

## Forest tenure in Sweden – a historical perspective

Jan-Erik Nylund & Fredrik Ingemarson

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## **Abstract**

Land tenure regimes are intimately coupled to land use forms, and tenure reforms accompany the ongoing re-evaluation of forest management around the globe. This report summarises forest tenure development in Sweden during the last 500 years. The driving forces of privatisation in Swedish forestry are seen in relation to the modernisation of society. The current forest ownership structure reflects the objectives of privatisation of forestland two hundred years ago. The Crown wished to provide every homestead with enough forest to cover its subsistence needs for major and minor forest products. The privatisation process gained momentum around 1800, well before the industrial revolution gave forestry commercial value. As there was little use for the vast timber resource, other than for household purposes, the Crown initially did not bother to define exact user rights. The transition in the North of Sweden is one example where the state did not foresee any conflict, as forestry, farming and reindeer herding were considered to co-exist. The first period of the privatisation process was turbulent when the full consequences of the transition from forest commons for subsistence to an exploit-table natural resource became obvious. Corporate law infringements, dubious affairs, fraud, and exploitation of peasant land-owners occurred, and much of the accessible forestland was temporarily ruined. Once secure in their tenure, the peasants started exploiting the now valuable timber resource, then, more reluctantly, began to employ modern management methods in spite of the extremely long investment horizon in northern silviculture. Today, Sweden appears to have reached an “age of maturity” regarding forest ownership, with a modern tenure system that requires an open dialogue between forest owners and stakeholders and considering multiple user rights. Private ownership of forest is a contributing factor to the success of the “Nordic Forestry Model”, and experiences from the tenure development in the Nordic countries have a broader application for global forest policy.

**Keywords:** forest certification, forest ownership structure, forest policy, forestry legislation, partitioning, property rights, Sami land use, tenure

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## **A NOTE ON SOURCES**

For the general narrative, some standard Swedish works have been consulted, listed below. As they largely overlap, reference is only made here. Other references are shown as normal in the text.

Stridsberg E and Mattsson L, 1980: *Skogen genom tiderna. Dess roll för lantbruket från forntid till nutid* [The forest through the ages. Its importance to farming from ancient to present time]

Eliasson P and Hamilton G, 1999: "*Blifver ondt att förena sig*" – några linjer i den svenska skogslagstiftningen om utmark och skog [Hard to reconcile – some developments in the Swedish forest legislation concerned unfenced grazing land and forest]

Eliasson P, 2002: *Skog, makt och människor. En miljöhistoria om svensk skog 1800-1875* [Forest, Power and People. An Environmental History of Swedish Forest 1800-1875]

Kardell L, 2003-2004: *Svenskarna och skogen* ([The Swedes and the Forest] 2 volumes

English-language accounts of Swedish forest politics from 1905 to 1890 are provided by Stjernquist P, 1973: *Laws in the Forests. A study of public direction of Swedish private forestry* and by the same author, 1991-92: *Forest treatment Relations to nature of Swedish private forestry.*

# 1. Introduction

Land tenure regimes are intimately coupled to land use forms, and tenure reforms accompany the ongoing re-evaluation of forest management around the globe (Garforth and Mayers 2005). In public debate, the Nordic countries, particularly Sweden and Finland, appear to have reached an “age of maturity” regarding forest ownership (Palo 2006). However, a closer look reveals a partly dramatic transition from the tenure forms of traditional society into present-day forms, and today’s ownership model is again contested. The present report aims at describing these processes in Sweden, using mainly Swedish-language material previously unavailable to an international readership.

Forest tenure concepts in a European context are analysed by von Below and Breit (1998), whose views are a starting point for the account below. Bekele (2003) summarises the classical contributions to the subject by Locke, Marx, and Mill, and the modern theorist, Bromley, with particular reference to a traditional society, Ethiopia, meeting modern perceptions and political change. A recent study by Fritzbøger (2004) discusses a similar transition in Denmark over a much longer period, from 1150 to 1830. The present study is mainly narrative, and the interested reader is referred to the cited works for a theoretical framework. However, the distinction between formal and exclusive possession rights and various, non-exclusive user rights, as discussed by von Below and Breit (1998, pp. 4 ff.) is also a key concept for interpreting the historical development of tenure rights in Sweden.

## 1.1. TRADITIONAL LAND TENURE IN EUROPE AND THE PROCESS OF MODERNISATION

In pre-modern Europe, the land itself was understood as a “gift of God”, as nobody can create more or less of it, and hence it could not be owned like man-made artefacts, only used. However, cultivated land was a result of hard labour, and man has right to the fruit of

his labour. This view was a starting point for both Locke and Mill (cf. Bekele 2003), but has far older roots (cf. von Below and Breit 1998). Hence, cultivated land could be held with strong tenure rights, and transferred through inheritance or commercial transactions. Conversely, extensively used land had no distinct owners and was kept as commons by villages or larger local communities. Little time was invested in maintenance of land outside the fences; and only commodities produced by Nature's bounty were harvested, in the form of grazing, tree felling or collection of "minor forest products".

Eliasson (2002) adds to the view of traditional land tenure being based on the concept of a "moral economy". According to this, everybody has a fundamental right to satisfy basic needs, and consequently have an equitable share of common resources in the rural society. Accordingly, parts of the land resource were to be managed as common property, open to all in the local community, whether landed or not. This age-old view was considered to be supported by the Bible.

Against the peasant perspective is the ruling view that all land is the property of the sovereign or the ruling classes, a view most clearly expressed in the classic feudal system, in its strict meaning (cf. Cornell 2005). The Roman Empire with its highly developed civil law never made claims of general state ownership of conquered land (although parts could be confiscated for settlements), but instead focussed on the right to tax collection. Cornell (2005) deduces the origin of the feudal social order from the collapse of Empire in the 5<sup>th</sup> century and onwards, when new, mostly Germanic, conquerors established their dominion over already settled land. The new rulers considered themselves the ultimate "owners" of all the new territories, and the peasants, etymologically meaning 'people already living in the country', and were according to the conquerors' opinion, using the land only by

permission. Later takeovers, such as the state-building by Charlemagne around 800, or the Norman conquest of Britain in 1066, entrenched this view: all land belonged to the King, who delegated control to his magnates, who in turn delegated it to their vassals. Ultimately, where feudal control was strong, the rural population was reduced to serfdom with few formal rights. In other parts of Europe, a class of free peasants survived, subject only to the ruler. Thinly populated forest and rangelands rarely passed under such strict feudal control.

Legal specialists at the emerging European universities in the 13<sup>th</sup> century tried to solve the conflicting views by seeing land tenure under two complementary rather than opposing perspectives (von Below and Breit 1998, Fritzboeger 2004). The political power had *dominium directum*, a formal ownership right, including rights to sell and bequeath the lands. However, to this came a *dominium utile*, a user right, or rather many non-exclusive user rights, which could be customary or well defined by written agreements and upheld in court. In the less usual case, where the two *dominia* were united and a single person had exclusive ownership and user rights, the term *dominium plenum* was applied (cf. Fritzboeger 2004). The holder of a *dominium directum* could not legally nullify a *dominium utile*, although numerous conflicts arose when powerful landlords wished to evict rural residents whose livelihoods depended on the user rights. During the 15<sup>th</sup> century, such conflicts arose in England with devastating social consequences; these were exposed by Thomas More in his famous work *Utopia* (1516). The English Forest Laws (eg. "The Black Act" of 1723) became notorious for their extreme harshness even in case of minor infringements, while, the peasant population still harboured notions that they had been deprived of ancient rights to woods and rangeland.

Privatisation of forest started later than privatisation of agricultural land and improved pastures. Large-scale reforms were initiated in

France and the German lands in the wake of turbulence created by the French revolution and Napoleonic wars. Von Below and Breit (1998) dedicate their study to the conflicts ensuing the transition from common to private ownership. That is also the background to Bekele's (2003) study of the transitions between tenure regimes in Ethiopia during the 20<sup>th</sup> century.

Writing about the Swedish reforms of forest legislation after 1970, Professor of Law, Per Stjernquist (1993) refers to Renner's (1949) views that property rights have different significance to different categories of owners. To a present-day investor, land ownership may have no importance beyond its direct and indirect economic benefits. To the partners in a housing coop, it is access to a suitable dwelling which is central, while any possible gain when selling the flat is secondary. To peasants all over the world, farming is a deep-rooted personal and social identity, land tenure being an indispensable part of it. Furthermore, in traditional society, the fruits of labour were accumulated over generations in the cultivated land, and holdings were frequently conserved within a family, a clan or a similar social group. Alienation of peasant land, regardless of whether it occurs through economic change or after expropriation for public use, tends to be socially disruptive. The lifestyle connection explains why real or perceived infringements of individual or collective tenure rights are such a sensitive issue. Stjernquist (1993) remarks that these observations are in no way novel to rural development sociologists, but they tend to remain neglected in legislation, where equal application of the law is essential. A court cannot judge differently with respect to the social profile of the litigant, lifestyle peasant or commercial forest farmer.

The late 20<sup>th</sup> century implied a successive rationalization in agriculture towards economically sound units in many countries, making land ownership less of a lifestyle in some units and more of an economic business. Conversely, exclusive private ownership of

forest, contested in the first half of the 19<sup>th</sup> century, again became an issue in the wake of conservation and other public interests after 1970: it is currently a matter of growing controversy, not at least in the United States of America (Olivetti and Worsham 2003).

