



# The Politics of property in a European periphery

The ownership of books, berries, and patents in the Grand Duchy of Finland 1850–1910

Matti La Mela

Thesis submitted for assessment with a view to  
obtaining the degree of Doctor of History and Civilization  
of the European University Institute

Florence, 07 November 2016



European University Institute  
**Department of History and Civilization**

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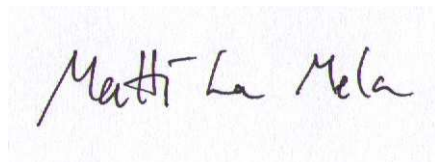
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# **The Politics of property in a European periphery: The ownership of books, berries, and patents in the Grand Duchy of Finland 1850–1910**

Matti La Mela

## **Abstract**

In the late nineteenth century, the Grand Duchy of Finland benefited from its backward position in the peripheral corner of Europe; its export markets expanded, career opportunities were sought abroad, and foreign ideas and technology were translated and appropriated. At the same time, the identity of the young nation state as a part of the Russian Empire was being put together by its educated elite, whose national projects would react to foreign developments and amalgamate with the expertise acquired abroad. This included the reconciliation of private, collective and state interests over natural resources and intangible ideas.

This thesis explores and adds to the scattered knowledge of four areas of intangible and material ownership in the country: inventions and literary works, trees and wild berries (*allemansrätt*, public access to nature). The thesis aims to understand how ownership, in general, became defined and how these specific property rights were produced as part of the peripheral dynamics in the Grand Duchy. The study analyses the political processes around the key legislative reforms in which the existing structures of ownership became challenged and reshaped.

The thesis argues that the peripheral perception related to the economic and intellectual context was central to conceptualising “property”. It allowed comparative reflection and learning from abroad, but the spatio-temporal relation served also to frame and guide the property reforms according to the interests of the political factions, for instance, by emphasising the particular or universal aspects of the reform. In general, a pragmatic, liberal line of thinking which favoured domestic interests permeated the reforms. The rhetoric of the sanctity of private property was commonly used, but in a way that incorporated the interests of the public; differences in the concept of property pertained especially to the role of the public and the way in which the common interest was seen to manifest itself.





# Table of Contents

<b>Acknowledgements.....</b>	<b>v</b>
<b>1 Introduction: Berry-picking apparatus and the concept of property .....</b>	<b>1</b>
1.1 Context and theory: The backward and peripheral Grand Duchy of Finland .....	4
1.2 Approach and literature: Making property visible in the nineteenth century .....	16
1.3 Method, sources and structure: Politics of property in a European periphery .....	25
<b>2 Intellectual property rights first take shape: The 1880 authors' rights law.....</b>	<b>37</b>
2.1 Early institutional development of authors' rights: Between Russian censorship and Swedish trade.....	39
2.2 Censorship authorial rights disintegrate in the 1860s.....	55
2.3 A liberal concept of copyright evolves in the 1870s .....	69
2.4 The demarcation of authors' rights in 1877: strong rhetoric of property and the limits of the foreign laws .....	87
2.5 Conclusion: A Nordic pirate bay with strong domestic property rights? .....	103
<b>3 Patenting the Nordic periphery in the late nineteenth century: Between foreign innovation and geopolitical concerns.....</b>	<b>107</b>
3.1 Foreign influences and the patent legislation of 1876 and 1898 .....	109
3.2 The Finnish learning economy: Privileges and patents around the mid-nineteenth century .....	129
3.3 The expanding international innovation market, its actors and the call for patent reform .....	140
3.4 The universal idea of a patent and the creation of the Finnish patent area in the 1890s .....	150
3.5 Conclusion: Intellectual property laws enforce the Finnish autonomy .....	166

<b>4 Mapping the trees of the nation: The good and the bad proprietors .....</b>	<b>173</b>
4.1 State forests and private forests in the mid-nineteenth century.....	175
4.2 Conflicts over the proper use of forests in the early 1870s: “The destiny of our forests is found in other countries” .....	185
4.3 The Forest Law of 1886 and the attempts to enforce and restrict forest ownership.....	199
4.4 Conclusion: The forests of the nation and perspectives on ownership in the late nineteenth century.....	208
<b>5 The ownership of wild berries and the tradition of <i>allemansträtt</i>.....</b>	<b>213</b>
5.1 Context for the Penal Code debate of 1888: Wild berry picking in the social fabric of the countryside.....	216
5.2 The economic potential of wild berries and the Penal Code proposal of the 1880s.....	232
5.3 The Penal Code debate of 1888: Should the Penal Code affect the poor berry and mushroom pickers?.....	243
5.4 Berry-picking strangers, patriarchal practices, and the turn-of-the-century economic expectations .....	257
5.5 Conclusion: The unequal history of the Nordic tradition of equal and open access to nature .....	269
<b>6 Conclusions .....</b>	<b>275</b>
<b>Bibliography .....</b>	<b>281</b>

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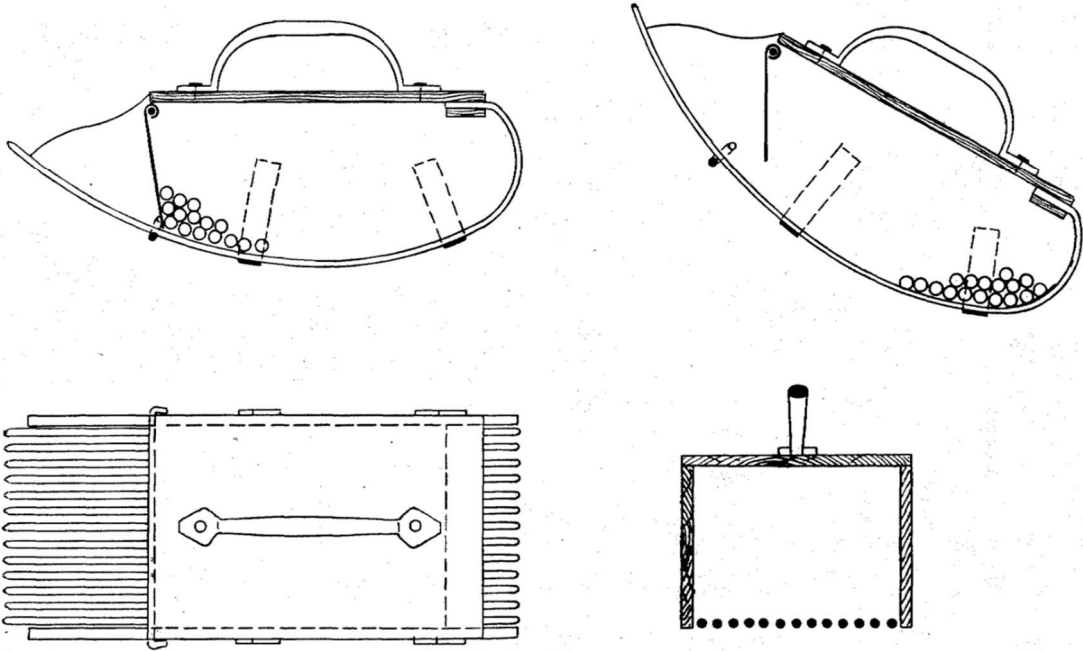
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BÄRPLOCKNINGSAPPARAT - MARJAINPOIMIMISKOJE.



Patent no. 4243 "berry-picking apparatus", granted to Anders Wikstrand in November 1910 (Industrial Board, the Patent office of the Grand Duchy of Finland).



# 1 Introduction: Berry-picking apparatus and the concept of property

Anders Wikstrand, a Swedish *handlare* from the town of Mora, received a patent for his "berry-picking apparatus" from the patent office of the Grand Duchy of Finland in November 1910. This was the first patent granted for a berry-picking device in the Grand Duchy, and the 4243rd patent since their numbering was started in 1842.<sup>1</sup> The idea of the berry-picker was simple. It was used manually to collect wild berries, such as lingonberries or bilberries, which grew abundantly in the forests of the Nordic countries. The apparatus was swung at the berry shrub, and the berries entered the container of the machine. The bottom of the machine was made of metal wires, so that leaves and other rubbish could fall out.

There was a growing economic interest in wild berries at the turn of the century, and Wikstrand's machine offered a solution for a more efficient method of picking the berries. However, Wikstrand was not the first to invent such a machine. Several patents had been issued for berry-picking machines in Sweden. J. O. Andersson's *apparat för bärplockning*, which was patented in 1888, used a similar technique, and the *bärplockningsapparat* by F. G. Dahlstrand which published in 1896 was comparable, except for the form of the machine.<sup>2</sup> In fact, the patent officials of the Grand Duchy rejected Wikstrand's application at first, because the invention did not appear to be new. In their resolution they wrote that a "quite similar" berry-picker had already been on sale in the Grand Duchy some years ago. Wikstrand was given 60 days to present a new application, in which the patent claim should only regard "the new in the invention".<sup>3</sup>

Wikstrand sent a modified patent claim with an explanation of what was new in the machine to the patent officials. He compared his apparatus to the berry-picking mechanism by E. E.

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<sup>1</sup> The first invention privilege of the Grand Duchy concerned steam boat traffic and was granted in 1833. In 1842, the Directorate of Manufactures received their first ordinance and became the main institution for evaluating applications, conserving the patents, and overseeing their expiry. Pirkko-Liisa Aro, 'Keksintöprivilegit Suomen suuriruhtinaskunnassa', *Defensor Legis* 1–3 (1977): 25–29; Helena Laihi, 'Näkökulmia patentti- ja rekisterihallituksen ja sen edeltäjävirastojen toimintaan', in *Patenttien vuosikymmenet* (Helsinki: Patentti- ja rekisterihallitus, 1992), 64–67.

<sup>2</sup> *Apparat för bärplockning*, Patent no 1677 (Kongl. Patentbyrå, 25 August 1888); *Bärplockningsapparat*, Patent no 6746 (Kongl. Patentbyrå, 19 August 1895). 'Swedish Patent Database', accessed 23 May 2016, <http://was.prv.se/spd/search?lang=en>.

<sup>3</sup> Resolution by the Industrial Board (8 July 1910). Patent no 4243. Ea:123, Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto, Finnish National Archives (FNA).

Mattsson—another Swede from the town of Mora—which had been patented just one year previously in Sweden.<sup>4</sup> Wikstrand's machine was equipped with a lid that opened and closed automatically, and prevented the berries from falling out. The strings that formed the body of the machine made it flexible, whereas the body of Mattsson's device was fixed. Both qualities, Wikstrand explained, were useful for berry picking.<sup>5</sup> The Finnish patent officials accepted the patent application, and published it in their official journal for the inspection of the public.<sup>6</sup> No complaints were made, and Wikstrand was granted a patent for 15 years. Wikstrand's invention was protected in the Grand Duchy for three years only, as he left the annual fees unpaid in 1913.<sup>7</sup>

This thesis studies the concept of property in the Grand Duchy of Finland during the second half of the nineteenth century. More precisely, the thesis examines the political processes which made it possible, acceptable, and desirable for the idea of a berry-picking apparatus to be protected by a foreign inventor in one of the European peripheries, an area that had been part of the Russian Empire since 1809. To reach this aim, the study focuses on four particular themes that reflect the thinking on intangible and material ownership in the country: inventions and literary works, trees, and wild berries. The themes are mainly investigated through the major legislative reforms in ca. 1870–1900, which were discussed in public debates, parliamentary documents, and papers by scholars and state functionaries, and which ultimately came to regulate the functioning of the property regimes.

The patenting of a berry-picking apparatus reflects the perspectives of this thesis in three ways. Firstly, in the nineteenth century, the Grand Duchy found itself at one of the European peripheries, and was according to the contemporary statistics a poor and backward country (and probably was considered to remain one). However, the country was able to benefit from this position by integrating with the more developed economies and learning from them. The export markets expanded, study trips were organised, and career opportunities sought abroad, and,

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<sup>4</sup> Anordning vid bärplockningsapparater, Patent no 29204 (Kongl. Patentbyrå, 18 October 1909). 'Swedish Patent Database'.

<sup>5</sup> Till industristyrelsen! Letter from Anders Wikstrand to the Industrial Board, 5 August 1910. Patent 4243. Ea:123, Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto (FNA).

<sup>6</sup> Minutes of the Industrial Board (9 August 1910). Ca:25, Pöytäkirjat 1910-1910. Kauppa- ja teollisuushallituksen arkisto (FNA).

<sup>7</sup> Patent register XI (patent no 4243). Ab:11, Patenttirekisteri (1910-1911). Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto (FNA).



consequently, new ideas and technology were appropriated.<sup>8</sup> At the same time, foreigners had a considerable role as founders and especially as technical experts of the industrial enterprises of the nineteenth century.<sup>9</sup> The Swedish Wikstrand was the first to patent berry-picking technology in the Grand Duchy. Similarly to the situation in many other smaller or peripheral countries, the majority of patents issued in the late nineteenth century were granted to foreigners.<sup>10</sup> Wikstrand could observe a similar commercial interest in wild berries in the Grand Duchy as that which had already developed in the 1870s in neighbouring Sweden. In both cases, this demand was generated especially by the German industries.

Secondly, regarding the greater economic appropriation of the resources, the practices of ownership studied in the thesis were increasingly formalised in law during the nineteenth century. The reforms aimed at the rationalisation of the property relations, but also at the reconciliation of the interests of the private owners, the state and to an increasing extent, the public, in dealing with the resources. As well as the modern legislation, state administration for managing the property rights was developed, and new authoritative groups—especially lawyers, engineers and scientists—emerged to lead these reforms.<sup>11</sup> As a result, new property and proprietors were created, and current practices were confirmed—but also disintegrated. Particularly in the novel area of intellectual property, foreign examples were studied during the domestic reforms, and international cooperation played a role so that a partial harmonisation of the laws took place.<sup>12</sup> Wikstrand's patent was a definite and delineated right, which he had obtained by following the formal procedure set in the patent legislation. The property rights to the wild berries, on the contrary, had not been clearly defined, and despite the landowners' petitions in both Sweden and Finland, the berries were turned into an open property that was accessible to all.

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<sup>8</sup> Timo Myllyntaus, *The Gatecrashing Apprentice : Industrialising Finland as an Adopter of New Technology* (Helsinki : Helsingin yliopisto, 1990).

<sup>9</sup> Niklas Jensen-Eriksen, 'Business, Economic Nationalism and Finnish Foreign Trade during the 19th and 20th Centuries', *Revue Française d'Histoire Économique - The French Economic History Review* 1, no. 3 (2015): 40–57.

<sup>10</sup> Reino Kero, 'Ulkomaalaisen teknologian patentointi Suomessa ennen ensimmäistä maailmansotaa (English Summary: The patenting of foreign technology in Finland before the First World War)', *Historiallinen arkisto* 90 (1987): 142–43; B. Zorina Khan and Kenneth L. Sokoloff, 'Historical Perspectives on Patent Systems in Economic Development', in *The Development Agenda: Global Intellectual Property and Developing Countries*, ed. Neil Netanel (New York: Oxford University Press, 2008), 19–20.

<sup>11</sup> In the case of Russia, see Ekaterina A. Pravilova, *A Public Empire: Property and the Quest for the Common Good in Imperial Russia* (Princeton ; Oxford: Princeton University Press, 2014).

<sup>12</sup> In general, see Catherine Seville, *The Internationalisation of Copyright Law. Books, Buccaneers and the Black Flag in the Nineteenth Century* (Cambridge University Press, 2006); Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law : The British Experience, 1760-1911* (Cambridge : Cambridge University Press, 1999).

Thirdly, standing at the very heart of this thesis, the property institutions were the results of particular political processes, and consequently, incorporated the visions of the political factions over how, why, and by whom, the resources should be owned. By the end of the nineteenth century, the peripheral Grand Duchy had developed into a self-assured nation-state, mainly due to its minor geopolitical importance in contrast to Poland and the Baltic States, and loyalty towards the Empire. In addition, the political factions active in nation-building made use of the perception of the Grand Duchy's backwardness, and could approach political questions by referring to the experiences in the more advanced countries.<sup>13</sup> The debates on the property rights place as part of a similar interplay between foreign developments and influences and the national aims of the political parties. The patent law of 1898 that regulated Wikstrand's patent followed developments in the major patenting countries very carefully. However, by basing its law on these "universal" principles, the Grand Duchy could detach itself from the administrative legislative tradition that had been traditionally in the hands of the Russian Emperor.<sup>14</sup>

## 1.1 Context and theory: The backward and peripheral Grand Duchy of Finland

The Grand Duchy of Finland was first created as an administrative and financial entity within Russia between 1809 and 1812. As a consequence of the 1808–1809 war between Russia and Sweden, eight eastern provinces of Sweden were annexed to Russia.<sup>15</sup> Emperor Alexander followed the practices of governance previously used in Estonia and Livonia, for example, by confirming the country's religion, former laws (also "constitutional laws", *grundlagar*) and the privileges of his new subjects. A Russian Governor-General was appointed for the Grand Duchy, who presided over the Senate and was responsible for the areas outside civil administration, mainly police and military matters, and in Saint Petersburg, the office of a Finnish Minister-Secretary of State was created, to present Finnish affairs to the Emperor and hold an important position between the Finnish Senate and Russian government, close to the

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<sup>13</sup> Pauli Kettunen, 'The Transnational Construction of National Challenges: The Ambiguous Nordic Model of Welfare and Competitiveness', in *Beyond Welfare State Models: Transnational Historical Perspectives on Social Policy*, ed. Pauli Kettunen and Klaus Petersen, Globalization and Welfare (Cheltenham: Edward Elgar, 2011), 22.

<sup>14</sup> Matti La Mela, 'Brevets d'invention et autonomie du Grand-Duché de Finlande dans les années 1890', *Revue d'histoire nordique* 19 (2e semestre 2014): 241–62.

<sup>15</sup> Osmo Jussila, Seppo Hentilä, and Jukka Nevakivi, *From Grand Duchy to Modern State: A Political History of Finland since 1809* (London: C. Hurst & Co, 1999), 21–24.

Emperor himself.<sup>16</sup> The Grand Duchy was run by its administration until the early 1860s, when the country's legislative organ, the Assembly of Estates, started to convene.<sup>17</sup>

Historian Osmo Jussila has described the autonomy of the Grand Duchy by dividing the century into two periods.<sup>18</sup> The first period ranges from 1808 until 1861, which he calls the era of the province.<sup>19</sup> During these years, the annexed area was stabilised to become one of the Russian provinces, even though it was somewhat more privileged than the other provinces. On the one hand, the aim was to remove the annexed area from Sweden's sphere of influence, and on the other hand, to prevent it from adopting separatist ideas.<sup>20</sup> The Finnish side appreciated its role as a privileged "province", which the Russian Governor-Generals possessively defended against their domestic colleagues. The state administration expanded, and at its very centre, the Economic Division of the Senate—the "government" of the Grand Duchy—was granted more tasks and competences by the Emperor.<sup>21</sup> In these decades, the country strengthened its separate position, in contrast to Poland or the Baltic states, partly due to the area's lack of importance, but also because of the loyal attitude towards the Emperor.<sup>22</sup>

During the second period, the era of state separatism (*valtiollinen separatismi*), which meant the interpretation that the Grand Duchy was actually a separate state with constitutional

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<sup>16</sup> In 1811, areas by the South-Eastern border, which were already conquered by Russia from Sweden in 1721 and 1743, were put under the same administration of the "New Finland". This "Old Finland" became the province of Viipuri (Viborg). Ibid., 7–13, 17–26.

<sup>17</sup> See Chapter 1.3.

<sup>18</sup> Jussila and some of his contemporaries challenged the constitutionalist interpretation of the Finnish nineteenth century autonomy in the 1960s, and sought to study the Finnish nineteenth century from the broader perspective of the Empire and its interests. The spokespeople of this *administrative* paradigm saw that it was, paradoxically, because of the Emperor, that the loyal borderland of the Empire was allowed to develop separately, however, for "too long a time". Recently, this *administrative* paradigm has been criticised for going too far in downplaying Finnish claims. According to the advocates of the *estate* paradigm, it is totally justifiable that the declaration made by Alexander I at the annexation in 1809 was understood in the light of contract theory, and that the Emperor accepted his role as a constitutional ruler. For the debate between the "administrative" and "estate" paradigms, see for example, Timo Soikkanen, "'...Lakiensa suojeluksessa'. Kahden tulkintamallin loukussa", in *Taistelu autonomiasta. Perustuslait vai itsevaltius?*, ed. Timo Soikkanen (Helsinki: Edita, 2009), 13–86; Kati Katajisto, 'Kansallisen näkökulman paluu. Timo Soikkanen (toim.): Taistelu autonomiasta. Perustuslait vai itsevaltius?', *Tieteessä tapahtuu*, no. 3 (2010): 64–67.

<sup>19</sup> Osmo Jussila, *Suomen suuriruhtinaskunta: 1809-1917* (Helsinki: WSOY, 2004), 18–19.

<sup>20</sup> Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 24–33, 41–43.

<sup>21</sup> The author of the Senate's history, M. Tyynilä, has titled the chapter on the early decades of the Senate as "Finland as the Senate". Markku Tyynilä, *Senaatti. Tutkimus Hallituskonselji-Senaatista 1809-1918* (Helsinki: VAPK-Kustannus, 1992), 123–60, 159–60.

<sup>22</sup> Matti Klinge, *Kejsartiden*, *Finlands historia* 3 (Esbo: Schildts, 1996), 82–84, 151–56, 168–70, 248–49; Juhani Paasivirta and D. G. Kirby, *Finland and Europe: International Crises in the Period of Autonomy 1808-1914* (London, 1981), 53–65.

founding took root in the country.<sup>23</sup> The proclamation made by Alexander I in 1809 had made the country an autonomous state, which had its own constitutional laws dating from the Swedish era. It is not a coincidence that one of the best-sellers of the early 1860s was the “Constitutional Laws of Finland” (*Storfurstendömet Finlands grundlagar*) edited by Professor of Law J. P. Palmén and published by the liberal G. W. Edlund, a member of the committee preparing the first law on authors’ rights in the following decade.<sup>24</sup> Towards the end of the century, the Finnish and Russian interpretations of the autonomy of the Grand Duchy led to a political conflict. The particular status of the Grand Duchy, developed under the permissive policies of the Emperor and backed by the loyalty of the Finns, became more intensively criticised in the Russian public eye. In addition, Russia had started empire-wide programmes of integration in the 1880s, which also affected the Finnish area.<sup>25</sup> The changed attitude of the Russian regime is highly visible in a much debated memorandum about customs, postal, and monetary matters written by the Finnish Senate. In 1889, Emperor Alexander III added his ironic comments in the margins of the memorandum, which Jussila interprets as a critical re-evaluation of the “foreign” Grand Duchy:

Ich habe alle diese Vortragsnoten gelesen und bin erstaunt, wovon darin die Rede ist, von einem Teil des russischen Reiches oder von einem ausländischen Staat? Wie ist des schliesslich – gehört Russland zu Finnland oder ist es ein Teil davon, oder gehört das Gf. Finnland zum russischen Reich? Ich finde, dass die Zollunion unerlässlich ist, dass sie keine leichte Sache und viel Arbeit ist, aber ausgeführt werden kann. Was Post, Geld und Währung angeht, so ist es unverzeihlich, dass diese Unterschiede noch bestehen und eine Vereinigung mit dem allgemeinen System des Reiches unvermeidlich. Ich bitte, diese Sache in diesem Sinne voranzutreiben.<sup>26</sup>

As the above quotation portrays, the Grand Duchy did not appear only as a separate state in theoretical disputes, but had built spheres of political, economic and cultural autonomy inside the Finnish area. The formation of these spheres had taken place since the annexation, but was pushed forward by the reforms of the mercantile structures in the early century<sup>27</sup>, and especially

<sup>23</sup> Jussila, *Suomen suuriruhtinaskunta*, 19.

<sup>24</sup> Kai Häggman, *Paras tawara maailmassa: suomalainen kustannustoiminta 1800-luvulta 2000-luvulle* (Helsingissä: Otava, 2008), 146–47.

<sup>25</sup> Hannu Tapani Klami, *The Legalists: Finnish Legal Science in the Period of Autonomy 1809-1917*, The History of Learning and Science in Finland 1828-1918 2 (Helsinki: Societas scientiarum Fennica, 1981), 90–94; Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 61–78.

<sup>26</sup> The original citation and a “zwangelläufig glättende” translation to German by Schweitzer: Robert Schweitzer, *Autonomie und Autokratie: die Stellung des Grossfürstentums Finnland in russischen Reich in der zweiten Hälfte des 19. Jahrhunderts (1863-1899)*, Marburger Abhandlungen zur Geschichte und Kultur Osteuropas 19 (Giessen, 1978), 236; Jussila, *Suomen suuriruhtinaskunta*, 530.

<sup>27</sup> The early reforms have been understated in traditional historical scholarship to emphasise the liberal spur and the return to the normal political conditions, that is, that the Estates were “allowed” to convene again in

since the mid-century, as a part of the recovery measures approved in the aftermath of the 1853–56 Crimean War (which Russia lost).<sup>28</sup> The state administration was broadened and deepened, and new state bureaus and institutions were created, including postal service (1856), the board of forestry (1863), and the statistical bureau (1865). The process of making the Finnish language the other official language (alongside Swedish, not Russian) was initiated in the 1860s, to take a distance from the former mother country, and was completed in the early 1880s. In addition, even though the Finnish parliament, the Assembly of Estates, did not have a clear constitutional status, the approximately 400 laws that it had discussed and had been approved by the Emperor between 1863 and 1906 strengthened the view of their autonomous legal space held by the Finns.<sup>29</sup> Finally, even a separate army based on conscription was created for the Grand Duchy in 1878.<sup>30</sup>

In economic terms, the development of a separate Finnish area is even more visible. A national currency was introduced in the Grand Duchy in 1860. Moreover, *markka*, was pegged first to silver in 1865 (and only silver roubles could be used in the country) and finally to gold in 1877, while Russian currencies lost any official status in payments. The Grand Duchy also formed a separate customs area which was confirmed in 1859 after the Crimean war.<sup>31</sup> Together with the developments in international trade, this benefitted the Finnish exports, which the forest industries had dominated since the mid-nineteenth century. As there was no need for imported lumber in Russia, the Finnish lumber industry turned their attention to the expanding western

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1863. M. Peltonen has criticised this common narrative, and noted how major reforms removing the mercantile structures were made already by the bureaucratic administration in the 1830s. Matti Peltonen, 'Aatelisto ja eliitin muodonmuutos', in *Talous, valta ja valtio. Tutkimuksia 1800-luvun Suomesta*, ed. Pertti Haapala (Tampere: Vastapaino, 1999), 97–110; Matti Peltonen, 'Valtiollinen yö? : ajatuksia autonomian ajan alun valtionrakentumisesta', in *Nälkä, talous, kontrolli : näkökulmia kriisien ja konfliktien syntyyn, merkitykseen ja kontrolliin.* -, ed. Kari Pitkänen, 1988, 115–25.

<sup>28</sup> The measures had been prepared in the Finnish Senate by the *de-facto* "prime minister" L. G. von Haartman and resulted into a five-step programme which emperor Alexander II presented in 1856. The programme included reforms to promote sea fare and trade (to repair the war damages), support the industry, develop transport networks, improve schooling at the countryside. Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 41–55; Jukka Kekkonen, *Merkantilismista liberalismiin: oikeushistoriallinen tutkimus elinkeinovapauden syntytaustasta Suomessa vuosina 1855-1879 (Summary: From mercantilism to liberalism : a study in the history of law on the adoption of freedom of trade in Finland 1855-1879)* (Hki: Suomalainen lakimiesyhdistys, 1987).

<sup>29</sup> Henrik Meinander, *A History of Finland* (London: Hurst & Company, 2011), 99–100.

<sup>30</sup> Klinge, *Kejsartiden*, 272–79.

<sup>31</sup> As Heikkinen writes, the customs relations were in "perpetual motion" reflecting the political and economic conditions since the annexation of the Grand Duchy. Both a common customs area, and a separate customs areas had their problems: in the 1880s and 1890s, a separate customs area was seen to protect the Russian industries against Finnish competitors, but also potential foreign dummy companies. At the same time, two separate customs areas accentuated the separate Finnish position, and was a situation criticised by the Russian nationalists. Sakari Heikkinen, *Suomeen ja maailmalle: Tullilaitoksen historia* (Helsinki: Tullihallitus, 1994), 206–8, 214–20, 249–59.

markets, mainly Britain. Later in the century, the Finnish paper industry would develop and expand to the Russian paper markets, while the Russian paper industry remained inefficient, and the custom policy set higher barriers for western competitors than for the Grand Duchy.<sup>32</sup> Finally, the Grand Duchy as an importer benefited from the long decline in wheat prices since the 1870s, whereas international wood prices remained more constant. This trend had the opposite effect on Russia, which was an important exporter of wheat. As Markku Kuisma writes, the tiny and backward Grand Duchy appeared almost as “an industrial giant” in contrast to its Empire.<sup>33</sup>

The liberal reforms also concerned the legislation related to property, including women's rights, limited companies, and compulsory purchase.<sup>34</sup> In broad terms, as the case-studies in this thesis demonstrate, a shift from property rights of status towards the rights of legal subjects took place after the middle of the century. This development also entailed a greater role for the state administration in managing these rights, which again reinforced the idea of a separate Finnish regime. As shown in the case of the ownership of inventions in chapter three, a shift took place in the nineteenth century from invention privileges to legally-bound patents, which were examined and maintained by the state patent agency. Regarding property rights over land, two developments should be cited. The first is that the enclosures, as well as the purchasing of the crown farms (*kronohemman*) by their tenants, were initiated in the late eighteenth century and progressed during the nineteenth century in the Grand Duchy. As a result of the enclosures, both individual landowners and the state (with its newly-founded forestry administration) became major owners of forest land, a theme explored in chapter four. Secondly, the structures of estate and family-based land ownership were transformed but not completely removed after the mid-nineteenth century.<sup>35</sup>

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<sup>32</sup> Markku. Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920* (Helsinki: Suomalaisen Kirjallisuuden Seura, 2006), 341–42, 344–47, 438–39.

<sup>33</sup> *Ibid.*, 337–39.

<sup>34</sup> The first law on expropriation was passed in 1864, just two years after the inauguration of the first railroad of the Grand Duchy. Antero Jyräki, *Perustuslaki ja yhteiskunnan muutos: tutkimus varallisuus- ja taloudellisen toiminnan vapauden perustuslainsuojan kehittymisestä tulokinnon avulla 1863-1919*, Forum-sarja (Helsinki: Tammi, 1973), 41–46.

<sup>35</sup> The peasant landowners had been granted full property rights to their land already in 1789, but the acquisition of noble land became possible to everyone only in 1864. The equal inheritance of land was broadened to all kins, including women, in 1878, and in the 1870s, the priority right to acquire the “family land” was restricted to concern only parents and children. Finally, the restrictions for partitioning of farms was relieved gradually since the 1860s, but in practice, new farms were created only after the act of 1895. For example, Anu Pylkkänen, *Trapped in Equality: Women as Legal Persons in the Modernisation of Finnish Law*, *Studia Historica* 78 (Helsinki: Finnish Literature Society, 2009), 42–43; Eino Jutikkala, *Suomen talonpojan historia* (Helsinki: Suomalaisen kirjallisuuden seura, 1958), 291–306; Heikki Renvall,

At the same time, even though the Grand Duchy experienced relatively fast economic growth and became increasingly integrated with the international markets, it appeared as a single agrarian and peripheral corner of Northern Europe. The economic growth of the Grand Duchy was still weak in the 1860s because of harvest failures, but was pulled ahead strongly in the 1870s by growing exports.<sup>36</sup> However, the country remained “behind” its western counterparts.<sup>37</sup> As noted by economic historians, in terms of GDP, Sweden was constantly from twenty to thirty years “ahead” of the Grand Duchy<sup>38</sup>—a temporal lag which seems to suit well also other societal areas. Moreover, the last major famine, a significant trauma to the generations of the late nineteenth century, affected the Grand Duchy from 1866 to 1868 when approximately eight percent of the population perished. After the famine, the country experienced a fast population growth.<sup>39</sup> Helsinki, the capital of the Grand Duchy, was an administrative town of 23 000 inhabitants in 1875, but reached a level of 119 000 in 1910. Again, in contrast to its Nordic neighbours, the image of the Grand Duchy around the turn of the century was rather agrarian and only locally industrialised.<sup>40</sup>

Notably—and this is a central theme of this thesis—the contemporaries of the Grand Duchy were aware of the backward and peripheral status of the country, and discussed the related advantages and disadvantages. This was also a way of defining the geopolitical relation of the Grand Duchy in terms of Scandinavia, western Europe and Russia. One illustrative example of

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*Teollisuuden ja maatalouden välinen taistelu Suomen metsistä: metsäpoliittinen tutkimus* (Helsinki, 1914), 26–39.

<sup>36</sup> GDP per capita doubled between 1860 and 1913 (1.5 percent per annum) and exports grew 6.6 times larger from 1861–65 to 1906–10. The exports rose over a rate of five percent per annum in 1860–1913 and more than tripled between 1880 and 1910. Sakari Heikkinen, ‘Aineen voitot – 1800-luvun elintaso.’, in *Talous, valta ja valtio. Tutkimuksia 1800-luvun Suomesta*, ed. Pertti Haapala (Vastapaino, 1999), 131; Riitta Hjerppe and Jukka Jalava, ‘Economic Growth and Structural Change. A Century and a Half of Catching-Up’, in *The Road to Prosperity. An Economic History of Finland*, ed. Jari Ojala, Jari Eloranta, and Jukka Jalava (Helsinki: Suomalaisen Kirjallisuuden Seura, 2006), 33–64; Yrjö Kaukiainen, ‘Foreign Trade and Transport’, in *The Road to Prosperity. An Economic History of Finland*, ed. Jari Ojala, Jari Eloranta, and Jukka Jalava (Helsinki: Suomalaisen Kirjallisuuden Seura, 2006), 132–48.

<sup>37</sup> In 1870, the GDP per capita in Finland had risen to 1140 points compared to 1432 in Norway, 1664 in Sweden, and 1974 in average in Western Europe. On the eve of the First World War, the Finnish economy had reached the level of 2111 points, the others 2501, 3096 and 3473 respectively. The unit of measurement in Maddison's statistics is the 1990 international dollar. Angus Maddison, *The World Economy: A Millennial Perspective* (Paris: OECD, 2001), 264.

<sup>38</sup> Viljo Rasila, ‘Kehitys ja sen tulokset’, in *Suomen taloushistoria 2*, ed. Jorma Ahvenainen, Erkki Pihkala, and Viljo Rasila (Helsinki: Tammi, 1982), 155.

<sup>39</sup> The population of the country was 1.7 million in 1870 and almost doubled before the First World War reaching 2.9 million in 1910.

<sup>40</sup> Between 1875 and 1910, the urban population of the Grand Duchy rose from 8 percent (132 thousand people) to 15 percent (432 thousand). In 1910, Stockholm was inhabited by 342 thousand dwellers and the total population of Sweden had risen to 5.5 million people. The share of urban population in 1910 was 25 percent in Sweden and 29 percent in Norway.

this reflection is the parliamentary debate on the Freedom of Trade Law in late 1877, where the Burgher Representative Mayor H. Höckert demanded greater restrictions on foreigners' trade licences by referring to the protectionist policies of the “civilised nations”. The licensing was not tightened, and remained in the hands of governors.<sup>41</sup> However, it is notable how the opposing side also approached the question from the peripheral perspective, as bank manager F. K. Nybom, a liberal representative of the Burgher Estate did in his address:

The honourable representative from Åbo [Höckert], who in my opinion has misunderstood the interest of businesses, has proposed to enclose our country with some kind of Chinese wall, and seems to think that we live in a place surrounded by barbarians without capital, education or skill. The fact is, however, that even we are lucky to find ourselves in Europe, albeit in one of its corners, and Europe does certainly not consider the Finnish people to be barbarians. Our land is sparsely populated, our country has [...] not an abundance of capital. Even in education we could take steps forward. Who then, would be more in need of an import of people, of capital from the old civilised countries, of education, and of working skills?<sup>42</sup>

K. Bruland has accentuated the role of learning and foreign knowledge in the industrialisation of the Nordic countries in general. Despite structural obstacles such as small population, communication barriers and a challenging climate, the countries developed into “learning economies” by taking measures (such as state-sponsored study trips) that promoted learning and technological change and by establishing institutions which made the processes sustainable.<sup>43</sup> In the Grand Duchy, these dynamics were very visible in the professional careers of the late nineteenth century. Students and specialists in modern professions, as well as in other fields, sought education or work abroad due the few opportunities offered in the poor Grand Duchy.<sup>44</sup> Meanwhile, foreign experts were especially needed as technical directors to run the

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<sup>41</sup> The debate on the trade licences for foreigners: The Minutes of the Estate of Burghers at the Assembly of Estates of 1877, 1408-1409; See also Kekkonen, *Merkantilismista liberalismiin*, 253.

<sup>42</sup> All translations, if not mentioned separately, by the author. “Den ärade representanten för Åbo, som uti ett enligt min mening missuppfattadt köpmannaintresse föreslagit att kringgärda vårt land med någon slags kinesisk mur, tyckes föreställa sig att vi lefva på en plats omgifven af barbarer utan kapital, utan bildning och utan skicklighet. Faktum är emellertid att äfven vi hafva lyckan befinna oss i Europa om också i ett hörn deraf och Europa anser visst icke det finska folket som barbarer. Vårt land är glest befolkadt, vårt land har, såsom den ärade talaren nämnde, icke öfverflöd på kapital. Äfven i bildning kunna vi göra framsteg. Hvem behöfver således bättre än vi import af folk, af kapital från de gamla kulturländerna, af bildning och arbetsskicklighet?” Minutes of the Estate of Burghers (1877), 1409.

<sup>43</sup> Kristine Bruland and Keith Smith, ‘Knowledge Flows and Catching-Up Industrialization in the Nordic Countries: The Roles of Patent Systems’, in *Intellectual Property Rights, Development, and Catch Up: An International Comparative Study*, ed. Hiroyuki Odagiri et al. (Oxford University Press, 2010), 63–95; Kristine Bruland, ‘Reconceptualizing Industrialization in Scandinavia’, in *Reconceptualizing the Industrial Revolution*, ed. Jeff Horn, Leonard N. Rosenband, and Merritt Roe Smith (Cambridge, Massachusetts, London, England: MIT Press, 2010), 125–50.

<sup>44</sup> Karl-Erik Michelsen, *Viides sääty : insinöörit suomalaisessa yhteiskunnassa* (Helsinki: Tekniikan akateemisten liitto, 1999), 164–79; Myllyntaus, *The Gatecrashing Apprentice : Industrialising Finland as an*



machines installed in modernised domestic factories, and were also recruited as teachers to the new professional institutes of the Grand Duchy.<sup>45</sup> To highlight the broad role of foreign expertise in Finnish industries in the nineteenth century, Kuisma writes that “what the Swedish engineers brought about in almost all the [Finnish] industries, this is what the British immigrants generated in textile-, engineering- and paper industries, the Germans in printing and glass industries, the Danes, the Swiss and the Russians in food industries and the Norwegians in lumber industries.”<sup>46</sup>

Regardless of the role that foreign expertise played in Finnish economic development, it has been emphasised that the developing industries still remained under the direction and ownership of Finns. Although many companies that were founded after the mid-nineteenth century were originally set up by non-nationals, foreign businesses did not take root in the country, with the exception of some large sawmills. This was partly due to the relatively uninteresting business opportunities (manifested in the low foreign direct investments of nineteenth century), but also because of the specific national policy which set restrictive legislations against foreign entrepreneurs and owners.<sup>47</sup> Niklas Jensen-Eriksen has explored this Finnish economic nationalism, which, involved a national export strategy with strong domestic protection of the country's natural resources, especially since the early twentieth century.<sup>48</sup> As we will see, this

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*Adopter of New Technology*, 66–77; Marjatta Hietala, *Tietoa, taitoa, asiantuntemusta: Helsinki eurooppalaisessa kehityksessä 1875-1917. 1. Innovaatioiden ja kansainvälistymisen vuosikymmenet* [English summary: *Know-how and Professionalism. Helsinki as part of European Development 1875-1917*] (Helsinki: Suomen historiallinen seura : Helsingin kaupungin tietokeskus, 1992), 209–44.

<sup>45</sup> For example, the Polytechnic institute in Helsinki recruited many of its teachers from Germany in the late 1850s, or the recruited Finnish teachers were given grants for studying in German universities, when the improvement of the national teaching education was initiated. Bernhard. Wuolle, *Suomen teknillinen korkeakouluopetus 1849-1949* (Helsingissä Helsinki : Otava, 1949), 76–82; Michelsen, *Viides sääty*, 167; Niklas Jensen-Eriksen, ‘Kansallinen teollisuus, kansainvälinen tietotaito. Saksalaiset ammattilaiset ja modernin metsäteollisuuden synty 1860-1940’, in *Kahden kulttuurin välittäjä. Hannes Saarisen juhlakirja*, ed. Aleksanteri Suviola and Erkki Teräväinen, Helsingin yliopiston Historian laitoksen julkaisuja 20 (Tampere, 2006), 225–37.

<sup>46</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 305.

<sup>47</sup> These regarded, for instance, restrictions for foreigners to acquire land (since 1851, a permission was required from the Emperor), the ban to enter the banking sector (since 1886), or the decision in 1895 according to which the boards of limited companies had to have Finns as their majority. Riitta Hjerppe and Jorma Ahvenainen, ‘Foreign Enterprises and Nationalistic Control: The Case of Finland since the End of the Nineteenth Century’, in *Multinational Enterprise in Historical Perspective / Edited by Alice Teichova, Maurice Lévy-Leboyer and Helga Nussbaum*, ed. Alice Teichova, Maurice Lévy-Leboyer, and Helga Nussbaum (Cambridge, 1986), 286–98; Riitta Hjerppe, ‘The Significance of Foreign Direct Investment in a Small Industrialising Economy: The Case of Finland in the Interwar Period’, *Business and Economic History On-Line* 1 (2003), [http://www.thebhc.org/sites/default/files/Hjerppe\\_0.pdf](http://www.thebhc.org/sites/default/files/Hjerppe_0.pdf). For the Nordic context, see Andreas R. Dugstad Sanders, Pål Thonstad Sandvik, and Espen Storli, ‘Dealing with Globalisation: The Nordic Countries and Inward FDI, 1900–1939’, *Business History* 0, no. 0 (27 April 2016): 1–26.

<sup>48</sup> In the early twentieth century, the state even became an owner of certain key companies. In 1918, the state acquired the foreign-owned forest companies W. Gutzeit Oy and Tornator, partly by the insistence of the German government, because the companies were thought to become otherwise occupied by other foreign,

approach of international integration and domestic protectionism is dominant in all of the cases studied in this thesis, and in fact, property rights were purposely designed to support and protect the small, peripheral country.<sup>49</sup>

The perception of the Grand Duchy as backward or peripheral did not relate only to the economic sphere, but also developed after the mid-nineteenth century into a general spatio-temporal understanding and a strategic resource used in individual and societal reflection. As Pauli Kettunen has argued, the elite of the Grand Duchy framed their political tasks according to the developments taking place in more advanced countries: the late-comer Finland could look abroad, learn from the more “modern”, and in this way prepare itself for the future that loomed elsewhere.<sup>50</sup> These different “locations” of the nation-states were mapped in the statistical surveys, discussed in personal exchanges and at professional meetings, propagated at international fairs, and contrasted in comparative work on national legislations, for instance.<sup>51</sup> The perception of what was more “advanced”, and what could be learned from abroad, obviously depended on the domestic debaters. In their recent article on Nordic intellectuals, Stefan Nygård and Johan Strang note how being peripheral should not be understood as a static condition of reception, but rather that the asymmetric relation was discussed and actively used by the peripheral intellectuals, for example, for challenging existing schools of thought and

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perhaps British investors. Jensen-Eriksen, ‘Business, Economic Nationalism’; Karl-Erik. Michelsen and Markku. Kuisma, ‘Nationalism and Industrial Development in Finland’, *Business and Economic History* 21 (1992): 348–52.

<sup>49</sup> It has to be added, however, that the (forest) industrialist national identity became broadly appropriated by the Finns only in the early twentieth century. In the late nineteenth century, especially the Fennomanian faction reviewed “cosmopolitan” big businesses with distrust. During the same decades, capital became, in general politicized (according to language), as the Fennomanian faction became to criticize the established “non-national” business-men, often part of the Swedish-speaking elite aligned with the Svecoman-liberal party. The businesses were challenged in rhetoric, but also concretely with the founding of the bank and insurance companies of the “Finnish-minded” in the late 1880s. Marko. Paavilainen, *Kun pääomilla oli mieli ja kieli : suomalaiskansallinen kielinationalismi ja uusi kauppiaskunta maakaupan vapauttamisesta 1920-luvun alkuun (English summary)* (Helsinki: Suomalaisen Kirjallisuuden Seura, 2005); Jensen-Eriksen, ‘Business, Economic Nationalism’, 49–51; Markku. Kuisma, ‘Green Gold and Capitalism. Finland, Forests and the World Economy’, *Historiallinen Aikakauskirja*, no. 2 (1997): 149–52.

<sup>50</sup> Kettunen calls this “the avant-gardism of the intellectual elite of a peripheral country”. Kettunen, ‘The Transnational Construction of National Challenges: The Ambiguous Nordic Model of Welfare and Competitiveness’, 22.

<sup>51</sup> As Randeraad notes regarding international statistics in the nineteenth century, even though the congresses were places of learning and exchanges (for the late-comers), and cemented the guiding role of statistics for decision-making, they involved also national concurrence, for example, on how to model the international standards. Nico Randeraad, ‘The International Statistical Congress (1853—1876): Knowledge Transfers and Their Limits’, *European History Quarterly* 41, no. 1 (1 January 2011): 50–65, doi:10.1177/0265691410385759; Pauli Kettunen, ‘The Power of International Comparison: A Perspective on the Making and Challenging of the Nordic Welfare State’, in *The Nordic Model of Welfare : A Historical Reappraisal*, ed. Niels Finn Christiansen et al. (Copenhagen: Museum Tusculanum Press, 2006), 37–42. See also, Jose Bellido, ‘The Editorial Quest for International Copyright (1886–1896)’, *Book History* 17, no. 1 (2014): 380–405.

promoting their personal careers at home.<sup>52</sup>

In other words, the spatio-temporal perception allowed both the framing and the “discovery” of current societal questions, and the digestion (and propagation) of foreign ideas as part of domestic discussions. For the debates on the property rights studied here, this late-comer rhetoric created a space for political guidance, and was used to support the visions of the national political factions. Finding “modernity” within a centre, calling a country “civilized” would set the stage for the developments found in these locations. These “modern” conditions could be seen as desirable or, in some cases, to be avoided. The measures that had been taken abroad could be portrayed as particularly suitable for the Grand Duchy, or as in the case of patents, as a universal matter that was applicable to all countries.<sup>53</sup> In some cases, the backward status even appeared as an obstacle that could not be surmounted. As we will see in the chapter on authors’ rights, the Fennoman faction justified their unwillingness to follow their own policy proposals with the claim that the Grand Duchy was not among the advanced countries, but just a backward country which should allow the civilised pioneers to experiment with modernising reforms.

In this thesis, the development of the property institutions is studied from the perspective of the key political factions. The national future horizons began to take shape in the public discussion in the 1840s, when the modern, critical press started to form. One of the pioneers was the newspaper *Saima*, an opposing voice against state policies, which was published by the Hegelian Philosopher J. V. Snellman, who was to become a professor, a senator, and a leading figure of the Fennoman movement.<sup>54</sup> The Fennophile movement of the early century started as a cultural movement interested in Finnish language and literature, but took the more political form of Fennomania in Snellman's hands from the 1840s onwards. Snellman viewed national culture and education as the only means to make the nation-state prosper. In brief, this meant that the Swedish-speaking elite, including Snellman himself, had to be Fennicized and the conditions of the Finnish-speaking masses improved.<sup>55</sup> Snellman commented widely on various

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<sup>52</sup> Stefan Nygård and Johan Strang, ‘Facing Asymmetry: Nordic Intellectuals and Center–Periphery Dynamics in European Cultural Space’, *Journal of the History of Ideas* 77, no. 1 (2016): 75–97.

<sup>53</sup> Christopher Hill, ‘Conceptual Universalization in the Transnational Nineteenth Century’, in *Global Intellectual History*, ed. Samuel Moyn and Andrew Sartori (New York: Columbia University Press, 2013), 134–58.

<sup>54</sup> Klinge, *Kejsartiden*, 133–37, 143–46.

<sup>55</sup> Ilkka Liikanen, *Fennomania ja kansa: joukkojärjestytyksen läpimurto ja Suomalaisen puolueen synty* [English Summary: *Fennomania and the People: The Breakthrough of Mass organization and the Birth of the Finnish Party*], *Historiallisia tutkimuksia* 191 (Helsinki: Suomen historiallinen seura, 1995), 124–33.

societal themes, and participated in the early debate on the condition and future of the forests in the Grand Duchy. As discussed in chapter 4, Snellman challenged the view of the *de facto* “prime minister” von Haartman who saw the country's only richness to lie in its forests. In contrast to von Haartman, Snellman equated forests with barbarism and misery: civilisation shined in Europe, where the forests had been turned into fields.

The Fennoman movement can be contrasted with the second main political faction, the so-called Liberals. Both movements became political in the 1860s, when the Assembly of Estates started to convene again and societal questions became increasingly discussed among the public. The two factions, however, are not easily compared and their differences should not be exaggerated. The Liberals were organised within the same Swedish-speaking, academic elite as the Fennomans, and aimed at challenging the *ancien régime*, the noble civil servants, in a similar way. The liberal movement, however, to an even lesser extent than the Fennomans, did not actively aim towards the extension of political rights and political inclusion to the masses, but was rather conservative.<sup>56</sup> Liberalism did not become very central in Finnish political culture either, paradoxically because of its success: liberal ideas were largely shared among the elite of the Grand Duchy, including the Fennomans<sup>57</sup>, and the liberal reforms of the 1860s and 1870s were conducted with a relatively large consensus.<sup>58</sup> However, the liberal reforms were largely of an economic nature, and the liberal rhetoric of individual rights was overshadowed by persisting conservative and patriarchal views.<sup>59</sup>

Several differences between the two political groups can be found, especially with regard to

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<sup>56</sup> Ibid., 120–21; Vesa Vares, *Varpuset ja pääskyset: nuorsuomalaisuus ja Nuorsuomalainen puolue 1870-luvulta vuoteen 1918*, Historiallisia tutkimuksia 206 (Helsinki: Suomalaisen Kirjallisuuden Seura, 2000), 22–28.

<sup>57</sup> In Snellman's Hegelian thought, the state or the general interest were seen as morally binding, and in opposition to the personal interests of the individual. Snellman's liberalism was instrumental and pragmatic: it has been described as be a mixture of Listian and Smithian thought applied to the Finnish context. Even though the difference between the Fennoman and the liberal faction has been found in their conceptualisations of liberty (as regards the state and the civil society), Kettunen has argued that neither the liberals did appropriate a clear conceptual distinction between any sphere of free action and the oppressive state. Tuija Pulkkinen, ‘Kansalaisyhteiskunta ja valtio’, in *Kansa liikkeessä*, ed. Risto Alapuro et al. (Helsinki: Kirjayhtymä, 1987); Sakari Heikkinen et al., *The History of Finnish Economic Thought 1809-1917* (Tammisaari-Ekenäs: Societas scientiarum Fennica, 2000), 79–81; Pauli Kettunen, ‘Yhteiskunta - Society in Finnish’, *Finnish Yearbook of Political Thought* 4 (2000): 173–75.

<sup>58</sup> Liikanen, *Fennomania ja kansa*, 114. As Kekkonen notes, a consensus already prevailed in the 1850s that the mercantile trade laws should be reformed, and only the intensity of the reforms remained under debate. One main factor of the liberal reforms of the mid-century was the central position that the new, liberal-minded industrial elite and their allies gained in the reform committees and high state administration. Kekkonen, *Merkantilismista liberalismiin*, 71–79, 322–41.

<sup>59</sup> Pylkkänen, *Trapped in Equality*, 27, 37–39, 42.

Finnish-Russian relations, as well as language politics and social policy—themes that divided the Finnish political scene of the late nineteenth century.<sup>60</sup> The Liberals were more keen to underline the historical and cultural ties with Sweden and Scandinavia, and the western legal (constitutional) heritage that bound even the Emperor. The liberal side distanced themselves from the Empire, and aimed at building the Finnish nation-state on western liberal values; it followed the European developments of these principles in its newspapers. A liberal party was formed in 1880, but it was to be short-lived. The liberal reforms had already been passed, and the party and Finnish liberalism itself appeared elitist and conservative, not willing to continue with broader social reforms.<sup>61</sup> In the mid-1880s, the Liberals merged into the Svecoman faction, which had developed in the 1870s in reaction to the radical language and cultural politics of the Fennomans. The Swedish party of the late nineteenth century carried elements of aristocracy, Swedish cultural nationalism, and classic Manchester liberalism.<sup>62</sup>

The Fennomans, on the other hand, were more inclined to compromise over constitutional questions and to support the imperial policies: the unified nation-state, which should be as autonomous as possible, and Finnish-speaking national culture could (only) develop under the patronage of the Emperor. Even though not actively working for the political rights of the Finnish-speaking masses, the Fennomans were social reformists influenced by the German models of a state-led social policy.<sup>63</sup> As Ilkka Liikanen has argued, in the 1870s, the Fennomans started to use the rhetoric of representing and acting according to the “people’s will”, and they took (captured) an active role in one of the mass organisations, the Society for Popular Enlightenment (*Folkupplysningssällskapet*). However, this was largely for challenging the other factions and cementing their own position among the ruling elite of the country.<sup>64</sup> Inside the Fennoman party, social-liberal and radical democratic tendencies appeared in the 1880s, which led in the 1890s into the separation of the conservative, loyal “old” and the social-liberal, constitutionalist “young” Finnish parties.<sup>65</sup>

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<sup>60</sup> Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 56–60.

<sup>61</sup> Jussi Kurunmäki, ‘On the Difficulty of Being a National Liberal in Nineteenth-Century Finland’, *Contributions to the History of Concepts* 8, no. 2 (2013): 83–95; Henrik Stenius and Ilkka Turunen, ‘Finnish Liberalism’, in *‘Liberalism’: Seminars on Historical and Political Keywords in Northern Europe*, ed. Ilkka Lakaniemi, Anna Rotkirch, and Henrik Stenius (Helsinki: University of Helsinki, Renvall Institute, 1995), 49–62; Vares, *Varpuset ja pääskyset*, 22–28.

<sup>62</sup> Klinge, *Kejsartiden*, 299–300; Risto Alapuro, *State and Revolution in Finland* (Berkeley: University of California Press, 1988), 98.

<sup>63</sup> Heikkinen et al., *The History of Finnish Economic Thought 1809-1917*, 93–98.

<sup>64</sup> Liikanen, *Fennomania ja kansa*, 166–74.

<sup>65</sup> Ibid., 309–20; Pirkko Rommi and Maritta Pohls, ‘Poliittisen fennomanian synty ja nousu’, in *Herää Suomi: suomalaisuusliikkeen historia*, ed. Päiviö Tommila and Maritta Pohls (Kuopio: Kustannuskiila, 1989), 114–

The socialist groupings proper are largely ignored in the thesis due to the periodisation: socialism appears in the sources mainly as a theoretical principle or a catchphrase. Newspapers reported about socialism, labour movements, and their institutions abroad and with regard to the Finnish situation already in the 1870s, but actual socialist action and thinking became more widespread in the 1890s. The Finnish Workers' Party, which headed the working-class movement, was founded in 1899, and became a major party in the new unicameral parliament in 1906. However, the political working-class movement had ties to the radicals and constitutionalists of the other parties, and even to the Russian government, until the General Strike of October 1905. In addition, the working-class associations, which radicalised in the 1890s, were intertwined with other mass organisations of the time, especially the temperance movement.<sup>66</sup>

## 1.2 Approach and literature: Making property visible in the nineteenth century

The peripheral and backward location of the country functioned as a prism for evaluating property rights to material and intangible resources, which were contested due to economic expansion and the integration with foreign markets in the nineteenth century. The legal reforms of the late century aimed at formalising and stabilising property relations, which had already taken a form through concrete practices and the guidance of the state administration. During the reforms, the experiences of the current socio-economic transformations were articulated, and were reflected upon in the light of the foreign developments. Even though the impulses behind the reforms were largely of an economic nature, the property institutions were not only perceived in economic terms. They were also shaping the relations that various groups had with the property objects in question (and under demarcation). In the context of the nineteenth century, the debates especially touched on the limits of private property: would the private proprietors act according to the common good, or should restrictions be set by the state to guarantee the interests of the poor, the people or the public?

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18; Jyrki Paaskoski, “‘Tuo siunattu 80-luku’ - nuorsuomalaisuuden aatteellinen tausta”, in *Valta, vapaus, edistys ja kasvatus: liberaalisten liikkeiden ja liberaalisen ajattelun vaiheita Suomessa ja Ruotsissa 1800-luvulta 1960-luvun puoliväliin*, ed. Vesa Vares (Jyväskylä: Kopijyvä, 2002), 21–80.

<sup>66</sup> A line of continuity can be drawn from the Fennoman patriarchal politics, which supported the association of the Finnish-speaking masses, to the political working-class movement. Hannu Soikkanen, ‘Sosialismin tulo Suomeen: ensimmäisiin yksikamarisen eduskunnan vaaleihin asti’ (1961), 31–39, 40–49; Alapuro, *State and Revolution in Finland*, 101–15; Pauli Kettunen, ‘Missä mielessä vanha työväenliike oli poliittinen liike’, in *Kansa liikkeessä*, ed. Risto Alapuro et al. (Helsinki: Kirjayhtymä, 1987), 236–50; Antti Kujala, *Venäjän hallitus ja Suomen työväenliike 1899-1905*, *Historiallisia tutkimuksia* 194 (Helsinki: Suomen historiallinen seura, 1995), 20–21, 412–17.

The thesis looks at four areas of ownership and their development in the specific Nordic context. In all of the cases, the existing practices were contested, or new rights were established, because of changes in the valuation of the appropriated resources. This is the classic, and powerful, argument of the economic theory of property: there are incentives to own a resource when the expected benefits gained from ownership exceed the costs related to it, such as the costs of protecting, storing, and exchanging the resource.<sup>67</sup> The model has been criticised for being “naive”, for it overemphasises the “demand side” of property rights, but has also been criticized for sustaining private-individual ownership as the ideal property regime, and maintaining a binary opposition between non-private and private property.<sup>68</sup> Moreover, the model, which according to Ostrom and Cole is still dominant today, fails to grasp the complexity of actual property solutions produced in response to changing social, economic, and also ecological concerns.<sup>69</sup> In the past, the property institutions have taken complex forms, such as the communal management of resources, which have had even more efficient results than private control of the resources. Although the economic model pays less attention to the shaping of the institutions and the objects themselves, it provides important insights about the concrete dynamics of ownership; the property institutions are not simple or stable, and involve both informal and formal practices of managing and securing ownership.<sup>70</sup>

The “supply-side”—the establishment of a property institution—regards individuals, groups and objects that have already a significance for those debating the institution. Property arrangements, in general, aim at exclusion, and thereby assign the related individuals or groups different possibilities for employing the property object. According to the definition that emphasises the social dimension of ownership, property is not about the relation between the

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<sup>67</sup> Harold Demsetz, ‘Toward a Theory of Property Rights’, *The American Economic Review* 57, no. 2 (May 1967): 347–59; Richard Allen Epstein, ‘Introduction’, in *Economics of Property Law*, ed. Richard Allen Epstein, Economic Approaches to Law, v. 9 (Cheltenham: Edward Elgar, 2007); Douglass Cecil North, *Institutions, Institutional Change, and Economic Performance*, Political Economy of Institutions and Decisions (Cambridge ; New York: Cambridge University Press, 1990).

<sup>68</sup> The naivety of the model was signalled by T. Eggertsson. Þráinn Eggertsson, *Economic Behavior and Institutions*, Cambridge Surveys of Economic Literature (Cambridge [England] ; New York: Cambridge University Press, 1990), 247–84; Thomas W. Merrill, ‘Introduction: The Demsetz Thesis and the Evolution of Property Rights’, *The Journal of Legal Studies* 31, no. S2 (1 June 2002): S331–38; Daniel H. Cole and Elinor Ostrom, ‘The Variety of Property Systems and Rights in Natural Resources’, in *Property in Land and Other Resources*, ed. Daniel H. Cole and Elinor Ostrom (Cambridge, MA: Lincoln Institute of Land Policy, 2012), 37–66.

<sup>69</sup> Cole and Ostrom, ‘The Variety of Property Systems and Rights in Natural Resources’.

<sup>70</sup> Pamela O. Long, ‘Invention, Authorship, “Intellectual Property,” and the Origin of Patents: Notes toward a Conceptual History’, *Technology and Culture* 32, no. 4 (October 1991): 846–84; Rosa Congost, ‘Property Rights and Historical Analysis: What Rights? What History?’, *Past & Present* 181, no. 1 (11 January 2003): 73–106.

owner and the object, but it concerns the “relation between the owner[s] and the others in regards to the object”.<sup>71</sup> The property institutions, then, are about structuring human interaction and giving meaning to the owned objects as a part of this interaction.<sup>72</sup> Accordingly, the debates on property rights go beyond their economic rationale, and involve social and cultural considerations related to the individuals bound by the property institution, for instance, being nationals or foreigners, or men or women.<sup>73</sup> As shown in chapter five, a debate over the ownership of wild berries involved the position of the berry-picking women (who were landless) within the rural hierarchy, as much as it did the privatisation of the commonly-managed resource.

The property institutions are historical not only in their concrete, functional sense, but also in how ownership has been comprehended and justified in the past.<sup>74</sup> The nineteenth century can be portrayed as the high tide of private, individual ownership; the turn of the century saw the constitutional confirmation of the liberal vision of property as the emblem of individual freedom. However, over the course of the century, private ownership never became absolute, but remained bounded and critically reviewed.<sup>75</sup> Even the legal concept of property, as described by legal historian Päivi Paasto, was “elastic”. Nineteenth-century continental legal thought acknowledged that property rights were limited. Only at its conceptual core was property absolute, an argument relevant mainly to the development of the scholarly field itself.<sup>76</sup> This elasticity stemmed from the social nature of property, while the proprietorial aims potentially conflicted with the (more general) interests of the state, the public, or other non-owning groups. On the contrary, then, the nineteenth century witnessed the “decline of individualism” and the

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<sup>71</sup> Stephen R. Munzer, ‘Property as Social Relations’, in *New Essays in the Legal and Political Theory of Property*, ed. Stephen R. Munzer (Cambridge University Press, 2001), 38–44.

<sup>72</sup> Margaret Davies, *Property: Meanings, Histories and Theories* (Abingdon, Oxon, UK; New York: Routledge-Cavendish, 2007).

<sup>73</sup> Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Melanie Wiber, eds., *Changing Properties of Property* (New York: Berghahn Books, 2006), 14–31; Margaret Jane Radin, *Reinterpreting Property* (Chicago: University of Chicago Press, 1993), 48–71.

<sup>74</sup> For example, Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge : New York: Cambridge University Press, 2007). On the justification of property, see Lawrence C. Becker, *Property Rights : Philosophic Foundations* (London : Routledge & Kegan Paul, 1977).

<sup>75</sup> Dieter Schwab, ‘Eigentum’, in *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland. Band 2* (Stuttgart: Klett-Cotta, 1975), 65–115; Richard. Pipes, *Property & Freedom* (London : Harvill, 1999), 44–57.

<sup>76</sup> In her work on the legal debate on the concepts and the justification of ownership, Paasto used legal text books from authors from the Germanic and the Roman legal traditions. Päivi. Paasto, *Omistuksen juuret : omistusoikeuden perustelua koskeva oppihistoriallinen tutkimus (Zusammenfassung: Der Ursprung des Eigentums : Eine Untersuchung zur Begründung des Eigentumsrechts in der Ideengeschichte)* (Helsinki : Suomalainen Lakimiesyhdistys, 2004), 349–50.



simultaneous “growth of the “public” domain at the expense of private properties”.<sup>77</sup>

This expansion took place in two ways. First, private property rights were increasingly managed (for instance, via taxation and registers) and secured by the state, which enhanced the position of the private owners, but at the same time rendered this ownership less private and more visible to the public eye.<sup>78</sup> Second, more references were made to the public interest in restricting private and encouraging state or public-led ownership. The interpreters of the public good were found in the novel fields of expertise of the nineteenth century—natural scientists, engineers, and lawyers—whose ideas resonated both with *fin-de-siècle* liberalism, which emphasised the societal responsibilities of the owning groups, and the modern state’s aspirations to efficiently manage the resources that had public importance.<sup>79</sup> The area of intellectual property exemplifies these developments well. As Mario Biagioli has argued in the case of patent law, in the nineteenth century the public became the natural contracting party of the inventor in the modern “patent bargains”, when the representational regimes replaced the sovereign monarchies.<sup>80</sup> Modern intellectual property rights established since the late eighteenth century included many constraints, with the temporal duration of the right being the most concrete, that were mainly set to protect the interest of the public.<sup>81</sup> Moreover, the modern rules of intellectual property were not only forged in the state patent offices over the course of the nineteenth century, but also in the disputes between the private professionals, who competed over the expert role to define and operate in the field.<sup>82</sup> The ownership of inventions became visible in the patent documents (which were available and announced to the public) that were the basic requirement for the functioning of the modern regime of intellectual property.<sup>83</sup>

Similar developments seem to have taken place in the Grand Duchy of Finland. The

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<sup>77</sup> Pravilova, *A Public Empire*, 1; Schwab, ‘Eigentum’, 94–109.

<sup>78</sup> Pravilova, *A Public Empire*, 9.

<sup>79</sup> Ibid., 7–8.

<sup>80</sup> Mario Biagioli, ‘Patent Republic: Representing Inventions, Constructing Rights and Authors’, *Social Research* 73, no. 4 (Winter 2006): 1129–72.

<sup>81</sup> Stef van Gompel, ‘Les Formalités Sont Mortes, Vive Les Formalités! Copyright Formalities and the Reasons for Their Decline in Nineteenth Century Europe’, in *Privilege and Property: Essays on the History of Copyright*, by Ronan Deazley, Martin Kretschmer, and Lionel Bently, OBP Collection (Cambridge: Open Book Publishers, 2013), 157–206, <http://books.openedition.org/obp/1074>.

