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Conflict Resolution Mechanisms Maintaining an Agricultural System.

The Development of Local Courts as an Arena for Solving Collective Action Problems within Scandinavian Civil Law, 17th Century to the End of 19th Century.

Abstract

Rapid access to low-cost local arenas to resolve conflicts among appropriators is one of the principle's that characterizes robust CPR institutions. In spite of this insight we have little knowledge about how such institutions solved collective action problems in early modern Scandinavia, when CPRs were an important part of the production.

Arenas to resolve conflicts among appropriators range from informal meeting among users to formal court cases. This paper will focus on local courts within the Scandinavian legal origin and how these courts developed as arenas for CPR conflict resolution. Court rulings from the parish Leksand in central Sweden are the main source material for this study.

The results indicate that access to a low cost arena was more important for the peasants than rapid access to the courts. Further, I demonstrate that the court acted so that disputing parties could solve collective action conflicts among themselves without a verdict from the court. Lay-judges, peasants from the region, came to play an important role in conflicts resolution. Thus, in the seventeenth and eighteenth century the court had an important role in maintaining an agricultural system with strong reliance on commons. The court came to lose this role during the nineteenth century.

Keywords: Commons, Design principles, Conflict resolution, Early modern Sweden, Agricultural systems,.

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1. INTRODUCTION

Agricultural systems in early modern West Europe were based on mixed farming, i.e. arable farming and livestock production within the same farm. These systems not only mixed different types of production they also mixed different types of property rights to land (De Moor 2009; Larsson 2014a). Forests, lakes and mountains were common-pool resources (CPRs) and used for different purposes such as grazing, collecting firewood and fishing. In early modern Northern Scandinavia land held as commons came to constitute a significant part of land use. Consequently institutions for handling collective action problems developed rapidly during this time (Sundberg 2002; Larsson in press).

Since the 1980s scholars have shown that local users themselves can construct institutions to use natural resources, this refuted earlier assumptions that users of commons were unable to avoid overuse and would destruct their resources. Most of these studies focused on local users own ability to build successful institutions (Gibson, Williams and Ostrom 2005). These institutions, i.e. rules (North 1990), included mechanisms to resolve disputes and conflicts and were necessary for facilitated management. Rapid access to low-cost local arenas for conflict resolution among appropriators is one of the principle's that characterizes robust CPR institutions. (Ostrom 1990; 2005).

However, in early modern Scandinavia the management of CPRs was not limited to the local users. The state had a stake in management regulations not only by the national law that set the limits for self-governing, but also in conflict resolution. Arenas to resolve conflicts among appropriators range from informal meetings among users to formal court cases and this paper will focus on the latter. In early modern Scandinavia the local courts became a trusted arena for solving conflicts within local communities and they were occupied mostly with civil cases involving economical disputes (Österberg & Sogner, 2000, Sundin 1992). While we know quite well how the court worked in many areas no attention has been paid to how collective action problems were solved at these local courts. Hence, this paper will discuss the local court as an arena for solving collective action problems by examining how one court in central Sweden handled these questions. The paper will do this by focusing on one type of utilization of the commons, i.e. a transhumance system. The paper will contribute to the understanding of the governing of commons by providing detail information about how collective action problems were solved in the context of Scandinavian law tradition. The paper will show how and why the court became en essential part in maintaining an agricultural system based on the use of commons. The paper will also briefly discuss why the system failed during the nineteenth century when the court ceased to be a trusted arena for solving collective action problems.

2. BACKGROUND

2.1. Scandinavian law and Swedish Courts

There is a tradition in comparative law to speak about legal families. What the most important feature is to create a legal family differs between legal scholars but most agree that common methods, legal terminology, characteristic institutions, and a shared legal background unite a legal family. Zweigert & Kötz (1998: 65) argues that the most convincing of the groupings so far is the division of legal systems into seven families: French, German, Scandinavia, English, Russian, Islamic and Hindu. Malmström (1969) argues that within the Western (European– American) legal group four legal families can be distinguished: the legal systems of Continental Europe (with a German and a Romanistic subgroup), the Latin– American system, the Scandinavian system and the Common Law system. We can conclude that Scandinavian law is generally regarded as distinct from other legal families, but some scholars regard Scandinavian law as a subgroup of civil law in continental Europe (Bernitz, 2010: 15; Tamm et al., 2000: 27; Sundberg, 1969: 204). An alternative name to Scandinavian law would be Nordic law since it refers to the law of the five Nordic countries, Denmark, Finland, Iceland, Norway and Sweden that are included in the group.[1] Scandinavian law has three key factors separating it as a legal family on its own: the limited importance of legal formalities, the lack of modern codifications and the absence of an actual reception of Roman law. Nordic legal science has according to Zweigert and Kötz (1998:285) always paid attention to the development on the continent, especially since the nineteenth century, but they have avoided the construction of large-scale integrated theoretical systems, "thanks to the realism of the Scandinavian lawyers and their sound sense of what is useful and necessary in practice".

