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TO KEEP AWAY FROM THE LEVIATHAN

The Case of the Swedish Common Forests

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The aim of this paper is to illustrate and discuss the current situation of the Swedish common forests. With reference to Giddens' (1984) theory of structuration and Kiser and Ostrom's (1982) meta-theoretical framework the commons are analyzed. It is shown that, even though the commons have survived for more than one hundred years and even though their existence is ultimately secured by the State, they have difficulties in handling the entrenchment of the principles of the democratic State. This observation gives rise to the question of whether it is possible to identify the relevant constitution governing the commons, and whether it is relevant to argue that the constitution decides collective and operational rules at a lower level in the institutional hierarchy. Finally it is concluded that, despite the fact that the State (the Leviathan) guarantees the existence of the commons, one of their means of survival is to keep away from the State.

Commons are frequently analyzed by elucidating the institutional arrangements under which they are operating. Thus we have a great number of studies illustrating this approach (Feeny et al, 1990, Ostrom, 1990, Arnold, 1993). The basic idea, as it is displayed in articles and in practical research, based on this approach, is that the researchers ought to start their investigations from below, within the systems themselves. This is due to the fact that we assume that acting people are the creators of institutional arrangements and not the reverse. Consequently we do not believe that institutions are the pure causes of systems of actions. This view is consistent with Giddens' theory of structuration (Giddens, 1984). According to this theory acting can be viewed as both structured and structuring. This is the basic idea of duality of structure.

If we assume that acting is governed purely by norms and values, our basic problem as researchers is to explain where these values and norms originate (Knight, 1994:16). We can suggest, of course, that people invent them, but why, and why is it that they are shaped the way they are? The notion invention, however, is a metaphor, predicating that there is nothing *prior* to the invention like the invention of the wheel or the computer. Norms are no inventions, however. Institutions form the base of societies and institutions have always existed in one way or another. We can hardly deny however, that human beings *are* governed by rules, and no one seems to believe in the pure *Homo Economicus* any longer (Barry, 1970). It seems as if we are caught in a trap. Giddens (1984), however, has suggested a solution to the problem.

In what ever milieu people operate they are faced with problems to be solved, i.e. "things" to be done. Coleman has dealt superficially with the same problem. Although he has used a different vocabulary the message is the same. Structures are *norm generating* and as actors act they are occupied by the processes of creation of structures (Coleman, 1986 and

1990). Both Giddens' and Coleman's theories are compatible with the neo-institutional approach of institutions (North, 1991). What they describe, however, are the principles how those "things" we call institutions are created.

To summarize, people are constantly entangled by institutional arrangements. Institutions facilitate their daily activities the same way as well-defined institutions ease the lives of industrial enterprises etc. Institutions make the world predictable, both for private persons and for industrial managers. When persons act within these arrangements however, they are at the same time participating in the creation and recreation of these institutional arrangements (Trift, 1983, Kaufman, Majone & Ostrom, 1986:791-803, Knight, 1994:21-49, 209-214).

This point of departure is relevant also for the analysis of commons. It has been shown that it is hardly possible to investigate or understand the principles of organizing used by relevant actors within commons without the use of methodological individualism. Nor is it possible to neglect the *constitution* under which they are governed. Every time we use the word actors, however, we also incorporate the idea of rule-governed activities. It is per definition not possible for an individual to be an actor without possessing both rules and resources (Giddens, 1984:16). Consequently commons are better understood if we succeed in scrutinizing their own system of rules.

Kiser and Ostrom (1982) have elaborated the idea of three worlds of action. Each common, whether it comprises irrigation systems or common forests, is shaped by three layers of rules, *constitutional rules*, *collective choice rules* and *operational rules*.¹ If we use a common forest as our example constitutional rules determine who is eligible to have access to the forests and share the benefit of its use etc. Collective choice rules regulate how decisions are made, for instance in order to decide the level of harvesting or the technological input. Operational rules finally regulate the daily activities, for instance the intensity of harvesting or the method of planting new trees.

The layers of rules form a hierarchy indicating that rules on a higher level decide the degrees of freedom for those on a lower.

Constitutional decisions establish institutional arrangements and their enforcement for collective choice. Collective decisions, in turn, establish institutional arrangements and their enforcement for individual action. [...] Constitutional choices precede and constrain collective choices. (Kiser & Ostrom, 1982:209-210).

