoretical reflection on the two key approaches in contemporary common property theorising with respect to their strengths and weaknesses for understanding crofting common grazings, and perhaps other commons in postproductivist contexts.

2. Conceptualising common property rights

There are many different approaches to the conceptualisation of property rights, although one can identify some shared elements. Most concur in as much as property rights are mechanisms enabling the holder to enjoy a resource or benefit-stream without interference from others. Usually seen as a tripartite relationship between the rights-holder, the resource, and everybody else, a property right involves both rights and duties. If one person has a right to a resource, everyone else has a commensurate duty to respect it (after Hohfeld, 1913; 1917). Crucially, for a right to be meaningful, it must encompass the capacity to exclude other parties who would also like to enjoy that resource, which requires an authority system to back up the resource claim.

There are also a number of ways in which conceptualisations differ, particularly as regards common property rights. Figure 2 summarises the key differences observed in various analytical approaches to the study of property rights for natural resource management. These will be elaborated throughout this section of the paper with reference to three discernible 'schools of thought'. They also constitute criteria that may influence the appropriateness of each approach for the elucidation of historical commons in a post-productivist context.

Figure 2: Key differences between the various approaches to property rights

- Varying emphases on different types of property right (e.g. withdrawal or alienability)
- Varying emphases on different types of entities that can hold rights (e.g. groups, individuals);
- Varying emphases on different authority systems for enforcement (e.g. State, local user group);
- Varying emphases on different methods of establishing and maintaining enforcement of the property rights (e.g. rules, norms, coercion);
- Property rights as clear-cut and stable versus property rights as fluid and dynamic;
- Different theoretical assumptions regarding degree to which formal property rights determine the rights exercised 'in practice'.

The first perspective is that of the 'property rights' school, which propounds that, "property rights of individuals over assets consist of the rights, or the powers, to consume, obtain income from, and alienate … assets" Barzel (1989, 2). Underpinned by the liberal economic model, this approach focuses heavily on rights to resources that can be separated from particular individuals and transferred to others in market exchange in the pursuit an efficient allocation of resources.

Accompanying this instrumental conceptualisation of rights, the tendency has been to privilege private, individual property rights at the expense of communally-held rights. Common property regimes have often failed to be acknowledged, been conflated with open access, or condemned as inefficient by 'property rights' scholars. Furthermore, the State is viewed almost exclusively as *the* authority system, and the customary or informal practices of local groups are seen as somehow interfering with and detracting from it.

The substantial limitations of this approach for understanding common property regimes have now been thoroughly documented (e.g. MacCay & Acheson, 1987; Ostrom, 1990; Bromley, 1992) and widely accepted, so will not be elaborated here. It is more pertinent to illuminate the vibrant, contemporary common property debate that the extensive critique and revision of the 'property rights' perspective has generated. Mehta et al (2001) identifies two key strands to the debate: approaches of New Institutional Economics, and what is termed an emergent 'post-institutionalist agenda'.

The dominant perspective is underpinned by New Institutional Economics (NIE), and its proponents have done much to curb previous tendencies to make generalisations about various property rights regimes. They highlight instead the need to look at the specific resource, user, and institutional characteristics when assessing the appropriateness of any property rights arrangement for a particular resource management scenario (Ostrom, 1990; Devlin & Grafton, 1998). This has opened up vital analytical space for a deeper understanding of common property regimes.

The second, emergent perspective is to varying degrees informed by social constructivism, and whilst acknowledging a number of valuable insights provided by NIE scholarship, they seek to highlight its limitations and challenge many of the assumptions used (for example, see Peters, 1987; Mosse, 1997; Li, 1998; Steins & Edwards, 1999; Cleaver, 2002). A number of key differences between the two main strands of the common property debate are summarised in Table 1, and will be expanded below.

First, a fundamental discrepancy centres on the difference between the notion of property rights as stable, rule-based social relationships, and property rights as interactive social processes. NIE scholars typically view rights as the product of rules (Ostrom & Schlager, 1996) and therefore as relatively fixed, changing only when the rules change. In contrast, the emergent view holds that rules themselves are subject to constant interpretation, negotiation, reinterpretation and change, and, as a consequence, property rights are rarely static and clear-cut in practice. Statutory elements in particular may give the appearance of rigidity and clarity, but even they are subject to interpretation by legal actors (Berge, 1998).

Table 1: Summary of emerging and mainstream perspectives

Theme	Mainstream views	Emerging views
Institutions	Static, rules, functionalist, formal	Social interaction and process, embedded in practice, struggles over meaning; formal and informal; interlinked with knowledge and power
Property regimes	CPRs as a set of rules based on collective action outcomes; clear boundaries	Practice not rule determined; strategic; tactical; overlapping rights and responsibilities; ambiguity, inconsistency, flexibility
Legal systems	Formal legislation	Law in practice; different systems co-existing
Resources	Material, economic, direct use-value, property	Also as symbolic, with meanings that are locally and historically embedded and socially constructed
Governance	Separated levels – international, national, local; micro-level focus	Multi-level governance approaches; fuzzy/messy interactions; local and global interconnected

(Source: abstracted from a larger table in Mehta et al (2001, 4)

The alternative outlined by Mehta *et al* (2001) propounds a more fluid, dynamic conception in which property rights are simply authoritative claims for access to and/or control over resources that are constantly being (re)constructed, negotiated and contested by various stakeholders. Static notions of institutions do not allow an understanding of the recursive and mutually constitutive nature of the relationships between key factors. As Meinzen-Dick & Pradhan (2001) state, "rather than seeking a single definition of property rights, it is better to recognise the multiple and often overlapping bases for claims, and to regard property rights and the use of resources as negotiated outcomes" (p.10).

Second, the two perspectives conceive differently of authority systems for defending resource claims. NIE approaches recognise that such authority systems can equally be the State or a local user group, but often place a greater emphasis on more formal institutions in analysis. McCay (2002) has observed that although the importance of 'softer' informal aspects, such as social norms, is often explicitly acknowledged in NIE frameworks, the latter do not provide tools that embrace the situated nature of these variables, and thus fail to bring them directly into the analytical picture. The conceptualisation of commons as an isolated system marginalises a number of important factors associated with the social, economic, cultural, historical and political contexts within which common resource systems are embedded (McCay & Jentoft, 1998; McCay, 2002).

Meizen-Dick & Pradhan (2001) also identify a tendency for NIE to view resource governance in terms of one principal, discrete, clearly bounded authority system when most resource management regimes have multiple authority systems existing simultaneously at a number of different scales. Drawing upon legal pluralism, they propose that, "instead of trying to identify a single authority, whether it be the state or formal user groups, it is better to identify the overlapping and polycentric forms of governance that influence resource management" (ibid, p.15). Legal pluralism has been developed principally in developing countries, where the discrepancy between *de jure* and *de facto* property rights can often be vast. Nevertheless, there has been a small degree of recognition of its broader potential for first world scenarios, as here too property is rarely as simple and clear-cut as sometimes supposed (Fortmann, 1996).

Third, there are disparate conceptions of the various mechanisms for establishing and maintaining inclusion and exclusion from a particular benefit stream. The principal mechanisms for thus protecting and enforcing property rights (which are not mutually exclusive) are: 1) rules, regulations and statutes; 2) values, norms and customs; and, 3) coercion. As indicated previously, both key common property perspectives highlight the role of both rules and statutes, and values and norms, albeit with different emphases. Moreover, both these mechanisms invoke the notion of legitimacy. However, the conceptualisation of legitimacy differs significantly between NIE and emergent approaches.

A typical NIE perspective is that, "by the term 'rules' we refer to *generally agreed-upon* and enforced prescriptions that require, forbid, or permit specific actions for more than a single individual" (Ostrom, 1986 cited in Ostrom & Schlager, 1996, 250, emphasis added). The importance of legitimacy is advanced more strongly by Bromley (1991), who incorporates it into his very definition of a right, stating that it is, "the capacity to call upon the collective to stand behind one's claim to a benefit stream" (p.15). Thus, for Bromley it is the acceptance and support of the collective that makes it possible to enforce a resource claim. This interpretation is a step towards the emergent perspectives, in that it does not privilege any one authority system, and allows for a relatively dynamic conception of legitimacy. However, the idea of '*the* collective' is problematic and begs a number of important questions. For example, who is the collective? Who is included and excluded, and how? Is there only one collective? In this regard, emergent views point out that, in practice, it is likely that a range of collectives will be connected to any one resource, and emphasise the negotiated and contested processes through which the legitimacy of competing resource claims are established, maintained, or eroded.

Fourth, a key distinguishing feature between the NIE and emergent approaches is that the latter give power an explicit and central role in explaining the delineation of access to and control over benefit streams. Power relations are deemed very important for understanding real-world situations as, "they often determine the distribution and actualisation of rights" Meizen-Dick & Pradhan (2001, 11). Rather than being a homogenous group, commons users and other stakeholders are socially differentiated actors with multiple identities, and hence, often have disparate claims on common resources that compete for legitimacy and dominance (Li, 1996; Leach *et al*, 1999). The bases for such resource claims may be material or symbolic, and their struggle for dominance may take place at a subtle level. Actors can appeal to particular meanings and definitions relating to: the resource, it's use and social groups; to reaffirmed or created identities; as well as to (re)interpretations of historical events, in order to legitimate and strengthen claims to access and control resources (Fortmann, 1996). Conversely, the struggle can occur at a more overt level, perhaps employing a degree of coercion. Indeed, even if one accepts that the struggle for legitimacy always involves the interplay of power relations, it is still possible for power to be exercised by individuals lacking legitimacy.

Lastly, the two strands of the common property debate seem to use different theoretical assumptions regarding the degree to which formal property rights (*de jure*) determine the rights exercised in practice (*de facto*). On one hand, NIE analyses often assume little or no discrepancy between a right to a benefit stream defined in formal laws and regulations and the corresponding benefit stream claimed 'on the ground', due to their normative view of property rights. On the other hand, emergent perspectives stress that actual configurations of use and control effects often deviate from the official delineation. Moreover, they warn that conflating the two scenarios in the analysis of 'real world' natural resource management could be highly misleading. Benda-Beckmann *et al* (1997) stress this crucial distinction, stating that, "principles, rules or laws concerning property rights do not reflect actual practice or actual configuration of property rights' relations. It is important to differentiate between the legal construction of rights from the

actual social relationships that connect concrete right holding individuals, groups and associations with concrete and demarcated resources" (p.26).

3. Crofting common grazings and their institutional arrangements

a) Geographical description

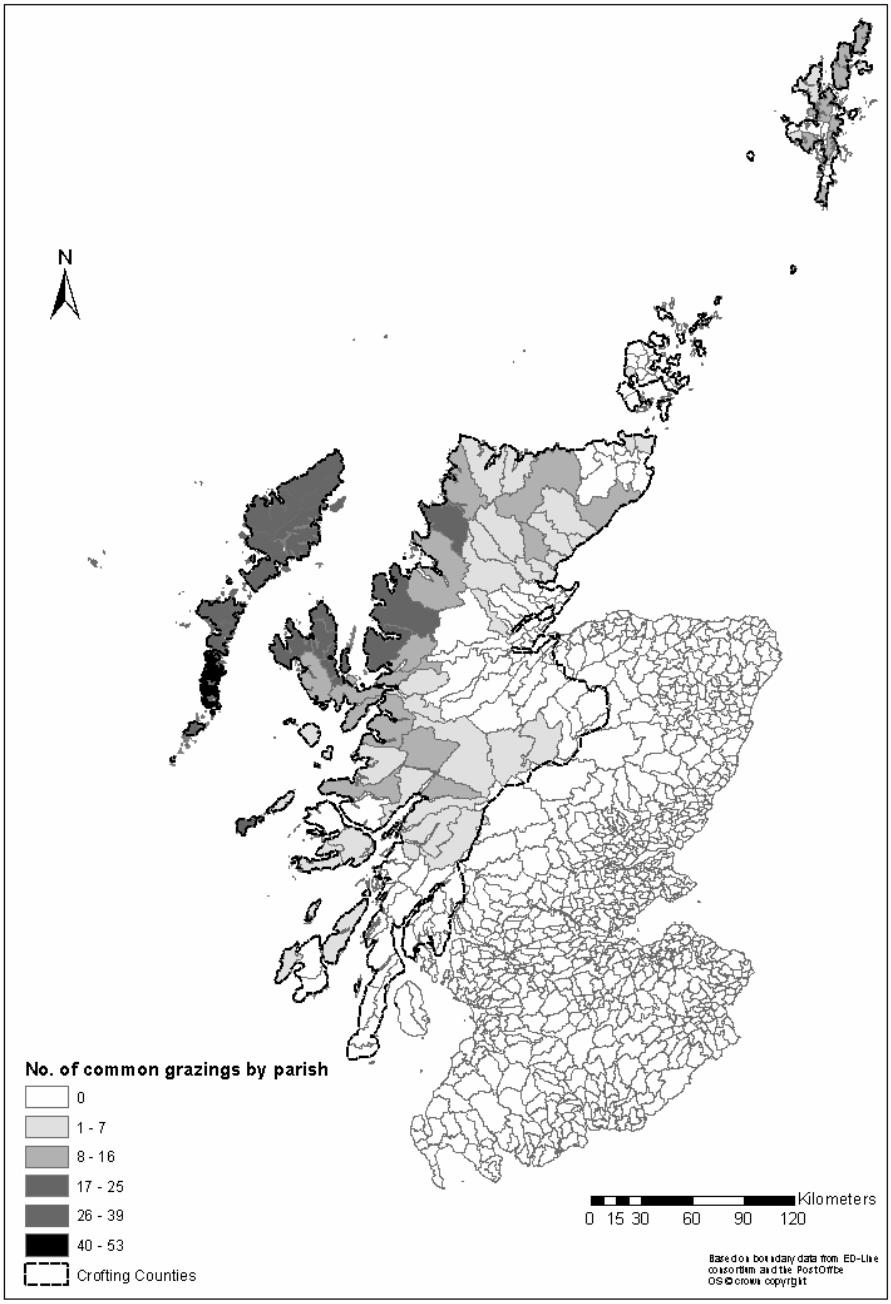
Crofting common grazings are found only in the Highlands and Islands of Scotland (see Fig.3), and constitute by far the most extensive type of historical land-based common property regime of the few to survive in Scotland up to the present time.[1] Currently, there are over 800 distinct common grazings units covering nearly 5,000 square kilometres, which is roughly 12% of the area of the Highlands and Islands (Crofters Commission, 1999). They are distributed primarily on the islands and coastal areas of the northern and western seaboard, stretching from the Argyll Islands in the South at latitude 55.6°, to Shetland in the North at latitude 60.8°.