The division of the world into legal families and the inclusions of systems in a particular family are vulnerable to alternation by historical development and change and legal families depends on the period of time of which one is speaking (Zweigert & Kötz, 1998, 67). The Scandinavian legal tradition goes back to the early medieval period when similar provincial law codes appeared in Denmark, Norway, Iceland, and last in Sweden. This intense period of legislation coincides with a period of political and ideology consolidation of the emerging states (Lindkvist, 1997: 214). The provincial laws in Sweden where replaced by a law code of the entire realm in the mid fourteenth century. There was one legal code for the countryside and one for the small cities, however there were no major divergences between the two. The law for the countryside was revised in 1442, but it was not entirely replaced by the new law code. Both were used up to 1608 when the revised version was printed and was considered the authoritative version. This medieval law code was in place up to 1734 when a new national law was introduced including

[1] The Scandinavian law tradition also includes three territories with a high degree of internal self-governance: The Faroe Islands, Greenland and the Åland Islands; the first two under Danish sovereignty and the latter under Finnish.

both the countryside and towns. However, the new law code did not mark any radical break in the legal tradition in Sweden (Lindkvist, 1997: 216-7). The land-holding peasants formed the local community in the laws and the yeoman was its starting point and he was the standard legal actor (Korpiola, 2014:98). The law code from 1734 is formally still in use but what the law contains and how the courts works has fundamentally changed (Jägerskiöld, 1984b, VII).

The long term history of jurisdiction in Sweden is the story of how the king and the state has gained more and more control over the process at the expense of the local community. Starting in the seventeenth century the jurisdiction slowly became more professionalized. The court had its roots in an organization for self-government, not just an arena for jurisdiction (Österberg, Lennartsson & Næss, 2000: 251-252). The medieval jurisdiction was under control of the local communities and the local community was the fundamental legal authority (Korpiola, 2014: 69, 116; Lindkvist, 1997: 220). The countryside was divided into judicial areas. The primary unit of the jurisdiction was an assembly called *ting*. The *ting* was a general assembly of the community, known since the Viking age, were diverse matters of the community were settled. During the Middle Ages it came to be an arena were the rural communities convened to manage their legal matters. The court proceeding took place under the leadership of a judge and he made his judgment together with a panel of twelve local men, the *nämnd,* or sometimes referred to as twelve men. (The word *nämnd* means to be appointed or to be nominated.) In the rest of the text the *nämnd* will be referred to as the jury. The members of the jury were in general peasants, and they did not have to be freeholders. No official could sit on the jury and the jury represented the community and its knowledge of local people and circumstances. The jury was a jury of the community and during the late Middle Ages (fifteenth century) it seems like a system with a fixed jury for a longer term was established instead of having a jury for each case (Inger, 2011: 60). Certain men had long careers in the jury and thus became influential in the local community. During the sixteenth century and part of the seventeenth century the jury strengthened its position in the court. Korpiola (2014: 96-97) argues that lay dominance in the judiciary was one of the cornerstones of Swedish legal cultural identity in comparison with other European regions. The members of the jury did not only act as co-judges, they also could be appointed by the court to act as surveyors, compurgators and inspectors in legal disputes. Hence, the jury had various tasks in investigating cases, informing the judge and assessing evidence and guilt. The Swedish Jury, unlike the English jury, did not have to reach unanimous conclusions. A simple majority was enough to determine the verdict. The participation of the community was essential for the legitimacy of the court (Korpiola, 2014, 100). Beginning in the end of the seventeenth century the jury's impact decreased. From the 1680s it became compulsory to have a judge appointed by the king and a change in the new national law from 1734 concerning the jury was that only a unanimous jury could overturn the judge in a verdict (Sundin, 1992: 41; Inger, 2011: 193). One explanation to the relative strong position of the Swedish peasantry in comparison with the peasants of much of contemporary Europe explains the fact that peasants were represented

as one of the four estates of the Diet that was reformulated and then standardized in the sixteenth century (Korpiola 2014: 102). The political weight of the Swedish peasantry increased because of the late medieval agrarian crisis.

A prominent person in the court was the *länsman,* who was part of the judicial system since Medieval time (Korpiola, 2014, 101), but since 1694 had a more clearly defined role as prosecutor and was employed by the crown (state). He was appointed by the county-governor (*landshövingen*), but lived in the district were he worked and he could be selected among one of the peasants in the court district, but often belonged to the upper strata in the society (Sundin, 1992, 68; Ulväng, 2004, 18). Even if he worked as a prosecutor the majority of all cases brought to the court came through individuals or groups of individuals.

