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Public right of access to private land: examples and considerations

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Abstract

Public right of access, everyman's or everyone's right, freedom to roam, right of public access to the wilderness and the right to roam are terms used for concepts that give people an independent right of access to forest land and rural areas for recreational or passage purposes. The access is not a self-evident right, nor are the practices in different countries resolved alike. In this paper we review how the public right of access is resolved in different countries, with a focus on cases in Sweden and Finland. We highlight problems that arise when the right of access enables extent use of the land by public and may make everyone's right prone to features related to the tragedy of the commons. We find that the code regarding public access depends largely on cultural, historical, and political differences and thus has no international or unambiguous definition as to what it includes or should include. The concept has worked considerably well throughout time but, as the original reasons for the right have declined and recreational use and demand have increased, the question has been raised whether everyone's right should be redefined to prevent complications between users and landowners.

Key words: Everyone's right, landownership, roaming, tragedy of the commons

Introduction

In most countries forest land is governed by private, common, and state ownerships. Often the access rights to forests and rural areas are defined differently for each ownership. Passing through, camping, swimming or any other forms of activity exercised by an individual on someone else's property are not universal rights but instead are almost everywhere controlled by codes or agreements. The coding regarding access to private land varies between countries and regions and it may be either highly permissive or exclusionary, depending on settings such as cultural traditions and geographical and social conditions (Mortazavi, 1997). Literature on public access to private land is quite limited. Existing studies concentrate typically on a certain aspect related to everyone's rights (Elgåker et al., 2012; Saito et al., 2022), while more general treatments are scarce (Colby 1988). We review how public right of access is organized in different contexts, with a focus on cases in Sweden and Finland, but extend the review to link the theme with landownership conditions in various parts of the world. We also discuss problems that arise when the right of access enables extent use of the land by the general public and make everyone's right (formerly the term everyman's right was used) prone to features related to the tragedy of the commons.

In economics property right regimes are typically divided into four categories: private property, common property, state property, and open access. The definition of open access property (non-excludable but rival good) describes partly the situation prevailing when the most extent form of public rights of access applies. The arrangement may thus arouse conflicts between landowners and the users of the access right, when the activities based on the rights increase land use pressure (Mortazavi, 1997; Hardin, 1968; Sténs and Sandström, 2013).

Due to the diversity of the approaches, any categorization in terms of the access rights is very suggestive. However, Robertson (2011) divides the policies into three categories according to the degree of the right of access to private land and the legislative context. The most extent form is found in Sweden and Finland where the public right to access forest and countryside is not written in law itself or delimited by single body of legislation, but is considered more as a default, rooted into the culture. Norway, Iceland and recently also

Britain, Scotland and some other countries in Europe represent another rather liberal practice, which may be based on old tradition but is nowadays specifically defined in law. The third practice is common in e.g. Southern Europe and found also elsewhere in the world. The premise is that access to private land is very limited, and the landowner has the right to exclude people from entering (Robertson, 2011).

Public Access to Private Land in Nordic Countries and in Other Contexts

The Nordic countries

The most liberal policies regarding access to privately owned land are found in Finland, Sweden, Norway, and Iceland, but the approaches and content vary. In Finland and Sweden, the rights allow diverse recreation activities and use of some of the forest products such as flowers, mushrooms, and berries (non-wood forest products, NWFP's) (Tuunanen et al., 2012). In Norway and Iceland, the rights are specified by law and are slightly narrower. The principle is however the same: the right of access is an old established custom where distinction between public and private land is not strict (Robertson, 2011).

Denmark differs from other Nordic countries with its stricter coding. The difference may be explained by population density, geographical characteristics, and land use intensity. Denmark has smaller land surface area and higher population density compared to the rest of the Scandinavia (Saastamoinen, 1999; The World Bank, 2023). Agricultural land covers about 65,5% (2 618 000 ha in 2021) of the whole land area in Denmark and forests about 14,1 % (608 078 ha in 2021) (Statistics Denmark, 2023a). The Danes do have access to state-owned forest and other natural areas, which cover about 20 % of the forest area (Statistic Denmark 2023b). Private forests, open countryside and uncultivated areas are open for pedestrians and bicyclists on paths and roads only during daytime, but the land owner may also prohibit the traffic if it causes major nuisance to privacy, to production or to protection of nature and wildlife (Wild about Denmark, 2023).

The enactment expanding the landowner's right to exclude was imposed in the 19th century. Before that, the access right in Denmark was closer to those in Finland and Sweden. Recently landowners' exclusion rights have been alleviated with the objective to secure recreation opportunities for all. As most of the land is in private ownership, the right of access is an important issue to the nation (Højring, 2002).

