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Common lands in Norway during the Middle Ages.

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Introduction.

One of the first times the 'commons' are mentioned in the Medieval legislation of Norway, is in a 'law amendment' or 'amelioration' which is addressed specifically to the inhabitants of northern Norway. In the very first years of the 12th century, the kings *Sigurd, Øystein and Olav Magnusson* - who reigned together - granted the inhabitants of Hálogaland "... all those commons that they had in the days of holy St. Olav". Only the oldest regional law books for Western Norway (Gulathingslǫg) and for the region Trøndelag in the middle of the country (Frostathingslǫg) contain passages about the commons which supposedly are older. Those passages also confirm that the commons shall be preserved in the way they have been previously, according to old custom.

In recent years, this ancient statement about the commons of northern Norway has led to some discussion, and has to a certain degree come to play a role in the political debate, i.a. concerning the right to engage in fishing along the coast of northern Norway. Sometimes this statement has been interpreted as being a special privilege granted to the northern Norwegian population.

A fruitful discussion of *the existence and fate of 'common lands' in the northern part of Norway during medieval times*, presupposes a clarification and explanation of two contexts: Firstly, the *practical agrarian context* in which the general Norwegian institution of 'common lands' was institutionalized and got its general legal framework - which is tantamount to a presentation of the agrarian adaptational system, based on individual peasant farmsteads, that characterized most of the southern part of the country, and partly northern Norway as well. Secondly: *The peculiar features of adaptation and multi-ethnic settlement which characterized northern Norway at the time*, and made out quite specific conditions for the adoption of similar agrarian institutions. Therefore, the first four sections of this paper will be devoted to a summing up of the general background for the formation of the 'common land'-institution, as it is was developed within a primarily southern Norwegian, agrarian context. Section five will deal with the

medieval legislation pertaining to the 'commons'. And finally, in section six I will discuss the evidence of 'commons' in northern Norway, within its particular multi-ethnic context.

I. The place of extensively exploited resources within the agrarian adaptation and the role of the 'common lands'.

In the southern part of Norway, the 'common lands' must be viewed as a necessary and integral element within a balanced agrarian adaptational form that comprised both agriculture and animal husbandry (cattle). Farming was done on individual lots (homesteads), that comprised both intensively cultivated parts of land, and more extensively exploited areas. The intensively cultivated parts - or "the in-fields" - comprised both fields for grain growing and meadows for hay production. The extensively exploited area - also called "the outlying fields" often consisted of woodland, stony areas and other impediments, as well as pastures, where the cattle belonging to the individual farm could graze. (These outlying fields which adhered to the particular farms, might either be owned completely individually or separately for each farm, or as 'joint property' ("sameie") for two-three farms together.) This mode of subsistence had highly adaptational capabilities, vis-a-vis different stress factors, such as varying population pressure, tax pressure from the authorities and the like. In times of growing population pressure - like in the high Middle Ages - increasing weight might be laid on grain production, which allowed for a greater amount of consumable energy to be produced from the land, though it required a greater labour effort; while in times of lower population pressure, the priorities shifted back to animal husbandry, which required a lesser work amount, and was better suited to the dietal preferences among people. But the functioning of the system required that some elementary standards of balance were being met, and in such a context the 'common lands' stood out as a necessary and highly appreciated element. They provided an extra, additional supply of potentially extensively exploitable resources, that stood at the disposal for the peasants on the officially recognized farmsteads.

The use, to which the common lands were primarily subjected within this agrarian context, was dictated by the need for additional, supplementary resources, as viewed from the individual peasant household or farmstead: To a great extent it concerned additional supplies of fodder for the cattle. I.a. this was provided for, by moving the cattle in summer to certain defined, individually disposed lots in the commons (socalled "seters"), around which the cattle could graze freely, and where their dairy produce could be preserved and stored on a temporary basis, before transport back to the farm in early autumn. Furthermore, the activities providing extra fudder for the cattle also comprised cutting the hay on outlying fields in the commons ("utslåtter"), and gathering leaves and barch for fudder purposes. Apart from this, the common lands also had great value for the individual peasant households on account of their wooden resources. The woods provided fuel and building material as well as material for fences. The processing of tar, on the basis of pine roots, was also common in many districts. Finally, the rights to fishing in the lakes and rivers, as well as to hunting, also meant quite a lot to the peasants concerned.

II. Limitations to the resource exploitation in the 'common lands':

Contrary to what might be expected from the term - in Norwegian: 'almenning' (that is: belonging to, available for "all men") - the exploitation of resources in these areas was not completely free; so far as we might deduce from historical sources:

a) In the first place, resource exploitation in the 'common lands' was subject to rather strict regulations and confinements, in relation to how the peasants might utilize their "own outlying fields". For instance, the outtake of wooden resources was allowed, so far as it concerned legitimate *"needs of the own household"* ("til eget husbehov"). However, the exploitation of the forests for other purposes, such as commercial, was another question, and not allowed.

