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Conflict-resolution mechanisms maintaining an agricultural system. Early modern local courts as an arena for solving collective-action problems within Scandinavian Civil Law

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Abstract: Rapid access to low-cost local arenas to resolve conflicts among appropriators is one of the principles that characterise robust common-pool resource (CPR) institutions. In spite of this insight, we have little knowledge about how such institutions solved collective-action problems in early modern Scandinavia, when CPRs were an important part of production. Arenas to resolve conflicts among appropriators range from informal meetings among users to formal court cases. This paper focuses on local courts, rather than laws and by-laws, within the Scandinavian legal origin and how these courts developed as arenas for CPR conflict resolution. Court rulings from Leksand Parish in central Sweden were the backbone for this study. The results indicate that access to a low-cost arena was more important to the peasants than rapid access to the courts. Successful conflict resolution could take years to accomplish and it was more important for the court to embed their decisions in people's minds than to come to a quick resolution. Further, I demonstrate that the court laid the foundation for disputing parties to solve conflicts among themselves. Lay judges – peasants from the region – came to play an important role in conflict resolution. Thus, in the 17th and 18th centuries, the court played a central role in maintaining agricultural CPRs.

Keywords: Agricultural systems, commons, conflict resolution, design principles, early modern Sweden

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1. Introduction

Agricultural systems in early modern Western Europe were based on mixed farming, i.e. arable farming and livestock production within the same farm. These systems also mixed different types of property rights to land (De Moor 2009; Larsson 2014a). Forests, lakes, and mountains were common-pool resources (CPRs) and used for different purposes, such as collecting firewood and hunting, fishing and livestock watering, and grazing and production of dairy products. Early modern Northern Scandinavian commons constituted a significant part of land use. Consequently, institutions for handling collective-action problems developed rapidly during this time (Larsson 2016; Sundberg 2002).

Since the 1980s, scholars have shown that local users can construct institutions to govern the use of natural resources (e.g. Ostrom 1990), refuting earlier assumptions that users of commons were unable to avoid overuse and would destroy their resources (e.g. Lloyd 1833; Hardin 1968). Most of these studies focused on local users' own abilities to build successful institutions (Gibson et al. 2005). These institutions, i.e. rules (North 1990), included mechanisms to resolve disputes and conflicts and were necessary for management. Rapid access to low-cost local arenas for conflict resolution among appropriators is one of the principles that characterise robust CPR institutions (Ostrom 1990, 2005). Local users could manage these arenas, but in early modern Scandinavia users of CPRs brought many cases regarding collective-action problems to the local courts.

State representatives in the local Swedish courts met with local users to resolve conflicts and created policy for management. In early modern Scandinavia, the local courts became a trusted arena for solving conflicts within local communities and were occupied mostly with civil cases involving economic disputes (Ågren 1988, 1992; Sundin 1992; Taussi Sjöberg 1996; Österberg and Sogner 2000). While we know how the courts worked on many topics, no attention has been paid to how collective-action problems were solved at these local courts. This paper examines how one court in central Sweden handled these cases. The paper will contribute to the understanding of the governing of CPRs by providing details of how collective-action problems were solved in the context of Scandinavian law tradition. The paper shows how and why the court became an essential actor in maintaining an agricultural system based on the use of commons and discusses what made it a trusted arena.

The paper discusses conflict resolution in a homogenous society and focuses on one type of utilization of the commons – a transhumance system. The first

section introduces the reader to Scandinavian law tradition and important features in the Swedish legal system and describes the case study area and why it is considered a homogeneous society. The section ends by introducing the reader to the source material used. The second section describes court cases that dealt with different types of collective-action problems and how the court handled these cases. The third section discusses how the juridical system handled *de jure* (lawfully recognised) vs. *de facto* (originating among users) rights, collective rights vs. private rights, and the balance between rapid conflict resolution and embedding policy and institutions in the local users' minds.