Other European Countries

Estonia has also quite extensive rights of access to private land. Similar activities to those in Nordic countries are in principle allowed but narrowed by stricter coding. The right includes access on foot, by bicycle, skis, boat or on horseback. Picking berries, mushrooms, and other forest "by-products" is generally allowed and is as an important part of Estonian culture. Camping is also allowed on private property for up to one night. However, landowner may choose to forbid access. If the landowner has set fences or other blockades, a permission to proceed is required. Landowner may also prohibit the access verbally or with signs. (Saastamoinen, 1999; RMK, loodusegakoos.ee.) Access is allowed also in various other Eastern European countries, for example in Belarus, Ukraine and Poland, but foraging is often only allowed on public (state owned) land. However, state ownership is often extensive and for example in Belarus state owns all the forest land (Gerasimov and Karjalainen, 2010.) Similar situation prevails in Russia where almost all the forest land is owned by the federation. Russian forest code gives the right for everyone to wander and to harvest mushrooms, berries and many other non-wood forest products for personal consumption and NWFPs. Foraging has been and continues to be both economically and nutritionally highly important for many Russian households especially on rural areas. Although commercial use is not covered by the access right, it has not

been enforced in practice until recently (2018), when Ministry of Agriculture proposed a seasonal payment for harvesting mushrooms and berries commercially (Stryamets et al., 2020).

In general, the further south you go in Europe, the more limited the public access rights become. However, in many countries, where landowners have otherwise generic right to exclude public from their land, the coding is more permissive when it comes to activities that hold high cultural and traditional value. For example, among the alpine countries, Switzerland and Austria have expanded the access to private land especially above the tree line to enable culturally important recreation activities: hiking and skiing. Also, in France where private properties and right to exclude are very important and strongly defended, the code is slightly more liberal in the alpine region. In countries where trekking and roaming does not have similar cultural importance, similar access rights have never been established (Robertson, 2011). In Southern Europe, beaches and shorelines are often for public use regardless of the ownership. Spain has a legislation (Ley de costas) especially for coastal areas which restricts private ownership right to protect and restore sea shore from for example building but also to guarantee the public use of the sea and its shores.

A common practice in some European countries (France, Spain, Italy) is that the landowner has the right to collect a fee for the use of his lands for recreational purposes or collecting non wood forest products (Robertson, 2011). In Italy where mushrooms such as truffles and boletuses are highly valued, permission for picking is demanded also on public land. The permission system was imposed when harvesting started to wear both landscape and mushroom yields. Since its inception, the permission system has proven to be very profitable for landowners. The system and pricing vary between provinces in Italy, but in general the permit defines picking seasons and the maximum amounts for each species (StarTree 2019; Matilainen, 2005; Pettenella, et al., 2005).

Although public right of access is based on traditional customs, some countries have only recently started to change their coding and formalizing rights. For example, Croatia, Serbia and Romania have limited landowner's possibilities to restrict public access to forests in 21st century (Nichiforel et al., 2020). In Czechia, people are allowed a free access to privately owned forest, and collect for their own needs fruits and dry waste wood lying on ground (Sisak et al., 2016). Great Britain, which formerly had given extensive rights for landowners to exclude trespassers, has also shifted towards slightly more permissive direction regarding everyone's rights. England and Wales introduced the Rights of Way Act (The Right to Roam) in 2000, which basically withdrew some of landowners' rights to exclude public from private land and gave the audience more rights to use private "open country" for e.g., walking, running, and climbing. Other uses (horse-riding, cycling, camping etc.) is not included but still needs landowner's permission. Formerly passing on private land was possible only with landowner's permission or on footpaths designated to public use. Open country means land that is not in landowner's active use for cultivation or is a private park or a yard. Also, for example woodland is not included to the right. (www.gov.uk, n.d.)) Scotland introduced in 2003 a new amendment to an old law (freedom to roam) which secures public access to private land for recreation, including camping and biking. Foraging mushrooms and wild berries is also possible for private consumption. (Scottish Outdoor Access Code, 2023.)

Other examples

Outside Europe landowner's right to exclude is common and roaming is generally allowed only with landowner's permission or on designated areas. E.g. in the United States and Australia the landowner's rights are very extensive and public right of access does not practically exist (Robertson, 2011; Hughes et al., 2010). However, opening access to private land may be allured by offering lower land tax rates to land owners. For

example, in Upper Peninsula Michigan USA, Lind-Riehl et al. (2015) report that many private landowners have enrolled in a commercial forest reserve (CFR) program that makes them eligible for property tax cuts. They link those landowners who selected the tax break program with a Nordic heritage. However, some respondents had conflicting attitude to open access: they enjoy using it themselves, but do not necessarily want to open their own forest for public access. Comparing the U.S. and Sweden, Colby (1988) contrasts the heterogeneous history of the U.S. with the homogeneous past of Sweden, leading to different land ethics and thus attitudes towards public access to land.

In New Zealand private land is not for public access, but all water bodies and water ways are in public owning and thus also for public use. Part of the coastland and water bodies are however surrounded by privately owned land which has stimulated a development of the access policy in general in New Zealand. In 2008 a Walking Access Act 2008 was founded to secure the access to foreshore via private land. For now, the walking access does not cover the land adjoining walkways, but the Act has derived new pathways for public use on private land (Hughes et al., 2010). In New Zealand a commission founded in pursuance of the Walking Access Act continues to work to enhance public access to the outdoors by creating new connections via private land together with communities and landowners (New Zealand walking access commission, 2023).

