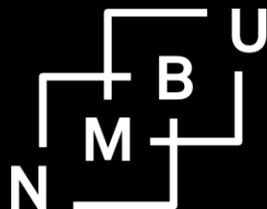
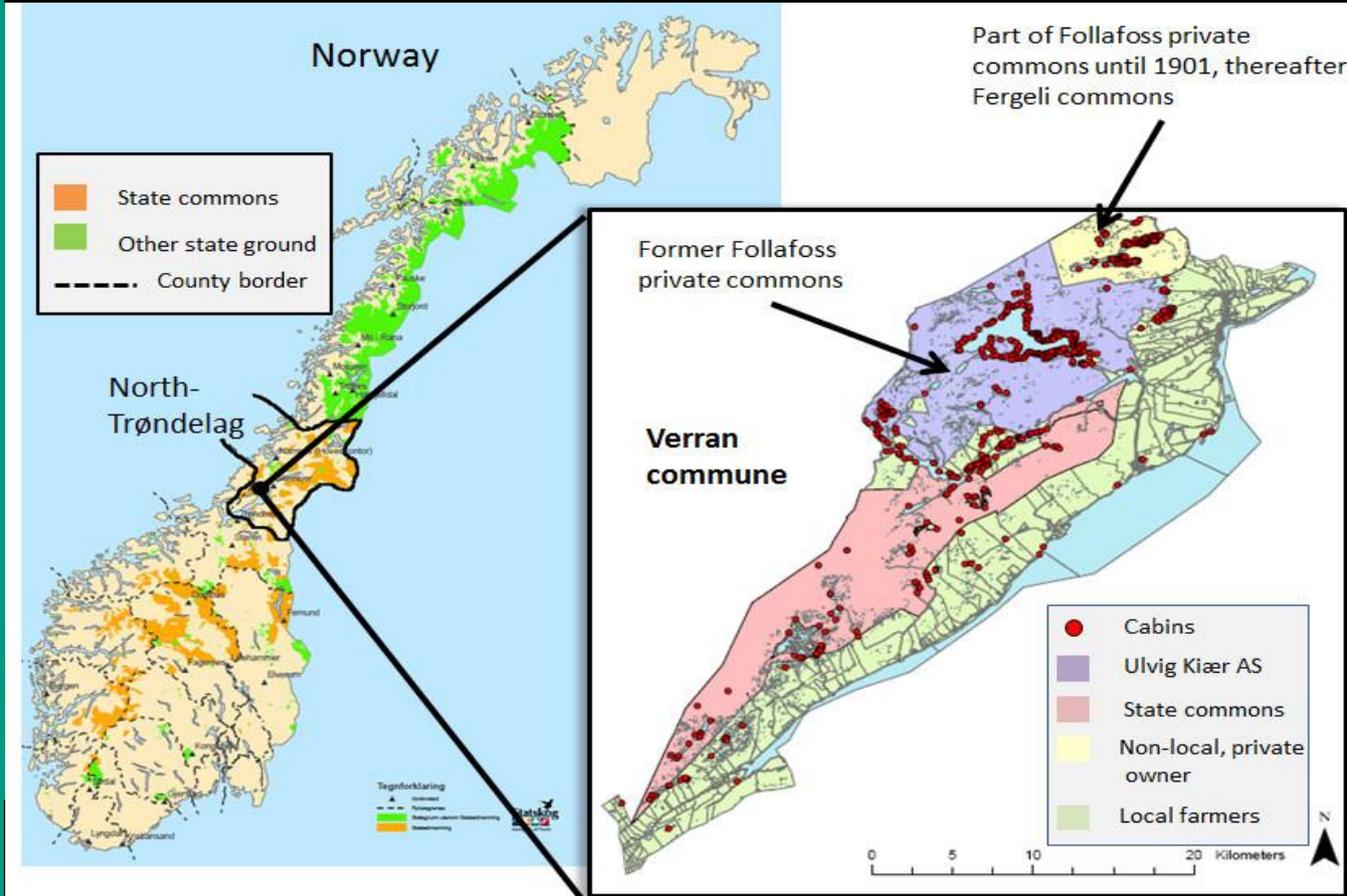


Enclosure Norwegian Style: the Withering Away of an Institution

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Abstract

More than 200 years after the King sold one of the “King’s commons” of Follafoss (located in the current Verran municipality) to urban timber merchants, local people in some ways still behave as if the area is a kind of commons. The paper will outline the history of the transformation of the area from an 18th century King’s commons to a 21st century battleground for ideas about ancient access and use rights of community members facing rights of a commercial forest owner and the local consequences of national legislation. The right of common to fish and to hunt small game without dog in Follafoss private commons was confirmed in a judgement of the Supreme Court in 1937 and in legislation on hunting in 1899 and 1951. In the Government’s proposal for new legislation on fishing in 1964 the right to fish was removed. And in 1981 the right to hunt was removed without saying a word about it, and it was never commented on in parliament during the legislative process. To explain what we observe it is suggested that a new layer of legislation on commons from 1857 and 1863 created a structural amnesia about private commons making it easy to remove them from legislation without anyone noticing.

Key words

King’s commons; private forest; rights of common; customary rights; national legislation; loss of customary rights;

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Introduction

In Norway privatization of natural resources is an on-going process arousing interest every so often. In 2013 there was a flare of debate around the privatization of the fishing quotas for Norwegian fishing vessels³. Should the fishing quotas last “forever” or can the government limit the time period?

In Norway fish is a more important resource than forest and in the forest timber is more important than hunting, fishing and other Non-Timber Forest Products (NTFP) - at least until recently. This article is about privatization of forest, fishing and hunting. At the core of this process is the privatization of land in the meaning of ground ownership. Privatization of land ownership is not a well-defined process⁴. In the discussion here, the focus is transfer of rights from members of a local community to some well specified legally recognize actor(s). This kind of privatization is in England known as enclosure (or inclosure) and has been extensively studied (Pugh [1953] 1968; McCloskey 1972; Dahlman 1980; Neeson 1993; Mackenzie 2010). In Norway the process has been less studied, maybe because it never created conflicts like those reported from England. Therefore our interest was aroused when we became aware of a flare-up of conflict around hunting rights in an area that 200 years ago was known as the “King’s Commons of Betstaden”. Today the bulk of this area locally is known as Follafoss Commons. It is not in any way a commons as these are defined in current Norwegian legislation. The landowner is a large company exploiting it commercially. The conflict arose as the local community discovered, more than 15 years after the fact, that their ancient rights to hunt small game without dog had been removed by the Norwegian Parliament in 1981 (Høyesterett 2000). But why did the Parliament do so at the same time as they worked to expand the public’s access to fishing and hunting? Another question is how it was possible to do so without violating the constitutional rule promising compensation for takings.

In the Follafoss area we shall trace the privatization of timbers, pasture, fishing, and hunting since it had status as a Kings commons in 1799 until 1982 when the local community finally had lost all rights to exploit the area as a community. In 1982 they did not know about that loss. When the company that owned the land in 1997 tried to make profit from selling hunting rights the conflict broke out. The hunting organisation asked its members to hunt without permission of the owner. In 2003, the owner reported the illegal hunting to the police. However, the police found the legal situation so unclear they dismissed the case. The land was sold to a new owner. For a while, the conflict seemed to subside. In 2012, the organised hunters agreed to sell hunting licenses on behalf of the owner. However, in 2013 the conflict flared up again.

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³ The Norwegian government decided in March 2005 that the fishing quotas henceforth should not have any time limit. In the fall of 2005 a new government retracted this and introduced a time limit. In October 2013 the Norwegian Supreme Court decided that curtailing the time period for the presumed everlasting quotas was not in contravention of the constitutional rules about retroactive impacts (http://www.lovdata.no/cgi-wift/wiftldles?doc=/app/gratis/www/docroot/hr/hr-2013-02200-p.html&emne=fiskekvot*&).

⁴ Usually one thinks of privatization of land as a transfer of the decision making power over the exploitation of the land from the state to some private actor(s). However, sometimes also individualization of ownership, transfer of land from some collective (as in a commons) to individual use is implied.

The rights that the local community members believe they hold are seen as customary in the sense that they have existed for as long as we have knowledge of such things. Their local rights have also been acknowledged by public authorities, last time in a judgement of the Supreme Court in 1937 (Høyesterett 1937) and in the Act on hunting and trapping from 1951. Today the old rights of common have been reduced to the right to summer farms and pasture for a few farmers.

The question we try to resolve here is why customary rights like those held by the community around Follafoss disappeared without a comment from the lawmakers in the Norwegian parliament, first fishing in 1964, and then hunting in 1981. To provide an understanding of the decisions of the government and parliament in 1981 we will trace the developments concerning rights of common and related institutions. Several trends are interesting. On the one hand the traditional rights of common have become more specific and limited; on the other hand, the general public gets more rights to enjoy and exploit the outfields in ways resembling the old rights of common. However, these processes interact with a strong policy guarding the unity of resources of the political ideal of a family farm while the number of active farmers is declining.

The loss of old rights for small groups, like the local hunters of Follafoss, may, perhaps, in the large scale national developments be called “collateral damage”. But it is not what the mine workers and small scale farmers living around Follafoss would expect from a Norwegian social-democratic government⁵. How this loss came to pass we cannot say for sure. Pending further evidence, such as the minutes from the government from 1981, we can only offer theoretically grounded speculations. The most reasonable one might be a combination of unintended consequences originating in other institutions interacting (protection of family farms) with the development of administrative beliefs in what types of commons existed (private commons were extinct) and what was possible to do within the institutional framework growing around the old commons (simplification was needed).

The development of the ideas about commons and rights of common on the one hand and the ideas about fishing and hunting rights on the other, made the existence of communities with rights like those around Follafoss into an anomaly that did not “fit” into the legal structure that evolved from 1857 onwards (Stortinget 1857 [1905]; 1863 [1905]). When the landowner of Follafoss in 1982 tried to register a servitude to the effect that the community members should have the fishing and hunting rights they had enjoyed from old, the legal rules of the Land Act from March 18, 1955 would not allow it.

The forests and wastelands that in Norway 250 years ago were known as the King’s commons have a complicated history. At the end of the 18th century when our story starts, the meaning of “King’s commons”, as revealed by administrative practice, was that the King was owner at law of the ground, and of the remainder of other resources after the commoners had harvested what they could use in their farming activities (Løchen 1957). Based on Norwegian history other meanings could have been possible (Berger 1956; 1959). The alternative would have been to consider the rights of common to belong to a local community where community membership was the key. However, the legal reality came to be that exercising rights of common required farmland and practice of agriculture.