Another feature of the Nordic judicial system was that many cases were resolved by settlements in court, not out of court (Österberg, Lennartsson & Næss, 2000: 244). The courts has been described as being social arenas were the local community meet the authorities and together with them "took part in the exercise of social control" (Österberg, Lennartsson & Næss, 2000: 252) and the court were also a place where local economic and other relations were settled (Lindkvist, 1997: 227). The importance of the local courts for the community is evident from the attendance figures. In some areas in Northern Sweden as much as 30 percent of the population came to the court sessions in the seventeenth century (Sjöberg, 1996: 59 -62). Lindkvist (1997:223) points out that a particular feature of the judicial system in Sweden was the total absence of private jurisdiction. Together with a quite simple court system it had the consequence that almost all cases from a judicial area came to be prosecuted in the local court. The local court was a low cost arena for the participant since there where no legal fees for bringing a case to the court (Liliequist, 1994) . Hence a large portion of people's disputes and offences were heard in courts. I therefor assume that there were very few cases concerning summer farms in Leksand that were handled by other courts than the local court in Leksand and thus the court records used in this paper provide a near complete picture of conflicts associated with summer farms during this time. The most common case that would not be covered would have been when users of summer farms in Leksand trespassed into summer farm areas located in other court districts. They would in these cases be prosecuted in the local court for that area (Larsson, 2009, 209).

In the seventeenth century the state became more efficient and established a more strict hierarchy between the different levels within the jurisdiction system. In 1614 a permanent superior court of appeal was established with the duty to supervise the local courts and revise the verdicts (in the coming decades three additional new superior courts, serving different districts, were established). In an attempt to make jurisdiction more conform local court had to send their rulings to a superior court for examination (Jägerskiöld 1984a: 217-227). In spite of these changes and a discussion among an elite in the society about the legal system during the early

modern period the legal system used in the investigation area in the late seventeenth century still had a lot of features going back to the late medieval period.

2.2. Area of investigation and agricultural system

Between 1660 and 1870 peasants in the parish Leksand in central Sweden brought ten thousands of cases to the local court. In Leksand, as in the rest of Sweden, a minor part of these cases were criminal cases and the lion's share was civil cases involving disputes and economical conflicts (Ågren, 1998, 495-496; Ågren, 1992, 152 – 157; Sundin, 1992, 412-414; Taussi Sjöberg, 1996, 78)). Since a large share of the peasants economy in Leksand came from the use of commons many of the cases brought to the court were about conflicts regarding commons.

Leksand encompasses the southern part of Lake Siljan and a stretch of Osterdal River (Österdalälven) and from central Leksand, it is about 48 km to Falun, the main city in Dalarna County. Leksand was one parish, but were divided into quarters for some administrative purposes; two were located west of Lake Siljan and Osterdal river and two east of them. The population increased from around 5,700 in the end of the seventeenth century to around 13,000 in 1865 (Palm, 2000, 272). As many upland areas in Europe, the peasants in Leksand had an integrated and flexible economy (Viazzo, 1989). The pillar in the economy was a mixed subsistence farming where animal husbandry was the more important part. The area was not self-sufficient in grain production and the peasants needed money to buy grain and pay taxes and secondary occupations was an intrinsic part of the peasant's life. Migration of labor was an important part of the economy and peasants from Leksand took part in agricultural work and construction work in many places far from their home parish (Rosander, 1967, 165–169). During the seventeenth and eighteenth centuries, Falun's Great Copper Mountain, an important copper mine, exerted a huge influence over everyday life in Leksand. Peasants had to deliver charcoal and fire wood to the mine and men from the parish were employed there. The term adaptive family has been used to stress the importance of flexibility for household members to rely on a variety of sources and the term fit well into household strategies in early modern upland Sweden where Leksand was a part (Wall, 1986, Larsson, 2014b: 396).

Leksand was not a typical early modern Swedish parish. Leksand and Upper Dalarna differed from other parishes and counties in Sweden during the eighteenth century with regard to inheritance rules, structure of agriculture, dependency on migration of labor, and in other important ways. However, as a community that developed a well-established common- property regime (Larsson, 2014a), it is well suited to an investigation of how the local court dealt with collective action problems.

Leksand was a homogeneous society with a shared understanding of many important aspects of life. The people belonged to the same church, it was a fairly egalitarian society with no large landowners except the church. Almost all adults were landowners and all peasants were freeholders, most people were born and raised in the community, and the local court handled all legal matters. Until 1870,

when industrialization started in Leksand, all households took part in agriculture. For this study, it is important to keep in mind that, before 1870, all households in Leksand kept animals. In Leksand and the surrounding area, partible inheritance was practiced and both sons and daughters inherited land. Until 1845, daughters inherited half of what sons inherited. After that, the rules changed so that sons and daughters inherited equal shares.