Common grazings are more prevalent in some counties than others, for example, they cover less than 20% of all mainland counties but account for over 50% of land area in Shetland and the Western Isles (see fig.4). The average size of a common grazings, is 617 Ha, but can vary enormously from as little as 10 Ha to as much as 10,550 Ha. Each common grazings unit can be constituted in more than one parcel, and it is not uncommon to find two or three parcels. A frequent arrangement is a relatively small inner or coastal common grazings parcel situated in close proximity to the village with a larger "hill" parcel stretching onto higher ground away from it. It is often the case that no fence exists between the "hill" sections of different township's individually regulated common grazings. Further, in some areas there are "General Commons" that are shared and regulated between multiple townships.

Areas where common grazings are found are generally cool, wet and windy with salt-laden prevailing westerly winds. Topographically, common grazings have rugged terrain that is frequently steep and/or uneven and punctuated by peat bogs, and can extend to elevations over 1000m. The soils are generally poor, either having impeded drainage and low fertility or, on higher ground, being of a thin and fragile nature with a low rate of organic matter accumulation (SNH, 2002). The combination of all these factors makes common grazings agriculturally marginal, although considerable variation exists in land quality from area to area.

[1] Others include village greens, common mosses, and a small number of commonties (Callander, 2003).

Figure 3: Distribution of Crofting Common Grazings

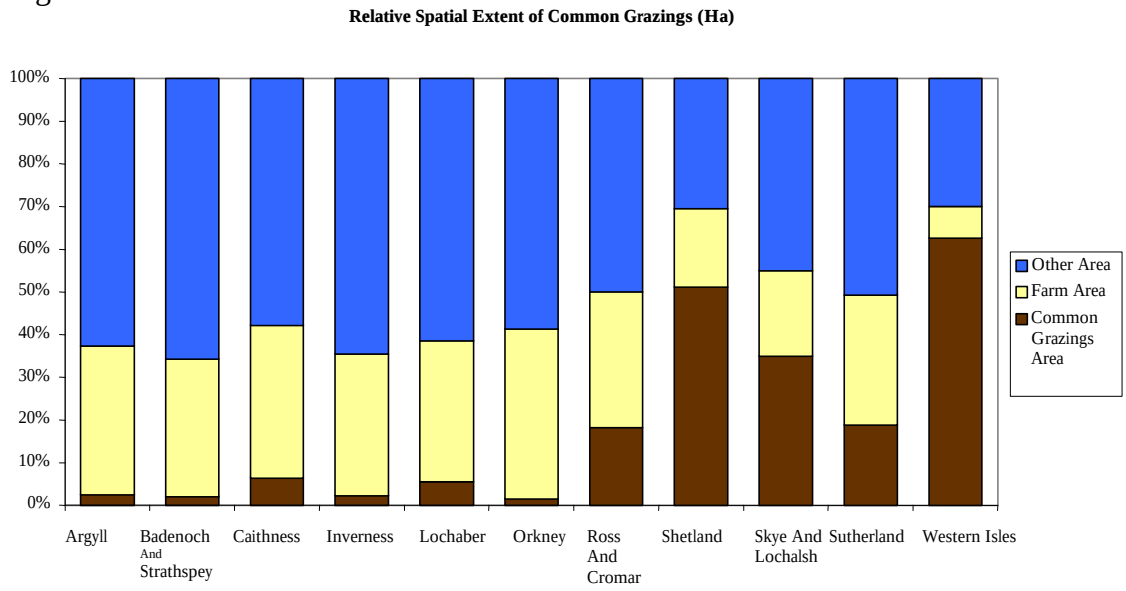


Source: Crofters Commission Data.

Overall, the land cover of common grazings is predominantly rough grazings consisting of heather moorland and peatland, but there are also small areas of woodland, improved grassland, bare rock and machair[2]. Streams and small lochs are also found in abundance. Most of common grazings land is considered semi-natural habitat. Deer are the only large native wild mammals and are thought to be particularly influential in shaping this habitat (SNH, 2002). Common grazings have significant conservation value with many sites protected under the EC Birds and Habitats Directive, or as Sites of Special Scientific Interest (SSSI).

[2] Machair is fertile, low-lying, base-rich, sandy coastal meadows of high conservation value (Warren, 2002).

Figure 4.



(Source: Agricultural Census 1999)

b) Historical context

In Scotland, as elsewhere in the UK, the vast majority of land under communal land tenure was replaced by individual private property between the 17th and 19th centuries contemporaneous with increasing industrialisation, population growth, urbanisation, expansion of the market economy, and supported by specific legislation (Devine, 1994). The incomplete nature of the enclosure process allowed commons to persist in some areas, although the precise circumstances of their survival and their legal histories are somewhat different in different parts of the UK. Crofting common grazings survived partially due to their inferior agricultural quality and remote location, but mainly due to the imposition of the Crofters Holdings (Scotland) Act in 1886 and the Crofters Common Grazings Regulation Act in 1891, which, for the most part, effectively 'fossilised' the basic pattern of land occupancy as it was at the end of the 19th century. Despite a number of amendments, additions, and some consolidation, crofting law has in essence remained relatively unchanged since this time.

Prior to this landmark legislation it was common for agricultural tenants in these areas to have communal access to rough pasture as part of their tenancy, but it would be more accurate to describe this access as a privilege rather than a right, leading to much insecurity. The contraction of the area of land made available for common grazings as well as total removal of access 'rights' were not infrequent occurrences as landowners developed their estates for deer stalking and large-scale sheep farming. Such actions added fuel to the growing civil unrest caused by years of eviction, resettlement in poorer quality areas, emigration and famine. In response, the government passed the 1886 Act and created the crofting system: a unique form of land tenure found only in the Highlands and Islands, encompassing a number of small, individually held agricultural plots known as "crofts" or "inbye" (upon which the crofter's house is usually situated) plus the associated areas of common grazings, constituted in villages known as "townships". This tenure conferred on crofters a set of rights unavailable to any other kind of tenant farmer in the UK, including security of tenure, fair rent, right to bequeath, and compensation at the end of a tenancy.

The institutional arrangements relating to crofting matters are notoriously complicated, thus, will be explained in stages. The first section will begin by identifying the key resources provided by common grazings as well as the key stakeholders perceiving those resources, and who may or

may not hold rights to them. The following sections will explain the regulatory structure and the property rights relations that link the resources and the actors together.

c) Institutional arrangements I: overview of resources and stakeholders

The main resources perceived in common grazings areas (summarised in Fig.5) include: minerals (such as sand, gravel or stone); big and small game for hunting (principal species being red deer, grouse, rabbits, and hares); fishing (principal species being salmon and trout); livestock grazing (for sheep, cattle and horses); woodland (for timber, shelter and conservation); peat (for fuel), seaweed (for fertiliser), heather and grass (for thatching); scenery and aesthetics (physical and cultural landscape); opportunities for recreation (such as hill walking and climbing); conservation and environmental services (such as biodiversity, carbon sinks and waste assimilation); potential sites of development (such as housing, sports facilities or wind farms); and, the ground and remainder (referring to anything left over after any specified rights have been exercised).

Figure 5: Principal resources

- Minerals
- Game
- Timber
- Livestock grazing
- Peat
- Seaweed Heather and grass
- Scenery/aesthetics
- Recreational opportunities
- Biodiversity & environmental services
- Site for potential development
- Ground and remainder

Figure 6: Key stakeholders

- Landlord
- Crofters
- State
- Residents
- Members of the public
- Interest groups
- Investors

The key stakeholder groups (summarised in Fig.6) are, firstly, the landlord who is by definition the legal entity holding the title to the land, usually an individual or company. Secondly, there are crofters and occasionally other agricultural tenants of the landlord who hold specified rights to the common grazings. Thirdly, there is the State operating principally through the Crofters Commission (a government body charged with the functions of reorganising, developing and regulating crofting, and promoting the interests of crofters) but also through its local authorities and its environmental and development agencies. Fourthly, there are members of the public, some of whom might be local residents who are not crofting or agricultural tenants but who value certain aspects of the common grazings, some of whom might be organised into interest groups which are usually recreation or conservation oriented. Lastly, there are investors who may be interested in developments on the common grazings.

The key rights-holders (as opposed to stakeholders) make up a smaller list, comprising the landlord, the state, the crofters, and members of the public, although the bundles of rights they hold are for the most part very different. The use rights and decision-making rights held in minerals, game, the ground and remainder are usually bundled together, as are the use rights and limited decision-making rights for grazing, peat, seaweed, and thatching materials. The former bundle is normally held by the landlord, and the latter by the landlord's crofting tenants. The configuration of rights dealing with development, woodland, and conservation and environmental goods are more complex and will be described more fully in due course.

Common grazings regularly form part of a bigger estate, which is owned by the landlord usually for the main purpose of hunting and fishing. However, some common grazings span more than one estate and thus have a number of different landlords. The crofter's rights to the common grazings are essentially linked to the tenancy of a separate, individually held piece of land, namely their croft or "inbye" land. The rights are *not* linked to residency or membership of a community as in some countries.

d) Institutional arrangements II: regulatory structure

The formal institutional arrangements for the regulation and management of the common grazings exist on a number of levels. At the constitutional level there are several acts of parliament that serve as the fundamental framework for the crofting system. The Crofters (Scotland) Act 1993 consolidated many of these acts and is thus one of the principal pieces of current legislation. However, a new Crofters Act is currently being developed as part of the Scottish Executive's Land Reform proposals[3]. Crofting legislation defines the basic legal rights and responsibilities of crofters, provides for a quasi-governmental body devoted solely to the development and regulation of crofting (the Crofters Commission), and substantiates local-level rules where necessary.

At an intermediate level there exists the Crofters Commission, which is granted with specific regulatory powers and duties to assist it in carrying out its aforementioned functions. A key implication is that many of the activities crofters wish to undertake must gain the prior approval of the Crofters Commission. Another is that the Crofters Commission must as far as possible solve problems that cannot be tackled on a local level. This body is also responsible for administering a small number of important funding mechanisms that specifically target crofters[4].

At the local operational level, there is a Grazings Clerk and a Grazings Committee who are elected by "the shareholders" (crofters holding rights in the common grazings). These individuals serve on a voluntary basis and do not have to be crofters, although they invariably are. Once elected, they have statutory powers and duties with respect to the management, maintenance and improvement of the resource (MacCuish & Flynn, 1990). The Grazings Clerk is responsible for administrative duties, while the Grazings Committee[5] is responsible for three main tasks:

1. MANAGEMENT - making and enforcing Grazings Regulations;
2. MAINTENANCE – maintaining the common grazings and fixed equipment;
3. IMPROVEMENT – improving the common grazings.

The Grazings Clerk and Committee are often the first port of call for the resolution of tensions and conflicts due to their responsibility for enforcing the Grazings Regulations. If issues cannot be resolved at this level, the Crofters Commission becomes involved, and if still unresolved it becomes a matter for the Scottish Land Court. Any person in breach of the regulations is guilty of an offence under criminal law and can be given a penalty of up to £200. With a continuing offence, the offender can be liable for a further £0.50 a day after the Grazings Committee has served notice on it.