The right to cut hay on outlying fields in the commons, was regulated on a year-to-year basis: The person "who first put his scythe into an outlying field" could use the hay from the site that year, but the next year it was again free for everyone. The practice of burning down some of the vegetation, and sowing grain in the ashes ("bråtebruk") was originally forbidden in the commons, whereas one was allowed to do it in the outlying fields pertaining to the individual farms. (In Early Modern times however, the peasants exercised an ever greater pressure to be allowed to do likewise in the commons.)

b) Secondly, *the scope of the right holders*: As far as we are able to deduce from the evidence of Early Modern times, the access to resource exploitation in the commons (the rights to common exploitation) was never assigned the whole settlement communtiy in its totality. The rights to use resources in the commons were on the contrary tied to farm units which were entered in the official land registers (Cadasters, "Matrikeln"), and which thereby were recognized as primary tax objects or fiscal units: "Cadaster farms" ("skattegårder" = "Steuer-höfe"). - In some regions even this was **not a sufficient condition**, as the rights of exploitation in the commons were still denied some farms which had been settled during the Viking Age, on stony and hilly areas with poorer soil, between the old settlement cores. (The farms of the "stokklendinger" in Eidsvoll parish, Romerike. Holmsen.) - Though the right to take up 'seters' in the commons was widely recognized, this was not necessarily practised by all the peasants. In Nannestad parish in Eastern Norway some 50 out of 134 farms having official status in the cadasters, used 'seters' in the common in the middle of the 18th century. However, 25-30 farms had 'seters' in their "own, separate outlying fields".

"Almennings-rett"/"Almende-recht", that is to say: Access to the 'commons', or 'rights to resource exploitation in the 'commons', must therefore *not* be confused with "allemannsrett", that is: "the free right of everyone to resource exploitation".

After all, 'common lands' as they emerge from the "classical" Norwegian evidence, are at best conceived as ***territories outside the precincts of the particular, individual farms ("Höfe") or settlement communities, which are open to resource exploitation for a***

selected majority of the peasants on fiscal farm units; the resource exploitation however being subject to stricter restrictions and confinements than the utilization of the farmland proper.

III. Structural oppositions concerning the extension of the common lands.

When it comes to the question of preserving the extension of the commons, and the assortiment of resources held within, there exists an inherent contradiction within the community of peasants adhering to a common: Between people who see themselves as capable of acquiring some part of the common for individual exploitation, and safeguarding this piece of the former common lands as their individual, exclusively disposable resources; and the majority of the community, to whom such procedures do not seem available. In principle, the acquisition of formerly common land may take place in two ways:

1) Either through a successive movement of appropriation from farmsteads already bordering to the common lands: A sort of "direct - may be silent - annexation" so to speak. An extension of the individual farmland proper into the common. ("Direct appropriation".) - Such areas were ordinarily not enclosed, but their boundaries were fixed according to terrain formations, marks in cliffs and stones, etc.

2) The other way is by cultivating new land in the commons, in the form of new, separate settlements or "clearances" (German: "Rodungen"), that do not necessarily have common borders with any old agrarian entities or farms ("Expansion by clearances").

The motivation for trying to appropriate parts of original commons as individually or jointly owned farm land, seems predominantly to stem from the limitations and confinements (restraints) that are laid down for ordinary resource exploitation in the commons, held up against the needs and aims of the individual peasant household, as viewed from its particular perspective. From the point of view of the individual household, it may be desirable to discard with the regulations and confinements, and implement a more thorough, intensive resource exploitation under individual control and without the restrictions from the collectivity. Such a goal may of course be triggered by several circumstances: In a context dominated by agrarian-based, household economy, increased population pressure and competition for the extensively exploitable resources may of course lie behind. Specific external factors, like increased market demand for specific resources, which pave the way for innovations within the encompassing economic system, of course play a central role. That seems to be the case of the increased international demand for timber and wooden resources, which promoted Norwegian export of these resources during the 16th and 17th centuries. As the forests now stood out as a new value - both in the eyes of the rising bourgeoisie and the peasants - many of the latter sought to acquire the neigbouring forest areas of many commons as private forests - either as individual private property, or as socalled 'joint property' between two or three

farms.

Such a drive for 'direct, silent appropriation' appear to have been present in very different periods, and in highly different contexts. Attempts of such appropriation might be undertaken from the oldest, well established, central farms in the communities, as well as from the ones in the middle layer, and the from tiny clearances, just barely established during christian medieval times. - Notwithstanding their ubiquity, such motivating forces in the direction of appropriation of course had to be mediated, balanced and checked out against other, counter-balancing and pre-disposing factors: Distance to the resource area originally considered as 'common', together with ecological and topographic factors will of course play a part, in determining the degree of access to these resources, and the degree to which some of the neighbouring farms will strive to appropriate land, or resist any newly established farm to get in their way, and cut off the access to the commons. But such topographical factors will of course have to undergo a social mediation. The real decisive factor in determining how far the appropriation of 'common land' shall be allowed, would appear to be the relative balance of social power between the peasant striving for appropriation, and the collectivity of those peasants who see themselves as "cut off" from the commons by this very appropriation. The peasants whose access to the commons seem to be threatened by the expansion of farm land proper, would naturally strive to halt back and check the movement of 'direct appropriation'. In other words, they would tend to put down a "veto" against further direct expansion. This contradiction seems to be present at all times.