The peasants in Leksand had since the sixteenth century developed a transhumance system for utilizing the forests for grazing and between 1660 and 1870 more than six hundred cases were brought to the court concerning this system. Almost all of these cases were concerned with different management aspects and only a few cases deals with crime, i.e. theft, assault. The animal husbandry system used in early modern Leksand was classified as Alpine transhumance due to stabling the livestock during the winter (Davies, 1941: Larsson, 2012, 17-19). Each summer the animals were taken to summer farms situated five to thirty-five kilometers from the villages. A summer farm contained many working units each with its own private buildings (a unit could be used by more than one family). There were 50 summer farms in Leksand in the 1660s and of 47 of these we know the number of units. The total number of units at these summer farms was 133 and the largest comprised 9 units (Lindén, 1974: 33-38). The number of summer farm units increased from the end of the seventeenth century to the mid nineteenth century. The decades around the 1700 was a period of rapid transformation of the system and having a summer farm changed from being voluntary and became compulsory. In the second half of the seventeenth century peasant's own organization for dealing with summer farms are known, e.g. summer farm communities (Larsson, 2009, 296-297; 2012, 26). Nobody was allowed to remain in the village with their animals when the other peasants moved to the summer farms and the transhumance system became a fundamental part of the agricultural system in the region. Around 1830 it were approximately 112 summer farms in Leksand with a total of 1043 units (Montelius, 1975, 124-127). One herder managed each unit, and the work depended on collective action between herders within the same summer farm (Larsson, 2014b, 397). The pasture grounds in the woodlands were commonly owned and the purpose to be at the summer farm was to use common pastures to feed the animals and to process milk into long lasting products (butter, cheese and whey-cheese) (Larsson, 2009; 2012).

2.3. Source material

Rapid access to low-cost local arenas to resolve conflicts among appropriators is one of the eight design principles that characterized long surviving robust common-property institutions formulated by Ostrom (Ostrom, 1990:90, 2005:259; Cox, Arnold and Villamayor Tomás, 2010). In spite of this we have little empirical knowledge of how local courts solved collective action problems. What we do have is knowledge about how the court system worked in early modern Scandinavia (e.g. Österberg & Sogner, 2000), and by combining this knowledge with cases from a defined area with collective action problems it is possible to determine the role of the courts in conflict resolution.

For an investigation of conflict resolution mechanisms in early modern Sweden court rulings are the most appropriated source material available. Hence, the primary sources in this study are rulings from the court district where Leksand parish was a part. The court district comprised of three parishes Leksand, Bjursås and Åhl, but Leksand was the largest and represent about 70 percent of the population (Palm, 2000, 272-273). The main reason that court records from only one of the parishes has been used is that I have had access to unique excerpts from Leksand's court records extending from 1660 to 1870 made by Dr Sigvard Montelius in the late 1960s (Sigvard Montelius archive, private collection, Falun, Sweden).[2] Court records concerning summer farms in Leksand comprise of more than 600 cases and these give an excellent overview of how the court had been used as an arena for solving collective action problem for more than two hundred years. To come closer to how the court worked in solving problems a close reading of a selection of original court rulings from the late seventeenth century and first decades of the eighteenth century has been performed. This was a time when the court took an active part in solving collective action problems and the rulings were chosen to illustrate different strategies the court used.

The local court was an arena where people did not hesitate to bring cases and people in the Nordic countries had a popular support for the law and the normal judicial forums. Earlier research has shown that a large proportion of people's disputes were heard in court (Österberg et al., 2000, 261). Even if many minor problems were solved in informal setting or within the organizations created by the peasants, e.g. village communities, summer farm communities, such a large number of cases were brought to the local court that it gives a rich picture of the practice at the summer farms. This makes court records one of the best source materials to understand how collective agriculture was practiced.

It has been argued that by-laws are our primary sources for the rules and ides that governed collective agriculture (Warde, 2013, 317). Even though by-laws are one of the best sources they have some weaknesses' compare to court records. By-laws cannot be taken as reliable guides of how commons were actually managed and we do not usually know if a particular by-law represent a long established practice or some kind of novelty and even the most ambitious by-law lacks information of key elements in collective agriculture. By-laws are normative, they are pointing to how users should behave, but they are telling us little of how users actually managed. By-laws give some of the formal institutions for management, but not the informal rules that we know are crucial to understand management (North 1990; Ostrom 2005). In court records formal and informal institutions encounter and the early modern court became an arena for solving mismatches between the two. In court records plaintiffs and the accused met and their arguments are weight together. To understand conflict resolution mechanisms they have to be viewed in the light of the

[2] Dr Montelius made the extracts while doing research for his book *Leksands fäbodar* (*Summer Farms in Leksand*) published in 1975.

agriculture practice. Court records give us the insight in agricultural practice that makes it possible to understand how conflict resolution mechanism were handled in early modern societies.

As all source material court records have their pitfalls. In court records we do not know how many cases that were solved outside the court and if the tendency to settle outside of court changed from 1660 to 1870. However, how useful or problematic a source is, is dependent on the question it is asked to solve. If people for example were exaggerated or lying in the court or if there were enforcement waves is not very important when the question for the paper is how the court worked to resolve collective action problems.

The distinction between civil cases and criminal cases that are important in many legal studies are not of interest here. The development in Leksand is similar to the general trend in Sweden during the eighteenth century where civil cases became the most common cases brought to the local courts (Ågren, 1992, 156). This development is an expression of how economical cases became more important. There is often a grey zone between the types and thus it may be hard to distinguish the different types of cases from each other. When a plaintiff brought a case about trespassing to the court he argued that a violation of a boundary had taken place (a crime). The accused part often denied that there was a boundary between them, or that the boundary where at a different location than the plaintiff said and turned the question into a matter of utilization areas, an economic question and a civil case (Larsson 2014a). Scholars have argued that in practice it was often not much difference between civil cases and criminal cases (Sundin, 1992, 12).

