

KEEPING AWAY FROM THE LEVIATHAN: THE CASE OF THE SWEDISH FOREST COMMONS^[1]

by

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Abstract

The role of common property in industrialised society raises a number of questions relevant to constitutional and democratic theory and policy. These questions are discussed here with reference to the current situation of the Swedish Forest Commons. It is shown that commons which have survived for more than one hundred years have difficulties in handling the entrenchment of the principles of liberal democracy, even though their existence is ultimately protected by the liberal democratic state. With reference to Giddens's (1984) theory of structuring and Kiser and Ostrom's (1982) meta-theoretical framework, this article challenges the theory that the constitution forms an institutional hierarchy by restraining collective and operational rules, suggesting rather that lower level rules change and adapt independently. It subsequently tackles the problem of how to identify appropriately the constitution of the commons. Finally it stresses that, despite the fact that the State (the Leviathan^[2]) guarantees the existence of the commons, one of their means of survival is to keep away from the State.

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Introduction

Commons represent a type of institutional arrangement that is older than the democratic state. Historically, their partial disappearance is caused more by State intervention (Buck Cox, 1985) than by internal institutional arrangements leading to an eventual devastation

of resources as in ♦ the tragedy of the commons ♦ (Hardin, 1968). Forest commons that still exist in industrialised societies are inevitably embedded in the logic of liberal democracy, and this logic, as shall be demonstrated here, tends to clash with that of the commons. This raises the question of who can, or should, act as the guarantor for the commons ♦ system of property rights.

In a number of studies, commons are analysed by elucidating the institutional arrangements under which they operate (Feeny et al, 1990, Ostrom, 1990, Arnold, 1993, Burger and Gochfeld, 1998). The basic methodological idea demonstrated in these studies is that research on institutions ought to be carried out within the systems themselves. Accordingly, it is assumed that people (the actors) are the creators of institutional arrangements, and not that institutions are themselves the sole cause of systems of actions (Carlsson, 1996). This view is consistent with Giddens ♦ (1984) theory of structuration, which predicates that actors have the role of structuring and of being structured by a system. This is the basic idea of duality of structure.

If we assume that actors are governed purely by norms and values, our basic problem as researchers is to explain where these values and norms originate (Knight, 1994:16). It can be argued that people *invent* them, but why, and why is it that they are shaped the way they are? The case of the Swedish Forest Commons^[3] shows that the commons are both subject to and victims of the principles of liberal democracy. Thus, the owners of the commons try to find ways to protect the principles of common property management that existed long before the advent of modern democracy. For this purpose the older norms and rules that were related to the commons are being adjusted and new ones are being ♦ invented ♦. However, norms are not inventions. Institutions form the basis of society and so do norms and rules. Rules determine ♦ who and what are included in decision situations, how information is structured, what actions can be taken and in what sequence, and how individual actions will be aggregated into collective decisions [♦] all of which exist in a language shared by some community of individuals rather than as physical parts of some external environment ♦ (Kiser and Ostrom 1982:179).^[4]

Thus, human beings *are* governed by norms and rules, and no one seems to believe in the pure *Homo Economicus* (Barry, 1970). It appears that we are caught in a trap. If norms and rules determine how people act, how can this behaviour, at the same time, constitute the mechanism by which institutions are made? Giddens (1984) has suggested a solution to the problem. Every time we use the word ♦ actors ♦ we also incorporate the idea of rule-governed activities. It is, by definition, not possible for an individual to be an actor without possessing both rules and resources (Giddens, 1984:16). 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 at the same time involved in the processes of the creation of structure (Coleman, 1986, 1990). Both Giddens ♦ and Coleman ♦'s theories are compatible with the neo-institutional

approach regarding institutions as ♦the rules of the game♦ (North, 1991). These theories explain the principles of how and why institutions are created and recreated in society. Consequently, commons are better understood if we succeed in scrutinizing their own system of rules, i.e., the institutional framework that de facto governs their activity.

To summarize, people are constantly entangled in institutional arrangements. Institutions facilitate their daily activities the same way as well-defined institutions ease the lives of industrial enterprises etc. 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 and Ostrom, 1986:791-803; Knight, 1994:21-49, 209-214). This point of departure is relevant for the analysis of commons. It has been shown by Ostrom, and others (Kiser and Ostrom 1982; Ostrom, 1990) that it is unproductive to investigate or understand the principles of organising 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.