2. Background

2.1. Scandinavian law and Swedish courts

A tradition in comparative law is to speak of legal families, but opinions about the most important features of a legal family differ among legal scholars. Most agree that common methods, legal terminology, characteristic institutions, and a shared legal background unite a legal family. Zweigert and Kötz (1998) argue that the most convincing of the groupings so far is the division into seven families: French, German, Scandinavian, English, Russian, Islamic, and Hindu. Malmström (1969) argues that within the Western legal group (European-American) four legal families can be distinguished: the legal systems of Continental Europe (with German and Romanistic subgroups), the Latin-American system, the Scandinavian system, and the Common Law system. We can conclude that Scandinavian law is generally regarded as distinct from other legal families, but some scholars regard Scandinavian law as a subgroup of civil law in continental Europe (Sundberg 1969; Tamm et al. 2000; Bernitz 2007). Another name for Scandinavian law is Nordic law since it refers to the law of the five Nordic countries – Denmark, Finland, Iceland, Norway, and Sweden – included in the group.¹ Scandinavian law has three key factors separating it as a legal family: the limited importance of legal formalities, the lack of modern codifications, and the absence of an actual reception of Roman law.

The division of the world into legal families and the inclusion of systems in a particular family are vulnerable to alteration by historical development and change and depend on the period of time one refers to (Zweigert and Kötz 1998). The Scandinavian legal tradition goes back to the early medieval period when similar provincial law codes appeared in Denmark, Norway, Iceland, and last in Sweden. This intense period of legislation coincides with a period of political and ideological consolidation of the emerging states (Lindkvist 1997). The provincial laws in Sweden were replaced by a law code of the entire realm in the mid-14th century. There was one legal code for the countryside and one for the small cities; however, there were no major differences between the two. This medieval law

¹ Scandinavian law tradition also includes three territories with a high degree of self-governance: the Danish Faroe Islands and Greenland, and the Finnish Åland Islands.

code was in place until 1734, when a new national law was introduced to include countryside and towns (Sveriges Rikes Lag [1780] 1984). However, the new law code did not radically break from legal tradition (Lindkvist 1997, 216). The landholding peasants formed the local community in the laws, and the yeoman was the standard legal actor (Korpiola 2014). The 1734 law code is formally still in use but both the content of the law and how the courts work have fundamentally changed (Jägerskiöld 1984b).

The long-term history of jurisdiction in Sweden relates to how the king and the state (crown) gained increasing control over the process at the expense of local communities. Starting in the 17th century, the jurisdiction slowly became more professionalised. The court had its roots in an organization for self-government, not just as an arena for jurisdiction (Österberg et al. 2000). Medieval jurisdiction was under control of the local communities, which were the fundamental legal authority (Korpiola 2014; Lindkvist 1997). The countryside was divided into judicial areas. The primary unit of jurisdiction was an assembly called *ting*. The *ting*, known since the Viking age, was a general assembly of the community where diverse matters of the community were settled. During the Middle Ages, it became an arena where rural communities convened to manage their legal matters. The court proceedings took place under the leadership of a judge who made decisions with a panel of twelve local men, the *nämnd* (appointed or nominated; hereafter jury), who served as lay judges. Jury members were generally peasants and did not have to be freeholders. No official could sit on the jury, and the jury represented the community and its knowledge of local people and circumstances.

During the late Middle Ages (15th century), the jury seems to have had a longer term instead of being appointed for each case (Inger 2011). Some men had long careers in the jury and thus became influential in the local community. In the 16th century and part of the 17th century, the jury strengthened its position in the court. Korpiola (2014) argues that lay dominance in the judiciary was one of the cornerstones of Swedish legal cultural identity compared to other European regions. The members of the jury not only acted as lay judges, they also could be appointed by the court to act as surveyors, mediators, and inspectors in legal disputes. Hence, the jury had various tasks in investigating cases, informing the judge, and assessing evidence and guilt. The Swedish jury, unlike the English jury, did not have to reach unanimous conclusions. A simple majority was enough to determine the verdict. The participation of the community was essential for the legitimacy of the court (Korpiola 2014). At the end of the 17th century, the jury's impact began to decrease. From the 1680s, a judge had to be appointed by the king, and the 1734 national law required a unanimous jury decision to overturn a judge's verdict (Sundin 1992; Inger 2011). One explanation for the stronger influence of the Swedish peasantry compared to much of contemporary Europe was that peasants constituted one of the four societal estates of the Diet that was standardised in the 16th century (Korpiola 2014).

