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Divergent interests and ideas around property rights: The case of berry harvesting in Sweden ☆

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ABSTRACT

This paper illustrates the clash between interests and ideas concerning property rights and regulation by analyzing the ongoing debate on the right of public access in Sweden, which has recently intensified due to an influx of foreign professional berry harvesters. The conflicts in Sweden are found to stem from contradictory concepts concerning property (notably, ownership and the right of public access) and ideological differences in terms of whether forest resources should be regulated by government or governance. While the precise circumstances of this case are somewhat unique to Sweden, differences of opinion concerning property rights and regulations are common and so our findings will be broadly applicable when defining and analyzing forest-related conflicts, especially those involving multiple-use situations.

1. Introduction

During the 19th and early 20th centuries, Swedish lingonberries were extensively commercialized and exported, primarily for use in the German jam industry. During this period, advocates of the berry industry claimed that Sweden's berry resources could potentially contribute more to the national income than wood production; "the red gold of the forests" (lingonberries) would outdo "the gold vein of the nation" (timber) (Boy, 1908).

However, the expansion of the industry and the berries' increased economic value created conflicts concerning the public right to harvest wild berries in private forests. The debate in the Swedish parliament was framed using dramatic and war-like images of vehicles filled with strangers from distant places invading the woods, picking the locals' berries, destroying the berry twigs with berry-harvesting machines, trampling down newly-planted tree seedlings, and tearing down fences, causing great economic damage and preventing the landowners from using their own land. The invasive character of the berry harvesters was stressed, along with the fact that they were strangers to the local people, the forests and the landowners. It was claimed that these foreigners, especially those from the cities, did not know how to behave in the woods and were even harvesting unripe berries, driving local people out of the market completely (e.g. Ekerot, 1913; Governmental bill, 1930:187; Parliamentary protocol, 1908a, 1908b; Parliamentary protocol, 1935a, 1935b).

The key question at the time (1899–1942) was how to manage wild berry harvesting. This issue has become topical again in recent years. As before, growth in the berry industry and an influx of "professional" and "organized" harvesters has triggered a debate on commercial exploitation of public access to forestland and the use of wild berries and other non-timber forest products (NTFPs) in Sweden.

In this paper, we situate the current berry controversy in a historical perspective to analyze changes in ideas concerning the right of public access and the regulation of a "common good" in the Swedish forests over time. By identifying key stakeholders, we analyze core arguments concerning access to resources, various preferences for their regulation, and the consequences of these preferences. Finally we discuss changes in perceptions over time and how they may affect current legislation.

1.1. Governing non timber forest products

In economic and political contexts, wild berries are NTFPs, i.e. "biological materials, other than timber, which are extracted from forests for human use" (Belcher, 2003). In the 20th and 21st centuries, there has been a universal right to pick wild berries, mushrooms, and common wild flowers on any land in Sweden, due to the right of public access (e.g. Åslund, 2008). Consequently, wild berries are Common Pool Resources, i.e. resources for which there is little scope for denying access to specific users (Ostrom, 1990).

Wild berry picking is thus inherently difficult to govern. Various modes of government often referred to as top down or coercive hierarchical steering and governance including a myriad of organizations and

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institutions, in addition to government, which take decisions affecting others have been proposed to handle situations of this kind (Peters and Pierre, 1998). As shown in Table 1, these can be founded on legally binding provisions or soft laws such as recommendations, standards or certification schemes, and can be implemented in rigid or flexible ways (for similar approaches see Knill and Lenschow (2003)). The flexible approach leaves stakeholders room to maneuver when applying the binding or non-binding law, for instance by letting them choose from a number of possible policy options. Conversely, rigid implementation focuses on standards to be adopted by the involved stakeholders.

Ideally, then, the harvesting of wild berries could be governed either coercively, i.e. via binding legal instruments with detailed rules on resource access and extraction or, at the other extreme, through non-compulsory guidelines such as certification schemes. In the former case, legislators would have to make decisions on subjects such as whether harvesting rights should revert to the landowner or be based on the right to public access, and would also define how the policy would be implemented. In the latter case, the involved actors define the common policy goals and how they are to be achieved. The other two ideal types – targeting and framework legislation – both focus on defining overarching goals. A framework legislation, such as the current Swedish Forest Policy, builds upon binding policy goals adopted by Parliament but offers the state forest agencies some leeway in implementation through the issuing of rules and recommendations. Conversely, targeting relies on recommendations but provides more details on how things should be done, i.e. by what means the objectives should be achieved.

