

Thy neighbour's property

Communal property rights and institutional change in an iron  
producing forest district of Sweden 1630-1750

Staffan Granér

Department of  
Economic History



School of Economics  
and Commercial Law  
GÖTEBORG UNIVERSITY

# Thy neighbour's property. Communal property rights and institutional Change in an Iron Producing Forest District of Sweden 1630-1750\*

Staffan Granér

[Staffan.graner@econhist.gu.se](mailto:Staffan.graner@econhist.gu.se)

**Abstract:** This paper focuses on the development of property rights to village commons, as they appear in the court rolls of a legal district in Sweden in the late 17th and the early 18th century. A development of agrarian property rights, from comparably attenuated towards more exclusive and private ones, has been considered one of the most important and crucial aspects of economic modernisation. To explain and analyse this development two, not necessarily incompatible, theoretical approaches can be identified. The neo-institutional *property rights* approach focuses on economising behaviour among individual agents in relation to factors such as enforcement and transaction costs, relative prices, market integration and contracts. A more sociological, or class based, *property relations* approach focuses on factors such as power structure, distribution, exploitation and social networks. In this area the regulation and privatisation of access to commonly controlled woodlands and pastures plays an important role. Immigration, population growth, colonisation, and a rapid establishment of iron mills in the 1690's, contributed to a commercialisation of economic relations, and to an increased scarcity of commonly managed resources such as wood, charcoal and waterpower. This put considerable strain on traditional local conceptions of rights. A significant part of the legal cases reflects disputes over rights to village commons and the resources that they contain. The long-run result of this process could be described as a kind of enclosure where communal and socially embedded rights were gradually redefined.

**JEL:** K11, N23, N43, N53, Q15

**Keywords:** Economic History, Sweden, Property Rights, Common Rights, Institutional Change, Enclosure, Forest History

**ISSN:** 1653-1000 *online version*

**ISSN:** 1653-1019 *print version*

© The Author

Göteborg University  
School of Economics and Commercial Law  
Department of Economic History  
P.O. Box 720  
SE-405 30 GÖTEBORG  
[www.econhist.gu.se](http://www.econhist.gu.se)

---

\* An earlier version of this paper has been presented at a session of the Fifth European Social Science History Conference, Berlin March 24-27 2004 and the comments of the participants are greatly acknowledged, especially those by the session commentator Jan Luiten van Zanden.

## 1. Theoretical point of departure

Most readers may be aware that the concepts of property and ownership and the rights that we associate with them are not absolutely given when we make comparison between different historical periods or cultures. For example, the conceptions of property in pre-industrial, household-oriented societies are in many ways different from those in industrial market-oriented societies. This becomes even more obvious when one looks at agrarian property rights, and land rights in particular.

Different kinds of rights to one and the same piece of land could be divided among many individuals or institutions. There is of course the hierarchical division between peasants, state, and landlords which we usually associate with feudal relations, but there are also more horizontal relations within peasant households, kinship relations, village organisations and other local institutions. (Bloch 1965, p. 115 ff)

Following the tradition of Roman law, it has been common to divide the concept of property rights into three components or dimensions: (Furubotn & Pejovich 1974, p. 4; Nutzinger 1981, p. 175)

- The *right to use* an asset (*usus*)
- The *right to the economic surplus* that an asset produces (*usus fructus*)
- The *right to change* an asset's form and/or substance (*abusus*). This third component contains the central economic topics of exchange and *transaction*.

Although these are the most common, they represent only one of many possible divisions. (Honoré 1994, p. 68 ff.; Becker 1977, p. 18 ff.) Perhaps the most fruitful interpretation is to see property rights as an aggregate concept for a complex bundle of rights that could be more or less exclusively tied to different persons or groups.

The development from comparatively diffuse and socially embedded property rights, towards more exclusive and private ones, has been considered one of the most universal and crucial aspects of the whole process of modernization.<sup>1</sup> Recently the American economic-historian and Nobel price winner Douglas North, and with him a whole school of so-called property rights-economists and historians have described modernization as

---

<sup>1</sup> E.g. Jean-Jacques Rousseau (1775), Karl Marx (1867) (1975) [1842], Torstein Veblen (1934), Karl Polanyi (1944)

something almost identical with the appearance of exclusive and well-defined property rights. (North & Thomas 1973 Furubotn & Pejovich 1974; Eggertson 1990)

In agrarian history this discussion has primarily focused on questions concerning common field systems and enclosure movements. However, the institutional package of *common fields* does not only include the system of *open parcelled fields*. Often it also contains features such as *common management* of work procedures within village organization, and *common pastures* in outlands or meadows. (Fenoaltea 1991) For Swedish conditions in general, and especially for an area like the one I have investigated, the gradually increased regulation and privatisation of commonly controlled outland resources plays an important role in the overall process.

### 1.2. *The tragedy of the commons*

For economic-historians trained in mainstream neoclassical economics, socially embedded communal property relations have traditionally been considered irrational and inefficient. (Dhalman 1980, p 31; Heckcher 1968, p 30 ff) Anyone who exploits common property has incentives to do so far beyond the limit where the costs, shared by all the commoners, exceed the benefits. Moreover, the incentives to profitable investments become much weaker if one might have to share the profits with a lot of “free riders”.

This reasoning (which is at least as old as modern economic science) is often referred to as the “tragedy of the commons”, which was the title of Garret Harding’s classical, though much criticized, article about overgrazing on common pastures (Harding 1968). Economists call such divergences between private and social costs *externalities*. Externalities could be internalised through different forms of regulations or norms, but privatisation has been considered the most efficient and dynamic form of internalisation. The historical riddle has then been to explain why this was seldom the case in pre-industrial societies.

### 1.3. *Transaction cost analysis*

The property rights approach offers a solution to this riddle by stating that there are certain enforcement costs connected with upholding private property; there is also transaction costs connected with using the price mechanism to allocate resources on the market (Coase 1937). If these costs are high enough it can actually be quite rational to coordinate the allocation of resources through different kinds of social regulations, rules or norms instead of market transactions. Thus property rights develop to internalise externalities only when

the gains from such internalisation becomes larger than its costs (Demsetz 1974, p. 34). In my opinion this is an improvement, compared with the traditional view. The conclusion is that one cannot assume that a price-regulated system based on private ownership is always economically the most efficient form of resource allocation and coordination (North, 1977, p. 711).

However, we must keep in mind that many advocates of this approach also claims that property conditions within village organisations can be fully explained as a kind of optimal socio-economic equilibrium in relation to some external parameters such as relative prices, technology and market integration. When these parameters change, a new equilibrium solution will be negotiated. This I think is more problematic. The models tell us very little about actual institutional change. How does one get from equilibrium A to equilibrium B? A functionalistic model that does not include the dynamics of change could very easily become tautological.