A prominent person in the court was the *länsman*, established as part of the judicial system in medieval time (Korpiola 2014), who after 1694 had a clearly

defined role as prosecutor and was employed by the crown. He was appointed by the county governor (*landshövingen*) and lived in the district where he worked. The *länsman* could be selected from among the peasants in the court district but often belonged to the upper stratum of society (Sundin 1992; Ulväng 2004). Even though as prosecutor he brought cases to the court, individuals or groups of individuals presented the majority of all cases.

Another feature of the Nordic judicial system was that many cases were resolved by settlements in court, not out of court (Österberg et al. 2000). The courts have been described as social arenas where the local community met the authorities and together “took part in the exercise of social control” (Österberg et al. 2000, 252) and as a place where local economic and other relations were settled (Lindkvist 1997). The importance of the local courts for the community is evident from the attendance figures. In some areas in northern Sweden, as many as 30% of the population came to court sessions in the 17th century (Taussi Sjöberg 1996). Lindkvist (1997) points out that a particular feature of the judicial system in Sweden was the total absence of private jurisdiction. Because the court system was also quite simple, almost all cases were prosecuted in the local court. The local court was a low-cost arena for participants since no legal fees were charged to bring a case to court (Liliequist 1994).

In the 17th century, the state became more efficient and established a more strict hierarchy between the levels of the jurisdiction system. In 1614, a permanent superior court of appeals was established to supervise the local courts and revise verdicts if necessary. Within decades, three additional superior courts were established to serve separate districts. In an attempt to make jurisdiction more standardised, local courts had to send their rulings to a superior court for examination (Jägerskiöld 1984a). In spite of these changes and a discussion among elite society about the legal system during the early modern period, the legal system used in my study area in the late 17th century still had many features going back to the late medieval period.

2.2. Study area and its agricultural system

Leksand Parish encompasses the southern part of Lake Siljan and a stretch of Osterdal River (Österdalälven), and central Leksand is about 48 km from Falun, the main city in Dalarna County. As in many upland areas in Europe, the peasants in Leksand had an integrated and flexible economy (Viazzo 1989). The pillar of the economy was a mixed subsistence farming where animal husbandry was the more important part. The area was not self-sufficient in grain production, and the peasants needed money to buy grain and pay taxes, so secondary occupations were intrinsic to the peasants' lives. Migration of labour was an important part of the economy (Rosander 1967). The term *adaptive family* is used to stress the importance of flexibility in households' reliance on various income sources and describes Leksand household strategies in early modern upland Sweden (Wall 1986; Larsson 2014b).

Leksand was not a typical early modern Swedish parish. Leksand and Upper Dalarna differed from other parishes and counties in Sweden during the 18th century with regard to inheritance rules, structure of agriculture, and dependency on migration of labour. However, because Leksand developed a well-established common-property regime (Larsson 2014a), it is well suited for an investigation of how the local court dealt with collective-action problems.

Leksand was a homogeneous society with a shared understanding of many important aspects of life. The people belonged to the same church; it was a fairly egalitarian society with no large landowners except the church. Almost all adults were landowners, all peasants were freeholders, most people were born and raised in the community, and the local court handled all legal matters. Until 1870, when industrialization started in Leksand, all households took part in agriculture and raised animals. In Leksand and the surrounding area, partible inheritance was practised and both sons and daughters inherited land. Until 1845, daughters inherited half of what sons inherited. After that sons and daughters inherited equal shares (Sporrong and Wennersten 1995).

Starting in the 16th century, the peasants in Leksand developed a transhumance system for utilizing the forests for grazing, and between 1660 and 1870 more than 600 cases related to this system were brought to the court (Larsson 2009). Almost all of these cases were concerned with different management aspects and only a few cases dealt with crime, i.e. theft or assault. The animal husbandry system used in early modern Leksand was classified as Alpine transhumance due to stabling the livestock during the winter (Davies 1941; Larsson 2012). Each summer the animals were taken to summer farms situated 5–35 km from the villages. The pasture grounds in the woodlands were commonly owned and the purpose of the summer farm was to use common pastures to feed the animals and to process milk into long-lasting dairy products (butter, cheese, and whey-cheese) (Larsson 2009, 2012).

