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Fields and Forests

Legislation, Management and the View of Common Property in Norway in the 17th and 18th Century

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Introduction

This presentation is based on an ongoing research where the aim is to study conflict solution in the local society in 18th century Norway. Three fields of conflicts are studied: Conflicts concerning natural resources, that is common property, conflicts about public duties, to a large extent conflicts between the local society and the central power, but also partly between groups within the local society, and the third field is about cultural conflicts, which also partly are conflicts between the local society and the central power. The method is microhistorical, and the research unit is the law district of Ålen and Røros in the former Trondhjems Amt in Mid-Norway. This district has been a mining area for centuries. Copper ore was found in the 1640'ies, and from the mid 17th century onwards the local society underwent radical changes.

The source material consists first and foremost of court records, licences to the use of commen property and correspondence between civil servants in different positions and at different levels. Most of the empirical material comes thus, according to the method chosen, from the above mentioned law district. A complementary methodical approach is the study of the institutional frames, i.e. laws and regulations and the administrative system on the one hand, and on the other hand the way things were carried out in practice in the fields of interest to this research. One main question is whose interests came in conflict and how the conflicts were solved. A byfocus is kept through the whole research on the persons responsible for the conflict solutions: The bailiffs and the local judges, the constables and the lawrightmen (a Norse word for the members of an assizes), i.e. the group of farmers representing the local society at court.

In the following I will give a short presentation of the conflicts about natural resources; the legislation, the management and the view of common property and the view of common property in contrast to the view of private property.

Legislation

The legislation as regards common property was begun in Norway already in the middle ages. The laws for the different regions in Norway had certain rules in this field. King Magnus Lagabøte's law of 1274 refers to the traditional use of common property; the use should be like it had always been. But if conflicts arouse, the local court should be brought in to decide upon the case.[1]

[1]Magnus Lagabøte's Law of 1274, chapter 61: "1. Saa skal alle almenninger være, som de har været fra gammel tid, baade det øvre [til fjells] og det ytre [til havs]. 2. Men om folk er uenig og én kalder det sit, som en anden kalder almenning, da lovfæste den, som kalder det sit og stevne ting dit, hvor man skal avgjøre det maal, og han maa ha utsendt tingbudet før femt [innen 5 dager]; men om han ikke gjør saa, da er hans lovfæsting unyttig for den gang."

What is new in the high middle ages, is that the king claims the right to give permission to new settlements within the common land, and the king is free to give this permission to whatever person he likes.[2]

This law from the 13th century was applied to the whole country and was in force for several centuries with smaller amendments. The amendments were first and foremost concerning trade and towns. During the rule of the Danish kings a need to modernize the law and to have it written in an understandable language, in Danish instead of Norse, was felt more and more, and during the rule of Christian IV (1588-1648) a new law for the whole country was given, in the year 1604. This law is first and foremost a modernization of the old law, with the amendments included, and written in the Danish language. This characterization of the law most certainly applies to the legislation of common property. In this field the chapters and paragraphs from the 13th century law are transported to the modern edition of the law almost without changes.

The general premise in this law is the reference to traditional use and the order to call upon the law court in cases of conflicts.[3] Also the chapter about the king's right to give permission to settlements within the common land is transported from the old law to the new one.[4] A paragraph to pay special attention to in this connection, is paragraph 6 of the same book and chapter which the former footnote pointed upon. This paragraph focuses on the right to take timber from the common forest, not only for the use of the household, but also for sale.[5] This paragraph is also parallel to a paragraph in the 13th century law.[6]

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[2]Magnus Lagabøte's Law of 1274, chapter 62: "1. Kongen kan bygsle almenning til hvem han vil. Men den, som leier, skal sætte gard om det første aar - og han har ikke ret til at flytte garden oftere - og snidelkast fra garden paa alle kanter til gardsbøter."

[3]The law of Christian IV 1604, part VI, chapter 58: "Om alminding, huorledis vere skal, cap. LVIII. Saa skal alminding vere, som den haffuer verit aff arrilds tid, baade offuen oc neden. Trættis to mend om alminding, oc kalder den ende det sit vere oc den anden kalder det alminding: da giøre hand som kalder det sit, forbud, oc steffne hannem til femte ting, Giør hand det icke: da gielder hans forbud intit den gang."