3. RESULTS

Between 1660 and 1870 about 600 cases were brought to the local court concerning summer farms in Leksand parish. The number of cases increased from 1680s and reached and peaked in 1760s. After that the number of cases dropped but remained on a high level to the 1830s when a decrease started and the court ceased to be an arena where peasants brought cases regarding summer farms in the 1860s. Cases concerning summer farms were less than one percent of all cases the court had to deal with in the 1660s and 1670s. In the 1680s there was a leap in the ratio of cases concerning summer farms and around four percent of all cases the court handled were about summer farms in Leksand parish. From 1700 up to the year 1800 the cases concerning summer farms were between three and four percent of all cases, but after 1800 the number decreased and by the end of the period vanished (Larsson, 2009, 213-14).

The court lost is place as an important arena for solving collective action problems during the nineteenth century. The high number of court cases in the first half of the century is largely an illusion. During and after a land consolidation reform (1818-1830) in the parish some summer farms close to the parish border were disappointed with the outcome and came in disputes that continued over many years and resulted in many court cases (Larsson, 2014a, 53). The cases brought to

court also changed from the later part of the eighteenth century. While up to the mid eighteenth century the court mostly solved conflicts between users within a summer farm, between summer farm communities or between summer farm communities and villages, later it came to be more involved in confirming agreements and by-laws made by summer farm communities for their internal management (Larsson, 2009, 267-268). The hey days for the courts to solve collective action problems concerning summer farms used was the end of the seventeenth century and the first half of the eighteenth century. This a period that coincides with an expansion of the transhumance system, but it was mainly a result of the way the courts dealt with these problems. The article will give a few example of how the court in Leksand handled cases brought to them during this period.

The local court that Leksands parish belonged to had court session only once or twice a year. If it was only one court session a year, it usually took place in November. The court session had to take place during a part of the year when few other things where happening and the court session could not interfere with the busy agricultural season from April to late September. Most cases regarding summer farms where handled at the court session in the fall and were about conflicts or events that occurred during the summer. The judge, appointed by the king, traveled from court to court in a region and led proceedings and he gave his verdict with the help of the jury. Since Leksand was by far the largest parish in the court district eight to ten of the jury members came from Leksand parish. All of the lay judges were peasants and at least from the late seventeenth century they all had their own summer farms. Hence, they practice the same kind of agriculture as most of the clients at the court. Since the lay-judges were in majority in the court and knew the customs of the area, how agriculture were practiced and how resources were utilized they come to play an important role in the judicial system when dealing with conflict related to management of natural resources in the area.

Stay in the Village

In the last decades of the seventeenth century it became compulsory to have a summer farm. A case in the fall of 1694 was brought to the court because there had been complains that some peasants stayed in the villages with their animals while the majority of peasants were moving their animals to the summer farms (Uppsala Regional Archive KLHA, 1694, fol 37). The court decided that the länsman together with trusted men should thoroughly investigate the summer farms and arrange so peasants without a summer farm could get one in a part of Leksand parish. However, the court realized that all peasants could not afford to go to a summer farm. Hence, the court decided that poor people could stay in the village during the summer and gave a reason for the decision: because poor people needed the milk from the animals to make a milk soup to feed their children and it would have been impossible to do it if the animals where away from the village. The court also gave a definition for what poor people were: i.e. one that only had one cow or one or two goats. The court also stated that more wealthy peasants have to move to the summer farm. Here the court was taking a lot of decisions about questions where the law says very little. The most obvious is the decision that peasants need to have

a summer farm. When the court decides to give exemption for poor people to move to a summer farm the court argue it is by mercy and for the wellbeing of the children so that they can stay in the village during the summer. By doing this they avoid going in to the more subtle questions weather it was possible for poor people to afford a summer farm and be part of the agricultural system the court had proposed. To establish a summer farm was an investment: building houses and put up fences. Poor families usually had fewer members than more wealthy families (Gaunt, 1976, 45-47; Larsson, 2014b, 406). Hence it would have been a proportionally heavier burden for them to send one of their family members to the summer farm compare to a wealthier household. The court came to the conclusion that a few poor peoples animals grazing on the pastures surrounding the village would not damage the pastures for people returning from the summer farms in the fall. The courts ruling eased the burden on the poor instead of increasing their burden by forcing them to establish a summer farm and possibly driving them into later needing poor relief, a burden that would have been carried by the remaining peasants.