2.3. Source materials

For an investigation of conflict-resolution mechanisms in early modern Sweden, court rulings are the most appropriate source material available. Hence, the primary sources in this study were rulings from the Leksand court district. Leksand, Bjursås, and Åhl parishes comprised the court district, but Leksand was the largest and represented about 70% of the population (Palm 2000). I have had access to unique excerpts from these records extending from 1660 to 1870 written by Dr. Sigvard Montelius in the late 1960s (Sigvard Montelius archive, private collection, Falun, Sweden). Montelius excerpts consist of more than 800 cases he collected while working on a book about summer farms in Leksand (Montelius 1975). Not all cases cover summer farms, but more than 600 cases do, giving an excellent overview of how the court was used as an arena for solving collective-action problems concerning a transhumance system for more than 200 years. I have confirmed that the excerpts correspond to the

original court records in two ways: (1) Montelius's excerpts are not word-for-word excerpts but are in the meaning very close to the originals; (2) the 600 cases are almost a complete collection of cases concerning summer farms from the parish. After reading all the excerpts, I divided them into groups concerning different management aspects (Larsson 2009, 212–215). To get a deeper understanding of how the court worked in solving collective-action problems, I selected a dozen original court rulings for very careful reading (Uppsala Regional Archive KLHA). The selections represent common collective-action problems according to the analysis of the 600 cases and are from the late 17th century and first decades of the 18th century. This was when the court took an active role in solving collective-action problems, and I chose specific rulings to illustrate different strategies the court used.

The local court was an arena where people did not hesitate to bring cases, and people in the Nordic countries supported the law and the normal judicial forums. Earlier research has shown that a large proportion of people's disputes were heard in court (Österberg et al. 2000). Even though many minor problems were solved in informal settings or within organizations created by the peasants (e.g. villages, summer farms), the large number of different cases brought to the local court give a rich picture of practices at the summer farms and how conflicts were resolved. User groups decided rules for governance, rules that had to be consistent with the law. Most of these by-laws probably were never written down and are not preserved. Some of the by-laws from the second half of the 18th century to the mid-19th century are known, since the user groups wanted the local court to confirm them because it gave the by-laws legal status from the state. A peasant could belong to numerous user groups encompassing different uses of resources and activities, i.e. summer farm community, village community, and parish community. Mismatches between them could be solved in the court, if necessary.

It has been argued that by-laws are our primary sources for the rules and ideas that governed collective agriculture (Warde 2013). Even though by-laws are excellent sources, they have some weaknesses compared to court records. By-laws cannot be taken as reliable guides of how commons were actually managed, and we do not usually know if a particular by-law represents a long-established practise or a novelty. Even the most ambitious by-law lacks information of key elements in collective agriculture. By-laws are normative, pointing to how users should behave, but they tell us little of how users actually behaved. By-laws provide some of the formal institutions for management, but not the informal rules that we know are crucial to understanding commons management (North 1990; Ostrom 2005). In court records, formal and informal institutions meet, and the early modern court became an arena for solving mismatches between the two. Plaintiffs and the accused met and their arguments were weighed together. Conflict-resolution mechanisms must be viewed in the light of the agricultural practises. Court records give us the insight into agricultural practise that makes it possible to understand how conflict-resolution mechanisms were handled in early modern societies.

Like all source material, court records have their pitfalls. However, the usefulness of a source is dependent on the question it is asked to solve. For example, if people exaggerated or lied in court is not important when the question in the study is how the court worked to resolve collective-action problems.

The distinction between civil and criminal cases that is important in many legal studies are not of interest here. The development in Leksand was similar to the general trend in Sweden during the 18th century, where civil cases were the most common cases brought to the local courts (Ågren 1992). This development is an expression of how economic cases became more important. There is often a grey zone between the types and thus it may be hard to distinguish one type of case from another. When a plaintiff complained about trespassing to the court, he argued that a violation of a boundary had taken place (a crime). The accused often denied there was a boundary between them or said the boundary was different from what the plaintiff had said. This exchange turned the question into a matter of utilization areas, an economic question and a civil case (Larsson 2014a). Scholars have argued that in practise civil and criminal cases did not differ much (Sundin 1992).