Any change in property relation is likely to have effects on the overall distribution of incomes and wealth, and hence on the very power structure of a society. A transformation of such relations would reflect and provoke conflicts between irreconcilable interests. It could also reflect social networks that go deeper than individual self-interests. This reasoning leads back to classical class-based and sociological understanding of property conditions not only as individual rights that could be transferred and negotiated for mutual individual benefit, but foremost as economic manifestations of basic social relations such as power structures and social networks (Gustavsson 1991, p. 13 ff. Hodgson 1989, 1991, 1993. Bromley 1989, 1991.)

This objection does not necessarily lead to the conclusion that property rights models are without explanatory value. Rather they might be under specified. But first of all one can not solve this dispute solely with logical disputes over deductive models. This calls for empirical studies at the local level, studies that examine how these transformations actually take place:

- Who were the driving agents behind the transformation?
- What were the distributional effects?
- What kinds of conflicts arose in the process and how were these conflicts expressed?

## 2. The area of investigation – an expanding frontier

Primarily there are two circumstances that make this area suitable for such an investigation:

- The area has the character of a demographic frontier. It is sparsely populated in the beginning of the period, but then experiences a very rapid expansion, due to migration and population growth. Important factors in this expansion are colonisation on forest land, and land reclamation
- A large-scale establishment of iron mills, beginning in the 1690's, contributed to a commercialisation of economic relations in general, and an increased scarcity of commonly managed resources such as firewood, timber, charcoal and water power.

In the early 17<sup>th</sup> century a few small villages, or in some cases single farms, situated along the shores of the lakes in this then sparsely populated area, had been able to establish customary rights to vast areas of forest land. This was land that was exploited extensively for primarily household use, as pastures, hunting grounds, for collecting winter fodder, etc. (Bladh 1995, p. 69)

These resources were exploited as village commons, though in many cases more than one village could share commons. In the early legal cases these rights are often described somewhat diffusely. The court could determine that, for example, two villages were entitled to use a specific forest together, without any exact definition of boundary lines. The argument for rights is often of immemorial prescription type, for instance, “we have always collected our birch bark here”. There seems to have been a relative abundance of these resources, and it probably would not have been worth the trouble to bear the cost of establishing more well-defined rights. More importantly, these resources were exploited for household use, not for commercial purposes. The later development challenged this traditional conception of rights.

TABLE 1 *Estimated and statistical population in Fryksdal's hundred, chosen years 1571-1751\**

<b>Year</b>	<b>1571</b>	<b>1620</b>	<b>1699</b>	<b>1718</b>	<b>1751</b>	<b>1780</b>
<b>Population</b>	675	1 608	4 946	5 869	9 483	12 353

Source: Palm, (2000) s 331 f

\* The Swedish demographic statistics dates back to 1749. For previous periods Lennart Andersson Palm has made estimations over specific years for all Swedish parishes based on tax material and church books

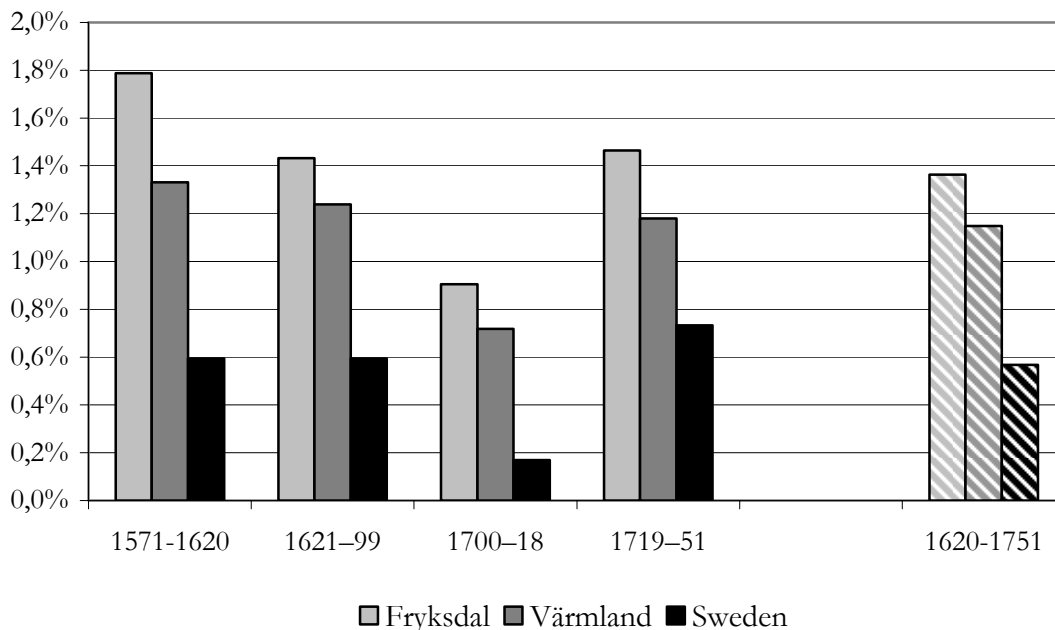
Population growth was very high in the area already during the first half of the 17<sup>th</sup> century. During the period as a whole, growth in Fryksdal's hundred was significantly higher than

average for the demographically expansive Värmland county, which means that it exceeded the national average even more.

Following the growth of the population, a substantial expansion of settlement came about. This expansion shows itself in part as an increasing partitioning of existing farms, and in part as settlements in the outlands. It was not uncommon that an old village had 2-5 or sometimes as many as 8, 'detached' villages on lands that they claimed to be theirs.

The immigration from eastern Finland is a famous feature of the 17<sup>th</sup> century history of the area. Most Finns settled in the vast forests of north and north-eastern *Fryksdal*. Their direct influence on the more central areas, where I have done most of my research, was limited. But the fact that the peasants of the core areas were no longer living in a 'frontier society' might have contributed to the creation of a new awareness of the importance of protecting and formalising rights to outlands. The technological aspect is highlighted by the fact that the Finns introduced new and efficient forms of *swiddening* (slash and burn cultivation) on forestland. The Swedes also took up this technique as a complement to traditional infield cultivation. Swiddening gave high returns on both work effort and planting seed for those who had sufficient forestland to invest. It seems plausible that this development contributed to a higher demand for and a scarcity of such land.

GRAPH 1. *Average population growth per year in Fryksdal's hundred, Värmland county and Sweden according to estimated and statistical population 1620-1751 and four periods 1571-1751*



Source: Palm, 2000 s 331 f.