<sup>82</sup> Kara W. Swanson, ‘The Emergence of the Professional Patent Practitioner’, *Technology and Culture* 50, no. 3 (2009): 519–48.

<sup>83</sup> Pottage and Sherman even suggest that intellectual property has become more material in the praxis of lawyers than is the case with tangible property. Alain Pottage and Brad Sherman, ‘On the Prehistory of Intellectual Property’, in *Concepts of Property in Intellectual Property Law*, ed. Helena R. Howe and Jonathan Griffiths (Cambridge University Press, 2013), 25–28.

inviolability of private property was already cited early in the century by the legal scholars exploring the country's constitutional tradition, and was portrayed as a societal corner-stone in the Hegelian Fennoman tradition, as well as used as a constitutional safe-guard in the late nineteenth century conservative politics of the Swedish party.<sup>84</sup> Yet, in the course of the century, the state became involved in administering these rights: demands were heard for greater public involvement, and views were expressed regarding the proper conduct of a private owner. These transformations have not received thorough scholarly attention and are the focus of the chapters on intellectual and material property. This thesis contributes to the existing literature in three ways; besides adding to the scattered knowledge of the history of the property institutions in the Grand Duchy, the thesis explores the peripheral dynamics related to the economic and intellectual context of the late nineteenth century. Moreover, the work adds to the understanding of the national political factions, and their position within this interplay between the formalisation of property rights and the greater accentuation of the interests of the community.

In recent decades, there has been a renewed interest in the history of intellectual property, which has benefited from historical-contextual and the multidisciplinary approaches.<sup>85</sup> The studies have emphasised the novel nature of the legal discipline itself, explored the formation of its central concepts, and challenged the narratives of the national traditions or the foundational historical origins of intellectual property law.<sup>86</sup> As Sherman and Bently have shown in a claim that can be extended beyond the British context of their study, it was in the late eighteenth century that intellectual property was first recognised as a distinct form of property, and it was only half a century later that the legal department had assumed the categories, grammar, and

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<sup>84</sup> Veli-Pekka Viljanen, *Kansalaisten yleiset oikeudet: tutkimus suomalaisen perusoikeuskäsityksen muotoutumisesta autonomiakaudella ja itsenäisyyden ensi vuosina*, 2. uud. p (Hki: Lakimiesliiton kustannus, 1988), 48–56, 70–81; Jyränki, *Perustuslaki ja yhteiskunnan muutos*, 69–93; Toivo Holopainen, 'Omistusoikeus arvokäsittienä Suomen oikeuskirjallisuudessa', *Lakimies* 2 (1965): 301–34; Marja Jalava, *J. V. Snellman: mies ja suurmies* (Helsinki: Tammi, 2006), 130–31.

<sup>85</sup> Brad Sherman, 'Towards a History of Patent Law', in *Intellectual Property in Common Law and Civil Law* (United Kingdom: Edward Elgar, 2013), 3–15; Ronan Deazley, Martin Kretschmer, and Lionel Bently, eds., 'The History of Copyright History: Notes from an Emerging Discipline', in *Privilege and Property: Essays on the History of Copyright* (OpenBook Publishers, 2010), 1–20; Mario Biagioli, Peter Jaszi, and Martha Woodmansee, *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective* (Chicago: University of Chicago Press, 2011), 1–17.

<sup>86</sup> For instance, Alain Strowel and Brad Sherman, eds., *Of Authors and Origins: Essays on Copyright Law* (Oxford: Clarendon Press, 1994); Alain Pottage and Brad Sherman, *Figures of Invention: A History of Modern Patent Law* (Oxford [England]: New York: Oxford University Press, 2010); Stina Teilmann-Lock, *The Object of Copyright: A Conceptual History of Originals and Copies in Literature, Art and Design* (Abingdon: Routledge, 2015).

logic that are familiar today.<sup>87</sup> At the same time, scholars have explored the histories of the national institutions of intellectual property, their differences, and the dynamics of divergence and convergence of these regimes.<sup>88</sup> In general, the protection of intellectual property was an international question in the nineteenth century, as national legislations were not capable of responding to the demands of individual creators, companies, and states in the expanding market for books and inventions. Accordingly, attention has been paid to the (difficult) formation of the international regulatory framework of the late nineteenth century and to the actors, both political and commercial, working in this environment that transcended the national borders.<sup>89</sup>

The thesis engages with this scholarship, emphasising the contingency and the international character of the formation of the nineteenth century national property regimes. Scholarship on the history of intellectual property rights in the Grand Duchy of Finland is scattered, and there are no comprehensive studies of the history of patenting or authors' rights in the nineteenth century.<sup>90</sup> This thesis, therefore, offers the first extensive historical account of the national intellectual property regimes, and describes the central role played by international influences

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<sup>87</sup> Sherman and Bently, *The Making of Modern Intellectual Property Law*; Alexandra George, *Constructing Intellectual Property* (Cambridge, U.K. : New York: Cambridge University Press, 2012), 111–37, 141–47, 149.

<sup>88</sup> For instance, Gabriel Galvez-Behar, *La République Des Inventeurs: Propriété et Organisation de L'innovation En France , 1791-1922*, Collection Carnot (Rennes: Presses universitaires de Rennes, 2008); Christine MacLeod, *Heroes of Invention: Technology, Liberalism and British Identity, 1750-1914*, Cambridge Studies in Economic History (Cambridge, UK ; New York: Cambridge University Press, 2007); Edward Beatty, 'Patents and Technological Change in Late Industrialization: Nineteenth Century Mexico in Comparative Perspective', *History of Technology* 24 (2002): 121–50; Gabriel Galvez-Behar, 'L'État et l'invention : une comparaison franco-allemande des cadres de la propriété industrielle à la fin du XIXe siècle', in *Figurationen des Staates, 1870-1945. Les figures de l'État*, ed. Alain Chatriot and Dieter Gosewinkel (Munich: Oldenbourg, 2006), 215–34. See also the project "Rethinking Patent Cultures" and their workshop "International Diversity in Patent Cultures – A Historical Perspective", <<https://rethinkingpatentcultures.wordpress.com/about/workshop-1/>>.

<sup>89</sup> Seville, *The Internationalisation of Copyright Law*; Sam Ricketson and Jane C. Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and beyond Part I*, 2. ed (Oxford: Oxford University Press, 2006); Isabella Löhr, *Die Globalisierung geistiger Eigentumsrechte: neue Strukturen internationaler Zusammenarbeit, 1886-1952* (Göttingen: Vandenhoeck & Ruprecht, 2010); Brad Sherman and Lionel Bently, 'Great Britain and the Signing of the Berne Convention in 1886', 2001; B. Zorina Khan, 'Selling Ideas: An International Perspective on Patenting and Markets for Technological Innovations, 1790–1930', *Business History Review* 87, no. Special Issue 01 (March 2013): 39–68; David Pretel and Patricio Saiz, 'Patent Agents in the European Periphery: Spain (1826-1902)', *History of Technology* 31 (2012): 97–114.

<sup>90</sup> In his recent dissertation, Kivistö studies the legal history of Finnish author's rights. The work was defended only some days ago and thus could not be reviewed here. According to Kaataja, the history of patents in Finland has been little-studied, and patents themselves have been minimally used as sources for studies in the history of technology. Martti Kivistö, *Tekijänoikeus omaisuutena : Tutkimus suomalaisen tekijänoikeuden yleisistä opeista*. <<http://urn.fi/URN:ISBN:978-951-855-361-1>>. Sampsa Kaataja, *Tieteen rinnalla tekniikkaa [English abstract. Finnish academic scientists as developers of commercial technology during the twentieth century]* (Helsinki: Suomen Tiedeseura, 2010), 32–33.

and the peripheral dynamics in the formation of the regimes. In the case of patent history, several scholars have approached the topic from the perspective of economic history or the history of technology.<sup>91</sup> Some authors have examined the institutional framework of the nineteenth century, and a corporate history by Yki Hytönen on the Kolster patent agency, an important figures in nineteenth century patent affairs, offers information about the conventions of the time.<sup>92</sup> Pirkko-Liisa Aro (later Haarmann) has briefly traced the development of the patent legislation in the Grand Duchy<sup>93</sup>. These texts emphasise the position of the Grand Duchy as a late-comer, as well as the importance of foreign legislative data and foreign inventors for the Finnish patenting in the nineteenth century, but they do not engage with the actual political processes which produced the property regimes. This has been the focus of Anneli Aer, who has studied the history of invention privileges in Imperial Russia, which is an important context for the Finnish debates.<sup>94</sup>

The history of authors' rights in the Grand Duchy has been briefly narrated as part of studies of the institution of censorship, book trade and the history of literature. Studies of the early nineteenth century book trade by Jyrki Hakapää and the history of the Finnish Publishing Association by Kai Häggman illustrate the informal conventions of authorial rights, which developed as part of the symbiotic literary relations between Finland and Sweden.<sup>95</sup> Bo Göran Eriksson has explored in a journal article the legislative process leading to the 1880 law on authors' rights.<sup>96</sup> These studies acknowledge the competing views of the political factions on authorial ownership, and highlight international influences, but do not focus on the specific question of intellectual property, and they ignore the peripheral dynamics in negotiating the

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<sup>91</sup> Kero, 'Ulkomaalaisen teknologian patentointi'; Timo Myllyntaus, 'Patenting and Industrial Performance in the Nordic Countries, 1870-1940', in *Cross-Country Comparisons of Industrialisation in Small Countries 1870-1940: Attitudes, Organizational Patterns, Technology, Productivity*, ed. Olle Krantz, Occasional Papers in Economic History (Umeå: Umeå University, 1995).

<sup>92</sup> Lausi, 'Näkökulmia patentti- ja rekisterihallituksen'; Yki Hytönen, *Kolster Oy Ab 1874–1999. 125 vuotta suomalaista patenttiasiamiestoimintaa*. (Helsinki: Edita, 1999).

<sup>93</sup> Aro, 'Keksintöprivilegit Suomen suuriruhtinaskunnassa'; Pirkko-Liisa Aro, 'Vuoden 1876 patenttiasetuksen syntyvaiheista', *Lakimies* 7 (1978): 603–18; Pirkko-Liisa Haarmann, 'Suomen ensimmäiset patentit (English summary)', in *Patenttien vuosikymmenet* (Helsinki: Patentti- ja rekisterihallitus, 1992), 22–29.

<sup>94</sup> Notably, the Grand Duchy of Finland remained a separate patent area regardless of imperial policies of legal unification in the late nineteenth century. Anneli Aer, *Patents in Imperial Russia. A History of the Russian Institution of Invention Privileges under the Old Regime* (Helsinki: Suomalainen tiedeakatemia, 1995).

<sup>95</sup> Jyrki Hakapää, *Kirjan tie lukijalle: kirjakauppojen vakiintuminen Suomessa 1740-1860 (English summary: Books' paths to readers: how book stores became the norm for book distribution in Finland 1740-1860.)*, Suomalaisen Kirjallisuuden Seuran toimituksia 1166 (Helsinki: Suomalaisen Kirjallisuuden Seura, 2008); Häggman, *Paras tawara maailmassa*.

<sup>96</sup> Bo Göran Eriksson, 'Förfärbetena till författarförordningen', *Tidskrift utgiven av Juridiska föreningen i Finland*, 1967.

author's rights. The history of the author's rights has been studied to a greater extent in Sweden.<sup>97</sup> The historicity of intellectual property has been underlined by Ulrik Volgsten, for example, who has studied how authorial rights on music evolved together with contemporary technological and socio-economic changes.<sup>98</sup> These works do not only offer a comparative perspective, but insights on the contemporary debates and practices which overlapped due to a common legal tradition, and the existence of a shared cultural and economic sphere.

The property rights to the forests of the Grand Duchy have been explored rather broadly, while the question of the appropriation of forest resources stands at the intersection of several fields, including the history of agriculture, the history of land law, and economic history. However, as with the field of intellectual property, no general studies have been written on the conceptual or the political history of property in the Grand Duchy.<sup>99</sup> In the nineteenth century, forests came to be viewed as the key source of national wealth and the forest industries took a leading role in the exports of the industrialising country (which was one of the most forested areas in Europe at the time). In the scholarship, the development of property rights has been viewed especially through this prism of economic development and the drive to secure the sustainable use of the forests.<sup>100</sup> In addition, in many accounts, especially on the history of forestry, a rather strong teleological outlook has been followed, and for instance, the public rule appears in the aftermath

<sup>97</sup> Martin Fredriksson, *Skapandets rätt: ett kulturvetenskapligt perspektiv på den svenska upphovsrättens historia* (Göteborg: Daidalos, 2009); Gunnar Petri, 'Transition from Guild Regulation to Modern Copyright Law', in *Global Copyright : Three Hundred Years since the Statute of Anne*, ed. Lionel Bently, Uma Suthersanen, and Paul Torremans (Edward Elgar, 2010); Gunnar Petri, *Författarrättens genombrott* (Stockholm : Atlantis, 2008).

<sup>98</sup> Ulrik Volgsten, *Musiken, medierna och lagarna: musikverkets idéhistoria och etablerandet av en idealistisk upphovsrätt* (Möklinta: Gidlund, 2012).

<sup>99</sup> The history of the Finnish concept of property in the nineteenth century has been explored mainly in legal studies and, in particular, as part of the developing constitutional laws. The concept of property does not appear in the collective work on the key concepts of the Finnish political culture. A particular feature is the development and persistence of a rather extensive constitutional protection of property rights in Finland in the twentieth century. This approach derived from the doctrine of "acquired rights" which was referred to by conservative lawyers to restrict reforms concerning existing (property) rights and privileges in the late nineteenth century. The protection of private property was expressed for the first time in the constitutional law of 1919. Jyränki, *Perustuslaki ja yhteiskunnan muutos*; Antero Jyränki, *Valta ja vapaus: kaksikymmentäkolme luentoa valtiosääntöoikeuden yleisistä kysymyksistä* (Helsinki: Lakimiesliiton kustannus, 1994), 184–88; Martin Scheinin, ed., *Omistusoikeus*, Tutkijaliiton julkaisusarja 21 (Helsinki: Tutkijaliitto : Sosialistinen lakimiesseura, 1983); Päivi Paasto, 'Om äganderättens ursprung i den nordiska och den europeiska diskussionen på 1800-talet', in *Norden, rätten, historia. Festskrift till Lars Björne* (Helsinki: Suomalainen Lakimiesyhdistys, 2004), 223–44; Matti Hyvärinen et al., eds., *Käsitteet Liikkeessä: Suomen Poliittisen Kulttuurin Käsitehistoria* (Tampere: Vastapaino, 2003).

<sup>100</sup> In his seminal work on the Finnish forests and the international economy (1620-1920), Kuisma emphasises the pragmatic role of the nineteenth century state bureaucrats in supporting the development of the forest sector with liberal reforms, however, by paying, at the same time, attention to the question of sustainability and the interests of the domestic owners. The classic work on the history of forestry is by Helander. Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 233–38, 256–57, 338; A. Benj Helander, *Suomen metsätalouden historia* (Helsinki, 1949).

as the rightful guardian of the national wealth as opposed to the private owners.<sup>101</sup> In this thesis, the emphasis is placed on the political conflict which considered the legitimacy of appropriating natural resources. This has been the approach in several studies on French, German or Russian forests<sup>102</sup>, as well as in Finnish forest sciences or the local forest conflicts in the nineteenth-century Grand Duchy.<sup>103</sup>

At the same time, in spite of their economic significance, the forests of the Nordic countries appear as relatively open places. This is exemplified by the principle of public access to nature, *Allemansrätt*, that has been labelled a customary principle in the Nordic countries, and which even today allows many commonly practiced outdoor recreational activities, *friluftsliv*, which are an important element of Nordic identity.<sup>104</sup> Even though the age-old nature of *Allemansrätt* has been questioned in recent years, it remains commonly agreed that this principle of public access is a specifically Nordic phenomenon.<sup>105</sup> Filippo Valguarnera suggests in his recent study that the *Allemansrätt* has developed and persisted in Sweden, Norway and Finland while the Nordic concept of property has been of a weaker and more pragmatic nature (*proprietà debole*) than the abstract and absolute Western principle of property (*proprietà forte*); in the Nordic legal tradition, due to the low level of social tensions, the political participation of the peasant

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<sup>101</sup> For instance, in his thesis on the history of Finnish forestry, Tapani Tasanen describes the devastation and large-scale cutting of the private forests of the late nineteenth century as the “price that must be paid for placing the principle of private property’s inviolability first, before the public interest”. Also, Tasanen concludes how the knowledge and methods for sustainable forestry were available in the late century, yet, the country lacked resources and people who would strive to achieve the aim. Tapani Tasanen, ‘Läksi puut ylenemähän: metsien hoidon historia Suomessa keskiajalta metsäteollisuuden läpimurtoon 1870-luvulla [Summary: The history of silviculture in Finland from the Mediaeval to the breakthrough of the forest industry in the 1870s]’ (Doctoral Thesis, Helsingin yliopisto, 2004), 422, 423–24, <http://ethesis.helsinki.fi/julkaisut/maa/me/vk/tasanen/>. See also, Heikki Roiko-Jokela, ed., *Metsien pääomat: metsä taloudellisena, poliittisena, kulttuurisena ja mediailmiönä keskiajalta EU-aikaan* (Jyväskylä: Minerva, 2005); Heikki Roiko-Jokela, ed., *Luonnon ehdoilla vai ihmisen arvoilla?: polemiikkia metsiensuojelusta 1850-1990* (Jyväskylä: Atena, 1997); Matti Palo and Erkki Lehto, *Private or Socialistic Forestry? Forest Transition in Finland vs. Deforestation in the Tropics* (Dordrecht: Springer, 2012).

<sup>102</sup> Jeffrey K. Wilson, *German Forest: Nature, Identity, and the Contestation of a National Symbol, 1871-1914* (Toronto: University of Toronto Press, 2011); Tamara L. Whited, *Forests and Peasant Politics in Modern France* (New Haven: Yale University Press, 2000); Pravilova, *A Public Empire*.

<sup>103</sup> Karl-Erik. Michelsen, *History of Forest Research in Finland. Part 1, The Unknown Forest* (Helsinki : Suomen Metsätieteellinen Seura, 1995); Jussi Raumolin, *The Problem of Forest-Based Development as Illustrated by the Development Discussion, 1850-1918* (Helsinki: Helsingin yliopisto, 1990); Harri Hölttä, ‘Itä-Suomen metsävarat 1850-1930 ja niistä tehdyt tulkinnot’, *Metsätieteen aikakauskirja* 4 (2013): 627–46; Anne Ruuttula-Vasari, ‘Herroja on epäiltävä aina - metsäherroja yli kaiken’ : *metsähallituksen ja pohjoissuomalaisten kanssakäyminen kruununmetsissä vuosina 1851-1900* (Oulu : Oulun yliopisto, 2004).

<sup>104</sup> Thomas Harold Beery, ‘Nordic in Nature: Friluftsliv and Environmental Connectedness’ (Doctoral thesis, University of Minnesota, 2011); Klas Sandell, ‘The Right of Public Access: The Landscape Perspective of Friluftsliv’, in *Nature First: Outdoor Life the Friluftsliv Way*, ed. B Henderson and N Vikander (Toronto, Canada: Natural Heritage Books, 2007), 90–99.

<sup>105</sup> Jaakko Husa, Kimmo Nuotio, and Heikki Pihlajamäki, eds., *Nordic Law: Between Tradition and Dynamism* (Antwerp: Intersentia, 2007), 25–26; *Allemansrätten i Norden* (Köpenhamn: Nordiska ministerrådet, 1997).

freeholders, and the late development of the bourgeoisie, property rights have been used to protect concrete, mainly economic interests.<sup>106</sup>

This thesis challenges this interpretation by studying the ownership of wild berries, which are today freely picked according to the principle of *allemansrätt*. In general, the accounts of the history of *allemansrätt* have served as an introduction to studies of the contemporary institution, and have not been interested in the historical context as such.<sup>107</sup> Instead of tracing the history of *allemansrätt*, this thesis explores the historical practices of berry picking and the attempts to formalise property rights to wild berries in the late nineteenth century. Similarly to the German debates on access to wild berries and mushrooms on another's land in the nineteenth century, as described recently by Jeffrey K. Wilson<sup>108</sup>, this thesis emphasises the contingency and complexity of the berry politics: no references to a tradition were made, but the picking of wild berries appeared as a controversial matter related to questions about poverty and the rural relations in the modernising nation-state. It was only in the twentieth century, as acknowledged by many studies, that the *allemansrätt* was truly established and conserved in the Nordic countries due to widespread popular and political support, especially among the social-democratic circles.<sup>109</sup>

### 1.3 Method, sources and structure: Politics of property in a European periphery

The chapters of this thesis examine the shaping of the selected property institutions in the peripheral and backward context of the late nineteenth century. Accordingly, the main sources that have been investigated are documents produced by the administrative and legislative

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<sup>106</sup> Filippo Valguarnera, *Accesso alla natura tra ideologia e diritto*, Comparazione e cultura giuridica ; 21 (Turin: Giappichelli, 2010).

<sup>107</sup> Two major exceptions are the work by Valguarnera and Wiktorsson. The concept of *allemansrätt* will be explored more in detail in chapter 5. For the twentieth century *allemansrätt*, see for instance Åsa Åslund, 'Allemansrätten och marknyttjande : studier av ett rättsinstitut' (Doctoral Thesis, Institutionen för ekonomisk och industriell utveckling, Linköpings universitet, 2008); Marianne Reusch, *Allemansretten: friluftslivets rettsgrunnlag* (Oslo: Flux, 2012); Karin Åhman, ed., *Allemansrätten i förändring: symposium 2012* (Stockholm : Uppsala: Norstedts juridik ; Institutet för fastighetsrättslig forskning (IFF), 2012). For wild berry-picking, see Anna Sténs and Camilla Sandström, 'Divergent Interests and Ideas around Property Rights: The Case of Berry Harvesting in Sweden', *Forest Policy and Economics* 33 (August 2013): 56–62; Matti La Mela, 'Property Rights in Conflict: Wild Berry-Picking and the Nordic Tradition of Allemansrätt', *Scandinavian Economic History Review* 62, no. 3 (2 September 2014): 266–89. Valguarnera, *Accesso alla natura*; Gunnar Wiktorsson, *Den grundlagsskyddade myten : om allemansrättens lansering i Sverige* (Stockholm: City Univ. Press, 1996).

<sup>108</sup> Wilson, *German Forest*.

<sup>109</sup> Valguarnera, *Accesso alla natura*, 182–83, 189; Anna Sténs and Camilla Sandström, 'Allemansrätten in Sweden: A Resistant Custom', *Landscapes* 15, no. 2 (November 2014): 106–18.

processes that ultimately established the institutions: committee and expert reports, administrative accounts, and the minutes from the discussions at the Senate and the legislative organ, the Assembly of the Estates. These processes are studied as part of the broader public debate, and in relation to sources pointing at the practices of ownership, which consist mainly of contemporary newspaper and journal articles.

These textual sources are approached along the rather pragmatic lines of conceptual history (*Begriffsgeschichte*) as conducted by Reinhart Koselleck.<sup>110</sup> This work has been inspired especially by Koselleck's insistence on the contested nature of concepts and his theorising on the ties between experienced reality and its historical formulation in language. In the Koselleckian *Begriffsgeschichte*, concepts are more than what linguists would call the meanings of words. These basic concepts (Grundbegriffe) are important concentrations of meanings, "inescapable, irreplaceable part of the political and social vocabulary [.. which] become indispensable to any formulation of the most urgent issues of a given time." Concepts are connectors, which are both used to describe the extra-linguistic world but are attached to the linguistic conventions of the time. The basic concepts play a role in human agency while they are semantically contested and reformulated in political struggle.<sup>111</sup> In recent years, the focus of conceptual history has shifted from larger diachronic shifts, as in the landmark encyclopaedic project of the *Geschichtliche Grundbegriffe* led by Koselleck, towards micro-diachrony, which investigates more precisely the actual communicative events where the conceptual historical struggles took place.<sup>112</sup> Accordingly, this thesis investigates specific debates, or communicative situations, in which the individual actors became engaged against each other. The debates on the property institutions were to a great extent attempts to conceptualise the tensions which stemmed from the growing interest in appropriating, but at the same time demarcating, the resources in question.

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<sup>110</sup> Jan-Werner Müller, 'On Conceptual History', in *Rethinking Modern European Intellectual History*, ed. Darrin M. McMahon and Samuel Moyn (Oxford University Press, 2014), 74–93; Niklas Olsen, *History in the Plural: An Introduction to the Work of Reinhart Koselleck* (New York: Berghahn Books, 2012).

<sup>111</sup> Reinhart Koselleck, 'A Response to Comments on the *Geschichtliche Grundbegriffe*', in *The Meaning of Historical Terms and Concepts*, ed. Hartmut Lehmann and Melvin Richter (Washington, D.C.: German Historical Institute, 1996), 64; Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time* (Irvine, NY: Columbia University Press, 2004), 81–87, 260–63; Melvin Richter and Michaela Richter, 'Introduction: Translation of Reinhart Koselleck's "Krise" in *Geschichtliche Grundbegriffe*', *Journal of the History of Ideas* 67, no. 2 (2006): 345–46, doi:10.1353/jhi.2006.0017; Jan Ifversen, 'Text, Discourse, Concept: Approaches to Textual Analysis', *Kontur* 7 (2003).

<sup>112</sup> Willibald Steinmetz, '40 Jahre Begriffsgeschichte - The State of the Art', in *Sprache - Kognition - Kultur. Sprache Zwischen Mentaler Struktur Und Kultureller Prägung*, ed. Heidrun Kämper and Ludwig M. Eichinger (Walter de Gruyter, 2008), 184–87.



In addition, alongside the hermeneutical concerns of translating between past and present languages, the question of transfers and translations within their particular historical context has been explored in conceptual history.<sup>113</sup> This is a central issue in the case of the peripheral and bilingual Grand Duchy of Finland, which was administratively trilingual, where the national languages were employed as instruments and emblems not only in political debates but also in scientific discourse and business life.<sup>114</sup> The modern Finnish language was created in the mid-nineteenth century as part of the national-romantic aspirations of the Swedish-speaking elite to apprehend and develop this national language proper. This coincided with the development of the modern Finnish political culture and its vocabulary, which was largely built by appropriating and translating concepts from other languages.<sup>115</sup> In these processes, the concepts were accommodated with the local, historical conditions, but also steered and defined according to the author's experiences and views about the modernising nation-state. In this way, the documents studied express the reception and insertion of the "travelling" foreign semantics, as discussed by Jani Marjanen, but also portray the competing meanings put forward by the debaters who used and constructed the developing (especially Finnish) national languages.<sup>116</sup>

Parliamentary sources are classic sources used in political history to illustrate and analyse political debates between factions and explain the outcomes of the legislative processes. From the perspective of conceptual history, however, these sources have a broader role. Parliamentary debates, ideally, follow the logic of debating a question from *utramque partem*, and thus, can

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<sup>113</sup> For instance, Melvin Richter, 'Introduction: Translation, the History of Concepts and the History of Political Thought', in *Why Concepts Matter: Translating Social and Political Thought*, ed. Martin J. Burke and Melvin Richter, Studies in the History of Political Thought 6 (Leiden ; Boston: Brill, 2012), 1–40; László Kontler, 'Translation and Comparison: Early-Modern and Current Perspectives', *Contributions to the History of Concepts* 3, no. 1 (2007): 71–102; Hyvärinen et al., *Käsitteet Liikkeessä*.

<sup>114</sup> See chapter 1.1; Katja Huomo, '*Perkeleen kieli*': *suomen kieli ja poliittisesti korrekti tiede 1800-luvulla*, Bidrag till kännedom av Finlands natur och folk 166 (Helsinki: Suomen tiedeseura, 2005); Paavilainen, *Kun pääomilla oli mieli ja kieli*.

<sup>115</sup> Kaisa Häkkinen, 'Kielen kehitys ja suomennoskirjallisuus', in *Suomennoskirjallisuuden historia I*, ed. H. K. Riikonen et al. (Helsinki: Suomalaisen Kirjallisuuden Seura, 2007), 162–71; Hyvärinen et al., *Käsitteet Liikkeessä*, 14–17. According to Kari Palonen, the translation work did not respond directly to local or national political needs, but was mainly for discussing, explaining and transferring news from the European core. Kari Palonen, 'Eurooppalaiset Poliittiset Käsitteet Suomalaisissa Pelitiloissa', in *Käsitteet Liikkeessä. Suomen Poliittisen Kulttuurin Käsitehistoria.*, ed. Matti Hyvärinen et al. (Tampere: Vastapaino, 2003), 571.

<sup>116</sup> Jani Marjanen, 'Undermining Methodological Nationalism. Histoire Croisée of Concepts as Transnational History', in *Transnational Political Spaces: Agents - Structures - Encounters*, ed. Mathias Albert et al. (Frankfurt, New York: Campus Verlag, 2009), 253–60; Jussi Kurunmäki, 'The Reception of Political Concepts in the Wake of Finnish Parliamentary Life in the 1860s', in *Die Zeit, Geschichte Und Politik; Time, History and Politics: A Nordic Festschrift Für Reinhart Koselleck*, ed. Jussi Kurunmäki and Kari Palonen (Jyväskylä: University of Jyväskylä, 2003), 291–310.

be seen as ahistorical elaborations on the topic.<sup>117</sup> At the same time, parliaments were places of political debate in their very historical sense. The debates were conditioned by a specific, historical parliamentary culture, and most importantly, were unique examples of how (political) language was used, and could have been used, in the past.<sup>118</sup> The debates were also tied to contemporary linguistic conventions, and could be used to reproduce these or challenge some of the commonly shared meanings or attitudes.<sup>119</sup> Moreover, besides being about resolving or guiding the debate, the debates reflected understanding of the debated issue, and offer evidence about the culture or practices regarding the matter under discussion.

At the same time, parliaments or bodies involved in the legislative process are not the main sites where the conceptual or political struggle takes place.<sup>120</sup> Legislature was but one node in the political process (or conceptual debate) where the property institutions became challenged. The “political” sphere is historical itself, and under the interaction of processes of politicisation and depoliticisation; as Willibald Steinmetz and Heinz-Gerhard Haupt put it, de/politicisation may take place in pure verbal acts, but also in symbolic or physical acts, for example, through the use of violence.<sup>121</sup> What is taken (or not) into the agenda of a parliament, or more broadly to public debate, has been already politicised outside the parliament and is approached within the parliament by taking account of this political framing. As shown by Tamara Whited in her study on the political use of forestry knowledge in the nineteenth century French mountain areas, the local peasants defended their use rights with not only with acts of violence, but also by influencing the national forest discourse and keeping the issue “political” in the legislature.<sup>122</sup> In addition, as we will see in the case of Finnish berry-picking, the role of the legislature can have very insignificant results in contrast to other places of political action: the ownership of

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<sup>117</sup> Suvi Soininen and Tapani Turkka, eds., *The Parliamentary Style of Politics* (Helsinki: Finnish Political Science Association, 2008).

<sup>118</sup> Pasi Ihalainen and Kari Palonen, ‘Parliamentary Sources in the Comparative Study of Conceptual History: Methodological Aspects and Illustrations of a Research Proposal’, *Parliaments, Estates and Representation* 29, no. 1 (January 2009): 17–34.

<sup>119</sup> Quentin Skinner, ‘Language and Political Change’, in *Political Innovation and Conceptual Change*, ed. Terence Ball, James Farr, and Russell L. Hanson (Cambridge University Press, 1989); Quentin Skinner, ‘Rhetoric and Conceptual Change’, *Finnish Yearbook of Political Thought* 3 (1999): 63–67.

<sup>120</sup> In its classic and narrow sense, politics was related to certain places where “political issues” became debated, for instance the legislatures. For example, Charles S. Maier, ‘Introduction’, in *Changing Boundaries of the Political: Essays on the Evolving Balance Between the State and Society, Public and Private in Europe*, ed. Charles S. Maier (Cambridge: Cambridge University Press, 1987), 1–26. For different national developments toward a “new” political history, see: Willibald Steinmetz and Heinz-Gerhard Haupt, ‘The Political as Communicative Space in History: The Bielefeld Approach’, in *Writing Political History Today*, ed. Willibald Steinmetz, Ingrid Gilcher-Holtey, and Heinz-Gerhard Haupt (Frankfurt: Campus, 2013), 11–21, <https://pub.uni-bielefeld.de/publication/2608006>.

<sup>121</sup> Steinmetz and Haupt, ‘The Political as Communicative Space in History’, 25–26.

<sup>122</sup> Whited, *Forests and Peasant Politics in Modern France*.

wild berries remained, in practice, in the hands of the landowners even though the Assembly of Estates had decided in favour of their open nature.

The “parliament” of the Grand Duchy continued the tradition of the Swedish *Riksdag*, a legislative assembly formed of four estates—the Nobility, Clergy, Burghers, and *Bonde* (“landowners”)<sup>123</sup>—in which Finnish members had also participated. In the Grand Duchy, the Assembly of Estates was adjusted to the Russian framework of rule only when it was convened in 1863, over 50 years after the annexation of the Finnish area. Even though the legislative debates of the late century lie within the focus of the thesis, the work also engages with the pre-1860s decision-making of the state administration, and the emerging press early in the century which increasingly surveyed the policies of the noble state bureaucracy. As will be shown, the intellectual property rights and the ownership of forest resources became discussed and regulated rather extensively by the “government of the Grand Duchy”, the Economic Division of the Senate. These early market practices and regulatory regimes framed, then, the later legislative processes that would also involve the participation of the political factions, also present at the Assembly of Estates.

The Assembly of Estates was called to convene in 1863 by Emperor Alexander II in order to create positive international visibility, as well as for pragmatic reasons, as the on-going liberal reforms involved legal changes, such as the creation of novel areas of law or the removal of estate privileges, that required the approval of the estates according to the invoked constitutional tradition. Due to the long break and the changed political context, parliamentary practices and norms had to be reinvented: nobody present at the Assembly of 1863 had any prior experience in parliamentary work.<sup>124</sup> The Estates would convene regularly from 1863 to 1906. The Assemblies were called every three to five years and took place mainly in the spring, between

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<sup>123</sup> Instead of the imprecise translations of “peasant” or “farmer”, the term *bonde* is used for describing the Estate, which consisted of (and were selected by) landowners who possessed assessed land (*mantal*).

<sup>124</sup> As Onni Pekonen has shown in his recent doctoral dissertation, an extensive discussion about the “ABC’s of parliamentary life” took place in the second half of the nineteenth century. Most importantly, the parliamentary practices were not only learned from the Swedish tradition, but a variety of European parliamentary cultures being discussed in the press. Pekonen argues that the Swedish model worked as a starting point for forming the Diet procedures, but appeared in later discussions as obsolete and was referred to more seldom. Onni Pekonen, *Debating ‘the ABCs of Parliamentary Life’: The Learning of Parliamentary Rules and Practices in the Late Nineteenth-Century Finnish Diet and the Early Eduskunta* (Jyväskylä: University of Jyväskylä, 2014), 20–21.

January and the end of May or early June.<sup>125</sup> The parliamentary reform of 1906 transformed the Assembly of Estates into a unicameral representative organ, the Parliament of Finland.

Contemporaries modelled the “national parliament” according to the modern and foreign parliaments, and even viewed the Grand Duchy a “parliamentary country”.<sup>126</sup> However, the institution retained the features of a mere consultative body for the ruler. First of all, the Assembly of Estates was not clearly organised into opposition and government. The Assembly was a mediaeval, corporative legislative institution, where the four estates convened to approve or reject laws or modifications proposed by the King and his government, which in the Grand Duchy was the Senate; the Estates did not have any rule over the Senate.<sup>127</sup> Secondly, the Assembly of Estates did not have a clear constitutional position in the Grand Duchy.<sup>128</sup> In most legislative cases, the Emperor respected the decision taken by the Estates—which had a great symbolical value for the Finns—and with the less satisfactory decisions, such as the above-mentioned 1898 Patent Act, he resubmitted the law proposal to obtain a new, appropriate resolution.<sup>129</sup> It was not always clear whether a piece of legislation needed the approval of the Estates, and it became commonplace for the Finnish side to interpret areas of administrative law as normal or constitutional laws, as was the case with patent law.<sup>130</sup> Thirdly, the representation in the Assembly was based on the Estates, and the decisions were made separately in each of the four Estates.<sup>131</sup> The main arenas for common discussion were the

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<sup>125</sup> Patrik Lilius, ‘Säätyvaltiopäivien työmuodot’, in *Suomen kansanedustuslaitoksen historia IV* (Helsinki: Eduskunnan historiakomitea, 1974), 164.

<sup>126</sup> These views were taken especially by the liberal faction. Pekonen, *Debating ‘the ABCs of Parliamentary Life’*, 19, 55, 61–62.

<sup>127</sup> The Senators, who had to be Finnish citizens, were appointed by the Emperor, and were chosen from among the high-level state officials and jurists. The Senate could be characterised as a sort of “upper house” or “second chamber”: it became a practice, that the Senate would read and comment on the law proposals and petitions before they were sent to the Emperor. The Emperor often took the side of the Senate in his decisions. Tyynilä, *Senaatti. Tutkimus Hallituskonselji-Senaatista 1809-1918*, 229–32. Jussila criticizes the notion of an upper-house of being inaccurate. Jussila, *Suomen suuriruhtinaskunta*, 383.

<sup>128</sup> The Regulations of the Assembly of Estates were approved in 1869: The Regulations proclaimed itself a constitutional law. Yet, the actual constitutional law, the Form of government, drafted simultaneously with the Regulations of the Assembly was never approved. Antero Jyräntä, *Lakien laki: perustuslaki ja sen sitovuus eurooppalaisessa ja pohjoisamerikkalaisessa oikeusajattelussa suurten vallankumousten kaudelta toiseen maailmansotaan* (Hki: Lakimiesliiton kustannus, 1989), 407–25.

<sup>129</sup> Since 1863, the Assembly could make requests to the Emperor for introducing law proposals, and in 1886, it received the right to introduce law proposals directly to the Estates. Katajisto, ‘Kansallisen näkökulman paluu. Timo Soikkanen (toim.): Taistelu autonomiasta. Perustuslait vai itsevaltiut?’, 50–52; Lilius, ‘Säätyvaltiopäivien työmuodot’, 269–71.

<sup>130</sup> Jussila, *Suomen suuriruhtinaskunta*, 534.

<sup>131</sup> The Regulations of 1869 allowed the calling of a plenary session, where the representatives from all the Estates would be present. However, the plenary session was only called twice, and it did not transform, as had been hoped, the estate-based discussion into a discussion between the members of the Senate and the representatives, or government and opposition. Lilius, ‘Säätyvaltiopäivien työmuodot’, 272–80.

committees, where the law proposals were prepared before they were read separately in the Estates. According to the Regulations of 1869, the committees had equal representation and equal votes per member, which made shared debates possible.<sup>132</sup>

At the same time, the Assembly of Estates became politicised and parliamentarised by emulating foreign parliamentary models in the late nineteenth century.<sup>133</sup> The formation of political factions or “parties” and their respective newspapers from the mid-nineteenth century onwards had built dividing lines inside and between the Estates in the Assembly, but also in the Senate.<sup>134</sup> The main political factions—the Fennomans and the so-called Liberals—were formed among the bureaucratic and academic elite of the Grand Duchy around the mid-century, and especially since the early 1870s, they had represented a dividing line in the Assembly; what is notable, therefore, is the overlap of estate and party-based representation.<sup>135</sup> The Fennoman movement united the church and academic intellectuals with the land-owning peasantry, and Fennoman thought was present especially in the Estates of *Bonde* and Clergy.<sup>136</sup> The Liberals and the Fennoman-reactionary Svecomans, on the other hand, were mostly seated in the Estates of Nobility and Burghers.<sup>137</sup> The factions did not organise into official parties before the turn of

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<sup>132</sup> Ibid., 193–94, 244. This centrality of committee work, and the insignificance of plenary debates, reflected the view that the deliberations at the Assembly should aim at negotiation and consensus-seeking instead of dissension and open debate. Pekonen, *Debating ‘the ABCs of Parliamentary Life’*, 155–61.

<sup>133</sup> One example is the development of stenography for recording the sessions of the Estates instead of providing summaries of the debates. The Regulations of 1869 ordered the Estates to have a secretary for documenting the sessions, but did not rule in detail about minute-taking. However, already at the Assembly of 1863, the Nobility and the Burghers had hired stenographers to compile the minutes. The stenographic profession developed together with the practices of the Assembly: the expertise was learned from abroad via literature, study trips and personal contacts. By 1885, all the Estates had stenographers. In the mid-1870s, the *Bonde* Estate started to develop stenographic practices for Finnish language. In 1885, the Estate of Clergy had also agreed unanimously to use stenography. By the mid-1880s, all of the Estates had decided to publish their minutes. Accurate minute-keeping was seen as a way to conserve the debates for future orators and historians, but also to bridge the temporal and spatial gaps between the separate discussions: the minutes enabled the Estates to comment on each other, but also to build continuity between the sessions, and to continue the debate outside the Assembly. Pekonen, *Debating ‘the ABCs of Parliamentary Life’*, 181–200.

<sup>134</sup> The particular senators became to be labelled according to their political stance. Tyynilä does not see this as any step towards “parliamentarism”, but merely as the enforcement of political opinions in the Senate, which still remained independent and above the Estates. Tyynilä, *Senaatti. Tutkimus Hallituskonselji-Senaatista 1809-1918*, 238–39.

<sup>135</sup> The elections of the non-noble estates were politicized in the 1870s and 1880s. Pirkko Rommi, ‘Lehdistö ja valtiopäivätoiminta’, in *Suomen kansanedustuslaitoksen historia. 4. osa*, ed. Olavi Salervo et al. (Helsinki: Eduskunnan historiakomitea, 1974), 377–92. Despite the estate division of the Assembly, the Regulations of 1869 had pronounced the principle of free mandate, and accordingly, the members were bound only by the constitution and defined to represent the people, not their estate. Pekonen, *Debating ‘the ABCs of Parliamentary Life’*, 115–21.

<sup>136</sup> Alapuro, *State and Revolution in Finland*, 26–29, 92–100.

<sup>137</sup> The support of the parties in the Estates, see Uuno Tuominen, *Suomen kansanedustuslaitoksen historia. 3. Säätyedustuslaitos 1880-luvun alusta vuoteen 1906* (Helsinki: Eduskunnan historiakomitea, 1964), 25, 35, 45, 55.

the century, but the groupings identified were according to their leaders or newspapers.<sup>138</sup>

The representatives, who included men only, were chosen in different quantities and in a different way to the Estates, and their social backgrounds were not strictly related to the historical names of the Estates. In the Estate of Nobility, there were between 130 and 170 representatives, of which one third were state bureaucrats—Senators or state officials.<sup>139</sup> All of the other three Estates had some kind of electoral system in place.<sup>140</sup> The Estate of Burghers included merchants, town administrators and urban gentry (40 to 70 representatives in total).<sup>141</sup> The Clergy, formed of approximately 36 representatives, consisted of all the bishops and representatives of the country's dioceses. The university and the teachers of the dioceses also chose one or two representatives.<sup>142</sup> Finally, the Estate of *Bonde* was elected by national judicial districts: the 56 to 64 representatives of the districts were mainly landowners, but also included rural merchants, teachers, and liberal professionals.<sup>143</sup> Later in the century, due to the electoral systems, estate-based restrictions and male-franchise, approximately 30 percent of the population of the Grand Duchy were “represented” at the Diet, and less than ten percent had the right to vote.

The sessions of the Estates offered a space for deliberation. This deliberation, as noted above, was only one instance in the political process. In practice, it was framed by the preparatory work carried out in committees, which was continued and elaborated on in the pages of the newspapers (of the political factions). The legal processes involved both pre-parliamentary expert committees, which often published their reports, and parliamentary committees that worked during the seasons of the Assembly. The role of the committees was central in preparing

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<sup>138</sup> Rommi, ‘Lehdistö ja valtiopäivätoiminta’, 373–77.

<sup>139</sup> The representatives were the heads of the noble families directly or other members sent by mandate. Besides state bureaucrats, the nobility consisted of landowners, university personnel and industrial patrons. Eino Jutikkala, ‘Säätyedustuslaitoksen kokoonpano, työmuodot ja valtuudet’, in *Suomen kansanedustuslaitoksen historia IV* (Helsinki: Eduskunnan historiakomitea, 1974), 10–18, 27.

<sup>140</sup> This made possible electoral campaigns based on local level polarities, or increasingly since the 1870s and 1880s, on the national level political divisions. For example, elections of the Burgher Estate: *Ibid.*, 98–108.

<sup>141</sup> The election regulations of the Burghers were reformed in 1869 and 1879, but the electoral procedures varied between the cities: with the reforms, especially that of 1879 which abolished the privileges of the Estate, the number of the people entitled to vote grew and was socially enlarged. In addition, after 1869, it was possible to pick a candidate who was not a dweller of the voting city. The number of votes were calculated in relation to tax payments. Before the reform of 1879, the Estate was mainly composed of merchants or members of the town administration. After 1879, state officials, members of the gentry and merchants formed the Estate. *Ibid.*, 48–77, 111–15.

<sup>142</sup> According to the Regulations of 1869, entitled to vote were all the pastors, but also the university teachers and teachers at the lower education with a regular post. *Ibid.*, 32–38.

<sup>143</sup> *Ibid.*, 124–36.

and framing the political problems; in fact, all of the cases presented in this thesis were first studied by an expert committee, which also drafted a law proposal on the matter. The expert committees also often commented on comparable foreign legislation and conditions in their reports. Even though the law proposals were still modified in the Senate, these reports set the basis for future discussion. The work of the parliamentary committees took place behind closed doors. Their statement, and the protests over the statement, however, drew the lines according to which the debates, and ultimately, voting, took place in the Estates.

The newspapers also carefully followed the actual seasons of the Assembly of Estates. According to Rommi, direct references to the minutes and documents covered between 10 to 15 percent of the coverage of the national newspapers.<sup>144</sup> The law reforms were reviewed and the actual legislative debates were continued, in the newspapers of the factions, but references to newspaper articles were also made in the Assembly. The newspapers, and other printed publications, were one important channel for digesting the spatio-temporal relation of the country towards the more advanced centres. Importantly, under the regime of censorship that was in place basically during the whole of the century, the print publications had more space to discuss the “foreign news” than a publisher had to import or translate books, and as such, the newspapers offered an indirect way of approaching the Finnish reforms.<sup>145</sup> Moreover, the Estates and their minutes of the legislative debates had a particular status under censorship, and could be cited in the newspapers. It was only in 1891, due to tightened Finnish-Russian relations, that the minutes were put under prepublication censorship.<sup>146</sup> The debates in printed publications were not only public discussion as such, but were an integral part for introducing, framing, as well as continuing the legislative debates of the Assembly of Estates.

The discussions of the Assembly of Estates were recorded and are available in printed volumes.<sup>147</sup> Other administrative records, minutes from the Senate, decisions made in the state administration (for example regarding patents), and the documents of the parliamentary committees are stored in the archives. As far as the nineteenth century newspapers and journals are concerned, an online database of digitised copies is currently available. The database enables both extensive key word searches for localising debates, and also allows the evaluation

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<sup>144</sup> Rommi, ‘Lehdistö ja valtiopäivätoiminta’, 429–30.

<sup>145</sup> Pekonen, *Debating ‘the ABCs of Parliamentary Life’*, 30, 43–49.

<sup>146</sup> Rommi, ‘Lehdistö ja valtiopäivätoiminta’, 414–26.

<sup>147</sup> For minute-keeping at the Assemblies, see footnote 133.

of first appearances and the spread or frequency of how pieces of news become cited or terms used. The searches, however, should not be seen as conclusive while the text-reading is not always precise, due to poor copies or the difficulties of reading the fraktur-typesetting. The value of this search tool has been especially heuristic, and used to provide new questions, and to support the interpretations drawn from other sources.

This thesis is divided into two parts: intellectual property and property in natural resources. This introductory and contextual chapter is followed by chapters on intellectual property: chapter two studies the developments leading to the first actual law on authors' rights (1880), and chapter three focuses on the formation of the modern Finnish patent area, with regard to earlier invention privileges, which were shaped by the reforms of 1876 and 1898. The chapters emphasise how the ownership of inventions and books was first reflected in relation to commercial endeavours but also the administrative practices. In the mid-century, foreign, especially Swedish, actors were active in both areas: it is possible to speak of Finnish-Swedish markets of innovation and literature. Moreover, the chapters note the centrality of foreign legislation in the making of these national laws. Both laws were prepared in liberal committees formed of legal scholars and professionals close to the fields, and had a considerable effect on their final form.

The second part examines how the borders between private, common or open access to natural resources became negotiated. The second part, especially the chapter five, critically reviews the principle of open access to nature, *Allemansrätt*, which is commonly characterised as a tradition in the broader Nordic region.<sup>148</sup> Chapters four and five study the occupation of the two “riches” of the forests of the Grand Duchy—the trees and their wild berries. These chapters show how both resources came to be regarded as important economic resources that could be appropriated for the benefit of the state or the nation: first the trees in the 1850s, and some decades later the wild berries, due to encouraging news about the berry boom in Sweden. Chapter four explores the making of the Forest Law of 1886, and shows how different views of “good” and “bad” ownership of forests appeared for regulating the scope of property rights. In chapter five, the trees are contrasted with another naturally growing resource—wild berries. Even though both carried commercial value, the ownership of wild berries came to be defined in very practical terms, and in the Penal Code debate of 1888, the criminalisation of wild berry-picking was

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<sup>148</sup> *Allemansrätten i Norden.*



discarded as being too harsh towards the poor. Moreover, the commercial visions of the time backed the principle of open access to berries; wild berry picking led to economic benefits that did not regard only the poor, but the whole nation.



## 2 Intellectual property rights first take shape: The 1880 authors' rights law

When the petition for the first law on literary and artistic property rights was discussed at the Assembly of Estates of 1872, the writers and artists of the Grand Duchy had ended up in a curious situation. For five years, there had been no legal regulations that would define their authorial rights. This “state of complete lawlessness”, as commented by a contemporary newspaper, was not related to any conflict about authors' rights, or disputes between book sellers, publishers or writers.<sup>149</sup> It was the result of one of the disagreements about the political identity of the Grand Duchy as a part of the Russian Empire—the question of freedom of the press. Due to difficulties in agreeing on the press law in the Grand Duchy, the Emperor passed an administrative decree which focused only on the core of printing regulations, leaving authors' rights unmentioned.<sup>150</sup> The political conflict did have some impact on the literary and art market, but ultimately, it specifically detached authorial rights from their previous context of censorship and printing.<sup>151</sup> With the *copyrightless* situation, it seemed natural to initiate copyright reform, which pushed the Finns to study, discuss and demarcate authorial rights in the Grand Duchy.

Even though some people underlined the novel character of a law on authors' rights, and the dangers of making decisions too hastily, the protection of authors and artists had already been institutionalised in previous decades as part of the censorship regulations. In addition, due to the intimate cultural relations between the Grand Duchy and Sweden, the readers of both countries had been enjoying the literature produced in the shared literary market.<sup>152</sup> These literary relationships, and the professional meetings where the trade was discussed, were among the first instances of a broader discussion about literary property rights in the country. Later in the 1860s, with the press law conflict, the field of authors' rights became more autonomous, to transform, also in the Grand Duchy, into a particular object of the law-makers. Moreover, the legislative work, and the evaluation of this work, was carried out to a large extent with the help of legislative experience that could be acquired from abroad. This legislative process of the

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<sup>149</sup> Literär och artistisk eganderätt. Vikingen, no 32 (20 April 1872).

<sup>150</sup> For example, Antero Tuomela, 'Painovapaus Suomessa vv. 1867-1872' (Master's thesis, Helsingin yliopisto, 1958), 31–34. The conflict about the press laws is studied below.

<sup>151</sup> When the law reform was discussed at the Artists' Association (*Konstnärsgillet*) in 1871, a member reported unauthorised copying of his sculptures. Bref till mina vänner i landsorten. Helsingfors Dagblad, no 83 (27 March 1871).

<sup>152</sup> Hakapää, *Kirjan tie lukijalle*.

1870s coincided with the expansion of the Finnish-language literary market, but also with the activation of the Fennoman Finnish party, which ultimately affected the positions held by the factions on the matter.

This chapter examines the development of literary (and artistic) creators' rights in the nineteenth century. It focuses especially on the differing views on the nature of this right. In general, the question of intangible ownership was first reflected on in the debates on literary property, and was the basis for later law-making on patents.<sup>153</sup> Moreover, a detailed reading of the opinions of the debaters introduces the specific political context, which also frames the later chapters. This chapter first looks at the development of authors' rights between imperial censorship policies and Swedish literary relations. The Swedish orientation, portrayed in the second part, led to a growing interest in the author's rights with visions of the formation of a common Scandinavian authorial property regime. Moreover, the 1860s saw the first interpretations of authors' rights by the political factions.

The third part shows how with the disintegration of the press laws, the actual legislative process on authors' rights could be initiated. The law was drafted in a liberal committee founded in 1873, and especially emphasised the contractual aspects of the rights. Finally, the draft was accepted by all of the factions at the Assembly of 1877. The scope of the rights, however, was expanded due to the strong rhetoric of the sanctity of property and the analogies made to material property rights by the Fennomans. It is also shown how the question was still largely novel in the 1870s, and was significantly guided by what had been done in the field abroad. Within this framework, national perspectives were made visible; as the Fennoman J. V. Snellman put it, strong property rights made the authors compete amongst themselves and produce good national literature, whereas more limited rights aroused competition between the publishers and potentially generated more literature but of a lower quality.<sup>154</sup> For Snellman, good books were the preferred goal, and a more "justifiable societal necessity" (*rättmätigare samhällsbehof*).

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<sup>153</sup> As Bently and Sherman note, the debates about literary property normalised the question of intangible ownership, and, consequently, made it easier to proceed, by analogy, with the protection of other forms of intangibles. Sherman and Bently, *The Making of Modern Intellectual Property Law*, 40–41, 65–66.

<sup>154</sup> Lagutskottets Betänkande angående författares och konstnärs rätt till alster af sin verksamhet. Morgonbladet, no 244 (19 October 1877).

## 2.1 Early institutional development of authors' rights: Between Russian censorship and Swedish trade

Early in the century, the authors of the Grand Duchy were protected against the illegal copying of their work by the regulations on censorship, first set in the decree on “censorship and book trade” of 1829. This decree broadly considered the functioning of the network of book production and sales; besides being a tool for control, it regarded the privileges destined to support and policy the literary market. The decree did impose preventive censorship over all literary production and imported work, but it also set regulations on bookshops, libraries, printing houses and authors.<sup>155</sup> For instance, the author's rights were regulated in the seventh chapter of the decree, which discussed the authorities and individuals who were “tied together by the institution of censorship”.

The decree on censorship of 1829, with its sections on authors' rights, was set at a time when the major copyright regulations had shifted their focus from printing privileges towards the author, and the author's relationship with the public. Even though the argumentation of the early debates in the major countries was very similar, the copyright history became narrated, and eventually developed into two idealised traditions: the utilitarian Anglo-American copyright which aimed at stimulating learning, and the French-continental authors' rights, which held these rights to be sacred as they arose directly from the author himself.<sup>156</sup> The late eighteenth century had seen the birth of the modern author as proprietor, as well as the literary work as independent creations of individual inspiration.<sup>157</sup> This was not only the result of developments in literary aesthetics, but also of “battles” over printing rights in the national book markets of

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<sup>155</sup> The section 69 of the decree stated that printing houses, bookshops, libraries, and book auctions were to be under the supervision of the censorship officials. In addition, the privilege petitions for new printing houses, bookshops and libraries were judged by the censorship officials; however, the final decision was made by the Senate (§ 71, 72) *Hans Kejserliga Majestäts Nådiga Förordning angående Censuren och bokhandeln i Stor-Furstendömet Finland*, (2)/14 October 1829.

<sup>156</sup> In her seminal article on the literary property rights in revolutionary France and North America, Ginsburg shows how both partners of the bargain—author and the public—and their respective rights and interests became emphasised in the debates on literary property in both revolutionary countries. Ginsburg also notes that in practice, these copyright areas had much in common; for instance, they mainly protected works that were useful in public education. Jane C Ginsburg, ‘A Tale of Two Copyrights: Literary Property in Revolutionary France and America’, in *Of Authors and Origins: Essays on Copyright Law*, ed. Alain Strowel and Brad Sherman, Repr (Oxford: Clarendon Press, 1994), 131–58. For this duality, see also: Alain Strowel, ‘Droit D’auteur and Copyright: Between History and Nature’, in *Of Authors and Origins: Essays on Copyright Law*, ed. Alain Strowel and Brad Sherman, Repr (Oxford: Clarendon Press, 1994).

<sup>157</sup> Mark Rose, ‘The Author as Proprietor: Donaldson v. Becket and the Genealogy of Modern Authorship’, *Representations*, no. 23 (July 1988): 51–85. For the (problematic) relation between the figure of “romantic genius” and copyright, see Mario Biagioli, ‘Genius against Copyright: Revisiting Fichte's Proof of the Illegality of Reprinting’, *Notre Dame Law Review* 86, no. 5 (2011).

the eighteenth century.<sup>158</sup> As Bently and Sherman note, the literary property debates of the late eighteenth century normalised the theme of literary property, and led to the acceptance that “mental labour *could* give rise to distinct species of private property.”<sup>159</sup>

At the same time, the principle of individual authorship should not be overstated, but the interpersonal nature of creativity and the interests of the public were also brought forward in the copyright debates.<sup>160</sup> The regulations restricted the duration of authorial property rights, for instance, and included formalities that the author had to submit to in order to claim his property rights. These formalities often derived from the earlier printing regulations, and as shown by van Gompel, they persisted in copyright laws even until the late nineteenth century.<sup>161</sup> Even the copyright laws of revolutionary France, where an author's right to his work was proclaimed an inviolable natural right, included the administrative formalities of the *Ancien régime*, and limited the protection to 25 years after the authors death.<sup>162</sup> Sweden was an exception to this, and became an example for the Grand Duchy; its 1810 law on Freedom of the Press proclaimed a copyright that was perpetual. In 1841, this perpetual copyright was limited to author's lifetime plus twenty years.<sup>163</sup>

The decree of 1829 was a landmark in the intellectual property law of the Grand Duchy. For the first time, it granted uniform protection to all author's publishing their works “of literature, sciences [or] arts”<sup>164</sup>, instead of a selective system of privileged printers or authors. During the Swedish era in the eighteenth century, authors of small works had been under equal protection, but in general, all printing and related rights had been imposed under the control of the Society of Printers, an institution of the mercantile state.<sup>165</sup> The new decree gave all authors and

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<sup>158</sup> Martha Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’, *Eighteenth-Century Studies* 17, no. 4 (1 July 1984): 425–48; Rose, ‘The Author as Proprietor’; Fredriksson, *Skapandets rätt*, 73–77. For authorship in music, see: Volgstén, *Musiken, medierna och lagarna*.

<sup>159</sup> Italics in the original. Sherman and Bently, *The Making of Modern Intellectual Property Law*, 36–42.

<sup>160</sup> *Ibid.*, 44–47.

<sup>161</sup> Gompel, ‘Copyright Formalities’.

<sup>162</sup> *Ibid.*, 173.

<sup>163</sup> Fredriksson, *Skapandets rätt*, 131–38.

<sup>164</sup> Section 2 defined that “under benämningen: “litteraturens, vetenskapernas och konsternas alster”, förstås handskrifter och böcker af alla slag och på alla språk, estamper, ritningar, teckningar, chartor och äfwen musikaliska noter med bifogade ord.”

<sup>165</sup> By the Statute of 1752, the Society of Printers became the organ of censorship in Sweden. It kept records on privileges and printing, and protected its members against illegal reprinting. The Society of Printers resembled the British seventeenth century Stationers Company, the regulator of all printing. According to Petri, however, the statute was more indebted to the French Regulation of Printing of 1686. Petri, ‘Transition from Guild Regulation to Modern Copyright Law’, 105; Fredriksson, *Skapandets rätt*, 89–91.

translators the exclusive right to publish and sell their work.<sup>166</sup> The right was seen equal to any “other property they [the authors] had acquired”, and the decree stated that all civil cases about the “property right to a book” were to be settled in court. The right spanned the life time of the author, and 25 years after the death of the author for the heir, after which it would be “possessed by the public [*allmänhetens tillhörighet*]”. Finally, even though the examination of infringements was left to the courts, the censorship officials, who in theory had all printed work pass under their eyes, were ordered to see that the rights of the authors were not violated.

It is noteworthy that the first legislation on authors’ rights in the Grand Duchy was not the result of any national copyright campaign, but was imposed on the country by the Russian authorities; ironically, the father of Finnish copyright came to be one of the Russian Governor Generals, A. Zakrevsky, later discredited in national historical narratives for taking measures to limit Finnish autonomy.<sup>167</sup> At the time, due to rumours of discontentment in the country, the Grand Duchy was being integrated more tightly under the rule of the Empire.<sup>168</sup> One area which appeared to be ineffective was censorship, which was ordered to be enhanced and brought into line with the recent Russian law of censorship of 1828.<sup>169</sup> The reform of censorship was led by Zakrevsky, who was a diligent Russian general, and expressed his disappointment about his posting to the backward and distant Grand Duchy by calling it his “Siberia”.

The first law proposal was drafted by the Senate of the Grand Duchy. The Senate followed the

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<sup>166</sup> The author's property right was decreed in section 83: “Hwarje Författare eller Öfwersättare af en bok, har uteslutande rättighet att, under hela sin lifstid, utgifwa och försälja sitt arbete, såsom annan wälförwärfwad egendom, och samma uteslutande rättighet tillkommer Författarens lagliga arfwingar under Tjugofem års tid, räknadt ifrån hans dödsdag. Efter denne termins förlopp, blifwer arbetet Allmänhetens tillhörighet, så att hwar och en må trycka, utgifwa och försälja detsamma, åliggande det Censur-Comitén och Öfwer-Styrelsen för Censuren att, i hwad å den ankommer, waka deröfwer, att Författarens rättigheter icke på något sätt kränkas. Men alla twister om laglig ägande rätt till någon bok, böra af Skiljemän eller behörig Domstol afgöras, såsom twister om hwarje annan slags egendom.” Hans Kejserliga Majestäts Nådiga Förordning angående Censuren och bokhandeln i Stor-Furstendömet Finland, (2)/14 October 1829, § 83.

<sup>167</sup> The Governor General was the highest administrative and military authority in the Grand Duchy, a representative of the Emperor of Russia, the Grand Duke of Finland. General A. Zakrevsky acted as the Governor General from 1823 to 1831. Even though he completed many administrative reforms aimed at greater integration, Zakrevsky's work resulted in the clarification and stabilisation of Finnish autonomy. For instance, the status of the Senate, which was headed by the Governor General, became more important, and the Finnish representative in Saint Petersburg, the state-secretary, gained an exclusive role in presenting and communicating appointments and legislative and budgetary matters concerning the Grand Duchy to the emperor. Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 34–37; Jussila, *Suomen suuriruhtinaskunta*, 193–99.

<sup>168</sup> Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 27–29.

<sup>169</sup> The Russian law included five articles on authors’ rights which were further elaborated on in an appendix. A Swedish translation of the Russian law can be found in the documents of the Finnish State Secretary. Act 2/1829. Fa:93 (1829). Valtiosihteerinviraston arkisto (Archives of the State Secretary) (FNA).

Russian model to a large extent, but disagreed with some major sections of the law, mainly the principle of preventive censorship.<sup>170</sup> According to the Senate, it had left out all sections of the Russian law that would expand beyond the current practices of inspection, while the present institution of censorship, already effective for over fifty years, had proved to be adequate. Moreover, the Senate wrote that the freedom of the press regulated by law had always been one of the nation's "most sacred rights and benefits". A law could be tightened only when it no longer fulfilled its purpose, which was not the case with domestic censorship. The Emperor did not accept the draft, and a new law proposal was formulated based on the critical comments by Zakrevsky. This time, the Russian model was copied more carefully. Besides imposing preventive censorship inside the country, the new decree included regulations on authors' rights that appeared in the Russian law. Interestingly, in their earlier draft, the Senate of the Grand Duchy had left out all of the sections on authors' rights.<sup>171</sup>

It is not entirely clear why the Senate omitted the sections on authorial rights from the decree, while they made no reference to the question in their report.<sup>172</sup> It was perhaps difficult to situate these regulations within the new decree on censorship; on the one hand, the Russian authors' rights were conceptually part of the preventive censorship that the Senate opposed, and on the other, in neighbouring Sweden, the regulations on authors' rights had found their place in the law on freedom of press, which had been given constitutional status.<sup>173</sup> Moreover, it could simply be that the Senate had little interest in regulating on authors' rights, which were not a key issue in the process. This was the case in Sweden, where the law on the freedom of the press received considerable attention, but the actual authors' rights attracted little notice in the early years of the century. There were few conflicts of interest in the literary field, and the views on copyright were adopted passively from foreign debates; for instance, the sections on

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<sup>170</sup> Yrjö Nurmio, 'Suomen sensuuriolot Venäjän vallan alkuaikoina vv. 1809-1829' (WSOY, 1934), 326–31.

<sup>171</sup> The actual task of drafting the new law proposal was left to the Finnish state secretary R. H. Reh binder. J. R. Danielson-Kalmari, 'Vuoden 1829 sensuuriasetuksen esihistoria', *Historiallinen aikakauskirja*, 1916, 182–89.

<sup>172</sup> In his 1916 article, historian and Fennoman politician Danielson-Kalmari suspected that the sections were left out because for any legislation on a new department of law, such as literary property, the Estates also needed to participate in the legal process. It is, however, doubtful that the Senate saw copyright as an independent field of law at this early stage. The interpretation, rather, reflects the constitutionalist thinking on the Finnish autonomy of the times of the author. *Ibid.*, 193.