Kiser and Ostrom (1982) have elaborated the idea of three worlds of action. Every institutional arrangement, they argue, is shaped by three layers of rules: *constitutional rules*, *collective choice rules* and *operational rules*.^[5] Using forest commons as our illustration, constitutional rules specify who is eligible to have access to the forests and share the benefit of its use. 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, i.e. the intensity of harvesting, methods of planting new trees, and so forth.

The three 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 and Ostrom, 1982:209-210).

From 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, however, that the process of setting of rules in order to make rules is hard to grasp. The fact is that the feedback mechanisms from the operational and collective choice levels are constantly operating, adjusting and influencing the constitution. When people are allowed, or decide to take the initiative to solve problems in a different way to that of previous eras, the constitution may change. This is a logical consequence of regarding institutions as a system of rules in use.^[6] Thus, a methodological consequence of this assumption is that the constitution has to be

demonstrated by empirical research, rather than considered theoretically. This is the idea of *empirical constitutionalism* (Hjern and Hull, 1982).

The purpose of this article is to discuss constitutional and democratic theory and policy using forest commons as an illustration. The empirical material is based on a project aimed at elucidating and comparing the forest commons of Sweden (Carlsson, 1995, 1997, 1999). These commons date back to medieval times, but the majority were constructed at the end of the nineteenth century. The commons are still vitally important as producers of timber for the benefit of their owners and for the gain of local people. The forest commons 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 (State and commons) conflict with each other, and it is an open-ended question what kind of constitution actually governs the commons. Evidently the Swedish Forest Commons 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 pre-democratic principles codified in laws and regulations.

This situation creates a tension between principles of modern management, principles of liberal 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.

History of the Swedish Forest Commons

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

In the sixteenth century the Crown (the State) began to lay claim to these lands. Sweden was sparsely populated and the claims of the Crown were never fully implemented in most villages. Farmers and settlers still used many lands as their common property. Moreover, in a forestry act of 1647 some commons were indeed accepted as legitimate by the Crown ♦ mainly so-called village or parish commons, i.e. common 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 vast areas as their common property.

In the sixteenth and seventeenth centuries the Crown started a process aimed at the creation of rational farms and the stimulation of more farming, especially in the northern part of the country. This process is referred to as the great redistribution of land holdings. The motive was twofold. First, to create rational units in order to fulfil the demand for timber caused by growing industrialisation, and second, to create an increased basis for taxation.

This redistribution could not be carried out without deciding what land belonged to the Crown and what belonged to villages and farmers. Such a process, called the delimitation of Crown lands, began in the late sixteenth century and was intensified during the nineteenth century. One result of this process was the creation of the Swedish Forest Commons. First farm and village lands were determined and the borders to Crown lands were decided and fixed accordingly. Then, as a second step, some of the lands allotted to the farmers were allocated as forest commons.

According to official rhetoric, these commons were created by the farmers themselves, or at least as the authorities' response to the farmers' demands. Research indicates, however, that a great number of farmers were hostile to this development. This was particularly so in areas where forest companies and sawmill companies were powerful (Liljenström, 1977). For farmers and settlers the forests had limited value; it was the cultivation value of the land that provided their livelihood, not the forests. Therefore, a great number of farmers were willing to sell their forest land to companies, and many of them did so. Some of the farmers even sold their *rights* to harvest timber on the land, and these rights were allotted in the first step of the delimitation process. In order to circumvent this, officials tried to persuade farmers to get together and create commons.

As a result, thirty-three forest commons were established in the County of Dalarna and in the two northernmost counties of Sweden, Västerbotten and Norrbotten. The first of these commons was created in 1861 but the process continued up to the beginning of the twentieth century. Thus, most of the commons are more than one hundred years old. In terms of organization, however, they have a medieval pattern borrowed from a type of commons that already existed when they were created.

The Commons Today

The forest commons constitute approximately 2.5% of the productive forest land in Sweden; they administer a huge forest capital. In total the commons comprise about 730,000 hectares of forest lands. Some of the units are comparable to big companies in that they have a large number of staff and a great assembly of machinery. Yet all of them are still organised according to the principles under which they were created more than one hundred years ago.

As indicated above, in the past, arable land had a higher value than forest land. Therefore, farming was the primary basis 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 using a specific algorithm each farmer's share in the forest common was decided.