However, it may probably be asserted that in the long run the rapid establishment of industrial iron production was the strongest factor causing high rates of population growth and an increased commercialisation of economic relations. In the 1690's the 17<sup>th</sup>- and 18<sup>th</sup> century boom in Swedish iron production reached this region. Eight middle-sized iron mills were established within the region. To this we have to add two larger mills situated close to the border of Fryksdal.<sup>2</sup>

The production of bar iron and its demand for labour expanded the means of subsistence in the area. Peasant households as deliverers of charcoal, transports and other forms of work by the day performed the bulk of the work effort needed in the production of iron. This certainly added to the commercial value of the outlands and their resources, and contributed to an increased strain on established conceptions of rights.

### 3. The legal framework

A series of Forestry Acts, starting with the one in 1647, regulated the rights over commonly held woodlands in Sweden. The act imposed many restrictions on the rights of the joint owners to exploit these resources. They were particularly restrictive on commercial use, but less harsh when it came to household use. The Forestry Act also provided an instrument for the individual joint owner to demand a division of the common - even against the will of all the others (Rydin 1855), this legislation has attracted little attention in earlier historiography, and we know little about its use in legal practice.

The state's claim to superior rights (*regalrätt*) over untilled land and its ambition to increase the basis of taxation supported colonisation in sparsely populated forest areas. New villages, or isolated farms, could be established on outlands, which by tradition were claimed by older villages. This did not make the colonisers tenants in the English sense of the word. The older villages had no official right to claim any kind of rent. Only the nobility and the state had such a right. According to the judicial doctrine of the time, 'peasants cannot tax peasants' (Elgeskog 1945). The new villages were taken up in the land register as separate units of taxation. Still, there was an important distinction between the rights of older villages and the rights of what we might call *detached villages* (The Swedish concept '*avgårda by*' seems to lack an English equivalent.). This distinction was most

---

<sup>2</sup> *Torsby, Oleby, Bada, Rottneros, Rottneholm, Skarped, Björkefors and Gårda in Fryksdal. Ransäter and Dömle in neighbouring Kils* hundred. Middle sized means a privileged yearly production of 500-1000 Swedish *skeppund bergsvikt*, which equals 75 000-15 000 kilo. (Bredfeldt 1994, Hildebrand 1987, Furuskog 1924.)



obvious in conflicts over the rights to outlands, which the old village and the detached villages originally had held in common. The older village claimed that their rights were stronger, especially regarding the use of land for commercial purposes. When the commons were divided, the 'detached' village claimed equal shares, while the old village often was opposed to sharing what they viewed as rightfully theirs. These conflicts between old and detached villages constituted a major source of disputes over the outlands in the investigated court. The legal code of the time<sup>3</sup> had actually very little to say about this situation. The court could thus make its own interpretation of the just claims of the parties. The new national code of 1734 eventually stated that only the old village had the right to initiate division, and that the 'detached' villages then should receive half the amount of land given to the old village.

Overall, the economic legislation of early modern Sweden was frequently imprecise and contradictory, leaving plenty of room for interpretations by the courts. Peasants had quite a strong position in the local courts in the countryside, where a board consisting of twelve peasants, as representatives of the local community, and a judge (*häradshövding*), representing state interest and formal legislation, judged together.

#### **4. What the court rolls tell us**

The court rolls have proved to be an ideal starting point for this kind of inquiry. Local courts played a much more comprehensive role in this early modern society than they do in most modern societies.

During my period of investigation the amount of cases handled annually by the court increases from approximately 25 to more than 400, as shown in diagram 3. This implies an increased importance of the court even when the rapid population growth is taken into consideration. If we assume 5-6 members in each household it represents an increase from 10-12 to 25-30 cases per 100 households. Since the major part of the cases are civil disputes involving at least two households and often many more we have to assume that an average household is involved in some kind of legal process every second or third year. Still the variation between households and over time was considerable.

---

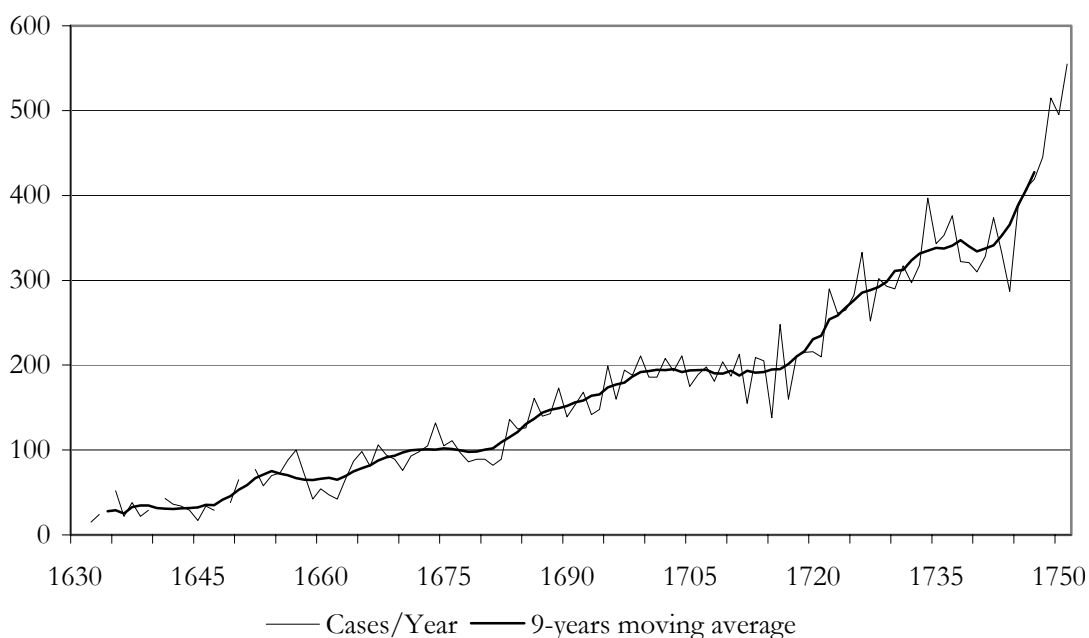
<sup>3</sup> Legal Code of King Christopher from year 1442 (Kristoffers landslag 1726),

In my thesis I use three complementary methods to analyse this material:

- Firstly, the cases have been sorted in different categories to make it possible to calculate how frequencies of these categories develop during the period.
- Secondly, thematic investigations in which specific types of cases are subjected to more detailed analysis are carried out.
- With the third method all cases concerning a few villages were sorted out to make it possible to perform micro-studies of property relations.

Foremost the court played an important role in the economic life of this local community. Less than 20% of all legal cases could be described as criminal ones; the rest were civil cases, mainly economic disputes and regulations.