In Africa, Asia and South America, public ownership is a common land ownership regime. For example, in Africa a typical share of land registered under private title is between 1-10 % (Boone 2013, citing various sources). In Africa, the most critical land access issue are the rights of local and ethnic groups to land resources in the context of central governments' desire to control their territories (Boone 2013). In South America, a pressing land accessibility question are the rights of indigenous peoples. Varying territorial indigenous autonomy regimes exist, although governments have been sluggish in enforcing legislative reforms granting indigenous land autonomy e.g. in Bolivia, Brazil and Nicaragua (Rayo et al., 2024; Anthias and Radcliffe 2015). In Latin America privately owned or governed land is also highly concentrated. For example, in Colombia, the poorest 70 % of the population occupies only 5 % of the land area, while the wealthiest 0.4 % owns 41 % leading to frequent conflicts between various actors (Rights and Resources 2015, citing El Tiempo 2015).

Constitution in several countries pursues to ensure citizens' right to healthy unpolluted environment, linking constitutional rights with land accessibility issues. This is the case, e.g., in South Africa, China, Chile and India (Raynolds 2008). However, these constitutions do not necessarily refer to citizens' land-use rights. Obviously, jurisdictionally constitution represents a top-level legal instrument, whose purpose is not to stipulate how or by which means public access to healthy environment is guaranteed. Nonetheless, it is interesting to link land-use rights issue with the constitutionally specified human rights.

In Asia, a typical land access issue are the conflicts between local people and concession holders. Especially this has been the practice in Indonesia, Malaysia and the Philippines (Price 2020). Land concessions are privately controlled land, often granted by the governments to large international logging companies. These companies are allowed to close the access to their holdings leading to abuses of the rights of the local people. For example, Price (2020) reports displacement of indigenous people in the above mentioned countries. In Japan, where communal forest ownership (iriai forests) has historically been predominant (Takahashi et al., 2017), faced, especially after WW2, a privatization of forest properties leading to severe parcelization, absentee ownership and lack of interest in management of forest properties. In face of this, steps have been taken to go back to communal ownership of forests to cope with the 'tragedy of anticommons' (Takahashi et al., 2021).

Alternatively, private ownership is maintained, but residents' associations use and manage the individual forests jointly. Thus, this last case represents a sort of common access to private forests in Japan.

Liberal access rights and their use in Finland and Sweden

Historical Roots

Everyone's rights in Finland and in Sweden date back at least to the Middle Ages. The exact origins are not known but are expected to have developed from the ancient practices that enabled living in sparsely populated countries. Officially the concept was recognized only much later (Mortazavi, 1997; Tuunanen et al., 2012). In both countries everyone's right originates from the time when the first settlers began to populate the countries (Tuunanen et al., 2012; Colby 1988). In sparsely populated land anyone was allowed to take parcel of land for cultivation or use the forests and their products freely. Slash and burn practices were common. Up until nearly a century ago everyone's right was still a precondition for survival for many. Products provided by the forests such as firewood, berries, and mushrooms were important source of food and energy especially for the poor (Lehtonen et al., 2007; Sandell and Svenning, 2011). In historical Sweden, people tolerated strangers to pass through their land as in sparsely populated country moving from one area to another would have been otherwise challenging (Colby 1988). Making contracts with the landowner would have been difficult including large transaction costs. Geographical circumstance was a base for a mutual understanding regarding entering private property and use of non-wood forest products (Mortazavi, 1997). Today, everyone's rights in Sweden and Finland resemble strongly each other. They include all, local or foreign citizens and tourists, who wish to enter private or public property that is not in active use as a field or as a home yard (that is, undeveloped land). Both still allow people to camp, fish with a rod and line, ride a bike or a horse, practice mountain climbing, sailing, canoeing, swimming, picking berries and mushrooms, skiing or hiking (Mortazavi, 1997; Lehtonen et al., 2007).

Although everyone's right is since turned from a necessity to a precondition for recreation, it still has only a loose legislative basis, both in Finland and Sweden. Although freedom to move about is mentioned in constitutions and other legislations, the practice is rather based on a norm and strong cultural tradition. However, various written laws do define its limits. The legislation outlining everyone's right relates to constitution, penal code, water legislation, and nature conservation act (Colby 1988; Tuunanen et al., 2012). These codes forbid for example picking endangered plants or any part of growing trees, entering private yards or houses, lighting open fire, and harming private property (Tuunanen et al., 2012).

The basic principle outlining the right is that any actions on someone else's land may not cause more than minor damage to the landowner or the nature. Thus, walking on cultivated field is in principle allowed, but it may not cause damage to the yield or land. Landowner may post signs or fences that indicate susceptibility to damage on e.g., newly planted forest, but usually the practice is based on common sense (Tuunanen et al., 2012; Mäntymaa, 1997). It is for example not defined how close to private gardens and yards you are allowed to go within everyone's right. You are not allowed to go too close, but the distance is not given. A proper distance is to be evaluated by a common sense.

Interestingly, when describing the government's role in Sweden in terms of advocating the practice of public access to private land, Colby (1988) points to the strong role of the social-democratic movement in the Swedish politics. This contributed to the type of land ethics favoring the maintaining and strengthening everyone's right.