The result today is that each farmer has his own cultivated land and his own forest land. In addition, each farmer is a shareholder in the forest common, an area that in some cases exceeds 50,000 hectares. However, no one can be a shareholder without ownership of a farm or forest property, which, according to the allotment made one hundred years ago, has rights to shares in a common. Today the Swedish Forest Commons 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). Throughout the existence of the commons the content of this law has remained basically the same, with only minor changes.¹⁷¹ The law regulates the organisation of the commons, some of its activities, and the role of State control.

Each common is governed by a chairperson and a board elected by the shareholders. The law stipulates that a person with higher education in forestry must be associated with the common. This forest manager manages the forest according to laws, rules and wishes of the owners. A compulsory forest management plan gives the framework of the forestry activities. The forest managers and the assembly of shareholders possess a high degree of discretion. The Swedish Forest Commons are judged by experts to be well managed compared to equivalent forest lands, under other forms of ownership. The tragedy of the commons does not apply to the situation in Sweden. On the contrary only about 70% of the increment is harvested (Carlsson, 1995:13).

The profit from the commons is distributed in two main ways: as cash amounts to the shareholders (proportional to their shares) or as subsidies (contributions) to the shareholders and the district. Subsidies are often given to support the farmers (the shareholders) forestry activities whereby they are paid per forest plant or according to the size of ditching areas. In some commons, all economic yields are reinvested in the district in order to run water purification plants, local sawmills, or to maintain the roads. The Ivdalen Forest Common, for instance, maintains more than 1100 kilometres (690 miles) of roads most of which are open to the public.

The Constitution of and Access to the Commons

The constitution of the commons is guaranteed by the State. The system of shareholding, 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 land or forest land with shares in the forest common. However, research has identified at least twelve different ways of changing or jeopardising the shareholding system, all of them legal and in practice. (Carlsson, 1995:17-18)

1. Property is sold and all the shares are transferred to the new owner, which can be a company.
2. Part of the property is sold. Some shares go along with the property to the new owner, the rest being kept by the old one.
3. Part of the property is sold but shares are kept by the seller.
4. A property is inherited and is jointly owned by the estate of the deceased.
5. 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.
6. The owner of a property buys another property with shares in the common. The shares from the two properties can be added.
7. 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 subsidies for planting, there are no legal ways to exclude the property that has been added.
8. Two companies are both shareholders in two different commons. If they exchange properties they can allocate their shares to one common each, thus
 - ◆controlling◆ one common each.
9. A private farmer exchanges land with the State. All shares are kept by the private shareholder.
10. A property with shares in a common reverts to the State; the State itself is now a shareholder. This can also be the case in the so-called settler-commons.
11. A common buys a property with shares in another common. Now this common is partly owned by a common.
12. A common buys a number of properties from its own members. After the transaction the common is partly owned by itself.

The Swedish Forest Commons came into existence with the express purpose of contributing to the development of the district where they were located. For this purpose rules were created in order to secure their existence and to circumvent the influence of forest companies. However, as described above, access to the commons is no longer protected. This change has come about despite the fact that the commons are governed by basically the same law as one hundred years ago. Why is that? It is partly due to the extravagant behavior of some land-surveyors who earlier accepted modifications of properties which were no longer sanctioned; but it is also due to changes that have their origin within pure jurisprudence. The amalgamation of lands to form 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 goals other than those of the commons, namely to improve the economic efficiency of private farms, not of the commons.

This situation implies that the access to the commons is widening. Even if a person has moved away from the district he or she might want to keep the shares. One way to obtain this is to own farms jointly ◆ in this way each individual is a shareholder and consequently has property rights in the common. Since shareholding also implies rights

to hunt and fish in 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 caused by the shareholding of companies. To prevent forest companies from totally dominating the district, a law was passed in 1903 which prevented companies from buying forest lands from private owners. This law was in force through much of 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 across 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, nevertheless, easy to achieve dominance by building alliances between shareholders. As research indicates, however, the commons have dealt with this problem in a very effective way. Two examples might illustrate this.