⁵ It was a Labour Party government that removed the special hunting rights in private commons.

A short history of Follafoss commons

On the 26th March 1799, the Danish-Norwegian Crown held an auction offering forest properties, parts of the King's commons⁶, to the highest bidder. Proprietor Christen Johan Müller was the highest bidder for the King's commons of "Follefoss" (or "Bedestad"; hereafter Follafoss) commons. The title deed was registered on 14th January 1801⁷. According to the legal standard of the time the King could sell only what belonged to the King. He was not allowed to infringe on the rights of the commoners. Hence, the title deed contains the standard clause: "The commons is sold including all rights His Majesty until now has held over the same and without any requirements of redemption. However, the Commoners are entitled to, in the future as until now, the rights of summer farming ("Sæter"), mountain meadows, fisheries, fuel wood, fencing material and necessary timbers for house building with further rights that the Law provides for in general and without therefore in any way being trespassed by the buyer." (our translation⁸).

In 1814 political events overtook the Danish-Norwegian Crown's rule of the commons. The legal situation changed. Norway became part of the Swedish-Norwegian kingdom, got a democratic constitution and a parliament to legislate. The Danish-Norwegian Crown's sale of bits and pieces of the King's Commons was stopped by an act from 1821 (Stortinget 1821, section 38). In 1848, after a moratorium of 27 years, the parliament again allowed sales of King's commons (Stortinget 1848). However, such sales were again prohibited by legislation in 1863 (Stortinget 1863 [1905], section 72, page 477).

The 1857 act (Stortinget 1857 [1905]) created a new understanding of the term commons. Three types of commons were defined. One of them was "Private Commons"⁹. Its definition fit the reality of Follafoss commons. However, even more interesting to note is that already in 1863 a new act stipulated that private commons, like Follafoss, should within the next 20 years, be dissolved by land consolidation into one part pure private land and one part bygd¹⁰ commons.

⁶ The idea of "King's commons" in the meaning that the King could sell his commons is difficult to trace further back than the 17th century, see Falkanger (2009, 45-50).

⁷ The presentation here is based on the preamble to the judgement of the Norwegian Supreme court 19th March 1937 (Høyesterett 1937).

⁸ "Almindingen bortsælges med al den ret Hans Majestet hidtil har havt over samme og uden al forbeholden af Reluition, dog forbeholdes Almuen herefter som hidtil, den Ret til Sæter, Fjeldslætter, Fiskerie, Brændeved, Gjærdesfang og fornøden Huustømmer med videre Rettighed, som Loven hjemler dem i Almindelighed, uden at de af Kjøberen deri paa nogen Maade maa fornærmes." (Høyesterett 1937, 169).

⁹ The two other types were "State" commons and "Bygd" (or community) commons. Rights of common on lands owned by the state became "state commons". Rights of common on land owned by private actors became "bygd commons" or "private commons". The dividing line between the two was the proportion of ground owners among the group with rights of common. If the proportion was less than 50%, the commons was a private commons. For a more detailed explication of these terms see Berge, Mitsumata, and Shimada (2011, iii-vi).

¹⁰ "Bygd" is a Norwegian word, which in the context of commons doesn't translate well to English. Statistics Norway translate it as "Common forest" (Statistics Norway 1969, 37). Sevatdal (1985, 34) translates "bygd" commons as "parish common lands". In a recent dissertation it was translated as "community commons" (Hoffman 2011). It has in connection with commons nothing to do with parish as usually understood, and with community only in a very specific sense. The concept "bygd" has been used in legal texts at least since King Magnus Lagabøter's (1238-80) "Landslov" ("law of the realm") from 1274. The meaning of "bygd" is literally "settlement" meaning a small local community. In most contexts village or local community will be the correct translation. Current usage of the word would suggest some kind of local community independent of more formally defined units such as school districts, parishes, or municipalities. Earlier in our history bygd would be used for the smallest administrative unit, the local law district, and later the parish. In Sweden the word would mean the same, but is today in Swedish spelled "by". Today and seen in conjunction with commons this translation of bygd to community will not give the right associations. Because the areas burdened with rights of common throughout our history usually were tied to users from some specific local community (the bygd), the

The history of Follafoss private commons has been bound to the fortunes of the timber trade. During the 19th century it changed owner several times. In 1919 North Trøndelag County bought the company to get hands on the water rights to start production of hydro-electric power. They stayed on as the owner of Folla Bruk AS and Follafoss commons until 1983. The 1983 sale was intended to include a servitude on the forest areas reserving the ancient rights of common to fishing and hunting small game without dog for the local public. The servitude was never created. When the North Trøndelag County tried to register a servitude to the effect that the community members of Follafoss should have the fishing and hunting rights they had enjoyed from old, the legal rules of the Land Act from March 18, 1955 would not allow it¹¹. We should note, however, that the Ministry could have made an exception to the rule if the seller and buyer had applied. Meråker municipality in 1974 secured similar hunting and fishing rights on the lands of Meraker private commons owned by Meraker Bruk AS (Lein 1993, 91).

In 1989 Verran Bruk (a new name for Folla Bruk) was sold to Norske Skog (Haugset and Berge 2013b, 13). With this sale a more turbulent period for the local public's use of the forest areas ensued. Norske Skog wanted to earn money from selling hunting rights and discontinued the voluntary cooperation with the local hunting and fishing board. In 1997 they started selling hunting permits. A local action group publicly encouraged people to hunt without permit. They more or less dared Norske Skog to take them to court. After the ruling of the Supreme Court in 2000 Norske Skog felt secure about their rights (Høyesterett 2000). In 2003 they reported the illegal activities by hunters and Verran Rettighetslag to the police. However, the police found it impossible to pursue the case without deciding on the issue of the rights of common. This they had no competence to do. In 2004 the forest area was sold again, now to Ulvik & Kiær AS who continued the practice started by Norske Skog of selling hunting permits. For a while, the conflict seemed to subside. In 2012, the organised hunters agreed to sell hunting licenses on behalf of the owner. However, in 2013 the conflict flared up again. In a survey among users of the area in 2012 58% of those we asked (n=271) were sure that people in the municipality would agree that the land owner was not the only one with fishing and hunting rights (Haugset and Berge 2013a, 117). The opposition among local hunters was as strongly expressed as before, at least in the newspapers (Haugset and Berge 2013b).

One factor that partly might explain the persistent and long lasting local opposition to the efforts of the landowners to commercialize fishing and hunting is that Follafoss was in public ownership from 1919 to 1982. Legislation on fishing and hunting has tended to treat land owned by public bodies such as municipalities (and more recently counties) in the same way as land owned by the state¹². The county of North Trøndelag followed the practice for

bygd became tied to a certain area recognized as "their" commons. During the past 800 years the original usage of the word "bygd" in the legal language has turned around, and today the bygd, in relation to commons, is defined as comprising of those farm enterprises which have rights of common in the area recognized in law as a "commons" (both state and bygd commons). This way of delimiting the units with rights of common has been in the law since 1687. Since translation of "bygd" to English in this case is seen as inadequate, the word "bygd" is used here. Translations of current legislation on state and bygd commons is found in Berge, Mitsumata, and Shimada (2011).

¹¹ The act prohibited severing any rights from agricultural or forest holdings for more than 10 years, see Normann (1996, 48) and Act on land registration §12a (Stortinget 1955). As for hunting in particular this rule was present already in the act on hunting and trapping from 1899 (Stortinget 1899 [1907], section 2).

¹² See e.g. Stortinget (1920, section 31 and 36; 1975 [2015], section 23 and 28; 1981 [1986], section 36; 1992 [2015], section 23)

municipalities. During the sales process before the county sold the land in 1983 both newspaper writings and speakers in public bodies like the municipal and county councils expressed a high degree of uncertainty about the legal status of the ancient rights of hunting and fishing (Haugset and Berge 2013b). The practice of “free”¹³ fishing and hunting of small game without dog was supported by established custom going back to the time long before the legislation in 1964 and 1981. But for commoners of private commons the Norwegian parliament removed it. And for the local public of Follafoss the County was unable to secure it. It may seem that private commons had a low priority both in parliament and in the county.

The sale of Follafoss in 1799-1801 started a long drawn out conflict between the commoners and the owner(s) of the ground¹⁴ (which in the period since 1799 have included both private investors like Müller, and public bodies like the local county). Slowly the commoners have lost important rights they once held at law. One chapter in this story closed in 1937 when timber rights were judged by the Supreme Court to have been lost. Another ended in 1964 when the Norwegian Parliament enacted to remove the right to fish and the last one in 1981 when the rights of commoners in private commons to hunt small game without dog was removed from the act on hunting. All local communities around what since 1857 had been called private commons now were without rights to fish and hunt.

Below we shall survey some of the historical developments that at important junctures take place in court cases and in acts of parliament with the consequence that the rights registered in the title deed of 1801 become illegal. The people experiencing such forced removal of rights may not agree in the justice of the process but they have been too few and disorganised to resist in any politically effective way. However, the knowledge that rights once existed will linger on. The paper will end with an exploration of the beliefs and attitudes among the local population about these rights.

Before going into the history we need to think about what we are looking for. The activities of people, both those who advocate the breaking of rules about paying licenses for hunting and those who propose to remove legal rules mandating rights to hunt, are governed by institutions and beliefs about the realities that institutions intend to govern. The next section will survey a few insights from institutional theory.

¹³ “Free” fishing is defined as fishing that according to ancient custom or other particular legal rules does not belong to the landowner (Stortinget 1992b, section 5d).

¹⁴ In Norway it has been a custom of old that within the same parcel there could be different owners to different specified resources. A group of farms could hold the pasture, one person the ever-green trees and a second the deciduous trees. But the one who owned the soil or the ground came to be seen as the landowner and the one holding the remainder (the resources not specified as belonging to someone else) (Berge 2002). This view emerged slowly, maybe out of the medieval theory of the King’s “regale” (economically valuable resources seen as belonging to the King), and was finally confirmed in a judgement by the Supreme Court in 1963 (Høyesterett 1963).

A theoretical guide to what are we looking for.

By institution we shall mean “the prescriptions that humans use to organise all forms of repetitive and structured interactions, including those within families, neighbourhoods, markets, firms, sports leagues, churches, private associations, and governments at all scales” (Ostrom 2005, 3). The prescriptions may be enacted as formal law, or they may be norms or codes of conduct as defined by local cultures. The main focus will be on Norwegian law, but we need to understand how the legislation depends on cultural values and precepts.