In the appendix are rendered two examples highlighting how this contradiction might be expressed at various times; respectively from a case in Gudbrandsdalen in 1432, and from a survey over the commons in Nannestad in 1759.

IV. The institutionalization of the 'commons' in Eastern Norway.

The very contradictions sketched out above, may serve as methodical approach ("innfallsport"), when it comes to determining when and why the 'commons' of eastern Norway came to be constituted or institutionalized.

Tentative analysis, carried out by the author, indicates that the successive development of settlement had come so far in these regions *during the Viking Age and the first, pre-christian part of the Middle Ages*, that such a contradiction as sketched out above had been actualized, with ensuing consequences for the *delimitation of the 'commons'*, and the establishment of certain *customary rules*.

Such an analysis must take into consideration the main trends of settlement development, as it may be reconstructed on the basis of archaeological evidence, place-names and evaluation of the relative size of the farms. At the same time, comclusions can be drawn from the distribution of land ownership categories among the various farms ("the geography of land ownership"), and the patterns of farm boundaries.

(To an international audience, it should be emphasized that the structure of Norwegian agrarian settlement is based on *separate, individual farms*, which have been established successively, colonizing ever greater parts of the landscape. In addition the land ownership management was of a special kind. Though a greater part of the land was owned by the great landlords - the Crown, the Church and to some degree the Nobility - these land owners rather kept a long distance to the concrete dispositions of the peasants, when it came to practical problems of farming. No manorial system was known, at least not during the High Middle Ages. The rights of the land owners were nearly restricted to collecting the rent. This system has therefore been called a *"rent ownership system"*. State taxes and revenues, as well as jurisdiction were entrusted to special state officials in cooperation with representative assemblies at local and regional level. A fairly great amount of the farm land was also owned by the peasants themselves, both in the form of *individual freehold* in the farms they occupied, and in the form of *property shares in other farms*, run by other peasants. (Socalled "peasant land owners".) Another essential feature of the "rent ownership system" was that it was a "share property system": From one farm for instance, the Crown might be entitled to some part of the rent, a monastery to another part, the local vicar of community to a third part, and so on, - until eventually the peasant living on the farm also owned a part. That is to say, he did not have to pay this part of the totally assessed rent to anyone. - Due to these particulars, the inherent features of the settlement structure has been proven to be so stable, as to allow for a backward "retrospection" or "retrogression" of certain traits or ownership categories, which only are documented in sources dating from Early Modern times.[1] Of course, due consideration must necessarily be taken to alterations produced by the settlement contraction during Late Medieval times, but many structural traits were still preserved at large. - For instance, when it comes to church property, it should be remembered that the Protestant Reformation, carried out in 1537, put an effective cover to the Medieval property relations. Thus, when confiscated church property is observed in late 16th-century sources, one may be fairly sure that this has its origins in the Middle Ages.

By way of these methods, it is to a fair extent possible to discern *centres of pre-christian social elites in the local communities*, who played a decisive role as resistance leaders, during the christianization process and the struggle for establishment of one, realm-comprising kingdom. The farms of such resistance leaders were to a high degree confiscated by the victorious king, and donated afterwards to various clerical institutions, such as bishop's sees, cathedrals and monasteries. - At the same time, indications of former *peasant property* are distinguishable, since peasants owning freehold parts in their own farms or property shares in other's, would be apt to donate *small shares* to the clerical institutions - in order to have soul-masses sung - and this would often concern the local, parish church. Whereas the donations carried out by the King or Nobility, would often comprise *whole farms*, and be directed to more central clerical institutions.)

Given the evidence mentioned above, several traits point in the direction that a boundary has been constituted between the "outlying fields" and forests of the separate farmland proper, and the 'common land' sometime at the end of the Viking Age or during the

[1] Cf. "la méthode regressive" of Marc Bloch.

earliest part of the Middle Ages. More precisely, this process would seem to be dateable, according to the chronology of certain farm-name types. It seems have taken part after the establishment of farms named with the elements *-stad* and/or *-set*[2], which are usually thought to have been productive in the Younger Iron Age, and in particular during the Vikig Age. While at the same time, it must have been completed before the establishment of the numerous clearances ending in *-rud*[3], dating from the later part of the Viking Age, and on through the first part of the Middle Ages. - Some -rud-farms in the middler and northern part of *Nannestad parish*, appear to have been established in what was considered as "outlying fields" within the sphere of influence of older, "mother farms", and not belonging to the common area of exploitative resources. Likewise, the -stad- and -set-farms in the eastern parts of *Ullensaker parish* have a northern delimitation, which suggests that this line has been significant in distinguishing between the separate "outlying fields" belonging to these farms in particular, and a bordering territory with another set of characteristics. North of this boundary line, lies one -rud-farm as well as several other clearances, which are even smaller and younger, and which presumably date back to the High Middle Ages.