GRAPH 2. *Legal cases at Fryksdal's local court (excl. registrations of purchases and mortgages)*



Sources: Almqvist, 1987. 1993. 1998, Manuscript 1741-1750 VA, Fr. Hd. Domböcker (Court rolls) Aia: 1-13  
There was a rapid growth in the number of civil cases. This shows that the court became an increasingly important arena for the solving of economic disputes and the general regulation of economic activities in the area. The bulk of these cases can be split into three general categories: debt relations, claims concerning kinship and inheritance, and finally 'property rights relations between neighbours'. The number of cases of all three kinds grows during the period. It is the last category, cases concerning neighbours and their

property, which is treated in my study. It is also the largest category; it is comprised of over 42% of the civil cases. In fact, relations between neighbours dominate the civil cases entirely in the first half of the 17<sup>th</sup> century. Between 1632 and 1638 they amount to over 70%. Later on, this increase becomes slower in pace compared to the development of the civil cases as a whole, but is still significant. The increase between the first and the last periodical sample is nearly fifteen fold. This should be weighed against an almost fivefold growth in the number of inhabitants.

A further division of the cases between neighbours into subcategories shows a historical development. During the 17<sup>th</sup> century, the common use of outlands and their gradual division and demarcation dominated. In the 18<sup>th</sup> century, the cases concerning infields and tilled land grew in importance. Furthermore, there was a predominance of cases between villages in the early period, whereas the disputes and settlements with time tend to take place between households or smaller constellations within the villages.

## **5. The peasants and the iron-mills**

The establishing of iron production in the 1690's meant that the iron mills and their affairs gained a considerable importance in the local court. The phases of establishment and expansion generated conflicts around scarce resources and external effects. Conflicts of this kind arose between parties with interests in the mills and the surrounding peasant community as well as within both these groups. The establishment demanded in itself a whole array of deals and transactions that were written down in the court rolls. The mills and their impact on existing structures have had the following aspects:

The most important influence was the general increase in the scarcity of resources. Primarily, this concerned wood for charcoal burning and sites for waterpower. Other things being equal, an increase in the scarcity of labour and food must have occurred as well, even though the scarcity of labour was counterbalanced by population growth.

The possibility for commercial use of the outland commons made common access and management more complicated. The problems could be reduced through a more detailed regulation and/or an allotment to smaller units; maybe even individual units. However, the basic legal principles for this process were by no means self-evident, and a lot of disputes concerning these matters occurred. The commercialisation emphasised and made the value of these resources obvious and possible to exploit in new ways, and it brought about an increasing division of labour. This undermined earlier arrangements of property rights.

The number of announced transactions in landed property increased sharply between 1690 and 1750, with marked peaks during phases of establishment and expansion of the iron mills. Distributed over the whole of the hundred, the direct transactions of the mills constitute a lesser portion of these announcements. The importance is more apparent in their immediate surroundings. Further one of the conclusions of this study is that the mills had an indirect impact on the frequency of transactions, through the above-mentioned factors, but also through their role as large local creditors.

The court rolls show a growing indebtedness to the mill-owners among the peasants. These debts made the peasants more depending on monetary incomes, and equipped the creditors with formal property rights in wood and other resources, i.e. the labour power of peasant households. The right of the mill-owners to a form of retail trade was probably an additional factor promoting the indebtedness of the peasants.

On the whole, the system of state privileges that followed with the iron mills was in fact contradictory to individualistic and private property right regimes. Property rights based on privileges and regulations were more important for the mill-owners than private ownership and free transactions. It is the peasants that claim private, individual ownership in opposition to the mills. Through the privileges, the mill-owners became an additional interested party in the woods and outland resources. In a way, the state transfers some of its' claims to the mill-owners. The demarcation between these claims on property rights and the claims of the peasants remains vaguely defined, in law as well as in legal practice. Meanwhile, the commercial value implied by these rights increased. From the mill-owners point of view, the use of common outlands for charcoal burning was preferred. The division of outlands seems to have facilitated the peasants' struggle to call the monopsony of the mill-owners in to question, and to gain the right to freely sell the charcoal they produced. In a way, this is privatisation from below, counter-acted by the mill owners' society and state administration.

## **6. Regulating the forest**

Cases concerning common use and access to outland resources between 1630 and 1744 were extracted from the court rolls in a frequency study, in all 2821 legal cases which makes approximately 15 percent of all cases in the protocols. These were then distributed in six subcategories, as showed in chart 2.

TABLE 2. *All cases concerning commons 1633-1744 distributed in seven categories*

Categories	Cases	Share of cases concerning commons	Share of all cases
Divisions of commons	437	15 %	2 %
Regulations of utilisation	220	8 %	1 %
Demarcations	904	32 %	5 %
Disputes over rights to access	567	20 %	3 %
Accusations of intrusion	306	11 %	2 %
Non-compliance towards the state	262	9 %	1 %
Other	125	4 %	1 %
$\Sigma$	2821	99 %	15 %

Sources: Almqvist, 1987. 1993. 1998, Manuscript 1741-1750 VA, Fr. Hd. Domböcker (Court rolls) Aia: 1-13

### 6.1 Divisions of commons

This type includes all cases concerning actual division of property between commoners, following the regulations in the forestry acts. A careful investigation of these 437 cases shows that they resulted in 277 court decisions to divide outland commons during this period. The remaining cases are mostly denied applications, complains and decisions to make investigations before final decision. The decision to divide outland commons, however, does not necessarily mean that divisions actually took place. They were often delayed by appeals, obstructions and disputes over details. The same domains and actors figure in several following decisions. Usually, this means that the previously decided division never took place, or at least not to its full extent.