The long time since the “creation” of Follafoss commons and its slow withering away, requires a historical perspective on institutional change. Mahoney and Thelen (2010) provide valuable advice on what to look for in this history. They define four modal types of institutional change:

1. “Displacement: the removal of existing rules and the introduction of new ones
2. Layering: the introduction of new rules on top of or alongside existing ones
3. Drift: the changed impact of existing rules due to shifts in the environment
4. Conversion: the changed enactment of existing rules due to their strategic redeployment” (Mahoney and Thelen 2010, 15-16)

Institutions, both informal and formal provide rules about actions that are prohibited, proscribed, and permitted. Usually they also has something to say about the consequences ensuing if rules are broken.

Mahoney and Thelen (2010) and Ostrom (2005) both provide frameworks for linking institutions and actors within a context of political and cultural realities informing actors of the implications of alternative ways of choosing actions as defined by the institutions. The actors we should be looking for are firstly the commoners of the private commons, then the lawmaker, the administrators of the rules, and groups other than commoners that may benefit or lose from the particular rules enacted. In this case it will be the forest owners and the groups enjoying hunting and fishing.

However, the long duration of the change processes (1857 to 1981) and the many parallel changes of the Norwegian society suggest that we need other explanatory factors than organised political activity. The actors on the scene at any moment in time are too few or with too low an interest in particular outcomes to “explain” the slow withering away. In some way the internal structure of the institution of rights of common must supply the conditions for its own withering away, perhaps assisted by interactions from external institutional developments. This would be a kind of structural causation attributed to the Norwegian commons institution (structuring choice alternatives, mandating powers), including structuring of the memory of relevant actors both within and externally to the institution. The idea that institutions structure what people will remember and forget, as outlined by Douglas (1986, 69-90), may be a key aspect of an explanation if the institutional development after 1857 made private commons increasingly insignificant.

In the details of the case of Follafoss commons presented below we shall be looking for such explanations of observed changes as well as the default outcomes of no change.

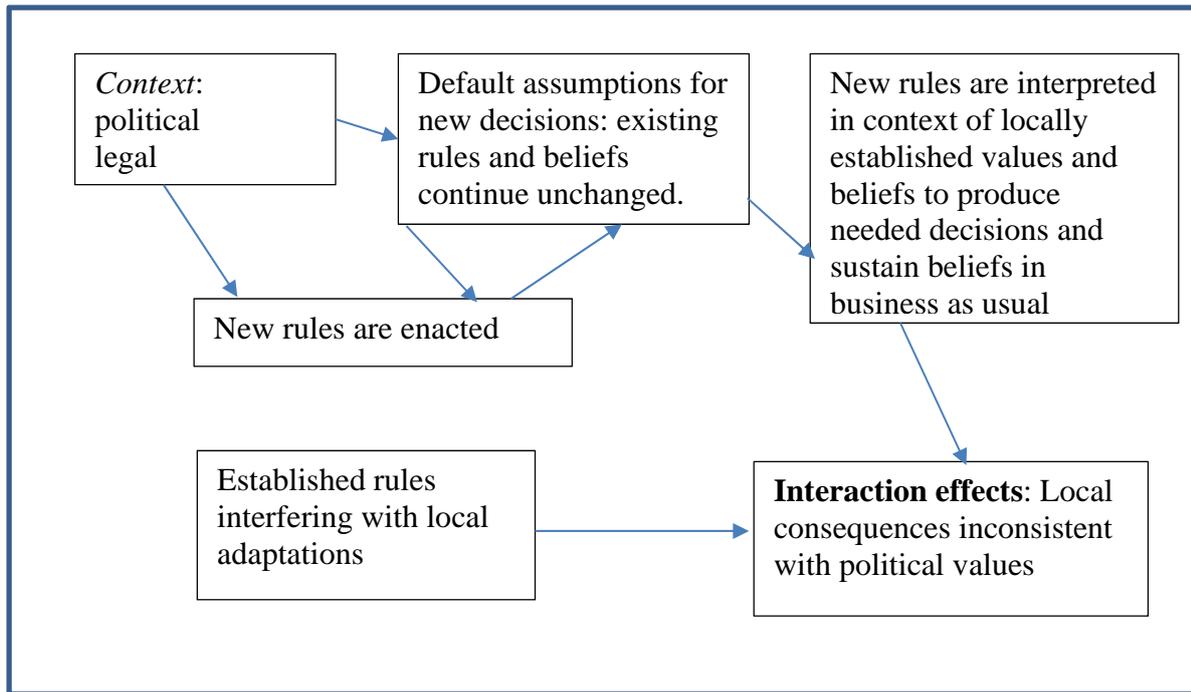


Figure 1 A map of factors affecting how new legislation is enacted and used. The arrows should not be read as causal in the simple sense. They indicate the flow of time.

Part 1: History of rights to timber in private commons

The context of the commoners of Follafoss commons has gone through several phases. The first phase runs from 1801 to 1857. During this period we see the fortunes of timber merchants varied and Follafoss was sold several times. One may presume that the exploitation of the timber was high. In many places within the country the dissatisfaction was growing. In 1837 the Norwegian Parliament enacted a system of municipal government¹⁵. It is known that in some places around the country the local municipalities took an active interest in the management of local commons (Høyesterett 1916). The municipal servants were used to make the situation of the commoners more visible. Follafoss commons was in 1850 located in Beitstad municipality and their rights of common were clearly stated in the title deed from 1801. In 1850 a group of commoners from Follafoss complained to the municipal government that the owner of the commons had cut so much timber that their summer farming activities were threatened. If logging continued in the same unsustainable way they would be unable to use their summer farms. This would be in violation of the conditions for the sale to a private owner, the commoners complained. The complaint was sent to the state's representative in the county who replied that this was a case for the courts. Nothing more came of this, and in 1858 a report from the municipal government to the state's representative in the county refers to the fact that many farmers had had to stop summer farming in Follafoss commons due to the conditions of the forest (Høyesterett 1937, 159-160).

The second phase can more roughly be said to run from 1857 to 1937. In the above mentioned 1857 act, the Norwegian Parliament started to clarify the situation for the commoners. The act from 1857 stipulates that the commoners shall establish a common board for governing their joint exploitation of the resources. In 1858 an effort to create an organisation for the commoners of Follafoss failed. In the neighbouring Kvernaa commons they succeeded. The parliament continued its work of clarification in 1863 when legislation on the forestry service

¹⁵ For a survey see Bukve (1993).

also relevant for commons like Follafoss was promulgated. The legislation stipulated that private commons like Follafoss should be subdivided in a land consolidation process with one part becoming a private forest without rights of common and another part an ordinary Bygd commons. In 1886 the Ministry for the interior came to the conclusion that the situation in Follafoss did not warrant any such subdivision¹⁶. In the case between the commoners and the owner of a part of the old Follafoss commons judged by the Supreme Court in 1937 (Høyesterett 1937) the judge takes this as one of several indications that the commoners had not exercised rights to log timber for house building.

The non-use that was observed by the Supreme Court must be understood in the context of the history of the public administration of the forests in the King's commons in the county. Since the late 17th century, an administrative practice had developed in some counties all over the country, usually managed by the local sheriff, for requiring payment of fee and permission for logging, letter of approval for the use of summer farms and fishing in lakes, and payment of a tax on the use of mountain meadows. In North Trøndelag this had developed much further than in the counties to the south, including payment of some kind of land rent (bygsel) both for summer farms and for fishing rights in a particular lake. This administrative practice had continued and been strengthened despite advice to the contrary from lawyers in the ministry. Lein (1993) refers on pages 59-60 to a letter from the government lawyer Dunker dated 20 April 1868 advising against taking to court farmers that had not obtained the permissions the sheriffs deemed to be mandatory. They were not mandatory or required by law according to the government lawyer. Initially these letters of permission from the sheriff were written on demand from the local users who wanted protection from local competitors. Later on, the administrative authorities used them as an income generating mechanism.

The timber rights was the main question before the court in 1937 and the judge weighed all evidence in favour of the view that rights to timber for house building had not been exercised for such a long time that it now, in 1937, must be void. The owners of the ground should be able to act on that as a fact.

There were many forces contributing to the fact that in 1937 the commoners could not prove that their timber rights had been used for a long time. But the judgement also confirmed that there was no doubt about the other rights of common stipulated by the title deed of 1801 (in particular the judgement discussed rights to summer farming (including timbers necessary for that) and fishing)¹⁷. The exercise of these rights was based on ancient custom, not on any contract or rights acquired by adverse possession. The judgement also added that the right to summer farms at this time could not be considered to belong to the inhabitants of the municipality¹⁸ in general but in current circumstances the right to summer farm must be considered to belong to a specified group of farms. The rights to hunting and fishing,

¹⁶ The act of 1863 stipulated that the subdivision should be done by voluntary agreement, but if no voluntary subdivision had been agreed on within 20 years of the act going into force, the subdivision would be enforced by the state; See section 43 in Act 1863-06-22 on forest management [Om Skovvæsenet] (Stortinget 1863 [1905], 461-477). The subdivision process had intended to dismantle all private commons. However, rights of common to pasture, fishing, and hunting proved difficult to subdivide in the fashion stipulated by the act. Hence many private commons proved difficult to remove in this way (NOU 1985, 14-15). Exactly how many such private commons there were, and their location, have never been investigated as far as we have been able to determine.

¹⁷ The farmers "... kjennes ikke almenningsberettiget til hugst til gårdsbehov i Follafoss almenning med Færgelia, men for øvrig berettiget til å utøve de almenningsrettigheter som ved kongeskjøte på denne almenning av 14. januar 1801 blev almuen forbeholdt." (Høyesterett 1937, 167)

¹⁸ The community called "bygd" was often interpreted to refer to the municipality. In 1937 municipalities were much smaller than today.

however, belonged to the public of the community as the title deed of 1801 stated. We shall however, take note that the title deed does not mention hunting explicitly. We shall return to this.

This conclusion about the rights of common can be contrasted with the conclusion of a government commission of inquiry into conditions of State commons in North Trøndelag County in 1861-1865¹⁹. The conclusion was that rights of common as defined by law did not exist in this area. All rights that farmers exercised on state lands were based on contract as evidenced by the payment of fees, or on adverse possession. The shift in opinion from the 1860s to the 1930s says something about a shift in attitudes and perceptions among the bureaucratic elite.

The 1937 Supreme Court case was based on a judgement of the lower court²⁰ from 8 October, 1934 (Høyesterett 1937, 167-172) where the owners of Follafoss were held to be right in believing that there were no rights of common at all. The presiding judge dissented. In his explanation for dissenting to the judgement, he argues that the clear conclusions of the government commission of 1861-65 became the foundation for the management of the state commons and was a probable reason why also private owners of commons tried to stop logging and other use of rights of common in this county. The owner of Follafoss in 1866 promulgated a warning against logging in his forest and apparently, he succeeded. However, according to the judge, such success could not invalidate the rights of common since these were of a nature that they could not disappear just by not being exercised. The judge also comments that even though the owner was able to stop logging and limit summer farming the local public still in 1934 had clear ideas that they had such rights based on old customs and legislation.