## **1.2. TRADITIONAL LAND TENURE IN SWEDEN**

In Scandinavia, the feudal system gradually took root in the south and greatly influenced forest tenure conditions (Fritzboeger 2004). The Jutland Law codified in 1241, stated (in section I:53), that of the commons, the King owned the land but the peasants the trees, whereas, the Swedish Ostrogothia Law (1350: section JB1) stated that the King could sell a commons to the peasants, implying a *dominium directum* over the land (Hoff 1997, p. 255 ff.). Such royal claims were obviously contested, Hoff comments, as the Scania Law stated, that a council of local stake holders could authorise the establishment of new settlements on previously uncultivated commons: no royal rights were mentioned. Similarly, Eliasson and Hamilton (1999) examine the situation in the Swedish lands, and the remainder of this section is based on their narrative. The Swedish central government was weak until the ascendancy of the Wasa dynasty in 1523, and the nobility consisted of great land-owning families rather than the feudal nobility of continental model. This meant that, in the beginning of the early modern era (around 1550), land tenure was primarily regulated under the “peasant perspective”. Tilled land users fell into three categories: freehold farmers paying tax to the Crown<sup>1</sup>; crown tenants paying fees not vastly different from the taxes; or noble families holding tax-empted land (and frequently taxed land as well) tilled by peasant tenants paying dues (the estates were rarely managed directly by the owner with hired labour). Tax land and tax-exempted land could be sold, mortgaged, bequeathed and divided, whereas crown tenancy

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<sup>1</sup> In line with established Swedish terminology, the word “Crown” is used for the state in its capacity as property owner and fiscal agent: “Government” is used for the state as the Executive and policy maker.

contracts were normally passed on to the next generation. Many tenants on the nobility's tax-exempted estates were, in theory, crown tenants paying dues to the nobleman instead of to the Crown; however, the noble owners tended with time to consider themselves as true owners of the land. Perhaps more than a quarter of all homesteads had previously been held by the church, but most of these holdings were taken over by the Crown as a result of religious reform during the 16<sup>th</sup> century.

Rural settlements were organised into villages, where the agricultural land was split up in numerous plots, the demarcation of which was recognised by the community. The surrounding forestland was held in common, with right of access to household timber and firewood, grazing etc., for both landed and landless local people. The commons were recognized as belonging to villages, parishes, legal districts (*härad*) or even provinces (Eliasson and Hamilton 1999). In less densely settled areas, they were not demarcated.

In the far North, the Sami population had distinct tenure rights to most of the highland areas. In the inland and mountains, Sami people hunted and herded their reindeer under customary regulation of their land use, paying tax to the Crown, a matter discussed later in a separate section. Much of the North, as well as forest areas in the southern and central parts, were sparsely settled, and the Crown from time to time invited colonists familiar with shifting cultivation methods from the Finnish parts of the realm, to settle in sparsely populated forest areas. The Helsingland Law (codified in the early 1300s), valid in the sparsely populated northern two-thirds of present-day Sweden, specifically stated that anyone had the right to settle and open new farmland in no-man's land.

Practically all forest land in the southern provinces up to river Dal was claimed by a community as commons, but sparsely settled regions still existed where demarcations were missing, and shifting cultivation was practised. Further to the north, commons of various types existed, mainly near settled areas on the coast and along major rivers. Due to intensive settlement, and the addition of former Danish provinces in the South, the number of rural households tripled over two centuries. Table 1 provides data on land owning households in Sweden about the year 1500 (estimates) and 1700 (census data), and illustrates the rapid expansion of agriculture.

Table 1. Estimated number of rural households in Sweden

	Year	
	1500	1700
Land-owning peasant households "tax farmers"	35 000	60 000
Crown tenant households "Crown farmers"	20 000	67 000
Tenant households on tax-exempted nobility estates	12 000	60 000
Total landed households	67 000	187 000
Landless rural households	n.a.	48 000
Total population (persons)	n.a.	1 780 000

\* By 1500, 16,000 of these tenants were cultivating Church land, to be secularised a few decades later. Sources: For 1500: Heckscher, 1935. For 1700: population statistics from all parishes, compiled in several issues of *Statistisk Tidskrift* around 1900. Fiscal statistics are available from 1870, whereas reliable area statistics on landholding were only obtained during the first property inventory in 1927-28, at about the same time as a first national forest inventory was compiled.

### 1.3. CROWN, PEASANTS AND COMPANIES: LEADING ACTORS IN SWEDISH FOREST TENURE POLICY

The factual material in this section is derived from Eliasson & Hamilton (1999) and Kardell (2003); however, the political interpretation is that of the authors, and no further references are provided. - In contrast to general European developments, the Peasants as a social group retained their political freedom and a strong influence on politics. Of the four Houses of Parliament, Nobility, Clergy, Burghers and Peasants, the King frequently

favoured the Peasants to counter the ambitions of the Nobility. During the majority of the 17<sup>th</sup> century, the Nobility struggled to control the Government and feudalise the land holding, but were thwarted in the 1680s and consequently played little role concerning forest tenure. All holders of tax land and crown tenants, who in this regard were just as enfranchised as the landowners, were entitled to elect their representatives to Parliament. Once the Estates were disestablished in favour of a two-chamber parliament in 1866, the Estate of Peasants was transformed into a political grouping, later to become a regular political party, which only lost its character in the late 20<sup>th</sup> century as a main vehicle for the political interest of landowning farmers. This politically important group will henceforth be referred to as Peasants, not to be taken as connoting a rural proletariat.

Two themes are evident in the development of forest tenure. The first one concerns the substitution of the older views on tenure for modern ownership concepts. Up till the end of the 19<sup>th</sup> century, the Crown was exercising some kind of *dominium directum* over all forestland, evident both through the oak regale and its claim to one-third of the commons. Noblemen, companies and tax farmers held *dominium utile*-style user rights. After a century-long transition period, around 1900, the idea of “inviolable private ownership” or *dominium plenum* (cf. Fritzboeger 2002) had gained general acceptance (except by the far left), whereas the late 20<sup>th</sup> century saw a re-emergence of *dominium utile*-style claims by external stakeholders, albeit that term is no longer used: various ‘public interests’ are recognised as intruding on exclusive property rights while formal ownership rights are maintained.

Starting in the late 17<sup>th</sup> century, another theme was successively growing stronger: the interplay between Peasant, Crown and Company interests. Until recent times, Peasants represented a social group with distinct lifestyle values, and the Companies stood for

organised commercial groups representing a modern, monetary economy. In this perspective, the Crown acts in its own interest, striving to strengthen revenue and maintain political control of the country. While the socio-political development in Britain, France and Germany is seen as a struggle by the Burghers to gain dominance over the Nobility, a strong theme in Sweden is the struggle of the Peasants to control the ambitions of the Crown. With the advent of the 20<sup>th</sup> century, a new group, the Workers, gained ascendance on the political arena, and were replaced at the end of the century by a much less organised and nebulous urban middle class.

The principal ambitions of the Crown have mostly been political stability and maximal revenue. Control of land has not been a goal in itself; rather, the governments, regardless of whether royal authoritarian or democratic parliamentarian, have striven to increase tax income. This could be derived from mining or farming, and later from saw milling and pulping industries. In earlier times, timber resources could be allocated to mining and metalworking, as Sweden was Europe's only supplier of copper and a major supplier of iron. Forestland could be used for new settlements that would pay taxes or tenants' dues later. However, the Crown had a direct interest in the forest as a source of oak and mast wood for shipbuilding, and heavy beams for construction. To obtain this, it maintained *regale* rights to such timber wherever it was found, except from the Nobility's tax exempted land. During the 20<sup>th</sup> century, the government's strove to protect and increase forest resources and even tried to force forest owners to fell in order to supply the important forest industry with feedstock, such as in the 1970s.

The Peasants' primary long-term goal was to free their land use from governmental control. Up to the 19<sup>th</sup> century, the peasantry showed no interest in changing the form of tenure, as forest

products were mainly used for subsistence purposes. However, a few decades before the forest attained commercial value, growing individualism prompted land-owning peasants to want to privatise forest commons along with refiguring their agricultural land. Once secure in their tenure, the peasants first started exploiting the now valuable timber resource, then, more reluctantly, to employ modern management methods in spite of the extremely long investment horizon in northern silviculture.

The Companies' interest in the forests was for a long time indirect, as they wished only to procure sufficient pit props, fuel wood and charcoal for mining and smelting. The technology was extremely wasteful, and smelting works had to be located where timber, not ore was available. From the second half of the 17<sup>th</sup> century, the Crown "reserved" forest areas to support smelting works, transferring forest commons and adjacent tax and tenant farms to support this: taxes and fees were payable in the form of wood and charcoal deliveries to the Companies as a form of state subsidy. With the introduction of industrial forestry, the new Companies, now having wood as a principal feedstock rather than as an accessory, had better motive to control their feedstock resources in the form of full ownership of forestland. For the entire 20<sup>th</sup> century, Company forests had a predominant role in forest economy, but land ownership appears less of a key asset at the end of the century.

## 2. From common to private ownership (1683-1950)

### 2.1. FOREST USE UNDER CUSTOMARY TENURE ARRANGEMENTS

As discussed above (section 1.3), tenure arrangements up till the reforms after 1800 can best be understood through the 'two dominions' philosophy. The Crown made its influence over the forest felt in several ways, best interpreted as a tacit *dominium directum* over all forestland. Corresponding claims were never made on tilled land, where ownership rights of peasant and noble freeholds were unquestioned.

Most notable in its consequences was the *regale*, or royal claim to ownership of all oak trees (and other trees), as well as to large size coniferous stems suitable for masts and major public works, on all land except for the Nobility's holdings. Freeholders as well as crown tenants could be compelled to take part in extraction and transport of this timber. This regulation, valid just into the 1800s, caused opposition from rural people and continuous conflicts with the Crown's forest guards, and resulted in widespread destruction of oak saplings. Even if the saplings grew on the tilled land, they could not be removed according to the *regale*. The oak issue is discussed in detail by Eliasson (2002).