In this perspective a constitution can be defined as a system of rules specifying the terms and conditions of governance while governance itself "*includes the setting of rules, the application of rules, and the enforcement and adjudication of rules*" (Feeny, 1988:172). It can be argued,

¹ For an illustration see Tang, 1991 and Ostrom, 1992.

however, that the processes of setting of rules in order to make rules is a hard activity to grasp. The feedback mechanisms from the operational and collective choice levels are constantly operating, adjusting and influencing the constitution. If people are allowed or intentionally grab the opportunity to solve problems in another way compared to previous eras, the constitution is changed. The conclusion so far is that the constitution has to be proved not taken for granted. This is the idea of *empirical constitutionalism* (Hjern & Hull, 1982).

The purpose of this article is to discuss these matters using common forests as a case. The empirical material is based on a project aimed at elucidating and comparing the common forests of Sweden.² These commons date back to medieval times, but the main part of them were constructed at the end of the nineteenth century. The commons are still living a vital life as producers of timber for the benefit of their owners and for the gain of local people. The forests have their own constitution, their own collective choice rules and of course a variety of operational rules. Sweden has changed, however, since the commons were created. Therefore, different principles of governance coincide with each other, and it is really an open-ended question *which constitution* actually is governing the commons. Evidently the Swedish common forests have survived as efficient producers of timber. Their forestry is largely compatible with modern timber management. At the same time, however, the commons are governed by ancient principles codified in laws and regulations.

This situation creates a tension between principles of modern management, principles of democracy and the principles of common property management. This is the background to the anticipated difficulties in deciding the essence of constitutional rules governing the commons.

The Swedish Common Forests

From time immemorial the country people of Sweden have regarded some lands as their common property. These were mainly forest lands, waters and pastures outside the cores of the villages. The so-called "all men's right", i.e. legal right of access to private land, is a reminiscence of this situation.

In the sixteenth century the King began to lay claims on these lands. Sweden was a sparsely populated country, however, and the claims of the King were never fully implemented in most of the villages. Farmers and settlers still used many lands as their common property. Moreover in a forestry act from 1647 some commons *were* accepted by the King. It was mainly a question of so-called village or parishcommons, i.e. common

² The project is documented in a report "Skogsallmanningarna i Sverige" (The Common Forests in Sweden), Division of Political Science, Luleå University, Sweden, forthcoming June 1995.

lands between villages and parishes. For the main part of northern Sweden, however, the situation of ownership was very unclear. The Sami people, farmers and settlers continued to utilize wide areas as their common property.

In the sixteenth and seventeenth centuries the King (the State) started a process to create more rational farms and to stimulate more farming especially in the northern part of the country. The process is called the great redistribution of land holdings. The motive was twofold. *First* the growing industrialization created an increased demand for timber and for that purpose rational units were needed. *Secondly* the State stimulated reclamation and establishing of new farms purely for the purpose of creating an increased base for taxation.

This could not be done, however, before it had been decided what land belonged to the Crown and what belonged to villages and farmers. This process is called delimitation of Crown lands. It began during the 17th century and was intensified during the 19th century. It was as a result of this process that the common forests of Sweden were created. The process proceeded in two steps. First it was decided what belonged to the farms and to the villages. The borders to Crown lands were decided and fixed. Then as a second step some of the lands which were allotted to the farmers were allocated as common forests.

According to the official rhetoric these commons were created by the farmers themselves or as a response to the demands of the farmers. Research indicates, however, that a great number of farmers were hostile to this procedure. This was particularly the case in areas where forest companies and sawmill companies were powerful (Liljenäs, 1977). For the ordinary farmer or settlers the forests had limited value. It was the cultivation value of the land which created the base of living not the forests. Therefore a great number of farmers were willing to sell their forest land to the companies, and many of them certainly did. Some of the farmers even sold their *rights* to harvest timber on the land, which were allotted in the first step of the delimitation process. Farmers were allowed to harvest a certain amount of timber as their "forest allotment". In order to circumvent this, officials tried to persuade farmers to get together and create commons.

As a result of this process 34 common forests were established in the County of Dalarna and in the two northern most counties of Sweden. Västerbotten and Norrbotten.³ The first of these commons was created in 1861 but the process continued to the beginning of this century. Thus most of the commons are older than one hundred years. In terms of organization, however, they have a medieval pattern.

³ According to official statistics there are 24 forest units, but this is not completely true. Two of these units consist of eleven small but autonomous commons.

The Commons

The common forests possess about 2.5% of the productive forest land in Sweden. They administer an extensive forest capital. Some of the units are comparable to big companies. They have a great number of staff and a huge assembly of machinery. All of them, however, are organized according to the principles under which they were created more than one hundred years ago.