In the history up to the 1937 judgement no trace has been seen of ideas that rights of common might be a more generic category of rights than those explicitly stated in the act from 1857. On the contrary, since the 17th century, the trend had been to limit the exploitation of the commons. The quantity of timber has been limited to what was needed on the farm. The number of cattle one could put out on pasture has been limited to the number one could feed during the winter. The number of commoners has been limited by requiring that they are active farmers within the bygd (community). And, as seen here, the exploitation of the commons has been limited by removing rights altogether when they had not been used for a long time. The decision of the Supreme Court in 1937 made the loss of timber rights final and concludes the second phase in the history of Follafoss commons.

Part 2: History of rights to hunting of small game without dog and to fishing

The third phase of the history has roots partly in the 1899 act on hunting and partly in the 1919 sale of Follafoss to North Trøndelag County (more on this below) and ends in 1982 when the loss of hunting rights to small game is final.

The commoners of Follafoss private commons had lost their rights to timber for house building. But they still had “the rights of summer farming (“Sæter”), mountain fields,

¹⁹ The commission has later been criticized for having a mandate both to establish the facts of the commons, primarily their boundaries, and to judge if they found breaches of the law (Landbruksdepartementet 1958, 23) . It has later been assumed that the farmers would be hesitant to tell about use of rights of common if they had not paid their usual fee. The fee was later explained as an illegal administrative invention that could not change the law. More in note 31 below.

²⁰ The court consisted of one professional judge and two lay persons.

fisheries, fuel wood, fencing material” as the title deed stipulated. We take note that the title deed issued by the King did not mention anything about hunting rights while fishing is included.

Law has regulated hunting since the 12th - 13th centuries. But the text of these laws is not easily interpreted. The current consensus (Austenå 1965; Kjos-Hanssen 1983) is that predators were open access for everyone. The exception is hunting of bears in winter lairs that could be publicly declared as a right belonging to the person who marked the lair²¹. This lasted until 1932²². Big game (moose, red deer, reindeer) could be hunted only by land owners. But according to the Act from 1276 (Taranger [1276] 1915, 155) hunting of moose (and by implication all big game) was open for all outside of private lands. By and large the 1276 act was in force until 1687. By then the commons of 1276 had become the King’s commons. But for the wilderness areas that were not known as King’s commons, the identity of the landowner(s) was not always clear. Large areas of land were in joint co-ownership (sometimes with individualized resource specific rights) by farms in the relevant areas. By the mid-18th century hunting of big game in the commons required permission by the King’s representative. Hunting of small game in the commons seems still to have been open to everybody. In out-fields that were not recognized as commons the right to hunt small game required hunting without dogs²³. An attempt to make hunting of small game without dog into a landowner right in 1730 created such uproar that the legislation was cancelled²⁴. Other minor changes occurred, but overall, the ancient rules were in force until 1899. The 1899 legislation set down the basic principle that the right to hunt belonged to the landowner and by this time it was clear that this meant the owner of the ground. However, the tradition that differentiated among owners of land, forest, pasture, etc. created difficulties since the earlier differentiation did not consciously see ground as different from other valuable rights. The problem was clearly present in the large areas that in 1899 were co-owned in one way or another²⁵. It was not a problem in the commons as defined in the act from 1857. These got their own paragraphs in the new act on hunting (Stortinget 1899 [1907], §§4-6). The act makes it clear that in private commons as well as bygd commons the right to hunt belongs to the owner of the ground. But in addition, the population of the community where rights of common exist also has right to hunt small game without dog.

The main argument in 1899 for limiting the hunting rights to the landowners was to limit the unsustainable quantity felled. In the latter part of the 19th century, the guns improved and both predators and game populations declined. The open access hunting made it difficult to monitor and enforce quantity restrictions. This was clearly a concern for hunting in the large co-owned areas. The act introduced the right for anyone with hunting right to call upon other holders of rights to create a local board with powers to regulate hunting in cooperation with

²¹ See Chapter 58 in the Book on Land Tenure (Landsleiebolken) page 153-154 in Taranger ([1276] 1915). Also in 18th century this was official policy, see Elgmork (1996).

²² Act 3 March 1932 No 2 changing section 10 of the Act 20 May 1899 on hunting and trapping (Stortinget 1899 [1907]).

²³ The differentiation of rights according to the use of dogs or not on the hunt goes back to Magnus Lagabøter (Taranger [1276] 1915, 154-155)

²⁴ Kjos-Hanssen (1983, 54); Rasch et al. (1845).

²⁵ The act was considered to be inconsistent when section 1 was compared to section 3 (on hunting in co-owned areas). The legal interpretation was resolved in two judgments by the Supreme Court in 1916 and 1959. The interpretation was that the right to hunt for both owners of the ground and owners of specified resources was present only in co-ownerships originating in old style functional subdivisions of resources, not in other kinds of co-ownerships (Austenå 1965).

the municipal board of wild-life management according to by-laws that had to be confirmed by the states local representative, the county governor.

We take note that this formula for management was repeated in the 1920 legislation on state commons and seems rather similar to the more recent management system for the statutory hunting commons (jaktvald) that regulates hunters and hunting activity in cooperation with the municipal boards of wildlife management. The somewhat tentative introduction of co-management in the act of 1899 seems today to have transformed into a successful adaptation able to handle the potentially unsustainable activities of hunters.

The act on hunting and wildlife had major revisions in 1932, 1951, and 1981²⁶. The rules about hunting rights were slightly restricted on all occasions. The major topic in the public debate was the opposition between those who wanted restrictions based on monopoly rights for the owner of the ground and those who wanted to ensure that also non-owners of the ground were granted rights to hunt in some way. The mining workers living near Follafoss belonged to the last group. The Norwegian Association of Hunters and Anglers was in favour of the strengthening of the ground owner rule. But the strengthening of this in the 1932 act probably also led to the creation of a separate Labourers Association for Hunters and Anglers (Kjos-Hanssen 1983). In the 1951 act, a major concern was the access to hunting for the general population. The goal was to encourage the formation of hunting commons with ability to sell hunting rights. The attempt in the 1951 act was, however, not usefully formulated. The changes introduced in the 1981 act did not lead to any development either. Only after changes enacted in 1992 did the co-management in the area of wildlife management take off. We may note that it took almost one hundred years of trials and adaptations.

The hunting rights in private commons like Follafoss, remained unchanged in 1932. In 1951 hunting of fallow deer, roe deer, and beaver were added to land owners rights and not seen as small game as before (Stortinget 1951 [1960]). In the government commission preparing a new act on wildlife (NOU 1974, 96,122) it is proposed to retain the rule on hunting in private commons that the 1951 act had. But in the government's proposal to the parliament (Miljøverndepartementet 1980) this rule has disappeared without comment²⁷. The big issue is improved access to hunting for the public, introduction of a testing procedure for new hunters, and a general rule that all wildlife is protected unless the act allows hunting. The discussion in the parliament did not mention the deleted rule about hunting in private commons either. The debate concerned the rule about making access for the public easier. We should note that the parliament insisted on a voluntary approach to co-management. Thus, as of 1 January 1982, the local public of Follafoss, the members of one of the community that had enjoyed rights of hunting small game without dog, had lost their right to hunt.

The inconsistency between the emphasis on access to hunting for the public and the removal of the rights for the local publics around private commons creates questions about why this happened. There are no clues to why this happened, and without any kind of access to persons or minutes from the discussion within the Ministry we can only guess²⁸. One possibility might

²⁶ The changes of 1932 were enacted as changes to the 1899 act, see Stortinget (1899 [1907]; 1932; 1951 [1960]; 1981 [1986])

²⁷ The Ministry of the Environment is closest to acknowledging the change when it says that they have simplified the rules for right to hunting. Then they immediately go on to discuss rules for improving public access to hunting never thinking of how the removal of the paragraph on private commons will affect the public access to hunting.

²⁸ The Minister of Environment at that time (1980-10-31), when Ot. Prp. Nr. 9 (1980-81) was presented, was Rolf Arthur Hansen (Ap/ Labour Party).

be that in the public mind “private commons” had disappeared to the point that the bureaucrats in the Ministry did not understand the significance of the section. Hence, they thought of removing it as a simplification. Another consideration might have been the goal of equalizing access to hunting and fishing for all citizens. Then particular rights for certain communities would be a complicating fact.

Fishing

The right to fishing has gone through a similar process. In the act on fishing anadromous fish and fishing in freshwater from 8 March 1964 (Stortinget 1964 [1966]), the right to fish was confirmed to be a right only for ground owners outside state commons and bygd commons if custom, long time use or other legal rules do not say otherwise. The rules were continued in the revised act of 1992. Before 1964 the basic rules for fishing in freshwater and river systems was Chapter 5-11 in Christian V’s Norwegian Law code from 1687. Chapter 5-11 confirms that for rivers or lakes on private lands the right to fish belongs to the landowner. The only rule for fishing in the commons (at that time “commons” meant lands outside of private lands) was Section 1. The rule states only that in lakes in the commons everybody has the right to fish according to their share of the commons, and that the lake shall not be leased to anyone in particular.²⁹ One interpretation would be that in river systems within the commons (as defined in 1687) fishing with ordinary means would be allowed for all. This is basically the rules governing the state commons and bygd commons today as long as the fishing is done by hook. The rule from 1687 must have covered also what later became private commons. However, the way the legislation in 1964 was formulated, rights of common to fishing in the private commons disappeared³⁰. Hence, fishing rights, like hunting rights, in private commons have been removed by specific legislation.³¹

The loss of ancient rights in Follafoss is not unique. In a case judged by the Lagmannsretten in 1999 (Høyesterett 2000) two private commons in Verdal municipality (south of Verran where Follafoss is located) with a similar history of rights of common were found to have ceased to be private commons some time during its 200 year period of existence. The rights to summer farming and pasture had changed from being rights of common to become servitudes. No rights to hunting or fishing remained. However, the Supreme Court found Lagmannsretten in error in this conclusion. There clearly still were rights to summer farming and pasture based on ancient rights of common as late as about 1950. And the following 50 years was too short a period to change any of this. Ancient rights of common do not need formal legislation for existing. But non-use may after a sufficient time make them disappear. One may conclude

²⁹ «1 Art. Alle Fiskevand i Alminding maa brugis af hver der haver Lod udi, og ikke til nogen i Særdelished bortbygslis.» http://www.hf.uio.no/iakh/forskning/prosjekter/tingbok/kilder/chr5web/chr5_05_11.html

³⁰ We may here note that the government commission (Innlandsfiskekomitéen 1948) that prepared the new act on fresh water fishing did not want to say anything about rights to fishing in the act. They acknowledged that the general opinion was that fishing was a right belonging to the owner of the ground. But they also noted that around the country there was a great variety of fishing rights based on ancient customs and found it impossible to do justice to this in a general act. The government agreed but felt it necessary to give some basic rules, including rules about bygd commons and state lands that were not state commons (in state commons fishing rights were defined by the act on state commons, the Mountain Act) as well as lands owned by municipalities. (Landbruksdepartementet 1955). One may note that lands owned by municipalities as far as possible should be managed and made available to the public in the same way as state lands outside state commons. Lands owned by counties were, rather surprisingly, included here only in 2012 (Stortinget 2012).

