

The Society and the Form of Land Ownership in Mediaeval Scandinavia (Sweden)

—In the Light of the Upland-Law—¹⁾

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I Introduction

I have been researching into the form of land ownership in the mediaeval Europe, particularly for the time being, that in the mediaeval Scandinavian countries. I have already had opportunities to discuss this problem, setting mediaeval Sweden to be one focus of its research. The discussion has been made in some articles entitled, for example, "The Form of Land Ownership in Mediaeval Scandinavia (Sweden)—as a step to the study of land ownership history in the early mediaeval Europe—" [*JOSAI KEIZAIGAKUKAISHI—Journal of Economics, Vol. 21-2·3 December 1985*], "Concerning a Custom of Self-help in the Mediaeval Scandinavia (Sweden)—An Inquiry into the Society of Private Force—" [*JOSAI JINBUN KENKYU—Studies in the Humanities, Vol. 13 January 1986*], "The Form of Land Ownership in the Uppland Law (Mediaeval Sweden)" [*JOSAI KEIZAIGAKUKAISHI—Journal of Economics, Vol. 22-2 December 1986*]. I admit that we have a long history of arguments regarding this problem and we have for instance a lordship theory (F. de Coulanges, A. Dopsch, K. Wührer, etc), a communal theory (G. L. von Maurer, G. von Below, K. Haff, etc), rotation of these theories (G. von Below) with us. But I can not admit that each of these is perfect enough to explain whole of the matters which mediaeval society presents, as long as the form of land ownership concerns. We must work out a better theory ("Aufheben") suitable for the interpretation of this problem. According to the conclusion drawn by me the character of land ownership has two complex features, that is to say, it is individualistic on one hand, but it is not free nor independent from the communistic regulations ("Zwing und Bann") on the other hand. To dare say by the term of my own it is antinomic land ownership. In other words it is "Gewere", which is generally seen in pre-and early-mediaeval Germanic society and whose typical feature is occupation by power ("Gewahrsam") in reality ("leiblich"). This article aims at discussing the said problem again through all the descriptions (except those in the chapter called "Wipærbo balkær" ((Chapter of Village Community, to be abbreviated "W" hereafter)),

which have been already treated in the previous article mentioned above) of Upplandslagen (Upland-Law) which was compiled through sanction of Birger Magnusson (1290-1318) in the end of the 13th century in central Sweden.²⁾

II Kingship

In accordance with the fact that the king gave sanction of compiling the Upland-Law he seems to enjoy superiority of power over sacred and secular worlds <Kirkiu balkœr (Chapter of Church, to be abbreviated "Kk" hereafter) § 20, Þingmalœ balkœr (Chapter of Legal Trial, to be abbreviated "Þ" hereafter) § 1 principium (to be abbreviated "pr" hereafter), Manhœlghis balkœr (Chapter of Human Sanctity, to be abbreviated "M" hereafter) § 8-1>. Military (oversea) expedition and military dues ordered by king are its examples <Kk §§ 10 pr, -6; M § 11-3>. They are imposed on domiciliated farmers (bolfasti mæn) except women, minority, and the aged <Kununx balkœr (Chapter of King, to be abbreviated "Kg" hereafter) § 12-1, M § 11-2>. They are carried out not by the individuals, but in terms of village community which ranges from the smallest village unit "hampn" to the largest village unit "hundæri" <Kg §§ 10-1, -3, -7, -11; 11 pr.>.

Now it is necessary to investigate the reality of king's power and the functions of village community, that is to say whether the former affects strong and arbitrary power to the people (who hereafter means to be free farmer called "bonde ((sing.)), bönder ((pl.))" generally.) and how much the latter affects to the daily life of the people.

III Village Community

(1) Communistic regulations ("Zwing und Bann")

The village community is not only the unit of military burdens imposed by the king, but also is touched deep into mortgage, lease <Jorþœ balkœr (Chapter of Land, to be abbreviated "J" hereafter) §§ 9 pr, -1; 12 pr, -1; W § 7-2>, sale and purchase <J §§ 2-4, 4 pr> of land or cattle. Besides these functions, it is concerned in church construction <Kk § 15-2>, upkeep of bridge <W § 23-1>, protection of the poor and the mentally defected <M § 2-1; Kiöpmalœ balkœr (Chapter of Purchase, to be abbreviated "Kp" hereafter) § 11>, and so on <M § 5 pr>. Village community intervenes in the daily affairs in which the people is concerned as seen above on one hand, but it, on the other hand, assumes responsibility as its own <M §§ 8 pr, 9-3>.

One might receive an impression that these functions of village community oppresses to its members their daily life and activity. Here it is necessary to investigate the functions further more.