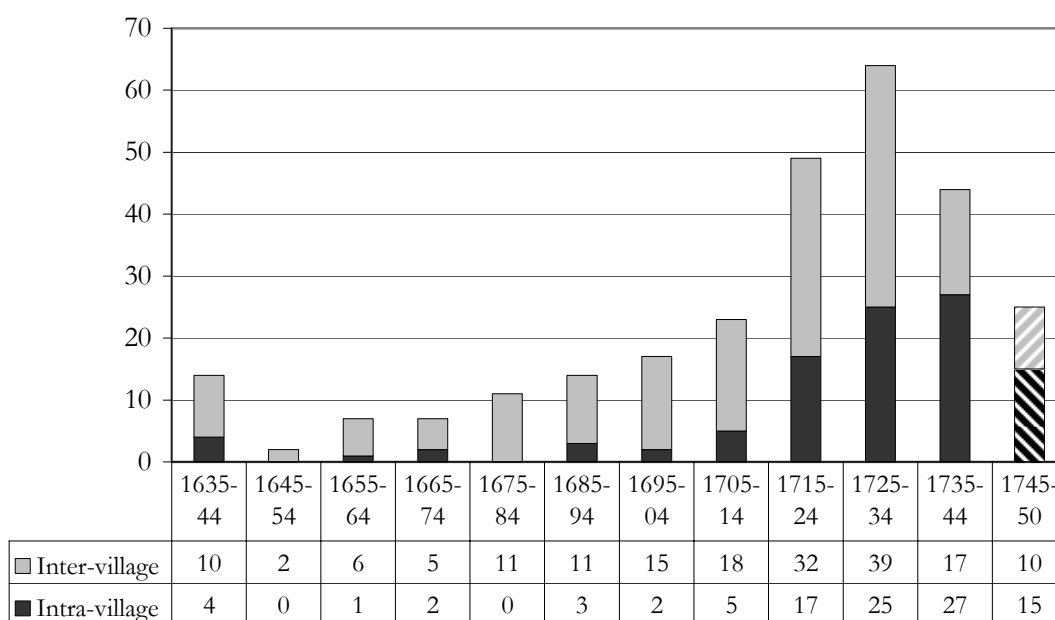
Sometimes the applications and decisions to divide commons concerned all resources that the parties had in common, but just as often it concerned just a limited share. Domains that were located close to the villages and therefore comparably easy to supervise were often divided while more distant forests were kept in common. The same goes for domains that contained commercially valuable resources. Furthermore, the division did not always concern a physical domain. The rights to certain forms of resource extraction, such as timber-cutting or the making of charcoal could be divided, while the rights to pasture were kept in common.

Disputes over divisions follow two main lines:

Firstly, there are disputes regarding if there should be any divisions at all. In these cases there is one party that advocates division and another that opposes it. This ought to be quite easy to solve legally, since the law stated that any participant in a common had the

right to demand division even against the will of all other participants. In reality there seems to have been many ways to obstruct and contest division. There were of course means of exerting pressure outside court, e.g. through family relations, or structures of social power and networks. In some cases parallel legal processes and claims were used to influence opponents to withdraw their demands. If the opponent could argue that the advocates represented a detached village, their right to demand division could be questioned. Sometimes the claim of one party to be part of a common, and hence to have the right to demand division, could be challenged by the counterpart. If the disputed domain was located far away from villages the property rights could be unclear and claims were often argued with no other references than custom and previous use.

GRAPH 3. *Granted divisions of commonly held outlands in Fryksdal's hundred 1635-1750 (1745-1750 only southern half of the district)*



Sources: Almqvist, 1987. 1993. 1998, Manuscript 1741-1750 VA, Fr. Hd. Domböcker (Court rolls) Aia: 1-13

Secondly, even when no party openly opposes a division, there are often disputes regarding the distribution of the resources to be divided, and of costs connected with divisions. The disputing parties often had conflicting opinions on the quality of different resources or domains, and consequently on how these differences could be compensated. If some of the peasants had invested work effort in parts of the commons, for example by building shielings or other arrangements for pasture, or preparations for swiddening, this could also

cause conflicts over distributional principles. The legal claims by old versus detached villages were also a major source of distributional conflicts. In all such conflict could delay and obstruct a division for many years, sometimes for decades.

In diagram 3 one could follow how the character of granted divisions developed over time. Only a minority of these actually resulted in private rights tied to a single farm. In most cases larger commons were divided into smaller units managed by fewer commoners. One could however identify a direction in the process. In the beginning, when the divisions are few they were concentrated to the intra-village level, between whole villages or groups of villages. Later inter-village division becomes more common, between single farms or smaller groups of farms.<sup>4</sup>

### *6.2 Regulations of resource utilization on the commons*

A less drastic alternative to divisions, in coping with the externality problems, was to regulate and define the commoner's rights over common goods more clearly. While divisions distributed rights over the resources themselves, regulations distributed rights over the surplus that could be extracted from them. In the legal practice of the court such regulations could be constituted through mutual agreements among the commoners and then written down in the court rolls. This does not mean that we could take for granted an optimal consensus solution. Obviously the actors had different power resources to mobilize.

A frequent form of such regulations was specifications of the size of the share of output that each user was entitled to. In most cases the shares were proportionate to the peasant's taxation, but in cases in which peasants from *detached* villages were involved they were sometimes given smaller stakes.

However, with regulations follow increased surveillance problems; they also required a large extent of trust and social control among the commoners. This often worked quite well if the common was shared by peasants from one single village who mostly exploited the outlands in joint work projects. It was somewhat more problematic if more than one village shared the common.

If outland resources were used primarily for household needs, this was in itself a limitation. The needs corresponded to the size of the individually controlled infields, which were more or less proportionate to the tax shares, at least within the same village. This

---

<sup>4</sup> Similar development patterns in Siberia are described by Channon (1990)

limitation was undermined when the possibilities of external commercial earnings from commons increased.

Prohibitions against specific forms of use on all or parts of the commons constituted a form of regulation that was comparatively easy to supervise. In these cases it was often the commercial use that was banned. Commercial use means of course extracting or producing goods from the common and selling it to outsiders. It could also mean leasing or in other ways transferring rights to specific use to outsiders. Often the regulations also include a specific penalty fine (*vite*) for those who break the agreement.

### 6.3 Demarcations

Demarcations are the largest and most heterogeneous of my categories. They include all cases concerning boundary lines between commons as well as individually controlled domains. While the divisions had the purpose to establish a new border and enclose a new domain, the demarcation cases aimed at clarifying and defining borders that at least one part in the case claims to exist.

Inspections of such boundary lines (*syneförrättningar*) were a specific judicial practice, a procedure according to which the court moved out in the fields consulting elderly witnesses, old court rolls and other documents to settle disputes, and to measure, mark and write down the position of the boundary line.<sup>5</sup> Sometimes this concerns large parts of a border; in other cases it is just a small adjustment.

These procedures are usually but one element in a series of complex and tedious property disputes, with constant appeals and contradictory claims, stretching over long time spans. In my view these procedures are an important element in the development of more specified property rights. It is often apparent that the border was quite vaguely defined. To have its position written down in a legal protocol seems, in many cases, to be of higher importance than to have it marked in the landscape.