³¹ Stenseth (2005, 221) points to the interesting opposition between the Supreme court judgement from 2000 (Høyesterett 2000) that takes as given that the Parliament can remove ancient rights of common without debate and the Supreme court judgement of 1937 (Høyesterett 1937) taking for granted that the rights of common (minus timber rights) as stipulated in the title deed of 1801 shall continue unchanged.

that Follafoss still is a private commons but that the rights of common now are reduced to summer farming and pasture.

We may also note that the institutional memory of the Supreme Court is better than the subordinate court. The Supreme Court has in several judgements emphasised that ancient rights of common need no formal legislation to exist and that their removal is difficult. After the 1857/ 1863 limitation of rights there are no positive legal enactments removing rights of common. The possible exceptions are the fishing rights in 1964 and the hunting rights in 1981. However, these removals come about in a somewhat indirect way. First the lawmaker confirms the existence of such rights even though legal theory says it is not necessary. Then the lawmaker removes the rules confirming the old rights and then legal theory confirms that they are gone.

The farmers that finally had confirmed their loss of timber rights in 1937 probably had adjusted to this fact long before the judgement. The community members that in 2000 got confirmation of their loss of fishing and hunting rights have not had the time to adjust to this yet. As far as we can see they have not easily accept the loss, and they have protested along the way without being heard by relevant legislative authorities. In a survey conducted in the spring of 2012 among a targeted sample of the most active users of Follafoss area 53.8% answered that the land owner was not alone in holding rights to hunting and fishing³². In the period 1997 to 2011 it was a particularly strong public opinion and debate about these rights. A survey of writings in the local newspaper for the period 1919-2012 confirms this abundantly (Haugset and Berge 2013b; Haugset and Berge 2013a). In the newspaper “Trønder-avisa” from 16 September 2004, for example, Malm hunting- and fishing association (MJFF) encourages their members to hunt for small game without dog in Follafoss private commons without paying the license fee. The year before the land owner had reported similar activities to the police. But the police dismissed the case on grounds that the legal situation was not clear enough for public prosecution³³. Clearly the local communities of Malm and Follafoss were not happy with the situation created by the national legislation in 1964 and 1981. To understand a bit more of the context for their attitudes and their somewhat delayed reactions we need to look at the history of landowning of Follafoss private commons.

Part 3: History of land ownership to Follafoss private commons

At the time of the original sale in 1799 Follafoss belonged among the King’s commons and had the same status for local communities as the lands the King did not sell. These lands were all over the country. To the south of North Trøndelag they became state commons. But in North Trøndelag they were towards the end of the 19th century considered to have another status. Thus the county was for a period kept outside the legislation on state commons (from 1920) like the 3 northernmost counties still are. The state authorities believed the lands owned by the state in North Trøndelag were not commons and classified them as “un-matriculated state lands” together with similar lands in the three northernmost counties. However, in 1926 the act on state commons was enacted also for North Trøndelag³⁴ and the process of restoring

³² The question was about who should decide on pricing and distribution of licenses to fish and hunt and listed 3 alternatives: 1) land owner holds these rights, 2) the land owner is not alone in holding these rights, and 3) no opinion on this question, see Table V8.56 in Haugset and Berge (2013a, 117). The question was posed to 708 persons and 292 returned an answer. See also section 4 below. For a discussion of data collection and data quality see Haugset and Berge (2013a, 7-16).

³³ More about this below.

³⁴ In 1990, a special law commission ruled that state lands in Nordland and Troms also were state commons. But the act on state commons has not yet been enacted for these areas. In 2005 the state lands in Finnmark were transferred to a semi-public company, Finnmarkseiendommen, in order to comply with ILO Convention 169 on

the rights of common started on a case-by-case procedure both for state commons and for private commons³⁵. In 1937, the Supreme Court confirmed that in Follafoss the ancient rights of common to timbers had lapsed due to non-use. In 2000, the same court concluded that ancient rights to fishing had been removed by an act of Parliament in 1964 and rights to hunt in 1981. Unless particular contracts or servitudes said otherwise the hunting and fishing rights belonged unstinted to the land owner.

The history of Follafoss private commons has been bound to the fortunes of the timber trade. During the 19th century it changed owner several times. In 1908 Folla Bruk AS who then was the owner, started a pulp mill. In 1919 North Trøndelag County bought the company to get hands on the water rights to start production of hydro-electric power³⁶. They stayed on as the owner of Folla Bruk AS and Follafoss until 1983 when the company (Folla Bruk AS) including the forests were sold to Bjørn Lyng (Lyng Industrier). The sale was intended to include a servitude on the forest areas reserving the ancient rights of common to fishing and hunting small game without dog for the local public. The servitude was never created³⁷. But neither did the new owner of Folla Bruk AS interfere with the public's usage of the area³⁸. North Trøndelag County retained a right of prior purchase. In 1989 Verran Bruk (a new name for Folla Bruk) was sold to Norske Skog (Haugset and Berge 2013b, 13). North Trøndelag County did not use its right of prior purchase, mainly to encourage the continuation of the manufacturing activities of the company. With this sale a more turbulent period for the local public's use of the forest areas ensued. Norske Skog wanted to earn money from selling hunting rights and discontinued the voluntary cooperation with the local hunting and fishing board (Malm jakt- og fiskeområde) and in 1997 they started selling hunting permits. A local action group (later known as Verran Rettighetslag) publicly encouraged people to hunt without permit. They asked farmers to start collecting their sheep on the first day of the hunting period. They more or less dared Norske Skog to take them to court. After the Ruling of the Supreme Court in 2000 Norske Skog felt secure about their rights. In 2003 they reported the illegal activities by hunters and Verran Rettighetslag to the police. However, the police found it impossible to pursue the case without deciding on the issue of the rights of common. This they had no competence to do. In 2004 the forest area was sold again, now to Ulvik & Kiær AS who continued the practice started by Norske Skog of selling hunting permits. The opposition among local hunters was as strongly expressed as before, at least in the newspapers. But what did the ordinary user of the forest area think about this?

One factor that might explain the persistent and long lasting local opposition to the efforts of the landowners to commercialize fishing and hunting is that Follafoss was in public ownership from 1919 to 1982. Legislation on fishing and hunting has tended to treat land owned by public bodies such as municipalities (and more recently counties) in the same way

indigenous and tribal peoples; see e.g. NOU 2007:14 (Del 18). The process where the customary rights of the Saami have been put back on the public agenda by the ratification of the ILO convention 169 acknowledging the Saami as an indigenous people indicates that restoration of ancient customary rights for small groups is possible. Since 1982 there has been several government commissions investigating how Saami customary rights to land and resources can be accommodated by Norwegian law (NOU 2007).

³⁵ See Landbruksdepartementet (1958)

³⁶ See <http://timeline.nte.no/1919-1923/>

³⁷ See note 11 above.

³⁸ In the title deed conveying the land to Folla Bruk AS, dated 30, December 1983, it is said: «De bruksberettigede i området skal uavkortet beholde sine rettigheter i eiendommene. Det samme gjelder almenhetens bruk som skal kunne foregå som tidligere. Dette skal ikke tinglyses.» (Our translation: "Those with use rights in the property shall keep their rights unstinted. The same applies to the public use that shall continue as before. This shall not be recorded in the land register.")

as land owned by the state. The county of North Trøndelag followed the practice for municipalities even if counties were not explicitly charged to do so until 2012³⁹. During the sales process before the county sold the land in 1983 both newspaper writings and speakers in public bodies like the municipal and county councils expressed a high degree of uncertainty about the legal status of the ancient rights to fishing and to hunting (Haugset and Berge 2013b) . And as mentioned above, the county intended to create a servitude granting fishing and hunting rights to the local public. The practice of “free”⁴⁰ fishing and hunting of small game without dog was supported by established custom going back to the time long before the legislation in 1964 and 1981. Despite the expressed uncertainty in statements from political parties at municipal and county levels, in the public opinion expressed in newspapers the majority was sure of their rights of common to fishing and hunting, and, as seen here, this opinion was not without foundation in historical experiences.

Table 1 Summary listing of owners of the Ground of Follafoss Commons:

1801-1919	Proprietor Christen Johan Müller, followed by many similar merchants and companies. The owner in 1908 was Folla Bruk AS who started the pulp mill.
1919-1982	North Trøndelag County
1982-1988	Lyng Industrier (Bjørn Lyng)
1989-2004	Norske Skog (the pulp mill was sold in 2000)
2004-	Ulvik & Kiær AS

³⁹ In the 1964 act on fishing in the rivers and lakes with no anadromous fish there are detailed rules about fishing rights on land held by municipalities (Landbruksdepartementet 1955). For the present study we note that in 2012 the county was added in an amendment to the 1992 act (Stortinget 2012). In section 23 it now says: «Fishing on municipal and county owned land. The municipality and the county shall exploit their right to fish for anadromous salmonids and freshwater fish on their lands in conformance with the purpose of this act, and give a best possible opportunity for fishing for the public for example by selling permission to fish.» (Our translation from Stortinget (1992b)).

⁴⁰ “Free” fishing is defined as fishing that according to ancient custom or other particular legal rules does not belong to the landowner (Stortinget 1992b, section 5d).

Summarizing the institutional developments relevant for loss of rights in the commons

Table 2 List of the various acts relevant for forestry, fishing and hunting in commons are listed with a short summary of the rules affecting the rights of common.