The Crown felt entitled to allocate forestland for use by mining companies that were in need of wood and charcoal for their operations. Although taking place before 1683 the allocations were regulated by an ordinance of that year, (also allowing regular partitioning of Crown land for settlement). This implied that companies obtained a non-exclusive *dominium utile* within portions of forest commons, as existing user rights of the population were not restricted. Furthermore, with the allocations, freeholders and crown tenants were directed to pay dues to the company, which regularly requested payment in kind, as deliveries of wood and charcoal, rather than cash.

With increasing population and intensified timber use, fears grew throughout the 18<sup>th</sup> century that forest products would not suffice all uses, and various restrictions aimed at timber conservation were introduced and enforced by the forest guards. In effect, these restrictions clearly infringed on traditional user rights, as did the ever-growing use of wood by the mining industry. However, later evaluations (Kardell 2003) indicate that timber scarcity was mainly a local phenomenon, albeit much used as a political argument. This concern was general all over Europe, and exploited for political purposes by various actors wanting to bring the forestlands under stricter control (Von Below and Breit 1998).

With the ordinances of the late 17<sup>th</sup> century, the Crown initiated a process of partition and settlement that continued until 1926. Kvist (1988) comments that the ordinance of 1542, stating Crown ownership of all unsettled land, aimed to open up the vast inland forest in the northern part of the country for settlement, despite being claimed as commons by coastal communities. The partitioning created a need for demarcation, which in turn designated land as exclusively owned by the Crown. However, subsistence use of forest products was permitted on most lands, the rules varying locally and with time as to the extent of marking required by forest guards before felling.

## **2.2. INTRODUCTION OF PRIVATE OWNERSHIP OF FOREST LAND**

The privatisation of forest preceded the profound change in mode of production, which took place with the introduction of steam-power saw milling from 1850, and gave the forest commercial value. As the history of silvicultural legislation highlights (Nylund and Ingemarson, unpublished data), institutional change followed societal and economic changes. The driving forces of privatisation in forestry can thus be seen in relation to the general modernisation of Swedish society.

The privatisation started with the unsuccessful settlement program provided by the 1683 forest ordinance and progressed slowly during the 18<sup>th</sup> century. New holdings were established on forestland in the interior and the north. Large areas, many hundreds of hectares, were demarcated, as the new farms were to have animal husbandry as their main income, and patches of grazing land was widely distributed in the forest. Early instructions mention 150 to 400 ha, and 350 to 700 ha on weaker lands. Actual property sizes ranged up to several thousand hectares. As there was little use for the vast timber resource, other than for household purposes, the Crown initially did not bother to define the exact user rights that the settlers could exercise.

Seeing to the number of stakeholders, the most important privatisation process concerned the partitioning of the commons. The early phases of this process are obscure, due to the lack of sources (Eliasson and Hamilton 1999). The Forest Ordinances<sup>2</sup> of 1647/1664 order intensified demarcation of Crown land from commons. The ordinance of 1734 § 19 discusses the use of “not partitioned” common land in terms assuming that individually held forest also did occur, but, to our knowledge, there is no positive written evidence of such land other than that of the new settlements. However, Eliasson and Hamilton (1999) report, that the members of the Estate of Peasants had requested that partitioning of village commons should be authorised in the 1734 ordinance, but did not gain enough support. And reading §11 of the 1647 “Ordinance on the Forests of the Realm” closely, the legislator

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<sup>2</sup> The legal terminology in older forest legislation is not consequent. The two Forest Ordinances of 1647, republished in 1664 were acts of the Parliament, and addressed only specific issues such as demarcation, shifting cultivation, mining companies, and “carrying trees”. The 1683 legislation was issued by the Sovereign only. The ordinance of 1734 was a parliamentary act, and aimed at addressing a wide range of issues. The Forest Ordinance of 1793 and 1805 were also wide in scope, but issued by the Sovereign without assistance of the Parliament. The very decisive legal text of 1789 (see below) was technically only a royal instruction regulating the conversion of Crown tenancies into tax land.

actually deals with the establishment of crofts on individually held land – land where no rights of other shareholders could be infringed upon. Private forest tax land must have existed in some form even then, as it is mentioned in the legislation, but there does not appear to be any empirical evidence of private forest tax land.

Starting around 1750, a major process of reallocating farmland (*Storskiftet*) had been initiated (first royal directive 1757), mainly on landowner initiative, and following similar processes in other Europe countries. The traditional settlement pattern meant core villages surrounded by fields, where each household had its parcel of land, implied serious fragmentation. The reform initially aimed at creating larger cultivation units, but in 1773, records from Karvia in the province of Ostrobothnia tell us, that timber forest was included in one partitioning process (Palo, pers.comm). Partitioning maps from the province of Nyland show parcels of forest distributed with the farmland between 1781 and 1802 (Tasanen 2006). Systematic research into the archives would probably reveal many more cases. - In 1800, the land reform went into a second phase (*Enskiftet*) with the explicit goal of uniting all land of one farmstead into one continuous unit. From then on, land from the forest commons was included in the demarcation, and hence privatised. Nonetheless, parts of the commons continued to exist, for which detailed procedures and regulations were stipulated in 1805, for more information about the present-day commons, see below chapter 3.4.

As this partitioning process went on and private ownership in the modern sense de facto to form, the law lagged behind. Yet, in 1789 a royal directive allowed Crown tenants to gain freehold or strictly speaking tax land status by paying a fee. In this connection, it was essential to specify which rights the freehold status implied. §2 states that forestland should be included in the property demarcation, and that the forest could be freely used by the owner,

§3 that it could also be sold. These rights were immediately understood to apply to all other tax land as well. The 1793 Forest Ordinance confirmed the new policy, which was again confirmed *in clara verba* in the ordinance of 1805: "...§18. *So may a tax farmer use his individual, legally demarcated or partitioned forest and land [sic] with the full right of ownership and disposal...*"(our translation).

In Europe in the period after the Napoleonic wars, there was a fundamental move towards a new economic liberalism, long advocated by the ascending power of Britain, and away from government-directed economic policies. For about a century, this view dominated the Swedish political landscape, regardless of other political preferences. According to the liberalist view, private initiatives – individual or corporate –were seen as more efficient than state management of the national forests. While previous reforms aimed at transferring common forest to private ownership, a second stage aimed at liquidating the Crown land ownership (except for military and residential purposes) as a matter of principle.

At this time, novel ideas of active and sustainable forest management were spreading from Germany. A first Forestry Institute was established in 1828 by I.A. af Ström, an enthusiastic advocate of the new thinking. However, the long political struggle aimed at reducing state regulation of private land use, and rendered any kind of forestry legislation unthinkable. Instead, the small but growing corps of professional foresters provided the Crown with forest management plans according to the novel thinking.

Forest tenure and forestry regulation were regularly voiced during the sessions in Parliament. In 1823, the discussions culminated in a series of decisions. The reform was enthusiastically supported by the parliamentary estate of Peasants; the Burghers were moderately positive; and the Nobility and Clergy were negative (Arpi 1959).

Privatisation of non-partitioned forest accelerated with the advent of new legislation (*Laga skifte*, 1827) and 65 000 ha out of 160 000 ha registered forest commons were distributed to peasant owners.

All claims to the Crown's partnership in the commons were withdrawn. The Crown's exclusive rights to oaks and other strategic timber had already been gradually relaxed, with the last regulations being removed in 1830 (Eliasson 2002, p 181). Out of 70 700 ha actively managed Crown forest in 1824, 45 400 ha were partitioned up to 1850 (Kardell 2003, p 117<sup>3</sup>). The "redemption" of the Companies' forest allocations should be seen in the light of this policy change. From 1811, it became possible for Companies to "redeem" their forest allocations into tax land with normal property rights. Under these legal provisions and until the law was abolished in 1898, 330 000 ha were transferred into corporate ownership<sup>4</sup>.

As the documentation from this process was spread over numerous local archives, no comprehensive statistics on the total extent of forest privatisation are available. A general property inventory was not conducted until 1928. After simplification, it is estimated that 8 million hectares of productive forest were partitioned and distributed, mostly to peasant households, in only Norrland, the northern part of the country, leaving the Crown the remaining 3.5 million hectares. These figures are approximate, as there are no demarcations, between the forest commons of the communities, existing for centuries, and the "ownerless" lands claimed by the Crown.

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<sup>3</sup> Eliasson (pers.comm) suggests that Kardell's sources may be uncertain in the claim that the land was sold, and the dissolution of the former Crown parks was a part of the general partitioning of Crown and unclaimed land.

<sup>4</sup> This and following statistical information comes from the compilations in Gadd (2000).

Whether privatisation would have proceeded as it did is open to speculation, especially if anybody had been able to foresee the developments after 1850, as illustrated by an anecdotal example (reported around the year 1900 by the politician, C Lindhagen; quoted by Morell 2001, p 124). The peasant Olof Jonsson in Härjedalen (southern Norrland) sold his homestead in 1781 to his son Jon for 67 Swedish dollars (*riksdaler*). In 1811, Jon sold the property to his son Per for 267 dollar, who in 1840 sold it to his son Jon for 1100 dollars. After that, Jon received title to 2250 ha forest through the privatisation of previously non-partitioned land; in these areas, there had not been any demarcations of forest before. In 1864, Jon sold the forest property for 40 000 dollars. Subsequently, the property passed through several owners in a short time, and was acquired by the Voxne-Ljusne Company for 300 000 dollars in 1872. Even at this price, it was a windfall, as the estimated standing value of high-class timber on the land was 2.5 million at the time of the acquisition.