Now, the majority of the -rud-farms in Nannestad parish has a name composed by -rud together with *a pre-christian male name.* This fact points in the direction that the process must have been completed *before* christianity gained foothold in these inner regions of Eastern Norway, which is commonly thought to have happened at the middle of the 11th century. In fact, the commons of Romerike appear to have been structured systematically according to an *old, pre-christian territorial organization*, and *not* in concordance with the parish organization that was introduced with the establishment of the new, christian church (A. Steinnes, A. Holmsen, B. Kirkeby), - another fact that substantiates this dating. Therefore, the fixation of the mid-11th century as a *terminus ante quem* for the constitution of the commons in these parts of the country, seems fairly sure. What is new in this analysis, is the rear delimitation, to sometime after the establishment of the -stad- and -set-farms.[4]

The prime moving force behind this establishment of 'common boundary' is probably the social pressure from those parts of the peasant community, who saw themselves cut off

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[2] Both name-giving elements indicate some human dwelling place, in the meaning "place where one stays, sits". Traditionally, they have been thought to represent an expansion of the settlement, by moving out from older settlement cores.

[3] The name element "-rud" in Norwegian means literally the same as "rydning", and is equivalent to English: "clearance" or German "Rodung".

[4] *På Hedmark følger almenningene 'fjerdingene'.[?] Dette kan bety at almenningene er institusjonalisert seinere der, - hvis fjerdingene har opphav i den kirkelige sogne-inndelingen; - eller peke i retning av det samme som Romeriks-materialet, hvis de kristne sognene baserer seg på en før-kristen bygdelags-organisering. Forskjell m.h.t. hvordan Romerike og Hedmark ble kristnet, inkorporert i 'riket'?*

from the access to the common resources in an ever increasing degree, as the settlement expansion went on. In those parts of the country where this group was sufficient numerous, or had the capabilities of rallying enough support, such a boundary may be established.[5] This presumed reaction on behalf of the "off-cut" part of the settlement community, appear to form the most tangible indications we are able to detect, for a possible "concerted action" or "collective behaviour" on par of the settlement community. In relation to the much more firm and concerted actions performed by self-reliant and self-conscious bodies of "Gemeinden" or "Gemeinschaften" at the continent, this appear as rather pale manifestations.

Another result of this resistance and pressure from the collectivity of the settlement community, vis-a-vis the perspective of an ever-increasing 'direct appropriation' of 'common land', may have been the formulation of a *customary rule* to the effect that the "commons should be preserved for the future in the shape (extension) they have (at the moment), and according to the practice that has been followed."
Such a customary rule was in fact confirmed in the oldest regional law books, codified separately for each of the traditional law provinces. (These regional codes go back to the 10th and 11th centuries, long before a common nation-wide law code was introduced by royal legislation, during the latter half of the 13th century. - The nation-wide country code of Magnus Lagabøte, 1277.)

Thus chapter 145 of *the Gulathing law book* holds, in the introduction to its exposition of rules concerning the commons:

> "Hverr maðr scal neyta vatz oc viðar i almenningi. Sinn almenning scal hverr hava, sem at fyrnsku hever haft..."
>
> "Every man shall enjoy water and wood in the common. His common shall every man have, in the way it has been..."

And chapter XIV, 7 of *the Frostathing law book* also states this general clause,

> "Svá sculu almenningar vera sem verit hafa fyrr at fornu fari bæði hit øfra oc hit ytra..."
>
> "Thus shall the commons stay in the way they have been before, according to previous custom, both in the upper and exterior... "

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[5] *In the southern Norwegian provinces of Telemark and Agder this kind of social pressure or support does not appear to have been sufficiently effective to bring about any constitution of a 'common boundary'. In these parts, the semi-mountainous areas and 'outlying fields' in their totality were divided between the separate farms. This phenomenon may have been caused by the principal parity* between the farms and peasants, which may go back to the earliest phases of the settlement. Almost all the land in these regions were owned by the peasants, reciprocally.

And then it goes on to stipulate exact procedures for solving that very type of conflicts that may arise from alleged attempts of 'direct appropriation':

> "...En ef menn scill á, callar annar ser an annar callar almenning, þá festi sá lög fyrir er ser callar, oc kenni þing siðan, hvárt sem þar er fylkisþing eða hálfuþing er menn eigu því máli at scipta..."
>
> "...But if men disagree, and one calls it for himself, and another calls it common land, then he have it endorsed who claims it for himself, and rally subsequently the 'thing', irrespective of it being county thing or half-county thing, which stands at disposal for men to settle such matter,..."

(Alas, those parts of the Eastern Norwegian regional law books that deals with secular matters of land management, have not been preserved.)

V. The legislation of the High Middle Ages.

During the High Middle Ages the King's authority in legal matters grew, and his legitimity as legislator increased substantially, insofar as his role of iniator was accepted by the local thing assemblies of the peasants. New measures and regulations - which were always given the appearance of being 'amendments' or 'improvements' of the old law - necessarily had to be presented for, and accepted by the regional, representative thing bodies of the peasants (Frostathing, Gulathing and so on.)