1687	Christian V's Norske Lov ⁴¹ [Christian V's Norwegian Law - usually referred to as N.L.]	Provides legal regulation of the exploitation of commons, in particular sections 3-12-1 to 3-12-6 and section 5-11-1
1857	Lov 1857-10-12 Indeholdende bestemmelser om almindingssskove. ⁴² [On forest commons]	Defines State common, Bygd commons, and Private commons
1863	Lov 1863-06-22 Om skovvæsenet. [On forest administration]	Section 42 stipulates that in 20 years at the latest Private commons should be divided into private land and Bygd commons
1897	Lov 1897-08-03 Nr. 7 Om valg paa bestyrelser for bygdealmendinger og statsalmenninger. [On election of governors in bygd commons and state commons]	The act rescinds sections 2 and 7 the 1857 act. However, section 9 in the 1857 act, about election of boards for private commons depends on section 7. The situation is the same after revisions and replacement of 1897 act in 1936 and 1992
1899	Lov 1899-05-20 Nr. 2 Angaaende jagt og fangst (jaktloven). [On hunting and trapping]	The act makes hunting into a right for the owner of the ground. It includes rules about rights for community members to hunt in state, bygd and private commons, and rules prohibiting the severance of the right to hunt from the ground ownership for more than 10 years
1920	Lov 1920-03-12 Nr. 5 Om utnyttelse av rettigheter til beite, fiske, jakt og fangst m.v. i statens almenninger (fjelloven). [On the exploitation of rights to pasture, fishing, hunting and trapping etc. in state commons (The mountain act)]	The act provides rules about hunting and fishing in state commons, making fishing and hunting small game without use of dog into an all men's rights provided the stipulated fee is paid.
1951	Lov 1951-12-14 Nr 7 Lov om viltstell, jakt og fangst. [On wildlife care, hunting and trapping]	Section 15 continues the rule for private commons introduced in the 1899 act. Hunting rights cannot be severed from the ground for more than 10 years at a time.
1957	Lov 1957-06-28 Nr 16 om friluftslivet (on out door life)	The act secures the right for every person to roam across wilderness areas and in forests without regard to ownership status as long as due care is taken not to impose unreasonable burdens on the landowner. This includes the right to enjoy the land by camping and bathing, by picking berries and nuts.
1964	Lov 1964-03-06 om laksefisket og innlandsfisket. [On fishing for salmon and in freshwater]	The act rescinds N.L. section 5-11-1 and in the 1920 act it adds rules about access to fishing for citizens of other countries than Norway. Fishing rights cannot be severed from the ground for more than 10 years at a time.
1981	Lov 1981-05-29 nr 38 Lov om viltet (viltloven). [On wildlife]	The act removes the rules about hunting rights in private commons. But it retains rules about hunting rights in co-ownerships, also for those without full ownership (only use rights), and the board for wildlife management (Viltneemnda) is instructed to work for increased public access to hunting.

The rules promulgated by Christian V' Law Book provides the foundation for the new layer of rules from 1857 and 1863.

⁴¹ The text can be found in Kong Christian V (1687 [1995])

⁴² Acts are usually listed with author "Stortinget" and the year as displayed in the title of the act.

One may reasonably stipulate two reasons for the disappearance of customary rights like those we investigate here. The usual reason in Norway has been that people stop exploiting the resource due to changes in technology and/ or incomes. After some decades, the custom based right is void. The other way is for the legislator to enact a rule to make some specified exploitation illegal or devising rules for removing them. This was part of the 1863 legislation on forest management (Stortinget 1863 [1905], 461-477). Both of these processes are part of this story. However, the occurrences in 1964 and 1981 do not really fit either of them.

The link between ancient customary law and formal legislation is not easy to navigate. Rights of common have never been created by an act, but they have been regulated at least since the first written legislation in the 13th century, and more recently reaffirmed in legislation on state commons and “bygd commons”. For “private commons” the trend has been to remove as much as possible of the ancient rights. One problem we want to understand is how or why the process of removing rights of common from private commons was pursued so persistently. The first round of enclosure following the 1863 Act did not succeed where pasture, summer farming and fishing was more important to the commoners than timber. These rights were difficult to distribute equitably in a land consolidation process and they were of small significance to the timber merchants who had bought the land. Nothing happened. Commoners were as far as possible using their rights as of old. In the 1897 act on election of governors in bygd commons and state commons rules about governing private commons in the 1857 act were removed (Stortinget 1897 [1907]). On the other hand, the 1899 act on hunting and trapping got a paragraph securing the traditional hunting rights in private commons as in the other commons. But most people seemed to forget about them.

By 1909 the director of the forest management was convinced that there could not be any more instances of private commons: “According to section 25 in the Act on Forest Management [Om Skovvæsenet] of 22 June 1863 (cpr. Act of 12 October 1857 on Forest Commons) those commons owned by at least half of the farmers with rights of common to timber were seen to be Bygd commons and other commons owned by private persons to be Private commons. These last should according to the just mentioned act’s section 42, upon the termination of a period of 20 years after the act entering into force have been divided between the owners and those with rights of common whether these wanted a division or not. The part of the commons that after the division fell to the group with rights of common, should according to the Act on forest commons, section 38, be treated according to the rules pertaining to bygd commons. Since all private commons that are known now, have been divided, there ought not to be any more.” (our translation from Skogdirektøren (1909, 131)).

After decisions of the Supreme court in 1930 and 1937 (Høyesterett 1930; 1937), professionals reluctantly had to admit that private commons still existed. But apparently, then again they were “forgotten”. Professionals in land consolidation were in the 1970ies led to believe that no private commons existed⁴³. In the preparation to the law revisions enacted in 1992 they were again “rediscovered”. The government paper on the revision of the acts on commons (NOU 1985, 14) notes that two Supreme Court judgements from 1930 (Meråker forest) and 1937 (Follafoss commons) confirm the existence of private commons. In Follafoss the traditional rights except rights to timber were confirmed to exist. In Meråker the right to hunt was confirmed to exist (Høyesterett 1930). But it was stipulated there were no farms with rights to take timber (NOU 1985, 14-15), as the supreme court decision of 1937

⁴³ Private communication from Hans Sevatdal and Håvard Steinsholt.

indicated, and therefore they seemingly were without much interest. The outcome was one paragraph on private commons in the 1992 legislation mandating the Ministry to provide necessary rules for the governance of private commons (Stortinget 1992a) .

“Forgotten” and “rediscovered” should not be interpreted in its literal sense. We propose here to see it in the light of Mary Douglas (1986, 69-90)’s ideas about structural amnesia. One institutional fact making forgetting private commons easy is that they did not have their own act like state commons (the mountain act) and were after 1883 numerically dominated by the bygd commons. Their “rediscovery” has for example never generated interest in counting how many there were of them and which rights of common were exercised. One might suggest that they were not consciously thought about except where they generated court cases. Otherwise, if they were explicitly mentioned in some official context they were only remembered as a relic of the past without standing or status in contemporary society. This is fairly close to the conditions for structural amnesia suggested by Douglas.

The institutional history of private commons starts with a new layer of rules on top of existing rules about commons⁴⁴ with new definitions and specifications of what was prohibited, proscribed and permitted. But it is reasonable to assume that even if some older regulations of the commons were removed or altered the cultural understanding of the commons were unaltered. For the cultural understanding the important part of the new rules was their specification and limitation of what a right of common meant.

While Norwegian society evolved and the practice of agriculture changed the exploitation of the commons could not change. This is a feature of the thinking that is worth noting. It is taken for granted without discussion that the rights of common comprise only those ways of exploiting the commons that the law lists and that is repeated in the clause in the title deed to Follafoss. The alternative view that some commoners of today try to champion is that the rights of common must be functionally adapted to the way agriculture is conducted. If today’s agriculture requires electricity, the commoners must be allowed to exploit the commons to produce electricity. For electricity this question was settled in 1963 when waterfalls were seen to belong to the land owner and not being part of the resources that the commoners could exploit (Høyesterett 1963). For other resources with less cash value, the state may lately seem to be more lenient. But this is in the state commons.

Dismantling private commons has been on the agenda since 1863. Since the 17th century, the trend had been to limit the exploitation of the commons⁴⁵. The quantity of timber has been limited to what was needed on the farm. The number of cattle one could put out on pasture has been limited to the number one could feed during the winter. The number of commoners has been limited by requiring that they are active farmers within the bygd (community). And, as seen in Follafoss, the exploitation of the commons has been limited by removing rights altogether when they had not been used for a long time. The decision of the Supreme Court in 1937 made the loss of timber rights final.

The limitation and specification of what kind of exploitation comprised the rights of common had long term consequences for all Norwegian commons. As society modernized and technology changed the importance to the farmers of all ways of exploitation except timber

⁴⁴ In the meaning of Mahoney and Thelen (2010, 15)

⁴⁵ The first chapter of the 1863 act (sections 1-24) are exclusively concerned with removing and regulating use rights in forests in general and forest owners can with the rules given here remove or limit use rights whether they are based on contract or custom.

and pasture declined in economic importance. But also timber for building material is not as critical as it used to be due to the many new types of materials. Lately also pasture is losing in importance as the number of active farmers decline and productions become more specialized. While the old rights of common decline in use, new ways of exploiting have consistently been judged to belong to the owner of the ground. The impact of the 1857/1863 rules about rights of common has been to make the commons less salient, easier to forget.

There is no doubt that private commons increasingly was seen as an anomaly. The legislation creating conditions for structural amnesia is the 1857 act. The categorization of commons in the 1857 act seems rather arbitrary. We can read the act but are left with the mystery of the reasoning behind the definition of commons introduced in 1857 and continued in 1863 with legislation designed to make private commons extinct. Why should one create different rules for commons based on the fraction of owners of the ground among commoners with rights to timber? In any case the subsequent diverging paths of the two types of commons is difficult to interpret as an outcome of a plan for enclosure hatched by the owners of private commons in the 1850ies and coming to fruition in the period 1883 to 1982.

After the 1863 decision to enclose the forest resources of private commons the rights to hunting and fishing in such areas came under pressure from another development. The transformation of Norway from a predominantly rural society where fishing and agriculture dominated to an industrial welfare society created a large and growing group of people with leisure time available. It became a policy goal for social democracy to encourage access to the countryside, including fishing and hunting as a recreational activity for the growing urban population. Formalizing the right to roam in 1957 was part of this process (Storthinget 1957 [1996]; Reusch 2012). Fishing and hunting small game without dog was part of the old tradition associated with the right to roam. But fishing and hunting was also a strong interest for landowners, and fish and game animals are common pool resources requiring agreed upon rules for sustainable exploitation, no less so than forests. It was a strong conviction among foresters that either individual private ownership or state ownership was needed to avoid the forest destructions that forest history had too many examples of. Moreover, the dramatic decline in both big game (moose) populations and predators following the introduction of modern rifles in the last half of the 19th century was on the mind of those who designed the 1899 act and later acts on hunting and trapping. The series of trials and errors in the construction of the management system for wildlife can now be seen to have succeeded in creating a co-management system that works to the satisfaction of both landowners and the public interested in hunting. On the lands owned by the state, the policy was to make fishing and hunting of small game without dog as close to an all men's rights as possible without creating too large pressure on the fish and game populations. This was done by requiring purchase of licence for a reasonable fee with options to limit the number of licences and the period where fishing and hunting could be performed. The state also required municipalities (and lately also counties) to follow the same practice and tried to encourage large land owners or groups of land owners to follow the same policy. One may understand that awarding an unrestricted right to hunt (small game without dog) to a local public within an entity that most believed to be extinct might be seen as an anomaly.