As indicated above the cultivated land had a higher value than the forest lands. Therefore, farming was the primary base of taxation for the State. When land was allotted to farmers or settlers their shares in the commons were decided on the basis of the area of their farms and the fertility of their land. Officials graded the land and with the use of a specific algorithm each farmer's share in the common forest was decided.

To summarize, each farmer has his own cultivated land and his own forests lands. Moreover, each farmer is a shareholder in the common forest. He possesses shares according to what has been decided as appropriate due to the quality of his agricultural land. No one can be a shareholder without ownership of a farm or a forest property which in turn has a right to shares in a common according to the allotment made 100 years ago. Today the Swedish common forests are owned by ca. 25,000 shareholders. These shareholders are the owners of ca. 14,000 properties.

Collectively-owned forest lands in Sweden are regulated by a special law, the Act Relating to Collectively-Owned Forest Lands (Swedish Code of Statutes, SFS 1952:167). During the existence of the commons this law has been about the same. Only minor changes have been made. The law regulates the organization of the commons, some of its activities and the role of state control.

The common is governed by a chairman and a board elected by the shareholders. The law also stipulates that a person with higher education in forestry must be associated with the common. This forest manager manages the forest according to laws and rules and the wishes of the owners. A compulsory forest management plan gives the framework of the forestry activities. The forest managers and the assembly of shareholders, however, possess a high degree of discretion. The Swedish common forests are judged by expertise to be well managed compared to equivalent forest lands, in other ownership. The "*tragedy of the commons*" does not accordingly apply to the situation in Sweden. On the contrary only about 70% of the increment is harvested.

The profit from the commons is distributed according to two main principles: as cash amounts to the shareholders (proportional to their shares) or as contributions to the shareholders and the district. Contributions are often dedicated to support the forestry of the farmers (the shareholders). They are paid per forest plants or according to the amount of ditching areas, etc. Some commons use neither of these principles. In these commons all economic yields are reinvested in the district in order

to run water purification plants, local sawmills or to maintain the roads. The Älvdalen Common Forest for instance is maintaining more than 1100 kilometer of roads. Most of these roads are used freely by all inhabitants, tourists and others.

The constitution of and access to the commons

The constitution of the commons is guaranteed by the State itself. The system of share holding, access to the commons and the principles of collective choice are decided by law. Thus no one can gain access to the commons without possessing a certain kind of property, agricultural or forest lands with shares in the common forest. Our research, however, indicates at least twelve(!) different ways to change the share-holding system, all of them legal and in practice.

- Property can be sold and thus all the shares are transformed to the new owner, which also can be a company.
- Part of the property is sold. Some shares follow the property to the new owner, the rest being kept by the old one.
- Part of the property is sold. All shares are kept by the owner.
- A property is inherited and is jointly owned by the estate of the deceased.
- A property is inherited and is jointly owned by the inheritors. Each one of them is a shareholder and some of them can possess parts of parts of shares.
- The owner of a property buys another property with shares in the common. The shares from the two properties can be added.
- The owner of a property with shares in a common buys another property without such shares. With a formal registration of property the two properties are amalgamated. If, for instance, the common gives the shareholders contributions for planting, there is no legal way to exclude the new part of the property.
- Two companies are both shareholders in two different commons. If they change properties with each other they can allocate shares to one common each, i.e. controlling one common each.
- A private farmer changes land with the State. All shares, however, are kept by the private shareholder.
- A property with shares in a common reverts to the State, something which can be the case in the so-called settler-commons. The State itself is now a shareholder.
- A common buys a property with shares in another common. Now this common is partly owned by a common.
- A common buys a number of properties with shares. After the transaction the common is partly owned by itself.

The Swedish common forests have come into existence with the express purpose of contributing to the development of the district where they are located. For this purpose rules were created in order to secure the existence of the commons and to circumvent the influence of the forest companies. As the twelve points above indicate access to the commons is no longer secured. This change has come to take place despite the fact that the commons are governed by basically the same law as one hundred years ago. Why is that? Part of the answer is provided by the extravagant behaviour of land-surveyors, but some of the changes have their origin within pure jurisprudence. The amalgamation of lands to bigger units, for instance, is governed by a special law, the Act concerning Registration of Property (Swedish Code of Statutes, SFS 1970:988). This law is aimed at other goals than the ones which the commons have, namely to improve the economic efficiency of private farms, not that of commons.