3. Results

Between 1660 and 1870, about 600 cases concerning summer farms were brought to the local court in Leksand Parish. The number of cases increased from the 1680s, peaked in the 1760s, and dropped but remained high to the 1830s. Cases then started to decrease, and the court ceased to be an arena for solving summer farm disputes in the 1860s. Cases concerning summer farms were less than 1% of all cases in the court during the 1660s and 1670s. In the 1680s, that ratio leapt to around 4%. From 1700 to 1800, cases concerning summer farms were 3%–4% and dropped significantly after 1800, finally vanishing by 1870 (Larsson 2009). The court lost its place as an important arena for solving collective-action problems. The heydays of solving collective-action problems concerning summer farms occurred from the end of the 17th century to the mid-18th century. This period coincided with an expansion of the transhumance system. Examples provided in Sections 3.1–3.6 facilitate a discussion about important features of the court that enabled it to handle collective-action problems.

Most cases were selected to elucidate different aspects of the most common collective-action problems in Leksand and how the court solved these dilemmas. The court was most occupied with (1) conflicts about boundaries of utilization areas, including trespassing; (2) a person's right to belong to a user group (a summer farm community); and (3) collective-action problems concerning open and closed seasons for grazing. A few other cases are given, e.g. fire and enclosures, to deepen the discussion about strategies the court used.

The local court for Leksand Parish only held sessions once or twice per year in the early 18th century. If the court held only one session, it usually took place in November. The court session had to take place when few other things were

happening and could not interfere with the busy agricultural season from April to late September. This meant that cases were often presented three to five months after the problem occurred. The judge, appointed by the king, travelled from court to court in the region and gave his verdict with the help of the jury. Since Leksand was by far the largest parish in the court district, eight to ten of the twelve lay judges came from this parish. All of the lay judges were peasants and, at least from the late 17th century, they all had their own summer farms. Hence, they practised the same kind of agriculture as most of the clients at the court. Since the lay-judges were the majority in the court and knew the customs of the area – how agriculture was practised, and how resources were utilised – they came to play an important role in the judicial system when dealing with conflicts related to management of local natural resources.

3.1. Staying in the village

In the last decades of the 17th century, it became compulsory to have a summer farm in Leksand. This rule emanating from the peasants' management of animal husbandry was confirmed by the court and made into a formal rule. A case in the fall of 1694 was brought to the court because there had been complaints that some peasants stayed in the villages with their animals while the majority of peasants moved their animals to the summer farms (Uppsala Regional Archive KLHA, 1694, fol 37). The court decided that the *länsman* together with trusted men² should thoroughly investigate the summer farms and make arrangements so peasants without a summer farm could join one. However, the court realised that all peasants could not afford a summer farm. Hence, the court decided that poor people could stay in the village during the summer and gave a reason for the decision: because poor people needed the milk from the animals to make a milk soup to feed their children. It would have been impossible to feed their children if the animals were away from the village. The court also created a definition of *poor person* as one who had only one cow or one or two goats. The court also stated that more wealthy peasants had to move to a summer farm. Here the court was making many decisions on questions about which the law said very little. The most obvious is the decision that peasants needed to have a summer farm. When the court decided to exempt poor people from moving to a summer farm, it argued that it was done for mercy and for the well-being of the children. By doing this, they avoided getting into the more subtle questions of whether poor people could afford a summer farm and fully take part in the agricultural system the court had proposed. Investments of materials and labour were needed to establish a summer farm: erect buildings, put up fences, etc. Poor families usually had fewer members than wealthier families (Gaunt 1976; Larsson 2014b). Hence, it would have been a proportionally heavier burden for them to send a family member to the summer

² The term trusted men is sometimes used in court rulings without specifying their names. It could refer to lay judges, but could also include other men.

farm compared to a wealthier household. The court came to the conclusion that a few poor people's animals grazing on the pastures surrounding the village would not damage the pastures for people returning from the summer farms in the fall. The court's ruling eased the burden on the poor instead of increasing their burden by forcing them to establish a summer farm. It also might have prevented them from needing poverty relief, a burden that would have been carried by the remaining peasants.