The sale of the King's commons to private owners 200 years ago created a new context for the exercise of the ancient rights of common. The legislation of 1857 and 1863 created a new more complex set of rules on top of the older understanding of the commons. But new ways of exploiting have consistently been judged to belong to the owner of the ground. That can also be seen as a kind of enclosure.

During the period considered the rights of the commoners were of course in conflict with the interests of private owners. This was probably most important at the start. The difficulties of the timber trade in the years during and after the Napoleonic war made the situation easier for the commoners but from about 1830-40 the timber trade again put pressure on the commoners as witnessed by the complaint of the commoners of Follafoss to the municipal council in 1850. During the first part of the 19th century the private interests were on the offensive. They had the benefit the liberal privatization ideology that had influenced public policy since the mid-18th century. The prohibition of sales in 1821, removal of the prohibition in 1848 and reintroduction in 1863 can be seen as outcomes of the ideological struggles. On top of the ideological backdrop professional foresters had real concerns about the sustainability of current logging practice and no doubt had influence on the legislation of 1857 and 1863. The outcome was both sales of commons and limitation of the rights of commoners, particularly timber rights. The areas of North Trøndelag County had a questionable administrative practice perhaps more so than other counties, requiring permission for use of the commons. This fuelled the belief that there were no state commons, only private commons and bygd commons (Lein 1993; Landbruksdepartementet 1958). This belief was slowly overturned and from late in the 19th century a case-by-case restoration of rights of common took place. The Supreme Court judgement on Follafoss from 1937 was part of this process. Outside our area it ended in 1992 with the restoration of the status of commons to the state lands in Nordland and Troms⁴⁶. However, all rights of common except pasture had been lost. The restoration process slowed down the enclosure process. But it had no impact on the decision in government from 1964 and 1981.

The sale of the commons from the county to private interests in 1982 was very clearly motivated by a concern for the workers in the local pulp mill. The forest of Follafoss commons was tied to the pulp mill from its start in 1908 until 2000 when the mill was sold to a Swedish company. But the general mood of Norwegian public authorities during 1980-2000 was clearly to follow the ideas of the “New Public Management” doctrines and devolve on private actors as much as feasible. For the farmers it was a clearly expressed public policy during in the first years of 2000s requiring landowners to exploit the commercial potential of fishing and hunting rights. This included a mandate for Statskog SF to commercialize as far as possible the State Commons. It created a period of difficulties for the local Mountain Boards managing the various State Commons (Runningen 2012). The private owners of Follafoss commons acted in accord with the commercialization policy. In 2012 the private interests in Follafoss seemed victorious. The local hunting and fishing association accepted to sell fishing and hunting licenses on behalf of the land owners. But in 2013 the conflict flared up again. Ancient rights are not easily forgotten⁴⁷.

Part 4: Current beliefs about rights to fish and hunt in Follafoss private commons

In May 2012, we carried out a survey among users of the area formerly known as Follafoss private commons, Follafoss commons for short (Haugset and Berge 2013a). The questionnaire was sent to persons who were assumed to be using the Follafoss commons area frequently: members of cabin owners associations in the vicinity, holders of rights to summer farms and pasture in the commons, members of the hunting and fishing association (Malm JFF), and holders of legally mandated hunting licenses with residence in Malm and Follafoss. Of the 708 questionnaires sent out 292 were returned. A central part of the survey asked about

⁴⁶ Judgements of the Supreme Court in the Beiarn-Skjerstad case (Høyesterett 1991) and in the Tysfjord case (Høyesterett 1996)

⁴⁷ See e. g. Trønder-Avisa 24.09.2013, side 9.

perceptions of, and opinions about, rights of common in Follafoss commons. The answers to the questions we posed must be interpreted within the context described above.

The question to focus on here is opinions about, or beliefs in, rights of common to fishing and hunting small game without dog. Table 1 presents the answers to two questions used to measure the respondent’s beliefs about the existence of rights of common. Question I and II in the table were framed in this way (translated from Norwegian⁴⁸):

The rights to hunting and fishing in Follafoss commons are disputed. In the local community, many inhabitants will claim that these are old rights of common for local people. Others will assume that the hunting- and fishing rights belong to the land owner. This would imply that the land owner can decide about the price for licenses, and whether there will be an open or a restricted sale of licenses (exclusive sale).

Table 3 Cross-tabulation of the answers to two questions about the beliefs about the rights of common to fishing and hunting in Follafoss commons in Verran. N=292. Missing = 21.

		<i>II: Do you think most people in Verran would agree that the land owner has the sole hunting and fishing rights in Follafoss commons?</i>			
<i>I: What is your opinion on this regarding Follafoss commons?</i>		Yes	No	I do not know	Total
The land owner holds the hunting and fishing rights		6 31,6%	23 11,6%	7 13,0%	36 13,3%
The land owner is not the sole holder of hunting and fishing rights		8 42,1%	145 73,2%	4 7,4%	157 57,9%
I do not have an opinion on this issue		5 26,3%	30 15,2%	43 79,6%	78 28,8%
Total		19 100%	198 100%	54 100%	271 100%
<p><i>New variable</i> “Rights of common exist” defined as: People believe strongly that “Rights of common exist” if they answer “No” on question II: “Do you think that most people in Verran would agree that the land owner alone has hunting and fishing rights in Follafoss commons?”, and choose the statement “The land owner is not the sole holder of hunting and fishing rights” to describe their opinion on question I; also see Haugset and Berge (2014)</p>					

The co-variation between the answers to these two questions in table 1 is rather strong (Cramer’s V = .428). 145 persons are convinced for their own part that others than the land owner hold rights to fishing and hunting in Follafoss commons, and they also believe that most people in Verran share this view. We argue that the perception of rights of common are most clearly and forcefully expressed by these 145 respondents, and define a new variable “Rights of common exist” by assigning these 145 the value 1 and the rest the value 0.

Holding a clearly expressed belief in the rights of common for local residents like it is seen her, despite the long history of dispute around them, cannot easily be explained by external or national values or general personal characteristics like sex or age. Only local cultural values and personal interest in the hunting and fishing activity can reasonably be argued to be causal factors. To this we should add knowledge about the political and legal aspects of the long

⁴⁸ See Haugset and Berge (2013a) page 25 for questions I and II in table 1, and page 117 tables V8.56 and V8.57 for marginal frequencies of responses, including missing observations.

dispute. To test out this we have done a logistic regression with “Rights of common exist” as dependent variable. We have tried out various explanatory variables among those available.

Cross tabulations show no significant difference in the perception of rights of common between respondents who report that they own land bigger than a cabin’s plot themselves, and those who don’t own outfield land in Verran. However, where respondents live, their age, gender and level of education, whether they are hunters⁴⁹ or not, whether they are members of the cabin owners association at Holden (inside Follafoss commons) or not and whether they are members of the local hunting and fishing association all correlate with their perception of the rights of common. We do not have good variables indicating knowledge of political and legal aspects of the issue. But several of these variables are confounded.

The logistic regression was used to find out which variables affected the perception of rights of common and in which direction, when controlling for the others.

Table 4: Dependent variable “Rights of common exist” regressed (logistic model) on background variables (Haugset and Berge 2013a).

Descriptive Statistics

Variables in the model	N	Minimum	Maximum	Mean
Rights of common exist	271	0	1	,54
Lives in Malm or Follafoss	292	0	1	,41
University level education	292	0	1	,36
Importance of hunting	273	1	10	5,86
Importance of fishing	278	1	10	7,81
Valid N (listwise)	253			

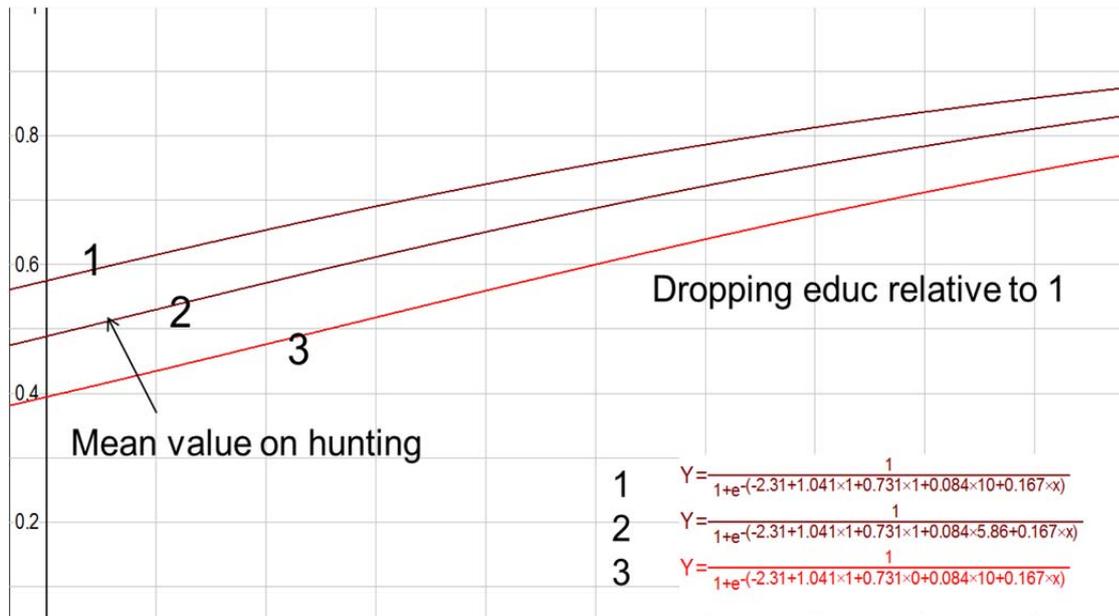
Variables in the Equation

Dependent: Rights of common exist	B	S.E.	Wald	Sig.	Exp(B)	95% C.I.for EXP(B)	
						Lower	Upper
Lives in Malm or Follafoss	1,041	,305	11,676	,001	2,832	1,559	5,144
University level education	,731	,302	5,872	,015	2,077	1,150	3,753
Importance of hunting	,084	,039	4,757	,029	1,088	1,009	1,174
Importance of fishing	,167	,055	9,160	,002	1,181	1,061	1,316
Constant	-2,310	,499	21,384	,000	,099		

n=253; missing n = 39; correct classification 65.2%;

As suggested above the only variables affecting the expressed belief in the existence of rights of common were interests in fishing and hunting (Importance of hunting and fishing), membership in the local community (Living in Malm or Follafoss), and education (University level education). Variables like age and sex did not have any significant impact. The results support an interpretation that local culture and personal interests are strong determinants of the beliefs in their ancient rights of common.