This situation implies that access to the forests is widening. Even if a person has moved from the district he wants to keep his part of the shares. One way to obtain this is to own farms jointly. Then each individual is a shareholder and consequently has property rights in the common. Since share holding also implies rights to hunt and fish in the common lands this process continues. There are cases where farms are jointly owned by 40-50 individuals.

The role of the companies

Another tension is due to the share holding of the companies. To prevent the forest companies from dominating the district totally a law was launched 1903 which prevented companies from buying forest lands from private persons. This law was in power well into the last decade. Nevertheless, many commons are partly owned by companies. In some of them, companies possess more than 50% of the shares. The average in all the commons is 18%. If companies buy shareholding farms they also become shareholders in the commons. This is a threat to the existence of the commons.

The formal rules are constructed to prevent big owners from dominating. No one is eligible to vote for more than 1/10 or 1/20 of the total shares represented at the assembly meetings. It is rather easy, however, to achieve dominance by building alliances between shareholders. As research indicates, however, the commons have dealt with this problem in a very effective way. Even though the companies possess large amounts of shares they can hardly utilize them to their appropriate value.

Many companies lay no claims to the seats in the boards of the commons despite the fact that they could have done so by virtue of their amount of the shares. It is also the case that, even though a company may possess 50% of the total shares, they never obtain a proportional income from the commons. In Jokkmokk, the second biggest common in Sweden,

50% of the shares are owned by a forestry company. This company, however, can only utilize about 25% of these shares. The situation is about the same in other commons as well. This is because the assembly has decided to set an upper limit for the contributions to the shareholders or in some other way circumvent the influence of the companies. In some commons, however, companies have succeeded in holding a place in the board of the common, but not even then do they have access to rights and incomes proportional to their amount of the shares. Commonly the representatives of the companies have a very low profile. They argue for their rights, of course, but they never persist in their opinions.

How can this be explained. According to the constitution they have property rights in the common, but collective choice and operational rules set a limit to the power of the constitution. The answer is simple. Companies are dependent on good relations with all the farmers in the areas in which they are operating. All farmers and other forest owners are presumptive suppliers of timber. Moreover, companies are also dependent on positive attitudes in order to utilize private lorry roads, etc. The default of payment represents their costs for maintaining forestry activities in the district, i.e. their transaction costs.

To summarize, access to the common forests is legally regulated by a formal constitution (rules for how to make rules are formalized). This *constitution*, however, is only partly valid. Local decisions and local modes of action have formed different systems of rules more in accordance with how people really behave. Furthermore the State itself has created other types of rules which conflict with the constitution of the commons. The Act of Registration of Property is actually eroding the base of the commons, namely the farms. This raises the question, "What is the relevant constitution?" In the next section this problem will be further illustrated.

Älvdalen Common Forest

Älvdalen Common Forest is situated in the County of Dalarna. The area and its culture have been of significant importance for the image of Sweden. In ancient days the area was known as containing a strong agricultural population.⁴ The base of the common is ca. 1,600 properties (farms) owned by 2,300 shareholders. Only half of the shareholders live in the district. The common contains 49,333 hectares of productive forest lands. The Municipality of Älvdalen, where the common is situated, has 8,264 inhabitants, all of whom for instance are allowed to utilize the 1,100 km of roads which the common is maintaining. The last ten years approximately 100 million kronor (14.3 million US \$) (paid as contribu-

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It was with the help of the farmers in Dalarna that King Gustav (Wasa) united Sweden in the 16th century.

tions) have been generated by the common forests. The common is of significant importance for the local economy.

The situation in Älvdalen is described in Figure 1. In order to understand the organizational complexity it is necessary to understand that the base for economic and political influence in the old Swedish society was the ownership of land. The very construction of the commons is a reflection of this. It must also be remembered that a significant part of the Swedish population was born before the entrance of the democratic State. The pre-democratic heritage, however, creates a tension between different people and principles far beyond the scope of the common forests.

At the beginning of this paper a process called the "great redistribution of land holdings" was mentioned. As a result of this process so-called parish commons were allotted to the villages. These commons codified the collective ownership of roads, waters, gravel pits etc.