The Grazings Regulations deal with aspects of stock management (e.g. fixing dates for the movement of stock and co-operative activities) and resource maintenance and improvement. They are not legally binding until confirmed by the Crofters Commission, who in turn must

[3] A recent piece of Land Reform legislation included the conferment to crofters of the right to buy their land (in effect buy the landlord's interest) even if the current owner does not wish to sell.
[4] Such as the CCDS (Crofting Community Development Scheme) and the CCAGS (Crofting Counties Agricultural Grant Scheme).
[5] The Grazings Committee must have a minimum of three members, and a majority is a quorum.

consult with the landlord. If a committee fails to make satisfactory regulations, the Crofters Commission may make them in their stead. The legislation specifies a number of matters that the regulations must provide for:

- Recovery from shareholders of maintenance, improvement and general committee expenses;
- The number and kind of stock each crofter is entitled to put on the grazings (known as the "souming");
- The alteration of soumings in improved areas where crofters have not contributed to improvements;
- Peat-cutting and seaweed collection;
- Summoning of meetings and the procedure and conduct of those meetings.

The manner in which "soumings" (stock allowances) were originally calculated was complicated and far from being a uniform procedure (Coull, 1968; Hunter, 1976). Variously based on common grazings carrying capacity (as judged by the estate factor[6] or land surveyor), wintering capacity of the "inbye" ground, the area of the "inbye", and the rent paid to the landlord, there are many inconsistencies both within and between townships. Soumings are either expressed as a fraction of the total stock allowance for the common grazings or as an actual number of sheep, cattle and horses. It is normally possible to substitute different stock types but the formula varies from place to place.

In a minority of common grazings, all the stock are communally owned by a Sheep Stock Club and managed together as one flock sometimes employing a part-time shepherd. Instead of being able to run his or her own stock on the common grazings, each shareholder is entitled to a dividend of the profits at the end of the year, calculated according to the original souming. Interestingly, there is no mention of Stock Clubs in any of the crofting legislation. Hence, their regulation must be provided for solely at a local level in the Grazings Regulations.

Another institutional arrangement that was formerly frequently written into the Grazings Regulations was the 'open township'; a temporary system of common property existing only in the winter whereby the stock of the township were allowed to wander over the "inbye" land to graze the residual vegetation from the year's crops. In 1955, however, a new round of legislation made it possible for a crofter to apply to the Grazings Committee (and failing that the Crofters Commission) for consent to exclude the stock of others from his "inbye" ground. This, coupled with a decline in traditional arable cropping, has resulted in the slow but steady individualisation of the inbye ground, with a proliferation of fencing where there was none before.

e) Institutional arrangements III: property rights relations in detail

The configurations of different rights, bundles and rights-holders found in common grazings institutions is summarised in Table 2, based on the framework of Ostrom & Schlager (1996).

Mineral rights

Almost without exception the mineral rights on common grazings land are held by the landlord of that estate, with the rights of withdrawal, management and exclusion qualified by government planning procedures. However, the right of alienation belongs wholly to the landlord who is free to lease it to another party. The crofters are required to allow the landlord (or their contractor) access to the common grazings for the purposes of searching for and mining or quarrying minerals, but the landlord must pay compensation to the crofters for any damages sustained.

[6] The 'factor' is the landlord's representative who manages the estate.

Table 2: Summary of the types of rights held in common grazings resources

X means presence of a property right. (x) means presence of partial or strongly conditional rights.	Types of Rights	**LAND-LORD**	**CROFTERS**	**STATE**	**MEMBER OF THE PUBLIC**
Mineral	Access	X			
	Withdrawal	X			
	Management	X			
	Exclusion			X	
	Alienation	X			
Hunting/ shooting/ fishing	Access	X			
	Withdrawal	X			
	Management	X		(x)	
	Exclusion	X			
	Alienation	X			
Peat	Access	X	X		
	Withdrawal	X	X		
	Management	X	X	X	
	Exclusion	(x)		X	
	Alienation				
Grazing	Access		X		
	Withdrawal		X		
	Management		X	X	
	Exclusion			X	
	Alienation				
Timber/ woodland	Access		(x)		
	Withdrawal		(x)		
	Management		(x)		
	Exclusion	X		X	
	Alienation				
Development	Access	X			
	Withdrawal	X	X		
	Management	X			
	Exclusion	X		X	
	Alienation	X			
Outdoor Recreation	Access	X	X	X	X
	Withdrawal				
	Management				
	Exclusion			X	
	Alienation				

Game & Fishing rights

The full scale of rights (from access to alienation) relating to the hunting and shooting of game[7] and fishing are virtually always held by the landlord. An exception is the crofters' limited right to take ground game (rabbits and hares) as a form of vermin control. They also have the right to claim compensation for any damage caused by game. With both fish and game it is not the creature that is 'owned' but the right to capture and kill them, and until capture they are wild animals. Indeed, both game and fisheries are fugitive resources with common-pool aspects. To reflect this, organisations have been set up to co-ordinate management and enforcement of rights[8]. In addition, there are numerous statutory and local-level restrictions relating particularly to the timing of resource withdrawal, but also to the conditions of the disposal of resource 'units'[9]. With respect to alienation it is competent for the landlord's game and fishing rights to be leased to another party. This is a frequent occurrence and the revenue is often an important source of income for estates. Furthermore, rights to game and salmon are heritable titles and can be separated from the land and sold completely. Rights to capture fresh water fish belong to the riparian owner and can only be leased.

Grazing rights

Grazing rights are recognised in crofting legislation as forming part of a statutory crofting tenancy (i.e. part of "the croft"). Despite the technical possibility of separating these two components of a crofting tenancy, in the vast majority of cases the grazings rights go with the croft (MacCuish & Flynn, 1990). "A right of common grazing, though it may be established by prescription, is usually founded upon a grant in the feudal title[10] of the proprietor" (ibid, p.47). Rights to graze stock on the common grazings are held almost exclusively by crofters. However, in rare cases there are grazing rights attached to non-croft houses in a township, which are usually vestiges of a former pattern of holdings where rights might be given to the residents of a farm house or a minister's house for horses and a "house cow". The landlord does not possess any grazing rights to this area.

The crofters' grazings rights encompass rights of access, withdrawal and management, but stop short of rights of exclusion or alienation. The management rights must be shared to a large extent with the Crofters Commission, which also holds exclusion rights. There are no rights of alienation as the other collective-choice rights are bound in law to be held between the Crofters Commission and the Grazings Committee. The arrangement for sharing the management rights between the Grazings Committee and the Crofters Commission involves the former being the active manager, but one who must gain the approval of the latter for a large range of actions, including the crucial approval (and thus legal recognition) of the Grazings Regulations. The Crofters Commission possess rights of exclusion by way of their power to decide who can and cannot be assigned a croft tenancy when one becomes available.

A further element of grazing rights is the right of any shareholder to apply to the Crofters Commission to apportion part of the common grazings for their exclusive use. The Commission must consult the Grazings Committee and often consult the landlord and other shareholders too.

[7] Game here refers to deer, hares, rabbits, pheasants, partridges, grouse, black game, capercailie, ptarmigan, woodcock, snipe, wild duck, widgeon and teal.

[8] For example, a structure of salmon fishery management bodies for the main rivers in Scotland has existed since the 19th century, known currently as District Salmon Fishery Boards, which has statutory powers for management and enforcement. There are bodies for freshwater fish management also but these are less co-ordinated and standardised. Also there exist Deer Management Groups, which are encouraged by the government (through the Deer Commission) to co-ordinate management.

[9] For example, it is illegal to sell rod caught salmon or sea trout.

[10] It should be noted that feudal tenure has recently been abolished with the passing of the Abolition of Feudal Tenure etc (Scotland) Act 2000.

If granted, the right may be conditional on fulfilling actions such as the erection of fencing or the improvement of the land. It is technically possible to fully apportion, and thus effectively privatise, the common grazings. However, this is extremely rare.

Peat rights

Although the right of peat-cutting is commonly associated with the grazing rights, it is separable from them. Both the landlord and crofters have access and withdrawal rights to cut peat from the common grazings, but these rights are limited by the domestic requirements of the users. Crofters have a prior right to cut sufficient peat for the present and prospective requirements of their croft, and the landlord (or anyone authorised by the landlord) has the right to take any peat surplus to the requirements of the crofters. However, peat can only be taken by the landlord for domestic or estate use and not for commercial peat extraction. Thus the alienability of these rights is rather limited even for the landlord. In addition, the landlord has the right to specify the areas in which peat may be extracted. The Crofters Commission has a limited management right insofar as it retains the power to design a scheme regulating the crofters' access to and withdrawal of peat if it is deemed necessary. It also has a limited exclusion right insofar as it can influence who can be assigned a croft tenancy, and thus the peat rights that form a part thereof.

Woodland, timber and tree-planting rights

Until 1992 crofters did not have any forestry-related rights to the common grazings, and the rights to any existing trees were held by the landlord, although it seems that the landlord did not have the right to plant trees either. However, the Crofter Forestry (Scotland) Act 1991 conferred onto crofters the right to plant trees on the common grazings and to use it as woodland, but only on the condition that the Grazings Committee obtain the written permission of the landlord as well as the approval of the Crofters Commission. Thus, the landlord and Crofters Commission possess strong rights of exclusion. There are no alienation rights as it is solely the Grazings Committee who can apply for consent. If granted the consent gives crofters the right of withdrawal and access. Once consent is given it lasts a maximum period of seven years before becoming void. However, if consent is not given the crofters have no right of appeal. Unlike some agricultural tenancies there is no right enabling the crofter to receive compensation for any trees planted if the tenancy comes to an end. The legislation also specifies that these rights should *not* be exercised in such a way that the whole of the common grazings becomes woodland.

Seaweed, heather and grass rights

In the past, seaweed was widely used as a fertiliser for arable cultivation on the croft and heather and grass were used for thatching for the croft houses. However, these rights are exercised very rarely nowadays. The main exception is crofters who collect seaweed for their croft in conjunction with their participation in an Environmentally Sensitive Areas (ESA) scheme, in which they are specifically paid to cultivate the machair for environmental benefits.

Development rights

In general terms, if a development (e.g. building of a house) takes place on the common grazings the law articulates that the landlord and the crofters must share the development value 50:50. However, the crofters have *no right* to initiate development themselves, and the landlord's right to initiate development is conditional upon two separate levels of state permission. Firstly, the state reserves the right to prevent any development that is thought to contravene the public interest through the planning system. Secondly, if a landowner wishes to undertake a particular development he must apply to the Scottish Land Court to resume the relevant portion of land from the crofting system[11]. This authority is usually conditional upon the development being for

[11] Also known as 'decrofting'.

the good of the common grazings, the estate or the public interest, for example, housing, public facilities, or any purpose likely to create local employment.

Recreational rights

Members of the general public have recently been given a 'right of responsible access' to land and water for outdoor recreation and passage by way of the Land Reform (Scotland) Bill, which completed its passage through the Scottish Parliament in January 2003. Prior to this there was a widely perceived but legally ambiguous 'right to roam'.

Rights to scenery, conservation and environmental goods and services

There are a number of laws and regulations dealing the protection of conservation and environmental goods and services, although these are far from comprehensive. There is a degree of protection given to particular wildlife but many of the laws and regulations relate to the prevention of pollution, and some are notoriously difficult to enforce for agricultural circumstances (Lowe et al, 1997).

The main UK conservation designation is the SSSI (Sites of Special Scientific Interest), which in total covers 11% of the area of Scotland. However, under Natura 2000 the system is currently in transition from the SSSI designation to the SAC (Special Areas of Conservation) designation. The previous SSSI arrangement specified and prohibited a number of PDOs (Potentially Damaging Operations) for each designated area. The government had the right to force the landowner to refrain from taking a PDO-related action, and the landowner had a corresponding duty to refrain. However, the government was then obliged to pay the landowner compensation, and if there were insufficient funds for the compensation, the landowner could go ahead with the forbidden action. This procedure has been heavily criticised for allowing landowners to claim 'money for nothing'.

The new system removes the liability rule protecting the landowner and places an emphasis on payments for positive management measures. Here as with non-designated areas, the general scenario is that the public may benefit from the privilege of certain conservation or aesthetic goods that a land manager voluntarily provides, but has no corresponding right. If the land manager wished to stop providing such goods, the public has no recourse but to 'buy' them (unless the action is so severe it is covered by the aforementioned laws). Thus, if the government wants to increase the provision of conservation goods, the land manager must, firstly, consent, and secondly, be paid for positive management through a management agreement or similar.