Although the companies possess large amounts of shares, they cannot utilise them to their appropriate value. Many companies lay no claims to seats in the boards of the commons despite the fact that they could do so by virtue of the amount of shares they hold. It is also the case that, even though a company may possess 50% of the total shares, it never obtains a proportional income from the commons. In Jokkmokk, the second biggest common in Sweden, 50% of the shares are owned by a forestry company. However, this company can only utilise about 25% of these shares. The situation is similar in other commons either because the assembly has decided to set an upper limit for the subsidies to the shareholders, or because it has found other ways to circumvent the influence of the companies. Some companies have succeeded in holding a place on the board of the common, but even then they do not have access to rights and incomes proportional to their amount of shares. Often, the representatives of the companies have a very low profile, and although they argue for their rights they never persist in their opinions.

How can this be explained, when according to the constitution they have property rights in the common? The answer is simple. Companies are dependent on good relations with the farmers in the areas in which they are operating: all farmers and other forest owners are potentially suppliers of timber, since they all have private forest land from which they can sell timber. Companies are also generally dependent on their positive attitudes in order to utilize private lorry roads, etc. The default of payment represents companies' costs, i.e. their transaction costs, of maintaining profitable forestry activities in the district. This is a good example of how collective choice and operational rules set a limit to the power of the constitution.

Laws and the State

Access to the forest commons is legally regulated by a formal constitution, i.e. rules about how to make rules are formalized. However, this constitution is only partly valid. Local decisions and local modes of action have formed systems of rules that reflect how people really behave. Some rules are regarded as obsolete: the commons simply do not use them. The most important law regulating the forest commons (Swedish Code of Statutes, SFS 1952:167) has not been changed since the 1950s. For example, the commons are still required to inform and send records to the County Board regarding harvesting, economy, etc. Some 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 no longer practised. Other rules are simply circumvented. For example, 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, ♦ they avoid this rule.

Significant costs (for the collection of information, for example) are engendered in the fulfilment of demands codified in the Natural Conservation Act and the National Silvicultural Act.^[8] The forest commons have tackled this problem by building alliances with the authorities, which are supposed to enforce the laws. Regularly they purchase service from the authorities for assessing (cruising) before cutting. They also buy inventories and even buy the means to control their own shareholders from the forest authorities. The latter requires an explanation.

About 74% of the commons distribute their residual for communal purposes, or as direct ♦ subsidies ♦ to individual shareholders for operations on their own private land. For example, the single farmer can be subsidised per number of cows he possesses, per hectares of land drained, for planting, and so forth. Since all shareholders have an incentive to cheat or at least to over-consume, the system must be controlled. The commons have developed different methods for this. When it comes to checking subsidised forestry, the most frequent solution is to utilise the bureaucracy already built up for the control of State subsidies. State employed and locally stationed extension rangers are responsible for all the controls related to forestry, even for the control of the former numerous State subsidies.^[9] Since the authorities already have control procedures (for the control of regeneration, etc.) they can easily check simultaneously whether a single shareholder has actually planted the number of pine trees he is subsidised for by the common. In practice, no money is paid until the shareholder can provide a signed form from the local extension ranger.

The forest commons simply pay the authorities for this service. Accordingly, they do not have to bear the costs for maintaining their own control system ♦ to control forestry activities requires a significant skill in forestry. This ♦ co-management ♦ suits the State

authorities well, because following the present trends to make the public sector more profitable the forest authorities are more commercial and market oriented.^[10] In this way the commons also protect themselves from future disputes with the authorities regarding demands for biodiversity, the preservation of protected biotopes, etc. Moreover, the commons externalise the costs for keeping up with rules and regulations related to these matters.

Finally it must be stressed that the State itself has created rules which conflict with the constitution of the commons. The Act of Registration of Property is actually eroding the basis of the commons, namely the farms. This raises the question, What constitution is really governing the commons? In the next section this problem will be elaborated further.

An Empirical Example

Ivdalen Forest Common is located in the County of Dalarna. The area and its culture have been of significant importance for the image of Sweden. In the past, the area was known to contain a strong agricultural population ; it was with the help of the farmers in this area that King Gustav (Wasa) united Sweden in the sixteenth century. The common is basically comprised of 1,600 properties (farms) owned by 2,300 shareholders of whom only half live in the district. The common contains 49,333 hectares of productive forest lands. The Municipality of Ivdalen, where the common is situated, has 8,264 inhabitants, all of whom are allowed to utilise the 1,100 km of roads, which the common maintains. In the last ten years approximately 100 million SEK (14.3 million US \$), was paid as subsidies, from money generated by the forest common. The common is of significant importance for the local economy.