### **2.3. CONFLICTS CAUSED BY THE PRIVATISATION OF FOREST**

The short-term beneficiaries of privatisation were the growing numbers of freehold owners, some of which had owned their farmland for generations; others were Crown tenants redeeming their farms or settlers in the interior and the north. The reform implied increased limitations of customary use of forest resources by the landless. In 1750, the number of landless households was 25% of that of landed households (including tenant farmers). While the number of landed households did not increase substantially up to 1850, the landless households (including crofters) increased four-fold, mainly because of population growth (discussed by Gadd, 2000). The demographic development accentuated the conflict between time-old perceptions of everybody's right to products and benefits from the forest and new ideas of exclusive usufruct by a legally registered owner.

A number of European historians have searched for hard evidence of social conflict. Von Below and Breit (1998) quote EP Thompson in Britain describing the struggle against the fencing, i.e. privatisation, of the commons in Hampshire in the 18<sup>th</sup> century, and the harsh “Black Act” of 1723, which stated the death penalty for some 50 different property related offences and infringements. Britain was early with rural privatisations, starting with the conversion of commons into sheep grazing land in the 16<sup>th</sup> century that caused severe rural proletarianisation (cf. More 1516), unrest and violence. Sahlins (1994) described social unrest in the French Pyrenees following privatisation of nominally royal domains in 1827. In Germany, several researchers (von Below & Breit (1998), Blasius (1978), Radkau (1983 and other works) and Mooser (1984) have studied various aspects of the same process. Blasius (1978) worked with statistical evidence on convictions from tried cases of “forest crime”. Eliasson dedicates a full chapter in his book *Skog, makt och människor [Forest, power and people]* (2002) to the discussions on “forest crime”. In Sweden, the “illicit” use of forest was an issue in every Parliament session between 1809 and into the 1870s, when company driven exploitative logging and take-over of peasant land became the issue of the day.

In Prussia (Northern Germany), privatisation and new silvicultural ideas led to a rapid exclusion of large numbers of people from the forestland. As rural people were still dependent on the resource, regardless of tenure reform, the number of “forest crimes” escalated. Court statistics give evidence of 1000 convictions per 100 000 inhabitants in 1836, and nearly 2500 at the peak in 1860 (Blasius (1978)). This high figure reflects a violent social conflict when the feudal-style land-use patterns were replaced with strict private ownership.

The corresponding figures on court convictions in Sweden were much lower. A cross-county analysis shows median values of 38

convictions per 100 000 inhabitants in 1830-34, 19.5 in 1850-54, and 9 in 1870-74. Eliasson (2002) reviews the public debate, and notes that tolerance to illicit use of forest successively decreased. The declining conviction figures indicated that social control brought with it a reduced delinquency in this. - Some county data provides evidence of a higher conflict level. Skaraborg county in central south Sweden stands out with a very high frequency (422 convictions per 100 000 inhabitants during 1830-34, 134 during 1850-54 but only 21 during 1870-74) compared with the national medians quoted above. All figures quoted from Eliasson (2002). Illegal loggers operated with paid labour, forest fires were lit to cover up their operations and as acts of revenge against landowners denouncing offenders to the authorities. Skaraborg was not a region of early commercialisation, so the data may express a social conflict over changing forms of land ownership. Figures were relatively high in other reasonably well-forested southern counties, but not in the ones with the smallest forest resources. In these counties, people may have become accustomed to restricted availability of forest products for a long time, as existing resources were controlled by owners well before the early 19<sup>th</sup> century.

Over time, the number of convictions declined in the South, including Skaraborg, indicating an increased acceptance of the new order, in spite of the growing number of landless. With the booming industry in the North, forest crime increased in the two northernmost counties, Västerbotten and Norrbotten, in the 1870s, but here the issue was economically motivated crime, not social protest.

The rural public's concept of common rights to forest is illustrated by the widespread opinion that illicit use of forest goods and benefits was not seen as "dishonourable". To provide a basis for new legislation, the 1855 Parliamentary Forest Committee conducted an enquiry into all county administrations. One question

was how rural people viewed the illicit use of the forest. In traditional society, theft was considered highly dishonourable. However, the replies indicate that illicit use for private needs, at least on crown and common land, was considered acceptable, particularly by the landless and was not considered dishonourable as theft was. The individual answers showed a high degree of social awareness and concern, whereas, illegal logging for commercial purposes was considered as theft and thus criminal.

As later history shows (cf. Enander 2000 on the debate on the 1903 Forestry Act), the concept of exclusive forest ownership took root rapidly once subsistence economy had been replaced by a market economic system at the end of the 19<sup>th</sup> century. The character of forest crime changed from adherence to subsistence forestry on common lands to modern, economically motivated criminality.

#### **2.4. THE COMPANIES' LAND ACQUISITIONS AND THEIR POLITICAL CONSEQUENCES**

From the mid-18<sup>th</sup> century, sawn goods from water-powered sawmills in the southern part of the country were exported in increasing quantities. The total volume (requiring 75 000 timber trees per year; Kardell 2003 p. 205) was small compared to the size of the resource, and it did not make the forest commercially valuable. The first steam-powered sawmill was established in 1849, in southern Norrland, and ten years later, the saw milling industry entered a phase of rapid expansion: from a total production of 1.4 million m<sup>3</sup> in 1850, it peaked in 1900 with 12.8 million m<sup>3</sup>.

Production of mechanical pulp for papermaking started in 1857, and chemical pulp started in 1872. In 1900, there were 65 paper mills in the country (public statistics quoted by Kardell 2004). In the first phase of expansion from 1890 to 1920, the output rose from 0.15 to 1.1 million tons. The quantity of timber required can only be estimated at around 2 million m<sup>3</sup> in 1900, but was over 10 million at the time of the first national forest inventory (1926-30). The total use of timber rose from 21 million m<sup>3</sup> in 1850 to 40 million m<sup>3</sup> in 1900,

and remained slightly above that level until 1950. From this quantity, the household consumption remained at 16 to 20 million m<sup>3</sup> into the 1930s<sup>5</sup>.

Logging operations were organised by sawmills and logging contractors, much of the capital coming from foreign investors (Kardell 2003). During the early years of saw milling expansion, the companies approached the peasants with recent titles to extensive forest domains, which up to now had had no commercial value and were used for grazing and winter fodder collection. In that situation, it was easy for the companies to buy Logging rights to all trees above set dimensions cheaply, and for periods of twenty to fifty years. The price paid was often well below timber value, even in cases where it appeared fair at the date of contract. New waterways were cleared by both companies and the Crown for floating, thus opening up previously inaccessible forest resources. The land was heavily cut, and neither the landowner nor the company had any incentive for any silvicultural action on the residual forest. Just as the illicit use of the former commons was intensively debated by the public between 1809 and 1860, this new ravage of the forest resource and the plight of the forest owners now received as much attention. In 1890, the longest lease period was restricted by law to 20 years, in 1905 to only five years, as frequent cases of fraud were reported.

Once the industry had achieved greater economic stability, and partly in response to the frequent litigation over logging rights, companies started to buy land. This frequently took the form of the company acquiring the entire homestead, and then separating the agricultural land and reselling it to the original or another owner. This became a problem especially in Norrland, where at the same time settlements continued to be established on former Crown land,

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<sup>5</sup> All statistics on timber consumption are from Arpi (1959).

and which in some cases quickly passed to company ownership. The political climate was still in favour of economic liberalism, and even the peasants' political representation was against any limitations of landowner's right to sell to whom he pleased. In the debate (cf Enander 2000), it was argued that restrictions on company acquisition of land would lead to drastically falling property values. Finally, the negative consequences, of the companies becoming monopoly owners of non-Crown forest in northern Sweden, became obvious, and a "stop law" to prevent further company acquisitions in Norrland was introduced in 1906. Although the problems had never been serious in the South, as the peasants' forest holdings were much smaller and there were fewer industries, the "stop law" was extended to the whole country in 1926.

According to the 1928 property inventory (*Statistisk Årsbok* 1931, Tables 99 and 100), more than 4.5 million ha of productive forest in Norrland and Kopparberg counties were in company hands after being bought from peasants, whereas, 5.5 million remained as peasant holdings. A majority of these 10 million ha were "unused" (besides Sami use and the commons of the old coastal and river valley settlements) in the sense of royal claims of 1542 and 1683; now the Crown was left with 3.8 million ha in Norrland and Kopparberg. In Värmland county, another 0.6 million ha passed into company ownership, and the areas in the South were smaller. In the whole country, the forest sector companies now owned 5.5 million ha, other companies 0.3 million ha, larger estates 0.7 million ha, the Crown and other public owners 5.2 million ha, and peasants 9.9 million ha.

In Finland, which was until 1809 a fully integrated part of the Swedish Realm, privatisation proceeded as it did in Sweden, but the growth of the saw milling and pulp industry started a few decades later. Consequently, company acquisitions were slower, and the

negative experience from Sweden made the legislators to pass a corresponding “stop law” in 1925, when only 7% had passed from private to corporate ownership. At this time, family holdings accounted for 51% of the productive area and State forests for 40% (Ilvessalo 1927). As Finland and Sweden socially and technically were similar in the 20<sup>th</sup> century, the resulting differences in forest ownership structure and the functioning of the forestry sector have been small.

In response to the rapidly increasing value of the forest, the Crown changed its previous policy of selling land (except for settlements in inner Norrland) and started buying back land in the southern part of the country. In 1870, the total area of managed productive state forest was down at 0.4 million ha: in 1946, with ownership distribution being stable for several decades, state forest comprised 5.6 million hectares, including vast areas in the interior of the North that never passed out of Crown ownership and were not demarcated or managed in 1870.