4. Common Grazings in Practice

To understand how common grazings institutions operate in practice, one must also grasp the ways in which rural change is manifest in common grazings scenarios. This involves an examination of the trends in both resource use and in the associated institutions.

a) Trends in common grazings use

As with most rural areas, the opportunities for the generation of revenue and maintenance of livelihoods in crofting areas have generally been contracting with the declining profitability of upland livestock production[12] and the limited expansion of possibilities for alternative uses. The overall result for common grazings has been a decline in the relative socio-economic importance

[12] Due to levels of subsidy and poor market prices and exacerbated recently with the outbreak of Foot and Mouth Disease in 2001.

of the resource, both in comparison to the individual "inbye" land, and in comparison to other sources of income and employment.

Crofting agriculture has never been a full-time activity, with supplementary employment in industries such as fishing, weaving, oil, or the public sector being an integral part of the system. Nevertheless, it is widely acknowledged in crofting circles that, at least until the 1950s, most crofting townships could rarely have survived without common grazing to provide for many of their subsistence needs, and even as this contribution waned, the resource remained an important as a source of cash income, principally from sheep production. In recent years, however, the proportions of household income provided by crofting agriculture have been substantially reduced and in many cases are now negligible[13]. Indeed, it is becoming increasingly common to find previously ancillary employment now subsidising the agricultural activity on the croft. The foremost value of crofting agriculture appears now to be the cultural and symbolic value, with livelihoods essentially being maintained by other employment or pensions.

The accompanying economic imperatives have induced many crofters to reduce or remove the stock they have on the common grazings. On average only 75% of available grazing shares are currently used, which is 78% of the shares used 10 years ago. Some crofters have quit stock-keeping altogether, whilst others have continued to run stock on their "inbye" land only, seeing it as the only way to continue in agriculture within the time-constraints of a full-time job. On average only 50% of shareholders currently run stock on the common grazings, and this figure is decreasing each year, although, the extent of the decline varies greatly between individual cases. For example, in over 8% of cases all of the shareholders ran stock on the common grazings, but in 9% of cases there was only one agricultural user (effectively *de facto* privatisation), and 7% of common grazings have no shareholders using them at all (effectively abandoned). The percentage of shares used is higher than the number of users because in some cases where a crofter has reduced or removed stock, other crofters have increased their stock to utilise the unused shares.

Despite the overall decrease in grazing intensity, the grazing impact has not always decreased but become more uneven spatially. It is now common to find simultaneous undergrazing and overgrazing on the same common grazings, because less stock are hefted[14] to the hill, shepherding is now rare, and stock are frequently turned out on the nearest area of common grazings (sometimes just overnight), and remain close to the boundary fence in anticipation of being brought in or fed.

Another marked trend is the change in user attributes. Due principally to the movement of exurbanites into crofting areas, shareholders are becoming increasingly heterogeneous, both culturally and socio-economically. In tandem, the set of meanings and values attached to the common grazings by both shareholders and wider society has broadened considerably. The previously dominant values surrounding the resource's ability to provide a (partial) livelihood is increasingly being challenged by conservation and amenity values, as well as different socio-cultural and symbolic values.

b) Common grazings institutions in practice

It is perhaps unsurprising that paralleling the declining use of common grazings is a general decay of local common grazings institutions. This is evidenced in the diminishing capacity of the

[13] Sutherland and Bevan (2001) found that less than 1% of crofting household income comes from agricultural returns.

[14] Hefting is a grazing practice whereby ewes and their offspring return every year to the same area of land.

institutions to involve shareholders with the will or ability to invest time, effort and/or finance in communal resource management. Many of the more formal institutional elements are often still in place, such as the registration of an official Grazings Committee with the Crofters Commission[15], but the less formal operational aspects are often either stagnating or absent. Consequently, the role played by local common grazings institutions in crofting townships is changing inexorably, but so is the role *expected* of them by government agencies and the like. The great irony is that, more often than not, there is a great disparity between the actual and projected roles, each of which will be elaborated in turn.

Firstly, the Grazings Committees are generally less active, and command substantially less interest and respect than they did in former times. Previously, it was not uncommon for Grazings Committees to be considered as a form of local government, dealing with the issues central to the running of the township, and accordingly wielding much power. Now it is generally very difficult to recruit members on to the Grazings Committee of a common grazings, and meetings are becoming increasingly rare and badly attended.

Secondly, communal activities with respect to both stock management and resource maintenance and improvement have become less frequent occurrences and involve much fewer participants than in the past. Once universal activities such as stock gathering, dipping and clipping are now becoming rarer. For example, in Table 3 it can be seen that only 68% of common grazings have any communal stock gathering. Whereas once these co-operative activities were social occasions involving the entire township, they are now typically carried out by three to five individuals.

Table 3: Co-operative activities on common grazings

Collective Activity	Stock Gathering	Stock Management (e.g. sheep dipping)	Resource Maintenance (e.g. fencing repairs)	Resource Improvement (e.g. reseeding)	Stock Club[16]
Percentage of common grazings units on which activity occurs	68%	49%	63%	24%	7%

Furthermore, where daily co-operation was once the norm, only 3% of cases now perform this, and 18% of cases have no co-operation at all (see Table 4). Of the shareholders that do run stock on the common grazings, many are either in full-time employment or are rather aged, making it very difficult to assemble the required human resources at a mutually convenient time. Where common grazings size and topography does not permit crofters to gather their stock alone, the decision must be made whether to invest in working together with the other shareholders, hire contractors, or remove their stock altogether.

Thirdly, there is a marked decline in the adherence of the shareholders to the Grazings Regulations, accompanied by lower levels of monitoring and fewer incidences of regulation enforcement. In 54% of cases the Grazings Clerk admitted that the Grazings Regulations were not adhered to, and the actual figure is likely to be higher. The reason often given is that the perceived relevance and need for the Regulations is much less clear than in the past. Nowadays, if a shareholder exceeds their 'souming', either nobody cares about the infringement, or there is

[15] Up to 96% of common grazings still have a Grazings Committee.
[16] In a stock club a livestock herd is administrated and managed wholly as one unit in order to produce an annual dividend for shareholders.

insufficient backing from the other shareholders for rule enforcement, often due to the parlous state of agriculture. At first sight it may seem unproblematic for the few remaining 'active' shareholders to work out their own informal system of distributing the unused rights either implicitly or explicitly, and in the short term this is often the case. However, where the rights have become ambiguous over time, and the legitimacy of the Grazings Committee has been eroded, difficulties have been known to arise at a later date in cases when the resource has become revalorised by a new development or project (e.g. crofter forestry) and disagreements occur about who should hold which rights.

Table 4: Frequency of co-operation on common grazings

Frequency of Co-operation	Mean Percentage of Cases
Every day	3%
Every few weeks	15%
Every few months	37%
Once or twice a year	27%
Never	18%

Simultaneously, the role *expected* of common grazings institutions particularly by government agencies and funding bodies is also changing. It is seen less about regulating access to and appropriation of resource units, and more to do with playing a more community-oriented entrepreneurial role, usually involving diversification from the productivist agricultural model.

The clear message from policy documents (e.g. the Scottish Executive's land reform policy) is that greater co-operation and inclusiveness is desired with regard to rural resource use and control. On one hand, more and more crofters are of external and usually urban origin. On the other hand, crofters are increasingly being steered towards the involvement of the wider 'community' (i.e. non-crofting residents) in projects involving common grazings, with the government seeing the resource as an asset for all the residents of the area and not just those holding formal rights. Therefore, pressure is mounting to engage with and harmonise a greater diversity of interests in the common grazings, both within the group of shareholder crofters and between shareholders and the wider community.

This is perceived as a great challenge, if not a threat, to many existing shareholders. Local common grazings institutions always served as a forum for avoiding and solving conflicts between different interests, but for most of the time since the inception of formal common grazings institutions, the shareholders have been a far more culturally and socio-economically homogenous group than they are now. Formerly, all crofters were agriculturalists and all were poor. As one interview respondent said, "it was easier in the old days, we were all the same then … we all had nothing".

Furthermore, the delivery of EU and UK government rural development policy in crofting areas, principally through government bodies[17] and agencies such as Local Enterprise Companies the Crofters Commission, Scottish Natural Heritage and the Forestry Commission, has increasingly employed competitive bidding as the primary mechanism for distributing resources for development projects and schemes. The key implications for representatives of common grazings shareholders (usually the Clerk or Committee members) are twofold. If any ideas or projects for the common grazings are to be taken forward, first, there has to be a general consensus built amongst the shareholders regarding the nature and details of the endeavour, and, second, there

[17] Primarily SEERAD (Scottish Executive Environment and Rural Affairs Department).

must be at least one individual with the awareness, skills, and enthusiasm to facilitate such consensus-building and to complete a "winning" application.

c) Counter-trend to institutional decline

For the most part, this projected image of local common grazings institutions provides a stark contrast to the empirical reality described above. Nevertheless, despite the rather gloomy overall picture of crofting common grazings, the trend towards disuse and institutional stagnation is not universal. Indeed, there is a small but crucial counter-trend that demonstrates that there is no inevitability in the decreasing use and institutional decay experienced on most common grazings. Approximately 8% of common grazings could be described as dynamic, in that they have high proportions of shareholders using the resource, frequent co-operation, and high levels of Committee involvement and vitality. Two broad types of "dynamism" can be identified, which are not mutually exclusive. There is the dynamism that accompanies the pursuit of 'traditional' agriculture whereby a critical mass of shareholders is considerably committed to common grazings use and associated co-operation. There is also the dynamism that accompanies endeavour to diversify common grazings use through the development of projects usually with the draw down of grants.

However, to say that common grazings use is diversifying is to simplify the issue, since there has been no unidirectional trend. In the post-war period, the diversity of uses of the common grazings actually contracted, as products provided by the resource were gradually replaced with substitutes purchased from elsewhere. The decline of the 'house cow' as a household milk provider, the waning in cereal and vegetable growing, the decline in the use of peat for fuel, and the use of modern building materials rather than stone and heather, are all good examples. This, coupled with the then-substantial opportunities to generate revenue from sheep/lamb sales and subsidies, led to a far-reaching transition to a phase of sheep monoculture that is still largely dominant in crofting today. Nevertheless, there are some signs that land use on common grazings is now diversifying again, with new opportunities being taken in areas such as forestry, tourism, conservation and heritage management and renewable energy generation.

Forestry is not at all a historically prevalent land use on common grazings, as until recently neither crofter nor landlord had the right to benefit from any trees planted there. This situation changed with the passing of the Crofter Forestry (Scotland) Act 1991[18] and the availability of favourable forestry-related grants. Now approximately 12% of regulated common grazings have been approved for a crofter forestry scheme[19]. Further opportunities have been grasped in the form of agri-environmental schemes, although so far only 17% have actually entered into some kind of conservation management agreement[20].

One of the most pertinent issues for common grazings in the near future is widely thought to be the drive towards increasing energy generation from renewable sources such as wind, wave and biomass. The Scottish Executive has committed itself to further development of these sources as demonstrated by the Renewables Obligation (Scotland) 2002, which states that Scotland must contribute to the total of 10% of the UK's energy requirements that must come from renewable sources by 2010. So far there is only one common grazings with planning permission to install a wind farm but there are a number of such proposals in the pipeline.

[18] The Crofter Forestry (Scotland) Act 1991 entitled Grazings Committee to plant trees on up to 10% of the common grazings with the consent of the landlord and the Crofters Commission.
[19] Up to September 2001, Source: Crofters Commission Annual Report 2001-2002.
[20] Through schemes such the RSS (Rural Stewardship Scheme), a Habitat Management Scheme, or through being an area designated as a SSSI (Site of Special Scientific Interest) or as ESA (Environmentally Sensitive Areas).

5. Issues for further investigation

From the illustration of common grazings outlined above, the variation between dynamic and stagnating local institutional arrangements is striking. A minority of institutions appear to be capable of adapting to and taking advantage of the shifting configuration of opportunities and constraints, whilst the others do not. These observations provoke the crucial question: why is there a differential institutional response to changing rural circumstances? In other words, why are some local institutions in decay and others thriving when they are all underpinned by an identical formal structure and are subject to very similar external pressures? The empirical investigation raised the following as possible explanatory factors:

Socio-economic factors

Most likely, socio-economic factors such as demography or the nature and availability of local employment affect the capacity of local resource management institutions. Demography may be particularly pertinent as the rural population of the Highlands and Islands is both ageing and declining, especially in remoter areas. However, these factors alone do not explain the institutional differentiation, as common grazings with very similar demographic and employment profiles can still vary enormously in terms of institutional dynamism, often in counter-intuitive ways. For example, there are common grazings with numerous, relatively young shareholders that are institutionally moribund, and cases with few, aged shareholders that are very dynamic. Similarly, having a ready source of employment in close proximity seems to influence the vibrancy of common grazings institutions, but not in a unidirectional way.