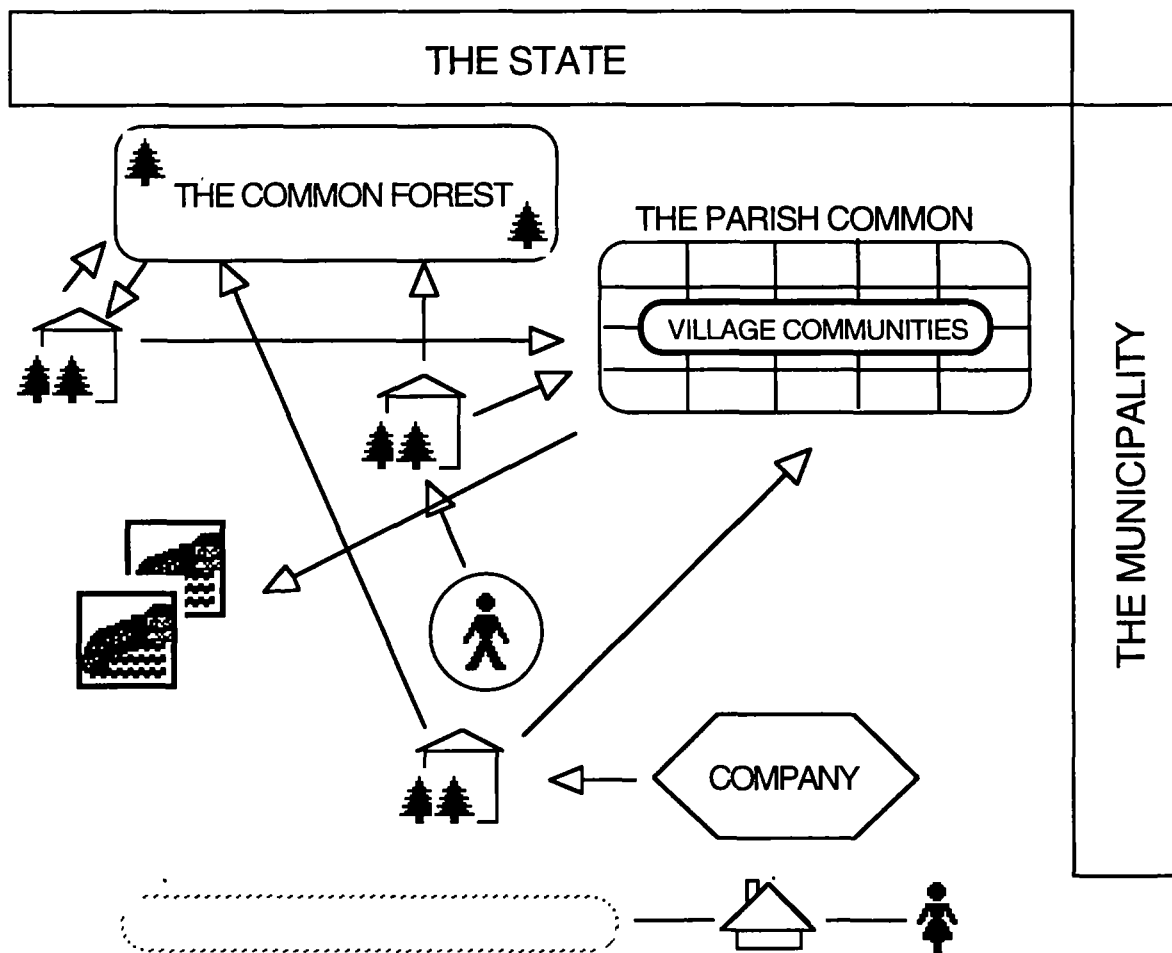


Figure 1. Relations and ownership connected to common forest

Such a parish common also exists in the district of Älvdalen. Since the parish common is the legal owner of the river Österdalälven, its shareholders possess an extensive capital for potential exploitation of the streams and waterfalls in order to build water power plants. This situation creates a complexity which is greater than it seems in the first place. Figure 1 shall be interpreted in the following way.

A single person is the legal owner of a property with shares in the common forest. The same person, however, is also a shareholder in the parish common. The common is divided into twenty village communities each with its local village assembly. Both the forest and the parish common, however, have their own boards and their own assemblies. It must be underscored that we are talking about the same people forming these three units.

The common forest is also the owner of private properties. Consequently the forest is a shareholder in the parish common. Moreover these properties have shares in the forest common, so that the common is partly owned by itself. Since the shares follow the properties, companies can also hold shares. This order is guaranteed by the State and is codified in laws and regulations. At the same time, however, most actors in the drama are twisted into realms and principles of the modern "democratic" municipality.