In order to understand the organisational complexity of the commons, it is necessary to understand that land ownership was the basis for economic and political influence in the old Swedish society. The very construction of the commons is a reflection of this situation. This pre-democratic heritage creates a tension between different people and principles far beyond the scope of the forest commons. It must also be remembered that a significant part of the Swedish population was born before the advent of the democratic State.

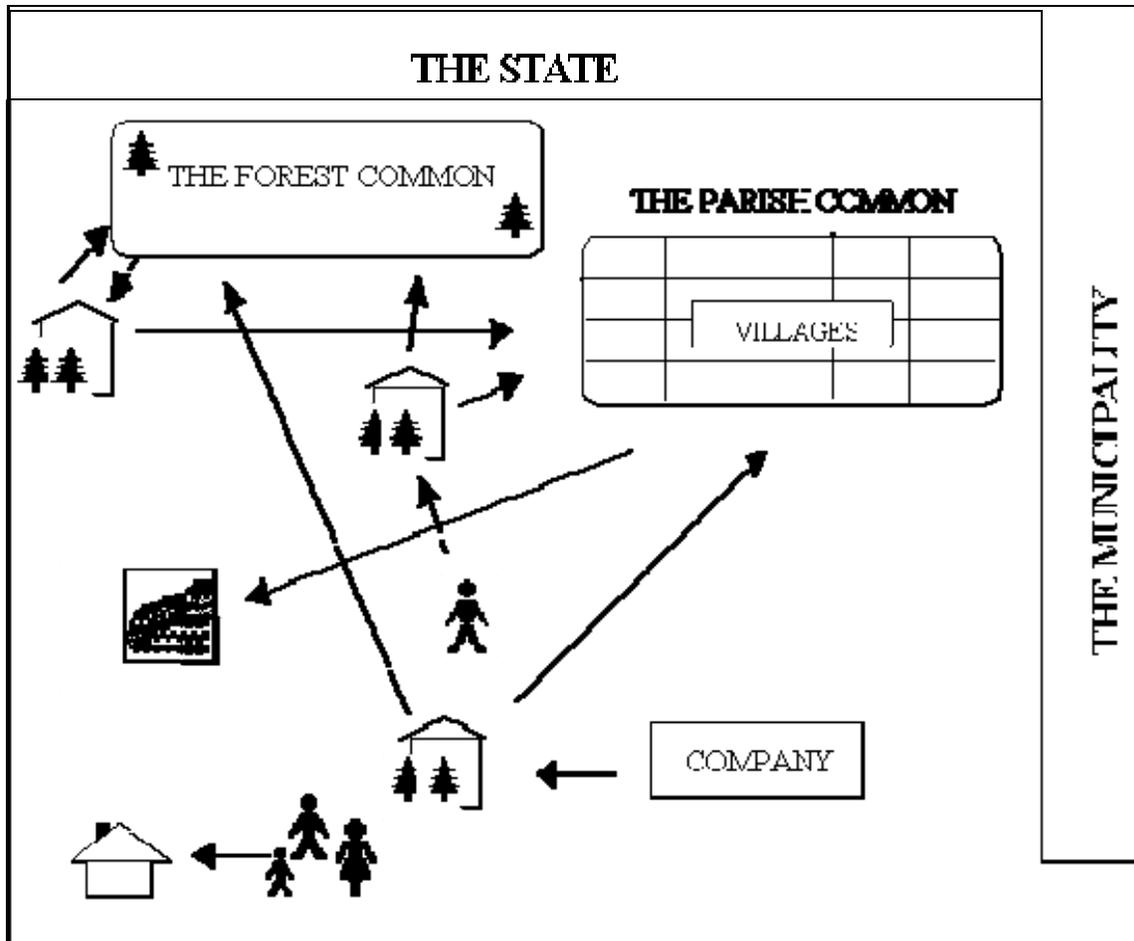
As a result of the process called the great redistribution of land holdings, described above, so-called parish commons were allotted to the villages. These commons codified the collective ownership of roads, waters, gravel pits, etc. Such a parish common also exists in the district of Ivdalen, and is the legal owner of parts of the main river. Therefore its shareholders own streams and waterfalls that are exploited for hydroelectric

power stations. This situation creates a complexity, which is greater than it may seem at the first sight. This is illustrated in Figure 1.