Similarly, Elgåker et al., (2022) and Kaltenborn et al., (2001) refer to the social democratic view as a factor explaining Sweden's pursuit for the position that access to nature should be available for all.

Private landowners own about 59 % of forest land in Finland and in Sweden the figure is about 50 % (Tuunanen et al., 2012), the rest being owned by the state, private companies, municipalities, communities etc. Everyone's rights are actively used for recreation in both countries. Picking berries and picking mushrooms, which are strongly dependent on everyone's rights, was in Finland practiced by almost 57 % (berry picking) and 40 % (mushroom picking) of the population in 2020 (Neuvonen et al., 2020). In Sweden horse-back riding, which heavily relies on public access to private land, is a highly popular activity with some 500 000 people practicing it (Elgåker et al., 2012). Unique feature regarding Finnish and Swedish everyone's right is that commercial berry picking and commercial recreational activities are in principle also allowed, whether the land is private or public (Neuvonen et al., 2020; Tunon 2022). In Finland a commercial berry and mushroom picking is even encouraged by a tax exemption, as income from selling berries or mushrooms picked by yourself are spared from income tax (Pouta et al., 2006).

As said, both the Finnish and Swedish legislation, or rather the lack of it enables commercial use of the everyone's right. In principle, if the activity complies with the legislation and the principle of responsibility, nature tourism, events and organized berry and mushroom picking on private land are possible (Tuunanen et al., 2012; Colby 1988). Landowner's permission is not required if the activity is temporal, it does not cause harm to the land and the size of the participating group is moderate (Tuunanen et al., 2012). Hence it is not uncommon that nature recreation organizations are at least partly utilizing private properties in their services. Generally, however, the landowner and tour operator have at least a verbal agreement to avoid conflicts that may hinder the setup altogether.

Forest berry industries in Finland and in Sweden have benefited from the everyone's right for decades (Tunon 2022; Saastamoinen 1999). In both countries berry pickers are increasingly seasonal migrant workers. The number of local pickers has declined as young generations are not interested in the low paid, hard work job (Neuvonen et al., 2022). Foreign work force has been used in the industry to complete the need for decades, but the volume has grown significantly in 21st century (Tunon 2022; Rantanen and Valkonen, 2011; Karkinen, 2010).

Conflicts Between Interest groups

Currently for many people the most important benefits provided by the everyone's right are the various outdoor activities made possible by accessing nature. According to a survey by Natural Resources Institute Finland (Neuvonen et al., 2022), most popular outdoor activities in Finland are walking in nature, swimming in natural waters, cycling, picking berries, staying in nature or admiring landscapes and spending time in summer cottage. Activities that have had major increase in 20 years are mountain biking, hiking and trailrunning. Covid 19 pandemic did affect the statistics in spring 2020 when nature replaced hobbies and activities that could not be accessed due to the pandemic. However, it seems that the outdoor trend is growing despite or due to the pandemic and for example number of visits to national parks in 2022 was 11 % higher than before the pandemic (Neuvonen et al., 2022).

Environmental organizations and landowners are occasionally worried about increased pressure towards the nature and question the activities that are allowed within the everyone's rights. Landowners report littering, unauthorized off-road driving, unleashed dogs, mountain biking and use of private roads which all exceed the

actual given rights (Viljanen and Rautiainen, 2007; HS 2002). However, over 90% of the respondents in the study performed by Viljanen and Rautiainen (2007), say that different forms of use of everyone's right have created harm to the landowner either never or seldom. Outdoor recreationalists have experienced given problems even less frequently.

Although there are occasional disagreements between landowners and the public regarding what the rights include, they are only rarely solved in court. Very often the disagreements are resolved between the parties by themselves. Often the user steps aside (Viljanen and Rautiainen, 2007; Lehtonen et al., 2007). When the issues end up in court, the court settlements have been based on written law and not on customary law (Tuunanen et al., 2012), which diminishes the users' chances for success in civil trial compared to those of the landowner. Saito et al. (2022) applied questionnaire survey in studying respondents' behavioral patterns in outdoor recreation behavior. They found that conflicts between landowner and visitors are at low level.

Compared to the "regular" use of everyone's rights, a larger issue recently has been the commercial exploitation of the right for nature tourism and commercial berry picking. Over 60 % of the landowners report that inappropriate entrepreneurship practiced on their property has created harm to the landowner seldom or often (Viljanen and Rautiainen, 2007).

In Sweden the Ministry of Environment and Farmers' Federation have demanded limitation of the rights from commercial users which would mean that any commercial actors would need permission from the landowner. Landowner may also be able to ask a fee from the use (Svenska Dagbladet, 2011). In Finland the discussion has evolved especially around the commercial forest berry picking. Although the berry industry is content with the secured source of berries, the commercial picking may annoy landowners, local people, and other interest groups for several reasons (MT, 2013; Yle, 2012). Living and working conditions and social status of the foreign pickers have raised concern. As the pay depends on the berry yield and natural conditions, the income is not guaranteed (Peltola and Hallikainen, 2010a). News have reported in both Finland and Sweden about pickers who have had no funds to return back home after a poor berry year (Yle, 2009). The lack of employment contracts and mutual communication have left many of the immigrant pickers with uncertainty concerning the liability issues and risks involved in undertaking the berry picking work (Karkinen, 2010). These issues have been settled also in court in Finland. Human rights issues have been raised and they also have been dealt with in court. For example, in 2022, the Supreme Court of Finland considered in its preliminary decision that the entrepreneur had committed 26 human trafficking crimes in the case of Thai berry pickers (Supreme Court of Finland, 2022). Tunon (2022) also gives a good account on the case of berry pickers from East Europe and Southeast Asia in Sweden.