<sup>173</sup> The Swedish constitutional law of 1809 cited the principle of freedom of the press. In the Grand Duchy, this principle was part of the constitutional thinking of the early nineteenth century. In one of the early constitutional (or: basic law) drafts from 1819, the notion of "freedom of press and writing" was mentioned, but its content was not further elaborated. Arno Rafael Cederberg, *Arkipiispa Tengströmin ajatukset Suomen uudesta perustuslaista*, *Historiallinen arkisto* 24, 2 (Helsinki: Suomen Historiallinen seura, 1914), II; Viljanen, *Kansalaisten yleiset oikeudet*, 88–90.



perpetual copyright in the Swedish law were passed with little comment in 1810.<sup>174</sup> In Russia as well, the discussion of authors' rights in general had flared up suddenly and recently in the early 1820s.<sup>175</sup>

The result of this drafting was that the author's rights became a solitary fragment in the Finnish decree on censorship. In the Russian law, the author and his rights appeared as part of the institution of censorship<sup>176</sup>: the author had to submit to the copyright formalities to gain a copyright.<sup>177</sup> In the Finnish decree, the five main sections and appendix on the author's rights in the Russian law were truncated into a single section, which in its wording, or elsewhere, did not explicate the status of the author or the more precise nature of the right.<sup>178</sup> In fact, the Finnish censorship process, its formalities and its possible sanctions, only considered the printers and publishers, and the author appeared in the law text only to the extent that his property right became briefly defined.<sup>179</sup> Thus, the decree established a Finnish area of censorship, which controlled all domestic literary production and regulated privileges related

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<sup>174</sup> Fredriksson notes how a separate literary field had not yet formed, and the "authors", who were mainly state officials, could have their views passed as such to the legislation. Fredriksson, *Skapandets rätt*, 111–17. Volgsten notes how the section on authors' rights was not mentioned at all in a summary of the first committee proposal published in the Journal for Literature and Theatre in 1809. In addition, none of the year's issues preceding the Freedom of the Press Act of 1810 commented on the topic. Volgsten, *Musiken, medierna och lagarna*, 144–45. According to Petri, the Swedish copyright regulations were influenced by European discussions and European publishers' campaigns on authorship and freedom of expression. He mentions the campaigns of the English and French publishers, decrees from French revolution and England (Statute of Anne), and the works of Kant and Blackstone. Petri, 'Transition from Guild Regulation to Modern Copyright Law', 106–7.

<sup>175</sup> Pravilova, *A Public Empire*, 218–19.

<sup>176</sup> As Pravilova aptly writes, the Russian law on censorship well exemplified the Foucauldian paradigm that literary ownership was established only when the author was put under state review and penalties. Ibid., 220–21.

<sup>177</sup> This principle was still expressed in the first separate copyright law of 1887. Michiel Elst, *Copyright, Freedom of Speech, and Cultural Policy in the Russian Federation*, Law in Eastern Europe, no. 53 (Leiden: Martinus Nijhoff, 2004), 66–69.

<sup>178</sup> For instance, the Russian law described the author's right as a result of the censorship process (§ 133–134), the author's right to his work was granted "after approval [of the censors]". These words had been left out from the Finnish decree. In addition, the § 17 of the appendix of the Russian law stated that anyone who printed a book without following the censorship regulations would lose all rights to the book. Swedish translation of the Russian law in Act 2/1829. Fa:93 (1829). Valtiosihteerinviraston arkisto (Archives of the State Secretary) (FNA).

<sup>179</sup> The Finnish decree of 1829 did not include, in general, many formalities, and for instance, did not require the author's name to be announced. The work submitted for censorship had to mention only the name of who handed it in, not necessarily the name of the author, translator or publisher, "yet, the published name has to be known to the printer, who is responsible for the printing of the book" (§ 21). Moreover, the decree regulated that the title page of a printed work had to include "the year of printing, the town of printing and the printer's name" (§ 28). The formalities included the depositing of three books: one to the censors, one to the library of the University and one to "our public library in Saint Petersburg" (§ 35). The penalties for not following the censorship formalities directly affected printers, publishers, and bookshops, and only indirectly the author. For instance, as section § 86 stated, in a case where the printed work differed notably from the manuscript, the printer was ordered to correct the work, "at the author's cost". The decree of (2)/14 October 1829.

to the field. The decree also meant the birth of the author as the lawful proprietor of a printed book, but not in an independent sense, instead as a “stakeholder” of the book trade. It was in this context of literary markets that the author’s rights were first discussed, and only when the censorship institution was reformed in the 1860s, were they discussed as a separate institution.

Regardless of the institutional and legal integration between the Russian Empire and the Grand Duchy, the Finnish literary field developed in a close relation with the former mother country Sweden, with which it shared a common language. Before the mid-nineteenth century, the Finnish literary market was very modest and relied heavily on foreign literary production; there were only a handful of (privileged) bookshops, which delivered written works mainly imported from Sweden to a limited reading audience.<sup>180</sup> Early in the century, between sixty and eighty percent of the imported books were Swedish, whereas the demand for Russian books was low and became marginal around 1840.<sup>181</sup> The trans-Baltic book trade was not harmed by even the preventive censorship set in 1829; the censors were not very effective, focused more on newspapers, and the decision to censor a book only increased its demand.<sup>182</sup> Moreover, the domestic print production was not yet very broad—around 200 books and booklets were published annually in the 1850s—and to a great extent consisted of traditional printed works such as almanacs, catechisms, hymnals and other religious texts bought by the common people often outside the bookshops.<sup>183</sup> To give an example, the domestic publications had a minor place in the bookshop and commercial library of J. W. Lillja, which was in the former capital of Åbo, where in the 1850s one could find 4 500 Swedish-language books published mainly in Sweden, 3 600 books in German, and 2 300 written in French.<sup>184</sup>

At the same time, the bookshops and readers in the Grand Duchy had a significant role in the

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<sup>180</sup> As put aptly by Jyrki Hakapää, the Finnish bookshops of the early century were not national, but through their indispensable western contacts, they worked as the remote points of the European literary market. Hakapää, *Kirjan tie lukijalle*, 143.

<sup>181</sup> After 1840, the exports of Finnish books occasionally even bypassed the Russian imports. It seems that either the Finnish readers did not acquire Russian literary works from bookshops, or had only little interest to them. *Ibid.*, 182–185, appendix 9 and 10.

<sup>182</sup> According to Häggman, the censors in Helsinki inspected 160 of the 10 939 books imported in 1849, and banned 40 of them. Hakapää gives detailed illustrations of the smuggling of illegal books. For instance, the booksellers could forge shipment lists, hire private smugglers, do the smuggling by themselves, or just print the illegal works in their prints (of which some situated in remote regions beyond the reach of censorship). Häggman, *Paras tawara maailmassa*, 63–65; Hakapää, *Kirjan tie lukijalle*, 196–202, 203.

<sup>183</sup> Häggman, *Paras tawara maailmassa*, 64, 71–76; Timo Myllyntaus, *The Growth and Structure of Finnish Print Production, 1840-1900* (Helsinki: University of Helsinki, 1984), appendix 2; Hakapää, *Kirjan tie lukijalle*, 237–48.

<sup>184</sup> Häggman, *Paras tawara maailmassa*, 118.

businesses of the Swedish publishers, who could dominate the Finnish market with the lower pricing of their printed work. This strong symbiosis between the two markets lasted at least until the 1860s.<sup>185</sup> The relationship did not only concern markets or the reading audience, but also the “national” authors who became active, and were shared by both countries. From the perspective of the few Finnish authors, the livelier western market offered important prospects, but the Swedish publishers also benefitted from their names. As Häggman writes, the role of Zachris Topelius, a renowned national writer and major public figure in Finland, was significant in Swedish publisher Albert Bonnier’s ascension to one of the major publishers in Sweden from the 1850s onwards. Bonnier also owned the publishing rights to Topelius’ work in the Grand Duchy until the 1870s.<sup>186</sup>

In the Grand Duchy, literary property rights were first discussed in relation to the Nordic and the broader European book trade, where reprints and translations of foreign work, which were illegal from the perspective of the original publisher, were a common product. Internationally, the first copyright laws of the early years of the century, similarly to other areas of intellectual property law, were confined to the national borders, and gave copyright-holders little protection in the expanding international book market.<sup>187</sup> One major centre of European piracy was Brussels, which came to specialise in reprints from the major European countries. The Belgian reprints were also known and discussed in the Northern periphery, where the French best-selling novels could be acquired easily and inexpensively.<sup>188</sup> International cooperation, first in the form of bilateral contracts, was a solution to the question of “international piracy”, and was, obviously, beneficial for some and harmful for others. As Ricketson and Ginsburg note, as would come to be the case in the Grand Duchy, the protection of national authors and publishers

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<sup>185</sup> According to an estimate from the 1840s, the Finnish book trade could form even a quarter of the total sales in Sweden, whereas book exports to Norway and Denmark remained almost insignificant. The lower unit costs were due to the larger print runs the Swedish publishers could afford in their domestic market. Also, Sweden had set import duties for books, which hindered the entry of Finnish publishers printing their work in the Grand Duchy. Finally, when a similar import duty of 20 percent was set in the Grand Duchy in 1845, the Swedish publishers replied by granting discounts for their Finnish customers, especially the bookshops of the largest towns. Jyrki Hakapää, ‘Yhteiset kirjamarkkinat: Ruotsin ja Suomen kirjamarkkinoiden riippuvuus toisistaan 1840-1860’, *Bibliophilos* 68, no. 2 (n.d.): 19–25; Hakapää, *Kirjan tie lukijalle*, 156–66, 219–22; Häggman, *Paras tawara maailmassa*, 69–70, 117–18.

<sup>186</sup> Häggman, *Paras tawara maailmassa*, 121–25, 70; Hakapää, ‘Yhteiset kirjamarkkinat’, 21–22.

<sup>187</sup> Löhr, *Die Globalisierung geistiger Eigentumsrechte*, 41–50; Seville, *The Internationalisation of Copyright Law*, 2–6.

<sup>188</sup> Hakapää, *Kirjan tie lukijalle*, 180–82. For instance, in 1846, the *Åbo Tidningar* published figures of the Belgian reprinting industry to mock the claim that the Grand Duchy was turning into a “small Belgium” due to its recent customs tariff against Swedish books. Belgiskt eftertryck. *Åbo Tidningar*, no 32 (25 April 1846). For another description of the Belgian industry, see Det Belgiska eftertrycket (from *Blätter für literarische Unterhaltung*), *Borgå Tidning*, no 63 (13 August 1842).

was seen as important, whereas unauthorised reprints of foreign work were often portrayed as acceptable—they were an element in the learning and spreading of culture.<sup>189</sup>

In the Swedish-Finnish literary sphere, the newspapers reported on (and accused each other of) illegal *eftertryck* on both sides of the Northern Baltic sea. In 1841, the Finnish newspaper *Helsingfors Morgonblad* countered the accusations of the Swedish press which seemed to propose that the “disgraceful system of reprinters [*eftertryckar-systemet*]” that now also existed in “the honest Scandinavia”, had recently originated in the Grand Duchy.<sup>190</sup> The *Morgonbladet* replied with a list of volumes that had been reprinted in Sweden in the early century to show that this activity had existed before the Finns even learned about it. The newspaper, however, acknowledged that illegal reprinting, mainly of textbooks, did take place in the Grand Duchy. In fact, it seems that the reprinting of textbooks was more acceptable than the copying of fiction due to their importance for national education. As secretary of the Finnish Literature Society S. Elmgren wrote openly in 1851, the copying of textbooks should not be judged too harshly, if it responded to the everyday demand by schools and did not lead to broader speculation (à la Belgium). Textbooks were needed in the country's schools throughout the year, and a printer could justify reprinting a textbook that was not available in the winter months when the Baltic sea was frozen, for instance.<sup>191</sup>

In the middle of the book trade debates in 1845, the Finnish censors addressed the question of reprinting foreign work. The main investigating body was the Censorship Committee, where censor Nils Abraham Gylden, Assistant in Greek Literature at the Imperial Alexander University in Helsinki, enquired about a German-language primary school textbook published in the previous year in Stockholm that he had examined, and that the Finnish publisher (and bookseller) Frenckell wanted to reprint.<sup>192</sup> The book itself was not against the censorship regulations, but section 83 of the Decree on censorship ordered the censors to watch over literary property rights; Gylden asked his colleagues whether section 83, which granted protection to all authors, only concerned work that had been published in the Grand Duchy, or

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<sup>189</sup> Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 19–22.

<sup>190</sup> Om Eftertryck. Helsingfors Morgonbladet, no 24 (25 March 1841).

<sup>191</sup> Elmgren wrote about the weak (winter) communications, but also about the fact, that the copying of textbooks was only temporary. Whereas new fiction was constantly produced by foreign writers, the Grand Duchy would shortly produce its own national textbooks, after which the Swedish publications would lose their importance. S. E. [S. Elmgren], Finska bokhandels skick. Litteraturblad för allmän medborgerlig bildning. No 1, January 1851. Häggman, *Paras tawara maailmassa*, 90–91.

<sup>192</sup> The work in question was *Praktisk lärobok i tyska språket : för elementar-scholor* by C. N. Öhrlander, Stockholm, 1844.

also those written or printed by foreign authors or printers. In other words, whether foreign works could be reprinted legally in the Grand Duchy.<sup>193</sup>

The Censorship Committee sent the enquiry to the highest censorship official, the National Board of Censorship (*Censur-Öfverstyrelse*), which discussed the issue in May 1845. The Board decided that it did not have the competence to decide on the matter, and asked the Senate for an interpretation of this section. In its letter to the Senate, the Board also expressed its own view, which was that the section should be seen to concern only work printed in the Grand Duchy, and thus all other “books, maps, engravings, and music books etc.” could be freely reprinted and sold in the country. This was to “encourage” the development of Finnish printing, and could be done until reciprocal protection was agreed on with some other country.<sup>194</sup> Surprisingly, the Senate did not further elaborate on the matter, and did not comment on the Board’s protectionist view, which was largely present also in other countries. The Senate replied in one sentence: the regulations of the section 83 were “clear and evident”, which the authorities were ordered to take as their guideline.<sup>195</sup> If this section was taken literally, then “all authors and translators”, including foreign ones, had an exclusive right over their work.<sup>196</sup>

This enquiry and decision about the scope of literary property rights appears to have been left without notice in scholarly literature and later legislative projects.<sup>197</sup> It seems, however, that the detested censorship institution imposed by the Russians produced outcomes that were important for the authorial rights and the form of the book trade, partly due its incomplete copying in 1829.<sup>198</sup> Even though this is beyond the scope of the present thesis, it appears that the tightened

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<sup>193</sup> The session of the Censorship Committee of 20 March 1845. Ca:11 Pöytäkirjat (1844-1848). Painoasiain ylihallituksen sensuurikomitean arkisto (FNA).

<sup>194</sup> The session of the National Board of Censorship of 2 May 1845. Cb:1 Puhtaaksikirjoitetut pöytäkirjat (1832-1846). Painoasiain ylihallituksen sensuuriylihallituksen arkisto (FNA).

<sup>195</sup> “Och som K. S. fann ofvanberörde stadgande i C Förordningen vara tydligt och klart, så ägde vederbörande att ställa sig detsamma till underdånig efterrättelse hvilket skulle uti afgående bref C Ö S till svar meddelas.” Minutes of the Plenum of the Senate (26 May 1845). Senaatin täysistuntojen pöytäkirjat, Cia:37, 489–491.

<sup>196</sup> See footnote 166.

<sup>197</sup> For instance, Häggman, *Paras tawara maailmassa*; Hakapää, *Kirjan tie lukijalle*; Voitto Silfverhuth, *Kirkon ja keisarin sensuuri: uskonnollisen kirjallisuuden valvonta Suomessa 1809-1865*, Suomen kirkkohistoriallisen seuran toimituksia 104 (Helsinki: Suomen kirkkohistoriallinen seura, 1977); Yrjö Järvinen, ‘Vuoden 1865 painolain esihistoria ja synty’ (Master’s thesis, Helsingin yliopisto, n.d.). The Report of the Law Committee no 8 (Documents, 1877-1878).

<sup>198</sup> In the Russian law of censorship, the protection regarded books published in Russia, and authorial protection was tied to the general censoring process. One definition of illegal reprinting was the case when a book printed in Russia, became reprinted abroad, and the reprint sold in Russia (Appendix, § 9). As noted above, in the Finnish law, the section 83 defining authorial rights remained a solitary fragment.

attitude of the censors did restrict the reprinting of foreign work, as will be seen below.<sup>199</sup> In addition, the decision demonstrates how the censorship officials acted as responsible for managing and securing authorial rights—besides their work of authorizing printing—and how the rights became demarcated in relation to inter-Nordic book trade. These limits on reprinting were publicly discussed in the late 1840s, when the quarrelling about the unbalanced book trade escalated again.<sup>200</sup> In 1850, the epic poem *Hanna* by the foremost Finnish poet J. L. Runeberg, who was also influential in Sweden, was reprinted without permission by the Swedish publisher P. Meyer.<sup>201</sup>

Reporting on the case, the newspaper *Helsingfors Tidningar*, whose editor-in-chief was the above-mentioned Z. Topelius, wrote in November 1850 how it had pleaded on several occasions for the public in Sweden and Finland to oppose illegal reprinting, which could turn into plundering of the finest literature of the neighbouring country with a shared language.<sup>202</sup> This awakening had not yet happened, and the newspaper was, again, astonished about the recent “attack on property rights [*attentat mot eganderätten*]” in Sweden. The polemic escalated further when the pseudonym “St-” in the newspaper *Ilmarinen* replied to *Tidningar's* views by suggesting that the Finnish publishers were especially active copiers; according to “St-”, as many as twenty times more unauthorised reprints were made in the Grand Duchy of the Swedish printed works.<sup>203</sup> The author added that the Swedish literary scene was surely much broader than the Finnish, and in many cases, reprinting had probably taken place due to the unavailability of the Swedish original work.

<sup>199</sup> When the Censorship Committee received the reply from the Senate, the committee forbade the printing of other foreign work requested by the publisher and bookseller Wasenius until the rights were clarified. The session of the Censorship Committee of 26 July 1845. Ca:11, Pöytäkirjat (1844-1848). Painoasiain ylihallituksen sensuurikomitean arkisto (FNA). Also in 1848, in contrast to petition letters for printing Swedish books from 1842, the publishers present the committee with their publishing rights.

<sup>200</sup> For instance, in 1848. The *Helsingfors Tidningar* discussed the role of the currently dominant Swedish literature for the literary field, but also the publication sector, in the Grand Duchy. The newspaper also defended literary property rights against the demoralising *eftertryck* by referring to the Belgian example. Det svenska skriftstället i Finland. *Helsingfors Tidningar*, no 6 and 8 (22 and 29 January 1848).

<sup>201</sup> The publicity around Meyer's unauthorised edition restricted its diffusion, but the author bought the reprint to facilitate the negotiations with the Swedish publisher A. Bohlin; in 1851, the publishing rights of Runeberg in Sweden were sold to Bohlin of the Lindh printing house, Runeberg's first Swedish publisher. Pia. Forssell, *Författaren, förläggarna och forskarna : J. L. Runeberg och utgivningshistorien i Finland och Sverige*, Skrifter utgivna av Svenska litteratursällskapet i Finland, ISSN 0039-6842 ; nr 726. (Helsingfors : Svenska litteratursällskapet i Finland, 2009), 76–82, 88–90, 102–3, 18–19.

<sup>202</sup> *Eftertryck af Runebergs arbeten*. *Helsingfors tidningar*, no 89 (9 November 1850).

<sup>203</sup> Några ord om bokhandeln. *Ilmarinen*, no 5 (18 January 1851). St-'s reply to his critics, *Svar till Åbo Tidningar*. *Ilmarinen*, no 11 (8 February 1851).

The shaky claims, the unclear interpretation of the copyright regulations<sup>204</sup>, and the list of alleged reprints presented in *Ilmarinen* were shot down by other commentators, especially in the newspaper *Åbo Tidningar*: some copying had surely taken place, which mainly concerned the textbooks necessary for national education.<sup>205</sup> As concluded by S. Elmgren in another article in 1851, it seemed that the Finnish publishers had “laudably resisted the temptation” and acquired the works legally from Sweden.<sup>206</sup> What could explain the honesty of the Finnish publishers, however, was the censorship institution. In a reminder by the official newspaper *Finlands Allmänna Tidning*, according to the current legislation, it was impossible that such reprinting would take place. The printers were expected to inform the censor about the publishing rights related to the work under examination, and as had been concluded in 1845, the copyright protection in the Grand Duchy also regarded foreign authors or works printed abroad.<sup>207</sup> In a similar manner, in 1854 the publisher and bookseller P. Tikkanen replied to allegations of unauthorised reprinting by referring to the censorship institution: to be able to print, the publisher needed to prove his copyright for the Finnish edition.<sup>208</sup>

It has to be kept in mind that the early debates concerned the book trade between the two neighbours, and the reprinting of original work; only later would the discussion turn to translation rights, which were a central concern internationally, as well as a key issue for the bilingual Grand Duchy.<sup>209</sup> The important consequence of these early debates was that attention was paid to the shortcomings (and benefits) of authorial protection in a literary market that transcended national borders. The international cooperation of the nineteenth century was a solution for handling this circulation of unauthorised reproductions. Internal measures such as customs policies could be taken to control the foreign reprints of domestic works on the home

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<sup>204</sup> *Ilmarinen* refers to a protection of lifetime plus 20 years, but the Finnish regulations set a post-mortem protection of 25 years. *Åbo Tidningar* taunts that *Ilmarinen* does not even know the regulations, but this could refer to the problematic question of authorial rights abroad: was foreign work protected according to the national law or the duration of protection granted in its home country. The copyright protection granted in Sweden was lifetime plus 20 years.

<sup>205</sup> *Ilmarinen och bokhandel I, II*. *Åbo Tidningar*, no 8 and 14 (28 January, 18 February 1851).

<sup>206</sup> According to Elmgren, the Swedish publishers had also played largely by the rules: there were only a few cases of copying because the Finnish literary field was so scarce. S. E. [S. Elmgren], *Finska bokhandels skick. Litteraturblad för allmän medborgerlig bildning*. No 1, January 1851.

<sup>207</sup> Ännu några ord i frågan om Finskt eftertryck af Svenska förlagsartiklar. *Finlands Allmänna Tidning*, no 44 (22 February 1851).

<sup>208</sup> In 1854, the publisher P. Tikkanen replied to allegations of unauthorised reprinting by saying that he was entitled to offer the edition in the Grand Duchy. Till Red. För Helsingfors Tidningar (P. Tikkanen). *Helsingfors Tidningar*, no 27 (8 April 1854).

<sup>209</sup> Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 13–14; Seville, *The Internationalisation of Copyright Law*, 51–52.

market<sup>210</sup>, but demands for international cooperation were heard especially in the major European countries for protecting the interests of national authors and publishers abroad.<sup>211</sup>

Not surprisingly, the main actors pursuing international agreements on copyright were France and the UK from the 1830s onwards.<sup>212</sup> It is illustrative of the early views on copyright that any bilateral agreement came about with great difficulty:<sup>213</sup> it was only towards the mid-nineteenth century that the European countries in general decisively started to view unauthorised reprinting as unacceptable, and reciprocal protection of authors as desirable and valuable.<sup>214</sup> In 1852, France was the first country to grant unilateral protection to all foreign authors, to the extent that they were protected in their own home countries.<sup>215</sup> This facilitated the negotiations, and by the end of 1865, France had entered into an agreement with most of the European countries. Other agreements followed with the majority of countries, but with the major exception of the US, which continued to protect its home market until the late nineteenth century.<sup>216</sup> It is important to note, however, that these first conventions, agreements or declarations between countries were not always complete or clear in their terms, and they did not always ease the formalities; for example the requirement to register the work in the other country, or to grant full translation rights to the foreign author.<sup>217</sup>

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<sup>210</sup> The British Copyright Act of 1842 set a fine for importing reprinted works, excluding those for personal use, and the 1842 Customs Act tightened the controls on books that were imported. The exceptions allowed by the law, and the almost impossible task given to the customs did not make the policies effective. Seville, *The Internationalisation of Copyright Law*, 22, 47–49.

<sup>211</sup> It has to be noted that informal practices or various agreements made on the publishing rights between the domestic and foreign actors existed. For instance, the major British authors received honoraries from American publishers, and many publishers in the US did not reprint the work of another American publisher. In addition, as shown above, the Finnish authors could secure their literary property rights in Sweden by publishing with Swedish publishers. *Ibid.*, 28–29, 49–50.

<sup>212</sup> The first bilateral agreements, however, had been signed between Prussia and the German states already in the late 1820s. These were sought by Prussia because the federal project for a uniform copyright law already proposed in 1815 had been delayed and not yet realised. Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 27–28. Moreover, as Bently and Sherman note, the UK first envisaged a multilateral treaty on copyright, but moved to the more pragmatic bilateral approach due to the divergences between the national copyright laws. Sherman and Bently, *The Making of Modern Intellectual Property Law*, 113–14.

<sup>213</sup> The British International Copyright Act of 1838 made it possible to agree on reciprocal treatment between the UK and other countries. The Foreign office informed France, Prussia, Austria, Saxony and the United States about the possible agreement. Nothing was concluded: some countries did not reply, and other countries' replies were too demanding to be accepted by the UK. The UK signed its first bilateral agreement with Prussia in 1846. Seville, *The Internationalisation of Copyright Law*, 46–47; Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 22–23.

<sup>214</sup> Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 22–23.

<sup>215</sup> *Ibid.*, 23–24.

<sup>216</sup> *Ibid.*, 29–32. For an illustration of bilateral agreements in force in 1886, the year when the Berne convention was signed, see *Ibid.*, 40. For the attitudes and reforms regarding international copyright in the US in the nineteenth century, see Seville, *The Internationalisation of Copyright Law*, 28–36.

<sup>217</sup> Stephen P. Ladas, *The International Protection of Literary and Artistic Property*, Harvard Studies in International Law 3 (New York, 1938), 50–67.



In the Nordic region, concrete steps towards reciprocal copyright protection were taken early in the century. Law reforms in 1828 in Denmark and in 1830 in Norway, the first in the world, had enabled the reciprocal against reprinting for authors, which they then obtained with the later Norwegian reform.<sup>218</sup> In 1844, following the example of the western Scandinavian neighbours, the Swedish government advanced the clause allowing bilateral agreements on copyright, but the reform was postponed for decades due to opposition in the parliament. In addition, the reform was passed with difficulty as literary property rights had been included in the Swedish constitutional laws.<sup>219</sup> As we will see, the question of international copyright became split between regional concerns, which were tied to other activities of political and cultural cooperation in the region, on the one hand, and the question of broader, international copyright, which would concentrate on the issue of foreign translations, on the other. Scandinavian reciprocity was achieved first, but only in the late 1870s when the first, separate copyright law was approved in Sweden.<sup>220</sup>

In the Grand Duchy, the idea of cooperation on authorial rights between Finland and Sweden was already proposed in public in 1841 in the pages of the *Helsingfors Morgonblad*.<sup>221</sup> The newspaper wrote that the friends of literature in both countries should strive for a mutual protection of literary property rights. Importantly, the newspaper referred to foreign developments, and noted how the need for such a protection had been recognised today in other countries. *Morgonbladet* remarked that matter had been lately discussed in the British parliament<sup>222</sup> and in France, where the government had been urged to open negotiations on bilateral treaties on copyright to prevent reprinting. The newspaper added the importance of such “official agreement especially between Finland and Sweden” was easily understood. Regardless of these early demands, no agreement on literary property was ever signed between the two countries. However, the debates on the book trade and authorial rights took on a political

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<sup>218</sup> *Recueil des conventions et traités concernant la propriété littéraire et artistique publiés en français et dans les langues des pays contractants* (Berne: Bureau de l'Union Internationale Littéraire et Artistique, 1904), 189–91, 379–80; Petri, *Författarrättens genombrott*, 308.

<sup>219</sup> Petri, *Författarrättens genombrott*, 308–10; A. Hedin, ‘Om literär eganderätt’, *Svensk Tidskrift* 6:te Häft (1873): 563–67.

<sup>220</sup> The Swedish copyright law of 1877 permitted an agreement in the Swedish-Norwegian Union in 1877. In 1879, the three kingdoms signed a multilateral agreement on copyright. Gunnar Karnell, ‘De nordiska strävandena till harmonisering av upphovsrätten’, *Nordiskt Immateriellt Rättsskydd*, no. 1 (1987): 29–30; *Recueil des conventions concernant la propriété littéraire et artistique*, 190–91, 196–97.

<sup>221</sup> Om eftertryck. *Helsingfors Morgonblad*, no 24 (25 March 1841).

<sup>222</sup> The 1838 International Copyright act protected foreign books in the UK, if they were registered in the UK and reciprocal protection had been agreed on. Sherman and Bently, *The Making of Modern Intellectual Property Law*, 114.

dimension as the issue of regional cooperation was raised, and would be openly expressed when the copyright reform became discussed in the 1860s.

The literary sphere of the Grand Duchy did not only develop in symbiosis with Sweden. In addition to the western book trade and its concerns with authorial rights, the mid-century saw the expansion of domestic printing, and notably the growth of the role of the Finnish language beside Swedish: the Finnish language started to expand beyond its traditional role of an “almanac language” to be appropriated by the rising educated groups.<sup>223</sup> Until the mid-century, the Finnish language had been mainly used by the lower classes, but increasingly attracted the interest of academic circles as a particular element of the national culture, for instance at the Finnish Literature Society founded in 1831.<sup>224</sup> Moreover, the 1840s saw the early politicisation of this cultural hobby, when nationalist thinking became intertwined with societal critique in the public debates, embodied in the Hegelian views of J. V. Snellman, and directed towards the dominant state bureaucracy. Even though this early political Fennomania was first interpreted as insurgent and dangerously democratic, the Fennoman nationalism presented itself as openly loyal and elitist, and was allowed to take root. In fact, since the early century, the Russian rule had acted positively towards the nationalism that drew on Finnish-speaking culture, to the extent that it distanced the Grand Duchy from Sweden, and did not include radical popular demands.<sup>225</sup> For instance, the custom duty declared on Swedish books in 1845 was a part of the measures for curtailing Finnish-Swedish exchanges.<sup>226</sup>

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<sup>223</sup> Translating foreign work into Finnish and the growing public use of Finnish led to the creation and stabilisation of new terms that were already use in the more “mature” European languages, especially in c. 1840-1870. Häkkinen, ‘Kielen kehitys ja suomennoskirjallisuus’, 162–71; Hyvärinen et al., *Käsitteet Liikkeessä*, 14–17.

<sup>224</sup> The Finnish Literature Society aimed at promoting, studying, and publishing Finnish literature. In its first decades, the Society was not an open association, but was organised under the University. Even though it first accepted women and peasants as its members, the membership consisted mainly of civil servants and the educated circles. The aims of the Society in the beginning were divided into academic-linguistic and more pragmatic, educative nationalism. The first became dominant, yet, the Society published both Finnish folklore (the national epic Kalevala was first published in 1835) and textbooks and dictionaries. In the 1840s, the Society had to respond to the demands of the more pragmatic nationalism of the academic circles, which led to the tightening of the rules, including membership requirements, and the scientific identity of the Society by the Russian rule in 1850. Irma. Sulkunen, *Suomalaisen Kirjallisuuden Seura 1831-1892*, *Suomalaisen Kirjallisuuden Seuran toimituksia*, ISSN 0355-1768 ; 952. (Helsinki : Suomalaisen Kirjallisuuden Seura, 2004), 24–28, 86–102; Liikanen, *Fennomania ja kansa*, 88–90.

<sup>225</sup> Liikanen, *Fennomania ja kansa*, 90–99, 102–3; Sulkunen, *Suomalaisen Kirjallisuuden Seura 1831-1892*, 96–107.

<sup>226</sup> The custom duties led to a temporary decrease in the number of books imported from Sweden. However, according to Hakapää, the duties mainly led to changes in commercial practices: The Swedish booksellers could compensate in prices to their Finnish counterparts, especially those of the largest cities. Hakapää, *Kirjan tie lukijalle*, 158–66.

In the 1840s, the Finnish publishers turned their attention towards national authors, translations for Finnish readers, as well as the Fennomanian newspaper printed in Finnish, yet these early publishing attempts attained more ideal than commercial goals.<sup>227</sup> Another push towards the development of domestic publishing and consumption of printed texts, but not so much for books<sup>228</sup>, took place in the early 1850s with the tightening of censorship and the outbreak of the Crimean war (1853-56).<sup>229</sup> As Kai Häggman describes, the events (and propaganda) of war were described on the pages of the newspapers, which were demanded and read eagerly among the population; according to one contemporary, the future Fennoman leader A. Meurman, the war had spread literacy among the people to a greater extent than the ecclesiastical reading schools. The Fennoman newspaper *Suometar* had 95 subscribers in 1851, but already reached 4600 just five years later. The publishers profited from the situation by increasing the print runs of the newspapers and publishing maps, pamphlets with war songs and other war literature.<sup>230</sup> Between 1850 and 1860, the number of Finnish-language newspapers rose from 2 to 9, and the total newspaper sheets published in both languages increased from 460 to 1460.<sup>231</sup>

The Crimean war also had an important impact on the Finnish-Russian relations, and would clarify the identities of the early domestic political groupings. Even though the Grand Duchy remained loyal during the war, the defeat of the Russian Empire and the bombardments by the British and French navies at the Finnish coast cooled attitudes towards the weakened Empire. Moreover, the societal reform programme drafted in this situation would only increase expectations for reforms concerning civil and political rights. In academic circles, demands were heard for closer cooperation—even accession—with the Scandinavian neighbours, and there was criticism of the more loyal and moderate voices, especially the new professor of

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<sup>227</sup> Häggman, *Paras tawara maailmassa*, 83–89, 224–30; Hakapää, *Kirjan tie lukijalle*, 158–59, 224–30; Päiviö Tommila and Raimo Salokangas, *Sanomia kaikille: Suomen lehdistön historia*, Kleio ja nykypäivä (Helsinki: Edita, 1998), 43–49; Sulkunen, *Suomalaisen Kirjallisuuden Seura 1831-1892*, 96–102.

<sup>228</sup> Even though the new bookshops were founded in the early 1850s, Hakapää does not give such a positive interpretation of the early 1850s, and describes the difficulties that the new entrepreneurs faced in the changed situation. For instance, the Crimean war had negative effects on the international and Swedish book trade. Hakapää, *Kirjan tie lukijalle*, 80–84, 266–73. Similarly, the number of printed books and booklets did not increase significantly in the 1850s in contrast to the previous decade. The total number of titles/sheets of printed books and booklets grew between 1850 and 1860 from 215/1211 to 269/1423. Myllyntaus, *The Growth and Structure of Finnish Print Production, 1840-1900*, appendix 2.

<sup>229</sup> It was quickly perceived that a tight censorship caused false rumours about the war to spread in the country. The censorship was loosened, and already in April 1854, even the Finnish-language newspapers published news about foreign events. Päiviö Tommila, 'Sensuuriolot ennen vuotta 1865', in *Sensuuri ja sananvapaus Suomessa*, ed. Pirkko Leino-kaukiainen, *Suomen sanomalehdistön historia -projektin julkaisuja* (Helsinki, 1980), 13–14.

<sup>230</sup> Häggman, *Paras tawara maailmassa*, 13–27.

<sup>231</sup> Myllyntaus, *The Growth and Structure of Finnish Print Production, 1840-1900*, appendix 2 and 3.

philosophy J. V. Snellman, who defended his Fennomanian views in public.<sup>232</sup> The division became evident in the early 1860s, with the growing constitutional sensibility and disagreements on the handling of the legislative rush caused by the reform programme<sup>233</sup>, but was crystallised during the Polish revolt of 1863. The liberal faction, now united around the newspaper *Helsingfors Dagblad*, called for the neutrality of the Grand Duchy in the wake of another great war. In contrast to the western sympathies of the liberals, Snellman pronounced his views of *realpolitik* in a famous article on how a small nation could prosper only by building on its own national culture within the confines set by the historical times—the Russian Empire.<sup>234</sup>

One issue that would be quarrelled about between the factions in the 1860s was the institution of censorship. In practice, the censorship had become more relaxed in the aftermath of the Crimean war, but it was increasingly criticised and defied by the constitutional-minded liberals, and also deemed impractical and harmful by the more moderate voices.<sup>235</sup> With the debates on freedom of speech and the reform of censorship law in the 1860s, the regulations on authorial rights also had to be re-evaluated. This re-evaluation was shaped by the book trade and literary culture which were interacting with the west. At the same time, the domestic literary market had taken its shape, and become officially organised—the Finnish publishers’ association was founded in 1858—and was expanding, as was the bilingual public space. This development would be supported by the reforms of the late 1850s, which included improvements in communications and popular education, for instance. Even though the contemporaries of the 1860s did not have a broad understanding of authorial property rights, the concept would be

<sup>232</sup> At this time, the “Young Fennomania” which would become the leading Fennomanian current in the 1860s, based on the thinking of Snellman, distanced themselves from the older generation of Fennomans, who were more sympathetic towards the Scandinavian west. Rommi and Pohls, ‘Poliittisen fennomanian synty ja nousu’, 75–82, 97–98; Klinge, *Kejsartiden*, 179–84, 195–98.

<sup>233</sup> In April 1861, the Emperor decided that a committee formed of the Estates would be convened, which would examine and comment on the list of legislative reforms that required the reading of the Estates prepared by the Senate. The Estates would be summoned only after this preliminary reading. The decision to call a smaller “parliamentary” committee instead of summoning the Estates was a disappointment in the Grand Duchy, and interpreted especially in the liberal circles as an attempt to reduce the constitutional role of the Estates. J. V. Snellman was among the few to defend the decision to convene this “January committee” in January 1862, another dividing line between the Snellmanian Fennomania and the more Scandinavian-oriented liberals, but also the older generation of Fennomans. Lolo Krusius-Ahrenberg, ‘Valtiopäiväajatus etsii toteutumistaan (1856-1863)’, in *Suomen kansanedustuslaitoksen historia 2. Säätyedustuslaitos 1850-luvun puolivälistä 1870-luvun loppuun* (Helsinki: Eduskunnan historiakomitea, 1981), 41–55.

<sup>234</sup> Krig eller fred för Finland. (J. V. S.) Litteraturblad för allmän medborgerlig bildning, no 5 (May 1863). Klinge, *Kejsartiden*, 211–20; Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 41–47, 56–57; Jalava, *J. V. Snellman*, 260–63.

<sup>235</sup> Tommila, ‘Sensuuriolot ennen vuotta 1865’, 14–15.

slowly pulled in conflicting directions according to the political agendas of the factions.

## 2.2 Censorship authorial rights disintegrate in the 1860s

The reform of the law on censorship was officially initiated in 1861. The Finnish representatives in Saint Petersburg criticised the overly extensive role of the Russian Governor General in the censorship institution, and proposed that a Helsinki-based committee be set up to examine the current law.<sup>236</sup> In late 1861, a new Governor General, the well-liked Baron Rokassowsky, was appointed to soften the criticism against the reluctance to summon up the Estates. In his inaugural speech in December, Rokassowsky confirmed the summoning, and on the same day, the direction of censorship was returned to the Finnish officials, and a committee would be set up to draft a more moderate press law.<sup>237</sup> The press law committee, which included the Fennoman Snellman, convened in 1862, and handed its proposal to the Senate in the same year. The press law proposal was drafted and commented on several times in the Senate and in Saint Petersburg. The Russian views remained cautious during the whole process; for example, a Russian press law committee had recommended that preventive censorship should not be removed, but the Estates finally received the law proposal in January 1864, at the very end of their session. The law proposal was accepted, but not with great enthusiasm. The Emperor had made the press laws conditional, and so they would be in force until the end of the next Legislative session of the Estates. Accordingly, the new press laws were in force only from January 1866 until May 1867.<sup>238</sup>

The new press law would regulate similar areas to the previous law on censorship—publishing, printing and its limits, book trade and legal proceedings—but it expressed the principle of liberty of the press, as preventive censorship was withdrawn, anonymous publications were allowed, and instead of controlling the printing houses, the author was named the primarily

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<sup>236</sup> In his memorandum presented to the Emperor in summer 1861, the Minister-Secretary of State A. Armfelt expressed that the central role of the general governor in the institution was one of the reasons for the discontentment expressed in the Grand Duchy. Moreover, the general governor did not know the local language, and had to rely on the views and interpretations of the censors, which could lead to unjust and harsh decisions. Armfelt proposed that the control of the censorship, which had been given to the general governor in 1847 and 1857, should be moved back to the officials in Helsinki. Jussila, *Suomen suuriruhtinaskunta*, 314–17.

<sup>237</sup> Krusius-Ahrenberg, 'Valtiopäiväajatus etsii toteutumistaan (1856-1863)', 62–64.

<sup>238</sup> Lolo Krusius-Ahrenberg, 'Uutta luovaa valtiopäivätoimintaa vanhoissa puitteissa (1863-1867)', in *Suomen kansanedustuslaitoksen historia. 2. osa, Säätyedustuslaitos 1850-luvun puolivälistä 1870-luvun loppuun* (Helsinki: Eduskunnan historiakomitea, 1981), 167–69; Järvinen, 'Vuoden 1865 painolain esihistoria ja synty', 46–57.

responsible for the content of a non-periodical publication.<sup>239</sup> Section 8 of the law would regulate authorial property rights, and was rather broader than the previous regulations, although it still concerned the act of publication. According to the section, every printed work (*tryckskrift*), both original and translated, was the author's or the right-holder's legal property. The manuscript or the right to reprinting could be completely or partially transferred by a contract. The property right endured for 50 years after the author's death, but if they were owned by the widow or the children, for as long as they lived. After this, the work (*skrift*) belonged to the public, and could be published by anyone. Finally, it was regulated that the section concerned not only written work, but literary and artistic work listed in an earlier section of the press law.<sup>240</sup>

Despite being included in the press laws, the issue of literary property was not discussed much at any point, and received only minor attention from the public. The press law committee did not elaborate on the section on literary property, and the Senate only proposed a clarification to the duration of the right<sup>241</sup>. The authorial rights were a minor detail of the much-awaited and delicate press law reform that would considerably alleviate the regime of censorship. Similarly, the Estates did not discuss the section at all during their session of 1863–64, due to the length of the new law and the short time for reading it. On the eve of the reading by the Estates, the newspaper *Suometar* wanted to turn the attention of the representatives towards the question of duration of the literary property right, which it saw as too long. The newspaper had also found other deficiencies, but would just underline one issue, because the Estates would not have a chance to study the matter in detail.<sup>242</sup>

The discussions primarily concerned the nature of this authorial right, while also evaluating the legal form of the new press law. The right in question was treated as *literary* property right, even though the new law would also protect artists. This was clearly expressed by the liberal *Helsingfors Dagblad*, which wrote in 1862 that the press laws were the natural place for the protection of literary property rights, as the general law (*allmän lag*) would protect property

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<sup>239</sup> Förordning angående tryckfrihet i Finland och om villkoren för dess begagnande (18 July 1865).

<sup>240</sup> These included maps, music sheets, pictures of all kinds (*afbildningar*), produced by any technique (§ 2). Förordning angående tryckfrihet (18 July 1865).

<sup>241</sup> The press law seemed to guarantee the post-mortem literary property right to the widow and the children of the author only for their life-time, whereas other right-holders could enjoy the right for fifty years. Minutes of the Plenum of the Senate (17 February 1863). Senaatin täysistuntojen pöytäkirjat, Cia:55, 154–155.

<sup>242</sup> Kirjallisesta omistus-oikeudesta II. *Suometar*, no 54 (5 March 1864).

rights in general.<sup>243</sup> Moreover, it was commonly viewed that the sections on literary property rights were an issue that could not be settled by the administration only. *Borgå Bladet* noted that the section on literary property rights was among the few sections in the old decree on censorship that belonged to a press law and was not a matter of the censorship institution.<sup>244</sup> According to some senators and members of the press law committee, the sections on literary property and the violations of the freedom of the press were issues that evidently required reading by the Estates, and could be separated from the remainder of the law text.<sup>245</sup> At this point, however, the regulations on literary property were still kept in the press law.<sup>246</sup>

The newspapers writing on the specific question of literary property mainly concentrated on the issue of duration of the protection. Even though commenting was still scarce and no real debate arose, the crux of this and the later debates, the scope of the protection, came to reflect the broader views of the political groupings. At this stage, special attention was paid to the role of the public and the nature of literary production. The Fennomanian circles, on one hand, emphasised that the public was not only consuming literature, but was also a legitimate owner of literature. On the pages of the liberal *Helsingfors Dagblad*, the question was viewed especially from the perspective of the author and his status on the literary market. However, what would grab the attention of the liberal circles was the western orientation of the literary field. It was in the 1860s that the question of cooperation over authorial rights in the Nordic region really took fire.

The authors and their rights (as well as the publishers as owners) were defended by the liberal *Helsingfors Dagblad* in 1862. The newspaper spoke in favour of perpetual protection and wondered how one could see such literary products as a “commune bonum”.<sup>247</sup> The legislator could not put the common good before “the author's property right to his own work”, but the law should support the authors and their literary production. The newspaper argued that any limitation to the property right would only make the publisher cut the honoraria of the author, which were already low in a poor country such as the Grand Duchy. Interestingly, these views

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<sup>243</sup> Om den litterära eganderätten. *Helsingfors Dagblad*, no 37 (14 February 1862).

<sup>244</sup> Censurfrågan V. *Borgå Bladet*, no 7 (13 February 1862).

<sup>245</sup> The report of the press law committee. Objection by von Shoultz, Furuhielm and Langenskiöld. Act 84/1863. Fa:682. Valtiosihteerinviraston arkisto (FNA); Minutes of the Plenum of the Senate (17 February 1863). Senaatin täysistuntojen pöytäkirjat, Cia:55, 185-187.

<sup>246</sup> Minutes of the Plenum of the Senate (17 February 1863). Senaatin täysistuntojen pöytäkirjat, Cia:55, 174-175.

<sup>247</sup> Om den litterära eganderätten. *Helsingfors Dagblad*, no 37 (14 February 1862).

were defended by referring to the legislations in France and the UK (the contemporaries spoke of England). The newspaper claimed that France had perpetual protection for literary property, and it “supposed” that similar protection existed also in “England”—this was obviously not the case.<sup>248</sup> The views in *Dagblad* in favour of rights in perpetuity, or “eternal property”, were embraced by the pseudonym *Undecumque*, which belonged to the major literary figure Z. Topelius.<sup>249</sup> *Undecumque* wrote that literary property was only poorly protected in the young Grand Duchy, and referred to news about recent French discussions on literary property that had been published in the official journal of the Grand Duchy.<sup>250</sup> As we will see, Topelius would later appear as an active spokesperson for the authors.

The nature of “intellectual” property was discussed by the main Fennoman figure Snellman as part of the press law reform. In March 1862, Snellman published an article on freedom of speech, where he presented his views on the historical limitations as well as the aims of public debate.<sup>251</sup> In the article, he expressed his interpretation of private property rights, a view that would recur later in Fennomanian opinions on literary property; even though they were inviolable, their use could not be detached from the interests of the nation, which were represented by the state. In other words, private property was conceptually part of a broader, national property. In his text on the freedom of speech, Snellman constructed an analogy between material and intellectual property, and as a side note, he used the example of private ownership of forests, debated at the time and discussed in chapter four of this thesis:<sup>252</sup>

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<sup>248</sup> The laws on literary property of the time included some sort of duration for the protection, even though demands for longer or perpetual protection were heard. In 1862, the British legislation (1842 Copyright Act) offered protection until seven years had passed after the author's death, or a minimum of 42 years. In France, the literary works were protected for author's lifetime plus thirty years. The International conference on literary and artistic property held in Brussels in 1858 proposed a post-mortem protection of 50 years, even though opinions favouring perpetuity was heard. Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 44–49.

<sup>249</sup> Helsingfors Tidningar, no 57 (10 March 1862).

<sup>250</sup> These news Finlands Allmänna Tidning regarded, for instance, the establishment of a committee to study the current French legislation on authors' rights. Frankrike. Finlands Allmänna Tidning, no 18 (23 January 1862); Frankrike. Finlands Allmänna Tidning, no 48 (27 February 1862).

<sup>251</sup> According to Snellman, the process of public debate (by the educated) served to discover among the many expressed opinions the true public opinion that was acknowledged by everyone. The newspapers were thus a way to presenting the rational public opinion to the readers, also for educative purposes. Pekonen, *Debating 'the ABCs of Parliamentary Life'*, 73–77; Jalava, *J. V. Snellman*, 288–97.

<sup>252</sup> Litteraturblad för allmän medborgerlig bildning. No 3, March 1862.



It is according to the interest of every individual to work and acquire property [...] But since the individual then also comes to share the existing national property [fortune], and since the education given by the society [and] the protection he enjoys for his work and property, have given him the opportunity to do so, he has not the right to deliberately destroy this property.

If he sets his house or his forests on fire and so forth, he will be prevented from doing so, even if other's properties are not harmed. The circumstances of a nation's intellectual property are similar [...] The freedom of thought and conscience are inviolable. However, if someone wants to communicate his knowledge to others, [...] it is required, that he uses it as national intellectual property is used. Therefore, even the freedom of verbal expression is set under the control of the state.

I hvarje individs eget intresse ligger det att arbeta och förvärfva egendom [...] Men emedan individen derigenom tillika blir delaktig af den redan förhandenvarande nationalförmögenheten, och emedan den bildning, han af samhället mottagit, det skydd, han för sitt arbete och sin förvärfvade egendom åtnjuter, sätta honom itillfälle dertill, så eger han icke rätt att godtyckligt förstöra egendomen.

Börjar han bränna upp sitt hus eller sina skogar o. s. v., så hindras han derifrån, äfven om ingen annans egendom dervid lider. Förhållandet med en nations andliga egendom är liknande [...] Tankens, öfvertygelsens frihet är oantastlig. Men vill hon meddela sitt vetande åt andra, [...], då inträder detta förhållande, att hon skall använda det såsom en andlig nationalegendom. Äfven den muntliga yttranderättens begagnande är derföre underkastad statens kontroll.

The moderate Fennomanian newspaper *Suometar* addressed the issue of literary property in 1864 from a more cultural perspective, but still alluded to the nation as an owner.<sup>253</sup> The newspaper greeted the press law warmly; as an “historical advancement”, which also decreed the author’s property rights in the country for the first time [!]<sup>253</sup>—at least according to the newspaper’s knowledge. The newspaper wanted to scrutinise one aspect of the section on literary property, which could have harmful results “for the public and literature itself”: the duration of protection. The article discussed how previously, “while no law on the matter existed”, literary property had been equated to other property. Thus, it could be inherited and sold without ever becoming the “common property of the nation” (*kansakunnan yleiseksi omaisuudeksi*). However, the newspaper wrote, this was specifically the aim of a book; immediately when it was published, the author's views became appropriated by the nation. As such, the temporary protection was nothing but a reward paid by the public to the author for his labour, a principle that the newspaper welcomed. The problem, however, was the long duration, that ought to be lowered from fifty years to thirty-five. *Suometar* wrote how this caused no harm to the author or the heirs (who possessed the right for their lifetime), but allowed the “nation” inherit the work a bit earlier. The work, in many cases, was owned by “a stranger to the author”, who could restrain the dissemination of the book on purpose.

<sup>253</sup> Kirjallisesta omistusoikeudesta I and II. *Suometar* no 53 and 54 (4 and 5 March 1864).

Finally, the question of literary property was increasingly debated in relation to the Finnish-Swedish book market. The *Åbo underrättelser* replied to the *Helsingfors Dagblad* in 1862, asking what was the sense of protecting literary property while the country shared a common language with the neighbouring Sweden, where anyone could reprint a Finnish work which they found valuable.<sup>254</sup> According to the newspaper, the only way for an author to be protected was to publish the work in Sweden. The article did not allude to any agreement with Sweden, a theme which had been raised in the earlier decades. However, the international endeavours for securing authors' rights were topical in the early 1860s and reported by the newspapers of the Grand Duchy. The official newspaper, *Finlands allmänna tidning*, had reported on the international conference on literary and artistic property in 1858 in Brussels, a major conference before the debates on international copyright of the late 1870s.<sup>255</sup> In addition, the Russian Empire signed treaties in 1861 with France and 1862 with Belgium, but it is unclear to what extent, if at all in practice, they became implemented in the Grand Duchy.<sup>256</sup>

Scandinavian cooperation was not a novelty in the broader Scandinavian region, which shared a common linguistic and cultural background, but was also integrated in terms of commerce, common markets, currency and mobile labour.<sup>257</sup> In fact, in the early nineteenth century, ideas of Scandinavian political unity spread in the Nordic countries. Political Scandinavianism, which mainly included Sweden, Norway, and Denmark, was weakened after the defeat of Denmark by Prussia-Austria in 1864, when Denmark was left without military support from the other Scandinavian countries. Scandinavianism was transformed into pragmatic Scandinavian or Nordic co-operation in cultural and civil matters. This led to the organisation of meetings between national scholars and professionals: according to Ruth Hemstad, a series of more than one hundred Nordic meetings took place in 1839 and 1905.<sup>258</sup> Towards the end of the century, the Grand Duchy of Finland also became increasingly involved in this Nordic transnational space.

The problems related to literary property rights, but also other fields of intellectual property,

<sup>254</sup> Den litterära eganderätten. *Åbo underrättelser*, no 21 (18 February 1862).

<sup>255</sup> Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 42–49.

<sup>256</sup> *Recueil des conventions concernant la propriété littéraire et artistique*, 401–8.

<sup>257</sup> Jonas Ljungberg and Lennart Schön, 'Domestic Markets and International Integration: Paths to Industrialisation in the Nordic Countries', *Scandinavian Economic History Review* 61, no. 2 (1 June 2013): 107; Ruth Hemstad, 'Scandinavianism, Nordic Co-Operation, and "Nordic Democracy"', in *Rhetorics of Nordic Democracy*, ed. Jussi Kurunmäki and Johan Strang (Helsinki: Finnish Literature Society, 2010), 179–93.

<sup>258</sup> Hemstad, 'Scandinavianism, Nordic Co-Operation, and "Nordic Democracy"', 182–85.

were tackled in the Scandinavian arenas from the mid-century onwards. It has to be noted that concrete steps towards reciprocal copyright protection had already been taken in the Nordic region. In 1844, following the example of the Scandinavian neighbours, the Swedish government proposed a creation of a similar clause which would allow bilateral agreements, but was postponed for decades due to opposition in the parliament—Scandinavian reciprocity was only achieved in the late 1870s.<sup>259</sup> This question of broader cooperation was first addressed in the Nordic meetings in relation to book trade. In July 1856, the “Scandinavian booksellers” organised a meeting in Copenhagen, where the “interests of the Finnish book trade” were represented by the bookseller and publisher J. W. Lillja.<sup>260</sup> The newspapers of the Grand Duchy reported how the protection for literary property was also discussed at the meeting, which resulted in the preparation of an address to the Danish king.<sup>261</sup>

Some years later in 1863, the literary property rights and the deficiencies of the intra-Scandinavian book trade were debated at the first Scandinavian National Economic meeting, at which no Finnish participation was registered.<sup>262</sup> Literary property rights were not among the main themes of the meeting (such as common money, measures and weights, communications and common industrial exhibitions), but were taken up for the discussion in the section which studied questions on customs, trade and industries. The participants raised concerns about the situation of the Scandinavian book trade, which was weak both culturally and commercially; more interaction should be sought by improving communications, removing customs duties, but also by improving the protection of authors.<sup>263</sup> In its general session, the meeting approved these principles, and requested in its communiqué that firstly, all books in a Scandinavian language should be traded duty free, secondly that authors’, composers’ and artists’ property rights would be secured and become common in Scandinavia, and, finally, iii) that all obstacles hindering Scandinavian literary exchanges would be removed.<sup>264</sup>

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<sup>259</sup> Petri, *Författarrättens genombrott*, 308–10; A Hedin, ‘Om litterär eganderätt, särskildt med hänsyn till de nordiska rikena’, *Framtiden* 6, no. Juli (1871): 563–67.

<sup>260</sup> Vid det skandinaviska bokhandlarmöte [At the Scandinavian bookseller meeting]. Newspaper Finlands Allmänna Tidning no 180, 5.8.1856.

<sup>261</sup> The same piece of news was also published in *Helsingfors Tidningar* (9 August 1856), *Wiborg* (12 August 1856) and *Åbo Tidningar* (14 August 1856).

<sup>262</sup> *Förhandlingar vid Skandinaviska national-ekonomiska mötet i Göteborg år 1863* (Göteborg: Handelstidningens bolags tryckeri, 1863).

<sup>263</sup> *Ibid.*, 71–73.

<sup>264</sup> “17:o att böcker, författade på danska, norska eller svenska språken, må tullfritt införas till alla tre länderna, utan afseende på tryckningsorten; 18:o att författares, kompositörers och konstnärers eganderätt betryggas lika och blifva gemensamma inom de skandinaviska rikena; 19:0 att alla de hinder, så snart och fullständigt som möjligt, må undanröjas, hvilka nu motverka den skandinaviska nordens litterära gemenskap [..]” *Ibid.*, 40, 31.

Other Scandinavian meetings followed. In June 1866, literary property rights were discussed at both the Scandinavian booksellers' and the National Economic meetings, which convened during the first Scandinavian art and industry exhibition in Stockholm. In the Grand Duchy, the participation in a Scandinavian exhibition provoked discussion about its political character, but the more pragmatic considerations over commercial and industrial relations and the unique possibility for the backward nation were underlined.<sup>265</sup> The Finnish participation and the Scandinavian relations were defended especially on the pages of the liberal *Helsingfors Dagblad*, and not surprisingly, important figures close to the liberal and industrial circles also attended the meetings. At the Scandinavian National Economic meeting, thirteen participants out of a total of 237 were registered from the Grand Duchy.<sup>266</sup> Many of the participants were affiliated with the actual exhibition (or would be later exhibition organisers), and as well as the Scandinavianist ethos, the meeting offered contacts and insights related to their own professional fields, including banking, trade, engineering and publishing. For instance, the participants included the Finnish Exhibition commissioner<sup>267</sup>, industrialist and head of the publishers association F. Frenckell<sup>268</sup>, as well as Robert Lagerborg, a major figure of the liberal faction and the founder of the *Helsingfors Dagblad*.<sup>269</sup>

At the National Economic meeting, the “international relations regarding products of literary and art” were a separate theme, studied together with the issue in uniformity of statistical reporting.<sup>270</sup> The meeting approached the theme in light of the broader Scandinavian cultural

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<sup>265</sup> The Stockholm exhibition was among the series of exhibitions of the late 1860s, domestic and international, which were planned and discussed keenly in the Grand Duchy. A handful of Finnish exhibitors already participated in the London exhibitions of 1851 and 1862, but as part of the Russian section. For the first time, the Finnish exhibitors had their own section at Moscow in 1864. The Stockholm exhibition was the first “western” exhibition where the Grand Duchy appeared independently, and the “poor cousin from the countryside”, as put by Smeds, was warmly welcomed as part of the Scandinavian family. The exhibition, according to the contemporaries, was not a great success, but it offered a lesson on how to prepare for the exhibitions and signalled the backward state of the Finnish industries in contrast to the western neighbours. Kerstin. Smeds, *Helsingfors - Paris : Finlands utveckling till nation på världsutställningarna 1851-1900*, Skrifter utgivna av Svenska litteratursällskapet i Finland (Helsingfors : Svenska litteratursällskapet i Finland, 1996), 53, 68–72, 82–95.

<sup>266</sup> *Förhandlingar vid andra Skandinaviska National-Ekonomiska mötet i Stockholm 1866* (Stockholm: Bergström & Lindroth, 1866), 10.

<sup>267</sup> Also the other commissioner at the Stockholm exhibition, Otto Alfthan, participated at least to the national-economic meeting.

<sup>268</sup> Jari Hanski, ‘Frenckell, Frans von (1821 - 1878)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2008), URN:NBN:fi-fe20051410.

<sup>269</sup> Jari Hanski, ‘Lagerborg, Robert (1835 - 1882)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2005), URN:NBN:fi-fe20051410. Other liberals included Axel Liljenstrand (Professor of Economic Law and Political Economy), and O. Reinhold Frenckell (the head of the only private bank of the Grand Duchy, future head of the Bank of Finland). For Liljenstrand and Frenckell, see Heikkinen et al., *The History of Finnish Economic Thought 1809-1917*, 81–90.

<sup>270</sup> *Förhandlingar vid andra Skandinaviska National-Ekonomiska mötet*.

relations. For instance, the meeting suggested that Nordic history be taught beside national history, the increased teaching of Nordic languages in higher education, and the uniformity of future university reforms. Literary and artistic property rights were tackled as part of this context. The participants referred particularly to the weak quality of translations from Swedish to Danish, and to the harm caused by the current situation to literary exchanges. The meeting, finally, proposed that Sweden should have a similar law to the one in place in Denmark and Norway, which would include reciprocity, and forbid illegal translations and reprints. A similar statement had been made by the Scandinavian booksellers' meeting a couple of days previously.<sup>271</sup> In addition, the National Economic meeting demanded a protective law against the copying of art, similar to the current Danish law, which would include reciprocal protection “for artistic property rights in all of the Nordic countries.”<sup>272</sup>

In the Grand Duchy, the main newspapers followed these Scandinavian events.<sup>273</sup> Besides reporting on the discussions and resolutions, the newspapers tied the debates to the current Finnish situation. Two weeks before the opening of the booksellers' meeting, the liberal *Helsingfors Dagblad* wrote about the agenda of the meeting.<sup>274</sup> Even though the programme had not yet been published, it was clear that the idea of a convention on literary property between the Nordic countries would be discussed, the *Dagblad* wrote. This question, largely resolved in the “civilised countries”, was of great importance to the participants, especially for Sweden and Finland, where the literature largely shared a common language. Although only minor illegal reprinting had taken place, it was better to rely on a written agreement than silent assumptions. The newspaper noted how many aspects of the literary property rights were still vague, such as the question of translations. As such, uniformity should be sought between the respective laws, while all differences could create obstacles for the book trade. The newspaper concluded by asking the meeting to take the initiative in the matter, and to strive for reciprocity and common regulations among the four countries.

A couple of days later, the *Helsingfors Tidningar* discussed potential problems related to

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<sup>271</sup> In general, the meeting discussed the inadequate communications between the Nordic booksellers, but also the literary journals. The meeting also proposed the publication of a common dictionary of the Nordic literary languages. Skandinaviska bokhandlaremötet. Finlands Allmänna tidning, no 145 (26 June 1866).

<sup>272</sup> *Förhandlingar vid andra Skandinaviska National-Ekonomiska mötet*, 26.

<sup>273</sup> For example, Andra skandinaviska bokhandlaremötet. Hufvudstadsbladet, no 143 (23 June 1866); Svenska [!] bokhandlaremöte. Helsingfors Tidningar, no 144 (25 June 1866); Andra skandinaviska nationalekonomiska mötet i Stockholm. Finlands Allmänna Tidning, no 151 (3 July 1866); Nationalekonomiska mötet i Stockholm. Helsingfors Dagblad, no 154 (6 July 1866).

<sup>274</sup> Med anledning af bokhandlaremötet i Stockholm. Helsingfors Dagblad, no 124 (1 June 1866).

translations in the Nordic market, but also in the eastern Baltic areas, and agreed with *Helsingfors Dagblad* that the booksellers' meeting should take the initiative in achieving reciprocal protection.<sup>275</sup> The newspaper, like *Dagbladet*, alluded to the international nature of the question: it wrote of how these international agreements had been concluded in the recent decades due to the extensive illegal reprinting business in some countries. As such, the question of literary property was examined in pragmatic terms in relation to the existing book trade, but understood as an internationally regulated field. These Scandinavian perspectives were reported in the major newspapers, at the time mainly in the hands of the liberals.<sup>276</sup> As we will see, these channels would also be strong in the following decade, when the first copyright law was stipulated.

What ultimately created the need for discussion on the authorial property rights was, again, a dispute on the press laws. The Estates convened early in 1867, and similarly to 1863, were given the chance to read the press law proposal. The Emperor made it clear that the press regulations belonged to his competences. The law was again made temporary, being in force until January 1869, and more restrictive, while there had been excesses in the press which was now freed from preventive censorship.<sup>277</sup> The tightened position on the press laws were a surprise in the Grand Duchy, and on the contrary, the proposal was expected to be more lenient. The Estates did not approve the proposal, and in the Estate of Clergy, for instance, it was believed that if it was disapproved, the Emperor would not dare to return to the previous conditions of preventive censorship.<sup>278</sup> However, already in April 1867, when the rejection of the law proposal seemed probable, the Senate had been ordered to prepare an administrative decree. This decree was pronounced in May 1867, already before the reply of the Estates had reached the Emperor.<sup>279</sup> The decree restored preventive censorship, and the press laws of the country became the target of criticism in the following decades.<sup>280</sup>

<sup>275</sup> Den litterära eganderätten. *Helsingfors Tidningar*, no 127 (5 Juni 1866).

<sup>276</sup> In 1865–1869, the Fennoman newspapers lost subscribers, and the *Helsingfors Dagblad* was among the leading papers. Krusius-Ahrenberg, 'Uutta luovaa valtiopäivätoimintaa vanhoissa puitteissa (1863-1867)', 192–95.

<sup>277</sup> Tuomela, 'Painovapaus Suomessa vv. 1867-1872', 20–22.

<sup>278</sup> Ibid., 23–25; Krusius-Ahrenberg, 'Uutta luovaa valtiopäivätoimintaa vanhoissa puitteissa (1863-1867)', 221–30.

<sup>279</sup> Tuomela, 'Painovapaus Suomessa vv. 1867-1872', 28–31.

<sup>280</sup> Petitions for a reform of the press decree, and that the legislation should be read and approved also by the Estates, were presented in early 1870s, before the next Assembly of Estates. The Emperor announced that the press laws belonged to his competences only, and that the current law was satisfactory for the country and in accordance with the press laws in the Empire. Uno Tuominen, 'Uuden valtiopäiväjärjestyksen alkukausi (1872-1878)', in *Suomen kansanedustuslaitoksen historia. 2. osa, Säätyedustuslaitos 1850-luvun puolivälistä 1870-luvun loppuun* (Helsinki: Eduskunnan historiakomitea, 1981), 403–5.