This category also includes many cases in which penalty fines, to be paid by intruders or trespassers as compensation, are written in the court rolls. Sometimes the formulation of these rules is quite general, but in many cases they are addressing specific persons or neighbouring villages. The charges are occasionally written as a mutual agreement to enforce a division when peasants in two villages agree that anyone who violates the

---

<sup>5</sup> The legal forms for this procedure are described by Almqvist (1923)



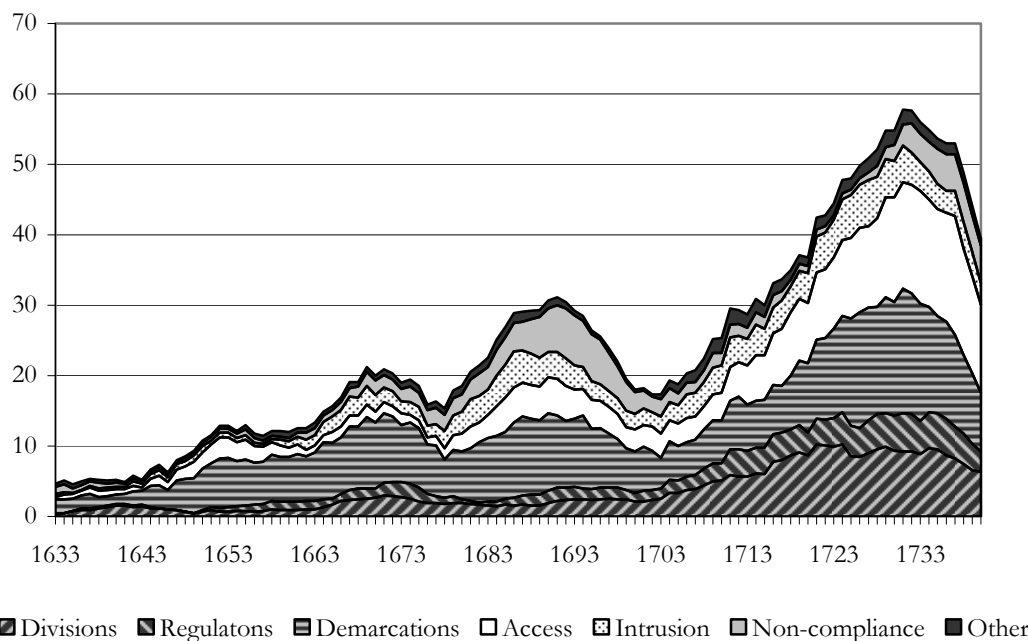
condition of the division of their formerly common forest should pay a certain fine to the intruded village.

One might ask why such penalty fines were needed. There were already general laws that prohibited intrusion and pilfering, enforced by fines and physical punishment. It seems that these specified fines supported the excluding character of the boundary lines.

\*

The division, regulation and demarcation categories constitute well over half of the cases concerning outlands. In my view, these cases reflect a process of institutional transformation, in which vaguely defined rights to usufruct gradually turn in to more of private, exclusive ownership rights. They resulted in actual re-regulations or more specific definitions of the property rights of the households. In diagram 4 the quantitative development of these cases over time is shown in the striped fields.

GRAPH 4. *Cases concerning commons distributed in seven categories 1633-1740. 9 years moving average*



Sources: Almqvist, 1987. 1993. 1998, Manuscript 1741-1750 VA, Fr. Hd. Domböcker (Court rolls) Aia: 1-13

The remaining categories (white and grey in diagram 4) show legal disputes and criminal cases which do not result in direct transformation of institutional arrangements. Still they are of importance since they indicate the increasing conflicts over village commons and hence the driving forces behind change.

#### *6.4 Access and intrusion*

The *access* category contains disputes over who actually has got the right to access in a common, as well as disputes over which kinds of resource extraction are included in such access. Typical examples are the constant disputes between older villages and detached villages. The *intrusion* category shows cases in which the court handles accusations of intrusion. Thus both the access and intrusion cases are residual categories, since disputes over access and accusations of intrusion are frequent also in the three first types of cases.

#### *6.5. Non-compliance towards the states claims to superior property rights*

The cases in which peasants are accused of violating state claim to superior rights are one important category among the driving forces is. The state regulated and limited peasant rights to outlands in many ways. Swiddening and commercial timber cutting was limited, foremost to preserve resources for the needs of iron production and shipbuilding. The state also gave privileges to mill-owners; which gave them monopsony on buying charcoal in specific domains of peasant forests.

#### *6.6. Micro studies*

To analyse the details of this process on the commons I have also conducted two micro studies, following the details of this process in two groups of villages (when the study begins some of them were actually single farms). Both groups originally kept their outlands as one single common. Over time, the commons were divided both between and within villages. Still there are only a few examples in which they actually reach the level of individual farms. Mostly, it is a gradual decrease from larger to smaller commons. However, even if the number of farms is increasing, there is a significant decrease of the number of farms involved in each common.

The studies give numerous examples of the complexity and tediousness of these processes. In fact, there seems to be no equilibrium of the kind that is assumed by neo-institutional theory, reflecting the preferences of all interested parties. The preferences of the actors when it comes to property rights regime reflect specific features such as administrative size (which determines the tax burden, *mantal*), the actual size of the farm, the size of the livestock and the farms' geographical relation to resources like timber, hay, and grazing in the forest.

## 7. Conclusions

In earlier works of Swedish history we often find the interpretation that pre-modern peasants practised an almost invariable joint property system on outland commons. This was then changed by judicial reform from above in a series of enclosure acts between 1749 and 1823. A more careful examination of legislation and judicial practice shows considerable possibilities for peasants to adapt their property rights arrangements to changing conditions, within their local courts. Yet we know quite little about to what extent these possibilities were used. My thesis investigates a court in an area where there seems to be a considerable pressure for change. Here we can see that the peasants were aware of the problems and dealt with them. However, we can also see that this created conflict between different groups in the local hierarchies.

The study underlines the evolutionary character of this process, as opposed to a sudden transformation from one type of property rights regime to another. During the 120 years that preceded the formal enclosure acts there was a gradual deregulation and redefinition of the institutional arrangements concerning common rights to forests and other natural resources. Taken together, locally conducted divisions, regulations of use and access, and the enforcement of boundary lines contributed to more individual, exclusive and transferable property rights, but more seldom to an absolute privatisation and individualisation of rights.

There is a clear connection between this development and the increasing scarcity of woodland and commonly controlled natural resources that followed from population growth and the introduction of new forms of swiddening. The one factor that stands out in the sources as a starting point for conflicts over the commons is the increasing production for commercial purposes. A conclusion is that new institutional arrangements were introduced not only to counteract over-exploitation, but also to manage conflicts over the distribution of the yields and the new economic values that commercialisation created. The study also underlines the evolutionary character of this process, as opposed to a sudden transition from one property rights regime to another.

The establishing of iron mills had a great and complex impact on the process of gradual privatisation. Firstly, it contributed to an increasing scarcity of outland resources. The mills made the commercial utilisation of these resources possible, and thereby enhanced the external effects of common access. Furthermore, the presence of the mills increased the

number of land transactions in the area. The mills did make direct transactions of this kind, but were most significant as an important indirect actor, as the providers of credit for other buyers and as beneficiaries from forfeited pledges. For the mill-owners, the main purpose of these credit relations was neither to acquire land nor to make profit as moneylenders, but to tie up the neighbouring peasants as suppliers of charcoal and transport services. Interestingly enough, one can hardly say that the mill-owners were consciously pushing towards privatisation, which one might have expected. It is then important to bear in mind that the resource mobilisation within this highly regulated industry was not primarily dependent on market transactions but rather on privileges from the crown.