The period from 1850 to 1900 was highly turbulent when the full consequences of the transition from forest commons for subsistence to an exploitable natural resource became obvious. Many corporate law infringements, dubious affairs, fraud, and exploitation of peasant landowners occurred, and much of the accessible forestland was temporarily ruined. Simultaneously, the future value of forest and forest industry became widely recognised and finally led to the breaking of political blocks and the introduction of adequate and successively stricter silvicultural legislation, starting with the first Forestry Act, of 1903. This provided an impetus for forestry research, improved forestry education, a national forest inventory (the first in 1923-29), and restoration and reforestation, the full benefits of which became obvious only in the 1980s.

Besides the negative consequences for the condition of the forests, the public debate at the end of the 19<sup>th</sup> century was particularly concerned about the social consequences of the loss of peasant forestland, especially in the northern parts of the country. At that time, the vision was for prosperous farmers settled in Norrland to till the soil during the summer and work in the forest during the winter<sup>6</sup>. However, efforts to settle the interior were largely unsuccessful, and the homesteads were abandoned due to the extent of labour required to exploit and later restore the vast forests. Forest work, on company and Crown land, provided a basic income for the rural population well into the second half of the 20<sup>th</sup> century, when mechanisation drastically reduced the labour force required and caused regional emigration to the urban centres along the Norrland coast and the southern parts of the country. The social catastrophe feared by many never fully materialised, but the general sufferings of the settlers and the conflicts between “the little man” and “the heartless Company” became a common theme in lore and literature.

## **2.5. SUMMING UP THE TENURE CHANGES UP TILL 1950**

The ownership structure of productive forestland according to the first comprehensive property inventory in 1927-1928 appears in Table 2. By then, most reform work was complete, colonisation in the north had ceased and companies were unable to buy more peasant land. Thus, the outcome was the creation of a quarter million homesteads with 9.9 m ha forest, all with legal title to their land. Approximately one quarter of the national forest area had passed into company ownership; the majority of which was originally unsettled Crown lands in the six northern counties, distributed free of charge to peasants and then resold at variable prices to the companies. The company acquisitions in the south (1.3 million hectares) mainly comprised privatised peasant commons

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<sup>6</sup> Cf. the idealistic picture of Norrland given in 1906 Nobel Prize winner Selma Lagerlöf's novel *Nils Holgersson's wonderful journey*.

and were assumed to have changed owners at more normal market prices. No available records show the total number of homesteads partly or entirely taken over by companies (Arpi 1959; Eliasson 2002).

Table 2. Tenure of productive forest land according to the 1928 property inventory

Property type	Northern Sweden			Southern Sweden	Whole country
	Norrbotten, Västerbotten 1)	Jämtland Västernorrland 2)	Gävleborg Kopparberg 3)		
Peasant homesteads etc	36 145	26 575	39 820	175 869	278 409
mean holding, ha	62,4	69,1	35,2	25,1	35,6
Other private holdings	-	-	22	1 319	1 331
mean holding, ha	-	-	1 117	538	552
Peasant forest, 1000 ha	2 255	1 838	1 402	4 414	9 909
Other private, 1000 ha	-	-	25	710	734
Company, 1000 ha	1 135	2 087	1 266	1 380	5 868
State, 1000 ha	2 966	449	396	538	4 349
Other public bodies, 1000 ha	363	14	229	216	821
Total area	6 718	4 388	3 318	7 257	21 682
Peasant forest %	33,6	41,9	42,3	60,8	45,7
Other private %	-	-	0,7	9,8	3,4
Company %	16,9	47,6	38,2	19,0	27,1
State %	44,1	10,2	11,9	7,4	20,1
Other public bodies %	5,4	0,3	6,9	3,0	3,8

1) Norrbotten, Västerbotten: forested inland settled by ethnic Swedes only after 1850  
2) Jämtland, Västernorrland: ancient nuclei of settlements in otherwise forested land  
3) Gävleborg, Kopparberg: mainly forested but engaged in mining industry for centuries

Government policy had achieved two goals, one of fiscal consolidation by increasing the number of taxpayers, and the other of securing political stability. The rural population and the area of agricultural land reached a peak in the period between the two World Wars. During the entire period of settlement, forest was seen as a necessary complement to farmland and pastures. The peasant labour force worked in the forest during the winter, ideally getting both the stumpage value and the income from felling. The forest policy during the first half of the 20<sup>th</sup> century began with the assumption, that the normal rural household combined farming and forestry for its sustenance.

During this period, Sweden's population rapidly increased: in 1750, it was 1.8 million, in 1810 it was 2.4 million, in 1860 it was 3.6 million, and in 1930 it was 6.1 million. Between 1860 and 1930, 1.4 million people emigrated. The number of landed households (freeholds, crown and estate tenants) rose from 178 000 in 1700 to 278 000 in 1928. This expansion did not solely account for the population increase, but with at least 2 million people having land-owning households (assuming six persons per household; no household census data are available for the period), political stabilisation was achieved. This was particularly so, as the parliamentary estate of Peasants and the Peasants' Party had political influence during the entire period.

### **3. Back to multiple user rights (1950-2000)**

From 1950, new patterns of societal change took place in Sweden: strong opinions formed among certain stakeholders and values among the rural population changed. In 1950, the countryside was well populated and normal holdings were small, combining farming and forestry. Over just two decades, mechanisation was introduced in large-scale forestry, and at the beginning of the 1970s, horses was only transporting a fraction of off-road extraction. Kardell (2004) points out that forest operations had lagged behind the development in other sectors for a long time, the result being a rapid transition with deep social consequences. In 2000, mechanisation has lead to lower employment in forestry and an increasing proportion of non-resident, non-farming owners. Income from forestry comprised a smaller proportion of the owner's total income. During second half of the 20<sup>th</sup> century, living conditions and values of the rural population approached those of urban people. Therefore, the word "peasant" has been superseded by small-scale private forest owner.

By 1950, private forest ownership with far-reaching, almost exclusive user rights had been the accepted norm for two generations. Since 1903, forestry legislation had imposed limitations on owners' management options, but the Forestry Act of 1948 marked a turning point regarding owner's freedom of action, and during the coming decades, user rights became stronger. The limitations of owner rights followed the political climate, with an increased claim for socialization of forests: even private forest ownership was occasionally questioned during the second part of the 20<sup>th</sup> century.

#### **3.1. PUBLIC INTEREST IN MAXIMAL PRODUCTION**

Politically, the Peasants' Party and the Worker's Social Democrat Party had collaborated for some time, and continued to do so. In 1952, groups within the Social Democrats started campaigning for

collective management arrangements, or even outright socialisation of the private forest. Their argument was that small-scale owners did not manage the forest efficiently. As the claim was not supported by empirical references, the National Forest Inventory was asked to investigate the situation. The results showed that both companies and individuals had quite large areas of poorly stocked and unproductive forest, especially the small-scale owners. The survey prompted an intensification of restoration efforts. Particularly, the forest owners' organisation started assisting members with management, voluntarily forming areas of joint silvicultural operations. This was necessary, considering the fragmentations of the holdings and that the main argument of the Social Democrats was small-scale private holdings were too small for the necessary mechanisation and other rationalisation of forest work (Enander 2003).

The socialisation initiative had never had wide support, and had been impossible considering the political collaboration between the Peasants' and Social Democrat parties. However, in the early 1970's, the forest industry experienced a short-lived boom resulting in an over-establishment of new industries. Accordingly, political and company representatives repeated concern over the small-scale forest owners not delivering enough feedstock to the industry. Coercive measures were again discussed, this time by a public committee that saw the forest exclusively as a raw material resource that should be developed maximally: any other interests being secondary. The committee's radical recommendations were considered extreme and were rejected by the government, but the concept of maximising value production was expressed in a set of new legislation (the 1979 and 1983 Forestry Acts), implying regimentation of forest owners' action. Maximum and minimum limits to felling, obligations for restoring low-productive forest, compulsory management plans etc. were not detrimental to the owner who shared the goal of intensified management. In some

instances, regeneration and road building were subsidised, but the compelling laws meant considerable limitation of the owners' freedom of action. The owners complied, but dissatisfaction was widespread, particularly among owners with different management ideas than those prescribed by the authorities. During the 1980s, production-oriented forest policy reached the same regulation level as in 1780 (Enander 2003), but trends changed swiftly and one decade later the policy was more liberal.

### **3.2. CONSERVATION AND STRONGER PUBLIC RIGHTS**

The environmental movement strengthened during the 1960s, and the State began assigning large areas for nature conservation and recreation. Limitations in 'owners' rights were solved through voluntary collaboration and compensation for infringements, but compulsory acquisition for conservation purposes was made possible. During the following years, conservationists managed to gain media and public attention by questioning the basic silvicultural practices used in forestry, in particular the clear cutting system and the use of chemicals.

From the early 1970s, owners' freedom of action was not only suppressed by new Forestry Acts. The customary right of common access to private land entitled the public to collect berries and mushrooms on any forestland. Previously, this had been seen as a concession to non-owners, not involving economic loss for the landowner. Now, the right was conceived as a claim on the owner to grant certain services to the public. In consequence, the use of fertilisers or pesticides was not allowed as it damaged the quality of berries and mushrooms, and felling and soil preparation made the forest less pleasant for the public.

The development of the modern forest industry in the 1960s and 1970s, with an increased area of young forest, increased the supply of food resources for the Swedish deer population. During the 1970s, the elk (moose) population increased dramatically. Towards

the end of the 20<sup>th</sup> century, the elk and roe deer populations were so large that their grazing influenced the landscape, for example, with respect to the mix of different tree species. Hunting created excellent conditions for recreation, and the meat was valuable; however, the damage caused by deer on the roads and to the deer forest industry was a problem. The consequences for forest owners with a high population were a limited choice of tree species and high costs for damage to plants and young forest and for taking deer preventive measures (Ingemarson et al. 2007). Since the end of the 1960s, elk hunting has been regulated by the County administrative board, but they only give recommendations and the hunters collaborate with the local forest owners on the level of shooting for moose reduction. The relative strength between the two partners has led to conflicts and even in 2000, owners' rights were still weaker than the user rights of the hunters, who had strong support from hunting associations with their own political agenda.