Not holding property rights to newly-valorised aspects of the resource

Since crofters are not the only kind of actor with rights to the resource it is possible that at present, the most pertinent rights are held by the landlord or the State. For example, renewable energy generation is put forward as one of the major opportunities for common grazings but Grazings Committees are relatively powerless to initiate such development[21], and even if the landlord does so, the shareholders cannot receive more than 50% of this development value. Conversely, the purchase and installation of wind turbines and infrastructure is extremely capital intensive in the early stages. In the absence of greater government support, it is questionable whether crofters can surpass this obstacle without the business skills and financial backing of their landlord. This scenario may also be applicable to other types of development.

Difficulty of capturing "newer" values

Many of the increasingly valorised aspects of common grazings, such as conservation, aesthetics and amenity, are less tangible than productivist aspects and have public good characteristics. Such values are more difficult to capture economically, because excluding people from the good can be problematic, opportunities to capture value directly through market mechanisms are few, and policy mechanisms such as designated areas and agri-environmental schemes are notoriously under-funded. Some shareholders capture such values *indirectly* through market mechanisms if they have a tourist facility such as Bed and Breakfast. However, non-shareholders are equally free to capture this value, so holding property rights to the resource does not confer any extra advantage in this regard.

Inter-institutional conflicting values

The values underpinning the opportunities provided by common grazings revalorisation are not always compatible with the interests and values of the shareholders. For example, chances to earn income from conservation management or forestry can be perceived as a threat to more

[21] Unless community ownership has been established.

"traditional" crofting activities and a general challenge to crofting as a(n essentially agricultural) way of life, even if the former generate greater financial rewards. There is a tension between policy and market signals on one hand, which are felt to reflect the wishes of the urban majority and the wishes of the 'traditional' rural minority on the other, particularly with respect to the way land should properly be used and how people should be able to earn a living from it. This tension can also be manifest within a crofting township between the shareholders and the (usually exurbanite) non-crofter residents.

Intra-institutional conflicting values

Similar frictions can also exist *amongst* the shareholders regarding the principal values they might aim to realise from the common grazings. Most common grazings have at least some exurbanite shareholders so the above situation can apply within the collective too, but it is rarely as simple as a local versus incomer issue. Appeals are frequently made to various fluid and unstable identities, especially to notions of what it is to be a "real crofter" or not, and what it is to practice "proper crofting" or otherwise. The negotiation and contestation of such notions means that certain users, uses or objectives can have greater legitimacy than others, thus shaping both the land use outcomes and the nature, magnitude and distribution of the benefits produced.

Institutional "fit"

The institutional capacity to cope with rural change seems to be affected by a lack of "fit" or congruence, both between formal and informal institutional arrangements, and between these and the current set of opportunities and constraints. Firstly, there seems to be an increasing discrepancy between the way informal common grazings institutions are supposed to compliment the formal institutional structure, and their current operation. The lack of monitoring or enforcement of the grazings regulations is but one example. Secondly, many 'resources' perceived in common grazings today were not recognised as such when the formal crofting institutions were formulated. This is evidenced in the relative lack of formal, detailed specification of rights to more recently valorised aspects of common land, such as biodiversity, aesthetics, exposed hill-tops (for wind energy), and until recently, trees and woodland. Such 'resources' are not necessarily easy to delineate rights to, but a more systematic approach to their 'appropriation' could prove superior to 'shoehorning' into the 'traditionally' oriented framework. The challenge would be having a sufficiently flexible institutional framework to deal with the, perhaps unexpected, ways in which common grazings might be valorised in the future.

Concluding Remarks

Historical commons found in post-productivist contexts present a range of new challenges to both popular and academic understandings of commons. Here the pertinent issues for commons institutions differ both from those experienced in the past 'on the ground', and from those typically discussed in the common property debate. Fresh challenges stem from: a) the decline in economic importance of 'traditional' commons products; b) the increasing diversity of values attached to the commons by an increasing diversity of people; c) the public good characteristics of many of the 'newer' goods demanded of the resource; d) the principal issue being resource revalorisation rather than overexploitation; e) tensions arising between increasingly disparate resource claims. Therefore, a key area for commons research is to understand how commoners and commons institutions have responded to these challenges, and the social, economic and environmental outcomes thus produced.

Preliminary empirical investigation of common grazings in the Highlands and Islands of Scotland revealed a twofold response to such challenges. The overall trend was one of declining use and institutional decay, but there was also a small counter-trend of cases displaying high

levels of use and co-operation. The pertinent issue thus to be addressed involves explaining this differential response. The empirical findings draw attention to a number of possible explanatory factors requiring further investigation including: socio-economic trends particularly in population and employment; the specification of rights to newly valorised aspects of the resource; the difficulty of capturing 'newer' values; inter- and intra-institutional conflict of values; and, institutional "fit" between formal and informal institutions, and between these and broader rural circumstances.

Gaining a deeper understanding of these issues requires the researcher to go beyond mainstream common property theory, underpinned heavily by New Institutional Economics, and draw upon insights of the 'post-institutional agenda' identified by Metha *et al* (2001). This is due to the significant differences between typical common grazings scenarios (and possibly other post-productivist commons) and those commons scenarios to which NIE frameworks are most aligned.

Common grazings scenarios are characterised by multiple resource types (private, public, common-pool), multiple uses, and multiple user-groups, giving substantial scope for tensions between different resource claims, and requiring multi-purpose governing institutions. In addition, the dependence upon or salience of the resource to the rights-holders is generally low and in decline, leading to a situation where the revalorisation of the commons is the key concern, *not* the aversion of 'tragic' overappropriation. Furthermore, the formal institutions are uniform across all common grazings and have remained remarkably unchanged for the last century, whilst informal institutions have tended towards decay with many demonstrating substantial discrepancies between their characteristics and the important characteristics identified by Ostrom (1990). Paradoxically, this is concurrent with increased pressure from policymakers on informal institutions to access newer benefit streams, which are less specified in rights and legislation that more traditional benefit streams. Contextual factors, such as demographic change and local employment appear to be of central importance, but the relationship between them and common grazings use and governance requires further exploration.

In contrast, commons scenarios to which NIE frameworks are most aligned are characterised by a single resource type (common-pool), single use, and single user group with single-purpose governing institutions. Dependence upon or salience of the resource is assumed to be high, and accordingly, avoiding over-appropriation is the key concern. Analytical approaches tend to be apolitical, overlooking the tensions and struggles between different values and interests, and static, giving little consideration to the social interactions through which access and control is secured or otherwise by particular individuals and groups. Formal institutions tend to be privileged over informal institutions, and where the latter are the focus, they tend to be decontextualised and not seen as embedded in broader socio-cultural relations.

Overall, it is conceded that mainstream approaches to understanding commons are useful both for highlighting a range of important factors, as well as for mapping out configurations of formal property rights associated with common-pool resources. However, it is clear from this study and other empirical work that commons not meeting certain conditions or assumptions do not simply fail or disappear. The outcomes are rather more complex, and in the current political climate, the response is unlikely to involve the elimination of common property in such scenarios. Rather, real-life commons and their impact on social, environmental and economic spheres need to be understood. Accordingly, the priorities for common grazings research are to better understand what is *actually* happening, and why.

Mainstream approaches can help to assess the desirability of particular resource, user and institutional characteristics but they cannot so easily address questions about how and why certain conditions or assumptions are, or are not met, and how these relate to particular outcomes. Aspects that are of central importance in post-productivist commons are often assumed away in mainstream analysis, instead of being specifically problematised and their effect on commons institutions understood. Thus, at present, mainstream approaches appear better equipped to explore normative property rights issues than to explain how property rights and relations are played out in practice in specific contexts such as common grazings.

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Community Rights and Access to Land in Scotland[22]

David Sellar,
School of Law, University of Edinburgh

The purpose of the paper was to give a flavour of the great land debate which has been raging in Scotland for some years, and of which the most tangible outcome so far has been the Land Reform Scotland Act. This Act, passed by the Scottish Parliament in January 2003, contains provisions permitting general public access to land, and allowing for the community purchase of land. Before moving on to the land debate, the paper considered a number of preliminary points: the history of commons or "commonties" in Scotland; whether anything approximating to an *allemansrett* might be said to exist in Scotland; the Trust concept; and two myths regarding ownership and access.

Commons or commonties

The history of commons in Scotland, or "commonties", as they are often referred to, is very different from the better known history of the commons in England. In Scotland division and enclosure of common land came rather later than in England, and does not appear to have been, at least at first, so socially disruptive. The last purely Scottish Parliament before the Union with England in 1707 passed some significant agricultural legislation, including the Winter Herding Act of 1686, the Runrig Lands Act of 1695 and the Division of Commonties Act, also in 1695. This last provided for the division of commonties among the various interested proprietors, although excluding from its ambit commonties in which the Crown was one of the proprietors, and the commonties of royal burghs. Some royal burghs, especially in the Borders, have continued to guard their commons jealously until the present day. Following the 1695 and later Acts there were great changes in farming practice in Lowland Scotland in the 18th century, often involving enclosure and eviction. Although there were some demonstrations and riots this was a largely peaceful process when compared to the trauma of the "Highland Clearances" in the following century (see further below).

Does anything approximating to an "allemansrett" exist in Scotland?

Although there was a wide-spread belief in the existence of a general public right of access to land in Scotland prior to the Land Reform Act, a right often referred to as "the right to roam", this was controversial, and in the opinion of some, including the speaker, a myth not founded upon law (see *Two myths* below).

However, there are some longstanding public rights to the "foreshore" in Scotland, that is, the land between the high and low watermarks of ordinary spring tides. Although traditionally couched in the language of feudal land lawyers, these rights amount in effect to an *allemansrett*. There is, it is said, an inalienable Crown right in the foreshore, in order to safeguard its use by the public for the purposes of navigation, fishing and (in all likelihood) recreation. There is also a public right of navigation in non-tidal waters. As one of Scotland's older authoritative legal writers, John Erskine of Carnock, writing in the 18th century, put it, the Crown's right in such matters is "truly no more than a trust for the behoof of the people."

The Trust concept in Scotland

As the above quotation illustrates, the concept of a "trust", so closely associated with English law, is well known in Scotland also, and has proved extremely useful. However, the trust

[22] Abbreviated version of paper given at *Landscape, Law and Justice Seminar*, Oslo, 12th March 2003

concept, as received and adapted into Scots law, is free from many of the abstruse technicalities of English law – there being, for example, no division in Scots law between "common law" and "equity" – and is therefore, it is suggested, much more suitable for export.

Many trusts hold land in Scotland, some of them expressly for the benefit of the public. For example, the National Trust for Scotland, established in 1931 as a charity "to protect and promote Scotland's natural and cultural heritage for present and future generations to enjoy", owns many properties in Scotland, including castles, houses great and small, gardens and areas of natural beauty. It enjoys wide public support. A more recent established Trust is named after the celebrated John Muir (1838-1914), one of the pioneers of the world conservation movement. Muir was born in Dunbar, near Edinburgh, but emigrated when young to the United States. The John Muir Trust was formed in 1983 to protect and conserve wild places and to increase awareness and understanding of their value. It now owns and manages 20,000 hectares in the Highlands and Islands, including Ben Nevis, the highest mountain in Britain. An interesting variation on the trust theme, the Stornoway Trust, was established by Lord Leverhulme, about 80 years ago. Leverhulme, a wealthy industrialist, was the proprietor of Lewis and Harris in the Outer Hebrides. He set up the Stornoway Trust, with trustees partly *ex officio* and partly elected, to own and administer the greater part of the land in the parish of Stornoway in the northern part of Lewis for the benefit of the inhabitants of the parish. A further variation on the theme is the Shetland Amenity Trust in the Northern Isles.

In addition to these private trusts, there are also some public bodies which hold or care for land in trust. The most notable of these is Historic Scotland, the rough equivalent of "English Heritage", an executive agency which looks after many ancient monuments and historic buildings, from the royal castles of Edinburgh and Stirling to neolithic structures such as Maes Howe in Orkney.

More recently, and rather belatedly, two National Parks have been established in Scotland, the Loch Lomond National Park in 2002, and the Cairngorm National Park in 2003.

Two myths

Two myths regarding the ownership of and access to land have been very influential in Scotland:
(i) The first is encapsulated in the phrase "the right to roam", already mentioned. The belief that there is (or was, before the passing of the Land Reform Act) a right to roam, was regarded by many as no myth, but as a legal right. This belief was deep seated and widely held, especially in the Highlands, yet it appeared to have no basis in strict law. Even judges, however, were not unsympathetic towards the belief. For example, in a case concerning public rights of way heard in 1866, the judge, Lord Deas, observed:

"I have been familiar with hills myself on which I would have thought it a most invidious thing if I had been prevented from going to the top and down again, and I never knew of anybody so prevented. But that did not give a right, and could not be pretended to have been done in exercise of a right."