1.2. Method

We performed a case study using a grounded and inductive methodology to analyze the berry controversy and the debate on the right of public access to Swedish forests. Qualitative data (written sources) were used to gain insights into the specific case (the berry controversy). The typology of governance modes (Table 1) was used as a tentative model when analyzing the data. The study covered a long period (from 1899 to 2011) to determine how the current situation evolved and to identify enduring ideas and perceptions. Particular emphasis was placed on the participants in the debate and their motives, as well as the economic and social context (Merriam, 1994). Data on the political debate in the early 20th century were obtained by analyzing every motion (private member's bill) presented in the two chambers of the Swedish Parliament (Riksdagen) between 1899 and 1942 (23 in total) concerning the right to harvest lingonberries (*Vaccinium vitis-idaea*) and/or other wild forest berries. Other sources were also considered, such as official inquiries, governmental bills and parliamentary protocols. The current debate about the right of public access to forests and wild berries was covered by analyzing motions raised between 1999/2000 and 2010/2011 (51 in total). We also analyzed articles published in Swedish newspapers (national and regional) in which stakeholders outside the parliament presented their opinions on the topic. Relevant articles from 2000 to 2011 (600 in all) were identified by searching the Mediaarkivet database using the keywords allemansrätt* (rights of public access) AND bärplock* (berry harvest*). The hits were scanned to identify the most active stakeholders in the debate. The positions of these stakeholders were then determined by analyzing the articles and other material they produced, including opinion pieces from internal journals and other policy oriented documents. Consequently, a wider scope of sources was used to analyze the current debate in order to capture the current and future stage of the controversy more thoroughly. However, throughout the article we are comparing the early debate with the current addressing similarities and changes over time concerning arguments, stakeholders and preferred modes of governance.

2. Results

2.1. The right of public access

Forests cover almost 23 million hectares of Sweden's total land area of 41.3 million hectares and are very important national natural resources. Swedish forests represent 25% of the total forestland in the European Union, making Sweden the Union's largest forest country. The forests are largely privately owned; the state owns less than 20% of the forestland. For historical reasons, most of the state-owned forestland is in the north of Sweden while most land in the southern regions is private (Statistics Sweden, 2011). However, due to customary rights of access, almost all land is open to the public irrespective of ownership (Åslund, 2008).

The Swedish right of public access is understood as “the limited right each and every one has to use the property of others, land and water, primarily by traveling over it, at least by foot, and to stay there for a short time.” However, one must not interfere with the landowner or his family, nor cause any injury to the land and what is on it. This means that users may not violate the owner's “right to peace at home” (hemfrid) or harm their economic interests. Users must also protect the environment. The responsibilities that come with this freedom are encompassed by the catchphrase “Don't disturb—don't destroy” (Bengtsson, 2004).

These rights mean that anyone is allowed to walk, run, ride a bike, or ski in any forest as long as they stay away from private gardens. At least since 1864, it has been prohibited to cut down trees or bushes, break off branches, or remove or damage trees in other ways because such actions harm the owner's economic interests. Harvesting NTFPs such as acorns, nuts, resin, gravel and peat has also been prohibited. Other NTFPs, such as wild flowers, berries and mushrooms, are not covered by the regulations and can be harvested freely. The right of public access is thus linked to both recreation and the utilization of some NTFPs (Bengtsson, 2004; Sandell, 2004; Åslund, 2008).

The concept of a “right of public access” (allemansrätt) can be traced back to the turn of the 20th century but the term did not come into widespread use until mid-century. However, parts of the concept derives from the (early) Middle Ages. Consequently, in time, the right of public access became an effective unwritten law as well as a part of Sweden's cultural heritage and something of a national symbol. However, the historical background and meaning of the concept is contested and the right has never been defined in detail in the law. Instead, it is restricted indirectly by other laws and regulations,

Table 1
A typology of governance modes of wild berry harvesting (Treib et al., 2007).

		Legal instruments	
		Binding	Non-binding
Implementation	Rigid	Coercion—regulation of accessibility by strengthening private property rights or by codifying the Right to Public Access.	Targeting—policy goals or standards are set by the government and involved actors in collaboration, specifying how the goals are to be met.
	Flexible	Framework regulation—a national NTFP policy regulates the overarching policy goals, but offers the actors leeway in implementation.	Voluntarism—the policy, both in terms of setting goals and implementation, is dealt with voluntarily by the involved actors through certification by bodies such as the Forest Stewardship Council or Programme for the Endorsement of Forest Certification.