⁴⁹ Almost all respondents report that they do inland fishing, so there is not enough variation in this variable to use for analyses.



To further explore the boundary between what local people believe are their rights and what the law says, we asked if the respondents knew anyone who used to fish or hunt in Follafoss commons without buying a license, and how common they believed this practice was. The answers are provided in table 3 below, showing that some illegal hunting and fishing takes place.

Table 5: The respondents' knowledge of illegal (un-licensed) hunting and fishing in Follafoss commons. For all these questions quite many respondents answered "I do not know" or did not provide any answer at all. The percentages in the table are calculated among those in the sample of 292 respondents who did answer.

Do you know someone	Who fishes without a license?	Who hunts for small game without a license?	Who hunts for big game (moose, deer, roe deer) without a license?
Yes, knows someone	47.6 % (n=185)	41.8 % (n= 182)	6.9 % (n=101)
How common do you believe this practice is? (on a scale from 1-10)	6.8 (n=150)	4.8 (n=131)	1.7 (n=122)
Knows of sanctions from land owner	14.0 % (n=121)	39.2 % (n=102)	3.8 % (n=76)

See tables V8.61-69, pages 119-121, in Haugset and Berge (2013a)

From side comments to the questionnaire, we understand that many resent questions about acts that clearly are illegal. This may be so both because they have a high regard for the legal system and do not want to know of people whom wantonly break the law. It may also be a factor that they do not want to tell on friends that they know have done illegal acts. The large non-response taken together with the fact that many people may know of the same one or two cases clearly makes it impossible assess how frequently these poaching activities occur. But we can confirm that they do occur.

In 2012, 30 years after the rights of common to hunt small game without dog in Follafoss commons were formally abolished by the Norwegian parliament, and 30 years after the land again was sold out of public ownership (which again made fishing a private landowner right), there is still a strong perception among the users of the area that the landowner is *not* the sole holder of hunting and fishing rights in the area. This perception is at its strongest in respondents living in the local community nearby (Malm and Follafoss) who hold strong interests in fishing and or hunting, and who are highly educated. Some voice their opposition by acting as if there still is free fishing and local open access to hunting of small game without dog.

A large fraction of the people most concerned with the Follafoss area feel wronged. Their rights have been taken from them without just compensation. The history we have surveyed shows a continuous practice of the rights by local residents. At periods of transition of land ownership in 1982-83 and in the 1990s the public debate flared up and revealed a considerable uncertainty about the legal realities. Part of the blame for this must be put on the lawmaker. Both in 1964 for the right to fish and in 1981 for the right to hunt, the old private commons were left out of the lawmaker's consideration without serious debate.

The final blow to the rights of the local hunters of Follafoss was the legal prohibition of severing hunting rights from a holding for more than 10 years. This can be described as an interaction effect from the legislation concerned with protecting family farms and the integrity of the resource diversity that traditionally were needed to provide agricultural families with a decent livelihood. Selling off bits and pieces of either ground or rights of exploitation will in the long run hamstring a farm as an economic enterprise.

One may say that the lawmaker had intended that the private commons should have been dismantled already by 1883. But at that time it was timber rights that were foremost in their minds. The timber rights in Follafoss were gone before 1937, partly due to administrative malpractice. In 1883, the act on hunting was still 16 years away. The 1899 act on hunting did preserve the rights of common to hunting in private commons. Fishing rights in commons had been protected by legislation from 1687. They were finally privatized in 1964.

Today the loss of these rights by the people of Verran is not critical to their livelihood. They can live without them. On the other hand: for the lawmaker it would have cost nothing to maintain their old rights. This would have been consistent with the prevailing policy of making hunting and fishing as accessible as possible to the public. For people living in Malm and Follafoss it would have improved on the standard of living and quality of life. What today remains of the original commons are the rights to summer farm and pasture. To exploit these you need to have a farm with livestock. These are disappearing. There are fewer and fewer farmers with livestock⁵⁰. The economy of livestock farming and the threat from predators are forcing more and more farmers to quit the livestock business. And if the right of pasture is not exercised for a sufficient time also this right will disappear. From another approach to the use of commons it has been seen that as farms grow bigger and farmers fewer the utilization of the commons decline (Baur, Liechti, and Binder 2014).

⁵⁰ In Verran the number of farmers with cattle declined from 47 to 27 from 1989 to 2010, for sheep it declined from 41 to 27. In North Trøndelag the number of cattle farms declined 45% from 2000 to 2010, and the number of sheep farms declined 35% (SSB 2013)

Conclusion:

This investigation started out with an observation of a local uproar against a large private forest owner wanting to sell licenses to local hunters. The local uproar came some 15 years after the Norwegian parliament removed the section in the act on hunting protecting the rights of the local public in private commons and after the county failed in creating a real servitude giving the local public the hunting rights they had enjoyed from old. Our study of the withering away of the rights of common in Follafoss did not provide a conclusive answer. However, the sequence of facts found does fit a hypothesis of the importance of institutions in structuring the memory of people, including those sitting in the parliament making law.

Table 6 List of factors affecting the 1964 and 1981 loss of rights of common to fish and to hunt small game without dog in Follafoss private commons

<p><i>Beliefs:</i> Since before 1850: *Forests are in need of protection Ca 1890: *No private commons exist Ca 1890: *Game animals are in need of protection Ca 1920: *Family farms are the goal and needs support and protection against selling bits and pieces</p>
<p><i>Legislation:</i> 1863: Legislation to dissolve private commons 1899: Legislation to protect game animals gives hunting rights to ground owners except in commons of all kinds. The legislation includes a prohibition of severance of the hunting rights from a holding. This rule applies also to public bodies and large forest owning companies.</p>
<p>Government decision 1964: no need for rules about fishing in private commons Government decision 1981: no need for rules about hunting in private commons</p>
<p>Interaction effect 1982: Public right to hunt and fish in areas that are private commons cannot be transformed into servitude, contributing to the disappearance of private commons</p>

Taking note of the decision of the parliament is sufficient in a court of law (Høyesterett 2000). We want to understand why the parliament decided as it did and why the county was unable to recreate the hunting rights by means of servitudes. Creating servitudes like the one the county wanted was prohibited due to legislation enacted to protect the diversity of resources on the traditional Norwegian family farm. The option of asking for an exception to the rule was never explored. The question of why the parliament decided as it did is harder. We have found no obvious contemporary political explanations for what occurred in 1981. The whitepaper proposing new legislation on hunting and trapping contained a paragraph on hunting in private commons similar to the one from 1951. The government removed it without saying anything about it in the bill sent to the parliament and in parliament it was not mentioned in the debate. The minutes from the governments deliberations have not been inspected. The most likely content might be: 1) Hunting in private commons is not mentioned;

2) Providing hunting rights for an almost extinct entity (community members of private commons) could be argued as unnecessary complications; 3) Providing hunting rights for a small group of people like this would be inequitable and contrary to the general policy of providing hunting rights for the general public. Any statements stronger than these would suggest that the interests of the big landowners or urban hunting interests had undue influence. This is of course possible but it is unlikely that if it were the case it would appear like that in the minutes of the government. And the long duration of the processes makes it even more unlikely.

It is our suggestion the institutionally structured ways of thinking about commons in general, and private commons in particular, may provide better understanding. Legislation in 1857 and 1863 introduced a new way of thinking about commons. Private commons were defined and a way of making them extinct was enacted. The realities on the ground made it difficult to achieve. But a belief in the impending demise of private commons was created. And beliefs have consequences. If people believe something to be real and act on the belief it will have real consequences. Thus the belief that the private commons were at least insignificant *may* be an explanation for the government decision in 1981 to remove from the legislation on hunting the paragraph protecting the hunting rights of the local public in private commons.

Even so, the decision appears both mysterious and inconsistent. It appears as inconsistent since the same act charges the municipalities to work for extending the public's access to hunting. It appears as mysterious since the decision occurred at the level of political decisions in the government and it never was commented on in parliament. But then again, the bill introduced many new topics of wildlife management to fill the debate and few parliamentarians would know anything about private commons. A common belief in their insignificance might explain also the lack of attention in the debate.

The long duration of this process (1857-1982) excludes a lot of explanations based on political struggles. One may suppose that the interests of forest owners have been fairly constant for example compared to political ideologies. But for private commons the number of owners have, since the 1880ies, been too few. We have to look at institutions defining more long-lasting social structures to provide an explanation.

We believe that a theory of the slow withering away of private commons can be understood by considering:

- On top of the ancient view of commons there was enacted a new layer of rules from 1857 differentiating between 3 types of commons based on ownership of the ground, and further detailing of rights of common in the 1863 act which also contained rules for dismantling the private commons.
- The differences between the new rules on rights of common and the ancient view of rights of common may be one explanation for the introduction of a rule protecting the rights of the commoners of private commons in the 1899 act on hunting.
- The long period of forgetting about private commons, ca 1883-1963, saw the rights of common as defined in the 1857-1863 legislation becoming less and less valuable as agricultural activity modernized, contributing to the invisibility of the commons in general and the private commons in particular.
- The consequences of the invisibility materializes in the period 1964-2000 with removals of sections on private commons from the acts, first fishing in 1964 and then hunting in 1981. The legal consequences were confirmed in the judgment of the Supreme Court in 2000. This period also sees the rise of a leisure society where access

to the outfields and mountains become an urban interest. The rights given to all citizens resemble a lot the most ancient rights of common, but for fishing and hunting they are confined to land in public ownership (including state commons) and with appropriate controls on hunting and fishing technology.

The key theoretical element here is the way the new layer of commons institutions structure interests and makes forgetting easy. They contribute to structural amnesia. The withering away becomes a high probability outcome. The withering away of commons institutions may be “Enclosure Norwegian Style”. However, the consequences of institutional structuring of memory may have explanatory utility also in other arenas.

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