The debate regarding access to land quickened towards the end of the 20th century, together with a parallel debate concerning the ownership of land, to such an extent that it became almost an article of faith among many hill walkers and ramblers that there was a "common law" right to roam.

(ii) The second myth which is regularly put forward is that in the days of the clans
land was held in common, or at least in trust for all the clansmen. Unfortunately, those who assert this myth of primitive clan communism have shown a distinct lack of intellectual rigour

about what is meant by a "clan", about what period of time is under discussion, and about how the clans acquired their land in the first place. The thesis has, in fact, no basis in law or history. It has, however, proved surprisingly powerful and re-surfaces at regular intervals. For example, in a letter written to *The Times* newspaper dated 25th January 2003 Ian Sandison asserted that:

"Clans had territory. The "laird" [i.e. the chief] led the clan in protecting it. It was never his to sell and no one had any right to give him title to it."

This bold assertion drew a response from Lord Jauncey, a retired Lord of Appeal in the House of Lords no less [effectively, a supreme court judge], who replied on 30th January:
"Sir, Mr Ian Sandison states that no one had any right to give the laird title to clan territory. King James V had no doubt that he had such right when, for example, in 1539 he granted to Donald Mackay in Strathnaver extensive lands in and around that strath [valley]. The Great Seal Register abounds with similar grants of land in the crofting counties by different monarchs in favour of individuals."

A third letter, however, written on 3rd February, reverted to the original proposition.

Another manifestation of this type of myth has been provided by the recent saga of "Who owns the Cuillins?", the Cuillins being the name of the famous and much photographed mountain ridge in the island of Skye. The MacLeods have been major landowners in Skye, including the area of the Cuillins, for over 700 years, the title to the land being in the name of the chief of MacLeod. The Cuillins were put up for sale recently by the chief of MacLeod at an asking price of £10 million pounds. His right to do so was challenged in some quarters on the basis that no-one could, no-one should, be able to lay claim to the high mountain tops and sell them like any other piece of land. It was the first time, it would appear, that such a claim had been made in a court of law in Scotland. The court scrutinised the title deeds, heard arguments on the law, and found in favour of MacLeod, as they were bound to do. Not long afterwards Ben Nevis, the highest mountain top in the British Isles, was purchased by the John Muir Trust, as already mentioned.

The Land Debate and the Land Reform Act

The fact that the beliefs described above as "myths" were so widely and so strongly held was symptomatic of a deep dissatisfaction with the pattern of landownership in Scotland, especially in the Highlands. The last few decades of the 20th century saw a growing debate on landownership which, in turn, contributed to the demand for radical land reform. The Scottish Parliament (re-)established in 1999, made land reform one of their key objectives.

Three background factors which helped to drive this debate were:
1) The scandal of the "Highland Clearances" – the terrible clearances from the land of peasant cultivators, known as "crofters", which took place all over the Highlands and Islands of Scotland in the 19th century: clearances in the name of "improvement"; clearances to make way for sheep. These clearances caused great hardship and huge dislocation of population. They gave rise to lasting bitterness which was only partly assuaged by the passage of a number of Acts from 1886 onwards designed to alleviate and safeguard the condition of the crofting population. A number of publications – plays, poetry and books – in the second half of the 20th century retold the story of the Clearances, and told it from the point of view of the crofters. It is difficult to believe that the land debate has not been motivated, at least in part, by a desire to put right the injustices of the past.

2) A second factor was the fact that rather too few people owned rather too much of the land in Scotland. Various figures have been quoted: that 1200 people own two-thirds of Scotland; or that

100 people own 60 per cent of the Highlands. In fairness it should be said that the quality of much of the land is very poor. Nevertheless, the imbalance regarding ownership is the worst in Europe.
3) A third factor was concern that many of these landlords were absentee, with no personal stake in the land, and not infrequently non-Scottish: for example, Dutch, German or Arab. There was also some difficulty in ascertaining who really owned the land behind the front of, for example, a trust in Liechtenstein, a bank in Sweden, or a company in the Bahamas.

Community buyouts

As a result of these factors there was a perceived lack of democratic control – a "democratic deficit"; also, and more emotional, a perception that there were ancient wrongs to be righted. Partly as a consequence, a succession of "community buyouts" of land have taken place from 1993 onwards, supported both by private donations and by the public purse. Two years ago a "Land Fund" was established, funded by lottery money, to assist such buyouts.

The crofters of Assynt in the west of Sutherland achieved the first community buyout in 1993, becoming the owners of their own land. Further high profile community buyouts followed, for example, in the island of Eigg, in the island of Gigha, and in the estate of North Harris in the Outer Hebrides. These community buyouts commanded widespread public support, and the psychological effect was incalculable. One of those involved in the North Harris buyout spoke of:

"A historic day for North Harris. For the first time ever, the people of North Harris can look at their land and know that it belongs to them."

However, the buyouts have not been uncontroversial. Concern has been expressed about the amount of public money involved, about the difficulties of repaying large public loans and about the long-term viability of some of the enterprises.

The Land Reform Bill/Act

Planning for land reform was already under way before the Scottish Parliament was reconstituted. There was a climate in favour of reform, as has been seen. Norway, and Scandinavia generally, were looked to as possible models. A Land Reform Policy Group was set up by the UK government in 1997. The main recommendations of this Group were accepted, namely: 1) "to create a right of responsible access to land for recreation and passage"; 2) "that rural communities should be able to buy land when it is put on the market"; and 3) "that crofting communities should be able to buy land at any time".

The Scottish Parliament, established in 1999, made land reform a priority. A Draft Bill for consultation was published in February 2001. This elicited more than 3,500 responses – a quite unprecedented number. It seemed that the draft pleased nobody: it was heavily criticised by both landowners and land reformers. In November 2001 a Land Reform Bill was introduced to the Scottish Parliament. Its aims were broadly in line with those of the Land Reform Policy Group: namely, to provide for responsible public access to land; to allow for community purchase of land by way of pre-emption; and to give crofting communities an absolute right to purchase land. In introducing the Bill, Scotland's first, and much lamented, First Minister, Donald Dewar, said that "The good landlord has nothing to fear." Some landlords, indeed, including the Queen at her Balmoral estate, had effectively operated an open access policy for years.

The Draft Bill was under consideration in the Scottish Parliament for over a year. It was debated extensively, and in public, in Committee. Many witnesses were called, or volunteered to give

evidence to the relevant Committees. As regards access, the existence or otherwise of a "right to roam" remained controversial. Some viewed the Act as declaratory of the old "common law". Others considered it to be a new departure. The debate was wide ranging. What restrictions should be placed on the public right of access? Should the right only operate between sunrise and sunset? What was the position about access for commercial purposes? How far should the right apply, for example, to mountain guides, riding schools or photographers? Should golf-courses be exempt? Should there be a procedure for suspending access rights in some circumstances? If so, who should operate it? Should there be core path networks? Should there be an "Access Code"? These and many other questions were debated in detail. In the event, the Act gave "a right to responsible access to land for recreation and passage." The right was widely interpreted, and relatively few restrictions were placed upon it. There was to be a Scottish Outdoor Access Code for guidance. Local authorities had a duty to plan paths. Access disputes were to be resolved, in the first instance, by local access forums, with a further appeal, if necessary, to the Sheriff or local judge.

The second part of the Bill allowed for community purchase of land, as and when it came on the market - that is, it gave a right of pre-emption. Questions arose in Committee as to how to define a community, how to constitute a community and, crucially, how to ensure a valuation that was fair to both sides. It was decided that a community should be defined by postcode area, and could be as few as twenty people. In order to exercise the right of pre-emption, the community must constitute itself as a company limited by guarantee, and register an interest in the land. The valuation of the land could include salmon fishing rights and mineral rights.

The third part of the Bill allowed crofting communities a right, not of pre-emption, but of compulsory purchase. One point at issue here was, given that not all those in a "crofting community" would actually be crofters, how large a majority of crofters should be in favour of the community purchase. This was hotly debated. The Scottish Crofting Foundation argued for a 75 per cent majority, but in the event it was decided that a bare majority of crofters would be sufficient. It was confirmed that the crofting community should have a right to purchase at any time, although the purchase should be compatible with sustainable development, and in the public interest. The valuation should take into account the cost of disturbance, and the effect of the purchase on the land remaining with the landlord. It might include salmon fishings and mineral rights. The crofting community must constitute itself as a company limited by guarantee in order to purchase.

The Land Reform Act was passed in January 2003, and received the royal assent in February. The Act itself, together with much accompanying material, is to be found on the Scottish Parliamentary website (www.scottishparliament.uk). The Act remained controversial to the end. In its regular column entitled *Debate of the Week*, *The Herald* (based in Glasgow) highlighted the Land Reform Act on 25th January 2003, noting comments made in newspapers of varying descriptions as follows:

Daily Record "The historic Land Reform Bill is one of the all-too-few occasions when the Scottish Parliament has proved its worth. The bill may not right ancient wrongs, but it will bring some fairness to the countryside."

Daily Mail "This legislation is dangerously flawed. It is inspired by class hatred, combined with an alarming urban ignorance of how our rural economy works ... This is a charter to turn us into the Albania of northern Europe, except Albania has recently repealed such tyrannical laws."

The Press and Journal (Aberdeen) "It was certainly a momentous day for the Scottish Parliament. Whether the passing of the ... bill will come to be seen as a momentous day for

Scotland and Scots is another matter. As ever, the broad jubilation which surrounds populist legislation might yet melt away once the detail becomes clearer."

The Scotsman (based in Edinburgh) "When all is said and done, this is flawed legislation. The heart of the problem lies in the attempt by the parliament to place severe limits on the rights of a landowner to use and dispose of their property."

The Herald itself commented, "If handled properly with appropriate back-up, land reform can become an economic regenerator, reversing centuries of decline." On the previous day the *Herald* had hailed "a historic day for Scotland", and written, "This bill is built on good intentions and fine principles. How land reform works in practice is what really matters ... It will not be easy ... [but] the risk must be taken."

The London *Times* had noted that the Act was, " an attempt to redress a longstanding social injustice", but went on to comment, "That may explain why the proposed legislation is long on ambition but short on good sense."

The debate continues, as does the programme of land reform.

Ancient Lands Cast Long Shadows. The case for reconnection with English Commons for sustainable management and use

Andrew Humphries, Colonsay House, Ivegill, Carlisle, Cumbria

> "to eat the grass with the mouths of his cattle or to take such other produce of the soil as he may be entitled to"
> *[from Halsbury's Laws of England]*[23]

This paper attempts to bring into context historical and contemporary aspects of the institutional framework of English commons with particular reference to the upland grazing areas of the North and West which are of particular significance for sheep grazing. The context for a system based on ancient customary practice in the 21st century will be addressed together with proposals for modernising legislation based on statute. The contemporary response of commoners will be outlined with particular reference to Cumbria which embraces 30% of the English common land area. The principle characteristics discussed are relevant to England and Wales. Scotland has a different history and legal framework.

Introduction

Sustainable management of commons has been a concern of upland communities from time immemorial. The family has always been the unit of social unit of primary importance, followed closely by the community of commoners. Their relationship with each other and with the Lord of the manor came from recognition of the critical importance of neighbourliness and expressed itself through local custom, creating a sense of place and community of remarkable diversity.

> "there is a law of neighbourhood which does not leave a man perfect master on his own ground" … "ancient custom is always reckoned as law".[Edmund Burke 1796]

Custom sits at the interface between the law and agrarian practice:- Carter in *Lex Custumaria* [1696] identifies four pillars namely antiquity, continuance certainty and reason.[24] The infinite local interactions between customary arrangements and the environment have played a vital role in creating the diversity and quality of landscape flora and fauna which are now formally recognised as public goods of high value.

The revival of interest in the English commons post World War 2 coincided with a regeneration of the sheep economy and the emergence of special interest groups concerned with conservation access and recreation.