(2) Self-defence=Autonomy

Occasional attacks against the village <Ærfbœr balkœr (Chapter of Heirship, to be abbreviated "Æ" hereafter) §§ 16-12, 17 pr> let it indispensable for the village community to make provision for self-defence <Kg § 12-1>. The power for the self-defence must be one concentrated mighty power strong enough to be superior to that of each community in order to cope with enemies and also to control disorder within and among the communities. In this point of view the duty of self-defence by the community is coincident with the duty imposed by the king. To dare say in other words the latter duty can be interpreted to be active and autonomic one for the members of the community <Kg §§ 10-2, -8>, not the passive one enforced unilaterally from the outside of the community (the king). For example the sentry duty is carried out solely under the condition of guaranteeing the daily life of the people and their producing activities <Kg § 12-2 (M § 45-1; J § 20-1)>, not carried out against conveniences of the people. The self-defence against the outside is after all equal to enjoyment of autonomy for the inside (the member of the communities). Here the communalistic regulations mentioned above (including the former chapter) can be understood to be measure or means for the sake of internal adjustment and in the end for the sake of independent autonomy. That is to say, the communalistic regulations do not affect in any way of oppressing the people's life. Member of the community can be interpreted to be free *economically* (as long as they can fulfill some kinds of dues imposed by the king) and *socially* (as long as they can enjoy autonomy). Now in the following chapter is their status to be investigated further more.

IV Social customs in pre—(established) state

(1) Self-help (blood-feud, "Fehde")

Not that self-help is one and only resort unavoidable for injury events to be settled, but it is optional <M §§ 9-2, 10-1, 38>. But it is an undeniable fact that self-help is one of the social customs which is a matter in vivid practice and generally sanctioned as a rightful obligation worth of respect <M §§ 9-4, 12-6, 19-1, 25 pr, 31-1, 32 pr, 52 pr; Kg §§ 4 pr, -1>. Therefore it is quite reasonable that murder in secret is one of the most abominable deeds <M § 31 pr>. Self-help in practice is carried out under the kinship solidarity (clan, "Sippe"), and that the kinship still functions effectively in the daily life of the people <J §§ 1 pr, 2 pr; P § 8 pr; Kk § 14-4>. Further more to say, social and economical independence is a precondition necessary for each of the people to commit self-help, who, needless to say, is under protection of his kinship though. All of these suggest that united power (authority) as a sovereign state is not established good enough to take the place of self-help in the society yet.

(2) "Peace" (Security) in a certain time and place

The fact on one hand that some kinds of Peaces are protected legally in some terms of periods <D §§ 14 pr, -1, -2; Kk § 22 pr> and spaces [house <Kg § 5 pr>; church <Kk §§ 18-1, 21 pr, 22-1; M §§ 39 pr, 50>; court (yard) of king, priest, knight <Kp § 9-5>; law-meeting <Kg § 7 pr>] intimates that on the other hand perils of murder, injury, and so on exist as a matter of reality, which could be attributable to self-help in daily life. Because Peaces are certain times and places pointed out for the purpose of evading self-help. Accordingly the dignity of Peace as the obverse side of coin, which is made sure as follows, indicates as its reverse side additional probability of such interpretation as the practical existence of self-help in daily life. Dignity of Peace reveals itself in higher amount of atonement paid in the cases of murder, injury, theft <M §§ 12-1, -2, -3, -5, -10, 24, 29, 50; Kk § 18-1> and in rigidity of house-ransacking procedure <M §§ 47-1, -2>.

(3) Socially respected personality

In case mis-arrest should happen to be done to a member of the community, a certain higher amount of penalty is imposed and paid to him or her <M §§ 31 pr, 41 pr; W § 25-1; (D § 9 pr; Kp §§ 10 pr, -1)>. It means that honour or personality is respected to each of the people, which is coincidental with social status of their independence.

(4) Grasp ("Gewere")

The purchase, sale, exchange, or lease of land becomes legally effective upon expiration of a certain years after the real transference of land caused by the aforementioned each reason <J §§ 9-4, 13-5>. The realistic right of utilizing the (waste) land is enjoyable to the man who cultivates or reclaims the (waste) land with his own labour, not the man who holds the land in name <W § 21-1; J § 15-5, Cf., Östgötalagen, Bygda balkær (Chapter of Construction) § 16>. This might signify grasp ("Gewere") upon land. The grasp here includes dual character. It is meritocracy, or individualism (which indicates the direction of private ownership in later, modern period) on one hand, but it is not free from the communalistic relations, in other words it is restricted on the whole by communalistic regulations, on the other hand.