Thus, the relative privatisation of the old village commons can to some extent be understood as the peasant reaction against claims on certain property rights to these resources from both the state/crown and the iron mills.

\*

As for the ambition to make a theoretical contribution via this study, some points can be made:

The theoretical tools and assumptions of the property rights school can certainly help us to understand why common or individual property arrangements are established and reproduced due to different prerequisites. It can also be helpful help when we try to explain why these rights vary in their degree of specification and exclusiveness. By incorporating risk management and transaction costs in the analysis, one can point to the fact that a price regulated system, based on private property, cannot automatically be assumed to be more efficient than all other conceivable systems of allocation. I hold this to be an important step, widening the understanding of the economic importance of institutions.

Past and present examples of the allocation of resources through families and kinship, village communities, guilds, corporate bureaucracy, the state, collectives or co-operatives as opposed to pure price regulated markets thus seem much more rational than in the neo-classical blackboard model. Following this, it is reasonable to expect that changes in relative prices, technology and the degree of scarcity could easily undermine institutional arrangements and thereby constitute pressure for change. Several findings of this study support these assumptions.

However, the ambition of the property rights school goes further than this. In general, the aim is to formulate an overarching theory according to which institutional change is

explained as the aggregate result of individual utility maximising behaviour, given certain constraints. It is the assumption of the theory that rights in property and other institutional arrangements concerning resource allocation tend to develop and adjust in the direction of Pareto equilibrium. I argue that the empirical findings of this study support a critical standpoint in these matters.

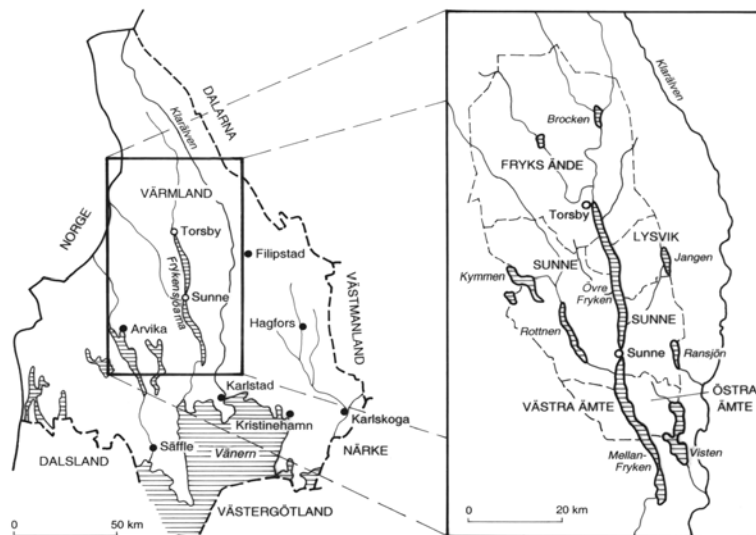
Property rights models assume free agreements – *transactions* – between actors whose sets of property rights are clearly defined and accepted by all parties. When an actor gives up any of these rights it is done in exchange for new rights, which puts the actor in a situation perceived as more favourable (or at least equal) to the previous. In a model like this there is no room for rivalling rights, stemming from conflicting legal principles. Moreover, the model cannot be applied to changes in which some actors have, or are supported by, means of coercion.

A process of transformation is inconsistent with the property rights model of transformation if it proves to have distributive effects, and it is reasonable to assume that these were foreseeable. In cases like this we cannot assume that the transformation is solely a move towards equilibrium arrangements that promote an optimum resource allocation. Thus, one need to ask in what ways this is affected by the positions the actors hold in social networks and hierarchies, and their ability to mobilise power resources and benefit from the legal framework to guard their interests, maintain their rights or vindicate their values. Undoubtedly we can find examples of transformations, which can be fitted in to the property rights model. However, the opposite is abundant.

The preconditions for a property rights model of change in Fryksdalen were quite favourable. There were no clear-cut demarcation lines following class or groups of interests. The State (the rent-taker) certainly had interests to protect, but these had no direct effect on the development of the internal relations among the peasants. Rather, the peasants seem to have had a great influence on the process, not the least through their strong position in the local court. Still, there are plenty of factors to contradict such a model of interpretation, especially when it comes to the divisions of the village commons. Despite the difficulties to quantify distributional effects, the numerous disputes show conflicting interests within the peasant group. It seems as if those who possessed comparably small farming units, and therefore only had small claims in a dividing or regulating process, had more to gain from common access and management than their wealthier neighbours.

For certain, the property rights perspective has an explanatory value. But applied as a general model for institutional change it must be considered underspecified. The transaction cost analysis developed by property rights theory helps us to understand how shifts in relative prices affect the efficiency of resource allocation under different institutional arrangements. But if one seeks to understand the specific impact of these factors in a process of transformation, one needs to relate and weigh them against other factors. Particularly, one cannot ignore the conflicts that emerge around distributive effects and power relations.

**Maps: Sweden, Värmland county and Fryksdal's hundred**



## References

### Unprinted sources

#### **Värmlandsarkiv, (The Regional Archives in the county of Värmland) Karlstad (VA)**

Fryksdals häradsrätt (Fr. hd.)

Domböcker (*Court rolls*) AIa: 1-13

#### **Gunnar Almqvists manuscript (computer files)**

Sammandrag av Fryksdals härads domböcker, nedre tingslaget 1741-1750

### Printed sources and literature

1734 års lag. (1934) *Sveriges Rikes Lag Gillad och Antagen på Riksdagen År 1734 (Faksimil av 1780 års upplaga)*. Stockholm, Minnesskrift ägnad 1734-års lag. III.

Almqvist, J E. (1923). *Det processuella förfarandet vid ägotvister. – Studier över jordabalkens 14 och 15 kapitel*. Stockholm. P A Nordstedt & Söner.

Almqvist, G. (1987). *Sammandrag av Fryksdals härads domböcker 1602-1700*. Ystad.

Almqvist, G. (1993). *Sammandrag av Fryksdals härads domböcker 1701-1725*. Ystad.

Almqvist, G. (1998). *Sammandrag av Fryksdals härads domböcker 1726-1740*. Karlstad.

Andersson Palm, L. (2000). *Folkmängden i Sveriges socknar och kommuner 1571-1997. Med särskild hänsyn till perioden 1571-1751*. Göteborg. L Palm, Historiska institutionen, Göteborgs universitet.

Andrén, F J B. (1962). *Om delning av naturnyttighet. Särskilt om att "skäpa skog"*. Stockholm.