Organized berry picking has also some regional impact on the berry yields and thus limits recreational picking, even though its portion of national berry yield is still marginal. Probably the most important reason for objection is that the berry picking has become very organized and that pickers are increasingly from abroad. Using low-paid work force from Thailand instead of native pickers has also raised objection, even though native pickers are not always available for the berry-using entrepreneurs. According to a survey, 92 % of the respondents accepted local berry picking for your own use without restrictions but only 28 % accepted the very same for foreign pickers. The more commercial and organized or the more remote the home country of pickers was, the more people wanted to restrict the picking (Peltola and Hallikainen, 2010a).

Many of the opponents of the current extent of public access rights in Finland and Sweden are criticizing the possibility to exploit the right for commercial activities without charge (Saito et al. 2022). Some even question whether everyone's right should be free of charge for foreigners all together (Mortazavi 1997). In recent years, several reports have been commissioned and conducted regarding the commercial berry picking in Finland and its relation to everyone's rights (e.g., Ministry of the Interior, 2007). For now, the authorities are not going to take action to limit everyone's right but try to handle the conflicts with other means. One reason is that limiting

the right of picking berries in terms of nationality would not follow the principle of equality. Everyone's rights are also considered so important that any restrictions would need to be well justified (Rantanen & Valkonen, 2011). Ministry of the Environment and Ministry of the Interior in Finland prefer using educational means, good practices, and common sense with the commercial use (Ministry of the Interior, 2007; Lehtonen et al., 2007). Also, the entrepreneurs' responsibility for the pickers is emphasized (Rantanen and Valkonen, 2011) and authorities are urging the industry to educate new pickers regarding the legislation, sustainable picking methods and responsibilities regarding everyone's right (Työsuojelu.fi 2023). Forest berry and mushroom picking trade is considerably large in Finland. In 2022, the forest berry trade made a net income of 22,1 million euros and wild mushrooms trade made a net income of 494 000 euros. Yields depends on that year's crop, but it has had a slight growing trend in 2010-2022. Trade depends on seasonal workers (Marsi, 2022).

In sparsely populated areas, employment and earning opportunities are often weaker than in urban areas. One possibility to increase the income of landowners in rural areas from their own forests could be agroforestry. Agroforestry refers to the cultivation of food plants that takes place alongside wood production, combining agricultural and forestry production techniques (Mosquera-Losada et al., 2009; Nestby et al., 2011; Yarborough, 2018). However, with everyone's rights prevailing, such production includes at least a potential conflict (Mäntymaa, 2015).

The intensity of agroforestry can vary widely. For example, in the case of wild berries, the easiest way to increase yields is by thinning the forest or placing artificial nests of pollinators on a site (Vanhanen and Peltola, 2015). In this case, cultivation is extensive. The berry growth is based on the site's original growth, no artificial fertilization or weed control is used, but the expected yield increase is at most moderate (Peltola et al., 2017). In extensive agroforestry, the plantation stands out from the rest of the environment little or not at all, and the appearance of the landscape is forested. At its most intensive, agroforestry can resemble arable farming, where trees are removed from the forest and all cultivation operations are carried out mechanically (Yarborough et al., 2016). In the case of berry cultivation, the origin of the vegetation is planted or manipulated, pollination is increased by honey bee nests, and artificial fertilization and weed control are used. The expected yield increase in such cultivation is large (cf. Yarborough et al., 2016). Intensive agroforestry is clearly distinguished from the forest landscape because the appearance of the landscape is field-like.

In Finland, extensive agroforestry may cause a conflict situation because of everyone's right (cf. Stén and Sandström, 2013; La Mela, 2014). If the yields of natural berries are increased only with relatively small investments, the plantation may not be clearly distinguished from the rest of the commercial forest. In that case, everyone's right guarantees anyone the opportunity to pick berries in such a cultivation site. Since the benefits of the investments made in the forest may accrue not only to the farmer but also to external berry pickers, the profitability of the investments may weaken. This may be a reason that the incentive for agroforestry may also weaken (Mäntymaa, 2015). If, on the other hand, cultivation is intensive with heavy investments and production inputs, the area resembles a field more than a forest. Then the cultivation stands out clearly from the surrounding landscape, so it is possible to exclude outsiders from the area. Thus, all the benefit from the investments made by farmers accrues to themselves, in which case the incentive to start farming also exists. Then the farmers decide on the investment based on how likely the production is expected to be economically profitable (Mäntymaa, 2015).