[4]The law of Christian IV 1604, part VI, chapter 59: "Om alminding brug, oc detz bygning. Konningen maa bygge alminding naar hand vil. Den som fester, skal giøre giærdis gaard der om inden aar oc dag, oc icke offtere flytte dem, oc haffue [sin marckeskiel paa alle sidergaarden, saa vide hannem forløffuis."

[5]The law of Christian IV 1604, part VI, chapter 59, paragraph 6: "Tømmer oc huggen bord maa ligge it aar omkring i alminding. Alt andit der huggis, oc icke føris bort inden afften: er lige frelst for huer mand."

[6]Magnus Lagabøte's law 1274, chapter 62, paragraph 8: "Tømmer og bord kan, om det trænges, ligge indtil 12 maaneder i almenning. Men av alt andet maa der kun hugges saa meget, som kan føres bort inden kveld; ellers er det alle jevnhjemlet. (...)"

During the 17th century legislation went on to a great extent, and dramatic changes took place in the institutional frames of the kingdom of Denmark/Norway. King Christian IV gave a large amount of amendments to the existing law, and during the reign of king Frederik III absolutism came to be the new state of affairs after a coup d'etat in 1660. In the last quarter of the century the legislation activity was rather intense, with new general laws given both for Denmark and for Norway, after several years of discussions within the juridical group responsible. We shall here focus on the changes in legislation that took place during this century as far as the common property is concerned, and we can start with the last paragraph that was pointed out above in the law of 1604, but first I will underline one important fact.

The right to use common fields and forests was reserved to the farmers in each community using taxable land. From the middle ages until the late 17th century these farmes had the right to take timber from the common forests both for household needs and for sale. This was radically changed by the legislation in the 1680ies. First came the socalled Mining Ordinance of 1683 which gave the mining companies access to wood and charcoal in general terms. Then came the Norwegian Law of king Christian V in April 1687. In this law the farmers' use of the common forests was restricted to household needs. In case a farmer chopped more timber in the common forest than he needed for the use at the farm or in case he burned forest in order to cultivate grain without permission to settle there, he would be sued as if he had been doing this in a private forest.[7]

Only four months after this Norwegian Law was given, a royal decree was passed, which gave the mining industry extensive rights to wood. Deliveries of timber to the sawmills from forests within the circumference of a mine was forbidden, and if a mining company needed wood, the sawmills in the near surroundings were told to give away what was asked for. Because a greater part of the forests around the Røros copper mine was common forest, this royal decree came in conflict with the common property paragraphs in the Norwegian Law given earlier the same year. It seems obvious that the interests of the mining companies and the state's interest in this industry were the main forces behind this change in legislation in the late 17th century.

The introductory paragraph concerning common property in the law of 1687 was kept in almost the same words as the law of the middle ages, though. It refers to the traditional use of common property and the appeal to court in cases of conflict.[8] Also the farmers' right to

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[7]The Norwegian Law of Christian V 1687, 3-12-6: "Almindings Skov maa en hver bruge, som boer der, som den tilligger af Alders Tid saa vit, som behøvis til en hvers Brændefang, nødig Bygnings Tømmer og Gaards Brug. Hvo som fælder mere Skov ned i Alminding og brænder Braader uden Bevilling til Oprydding, som nu er sagt, søgis derfor, som den der hugger udi fremmet Skov."