In contrast to the previous laws, the new decree did not include any regulations about authorial property rights. During the previous reform, certain aspects of the press law had already been deemed of such importance, that they needed also the approval of the Estates. To avoid constitutional criticism, these areas, which included the regulations on authorial property rights, had been left out of the decree of 1867.<sup>281</sup> This meant that after May 1867, artists and writers were left without any explicit legal protection. This issue seems not to have raised notable discussion in the late decade or the early 1870s, and even though complaints of illegal copying were raised<sup>282</sup>, it is not clear what was the impact of the lacunae in copyright law.<sup>283</sup> The “lack of legal rights” (*rättslöshet*) was alluded to by the newspaper *Vikingen*, but it continued by writing about how a general sense of justice had—at least to some extent—prevented the illegal appropriation of others’ literary works.<sup>284</sup>

There was demand for protective legislation, however, and the law reform on copyright was initiated at the Assembly of Estates of 1872. In the Estate of Clergy, Karl Gustav Ehrström, a law professor sympathetic to the Fennoman thought, petitioned that a law proposal on “literary and artistic property and publishing rights” would be prepared for the next Assembly. Ehrström presented the petition at the request of the “country’s authors and artists”, among whom the need for protective legislation had been discussed in recent years.<sup>285</sup> In his petition, Ehrström referred to the current legal lacunae, but also pointed at reasons why a backward nation should worry about them. Ehrström noted that the principle of authors’ rights had been reasserted in law in the recent decades by almost all of the countries “where a higher civilisation [*kultur*] had already developed”.<sup>286</sup> The development of the author’s rights was perceived, and would be perceived, as an international matter that the Grand Duchy had to consider as well.

<sup>281</sup> Tuomela, ‘Painovapaus Suomessa vv. 1867-1872’, 28–31.

<sup>282</sup> Bref till mina vänner i landsorten. Helsingfors Dagblad, no 83 (27 March 1871).

<sup>283</sup> The theme of illegal copying due to the legal lacuna is not a recurring theme in the copyright debates of the 1870s, and many commentators note, that, in general, the literary and artistic rights have been well respected. For instance, literature professor C. G. Estlander wrote in his review of the current legislative reform in 1877 that one heard very rarely about violations of literary property rights. Regarding violations of artistic property rights, there had not been any case worth mentioning in the press. However, as we will see, this rhetoric by Estlander was also used in the current debate to understate the importance of the copyright law. C. G. Estlander, ‘Om literär och artistisk egendom’, *Finsk tidskrift för vitterhet, vetenskap, konst och politik*, no. Förra halfåret (1877): 110–21.

<sup>284</sup> Om literär eganderätt. *Vikingen*, no 37 (11 September 1871).

<sup>285</sup> According to Tikkanen in his History of the Finnish Art Society from 1896, the question of “a protective law for artistic and literary property rights” arose in the Artists’ Association. Koroma writes that the question had been discussed “for over five years” in the Association, before Ehrström filed his petition. J. J. Tikkanen, *Finska Konstföreningen 1846-1896* (Helsingfors: Finska Konstföreningen, 1896), 137; Kaarlo Koroma, *Suomen Taiteilijaseura = Konstnärsgillet i Finland: 1864-1964* (Helsinki: Suomen taiteilijaseura, 1964), 21.

<sup>286</sup> Petition by G. Ehrström (17 February 1872) in Report of the Appellate Committee no 6 (Documents, 1872), 193–194.

In the early 1870s, however, the question did not yet attract considerable public attention. The protection of intellectual workers, especially literary authors, appeared as a matter of common sense, and a definition for the rights was sought from the general conclusions made abroad. For instance, one of the themes in the Grand Duchy that caused divisions among the political groups was the status of the Finnish language especially with regards to education<sup>287</sup>, which did not yet have a role in the discussion on authorial property rights. However, some differences in the thinking on intellectual property can be found which were related specifically to the Scandinavian ties of the past decades. Before moving on to the influential work of the Authors' Rights Committee of 1873, the situation of the early 1870s is briefly described, and the international awareness of the commentators portrayed by looking at three articles.

One of the first demands for the law on “literary property rights” was made in 1871, surprisingly on the pages of the newspaper *Vikingen*, a short-lived newspaper which was the voice of early Svecomania in the capital. This was a movement that defended the status of the Swedish culture against the radical demands of the Fennomans.<sup>288</sup> The *Vikingen* referred to the recent developments in the Scandinavian countries, which historically had the closest ties to the Grand Duchy.<sup>289</sup> The newspaper noted that the basic principle that “the products of soul's and body's labour” should be protected by law and held holy had been generally acknowledged. It continued by stating how abroad, where this “important cultural and legal question has been dealt with for several years”, the products of intellectual labour which could be mechanically reproduced (and have a commercial value), had been divided into three categories: literature, artistic works and technical inventions.

The newspaper lamented that in the Grand Duchy, only inventions were protected to some extent, but in all cases, no protection was given to foreign works. However, in the whole of the civilised world, the literary property rights had been recognised to be as essential as all other property rights, and it was time for the Grand Duchy to wake up, and proceed with legislations

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<sup>287</sup> In 1872, for instance, there was a Fennomanian nation-wide campaign (to which also non-Fennomans participated, however) to raise money for Finnish-language secondary level education in Helsinki, that had been recently discontinued in the capital. Klinge, *Kejsartiden*, 256–69; Liikanen, *Fennomania ja kansa*, 160–65.

<sup>288</sup> The newspaper also opposed the more cosmopolitan attitude of the liberals, who viewed, the development of the Finnish culture positively, for instance, and were more indifferent to the quarrel between the linguistic national cultures. The newspaper was published once or twice a week from 1870 to 1874. Päiviö Tommila et al., eds., *Suomen lehdistön historia. sanoma- ja paikallislehdistö 1771-1985 / 7, Hakuteos Savonlinna - Övermarks tidning* (Kuopio: Kustannuskiila, 1988), 281.

<sup>289</sup> Om literär eganderätt. *Vikingen*, no 37 (11 September 1871).



for all creators of the three categories. The newspaper concluded its article with remarks about the current legislation in the Scandinavian countries, and about the development of a “union with reciprocally protected rights”. It demanded that the Finnish government give a law proposal in the field, which would enable the Grand Duchy to take its place among the Nordic people.

A more elaborate article was published in the editorial of the Fennoman newspaper *Morgonblad* in April 1872, some weeks before the first debates at the Assembly of Estates.<sup>290</sup> In addition, the *Morgonbladet* noted the lacunae of the current domestic law, and urged that intellectual labour be guaranteed the protection it deserved, similarly to material labour. The newspaper did not allude to the Scandinavian context, but discussed the problem in terms of the “civilised nations”. The editorial discussed how laws on literary and artistic property rights had been enacted in almost all civilised countries. Nevertheless, there was still considerable disagreement on the basic principles. The newspaper editors wrote several arguments against literary property, which it then countered because “most of these claims are of little significance”.<sup>291</sup> According to the newspaper, there were not enough reasons for limiting the concept of property only to material things. An author's labour was equally arduous—or even more so— than any other labour. The result of his or her labour was not just any idea, but a particular structuring of ideas, that stemmed from his personality. By pointing towards the romantic tradition of personhood as a justification for the right<sup>292</sup>, which as we will see appeared in German legal thinking at the time, the newspaper could draw a parallel with another field of intellectual labour under demarcation: the author was the first inventor of the particular form, and possessed a similar right to an inventor regarding his own novel machine.

Accordingly, the Fennoman *Morgonbladet* strongly equated literary and artistic property with other material property, but also with the rights of the inventor. Nonetheless, the newspaper did view the authorial property right to be limited in time, an issue it returned to on the following

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<sup>290</sup> Om litterär och artistisk eganderätt I. *Morgonbladet*, no 75 (2 April 1872).

<sup>291</sup> It referred on the one hand to the claims that immaterial things cannot become property; from a legal-conceptual perspective problem, property rights could only regard a material object, such as the manuscript or a printed book. On the other hand, the newspaper discussed how authorial property rights interfered with the rights of the public. Referring to the socialist Louis Blanc, the newspaper said that when published, ideas should be seen as belonging to everyone. In addition, citing the name of the American economist Carey, it was not right for an author to earn on ideas that were not discovered by only himself, but derived from the broader, general culture. Finally, the newspaper pointed to arguments which saw the author's rights as harmful monopolies hindering the diffusion of new ideas.

<sup>292</sup> See chapter 2.1.

day.<sup>293</sup> The editorial noted how some (literary) authors understood the property right to be perpetual. It added that the duration, however, had been limited by legislation, and cited the examples of England, Austria, Denmark, Sweden, Portugal, Spain, and Russia. The newspaper interpreted this as “a sort of right to expropriate” that the states had reserved for themselves, in order to grant private property rights over works of literature and art. This expropriation was not only useful, but it was also just. In fact, the author's work was also indebted to the education (*bildning*) he had “received from his nation and the mankind”: the author had “inhaled for free the intellectual atmosphere around him”. By referring to this “raw material offered by his nation”, the newspaper paralleled the situation with other material production. Similarly to the capitalist, the newspaper claimed, society (*samhälle*) contributed this “material” to the process, without which intellectual labour would not be possible.

Finally, a third example can be taken from the liberal *Åbo underrättelser*, which discussed the theme in its editorial in late April 1872, when Ehrström's petition was being already studied by the Estates.<sup>294</sup> It can be noted that *Vikingen* had returned to the topic three days earlier, underlining the Scandinavian heritage and concrete ties, as in their article from 1871.<sup>295</sup> The *Åbo underrättelser* had a similar approach; however, it noted how in general, international protection in the form of reciprocity was missing from the law project. It wrote that “in our times”, with improving communications and increasing cultural exchanges, literary and artistic property as well as all other private property should be protected beyond a country's borders. This principle appeared to be rather novel, the newspaper added, while all of the international legislation had taken its form only around the mid-century. The *Underrättelser* then went through the main bilateral agreements and national legislations that enabled reciprocal protection. Importantly, the newspaper reminded that these international agreements did not regard only illegal reprinting, but also regulated the right to translate the work of foreign authors. The newspaper concluded that the information about literary property rights in other countries had been taken from an article by the Swede Adolf Hedin, a liberal and Scandinavianist, who was active in advocating reciprocity in the Swedish legislation on authors' rights.<sup>296</sup>

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<sup>293</sup> Om litterär och artistisk eganderätt II. Morgonbladet, no 76 (3 April 1872).

<sup>294</sup> Åbo den 23 april. Åbo underrättelser, no 62 (23 April 1872).

<sup>295</sup> Litterär och artistisk eganderätt. Vikingen, no 32 (20 April 1872).

<sup>296</sup> The article mentioned was a broad review of literary property, its history, current debates and Swedish and Nordic developments, and was published in the periodical *Framtiden* in July 1871. Hedin, ‘Om litterär eganderätt, särskildt med hänsyn till de nordiska rikena’.

### 2.3 A liberal concept of copyright evolves in the 1870s

As noted above, the actual legislative process of the law on author's rights was initiated by the petition of the Fennoman law professor K. G. Ehrström at the Assembly of Estates of 1872. Since Ehrström's petition, the law project clearly regarded both literary and artistic authorship, even though the literary rights were in its focus; Ehrström petitioned for a proposal of a "complete law regarding literary and artistic property and publishing rights".<sup>297</sup> As we will see, the naming of the law became one area of dispute, as it would define the nature of this authorial right. Ehrström's petition built on two elements. Firstly, it introduced the bargain between the nation and its creative workers: it was "in the interest of every people [*folk*]", that the works of science, literature, and arts could be enjoyed by all. At the same time, the scientists, authors, and artists, "like every other honest worker", had the right to demand that "the earthly fruits", achieved by his "arduous work" could be of benefit to him or his right-holders. Secondly, Ehrström recalled that such rights had been constituted in latest decades in almost all of the countries "where a higher civilisation [*kultur*] had already developed".

The Estates convened for their spring session of 1872 after a break of five years. The decade saw the end of the liberalising societal reforms, and after years of extensive famine in the late 1860s, the country experienced positive economic growth in the aftermath of the Franco-Prussian war. Politically, the party lines were being drawn more carefully, especially because of the activation of the Fennomans under the leadership of the history professor G. Z Forsman (Yrjö Koskinen).<sup>298</sup> The Fennomanian grouping of the 1870s was speaking more daringly for a (uniquely) Finnish-speaking national culture and state administration, and presented themselves, in their more radical rhetoric, as the party representing the will of the people.<sup>299</sup>

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<sup>297</sup> Petition by G. Ehrström (17 February 1872). Report of the Appellate Committee no 6 (Documents, 1872), 193–194, 196–197.

<sup>298</sup> In the 1870s, G. Z. Forsman became to be viewed as the leader of political Fennomania. G. Z. Forsman used the pen-name Yrjö Koskinen (a Finnish translation of his name), but assumed the Finnish version Y. S. Yrjö-Koskinen when he was ennobled in 1882. Forsman was a professor of history, who Suvanto has characterised as a Herderian nationalist and a reformist conservative. Even though he was an advocate of German social-reformism, Forsman was critical of contemporary German nationalistic thinking, which he saw in its expansionism to be dangerous for smaller nations. In contrast, Forsman was interested in French (conservative and Catholic) culture, but also appreciated the English political tradition. Venla Sainio, 'Yrjö-Koskinen, Georg Zacharias (1830 - 1903)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2000), URN:NBN:fi-fe20051410; Rommi and Pohls, 'Poliittisen fennomanian synty ja nousu', 97–100; Pekka Suvanto, *Konservatismi Ranskan vallankumouksesta 1990-luvulle* (Helsinki: Suomen historiallinen seura, 1994), 168–74.

<sup>299</sup> Liikanen, *Fennomania ja kansa*, 163–65; Rommi and Pohls, 'Poliittisen Fennomanian synty ja nousu', 89–91.

One channel for this political activism was education policy, where important reforms were made in the early 1870s.<sup>300</sup> This was also the main theme at the Assembly of 1872, where ten petition proposals were made, which generally speaking demanded that the Estates should participate in legislating on educational laws, also for the university.<sup>301</sup> Moreover, the division into the Fennoman Estates of Clergy and *Bonde*, and the liberal-Svecoman Estates of Burghers and Nobility intensified, but this only became apparent at the next Assembly held in 1877.<sup>302</sup>

The petition proposal for a law on literary and artistic property rights was one of the successful petitions made in 1872. The petition was first sent to the Appellate Committee, which gave a short, four-page statement about the matter, and then discussed in the Estates. In its statement, the Appellate Committee paralleled the "intellectual or spiritual property right" with tangible property rights, which recognised the individual an absolute right to enjoy what he had acquired by his activities. This property right regarded workers in both intellectual and material fields, and thus the intellectual property right consisted of an exclusive authority [*befogenhet*] to benefit materially from the products of one's intellectual work. According to the committee, the concept of "intellectual [*andlig*] property" also included the originators [*upphovsman*] of practical inventions, but they had been ruled out in the petition. In the second part of the statement, the committee briefly discussed the scope of protection that had been given abroad to literary products, as well as to translations, artistic, dramatic and musical works. It reviewed elements—mainly their duration—from the legislations of the UK, Italy, Denmark, Russia, France, Belgium, Sweden, Germany, Austria and Spain.<sup>303</sup>

The question of authorial property rights did not raise widespread interest among the representatives, but the discussion largely regarded formal matters about the petition procedure itself.<sup>304</sup> In addition, the comments on the authorial rights did not become very political, and the representatives mainly made general observations about the matter. It seems that at this stage, the question was of a pragmatic nature, and perhaps also rather strange to some. The

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<sup>300</sup> Klinge, *Kejsartiden*, 256–69; Rommi and Pohls, 'Poliittisen fennomanian synty ja nousu', 91–97.

<sup>301</sup> The petition made by the Estates was not accepted, but an administrative decree on schools was prepared and accepted in summer 1872. Some proposals raised in the petitions were taken into account, however, and pronounced in an imperial declaration some years later. Tuominen, 'Uuden valtiopäiväjärjestyksen alkukausi (1872-1878)', 399–403.

<sup>302</sup> *Ibid.*, 387–88.

<sup>303</sup> Report of the Appellate Committee no 6 (Documents, 1872), 197–202.

<sup>304</sup> It was first debated in the Estate of Clergy, how one should proceed with the petition. Second, the Estates were generally of the opinion that the petition drafted by the Appellate committee was too detailed. Instead of giving a definition of its duration, the petition should only say the principle behind the law, that is, the bargain between the author and the public.

discussion in the Estate of Peasants is an example; there the only comment made during the reading regarded the authors publishing in the Finnish language—a heated topic at the next Assembly in 1877. Representative Heikura, the first to take the floor, approved the proposal of the Appellate Committee and noted that the law was especially important for protecting those who wrote in Finnish.<sup>305</sup> The following two speakers approved the proposal, yet found the remark made by Heikura inappropriate and to be left out. Another example was the debate in the Estate of the Clergy, where the attention was turned by the Fennoman leader G. Z. Forsman away from the author's rights towards the poor quality of the Finnish translation of the statement of the committee; interestingly, it was the translations of the Assembly documents and the cause of the Finnish-speaking representatives, not the author's rights, that caught Forsman's Fennomanian eye. Moreover, the excuses made by Forsman's colleagues well portrays the weaker status of Finnish in the early 1870s.<sup>306</sup>

The comments on the actual content of the petition looked at the relation between the public and the author or his right-holder, often the publisher. It is notable that the representatives approached the author's rights through foreign examples; the Grand Duchy held the position of an observer who could survey the more advanced nations. For instance, the different durations of protection were contrasted by using the respective countries as examples. In the Estate of Clergy, Pastor Hornborg criticised the previous speakers, who had defended the British protection term that was fixed to the publication date. It seemed to him that "England" was a "model country for many more than it deserved to be". The main issue was that the legislation on literary and artistic property was quite uniform in all civilised countries [*kulturländer*]. However, "England" was the exception here, and it had not been followed by other countries; that is why the Appellate Committee had also decided to support a protection term fixed to the lifetime of the author.<sup>307</sup> In the Estate of the Nobility, liberal law professor R. Montgomery noted that it was correct to give priority to the principles that had been assumed in the majority of today's *kulturländer*. In this field, the similarity of the laws was especially important between

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<sup>305</sup> Minutes of the Estate of *Bonde* (1872), 385.

<sup>306</sup> Pastor K. E. Järnefelt said he had not dared to propose corrections, even though he wanted to, because he thought the other translator to be more talented than him in Finnish. Pastor A. J. Hornborg reminded that the work had to be often done in great haste and at inconvenient time: the committees often convened until nine o'clock in the evening. In his critique, Yrjö Koskinen underlined that instead of translating a Finnish version, the two reports should be drafted at the same time: there were, anyway, Finnish-speaking representatives. The key issue, according to him, was that the Finnish version should be as good as the Swedish one. Minutes of the Estate of Clergy (1872), 818–821.

<sup>307</sup> Minutes of the Estate of Clergy (1872), 819.

countries with close ties.<sup>308</sup>

At the same time, the references to general developments also helped to point at the particular conditions in the Grand Duchy. The General Director of the Finnish Art Society, B. O. Schauman, who had also participated in the above-mentioned Scandinavian meetings in 1866, noted that since the French revolution, literary and artistic property rights had been under legislative work in all civilised countries, as also suggested by the petitioner Ehrström, and the object of study at specific international conferences. Schauman rejoiced that the theme had become topical even in the Grand Duchy, even though he noted that it was a less important matter than in other countries with greater literary and artistic output. Artistic property rights in particular were only “an issue for the future”, and therefore, Schauman urged the government to study not only the foreign legislations for the bill proposal, but also to take into consideration “our peculiar conditions”.<sup>309</sup>

Most importantly, the discussion on the content of the petition voiced very pragmatic and mainly liberal considerations. Both the editor-in-chief of the liberal *Hufvudstadsbladet* A. Schauman and the Fennoman leader G. Z. Forsman spoke in favour of the “English” system and its benefits for the general public: a longer protection after the death of the author could only be harmful for the public, and benefitted only the publishers. Forsman agreed with Dean T. T. Renvall, another Fennoman of the Clergy, who had used Anglo-American, utilitarian rhetoric in his talk before Forsman. According to Renvall, even though it was called a property right, the literary and artistic property right relied on a different grounding. The right was like a patent right, a “stimulus for talent and scholarship [...] and also a reward for the exertion of the talent and scholarship”.<sup>310</sup> The right was a “monopoly of the author”, “a taxing taken upon by the public”. Moreover, Forsman proposed the shortening of the compulsory publishing clause inserted in the petition<sup>311</sup> suggesting that this should be lowered to five years, as in Denmark, to prevent a right-holder from keeping a work out of the reach of the public.<sup>312</sup>

The similarity between the Fennoman views and those of the liberal Schauman is not surprising

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<sup>308</sup> Minutes of the Estate of Nobility (1872), 496–497.

<sup>309</sup> Minutes of the Estate of Nobility (1872), 497–498.

<sup>310</sup> Minutes of the Estate of Clergy (1872), 817.

<sup>311</sup> This clause was inserted to the petition by The Appellate committee. It stated that if the right-holder did not publish the work during ten years, the work could be reprinted by anyone. This principle was taken from the Danish law. Report of the Appellate Committee no 6 (Documents, 1872), 198–199, 201.

<sup>312</sup> Minutes of the Estate of Clergy (1872), 818.

in itself. The Fennoman leader G. Z. Forsman became a spokesperson for the German social-reformism in the mid-1870s, but he was also an Anglophile and belonged to the democratic front of the Fennomans. The side of the public and a shorter protection term could be taken either in terms of promoting the circulation of printed text in general<sup>313</sup>, or in terms of providing cheaper editions of important work for educational purposes. This latter perception is closer to the Fennomanian thought in general, where the education of the Finnish-speaking masses was a central aim and a national necessity.<sup>314</sup> A more radical interpretation can be made, however. Liikanen has argued that a rhetorical turn had taken place since the late 1860s, especially in the vocabulary of G. Z. Forsman, who began to support the Fennomanian agenda by referring to “the will of the people”.<sup>315</sup> In contrast to most of the liberals, who defended constitutional principles, and also his more moderate Fennoman allies, Forsman even seemed to give the will of the people precedence over law.<sup>316</sup>

This reasoning was visible in the editorial of the main Fennomanian organ *Uusi Suometar* in 1873, which warned against the dangers of a long protection for literary rights.<sup>317</sup> The newspaper wrote that it was natural that a literary author, like any other worker, should enjoy the fruits of his labour. At the same time, the newspaper noted that also “the public, that is the people [*kansa*],” had “something of a right” to use the intellectual products that had been published by “its writers”. The literary property right, then, should be limited and not last too long. Interestingly, the newspaper found the argument for short-term protection from the Whig historian T. Macaulay—an author appreciated by Forsman—and his speech in the British

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<sup>313</sup> In the Estate of the Burghers, in the few comments on the actual content of the petition, the rights of the public regarding important works of literature and art were highlighted. Wallgrén of the burghers commented that a minimum protection should be included also in the petition text. Otherwise, one would grant not only to the writer and artist, but also to his right-holder, unlimited power to keep secret the “often so valuable intellectual creations [*andliga skapelser*]; and one could easily imagine a case, where somebody thinks to be such an absolute owner of his intellectual creations, or the creations he or she inherited, that the general public [*den stora allmänheten*] should not receive a part of it.” Minutes of the Estate of Burghers (1872), 741.

<sup>314</sup> Lauri Kemppinen, *Sivistys on Suomen elinehto: Yrjö Sakari Yrjö-Koskisen kasvatusajattelu ja koulutuspolitiikka vuosina 1850-1882 [Summary: Education is Finland's Life-Blood]* (Turku: Turun yliopisto, 2001).

<sup>315</sup> Liikanen, *Fennomania ja kansa*, 160–65, 169–74.

<sup>316</sup> As Liikanen writes, Forsman had used the French Revolution as one historical example, in which the people had had no other choice than to rise up against the old rule. Liikanen 134–138, 142. According to Klinge, Forsman advocated in his history-writing a specific, geographically unified Finnish people—represented by the independent freeholders—which had a history of defying the ruling groups. This agitating view of the past was part of the oppositional politics of the Fennomans, and waned in the 1880s when the government turned more favourably towards Fennomania; Yrjö-Koskinen became a senator in 1882. Ibid., 134–38, 142; Matti Klinge, *A History Both Finnish and European: History and Culture of Historical Writing in Finland during the Imperial Period* (Helsinki: Societas scientiarum Fennica, 2012).

<sup>317</sup> Kirjallisesta omistus-oikeudesta. *Uusi Suometar*, no 126 (27 October 1873).

Parliament in 1841, where the law reform extending the copyright term was debated.<sup>318</sup> The newspaper raised two aspects mentioned by Macaulay: the little benefit that long protection brought to the author, and the opportunity for the right-holders to block important works for political or religious reasons. The newspaper concluded the article by noting how a long protection would, thus, not help the author, but rather harm the spread of “general culture [yleinen sivistys]”.

Arguing for a shorter protection and the rights of the public, however, was not unproblematic while the authorial right in question was perceived as property. It has to be remembered that even though it referred to radical democratic views, and encouraged popular participation (the Society for popular education was founded in 1874), political Fennomania was conservative and built on the support of the agrarian elite—the landowners and the clergy. It seems, then, that the Fennomans hesitated about how to approach this authorial property, which was still a largely unknown topic for the broader public, as noted by *Uusi Suometar* in 1873.<sup>319</sup> As we will see, Fennomans decided to take up the rhetoric of holiness of property in the question. When discussing the main themes at the Assembly of 1877, the Fennoman *Uusi Suometar* paralleled illegal reprinting with “stealing other people's belongings”.<sup>320</sup> Moreover, G. Z. Forsman and the Fennoman party with him, especially in the Estate of the landowners, would stand united as the defenders of the institution of private property, and blame the advocates of restricted authorial rights as “socialists” or “literary communists” and defend the longest duration of protection proposed at the Assembly. The Fennomans, however, did not defend perpetual protection but agreed to limit the right—a matter they still had to explain.

In fact, in 1872, the only representative who spoke up explicitly for the author and his property rights was the established but already fading Fennoman figure J. V. Snellman of the Nobility. The contrasting views between the Fennomans of the Clergy and Snellman illustrate internal

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<sup>318</sup> Macaulay's speech was part of the on-going copyright law reforms, which led to the approval of the 1842 Copyright Amendment Act. One area of disagreement was specifically the question of extending the copyright term, and where ultimately a compromise was sought (the term was extended to forty-two years or the author's lifetime plus seven years). Macaulay approached copyright as a monopoly, and referred to it as “a tax on readers for the purpose of giving a bounty to writers”. Ronan Deazley, ‘Commentary on Copyright Amendment Act 1842’, ed. Lionel Bently and Martin Kretschmer, *Primary Sources on Copyright (1450-1900)*, 2008, [www.copyrighthistory.org](http://www.copyrighthistory.org).

<sup>319</sup> Kirjallisesta omistus-oikeudesta. *Uusi Suometar*, no 126 (27 October 1873).

<sup>320</sup> Katsahdus valtiopäiville annettuihin esityksiin. *Uusi Suometar*, no 14 (31 January 1877).



disagreements<sup>321</sup>, but also speak to the early stage of party formation, and the relative unimportance of the question at the time. According to Snellman, the Estates were ready to make demands on the property of an author (and his heir), who was often a “poor man” in the Grand Duchy, for the benefit of speculators, the publishers. Snellman emphasized that the more the protective term was restricted, the more was taken away from his lawful property, which the author had acquired through “long-standing trouble, privation and hardship for many years”. Snellman did not refer to the personality of the author as constitutive of the property right. However, he certainly saw the right as not merely economic, but also encompassing moral dimensions. Snellman opposed the idea of compulsory publication—supported by Forsman. It was up to the author to decide, whether a new edition was published, also for some time after his death. It was possible, for instance, that the author had found the quality of his work to be too weak for publication.<sup>322</sup>

The Estates approved the petition, which was finally accepted by the Emperor in May 1873. The petition gave an outline for the law, according to which the Estates had petitioned for a law proposal on “literary and artistic property right” which gave protection against copying (*efterbildning*) to authors and artists, but also considered the claims of the public, so that valuable works would not be withheld from free competition.<sup>323</sup> The debate over the petition demonstrated the relative consensus, and the minor interest, regarding the matter. Notably, the law proposal now came to also cover artistic authorial rights, which were even explicated briefly in the Estate of Nobility by B. O. Schauman.<sup>324</sup> At the same time, the authorial rights were being distinguished from the other main “right of the creator”, the patent right. A line was drawn between the two, even though Law Professor Montgomery of the Nobility, the future president of the 1873 Authors’ Rights Committee, noted that the legislation could have been extended to patents, where a general law was also lacking.<sup>325</sup>

The legislative work was continued, as came to be the habit in Finnish law-making, in a committee that the Senate formed in the autumn of 1873. The committee had five members,

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<sup>321</sup> As Liikanen writes, at his older age, Snellman had become more careful about making democratic and popular political claims. For instance, he was sceptical about the founding of the Society of Popular Enlightenment in 1874 (supported by Yrjö Koskinen). Liikanen, *Fennomania ja kansa*, 130–33.

<sup>322</sup> Minutes of the Estate of Nobility (1872), 493–494.

<sup>323</sup> Petition of the Estates in Report of the Appellate Committee no 6 (Documents, 1872), 202.

<sup>324</sup> Minutes of the Estate of Nobility (1872), 497–498.

<sup>325</sup> Minutes of the Estate of Nobility (1872), 497

and was asked to prepare the law proposal on the “literary and artistic property right”.<sup>326</sup> The committee could be characterised as politically liberal with important international contacts, and consisted of names from the spheres of law, literature, and publishing. There was no practising artist in the committee, but the “painters, sculptors, architects and musicians” of Helsinki met to discuss the law project and communicated their views to the committee.<sup>327</sup> Even though it had close ties with the literary and artistic world, the law proposal would aim at a mediating solution—it focused on the publication process, and the roles of the authors and the public as part of this process. Moreover, the report of the committee would not only become a central factor for the form and content of the future law, but also for politicising the process and making the Fennomans more clearly in opposition to the liberal vision of the proposal. The committee completed its work in early 1875. The Senate prepared a revised version of the law proposal, however, mainly by making stylistic changes. This law proposal was then introduced to the Assembly of Estates of 1877–1878, where the matter was ultimately debated and approved.

The committee of 1873 was presided over by the Professor of Civil and Roman Law Robert Montgomery, a major liberal and constitutionalist politician, who as mentioned above, had expressed his views on approaching the new law from an international and regional perspective. The second jurist of the committee was Leo Mechelin, the future liberal leader, with whom Montgomery had personal ties. Neither of the legal scholars directly specialised in authors’ rights; Montgomery was an expert on the law of bankruptcy and contracts, and Mechelin had just finished his doctoral thesis on state unions, and had professional experience from industry and banking.<sup>328</sup> The other members of the committee worked actively in the literary sphere. These included the liberal intellectual, philosopher and Feuerbach-scholar Wilhelm Bolin<sup>329</sup>

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<sup>326</sup> Eriksson, ‘Författarbetena till författarförordningen’, 93–94. The report of the committee of 1873 transcribed in: *Ibid.*, 97–121.

<sup>327</sup> Härvarande artister. *Hufvudstadsbladet*, no 10 (14 January 1874). Also, Z. Topelius, one of the members of the committee, noted later that the committee had had one artist from the Artist's association as a “consultative member”. *Skola konst och litteratur stå rättslösa ! Helsingfors Dagblad*, no 78 (21 March 1877).

<sup>328</sup> Klami, *The Legalists*, 20–21, 47–48; Markku Tyynilä, ‘Montgomery, Robert (1834 - 1898)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2005), URN:NBN:fi-fe20051410; Tapio Helen, ‘Mechelin, Leo (1839 - 1914)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 1997), URN:NBN:fi-fe20051410.

<sup>329</sup> Bolin challenged the dominant philosophical currents in Finland in the 1860s in vain, but developed important connections abroad, especially with German-speaking scholars. In his early career, he got to know the philosopher Ludwig Feuerbach, and after Feuerbach's death in 1872, Bolin became the right-holder and publisher of his work. Henrik Knif, ‘Bolin, Wilhelm (1835 - 1924)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2007), URN:NBN:fi-fe20051410.

and the Helsinki-based bookseller and publisher Gustaf Wilhelm Edlund, who would become the main name in the publishing industry for the rest of the century. All of the above-mentioned members were partisans or close to the *Dagblad* liberalism of the 1860s, and Montgomery, Mechelin and Edlund signed the programme of the short-lived Liberal Party in December 1880.<sup>330</sup>

Finally, the committee included the renowned national writer and Professor of History Zachris Topelius, who strongly defended international cooperation regarding authors' rights in the Finnish debates. Among his many positions, Topelius was the secretary of the Finnish Art Society and had been the president of the Artists' Association since its founding in 1864.<sup>331</sup> The Association, which aimed at promoting arts and literature, brought together artists, writers, composers, architects, patrons and other intellectuals. Bolin, Mechelin and Montgomery were also members of the Association; Edlund became a member in 1874.<sup>332</sup> Topelius sat with Edlund at the directorate of the Finnish Publishers Association founded in 1858, which Edlund directed from 1878 onwards. Edlund was already at the time a major publisher and bookseller, and close to the urban, Swedish-speaking circles. He built his enterprise by dominating the Swedish-language textbook market, but also held the publishing rights to the two main national authors, Topelius and Runeberg, and published other landmarks of patriotic literature, such as the all-time best-selling school history book *Boken om vårt land* [1875], written by Topelius. Moreover, Edlund published scholarly and popular works edited or written by the activists of the liberal youth, including works by Mechelin and Bolin.<sup>333</sup>

Before focusing on the actual work of the committee, it should be remembered that the matter of authorial property rights in the Nordic region was very topical in the early 1870s. The question had been tackled in another arena of Nordic cooperation in August 1872, at the first Nordic Jurist meeting held during the Nordic industry and art exhibition.<sup>334</sup> The meeting

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<sup>330</sup> Det liberala partiets program. Helsingfors Dagblad, no 331 (5 December 1880).

<sup>331</sup> Matti Klinge, 'Topelius, Zachris (1818 - 1898)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 1997), URN:NBN:fi-fe20051410; Tikkanen, *Finska Konstföreningen 1846-1896*, 27, 137.

<sup>332</sup> Koroma, *Suomen Taiteilijaseura = Konstnärsgillet i Finland*.

<sup>333</sup> The Book on Our Country (*Boken om vårt land*) was published first in 1875, and a Finnish translation was published the following year. In total, five editions in Swedish and seven in Finnish were published in 1875–1876, which equalled 70 000 articles. Before the turn of the century, around 265 000 copies had been sold. Häggman, *Paras tawara maailmassa*, 106–7, 122–23, 145–61, 207–8.

<sup>334</sup> The jurist meetings were organised triennially between 1872 and 1902, and later since 1919. They took place in each member countries in turn, which before 1919 meant Sweden, Denmark and Norway. The jurist meetings were intended for discussing and sharing views on the major legal questions in the Scandinavian

welcomed 397 participants, of whom 231 were from Denmark, 113 were from Sweden, 50 were from Norway and 3 were independent participants from Finland. The three visitors from the Grand Duchy were the jurist E. Bergh, another central figure among the *Dagblad* liberals, the judge of the Court of Appeal of Viborg F. T. Mechelin and the mayor of Helsinki H. W. J. Zilliacus.<sup>335</sup> F. Mechelin was a relative of Leo Mechelin, the other jurist of the Authors' Rights Committee of 1873. As for Zilliacus, he had been nominated as a member of the Authors' Rights Committee by Senator Schultén, to take the place of L. Mechelin who Schultén did not find to be experienced enough.<sup>336</sup>

The theme of “literary and artistic property right” was introduced at the Jurist meeting of 1872 by O. A. Bachke, who was a Scandinavianist, one of the main Norwegian legal scholars of the time, and an expert on copyright.<sup>337</sup> According to Bachke, there was an urgent need for reciprocal protection, as well as the convergence of the literary and artistic copyright legislation in the three Nordic kingdoms. The “barbaric” division into domestic and foreign authors had to be overcome, as had been done in many countries already. Bachke saw that the current laws were impeding the natural development of not only the common Nordic literary market, but also the expanding art market. In his introduction, Bachke went through the similarities, differences, and contradictions in the current Nordic laws. The question of translation proved to be especially problematic.<sup>338</sup> The presentation remained mainly confined to the Nordic sphere, and only a few examples were drawn from European countries.<sup>339</sup>

The general debate on the matter remained very short. In fact, only two addresses were delivered: the introduction by O. A. Bachke followed by the short comments from one of the conveners of the meeting, county governor E. J. Sparre, who took the floor unprepared because

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countries, and were influenced by the corresponding English (“*Society for the Promotion of Social Science*”) and German (“*Juristen tage*”) meetings. Invitation letter for the first meeting and the first statutes in *Forhandlingerne paa det første Nordiske juristmøde i Kjøbenhavn, 22.-24. August 1872* (Kjøbenhavn, 1872), I–III, Bilag XII; Henrik Tamm, *De Nordiske Juristmøder 1872-1972* (Kjøbenhavn, 1972), 19–27.

<sup>335</sup> Annexe 1: participants to the Jurist meeting. *Forhandlingerne paa det første Nordiske juristmøde*.

<sup>336</sup> Minutes of the Plenum of the Senate (6 October 1873). Senaatin täysistuntojen pöytäkirjat, Cia:68, 631–633.

<sup>337</sup> Dag Michalsen, ‘Ole Andreas Bachke’, *Norsk biografisk leksikon*, 29 September 2014, [http://nbl.snl.no/Ole\\_Andreas\\_Bachke](http://nbl.snl.no/Ole_Andreas_Bachke). (retrieved 5 February 2015).

<sup>338</sup> According to Bachke, in general, the author had an exclusive right over translations. In practice, the languages of the three countries were dialects of the same language, which equalled unauthorised translations with illegal reprinting (*eftertryck*).

<sup>339</sup> Bachke referred to the recent Northern Germanic law as an example of a complex solution (page 137) for the national/foreign authors' rights question. In his reasoning on the role of translation, which he in theory saw similar to illegal reprinting (*eftertryck*), Bachke referred to French and Dutch law and practice. *Forhandlingerne paa det første Nordiske juristmøde*, 133–43.

nobody else had asked for the floor. Sparre found the resolution proposed by Bachke to be “so axiomatically correct” that the meeting could but approve it. As a result, the Nordic jurists unanimously passed the resolution from Bachke. It called for the recognition of the rights of the authors of other Nordic countries, a temporal protection for authors against translations, and the goal of the future legislative work, especially the ongoing Norwegian and Swedish reforms, to aim at the convergence of the laws following the Danish model. The resolution also suggested that the area of literary and artistic property should be treated as a kind of Nordic *ius commune*.<sup>340</sup>

In the Grand Duchy, the Authors’ Rights Committee of 1873 formulated the law proposal with the help of foreign examples.<sup>341</sup> It noted in its report that this was the first attempt to draft an encompassing law in the field in the Grand Duchy. The committee wrote of how on the one hand, it could rely on the general principles expressed in the finest contemporary laws, which had become a sort of a “*jus gentium*”. At the same time, the committee reminded, the details should not be drawn from foreign examples, but the law had to conform to the local conditions of the Grand Duchy, which differed from the more active and speculative literary and artistic spheres abroad.<sup>342</sup> The committee built especially on the German and Danish models, and on the Swedish legislation regarding artistic authorial rights; it noted how the western neighbours should especially be followed, as the legal cultures were similar and cultural ties existed.<sup>343</sup> This Scandinavian emphasis is visible in the proposal; however, as far as the influence of the German legislation is concerned, the differences appear to be more central than the similarities, in contrast to what Eriksson suggests, for instance.<sup>344</sup> Whereas the German copyright law (1870) and the subsequent Norwegian (1876) and Swedish (1877) laws focused on the act of (illegal) *printing*, the committee built their law proposal (even more evident in the actual law of 1880) around the right to *publish* a work.<sup>345</sup>

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<sup>340</sup> Ibid., 144.

<sup>341</sup> The committee finished its work in December 1874, and the Senate received the report in January 1875. KD 294/21. Ea:3116, Kirjeaktit (1873). Talousosaston registraattorinkonttorin arkisto (FNA). The report of the committee and the law proposal are published in Eriksson, ‘Förfarbetena till författarförordningen’.

<sup>342</sup> Report in Ibid., 100–102.

<sup>343</sup> Report in Ibid., 108.

<sup>344</sup> Ibid., 94.

<sup>345</sup> The first chapters of the Norwegian and Swedish laws regarded “illegal reprinting (*eftertryk*)” and “protection against illegal reprinting (*eftertryck*)”. In the Finnish case, the Committee of 1873 already named the chapter “On the right to publish texts”. F. Kawohl has noted how the German copyright act of 1870 still built on the traditional concept of (illegal) reprinting. The vocabulary of *eftertryck*, obviously, appeared also in the Finnish law due to the its role in contemporary terminology and censorship regulations, but the emphasis on the right to publish is evident. As described by Teilmann-Lock, this appears as a shift from the printing paradigm towards the modern copyright framework of original-copy, which is “the elastic and

In its report, the committee, first of all, stepped back from the rhetoric of property, which would later catch the attention of the Fennomans. This was a notable step, as the petition of 1872 had demanded a law for a “property right”, an expression that was also used commonly among the public. The committee justified this with shifts in the legal nature of the author’s rights. First, the system of printing privileges had been replaced by a morally appealing conception of literary property, which paralleled physical work and the “spiritual work” (*själsarbete*) of authors. Recently, however, a more appropriate definition of the “latest legal science” had been assumed, which distinguished the author’s rights from property rights. The committee cited three main differences between the two. First, the manuscript was surely the property of its author, but the author’s right was to the “mental product” of an author’s imaginative activities, and this right persisted immaterially even if the manuscript was lost or the paint used for the painting ran out. Moreover, the right was not about keeping the object for the owner; instead, it regarded how and when the “mental product” could be made public, and then be used within certain limits by everybody. Finally, in the case of the author’s rights, the interest of the public was also considered, which had resulted in limiting the duration of the right. As a result, the committee rejected the term “property” and decided to call the law proposal as follows: the “author’s and the artist’s right to the products of their activities (*verksamhet*)”. The committee emphasised that this did not diminish the importance or sanctity of the right.<sup>346</sup>

The committee justly referred to the continental debates, where the nature of the literary property right had been examined in the last decades.<sup>347</sup> Particularly in the German legal discussion, the principle of *Geistiges Eigentum* had been questioned, and would be rejected by

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inclusive concept known today”. Friedemann Kawohl, ‘Commentary on the German Imperial Copyright Act (1870)’, ed. Lionel Bently and Martin Kretschmer, *Primary Sources on Copyright (1450-1900)*, 2008, <http://www.copyrighthistory.org/>; Teilmann-Lock, *The Object of Copyright*, 8–9, 102–24; Ch Lyon-Caen and Paul Delalain, *Lois françaises et étrangères sur la propriété littéraire et artistique* (Paris: Cercle, F. Pichon, 1889), 55–60, 437, 505, 523; Stig Strömholm, ‘Le droit moral de l’auteur en droit allemand, français et scandinave avec un aperçu de l’évolution internationale: étude de droit comparé. 1, L’évolution historique et le mouvement international’ (Doctoral Thesis, 1966), 263–67.

<sup>346</sup> Report in Eriksson, ‘Förfarbetena till författarförordningen’, 98–100.

<sup>347</sup> The committee members were aware of the continental discussions, but did not mention, besides referring to the main countries and some of their legislative corpuses, any particular influences. The proposed title of the law did not appear in other contemporary legislations (presented in the comparative work by Lyon-Caen and Delalain). However, as an observation to be made for curiosity’s sake, it carries considerable similarity to a text by the French jurist Augustin-Charles Renouard titled “*Théorie du droit des auteurs sur les productions de leur intelligence*” published in 1837. Renouard disapproved the use of the term “property” in regards to intellectual works, and contributed to the development of the specific French notion of authors’ rights. Lyon-Caen and Delalain, *Lois françaises et étrangères sur la propriété littéraire et artistique*. Augustin-Charles Renouard, «Théorie du droit des auteurs sur les productions de leur intelligence», *Revue de Législation et Jurisprudence*, t. V, 1836-1837. On Renouard, see Teilmann-Lock, *The Object of Copyright*, 76–80.

the end of the century, mainly to defend the concept of property itself.<sup>348</sup> At the same time, the terminology of property was not at all uncommon, but was used by scholars such as the German R. Klostermann<sup>349</sup> to underline the economic nature of the author's right or to stress the centrality of the author, as in the French tradition where the terms *propriété littéraire* and *industrielle* were commonly used.<sup>350</sup> In the German area, one reason for rejecting the term “property” was that the author's right included an important non-economic component, which was to some the main feature of the right, while the right derived from the personality of the creator of the work.<sup>351</sup> In a seminal text from the “personalist” line of thought from 1853, Swiss jurist J. C. Bluntschli set the nexus of authors’ rights within the act of publication: the work existed and was protected primarily through the author's person, but after its communication to the public, the rights of the community were also to be considered.<sup>352</sup>

In their reasoning, the committee recognised the personal component of the author's right, but they did not give a major emphasis to it. According to the committee, simply, he who had produced the work could alone decide when, how and what to publish, and after the publication,

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<sup>348</sup> Dreier notes how the German term *Eigentum* has been used again very recently in legal literature, in terms of the globalised context, for instance, of trade in immaterial goods. According to him, the term intellectual property was rejected for two reasons in the German area: for not blurring the boundaries of the concept of property, and as a defensive measure by the civil law specialists for avoiding criticism for using the term imprecisely. As Jänich writes, the Constitution/Verfassung of 1871 still stipulated about “der Schutz des geistigen Eigentums”, but the expression had disappeared from the Constitution/Verfassung of 1919, and the author’s rights were regulated by stating how “Die geistige Arbeit, das Recht der Urheber, der Erfinder und der Künstler genießt den Schutz und die Fürsorge des Reichs”. Thomas Dreier, ‘How Much “Property” Is There in Intellectual Property? The German Civil Law Perspective’, in *Concepts of Property in Intellectual Property Law*, ed. Helena R. Howe and Jonathan Griffiths (New York: Cambridge University Press, 2013), 116–20; Volker Jänich, *Geistiges Eigentum – eine Komplementärscheinung zum Sacheigentum?* (Tübingen: Mohr Siebeck, 2002), 82–83.

<sup>349</sup> In his work from 1876, Klostermann explicitly used the term *geistiges Eigentum* (*an Schriften, Kunstwerken und Erfindungen, nach Preussischem und internationalem Rechte*). Even Klostermann saw that *geistiges Eigentum* was not a subcategory of *Sacheigentum*, while the latter regarded only material objects. Klostermann underlined the economic nature of the right, and saw *geistiges Eigentum* as “die Vermögensrechtliche Nutzung an der mechanischen Wiederholung eines Productes der geistigen Arbeit”. Jänich, *Geistiges Eigentum*, 83–85.

<sup>350</sup> For instance, the neutral expression of “*protection des oeuvres littéraires et artistiques*” was chosen for the Berne convention to mediate between the different views on the nature of authors’ rights. Ladas, *The International Protection of Literary and Artistic Property*, 80–82.

<sup>351</sup> Dreier, ‘How Much “Property” Is There in Intellectual Property?’, 120–21.

<sup>352</sup> In the 1880s, a dualist approach developed and became dominant, as in the influential theory of *Immaterialgüterrecht* of J. Kohler, which saw both economic and personal components essential for the author's right. This dualism was present also in France, where the moral rights of the author were explicitly cited in the 1870s, and had developed in their “full maturity” around 1900. Stig Strömholm, ‘Copyright - National and International Development’, in *International Encyclopedia of Comparative Law. Volume XIV Copyright*, ed. Eugen Ulmer and Gerhard Schricker (Tübingen: Mohr Siebeck, 2007), 9–13; Johann Kaspar Bluntschli, ‘On Authors’ Rights, Munich (1853)’, ed. Lionel Bently and Martin Kretschmer, *Primary Sources on Copyright (1450-1900)*, 1853, [www.copyrighthistory.org](http://www.copyrighthistory.org); Friedemann Kawohl, Lionel Bently, and Martin Kretschmer, ‘Commentary on J.C. Bluntschli, “On Authors’ Rights” (Munich, 1853)’, *Primary Sources on Copyright (1450-1900)*, 2008, [www.copyrighthistory.org](http://www.copyrighthistory.org).

enjoy without any interference the “property/wealth value” (*förmögenhetsvärde*) of his work, that stemmed from the “desire” that others had for it. The committee stated that the right was thus partly a “personal right”, similar to personal freedom (*rättigheten till frihet*) or civil honour (*medborgerlig ära*), but also partly a *förmögenhetsrätt* of a peculiar nature.<sup>353</sup> The committee seemed to prefer a neutral language, and even though the non-economic rights of the author were also considered in the law proposal, the person of the author, or the origins of the right, were not explicated. Instead of using the term “author”, the law proposal seemed to introduce different functions for authors—“writers” and “artists”. This can be contrasted with the German law of 1870, which explicitly stated in its first article how the right in question was “vested exclusively in the author of the work”.<sup>354</sup>

It seems, then, that the foremost aim of the liberal committee was to define and demarcate the roles of those acting in the literary and artistic market: the authors and especially the established publishers would have a strong position. By relying on the “newest legal science”, the committee rejected the vocabulary of property, and built the right loosely around individual creativity and the individual's freedom to decide whether to publish his or her work or not. Publishing did not mean printing, but the communication of a work, such as a book, theatre performance or an artistic creation, to the public based on certain terms, which were partly contractual, and partly defined by the law. The nature and scope of these terms were not very clearly validated, but the committee sought a compromise that stabilised a legal framework but left space for the private interests. For instance, the committee wrote how the motive for limiting the duration of the right “for the interest of general culture” was so “widely known, that [...] it need not be repeated”.<sup>355</sup> Later, it opposed the longest durations of protection by referring to international statistical calculations which demonstrated that a long protection did not guarantee a better income for the heirs.<sup>356</sup> Regarding contractual relations, the committee did not want to create any formalities of registration or restrict the contracts, but left the “parties freely to agree and decide over the mutual legal relations”. Some minimum conditions, however, were set, that secured the author's position, both in contractual and moral terms, but

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<sup>353</sup> Eriksson, ‘Författarna till författarförordningen’, 100.

<sup>354</sup> Copyright Act for the German Empire, Berlin (1870), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, [www.copyrighthistory.org](http://www.copyrighthistory.org).

<sup>355</sup> The committee later explained, how the publishing rights were, in practice, sold to publishers and did not remain in the hands of the author or the family. This could lead to unnecessary speculation or to the right-holder preventing the publication of the work and the public's access to it. Eriksson, ‘Författarna till författarförordningen’, 99, 102–3.

<sup>356</sup> The committee did not precisely state the source for this statistical information in its report. *Ibid.*, 104–5.



which did not seem to prevent the complete transfer of rights, if so desired.<sup>357</sup>

Finally, in one major aspect the committee took the side of the domestic publishers: the authors were not granted complete translation rights, but the committee proposed that the right to translate could be reserved for a duration of five years. This principle was not an exception among the legislations of the time, but appeared as problematic in a bilingual country.<sup>358</sup> Moreover, the committee did not propose any specific protection for the other Scandinavian languages, which were viewed and would be protected as “dialects” in the other Nordic countries.<sup>359</sup> The author's right did extend only to Finns and foreigners residing in Finland, but the proposal permitted the Emperor to establish reciprocal agreements with other countries.<sup>360</sup>

The literary authors of the committee, Bolin and Topelius, protested the narrow translation rights, and demanded the extension of the (conditional) translation right to cover the lifetime of the author. The protection of five years was too short in the bilingual Grand Duchy, where even translations of the works into Finnish—especially textbooks and popular literature—could turn out to be very profitable. Moreover, the objectors claimed, that the short protection was also harmful for the reading public. “Free and hasty competition” over translations led only to publisher speculation, and produced works of bad quality which were beyond the author's control. The objectors also noted that experience had shown how the nations that only lived off the “robbery of other's literature”—illegal reprints or translations—had not managed to develop a proper capacity for literary production. Bolin and Topelius presented their proposal as a compromise between the general interest and the author's personal right: it rendered the law coherent, and the author could also control translations, different “clothings” of the original work, and decide on “the form in which his work reaches new readers”.<sup>361</sup>

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<sup>357</sup> The committee proposed (§ 30) that the transfer of rights should be done in writing and should describe the scope, duration and terms of the right. If the scope of the printing right was not defined, it would regard only the publication of one edition of a text that had been left unmodified by the publisher. In the section § 18, the law proposal stated that the selling of a work of art did not include the transfer of the authorial right, if not specifically agreed on. In addition, unpublished manuscripts could not be taken for the payment of debts (§ 2). *Ibid.*, 109, 120–21.

<sup>358</sup> According to the proposal of the committee, the author could reserve the right of translation for five years by stating it on “the title page or some other usual place” of the book. If the book was published simultaneously in several languages, the author's right covered all of these languages. A similar principle, but a shorter length of protection, was expressed in the German law (a one-year period), but was used also elsewhere, for instance in the UK, where the right could be reserved for ten years. In the French copyright tradition, translation rights were granted to the authors. Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 13–14.

<sup>359</sup> *Ibid.*, 14.

<sup>360</sup> Section § 34. Eriksson, ‘Författaröförförordningen’, 121.

<sup>361</sup> *Ibid.*, 110–13.

Bolin and Topelius spoke of concrete changes that were visible in the domestic literary market of the time. Even though it was still modest, the role of the Finnish-speaking readership was growing in the 1870s, and as Topelius had personally experienced, not only were works published in Finnish, but the Swedish-writing authors were also translated into Finnish. The expansion took place especially in newspapers, where the printed sheets almost quadrupled in the 1870s, but the number of books printed annually in Finnish also grew from around 200 to 350 titles between 1870s to 1880.<sup>362</sup> At the same time, the Finnish-reading audience was consuming more fiction, whereas the role of religious literature in the literary market was diminishing.<sup>363</sup> Most importantly, as suggested previously, the 1870s saw the sharpening of the views on the two languages and their status in the nation-state. The Forsmanian Fennomans were actively taking over several national cultural institutions, such as the Finnish Literature Society, and harnessing them for the aims of their political Fennomania.<sup>364</sup> Even though the Finnish-language literary market matured only closer to the turn of the century, the early 1870s also saw the first enterprises of the first actual Finnish-publishing publishers, who would benefit both from the market developments and the cultural politics of the Fennoman movement.<sup>365</sup>

The law proposal of the 1873 Authors' Rights Committee was reviewed by the Senate in 1875, approved by the Emperor, and finally taken to the Assembly of Estates of 1877–1878. The Senate had only made stylistic changes, and so the work of the Authors' Rights Committee was transmitted almost directly to the scrutiny of the Estates.<sup>366</sup> Even though a lively debate took place, both in public and the Assembly, the law proposal of the Estates, which ultimately became the 1880 law on authors' rights, did not change considerably from the proposal of the Authors' Rights Committee. The Estates rendered the position of the author more stable and better protected. The protection durations were increased to fifty years after the death of the author (except for photographs, which were protected for five years), the translation rights were

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<sup>362</sup> Myllyntaus, *The Growth and Structure of Finnish Print Production, 1840-1900*, appendix 3; Häggman, *Paras tawara maailmassa*, 173.

<sup>363</sup> According to a contemporary, the literature scholar Vilfred Vasenius, the share of religious literature of all printed work in Finnish fell to less than a quarter between 1866-1875, and between 1876 and 1886, the most commonly printed books were novels or stories (266 titles), followed by children's literature (72 titles) and drama (69 titles). Häggman, *Paras tawara maailmassa*, 174.

<sup>364</sup> Sulkunen, *Suomalaisen Kirjallisuuden Seura 1831-1892*, 172–84.

<sup>365</sup> Häggman, *Paras tawara maailmassa*, 189–91.

<sup>366</sup> In the imperial proposal given to the Estates, the author's position was made more secure. Besides unpublished manuscripts, the imperial proposal stated that the rights of published work possessed by the author could not be taken for the payment of debts during his lifetime (§ 32). The protection given to foreigners became more conditional: to be covered by the law, the foreign authors needed to reside and also publish their work in the Grand Duchy (§ 36). Imperial proposal no 3 (Documents, 1877–1878): *Förslag till förordning angående författares och konstnärs rätt till alster af sin verksamhet*.

extended to cover domestic languages during the whole protective term, and some contractual matters were clarified, which improved the author's status.<sup>367</sup>

In the Assembly, the law was first commented on by the Law Committee, which made many valuable refinements to the legal text, but as far as authorial protection was concerned, the Committee underlined the benefits of free competition. For instance, the Law Committee removed all translation rights from the proposal, shortened artistic protection to cover only the author's lifetime, and removed the vague definition about what rendered a modified work independent.<sup>368</sup> In the Law Committee, two protests were made by two prominent jurists of the country: the liberal law professor R. Montgomery who was the head of the 1873 Authors' Rights Committee, and the Fennoman law professor K. G. Ehrström, who was the "father" of the actual legislative process in 1872. The two were very much united in their protests against the Law Committee; for instance, they explicitly followed the German example in their views on the translation right.<sup>369</sup> Of the two, however, the liberal Montgomery was more moderate, and sought a compromise between the interests of the public and the author's rights.<sup>370</sup> In his argument, he alluded to international developments, and noted that for a small nation it was important to approve reciprocity in international relations. Ehrström was using the stronger rhetoric of property rights by referring to honest work and stealing, for example. Moreover, Ehrström underlined the specific bilingual conditions of the Grand Duchy, and pointed also to the important role of literature and arts for the nation and its development.

In the actual reading, the Estates became divided between these different orientations by the Law Committee and the protesters. The Estate of Burghers followed the proposal of the Law committee, whereas the Fennoman Estates of *Bonde* and the Clergy aligned in key issues with Ehrström's reservation. The Nobility combined both Montgomery's and Ehrström's proposals in their voting, or voted for the proposal by L. Mechelin, another liberal jurist in the 1873

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<sup>367</sup> It had been previously stipulated that if not mentioned in a contract, the printing right regarded one edition. It was added by the Estates that the edition consisted of a thousand copies of the work. The author was also granted the right to repurchase his printing right, if the publisher did not manage or want to sell out the edition he was entitled to (§ 28).

<sup>368</sup> The proposal of the committee, but also the final law (§ 8), stated that a rewritten or modified work was seen as an illegal reprint, if this "new work could not be proved as an independent work".

<sup>369</sup> In Germany, the author could reserve the translation right for three years. After the translated work was published, the exclusive right for the language still endured for five years. Montgomery followed this principle for all translations, while Ehrström approved it for translations into foreign languages.

<sup>370</sup> For example, concerning translations, Montgomery found that the author should have some sort of translation right, but at the same time, the public could not be prevented of reading his works, if they did not know the original language. The Report of the Law Committee no 8 (Documents, 1877–1878), 32–43.

Authors' Rights Committee. The law therefore took its form according to the decisions of the three latter Estates. In the Estate of Burghers, more market-oriented or individualist views were presented, but it is notable how the Burghers also approved the proposal of the Law Committee, which agreed with the main lines of the proposal of the 1873 Authors' Rights Committee. After the reading, the slightly differing opinions were settled, and the Estates accepted the law proposal and sent it to the Emperor for his approval.

The law now protected printed work, (musical) plays, works of art and photography. Regarding the translations, Ehrström's line had been followed: the authors retained the right of translation into both national languages. Finally, the varying durations of protection had been harmonised and increased to the author's life-time plus fifty years, except for photography, where a term of five years was set. The extension of the protective term was very much due to the Fennomans, who strongly emphasised the author's honest and arduous work, and his status as a proprietor. In their report to the Emperor, the Estates commented on the changes in a different voice: the term of fifty years was in accordance with the previous protection terms in the Grand Duchy (in the Press Law of 1865). In addition, many foreign laws, for instance the recent Swedish law, followed this principle. Interestingly, Russia, where the protection was the same, was not mentioned, and no references were made to the country during the actual debates. For the translations, the Estates reported that the translation right had already been respected in the country, and the law only confirmed this practice.

In this last part of the chapter, we will take a more detailed look at the views on authors' rights that were expressed during the legislative process in 1877. The debaters raised criticisms against the work of the Authors' Rights Committee, which puts the views of these mainstream liberals in the committee into greater perspective. Moreover, the discussion shows clearly that the matter was still considered rather novel, and according to some, especially in this peripheral corner of Europe, the law project should be studied carefully. To an important extent, the law was being modelled through foreign examples or the general principles of authors' rights, which could be, selectively, adapted to the less-developed Finnish conditions. At the same time, it was clearly emphasised that the principle of literary property, which also covered the right to translate, was already commonly acknowledged and respected in the country.

## 2.4 The demarcation of authors' rights in 1877: strong rhetoric of property and the limits of the foreign laws

One line of criticism came from the liberal circles, but also included Svecoman figures, who were speaking more to the Swedish heritage in the Grand Duchy, and thus stood in direct opposition to the Fennomans. This line of criticism included ideas of liberal individualism, but also had a conservative tone as far as the profession of authors and artists was concerned. It underlined the pragmatic nature of the author's rights, and many references were made to the British tradition of copyright or artistic protection, in contrast to the continental traditions of author's rights. The first to raise such issues was the Professor of Aesthetics and Modern Literature C. G. Estlander. Estlander was one of the founders of the liberal *Helsingfors Dagblad* in 1862, but later became the foremost spokesperson for a bilingual Grand Duchy, where the Swedish-speaking culture would also have its place.<sup>371</sup> In the 1870s, Estlander actively took part in the debates on schools and professional education. He spoke for the role of industrial arts and original industrial production—citing as an example the pragmatic industrial culture of England—that he saw crucial for the existence of a nation.<sup>372</sup> Estlander was among the first to publicly criticise the work of the 1873 Authors' Rights Committee and the law proposal given to the Estates.

Estlander's "On Literary and Artistic Property" was published in early 1877, some months before the law proposal was read at the Assembly of Estates.<sup>373</sup> Estlander saw the legislation in general as welcome, and he commented on the contents of the proposal by relating it to the German and British ("English") laws. Estlander, however, remained doubtful about the benefits of a copyright law for a backward country like the Grand Duchy, where reprints of literary work were "rather unusual", musical compositions "even rarer", and engraving work and even art-

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<sup>371</sup> Sven Lindman, 'Den unge C.G. Estlander och språkfrågan', in *Historiska och litteraturhistoriska studier*, 60, ed. Torsten Steinby (Helsingfors: Svenska litteratursällskapet i Finland, 1985), 5–18.

<sup>372</sup> Estlander was one of the founders of the Finnish Association for Industrial Art in 1875. The founding of the *Konstflitförening* has been seen as a reply to the Fennomans, who took over the Society for Popular Education founded the previous year. According to Klinge, the associations represented also the differing views on industrial development, but also nationalisms of the liberals and Fennomans. The first had assumed a pragmatic, utilitarian approach which saw arts and sciences applicable by the industries. The Fennomans, on the other hand, viewed the industrial and material culture more sceptically, and aimed foremost at countering the negative effects by educating the people. Matti Klinge, 'Kansanvalistus vai taideteollisuus? Fennomanian ja liberalismien maailmankuvista sata vuotta sitten', in *Maailmankuvan muutos tutkimuskohteena: näkökulmia teollistumisajan Suomeen*, ed. Matti Kuusi, Risto Alapuro, and Matti Klinge (Helsinki: Otava, 1977), 148–58; Klinge, *Kejsartiden*, 268–72.

<sup>373</sup> Estlander, 'Om literär och artistisk egendom'.

dealing did “not yet exist”. On the contrary, the new law could only hinder the progress of arts in the country. Estlander noted that an important country like “England” had done well until 1862 without fine art copyright, so the Grand Duchy would not have any hurry in the matter. The law proposal, however, would most probably be approved, as it had already been presented and the neighbouring counties already had such law on literary and artistic property rights.

For Estlander, the problem with the law on authors’ rights lay in the way the label of property was imposed on artistic and literary creativity. Estlander acknowledged the importance of authorial protection in its pragmatic, contractual sense. He did not incorporate moral elements into the right, especially regarding artistic work, which was a common practice in Europe at the time.<sup>374</sup> Estlander hinted at the informal rules in place in the Grand Duchy, and in fact could not name a single instance when artistic work had been illegally copied in the country. Besides, should infringements take place, the public attention paid to this wrongful act would be corrective enough. Estlander acknowledged that with the rising value of the Finnish literary and artistic oeuvres, speculation would take place as it did elsewhere. Consequently, formal legislation needed to be set, but only for protecting against the reprinting of the material objects, not against the copying of author's ideas or ideals.<sup>375</sup> With the law project, however, the legislators were going beyond the material reality, and shaping and demarcating ideas into a *rättsobjekt*. They were fencing the free circulation of ideas, impeding literary and artistic exchanges, and harming the high ideals of the artists. In the future, Estlander warned, profit could be made with this kind of property as with “cabbage land or a potato plot”.<sup>376</sup>

Besides criticising the immaterial enclosures, which built obstacles for intellectual creativity in the developing Grand Duchy, Estlander also drew attention to the difficulties that the propertisation of ideas would bring. Estlander referred to the French law, where a “shaky basis” had been built, while the “legislator had abandoned the material form, and tried to make the

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<sup>374</sup> For instance, Estlander noted that it depended on the buyer of an original artwork, whether the artists could have the original to be used as model for another work. According to Rideau, in France during the whole of the nineteenth century, the rights that the artists possessed after having sold his work, depended largely on the contract made between the artists and the buyer. If no explicit contract was made, the rights were transferred completely. Frédéric Rideau, ‘Nineteenth Century Controversies Relating to the Protection of Artistic Property in France’, in *Privilege and Property: Essays on the History of Copyright*, by Ronan Deazley, Martin Kretschmer, and Lionel Bently, OBP Collection (Cambridge: Open Book Publishers, 2013), 241–54, <http://books.openedition.org/obp/1078> (retrieved 2 February 2016).

<sup>375</sup> For instance, Estlander doubted whether Shakespeare's work could have been seen "independent work" in regards to its predecessor's work or the Italian short stories. Estlander, ‘Om literär och artistisk egendom’, 116.

<sup>376</sup> Ibid., 110–21.

content [of the work] his object”. One example of the difficulties was the section in the Finnish law proposal which allowed the publication of variations of original work, if the new work could stand as an “independent work”. Estlander noted how the section, which had been removed from the German law, might leave the Finnish judges puzzled about whether the works of Shakespeare could have been originally published according to this section.<sup>377</sup> In other words, Estlander was worried about another shift that would take place with the reform: the right to define authorship or to discuss the qualities of a literary work was moving partly into the hands of new experts, the lawyers and jurists.