V Background of the society

Split of people into classes and ranks is not deniable <Kk §§ 7-2, -7, 8-2, 9 pr; J §§ 14 pr, -1; Kp § 11>. Further more to say, people could be degraded in some cases to slave in debt <M § 32-1; D § 7-3>. This is a "new" (to be mentioned later again) situation which comes to appear within the "archaic" (to be mentioned later

again) village community. But contrary to these descriptions of degradation into slave in debt, we see the descriptions restricting the slave in debt itself and sale of Christian (Kp §§ 3 pr, -3). The latter descriptions might rather indicate king's desire and would-be declaration of his power. King's intention to gain power can be seen from other descriptions (Kk § 22-1; P §§ 7-3, 8 pr; W § 23-1; Kp § 9-3; M §§ 15 pr, 20, 45-1). A certain mighty power enough to guarantee the ownership of goods stolen or lost (M §§ 51-1, 53-1, 54-1) might be derived from and based upon a certain united power (authority) of state like that of the king.

Now it is in a historical stage for the king to try and intend a certain role to play as a incarnation of state-power under the pretext of maintaining social order which becomes unsteady in the face of splitting of people into classes and ranks partly brought about by the reason of meritocracy, or individualism (which is designating private ownership in later and modern period in accordance with the firmly established state power). But all that the king can exercise is not more than trial or intention, because his power is not free from a certain limitation yet. In other words the village community still remains strong enough to deal with and influence over matters which are raised there and among its members, even though it is not always fully strong enough to (here in the "crack" the king finds a certain role to play in its place). The society has thus dual structure. That is to say, each of the king and the village community has its own strength (power) and weakness (limitation), and the strength of the one is, to be complementary, corresponding to the weakness of the other.

VI Conclusion

The form of land ownership reflects itself upon the social situation. Now to begin with, it is proper to summarize something about social situation examined above. The situation which Upland-Law presents shows dual character to each of the village community and the kingship.

(a) Village community remains still alive and active to manage "almost" all of the internal and external affairs by means of communalistic regulations. To say in a word, we can put it "Collectivism" (U. Sporrang),³⁾ which can be interpreted to be "archaic" character of village community.

(b) But on the other hand, we can not but admit the appearance of "Individualism" (G. Hatt)⁴⁾ within the village community. The social and economical meritocracy made sure through many cases of descriptions is another feature. Split of people into ranks and classes is one consequence deriving from it. This is a "new" feature in contrast with "archaic" village community. As for the kingship, it finds some roles to play in the face of "new" and unsteady situation which emerges within village community, and tries and intends to enlarge and strengthen

the roles more and more [corresponding to (b)]. It is sure enough to have accomplished the aim in a certain degree, but not in full-fledged, because the time is still in one "part of larger processes including...the state-building efforts" [T. R. Skarsten]⁵⁾ and also on the starting edge of demanding rightful power over the kingdom ("Under 1200-talet började konungen göra anspråk på att de kungliga stadgarna automatiskt skulle äga laga kraft i hela riket.") [K. Drar].⁶⁾ To say in a word, the time is on the eve of sovereign or state power to be firmly established. The situation over kingship is reasonably complementary to that over the village community [as mentioned in (a)].

The form of land ownership is awfully reasonable enough to correspond to dual character judged from both of the village community and the kingship. That is to say, land ownership is individualism, or meritocracy [corresponding to (b) and its relating situation of kingship (state authority)] on one hand. But on the contrary it is not unrelated to village community (regulations), and it is rather firmly connected with village community (regulations) and in a sense it is under the protection of village community (regulations) on the other hand [corresponding to (a) and its contrasting situation with kingship (state authority)].

In case the way of interpretation hereto could be approved in order to understand the form of land ownership in the society of Upland-Law, lordship theory and communal theory insisted heretofore could not be maintained any longer. Consequently the form of land ownership containing dual character within itself should be called, according to definition of mine, "antinomic" form of land ownership. To use the German term, it is "Gewere", or it could be put "Sondereigentum" as a stage of economic history regarding land ownership.

By way of wider range of research than before this article in the end re-confirms the conclusion drawn in some previous articles of mine.

«NOTE»