[8]The law of Christian V 1687, 3-12-1: "NL 12 Cap. Om Atskilligt, som Bøjgde-Folk i Almindelighed angaar. 1 Art. Saa skal Alminding være, saasom den haver været af gammel Tid, baade det øverste og yderste. Falder der Trætte om Alminding, og paa den ene Side forregivis, at det er Alminding, men paa den anden Side, at det er nogens egen Jord, da maa den, som siger det sit at være, giøre Forbud derpaa, og forfølge Sagen lovligen."

establish summer farms within the common property was based on tradition from the old days.[9]

The summer farms were not supposed to be farms for permanent use. But if these farms could be cultivated and thus after some years become taxable land, one was supposed to act according to another paragraph in this law.[10] And in the paragraph referred to in this last paragraph mentioned, a very interesting new feature draws the attention. The words to pay notice to, are "lovlig Besigtelse", that is legal investigation, which within the legal-administrative system of the time meant that the local judge accompanied by the farmer representatives at the local court, the lawrightmen, were to do a legal investigation. The cases in question were when summer farms or other settlements within the common property were wanted as places for permanent settlements. The king's bailiff was not allowed to give permission for such settlements before the judge and a group of lawrightmen had established whether or not the place in concern was of such quality that it in some time could be taxable as a farm.[11]

A last important change in legislation in the field of common property is the obligation to ask the king's bailiff for a permission to cut grass in the common property, that is, the farmer had to have a licence to get access to the common fields.[12]

Management

In the following, I am going to give some examples from the local source material demonstrating the management of common property in practice. On the one hand we shall

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[9]The Norwegian Law of Christian V 1687, 3-12-3: "En hver skal nyde Sætter og Fædrift i den Alminding, som ligger til hans Bøigdelav. Sættersmark skal være til Fields, som det haver været af gammel Tid, Sættersmerke maa ingen flytte, uden det flyttis did, som ingen Mand er til Skade. Til Sætter skal holdis den rette Drift, som af Alders Tid haver været, og skal der møde Horn mod Horn, og Kløv mod Kløv. En hver skal giøre sig Sætterboel i Alminding, som vil sidde der om Sommeren."

[10]The Norwegian Law of Christian V 1687, 3-15-8: "Udi Sætterne maa ikke ryddis, men bør at blive til Gaardene, som af Alders Tid til Fæbeed; Men med Pladser, som kunde opryddis i Almindinger, hvor ikke er Sætter, forholdis det efter den fierde Artikel i det XII. Cap. i denne Bog."

[11]The Norwegian Law of Christian V 1687, 3-12-4: "Kongens Foget skal ikke bortbygge nogen Plads i Almindingen med mindre den ved lovlig Besigtelse befines at kunde med Tiden opryddis til et Skatteboel. Byggis og fæstis den saaledis til nogen, da skal hand giøre Gierde derom inden Aar og Dag, og ikke oftere flytte det, og have sit Markeskiel paa alle Sider af Gaarden, saa vit hannem forløvis."

[12]The Norwegian Law of Christian V 1687, 3-12-5: "Dersom nogen saaer Korn, eller slaaer Høe udi Alminding uden Fogdens Bevilling, da ejer Kongen baade Korn og Høe."

look at the legal frames, and on the other hand at the way the management of common property was carried out in this unit in concern, Ålen & Røros law district.

An interesting feature to be observed, is the fact that until the mid 18th century very few licences for the use of common fields were given. This is astonishing due to the fact that every farmer was obliged to ask the bailiff for a licence according to the law. But although few licences were given for this use, we know from other sources that common fields were in extensive use, and in openly use, known to the bailiff. The farmers f.i. payd extra taxes for hay cut in common fields, and licences given in the later part of the 18th century often refers to the traditional use of certain fields.

Maybe the right to establish summer farms within common property without a licence was thought to be adapted to the use of common fields as well. During the first half of the 18th century just a few licences to use common fields were given to individual farmers according to court material and the documents preserved. But some of the existing ones also comprised the right to establish summer farms, a permission which was not needed. Another right which some of the farmers obtained by these licences, was the exclusive right to the fisheries in spesific mountain lakes. This was an exclusion of other farmers which was forbidden according to the law of 1687[13], but we can see it carried out in practice several times during the first half of the 18th century.

Then in the middle of the 18th century there is a marked change in the practice. The number of licences given to farmers for the exclusive use of certain common fields, and sometimes also for the use of certain summer farms, is increasing rapidly. One way of looking at this change is that there was a growing pressure on the natural resources, and the farmers wanted or needed to secure their use of certain fields and summer farms. The licences were given for a farmer's lifetime, thus more or less guaranteeing the supply of fodder for the cattle for his whole period of farming, or, as we shall see further down, perhaps also for the coming generation.