Even though the Authors’ Rights Committee of 1873 had included liberals close to the *Helsingfors Dagblad*, it was the newspaper itself that took over the views of Estlander and continued his criticism in its editorials on “the literary and artistic property right”. On 13 March, the newspaper published the talk by the journalist A. H. Chydenius which he had given on the matter as the representative for the town of Kajaani in the Burgher Estate.<sup>378</sup> Chydenius was on the editorial staff of the newspaper from 1863 until 1887. The editorial introduced the topic by noting how criticism had already been presented on the law proposal by “C. G. E.”. The editorial shared his concerns about this hasty and unnecessary reform in the Grand Duchy, while in many areas “copying and reproduction rights [were], for the time being, almost without any market value.” Two days later, a second editorial was published, in which the law proposal, mainly the discussion of the artists’ rights, was studied more in detail.<sup>379</sup> The newspaper found inconsistencies and ambiguities in the principle of artistic protection, emphasised the few incentives to copy and the lack of professionals who could even do the artistic copying<sup>380</sup>, and concluded that it would be best to give up of legislating on “works of art in this country”. The editorial wrote that it was “unnecessary to have traffic regulations for cities, where the inhabitants had to search for others to even meet up, however useful they might be in cities such as London and New York”.

The third part of the article series had to be awaited for six days. This delay was due to a fiery response sent to the newspaper by Z. Topelius, a member of the 1873 Authors’ Rights Committee, to which the newspaper then gave three replies explaining their criticism. In his

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<sup>377</sup> Ibid., 115–16.

<sup>378</sup> Den litterära och artistiska eganderätten I. Helsingfors Dagblad, no 70 (13 March 1877).

<sup>379</sup> Den litterära och artistiska eganderätten II. Helsingfors Dagblad, no 72 (15 March 1877).

<sup>380</sup> According to the newspaper, there were no copperplate engravers in the country, it was difficult to find a proper wood-engraver and the two lithographers of Helsinki were not known of illegal copying.

article “Should art and literature remain without legal protection?”, Topelius expressed his astonishment at the proposal that the country should postpone the legislation, in order to gain more experience, and leave writers and authors unprotected.<sup>381</sup> For Topelius, the aim of the law was to simply protect the work of the author, the fruit of his labour. This was the “idea-product” (*idéproduct*), which Topelius distinguished from ideas, which belonged to everyone. This was a difficult distinction to grasp, but even the sense of justice of common people agreed at least partially that the “idea-products” should belong to the author. Topelius noted that other legal principles existed, that had first been approved by the more “enlightened”, and then were taken on by “the majority of the people”. Topelius referred to the rights of inheritance for women, and the forest legislation: the latter could not be delayed until the “masses of the people” understood that a growing tree was property.

Topelius used the strong rhetoric of honest labour and stealing property. Authors and writers, who were “workers of ideas” (*idéernas arbetare*), had a right to their property, because every “craftsman, worker, had an unquestionable right to the fruit of his labour”. Topelius replied to the claims about the insignificant market value by presenting figures on the annual literary and artistic production. He noted that the Finnish market should be compared to foreign markets, but should look at its own dynamic: thirty years ago, the value of domestic literary and artistic production was close to zero, but today, it was at least 150 000 marks.<sup>382</sup> This was the production of the country's intellectual force that the law would protect. Topelius asked polemically what would the manufacturers of shingles or shoe-leather say, if their storehouse would be threatened by burglary every night, and the law would not deal with the matter at all.

Finally, Topelius reminded the newspaper of two aspects that had not been brought out by the critics of the law proposal. He noted that the authors also had their authorial name to defend, which was the most precious property they possessed. For instance, a literary author needed to control so that the publisher did not modify his work before it was published. And most importantly, the protective law would be a signal for the authors that their role was recognised in society, and therefore that literature and art were “societal questions” (*samhällsfrågor*).

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<sup>381</sup> Skola konst och litteratur stå rättslösa? Sent by ZT. Helsingfors Dagblad, no 78 (21 March 1877).

<sup>382</sup> According to Topelius, the annual value of artistic production was at least 50 000 marks, and the published domestic literature 100 000 marks (of which half generated from textbooks). The sum of 150 000 marks equalled the annual exports of fur in 1877, and can be contrast with the total exports with totalled 105 million marks. The state expenditure in 1877 was 37 million marks. *Annuaire statistique pour la Finlande de 1879*. Suomalaisen kirjallisuuden seuran kirjapaino, Helsinki 1878.



Finally, Topelius came to a topic that he had already discussed decades earlier, which was the international dimension of the author's rights. He emphasised the dangers of becoming a "stronghold of thieves" somewhere in the Baltic sea. This was very harmful to the development of national literature, as had been in the case of Belgium, and as had already been emphasised three decades ago. Moreover, the other countries, especially the neighbouring Sweden which had the most commercial importance, and a law on authors' rights, would treat the Grand Duchy prejudicially and aim, equally, to plunder its literature. Topelius finished his text with an emotional plea to join the advanced countries:

Should art and literature remain without legal protection in Finland, when the civilised Europe has given them civil rights? No, not a day longer than is necessary, because for every such day we stand a day behind our times.

Skola konst och litteratur stå rättslösa i Finland, medan det civiliserade Europa gifvit dem medborrätt? Nej, icke en dag längre än nödigt är, ty för hvarje sådan dag stå vi en dag efter vår tid.

The *Helsingfors Dagblad* already replied to the pseudonym Z. T. in the same newspaper, and noted how the esteemed writer had misunderstood their criticism: the idea had not been to reject the law as such, but to discuss it thoroughly, and see if it brought more benefit than harm.<sup>383</sup> There was no hurry to proceed with the matter. Moreover, the *Dagblad* blamed Topelius for building his reply on his and the committee's authority, and not directly criticising their article; thus, pedantic liberal deliberation encountered with Topelii affective reply<sup>384</sup>, that the *Dagblad* called *känslopolitik*. In their second reply on 27 March, the newspaper focused on the division between ideas and idea-products, which the newspaper found confusing: their conclusion was that the committee, at least, had not based their work on this division.<sup>385</sup> For instance, if the author's idea-product was his property, why was this property right only temporary—a question that the Fennomans had to answer some months later. The *Dagblad* returned to Topelius' example of a manufacturer of shingles. What would he say, the newspaper asked, if he was told that his storehouse was protected against burglary, but only for thirty years?

According to the liberal *Helsingfors Dagblad*, the authorial right in question was best understood as a monopoly, and that had been the approach of the Authors' Rights Committee too. A book was the property its purchaser, but the law prevented him from using it as a model

<sup>383</sup> Skola konst och litteratur stå rättslösa? Genmäle I. *Helsingfors Dagblad*, no 78 (21 March 1877).

<sup>384</sup> For deliberative debate culture and the *Dagblad* liberals, see Pekonen, *Debating 'the ABCs of Parliamentary Life'*, 53–56..

<sup>385</sup> Skola konst och litteratur stå rättslösa? Genmäle II. *Helsingfors Dagblad*, no 83 (27 March 1877).

for copying. The law enabled the selling or transferring of the monopoly, which gave it the features of property. Thus, the newspaper wrote, this property was not created by the writer or the artist, but the law-maker. The second reply was concluded with a citation from the speech by T. Macaulay on the British copyright in 1841—as noted above, the same speech had been used in the Fennoman newspaper *Uusi Suometar* just four years earlier.<sup>386</sup> The *Dagblad* took this example to show how it was worthwhile to reflect on the good and bad sides of the law, as had been done by “wise and respectable nations before us”. Finally, in the third reply, the newspaper countered the threat by Topelius of a Finnish stronghold of thieves and the unfavourable attitude of the foreign countries.<sup>387</sup> It noted that, besides the law, there were also other reasons why an author's work became protected, for instance, courtesy or publicity. Should the law process take more time, the situation of the authors would not be aggravated. As a conclusion, a clever example was used to show how Topelius had confused and dramatised the situation: even if the law would be approved in its current form, the newspaper wrote, it did not prevent someone from publishing “his rhymes under the pseudonym Z. T.”.

The idea of postponing the whole law project, not just the sections on artistic rights, for the near future was also expressed during the actual reading of the law. In the Law Committee of the Estates, it had been noted that there was no considerable need for such law, and it would turn out to be beneficial for the country to postpone the project. Later, the Grand Duchy could enjoy the “fruits of experience” gathered in other countries, and many mistakes could be avoided, as this legislative field was still “untrodden” in the Grand Duchy, and in the other countries had become only “recently trodden”. The Committee, however, advised proceeding with the process, while the initiative for the law had come from the writers and artists of the country, who best knew the needs of the current situation.<sup>388</sup> The question was explicated also in the Estate of Clergy by Dean Rosengren, who had been a member of the Law Committee. Rosengren explained that it first seemed to him that the law project should be postponed to gain more knowledge in the area, that it was of very recent nature even in the most “civilised countries”; in addition, Sweden was only then preparing a similar law. Rosengren, however, changed his mind, as he was assured that there was enough legislation available, and if the “tracks of Germany, Denmark or Norway” were followed, a “right solution could be found also

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<sup>386</sup> In the citation printed in the *Dagblad*, Macaulay noted how the question on copyright was not black and white, but grey, thus, contained benefits and disadvantages. The citation also included few insights on the nature of the literary monopoly, and how the public were taxed for rewarding the author.

<sup>387</sup> Skola konst och litteratur stå rättslösa? Genmäle III. Helsingfors Dagblad, no 85 (29 March 1877).

<sup>388</sup> Report of the Law Committee no 8 (Documents, 1877–1878), 4.

for our country”.<sup>389</sup>

The question of postponing the law project became concrete only in the Estate of Burghers, where it was proposed by the journalist A. H. Chydenius of the *Helsingfors Dagblad*, where the work of the committee had been recently reviewed and criticised. Chydenius repeated once again that he did not find the law to be unnecessary, on the contrary—he did not wish to hurry with such an important law, which was defective in its current state, however. With the votes at 25 to 17, the Estate decided to proceed with the reading. Besides proposing the rejection of the law proposal, Chydenius appeared as one of the ardent critics of the law proposal and the basis it was built on. According to Chydenius, who approached the author's rights from a utilitarian perspective, the law proposal tended to limit the free right to reproduce to the extent that it did not benefit much the authors and the artists. For instance, it automatically granted protection to literary work, regardless of how the author himself valued his work. The solution proposed by Chydenius was the fixed protection used in the British system, and the establishment of a system of registration. Chydenius's registration system was supported in the Estate of Nobility by Baron V. M. von Born, a wealthy and conservative landowner, who nevertheless spoke for civil liberties.<sup>390</sup>

For Chydenius, the system of registration was a solution for avoiding the kind of grey zones of protection, where authors did not gain extra income, but the literary works remained beyond the reach of the readers. The system of registration would make things clearer and more stable, as the claims to this right would be "on black and white", and it would "materialize" the right in the form of the document, as was the case with bonds. For example, a landowner could not himself investigate and decide the area he owned, so a system of registration had been developed to examine where the properties extended and who owned what. Chydenius viewed that it was in the interest of authors to make literary property into this kind of property: without the system of registration, buyers and sellers would not meet.<sup>391</sup>

In Chydenius' proposal, the author and his work would be protected only by registering. It was up to the author, whether he saw the protection to be valuable. Baron von Born suggested that

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<sup>389</sup> Minutes of the Estate of Clergy (1877–1878), 1759.

<sup>390</sup> Thomas Westerborn, 'Von Born, Viktor Magnus (1851–1917)', *Biografiskt Lexikon För Finland*, October 2007, <http://urn.fi/URN:NBN:fi:sls-5536-1416928958142>. (retrieved on 2 February 2016).

<sup>391</sup> Minutes of the Estate of Burghers (1877–1878), 1288–1293.

the works could be registered by the printing officials who controlled printing in towns or the magistrate, and then a central registry would be held by the Governor of Helsinki. There would be no costs, taxing this right was useless, and the writer had a period during which the work had to be registered: eight days at the place of publication, two weeks at the central office, two weeks for the western and eastern neighbouring countries, one month for Europeans, and two months for extra-European works. The process of registration should be simple; it would be via letter or telegram so as not to build obstacles for foreigners.<sup>392</sup> Chydenius also proposed that the right-holder needed to renew his right every five to ten years. The renewal helped to release unused work to the public domain, and as Chydenius had noticed, it was not too much to ask from the writer, who valued the benefits and income he received this right, to adapt to the "discomforts of registration".<sup>393</sup> Von Born called this threshold of registration as a "thermometer measuring the author's estimation of his own work".<sup>394</sup>

The idea of registering works of art and literature for gaining protection much resembled the institution of patents. This parallel was constructed by A. M. von Haartman, a manor owner and forester who supported von Born's views on the authorial registry. Von Haartmann defended the registry by noting that also the inventor of a new mechanism also had to apply for a patent to protect his invention against copying. It was fair that a writer, if he wanted to protect his literary activities, would also submit himself to the same resolutions.<sup>395</sup> In addition, von Born emphasized the similarity between patenting and authorial protection. According to him, both the patent and the authorial right protected the productive process.<sup>396</sup> The parallel between patents and copyright was also made in the Estate of Burghers, not to support the registry, but to elaborate on the definition of the right. Representative G. Tengström found it absurd to call the right in question "a property right of the writers and artists", while the right was limited in time. For Tengström, both copyright and patents were creations of positive law—they were rewards for the praiseworthy work by an author or an inventor, and aimed at encouraging these activities.<sup>397</sup>

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<sup>392</sup> Minutes of the Estate of Nobility (1877–1878), 148–150, 152.

<sup>393</sup> Minutes of the Estate of Burghers (1877–1878), 1288–1293.

<sup>394</sup> Minutes of the Estate of Nobility (1877–1878), 162.

<sup>395</sup> Minutes of the Estate of Nobility (1877–1878), 159.

<sup>396</sup> A patent granted the inventor an exclusive right to perform a mechanical labour in a certain way, copyright an exclusive right to present the author's thinking in a certain way. Minutes of the Estate of Nobility (1877–1878), 163.

<sup>397</sup> Minutes of the Estate of Burghers (1877–1878), 1310–1322.

The Estates rejected the idea of the system of registration, and it was voted down by clear majorities. However, the idea of registry and the parallels with patenting forced the representatives to discuss in more detail what was meant by authors' rights. As noted at the beginning of this chapter, the author's rights also included certain formalities with which the authors had to comply, especially in the early nineteenth century, but were increasingly rejected towards the end of the century.<sup>398</sup> This rejection was strong especially in France and Germany; as van Gompel writes, the German Act of 1870 followed the thinking that formalities could be set only if there was a real public need for them.<sup>399</sup> The formalities were not required for establishing the authorial right, while it was viewed that the work and its protection were intimately tied to the personality of the author.<sup>400</sup> The formalities were central to authorial protection, not only in the United States and Great Britain, for instance, where they formed a logical part of the copyright system, but also in continental countries such as Italy and Spain.<sup>401</sup>

In the Estates, the system of registration was first opposed due to practical inconveniences. The head of the National Statistics Karl F. Ignatius, a Fennoman member of the Burghers, noted that the system of registration would be impractical and would only bring expenses. If needed, Chydenius' proposal could be considered in the future, but so far there had been no difficulties in knowing who the owner of certain work was.<sup>402</sup> J. V. Snellman found the proposal of a registry to be astonishing and noted ironically how such a system that did not exist anywhere else<sup>403</sup>, was needed particularly in the Grand Duchy, where there was an abundance of literary authors. Snellman was also doubtful about registering paintings properly: how could the work be described and named so well, that the artists would not need to hand in a copy of the work to the register.

Second, it was recalled that the literary and artistic rights that stemmed from the person of the

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<sup>398</sup> Gompel, 'Copyright Formalities'.

<sup>399</sup> Ibid., 177–78.

<sup>400</sup> The German legal thought on intellectual property has been examined in chapter 2.3. Ibid., 183–84.

<sup>401</sup> In the US, Italy and Spain, certain formalities such as depositing the work were necessary for gaining the right. In the UK, no complaint could be filed before the book was registered. According to the Italian law of 1882, works of art also needed to be deposited, in the form of a copy or a photograph. Ladas, *The International Protection of Literary and Artistic Property*, 35–38.

<sup>402</sup> Minutes of the Estate of Burghers (1877–1878), 1321.

<sup>403</sup> Here, Snellman referred to the system of registration proposed by von Born. As noted above, there were registering formalities in other countries. Even in Russia, the author had to comply to the censorship formalities to have his authorial rights protected. Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 18–19; Elst, *Copyright, Freedom of Speech, and Cultural Policy in the Russian Federation*, 66–69.

author were not compatible with the idea of registering. Already the Law Committee had reminded everyone of how the registering system would be a considerable limitation to the authorial right in question. For Th. Rein, a Fennoman Professor of Philosophy in the Nobility, the most important reason for refusing a registry was that the author's right should exist even without formalities. The right was "a natural right belonging to the author", which was "recognized by a sense of justice" and was now to be confirmed by law.<sup>404</sup> R. Montgomery agreed with Rein, and noted how the registering system proposed by von Born and Chydenius did not fully recognise the principle that was at the basis of the law, and the authorial right itself could not depend on the registering formalities.<sup>405</sup> In terms of the connection to patents, Montgomery added that the similarity between the two was illusory. A patent right regarded the process for producing material objects, a method which anyone could appropriate only by seeing the product. This differed from the creative labour of the writers and artists, where the person of the author was more central.<sup>406</sup>

Thus, this individualist-utilitarian criticism, as well as the proposal of a system of registering the work, were rejected by the Fennoman and liberal factions, who saw the founding principle to be rather in the author's person and the labour he had carried out. The work of the liberal Authors' Rights Committee, however, was also criticised among the Fennomanian ranks. According to the Fennoman view, the committee had discredited these authorial *property* rights by settling on the shorter protection (life-time and thirty years), and by not calling the right a property right. Already in January 1877, several months before the reading, the Fennoman newspaper *Uusi Suometar* had taken a brief look at the topics to be discussed at the Assembly of Estates. The newspaper wrote, in complete opposition to C. G. Estlander's analysis presented above, that the law proposal on authors' rights was "very important", and that the need for such a law "was probably clear to everyone".<sup>407</sup> The newspaper emphasised that the author had invested "the capital" in the literary work, and its copying by someone else would be mere stealing. The "literary property right" needed to be protected like any other property right. No notice was given to the role or the rights that the public might possess.

At the Assembly of Estates, the strong rhetoric of private property was used by the Fennoman

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<sup>404</sup> Minutes of the Estate of Nobility (1877–1878), 154–155.

<sup>405</sup> Minutes of the Estate of Nobility (1877–1878), 157–158.

<sup>406</sup> Reservation by Montgomery in the Law Committee (1877–1878): Report of the Law Committee no 8 (Documents, 1877–1878), 32–35; Minutes of the Nobility (1877–1878), 162.

<sup>407</sup> Katsahdus waltiopiäiwille annettuihin esityksiin. *Uusi Suometar*, no 15 (31 January 1877).

representatives. It has to be underlined that the question, indeed, was of a rhetorical nature, and partly a mere oppositional position against the liberal Authors' Rights Committee of 1873. None of the Fennomans dared to propose perpetual protection, only the extension of the protection term from thirty to fifty years, which appeared to some as a completely arbitrary choice. In the Estate of Clergy, the debaters kept arguing for and against the preference of fifty years over a protection of thirty years. For instance, Professor of Didactics Z. Cleve saw the extension necessary for defending "our sense of justice", whereas Dean T. T. Renvall found thirty years to be enough to secure a reasonable remuneration for the family of the author.<sup>408</sup> Dean Rosengren reminded the debaters that if the right in question was truly a property right, and the interests of the public were not considered, should not the protection be extended to one hundred years and over? Rosengren himself opted for thirty years, while he saw literary works as only temporary in the ever-changing "ocean of knowledge".<sup>409</sup> The dispute well exemplifies how the models of the major foreign countries framed the decision-making, while the protection terms of thirty and fifty years were the most common in use. In fact, in the Nobility, the protection period of fifty years was defended by referring to the term of fifty years in Sweden, as well as in France and Denmark.<sup>410</sup>

Still, even though it was of little practical importance, the occasion could be used to stand in favour of the sanctity of private property. The strongest rhetoric was heard in the Estate of *Bonde*, which was the only Estate to propose that the title of the law should be changed ("on literary and artistic property right"). The floor was taken first by major figures of the Estate E. Avellan and A. Meurman, who again noted that the literary property right was among the major questions debated by the Estates. Avellan criticised the Authors' Rights Committee of 1873 for not having equated the authorial right with "other property rights". The Authors' Rights

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<sup>408</sup> Renvall argued that it was important that God-inspired thought would be revealed at some point to the public—if the protection was too long (50 years), the publishers could set the price of the work high, which would be an obstacle for the readers. On the other hand, 30 years were sufficient for providing enough revenue for the writer and his family. Notably, Renvall had used straight-forward utilitarian vocabulary at the previous Assembly of 1872. Minutes of the Estate of Clergy (1877–78), 1763–4.

<sup>409</sup> Minutes of the Estate of Clergy (1877–78), 1761, 1759.

<sup>410</sup> A protection term covering the life-time of the author plus fifty years had been taken to the resolution of the Conference of Brussels in 1858. This was the protective term set in France (1866) and Russia (1857), and it had been recently assumed by several other countries. A post-mortem period of eighty years was adopted in Spain in 1879. In other countries, the period ranged between ten to thirty years: for instance, the German law of 1870 had adopted a period of thirty years. The other Nordic countries had adopted a protective term of fifty years, and Sweden was finishing its legislation at the time of the Finnish debates. At the time, only two countries granted a perpetual protection to the literary authors: Mexico in its Civil Code of 1871, and Guatemala, after the law of 1879. Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 11–12, 45–46; Ladas, *The International Protection of Literary and Artistic Property*, 33–35. Minutes of the Nobility (1877–1878), 170.

Committee had valued the works of literature and art as “superior than the fruits of physical labour”, and for this reason, had deprived the writers and artists of their “full property right”. Avellan objected to this view, and noted that he did not see that the public possessed any right over these works, just as he himself had no “right to the products of someone's physical labour”. Instead—and this was crucial to the Fennomans—it was beneficial for the public that strong literary property rights existed, which belonged “naturally” to the author. As Avellan explained, literature and the arts were necessary to the existence of the nation, and legal protection for the authors was “the natural” way to support their development.

Agathon Meurman, one of the leaders of the Fennoman faction, was as strong in his rhetoric. During the inspection of the protective term, Meurman noted that the Estate of *Bonde* did not have much literary property to defend, but instead it had the “ideal [aate] of property” to be defended. Meurman continued by saying that, like Avellan, he had not noticed any difference between “ordinary tangible property and this kind of intellectual/mental [*henkinen*] property”.<sup>411</sup> He marvelled at the view that the public would have some sort of right to the author's work. This was, however, nothing new: the socialist parties were making similar claims about land as these “literary communists” were about literary property. Meurman reminded them what would happen to agriculture if the landowner was told that he would lose his land after 40 years because the public interest so demanded. The literary property rights needed to be secured like any other kind of private ownership, which was conserved as inviolable precisely for the sake of the public. Moreover, this was the only way to make literature prosper. Importantly, Meurman extended his reasoning to translations when he criticised his fellow representatives who thought that it was beneficial for the Grand Duchy not to grant any protection to foreign literary works.<sup>412</sup>

The Fennomans in the other Estates took a more moderate position in the question, however, underlined also the property-like nature of the right. History professor G. Z. Forsman, the leader of the Fennoman faction, acknowledged that there were considerable differences between

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<sup>411</sup> Minutes of the Estate of *Bonde* (1877–1878), 1196–1199.

<sup>412</sup> Meurman agreed that it would be truly profitable for the Grand Duchy, if foreign translations were not protected. He added, however, that this would be morally dubious: someone who had nothing could say, “I proclaim stealing permissible, for nobody can take anything from me, but I can take from all of the others”. Moreover, Meurman doubted whether the “Finnish people” dared to negotiate on reciprocity with other countries with such a proposition. The rhetoric of stealing was used also by the Fennoman K. F. Ignatius of the Burghers, who viewed that a free translation right, proposed by the Law Committee, was justifying theft: the thief only needed to “dress” the work differently. Minutes of the Estates of *Bonde* (1877–1878), 1199–1200; Minutes of the Burghers (1877–1878), 1315–1316.



normal property rights and the right in question, as the literary authors could not appropriate the actual ideas, which travelled freely between countries, and which were given to the public for their enjoyment. The actual authorial right, which was the property of the author, then, regarded the formal work. To this, the public did not have any greater right than it had to “other private property” —just five year earlier, Forsman had found excessive protection harmful to the public!<sup>413</sup> Forsman also hinted at the dangers of socialism and noted that individuals would become lacking in motivation if they could not turn over the fruits of their “honest labour” to their descendants. An exception to this principle had been made by all countries by limiting the duration of the right, but Forsman emphasised that this should not blur the true nature of literary property. Law professor K. G. Ehrström agreed with Forsman that the right under discussion “was a real property right [*verklig eganderätt*]”.<sup>414</sup> Ehrström repeated, once again, the classic division between ideas and their composition<sup>415</sup>, and described how the latter was produced by the author:<sup>416</sup>

It is not the property right to ideas, that is the issue here, but rather the composition of ideas, that a text includes, and this composition is the writer's own; it is his property. He has acquired the property right to it through the labour of his mind, in a similar way, as every producer of a material thing has acquired the property right to it by his labour—provided naturally, that the material has been his own.

[D]et är icke om eganderätten till tankarne, som här är fråga, utan om den sammanställning af tankar, som en skrift innebär, och denna sammanställning är författarens egen; det är hans egendom. Han har förvärfvat sig eganderätt dertill genom sin andes arbete, på samma sätt, som hvarje producent till ett materielt ting har genom sitt arbete förvärfvat sig eganderätt dertill – förutsatt naturligtvis, att materialet har varit hans eget.

In the Fennomanian thinking, then, the public had a different role. In fact, there was no bargain between the author and the public, as there was in the liberal interpretation. As was underlined once again in an article published by J. V. Snellman in the Fennoman *Morgonbladet* during the reading of the law proposal, the shorter protection term being advocated by the liberals only benefitted the speculative publishers.<sup>417</sup> On the contrary, it was in the interest of the public that the author's interests were strongly protected. This made the authors compete and surpass the already existing literature, and led to the production of better national literature, which could be, ultimately, enjoyed by the public. National literature and literary politics had an important

<sup>413</sup> See chapter 2.3; Minutes of the Estate of Clergy (1877–1878), 1753–1757.

<sup>414</sup> Minutes of the Estate of Clergy (1877–1878), 1757.

<sup>415</sup> Sherman and Bently, *The Making of Modern Intellectual Property Law*, 45–46.

<sup>416</sup> Minutes of the Estate of Clergy (1877–1878), 1757.

<sup>417</sup> Lagutskottets Betänkande angående författares och konstnärs rätt till alster af sin verksamhet. *Morgonbladet*, no 244 (19 October 1877).

role in the thinking of Snellman and the Fennomans; national literature helped the elite in their task of educating the people, who could then take their place in the developing nation.<sup>418</sup> Another way of supporting the development of literature, and especially the Finnish language itself, was to provide translations. For instance, in the early 1870s, the Finnish Literature Society, according to the proposal of its president Snellman, drafted a list of important European literary to be translated into Finnish, to further develop and stabilise the use of the language. G. Z. Forsman, who succeeded Snellman in 1874, shared this approach, but put a greater emphasis on supporting the Finnish literature proper, with the help of literary prizes, for instance. This support was not for just any literature, but literature that had moral and cultural integrity.<sup>419</sup>

Even though the property-like nature of the right was highlighted, the Fennomans still held to the temporal limits. Curiously, the main explanation for this were practical considerations. According to Meurman, as the time passed, nobody would know who was the original proprietor of the literary work anymore. Consequently, the work could be appropriated by the first party to find it, a principle similar to the first occupancy of material objects.<sup>420</sup> In a similar way, Representative Avellan argued that extending protection to one generation of descendants should be enough. After this generation, it would be “burdensome to follow [the passing of the property right] from one generation to another”.<sup>421</sup>

Secondly, limiting the right was possible because the value of the work could not be defined as perpetual, but at a fixed sum. Professor Forsman noted that the financial value of the work had to be defined at the moments of selling or inheriting the literary property. When the price was calculated, it could not be defined according to some possible value in the far future, but had to be determined for a shorter period. Because of this short perspective on which the payments were based, the descendants would not benefit from perpetual literary property, and thus in all legislations a *terminus ultimus* had been set.<sup>422</sup> Not related directly to the question of perpetual duration, some representatives thought that the value of the literary work diminished with time,

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<sup>418</sup> According to Karkama, the two articles published by Snellman in *Morgonbladet*—another article was published on the following day on the matter of translations—were his final, broader statement on literature in the nation. Pertti Karkama, *J.V. Snellmanin kirjallisuuspolitiikka*, Suomi 144 (Hki: Suomalaisen kirjallisuuden seura, 1989), 254–59.

<sup>419</sup> Sulkunen, *Suomalaisen Kirjallisuuden Seura 1831-1892*, 160–61, 179–82, 201–7. For Snellman's views on proper literature, see, for instance, Karkama, *J.V. Snellmanin kirjallisuuspolitiikka*, 95–120, 203–9.

<sup>420</sup> For the theory of first occupancy, see Becker, *Property Rights : Philosophic Foundations*, 24–31.

<sup>421</sup> Minutes of the Estate of *Bonde* (1877–1878), 1197–1198.

<sup>422</sup> Minutes of the Estate of Clergy (1877–1878), 1754–1755,

or as Rosengren said, in this world which was becoming more and more fluid, many works were only momentary. Representative Puha of the *Bonde* noted how the value of books diminished—in contrast to fields and forests—with the development of the mankind.<sup>423</sup>

Thirdly, professor K. G. Ehrström and other representatives, commented that the process of taking the literary work to the public domain was similar to expropriation.<sup>424</sup> In principle, the literary property right had no limit, and if it was appropriated by the public, some sort of compensation needed to be paid to the author. A system of expropriation had not yet been established, because the field of authors' rights was a new field. Ehrström was, however, sure that the legislation on authors' rights in civilised countries would leave these "unjust time limits behind" and develop towards a perpetual property right. However, he concluded:<sup>425</sup>

But we here in Finland cannot think of the possibility that we would be the first among nations to take such a step. We will, of course, follow the traces of the others and we also will set a time limit, after which the author will be dispossessed of his property right for the benefit of the public.

Men vi kunna icke här i Finland tänka på möjligheten att taga ett sådant steg främst bland nationerna, vi få väl följa dem i spåren och äfven vi fixera en tidpunkt, då författaren eller hans rättssinnehafvare skall beröfvas denna sin eganderätt till förmån för det allmänna.

As the system of perpetual literary property was not yet attainable, Ehrström also explained that it was practical to limit the duration of the right. With the passage of time after the death of the author, it was "almost impossible" to identify who had the right to the work, when it had been inherited by many and been passed on from person to another. Notably, the system of registration had been defended by Chydenius with similar arguments, while a registry would solve this problem and help to identify the current right-holder.

Finally, to conclude this section, we will examine the criticism of the weak translation right. The Authors' Rights Committee of 1873 had proposed a short, conditional right, whereas the Law Committee of the Assembly had removed the right completely from the law proposal. The liberals, such as the chairman of the Authors' Rights Committee R. Montgomery, criticised the

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<sup>423</sup> Minutes of the Estate of Peasants (1877–1878), 1198.

<sup>424</sup> For instance, Professor of Philosophy Th. Rein considered that the taking of the work to public domain was an act of expropriation. According to Rein, the law-maker had found that this expropriation could take place at this particular moment, while the writer or his right-holder had been fully compensated for his work. Minutes of the Estate of Nobility (1877–1878), 154–155.

<sup>425</sup> Minutes of the Estate of Clergy (1877–1878), 1757.

Law Committee, and spoke in favour of the work of his own committee. Montgomery justified his views in favour of a translation right of a total of eight years.<sup>426</sup> According to Montgomery, these shorter terms had become a sort of *jus gentium* of the field. Besides, it was important to allow similar protection for both domestic and foreign authors, and not to protect the translations into domestic languages in a different way, as Ehrström had proposed. Most importantly, the liberal Montgomery underlined the benefits that a short translation right had for the public of a bilingual country. Every citizen should have the possibility to evaluate and judge that what his fellow citizens had said in public.<sup>427</sup> Thus, the short translation term would help to overcome the language barriers in the country—a matter in which the liberals sought to remain neutral. As another liberal of the Nobility, factory owner R. Björkenheim<sup>428</sup> noted, it was important, to ensure peace, that the people as a whole knew what was happening in the country, despite of their linguistic differences.<sup>429</sup>

As noted already, the Estates extended the translation right of the domestic authors. Again, the Fennomans were speaking in favour of this solution, which was based on Ehrström's objection, that aimed at securing the property rights of the domestic authors. In a bilingual country, this was an important source of income for the author, in some cases even more important than the right to the original. J. G. Geitlin, the head teacher of the Finnish-speaking classical high-school in Hämeenlinna, and also an author of several textbooks, noted that in the case of a textbook published first in Finnish, the Swedish translation would reach a much larger readership.<sup>430</sup> The Fennoman representative also brought forward the fact that the two areas of national literature were different, and especially the authors writing in Finnish needed support. Even though this was not a very central feature of the discussion, some politicised the question by hinting that the weak translation rights were an attempt to marginalise the Finnish language. According to Snellman in an article published in the Fennoman *Morgonbladet*, the liberal translation rights would break down the delicate balance between the two literatures, while the (poor) authors writing in Finnish would be challenged by the Swedish translations of their work.<sup>431</sup> Forsman suggested in the Estate of Clergy that this “draconian” translation term had been proposed

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<sup>426</sup> The author could reserve the translation right first for three years, and when the translation was published, the right was extended for another five years.

<sup>427</sup> Minutes of the Estate of Nobility (1877–78), 188–190.

<sup>428</sup> Robert Björkenheim. *Helsingfors Dagblad*, no 29 (31 January 1878).

<sup>429</sup> Minutes of the Estate of Nobility (1877–78), 192–193.

<sup>430</sup> Minutes of the Estate of Clergy (1877–78); Dödsfall, Johan Gabriel Geitlin (1836-1890). *Finlands allmänna tidning*, no 164 (19 July 1890).

<sup>431</sup> Om det sätt, hvarpå Finska litteraturens gagn afses i förslaget till “förordning angående författares och konstnärs rätt till alster af sin verksamhet”. *Morgonbladet*, no 245 (20 October 1877).

because some feared that Finnish-language radicals would not otherwise publish their work in Swedish.<sup>432</sup>

One central reason for extending the translation right to domestic work that was brought forward in all the Estates was simply that this right already existed and was respected in the country, even though no law existed. Even Montgomery himself noted that free translation rights would be a step backwards. Moreover, as noted by the Fennoman Ignatius, not only the domestic authors, but also the foreign authors were asked for permission to translate their work, which they had gladly given.<sup>433</sup> Many emphasised that a shorter protective term could only lead to translation of weak quality. In the Nobility, Af Schultén pointed at the Swedish literary market, which was full of bad translations. Again, the debate that took place in the press became referenced at the reading. In the Nobility, B. O. Schauman referred to a recently published article by the pseudonym ZT (Topelius), where he defended the translation right, the “other half of literary property”.<sup>434</sup> Schauman supported Topelius' view that the translation right was important for the reputation of the author, and was also a way of preventing translations of bad quality from being published. It could be noted that the article by Topelius led, again, to a short quarrel with the liberal *Helsingfors Dagblad*, which defended the free translation right on its pages.<sup>435</sup>

## 2.5 Conclusion: A Nordic pirate bay with strong domestic property rights?

The new law on authors' rights came into force in January 1881, and was in general greeted with welcome. The Fennoman *Uusi Suometar* presented the law on “artistic and literary property” as a project of the Finnish Party, and very successful and significant for the young Finnish literature. One aspect, however, required further attention. This was the rights of the foreigners, especially the Swedes.<sup>436</sup> The Scandinavian neighbours had not received any special

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<sup>432</sup> Minutes of the Estate of Clergy (1877–1878), 1770–1771.

<sup>433</sup> Minutes of the Estate of Burghers (1877–1878), 1315–1318.

<sup>434</sup> Schauman read direct quotations from Topelius' article published two days earlier in the *Hufvudstadsbladet*. Öfversättningsrätten vid Landtdagen. Hufvudsatdsbladet, no 237 (11 October 1877).

<sup>435</sup> The newspaper particularly pointed at the inconveniences for the circulation of texts that resulted from the strong protection. The article by the *Dagbladet* was followed by Topelius' reply in the same newspaper. Topelius emphasised that in its current form, the law was about to deprive the author of a right that was already recognised in the country. Om öfversättningsrätten. Helsingfors Dagblad, no 286 (20 October 1877); I frågan om öfversättningar, no 288 (22 October 1877).

<sup>436</sup> Uusi asetus kirjalllisesta ja taiteellisesta omistusoikeudesta. Uusi Suometar, no 26 (2 February 1881); See also: Asetus kirjailijain ja taiteilijain oikeudesta työnsä tuotteihin. Valvoja, no 1 (1 January 1881).

position in the law, but had functioned as an important influence, and found their place in the debates on the author's rights. The protection period of 50 years was justified by the Swedish, or Scandinavian, relations<sup>437</sup>, and in addition, it was constantly emphasised that the Swedish publishers were considerable actors in the Grand Duchy. As *Uusi Suometar* noted, an agreement with Sweden would be an "important complement for the law in question" and this was a view shared by many. The convention and its role for the Finnish literature and literary trade had already been discussed in January in *Valvoja*, a bi-monthly journal of the moderate, liberal Fennomans.<sup>438</sup> The journal reported that the Swedish government had raised the question of establishing an agreement on authors' rights with the Grand Duchy. Sweden was again significant, as in the very early debates on illegal reprinting.

Even though the question had been officially raised, agreements with Sweden or any other country were never signed.<sup>439</sup> The law on authors' rights only protected the work of foreigners residing and publishing in the country, and consequently, the "stronghold of thieves" envisaged by Topelius was taking shape.<sup>440</sup> The pseudonym Z. T. would speak actively in favour of domestic and foreign authors' rights in the coming years as well.<sup>441</sup> However, with this decision, the Grand Duchy was only taking the side of the Scandinavian countries, where translation rights covered only domestic languages or Scandinavian dialects. Moreover, the Scandinavian bloc, where reciprocal protection had been set in 1879, only reluctantly joined the international Berne convention signed in 1886: Norway was the first to join in 1896, whereas Denmark and

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<sup>437</sup> For instance, in their report to the Emperor, the Estates justified the protection of fifty years by the situation in Sweden, while the Swedish "literary relations had a special meaning for our country". Response of the Estates to the Imperial proposal no 3 (Documents, 1877–78), 2–3

<sup>438</sup> Sopimus Ruotsin kanssa kirjallisesta omistusoikeudesta. *Valvoja*, no 2 (15 January 1881).

<sup>439</sup> The Senate asked the Finnish Literature Society about the possible convention with Sweden and Norway. In early February, the Society formed a committee to study the matter, and gave its statement in March, where it emphasised how the law of 1880 was not complete without a convention with the western neighbours. The Society, finally, gave its statement in early April. *Finska litteratursällskapets sammanträde i går*. *Hufvudstadsbladet*, no 28 (4 February 1881); *Finska litteratursällskapets månadssammanträde i går*. *Hufvudstadsbladet*, no 51 (3 March 1881); *Finska Litteratursällskapets utlåtande*. *Hufvudstadsbladet*, no 78A (5 April 1881).

<sup>440</sup> Section 32 of the Law of 1880.

<sup>441</sup> In 1888, another debate took place between Z. T. and *Helsingfors Dagblad*, when Topelius blamed the newspaper of the plundering of Ibsen's *The Lady from the Sea* by publishing it on its pages. Topelius criticised the double standards of the law of 1880, which protected only domestic authors. In its reply to Topelius, *Dagblad* reminded that this was a common practice, and the criticism could have been pointed at any newspaper. Also, they did not have anything against such conventions, on the contrary. *Litterär eganderätt*. Finland, no 295 (16 December 1888); *Något om internationell litterär eganderätt I and II*. *Helsingfors Dagblad*, nos 23 and 25 (25 and 27 January 1889).

Sweden joined only in 1903 and 1904.<sup>442</sup> The independent Finland would only join the Convention in 1928, despite the warnings of the national publishing association about the great costs that the international cooperation would bring about.<sup>443</sup> Thus, the Finnish publishers benefitted from the (pirate) translations of foreign literature since the late nineteenth century. It seems, however, that at least the major foreign authors, or their publishers, were contacted for permission to translate.<sup>444</sup>

The Grand Duchy had carefully considered the examples of the more advanced countries when drafting the 1880 law on authors' rights. At the same time, domestic practices that regulated reprinting had already formed under the regime of censorship, especially in relation to the Swedish market. This might stand behind the developed "sense of justice" regarding illegal reprinting among the people that was highlighted in the later debates. The disagreement with the Russian Empire over the press laws created a legal void for authors' rights, which served as an impetus for drafting a law in the field. The work of the liberal Authors' Rights Committee of 1873 was integral to the law of 1880, and combined the "latest" German legal thinking with an interest in defining the positions of the authors, in particular, as well as the public, and the publishers, in the process of publication. In the early 1870s, the views of the commentators did not greatly differ, but the author's rights appeared as a relatively neutral, perhaps unknown field. The work of the Authors' Rights Committee would stand as a landmark for the later debate: it was the role of the public that caused controversy among the political factions.

In 1877, during the actual legislative process, the individualist and utilitarian views, which referenced the British copyright tradition, were ruled out. This criticism, as well as the proposal to base the authorial right on a system of registering, pushed the debaters to reflect on the nature of the right, in relation to patents, for instance. The liberal faction, with law professor Montgomery, the chairman of the Authors' Rights Committee of 1873 at its head, emphasised the bargain between the public and the authors. The right derived from the person of the author, but the public had also a claim, for cultural and political reasons, on the ideas that the authors

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<sup>442</sup> Ricketson and Ginsburg, *International Copyright and Neighbouring Rights*, 82–83; Fredriksson, *Skapandets rätt*, 196–98; Karnell, 'De nordiska strävandena', 30–31; John Ask, *Om författarerätt företrädesvis enligt svensk lagstiftning* (Lund, 1893), 95–96.

<sup>443</sup> The publishers managed to secure some of their earlier "rights" in the Berne Convention. A clause was included in the Finnish treaty, which allowed the publishers to reprint translations that had been published before joining the Convention, even if the author's permission had not been asked. Häggman, *Paras tavara maailmassa*, 365–70; Jarl Hellemann, 'Kustannustoiminta kansainvälistyy', in *Suomennoskirjallisuuden historia. I*, ed. H. K. Riikonen et al. (Helsinki: Suomalaisen Kirjallisuuden Seura, 2007), 344–45.

<sup>444</sup> Hellemann, 'Kustannustoiminta kansainvälistyy', 340–44.

had rendered public. The Fennomans, on the other hand, distinguished themselves in the course of the 1870s as the party defending private property rights; the Authors' Rights Committee had rejected the vocabulary and the view that the law regarded literary *property*. The Fennomans considered that the public had no direct claim over the work, which was the result of a poor author's honest labour. Moreover, the shortening of the duration of the right only benefitted the speculating publishers, not the public. Instead, by securing the authorial property right, the public could enjoy of the fruits of the blossoming national literature and arts, and this was the task of the country's authors and artists.

In the following chapter, we will look at another area of intellectual property rights—patents. The regulations for inventor protection followed similar tracks as seen in this chapter. The inventors' rights developed in the actual practices between the inventors and the state bureaucracy to a very important extent. Moreover, foreign examples, and especially foreign inventors played a central role in the formation of the Finnish patent institution, and as with the literary sphere, it is possible to speak of a Swedish-Finnish market of innovations. However, due to their different character, the patent legislation already was much more tied to the interests of the state, and in fact remained as an administrative area managed by the state until the late nineteenth century. The detachment of patents from the hands of the Emperor became a common aim for the political factions in the late century. This detachment was made easier by the lobbying of the industrial circles for a law reform. It was claimed that the reform would follow the example of the more industrious nations, their universal principles in the field, which allowed a more transparent application process and fixed protection, and would lead to the growth of innovation in the country.



### 3 Patenting the Nordic periphery in the late nineteenth century: Between foreign innovation and geopolitical concerns

The reforming of the law on literary and artistic authors' rights coincided with a reform in another major area of (what we call today) intellectual property rights—the patent law. In contrast to the law on authors' rights, the industrial creator's rights—a parallel drawn in both public debate and scholarly literature—were first codified in an administrative decree in 1876. This “decree on patent-right” mainly confirmed existing practices, which had developed in patent administration since the first invention privileges were granted in the 1830s. Conceptually, the handful of patents that were approved annually around the mid-century were part of the state economic policies and its apparatus of privileges. These invention privileges were granted according to the estimated benefits to the country, rather than the novelty or originality of the invention. The applications were approved by the Economic Division of the Senate, the “government” of the Grand Duchy, but scientific and technical experts, with a double role in the state apparatus and the modernising civil society, gave their opinion on the inventions.

At the same time, the Grand Duchy became increasingly influenced by the patent cultures of its western neighbours. With the expansion of the European innovation market in the late century, the Nordic area also caught the attention of foreign inventors for business opportunities and strategic interests.<sup>445</sup> The Grand Duchy found itself at the corner of this area: in the 1870s, Swedish inventors outnumbered the Finnish patentees inside the Grand Duchy<sup>446</sup>, the Swedish patent bureaus were active in serving customers in the country, and the patent decree of 1876 was almost a direct copy of the contemporary Swedish patent statute. Moreover, common principles, and even universal regulations for patenting, were sought internationally from the early 1870s, which led to the signing of the convention for the protection of industrial property in Paris in 1883. In this context, the patent legislation of the Grand Duchy became viewed as outdated and even harmful for the industrial development of the country. Following the common principles of the field would increase patenting in the country, as had taken place

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<sup>445</sup> Myllyntaus, ‘Patenting and Industrial Performance in the Nordic Countries, 1870-1940’; Bjørn L. Basberg, ‘Amateur or Professional? A New Look at Nineteenth-Century Patentees in Norway’, *Scandinavian Economic History Review* 63, no. 1 (2 January 2015): 24–44; Kero, ‘Ulkomaalaisen teknologian patentointi’.

<sup>446</sup> In the Grand Duchy, between 1870 and 1880, 70 percent of all patents were granted to a foreign applicant. Of the foreign patentees, 60 percent were Scandinavian, mainly Swedish. *Förteckning öfver patent beviljande inom storfurstendömet Finland åren 1833-1900* (Helsingfors: Osakeyhtiö Weilin & Göös Aktiebolag, 1900).

elsewhere. The patent legislation of the Grand Duchy was ultimately reformed in the 1890s, and the first patent law came into force in 1899.

This chapter studies the formation of the Finnish patent area in the nineteenth century, during which the apparatus of invention privileges was replaced by a more universal system of patenting. The chapter first traces the development of the patent institution of the Grand Duchy from the first administrative Decree of 1876 to the Patent Act of 1898. It shows how the foreign legislative examples and the steps taken in international cooperation as well as the actual practices of patenting, in which foreign applicants had a major role, influenced the development of the Finnish patent legislation. Secondly, the chapter looks at the actual shift from the privilege-oriented inventor's protection to the view that all novel inventions were to be protected on equal terms. This shift was, as will be shown in the third section, promoted by the technical and industrial circles that were politically close to the Liberals of the country. These individuals were key actors in the domestic patent institution, participated in the patent reform, and were well aware of the practices of invention protection abroad.

Finally, the chapter explores the actual legislative process, which led to the approval of the first patent law of the Grand Duchy by the Emperor Nicholas II in 1898. The process caused less disagreement between the political factions than the case of the author's rights had done. This resulted, on the one hand, from the non-political, specialist discourse behind the patent reform, and on the other hand, from the favourable stance of the political factions towards the reform, which granted the nation-state a prominent role in managing the patent rights. Moreover, the reform took place a decade after the literary reform, at a time when the Empire had accelerated its policies of imperial integration. The patent law reform also became part of this political conflict, which regarded the competences of the Finnish Assembly of Estates within this field of law. This chapter shows how not only the universalistic discourse of patenting, but also the national tradition of the author's rights were used to back up the cause of the Finnish side. In fact, even though some more cautiously, all of the Finnish parties saw the reform as welcome, as it established another administrative area based on territoriality, which further distinguished the Grand Duchy from its Empire.

### 3.1 Foreign influences and the patent legislation of 1876 and 1898

In the Grand Duchy, the first decrees on invention privileges were pronounced in the mercantile spirit of the seventeenth and eighteenth century, a time when the Finnish area was part of the Kingdom of Sweden.<sup>447</sup> In general, the invention privileges granted temporal monopolies that were aimed at attracting new technology in the realm of the sovereign. The first written expressions of the principles of patenting are generally found in the Venetian statute (1474) and the British Statute of Monopolies (1623). In Sweden, a decree was given in 1739 on manufacturing and handicraft privileges, which contained the rules that would remain in force until the first patent decree of the Grand Duchy in 1876. According to the Decree, the monarch could give a privilege to anyone who had invented or found a "useful and new *fabrique*, machine, or work method" that was not known or used in the land. Furthermore, if this new invention was shown to be of great importance for the industry, the inventor would get a just reward based on its utility, if he allowed the invention to become public.<sup>448</sup> The Decree was further specified in the Act of Union and Security of 1789. The king then assured everyone, especially the burghers, that no privilege or monopoly could be granted on commerce, handicrafts, or techniques that were already known, practised, or could be practised.<sup>449</sup>

The Decrees of 1739 and 1789 remained in force after Finland was annexed to the Russian Empire in 1809. The power to decide on privileges was thus transferred to the new monarch, the Emperor of Russia and the Grand Duke of Finland. When the first invention privileges were applied in the early 1830s, the Senate of the Grand Duchy began to handle their approval. Even though the Finnish patent system mainly leaned on public announcement, the officials conducted also a certain kind of examination of the applications. The Senate had to make use of the little technical expertise available in the country, and asked for statements from other state officials and the Finnish Economic Society. In the early 1840s, the main patent organ became the Directorate of Manufactures (*Manufakturdirektionen*), a state bureau created to promote technical education and the development of the country's industries.<sup>450</sup>

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<sup>447</sup> In 1668, a decree was made about the privileges regarding the *Handtverkshuusen*, the handicraft workshops. Article 21 of the decree stated that anyone who had introduced a previously unknown invention in the country could be granted a privilege for its use. Infringement of the privilege could result in confiscation of the protected article and some penalty.

<sup>448</sup> J. N. Lang, *Om grunderna för uppfinnareskydd genom lag: akademisk afhandling* (Helsingfors: J. C. Frenckell & Son, 1880), 34–36; Aro, 'Keksintöprivilegit Suomen suuriruhtinaskunnassa', 18–19.

<sup>449</sup> Haarmann, 'Suomen ensimmäiset patentit (English summary)', 23.

<sup>450</sup> *Ibid.*, 24–27.

The early nineteenth century, similarly to the legislation on author's rights, saw the establishing of patent legislation in the major European and American countries. Galvez-Behar notes how this first period was followed by the drafting of laws in the British and French colonies from the mid-century onwards, and in the late century, an acceleration in the diffusion of the patent legislation took place.<sup>451</sup> In the Grand Duchy, the first attempts to have a separate patent law, or to reform the existing regulations of invention protection, were heard with the convening of the Assembly of Estates in the early 1860s. In 1859, the Senate received an order from the Emperor to prepare a list of reforms that could not be passed as administrative reforms, but required the approval of the Assembly of Estates. The order was the consequence of the reform policies that had started in 1856, which aimed at the economic modernisation of the country.<sup>452</sup> The current patent institution, which had its formal regulations in the Decree of Manufacturing and Handicraft Privileges of 1739, was part of this economic reform, and was included in the reform list presented by the Senate in May 1861.

The patent issue was treated in the section on “Questions of general economic interest”<sup>453</sup>, and found its place in the question 52, subsection *m*, which was the second-last of all the issues found on the Senate's list. It asked what were the terms according to which a “patent right (*patenträtt*), or the right, by excluding all others, to make and assign the produce belonging under the patent” was issued and could be made use of.<sup>454</sup> The terms were to be set so that useful inventions would be encouraged, but competition with older (“worn”, *slite*) inventions would not be hindered. A protest had been presented in the Senate. Three senators argued that the patent issue should not be handed to the Estates. Patent law was, and had always been, an administrative issue only, and the law could be reformed by the government alone. As we will see, this question about the nature of the patent law—a simple privilege or an extensive (property) right—would become a key aspect in later discussions on patenting.

The January Committee, an assembly formed of the Estates to prepare the first actual Assembly of Estates, went through the Senate's list of reforms. The discussion about patents remained

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<sup>451</sup> According to Galvez-Behar, of the territorial patent laws in force in 1901, half had been established between 1880 and 1900. Gabriel Galvez-Behar, ‘The 1883 convention and the impossible unification of industrial property’, 2014, 3–5, <https://halshs.archives-ouvertes.fr/halshs-01009953/document> (retrived on 2 March 2016).

<sup>452</sup> Kekkonen, *Merkantilismista liberalismiin*, 38–44, 91–94.

<sup>453</sup> “Allmänna hushållningen rörande frågor”

<sup>454</sup> *Kejserliga Senatens Protokoll för den 4 Maj 1861 angående de 52 frågor, hvilka komma att föreläggas deputerade utaf landets fyra stånd* (Helsingfors: Frenckell & Son, 1861), 56–57.

short. First, the protest presented in the Senate, that patenting belonged to the sphere of administration only, was recalled. Second, Baron Carpelan urged that a law on patents needed to be drafted and read by the Estates. He reminded everyone of how there was currently no real patent law, and that patenting was based on the Decree on Manufacturing Privileges of 1739. Carpelan insisted that the Patent Office should oversee novelties and decide on the duration of the patent. However, the practicality or utility of the invention could be judged only by the inventor. Consequently, the law needed to be drafted “in a thoroughly liberal spirit”.<sup>455</sup>

By a vote of 26 to 19, the January Committee decided to propose that Decree of 1739 should be reformed. The Committee did not see the matter as very urgent, and placed it within the second class of “less burning questions”.<sup>456</sup> The proposal, however, did not bring any results.<sup>457</sup> The patent law reform was not very urgent as a functioning patent administration was in place which could handle the few yearly applications; until the 1850s, six or fewer patents were granted yearly, in the 1860s the number ranged between three and ten patents and in the 1870s, it finally passed the number of ten annual patents.<sup>458</sup>

As with printed work, the protection of new technology also became a significant international question, as the innovations and machines could travel beyond national borders. Similarly to the author's rights, the protection granted to inventors was based on national laws. For the inventors, however, the need for international agreements was not as pressing as it was for literary authors, as patenting consisted of a formal process that the foreign inventors could often take part in by naming a representative in the country. In fact, already in the 1860s, the major countries had removed all substantial restrictions against foreigners applying for and obtaining a patent.<sup>459</sup> In contrast to the author's rights, which were protected as part of the network of bilateral agreements, only two bilateral trade treaties made by Austria-Hungary also concerned

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<sup>455</sup> *Protokoller förda i det Utskott af Finlands fyra stånd, som till följd af Hans Kejsersliga Majestäts Nådiga Manifest af den 29 Mars (10 April) 1861 sammanträdde i Helsingfors, den 20 Januari-6 Mars 1862* (Hfors: Kejsersliga Senatens Trycker, 1862), 607.

<sup>456</sup> *Ibid.*, 694.

<sup>457</sup> Aro, ‘Vuoden 1876 patenttiasetuksen syntyvaiheista’, 604–6.

<sup>458</sup> *Ibid.*, 603.

<sup>459</sup> Prussia had a discriminatory system against the applications coming outside the *Zollverein* until 1877. Japan was a considerable exception in the matter of foreigners' rights. Between 1885 and 1899, foreigners were not allowed to obtain patents in the country. Yves Plasseraud and François Savignon, *Paris 1883. Genèse du droit unioniste des brevets* (Paris: Litec, 1983), 82–83; Stephen P. Ladas, *The International Protection of Industrial Property*, Harvard Studies in International Law / Ed.: Manley O. Hudson 2 (Cambridge, Mass, 1930), 33.

patenting.<sup>460</sup> The international innovation markets that developed during the second half of the nineteenth century were coordinated by a growing number of patent agents who could help the foreign applicants, and increasingly also the domestic inventors, with local patent culture and its formalities.<sup>461</sup>

The harms and inconveniences of the national system of patenting provoked criticism and demands for both the harmonisation of the legislations and international cooperation. In some cases, the inventors could not apply for a patent in a country while the invention was deemed not-new, because of a previous application elsewhere.<sup>462</sup> The national laws were also insufficient against industrial espionage and the copying of inventions abroad.<sup>463</sup> The question of the unification of the patent laws was raised in the 1850s soon after the first international expositions. The situation escalated before the International Exposition of Vienna of 1873. The Americans announced that they might not participate in the fair, because no protection was offered to the inventions participating in the Exposition, and that the conditions for patenting the inventions in the Austro-Hungarian Empire were discriminatory. The conflict eased, while the inventions presented at the exhibition were granted protection until the end of the year, and a specific patent congress was called to work on a draft agreement on cooperation in the field.<sup>464</sup> A positive resolution for patent protection was signed in Vienna, and functioned as the beginnings of international cooperation in patenting.<sup>465</sup>

It has to be noted that despite the pro-patent resolution in Vienna, the benefits of patenting were constantly questioned, which played a role in how the international cooperation, and the negotiations for the conventions of the late nineteenth century progressed.<sup>466</sup> In fact, partly due to the practical difficulties caused by the national laws, the usefulness of patent protection was

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<sup>460</sup> The agreements that were signed in the nineteenth century concerned reciprocity over trademarks or industrial design. The two agreements were the Treaty of Commerce of 1881 between Germany and Austria-Hungary, and the Customs Convention of 1876 between Austria-Hungary and Lichtenstein. *Recueil des traités, conventions, arrangements, accords, etc. conclus entre les différents États en matière de propriété industrielle* (Berne: Bureau international de la propriété industrielle, 1904), 13–14; Ladas, *The International Protection of Industrial Property*, 54–58.

<sup>461</sup> Pretel and Saiz, ‘Patent Agents’.

<sup>462</sup> Ladas, *The International Protection of Industrial Property*, 31–32; Edith Tilton Penrose, *The Economics of the International Patent System* (Baltimore, 1951), 67–71.

<sup>463</sup> Plasseraud and Savignon, *Paris 1883*, 120–22.

<sup>464</sup> For example, there was an obligation to produce all of the parts of the invention in the Empire within one year of the granting. *Ibid.*, 125–33.

<sup>465</sup> *Ibid.*, 123–54.

<sup>466</sup> Gabriel Galvez-Behar, ‘Controverses et Paradoxes Dans l’Europe Des Brevets Au XIXe Siècle’, in *Innovations, Réglementations et Transferts de Technologie En Europe Du Nord-Ouest Aux XIXe et XXe Siècles*, ed. Jean-François Eck and Pierre Tilly (Villeneuve d’Ascq, France: Peter Lang, 2011), 35–51.

broadly debated in Europe between 1850 and 1875. As Machlup and Penrose write, it seemed at the height of the debate that the anti-patent movement would triumph and patent systems would be weakened or abolished.<sup>467</sup> Consequently, Switzerland remained without any patent law until 1907, in spite of the insistence by the country's engineers, and the Netherlands had its patent law abolished between 1869 and 1912. Both countries activated the laws due to international pressure.<sup>468</sup> Anti-patent views were strong especially among economists, whereas the patent laws were defended by engineers, industrialists, and patent lawyers. The arguments and counter-arguments were divided between patents as harmful monopolies, on the one hand, and the rights of the inventor, on the other.<sup>469</sup>

According to Machlup and Penrose, the pro-patent opinions became dominant (however, not overwhelming) and national protective measures were reintroduced due to the financial crises of 1873 and the waning of free-trade ideals in the 1870s.<sup>470</sup> This interpretation has been challenged and developed in a recent article by Lang, who suggests that the triumph of the pro-patent movement in Germany was an important part of the strategy by lawyers and engineers to demarcate the borders of their professions. Moreover, the industrial interpretation of patent protection for which these groups lobbied, in contrast to the views of inventors and economists, would be endorsed by the state administration and certain political factions.<sup>471</sup> As this chapter will show, this interpretation also seems appropriate in the case of the Grand Duchy, where the ties between the political realm and the bloc closest to industrial-legal circles appear very intimate.

Finnish historiography has not really studied the role of anti-patent opinions in the Grand Duchy. According to Laisi, the attitude towards patents and invention protection was positive, and there was basically no resistance similar to that of Western Europe at all.<sup>472</sup> This does not seem to be entirely correct. On the whole, there was no extensive public debate on patenting before the first patent decree, which was approved in 1876. Anti-patent arguments were

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<sup>467</sup> Fritz Machlup and Edith Penrose, 'The Patent Controversy in the Nineteenth Century', *The Journal of Economic History* 10, no. 1 (May 1950): 1–2.

<sup>468</sup> For the British context, see MacLeod, *Heroes of Invention*, 249–79.

<sup>469</sup> Machlup and Penrose, 'The Patent Controversy in the Nineteenth Century'.

<sup>470</sup> *Ibid.*, 5–6.

<sup>471</sup> Markus Lang, 'The Anti-Patent Movement Revisited. Politics and Professionalism in Nineteenth-Century Germany', in *Professionen, Eigentum und Staat: europäische Entwicklungen im Vergleich: 19. und 20. Jahrhundert*, ed. Dietmar Müller and Hannes Siegrist, *Moderne europäische Geschichte*, Bd. 8 (Göttingen: Wallstein Verlag, 2014), 230–49.

<sup>472</sup> Laisi, 'Näkökulmia patentti- ja rekisterihallituksien', 74.

reported in the newspapers, but the existence of an anti-patent league is not apparent; the newspapers mainly wrote about anti-patent opinions elsewhere, without commenting specifically on the Finnish situation.<sup>473</sup> For instance, in 1863 the liberal *Helsingfors Dagblad* published an article “on patent legislation” which had been picked up from an anonymous German journal.<sup>474</sup> The article portrayed patents as publicly-paid monopolies, which were granted as a matter of coincidence to the first applicant who had anyway built his work on the accomplishments of others. The text concluded that critical views on the whole institution had appeared in England, France, and Germany, and it seemed that patenting should belong to the early phases of the history of innovation.<sup>475</sup>

The low patenting activity in the country and the international atmosphere did not encourage proceeding with extensive reforms before the 1870s. After this, the views on patenting turned positive, but as noted above, were still shadowed by the anti-patent views. In August 1873, the liberal *Helsingfors Dagblad* reported on the first international patent congress of Vienna in a hesitant tone.<sup>476</sup> The newspaper noted that there were fewer participants in the congress than had been expected because of the important but controversial nature of the patent question. The newspaper noted that the majority of the participants were industrialists and engineers, and shared the pro-patent views of its president, W. Siemens. The *Dagblad* wrote of how the congress had been hurried during its last days, which had resulted in an incomplete and partly illogical resolution. The *Dagblad* cited an anonymous “foreign newspaper” which rejoiced over this “defective piece of work”, which meant that the opinions of the opponents, even though a minority, had been effective. In 1875, an article series defending the role of patent laws was published in the *Helsingfors Dagblad*. However, the text did not manage to counter the anti-patent argumentation it discussed very well.<sup>477</sup> In 1880, in his dissertation on protection for

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<sup>473</sup> Om Patenträtten. *Helsingfors Dagblad*, no 86 (16 April 1863); Patent-lagstiftningen i England. *Helsingfors Tidningar*, no 208 (8 September 1865).

<sup>474</sup> Om patent lagstiftningen (Efter ett tyskt blad.). *Helsingfors Dagblad*, no 291 (15 December 1863).

<sup>475</sup> In its review on latest foreign law reforms, the *Journal of the Finnish Lawyers* presented the recent abolition of the Dutch patent law in a positive tone. It included an extract from Rolin-Jacquemyn’s article published in the *Revue de droit international*, where an 1862 report by Michel Chevalier was cited. The citations noted, for instance, how “legislation on patents is currently harmful for industry”. *Nyare utländsk lagstiftning. Juridiska föreningens i Finland tidskrift*, Sjunde årgången (1871), 313-314.

<sup>476</sup> *Helsingfors* den 31 Aug., *Helsingfors Dagblad* no 236 (31 August 1873).

<sup>477</sup> Om patenter. Patentlagens inflytande på industrien och samhället. *Helsingfors Dagblad*, no 236 (31 August 1875). For instance, the argument that patents were creating obstacles for innovation and the development of industries, the article merely stated how these kind of obstacles were found also in other areas of property rights: it gave an example of someone cultivating a new piece of land. Should there be someone more capable of cultivating – which would be more beneficial for the society – he could not take over the land unless the first owner sold the land to him.



inventors, legal scholar Joel Napoleon Lang reviewed recent anti-patent opinions, and even though he strongly endorsed patent protection, Lang noted the relative role of a patent institution for smaller nations.<sup>478</sup>

The early 1870s brought patents back to the political agenda of the Grand Duchy, however, first in relation to literary property rights. During the literary property debate in 1872, law professor Montgomery hinted at extending the law on literary and artistic property to also cover patents. In 1874, one year after the patent congress of Vienna, the Finance Department proposed that the Senate prepare legislation on patents. The Department noted that the industrial life of the country had lately been developing strongly, and questions about patents and the exclusive use of inventions were often brought out. However, a "complete and up-to-date" law was missing.<sup>479</sup>

The Senate ordered the Directorate of Manufactures, the *de facto* patent official, to draft a proposal for a patent law, following what had been done in the field in the neighbouring countries. After five months, the Directorate had finished its work, based mainly on the Russian and Swedish patent laws of 1833 and 1856. The Senate made final modification to the law proposal, mainly steering the decree towards the Swedish patent law.<sup>480</sup> In fact, the first patent law of the Grand Duchy, the Decree on Patent Rights, pronounced in March 1876, was a mere copy of the Swedish Patent Act of 1856. As noted by the Professor of Law and Economics Joel Napoleon Lang, the patent decree corresponded to the Swedish statute of 1856 "to a great extent word for word".<sup>481</sup>

The Patent Decree of 1876 stated that a patent created a right for its holder (*innehafvare, omistaja*), who during the term printed in the patent letter, by excluding others, could use in Finland the invention and "bring about the manufacturings" for which the patent was granted. Furthermore, the patent right was the legal property (*egendom, omaisuus*) of its holder, and could be inherited by or transferred to others.<sup>482</sup> A patent could be given to new inventions of

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<sup>478</sup> Lang reviews Michel Chevalier's text *Les brevets d'invention contraires à la liberté du travail* (Journal des Économistes, Mai 1878). Lang, *Om grunderna för uppfinnareskydd genom lag*, 81–90, 168–69.