Moving together

A question that many times invoked to action at the court was when to move from the villages to the summer farms in the early summer and back again to the villages in the fall. In a case from a court session in the beginning of December 1717 there where complains that 'neighbors neighbors' in the two western quarters of the parish moved their animals to and from the summer farms without coordinating with other neighbors (Uppsala Regional Archive KLHA, 1717, §54). It was five members of the jury from the two quarters of Leksand that with a written statement complained on the behalf of some of their 'constituencies'. The court concluded that is was unfair to not coordinate the move since the common pasture were for all peasants in the villages and if some users would arrive earlier than the rest, large parts of the feed would have been eaten at the time when the 'coordinated' peasants arrived. The court emphasized that all peasants had to follow the rules for coordinating moving, a rule that was already in place.[3] None was punished for breaking the rule, but a fee of 40 Daler silver coins was determined for future violations. To make the court decision known to all members of the two quarters the court decided that the verdict had to be read out loud at the next parish meeting (sw. *sockenstämma*). It was important for the implementation of rules regarding an open and a closed season and that all users of the commons knew the rules as well as the possibility to collect fines. The court decision indicates that they used graduate sanction (Ostrom 1990; 2005). No one was punished for violating the rules, the court clarified the rules for future use and all users got a warning: next time a violation occurs the violator had to pay a fine. However, the problem with coordinated move and the respect for an open and closed grazing season continued.

[3] The oldest record we have about coordinated move to and from the summer farms in one of the two quarters are from 1700 (Sigvard Montelius archive, private collection, Falun, Sweden). The conflict described here from 1717 was one of many conflicts about how to enforce this rule.

In the first 50 years of the eighteenth century there was a case about coordinated move every second year at the local court (Larsson, 2009, 216).

In a case from 1727 in the eastern part of the parish a number of people had violated a court decision from 1725 that all people had to leave the villages for the summer farms (Uppsala Regional Archive KLHA, 1727, §144). Nine of them had to pay a fine of 5 Daler silver coins each, the rest had according to the court, valid excuses or had no summer farm. However, the court stated that in the future it would not accept people staying in the villages and those who did not have a summer farm had to acquire one. The big differences in the proposed fines of 40 Daler silver coins in the case from 1717 and the actual fines of 5 Daler silver coins given in this case is another indicator that the court used gradual fines.

There was an agreement among villagers in the eastern part of Leksand about moving animals to the summer farms in the spring, an agreement confirmed by the court in November 1726, despite this some people stayed in their villages during the summer of 1727. In the fall that year some of those who moved sued those who stayed (Uppsala Regional Archive KLHA, 1727, §159). The arguments for not moving were plenty, some lacked summer farms, others argued that the summer farms were to far away, that the pasture at the summer farms was scantly and better pastures were found around the villages. In its rule the court said that since the agreement came in place without everybodys participation it was hard to follow it. However, two persons who had sign the agreement in 1726 but stayed in the village during the summer of 1727 denied knowing about the agreement and had to pay heavy fees for intentionally not following the agreement and an extra fee for disobedience of the court ruling. More importantly the courts decision tried to find a solution to the problem that encompassed at least seven villages. The court appointed trusted men to make an investigation and the trusted men were to gather all people involved so that they could participate in the investigation. As a guideline for the trusted men the court said that in areas where moving to the summer farms would create more harm than good all peasants should stay in the villages, but in an areas where the summer farms pasture was sufficient, all peasants had to leave the village during the summer. The court emphasized that it was particularly wrong for larger cattle owners to stay in the village. Further, the court argued that the investigation had to take into account each homesteads share in the village and that the number of animals they could bring should correspond to that share. The court explicitly mentioned that it was important to bring amity between the participants. However, a final solution to the problem had to wait at least until the investigation had taken place in 1728.

Trespassing

The most common cases related to summer farms in the eighteenth century were about violation by trespassing of the boundaries of a summer farms utilization area (Larsson, 2014a). Examining some of these cases provides information about how the court tried to solve collective action problems. Individuals sometimes trespassed into another summer farm communities grazing land, but it was more

common that summer farm communities, or a village and a summer farm community, were in disputes about boundaries. In a case from 1727 villagers were accusing a summer farm community for trespassing (Uppsala Regional Archive KLHA, 1727, §136). Even though there had recently been two resolutions how to divide the pastures between the two entities, the first from July 3, 1711 and the second from October 10, 1726, the court decided to discuss the case. The court urged them to solve the conflict among themselves, but also appointed four trusted men to execute an inspection. The summer farm community that had trespassed argued that they did not recognize the border since all their members had not taken part in the surveys in 1711 and 1726. They also accused the villagers of having enclosed parts of the commons so that the pasture area had decreased. These arguments were enough to convince the court that a new survey was necessary. This process could take time, but it seems that for the court it was more important to implement and inform than coming to a quick solution. All appropriators would be given the chance to be listened to and from their complains and suggestions the court would find a solution.

Enclosures

As in the example above it was a quite common problem that parts of the commons were enclosed for private or semi-private use. Some of them were done to get a little arable close to the summer farm buildings or to put up fences to keep in calves and lamb that were to small to follow the older animals out in the woods to graze. These enclosures were normal practice since they were needed in the agriculture and land close to the buildings at the summer farm was perceived as private property (Larsson, 2014a, 47). However, in some cases larger pieces of land were enclosed than most members of a summer farm community could accept. In a case from 1737 all member of a summer farm community complained to the court about enclosures at the summer farm (Uppsala Regional Archive KLHA, 1737, §61). The court decided to appoint two men, one of the jury members and the *länsman* to make an investigation of the enclosure before a decision about them could be taken.