The increased pressure on the resources is easy to observe from other facts in the local society. The population growth is the most obvious factor, and an underlying cause is the expansion of the Røros mining company. A new mine (called Muggruva) was opened about 1770 in an area of traditional mountain farming and fields in use by the local farmers. This establishment demanded labour force, and many people moved into this area. The working force consisted of about 50 men throughout a long period of time. But the miners were not only industrial workers. They stood with one foot in this protoindustry, and with the other in the traditional agriculture. This had the implication that the increase in the working force of the mining company or the establishing of a mine in another part in the district also meant the need for suitable farm land. In other words, the expansions of the Røros mining company meant on the one hand that there could be potential conflicts between the established farmers in the district and the newcomers, and on the other hand an encreased pressure on the resources in general.

As we have seen, the king's bailiff was given the authority to give permission to permanent settlement within common property, but not if not a legal investigation went prior and the

[13]The Norwegian Law of Christian V 1687, 5-11-1: "Alle Fiskevand i Alminding maa brugis af hver der haver Lod udi, og ikke til nogen i Særdelished bortbygslis."

judge and the lawrightmen found the settlement to be of taxable value in the years to come. Many of the newcomers in the last part of the 18th century seek to establish permanent farms on former summer farms. Their places underwent a legal investigation. A characteristic feature to these investigations is that the neighbours, i.e. farmers using fields or summer farms in the surroundings, often protested, but without any results for their part. That is, they were allowed to speak at the legal investigation, the newcomers were strictly forbidden to feed cattle belonging to other farmers, and they were also told to live in peace with their neighbours. But interesting though is the fact that the lawrightmen, the established farmers' representatives at court, in every case admit the newcomers, although some of them theoretically could have been turned away because the places in concern were really marginal for agricultural use, and thus of low value for taxation.

The obligation to live in peace with their neighbours is also expressed in different ways in most of the licences for the use of common fields from the 1760ies onwards. The words can be rather sharp, thus indicating potential conflicts between the farmers using common fields, and in some cases a certain use is strictly forbidden: the chopping of wood in the common forests.

This leads to the forests conflicts which were of great intensity in the whole southern part of Norway from the 17th century onwards. The legislation of the 17th century which was outlined above, should give a good impression of the interests at stake and the underlying conflicts in this field. In Ålen & Røros law district there was a crizes building up towards the turn of the century. In the beginning of the 18th century the situation was thought very critical. The forests within the circumference of Røros copper mines were so destroyed, that the company was compelled to get wood and charcoal from distant regions, so wrote the direction of the central mining office at Kongsberg. This description can be confirmed by the pay rolls of the Røros mining company, showing that the men who delivered charcoal often had farmnames belonging in parishes as far as 100 kilometres away. It was only a question of time before the mining company had to close down, was one of the opinion expressed in a document of the year 1736. And in the year 1748 it was so difficult to get charcoal that large quantities of copper could not be melted.

In 1727 the Røros mining company had put up a new hut for melting copper outside the circumference. The reason why they did so, was that they in this way moved closer to the wood resources. This new melting area was named "Dragås hytte" and lay close to the best forests in the district, the common forests of Dragås in the parish of Holtålen, divided in two law district, the district of Holtålen and the district of Singsås. This expansion of the mining company increased the forest conflicts in the region and made them more intense than they had been. The interests of the mercantilistic state was to cultivate the land and thereby increase the population and thus the number of taxpayers. This is also a feature clearly being an underlying premise in the legislation, as demonstrated above. But in the middle of the 18th century in the district being studied it turns out to be conflict of interests between the aim of cultivating the land and the need to secure wood resources for the mining industry.