3.2. Moving together

When in early summer the villagers should move to the summer farms and when in the fall to move back to the villages, was a question that often invoked action at the court. The court heard a case in the beginning of December 1717 involving complaints that some peasants in the parish disregarded established rules³ and moved their animals to and from the summer farms without coordinating with neighbours (Uppsala Regional Archive KLHA, 1717, §54). Five jury members submitted a written statement complaining on behalf of some of their constituents. The court concluded that it was unfair not to coordinate the move since the common pasture was for all peasants in the villages and if some users arrived earlier than the rest, large amounts of the feed would have been eaten by the time the rest of the peasants arrived. No one was punished for breaking the rule, but a fee of 40 Daler silver coins was determined for future violations. To make the court decision known to all members of the parish, the court decided the verdict would be read aloud at the next parish meeting (sw. *sockenstämma*). It was important for the implementation of rules regarding open and closed seasons and that all users of the commons knew the rules as well as the possibility of having to pay fines. The court decision indicates that they used graduated sanctions (Ostrom 1990, 2005). No one was punished for violating the rules, the court clarified the rules for future use, and all users got a warning: the next time a violation occurred the violator would have to pay a fine. However, the problem with coordinated moves and respect for open and closed grazing seasons continued. In the first 50 years of the 18th century, a case about coordinated moves appeared in court every other year (Larsson 2009).

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

³ The oldest record about coordinated moves to and from the summer farms is from 1700 (Sigvard Montelius archive, private collection, Falun, Sweden). The 1717 conflict described here was one of many conflicts about how to enforce this rule.

actual fines of five Daler silver coins given in this case is another indicator that the court used graduated sanctions.

There was an agreement among some villagers in the eastern part of Leksand about moving animals to the summer farms in the spring, an agreement confirmed by the court in November 1726. Despite the agreement, some people stayed in their villages during the summer of 1727. In the fall, some of the peasants who had moved sued those who had stayed (Uppsala Regional Archive KLHA, 1727, §159). The arguments for not moving were plenty: some lacked summer farms, some argued that the summer farms were too far away, and others said the pastures at the summer farms were scant and better pastures were found around the villages. In its ruling, the court said that since the agreement had been put into effect without everybody's participation, it was difficult to enforce it. However, two persons who had signed the agreement in 1726 but stayed in the village during the summer of 1727 had to pay heavy fees for intentionally not following the agreement and an extra fee for disobedience of the court ruling. More importantly, the court's decision tried to find a solution to the problem that encompassed at least seven villages. The court appointed trusted men to investigate and gather all people involved so they could participate in the investigation. The court's guideline for the investigation stated that in areas where moving to the summer farms would create more harm than good all peasants should stay in the villages, but in areas where the summer farm pastures were sufficient, all peasants had to leave the village during the summer. The court emphasised that it was particularly wrong for larger-scale cattle owners to stay in the village. Further, the court said that the investigation had to take into account each homestead's share in the village and that the number of animals they could take to the summer farm should correspond to that share. The court explicitly mentioned that it was important to establish amity among the participants. A final solution to the problem had to wait at least until the investigation had taken place in 1728.

3.3. Trespassing

The most common cases in the 18th century were about trespassing on the utilization areas of summer farms (Larsson 2014a). Individuals sometimes put their livestock on grazing land of other communities' summer farms, but it was more common that summer farm communities or a village and a summer farm community had disputes about boundaries. In a case from 1727, villagers were accusing a summer farm community of trespassing (Uppsala Regional Archive KLHA, 1727, §136). Even though two resolutions had been adopted to divide the pastures between the two entities, the first in July 1711 and the second in October 1726, the court decided to discuss the case. The court urged them to solve the conflict among themselves, but also appointed four trusted men to do an inspection. The trespassers argued that they did not recognise the boundary because not all of their members had taken part in the surveys in 1711 and 1726. They also accused the villagers of having enclosed parts of the commons, which reduced the pasture

area of summer farms. These arguments were enough to convince the court that a new survey was necessary. This process could take time, but it seems that for the court it was more important to implement and inform than come to a quick solution. All appropriators would be given the chance to be heard and from the users' complaints and suggestions, the court would find a solution.

3.4. Enclosures

As in the example above, it was quite common for parts of the commons to be enclosed for private or semi-private use. Some of them were enclosed to keep a little arable land close to the summer farm buildings or to put up fences to corral calves and lambs that were too small to follow the older animals into the woods to graze. These enclosures were normal for the type of agriculture practised, and land close to summer farm buildings was perceived as private property (Larsson 2014a). However, in some cases large pieces of land were enclosed that most members of a summer farm community could not accept. In a case from 1737, all members of a summer farm community complained to the court about enclosures (Uppsala Regional Archive KLHA, 1737, §61). The court decided to appoint one of the lay judges and the *länsman* to investigate the enclosure before a decision could be made.