- 1) This is a brief English summary of an article of mine entitled "The Society and the Form of Land Ownership in Mediaeval Scandinavia (Sweden)—In the Light of the Upland-Law—" [JOSAI KEIZAIGAKUKAISHI—Journal of Economics, Vol. 23-2 September 1988, pp. 1-88].
- 2) The author uses the following materials of documents.
Corpus Codicum Suecicorum Medii Aevi, Vol. I. Henrik Cornell (ed.) *Lex Communis Regni Sueciae Vetustior* »Magnus Eriksson Landslag«, 1943; Vol. VIII: utg. Axel Nelson, *Lex Helsingiae (Hälsingelagen)*, 1948; Vol. XII: utg. Elias Wessén, *Lex Vestro-Gothica vetustior (Äldre Västgötalagen)*, 1950. *Samling af Sweriges Gamla Lagar (Corpus juris Sueo-Gotorum antiqui) (to be abbreviated SSSL hereafter)*, vol. I: utg. H. S. Collin/C. J. Schlyter, *Westgöta=Lagen*, 1827; vol. II: utg. Collin/Schlyter, *Östgöta=Lagen*, 1830; vol. III: utg. C. J. Schlyter, *Uplands=Lagen*, 1834; vol. IV: utg. C. J. Schlyter, *Södermanna=Lagen*, 1838; vol. V: utg. Schlyter, *Westmanna=Lagen*, 1841; vol. VI: utg. Schlyter, *Helsing=Lagen, Kristnu=Balken af Smålands=Lagen och Bjärko=Rätten*, 1844; Vol. VII: utg. Schlyter, *Gotlands=Lagen*, 1852; vol. IX: utg. Schlyter, *Skåne=Lagen*, 1859. Sam. Henning (utg.), *Upplandslagen enligt Cod. Holm. B 199 och 1607 Års Utgåva, Häft. 1 och 2*, 1967. Harald Hjærne, *Medeltidens Statsstick omkr. 800-1350 Valda Texter*, 1895, s. 327-

340.

The author clings to the documents, and when the translation is necessary he tries to do it directly from them with the help of the following literatures.

SSGL, vol. XIII: C. J. Schlyter, *Ordbok till Samlingen af Sweriges Gamla Lagar*, 1877. Utg. Åke Holmbäck/Elias Wessén, *Svenska Landskapslagar, tolkade och förklarade för nutidens svenskar*, Vol. I: *Östgötalagen och Upplandslagen*, 1933; Vol. II: *Dalalagen och Västmannalagen*, 1936; Vol. III: *Södermannalagen och Hälsingelagen*, 1940; Vol. IV: *Skånelagen och Gutalagen*, 1943; Vol. V: *Äldre Västgötalagen, Yngre Västgötalagen, Smålandslagens Kyrkobalk och Bjärköarätten*, 1946. Elof Hellquist, *Svensk Etymologisk Ordbok*, Vol. I-II, 1980. Ludovic Beauchet, *Loi de Vestrogothie (Westgöta-Lagen)*, 1894. Über. Claudius Frh. V. Schwerin, *Schwedische Rechte Älteres Westgötalag, Uplandslag (Germanenrechte, Texte und Übersetzungen Bd. VII)*, 1935. Åke Ohlmarks, *De Svenska Landskapslagarna*, 1976. Åke Holmbäck och Elias Wessén, *Magnus Erikssons Landslag i Nusvensk Tolkning*, 1962.

Literatures for reference are pointed out on each note in each article of mine mentioned above.

- 3) Other related description: "germanic tribal community"—Ulf Sporrang, 'Studies of Rural Society Based on Field Evidence in Central Sweden', Sven-Olof Lindquist (ed.), *Society and Trade in the Baltic during the Viking Age*, 1985, pp. 204, 209.
- 4) Gudmund Hatt, 'The Ownership of Cultivated Land', *Det Kongelige Danske Videnskaberne Selskab, Historisk-Filologiske Meddelelser*, XXVI/6, 1939, p. 15. Do., 'Das Eigentumsrecht an bebautem Grund und Boden', *Zeitschrift für Agrargeschichte und Agrarsoziologie*, Jahrgang 3, 1955, S. 125. Other related descriptions: "individualistic form of ownership; individualistische Formen des Eigentumsrechtes"; "personal ownership of land; das persönliche Eigentumsrecht an Grund und Boden." (G. Hatt, 'The Ownership—((*op. cit.*))', pp. 16, 22. Do., 'Das Eigentumsrecht—((*op. cit.*))', S. 125, 129).
- 5) Byron J. Nordstrom (ed.), *Dictionary of Scandinavian History*, 1986, p. 110.
- 6) Kristin Drar, *Konungens herravälde såsom rättvisans, fridens och frihetens beskydd: medeltidens fursteideal i svenskt hög-och senmedeltida källmaterial*, 1980, s. 51.

«Appendix Note»

Judging from the typical feature that "solskipt (sun-division)" and open-field system had or have kept, roughly to say, communistic principles [*JOSAI KEIZAIGAKUKAISHI—Journal of Economics*, vol. 21-2-3, 1985, n. 40, 41, 44-50, 84 (pp. 28-31, 39-40); *ibid.*, vol. 23-2, 1988, n. V-30 (pp. 64-66), VI-8 (p. 72)], both of the two systems furnish me with good and much information and reference, and therefore do me a great deal of good for the purpose of interpreting the historical character or form of land ownership discussed here in this article. Here I greatly appreciate all of those mentioned in [*ibid.*, vol. 23-2, p. 74] who helped me to visit Laxton for researching the open-field system operated still there, from mediaeval times down to the present.