During this process of legislation, the customary rule about preserving the commons, in the shape they always had been, and according to old customs and practice, got confirmed, and was incorporated in the (authorized) regional law books. - But another clause was added, obviously on the initiative of the King. This clause concerned the land ownership status of potential settlers in the commons, who now were declared to be *tenants of the Crown*. Immediately after the clauses confirming the status of the commons, the Gulathing law book states:

> "...En ef bygð gerizt i almenningi, þá á konongr."
>
> "...But if settlement is made in the common, then it is owned by the King."

And the Frostating law book (Chapt. XIV, 8) contains the following clause to the same effect:

> "Konungr má byggia almenning hvargi er hann vill."
>
> "The King may rent out common land to whom he may wish."

On the background of the evidence presented above, these points of legislation may now be regarded as a measure to ease and improve the situation for the potential settlers, vis-a-vis the customarily established "veto" against infringements on the commons. The Crown may have deemed it convenient and advisable that some land was placed at the disposal for such settlers, even though it meant an intrusion to the established rights of the communities when it came to exploitation of extensively used resources. As long as the old, customary rule about the preservation of the commons was preserved, and fixed legal procedures were established for charges implying those kind of infringements, a clearcut priority was established as to what kind of infringements on the commons that might be tolerated; viz. clearances and settlements consisting of separately cultivated areas, with own grain production, which could contribute to the procurement of the ever-increasing population. 'Direct appropriation' which would imply the strengthening of the extensively exploitable resources for those already established, was still prohibited. - This policy of favouring new settlement to a certain extent, promoted at the same time the number of individual farmsteads in the country, which subsequently could be subject to the *Crown's taxation*.[6] As the 'subject relationship' to the King (Crown) also was expanded, in so far as the new settlers were taken into the custody of the King, this measure might also have loosened and weakened older, more traditional power structures in the communities, dating back to pre-christian times.

The taxation to the Crown had been institutionalized during the civil wars of the 12th century - when the traditional obligation for the peasants to provide foodstuffs for the popular armed forces in wartime (the 'leidang') had been partly transformed to an annual tax in peacetime. Thus the Crown's interest in tax objects cannot be much older than this arrangement, presumably dating from the middle of the 12th century. - On the other hand, the legislative position in these matters must have been clearly established in the southern parts of the country well before 1260. In this year, king Håkon Håkonsson referred explicitly to the state of law in southern Norway, when he introduced similar regulations to Frostathingslǫg, as part of a law initiative for this region, - his socalled "New law":

> "About those possessions (farms) which are called 'outside the staves' and are established in the commons, then we want such law and arrangement to stand between king and free men, as in the eastern or southern parts of the country, and they pay such obligation of the subjects here as there, according to the king's decree."[7]

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[6] *As these measures were being implemented for Frostatingslǫg as late as in 1260, some scholars have further suggested that they represent a counter-measure to certain difficulties signalling a beginning agrarian crises already in the High Middle Ages: Slightly worsening climatic conditions shall allegedly have aggravated the situation for agriculture in the northern part of Norway already during the 13. century. (Holmsen 1975.)*

[7] *"Of eignir þær er utan stafs ero kallaðer oc i almenningen ero görvar, þá vilium ver at þar standi slíc lög oc scipan um meðal konungs oc karls sem austr eða suðr í landit, oc slíca þegnscylldu geri þeir her sem þar eptir konungs skipan." (Frostathingsloven, Norges gamle Love, vol. I, p. 125.*

VI. Northern Norway: Norwegian 'commons' in an inter-ethnic setting.

Having sketched out the general features and structure of the institution of the commons in southern Norway, and the background for the general medieval legislation concerning this institution, we now stand in a better position to assess the North Norwegian evidence:

The legal clause restituting the conditions of the commons in Northern Norway, forms part of a more general 'law amendment' issued by the "triumvirate" kings *Sigurd, Øystein* and *Olav Magnusson*, in the very first years of the 12th century (1103-07). (In the translation below, numbers and explanations in brackets have been added by the author, to enlighten the understanding.)

> Þessa réttarbót hafa konungar gefit Háleygium öllum. þat eru fiscigiafir allar bæði af nesium öllum oc af öllum fiskistödum, fyrir utan þat er menn hafa gefit konungi .v. fisca. þat scal hverr maðr fá er í fisci er i Vágum, reycmæla oc rygiar tó oc viniar spönn. Hafa þeir oc gefit almenninga alla slíca sem þeir höfdu um hins helga Olafs daga, bæði hit ytre oc hit öfra, sunnarla oc norðarla. En klóvöru alla fyrir norðan Umeyiarsund, þar á konungr einn caup á.