The figure comprises the following central entities: the individual shareholder (middle circle), single shareholding farms (houses with spruce trees), the forest common, the parish common (square indicating twenty villages), and hydroelectric power plants (lower left). Arrows indicate ownership. The figure is framed by the jurisdiction and principles of the State and the local municipality. The figure should be interpreted in the following way:

A single person is the legal owner of a property with shares in the forest common.^[11] In addition, the same person is also a shareholder in the parish common. This common is divided into twenty ♦ parcel systems ♦ or, in approximate terms, villages, each with its own local assembly. Both the forest and the parish common have their own boards and their own assemblies. Thus, it must be emphasised that we are talking about the same people forming these three units: the forest common, the parish common, and the village community.

Figure 1. ♦♦♦♦♦♦♦♦ Relations and ownership connected to a forest common



The forest common also owns single properties. Consequently, the forest is a shareholder in the parish common. Moreover, these properties have shares in the forest common, thus, the common is partly owned by itself. Since the shares go along with the properties, companies can also hold shares. As has been emphasised, this arrangement is guaranteed by the State and it is codified in laws and regulations. At the same time, however, all actors in the drama are implicated in the principles of the modern ♦democratic♦ municipality, and its political-administrative apparatus.

In the lower part of the figure we find individuals without any shares in the described system. These are the other inhabitants of the municipality as well as the possessors of summer ♦houses♦, etc. These people, perhaps without being aware of it, have many benefits from the activities of the commons. One example is maintenance of the roads. The commons clear them from snow so that people 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 commons, i.e. the holders of property.

The People Versus the People

A recent issue in **◆**Ivaden demonstrates the clash between the democracy of the commons and the liberal democracy exercised by the municipality and the State. As mentioned above, the parish common, i.e. all shareholders in the parish and the forest common, is the owner of streams and waterfalls. Private hydroelectric power stations utilise some of these waters for which the parish common is compensated economically. Some of the money is then reinvested in these plants. The shareholders own 30% of one power plant, 50% of a second and 50% of a third (lower left in Figure 1). The yield from these investments is divided amongst the twenty villages. However, the parish common and the forest common^[12] decided to build a power plant of their own. This led to local criticism, and local politicians intervened. A local referendum was organised, which the opponents to the power plant won. A majority of shareholders, however, declared that they were not bound by local opinion, just as industries are not bound by public opinion when they plan to make investments. The property owners also reinforced their case by asserting that the power plant was quite legal, and that no obstacles had been raised with reference to the Natural Conservation Act. 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 by the property owners. Higher courts of appeal will have to resolve this paradoxical situation that might be characterised in the following way: the people opposing the people.

It might be stressed that the behaviour of the shareholders should not be understood solely as an instance of a **◆**special interests**◆** against the general will or the individual versus the system. The commons are older than liberal democracy and moreover, as institutional arrangements, they fulfil a number of criteria for being regarded as political entities. For example, they provide and produce collective goods for the local area, they elect decision boards and they tax themselves (for example, they distribute a significant part of their surplus for public purposes, such as roads). Evidently, the commons participate in the **◆**allocation of goods in the society,**◆** the latter alluding to a standard definition of politics. A central point in this article is that the role of the commons is historically and formally protected by the State, yet this self-same State simultaneously acts as the agent of the principles of liberal democracy, which supposedly threaten the commons.

Keeping Away from the Leviathan

The situation in **◆**Ivdalen illustrates a paradoxical situation for the commons. The old, local principles for political decision clash with modern political democracy. In some respect the people are opposing the people, i.e. the electorate versus the property rights of the commoners. At the same time, both the existence of the commons as well as the

democratic system are guaranteed by the power of the formal political system. The State has created the law regulating the commons, a law it has refused to change. However, the State also possesses the role of the ultimate instance of insurance of private property. It is worth noting that the described situation is not a question of the political system against farmers. On the contrary, the commons are clearly active in the process of allocation of values in the society, i.e. the process of creation of politics. This example illustrates something typical for most democracies, namely the existence of many actors involved in the process of the creation of politics. Some of them are old, like the commons, while others represent a newer political-administrative apparatus.