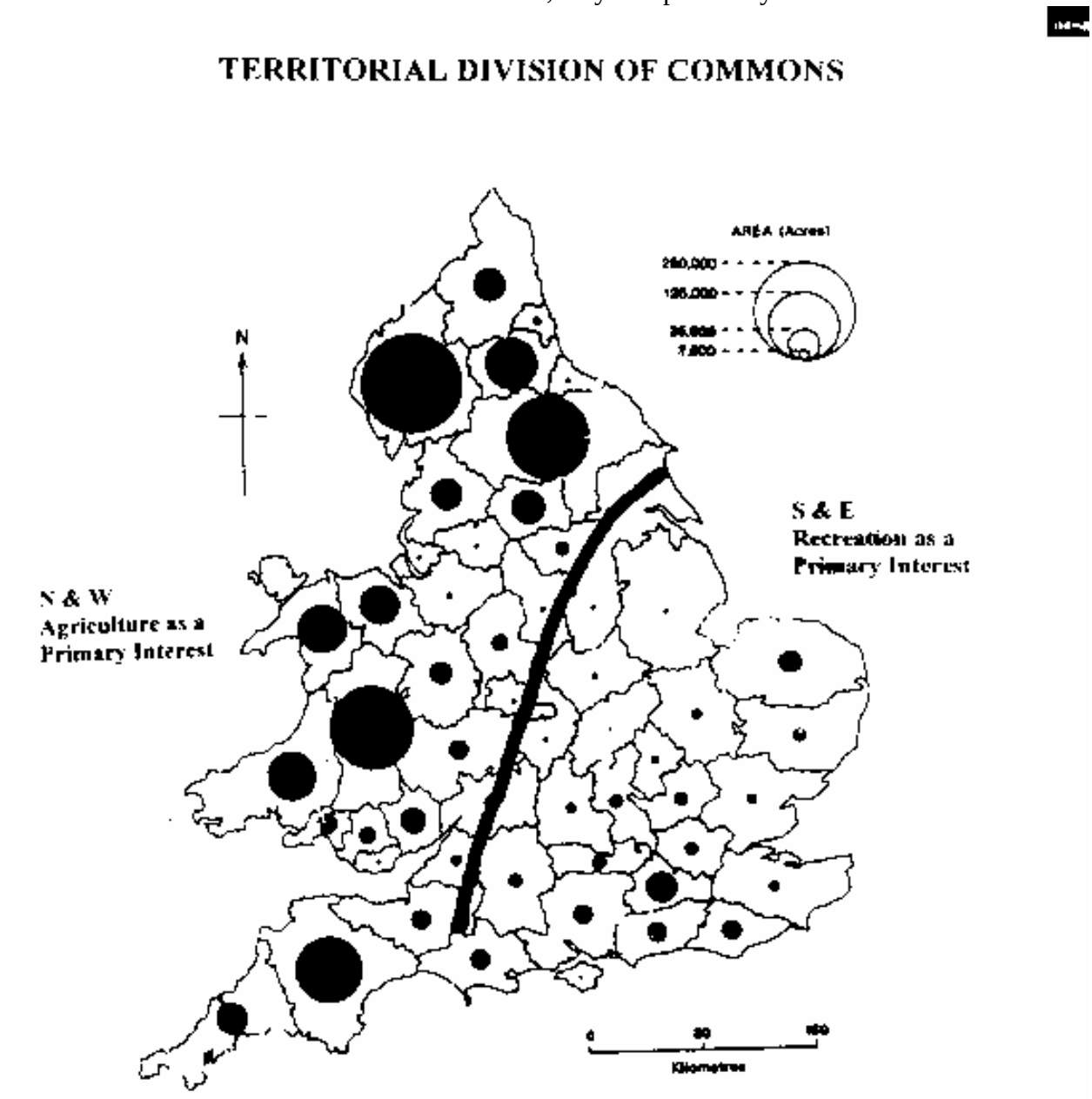
In this context we can identify some of the core issues surrounding contemporary perceptions relating to common lands. *The framework of public perception and the grain of agricultural policy are critical in the development of an institutional framework.* The distribution of commons numerically is widespread but spatially the uplands of the N&W are of greater significance. The area of urban commons comprises about 10% in both England and Wales.

Distribution of Common Land in England and Wales

Britain is perhaps well described as the first industrial nation. The country is heavily urbanised yet has a higher % of land in agriculture than most EU States. The contemporary relevance of

[23] Halsbury's Laws of England Being a Complete Statement of the Whole Law of England [2nd edn.ed.Viscount Hailsham, 1932]
[24] Quoted in Thompson EP Customs in Common, Studies in Popular Culture, New York 1993, p97.

commons is characterised in terms of access, recreation and conservation. However whilst legal access to specific areas of common land began as early as 1593 in the metropolis and characterises the commons of the South and East, they comprise only 10% of the area.[25]



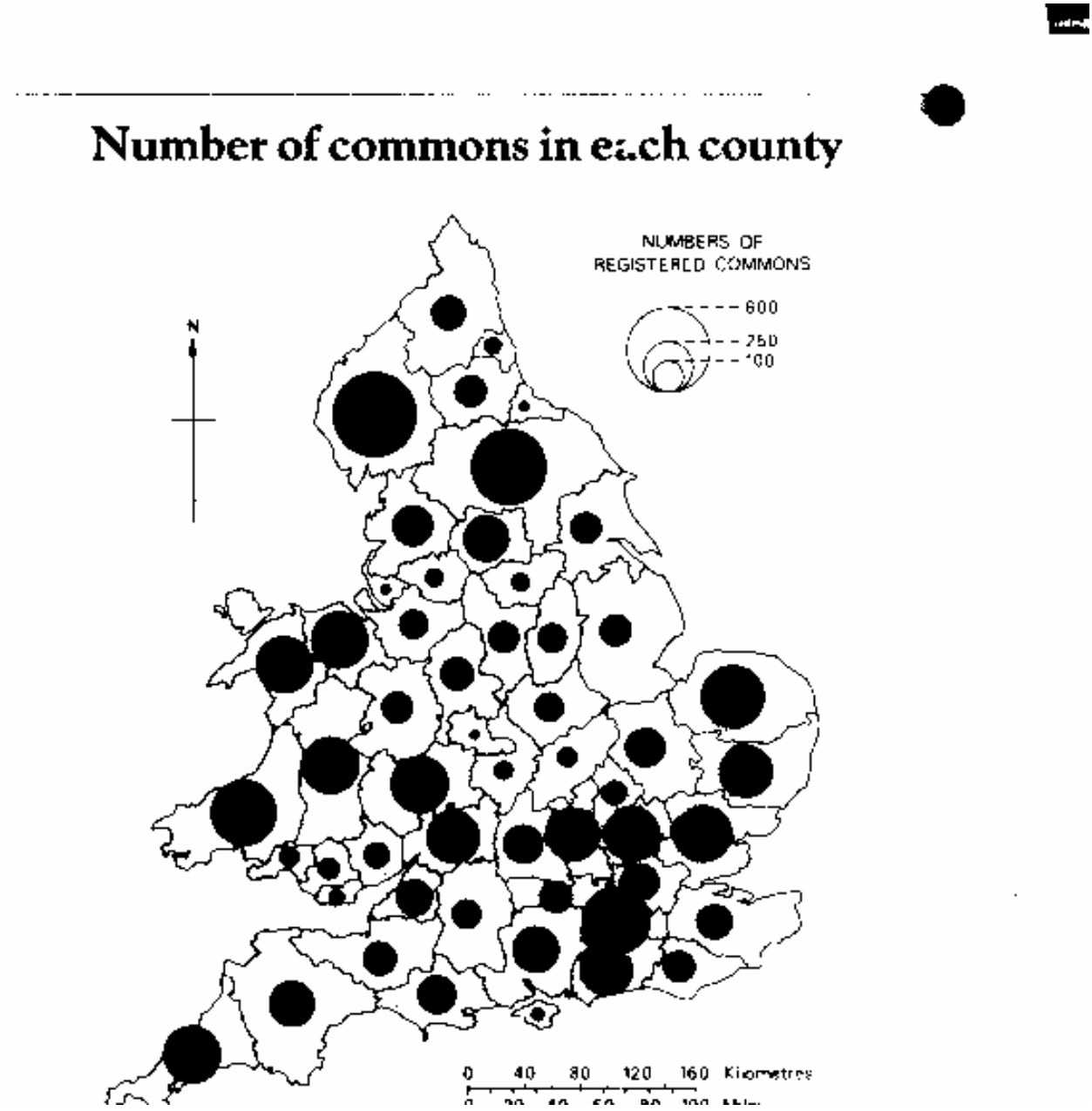
In the North and West upland agriculture remains a primary consideration, yet these areas are open spaces of inspirational value to walkers and others from urban centres that have little understanding of the commoners' needs and aspirations. The case for commons and commoners has not been made in modern times. Society perceives commons as peripheral to modern agrarian practice and that their functions are limited to recreation and conservation [presumably guided by some invisible hand] Suggestions that they retain important utilitarian values which provide the means to deliver a wider public agenda may seem anachronistic to many. The public value the outcome of commons management but do not recognise the process. The dynamics of change in policy and practice are reshaping what is meant by the term agriculture, embracing objectives

[25] Data from cmnd.462 Royal Commission on Common Land 1955-1958, London 1958 pp 266-7.

which clearly aim to deliver a wide range of public benefits alongside a sustainable agrarian economy.[26]

The clear difference between the relict commons of the South and East and the continuing economic and subtractive use for grazing in the N &W marks a clear differential which is not well understood in a society which is predominantly urban. EU policy is changing the primary objectives for agriculture to combine market and non market goods, arguably bringing the opportunity to recognise and foster the range of benefits that may arise from communally managed upland areas.

Commons in England are in danger of being seen as Open Access Resources rather than Common Property Regimes, by an urban majority which has become disconnected with rural culture.



[26] See Defra [2002] England's Rural Future,[www.defra.gov.uk/corporate/pubcat/rural.htm].

The Context of Management for the 21st Century

Traditional management institutions in the main reflected a response to the needs of local communities including users and owners based on custom and practice. Today the significant differences include the emergence of external influences as strong considerations alongside local community needs. The impact of policy at National and EU levels and the proposals for modernisation through statute are key concerns of commoners in a dynamic change process. The potential for policy and legislation to further marginalise the community of commoners and their rights is a real risk unless mutual understanding is established.

Policy implications for English Commoners

The objectives for commoners must include sustainable economics alongside the biological sustainability of the resource. Within the EU framework of CAP the changes in the support system are critical.

The model of farming support and business structure illustrates the movement of funds from pillar 1 to pillar 2. For sheep farmers this means an opportunity and encouragement to optimise rather than maximise stock numbers; to emphasise husbandry rather than production; to seek to secure a share of income from the delivery of environmental goods. Adding value to the primary product and enhancing access and recreation may become specific aims rather than accidental or incidental by products of farming practice.

Such changes will also support the retention of more traditional breeds and systems of husbandry emphasising the diversity of cultural landscape and sense of place. In principle the policy change to a multi functional role will assist rather than damage common land systems since the ability to produce primary produce is limited, yet the capacity as an environmentally favoured area to deliver the public goods for which the market cannot pay is enhanced.

Key Legal Characteristics

Normally the ownership of the land is vested in the Lord of the Manor [or their legal descendant]. The owner in practice has entitled to the sporting timber and mineral rights and can allocate grazing surplus to the needs of the commoners.

The commoners have secure legal rights to defined benefits. These were many but today are largely confined to grazing but may include peat and stone for use but not for sale.

Issues of overgrazing pervade contemporary debate on sustainable upland management. Historically principles of sustainability were administered by the manorial courts and similar bodies.

Ohp rights

Rights could be subject to a quota based on the estimated grazing capacity of the area. Such commons are "stinted" [or rights in gross] but account for only about 20% of English commons.

The majority of rights were rights "***sans nombre***": – without number. However this principle of unlimited rights could only be exercised for the number of stock that the farm could support in winter "***from its own resources***" following the principle of levancy and couchancy.[27] These rights were also inseparable from the land whereas rights in gross could be sold and separated from the dominant tenement.

[27] Gadsden GD. The Law of Commons, London 1998, pp 20-21.

The regulation was implemented in the manorial courts; the lowest and most devolved level of court with legal jurisdiction. Their function included the means of local discipline and sanction, a process undertaken by a jury of fellow commoners under the administration of the Steward of the Lord of the Manor.

Decline of the management framework

The development of county courts, the role of magistrates and the abolition of copyhold tenure in 1925 combined to effect the virtual disappearance of all but a minute number of the manorial courts. This effectively destroyed the capacity to implement discipline and created a complex of vulnerability.

The agricultural depression which more or less ran from 1878 to 1939 in practice limited the dangers of overuse. However the recovery of the sheep economy after World War Two, together with a growing consciousness of environmental fragility led to concerns being expressed by a variety of interests including farmers. Government in response established a Royal Commission [1955-1958] with a clear purpose "*to recommend what changes in the law if any are desirable to*

- Promote the benefit of those holding manorial rights
- The enjoyment of the public
- Where little or no use is currently made – to recommend other desirable purposes.

The outcome included a proposal to establish a database of facts about common land, its extent, location, ownership together with a register of right holders and their rights. This was to be followed by management legislation as a second stage.

In 1965 the Commons Registration Act came into being and unfortunately had serious defects; reflecting at least in part the failure of government to understand the culture of common land grazing. One of the more serious defects was a strict requirement that commoners should register specific numbers in spite of the fact that their rights in the main were "sans nombre" i.e. without number. Numbers were registered but with little evidence required apart from the land to which the rights related. In addition the registration authorities had no power to object to registrations which seemed inappropriate. The result was somewhat chaotic and in spite of 20 years work by the commons commissioners is still a major impediment to sustainable management since the confirmed register entry is secure as a legal entitlement even where it was inappropriate – few amendments are possible.