The opposite problem of enclosures also emerged as conflicts, when users let their animals onto other users' enclosed land. In another 1737 case, peasants from several villages had let their cattle and goats onto another village's meadows (Uppsala Regional Archive KLHA, 1737, §68). Even though no one denied what had happened, the court did not punish the intruders. Instead, the court issued a statement: the owners of the meadow had suffered remarkable damage, a ban to enter the meadows was introduced, and any person letting his or her animals onto land without property rights in the future would have to pay a fine.

3.5. Rights to the commons

With the examples above, we can see how summer farm communities came together and sued individuals who they argued were free riding on the commons. It also happened that individuals sued a summer farm community for denying them access to resources they argued they had the right to use. In 1737, a man named Olof Andersson sued the summer farm community at Getbergs because they denied him his right to be a member of the summer farm community and to use the common pasture (Uppsala Regional Archive KLHA, 1737, §56). Olof Andersson had two arguments for his right to be a member. First, his father had been a member, and second, he was not a member of any other summer farm so he had nowhere to feed his animals in the summer. Despite the summer farm community wishing to deny him membership, the court decided that Olof Andersson could join. The main argument was that he had the right to use the commons and since his father had been at the summer farm they could not deny him access.

3.6. Fire

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

4. Discussion

The examples in Section 3 show how the court in Leksand became an active participant in solving collective-action problems concerning summer farms. The increased total number of cases brought to the court confirms the impression that the court became a trusted arena for dealing with conflicts in society and further illustrates earlier research about early modern Scandinavian courts (Ågren 1992; Österberg and Sogner 2000). The overarching goal for the court was to instill or keep social stability. To keep this stability in cases concerning CPRs, the most critical aspect was to hamper all tendencies to free ride on the commons (Olson 1965; Ostrom 1990). Almost all cases, except for the one described in Section 3.6., touch on different aspects of free riding. A court that failed to stop free riders would have lost people's confidence. On the other hand, if the court had not also upheld peasants' individual rights that other community members sometimes tried to obstruct, as in Section 3.5., the court would have lost its credibility. Hence, the courts had to recognise both collective and individual rights. They had to stop free riding to avoid the tragedy of the commons and had to deal with the question of whom the summer farm communities had the right to exclude. To deal with these complex questions the courts used certain strategies and had certain features.

The court world was a local world. The collective-action problems a court had to solve were local problems facing members of the local community. In the beginning of the 18th century, Leksand's court district was inhabited by 7000–8000 people. No one knew every other person, but the district was small enough

for people to have a good understanding of other peoples' living conditions. To make good judgments in this environment, lay judges of the jury played a very important role in the court and became crucial in dealing with collective-action problems. As peasants in the area practising the same kind of agriculture as plaintiffs and defendants, lay judges had unique insights and could inform the judge about local circumstances. To help judges make decisions, they also served as mediators, surveyors, and inspectors, most clearly shown in Sections 3.1.–3.3. and 3.6. They estimated the value of property destroyed by fire, determined the borders between utilization areas, and estimated how many animals a peasant could take to the summer farms without depleting the pastures. The court could appoint other people to assist, but lay judges were often called on to do these kinds of duties.

One key to the courts' ability to find solutions accepted by the people was its ability to use both *de jure* and *de facto* rights in jurisdiction (Schlager and Ostrom 1992). Although the law could give detailed descriptions about agricultural life and the work of the peasants and internal relationships within villages (Lindkvist 1997), it lacked guidelines for many parts of agricultural practice. Hence, to solve many of the conflicts arising from the use of commons for a transhumance system, the court had to use both *de jure* and *de facto* rights. Examples of *de jure* and *de facto* rights would be all peasants' right to use the commons (Section 3.5.) and established open and closed seasons at the summer farm (Section 3.2.), respectively. The decision that it was compulsory to have a summer farm was *de facto* (Section 3.1.) as well as the rule that poor people had the right to an exemption and could stay in the village while the other villagers were at the summer farm (Section 3.1.). The decision to share the common pasture in accordance with the farms' shares in the village was *de jure* (Section 3.2.). By mixing *de jure* and *de facto* rights, peasants were able to anchor the court's decision in both the law and local customs to create a robust policy management of the commons in Leksand.