The opposite problem of enclosures of land also emerged as conflicts, when users let their animals in on other users enclosed land. In a case from 1737 peasants from several villages had let their cattle and goats in on a village's meadows (Uppsala Regional Archive KLHA, 1737, §68). Even though no one denied what had happened the court did not punished the intruders. Instead the court made a statement that the owner of the meadows had suffered remarkable damage, a ban to enter the meadows were introduced and if a person let their animals in without property right he would in the future have to pay a fee.

Rights to the Commons

With these examples we can seen how summer farm communities came together and sued individuals who they argued were free riding on the commons. It also happened that individuals sued a summer farm community for denying him access to resource he argued he had the right to use. In 1737 a man named Olof Andersson sued the summer farm community at Getbergs summer farm because they denied

him his right to be a member of the summer farm community and to use the common pasture (Uppsala Regional Archive KLHA, 1737, §56). Olof Andersson had two arguments for his right to be a member of the summer farm community at Getbergs summer farm. First, his father had been there, and second, he was not a member of any other summer farm and without a summer farm he had nowhere to feed his animals in the summer. Despite that the summer farm community wished to deny him the right to be at the summer farm the court decided that Olof Andersson could be there. The main argument for their decision was that he had the right to use the commons and since his father had been at the summer farm they could not deny him access.

Fire

In an agricultural system dependent on collective action disasters that an individual peasant faced could cause problems for more than the household involved. According to the Swedish law fires in a village had to be handled by the local court (*Sveriges Rikes Lag Gillad och antagen på Riksdagen åhr 1734* [Sweden's Law, approved and passed by the Parliament in 1734] ([1780] 1984, 90 §6). A case of a fire at the summer farm *Långbodarna* on September 21, 1737 were brought to the local court in Leksand in November the same year (Uppsala Regional Archive KLHA, 1737, §58). To estimate the damage the peasant suffered, three jury members living in the same area as the affected, were appointed and when the court met in November they had made their investigation and the results were presented to the court. Three building and winter feed to the animals (hay and leaves) had been destroyed in the fire. The only person at the summer farm when the accident occurred was an old dumb maid tending the animals in the woods and it was hard to get any information from her. In the court decision the members of the court considered that the peasant Jonas Jonsson had had other hardship than the fire (although they did not specified what kind of hardship) and they decided to pay him 134 Daler copper coins to cover the damage from the fire. It was exactly the same amount of money as the jury members had estimated the damage to. The compensation had to be paid by the other peasants in the area.

4. DISCUSSION

The example given above shows how the court in Leksand became an active part in solving collective action problems concerning summer farms. The increased total number of cases brought to the court confirm the impression that the court became an trusted arena for dealing with conflicts in the society and are in line with earlier research about early modern Scandinavian courts (Ågren, 1992, Österberg & Sogner, 2000). As previously shown, the overarching goal for the court was to bring or keep social stability. To keep this stability in cases concerning common pool recourses the most important was to hamper all tendencies' of free riding on the commons (Olson 1965; Ostrom 1990, 5-7). A court that would have failed to stop free riders that users of the commons complained about would have lost peoples confidence in it. If the court, on the other hand, had not acknowledged individual rights peasants had, rights other members of the community sometimes tried to obstruct, the court would have lost its credibility, too. Hence, the court had to

recognize both collective and individual rights. They had to stop free riding to evade the tragedy of the common and had to deal with the question about whom the summer farm communities had the right to exclude. To deal with these complex questions the courts used certain strategies and had certain features.

The courts world was a local world. The collective action problem they had to solve were local problems facing members of the local community. In the beginning of the seventeenth century, Leksand's court district was inhibited by seven to eight thousand people. It was too many people for everybody to know each other, but it was small enough for people to have a quite good understanding of other peoples living conditions. To make good judgment in this environment lay-judges in the jury became a very important part of the court. With good knowledge about the local conditions they became crucial in dealing with collective action problems. As peasants in the area practicing the same kind of agriculture as plaintiffs and defendants they had a unique insight and could inform the judge about local circumstances. As the examples above have shown, the people in the jury did not only participate in court session. They were also appointed as mediators, surveyors and inspectors. They estimated the value of houses destroyed by fire, they decided the borders between utilization areas and they could estimate how many animals a peasant could bring to the summer farms without depleting the pastures. The court could appoint other people to assist, but jury members where often called on to do this kind of 'trusted' duties.