New entertainment activities, such as snowmobiles, mountain biking, canoeing, and the collection of reindeer moss (lichen) for fodder were added to the common access agenda. The customary right of common access had a wide political support and emerged even stronger at the end of the 20<sup>th</sup> century (Kardell 2004). Access for commercial gain has always been viewed as requiring a formal agreement and usually compensation to the owner, but the limits of this non-codified right are increasingly challenged, even in court. Tour agencies arranging rafting, canoeing and horse riding on a regular basis on private land resisted all claims for compensation. At the same time reindeer management expanded in the North. Several conflicts ended in court, and were mostly decided negatively towards the owners. Even so, the customary right of common access was never questioned (Kardell 2004). Stjernquist (1993) pointed out that property rights have widely differing significance to different categories of owners (cf above, section 1.1).

### **3.3. NON-GOVERNMENTAL ORGANISATIONS INCREASE THEIR INFLUENCE**

At the end of the 1980s, the emphasis on regulation for maximal production was relaxed, following a more liberal political climate. Conversely, regarding tenure, global organisations started to set the limitations for the owners' rights in Sweden in different ways. This, along with higher public commitment towards the environment, strengthened user rights.

The changing attitudes were politically manifested as a new Forestry Act passed by the Swedish parliament in 1993, which became valid in 1994. For the first time in forest policy, biodiversity and production objectives had equal legal importance. Detailed regulations of operations were replaced by increased owner's responsibility with target-oriented rules: the private forest owners had to take responsibility and set voluntary areas aside for conservation, not restricted according to the law. The political pressure claimed that nature, cultural conservation, and different user right ought to be taken into consideration during all forest management planning (Ingemarson 2004). During previous legislation, many private owners had disobeyed regulations while sharing the goal of high production, mostly to the benefit of biological and scenic diversity (Kardell 2004). Now, this behaviour received official approval.

When the 1994 Forestry Act was passed, the National Board of Forestry began developing work with green forest management plans; simultaneously other organisations worked with corresponding plans. In the green management plan, every compartment is assigned a goal class describing the direction of the long-term goals aimed at production or conservation, in accordance with the Act (Ingemarson 2004).

With changed emphasis of the national legislation, another strong external factor restricted the freedom of forest owners' action in the

form of pressure from local and global non-governmental organisations, sometimes with their own political agenda (Sörlin 1991, pp 233 ff.). Some environmental organisations have a history of limiting forest ownership rights and criticising the Swedish silvicultural model. Although the environmental movement has been critical, the international perspective of Swedish forest owners' responsibilities and obligations is that they stand on a high level.

Third part (independent control) forest certification schemes are examples of non-governmental policy tools, partly market driven, developed to set standards at a higher level than legal ones in an open negotiation process. Forest certification could be seen as one of several external influences on the forest owners' right. Thereby certification is a complement to the national laws but a result of action from stakeholders groups dissatisfied with the national laws. The phenomenon of public decision making where organisations and interest groups outside the formal democratic system strongly influence the outcome is further analysed by Habermas (1996).

Forest management certification should promote sustainable forest management from an environmental, economic and social perspective. Two international certification schemes came into force in Sweden during the last decade of the 20<sup>th</sup> century: the FSC (Forest Stewardship Council) system and the PEFC (Pan European Forest Certification) scheme. These two are similar with regard to forest management, but the FSC system is more transparent and has a wider non-owner stakeholder interaction during the development of the standard. The environmental and economic requirements are also similar, but there are differences regarding social issues. The FSC system demands further consultations with indigenous people and local villages, whereas, PEFC demands a certificate for the contractors. The forest owners' associations were active during the creation of the national FSC standard, but decided to leave the collaboration to follow the European scheme PEFC.

The Swedish government was not involved in the process, as certification was seen as a non-state market driven tool, although the green management plan was developed by the National Board of Forestry in accordance with the requirement of the FSC system. A certification code ensures the market that the wood comes from sustainable managed sources, but whether the certification systems are market driven is questionable, as Non-Governmental Organisations (NGOs) use the market mechanisms to promote the schemes.

From an international perspective, the Swedish 1994 Forestry Act was of a high standard, and built upon a stable framework e.g. the Brundtland report and the UN conference in Rio de Janeiro in 1992. A third part international certification scheme requires certain conservativeness to become trustworthy, and has to address recognised global issues. In a society with a mature forest economy, and a high level of legal compliance by landowners and contractors, development might be more rapid and graded than a certification scheme can handle.

#### **3.4. OWNERSHIP STRUCTURE 1950-2000**

In public statistics, forest ownership in Sweden was classified into four groups: private forests, company forests, state-owned forests, and community forests. The proportions between the groups have not changed since the 1928 property inventory; however, within the groups notable changes have taken place.

The Crown recently placed (1994/2001) most of its productive land in a state owned commercial company, Sveaskog, producing timber for an open market with nearly 5 million ha of forest. This land includes the Crown parks, acquired in the 19<sup>th</sup> century, and land that was never settled. Direct state ownership applies only to land with cultural, environmental or military interest, that is 0.9 million hectares. The public expects the state-owned company to maintain a higher environmental and social profile than any other owner,

reflecting the ideals from the 19<sup>th</sup> century where the Crown parks were supposed to lead silvicultural development.

The private company holdings, 3.4 million ha, have been subject to land exchange in order to create more rational units. The merges have resulted in only three large owners besides Sveaskog: Stora Enso, SCA and Holmen. Recently (2004) Stora Enso together with a smaller company, Korsnäs, placed their land in a public company, thus separating pulp, paper and saw milling from silviculture. The community forests encompass 1.7 million ha, and include forestland belonging to church parishes, municipalities, public foundations, and some non-partitioned regional commons. Municipalities increase their holdings with land for future expansion plans and for recreational purposes.

During the second half of the 20<sup>th</sup> century, the total forestland area for the small-scale private forest owners remained unchanged. In 2000, private holdings encompassed approximately 50% of the total area of productive forest in the country: some 350 000 owners of about 238 000 holdings, with an average area of about 45 ha of productive forest per holding, totalling 11.4 million hectares. One third of the small-scale holdings had non-resident owners, and this did not differ over the country. Slightly more than 40% of all holdings had more than one owner, with an average of 2.2 persons per holding. Of single owners, 28% were non-resident, and for multiple owners it was 43% (Skogsstatistisk Årsbok 2000). Most owners inherited the holdings. These data illustrate owners prefer to keep the property in the family and did not want to split it, even when moving away, presumably into towns. Most small-scale forest owners live in the South and control 57% of the timber production in the country (Törnqvist 1995), and state and company forest dominate the North. In the South, private holdings are smaller, with greater diversity and productivity compared to those in the North of the country.

The structure of small-scale private forest ownership underwent profound changes during the second half the twentieth century, which resulted in new approaches in forest policy (Hugosson & Ingemarson 2004). One major factor was the rapid rationalisation in agriculture. Between 1964 and 1992, the number of farms decreased by 60%, mainly due to fusion of holdings, and between 1928 and 2000, the number of forest holdings fell by 15%. The proportion of farm holdings with forest slightly increased from 65% in 1964, to 71% in 1992. During this process, ploughed land was separated from forest. In the early 1950s, one-third of the forest holdings had less than 2 ha grazing or farmland. At the end of the period in 1992, the corresponding figure rise to 72% (Skogsstatistisk Årsbok 1951 - 2000). The slow start to rationalisation of forest operations, accelerated rapidly in the 1960s. Income from work in the forest was important to the farmer during winter when agriculture was less demanding. Today, the typical forest owner, farmer or not, does not participate in thinning and final felling, but leaves that job to contractors.

During the last decades of the 20<sup>th</sup> century, reforms in legislation regulating the acquisition of farmland and forest allowed non-resident and non-farmer to buy forests. Previously, property transfers were tightly regulated by the Agricultural Boards, strictly pursuing a policy of agricultural rationalisation through the creation of larger holdings. Membership in the European Union resulted in lower agricultural activity among farmers, and during the end of the century farm owners strictly performing forestry activities are in majority. The value of the forest previously corresponded to the return from the forest, but other interests, such as hunting, tax planning and quality of life on the countryside raised the prices of properties (Ingemarson 2004). Average farm prices and forestland nearly doubled in the last ten years of the century (Skogsstatistisk årsbok 2000). The open market for forestland created new objectives among the categories of small-

scale owners, and forest owners are differentiated by their objectives into five types (Ingemarson et al 2004): 'the economist', 'the conservationist', 'the traditionalist', 'the multi-objective' and 'the passive' owner. This confirms a shift among values took place during the 1980s and a sole emphasis on economic benefits is not desirable for a majority of forest owners.

By the end of the 20<sup>th</sup> century the forest owners association in Sweden had their own sawn mills and the largest association had its own pulp industry. Although it has been questioned if is suitable to assist the forest owner with both a selling and a buying organisation the owners associations were well organised. Ninety thousand holdings, including 6.3 million ha of forest (54% of total small-scale privately owned productive forest land), belonged to an association in year 2000 (Skogsstatistisk årsbok 2000), representing a considerable political power.