<sup>479</sup> Aro, 'Vuoden 1876 patenttiasetuksen syntyvaiheista', 606.

<sup>480</sup> Ibid., 606, 616. Also Kero agrees, that the Swedish law served as the main model for the law. For a general comparison between the Finnish, Swedish and Russian laws, see Kero, 'Ulkomaalaisen teknologian patentointi', 127–30.

<sup>481</sup> Lang, *Om grunderna för uppfinnareskydd genom lag*, 167.

<sup>482</sup> However, the changes in the ownership had to be reported to the Directorate of Manufactures which then presented it to the Senate to decide on. 11 §, Förordning angående patenträtt i Finland, no 8 (30 March 1876).

"handicraft, industry or art" (technique) or to improvements of old inventions<sup>483</sup>, and was in force from three to twelve years depending on the nature and importance of the invention. The patent could only be granted to the inventor of the invention or to a foreigner who had patented the same invention abroad. The application was to be sent to the Senate, but the examination process was not further described; the task of registering the patents was given to the Directorate of Manufactures.

Finally, the duties of the patentee and the cases of dispute were regulated. The announcement procedure and a yearly duty of proving that the invention was ("fully") applied remained in place.<sup>484</sup> In the case of possible misuses—someone falsely acting as the inventor, patenting a known invention in Finland or abroad, or an invention that would be a threat to public security, health or against common morality—legal action needed to be taken before one year and one night had passed since the third announcement of the patent in the official newspaper of the Grand Duchy. The appeal period of one year and one night was a peculiarity that was not found either in the Swedish nor the Russian law.<sup>485</sup>

According to Aro, the new legislation basically confirmed existing practices. It introduced novelties mainly by decreeing the application process and legal proceedings in patent matters.<sup>486</sup> Some changes, however, can be noted, if the Decree is compared to the early regulations set by the Directorate of Manufactures in the 1840s, when patenting in the Grand Duchy was initiated. For instance, the role of the inventor had become more central—authorship was respected not only in the Grand Duchy but also abroad—and the condition of the utility of the invention no longer appeared in the Decree of 1876. The Decree, however, did soon face criticism and claims that it was outdated. Legal scholar J. N. Lang presented an extensive inquiry in his doctoral dissertation in 1880. He criticised especially the unsatisfactory examination, short patent terms, and some potentially dangerous loopholes. In addition, Lang could not find any reason why the period of litigation had been set to one year and one night and not to cover the whole patent

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<sup>483</sup> Inventions that could not be patented included medicine and inventions which were against law, public security or "good manners".

<sup>484</sup> The first demonstration of application had to be given after two years of the approval. The Senate could shorten it to one year or extend to four years. 10 §, *Förordning angående patenträtt i Finland*, no 8 (30 March 1876).

<sup>485</sup> Aro, 'Vuoden 1876 patenttiasetuksen syntyvaiheista', 616.

<sup>486</sup> *Ibid.*, 617.

term. Lang concluded that the law was unsuitable and had to be reformed.<sup>487</sup>

The criticism of the new decree on patenting derived largely from comparative observations. The contemporaries of the Grand Duchy were aware of the steps taken in international cooperation, and also of the national reforms initiated at that time; for instance, in the dissertation of Lang (1880) on the principles of inventor protection, one of the few contemporary works on the question of “literary, artistic and industrial creator’s rights (*upphovsmannarätt*)”, Lang studied and compared foreign patent institutions and their functioning.<sup>488</sup> The criticism of the Finnish legislation was built on these views and the report by the Swedish patent committee of 1878, which had reviewed their own patent statute of 1856—the current Finnish decree—that required reformation.<sup>489</sup> At the same time, in its practical work, the patent institution tackled foreign practices, as the officials processed applications mostly by foreigners: during the record year (in applicants) of 1874, only one patent was granted to a Finn, and thirteen to foreign inventors.<sup>490</sup> In addition, as we see in the following chapter, a rise in the activities of Swedish patent agents was visible.

After the Patent Congress of Vienna, negotiations were continued for broader international cooperation in the area, for instance at the meetings in Paris in 1878 and 1880. This process led to the creation of the Paris Convention of the Protection of Industrial Property in 1883, which set the principles of equal national treatment and right of priority<sup>491</sup> for the Union members.<sup>492</sup> Notably, the convention mainly regarded the fair treatment of all applicants in the Union, and

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<sup>487</sup> The requirement for compulsory use within two years was inadequate: the current law made it possible to patent an invention and fill the requirement by only using it abroad and, thus block the domestic industries from using the patent. Lang, *Om grunderna för uppfinnareskydd genom lag*, 173–80.

<sup>488</sup> Lang, *Om grunderna för uppfinnareskydd genom lag*.

<sup>489</sup> For instance, *Ibid.*, 118. In their report, the Swedish committee first looked at the recent legislative developments and the functioning of the current patent institutions in Great Britain, United States, France, Belgium, Austria-Hungaria, Germany, Denmark, Norway, Finland (which had the same legislation as currently in Sweden). ‘Betänkande angående patentskydd äfvensom skydd för mönster och modeller samt varumärken’ (Stockholm: Samson & Wallin: Samson & Wallin, 1878), 5–22.

<sup>490</sup> *Förteckning öfver patent*, IV–V.

<sup>491</sup> The first application date could be used for later applications in the Union countries during a period of six months.

<sup>492</sup> The Convention also established the International Bureau of the Union for the Protection of Industrial Property, which in 1893 would merge with the International Bureau of the Berne Convention (for the Protection of Literary and Artistic Works of 1886), into the United International Bureaux for the Protection of Intellectual Property. Plasseraud and Savignon, *Paris 1883*, 155–209, 276–78, 405–8; Ladas, *The International Protection of Industrial Property*, 73–85; Galvez-Behar, ‘The 1883 convention and the impossible unification of industrial property’.

fixed the national patent institutions as the basis of patent protection.<sup>493</sup> It is not clear whether the Finns participated in the international meetings. However, representatives from Finnish industries and commerce participated in the exhibitions where the patent congress of 1873 as well as the patent and literary congresses of 1878 took place.<sup>494</sup> For example, Rudolf Kolster, an engineer, lecturer at the Polytechnic, and patent attorney who later took part in the work of the significant Patent Committee of 1889, visited the Exhibition of 1873 and probably the Congress taking place.<sup>495</sup>

Similarly to the issue of literary and artistic author's rights, the question of patenting was also reviewed in the light of Nordic cooperation. A common patent area was discussed at the Nordic Jurist Meeting held in Copenhagen in August 1881.<sup>496</sup> The meeting welcomed nine participants from the Grand Duchy, including the major liberal figure law professor R. Montgomery, who had been influential in the 1870s in the legislative process on authors' rights.<sup>497</sup> The topic was introduced at the meeting by District Judge Gustaf Ribbing from Stockholm in his presentation "on the prerequisites for obtaining uniform patent laws for the Nordic countries".<sup>498</sup> Ribbing noted in his presentation how in the 1870s, after the anti-patent critique, the patent institution in its territorial form had been well-rooted—a major example being the German law of 1877—and attempts for international cooperation had been also made, especially since the Vienna Congress of 1873. Ribbing acknowledged that it seemed currently improbable, due to the experiences at the Paris meeting of 1880, that uniformity among the legislations could be achieved internationally. However, it seemed that more cooperation could take place between neighbouring countries. This was true especially in the case of the Nordic countries, which were too small to become closed patent areas, but at the same time, were in a "lively and daily increasing economic contacts".<sup>499</sup>

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<sup>493</sup> For instance, the Convention stipulated that the patents remained independent of each other. A patent granted, or rejected, in one country did not automatically mean its approval, or rejection, in another member country. Penrose, *The Economics of the International Patent System*, 60–74.

<sup>494</sup> Smeds, *Helsingfors - Paris : Finlands utveckling till nation på världsutställningarna 1851-1900*.

<sup>495</sup> Hytönen, *Kolster Oy Ab 1874–1999*, 21–25.

<sup>496</sup> The recent fourth Scandinavian national-economic meeting also expressed the desire for common Nordic legislation regarding trademarks and patents. Accounts of this fourth Nordic jurist meeting were given in the pages of the Finnish newspapers. Det fjerde skandinaviska national-ekonomiska mötet. Morgonbladet, no 173 (1 August 1881). Nordiska juristmötet. Helsingfors Dagblad, no 234 (30 August 1881); Fjerde Nordiska juristmötet (according to Stockholms Dagblad) II. Morgonbladet, no 202 (3 September 1881).

<sup>497</sup> *Forhandlingerne paa det fjerde Nordiske juristmøde i Kjøbenhavn 25.-27. August 1881* (Kjøbenhavn, 1882), Bilag VIII.

<sup>498</sup> Published also as a separate print, G. Ribbing, *Om förutsättningarna för erhållande af öfverensstämmande patentlagar för de nordiske länderna* (Stockholm: A. L. Normans Boktryckeri-Aktiebolag, 1881).

<sup>499</sup> *Ibid.*, 12–13, 5–12.

Ribbing then went over the differences between the current Nordic laws, which to him seemed reconcilable, and concluded with a proposal for the principles on which the Nordic laws could be built in the future.<sup>500</sup> In contrast to the author's rights, there was no great enthusiasm for Nordic cooperation in the field of patents. In fact, despite the lively discussion, no common resolution was made by the meeting. This was, however, partly due to the lack of time, which had led to many of the participants leaving already before the patent theme was under discussion.<sup>501</sup> Even though it had regional importance, patenting was not a particularly Nordic matter, and the countries had differing interests. The Danish representative Hørring noted that although he espoused the proposal for a common Nordic law, as far as the basis of the law was concerned, it was more important to turn attention towards Germany. Between 1878 and 1880, fifty-four Danish patents had been granted to Germans, compared to only twelve to Swedes and eight to Norwegians, and in general, the Danish inventors first sought protection for their inventions in the south where the market was more extensive.<sup>502</sup> As a result, the Nordic countries adhered to the Paris Convention at an early stage, again in contrast to international cooperation in literary matters; Sweden and Norway adhered to the Convention already in 1885, and Denmark in 1894. Finland joined the Convention only in 1921, after its independence in 1917, but in practice followed the Nordic bloc in the matter, as the patent law reform of the 1890s assumed principles that would have allowed international cooperation in the field.

In the Grand Duchy, the need for patent reform was discussed at the Assembly of Estates in the 1880s. The issue was raised in the Estates of Nobility and Burghers, where the current Patent Decree was condemned as out-dated and inadequate from the perspective of the Finnish industries. In 1882, a petition proposal was handed in the Estates of Nobility by Alfred Rosenbröijer, a civil engineer who had received his degree in Karlsruhe, Germany. Rosenbröijer suggested modifications to two sections of the Patent Decree, to put the sections in line with the "liberal tendency, which altogether permeates the Decree".<sup>503</sup> According to Rosenbröijer,

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<sup>500</sup> For instance, the Swedish patent reform aimed at setting a system of announcement, whereas in Norway and Denmark, the opinions were more in favour of a system of preliminary examination of the applications. According to Ribbing, Sweden saw examination, in principle, as welcome, however, it was concerned about having qualified authorities for the task. In his conclusion, Ribbing proposed five features on which the Nordic patent institutions should be built: the novelty of the inventions should be examined, the annual patent fees should increase progressively, if the public interest required, obligation to grant licences should be set, and the patent trials should take place in the capitals of the Nordic countries. Ribbing also proposed that a right of priority should be given to the applicants in the Nordic countries. *Ibid.*, 18, 23–24.

<sup>501</sup> *Forhandlingerne paa det fjerde Nordiske juristmøde*, 196.

<sup>502</sup> *Ibid.*, 179–80.

<sup>503</sup> Minutes of the Estate of Nobility (1882), 45.

the patent term needed to be fixed, while the future potential of an invention was foreseen in a complicated way, and it also needed to be longer, as the current minimum protection of three years was too short for creating publicity and generating sales. Rosenbröijer used the example of the United States, where the patent term had been set at 17 years (however proposing a protection of 15 years). Rosenbröijer also proposed that the patent fees should be paid in yearly shares, because a lump sum would be too great a sum for a "poor worker, who had maybe made a useful invention, to pay at one time".<sup>504</sup>

The petition proposal was followed by a short discussion. Instead of commenting on the actual modifications, the representatives turned their attention to the nature of the law: did patenting belong only to administrative matters? This was the view of Representative Fredrik Pipping, a private lawyer with family in academia and high public administration. He noted that Rosenbröijer was asking for a law proposal for the next Assembly of Estates, even though the modifications regarded a decree which belonged to the competences of the Emperor only. Pipping's view was rejected by the Liberal Senator Leo Mechelin, who agreed with Pipping that a law proposal aimed at changing the patent decree was impossible. However, in Mechelin's view, patenting did not only belong to the administrative sphere. According to him, patent law included "such questions that it would be perhaps more correct, that at least the main lines of such a decree would be produced as by the way of general legislations.", that is, with the contribution of the Estates.<sup>505</sup> The petition was finally sent to the Law and Economy Committee, where it did not receive any further comments.

In 1888, the patent question was discussed in the Estate of Burghers. Factory-owner Johan Nissinen, the first to install a telephone line in Finland in 1877, petitioned the Emperor to found a committee to prepare a new patent law for the next Assembly of Estates. According to Nissinen, the Decree of 1876 had during the past 11 years proven to be unsuitable, as holding a patent right was expensive and the protection that it granted was very questionable.<sup>506</sup> He claimed, for instance, that those accused of patent infringements could easily be freed from their responsibility, if they showed that the invention had been known or used in the country or

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<sup>504</sup> Minutes of the Estate of Nobility (1882), 46.

<sup>505</sup> "Patentlagen ingår på sådana frågor, att det måhända vore riktigare, om åtminstone gruddragen af dylik författning skulle i den allmänna lagstiftningens väg tillkomma." Minutes of the Estate of Nobility (1882), 102.

<sup>506</sup> The high patent fees and the short protection term had also been criticized at the general meeting of industrialists in Oulu of 1887. Viides yleinen teollisuuden harjoittajain kokous Oulussa. Uusi Suometar, no 146 (29 June 1887).

elsewhere at the time of the application. Nissinen saw that the insecure position of the patent-holders had caused many inventions to remain unknown to the industries of the country.<sup>507</sup>

Again, the nature of the law was debated. The petitioner added that even though the previous decree was of an administrative nature, for the sake of coherence, the new patent law required the approval of both the Assembly of Estates and the government. Nissinen pointed to a section of Burgher privileges from 1789, but especially to the "act on literary and artistic property rights<sup>508</sup>" of 1880, which was "of a similar nature" to the patent law and had been read and approved by both "state authorities" (*statsmakter, valtiovallat*). Representative Elving supported the petition and brought forward more flaws in the current patent law, for example, the assessment of novelty of the invention carried out by the authorities; according to his own experiences, there were inventions that had been patented abroad, "in Sweden, Russia, Germany, England, France, America among others", but not in the Grand Duchy, because the Finnish patent office had doubts about their novelty.<sup>509</sup>

The petition was not forwarded to any committee, because it was remarked that the Senate was already preparing a law proposal for the next Assembly of Estates.<sup>510</sup> This preparation had three steps. First, the Finance Department of the Senate had asked the Industrial Board<sup>511</sup>, the patent office of the country, to comment on the weaknesses of the current patenting procedures. Second, a Patent Committee was founded to draft the law proposal. Third, before the Senate completed the final law proposal, the regional governors and their manufacturing associations made statements about the proposal of the committee.

The Industrial Board handed its report to the Department of Trade and Industry of the Senate

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<sup>507</sup> Minutes of the Estate of Burghers (1888), 257–258.

<sup>508</sup> Nissinen explicitly uses the wording literary and artistic property rights for the act, even though the term property became omitted from the actual name of the act. See chapter 2.4.

<sup>509</sup> Minutes of the Estate of Burghers (1888), 258–259.

<sup>510</sup> Minutes of the Estate of Burghers (1888), 285.

<sup>511</sup> The Directorate of Manufactures and the administration of mining were unified under the Industrial Board in 1884. Similarly to the previous institutions, it was responsible for regulating and controlling as well as reporting on and developing the industries. The Industrial Board acted as the patent official of the Grand Duchy until 1918. Its ordinance stated that the Board had to examine and decide on the patent applications and take over the task of overseeing the patent announcements and the exercise of patented inventions. In addition, the secretary, from 1890 onwards the chief accountant (*kamreeri*), of the Industrial Board was ordered to register the approved patents and trademarks and take care of the archives of the Board. 5 §, 33 §, Ordinance for the Industrial Board, no 23 (13 November 1884). Patentti- ja rekisterihallitus, *Patenttien Vuosikymmenet* (Helsinki: Patentti- ja rekisterihallitus, 1992), 76.

in December 1888.<sup>512</sup> The members of the Board would be active in the patent reform at later instances as well: of the three members, intendant L. Gripenberg would chair the Patent committee of 1889 and superintendant A. E. Arppe was to examine the final version of the law proposal as a Senator in 1892. The Board commented on various aspects of the current law, including the role of juridical persons as patentees, inspection of novelty, patent fees, duration of patents, and punishments for patent infringements. It is notable that the Board used examples from foreign legislation and practices, especially the legislation of Sweden, to support their claims.

In their report, the Board proposed a patent law which strengthened the inventor's status, but included the requirement to work the invention in the country. The Board proposed a fixed term of protection (15 years), higher punishments for patent infringements and lower patent fees based on simpler principles.<sup>513</sup> In the current system, the patentee had to pay beforehand for the whole duration of protection, whereas in the Board's proposal, and proposals made at the Assembly of Estates previously, patent fees were paid on a yearly basis. The principle of yearly payments was similar to those "in force today in other countries", but the Board also considered that the reform would make applying easier and more calculable, and, consequently, increase the amount of patent applications. The requirement for novelty was made explicit, and depended mainly on whether the invention had been already "in use" or "exercised" (*utövning*) elsewhere. In addition, the Board wanted to keep the requirement of proving yearly that the invention was in use not just anywhere, but in the Grand Duchy.

The Department of Trade and Industry received the report of the Board in early January, and at the meeting of the Senate on 17 January 1889, a committee was set up to prepare a proposal for a new patent law. The assignment was presented by L. Mechelin, currently a senator and the head of the Department of Trade and Industry:<sup>514</sup>

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<sup>512</sup> Report of the Industrial Board (sent to the Department of Trade and Industry of the Senate on 14 December 1888). Ea:2 Kirjeasiakirjat (1888). Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

<sup>513</sup> Ibid.

<sup>514</sup> Minutes of the Economic Division of the Senate, 17 January 1889. Talousosaston yhteisistuntopöytäkirjat I, Ca:387, 155.



as the gracious Decree of 30 March 1876 on patent law in Finland has been discovered to some extent inadequate and not any more filling the purpose of a patent act, a committee should be appointed to prepare, with the guidance of the newer foreign legislation and by considering the experience gained about the patent institution in this country, a proposal for regulations in patent law, that are adapted for Finnish conditions regarding inventor protection and the advancement of the domestic industries.

imedan nådiga förordningen af den 30 Mars 1876 angående patenträtt i Finland, befunnits i särskilda afseenden bristfällig och numera icke motsvarande ändamålet med en patentlag, en komité borde nedsättas, hvilken egde med ledning af den nyare utländska lagstiftningen i ämnet och med hänsyn till den här i landet vunna erfarenhet beträffande patentinstitutionen uppgöra förslag till sådana bestämmingar angående patenträtt, som med afseende å uppfinnareskyddet och den inhemska industrins förkofran äro för förhållandena i Finland ända målsenliga.

Following the proposal of Senator Mechelin, five members were called to form the Patent Committee of 1889. The intendant of the Industrial Board responsible for patent matters, Lennart Gripenberg, presided over the Committee. Other members were the professor of Law and Economics Joel Napoleon Lang, prosecution counsel August Nybergh, engineer, patent attorney and lecturer at the Helsinki Polytechnic Rudolf Kolster, and engineer Oskar Stenberg. Stenberg retired from the committee due to medical reasons and was replaced by engineer Klas Mathias Moring.

The selection of Gripenberg, Lang, Kolster and Stenberg seem to have been clear, but other names were also discussed in an undated, anonymous draft part of the documents of the Department of Trade and Industry. In the draft, a representative from the paper industries was proposed, because "the inventions especially in this sector were, and the protection [of these] was, useful".<sup>515</sup> The person mentioned was industrialist Fredrik Idestam, who had transformed his wood pulp business into a company, Nokia Ab in 1871. Senator Mechelin, a close friend of Idestam, was the co-founder of Nokia and an important source of support for Idestam in acquiring capital to the company.<sup>516</sup> The other candidate listed in the document was Albert Krank, a steam boat engineer and one of the most prolific patentees of the time.<sup>517</sup> The fifth member of the committee to be selected, however, was the above-mentioned A. Nybergh from the Court of Appeal of Viborg, a liberal and later a constitutionalist senator.

The Committee was a reformist committee with ties to industrial sectors and knowledge of the

<sup>515</sup> Anonymous document bound accidentally as page 3 of the report of the Industrial Board. KD 6/161. Ea:2 Kirjeasiakirjat (1888). Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

<sup>516</sup> Tapio Helen, 'Idestam, Fredrik (1838 - 1916)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 1997), URN:NBN:fi-fe20051410; Helen, 'Mechelin, Leo (1839 - 1914)'.

<sup>517</sup> Martti. Myllylä, *Albert Krank : varkautelainen laivanrakentaja* (Helsinki : Suomen Höyrypursiseura, 1990).

international currents: Gripenberg had expressed his liberal political and economic views in pamphlets and newspaper articles in the 1880s. Before his post on the Industrial Board, he had worked as an engineer on the railroads and in forestry.<sup>518</sup> Professor Lang, a moderate Fennoman, had raised extensive criticisms against the Patent Act of 1876 in his dissertation, and as the professor of economic law, he was one of the advocates of the German historical school in Finland.<sup>519</sup> Both Lang and Kolster had contacts abroad: the former had studied law and economics widely in Europe, including in France, Germany, Denmark, and Sweden and the latter was of German origin and as a patent attorney served foreign customers.<sup>520</sup> At the time, Nybergh worked in the Court of Appeal of Viborg, but in the following decades, based on his legal expertise, he had roles in national politics and administration, for example in law committees, the legislative council, and the Supreme court.<sup>521</sup> Later, between 1903 and 1904, Nybergh and Gripenberg, as well as Mechelin, were exiled by the Governor-General, because of their constitutionalist resistance against the integration policies of the Empire.<sup>522</sup>

The report published by the committee in 1890 proposed important changes to many areas of the current patent law and, most importantly, laid the basis for the long-awaited Patent Act of 1898. In terms of their content, the Committee proposal and the Patent Act were basically identical. The Act of 1898 would include small additions<sup>523</sup> and improvements<sup>524</sup>, and the patent fees, both administrative fees and yearly payments, were slightly lowered<sup>525</sup>. However, it was

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<sup>518</sup> Jaana Gluschkoff, 'Gripenberg, Lennart (1852 - 1933)', *The National Biography of Finland*, 2008, URN:NBN:fi-fe20051410.

<sup>519</sup> Heikkinen et al., *The History of Finnish Economic Thought 1809-1917*, 102–3.

<sup>520</sup> Kolster's first customers were the Englishmen George Sinclair and John Nicol who patented their invention related to paper industry in 1873. Hytönen, *Kolster Oy Ab 1874–1999*, 13–27; Mia Sundström, 'Lang, Joel Napoleon (1847 - 1905)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2005), URN:NBN:fi-fe20051410.

<sup>521</sup> Mia Sundström, 'Nybergh, August (1851 - 1920)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2006), URN:NBN:fi-fe20051410.

<sup>522</sup> Klinge, *Kejsartiden*, 398–404.

<sup>523</sup> It is mentioned in the Act of 1898 that chemically produced materials cannot be patented. This was added to the patent law by Senator A. E. Arppe, former professor of chemistry, when the Senate discussed the first law proposal in 15 January 1894. Minutes of the Economic Division of the Senate, 15 January 1894. Talousosaston yhteisistuntopöytäkirjat I, Ca:417, 41; Patent Act of 1898: Förordningen om patenträtt samt om rättegång i mål rörande patent, no 2 (21 January 1898).

<sup>524</sup> For example, regarding the announcement of the application to the public, the Act of 1898 stated that it had to be reminded in the announcement that the invention was already under protection. Förordningen om patenträtt (1898).

<sup>525</sup> In the Patent Committee's proposal, the total cost of the fifteen-year patent rose to 940 Finnish marks, administrative costs were 40 marks. In the Patent Act of 1898, the yearly patent fees made a total of 700 marks and administrative fees were 30 marks. The difference was even greater because of inflation (940 marks in 1890 equalled to 1012 marks in 1898). In the 1890s, the average daily wage of a saw-mill worker was approximately 2.3 marks. Money value converter by the Bank of Finland Museum, accessed 4 April 2012, <[http://www.rahamuseo.fi/en/multimediat\\_ja\\_oppimateriaalit\\_rahamarvolaskuri.html](http://www.rahamuseo.fi/en/multimediat_ja_oppimateriaalit_rahamarvolaskuri.html)>.

the form of the law that became the source of disputes in the 1890s. The Committee already noted, that it was questionable whether the patent law proposal should be taken to the Assembly of Estates or not. The previous Act of 1876 and privilege matters in general had been the exclusive property of the monarch since 1668.<sup>526</sup>

After the Patent Committee had finished its work, the report was sent to the regional governors and their industrial and handicraft associations for further comments. The report of the Committee was received positively, the law proposal was seen as fitting, and in general, no objections were presented. For example, the Handicraft and Manufacture Association of Kuopio stated that it did not have anything to remark, but found the proposal to be very good in its whole.<sup>527</sup> The report was briefly commented by the Magistrate of Åbo, headed by Mayor Ferdinand Jusélius, lawyer and representative at the Burgher Estate between 1888 and 1900. In the statement, the magistrate repeated the task given to the Committee: to make use of the foreign legislation available, while taking into account the industrial conditions of the country, which it saw to be "very apt for founding a law in the field." The magistrate remarked on two details: publishing the invention abroad and cancelling the patent.<sup>528</sup>

Finally, in May 1892, the report of the Patent Committee and the statements were presented at the Senate. Senators Arppe, Yrjö-Koskinen, and Eneberg were chosen to further prepare the matter, and the Senate approved the law proposal unanimously at their meeting on 15 January 1894.<sup>529</sup> The contents of the law proposal did not undergo any major changes apart from some procedural refinements. The main alteration was made to its structure by strengthening the role of the government; Yrjö-Koskinen and Eneberg were major figures of the loyal and conservative Finnish party. Instead of a single act proposed by the Committee, the Senate introduced a double structure which divided the law into its administrative part, which regarded

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<sup>526</sup> Report of the Patent Committee of 1889: *Komitén för revision af gällande förordning angående patenträtt*, [Komitébetänkande, 1890:4] (Helsingfors, 1890), 6–8.

<sup>527</sup> Statement by the Handicraft and Manufacture association of Kuopio (*Kuopion käsityö- ja tehdasseuruus*), 9 October 1890. KD 6/161. Ea:2 Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

<sup>528</sup> Section 2 of the law proposal of the Patent Committee stated that publishing the invention abroad at international exhibitions or for a patent application did not prevent the inventor for applying for a patent in Finland. At the same time, section 18 stipulated that a patent was not valid against those who had been using the invention before the patent had been applied. The Magistrate saw that someone could possibly start applying for a patent after having seen it at an international exhibition. The Patent Act of 1898, however, included the sections as proposed by the Committee. Statement by the Magistrate of Åbo, 20 October 1890. KD 6/161. Ea:2 Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

<sup>529</sup> Minutes of the Economic Division of the Senate, 20 May 1892. Talousosaston yhteisistuntopöytäkirjat III, Ca:407, 756; Minutes of the Economic Division of the Senate, 15 January 1894. Talousosaston yhteisistuntopöytäkirjat I, Ca:417, 41.

the actual material patent, and the part to be inspected also by the Assembly of Estates. This "Estate law" concerned the infringement of patent rights.<sup>530</sup> The law proposal was approved by the Emperor, and introduced to the ongoing Assembly of Estates of 1894. The patent law was reread by the Assembly of 1897, and approved by the Emperor in 1898.

As noted already, the law proposal was drafted with the help of foreign legislation. Similarly to the Decree of 1876, Sweden was the main influence for the Patent Committee and therefore the Patent Act of 1898.<sup>531</sup> However, it is notable that the law proposals were drafted by using a large legislative corpus and the latest international agreements. In the dissertation of J. N. Lang (1880) and in the report of the Patent Committee of 1889, the patent laws of countries that were studied and compared included the United States, Germany, the UK, Sweden, Austria, France, Belgium, Italy, Norway and Russia. Moreover, the report of the Patent Committee starts by introducing the agreement made at the Vienna Patent Congress, and describes some elements of the Paris convention.<sup>532</sup> When settling the rewards with the Senate, the Patent Committee acknowledged the important role of secretary Nybergh for the exhaustive work he had done composing an overview on the current foreign legislation.<sup>533</sup> The Committee stated after an overview of the current national laws that<sup>534</sup>

The Committee hence has had at its hand extensive legislative data, which has been so keenly consulted because the subject in question, taking into consideration that a patent is applied at least for the most important inventions in several countries, is undoubtedly, similarly to e.g. trade or maritime law, one of those legal areas where the universal legal viewpoints can least be left aside.

Komitén har sålunda stått till buds ett omfattande legislativt material, hvilket så mycket hellre kunnat anlitas, som förevarande ämne, med hänsigt dertill att patent åtminstone för viktigare uppfinningar i regeln sökes i flera länder, otvifvelaktigt, i likhet med t. e. vaxel- och sjörätten, hör till de grenar af lagstiftningen, uti hvilka universalrättsliga synpunkter minst kunna lemnas ur sigte.

The Committee also noted how, at the same time, the differences between national laws were vast and only a little experience could be drawn from "our own country" to be able to decide between these different views.

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<sup>530</sup> The proposal for a patent law, approved by the Senate on 15 January 1894. VSV 90/1894. Valtiosihteerinviraston arkisto (FNA).

<sup>531</sup> Kero, however, seems to ignore how other national laws and international agreements were examined while drafting the Patent Act of 1898. Kero, 'Ulkomaalaisen teknologian patentointi', 133.

<sup>532</sup> *Komitén för revision af gällande förordning angående patenträtt*; Lang, *Om grunderna för uppfinnareskydd genom lag*.

<sup>533</sup> Letter from Lennart Gripenberg to the Department of Trade and Industry (1 May 1890). KD 6/161. Ea:2 Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

<sup>534</sup> *Komitén för revision af gällande förordning angående patenträtt*, 5.

What were, then, the essential changes that the Patent Committee had suggested, and that were confirmed in the Patent Act of 1898? According to Laisi, the major aspect of the Act of 1898 was the requirement of absolute novelty.<sup>535</sup> The requirement of newness, however, was already expressed in an indirect way in the Decree of 1876. When describing possible misuses in section 16, the Decree of 1876 gave a definition of a not-new invention as something "that has been in this country or elsewhere already known or used before the application was filed".<sup>536</sup> The Act of 1898 made this requirement explicit, but more importantly it extended the right of appeal against wrongful patents to cover the whole patent term, whereas the Decree of 1876 only gave a right of appeal for one night and a year. It also made the concept of patent right clearer and the position of the patentee stronger. The application process was defined more transparently, the patent term was fixed at 15 years, and patent fees made payable on a yearly basis, but with a higher overall total, however.<sup>537</sup> Finally, the patentee was separated from relying on the pure goodwill of the absolutist Emperor, as the Act introduced the expropriation of useful patents for decent compensation. In addition, the previous requirement of proving yearly that the invention was worked was modified into a duty to share the patent right in exchange for a compensation, if demanded.<sup>538</sup>

From a more general perspective, the Patent Act of 1898 followed the international developments in the field. It converged with these in many formal aspects, such as regarding the patent term.<sup>539</sup> Moreover, it was made clear that the law had been made compatible with the

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<sup>535</sup> Laisi, 'Näkökulmia patentti- ja rekisterihallituksen', 85. It was stated in the second section of the Committee proposal that the invention was not new if, before the filing of the application, it had been discussed or used publicly so that it became accessible for the experts of the field.

<sup>536</sup> Lang remarked on the inadequacy of the concept in his dissertation, but the Patent Committee did not have any special remarks on this. It noted that there was a general requirement of newness in the patent applications, but then gave more detailed examples of how this requirement varied from country to another. Lang, *Om grunderna för uppfinnareskydd genom lag*, 118 footnote 1; *Komitén för revision af gällande förordning angående patenträtt*, 20–22.

<sup>537</sup> Currently, the fee had to be paid before receiving the patent letter. The patentee had to pay 20 Finnish marks for every year of protection. In the proposal, the patentee started to pay the yearly fees from the second year onwards. The yearly payments rose progressively. As a result, the total costs got higher, but the initial costs lower. Under the decree of 1876, a 12-year period of protection plus administrative costs equalled 283 marks (in 1898, before the new act entered in force). Under the act of 1898, this sum was reached in the course of the eighth year (a 15-year protection totalling 730 marks). *Komitén för revision af gällande förordning angående patenträtt*, 34–36. *Förordningen om patenträtt samt om rättegång i mål rörande patent*, no 2 (21 January 1898).

<sup>538</sup> If the patentee had not taken the invention into use in three years' time, or the invention lay useless the patentee had the obligation, if demanded, to give a licence for the invention for compensation. This obligation also concerned cases where a more advanced invention needed the patent, or when the public interest so demanded. *Förordningen om patenträtt samt om rättegång i mål rörande patent*, no 2 (21 January 1898).

<sup>539</sup> Beatty has listed areas in which the national patent laws converged after 1880. The laws included a protection term of 10 to 15 years, some principle of compulsory working, and were based on registration or

Paris Convention for Protection of Industrial Property, even though the Grand Duchy did not join it until 1921.<sup>540</sup> The patent fees were made relatively low, and lower than in the neighbouring countries, to attract domestic and international innovation in the periphery.<sup>541</sup> At the same time, the Act confirmed many existing practices and adopted influences from the German culture of patenting, especially from its Swedish and Norwegian counterparts.<sup>542</sup> The Act moved away from a system of privileges to a bureaucratic process of patenting. In this, the role of the state remained central, as the examining patent office<sup>543</sup> and the guardian of the interests of the public and the industries through the expropriation, compulsory licensing and working requirement clauses.<sup>544</sup> As we will see, the development and organisation of patenting in the Grand Duchy became strongly led by experts in technical professions, and thus, remained more receptive to the interests of the industries of the nation-state, as in the German case.<sup>545</sup> As a result, the Patent Act of 1898 made the process of applying and holding a patent more transparent and enforced the rights of the inventor, but left considerable space for the state or other inventors to interfere with a patent right. Similarly to the law on the author's rights that

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limited examination (in contrast to the strong examination in the Us and in Germany). Beatty, 'Patents and Technological Change in Late Industrialization: Nineteenth Century Mexico in Comparative Perspective', 128–29. See also Khan and Sokoloff, 'Historical Perspectives on Patent Systems'.

<sup>540</sup> *Komitén för revision af gällande förordning angående patenträtt*, 16. The Committee pointed especially to sections 2 and 37 of the law proposal. These regarded the conditions, under which a foreign patentee could still apply for a patent in the Grand Duchy, even though he had disclosed his invention abroad.

<sup>541</sup> The patent fees were set at a level slightly lower to those of Sweden and Norway. Khan and Sokoloff have presented a table of the patent costs in the late nineteenth century. The Grand Duchy, with patent fees of 141 dollars for the term of 15 years, ranked at the second lowest category, with the Nordic countries, for instance, as well as Spain, Belgium, Japan. Khan and Sokoloff, 'Historical Perspectives on Patent Systems'.

<sup>542</sup> Again, some similarities are found in the written form between the law proposal of the Patent Committee of 1889 and the Swedish Patent Law of 1884; for example, between the sections describing the application process. The Finnish and Swedish laws differed to some extent in terms of patentability or definition of novelty. The Finnish law regarded not only industrial, but commercially-exploitable inventions. Kero, 'Ulkomaalaisen teknologian patentointi', 133; *Komitén för revision af gällande förordning angående patenträtt*. Patent laws of the Grand Duchy, Sweden, Norway and Germany in Josef Kohler and Maximilian Mintz, *Die Patentgesetze aller Völker: The patent laws of all nations. Band II, Tome II* (Berlin: R.v. Decker, 1912).

<sup>543</sup> The patent system of the Grand Duchy was a combination of examination and announcement, in place in the Northern European countries. The patent office could reject the patent application already before it was announced publicly only if there were "evident" reasons for this. A similar system of lighter examination had been adopted in Norway and Sweden. *Komitén för revision af gällande förordning angående patenträtt*, 12–13; Kohler and Mintz, *Die Patentgesetze aller Völker*, 351, 385, 427.

<sup>544</sup> Compulsory working and licensing have been among the most controversial issues in international patent cooperation. Ladas, *The International Protection of Industrial Property*, 327–42; Penrose, *The Economics of the International Patent System*, 78–87, 166–68.

<sup>545</sup> Galvez-Behar has portrayed the role of the German state in developing the patent system of the late nineteenth century as more dynamic and concerned for the interests of the industries, in contrast to the more conservative French state, aiming at guaranteeing the rights of the individual inventor. Gabriel Galvez-Behar, 'L'Etat et l'invention. Une comparaison franco-allemande des cadres de la propriété industrielle à la fin du XIX<sup>e</sup> siècle.', *Figurationen des Staates in Deutschland und Frankreich, 1870-1945. Les figures de l'Etat en Allemagne et en France*. 72 (2006): 215–34. See also: Lang, 'The Anti-Patent Movement Revisited. Politics and Professionalism in Nineteenth-Century Germany'.

came into force more than a decade earlier, foreign legislation and their more “advanced” examples were studied as part of the legislative process. In contrast to the law on authors’ rights, at least in rhetoric, the international developments were followed with more enthusiasm. This attitude was beneficial for the Grand Duchy at least from two perspectives.

First, the patent reform and the adoption of international principles were portrayed as crucial for the industrial development of the Grand Duchy. The main reformers had ties to the industries of the country, and underlined the importance of good institutions for attracting ideas and new technology. In the case of the author's rights, as we have seen, the logic was the opposite, as the domestic translation market came to have a decisive role in how the law was drafted. Second, the patent reform suited the views of the leading political factions. Not only did it steer the Grand Duchy towards the west, but also strengthened the autonomous status of the country. With its own patent office and patent market, the Grand Duchy acted as if it were separate from the mother country, which had hastened the politics of integration in the late century. Thus, the formation of a “standardised” patent area was not related to economic considerations, but the national patent system also became an expression of the country's political autonomy.

### **3.2 The Finnish learning economy: Privileges and patents around the mid-nineteenth century**

The role of knowledge, its management and transfer by learning was an important element in the “catching-up industrialisation” of the Nordic countries, which were still relatively poor areas in the mid-nineteenth century. According to Bruland and Smith, the elites of the Nordic countries managed to transform their countries into “learning economies”, which were able to acquire, implement and diffuse knowledge in the Nordic area.<sup>546</sup> In the Grand Duchy, much of this knowledge acquisition took place in personal exchanges and not through direct investments by foreign companies. The government funded study trips abroad for engineers and entrepreneurs, many Finns sought job opportunities outside the borders of the poor Grand Duchy, and on the other hand, foreign technical experts arrived in the country to instruct about the operation of imported technology.<sup>547</sup> The patent institution developed alongside

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<sup>546</sup> Bruland and Smith, ‘Knowledge Flows and Catching-Up Industrialization in the Nordic Countries’..

<sup>547</sup> Myllyntaus, *The Gatecrashing Apprentice : Industrialising Finland as an Adopter of New Technology*, 109–13, 127–31; Hjerpe, ‘The Significance of Foreign Direct Investment in a Small Industrialising Economy:

international contacts and helped to sustain the “learning dynamics” in the Nordic area.<sup>548</sup> It first served the mercantile policies of encouraging the insertion and development of industries in the Grand Duchy, and later in the century, it facilitated international patenting by following the common formalities of the field.

Mario Biagioli has argued that the transformation from invention privileges to patents paralleled the end of absolutism and the establishment of popular representation since the late eighteenth century.<sup>549</sup> With this regime shift, the activity of invention protection became something to consider with regards to the public interest, and not only as a concrete and personal exchange between the ruler and the inventor. This claim is interesting in the case of the Grand Duchy, as the patent system developed in a context where the question of people's representation and the status of its organ, the Assembly of Estates, were not clear and constantly negotiated in regards to the Empire.<sup>550</sup> In terms of patent law, this became visible in the 1890s, when the competences of the Assembly were discussed along with the making of the new law. At the same time, a modern regime of patenting had already taken shape and functioned within the confines of the country. Therefore, building on the claim by Biagioli, it would seem then that the principle of a public interest concerning invention protection was first appropriated by the patent officials, and later settled between the Emperor and his subjects.

Biagioli distinguishes between the two regimes by looking at the process of patenting itself: how an invention was defined, communicated, and approved by the patenting authority and the inventor.<sup>551</sup> In the system of invention privileges, the invented machine was presented concretely to the sovereign, who granted a privilege while the technology was novel and appeared useful in the local environment. The description of the invention was not central, but the sovereign expected that the machine itself was tangible, would be briefly put to work and functioned as the inventor had promised. In the modern system, invention protection was justified with regards to the public and its interests. If an invention was truly novel, its disclosure was only beneficial to the public, and thus could be granted to any inventor. The

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The Case of Finland in the Interwar Period'; Michelsen, *Viides sääty*, 164–79; Hietala, *Tietoa, taitoa, asiantuntemusta*, 209–44.

<sup>548</sup> Bruland and Smith, 'Knowledge Flows and Catching-Up Industrialization in the Nordic Countries', 91.

<sup>549</sup> Biagioli, 'Patent Republic: Representing Inventions, Constructing Rights and Authors'.

<sup>550</sup> See chapter 1.3, and for views of the political factions on the representation of the people: Pekonen, *Debating 'the ABCs of Parliamentary Life'*, 120–34.

<sup>551</sup> Biagioli mainly uses examples from late sixteenth-century Venice, where Galileo was granted a privilege for his water pump in 1594, and the US patent institution of the late eighteenth century. Biagioli, 'Patent Republic: Representing Inventions, Constructing Rights and Authors'.



focus of the protection moved from the material machine to the detailed description of the invention on paper—its representation.<sup>552</sup> As Biagioli notes, the idea of the invention was “inscribed on a piece of paper”, which ultimately allowed the expansion of patent protection in geographical terms; the patent specifications allowed the registering and transfer of “inventions”, instead of needing to go and observe the machine in its local environment.<sup>553</sup>

The characterisation of a modern patent regime, as put by Biagioli, seems valid especially for the US patent system, whereas many European patent regimes were built on different principles; for instance, the working requirements persisted into the nineteenth century, and the novelty requirements were not as rigid. However, these two ideal regimes—the pre-modern and the modern—serve to evaluate the changes that took place in how inventions became protected in the Grand Duchy. A shift is clearly visible, both in practices and in the vocabulary that was used in the administration of invention privileges. Moreover, it is important to note that most of the “pieces of paper” came from abroad and would form the basis of the domestic patent depository. Even though transferred by local patent agents, the “pieces of paper” were important examples of how the applications, with the specifications and patent claims, were drafted in other patent cultures.

In the Grand Duchy, patenting was conceptually close to invention privileges, at least until the 1870s. The patent system belonged to the sphere of state administration, similarly to industrial privileges such as factory or distillery privileges. Even though there were exceptions to this view, for instance at the above-mentioned January Committee of 1862, it is illustrative that the whole patent law of 1876, and extensive parts of the law of 1898, were given as administrative decrees. In the early 1840s, the main patent organ became the Directorate of Manufactures (*Manufakturdirektionen*), after 1885 the Industrial Board, which was a state bureau created to promote technical education and the development of the country's industries.<sup>554</sup>

In 1842, the Directorate had its first ordinance and was given the task to conserve the approved patents and oversee their expiry. No explicit orders about the examination or the patenting

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<sup>552</sup> Biagioli writes that it was the patent specification “that put the “intellectual” into “intellectual property”, whereas the privileges were “all about locality, materiality, and utility.” Mario Biagioli, ‘Patent Specification and Political Representation : How Patents Became Rights’, in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, ed. Mario Biagioli, Peter Jaszi, and Martha Woodmansee (Chicago: University of Chicago Press, 2011), 30, 32.

<sup>553</sup> *Ibid.*, 31.

<sup>554</sup> Patentti- ja rekisterihallitus, *Patenttien Vuosikymmenet*, 64, 76.

process were stipulated, but the Directorate agreed in its early meeting to follow certain principles. These included the requirements for novelty (at least inside the country) and the utility of the invention, and that the patent had to be announced three times in the official newspaper of the country.<sup>555</sup> The Directorate also divided the examination tasks among its three members: Professor of Physics Hällström would “judge and inspect” mechanical devices, Professor of Physics Nervander would do the same for inventions related to “chemical matters”, and all other matters were given to superintendent Nordenskiöld, specialist in geology.<sup>556</sup> In some cases, the Directorate asked for further advice from independent experts or state officials such as the *Överstyreelse för Väg och vattenkommunikationerne*, the corps of civil engineers.

The two main requirements for patenting set by the Directorate of Manufactures in 1842 were the novelty and utility of the invention, which were both important for the encouragement of industrial activity. The first *privilegium exclusivum* of the Grand Duchy was granted in 1833 to industrialist Nils Ludvig Arppe, who gained an exclusive right to steamboat traffic on Lake Saimaa in Eastern Finland for 20 years.<sup>557</sup> Even though the Act of 1789 had stated that privileges could not be imposed on known practices, which the Senate clearly expressed in its statement on Arppe's application, the Senate still held that Arppe's activity would have positive implications for the economic development of the region. It was seen that the privilege was a compensation for the expenses that the acquisition and possession of the first steamship in the Grand Duchy created.<sup>558</sup> The first privilege to be closer to a patent than an economic monopoly was granted in 1837 to French inventors, F. Didier and F. Droinet, for a method of coal combustion. The application was approved even though the examining officials from the Directorate did not quite understand what the method was about. Similarly to Arppe's privilege, it was judged that the invention would probably be useful.<sup>559</sup>

The exclusive rights to inventions kept their nature as privileges beyond the mid-nineteenth century, and were regulated according to the economic interests of the country. At the same time, the differences between the two concepts, privileges and patents, became increasingly

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<sup>555</sup> Laiši, ‘Näkökulmia patentti- ja rekisterihallituksen’, 64–67; Aro, ‘Keksintöprivilegit Suomen suuriruhtinaskunnassa’, 25–29.

<sup>556</sup> The minutes of the Directorate of Manufactures (3 March 1872). Ca:1 Pöytäkirjat 1842-1846. Manufaktuurijohtokunnan arkisto (FNA).

<sup>557</sup> In a similar way in 1835, a steamboat company in Turku applied for a privilege for circulation between some Baltic Sea cities, and was granted a privilege of six years.

<sup>558</sup> Haarmann, ‘Suomen ensimmäiset patentit (English summary)’, 23–24.

<sup>559</sup> Ibid., 24.

nuanced around the mid-century. The Finnish term *patentti* (open letter) was already used in the seventeenth century in the translations of the Swedish law.<sup>560</sup> In the early nineteenth century, the term appears in newspaper texts on new and foreign inventions, as in the article about a method of fabricating paper by “Alexander Nesbith, an Englishman,” who had “got from his Authorities the permission to alone and for his own benefit to fabricate this paper. Patent [*patenti*] on July 24<sup>th</sup> 1824.”<sup>561</sup> The Finnish term *patentti* became more common on the pages of dictionaries only after the mid-century<sup>562</sup>. However, in the translations of the Swedish *patent*, the dictionaries preferred the term *yksin-oikeus* (“*Monos-right*”) to privilege, *etu-oikeus* (“*Privus-right*”).<sup>563</sup>

In practice, however, patents remained conceptually close to privileges. As Haarmann has noted the terms “privilege” and “patent” were used almost interchangeably by the Directorate in their reports on the patent applications, and depended mainly on the word choice of the applicant.<sup>564</sup> Still in the early 1870s, when “patent” was commonly in use, one finds such terms as “privileged invention” or “permission and privilege [...] to compile a machine”, “privilege-right” or “patent-privilege” in the annual declarations that the patentee had to make to prove

<sup>560</sup> Speitz used it in the sense of an open letter or declaration given by the ruler. In the Swedish-Finnish dictionary of Helenius (1838) patent was translated as an 'open letter' (*awoin-kirja*) which could also carry the meaning of an open patent, that is a privilege for something. Raimo Jussila, *Vanhat sanat: vanhan kirjasuomen ensiesiintymiä* (Helsinki: Suomalaisen Kirjallisuuden Seura : Kotimaisten kielten tutkimuskeskus, 1998), 189; Carl Helenius, *Suomalainen ja ruozalainen sana-kirja =: Finsk och svensk samt svensk och finsk ordbok* (Åbo: Hjelt, 1838).

<sup>561</sup> Paperia Sammalista. Oulun Wiikko-Sanomia, no 23 (6 June 1829).

<sup>562</sup> In dictionaries, the actual word *patentti*, then, is used by Ahlman (1865), *patenti* by Nordlund (1887), and also by Godenhjelm (1873) in his German-Finnish dictionary, giving as translations both *patenti* and *yksinoikeuskirja* (letter of exclusive right). In the encyclopedia by Meurman (1883), we encounter the terms "invention-patent" (*keksintöpatenti*) or "patented article" (*patentitavara*), "an article of which the fabrication only the inventor or the right-holder has the right to". F. Ahlman, ed., *Svenskt-finskt lexikon* (Helsingfors: Frenckell, 1865); C. F. Nordlund, ed., *Svenskt-finskt handlexikon: skolupplaga* (Helsingfors: K. E. Holms förlag, 1887); B. F. Godenhjelm, *Deutsch-finnisches Wörterbuch*, Suomalaisen Kirjallisuuden Seuran toimituksia 49 (Helsingissä, 1873); Agathon Meurman, *Sanakirja yleiseen siwistykseen kuuluvia tietoja warten*. (Helsinki: Edlund, 1883).

<sup>563</sup> The meaning of exclusion is visible in Europeus (1853). He translated the Swedish word patent into "letter of exclusive right" (*yksin-oikeus-kirja*) or the Swedish verb to patent into "give/grant a letter of exclusive right" (*antaa/varustaa yksin-oikeus-kirjan/-lla*). However, he did not use at all the Finnish word *patentti*, but the word *yksin-oikeus-kirja*. Furthermore, he translates *yksin-oikeus* and *etu-oikeus* (privilege) into *privilegium*. When it comes to Ahlman (1865), he translates the Swedish verb "to patent" (*patentera*) into Finnish "to grant an *yksin-oikeus*", which corresponds in his dictionary to the Swedish word of *monopol*, the monopoly. For him, a *privilegium* translates into *etu-* or *eri-oikeus* which are not used together with the vocabulary of patents. Thus, even though closely related, *patentti* carried a different connotation to privilege in the mid-century: *patentti* was an *yksin-oikeus* (*yksin* - "alone", cf. *monos*), whereas privilege an *etu-oikeus* (*etu* - "advantage", cf. *Privus*). D. E. D. Europaeus, *Svenskt-finskt handlexikon*, Suomalaisen Kirjallisuuden Seuran toimituksia, 16 osa (Helsingfors: Finska Litteratur-Sällskapet, 1853); Ahlman, *Svenskt-finskt lexikon* =.

<sup>564</sup> Haarmann, 'Suomen ensimmäiset patentit (English summary)', 27.

that the invention was in use.<sup>565</sup> However, it seems that the pre-modern–modern distinction proposed by Biagioli serves to reflect how the terms were used; in the report letters from the early 1870s, the term “patent” seems to have regarded the abstract invention, whereas “privilege” was used together with the temporal and spatial aspects of the exclusive right.<sup>566</sup>

For the Directorate of Manufactures, the requirement of novelty of an invention was not absolute, but concerned the application of a technology in the country or in one of its regions. The utility of the invention was the main condition for a patent, as some novel inventions were not approved because they were “not worth” a privilege.<sup>567</sup> Moreover, the fact that an invention was already known abroad could have been a positive attribute to show that it was seen worth using elsewhere: for instance, “a washing machine, first thought up in America”, was granted a patent in 1855.<sup>568</sup> In more general terms, the patenting of foreign technology was not an uncommon principle in the nineteenth century.<sup>569</sup> Even though the Grand Duchy did not formally introduce “patents of introduction” in its legislation, the novelty requirement remained a relative condition at least until the Patent Decree of 1876. For instance, in its report on a mechanic loom in 1861, the Directorate wrote that a patent right should be granted only to the inventor, but in this case the protection could be approved, as the applicant had introduced a useful invention to the country, and the endeavour had caused him costs.<sup>570</sup>

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<sup>565</sup> Letters about machines with privileges in operation. Ilmoitukset ja todistukset (1846-1881), Ec:2. Manufaktuurihoitokunnan arkisto (FNA).

<sup>566</sup> For example, in a report from 1875 describing that a machine for alcohol distillation was in operation. In the patentees letter, it was written that “the patented invention is indeed in use”, whereas the inspector stated how the “machine, used [...] under the exclusive privilege of eight years time, [...] was found fully operational.” Letters from H. Brummer and A. F. Liljeros (30 January 1875). Ilmoitukset ja todistukset (1846-1881), Ec:2. Manufaktuurihoitokunnan arkisto (FNA).

<sup>567</sup> The Directorate refused an application on “transportable rail tracks” because it was seen as “not worth” a privilege. Patent application by C. L. Christiernin and Alb. Amundson regarding “transportable rail tracks” (7 April 1873). AD 458/25, Eb:1754. Talousosaston registraattorinkonttorin arkisto (FNA).

<sup>568</sup> A new washing machine. Inspector I. G. Broberg [...] has received a privilege of 5 years to construct and sell to the people of our country a washing machine, first thought up in America, that used by two people washes clean as many clothes as five people would wash in the same time. Also, the clothes do not wear out when washed with it. [...] Patent no. 33 of the Grand Duchy of Finland. Uusi pesukone. Maamiehen ystävä, no 45 (10 November 1855).

<sup>569</sup> Countries, such as Spain, Italy, Portugal, Russia and Argentina, had systems of patent of introduction in the late nineteenth century. In the Northern periphery, the “patents of introduction” were banned internationally relatively early. Norway refused them since the first “patent paragraph” of 1839, Sweden banned them in its patent statute of 1856. Khan and Sokoloff, ‘Historical Perspectives on Patent Systems’; Bjørn L. Basberg, ‘Creating a Patent System in the European Periphery: The Case of Norway, 1839–1860’, *Scandinavian Economic History Review* 45 (1997): 147–49; Olle Krantz, *Teknologisk Förändring Och Ekonomisk Utveckling I Sverige under 1800- Och 1900-Talen: Iakttagelser Från Patentstatistiken*, Meddelande Från Ekonomisk-Historiska Institutionen, Lunds Universitet, nr 26 (Lund: Lunds univ, 1982), 10–11.

<sup>570</sup> Report by the Directorate of Manufactures on Patent 65 (Mekaniska kätt- eller kedjävästolar), granted on 18 January 1861. Ea:2. Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto (FNA).

In their examination, the Directorate could evaluate the importance of the invention by deciding on the duration of the patent protection, which ranged from disapproval to a protection of three up to twenty years, normally between five and ten years.<sup>571</sup> The granted duration reflected the view on the role the invention could have locally or nationally for the country's economic development. The novelty requirement was made explicit in the Patent Decree of 1876, and the patenting of medicine and illegal and (morally) harmful inventions was forbidden.<sup>572</sup> In a court case from the early 1880s, an invention was deemed not novel or known in the country, while the invention had already been patented abroad and explained in foreign professional journals of the time.<sup>573</sup> However, even these terms left considerable room for the examination, and left the patent duration, now set at three to twelve years, in the hands of the patent office.<sup>574</sup> For instance, in the 1870s and 1880s, up to one third of the applications were not approved in the examination.<sup>575</sup>

To illustrate how the patent system supported the dynamics of learning in the country, an example can be found in the nascent paper industry. The Directorate blocked an invention in paper production by the well-known German engineer H. Voelter in 1873. In its report, the Directorate stated that the invention was known in the country, but “probably not yet applied”. However, as the invention threatened “the important and greatly developing industry of the country”, the Directorate did not recommend the approval of the application.<sup>576</sup> In contrast, just four years earlier in 1869, a patent of ten years had been granted to the Idestam-Kauffman wood-grinding machine.<sup>577</sup> In the early 1860s, the Finnish civil engineer K. F. Idestam had visited, and spied on, a paper mill during his study trip in Germany.

In 1865, Idestam opened a paper factory in Tammerkoski, Finland. The grinding machine he

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<sup>571</sup> *Förteckning öfver patent.*

<sup>572</sup> Förordning angående patenträtt i Finland, no 8 (30 March 1876).

<sup>573</sup> The legal process was initiated in 1882, when a patent-holder sued a company manufacturing matches for infringing his patent on a method of producing matches. Rättsfall: uppfinning, hvarå meddelats patent, förut känd eller icke? Juridiska föreningens i Finland tidskrift no 1 (1885), 173–181.

<sup>574</sup> Since the late 1880s, the duration of protection becomes more standard, and of 12 years. *Förteckning öfver patent.*

<sup>575</sup> Data from the years 1872–73 and 1882–1884. Anomusdiaarit, Ab:86-87, 96-98. Valtiovaraintoimituskunnan arkisto (FNA).

<sup>576</sup> Patent application by Heinr. Voelter (12 June 1873). AD 814/223, Eb:1760. Talousosaston registraattorinkonttorin arkisto (FNA); For Voelter and the development of the Finnish paper industry in the nineteenth century, see Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 315–17; Timo Myllyntaus, Karl-Erik Michelsen, and Timo Herranen, *Teknologinen muutos Suomen teollisuudessa 1885-1920: metalli-, saha- ja paperiteollisuuden vertailu energiatalouden näkökulmasta*, Bidrag till kännedom av Finlands natur och folk, h. 134 (Hki: Suomen tiedeseura, 1986), 109–14.

<sup>577</sup> Maskin för beredning av pappersmassa av trä. Patent no 108 (13 May 1869).

received at his factory was one developed by Voelter. Later, Idestam together with H. Kauffmann, a Danish engineer working as the technical director at the Tampella factory nearby, developed their own grinder machine, which laid the foundations for the later development of the Finnish mechanical pulp industry.<sup>578</sup> The development was based on his experiences of the Voelter grinder used at his paper factory. Between 1869 and 1871, the Tampella factory built 24 grinder machines based on the Idestam-Kauffman method, but in the following years they built several Voelter-type grinders as well.<sup>579</sup> Voelter and his industrial rights also influenced earlier developments in the paper industry. Voelter had received a patent privilege in the Grand Duchy in 1859 for his breakthrough grinder; he had asked for a privilege for ten years, but was only granted five years. The patent was harmful for a brief time, but it also gave important advice to the pioneers in paper industry who were active in the town of Viborg in South-Eastern Finland.<sup>580</sup>

From the perspective of the developing Finnish industries, the system of invention privileges led by the state bureaucracy did not raise broad criticism around the mid-century. The actual practice did not create significant tensions, as the number of patents remained low and the importation of foreign technology was made possible. Moreover, the state bureaucracy had initiated reforms of the mercantile structures which would also affect the role of the invention privileges.<sup>581</sup> The issue of patent reform could have seemed irrelevant, especially as news of foreign anti-patent sentiments were published. In the texts of the Fennoman leader J. V. Snellman, who broadly debated societal topics, including the industrial development of the country, no attention was paid to domestic patenting. His only comment on the question appeared in a book review from 1856 about a travelogue in the US, which discussed patenting, rail-roads, and the relevant legislation. According to Snellman, this theme was surely of great

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<sup>578</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 316–17.

<sup>579</sup> In 1874, a total of 67 grinder machines were installed in Finland, of which 41 built by the Tampella factory.

<sup>580</sup> In the late 1850s, pharmacist Achates Thuneberg continued the work of another Viborgeois, Carl Wilhelm Holmström, who had received a (industrial) privilege for his method of grinding for producing paper. Voelter's invention privilege of 1859 impeded Thuneberg's use and development of the grinding machine, and Thuneberg filed his own privilege petition and later a complaint against the privilege granted to Voelter. Thuneberg was allowed to use the parts of his machine that were invented by him. Voelter's patent and the description of his grinding machine—a very detailed description was included in the patent application—helped Thuneberg to develop his grinder in the early 1860s. A grinding mill based on this development was opened in mid-1860s. However, only Idestam's endeavours formed a solid basis for the industry. I. Sourander and Erik Solitander, *Suomen puuhiomoyhdistys 1892-1942: lisävalaistusta Suomen hioke- ja kartonkiteollisuuden historiaan* (Helsinki, 1943), 11–18. Tillverkning av appersmassa och papper (H. Voelter). Patent no 51 (6 August 1859).

<sup>581</sup> Debates on reforming the mercantile trade laws were read in the newspapers in the 1840s and 1850s. Kekkonen, *Merkantilismista liberalismiin*, 31–37.

interest in countries with developed industries where patents of new inventions had a value. “In our country”, Snellman continued, “these times seemed to be very far off”, and therefore, the topic was not interesting to the reading audience.<sup>582</sup> It is, however, notable, that the newspapers published accounts of foreign inventions (taken from foreign sources) or stories of foreign inventors both for curiosity and technical interest.<sup>583</sup>

In the few texts on the domestic patent system, a balance was sought between the interests of the novel and young industries of the country, and the reformist, right-based views of patenting. Patenting and the industries were discussed in 1856 and 1859 by the pseudonym “—k”, which belonged to S. P. Dahlbeck, a teacher of chemistry, industrial entrepreneur and a reformer of technical education. Dahlbeck had studied chemistry in Germany, and in the 1850s was a teacher at the Technical School of Åbo, the editor of two short-lived technical journals and the director of the Sahakoski factory which produced linen oil and ink, among other things.<sup>584</sup>

Dahlbeck's text from 1856 was titled "Something on patents and patent right", and was published in the newspaper *Wiborg*, one of the advocates of economic liberalism of the time.<sup>585</sup> The author drew a distinction between old invention privileges and the contemporary meaning of a patent. The aim was to convince the readers how patents were not as harmful as the old privileges had been. Instead, the patent was a simple temporary protection which guaranteed the inventors and industrialists the enjoyment of their ingenuity. After the protective term, the invention became the property of the public (*allmänhetens egendom*). Importantly, the author saw also the role of industrialists and their rights as central. Besides the original inventor, all industrialists had the right to be protected if they introduced previously unknown inventions into the country.

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<sup>582</sup> Snellman's review of *Resa i Förenta Staterna*. P. A. Siljeström. 2:a delen. Stockholm 1854 in *Litteraturblad för allmän medborgerlig bildning*, nro 1, January 1856.

<sup>583</sup> The *Litteraturblad för allmän medborgerlig bildning* wrote in 1854 (no. 10-12) how no reader could have ignored the many “inventions, discoveries, improvements of tools, patents etc.” reported by foreign newspapers. For example, the issue of *Wiborg*, a liberal journal for “literature, trade and economy”, presented in December 1859 the “propeller steam boat” by Howard Douglas and other chemical inventions taken from the *Repertory of Patent Inventions* or *Journal de Chimie Médicale*. *Tekniskt. Wiborg*, no 129 (30 December 1859).

<sup>584</sup> *Priskurant å Sahakoski fabriks tillverkningar*. Åbo Underrättelser no 59 (30 August 1858). In 1853 to 1854, Dahlbeck published the journal *Teknisk tidskrift*, and in 1855, *Mönsterblad för handverkare*, which offered drawings and models of constructions, machines and designs. In 1856, Dahlbeck became the member of an industrial committee, where he brought forward ideas about reforming the technical education of the country, especially by developing higher education.

<sup>585</sup> Något om patenter och patenträtt, *Wiborg*, nos 34 and 35 (6 and 9 May 1856).

Dahlbeck also discussed the length of invention protection. According to him, as experience had shown in the major “inventive” countries like “the United States, Belgium, France, Germany and England”, a short patent protection was worse than no patent protection at all. If protection was short, the introduction costs of the invention could not be covered, while competitors could start using the invention very soon. Therefore, the best solution was to have protection of at least 10 to 15 years. The author paralleled the patent protection with the protection that writers had over their work. The difference between the two was that literary authors and translators were more appreciated because of their greater endeavours and sacrifices. For literary work the protection was automatic, whereas a patent had to be applied for. The author concluded that no inventor would probably ask for more than 25 years of protection, although a longer duration would not be harmful in any way.

In 1859, "—k" wrote about the "needs of our industry" in the leading newspaper of the time, *Helsingfors Tidningar*. Dahlbeck pointed out that the country's young industries needed to be protected, but in a way which did not harm free competition in general; they needed a limited time to grow, not to be crushed by the foreign competitors. The protection for industries included also "a sensible patent protection for all kinds of industrial inventions, models and ornaments." The author wrote that every invention was the “child of the inventor's intellectual activity”, and thus he had the right to demand equal protection for “this property” as for his material property. The author again pointed at the dangers of short protection. The inventor would rather keep the invention in secrecy, than have the result of his efforts be offered after 3 or 5 years to the numerous “marauders” of the industrial field. Here, the author perhaps referred to his own experience. Dahlbeck had received a patent (“privilege”) in 1853 for his method of processing the needles of pine trees, but only for five years.<sup>586</sup>

Even though he was contrasting the young national industries with their foreign mature competitors, Dahlbeck did not explicitly discuss the role of foreign patentees. This was obviously not such a burning issue, but it was obviously a political one, as long as patents were privileges granted by the administration. On the one hand, foreign patenting could lead to introduction of new technology; on the other hand, it could block domestic industrial development. The latter view was advocated in a small article in *Helsingfors Tidningar* in 1859, which lamented the backward state of the Finnish forest industries.<sup>587</sup> The article stated how

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<sup>586</sup> Metod att tillgodogöra trådamnet ur barren av pinus arter (Dahlbeck S. P.). Patent no 31 (9 December 1853).