However, in general Finns are quite pleased with how everyone's right works. According to a survey made by an outdoor recreation organization, 39 % find that everyone's right works very well, 58 % find it works fairly well, and only 1 % considers it works poorly (Viljanen and Rautiainen, 2007). Attitudes are more negative towards commercial exploitation than towards frequent local users (Lehtonen et al., 2007; Peltola and Hallikainen, 2010a).

Economic value of everyone's right

Economic value of everyone's right consists of the market and non-market value of the goods and services it is providing (indirectly). The resources available by everyone's right is e.g. the non-wood forest products but also the recreational opportunities and access to exercising, socializing and relaxation which all can affect to the quality of individual's life (Fredman et al., 2012). Nature based activities available in both private and public properties (parks, nature reserves, national parks etc.) create both non-market and market values from which the latter includes e.g. consumption of travels, food, accommodation, and guiding services. The market value is easy to measure especially locally. Non-market goods and services consumed are e.g. public trails, landscape and health promotions. The value of non-market services is more difficult to measure, although they are an important part of the total welfare (Fredman et al. 2012).

A synthesis report done by Fredman et al. (2012), review the economic value of outdoor recreation in Sweden on rural and urban-proximate location. The study was compiled by using several findings in scientific publications regarding the market and non-market values of nature-based recreation. The perceived value of recreation on forest and agricultural areas using the everyone's right (private property) was estimated to be 216 SEK (20 €)/visit day and 130 SEK (12 €) per person/year for forest and agricultural areas, in respective. For forests this would be approximately 1.16 billion SEK per year (105 million €/year) when multiplied with the Swedish population and proportion of people visiting forests at least once a year. For agricultural areas the value would be about 820 million SEK/year (75 million €). (The estimation is for the year 2009, rate between Euro and SEK being 1:11.) The study has also

collected data about the economic values of hunting and fishing, mountain tourism, services provided by outdoor recreation organizations and commercial players, and value of outdoor recreation equipment. The researchers behind the study are however very careful not to present any aggregated numbers regarding the total value of the industry, as the figures collected from various studies have different study limitations and definitions (Fredman et al., 2012)

Compiling studies about the net value of outdoor recreation or the net value of everyone's right in Finland are also missing. Few have studied the valuation of the public access to private land and economic impact of outdoor recreation on public land. Juutinen et al. (2014) investigated the benefits of recreation-oriented management of the state-owned commercial forests in a choice experiment study. The study focused on three alternatives of management practices: scenic buffer strips along lakes and rivers, game bird habitats, and landscape quality along hiking trails. Although regional differences in preferences were found, the current recreation-oriented management of the state-owned commercial forests was highly valued throughout the country. In addition, they found that scenic buffer strips along the shores of lakes and rivers were the most valued feature by the citizens. Mäntymaa (1997) has examined the valuation of everyone's right with a questionnaire where individuals willingness to pay (WTP) for the common access was asked. The respondents were requested to estimate how much they would be willing to invest in a year to maintain the current access rights to private land for recreation. The respondents were told that without the common access right they would still have "recreational rights" that would allow access to and recreation activities in certain limited areas, such as national parks and nature reserves. The average value the respondents gave to the current level of the access rights was about 59 euros per year (converted from 260 FIM). (Mäntymaa, 1997). The amount is rather high considering that recreation would be possible on public land even without the common access rights. The net value for population aged 15-74 years, would be about 239 million euros per year. For comparison, the value the respondents gave to the access right to private land is over twice higher than another similar study performed a few years later regarding the valuation of state-owned outdoor recreation areas and national parks. In 2002 the possibility to use these services was estimated to be worth of about 23 euros

(converted from 110 FIM). The study did not take into account other land areas that would be similarly in public use, such as state-owned forests and parks (Huhtala et al., 2001).

The studies estimating the non-market or market value of everyone's rights in Finland are generally national studies, which do not consider the potential tourism from outside the country, although nature tourism is important part of the industry. Studies that handle the economic impacts of nature tourism are often local examinations from certain active tourism area. Tourism that is exploiting everyone's rights is difficult to observe as the use may partly be independent and not involved with the industry itself.

Another way of valuing the access rights to private land could be based on monetary benefits granted to private landowners who open their land for public, in conditions where public access rights do not in general apply. For example, in the United States some states grant tax allowances to private landowners if they open their land for hunting and other recreational purposes. In these cases, the tax allowances reflect the society's preferences and willingness to pay for the public access rights to private land.

Can everyone's right lead to the tragedy of the commons?

The concept of everyone's right seems to serve well as long as the principle of responsible use prevails, that is, as long as the users do not cause any harm to the property, and thus to the environment. However, either the principle is not always fulfilled, or the position what is harmless and what is not, is not sufficiently defined. Problems arise when the demand for the services provided by public access increases or changes.

Everyone's right allows access to forests for everyone for different purposes. No-one can be excluded from the right. However, a parcel of forest is not unchangeable or limitless in size or quality and increase in the demand may stretch the limits of sustainability of the use and activities. A camping spot is possible to use only by one person or by a single group of people at a time and a bilberry can be picked only once a season.