> "This amendment has been given by the kings to all the Háleygs:[8] That is **1)** [the suspension of] all gifts from the fisheries, from all the promontories and from all the fishing places as well, - with exemption of that which men have agreed to give the king; that is 5 fishes: which shall be payed by any man who participates in the fisheries at Vágar - [likewise the suspension of] **2)** One 'mæle' malt, **3)** a hand's full of unspunt linen and **4)** one bushel of butter. Have (the kings) also granted (them) all those commons that they had in the days of St. Olav, - both the exterior and the upper, to the south and to the north. But all fur-ware north of Umeyiarsund[9], that has the king alone the right to buy."

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[8] *Háleygjer: Inhabitants of Hálogaland, the northernmost part of Norway, well integrated in the Norwegian king's "Realm" of the Middle Ages. North and east of Hálogaland lay Finnmǫrk, where the primarily Sami population was recognized as having a status outside the 'Realm' in so far as they were not full-capacity subjects to Norwegian law and authority. They still had to pay tribute to the Norwegian king.*

[9] *Not precisely identified. Informed guesses have suggested Vennesund ("Vinjarsund") near Brønnøy, as well as the outlet of the great lake "Uman", situated in mountainous border area between Norway and Sweden.*

The immediate context of this royal decree is easily sketched: What the three kings do by this amendment, is to withdraw the last ones of certain illegal regulations and prescriptions that had been introduced by the puppet regime of *Svein* and *Alfiva*. These two had been ruling on behalf of *the Danish king Knut*, after the fall of Olav Haraldsson, who later was to be declared holy.[10] - During the reign of Svein and Alfiva, several enactments had been issued, which confronted and offended the traditional rights of the Norwegian peasants, i.a. concerning the circumstances under which confiscation of property could take place, their right to travel freely abroad, etc.[11] Among the foremost of these illegitimately conceived enactments, were the prescription of forced deliverances in kind from the peasants; these were the socalled "Christmas gifts". The above mentioned amounts of malt and linen are examples of such forced "christmas gifts".

So the situation concerning the commons in northern Norway was being restored to what it had been "in the days of the holy St. Olav". Nevertheless, the right of buying precious furs was to be a royal prerogative.

From the analysis above it follows that this concern with the commons of northern Norway chronologicaly preceded all general initiatives regarding the commons which the Crown implemented during the High Middle Ages. These general enactments were not implemented for northern Norway until the second half of the 13th century. - If northern Norway was recognized as an integrative part of Frostathingslǫg as early as in 1260, when king Håkon Håkonsson presented his "New law", it follows that the general legislation with its double perspective on the commons was introduced in northern Norway already at this time. Anyhow, the general legislative regulations must have been adopted *not later than 1280*, when the baron Bjarne Erlingsson - acting on behalf of the king at the thing of Vágar in Lofoten - substituted the old regional or local law code, with the new, nation-wide, ("Realm-encompassing") law code. Thus, the suspension of the regulations introduced by the Svein & Alfiva regime must be regarded as a retreat from a premature, untenable position, which claimed royal sovereignty or property rights over

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[10] *The withdrawal is made for the legal province of* ***Frostathingslǫg****. For the province of* ***Gulathingslǫg****, the regulations had already been suspended earlier, by Magnus "the Good" (son of Olav Haraldsson), and Håkon Toresfostre.*

[11] *Refer to the saga literature; P.A. Munch, etc. - According to P.A. Munch (1853:815), the complete list of the regulations and prohibitions issued by Svein and Alfiva, must have included the following:* ***1)*** *Nobody was to leave the country, without permission of the king. Violations led to confiscation of property.* ***2)*** *Introduction of property confiscation as punishment for manslaughter.* ***3)*** *Legacies pertaining to people being "outside the law", were taken by the king.* ***4)*** *At the turn of year, every peasant was obliged to pay the socalled "Christmas gifts" to the king.* ***5)*** *The peasants were obliged to build all the required houses on the king's residences.* ***6)*** *The annual tax should be collected according to more unfavourable terms for the peasants.* ***7)*** *Anyone engaged in the fisheries should pay the king a fee.* ***8)*** *Any ship leaving the country should keep a room for the king's disposal.* ***9)*** *Anyone travelling to Iceland should pay the king a fee, whether he was a Norwegian or an Icelander.*

the commons, - possibly according to foreign models. - However, from a legal point of view one would assume that the stipulations about the commons of the Háleygs, as they were expressed in the 'law amendment' from the early 12th century, *must have been replaced by the general clauses contained in the nation-wide law code*, which at the latest had been introduced and adopted in northern Norway during the last years of the 13th century.

But what were the conditions of the commons "in the days of St. Olav", and how are we to conceive the institution of 'commons' in a north Norwegian Medieval context? To get a more thorough understanding of these questions, we must firstly delve deeper into the conditions made up by a diversified, multi-cultural and multi-ethnic settlement, consisting av both Norwegians and Saami alike. (Reference to "Rímbegla", "Historia Norvegiae.") At the same time, the analysis may profit from the lessons drawn from the southern Norwegian evidence: In particular what has been exposed about the institutionalization of the 'commons', as partly promoted by the pressure exercised from those peasants who saw themselves threatened and 'cut off' from the common exploitable areas, by the silent, 'direct appropriation' of those having farm lands bordering directly to the common resources.