The present-day commons are an institution that has survived for hundreds of years, despite the many changes in rules and regulations. At the end on the last century, the commons covered some 730 000 ha and the share of productive forest was 2.5% of the Swedish forest (Carlsson 1995). The present days commons do not operate as companies and have their own legal regulations, and are based on private ownership, as the joint owners own different shares that can be passed on to the next generation. Common forestlands are often well integrated in local society and the main goals are for sustainable return and to use profit to support the local infrastructure.

### **3.4. SAMI TENURE AND USE OF FOREST AND MOUNTAIN LAND**

The transition in the North of Sweden is one example where the state did not foresee an uprising conflict, as forestry, farming and reindeer herding were considered to co-exist. Some 17 000 persons are recognised as Sami, an indigenous ethnic group with legal minority status: all Sami are fully integrated in the Swedish society.

The Sami suffered most during the transition process, and their past and present tenure and user rights to northern forests and uplands continues to be subject of controversy. There are several different perspectives on this, which are further developed in Appendix 1, and only a summary of facts with immediate consequence for the general issue of forest tenure are presented.

Sami rights to hunting and annual husbandry were recognised in medieval royal decrees and traditional law. By the beginning of modern times (after 1500), Sami people paid tax on a village basis for the use of wide, demarcated tracts of upland in the north, and their tenure rights were recognised by the Crown in subsequent tax reforms. Reindeer husbandry was the main livelihood for most Swedish Sami, occupying uplands in summer and lichen-bearing forest in wintertime.

The move to colonise the North accelerated during the 19<sup>th</sup> century and was bound to conflict with Sami tenure rights. At a time when ethnic Swedish peasants obtained modern ownership rights to forest land, based on customary user rights, the county authorities, administrating the partitioning, disregarded the corresponding user rights of the Sami, ignoring the tax-and-tenure arrangements previously acknowledged by the Crown. No royal or parliamentary decisions to this end were issued; instead, it is assumed that the county administrators, unopposed, saw the “overriding interest” of the nation opening the North to farming the country as a guideline. Tenure conflicts concerning tax land redistribution ought to have been settled in the district courts; however, the partitioning process was handled by the County authorities, a procedure used only when exclusively Crown land was involved (Korpijaakko 1989). Ethnic attitudes undoubtedly prevailed; however, any Sami who wished “to settle” had the same rights to a homestead in the

partitioning as everyone else<sup>7</sup>. The plight of the Sami was increasingly brought to public attention, resulting in the Act of 1886, which established specific user rights of recognised Sami villages. This legislation has been to some extent updated, but the basic tenets are still valid. At the same time, general society, the Sami community, and the reindeer husbandry underwent major changes. Three issues prevailed: ownership rights, Reindeer herding rights, Certification, indigenous peoples' rights and intrusion on forest owner's rights.

In a major legal process, "*Skattefjällsmålet*", the Crown's ownership of a wide upland area was contested by some Sami individuals. Even if the Supreme Court decided (in 1981) to uphold the Crown's claims in this specific case after ten years litigation, more cases will be brought up. The basic issue is whether it can be justified that customary tenure rights are converted into modern property rights for ethnic Swedes, when corresponding rights are not recognised regarding ethnic Sami. "Restitution" would imply handing over vast tracts of land to the few Sami able to prove their claims, without redress to the rest of the community

According to the 1886 legislation, reindeer herding rights, including rights to winter grazing in 25% of Sweden's productive forests regardless of ownership, are exclusively held by recognised Sami villages. However, only some 2500 persons out of the 17 000 Sami community are members of these villages, and membership is not readily conceded to non-family newcomers. Established members have the decisive vote in each individual case of application. Efforts to redress the injustice of the general partitioning through extending a different kind of user rights have succeeded in creating only a favoured minority.

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<sup>7</sup> In the European overseas colonies, indigenous tenure rights were normally not recognised by the new rulers as anything but temporal arrangements (exception: highly developed India)

As lichens growing on trees are an essential winter forage for reindeer, the 1886 Act entitled the reindeer keepers to herd their animals in lowland forest designated as “the reindeer management area”, regardless of ownership. This area comprises about the northernmost 1/3 of all productive forestland. The law expects conflicting interests to be settled by negotiation. In the beginning, when both forestry and reindeer husbandry were less intensive, few clashes of interest occurred. Over time, they have become more frequent, especially during the second half of the 20<sup>th</sup> century. Recent Government reviews (SOU 1999:25 and 2006:14) have dealt with some aspects of the issue, as forestry and reindeer husbandry has adopted modern technology and intensified the use of the natural resources.

Both international agreements, expressed in ILO convention 169, and certification requirements, as expressed by FSC, are becoming contradictory on the conservation profile and social rights. In a situation where non-reindeer owning forest owners (regardless of ethnicity) may suffer considerable intrusion and even damage because of present rights, and where the privileged reindeer owners represent only a minor part of the indigenous ethnic group, it is not self-evident that reindeer owners rights should be further extended.

## 4. Reflections over the present situation

From the early 1970s, freedom of action was restricted by external stakeholders' demands for yield production in accordance with the Forestry Act 1948, amended in 1974 and notably tightened 1979, and at the same time, a series of amendments to the 1964 Conservation Act contributed to further restrictions. During these years, trends changed swiftly after a more liberal political climate, and within ten years, forest owners' user rights went from highly limited to 'less restricted rights. User rights were strong, with a higher public environmental commitment than during the first part of the 20<sup>th</sup> century.

The forest ownership structure in Sweden today reflects the main objective of the privatisation of forest land two hundred years ago: to provide every homestead with enough forest to cover its subsistence needs for major and minor forest products. The redistribution of the forest commons and Crown land occurred before the forest had commercial value, which industrial forestry created just a few decades later. In a hypothetical situation of commons and Crown land remaining intact up to 1870, the State could possibly have retained a larger share and favoured the creation of fewer and larger private forest estates. Then, perhaps a major part of what is now private forest would have urban owners, e.g. 'the conservationist' according Ingemarson et al. (2004).

In reality, what happened was the existence of a large class of land-owning peasants created political stability in a situation where the number of rural landless grew rapidly and urban industry could not absorb the surplus of labour. For the forest industry, the situation could have developed less favourably, where over half of the timber production capacity lay in smallholdings, with owners whose main income was from agriculture and later industry wages. A comparison with the United States shows that the potentially

very productive pinelands in the Atlantic South East, where there are numerous individual landowners with little interest in improving the timber production, are less of a forestry area than the Pacific North West is, which is dominated by public and corporate owners enhancing the interest in forestry among individual owners.

The situation in Sweden (and Finland and Norway with their similar development of forest tenure) is a different one, with high standards in both the 250 000 private holdings and institutional forest owners. This testifies to the success of the work of the National Board of Forestry, with its concept of 'small stick and large carrot' in supervision and extension to private forestry, and the importance of small-scale private forest owners' co-operative movement. During the second half of the 20<sup>th</sup> century, private timber purchasers offered more interesting management packages, including counselling and management plans, including multi-objective forestry activities. Without these instruments to inspire and guide the forest owners, progressive forestry legislation would not have achieved the success of today's forest production, 100 million m<sup>3</sup> cubic meter growth and 90 million m<sup>3</sup> actual cutting on 22.6 million ha of productive forestland.

The creation of a legal and institutional framework, instrumental in turning the apparent sub optimal tenure situation into one of social and productive strength will be discussed in a future paper. The authors share the view of Palo (2006), that private ownership of forest is not only compatible with but a contributing factor to the success of the "Nordic Forestry Model", and the experiences from the development in the Nordic countries have a broader application for forest policy globally.

The Swedish forestry framework is stable and well developed. The ownership structure and their roles are well defined. The well-established institutions require that partners can foresee the

consequences of their actions, and thereby, trust in the agreements made. Continuous dialogues with stakeholders and clear market channels contribute to a sustainable tenure system. The activities are surrounded by far-reaching rules and regulations that are mature in the sense they can handle the swiftly changing trends in society. However, attitudes among stakeholders towards owner and external stakeholder rights have changed with the trends in society. Thus, future successful forest policies ought to take into consideration that the different meanings of land ownership to different categories of owners, and that user rights consider several recognized users.

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The Royal Directive 10 December 1793

The Royal Directive of 1 August 1805

# Appendices

## APPENDIX 1. SAMI TENURE AND USE OF FOREST AND MOUNTAIN LAND

The Sami population, who suffered the most in the transition from traditional to modern forms of tenure, mainly appear in the margins of literature. Even though the Sami issue adds valuable perspectives on the development of forest tenure system in Sweden, it was only in the late 20<sup>th</sup> century that the negative consequences of privatisation become more widely debated in the public. The Sami ethnic groups stem from early post-glacial settlers of northern Scandinavia, and are recognised by Swedish law as a national minority. Some Sami have exclusive rights to reindeer husbandry, involving grazing rights on designated forest and mountain land under public, corporate and private ownership, which alone motivates the treatment of the Sami issue in connection with tenure of forestland. Reindeer herding requires large pasture areas and implies there are challenges associated with the practice, even so, the employment and economical impact of reindeer herding on the national level is small.

Since the first reindeer-herding Act was established in 1886, there have been disputes about Sami customary rights. Whether traditionally transhumant, or extensively land using aboriginal people, should have legally recognised land tenure rights, in forms adapted to their indigenous social organisation, was not seriously considered during the expansion of European culture, locally or in the “new” lands on other continents. “Progress” seems to have legitimised the takeover of land use rights by the expansionist nations.

The mountain Sami started to live off reindeer herding after wild deer disappeared due to over hunting. In the 17<sup>th</sup> century, reindeer herding became a principal source of income and the Sami started to migrate with them throughout the year. This is the origin of today’s Sami villages (Borchert 2001). In Sweden, the partition and settlement of Norrland, taking place in the 18<sup>th</sup> and 19<sup>th</sup> centuries, led to changes in the Sami society, and in both contemporary and present-day opinion, the infringements of Sami tenure rights. During the 20<sup>th</sup> century, reindeer herding began to move increasingly towards meat production

and with this the traditional Sami livelihood has adapted to the technological innovations of the modern world.