Economic theory classifies four types of goods, which are defined according to their position in terms of rivalry and exclusionary. A *public good* (air, a beautiful scene) is both non-rival and non-excludable. Scenery is not diminished whether one, two or more people are viewing it and no-one can be excluded from the view. A *private good* on the other hand is both rival and excludable (clothes, apartments). The owner may exclude others from using for example the apartment and there are no possibilities to build a similar one for everyone. Everyone's right could be stated to be located somewhere between these two classifications as it is non-excludable but its objects are rivalrous, in other words, a *common good*. Another type is a *club good*, a non-rival but excludable good such as satellite TV or golf fields.

A common good is available for everyone to exploit, but it is also finite or fragile. Increase in its demand may lead to problem named in economic theory as the tragedy of the commons, describing a situation where the use of a common good exceeds the carrying capacity level of the good. The theory was introduced by G. Hardin in Science magazine in 1968 where the author states that as people have the tendency to maximize their own private welfare the common good will probably be overexploited if the property rights are not properly defined. According to the theory, people would not have incentives to consider or negotiate with others about the carrying capacity or sufficiency of the good, nor consider the social benefits of their actions, but try to maximize their own benefits from the good. Hardin states that "commons are justifiable only under conditions of low population density". If for example national parks are treated as commons, they will have no value for anyone in the future (Hardin, 1968).

The tragedy of commons could show up in more subtle ways than as wearing of the landscape or overexploitation of berry or mushroom crops. Namely, it is possible that public access affects private forest owners' land management decisions, e.g. in such way that they favor timber production at the cost of non-wood forest products. This possibility arises from the freeriding behavior allowed by the public access to private land (Uusivuori, 2016). For example, as a neighboring forest can be accessed for recreation, a landowner may be tempted to manage her own forest more intensely for timber production. When this behavior is followed by landowners more generally, a reduced amount of forest is dedicated for recreation in the equilibrium, as compared to a situation where public access were closed.

Hardin (1968) suggests that the only solution to maintain the common good is either to limit the use or privatize the good. Libecap (2009) suggests that command and control tactics such as regulations and taxes could control the overexploitation. However, centralized regulation involves often inefficiency in maximizing the welfare or to prevent the overexploitation and freeriding. To implement efficient tax or regulation system, the officials would need to hold great amount of knowledge about the social costs, limitations of the resources and costs for private user's costs of compliance, private production or opportunity costs (Libecap, 2009).

Mortazavi (1997) presents a theory that the users also may have divergent motives to comply with the regulations. Although maximizing one's private welfare does not in principle involve preservation of the good to next generations, some users do put value to the prospect that future generations have the possibility to experience the nature as they have. Thus it is possible to divide the users between long term players and short term players according to their interests. Representatives of the two users could be tourists and locals. Mortazavi (1997) explains the behavior of different users by game theory, where long-term and short-term players play different game and the game changes if played together. The game between long-term players works only if the misusers are excluded. However, short term players do not respond to punishment mechanisms, such as exclusion, as long-term players do. Long-term players simply spend more time on the spot and have greater chance to get caught (Mortazavi, 1997).

More formal property rights would mean that the private forests are for private or community owner use only, or the use would at least somehow be excluded from outsiders. As pointed out before there are several countries that have chosen this course of action. Property rights address the problem directly and give incentives for the owner to use the resources sufficiently and allow markets to give information about the costs and benefits of the use. Generally, when talking about common or public goods, property rights are either difficult or expensive to define as goods such as fish stock or clean air are divided between various interest groups. However, regarding the use of forests and overexploitation of everyone's rights, the issue wouldn't be as complicated. As the ownership of forests is already defined, only the definitions what the property rights include open the possibility for the tragedy. By defining the everyone's rights more exclusive would automatically limit the overexploitation. This would mean either removing the whole concept of everyone's rights or limiting its range either only on private land or equally on private and public land.

Finland and Sweden have been reluctant to limit the unique and traditional concepts, although in Sweden the issue has already been discussed in the Swedish Environmental Protection Agency (Sydsvenskan, 2011). The reason for the willingness to maintain the current extent of the rights could be that dramatic overexploitations have not yet occurred in Finland or Sweden, as opposed to the Italian case where permission system was imposed when public access started to wear both landscape and mushroom yields. In other words, so far the condition of "low population density" has been fulfilled. From the economic point of view the everyone's right is also justified if the social welfare is higher when the forest provides both recreational services for all users in addition to private profit from timber (Mortazavi, 1997). Removing the right of recreation on private land could have substantial political and social impacts. Losers of the measure, that is the recreationists who would end up with lower accessibility to forests, would probably demand compensation from lost rights (Libecap, 2009). According to the study conducted by Mäntymaa (1997), this compensation could be rather large.