In the lower part of the figure we find individuals without shares in the described system, the "ordinary" inhabitant of the municipality, the possessors of summerhouses, etc. These people, maybe without being aware of it, have many benefits from the activities of the commons. One example is maintenance of the roads. The commons, for instance, clear them from snow so that they can reach their summer houses in the wintertime. Also tourist-enterprises, anglers and others have benefits from the roads and the waters owned by the holders of property.

Recently one question has demonstrated the problems of handling the "democratic" principles of the commons and the "even more democratic" principles of the municipality and the democratic State. As mentioned above the parish (i.e. all the shareholders in the parish *and* in the forest common) is the owner of streams and waterfalls. Private hydroelectric power stations utilize some of these waters. The parish common is compensated economically for this. Some of the money has, however, been reinvested in these plants. Therefore the shareholders are the owners of 30% in one power plant and 50% in two others. The yield from these interests is divided between the twenty village communities.

The parish and the common forest⁵ have decided to build a power plant of their own. Local criticism has occurred, however, and as a response to these expressions of opinion local politicians have intervened. They organized a local referendum, which the opponents to the power plant won! The shareholders, however, declared that they were definitely

⁵ Note the difficulties to separate the units since the activities they perform are nested into each other.

not bound by local opinions, no more than other companies have to pay attention to public opinion when they plan to make investments. The property owners also underpinned their case by asserting that the power plant was quite legal. No obstacles have been raised with reference to the Natural Conservation Act for instance. This was not accepted by the local politicians who responded to the persistence of the property owners by appointing the area a "temporary conservation area". This decision, however, has been appealed against by the property owners. Higher courts of appeal will have to resolve the case.

How to keep away from the Leviathan

The situation in Älvdalen is paradoxical. The ancient local principles for political decisions clash with political democracy. In some respect the people are opposing the people. Moreover, both the commons and the democratic system are guaranteed by the power of the formal political system. The State created the law regulating the commons (a law they have refused to change). The State also possesses the role as the ultimate instance of insurance of private property. It is worth noting that the commons are definitely active in the process of "allocation of values in the society", i.e. creation of politics. Thus we have a great number of actors involved in the process of the creation of politics. Some of them are old (the commons) and others are new (the democratic apparatus).

The municipality is governed by principles of democracy. Democracy is based on the principles of a legitimate struggle between ideologies. The legal right of the majority is in power. Commons, however, rest on a medieval structure of property rights and these principles are not understandable within a democratic context. Moreover, the commons are "undemocratic". The Swedish Commission on Collectively-Owned Land (Ds Jo 1984:15) suggested that the common forests should be converted into cooperatives missing two of the main points connected to commons: firstly that commons normally try to regulate access to the resource (co-operatives normally want many members) and secondly that the influence in the commons is based on inequality (in co-operatives one man one vote is the common rule).

In the previous section the access-problem was discussed. Twelve different ways of changing the shareholder situation was described. With reference to this it is evident that the commons have difficulties in defending themselves from changes *legally* performed by different actors. The system is gradually undermined by the expansion of the number of shareholders. Some of this development (for instance the influence exercised by the companies) can be temporarily restrained by the commons but other changes are continuing with the legal support of the State.

The main problem for the common forests is, in some respects, to keep away from the hegemony exercised by the Leviathan (the State). This is

not easy, however, because the Leviathan turns a Janus-face towards the commons. Their constitution is secured by the State, but at the same time, however, the democratic State (the political assemblies in the municipalities included) precludes the commons from exercising their property rights. Moreover, some laws have been created for the benefit of securing *other* interests than preserving the base of the commons, the shareholding system.

Finally let us discuss the question concerning the constitution and the three worlds of action. The common forests of Sweden have survived for more than one hundred years. Most of the commons are regarded by expertise as efficient and competitive timber producers. This development has been achieved under the cover of basically the same formal constitution. At the same time, however, the State has become "democratic" and governed under a democratic constitution. It has been shown that the commons operate within the realms of *both* these jurisdictions at the same time. Acting people are the carriers of structural properties (rules and resources), however, and as a result of their actions institutional arrangements are constantly created and recreated. This process also includes the changing of the master rules of institutions, the constitution.

With reference to the general problems of regulating the shareholding system, the role of the companies and finally the case of Älvdalen, it is consequently difficult to decide under *which* constitution the commons really are operating, their own, the democratic one or some other. The Leviathan is hardly acting in a foreseeable way. Therefore the people governing the common forests must zigzag the commons through the insecure waters which will carry them into the 21th century. Whether or not they will succeed in that prospect will depend primarily on whether they are able to keep away from the Leviathan.

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