Arrow, K J. (1984). "The Property Rights Doctrine and Demand Revaluation under Incomplete Information." In: *The Economics of Information, Collected Papers of Kenneth J Arrow, Vol. 4*. Cambridge Massachusetts .

Barzel, Y (1989). *Economic Analysis of Property Rights*. Cambridge. CUP.

Bhaduri, A. (1991). "Economic power and productive efficiency in traditional agriculture." In: Gustafsson, B. (Ed.) *Power and Economic Institutions. Reinterpretations in Economic History*. Aldershot.

Bladh, G. (1995). *Finnskogens landskap och människor under fyra sekler. –En studie av natur och samhälle i förändring*. Göteborg.

Bloch, M. (1965). *Feudal society*. London.

Bredfeldt, R. (1994). *Tidigmoderna företagsstrategier. – Järnbrukens ägar- och finansieringsförhållanden under 1600-talet*. Stockholm. Almqvist & Wiksell international.

Bromley, D W. (1991). *Environment and Economy. Property Rights and Public Policy*. Oxford. Blackwell.

Channon, J. (1990). "Regional Variation in the Commune: The Case of Siberia." In: Barlett, R. (Ed.) *Land Commune and Peasant Community in Russia: Communal Forms in Imperial and Early Soviet Society*. London. Macmillan Sid. 66-89.

Coase, R. (1937). "The Nature of the Firm." *Economica*. 4. p. 386-405.

Coase, R. (1960). "The Problem of Social Cost." *The journal of Law and Economics*. p. 1-44.

Dahlman, C J. (1979). "The Problem of Externality." *Journal of Law and Economics* 22. p. 141-162.

Dahlman, C J. (1980). *The Open Field System and Beyond. –A property Rights Analysis of an Economic Institution*. Cambridge.

Demsetz, H. (1967). "Towards a Theory of Property Rights." *American Economic Review* 57. p. 347–359.

Eggertsson, T. (1990). *Economic Behavior and Institutions*. Cambridge.

Elgeskog, V. (1945). *Svensk torpbebyggelse från 1500-talet till laga skiftet. En agrarhistorisk studie*. Stockholm. Lantbruksförbundets tidskrifts A. -B.



- Fenoaltea, S., (1991). "Transaction Costs, Whig History and the Common Fields." In: Gustafsson, B. (Ed.) *Power and Economic Institutions –Reinterpretations in Economic History*. Aldershot p. 107–169.
- Furubotn, E G. & Pejovich, S., (Eds.) (1974). *The Economics of Property Rights*. Cambridge.
- Furuskog, J. (1924)., *De Värmländska järnbruken. Kulturgeografiska studier över den Värmländska järnbanteringen under dess olika utvecklingskedan*. Filipstad. AB Bronellska bokhandeln.
- Granér, S. (2002)., *Sambänd och rågång. Om egendomsrelationer, ägoskiften och marknadsintegration i en värmländsk skogsbygd 1630-1750*. Göteborg (With a summary in English)
- Hafström, G., (1970). *Den svenska fastighetsrättens historia*. Lund.
- Hahn, T., (2000). *Property Rights, Ethics and Conflict Resolution. Foundations of the Sami Economy in Sweden*. Uppsala. SLU.
- Hardin, G., (1968). "The Tragedy of the Common." *Science* 162. p. 1243-1248.
- Heckscher, E., (1971). *Svensket arbete och liv. Från medeltiden till nutid*. Stockholm. Bonniers.
- Hildebrand, K-G., (1987). *Svensket Järn. sexton- och sjuttonhundratalet. Exportindustri före industrialismen*. Stockholm.
- Hodgson, G. M., (1988). *Economics and Institutions. A Manifesto for a Modern Institutional Economics*. Oxford.
- Hodgson, G. M. (1993). "Institutional Economics: Surveying the 'Old' and the 'New'." *Metroeconomica* 44: 1. p. 1-28.
- Honoré, T. (1994). "Ägande." In: *Ideer om ägande*. Stockholm. Tiden p. 63-97.
- Knight, J. (1992). *Institutions and Social Conflict*. Cambridge. Cambridge University Press.
- Knight, J. & Sened, I. (1995). *Explaining Social Institutions*. Ann Arbor. University of Michigan Press.
- Kristoffers landslag (1726). *Sveriges riktes lands-lag Som af rikens råd blef öfversedd och förbättrat (1442 och 1608) och nu å nyo andra gången med anmärkingar [av Petter Abrahamsson] upplagd*. Stockholm, Johan Henrik Werner.
- Marx, K. (1975). [1842] "Debates on the Law on Thefts of Wood." Proceedings of the Sixth Rhine Province Assembly. Third Article. *Marx/Engels Collected Works* Vol. I. London.
- Marx K., (1867) *Das Kapital. Kritik der politischen Oekonomie*. Vol. I. Hamburg.
- North, D.C. (1977) "Markets and Other Allocation Systems in History: The Challenge of Karl Polanyi." *Journal of European Economic History*. 6:3 p. 703-716
- North, D.C. & Thomas, R., (1973) *The Rise of The Western World. A New Economic History*. Cambridge. CUP.
- Nutzinger, H G. (1981). "The Economics of Property Rights – A New Paradigm in Social Science." In: Balzer, W., Spohn, W. och Stegmüller, W. (Eds.) *Philosophy of Economics*. München p. 169–190.
- Ostrom, E. (1990). *Governing the Commons – The Evolution of Institutions for Collective Action*. Cambridge. CUP.
- Palm, L., (2000) *Folkmängden i Sveriges socknar och kommuner 1571-1997. Med särskild hänsyn till perioden 1571-1751*. Göteborg, Historiska institutionen
- Polanyi, K., (1944) *The Great Transformation. The Economic and Political Origins of Our Time*. New York
- Rousseau, J-J., (1775) *Discours sur l'origine et les fondements de l'inégalité parmi les hommes*. Paris
- Rydin, H L. (1855). *Bidrag till Svenska Skogs-Lagstiftningens Historia*. Uppsala. Wahlström & C.
- Stevenson, G G. (1991). *Common Property Economics. A General Theory and Land Use Applications*. Cambridge. Cambridge University Press.
- Veblen, T., (1934) "The beginnings of Ownerchip". In: *Essays in our Changing Order*. New York

# Göteborg Papers in Economic History

Available online at S-WOPEC: (<http://swopec.hhs.se/gunhis/>)

1. Jan Bohlin: Tariff protection in Sweden 1885-1914. 2005.
2. Svante Larsson: Globalisation, inequality and Swedish catch up in the late nineteenth century. Williamson's real wage comparisons under scrutiny. 2005
3. Staffan Granér: Thy Neighbours Property. Communal property rights and institutional change in an iron producing forest district of Sweden 1630-1750. 2005