Several conflicts are treated by the local courts concerning newcomers in conflict with the interests of the Røros mining company, although the rights of the mining company to these forests were not clear from the start. Many cases were in the end handled by the newly erected General Forest Office for Norway at the mining town Kongsberg. The first General Forest Office was established in 1739, and must be seen as an effort from the king and the state to control the forest resources in a better way than had been the situation earlier. The

General Forest Office was in 1744 given the function of law court in wood-conflicts, later also in common property conflicts. In 1746 civil servants as forest inspectors were appointed, and these inspectors were to regulate and secure the wood deliveries to the mines.

When settlers came into the above mentioned Dragås common forest, the cases were brought before the General Forest Office. The Office decided that the settlements should remain, but they were not allowed to extend their farms and they were strictly forbidden to damage the forest. The borders of the settlements should be clearly marked, a task for the local forest inspector, and new settlements came not in question. This took place in 1744-45. Another case at approximately the same time illustrates the difficult dilemma the authorities could be brought into. The Røros mining company made in 1745 a request to cut wood in the common forest, more specific if the farmers could be permitted to cut wood so that they could earn a little money and thus also pay their taxes. The diocesan governor wrote to the General Forest Office. He told that the farmers had already chopped large amount of wood without a permission. How should this conflict be solved? If the farmers were not allowed to chop wood to produce charcoal for delivery to the mining company, the company would stop, and the king would get no taxes neither from the mining company, nor from the farmers. The final solution came in 1751 as a royal decree. This decree gave the Røros mining company the right to use the common forests without having to pay duties. This decision was according to the particular legislation concerning the mining industry of the 1680ies. But the decree told the mining company to avoid damaging the forests. The farmers who lived outside the common forests were excluded from the use of the common forests. But the farmers in Haltdalen court district who had continued the woodchopping in this common forest throughout the years of conflict were given the permission to continue their use due to their traditional usage.

The view of common property

There is an ongoing debate on the question private property and the different ways of gaining property rights to land. One reference could be the last meeting of Nordic historians in Oslo in August 1994, where this question was part of one of the three major themes. This is not the time and place to go into this debate. I will just give a brief sketch based upon my ongoing microstudy. In the first part of the period in concern, there are signs that the population viewed the natural resources as some never ending supply of fodder and wood, thus there were no need to secure the rights to exclusive use of a certain field or summer farm. With the increasing population and thus increasing pressure on the resources, the view as it can be studied by the local practice, seems to change. It became more important to do it the way the law dictated, that is to ask the bailiff for a licence for the exclusive use of one or several common fields. The licence did not come to an end before the farmer in question himself ended his work as a farmer, although this liberal practice, as seen from the single farmer's point of view, was not legally adviced. It seems though, by a thorough study of the many licences from the 2nd half of the 18th century that the view of common property among the farmers was moving towards a view close to the one they had of private property.

Firstly, we can note that the same fields and summer farms were used by the same farms in generations, thus traditionally "belonging" or "lying under" a certain farm. The common fields, forests and summer farms were natural extensions of the taxable farms in the local community, this also stated in general terms in all the legislation from the middle ages

onwards, but with restrictions as the forests were concerned in the law given by king Christian V in 1687.

Secondly, an institute common in the use of private property, the "opplatelses"-intitute, i.e. the former user's willingness to release the place to another, is in practice applied to the use of common property as well. That meant, that the former user of a field or a summer farm indirectly handed over the use to another person, his son or another man, in a few cases also a woman. The bailiff had to be contacted to get the formal licence, but it seems the local society to a very large extent handled these cases itself. In some cases these transactions also took place without the bailiff being involved. We know a few such cases because they came to the knowledge of the authorities later on, and the bailiff had to warn the local farmers not to continue do so in licences that he gave in the time succeeding these events. Only in cases were there were common fields not being used of any farmer, the bailiff had to announce in court the possibilities for local farmers to use these fields, thus bringing the socalled "hay-duties" to the king's tax office at Department of Finances, the Rentekammer. But in most cases it seems that the local farmers managed the use of common property to a great extent independently, only with the bailiff as an intermediary. This can be seen as a reflection of the view of the common property, an understanding of fields and summer farms as naturally belonging to their farms, but one must of course also bear in mind the small local and regional administration at the time which made a certain degree of self government unavoidable, also during the absolutist regime.

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