Norwegian Commons: History, Status and Challenges.

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

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

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

1 Introduction

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

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

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

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

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

2 Terms and Concepts

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

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

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

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

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

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

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

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

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

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

3 History of the Commons

3.1 Some aspects of general history related to the commons

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

3.1.1 Topography, Population and Farming Systems

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

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

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

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

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

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

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

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

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

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

3.1.2 Tenure Systems

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

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

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

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

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

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

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

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

3.1.3 Legal and Political History related to the Commons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.1.4 Patterns of Rural Settlement

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

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

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

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

3.2 The Emergence of State and Parish Commons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Box 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4 The Emergence of Farm Commons

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

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

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

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

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

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

By and large farm commons originated in two different ways:

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

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

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

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

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

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

3.5 The Land Consolidation Courts

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

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

4 Current Status and Management

4.1 Introduction

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

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

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

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

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

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

4.2 Current discussions around use rights

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3 Legal Framework

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

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

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

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

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

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

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

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

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

4.4 Management and Administration

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

4.4.1 State Commons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.4.2 Parish Commons

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.4.3 Farm Commons

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

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

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

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

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

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

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

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

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

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

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

4.4.4 The Commons in the Land Registers

The basic role of the land registration system is to;

- Secure propriety rights, i.e. any type of right derived from the institution of property right (property right of any kind; individual rights, collective rights, easements, leasing, mortgage, formal and informal possession etc.)
- Sustain all kind of transaction in land and immovable assets, i.e. conveyance of any kind of rights in real property.
- Provide information for a wide range of purposes.
- Provide the system (mechanisms) within which formal property units are established

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

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

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

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

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

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

5 Future opportunities and challenges

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

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

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

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

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

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

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

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

5.2 Understanding the conflicts.

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

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

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

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

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

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

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

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

5.3. Challenges and research ideas

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

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

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

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

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

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

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

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

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

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

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