Several studies from the recent years have fully documented the picture of an ethnically and culturally diversified settlement in northern Norway during Medieval times. In a general perspective the Norwegians might be said to be more numerous in the outer districts and on the big islands, while the Saami were predominant in the central and inner parts of the settled area, with the great fiords. In many districts however, the Norwegian and Saami settlement appeared almost side by side. (Hansen 1990, Nielssen 19..., Bratrein 199..)

Now, a preliminary glance at the north Norwegian evidence seems to indicate that the occurrence of 'commons'-conceptions is attached to some kind of "boundary" situation, - to some areas which may have been regarded as "marginal" or "peripheral" from either one, or both sides. These areas and institutional relicts may be regarded as functioning as a kind of "mediators" between Saami and Norwegian adaptations and ways of life.

Verbal relicts, such as Norwegian *place-names* signifying "almenning" or 'common' are to some extent found in areas which make up a border zone between the Norwegian and Saami settlement as both may be reconstructed for Medieval times. (E.g. Steigen.) This goes for both farm-names, and for lake-names. Some institutional reminiscences also indicate that *certain districts or settlement units were being conceived as being part of the 'commons' from Norwegian side*, while at the same time they were an integral part of a Saami habitat. During the first half of the 17th century, the Saami of the fiord of Salangen in the southern part of Troms county, were granted special rights of exploiting their traditional sites according to their own systems, without having to pay the ordinary rent which tenants normally had to deliver. In this way, they had been bestowed the right to *operate outside the ordinary land ownership system*, which otherwise encompassed all Norwegian peasants. But in cases where the Saami residents for some reason did not want to exploit the resources on these traditional sites, Norwegian peasants might be allowed to *lease* the use rights, but only on a *temporary*, year-to-year basis. When doing so, they

had to pay a certain annual fee, called 'gressleie', or 'grass fee'.[12] But this kind of fee is closely attached to the exploitation of resources in the commons elsewhere in Norway. In the great valleys of southern Norway peasants had to pay the state authorities the same kind of fee, in order to be able to exploit some of resources in the commons more freely than they otherwise would be allowed, according to the law and customary regulations. (Hansen 1986.) *In other words the same kind of institutional solutions was implemented for extra resource exploitation in the commons of southern Norway, and for Norwegian exploitation of traditional Saami sites in Troms.* This would indicate that some of the traditional Saami land use areas of northern Norway were being perceived as analoguous to 'common land' from the Norwegian point of view.

But the 'law amendment' of the early 12th century has also to assessed on the immediate background formed by conditions of settlement and political power in northern Norway in the early Medieval ages. The foremost political endeavour in the preceding century had been the successive integration and subjugation of northern Norway into the encompassing Norwegian kingdom; a process by which the traditional north Norwegian chieftains had been abolished and expropriated by the "supreme king", who pretended to exercise authority over the whole "realm". The leading representatives of the traditional north Norwegian elite - the socalled *Lade earls* - were finally beaten during the first decades of the 12th century. There are good reasons to believe that the traditional chieftains had maintained a mutually beneficial relationship with the fur-producing Saami, as the fur export represented a highly evaluated and status-bringing activity. To this end, they might even have sought to preserve the Saami catchment areas, and protected them from undue intrusions by Norwegian settlers. But the two supreme authorities that replaced the chieftains - that is the "realm-encompassing" kingdom and *the church* - did not have the same options for exercising sanctions against aspiring Norwegian settlers, who wanted to cultivate land within the Saami premises. It is reasonable to assume that the land use areas which previously had been exploited exclusively by the Saami, were exposed to settlement pressure from ambitious Norwegian settlers, who were eager to take up new, cultivated farm lots at sites which alreqady had been cleared by the Saami, serving as home-steads and seasonal centres within their semi-nomadic migrations. As a result, these land use areas were exposed to a pressure, and *a successive individual appropriation* which was very similar to the appropriation of originally common exploitable resources that had been going on in southern Norway.

Consequently, two kinds of oppositions must have arisen:

> 1) Within Norwegian society there must have occurred a state similar to the one in southern Norway: A contradiction between those aspiring new settlers, who wanted to move into the former Saami territories and start cultivating separate lots there; and the other peasants who wished to preserve these land use areas in their traditional shape, but with common access to the extensively exploitable resources

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[12] *If some of the Saami wished to take up the activities on the site however, the Norwegians had to cede, and the Saami could continue their resource exploitation without having to pay anything. This arrangement lasted until 1661.*

there. (The reminiscenses of some areas recognized as 'common' in the bordering zone between Saami and Norwegian settlement, may be interpreted as a manifestation of this opposition.)

2) Secondly, there must have occurred an opposition in relation to the local Saami society, which assumingly must have wanted to continue its traditional resource exploitation and adaptational form.