The municipality is governed by principles of liberal democracy. This type of democracy is based on the principles of a legitimate struggle among ideologies and the idea of the majority holding 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, ♦ in the sense that ♦one person one vote♦ is not in practice. The Swedish Commission on Collectively-Owned Land (Ds Jo 1984:15) suggested that the forest commons should be converted into cooperatives, but this misses two of the main points connected to commons. First, commons normally try to regulate the access to the resource whereas consumer cooperatives normally want many members; and second, in the commons influence is based on the size of shares held, while in cooperatives ♦one person one vote♦ is a general rule. Commons are neither cooperatives, nor interest groups, nor private companies. They represent a type of property rights and institutional arrangement which fall between the categories of private and public.

In the previous section, the access problems of the Swedish commons were discussed. With twelve different ways of changing the shareholder, it is evident that the commons have difficulties in defending themselves from changes performed legally by different actors. The system is gradually undermined by the expansion of the number of shareholders. Some of this development, such as the influence exercised by the companies, can be temporarily restrained, while other changes continue with the legal support of the State.

To some extent, a central problem for the forest commons is to keep away from the hegemony exercised by the Leviathan (the State). This is not easy because the Leviathan turns a Janus-face towards the commons. Their constitution is secured by the State, but at the same time the democratic State ♦ political assemblies in the municipalities included ♦ precludes the commons from exercising their property rights. Moreover, some laws have been created for the benefit of protecting interests other than those preserving the basis of the commons, the shareholding system.

Finally, how do these empirical findings touch upon the question concerning the role of the constitution and the theory of three worlds of action launched by Kiser and Ostrom (1982)? It can be concluded that the supposed hierarchy predicating three levels of rules

is useful when analysing the commons but one of the main features of the theory must be further refined. The Swedish Forest Commons illustrate that constitutional rules do not, as indicated by the theory, restrain operational and collective choice rules. On the contrary, the constitution of the commons is changed and softened by changes in lower level rules. In addition, the principles codified in the constitution of liberal democracy contribute to the undermining of the property rights of the commons.

The forest commons of Sweden have survived for more than one hundred years. Experts regard most of them as efficient and competitive timber producers. This has been achieved within a pre-democratic constitution that has remained basically unchanged. Meanwhile, the State has become democratic, governing under a liberal democratic constitution. It has been shown that the commons operate simultaneously within the realms of both these jurisdictions. Since actors are the carriers of structural properties ♦ i.e. rules and resources ♦ 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 ♦Ivdalen, it is difficult to conclude under which constitution the commons really operate: their own, the democratic one or some other. The Leviathan does not follow a recognised pattern and the very concept of the State is quite ambiguous. Therefore, the people governing the forest commons must steer the commons through the unsure waters which will carry them in the twenty-first century. Whether or not they will succeed will partly depend on whether they are able to keep away from, or learn to handle, the Leviathan.

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^[1] Paper prepared and discussed within the MOST Project on Circumpolar Coping Processes Project. For more information, please check <http://www.unesco.org/most/p91.htm>

^[2] The concept of the Leviathan is borrowed from Thomas Hobbes (1588-1679) who discusses the need of a strong power to impose order in society and thus preventing the war of all against all. A strong state is often believed to fulfill this mission. Since the early 16th century Sweden has been known for its strong State.

^[3] The Swedish Forest Commons can also be labeled community managed forests.

^[4] For an elaboration on institutions, norms and rules, see Crawford and Ostrom, 1995.

^[5] For an illustration see Tang, 1991, and Ostrom, 1992.

^[6] The Kiser and Ostrom theory is incorporated in the Institutional Analysis and Development framework (IAD) widely used for policy research especially with regard to common-pool resources (Oakerson, 1992; Ostrom, Gardner and Walker, 1994; E. Ostrom, 1995; Thomson, 1992).

^[7] The statutes that regulated the commons were not originally assembled in one single and coherent law.

^[8] SFS 1993:53, Skogsvårdslagen (*The National Silvicultural Act*).

^[9] In the beginning of the 1990s virtually all subsidies were removed by a right-wing government. The present social democratic government which, after the 1994 election came back to power, has not changed this policy.

^[10] Note, however, the perverse situation this creates when the monitor is controlling itself. If a common buys the service of planting new trees on an area, from the authorities, even this area is submitted for control. However, if the regeneration fails, or in other ways deviates from rules and regulation, the authorities can hardly criticize the commons since they did the work themselves!

^[11] Note that it does not have to be a person. Groups of people and corporate actors, such as companies, can own properties and thereby possess shares.

^[12] Note the difficulties in separating the units since the activities they perform are nested in each other.

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