One key to the courts ability to find solutions that where accepted for the people was the courts ability to use both the jure rights and de facto rights in jurisdiction, e.g. rights given lawful recognition (de jure) and rights that originated among users (de facto) (Schlager & Ostrom, 1992, 254-255). Although the law could give detailed descriptions about agricultural life and the work of the peasants and internal relationships within the villages (Lindkvist, 1997, 216), it still lacked guidelines for many parts of agricultural practice. Hence, to solve many of the conflicts arising from the use of commons for a transhumance system the court had to use both de jure rights and de facto rights. An example of the jure rights would be all peasants right to use the commons and a de fact right that there was an open and closed season at the summer farm and that all peasants had to coordinate the move of their animals. The decision that it was compulsory to have a summer farm was a de facto decision as well as the rule that poor people had the right to get an exemption and stay in the village when the other villagers moved to the summer farm. The decision to share the common pasture in accordance with the farms share in the village was de jure. By mixing de jure and de facto rights they where able to anchor the courts decision in both the law and the local customs and created a robust policy management of the commons with summer farms in Leksand.

The court was a low cost arena for solving conflicts in the area. This fact had two consequences important for dealing with collective action problem, the first was that it encouraged people to bring their cases to the court and second that it is likely that almost all of these more complex cases were solved at the court. By having

almost all conflict solved in the same court and in an open and transparent process the solutions to the conflict provided guidelines to all parties of how to solve their conflict or avoiding conflicts by finding solutions before the conflicts arose. These guidelines would lower the cost for the transhumance system used in the area since the court clarified 'the rules of the game' for all users in the court district. The fact that the court was a low cost, and a trusted, arena made the use of informal conflict resolution arenas outside the court system less important and these were probably non-existing. Avoiding these informal conflict resolution arenas made the system transparent for all users and gave a better control that people where treated equally in the area. It was also a low cost arena in the sense that the court sessions took place in a period of the year when there where little other things to do. In November when most court sessions took place in Leksand the agricultural season was over, the harvest was done and the animals where stabled and most of the dairy animals had stopped giving milk. It was before the time the lakes had frozen and snow had come that facilitated transportation and going to markets to buy and sell commodities. It is always a cost connected to participation in a court session, but there is little reason to think that the cost would have prevented people from participating in November. However, by having the court session in the peasants idle season they did not have rapid access to an arena for conflict resolution.

Rapid access to arenas for solving collective action conflicts is one of the key features of Ostrom's design principle about conflict resolution mechanisms (Ostrom, 1990; 2005; Cox et al., 2010). Although this aspect of conflict resolution is missing in Leksand during the early seventeenth century the management of the commons used in the transhumance system worked well. It might have been that some minor problems could be solved quite rapidly within the summer farm community, but nevertheless many conflicts that emerged during the spring and summer had to wait until late November before the court handled them. But it was not only the access to conflict resolution mechanism that lack speed, when a case came in front of the court it often took long time before a solution or a verdict came. It is striking that processes could take time because it was more important for the court to embed their decision in peoples minds, then to come to a fast resolution. One way to do this was to appoint so called trusted men to investigate the problem or letting members of the jury take part in the negotiation between the parties. During this type of investigation the court could requested the trusted men to gather people involved and listen to their opinions in the search for a solution. The court did not settle all cases that came to them. Instead the court was an arena where users could negotiate. The court encouraged the participants in a conflict to negotiate a settlement instead of waiting for a verdict. In a case from 1727 the court express that it was only if the two parties did not settle that the court would come with a verdict (Uppsala Regional Archive KLHA, 1727, §151). The court express awareness of the fact that an agreement between two parts is stronger if it is negotiated between them than if it comes as a verdict from the court. This particular case had been brought to court in 1721 and in 1727 it was still not settled.

For the court it was extremely important that all people had knowledge about decisions, agreements and settlement that concerned them. Without that the implementation would be harder. As a consequence many conflicts took many years to settle and many users had to manage their summer farm without knowing the outcome. In cases were someone's lawful rights was denied, for examples access to the outlaying land, the court worked faster, but it could take a long time before it was decided to which summer farm on the outlaying land that a person belonged. For the court it was important that people living in the court district felt included in the courts work. The principles expressed in norm *quad omnes tangit ab omnibus approbari debet* or 'what touches all must be approved by all', which became established in medieval law (Korpiola, 2014, 97), was still an important principle for the court in early modern Leksand.

5. CONCLUSION

As we have seen, the courts role in the eighteenth century was not only to bring justice to the community but more importantly it was to solve problems within the community. With this strategy an important work for the court was to uphold and maintain the agricultural system. Since a large part of the agricultural economy in Leksand was based on the use of common-pool resources and collective action it became necessary for the court to make these parts work. The court identified that a major threat to the system was free riding on the commons and their overarching goal in their jurisdiction became to prevent it from happening and when it happened to negotiate settlements to avoid it in the future. The role of the court in Leksand was like the manorial courts in England (Rodgers et al. 2011, 37), to foster good neighborhood. The court was a trusted arena and the court worked to include users in investigations. The court came to lose its place as an important arena for collective action problems during the nineteenth century when the courts became more professionalized and judicial reforms reduced the influence of custom law in favor of legal positivism. In addition, at that time changes in property rights had reduced the commons and agriculture dependence on collective action had to find other forms to operate than using the court as one mean for solving problem (Larsson 2014a).

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