Efforts to safeguard Sami survival around 1900 created new problems related to tenure and multiple-use that accelerated during the last decades of the 20<sup>th</sup> century. As in other parts of the world, action was demanded to redress the perceived and established wrongs-doings during the expansion of population. Three cases are noteworthy: the ILO convention (International Labour Organisation) 169, the FSC certification standard, and a Swedish Supreme Court ruling against Sami claims for ownership of present Crown land.

The ILO convention 169 covers user and tenure rights of indigenous peoples. In preparation of Sweden's possible ratification, two official reports to the Government (SOU 1999:25 and 2006:14) have so far been prepared. To comply with the convention, the rights of reindeer owners would have to be strengthened at the expense of forest owners, infringing on their tenure rights in relation to forest owners outside the reindeer grazing area, according to the reports. The FSC certification standard shares a number of assumptions held by the ILO report, and makes demands on forest owners that surpass those of current legislation. The justification for the precise measures required by FSC has been questioned, partly because of the social issue the standard wants to address, and partly because of conflicting environmental concerns, such as overgrazing. The legal claim of some Sami to extensive Crown mountain land was decided by the Supreme Court in 1981, after 15 years of litigation. The verdict went against the Sami claims, and argued that their traditional user rights were not strong enough. Notable legal and historical expertise does not agree with the Supreme Court and according to Jahreskog (1982), new cases are likely to be brought up as archive research advances. Since 1981, other court cases related to tenure and grazing have been opened.

In the partition process during the 18<sup>th</sup> and 19<sup>th</sup> century, all former user and tenure rights, partly collective and partly individual, were set aside, to the detriment of mainly Sami but also non-Sami dwellers. This was a consequence of a general campaign for the effective use of the natural resources of Norrland. The action by middle level authorities and provincial civil servants was instrumental, whereas no

decisions on parliamentary or central government level explicitly called for the setting aside of previous land rights. The courts and the political system have been negative to the Sami claims for redress. Besides the consideration of legal niceties, such a redress would transfer ownership of extensive areas of land in the far North from the State to relatively few individuals.

When all previous tenure rights had been set aside, the Crown granted new user rights to specific Sami communities, “villages”, regulated by Law (1886 and subsequent revisions). These communities had rights to graze their herds on mountain land, that at the same time were redefined to be Crown property, and on extensive areas of private and public forest land in winter. The forest owners were and are still obliged to accept this intrusion on their property rights, even when the animals create substantial damage to regenerations, and are obliged not undertake forest management without considering the needs of reindeer husbandry. Both existing and possible new provisions of the ILO and FSC standards are questioned from two points of view: an ecological view and a social view.

From an ecological point of view, reindeer herds have grown considerably since the conception of the 1886 legislation. In 2000, the total number of animals was 240 000, and this may have a negative effect on the ecological balance. About one third of the national territory is legally defined as reindeer grazing land (SOU 1999:25). The damage foreseen by the legislators to other peoples’ forest may have been small, but the growth of the reindeer economy during the last forty years has made the clashes between conflicting interests substantiated. FSC rules state that reindeer herding is sustainable and compatible with environmental goals. However, the intensity of current grazing over the Nordic countries appears heavier than with the much less grazed lands in Russia’s Kola Peninsula: the average distribution in Finland is 1.5 reindeers per km<sup>2</sup>, Sweden is 1.4, Norway 1.2 and European Russia 0.4, according to Turi (2002). The effect of reindeer on the regeneration of conifers in timberline forest is significant in areas where the number of reindeer exceeds the carrying capacity (Tasanen 1999). The reindeer forage on lichens and evergreen shrubs. Studies of caribou in Quebec show that lichens are of primary importance for these animals in winter and make up 50-70% of their diet (Scotter 1967). The practical

consequences of complying with ILO and FSC requirements are in conflict with the general conservation profile of the FSC system. In South Sweden, FSC rules call for a reduction of the large deer stock in order to protect herbaceous flora and the regeneration of broadleaf trees, whereas in the north, the standard ensures Sami grazing rights on traditional winter grazing land. The Sami reindeer herding communities will face problems feeding the current number of reindeers with a smaller winter grazing area than the one currently used. Therefore, it appears that grazing pressure on the ecological system is high in Scandinavia.

From a social point of view, the Sami rights to the land is tied to the right to engage in reindeer herding, although the Swedish reindeer herding law (1886) has been updated several times. Out of 17 000 persons defining themselves as Sami, only some 2500 are members of a Sami village, and only these persons have right to reindeer husbandry and have special hunting and fishing rights. The village has exclusive right to grant membership, which is frequently denied to the remaining 90%, the “outsider Sami”. This is currently a source of internal conflict among the Sami. ILO and FSC principles assume that indigenous people are clearly distinguishable from the majority population. This may be the case with previously relatively isolated rainforest inhabitants, but is highly problematic where the ethnic minority has interacted with the majority for a long time, such as in India and Scandinavia. In Scandinavia, genetic markers frequent in ethnic Sami groups are common among ethnic “Swedes” in the same areas, and historical records provide sample proof of intermarriage, of Sami becoming settled farmers in the “Swedish” forest land, and of Swedes establishing holdings in the “Sami” mountain areas. Hence, the current definition of Sami is a social one.

These critical points illustrate the difficulty of redressing past wrongs of State and society in abolish Sami tenure rights in the past. Land ownership in the modern sense was introduced in Sweden in the mid 18<sup>th</sup> century with land reforms and accompanying legislation. This was also the point of departure for the Supreme Court in 1981, when the verdict went against Sami claims to extensive Crown mountain land (Jahreskog 1982). In the southern part of the country before the mid 18<sup>th</sup> century, only agricultural land (and built-up land) could be owned.

Ownership implied exclusive right to cultivation, as well as the right to mortgage, sell, partition, and confer by will. The 1789 constitution inferred full ownership in the modern sense, and forest was assigned to private owners as part of continued land reform. In the northern lands, instead of holding all forest in common, land reform included large tracts of forest for established settlements, and land for animal husbandry was scattered over less fertile forestland.

At that time, the Sami lands were already partitioned between villages, families and individuals according to the Sami community usage, and demarcated by cairns or natural objects. The Law of Helsing, a medieval set of laws recognised by the Crown as applying to all Norrland, specifically recognised such demarcation as valid. The individual land lots could be sold and inherited, and were normally used exclusively by the owner (Jahreskog 1982, Lundmark 2002). During the middle ages, taxes were collected from the Sami (Borchert 2001). Decisions on community level could motivate redistribution, but not change in total ownership of farmland. In 1602, the arbitrary taxation of the Sami was replaced by regular land taxation, with individual land holdings as the base, and with collective (village level) responsibility for all dues being paid. This reform was implemented within a short time, which indicated that the established tenure system only required ratification by the fiscal authorities. Later, conflicts over land use were treated in district courts, in the same way as cases related to other taxed landowners, whereas, conflicts related to Crown land tenants were considered administrative matters and treated by the county authorities (Korpjaakko 1989). Many (*vide* Cramér 1972, Cramér and Bergsland 1975) consider this evidence for the traditional Sami tax land tenure was as firm as tax land tenure in the rest of the country, but not by the Supreme Court in 1981, when the verdict went against Sami claims to extensive Crown mountain land, see above. When borderlines for reindeer grazing land are unclear, conflicts regarding hunting fishing and reindeer herding arise (SOU 2005:116). In case of conflict, it is the Sami's responsibility to prove their customary rights in the courts. During the last two decades of the 20<sup>th</sup> century, Sami reindeer herding communities have been sued by private small-scale forest owners. The verdicts from these cases provide a guideline as to where a borderline for the winter grazing could be drawn. One Commission mapped winter grazing zones (SOU 2006:14).

The Sami tax land was treated as Crown land in the partitioning, and is the root to the present conflicts. The entire partitioning process was handled by the county administrations, not by the courts, and the administrators considered the entire north, away from traditional agricultural areas, as being “no man’s land”, and as such under the dominion of the Crown. During the 19<sup>th</sup> century, the semi-nomadic Sami were considered as disqualified as landowners, unless they became sedentary, and it would have been easy for the company logging to take-over Sami land (SOU 2006:14). While society approved of the partition for settlement, and shared the view that a nomad could not be considered a landowner, plight of the Sami soon drew attention. However, the proposed solutions also reflected societal opinion: the “ethnic” lifestyle of reindeer husbandry should be protected by allowing nomad Sami user rights on Crown and private land, whereas the ‘other’ Sami were invited to be assimilated into the majority population. There is little evidence of prejudice or discrimination against those who had a Swedish language and lifestyle (Lundmark 2002).

The Swedish state did not foresee the uprising conflict, as forestry, farming and reindeer herding were considered to co-exist. The settlers were to live on farming and the Sami by herding, hunting and fishing (SOU 2006:14). In reality, the climate was not suitable for farming and settlers were forced to hunt and fish, and reindeer herding moved more towards meat production. On crown land and in forest owned by forest companies there are fewer conflicts regarding customary rights; however, in areas of conflict, the scattered ownership pattern with several small-scale forest owners between the state owned lands renders it impossible for reindeer herds to avoid small-scale private land during migration.

The current definition of Sami is a social one. Consequently, the extended rights called for by ILO and FSC may actually discriminate against the Sami as a group and favour only a limited few. Regardless of past legal wrongs and present cultural rights, whether an exclusive group of a few thousand should have legal rights to interfere with forest owners’ rights to the extent the proposed redress calls for, is questionable.

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