Nevertheless, the issue remains on the table as the demand for recreation areas rise in the vicinity of larger tourist or urban centers, the number of foreign professional berry pickers continues to grow and as new leisure activities increase in popularity. Pressure to the environment and local communities has grown and this will probably continue in future (Sandell and Svenning 2011; Lehtonen et al. 2007). However, as the unique and generally well-functioning system has a substantial group of supporters, alternative options for removal of the extensive rights have been suggested. Mortazavi (1997) proposes that to respond to the problem of different players (long term, short term) different activities in forest could be under specific permits. Permit system is not a new concept as it is already implemented for rod fishing both in Finland and Sweden. Recreational fishers need to pay a fishing management fee and possibly also provincial fishing fee to be allowed to fish with a lure. Similar system could be applied to for example commercial activities or nature wearing recreation activities. A limit to the number of sellable permits is set to the level that secures sustainable use. If the visitor violates the rules, he loses the permit. Mortazavi (1997) suggests that the permit system would concern only tourists and users outside the community. Locals would not need to purchase the permit. The permit system would thus involve also e.g., the berry pickers outside the community, which could possibly increase communities' income, control the berry picking on certain areas and restrain the conflicts between the local and foreign berry pickers. A picker who hurts e.g. the berry twigs would either lose the permit or be liable for the damage. This would be an economic setback for the picker and would work as an incentive to handle the berry yield with caution.

The permit system would again need a monitoring and governance system, that would either be highly costly or if lighter, not as efficient to exclude the misusers. Those, who consider that the risk of being caught is small enough, would continue to act as free-riders.

Conclusions

Our review reveals that public rights to use private land are very space-specific concept, depending on local and regional geography, landscape, traditions, demographics and social issues. In general, it is common that where there are extensive public access rights to nature, such as in Finland and Sweden, no single defined authority or legislation regulates public access to private land and rights and responsibilities have evolved in the course of history. The legal codes underlying the practices vary between countries and regions and they may be based on ancient tradition or on newer contractual agreements of law. In Sweden and Finland, the observance of public rights to private land is mostly based on tradition and common sense.

In Europe, the further south you go, in general the more restricted public access to private land becomes. However, a fairly typical trend in Europe during the last decades has been to either expand or at least ensure land-use rights of the public. One reason for this may be that recreation opportunities might become more scarce in the future because of the pressure to expand the area under set-aside areas for strict nature conservation, which would restrict public access to those areas. The concept of everyone's right has worked considerably well throughout time but, as the original reasons for the right have declined and recreational use and demand have increased, the question has been raised whether everyone's right should be redefined to prevent complications between users and landowners.

In Finland and Sweden criticism towards the system has however increased equally on the side of landowners, private users, and civic organizations as the rather open concept is not taking into account the growing and changing demand for recreational services of land. For example, there have been some demands on the landowners' side to exclude commercial activities from everyone's right, referring especially to berry picking

and a more formal control of the trade (Written question to Finnish parliament 8.9.2009). The discussion has diminished at the beginning of the 2020s regarding what kind of damage, for example, commercial berry picking causes to the landowner and the attention has been on the human rights of foreign pickers. In Finland, instead of limiting the existing everyone's rights from for example commercial activities, the administration has invested in ensuring the realization of human rights by new legislation ("Berry act") and by informing about the possibilities and limitations the everyone's rights include (Työsuoja.fi 2023). Hence, the objective is to decrease the conflicts between pickers and interest groups without interference with the current legislation or common practice.

It still could be questioned whether the current extent form of the rights is reasonable to maintain if it leads to excessive pressure on the environment and whether it is reasonable to have commercial activity practices under the everyone's right, without compensation to the landowner. According to the economic theory, people have tendency to maximize their welfare which will eventually lead to overexploitation of a common good. Although everyone's rights have worked considerably well, this situation can be viewed as stemming from the low population density and thus from the low usage rate. As the rate of use increases or more nature wearing activities become more frequent, the carrying capacity of popular recreation areas probably decreases. It can also be argued that locals have a higher tendency to respect the nature and maintain it to next generations and also have more incentives to comply with the given regulations, compared to those who are only visiting the area. Theoretical approaches such as those related to carrying capacity or over-crowding would validate a differentiated policy for tourism and locals.

Finland and Sweden could also benefit utilizing the concepts of public access rights in nature-based tourism. For example, different forest ecosystem types and biotopes could be demonstrated to interested visitor groups. However, if this sort of practice will become more common, it is likely that more defined communication and contractual agreements are needed with possible compensatory elements included.

Any limitation of the rights would need a comprehensive valuation of the costs and benefits that the rights are creating. By no means does the economic value be limited to the financial value of the trade chain of the forest berry and mushroom industry or the outdoor recreation industry. Although most of the aspects contributing to the market and non-market values of the rights have probably been recognized in literature and public discussion, the full value of the rights has not yet been estimated on a national scale.

Based on different landowner regimes, issues of land-use rights elsewhere in the world besides Europe are typically focused on other questions than public access to private land. In large part of the world, public ownership of land is very common. However, in Africa, Asia and South America, land policies exist where either local communities, indigenous groups, ethnic groups or private industrial land concessions are given rights to control land areas of their interest. However, these policies have been typically unstable and e.g. enforcement of legislative initiatives has been often poor.

Our review also reveals that literature and research concerning everyone's rights is quite scarce. It is typically limited to certain specific aspect of everyone's rights, but more comprehensive surveys have been uncommon. Besides, certain aspects of everyone's rights, such as the estimates of the values of the practice of public access to private land, or the optimal extent of access rights, are either missing or very rare. These could be obvious directions for future studies.

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