The court was a low-cost arena for solving conflicts locally, which encouraged people to bring their cases to court and made it likely that most of the more complex cases, like the examples in Section 3, were solved at court. Since most court sessions occurred in November, another low-cost aspect was little loss of work for participants. The agricultural season was over, the animals were stabled, and most of the dairy animals had become dry. The only downfall to this court system was its infrequency of court sessions. With only one or two sessions per year, participants could not expect a quick resolution for problems presented to the court.

Rapid access to arenas for solving collective-action conflicts is one of the key features of Ostrom's design principle about conflict-resolution mechanisms (Ostrom 1990, 2005; Cox et al. 2010). Although this aspect of conflict resolution was missing in Leksand during the early 18th century, the management of the commons used in the transhumance system worked well. Some minor problems possibly were solved quickly within the summer farm community, but many conflicts that emerged during the spring and summer had to wait until late November. However, access to conflict-resolution mechanisms was not the only barrier to

speedy solutions; when a case came to the court it often took a long time before a solution or a verdict was issued. It is striking that it was more important for the court to embed their decisions in peoples' minds than to come to a fast resolution. One way to do this was for the judge to appoint trusted men and/or the *länsman* to investigate the problem or ask lay judges to act as mediators in the negotiation between the parties.

By having almost all conflicts solved in the same court with an open and transparent process, the solutions to the conflicts provided guidelines on how individuals and communities could solve their conflicts or avoid conflicts by finding solutions before the conflicts arose. These guidelines or policies lowered the cost of the transhumance system used in the area because the court clarified its decisions and reasons for decisions for all users in the district. Hence, the local court became an important collective-choice arena (Ostrom 2005).

The court did not settle all cases that were presented. The court was an arena where users could negotiate and the court encouraged the participants in a conflict to negotiate a settlement instead of waiting for a verdict. In a case from 1727, the court expressed that only if the two parties did not settle would the court come with a verdict (Uppsala Regional Archive KLHA, 1727, §151). The court expressed awareness of the fact that an agreement between two parties is stronger if it is negotiated between them than if it comes as a verdict from the court. This particular case had been brought to court in 1721, and in 1727, it was still not settled.

For the court, it was extremely important that all people had thorough knowledge about decisions, agreements, and settlements that concerned them. Without that, the implementation would be harder. Consequently, many conflicts took many years to settle and many users had to manage their summer farms without knowing the outcome. In cases where someone's lawful right was denied, e.g. access to outlying land, the court worked faster, but it could still take a long time before a decision was made regarding which summer farm on the outlying land a person belonged to. For the court, it was important that people living in the district felt included in the court's work. The principles expressed in the norm *quad omnes tangit ab omnibus approbari debet* or "what touches all must be approved by all", which was established in medieval law (Korpiola 2014), was still an important principle for the court in early modern Leksand handling collective-action problems.

The role of the court in Leksand was like the manorial courts in England (Rodgers et al. 2011): to foster good neighbourhoods. The court was a trusted arena and the court worked to include users in investigations. By analysing all 600 court cases concerning summer farms from 1660 to 1870, it becomes clear that the court lost its place as an important arena for collective-action problems during the 19th century. The courts became more professionalised and judicial reforms reduced the influence of custom law in favour of legal positivism. In addition, at that time, changes in property rights had reduced the commons, and communities that depended on collective agriculture had to find ways to operate other than

using the court as a means for solving collective-action problems (Larsson 2014a; De Moor 2015).

5. Conclusion

As we have seen, the court's role in the 18th century was not only to bring justice to the community but, more importantly, to solve problems within the community. With this strategy, an important work for the court was to uphold and maintain the agricultural system. Since a large part of the agricultural economy in Leksand Parish was based on the use of CPRs and collective action, it became necessary for the court to make these features work. The court identified that a major threat to the system was free riding on the commons, and its overarching goal was to prevent it from happening and, when it happened, to negotiate settlements to avoid it in the future. This case study shows how the knowledge of local users was crucial to finding solutions to collective-action problems. This practice is in contrast to more formalistic and professional legal thinking where learned lawyers solve legal disputes to enforce individual rights.

Archival sources

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