<sup>587</sup> Skogsindustrin i lunda. Helsingfors tidningar no 92 (19 November 1859).



“the Germans were teaching us how to use our forests”, referring to a recent five-year patent for a pulp method by the above-mentioned H. Voelter. The article proposed new ways of making use of the woods, for example by producing “tar water”. It concluded by writing of how nothing would probably happen before a German patented this method as well and made a 200 percent profit with it. The newspaper *Åbo tidningar* replied to this “lecture”, and noted how there was no threat of a German patent, as “tar water” was already produced and used in many instances in the country.<sup>588</sup>

Attention was also paid to the relative backwardness of the agrarian Grand Duchy. In 1866, on the eve of the last great famine in the country, a talk on the role of new inventions by Otto Alfthan was published in the liberal *Helsingfors Dagblad*.<sup>589</sup> Alfthan had studied chemistry in Jena, Munich and Vienna in the 1850s and worked as technical manager in Finland and Russia, and served as a commissioner at the industrial exposition of Stockholm (1866) and international exposition of Paris (1867).<sup>590</sup> Alfthan noted that the productive conditions of the Grand Duchy stood “several decades behind the other civilised nations”, and major foreign inventions could only exceptionally be applied directly. The latest innovations could be studied at the exhibitions, for instance, to develop the industrial (or handicraft) activities in particular, which were already known and practised in the country.<sup>591</sup> In his talk, Alfthan also addressed the question of patenting. Alfthan noted that patent laws gave the impulse for new inventions by helping the inventors to capture the value of their invention. However, Alfthan clearly related the benefits of patent protection to the realities of advanced industries, which as in the exemplary case of “England”, could result in large quantities of new inventions.

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<sup>588</sup> As noted in chapter 1, the foreign engineers and skilled workers were a key resource for the developing Finnish industries. For German experts in the Finnish forest industry, see Jensen-Eriksen, ‘Kansallinen teollisuus, kansainvälinen tietotaito. Saksalaiset ammattilaiset ja modernin metsäteollisuuden synty 1860-1940’.

<sup>589</sup> Huru skola nya uppfinningar fördelaktigast tillgodogöras. *Helsingfors Dagblad*, no 78 (6 April 1866) and no 81 (10 April 1866).

<sup>590</sup> Alfthan was also a commissioner at the International Exposition of 1867 of Paris. Yrjö Kotivuori, ‘Otto Alfthan’, *Ylioppilasmatrikkeli 1640–1852*, 2005, <http://www.helsinki.fi/ylioppilasmatrikkeli/henkilo.php?id=16757>.

<sup>591</sup> This industrial study he conducted in practice the following year. As the Finnish commissioner in Paris, Alfthan had been ordered by Senator J. V. Snellman to systematically gather information about articles that could be of interest for the Grand Duchy. Alfthan's report concentrated on articles of handicraft and small-scale manufacturing. The report, and perhaps also Alfthan's talk, echoed the views of Snellman, who preferred that the national economy be built on small production instead of large industrial efforts. In addition, the attempts to stimulate small-scale, even home-based production were Snellman's response to the difficulties caused by the famine. Smeds, *Helsingfors - Paris : Finlands utveckling till nation på världsutställningarna 1851-1900*, 104–5; Jalava, *J. V. Snellman*, 300–302.

### 3.3 The expanding international innovation market, its actors and the call for patent reform

In the late nineteenth century, the patent institution of the Grand Duchy was reformed to comply with common international principles, and more specifically by following the developments in Germany and the Nordic countries. This process can be explained as a strategy of the peripheral and backward nation for joining the common patent infrastructure to attract foreign patents.<sup>592</sup> What is notable, however, is that this development was encouraged and facilitated especially by the social group of industrial experts or “engineers” who had important contacts abroad.<sup>593</sup> The engineers had assumed a central role both in the institutional framework of patenting and in the functioning of the learning economy. The views adopted by the technical elite suited the political parties who saw international integration as a means of enforcing the separate status of the Grand Duchy in regards to the Empire.

The first patent examiners were renowned scientists, but after the mid-century, the *de facto* patent office, Directorate of Manufactures became tied to the corps of engineers especially via the Technical School (*tekniska realskola*) of Helsinki that was founded in 1849. For instance, the Director of the Technical School A. O. Saelan was a member of the Directorate from 1856 to 1874. The Technical School—Polytechnic School in 1872, Polytechnic Institute in 1878 and University of Technology in 1908—became the main national institution to offer higher-level technical education. In addition to the international working and study experience of the Finnish engineers, the Technical School had a strong background in German engineering; the school recruited many of its teachers from Germany in the late 1850s, and the recruited Finnish teachers were sent for further studies in German universities, when the improvement of the national technical education was initiated.<sup>594</sup> Foreign experts were present when other institutions for the training of modern professionals were founded. The education of foresters started in the late 1850s was organised according to the German model of forestry and its teachers received their education at the German forestry academy of Tharandt.<sup>595</sup>

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<sup>592</sup> For peripheral patent systems, see for instance, Pretel and Saiz, ‘Patent Agents’.

<sup>593</sup> Michelsen, *Viides sääty*, 160–79.

<sup>594</sup> Wuolle, *Suomen teknillinen korkeakouluopetus 1849-1949*, 76–82.

<sup>595</sup> Tero Halonen, *Maasta ja puusta pidemmälle : Helsingin yliopiston maatalous-metsätieteellisen tiedekunnan historia. Osa 1, Hyödyn aikakaudesta vuoteen 1945* (Helsinki: Helsingin yliopisto, maatalous-metsätieteellinen tiedekunta, 2008), 82–83, 107.

In 1872, the Directorate received a new Ordinance, which ordered that the three members of the Directorate had to include the director and one teacher from the Polytechnic School, as well as one technical expert residing in Helsinki.<sup>596</sup> This ordinance was in force until 1885, when the Industrial Board was founded and took over the administration of patents. Its three intendants were required to have industrial expertise and have a background in natural sciences or engineering. For instance, the first intendant responsible for patents was L. Gripenberg, a graduate of the military engineering academy of Saint Petersburg and the chair of the Patent Committee of 1889.<sup>597</sup> The ties to the Polytechnic Institute in the Finnish system<sup>598</sup> can be contrasted with the Norwegian patent institution the tasks of examination and administration of patents were similarly given to a group of experts. The Norwegian experts, the “patent office” between 1841 and 1885, however, were members of the patriotic society *Selskapet for Norges Vel*, and more specifically, part of its expert group called the Industries Group (*Industriklassen*). The members were active in the fields of science, politics, law and business.<sup>599</sup>

As in the case of other peripheries, the majority of the patents granted in the Grand Duchy were given to foreign inventors.<sup>600</sup> All Nordic countries had a high level of foreign patenting in the late nineteenth century. In the Finnish case, around 55 to 75 percent of all patents were granted to foreign applicants. This figure is average if compared internationally, and only demonstrates the global nature of the innovation business in the late nineteenth century.<sup>601</sup> Considered as part of the Nordic area, the Grand Duchy was the periphery of a periphery. In absolute terms, the number of patents granted in the country remained low until the mid-1880s, and in terms of patent per capita, Finland was at one third/one quarter of the levels of other Nordic countries at the turn of the century.<sup>602</sup> The Finnish position is even better illustrated, if exchanges between the Nordic countries are examined; the Grand Duchy was the receiving side in contrast to

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<sup>596</sup> Ordinance for the Directorate of Manufactures (14.8.1872). Wuolle, *Suomen teknillinen korkeakouluopetus 1849-1949*, 135–36. In 1885, the Directorate was incorporated to the newly found Industrial Board, which became responsible for the patent affairs of the Grand Duchy. Ordinance for the Industrial Board, no 23 (13 November 1884), 5 §.

<sup>597</sup> Gluschkoff, ‘Gripenberg, Lennart (1852 - 1933)’.

<sup>598</sup> In Denmark, which did not have an actual patent law before 1894, the examination was conducted by the director and professors at “polytekniske laereanstalt”. Lang, *Om grunderna för uppfinnareskydd genom lag*, 166.

<sup>599</sup> Basberg, ‘Creating a Patent System in the European Periphery’, 145–47.

<sup>600</sup> Patricio Sáiz, ‘Social Networks of Innovation in the European Periphery : Independent versus Corporate Patents in Spain circa 1820-1939’, *Historical Social Research* 37, no. 4 (2012): 348–69.

<sup>601</sup> Khan and Sokoloff, ‘Historical Perspectives on Patent Systems’, 19–20; Khan, ‘Selling Ideas’.

<sup>602</sup> Myllyntaus, ‘Patenting and Industrial Performance in the Nordic Countries, 1870-1940’, 186–87; Kero, ‘Ulkomaalaisen teknologian patentointi’, 140–41.

Swedish and Danish inventors.<sup>603</sup>

It has to be remembered that many of the domestic patents were based on foreign experience, as many of the engineers had studied or worked abroad. An illustrative example of this, as well as the broader learning process, can be found in the career of the engineer Albert Krank. Krank is known especially for his work and innovations in the steamboat industry, which in the Finnish conditions had to adjust to the dimensions of local waterways and the Saimaa Canal, connecting the Eastern lakes to the Baltic Sea. After graduating in the port town of Oulu, Krank moved to study mechanical engineering at the Helsinki Polytechnic between 1874 and 77. His teacher was the German engineer Rudolf Kolster, who had been one of the foreign engineers recruited to the Polytechnic in the 1850s.<sup>604</sup> After his studies, Krank travelled to England to specialise in shipbuilding, and worked at shipyards and ironworks from 1879 to 1881. In Finland, Krank became a member of the Technical Association (*Tekniska Föreningen i Finland*), and was soon appointed as the technical director at Paul Wahl and Co., a workshop building machines and steamships, in the town of Varkaus. In 1888, Krank founded his own engineering workshop.<sup>605</sup>

If only numbers were studied, Krank would be the leading technical innovator in the nineteenth century Grand Duchy; with his 13 patents before the turn of the century, Krank was the most prolific patentee in the country. His innovations related to agricultural innovations, steam engines and ships, where other domestic patentees were also active<sup>606</sup>; steam boats and machines were important in a land of a “thousand lakes” and “hundreds of sawmills”, but where the population was mainly engaged in agriculture. Krank was also active in securing his inventions abroad: his patents have been registered at least in the US, Canada, Great Britain, Switzerland, Austria, and Denmark.<sup>607</sup> The role of Krank and other Finnish patentees abroad has obviously been marginal. However, the will to patent is an indicator of invention markets that were interesting even to the peripheral inventor.

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<sup>603</sup> Kero, ‘Ulkomaalaisen teknologian patentointi’, 145–50.

<sup>604</sup> Hytönen, *Kolster Oy Ab 1874–1999*.

<sup>605</sup> Myllylä, *Albert Krank : varkautealainen laivanrakentaja*.

<sup>606</sup> The first “patent”, or invention privilege, was granted to the entrepreneur N. L. Arppe in 1833. By the Emperor’s decision, Arppe gained an exclusive right to steamboat traffic on the lake Saimaa in Eastern Finland for 20 years.

<sup>607</sup> It is difficult to compile numbers of Finnish patents abroad, as the patentees of the Grand Duchy were often classified as both Finnish and Russian. In any case, the numbers remain very marginal. According to the Espacenet patent database, there were 37 Finnish patents in Britain in 1893–1902, out of which Krank held 3. In 1902, 14055 patents were granted in the Great Britain. ‘Espacenet Patent search’, <https://worldwide.espacenet.com/>.

The role of Finnish engineers extended beyond actual patenting and patent management to concrete intermediation at the patent market. With the broadening of the markets in innovation and the development of the national patent systems, patent agents (attorneys, lawyers) became important intermediaries and actors in the field.<sup>608</sup> In the case of Sweden, Andersson and Tell note how the role of patent agents was very central in managing contacts to and from abroad, filing applications as well as promoting a business oriented management of patents.<sup>609</sup> Very soon after the Swedish patent reform of 1884, the patent markets became dominated by a few patent agencies, which were often founded by engineers. The foreign patentees in Sweden had already been represented by agents, as the law obliged them to name a national representative, but in the 1880s the Swedish applicants also came to file their applications via agencies. At the turn of the century, fewer than ten percent of the domestic applications were filed without an intermediary.<sup>610</sup> Similar figures are found, for instance, in Spain, where 80 percent of the patent applications were provided at the turn of the century by an agent.<sup>611</sup>

The role of patent agents seems to have followed a similar development in the Grand Duchy as in the neighbouring Sweden. More precisely, due to the common history and economic ties, as in the case of the literary business, it seems that a common market of patents had developed in the Swedish-Finnish area. In this asymmetric relation, both Swedish patentees and patent agents have had a leading, if not dominant, role. The Swedes patented relatively more in Finland than Finns in Sweden<sup>612</sup>, and the Swedish patentees ranked first among the foreign patentees in the Grand Duchy, and in some years even outstripped the Finnish applicants.<sup>613</sup> Moreover, in the early 1880s, all of the Swedish patents granted in Finland had a Swedish agency behind them, but the Swedish agencies had also been the managers for other foreign applicants. Three names in particular appeared in the applications: *Stockholms Patentbyrå Zacco & Bruhn*, one of the most influential patent agencies in Sweden, were often represented by lawyer C. J. Timgrén,

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<sup>608</sup> Khan, 'Selling Ideas'.

<sup>609</sup> David E. Andersson and Fredrik Tell, 'Patent agencies and the emerging market for patenting services in Sweden, 1885-1914', *Entreprises et histoire*, no. 82 (27 April 2016): 11–31.

<sup>610</sup> *Ibid.*, figure 6.

<sup>611</sup> Pretel and Saiz, 'Patent Agents'.

<sup>612</sup> In the 1880s, Finns were granted 56 patents and Swedes 46 patents in the Grand Duchy. Between 1886 and 1890, Finns received 10 patents in Sweden. Kero 143, 207. In 1885, of the 22 patents granted in the Grand Duchy, 7 were given to Finns, 9 to Swedes, and 1 to each applicant from Germany, the US, England, Denmark, Switzerland, and Belgium. *Förteckning öfver patent*, IV–V.

<sup>613</sup> Moreover, as Kero notes, most of the foreign patents sold to Finns were of Swedish origin. Kero, 'Ulkomaalaisen teknologian patentointi', 178–79.

Victor Berg, and L. A. Groth & Co. (*skandinaviska patent- och agentur*).<sup>614</sup>

The Swedish patent agencies were also commercial representatives in Finland, as noted also by Tell and Andersson. The *Stockholms Patentbyrå Zacco & Bruhn* appears in the Finnish newspapers not as an engineering or law bureau but in their role as a retailer commercialising new inventions.<sup>615</sup> A two-page advertisement brochure for the *Patentbyrå* published in *Helsingfors Dagblad* in 1886 was divided between two “departments” of the bureau—the machine and the patent departments.<sup>616</sup> The advertisement mainly covered information about machines, some new and patented, for sale, and the *Patentbyrå* also offered to buy used machines. At the very bottom of the first page, the patent services were described: applying for patents in Sweden and abroad, information about patenting, blueprints according to models or drafts.

Among the Finnish patent agents, one of the major names was the engineer Rudolf Kolster, who was also one of the experts used for patent examination by the Directorate of Manufactures.<sup>617</sup> Kolster had worked as mechanic at machine shops in Hamburg, Bremen and Hannover, where he completed his studies in engineering in 1860. Following this, and together with his Norwegian colleague E. Lekve, he was recruited as a teacher in mechanical engineering at the *Tekniska Realskola* in Helsinki. Kolster was an active member of the Helsinki Polytechnic where he worked until 1901, and became an integrative part of the Finnish engineering and industrial expertise.<sup>618</sup> Besides his teaching work, Kolster quickly became a consultant for various commercial and public tasks, and also became a representative for German metal companies in Finland. For these purposes, Kolster founded an engineering bureau in the 1860s, and in the early 1870s, he started to act as a patent agent for foreign customers.<sup>619</sup> In the face of

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<sup>614</sup> Patent applications no 203-227 (1882-1884). Ea:7. Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto (FNA).

<sup>615</sup> Patentbyrå Zacco and Bruhn claimed, for instance, to be the agents for “Decauvilles’ fixed and moveable railways, railcars and locomotives and patents” in Sweden, Finland and Norway. Andersson and Tell, ‘Patent agencies’, 21–22.

<sup>616</sup> Cirkulär no 9. Helsingfors Dagblad, no 9 (11 January 1886). Advertisements by the Patentbyrå appeared also in other regions of Finland, see for example, Östra Finland, no 142 (21 June 1889); Vasabladet, no 41 (24 May 1882).

<sup>617</sup> Hytönen, *Kolster Oy Ab 1874–1999*, 16–21.

<sup>618</sup> For instance, Kolster was one of the founding members of *Tekniska Föreningen i Finland* in 1880. Ibid., 11–15, 30.

<sup>619</sup> Kolster’s first case was the above-mentioned patent application made by two Scotsmen, Sinclair and Nicol, who received a patent for a period of 20 years. Their invention regarded improvements made in machines of wood-processing, a similar area, where Voelter’s patent had been rejected as harmful for the Finnish paper industry just two years earlier. Patent no 129. Ea:4. Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto (FNA).

competition with the Swedish agents, in the early 1880s, Kolster mainly assisted clients from the German-speaking areas.

Notably, Kolster's role, but also the role of other engineers at the Polytechnic, as an independent expert, patent agent and teacher became intertwined. Kolster had close ties to the Directorate: not only did Kolster's director sit at the board of the Directorate, but also did some of his colleagues. In fact, in 1877, the new building of Polytechnic became an important node in the patent affairs of the Grand Duchy, when also the Directorate of Manufactures moved to the building, and had its office there (since 1885 the Industrial Board) until 1896.<sup>620</sup> The Polytechnic was a unique concentration of technical expertise, which was used both in commercial connections and in regulating, administrating, and archiving the actual process of patenting. These institutional ties were reinforced in the late 1880s, when Professor Kolster and Intendant of the Industrial Board Gripenberg were chosen for the (five-member) Patent Committee of 1890.

The 1880s brought back demands for reforming the patent system. The Patent Decree of 1876, which was a copy of the Swedish patent law of 1856, was deemed to be outdated, incapable of assuring enough protection for inventors, and potentially creating barriers for domestic industries. Moreover, the leading view was now that the patent institution, as in place in most western countries and promoted by the international conventions, but also at the Nordic meetings, was desirable and advantageous to the economic development of the country. The critique on the Decree of 1876 and the narrative of the progress of patenting was presented by Joel Napoleon Lang in his dissertation on inventors' protection in 1880. This criticism was significantly channelled by the industrial and technical groups who had experience with the actual practice of patenting. The Grand Duchy was being integrated in the global patent market, and the experts at the Polytechnic—inventors, examiners and agents—were an important node in this development.

In his dissertation, Lang discussed the legal and national-economic nature of inventors' protection, reviewed the current foreign legislation and conceptual views, and only in the final part presented his criticism of the Finnish patent institution. Lang saw this structure useful, as “a common legislation was being developed for the civilised nations, but in our country, the

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<sup>620</sup> Panu Nykänen, *Kortteli sataman laidalla: Suomen teknillinen korkeakoulu 1908-1941* (Helsinki: WSOY, 2007), 56.

patent matter has hardly received any attention”.<sup>621</sup> The statement obviously underlined the importance and topicality of Lang's own work, but it also reflected the context in which the patent issue would be treated—a universal agreement was being sought by others, an idea to which the Grand Duchy had just awoken. In fact, Lang built his argumentation on the desirability of a patent institution upon the first resolution of the Vienna Patent Congress of 1873, which listed reasons why protection of inventions was needed.<sup>622</sup>

The reasons he cited pointed at technological development and new innovation, but also at the benefits that a patent institution would secure for the inventor. Lang saw the disclosure and publication of inventions of all kinds to be especially important, which had direct and indirect advantages; already, the publications and pictures themselves strongly stimulated the “inventor spirit” (*uppfinnareandan*).<sup>623</sup> The only argument which cannot be found among the resolutions regarded the class conflict in patenting. According to Lang, the inventor's rights protected the intellectual workers against “the supremacy of capital”: inventors were mainly non-capitalists, engineers, or workers, whereas the opponents of patents were specifically capitalists and industrial entrepreneurs.<sup>624</sup>

This did not mean, however, that some original justification for the inventor's protection or a universal patent law could be presented. Lang had adopted the views of the German historical school, and realised that the patent law had also evolved, and needed to be legislated according to the developing “living circumstances” (*lefnadsförhållandena*).<sup>625</sup> Lang considered the inventor's rights as part of the German concept of the author's right (*Das Urheberrecht, upphofsmannarätten*). He refuted the scholars who tried to see these author's rights as immaterial (absolute) property rights, or stemming from the personality of the author only. Instead, Lang underlined the economic interests of the author, and viewed author's rights as a special area of the “property law” (*förmögenhetsrätt*). These economic interests were to be protected by law, because it was the duty of the state to promote intellectual creativity.<sup>626</sup> It was a principle in modern society, and in accordance with the common sense of justice, that a person

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<sup>621</sup> Lang, *Om grunderna för uppfinnareskydd genom lag*, 7.

<sup>622</sup> Lang cites paragraphs B, C, E and G of the 1873 Resolution.

<sup>623</sup> Lang, *Om grunderna för uppfinnareskydd genom lag*, 98–99.

<sup>624</sup> *Ibid.*, 107–8.

<sup>625</sup> *Ibid.*, 6–7.

<sup>626</sup> Lang saw that the primary impulse for setting the author's rights came from the state, the main supporter of all human endeavours for “living purposes” (*lefnadsändamål*). Original production, which included intellectual creativity, promoted a nation's cultural life and created new ways of satisfying material needs. This was one of the human endeavours which the state needed to support. *Ibid.*, 72–73.



could enjoy the fruits of his labour. As a conclusion, a patent was not a monopoly or a privilege, but the only way to guarantee the inventor this “natural salary and profit” for his labour.<sup>627</sup>

Finally, Lang discussed the role of the patent institution in the Grand Duchy. According to him, patenting, and labour-saving technology, were not central for a small country, where wages were low and competition between companies was not very tough. However, this did not mean that the institution was useless. Without a patent institution, there would be few incentives to innovate, and many of the important inventions would be taken abroad. Without a patent law, one could surely make use of foreign inventions without paying. However, Lang continued, referring to the Swedish patent committee, that only a small share of the foreign inventions could be discovered, and all respect in the eyes of other countries would be lost. The Grand Duchy needed to attract both foreign inventors, as well as to produce its own inventions to sustain “any higher economic developed” and to compete with other nations. Only domestic inventors knew the natural conditions and the needs of the country. Thus, a good patent institution guaranteed the proper protection for the inventor, but also made sure that the society could benefit from the invention and the information disclosed with the patent.<sup>628</sup>

Lang's dissertation was reviewed in the liberal *Helsingfors Dagblad* in July 1880 together with a pamphlet by a Swedish author J. H. Fredholm on the current patent reform in Sweden (published by the Swedish *teknolog* association).<sup>629</sup> The review was written by R. R., initials that belonged to Robert Runeberg<sup>630</sup>, who was a ship builder who had gained his expertise in Britain, a successful entrepreneur in Russia, and a Finnish commissioner at several world exhibitions.<sup>631</sup> R. R. welcomed Lang's work warmly and shared his views that recognising inventor's rights “by us” also was indispensable. The author especially joined in with Lang's criticism of the short protection time granted to patentees in the Grand Duchy. At the time, the

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<sup>627</sup> The fruit of the labour of such original producer was an immaterial object. It had exchange-value like a material object, but this value could be exploited to its full extent only with the process of reproduction. When the immaterial object was made public, everyone could reproduce it and, therefore, the original producer could not generate enough profit to cover his expenses. The state needed to grant the original producer an exclusive right, which was based on the possibility to decide on the reproduction of the immaterial object. Thus, the basis of author's rights lied in this need to give special protection for the original producer's economic interest, his “interest for wealth” (*förmögenhetsintressen*). Ibid., 74–79.

<sup>628</sup> Ibid., 168–71.

<sup>629</sup> *Uppfinnareskyddet I, II* in *Helsingfors Dagblad* no 177, 178 (4 and 5 July 1880). The pamphlet, “A vital question for Swedish industries” (*En lifsfråga för svenska industrien*, 1878) was by J. H. Fredholm.

<sup>630</sup> In 1883, “R. R.” reported about his study trip to the Angara river. For example, *Från en expedition till Angara*. *Helsingfors Dagblad* no 184 (10 July 1883).

<sup>631</sup> Max Engman, ‘Runeberg, Robert (1849-1919)’, *Biografiskt Lexikon För Finland*, 2014, <http://www.blf.fi/artikel.php?id=9551>.

average protection was five years, which did not have, referring to Lang, any “practical meaning”. The protection term of five years was contrasted with the British system, where patents were granted for fourteen years. Fredholm's work was also reviewed in a positive tone. Fredholm saw a proper patent institution as integral to the industrial development of a country, “a vital question for the Swedish industries”. Runeberg agreed with this, and noted that it was increasingly understood that a good patent laws acted as “an important spur” to the country's industrial development.

These views on how to develop the Finnish patent system—to secure the inventor's (economic) rights and to encourage industrial development—recurred among the public in the 1880s. As discussed above, at the Assembly of Estates of 1882, engineer A. Rosenbröijer presented his petition proposal, which related to the short patent protection and expensive patent fees. Proper protection was essential to the inventor for making his invention known, generating sales and getting compensated for the capital and labour he had invested. In addition, Rosenbröijer saw the current fees, which had to be paid in a lump sum, as too high for “a poor worker” who had potentially made a useful invention.<sup>632</sup> These lacunae—fees and short patent protection—were also discussed at the general industrial meeting in Oulu, and raised by factory owner Nissinen in his petition at the Assembly of Estates of 1888.<sup>633</sup>

In 1883, Hjalmar Londén<sup>634</sup>, a civil engineer who specialised in rail roads and had studied in Paris, wrote an extensive article on the recent founding of the International Union for the protection of industrial property.<sup>635</sup> For Londén, this international cooperation offered both diplomatic opportunities and a forum for learning. The Grand Duchy already belonged to the postal union and metric system, and by joining the Paris Union—before Russia did—it could “heighten its name among the nations”.<sup>636</sup> The conferences of the Union would also offer

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<sup>632</sup> Petition proposal no 7 by A. Rosenbröijer. Minutes of the Estate of Nobility (1882), 45-47.

<sup>633</sup> See chapter 3.1; Viides yleinen teollisuuden harjoittajain kokous Oulusta. Uusi Suometar, no 146 (29 June 1887).

<sup>634</sup> The authors wrote under the pseudonym “Hj. L-n”, and was most probably engineer Hjalmar Londén (1850-1937). Londén had studied in 1875-1877 at the École des ponts et chaussées, and reported, for instance, from the Paris Exhibition of 1878. He was the Finnish commissioner at the Paris Exhibition of 1889. Den inre navigationen (Anteckningar vid Parisexpositionen af en finsk ingenjör.), Morgonbladet no 12-13 (16-17 January 1879).

<sup>635</sup> Internationella unionen för skyddandet af den industriella eganderätten. Tidning för Finlands handel och industri, no 20 (31 October 1883).

<sup>636</sup> The model of the Postal Union was referred to in the international congresses on intellectual property rights, for instance, at the Rome Congress of 1882 on literary property. Seville, *The Internationalisation of Copyright Law*, 60-61.

valuable knowledge for improving the flaws in the Finnish patent law. Londén emphasised that the future of a nation depended on industry and commerce, to which the inventors contributed by finding cheaper and more efficient solutions. A good patent law, then, was essential as it protected the nation's inventors. According to Londén, in Britain in the seventeenth and eighteenth centuries, and in France since the patent law of 1791, industries had developed greatly, due to the patent protection granted to the inventors.

The call for a patent reform was heard by the government and initiated in 1888 in the Finance Department led by Mechelin. In practice, however, the patent office already reacted to the reform demands before this. As noted above, the patent office had close ties with the Helsinki Polytechnic, but was also influenced by the patent applications coming from abroad, which formed the majority of the Finnish patent database. First, the short patent term, which depended on the patent office's decision, was extended in the 1880s. Between 1877 and 1879, the average protection granted was 5.8 years and the most common term was of 5 years. Ten years later, the patentees were granted a protection of 10.9 years in average, normally for 12 years, which was the maximum protection that the Patent Act of 1876 allowed.<sup>637</sup> Second, the patent office took note of the development of formalities abroad which the Grand Duchy should also follow. In 1888, when asked about the flaws of the current patent law, the Industrial Board reported that a section describing the “patent claim” appeared in most foreign patent applications. According to the Board, the new patent law of the Grand Duchy should also require a “patent claim” from the applicants.<sup>638</sup> This lacuna is visible in the 1880s, when only a minority of the Finnish patents included an explicit “patent claim”.

By the time of the patent reform of the late 1880s, a shift had taken place both in the administration and public debate from a privilege-based view of patenting to an understanding where the patent right was seen as a just compensation for any inventor in return for the “fruits of his labour”. A patent system which resembled the international examples, was defended by engineers and entrepreneurs who often had study experience or professional contacts abroad. According to a common view, a proper patent law, which encouraged domestic invention and attracted foreign inventors was essential to the industrial development of a nation. These groups were present at the Helsinki Polytechnic, the patent office, were acting inventors and patent

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<sup>637</sup> *Förteckning öfver patent.*

<sup>638</sup> Report of the Industrial Board (sent to the Department of Trade and Industry of the Senate on 14 December 1888). Ea:2, Kirjeasiakirjat (1888). Kauppa- ja teollisuustoimituskunnan arkisto (FNA).

agents, but took also part in the actual patent reform process. As we will see, this lobbying for an inventor-centred patent law and the depoliticisation of the question continued in the 1890s.

What is important is that the protection of inventors rights proposed by the technical groups suited both the Fennoman and Liberal political views of the time. Even though foreign examples were followed, and the standards of the patent union adopted, patenting would remain in the hands of the nation-state. From a Fennoman perspective, a proper patent law helped the (poor) national inventor against unmanageable competition and foreign capital. Inventor protection became right-based, granted on equal terms to all inventors of new (industrial) methods or machines, not only to those picked by the Senate. At the same time, the expropriation clause and strong requirements of compulsory working and licensing were set, to secure national interest and to prevent the formation of harmful monopolies.

As a result, when the actual patent law was debated by the Estates in the 1890s, the content—patent term, scope of protection or the role of foreign inventors—received hardly any attention. The patent law became part of the on-going conflict about the limits of the autonomy of the Grand Duchy. By underlining the international trends and the right-based view of patenting, the Grand Duchy could distance itself from the Russian rule, and create another autonomous sphere of activity within the Grand Duchy: a distinct Finnish patent area.

### **3.4 The universal idea of a patent and the creation of the Finnish patent area in the 1890s**

The new patent law was read at the Assemblies of Estates of 1894 and 1897, approved by the Emperor in 1898 and finally entered in to force in 1899. In contrast to the debate on authors' rights two decades earlier, the patent question did not create much controversy among the political parties. On the contrary, the opinions were mainly in favour of the reform, which had been portrayed as beneficial to the industrial development of the nation. Accordingly, the content of the patent law did not undergo any major changes, but the proposal of the Patent Committee of 1889, based on foreign examples, remained at its basis.

The legislative process on patents took place in a rather different political context than the earlier legislative work on authors' rights. Since the 1880s, the development of the Grand Duchy

into a separate nation-state had increasingly caught the attention of the Russian public eye, especially in the Slavophile press. Moreover, Finnish matters were increasingly put under ministerial review in Russia, which was made legally binding in 1891 and the direct and personal ties between the Finnish representatives in Russia and the Emperor became less important.<sup>639</sup> The policies of imperial integration were relaunched in the Grand Duchy, with the concrete expression of two imperial manifestos on postal matters and the penal code in the early 1890s, which the Finnish side viewed as interfering with the country's constitutional order.<sup>640</sup> Even though the conflict had slightly eased and would flare up again in 1899, the sessions of the Assemblies of 1894 and 1897, where the patent reform was also discussed, were overshadowed by these constitutional concerns.<sup>641</sup> The parties, and their respective Estates, accustomed to the question differently. The Fennomanian Finnish party took a more loyal line, whereas the Swedish party, formed together with the Liberals and the Svecomans, was openly critical towards the policies of Russification.

These perspectives of the parties on Russo-Finnish relations were reflected in the legislative debates on the patent law. The disagreements came to regard the structure of the law—the extent to which the Estates could participate in the legislative process, while the field of invention protection had in the past been an administrative matter only. The Patent Committee of 1889 had proposed one complete Patent Act. However, the imperial proposal that was presented to the Estates in 1894 had narrowed to relate only to patent infringements and the judicial process.<sup>642</sup> The Senate of the Grand Duchy had seen that the authority of the Estates only covered the criminal procedure. The material patent law, then, should be decreed in an administrative way, as had been done with the Patent Decree of 1876 and with the invention privileges of the previous centuries. In addition, the proposal for a decree on the actual patent right was given to the Estates, but only as a notice which would help the Estates to discuss their

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<sup>639</sup> Jussila, Hentilä, and Nevakivi, *From Grand Duchy to Modern State*, 61–65.

<sup>640</sup> In June 1890, the Emperor used a manifesto to order the Finnish post to be set under the Russian Ministry of the Interior, without hearing the Estates in the matter. In 1891, the Emperor Alexander III took back the recent Finnish Penal Code which he and the Finnish Assembly of Estates had already approved, while certain sections of the Code had been deemed by Russian legal scholars as disadvantageous for Russia. Klinge, *Kejsartiden*, 312–16; Uno Tuominen, *Säätyedustuslaitos 1880-luvun alusta vuoteen 1906* (Helsinki: Eduskunnan historiakomitea, 1964), 14, 238–41.

<sup>641</sup> For instance, in 1894, the speakers of the Estates referred to the constitutional status of the Grand Duchy in their opening speeches, some criticizing also the attacks made in the Russian press against Finnish autonomy. Also, the Estates sent an address to the Emperor, where they hoped that the rights that the country possessed would not be affected without first hearing the Estates. Tuominen, *Säätyedustuslaitos 1880-luvun alusta vuoteen 1906*, 74–75.

<sup>642</sup> The imperial proposal no 22 on the "förslag till förordning rörande intrång i och annat brott mot patenträtt samt om domstol och rättegång i mål om patent".

part of the legislation.

The Estates did not accept the division and claimed their right over the patent matters, which led to the scissoring of the law. The Estates transferred the majority of the administrative decree under their own competences, and this Estate law was turned into the main patent law, the Act on Patents (*Förordning angående patent*). The changes were too radical, and the Emperor left the proposal to lapse. However, in 1897, a similar law proposal on patent infringements was presented, which was slightly more beneficial to the Estates. This time the Estates were more uncertain about how to proceed in the matter. Their cutting was more moderate, but again, the part of the Estates was made the main patent law. This was done by including the definition of the patent right into the first article, naming the decree the “Act on Patent Right [...]” (*Förordning angående patent rätt [...]*), and, on the other hand, calling the administrative part only “a proclamation on patent” (*kungörelse angående patent*). This solution was finally accepted by the Emperor.

As we have seen, the nature of the patent law had already been disputed in the 1860s, when the Senate prepared the agenda for the January committee.<sup>643</sup> The distinction between old invention privileges and new patents of invention was alluded to in public, but was clearly drawn by J. N. Lang in his dissertation. Lang saw modern patenting as an institution of private law, already exemplified in the Decree of 1876, and drew a parallel with the author's rights which had also been legislated by the Estates. Thus, not being a sole “tool of protectionism”, the patent law clearly belonged to the competences of the Estates.<sup>644</sup> The Patent Committee of 1889, which included Professor Lang, followed his line of thought, which the Estates also embraced in 1894 and 1897. At the same time, contrasting views, which considered patents as privileges, had been presented and were presented at the time. As Aer has shown, at the turn of the century in Russia, a patent right was still seen to a great extent as a privilege granted by the Emperor.<sup>645</sup>

More importantly, this dispute over the nature of the patent law did not only relate to the competences of the Estates, but became part of the broader debate on the political identity of the Grand Duchy. First, by promoting the liberal view on patenting, which emphasised the rights of the inventor, it was possible to strengthen the position of the Estates. Patent law came to be

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<sup>643</sup> See chapter 3.1.

<sup>644</sup> Lang, *Om grunderna för uppfinnarekydd genom lag*, 173.

<sup>645</sup> Aer, *Patents in Imperial Russia*, 138–41, 153–55, 180–83.

understood as another legal field which required the participation of the Estates, which according to the Finnish side, especially the liberals, had a clear constitutional role. One argument in favour of the participation of the Estates would be the law on authors' rights of 1880. The law on author's rights had also been read and approved by the Estates. As has been noted, the inventor's rights had been paralleled with the rights of the writers and artists. Second, the creation of a distinct Finnish patent area, which had followed different principles of patenting than the mother country, would highlight the separate status of the country. The Grand Duchy was being positioned as part of the west, and the "modern" forerunners of patenting, and their universal principles, were used as examples in drafting the law.<sup>646</sup>

At the Assembly of Estates of 1894, the imperial proposal on patenting was first sent by the Estates to the Law and Economy Committee (LEC). The LEC noted how the content of the law was equal to the proposal of the Patent Committee of 1889, and only the form of the law—the division into the Estate law (patent infringement only) and the administrative law—remained to be discussed. The LEC was the first to comment on the division, and made the major changes which rendered the Estate law as the main patent law. In its argumentation, the LEC mainly followed the Patent Committee of 1889. In fact, the LEC had ties with the Patent Committee; for example, August Nybergh, the secretary of the Patent Committee, presided over the LEC and its members included Alexis Gripenberg, second cousin to Lennart Gripenberg, the Chairman of the Committee.

The LEC began its report with a historical introduction to patent law in Finland by alluding to a common historical background, as well as to recent developments, which the Grand Duchy had not yet followed. The LEC wrote how patenting had its origins, "similarly to many other nations", in the system of privileges where, in order to promote domestic industries, inventors were granted exclusive rights to their inventions. The report referred to the Swedish Ordinances of 1668 and 1739 and to the current Patent Decree of 1876. It considered that the current law had been a step forward, but it still included many flaws and was not in accordance with the "principles that are dominant in patent law."<sup>647</sup>

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<sup>646</sup> In 1891, the Finnish Technical Society (Tekniska föreningen i Finland) discussed the report of the Patent Committee of 1889, and wrote once again about the particular weaknesses of the current law, which had been based on outdated principles already at its time. Accordingly, the patent law proposal had been drafted according to principles expressed in the patent congresses and in general followed the newest patent laws, mainly those of Germany, Sweden and Norway. Tekniska föreningens i Finland förhandlingar, no 1-2 (1891), 38–39.

<sup>647</sup> Report of the Law and Economy Committee (LEC) no 11 (Documents, 1894), 2–3.

To discuss the division between the administrative and estate law, the LEC had examined to what extent "the contribution of the Estates was necessary in patent law according to the constitutional laws". According to the report, there were sections that had to be moved from the administrative law to the Estate law because they were defining each other.<sup>648</sup> Besides this organic relation, the LEC stated that there were reasons of a more principled nature according to which the main features of the patent law should be decided by the Estates:<sup>649</sup>

As it has previously been mentioned, patent law, or the industrial author's right, as well as the literary author's right closely related to it, have indeed grown from the privileges that in older times were granted in casu to inventors and writers. [...]

But this protection has developed from privileges to a system of fixed legal norms, which implies, that the inventor or the writer are *entitled* under a certain time period to enjoy alone the fruits of their labour, and this right can not be characterised as anything else than as a right of private nature.

Såsom förut är nämndt har visserligen patenträtten eller den industriella upphofsmannarätten liksom äfven den dermed nära beslägtade literära upphofsmannarätten uppvuxit ur de privilegier, som i äldre tid in casu meddelades åt uppfinnare och författare [...]

Men från privilegieväsendet har antydda skydd numera utvecklats sig till ett system af fasta rättsnormer, hvilkas innebörd är, att uppfinnaren eller författaren är *berättigad* att under viss tid allena njuta frukterna af sitt arbete, och denna rättighet kan icke annorlunda karaktäriseras än såsom en sådan af privaträttslig art.

The Estates had participated in legislating the law on authors' rights of 1880, and because of the similarities between the two institutions, there was no reason why the Estates should not participate in legislating the patent law. The LEC noted that even though the "industrial author's right" was weaker than the literary and artistic right, being shorter in duration and "taxed", there could be no difference in the legislative practice. It continued by presenting other legislative cases in which the Estates had earlier participated.<sup>650</sup> For instance, the LEC described how the patent law conflicted with the principle of freedom of trade. The Estates had participated in legislating the Act on Business and Trade of 1879, which was another reason why the Estates should examine and decide on the general principles of a patent included only in the administrative decree.

<sup>648</sup> For example, section 1 of the Estate law used the term "without the permission of the patentee". This, however, was contradicted in the administrative law (sections 18-20) with cases where the permission of the patentee was not needed (e.g. in the case that the invention had been already used by someone). Report of the LEC no 11 (1894), 10–11.

<sup>649</sup> Report of the LEC no 11 (Documents, 1894), 11, italics in the original.

<sup>650</sup> The LEC noted that if the legislator granted such exclusive rights to the "author", other legal rules were needed in order to settle the possibly conflicting relations that would arise. For example, the Estates should also decide what would follow if two inventors had made the same invention. Report of the LEC no 11 (Documents, 1894), 11–12.



Finally, a distinction was made between the tradition of administrative law-making and the current legislative process. According to the LEC, the Patent Decree of 1876 had been enacted without the contribution of the Estates because the legislator was not fully aware of the nature of this "author's right" (*upphovsmannarätt*). Moreover, the principle of freedom of trade had not yet been set (1879), in which the Estates then participated.<sup>651</sup> The LEC returned to the narrative—but as we have seen the transformation was also real—a shift had taken place from invention privileges to modern patenting: the inventor had taken a more central role, and was not supported because of the good-will of the ruler, but because of the inventor's "authorial" right to the fruits of his intellectual labour.

The Estates approved the report and the proposal of the LEC almost as such. No discussion took place in the Estate of *Bonde*. The Clergy commented on misprints and imprecise translations between the Finnish and Swedish law proposal. County Dean Torckell addressed the issue of employee inventions. According to the law proposal, the employer gained the right to inventions made by his employees. Torckell considered that this was not just, for employees were not mere non-human objects, but should be offered at least some compensation for their inventions.<sup>652</sup> Torckell's proposal, however, remained without support.<sup>653</sup> In the Estate of *Burghers*, Representative Wegelius alone touched upon the law proposal. He wanted to extend the period during which the patent application could be revised from four to six months. This would enable the inventor to secure protection for his idea, but still to develop it in practice. As an example Wegelius used the British patent law where the term was one year. The Estate gave no support to Wegelius' proposal.

The longest discussion took place in the Estate of Nobility, where the leading constitutionalist lawyers warmly greeted the changes made by the LEC. Liberal legal scholar Robert Montgomery, who had resigned his office in 1890 due to the dispute over the Penal Code, noted how the Estate law had to include the general principles of the law, whereas the administrative decree should consist of more detailed definitions. Another liberal in the Nobility, the former senator L. Mechelin agreed with Montgomery, and added that the imperial proposal handed to the Estates could not be treated as an independent law, but a mere administrative decree. Finally,

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<sup>651</sup> Report of the LEC no 11 (Documents, 1894), 10–14.

<sup>652</sup> Minutes of the Estate of Clergy (1894), 1356.

<sup>653</sup> The section raised discussion at the Technical Society of Finland in 1891, for the principle, even though applied in practice, did not exist in the laws of the neighbouring countries. Tekniska Föreningens i Finland Förhandlingar, no 1-2 (1891), 38–42.

R. A. Wrede, Professor of Roman and Civil law, gave his support to both speakers. He asked, however, whether the section on patent fees should also be included in the Estate law, as it concerned taxation.

Besides the praises from Montgomery, Mechelin and Wrede, the discussion in the Estate dealt with the section on patent fees, a matter, that according to Alexis Gripenberg had also been much discussed in the LEC: was patent fee a tax set upon the invention/patentee, or a compensation that the inventor paid to the state for the protection and the bureaucratic process? In the former case, the section could be transferred to the Estate law, while in the latter, it could remain in the administrative law. The tax nature of the fees was defended especially by R. A. Wrede, who noted that the patent fees were progressive, not a single payment, which made them more tax-like.<sup>654</sup> Analogies to other fees were used to show how the patent fees should be decided by the Estates (Representative Furuhielm pointing to trade register fees) or set by the administration (Representative A. Gripenberg referring to ship register fees).

In the final vote, the section remained unchanged and part of the administrative decree of the legislation.<sup>655</sup> The patents and the fees were seen related to the industrial policies of the state, not, for example, to the taxation of harmful monopolies. But more importantly, by leaving the patent fees to the administrative law, which was a minor issue, a compromise was sought to compensate for the large changes made to the imperial proposal. For instance, A. Gripenberg said that the LEC had decided to leave the fees within the administrative law because of "certain reasons of convenience" (*på grund av vissa lämplighetssynpunkter*). The geopolitical concerns that would be more central at the next Assembly of Estates, were expressed explicitly by baron Samuel Werner von Troil, a liberal who resigned his post as senator in 1891 because of imperial codification policies:<sup>656</sup>

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<sup>654</sup> Minutes of the Estate of Nobility (1894), 1399.

<sup>655</sup> According to L. Mechelin, A. Mechelin and A. Gripenberg, patent fees were a mere payment, because the state did not want to impose taxes on inventions as such, but to guarantee protection for patented inventions. Also, the payment regarded only inventors who had asked for protection and the patentee could resign the payments any moment he wished. Minutes of the Estate of Nobility (1894), 1395–1402.

<sup>656</sup> Kristiina Kalleinen, 'Troil, Samuel Werner von (1833 - 1900)', *The National Biography of Finland*, 2007, URN:NBN:fi-fe20051410.

I will not try to provide any enquiry on whether patent fees should be seen as taxation or as payments provided to the state for the patent protection. For me, the main issue about this is that the Estates have for the first time had the possibility to take part in legislating the patent law, which until now has belonged to the administrative legislative sphere alone[.]

Jag vill icke försöka ingå i någon utredning om, huruvida patentafgifterna äro att betraktas såsom en beskattning eller såsom åt statsverket lemnad ersättning för patentskyddet. För mig är det hufvudsakligaste härutinnan att Ständerna nu för första gången lemnats tillfälle att deltaga i patentlagstiftningen, hvilken hittills ansetts höra till den administrativa lagstiftningens område[.]

A compromise between the Estates and the Emperor was also prepared by L. Mechelin. He noted how the government (*regeringsmakt*) should not feel its work harmed, even though the Estates now contributed to a larger part of the legislation. Mechelin hoped that the division made by the LEC would not be discussed in terms of the “prerogatives of the monarch”. The law proposal of the LEC, which expanded the role of the Estates in legislating the patent law, was approved in all Estates. To Mechelin's disappointment, the juridical reasoning of the LEC was not enough, as the “prerogatives of the monarch” that had been limited in the reading entered the debate.

Concerns about the fate of the patent law were already expressed in the public before the Emperor had given his final rejection. What is notable, is that the debate was initiated outside the strictly political press in *Teknikern*, a professional journal in the field of engineering.<sup>657</sup> The article “Finland's patent law” was published in May 1895, and was cited in the newspapers close to the Swedish party.<sup>658</sup> The article wrote of how the new patent law had been yearned after for years by many, especially by those in “technical circles”. At the moment, the majority of the laws approved at the Assembly of 1894 had been confirmed by the Emperor, but the patent law remained a question mark. This silence from the side of the government could be interpreted as a hesitation to accept the changes made by the Estates. The *Teknikern* tried to remain neutral in the matter, and wrote that it was difficult to say whether the division proposed would breach the competences of the government in the matter. The journal alluded to a compromise and wrote of how important matters, such as patent fees and the patent procedure had still been left to the government alone.

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<sup>657</sup> Finlands patentlag. *Teknikern*, no 15 (1895).

<sup>658</sup> Hufvudstadsbladet no 115 (21 May 1895); Aftonposten no 46 (25 May 1895). The Finnish-language press only referred to the general meeting of industrialists in Turku, where the chairman expressed his wish that the new patent law, important for trade and industries, would be soon approved by the Emperor. Kahdeksas yleinen teollisuuden harjoittajain kokous Turussa. *Uusi Suometar* no 165 (20 July 1895).

Most importantly, the journal underlined the importance of the law reform outside the competence quarrel. According to the journal, the small number of patents in the country resulted from the current harmful and impeding legislation. The journal noted that only 40 patents had been granted annually between 1891 and 1894, an amount that was "completely unimportant compared to the numbers that the more advanced countries could present". The number of patents and the advances gained from these would quickly rise with the law reform; this was the "experience shown in all the countries, where a patent reform had been carried out." The Grand Duchy would be no exception to this. Innovation, if any, was a "cosmopolitan activity", and not dependent on matters such as climate or geography.<sup>659</sup> The article concluded that it should be according to the interest of the state to update the legislation, which was harming inventiveness in the country.

In mid-June, the question was addressed outright in the editorial of the *Nya Pressen*, constitutionalist newspaper close to the Swedish party.<sup>660</sup> The editorial, "Where does the patent law linger?" (*Hvar dröjer patentlagen?*), wrote that a year had passed since the last Assembly of Estates, and no statement had been heard from the Senate about the patent law. Referring to the article of *Teknikern*, the editorial noted that this delay had raised concerns about a new dispute over the competences of the two "State authorities" (*statsmakter*). However, whereas von Troil in the above citation and the article in *Teknikern* had seen that with the new patent law, the government had accepted the participation of the Estates in the legislative process, *Nya Pressen* expressed that the Estates absolutely needed to be involved. Rather, the editorial wrote, the division proposed in the imperial proposal could be seen as purposely created to diminish the competences of the Estates. Thus, *Nya Pressen* made it clear that the Estates, by making the structural changes, were not only correcting the incoherent and illogical patent law, but justly defending their legal competences. As a conclusion, the editorial hoped that the fears about a plot in the government was exaggerated and other harmless reasons could be found behind the delay.

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<sup>659</sup> Even though the importance of the patent reform was commonly acknowledged, not everyone was so optimistic about the effects of the new law. The Patent Committee of 1889 reported that new personnel were not needed at the patent office, while the number of patents would probably not increase very highly in the coming years. *Komitén för revision af gällande förordning angående patenträtt*, 14.

<sup>660</sup> *Hvar dröjer patentlagen?* *Nya Pressen*, no 156 (13 June 1895). The editor of the newspaper was Axel Lille who had studied commercial law, and was the long-term editor of *Nya Pressen* and an active in the Swedish(-speaking) parties. Lars-Folke Landgrén, 'Lille, Axel Johan (1848–1921)', *Biografiskt lexikon för Finland*, 2007, <http://www.blf.fi/artikel.php?id=3531>.

In November 1895, the Senate gave its statement about the changes made to the imperial proposal by the Estates, which had restricted the role of administration in the matter. The Senate repeated the reasoning of the LEC, based on the Patent Committee and earlier work by J. N. Lang; today's patent was something different than a mere invention privilege. In general, it had developed into a legal system, according to which all inventors fulfilling certain prerequisites were entitled to have their invention protected. The modern patent laws regulated these objects and the legal relations they involved, which were matters of private law that belonged to the competences of the Estates. Moreover, the modern institution of patenting was close to the literary author's rights, which the Estates had legislated in 1880. The Senate concluded that the changes made by the Estates were not an impediment to accepting the law, if the Emperor so wished.<sup>661</sup>

In January 1896, however, the newspapers reported that the Emperor had left the proposal lapse. This was a little surprising, as in its statement of November 1895, the Senate had been cautiously positive, though indecisive, about the division.<sup>662</sup> In addition, the liberal newspaper *Päivälehti* of the youth of the Finnish Party reported how according to its knowledge, the division proposed by the Estates had been refused because the Russian Minister of the Interior had not accepted the larger role of the Estates in the legislation of the law.<sup>663</sup> The piece of news by *Päivälehti* was cited broadly in the national and regional newspapers<sup>664</sup>, and consequently, the line of conflict was reinforced between the Estates (slightly backed by the Senate) and the government of the Empire.

Meanwhile, the patent reform was continued outside the traditional arena of politics. In summer 1896, the Technical Club of Viborg began to prepare a proposal for reforming the current administrative decree.<sup>665</sup> It was not sure—a matter reported to the Technical club in June 1896 by the Industrial Board—whether a new patent law proposal would be given to the next Assembly of Estates. In this case, the most pressing problems of the current decree could be changed administratively.<sup>666</sup> The Technical Club of Viborg prepared a list of ten issues, that

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<sup>661</sup> Minutes of the Economic Division of the Senate, 14 November 1895. Talousosaston yhteisistuntopöytäkirjat XII, Ca:433, 357.

<sup>662</sup> Patentlagen. Hufvudstadsbladet, no 26 (28 January 1896).

<sup>663</sup> Patenttilaki. *Päivälehti* no 23 (29 January 1896).

<sup>664</sup> For example, Hufvudstadsbladet, no 28 (30 January 1896); *Östra Finland*, no 24 (30 January 1896); *Nya Pressen*, no 28 (30 January 1896); *Aamulehti*, no 24 (30.1.1896).

<sup>665</sup> Tekniska klubbens utflykt till Rakkolanjoki. *Östra Finland*, no 169 (24 July 1896).

<sup>666</sup> This notice had been given by the Intendant of the Industrial Board, C. P. Solitander. According to Solitander, the most pressing issue in the current “defective” patent decree were the patent fees, which could

should be taken into account when reforming the current law. These included the publication of new patents, the format of patent applications, patent examination and the role of the Patent Office (Industrial Board), and they were also sent to a Swedish patent agency for comments.<sup>667</sup> Most important, however, were the patent fees which were too high. In fact, the engineer L. Boije had asked the Swedish L. A. Groth's patent agency (Stockholm) about the fees in Europe, and concluded that the Finnish fees were currently the highest. Boije sketched how the heavy costs in patenting were hindering, for example, the use of natural resources; with all its rapids and their power, and a better patent law, the Grand Duchy could become "a large Sheffield".<sup>668</sup>

The Technical Club of Viborg had its proposal ready in November 1896, after which it was sent to other technical clubs in the country. The other clubs agreed to the initiative of their colleagues in Viborg, but the initiative came too late. The Senate had formed a committee to continue the process and to form a new proposal. This was sent to the Emperor in November 1896.<sup>669</sup> In its letter to the Emperor, with a law proposal appended, the Senate underlined the urgency of the matter. It wrote that the "need for new patent law" had become even more evident "while the patent institutions in other countries developed". The Senate saw that the reform should not be stopped only because the Estates had diverged from the imperial views on the competences. The Senate, then, "dared" to propose to the Emperor that a law proposal should be presented at the next Assembly of Estates. This was approved by the Emperor, and the Estates received a new imperial proposal on the matter in 1897.

The imperial proposal had the same dual structure as in 1894; the Estates could mainly decide on patent infringements, whereas the norms of patenting were settled administratively. This time, as the previous law proposal had been to left lapse, the Estates approached the patent reform in a more considerate manner. Already in the preliminary debate of the law proposal, the moderation and importance of the reform were highlighted. In the Burgher Estate, August Nybergh, the secretary of the Patent Committee of 1889, noted how the division made by the

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be reformed by lowering the fees and making their payment annual. Patentlagen. Hufvudstadsbladet, no 170 (26 July 1896).

<sup>667</sup> This was the Boo Hjärnnes Patentbyrå in Stockholm. The patent agency viewed the reform list as successful. It recommended that the Grand Duchy changed its principle of compulsory working (currently, the invention needed to be in operation after two years, and its functioning had to be proven yearly) to the principle of compulsory licensing, which was also the current aim in Sweden. Teknikern, no 144 (15 December 1896), 242.

<sup>668</sup> Teknikern, no 144 (15 December 1896), 241.

<sup>669</sup> Minutes of the Economic Division of the Senate, 19 November 1896. Talousosaston yhteisistuntopöytäkirjat XI, Ca:445, 587.

Estates was clearly better than the proposed one. However, as the limits of the competences in the area were vague, one could solve the issue only by being prepared for an agreement. It was a “fait accompli” and an advantage to the government that the Patent Decree of 1876 had been stipulated by the administration only. What Nybergh saw to be particularly important was that the law would strengthen the special status of the Grand Duchy, as by approving the law, both “state authorities” recognised that “Finland was a specific legal sphere” in patenting.<sup>670</sup>

In addition, the importance of patent reform for the industries, and the opportunity the Estates had for participating in the reform, were pronounced in the preliminary debate by officials of the Industrial Board, the patent office. The Treasurer of the Board, A. A. Lilius, applauded the conciliatory words of Nybergh. Lilius asked to read the law proposal this time, in a delicate way to have the law approved by the Emperor, while there was a practical need for the reform in the country. The old patent law was outdated, unsuited and discouraging, so that some domestic inventors had only applied patents abroad. According to Lilius, even foreign inventors found the strict conditions for applying and keeping a patent to be strange. Lilius concluded that it was important to facilitate foreign patenting, which formed the majority of patents granted, to attract valuable foreign inventions.<sup>671</sup> C. G. Sanmark, the Superintendent of the Industrial Board, expressed similar views to those of Nybergh and Lilius in the Nobility. Sanmark underlined the momentum given to the Estates. The reform was so timely that if the proposal was cancelled again, the Industrial Board had to ask for an administrative reform (which had been the aim of the Technical Club of Viborg, as noted above). Sanmark hoped that the proposal would be approved regardless of the division, and in any case, there was no dispute about the content of the law.<sup>672</sup>

Similarly to three years earlier, the law proposal was sent to the Law and Economy Committee (LEC). The LEC did not express any new views on the matter. It again criticised the structure of the law, but did not want to suggest any changes to the imperial proposal because of the great need for a reformed law. A large minority of the LEC, with members from the Nobility and Burghers, presented an objection. According to the objection, the division remained incomplete, and parts of the administrative decree, especially the definition of a patent, had to be moved to

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<sup>670</sup> Minutes of the Estate of Burghers (1897), 67–69.

<sup>671</sup> Minutes of the Estate of Burghers (1897), 69–70.

<sup>672</sup> Minutes of the Estate of Nobility (1897), 82.

the Estate law.<sup>673</sup> Consequently, the discussion in the Estates was divided between those in favour of the LEC, and those in favour of the objection.

It has to be remembered that the actual question of patenting had not raised much interest among the public. When it was discussed, the issue was viewed through the competence dispute which ultimately regarded the political identity of the country. The liberal newspaper *Hufvudstadsbladet*, close to the Swedish party, commented on the “patent law question” in its editorial at the time of the reading of the law in March 1897.<sup>674</sup> It examined the actual question of patenting only indirectly by defending the constitutional role of the Estates. The newspaper took the side of the objectors, while it found that the law proposal gave the administration too much an authority to influence economic life. For instance, if the definition of patent was left to the administration, it could also make medicine and foodstuffs patentable, which would increase their price and accessibility, the newspaper wrote. Moreover, it criticised the Senate, where the Fennomans had strengthened their position and were seen as the “governing” party<sup>675</sup>, for not giving a stronger support for the Estates.

Thus, the discussion in the Estates followed the division into the constitutionalist side (mainly the Burghers and the Nobility) that underlined the parliamentary nature of the Assembly of Estates, and the Fennoman side (strongest in the *Bonde* and Clergy) that was more compromising towards the Empire.<sup>676</sup> Many representatives hesitated between the two, but still approved the imperial proposal in order to make the patent reform pass. Some pointed to the urgency of the reform, which was demanded by the technical and industrial circles of the country. To many, however, the patent law appeared to be an opportunity to both reinforce the status of the Estates and to mark a distance from the Empire.

The Estate of *Bonde*, with a majority of 40 to 15, approved the report of the LEC. The realist tone was strong. The representatives noted that the current proposal was not perfect, but it was better than nothing. Representative Wuolijoki noted that the Estate had been too courageous three years ago (thus criticising the liberal representatives), which had led to the rejection of the law by the Emperor. The best thing would be to accept the current proposal to be able to

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<sup>673</sup> Report of the Law and Economy Committee (LEC) no 3 (Documents, 1897).

<sup>674</sup> Patentlagsfrågan. *Hufvudstadsbladet*, no 82 (25 March 1897).

<sup>675</sup> Tuominen, *Säätyedustuslaitos 1880-luvun alusta vuoteen 1906*, 82, 80–81.

<sup>676</sup> Helsingforsbref. *Wasa Nyheter*, no 72 (28 March 1897).



participate in the law-making.<sup>677</sup> In a similar tone, Representative Kakkinen pointed out that it was difficult to draw the line between the administrative and Estate laws. If there was a dispute about the matter, nothing would be accomplished. “Why not take that little, that we are able to seize? We have now something concrete in our hands.” Kakkinen continued.<sup>678</sup> An interesting opposing view was presented by Representative Niemelä, who drew a parallel between concrete property and the ownership of an invention. For Niemelä, it was clear that inventions could be held as property, as a person's or a family's livelihood could depend on it. The Estates had historically decided on laws related to property, such as laws on inheritance or land ownership, and could thus decide also on patent law. According to him, a patent related to a similar right as that of who could be entitled to a piece of land.<sup>679</sup>

In the Clergy, no addresses opposed to the LEC were pronounced. Even the liberal, Professor of Medicine, J. W. Runeberg, who defended the role of the Estate by paralleling patenting and taxing, and alluding to the literary property debate, considered that by approving the imperial proposal, the Estates could participate within a sphere of law that had previously been only the domain of the Emperor. Professor of Law R. Hermanson gave a long legal-historical lecture about the legislative competences. He demonstrated the complex nature of the question, alluded to the similar conflict in Sweden, and concluded that as the Emperor had kept the right, the Estates had no possibilities to expand their own rights beyond the proposal.<sup>680</sup> The Fennoman Professor of History J. R. Danielson came to a similar conclusion. Even though patenting had come to be internationally legislated by the “people's representatives”, the “government” had wanted to hold on to their old competences. The Estates could not do anything else but “adapt to the situation”.<sup>681</sup> The most compliant words were heard by the Professor of Law J. Forsman, the brother of the leading Fennoman figure Yrjö-Koskinen. Forsman noted the active role of the government in building a compromise, by giving the Estates a second opportunity to read the law proposal, for instance. According to Forsman, the Estates should “thankfully express their gratitude” for this.<sup>682</sup>

Both the Estate of Burghers and Estate of Nobility, like their representatives in the LEC, refuted

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<sup>677</sup> Minutes of the Estate of *Bonde* (1897), 539.

<sup>678</sup> Minutes of the Estate of *Bonde* (1897), 540.

<sup>679</sup> Minutes of the Estate of *Bonde* (1897), 540–541.

<sup>680</sup> Minutes of the Estate of Clergy (1897), 576–582.

<sup>681</sup> Minutes of the Estate of Clergy (1897), 588–589.

<sup>682</sup> Minutes of the Estate of Clergy (1897), 588–589.

the imperial proposal, and again made the Estate law the main law, but adopted a moderate stance in the matter. In the Nobility, the three legal scholars L. Mechelin, R. A. Wrede and R. Montgomery, concluded that both the imperial proposal and the changes made in the objection left the law incoherent and with potential competence issues. A smaller change was proposed, and finally accepted, to restructure the law: at the proposal of Mechelin, an introduction was added to the first paragraph of the Estate law, which summed up the definition of a patent right and stated that the details of the right were given in the administrative decree.<sup>683</sup> Lennart Gripenberg, the chairman of the Patent Committee of 1889 and current senator (of trade and industry), also criticised the objection. Gripenberg noted how the dispute, in the end, did not cover very important matters but “opportunistic standpoints”. In practice, the transfer of the paragraphs did not solve anything, as they contained both regulations of an administrative nature and only a partial definition of the patent right.

The strongest objection to the LEC was heard in the Estate of Burghers. Assistant Judge E. A. Stigzelius and bank director L. von Pfaler claimed that the fears that a modified law would again be disapproved by the Emperor were groundless. Some changes had already been made to the current imperial proposal, and more should be done to correct the structure of the law. Others remained more sceptical about the benefits of these corrections. Banker Theodor Wegelius suspected that Emperor's reply to any direct changes would be the same, and besides, neither of the changes proposed in the objection seemed adequate. Instead, Wegelius proposed that an introduction, similar to the one proposed in the Nobility, could simply be added to the beginning of the Estate law.

Finally, also in the Estate of Burghers, the view was brought up that only a little could be acquired but much could be lost by transferring further paragraphs from the administrative decree. In the address by Mayor K. W. Nystén, a Fennomans who headed the LEC<sup>684</sup>, the reasons why the reform was so important were once again highlighted. Nystén aptly bound together the demands of the technical and business circles and the political opportunity to enforce the status of the Grand Duchy, which was to be realised by catching up with the universal standards of the field:<sup>685</sup>

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<sup>683</sup> Minutes of the Estate of Nobility (1897), 394–407.

<sup>684</sup> Fennomansk otillståndighet. *Wiborgsbladet* no 77, (3 April 1897).

<sup>685</sup> Minutes of the Estate of Burghers (1897), 498–499.

Mr. von Pfaler or Mr. Stigzelius—I do not remember which—has said that getting a new patent law would not be worth much. But what I have heard from the business circles is that new rules are desperately needed in the field. Our previous patent law is outdated, inadequate, not at all in concordance with the patent laws of other civilised nations and in this matter, of all things, we have to keep besides the others. This Act is, in a way, of an international kind.

[Another] viewpoint, that cannot be left unmentioned, is that [...] it could be confirmed with the Estate law that Finland is a separate patent area. There has been much doubt about this in Russia and in abroad.

Because of these viewpoints, I think the imperial proposal should be approved without modifications. Only when the circumstances evolve, it is possible to make further modifications to the Estate law. Everything that can now be included is a victory for the legal sphere of the Estates. We do not know when another opportunity for it will come along.

Hra von Pfaler tahi hra Stigzelius — en muista kumpiko — on sanonut että uuden patenttilain saanti ei olisi niin aivan suurenarvoinen. Mutta mitä minä olen kuullut liikepiireistä, niin kipeästi kaivataan uusia määräyksiä tällä alalla. Meidän entinen patenttilakimme on vanhentunut, puutteellinen, ei ensinkään sopusoinnussa muiden kulttuurimaiden patenttilakien kanssa ja tällä alalla jos millään meidän kuitenkin täytyy pysyä toisten rinnalla. Tämä asetus on tavallaan kansainvälillistä laatua.