The recent situation has therefore been one in which

- Numbers registered may or may not have a reasonable relationship with sustainable use.
- The registers were constructed 30 years ago with no proper arrangements for updating.
- Little evidence was required
- The mechanisms for regulation and management are largely non existent or at best fragile and vulnerable to dissenting minorities.

Not surprisingly in many cases the EU based livestock support regime based on payments per sheep encouraged and pressured farmers to graze higher numbers with negative environmental consequences, and little capacity to bring discipline and sanction to bear.

What is required?

- Commoners need to be re empowered to enable them to be accountable for sustainable management
- Democratic decision making and the ability to bind a dissident minority are crucial,
- A proper relationship with the wider range of stakeholders
- Live registers to provide commoners associations with reliable data.

- Capacity to link grazing levels to sustainable use.
- Capacity to allocate grazing equitably
- Flexibility to apply local solutions under national guidelines.

Proposals for legislation

Following requests by farmers and a number of organisations and pressure groups, the intention to consult on legislation was announced at a common land conference organised by commoners in Cumbria in February 2000.

The consultation document was circulated to over 120 consultees of whom perhaps 10% were directly involved in agriculture. The proposals [20] included only on specific to agriculture and that was of minor significance. Views on other aspects of agricultural management were sought.

Commoners in Cumbria and elsewhere concerned that agricultural management issues were not at the centre of the proposals and that commoners themselves did not feature strongly in the consultations began to consider their situation. They argued the need to actively move the focus of the debate and to clearly differentiate between those holding secure legal rights to benefits and a range of third party interests, articulate persuasive and with a relevant agenda, but with insufficient focus on the underlying causes of the problem. The need to recognise that a study of the culture and history of commons could offer at least as much to the achievement of sustainable use as the expertise of biologists remains a central issue.

Progress towards legislation

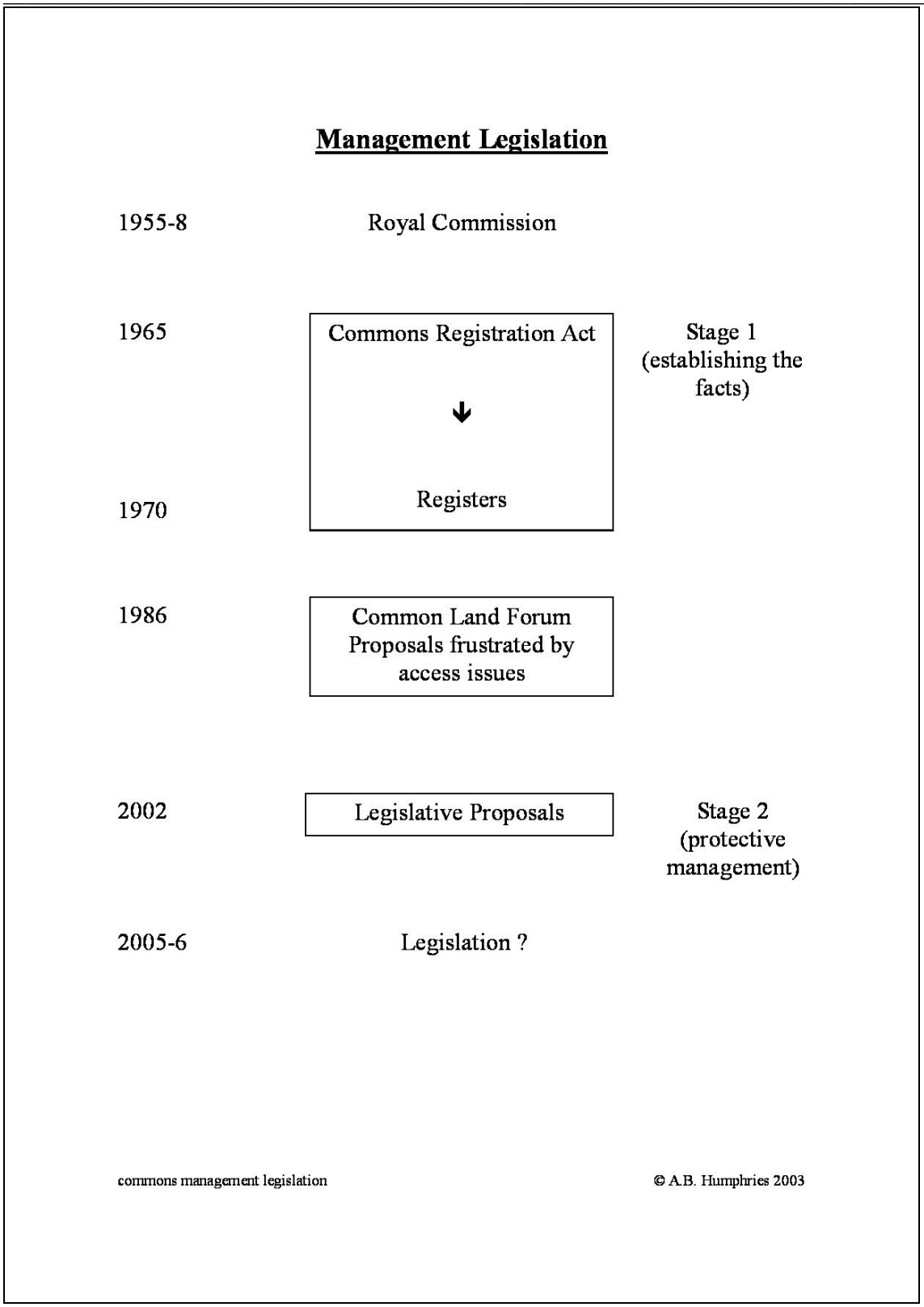
Government have made a commitment in principle to legislate, but no precise date has been declared and which is unlikely to be before 2005\6.

With respect to agricultural management and sustainable use there has been a special working group who have developed a set of recommendations with the Parliamentary Bill Team for government to consider and from which a final consultation paper will emerge in the near future.

Current arrangements reflect and uncoordinated approach to use by a range of interests. There is a clear need to restructure a management framework to reflect in principle the capacity previously integrated into manorial court proceedings to issue bye laws and to bind a dissenting minority.

General principles on Commoners Associations

- Commons vary in size and complexity - a flexible model therefore essential
- Establishing associations not too difficult – issues are really empowerment and accountability.
- New arrangements should not presume to prejudice existing ones which are successful.
- New or existing associations should be free to acquire statutory powers to resolve grazing and related issues.
- Any powers granted should be for the purpose of assuring sustainable agricultural management of the common
- The minority should not be able to frustrate the will of the majority but some protection for a sizeable or otherwise important minority needs to be secured.
- There should be balanced representation across all groups that would be directly affected by the introduction of new statutory powers.

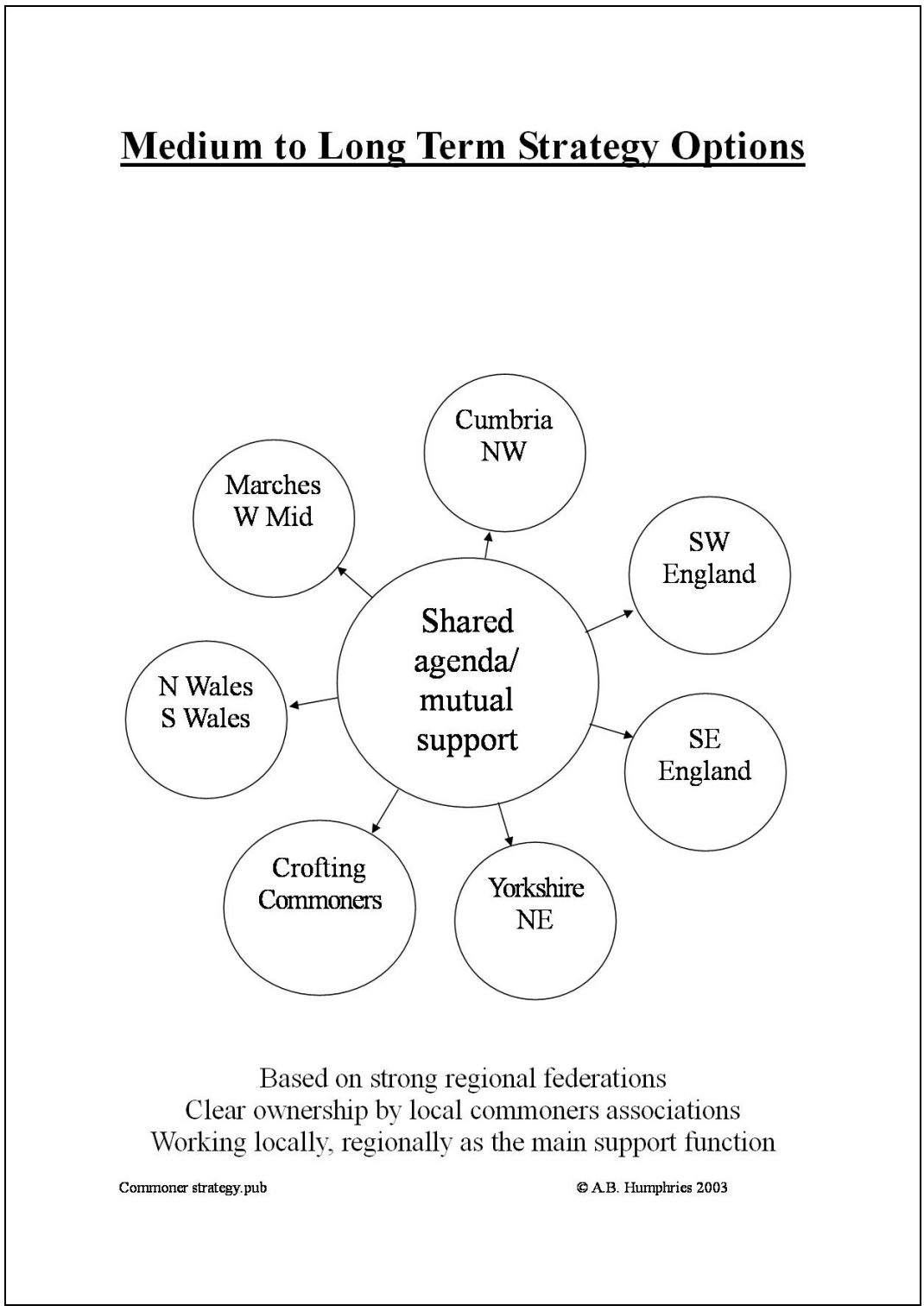


There are also recommendations for advisory bodies perhaps on a regional basis representing the wider public interest in commons. These would advise and consult with commoners associations and also advise government ministers on matters including the use of statutory powers by commoners and on other matters. There is also a recommendation in the report in respect of powers of last resort for the Secretary of state.

Commoners Federations

Commoners in recent times have frequently found themselves under pressure by a variety of Government and non Government organisations. As individual associations of small numbers of graziers perhaps typically 6 – 20 they feel somewhat vulnerable to the agendas of the more powerful and articulate pressure groups and organisations.

In Cumbria commoners and related interests began to think of ways in which Commoners could be supported and safeguarded in the radical adjustment which is affecting so many sectors of the farming community. The idea of a federation of Commoners Associations began to develop.



Aims

To establish an organisation that will support graziers of common land in Cumbria, resulting in increased collaboration between graziers, more land managed in an environmentally positive manner and increased economic returns.

By establishing Federations rooted to the culture and practice of each area, local distinctiveness will be better conserved and local ownership established. The potential to link Federations to provide a network of mutual support can then be envisaged without removing the grassroots strength of individual regional Federations.

Commons are significant in the English uplands to a wide and increasing group of stakeholders. Their relevance to perceived public needs is growing. The mutual understanding necessary for sustainability to become a reality is critical and needs to focus on the capacity, empowerment and accountability of commoners as the key to progress. The degenerate state of the management framework, lack of accurate data and disregard for the cultural values and practice are a major issue in modernising this particular common property regime which has much to contribute to the achievement of multi functional land management on a remarkable resource in a highly urbanised society.

ISS-REPORTS AVAILABLE FROM DEPARTMENT OF SOCIOLOGY AND POLITICAL SCIENCE, NTNU

NO.	YEAR	AUTHOR	TITLE
1	1976	Reidar Almås	Produksjon og samkvem. Synspunkt på økonomisk sosiologi.
2	1977	Ola Listhaug	Om retrospektive intervjudata.
3	1977	Bjørn K. Wold	Turisme som utviklingsstrategi for bygdesamfunn med ensidig næringsliv.
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8	1981	Willy Martinussen	Sosiologisk analyse. Utsolgt.
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