In this situation, the royal power intervened with a decree that implied *a retreat from a standpoint claiming full property rights or authority over the commons*, and a confirmation that the commons in northern Norway should be preserved in their former status. (In fact this may be viewed as an endorsement and adaption of the customary principle which at the same time was being confirmed in the southern part of the country: "The commons shall be in the way they have been before, according to previous practice, both in the upper and exterior... " (Frostathing law book, chapt. XIV, 7.) - The fact that the 'law amendment' for northern Norway uses the very same terms hinting to "the exterior and the upper" may in itself suggest that it has been drafted with the former as model.)

In this way, the 'law amendment' implied *a decision in favour of those peasants who wished to preserve the extensively exploitable resource areas for common use, and secure the common access to those resources*. But at the same time the King reserved for himself alone the right of exploiting one of the greatest income sources attached to the outlying areas of northern Norway, viz. the *prosperous fur trade*. This *commercial interest* in one of the main resources did not infer with the general peasants' use of extensively exploitable resources as a supplement to the ordinary farmsteads. They could still cover their legitimate "own household needs". Nor in previous times had the ordinary Norwegian peasants and fishermen had much control over the fur trade, as this was being managed by the great chieftains. Through the royal prerogative, the fur trade became an important asset to the ruling apparatus of the king, and was granted as a fief to the successive incumbents of the important position as the king's representative in northern Norway. (Cf. the strife about the terms of the fur trade documented in "Sigurd Ranessøns proces" [The law suit against Sigurd Ranesson].)

To the Saami, it must have been a better option to have their traditional lands regarded as 'common' from the Norwegian point of view, than having it at once declared as "free land, open to new settlement and clearances". But of course, the situation was not as good as it had been in the days of the chieftains. As the general Medieval legislation concerning commons was introduced, the pressure from settlement-seeking Norwegian peasants also grew, and put the traditional Saami livelihood under a severe pressure, from which it was not able recover.

Concluding remarks.

The exposition above has amply demonstrated that there existed a certain drive among the

users of the commons towards "direct appropriation' of common land - through the most different epochs and under the most varying circumstances, stemming plainly from the internal conditions of the subsistence system, primarily based on a combination of agriculture and cattle breeding. This drive was highly accentuated under conditions where the commercial interests (market demand) for certain of the resources in the commons increased, and such interests also brought new actors into the game. But such commercial interests were no necessary condition for this kind of pressure towards a partioning into separate areas of farmland proper. - *The very fact that this tendency was so steady, even under purely subsistence conditions, shows that the original Norwegian institution of the 'commons' embodied such elaborated and socially defined restrictions on the exploitation of resources in the commons, that it did not allow for a an unrestrained and unscrupulous exploitation of the resources, that would jeopardize their carrying capacity.* Therefore, it would seem worthwhile to deepen and further expand the study of the social institutions and regulations pervading the use of the commons according to the orginal Norwegian model.

Appendix.

Letter issued at the farm Bjölstad in Vågå parish, Gudbrandsdalen valley, 23.09.1432. Published in Diplomatarium Norvegicum.

To all men, those who may see or hear this letter, do we **Ogmund Nikulasson**, **Tore Hugleiksson** and **Jon Pálsson**, county jury members* in (the parish of) *Vågå*, send the greetings of God and ourselves, proclaiming that we and several other good men were present at the farm **Bjölstad**, which lies in the valley of Gudbrandsdalen, on the tuesday following the Imbre [= Emmeran ?] sunday of autumn, in the 44th year of the reign of our dignified lord, Hr. Erik, by the grace of God king of Norway.

There we listened to **Andres Jonsson**, who on behalf of the peasants of Vågå brought charges before the King's representative in the northern half of Gudbrandsdalen, that they (the peasants) distrusted **Eirik Björnsson**, who claimed to have 'home-area' [= individual farmland proper] stretching into the King's common, for a longer distance than he rightfully ought to. - Thereafter we stretched 'home-area-rope' from the ring of his store house, north of the pool called Sindrehölen which lies in Midlunne, and we put marking sticks at the place where 'home-area-rope' ended; with the consent of all us being present, and in the presence of the King's representative. - Then spoke **Andres Jonsson**: "Now we know your home-area, and if anyone does you harm within this mentioned home-area, and in your fishing, it seems to me as though he has taken it from your store house."

For the sake of truth did **Pál Halvarson**, the above mentioned representative of the King and present, put his seal - and we our seals - under this document, which was issued at the day and in the year previously stated.
* Or: "county jury delegates".

(English translation by Lars Ivar Hansen.)

Testimonies about the commons of Holter, Nannestad and Bjørke parishes, recorded June 6th, 1759. (Appendix to missive from province governor Storm in Akershus province, May 9th, 1761; Archive of Generalforstamtet, Norwegian National Archives.)

"...The occupants of the farms laying farthest away in Holter parish (in Nannestad) did most humbly plead that those among the peasants on farms bordering closely to the common, who were not able to produce any legal title to their enclosures of the socalled home-forests, must either be ordered to tear down the same enclosures, or else must the other ones also be allowed to have the same freedom to fence in that land which is situated most suitably to them; if not, they would have no use of the common."

(English translation by Lars Ivar Hansen.)