[Toinen] näkökohta, jota minä en saata olla tässä mainitsematta, on se, [...että] saataisiin säätylailla vahvistetuksi se että Suomi on eri patenttipiiri. Siinä suhteessa on Venäjällä ja ulkomailla ollut paljon epäilyksiä.

Näiden näkökohtien vuoksi minä puolestani luulisin että olisi hyväksyttävä tämä armollinen esitys ilman muutoksia. Vastedes kun olot kehittyvät, saatanee sitten ehkä lisä-säädäntöjä säätylakiin. Kaikki olisi voittoa säätylakipiirille, mitä nyt siihen saataisiin. Minun ajatukseni on ettei tiedä, milloin tilaisuutta vastedes siihen ilmaantuu.

The differing views of the Estates became conciliated in the Law and Economy Committee, which decided to include the definition of the patent right in the Estate Law. The *Bonde* and the Clergy accepted the changes, however, in the Clergy, the Fennoman law professor J. Forsman made a short notice about the conciliation and signalled the support of the Estate for the government.<sup>686</sup> As for the Senate, it presented the modification made by the Estates as minor and of merely “formal nature” and suggested the Emperor to approve the patent law, which he did in early 1898.<sup>687</sup> After a decade of struggle over the formal matters of the law, the Act on patent right and penal procedure and the Decree on patents entered into force in the beginning of 1899.<sup>688</sup>

<sup>686</sup> Forsman noted how the decision to add the introduction to the Estate law was “dubious”, as it had put the Estate law before the administrative decree. Forsman saw that it would have been more correct to disapprove the proposal, but as the modifications were only minor, the Estate could approve them. Forsman wanted this observation to be entered into the minutes, so that future readers would not think that the Estate had changed its mind in the matter. Minutes of the Estate of Clergy (1897), 818–819.

<sup>687</sup> Minutes of the Economic Division of the Senate, 22 October 1897. Talousosaston yhteisistuntopöytäkirjat X, Ca:456, 771.

<sup>688</sup> Den nya patentlagstiftningen. Nya Pressen no 27B, (29 January 1899).

### 3.5 Conclusion: Intellectual property laws enforce the Finnish autonomy

The first patent approved according to the regulations of the new law was granted to the Finnish Tykö Bruk Aktiebolag, an old established ironworks located on the south-western coast of the country. It was registered as the 932nd patent since their numbering had been started in 1842, and concerned a plough for cleaning up ditches.<sup>689</sup> The patent application was managed by the newly-found patent agency Petterson-Stenroos. The new law gave a protection of 15 years to the invention, and the company only paid small administrative fees of 23 marks when retrieving the patent letter. Just one month earlier, J. Wikschtrems and P. Krutikow from Kiev, the holders of patent number 931 had paid 283 marks which covered the whole patent term of 12 years. With the new law, the initial costs were considerably lower, but the progressively increasing annual costs made the patent fees for the whole term higher than they had previously been.<sup>690</sup>

The Patent Decree of 1876 had been deemed inadequate and outdated shortly after its enactment. Not only was the law unbalanced, but it was claimed that it was behind the low patenting rates in the country. In August 1898, the *Hufvudstadsbladet* wrote that the new law was “in many ways more suitable and liberal” than the Decree of 1876, and more united with the patent laws of the other “civilized nations”. Therefore, the paper noted, it was “probable that also the number of patent applications will considerably increase” after the new law entered in force.<sup>691</sup> This did not, however, take place in such a direct manner. The new law might have had a positive contribution, but as Kero notes, the increase in the patent applications, as in all Nordic countries, had already been initiated before the turn of the century—in around 1890 in the case of the Grand Duchy.<sup>692</sup> In addition, if it was compared to patents granted in Norway, a Finnish catch-up took place in the 1890s, whereas the patenting ratio of the peripheral neighbours remained equal in the early 1900s.<sup>693</sup>

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<sup>689</sup> *Dikesplog* (Tykö Bruks Ab). Patent no 932 (20 March 1899).

<sup>690</sup> See footnotes 525 and 537.

<sup>691</sup> I anledning af den nya patentlagen. *Hufvudstadsbladet* no 222 (19 August 1898).

<sup>692</sup> In 1890, 23 patents were granted, and in 1898, before the new law entered in force, the yearly patents equalled 147. Between 1899 and 1904, the amount of yearly patents was 206, 269, 247, 234, 222 and 207 respectively. A period of slight growth was experienced after 1906. Kero, ‘Ulkomaalaisen teknologian patentointi’, 136–37.

<sup>693</sup> In the late 1880s, almost twenty times more patents were granted in Norway, in 1898, the ratio was at 7.6, and then set between 4–5 in the early century. Ibid.; Bjørn L. Basberg, ‘Patenting and Early Industrialization in Norway, 1860–1914. Was There a Linkage?’, *Scandinavian Economic History Review* 54, no. 1 (2006): 19–20.

As Kero rightly points out, the growth in patenting was of a more general nature, and related not only to the industrialisation and improvement of technical qualifications in the country, but also to the growth of the global innovation market.<sup>694</sup> The new law lowered the initial costs of patenting, and made the patenting process more transparent. From the perspective of a foreign inventor, however, the costs were already at a low level, and the main concerns probably regarded the obligation clauses and the varying protection term. The lower patenting costs might have been more beneficial for the “poor” domestic inventors, but no clear results can be derived from the patent statistics. Therefore, instead of the law reform, attention should be paid to the practices of the governmental patent office and the individual agents in facilitating (or deliberately hindering) both foreign and domestic patenting already before the law reform. Even though patents or licences are not seen as central channels of technology transfer in the nineteenth century Grand Duchy<sup>695</sup>, it is evident that the government reacted practically to patenting. For instance, the working requirement could have been negotiated, as did happen in the case of Italian patentees in the 1890s, the brothers Durio from Turin, who could twice postpone the deadline for proving that their method of tanning leather was in use in the country.<sup>696</sup>

More interesting is the second observation by the *Hufvudstadsbladet*, namely that this “liberal” law was taking the Grand Duchy closer to the other “civilised nations”. Seeing patenting as a field with common international, even universal, principles, was used to depoliticise the patent reform, and to underline the unavoidable nature of the reform. In concrete terms, the patent law of 1898 followed the general trends of the time; for instance, it was compatible with the conditions of the Paris convention and it should be remembered that also Russia “modernised” its patent law in 1896.<sup>697</sup> On the other hand, only certain aspects were selected from the patent laws of the “civilised nations”. The Decree of 1876 was an almost direct copy of an older Swedish patent law, and in the case of the patent reform of the 1890s, the preparatory Patent Committee took influences from the western neighbours Sweden and Norway, but also from Germany. What is notable is that the laws, especially the Decree of 1876, to a large extent

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<sup>694</sup> Around the mid-1890s, the share of foreign patentees rose to the level of 70-75 percent in the Grand Duchy. Kero, ‘Ulkomaalaisen teknologian patentointi’, 139–42.

<sup>695</sup> According to Myllyntaus, the most important channels were machinery imports, immigration, natural diffusion and the study tours made abroad, the last one being the most central. Myllyntaus, *The Gatecrashing Apprentice : Industrialising Finland as an Adopter of New Technology*, 127–32.

<sup>696</sup> Patent no 477 (Durio G. and S.). Ea:14. Patentti- ja rekisterihallituksen patentti- ja innovaatiolinjan arkisto. FNA.

<sup>697</sup> The law gave a protection of 15 years to new patents, and included requirements of working and novelty of the invention (not previously used in the country or described in literature).

confirmed existing practices. A certain culture of patenting had developed in the very practice that involved contacts with foreign agents and patentees. This culture was “western”, while the actual patent database was constituted of Nordic and later German applications, and the main networks of patenting were directed towards these countries.<sup>698</sup>

This geographic orientation of patenting lived together with the political views. When it called the patent law liberal in the 1890s, the *Hufvudstadsbladet* did not refer to less public regulation or fewer expenses—on the contrary. The law was liberal in how it stabilised the legal status of an inventor (in terms of his duties) and, especially confirmed the national sphere of patenting (in line with the western culture of patenting). Around 1860, the liberal views were inspired by the free-trade liberalism of the time, and should be interpreted as part of the on-going reforms aiming at opening the mercantile markets. A patent right was like property, that could be sold, exchanged and inherited, as was stated in the Decree of 1876.<sup>699</sup> However, these transactions, and the actual application, could be done only under the watchful eyes of the Senate and its experts, who came from the technical and industrial circles of the country. The liberal press also presented anti-patent views from abroad, yet, no clear domestic anti-patent opinion seems to have formed.

The new patent law was also more “liberal” in the sense, that, in contrast to the Decree of 1876, it had been taken almost entirely under the competences of the Assembly of Estates. The narrative, that modern patenting (a parliamentary matter) was different to pre-modern invention privileges (a governmental matter) appeared already in the early reform of the 1860s. In the late nineteenth century, the matter became viewed through the question of the autonomy of the Grand Duchy by all of the political parties. The legal nature of contemporary patent law, as had been studied abroad, but also its similarity to the rights of writers and artists, seemed to prove why the Assembly of Estates should increase its competences. Again, this would only be to stabilise the situation in a way that was favourable for the Finnish autonomy, not to lessen the role of the public as the other partner of the patent bargain. The state and its experts retained their role in the application process and over-seeing transactions, the foreign patentees needed

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<sup>698</sup> The Nordic patentees were active in the 1870s and 1880s, whereas the role of German inventors grew towards the end of the century. In the 1890s, 247 patents were granted to Finnish, 189 to Swedish, 126 to Germans, 45 to Danish, 41 to Russian, and 36 to Norwegian applicants. Kero, ‘Ulkomaalaisen teknologian patentointi’, 143.

<sup>699</sup> These transactions could be done, however, only under the watchful eye of the Senate. §1 and §11 of the Decree of 1876. *Förordning angående patenträtt i Finland*, no 8 (30 March 1876).

to name a domestic attorney, and clauses for compulsory (and annual) working, licensing and expropriation were included in the law. The criticism presented against the Decree of 1876 did not only refer to the insecure role of the inventor, but also to problems of a national-economic nature.<sup>700</sup>

It could be concluded that by approving a patent law which emulated international trends and the patent laws of the western neighbours, the Grand Duchy responded to (and tried to strengthen) what was taking place in the actual innovation business. At the same time, the reform was a perfect opportunity to further build the national intellectual property regime, and take distance from the mother country.<sup>701</sup> Even though the Fennomans expressed more moderate views than the Svecoman-liberals, who were even provocative, this opportunity to transfer competences to the Estates was welcomed warmly by all political parties. In contrast to the literary property debate two decades earlier, the content of the law did not provoke much discussion. One reason for this was that the reform itself was presented by the professionals in the field as necessary and neutral, and as something that had been already carried out successfully in other countries. Moreover, other aspects of the law, such as inventions by employees, might have been disputed further, if the debaters had not focused so intensively on the competence dispute. In contrast, the law on literary and artistic property had appeared as more tangible and personal, and reflected conflicting views of the parties on national language and national representation, which heated up in the late 1870s.

The development of the intellectual property law was to a great extent related to the position of the Grand Duchy in the Empire. At the same time, both institutions of property rights had already taken a form in the functioning markets (or interpretations of these markets) of books, art, or inventions, to which the legal projects were accustomed. In the following chapters, which study the ownership of trees and wild berries, the economic significance of the resource comes to be of even greater importance. Trees were at the base of the Finnish economy when it started its expansion inside and outside its borders in the late nineteenth century. Similar potential was seen in wild berries, the red gold of the forests, for founding another industrial sector using an

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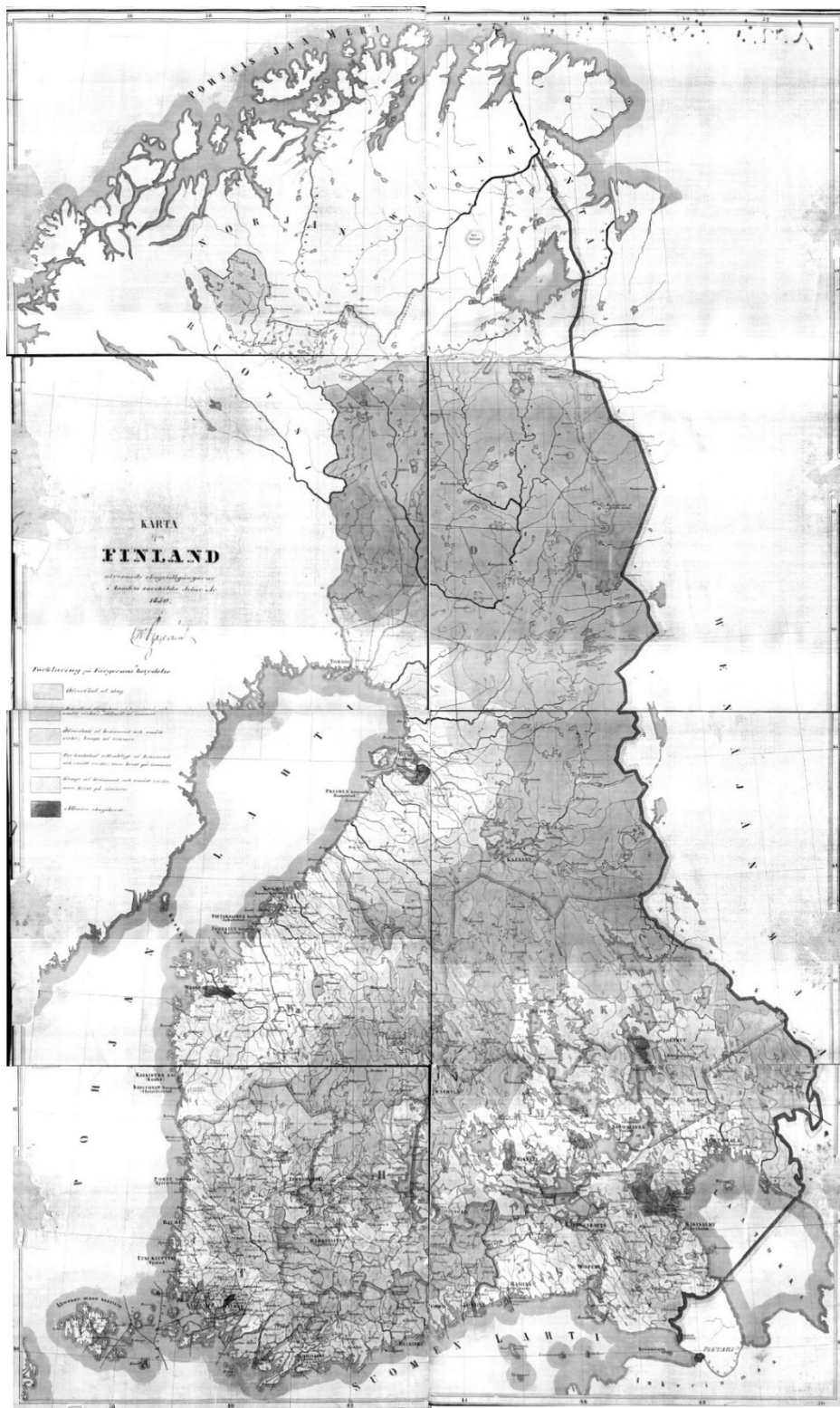
<sup>700</sup> For instance, the working requirement of the decree of 1876 did not say that the invention had to be worked specifically in the Grand Duchy. Lang, *Om grunderna för uppfinnareskydd genom lag*, 176–77.

<sup>701</sup> Also in this area, the difference to Poland was notable. According to Kero, in 1867, the Polish privilege-system was unified with the Russian system, which were already at the time very similar. After 1867, all Russian invention privileges entered in force also in Poland. Kero, 'Ulkomaalaisen teknologian patentointi', 133–34.

abundant national resource. In midst of these economic realities and expectations, the ownership of these resources became debated. As with the immaterial objects, solutions were presented in which individual interest had to compete with a more general interest, backed by scientific results or expert knowledge.







Map depicting the availability of forests (firewood and timber) in the Grand Duchy of Finland.<sup>702</sup> C. W. Gylden (1850): Karta öfver Finland utvisande skogstillgångarna i landets särskilda delar år 1850.

<sup>702</sup> The darkest spots at the coast in the proximity of large towns indicate a “general shortage of wood”. The areas in grey in the middle, eastern and northern part of the country are regions with abundant wood, some shortage of timber occurs. The light areas between the two (especially at the western coast) indicate some shortage of firewood and timber. The original map is coloured. <<https://helda.helsinki.fi/handle/1975/162>>

## 4 Mapping the trees of the nation: The good and the bad proprietors

The map on the previous page not only introduces the reader to the historical geography of the Grand Duchy, but is also an important scientific object of the mid-nineteenth century. This map drawn by the land surveyor C. W. Gylden was the first complete representation of the forest resources in the Grand Duchy. As the economic role of forests had recently been “rediscovered” by the state administration, it was important to provide knowledge of their current status and the distribution of the much-feared and rumoured deforestation.

The role of forests within the economic history of the small country cannot be exaggerated. In circa 1850, the Grand Duchy and Sweden shared the second place when it came to the most forest-covered countries of the continent. Russia obviously controlled the most forests—between 160 and 200 million hectares in around 1900, but with their approximately 20 million hectares, Sweden and Finland outstripped Germany (14 million hectares) and France (ten million hectares), for example.<sup>703</sup> Around the middle of the century, the Grand Duchy was importing timber in growing numbers to western Europe, and profited especially from the removal of British customs tariffs.<sup>704</sup> As Kuisma aptly remarks, an emblem of the importance of the Finnish trade was that in 1856, the *Economist* began to quote the price of imported Finnish plank boards for the first time.<sup>705</sup> Moreover, from a broader historical perspective, the Nordic countries had always been exporters of wood, whereas the continental countries used their lumber for their own consumption.

At the same time, specific structures of ownership had developed in the country: both the state and the landowning *bonde* had become the largest forest proprietors, with differing understandings on forest use, as well as also distrustful views about each other. This was the result of the process of *storskiftet*, the land survey and transition from “open fields” to private land.<sup>706</sup> The enclosures were initiated in late eighteenth-century Sweden, but took place in the

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<sup>703</sup> P. W. Hannikainen, *Suomen metsät kansallisomaisuutenamme* (Helsinki, 1896), 9; M. Kovero, *The Wood Industry of Finland* (Helsinki, 1926), 3–5; Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 191–92.

<sup>704</sup> Kuisma, ‘Green Gold and Capitalism. Finland, Forests and the World Economy’.

<sup>705</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 191.

<sup>706</sup> In Sweden and the western areas of Finland, a system of striped fields was established ca. 1200-1500. Every *hus* (“house”, farm) owned a part of the village lands and was taxed according to this share. The owned plots were scattered, and thus fields were cultivated following common practices. In the eastern parts of the Finnish regions, slash and burn cultivation was practised in addition to the cultivation of fields. Jutikkala

Grand Duchy mainly in the nineteenth century.<sup>707</sup> Similarly to the agricultural reforms of other European countries of the time, the aim of land parcelling was to increase agricultural productivity in Sweden and to respond to concerns about weak population growth.<sup>708</sup> The idea of the *storskifte* was to survey the land areas of a village, and to re-divide them so that sectorised or plotted fields would be recombined into fields owned by single farms. The forest areas were also surveyed and distributed according to the size of the farm, but most importantly, all of the land that was viewed as “no-man’s land”, or forests that were not assigned to any farm, became the property of the state.<sup>709</sup> As a result, the state became the largest forest owner with approximately 40 percent of the land area of the country. The second-largest owner, or group of owners, were the small and medium land-owning *bonde*; in the late century, there were around 111 000 farms in the Grand Duchy.<sup>710</sup>

This chapter makes an enquiry on the competing views of forest ownership during the second half of the nineteenth century, and aims primarily at building the context for the final chapter, which studies the ownership of wild berries. This chapter first describes how since the middle of the century, along with the expanding exports, industrial demand, and the rise in the value of forests, the proper management of the forests and the prevention of their excessive use was (again) disputed between the private owners and the state. The voice of the state was reinforced by the new experts in forest sciences, who had trained abroad, and were serving in the state administration and the institutions of forestry. At this time, the state’s forest properties and those of the landowning *bonde* were treated as two separate regimes. The state managed its forests to

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1982: tenancy; Heikki Junnila, ‘Keskiajan vapaasta maankäytöstä Isonjaon maanomistusjärjestelmään 1800-luvulla’, in *Metsien pääomat: metsä taloudellisena, poliittisena, kulttuurisena ja maailmiönä keskiajalta EU-aikaan*, ed. Heikki Roiko-Jokela (Jyväskylä: Minerva, 2005), 61–65; Eino Jutikkala, ‘Tenancy, Freehold and Enclosure in Finland from the Seventeenth to the Nineteenth Century’, *Scandinavian Journal of History* 7, no. 1–4 (January 1982): 339–44.

<sup>707</sup> By 1848, 13.3 million hectares had been parcelled out. In the early twentieth century, the parcelled land area totalled 18.7 million hectares, which excluded only remote areas in Northern Lapland. Jutikkala, *Suomen talonpojan historia*, 306–9.

<sup>708</sup> Population policies, such as the questions of infant mortality or emigration, were a discussed topic in the mid-eighteenth century Sweden. One response for improving population growth was *storskiftet*, proposed by the agricultural reformer Jacob Faggot in the late 1740s. The Act on *storskiftet* was approved in 1757, but defined and modified by the acts of 1762 and 1775. Juhani Saarenheimo, ‘Isojako’, in *Suomen maatalouden historia. esihistoriasta 1870-luvulle. 1, Perinteisen maatalouden aika*, ed. Viljo Rasila, Eino Jutikkala, and Anneli Mäkelä-Alitalo (Helsinki: Suomalaisen kirjallisuuden seura, 2003), 349–64.

<sup>709</sup> Famously, and controversially, King Gustavus Wasa had proclaimed all unsettled and non-cultivated land to be crown’s property already in 1542. The proclamation was part of the King’s policies to generate more taxes and encourage settlement: the use rights of landowners to the uninhabited lands were restricted and settlers were allowed to move to “the crown forests” now controlled by the state. Junnila, ‘Keskiajan vapaasta maankäytöstä Isonjaon maanomistusjärjestelmään 1800-luvulla’, 54–64, 95–97.

<sup>710</sup> Teppo Vihola, ‘Pärjääkö pienviljelys?’, in *Suomen maatalouden historia osa 2. Kasvun ja kriisien aika 1870-luvulta 1950-luvulle.*, ed. Matti Peltonen (Helsinki: SKS, 2004), 140–41.

offer a valuable example to others or to make money for the state treasury, and the mismanagement of private forests was seen mainly as a problem for the owner and his own community.

The second part of the chapter describes how the expansion of the state forestry led to local conflicts, and to public disputes over the proper ways of using forests. Especially since the early 1870s, concerns about the condition and future of the country's forests were raised among the public, and several committees were set up to inspect the matter. The last part of the chapter studies the legislative process leading to the Forest Law of 1886. The debate over restricting (due to public interest) and reinforcing private property rights (against forest theft) continued. Even though the state forestry and forestry education declined and was cut due to public criticism, a more holistic view of the forests gained ground, and it became commonplace to argue that this national wealth should be managed according to common principles. This was related to the growing national-economic importance of the sector, and the more positive stance taken by the Fennomans. Forests were no longer objects grown by nature; rather, their owners were “investing” labour and attention in the trees. Moreover, the opinion of private owners began to seem less-qualified and short-sighted in the face of the objectivity and long-term planning that could be conducted by wider communities, the state, and specific forest partnerships.

#### **4.1 State forests and private forests in the mid-nineteenth century**

The discussion about forests and forest policy in the mid-century was structured by the division into state-owned and privately-owned forests, and the economic expectations for this scarce resource. Deforestation, or the lack of the proper kinds of trees for ship-building, for example, had been a concern raised all over the continent for centuries. In addition, in the Swedish kingdom, including in its Finnish area, forest legislation had been designed to prevent destruction of valuable trees since the seventeenth century, and deforestation was a constant fear.<sup>711</sup> Consequently, Hölttä finds that the narrative of deforestation in Finland followed the European discussion.<sup>712</sup> In the Grand Duchy, uncertainty regarding the condition of the forests

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<sup>711</sup> Tapani Tasanen, ‘Review on the Forest History of Finland from the Late Mediaeval to End of 1800s’, in *Essays on the History of Finnish Forestry*, Vuosilusto 2004-2005 (Punkaharju: Luston Tuki Oy, 2006), 4–32.

<sup>712</sup> Hölttä, ‘Itä-Suomen metsävarat 1850-1930 ja niistä tehdyt tulkinnat’, 642.

was reflected and became a public concern in the early nineteenth century.<sup>713</sup> Finally, the 1840s saw a broader debate over forests and their roles as state or private property. As a result, in the decades that followed, the two regimes became viewed differently in political discussions: whereas private forests remained unregulated, public forest administration and forestry education were established, and state forests were placed under greater control.

Forests had been a crucial economic asset in past centuries, but they had remained in the shadow of ore industries, and their use had been constrained by mercantile export policies and fears about deforestation.<sup>714</sup> These economic policies were continued in the Grand Duchy after the annexation in 1809, and the priority was given to national mining and metal industries. Restrictions were not only placed in sawmills to guarantee low material costs for other industries, but also because the sector had a reputation of being “speculative”, and while it had a low degree of processing, which made it “not a real industry at all”.<sup>715</sup> Moreover, the largest companies in the mid-nineteenth century were in the ore and textile sectors, and from 1860 to 1864, the GDP share of timber, paper and wood industries (13.9 %) was equal to the share of the food and tobacco industries (13.7), and lower than the share of textiles (26.7 %) and mining, metal, and transport industries (33.2 %).<sup>716</sup>

At the same time, timber had become the leading export article of the country, and had a great importance for the landowners and burghers of the sea ports. In the mid-1830s, timber outstripped tar as the main export article, and in 1850, the value of timber exports were almost

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<sup>713</sup> Kirsi Ojala, ‘Maamme metsiin on luonto sijoittanut ainoan rikkautemme lähteen. Metsälainsäädännön kritiikkiä säätyjen ajalta autonomian ajan ensi vuosikymmenille 1734-1851’, in *Metsien pääomat: metsä taloudellisena, poliittisena, kulttuurisena ja mediailmiönä keskiajalta EU-aikaan*, ed. Heikki Roiko-Jokela (Jyväskylä: Minerva, 2005), 127–29; Tasanen, ‘Läksi puut ylenemään’, 212–15, 237.

<sup>714</sup> Similarly to the trade in other natural resources, the production of planks and tar has tied the Northern countries to the conflicts of the major European states, and was one of the factors that made the sparsely populated Swedish kingdom become a great power in the seventeenth century. Particularly, within the Finnish regions, forests have been key to the development of trade and communications. At the end of the seventeenth century, the Finnish regions of Sweden produced 90 percent of Stockholm's tar exports, and further, 90 percent of the tar and pitch imported to England was of Swedish origin. Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 34, 42–43.

<sup>715</sup> Kuisma also notes that state officials had personal ties to ore industries. Ibid., 183–84, 214–19; Antti Parpola and Veijo Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009 [English summary: Metsähallitus and Finland 1859-2009]* (Helsinki : Edita, 2009), 18–20; Kai Hoffman, *Suomen sahateollisuuden kasvu, rakenne ja rahoitus 1800-luvun jälkipuoliskolla*, Bidrag till kännedom av Finlands natur och folk, h. 124 (Helsinki: Societas scientiarum Fennica : [Akateeminen kirjakauppa, jakaja], 1980), 165–66.

<sup>716</sup> Riitta Hjerpppe, *Suurimmat yritykset Suomen teollisuudessa 1844-1975* (Helsinki: Societas scientiarum Fennica, 1979), 31–41; Sakari Heikkinen and Riitta Hjerpppe, *Suomen teollisuus ja teollinen käsityö 1860-1913 =: Industry and industrial handicraft in Finland, 1860-1913* (Hki: Suomen pankki, 1986).

three times higher than exports of tar and five times higher than iron exports.<sup>717</sup> As Kuisma writes, the sawmill industry was a “quiet necessity” regulated by law but promoted by customs policies.<sup>718</sup> Finally, the slow liberalization of sawmill production (the allowing of steam sawing and levying of saw quotas) in the late 1850s and early 1860s was mainly aimed at strengthening the financial situation of the state.<sup>719</sup> It is important to note, however, that the industries were not the main consumers of wood during the whole nineteenth century: in 1860, of all raw wood more than 80 percent was used by the households, compared to the 8 percent share of the industries and the 2 percent share of wood products that were exported.<sup>720</sup>

In the 1840s, when the Forest Act of 1851 was being drafted, an important forest political debate took place which signalled a shift in the state's preferences from ore to forest industries. In 1841, major figures in the ore industry asked the Senate to reform the 1805 Forest law to secure enough wood for the industries of the country. The Senate formed a committee to offer a law proposal, which came to be very opposed to the sawmill industries, but mainly to be able to emphasise the state's important role as a forest owner that would become explicit later in the decade.<sup>721</sup> After the process of listening to experts, public discussion, and another committee proposal, the law was discussed in the Senate in 1848. Surprisingly, the Vice-President of the Senate, L. G. von Haartman, who was the *de facto* “prime minister” of the country, single-handedly overrode the law proposal, and presented his own forest programme in May 1848. According to Haartman, forests were the only source of wealth for the Grand Duchy: agriculture would not thrive in a northern country, fishing did not provide enough income, and ore deposits in the country seemed to be scant. Haartman's solution was to both control the use of forests and to manage them better.<sup>722</sup> Better management did not, however, mean increased production; due to the concerns about deforestation and von Haartman's unfavourable attitude towards the private sawmills, the Forest Act actually imposed even stricter regulations on sawing.<sup>723</sup>

<sup>717</sup> Kaarina. Vattula, *Suomen taloushistoria. 3, Historiallinen tilasto* (Helsinki: Tammi, 1983), 180–83.

<sup>718</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 231–32.

<sup>719</sup> *Ibid.*, 233–38.

<sup>720</sup> Heikki J. Kunnas, *Metsätaloustuotanto Suomessa 1860-1965 : Forestry in Finland*, Suomen Pankin julkaisuja 4 (Helsinki : Suomen Pankki, 1973), 110–11.

<sup>721</sup> Jouni Yrjänä, ‘Metsäpirulainen: liikemies Erik Johan Längman (1799-1863) talousjärjestelmän murroksessa [Summary: The Forest Devil. Businessman Erik Johan Längman (1799-1863) in the transition of economic system]’ (University of Helsinki, 2009), 122–26, <http://urn.fi/URN:ISBN:978-952-10-5677-2>.

<sup>722</sup> Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 21–24.

<sup>723</sup> Jouni Yrjänä, ‘Sahat ja kruununmetsät, kurituspolitiikan syitä ja taustoja 1830-luvulta 1860-luvulle’, in *Kansallinen kapitalismi, kansainvälinen talous*, ed. Niklas Jensen-Eriksen (Helsinki: Siltala, 2012), 72–99; Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 221–23; Mauno Pekkala, *Lars Gabriel von Haartman valtio- ja metsätalousmiehenä* (Helsinki: Metsätieteellinen tutkimuslaitos, 1952), 7–15. Kuisma notes, however, that the weak quality of the sawmill products, rather

Von Haartman did not have a clear vision of what could be produced from the forests. Nevertheless, his proposal became the basis for the Forest Act of 1851, which indicated that the role of state forest land was primarily as an economic resource. Traditionally, non-private forests had mainly been a reserve for settlement and the creation of new farms. For example, the leftover land given to the state through the process of *Storskifte* had been flagged as land for settlement, not for industrial purposes. This policy was challenged by forest-related economic perceptions at the turn of the century and intensified in the early nineteenth century. The Forest Act of 1851 explained for the first time that only the state-owned forest land that was not essential from an economic point of view could be used for settlement.<sup>724</sup>

The law proposals made by the ore lobby in the 1840s were obviously criticised by the sawmill industry. The forest debate also raised opinions about the role that the forests themselves could play in the future of the country. In opposition to the conclusions drawn by von Haartman, the future Fennoman figure J. V. Snellman supported liberal forest policies; generating capital should not be reinvested in the forest sector, but rather in agriculture, which he found to be the main economic sector of the country. In an article from 1848, the Fennoman Snellman advocated liberal use rights to forests. Forests could be planted on non-arable land, but in the long run, the forest economy was not sustainable: there would be little demand from abroad because there were materials that could be substituted for wood, such as stone and iron. In addition, there would be problems in supply due to competition and the deterioration of soil. According to Snellman, forests had particular value in the present: liberalising the sawmills would raise demand and the price of wood, and generate capital for the landowners which they could invest into agriculture.<sup>725</sup> Moreover, forests and trees represented barbarism and ignorance for Snellman, whereas fields and meadows were the symbols of European civilisation. Creating new farms and parcelling out the existing ones was a way to tie the growing landless population to the land, as well as to educate them.<sup>726</sup>

Snellman, however, agreed with Haartman that forests should be well managed. At the same time, both Snellman and von Haartman did not pay much attention to the individual landowner

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than the bureaucratic regulations, was a key reason for the slow expansion of the sawmill industry in the 1850s.

<sup>724</sup> Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 26.

<sup>725</sup> Skogsskötsel och Trädvaruhandel i Finland (J. W. S.). Litteraturblad för allmän medborgerlig bildning, no 2 (February 1848).

<sup>726</sup> Jalava, *J. V. Snellman*, 138–41.



and his actions. According to von Haartman, public interest should prevail over private interests. However, he directed his regulatory ambitions towards the sawmill business, and did not touch the property rights of the landowners as such. Moreover, von Haartman considered that the organised forestry practised by the state could serve as an example to the private owners.<sup>727</sup> In a similar tone, Snellman wrote that it was clear that the state could promote organised forestry and earn through it, as other countries had done. Snellman even added that the state should actively acquire non-arable land in order to cultivate forests on these lands. Only the state, and not the short-sighted individual, could organise such long-term operations. As far as the private landowner was concerned, his main task was the cultivation of fields and the felling of his forests. Forestry should be practised only on non-arable land, and the individual landowner would become interested in this along with the rising prices of wood, improving communications, and ultimately, grow even more interested when the level of the country's agriculture had fully matured.<sup>728</sup>

This shift in economic policy towards forests, together with the idea of a broader and more extensive management of state forests led to the creation of forest administration in the Grand Duchy. In 1851, the Department of Forestry was created under the Board of Land Surveyors (*Överstyrelsen för lantmäteriet och forstväsendet*), and in 1863, the Department became as separate independent administrative board, the Board of Forestry (*Forststyrelsen*).<sup>729</sup> According to the regulations of 1859, the function of the Board of Forestry was to take care of the state's forest properties. In practice, the Board was expected to make profit from the state forests, to promote the saw industries, and to encourage settlement. Besides generating income, the Board was expected to fund itself.<sup>730</sup> However, the Board had constant problems with its budgets, which invited critical voices against state forestry and its administration. In the 1860s, for instance, the Board of Forestry only managed to cover its annual budget in 1863.<sup>731</sup>

Even though forests were seen as the main source of wealth in the country—following von

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<sup>727</sup> Pekkala, *Lars Gabriel von Haartman valtio- ja metsätalousmiehenä*, 9–11.

<sup>728</sup> Skogsskötsel och Trädvaruhandel i Finland (J. W. S.). Litteraturblad för allmän medborgerlig bildning, no 2 (February 1848).

<sup>729</sup> Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 26–32, 38.

<sup>730</sup> *Ibid.*, 40.

<sup>731</sup> A reason for the weak results lay in the inflexible selling principles of the Board and the low level of demand in the 1860s. For example, the Board and its director R. Z. Wrede were reluctant to compete with the landowners who were—according to the Board—selling their trees at prices that were too low. The financial situation of the Board improved in the 1870s, and it became profitable in the 1880s. Ruuttula-Vasari, *Herroja on epäiltävä aina*, 67–75.

Haartman's—the Senate did not unleash the forces of production, but rather set restrictions on sawing. The first step was to manage the forests, but as the fears of deforestation were omnipresent, information was needed about the actual conditions of the forests.<sup>732</sup> In this way, a tie was created between forest politics and scientific knowledge the economic importance of forests became an argument in favour of the creation of research institutes and state administration. The tasks of surveying and reporting on the conditions of the forests were not simple and highly political: for instance, the estimations of growth and consumption were used to set or remove restrictions for the timber industries. The independent surveys conducted before the 1920s offer differing results and did not manage to give a very accurate picture of forest growth in the country.<sup>733</sup>

The debates over the forest politics of the 1840s were based on scattered data and regional observations.<sup>734</sup> To investigate the worries about deforestation, von Haartman invited Swedish forest experts to carry out research on the Finnish forests, as there were no trained Finnish foresters available. These Swedish experts, however, refused the task due to difficulties related to the imperfect research methods, unknown ecological factors in the Finnish area, and the time-consuming nature of the work.<sup>735</sup> The first comprehensive, nationwide estimation of the condition of the country's forests was published in 1850 (pictured at the beginning of this chapter) by C. W. Gyldén, who became the Head of State Board of Surveying which covered the forest administration in 1854. In his map, Gyldén illustrated how the forests were generally in a good condition, and a shortage of wood was experienced only in certain regions where consumption had been high due to local demographic or industrial reasons.<sup>736</sup>

In 1853, C. W. Gyldén published a “Handbook for Foresters”, in which he included a broader discussion about the condition and the future of the country's forests. This textbook was used by Finnish foresters for the next fifty years, and was based on work carried out by German scholars.<sup>737</sup> Besides giving instructions for foresters, Gyldén discussed the potential climatic

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<sup>732</sup> Michelsen, *History of Forest Research in Finland*, 23–24.

<sup>733</sup> Hölttä, ‘Itä-Suomen metsävarat 1850-1930 ja niistä tehdyt tulkinnat’; Timo Myllyntaus and Timo Mattila, ‘Decline or Increase? The Standing Timber Stock in Finland, 1800–1997’, *Ecological Economics* 41, no. 2 (May 2002): 273.

<sup>734</sup> Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 29.

<sup>735</sup> Michelsen, *History of Forest Research in Finland*, 23–24.

<sup>736</sup> Hölttä, ‘Itä-Suomen metsävarat 1850-1930 ja niistä tehdyt tulkinnat’, 628–35.

<sup>737</sup> Matti Leikola, ‘C.W.Gyldén ja hänen oppikirjansa Suomen metsien hoidosta’, in *Suomalaisen metsänhoidon opas. Suomentanut Matti Leikola*, by Claes Wilhelm Gyldén (Kustannusosakeyhtiö Metsälehti, 1998), 7–23;

harms of deforestation, presented his research on the current status and regrowth of the forests, and most importantly, gave policy recommendations about the economic use of forests. He found that there was no acute threat of deforestation, and with the management of forests (*skogshushållning*), climate worries could be left behind and restrictions on saw mills could be lifted. Gyldén paralleled the current situation in Finland with the other European countries to show that there was a surplus of forest products in the country. Moreover, Gyldén saw that in Finland their employment could be greater than elsewhere.<sup>738</sup>

Gyldén underlined the primacy of state forests over private forests. Private landowners were largely ignorant and had no knowledge of the methods of rational forestry. Nevertheless, no restrictions should be set over private forests as they would be ineffective and difficult to enforce. Instead, the state should take a leading role in promoting the better management of forests by distributing instructive booklets, providing an example of good forestry with the state forests, and also taking over the non-distributed lands. Furthermore, Gyldén noted, the interest of the private owners in the improved management of their forests could only be awakened by the higher price of wood, an idea which was slowly coming true due to better communications and rising demand.<sup>739</sup>

In his work, Gyldén gave statistical support for the liberalisation of sawmill industries. For this purpose, however, forests needed to be managed well to guarantee regrowth in the future. In his recommendations, he showed (again) how one of the threats to the forests were the locals themselves; wood was not used efficiently in households, or it was destroyed through slash-and-burn cultivation. According to his estimates, the annual regrowth of the forests was twice as high as the total consumption. Of the total consumption, 65 % were used by households, 18 % by industries, 8 % was “lost” through the slash-and-burn, and, finally, only 7.5 % exported abroad.<sup>740</sup> In this way, the short-sighted *bonde* was contrasted with the rational, educated, and patient forester (the example forestry plan given in Gyldén's handbook stretches to the year 2013). As the Head of the State Board of Surveying, Gyldén continued the organisation of the state forestry administration that was initiated in 1851. In 1858, through his proposal, and

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Juha Kotilainen and Teijo Rytteri, ‘Transformation of Forest Policy Regimes in Finland since the 19th Century’, *Journal of Historical Geography* 37, no. 4 (October 2011): 430, doi:10.1016/j.jhg.2011.04.003.

<sup>738</sup> C. W. Gyldén, *Handledning för skogshushållare i Finland: med tabeller, en planch och en skogskarta* (Helsingfors: tryckt hos H. C. Friis, 1853), 8.

<sup>739</sup> *Ibid.*, 9–11.

<sup>740</sup> *Ibid.*, 8.

according to a principle that had already appeared in von Haartman's forest programme, the Senate approved that forestry education was also to be organised by the state. Basic forestry education had been given in the agricultural institutes since the 1830s, but founding a separate forest institution had been rejected as useless in the early 1850s. With the shift in state economic policy, initiated by von Haartman and continued by Gylden, the Evo forest institute began its work in 1862.<sup>741</sup>

The founding of the Evo Institute and the public education of foresters invited critical voices about its expenses and usefulness for a small country. At the same time, the polemic described how the group of professional foresters was taking shape and claiming their place in the forest-related political debate.<sup>742</sup> In May 1858, J. V. Snellman discussed the role of the modern professions—agronomists, architects, “technologists”, mechanics, and engineers—and their national education in his review of a public report on the Finnish industries: to what purpose would these new experts serve? Snellman considered that due to the backward conditions of the country, there would not be enough work for the new professionals, who would then leave the country to work abroad. Therefore, instead of organising education, it was much more beneficial for the state to send the students to study at institutions abroad.<sup>743</sup> For the foresters, Snellman hoped that “not too many scientifically educated young men take to this career”, in which only practical knowledge was needed. Educated foresters were needed only for the management of state forests, whereas landowners could learn the basic skills for managing their own forests.

The few lines about the role of foresters in Snellman's review received a reply from Baron R. Z. Wrede, the future head of the Board of Forestry, who heavily criticised Snellman's views. Wrede wrote that Snellman's text reflected ignorance and a simplistic view of the matter about which everyone, except Snellman, seemed to agree. Forests were “from a certain perspective the most precious property [*egendom*] of the country”, which should not be managed by cheap and unskilled officials but assigned to educated foresters: in all countries where rational forestry (“*på rationela grunder ordnad skogshushållning*”) had been organised, the state had been able

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<sup>741</sup> According to Michelsen, one of Gylden's aims was to create the basis for forestry research in Finland. Michelsen, *History of Forest Research in Finland*, 24–31; Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 29–30.

<sup>742</sup> Halonen, *Maasta ja puusta pidemmälle*, 72–73; Michelsen, *Viides sääty*.

<sup>743</sup> *Inhemska Litteratur: Manufakturdirektionens i Finland underdåniga utlåtande ang. åtgärder till befrämjande af finska industrin och bergshandteringen*. H:fors 1857 (J. V. S.). *Litteraturblad för allmän medborgerlig bildning*, no 5 (May 1858).

to cover the expenses of their education and employment. The foresters required both practical and scientific knowledge specific to their field; whereas “the judge has to know positive law and the organisation of society, a forester has to be familiar with the greater legislation of nature itself, and the meteorological and geological conditions of our land.”<sup>744</sup>

The debate continued until the autumn of 1858, but instead of discussing the role significance of the profession, the authors only moved on to personal insults. Snellman repeated that he had not been understood properly, and that he had always been in favour of the education of foresters. The debate was mainly due to the confusion created by Snellman who lumped forest rangers and foresters together. Regardless of the confusion, Snellman tried to question the leading role of the new forest officials. He lamented that it seemed to be possible only for “certain people” to discuss financial matters of the state. Snellman asked Wrede to show how the high officials of state forestry with their large salaries—which meant Wrede himself—were truly men of science.<sup>745</sup>

Snellman's criticism did not have an effect on the creation of the Evo Forest Institute. In any case, as a result of Gylden's initiative, before the approving of the complete ordinance of the new forest administration and during the debate over the education of foresters, the Senate once again decided to invite a foreign expert to survey and report on the Finnish forests. In the summer of 1858, German forest scientist Edmund von Berg, who was a major figure in international forest sciences, visited the central, northern and eastern parts of the Grand Duchy together with Gylden and Wrede.<sup>746</sup>

Just six days after the end of the trip, von Berg handed in his report which basically confirmed the observations made by Gylden in the 1853 Handbook: forests were the greatest treasure of the country, deforestation led to problematic climate changes, and the state as the leading actor could earn money by managing its forests as well as show an example to the ignorant local landowners. Von Berg also confirmed the fact that specific national and scientific training was needed for the foresters. The local context had to be scientifically studied and taught, as learning

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<sup>744</sup> Är en forstman i behof af vetenskaplig bildning? (R. W.) Finlands allmänna tidning, no 202 (2 September 1858).

<sup>745</sup> Vetenskap i skogen. (J. V. S.) Litteraturblad för allmän medborgerlig bildning, no 9 (September 1858).

<sup>746</sup> Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 30–31. Von Berg had conducted a similar survey in Sweden and Norway in 1854. Tasanen, ‘Läksi puut ylenemähän’, 251–52.

and copying from abroad would be merely a waste of money.<sup>747</sup> In fact, Michelsen suspects that von Berg's report was actually drafted by Gylden and Wrede.<sup>748</sup> The report was printed in German, Swedish and Finnish in 1859, and has been much cited in research literature because of its propagandistic value and harsh tone regarding the conditions of the forests:<sup>749</sup>

The impression, that the wasted or devastated or burned forests in Finland made on me is more miserable and discouraging than can be imagined. I did not enter the Finnish forests with great expectations, but such indescribably large devastation I had not thought to discover. Only the greatest foolishness of man can look upon them with indifference. The Finn lives, for the most part, in and of the woods, and in his foolishness and greed he slays the goose that had laid him a golden egg—like the woman in the fairy tale.

Der Eindruck, welchen mir die verwirthefteten oder verwüsteten oder abgebrannten Wälder in Finnland gemacht haben, ist ein über alle Begriffe trauriger und niederschlagender. Ich habe mit grossen Erwartungen die finnischen Forsten nicht betreten, aber so unbeschreiblich grosse Verwüstungen habe ich nicht zu finden erwartet. Nur der grösste Unverstand der Menschen kann sie gleichgültig betrachten. Der Finne lebt grösstentheils im und von Walde und schlachtet – wie die Frau in der Fabel – in seinem Unverstande und seiner Habsucht die Henne, welche ihm die goldenen Eier legt.

In addition to his report, von Berg participated in Snellman's and Wrede's debate in early 1859. In the response he wrote in January, von Berg defended foresters and their scientific education. He distanced himself from Snellman's claims by deeming them false, and showing how this distinguished Professor of Philosophy could not grasp the principles of national economics and forestry. Von Berg wrote that nobody in Germany would doubt the need for a scientific education for foresters, and concluded that the Finnish foresters should be supported and not opposed by their countrymen.<sup>750</sup> Snellman replied to von Berg by writing that he had never claimed that educated foresters were not needed to run state forestry, but that this was not a career for too many. Snellman repeated his old opinions on the priority of agriculture in the country, and accused von Berg of trying to silence the Finnish debate while in the role of a (hired) foreign expert.<sup>751</sup> Snellman received one more reply from von Berg which concluded the debate: von Berg once again underlined the national economic importance of wood by

<sup>747</sup> Karl Heinrich Edmund von Berg, *Berättelse om Finlands skogar [with a German translation]* (Helsingfors: Finska Litteratur-sällskapets tryckeri, 1859), 1–6, 9–11, 22–24. As Raumolin notes, a longer study was published in the Tharandter Forstliches Jahrbuch of 1859. Raumolin, *The Problem of Forest-Based Development as Illustrated by the Development Discussion, 1850-1918*, 39–43.

<sup>748</sup> Michelsen, *History of Forest Research in Finland*, 37; Kalle Michelsen, 'Suuren metsäkeskustelun aikakirjat', accessed 1 February 2016, <http://www.tieteessatapahtuu.fi/995/michelsen.htm>.

<sup>749</sup> Berg, *Berättelse om Finlands skogar*, 12–13.

<sup>750</sup> The article included an extensive signature: "Tharandt i Januari 1859. Ed. Frih. v. Berg. Kungl. Sachsiskt öfverförstråd m. m.". Vetenskapen i skogen. Finlands Allmänna Tidning, no 28 (4 February 1859).

<sup>751</sup> En Hr von Berg.. Litteraturblad för allmän medborgerlig bildning, no 1 (January 1859).

presenting export statistics, and pointed to the broader significance of the forests: they had an essential climatic role which also affected the Finnish agriculture.<sup>752</sup>

Von Berg did not bring any new aspects to the forestry-related political project which had been initiated in the 1840s by von Haartman. As the Rector of the Forest Academy of Tharandt, von Berg presented the education model of Tharandt which was adopted in Finland. In general, the example of German forestry was significant when shaping the organisation of state forestry and education, and in adapting German theories and models of forestry, Finland was no exception in Europe.<sup>753</sup> For example, four teachers at the new Evo Institute had studied in Tharandt, the curriculum broadly followed broadly Tharandt's own, and German books were used in teaching.<sup>754</sup> Most importantly, however, von Berg gave important support to Gylden and Wrede in their aims to promote state forestry and the national education of foresters.<sup>755</sup> This role played by von Berg was clear to the contemporaries. In his review of von Berg's report, Snellman kindly agreed with von Berg's opinions. Nevertheless, Snellman ended his review by coming back to the debate he had held earlier with von Berg. Snellman wrote that he had not guessed that von Berg followed Finnish newspapers so well. Instead, he thought, that it might have been a certain state forest official who had ordered such a reply from von Berg.<sup>756</sup>

## **4.2 Conflicts over the proper use of forests in the early 1870s: "The destiny of our forests is found in other countries"**

The foundations for forest administration and education were created in the 1850s, but regardless of the great expectations among the leading spokespeople, both failed in their first years. As mentioned above, state forestry remained unprofitable in the 1860s, and the Evo

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<sup>752</sup> Ännu en gång "vetenskap i skogen" (Ed. Friherre v. Berg). Finlands Allmänna Tidning, no 85 (13 April 1859).

<sup>753</sup> According to Tasanen, the Finnish forestry was influenced by German and Swedish forestry. On the other hand, Russian forest sciences did not raise great interest among the Finnish foresters. Kotilainen and Rytteri, 'Transformation of Forest Policy Regimes in Finland since the 19th Century', 430; Tasanen, 'Läksi puut ylenemähän', summary 419. For the central role of German forestry internationally, see Raumolin, *The Problem of Forest-Based Development as Illustrated by the Development Discussion, 1850-1918*, 23–33.

<sup>754</sup> Halonen, *Maasta ja puusta pidemmälle*, 82–83, 107.

<sup>755</sup> Michelsen, *History of Forest Research in Finland*, 36–37; Tasanen, 'Review on the Forest History of Finland from the Late Mediaeval to End of 1800s', 22–26.

<sup>756</sup> Inhemsk litteratur: Berättelse om Finlands skogar af E. v. Berg. H:fors 1859. (J. V. S) Litteraturblad för allmän medborgerlig bildning, no 5 (May 1859).

Institute did not manage to keep up with its budget.<sup>757</sup> Moreover, the Evo Institute already had difficulties in finding enough students for its second course. As a result, the Evo Institute was closed in 1867 for the years of the famine, but still lacked students after its reopening in 1874, and the forest administration was not expanded but finally cut down in the early 1870s.<sup>758</sup> During the first years, criticism was raised among the public against the expanding state forestry. This was due to the budgetary problems, emphasised by the liberals, but the Fennomanian circles continued to defend agricultural interests and the need for settlement land, which led to petitions at the Assemblies of Estates of the 1860s and early 1870s.<sup>759</sup> In addition, as described by Ruuttula-Vasari, the enhanced state forest policy led to conflicts both on the pages of newspapers and in the forests between the local population (landowners and landless groups) and the recently-established state forestry.<sup>760</sup>

The publication of a ten-page pamphlet named “On the Significance of Forests” in 1862 in the state's official journal both in Finnish and Swedish exemplifies the difficult encounter, and the struggle between the state officials and the local landowners over the legitimacy to manage the forests.<sup>761</sup> The purpose of the pamphlet, written under the pseudonym “Finnish Citizen”, who was described as a “main figure of the country's forestry”<sup>762</sup>, was to introduce its reader to the great importance that the forests had for the Grand Duchy, and to highlight the role of the new administrators in managing them. The text cited historical examples of what had (notoriously) happened to forests abroad, and then explained how the forests stabilised climatic conditions and were important for agriculture. In addition, the pamphlet explained, it was mainly from the forests that the country received the products it could trade. Despite the restrictions of the forest laws, the forests of the country were, as was known by all informed people, in bad shape.

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<sup>757</sup> To cover the weak sales of trees, the Institute founded a sawmill and a tar and turpentine factory which aggravated the economic situation even more.

<sup>758</sup> Halonen, *Maasta ja puusta pidemmälle*, 92, 96; Michelsen, *History of Forest Research in Finland*, 52–54.

<sup>759</sup> The possibilities that the landless groups had to use forests, as well as to acquire land for farming were becoming even narrower towards the end of the century: the state had already restricted the parcelling out of farms to guarantee their tax revenues, and now, the state forest land was being set under tighter control. For example, at the Assembly of 1867, in the petitions, which included letters from local meetings, the foresters were blamed as lazy and not worth their salary, the restrictions set over forest use rights were seen as too harsh and it was considered that grazing in the state forests should be allowed. At the Assembly of 1872, the *Bonde Estate* petitioned for the dissolution of forest administration and the distribution of all arable land to the people. Tasanen, ‘Läksi puut ylenemähän’, 267–68; Michelsen, *History of Forest Research in Finland*, 46–49; Ruuttula-Vasari, *Herroja on epäiltävä aina*, 264–70; Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 42.

<sup>760</sup> Ruuttula-Vasari, *Herroja on epäiltävä aina*.

<sup>761</sup> Suomen Kansalainen, ‘Metsien arwosta [Om skogarnes värde]’, 1862, <https://helda.helsinki.fi/handle/10138/38925>.

<sup>762</sup> “Metsien arwosta” on... Suomen Julkisia Sanomia, no 17 (3 March 1862).



Because of this, the pamphlet stated, the state had recently initiated policies of control and management in state forests to take care of the regrowth of this valuable resource.

The pamphlet was not very well received in the supposedly deforested peripheries. In the town of Oulu in North-Western Finland, where forests had been used to produce tar for centuries, the claims in the pamphlet were seen as outrageous.<sup>763</sup> The Senate had also sent a dozen copies to the agricultural association of the region of Oulu, but at the general meeting of the association, nobody had accepted a free copy of the disliked pamphlet.<sup>764</sup> The participants claimed that the information provided was already well-known, and had been much better explicated elsewhere in the newspapers. Besides, it was said that the inhabitants of the region were very well aware of the value of managing forests, and therefore the claims presented in the pamphlet were unacceptable and probably only arose from the ignorance of the author. After the meeting, the pen name F. N., who was Doctor Fredrik Nylander, a Fennoman and botanist, published a very critical review of the pamphlet in the local newspaper, the *Oulun Wiikko-Sanomia*.<sup>765</sup> Nylander said that being an official publication, written in the worst case scenario by someone from the forest administration itself, a word of warning was appropriate for the “weak knowledge, poor skill and to large extent repulsive language.” Nylander criticised, for instance, the author’s claims that deforestation was the reason for the harsh climatic conditions of certain cold countries, such as “Greenland, Iceland and many others”. Nylander ended his criticism by marvelling how this kind of writing could be seen as appropriate and decent “in our capital”.

Despite the failure to develop forest administration and to create a stable institution of forest research, the shift in economic policy led to changes in how the ownership of forests was perceived. It was evident to the contemporaries that trees were an important economic resource, and that the state could, at least to some extent, organise forestry on its land, however, it was heavily debated in what ways and to what extent the forests could be utilised. As far as the private forests were concerned, they were still an open question, or not a question at all. Even though forests were seen as important for the whole country, and the local people were viewed as ignorant due to their wasteful habits of using forests, the discussion and the new regulations on rational forestry mainly regarded state forests. The Forest Law of 1851 imposed almost no regulations over private landowners, but the good example given by the state forestry, and the

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<sup>763</sup> Ruuttula-Vasari, *Herroja on epäiltävä aina*, 259–64.

<sup>764</sup> Kotimaalta. *Hämäläinen*, no 13 (4 April 1862).

<sup>765</sup> “Metsien Arwosta.” *Oulun Wiikko-Sanomia*, no 12 (22 March 1862).

rising value of the forests, were seen as enough to give guidance. Moreover, the state could work as a buffer against the self-seeking private owners. As von Berg wrote in his report, the state controlled so much of the forest that the potential climatic harm resulting from private owners' actions could be countered.<sup>766</sup> The property rights of the private forest owner were kept untouched, and the state only intervened when the actions of the private owner were so reckless that the tax-paying ability of the farm (which was the definition of the farm) was at stake.

Still in the 1860s, the question of wasting the forests regarded especially the wood-use of the rural population, and whether their use rights should be restricted. At the January Committee of 1862, the preparatory committee of the Estates for the actual Assembly of Estates that was expected in 1863, the issue of restricting the property rights of private owners was examined. In Question 52, Subsection A, drafted by the Senate, it was asked whether the right to freely use forests should be restricted because of the perils of “mismanagement” (*vanvård*) and “destruction” (*förstöring*) of forests.<sup>767</sup> The members of the Committee did not yet find the issue to be very pressing, and it was placed in the second category of significance. Consequently, the members voted strongly against the proposal, with 42 voting against and only 3 in favour. As the debate shows, the majority of the committee took a liberal stance over the question, but views over the current condition and the proper use of forests clashed.

In the very first address of the debate<sup>768</sup>, which remained the leading view, Rural Dean A. J. Europaeus emphasised how restrictions on the free use rights of private (*frälse och skattehemmans*) forests was against the “sanctity of property rights”. Europaeus acknowledged the common wisdom that especially in the North-Eastern parts of the country, forests were in bad shape and needed care because of “slash and burn cultivation and recklessness”. He also pointed out how “culturally more advanced countries” had certainly set restrictive measures, but Europaeus suspected that such measures could never be accepted “in the most cultured of countries, such as England and Scotland”. What Europaeus suggested instead was that the process of *storskiftet* (general parcelling) should be speeded up, and that regulations over the illegal taking of wood from private land were tightened: as the value of wood products was rising, the forest owners would treat their forests better if there were clear property rights that

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<sup>766</sup> Berg, *Berättelse om Finlands skogar*, 72–74.

<sup>767</sup> The restrictions proposed by the Senate were not very extreme, but regarded an obligation to plant or seed trees to the “wasted” areas.

<sup>768</sup> *Protokoller i Utskott af Finlands fyra stånd 1862*, 592–600.

were enforced well.

According to the liberals of the 1860s, the markets would teach the irresponsible landowners to appreciate their woods. The formation of the markets only needed some support. A. F. Järnefelt said that wherever one went, there was no management of forests taking place, and sometimes, one found traces of great destruction of trees. According to Järnefelt, the problem lay in the fact that the forest owners did not have any economic possibilities for using their woods. Only with improved communications could the forest owners “discover” the value of their forests. As well as the expanding of markets, a small educational push was needed on the part of the state. Baron K. J. Carpelan, a liberal reformer, underlined the sanctity of property rights and that the government should place as few regulations on forestry as they had put on farming. Carpelan pointed out that the rising prices had already led to the greater valuing of woods and increased management, such as annual cutting in compartments (a method developed by the German forest scientist Cotta) and sowing. Carpelan added, however, that due to the high costs of these methods, the state should hire public advisers to help the forest owners to implement these practices. According to Carpelan, rational practices were more important than any prohibition.

The liberals saw that the forest owners were only thoughtless, and would treat their trees differently when their value became visible. Some representatives of the Clergy took a harder line, and saw restrictions on use rights as indispensable. The Dean of the Cathedral (*domprost*) D. Lindh found that whereas for “normal” mismanagement (*vanlig misshushållare*) of one's own property one could be put under guardianship by law, a landowner who “wasted or mismanaged” his forest should be patronised by the state to an even greater extent. Such a person was not only harming himself, but depriving his descendants of the necessities for their future standing. Moreover, Lindh added, the forest owners who committed wastage were harming their neighbours by contributing to the deterioration of the climate. Dean E. J. Andelin said he had hesitated to comment on such a delicate matter as “the right of everyone to freely dispose of one's property”. However, he wanted to protest against any free use right which could become harmful for society (*samhället*). Andelin had lived in areas<sup>769</sup> where no simple understanding of forestry existed, and were harmed by excessive slash-and-burn cultivation. Criticising the liberals, the Dean asked whether there would be any forests left

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<sup>769</sup> Andelin had stayed in the parishes of Iisalmi and Tohmajärvi, located in the Eastern-Finnish regions of Northern Savonia and Northern Karelia. Yrjö Kotivuori, ‘Erik Johan Andelin’, *Ylioppilasmatrikkeli 1640–1852*, 2005, <http://www.helsinki.fi/ylioppilasmatrikkeli/henkilo.php?id=13865>.

when their value started to rise.

Thirdly, addresses defending the forest owners were heard by the representatives of the *Bonde*, who shared the liberal line of no restrictions. On the one hand, the supposed wastefulness and irrationality of the landowners was challenged. Landowner H. Jaatinen reminded them of how in Karelia, the conditions for proper agriculture were so weak that slash-and-burn techniques could not be abandoned. On the other hand, the role of state forestry was questioned. Here, the representatives reflected the opinions of the Fennoman J. V. Snellman. Landowner E. Niemelä acknowledged that forestry was important for the country, but not as important as the “mother livelihood”, which was agriculture. Even at this point, the state officials did not respect the customs of the local inhabitants, and the crown forests were under too much attention: for example, the forest officials should not have a say in the forming of new farms on state-owned, uncultivated land. In addition, Jaatinen noted that the expansion of state-run silviculture by acquiring forests for the state would lead to higher costs, as foresters and rangers needed to be hired. These costs could become a burden while the price of forests still remained very low.

Finally, an interesting comment regarding the rational management of forests was given by landowner A. Puhakka, a national romantic poet and local reformist from Northern Karelia. Puhakka confirmed that the landowners would have an interest in taking care of the forests when the *storskiftet* was completed. For example, in Northern Karelia, where the parcelling was not even finished yet, the use of firewood had already become more moderate. As far as the proposal to promote the regrowth of forests by planting and sowing was concerned Puhakka laconically expressed that no special measures were needed, because the “old *Pellervo* [a god of fertility] would certainly, in the future like in the past, take care of that”. In his comment, Puhakka separated the management from the use of forests. Regarding the latter, he took, as did other members of *Bonde*, a liberal view: the forest owners would change their behaviour according to the valuation of forests. However, Puhakka remained sceptical about the need and fruitfulness of managing forests, and thereby scientific forestry itself.

The public debate over the wastage of forests would, however, truly explode only in the early 1870s. After the years of famine of the late 1860s, the Finnish forest industries would benefit greatly from the high demand on the European market. The 1870s saw the breakthrough of steam sawing in the country. Between 1871 and 1877, the number of logs processed rose from

two million to seven million and the number of sawmills quadrupled.<sup>770</sup> At the same time, the value of the forests continued to climb, and the newspapers reported on (the inexperienced) landowners who had earned quick money too hastily by selling the trees of their forests.<sup>771</sup> It has to be recalled, however, that the upswing in the early 1870s appeared to be exceptional especially because it followed the years of famine. The industrial demand for wood was not considerably higher in the early 1870s than it had been a decade earlier, and the average prices for standing timber were almost the same in 1861–1865 and in 1871–1875.<sup>772</sup>

The sawmills and their consumption of wood had been cautiously reviewed already in the debates over the condition of the forests in the 1840s and 1850s. With the major upswing in demand of the early 1870s, and the loggings carried out in these years, attention was turned once again to the degradation of the country's forests and especially to the harms and benefits that the expanding lumber industry and the rising value of forests brought about. As the pen-name “Common Man” (*kansan mies*) wrote in the local newspaper the *Satakunta* in December 1873, complaints about the “rape of forests”<sup>773</sup> and the “devastation of forests” were on everyone's lips and on the pages of newspapers: some were laughing at this “fear of phantoms”, while others lamented over the “groaning woods”.<sup>774</sup> Notably, the expanding timber industries were not the target as such, but the upswing worked as a stimulus for discussing and challenging the views over the use of the forests, in general, and the wider significance of the forests to the

<sup>770</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 288–89; Sakari Heikkinen and Kai Hoffman, ‘Teollisuus ja käsityö’, in *Suomen taloushistoria. 2, Teollistuva Suomi*, ed. Jorma Ahvenainen, Erkki Pihkala, and Viljo Rasila (Helsinki: Tammi, 1982), 60–65.

<sup>771</sup> Heikki Roiko-Jokela, ‘Meiltä loppuvat metsät? Metsien haaskauksesta metsänhoidon valistustyöhön (noin 1850-1910)’, in *Luonnon ehdoilla vai ihmisen arvoilla?: polemiikkia metsiensuojelusta 1850-1990*, ed. Heikki Roiko-Jokela (Jyväskylä: Atena, 1997), 27–31.

<sup>772</sup> This was the price in the state forests, which was considered the maximum price in the country due to the conservative sales policy of the state. Kunnas, *Metsätaloustuotanto Suomessa 1860-1965: Forestry in Finland*, 110–11, 114–15. In general, the prices of standing timber experienced a growth of 2.6 percent in the late century, which does not differ from the development of other prices relevant in the agriculture. As Peltonen notes the most radical increase in prices in forestry took place already earlier, between 1840 and 1860, when the price levels quadrupled. Matti. Peltonen, *Talolliset ja torpparit: vuosisadan vaihteen maatalouskysymys Suomessa = Landowners and crofters: the peasant question in Finland at the turn of the century* (Helsinki: Suomen historiallinen seura, 1992), 188–89.

<sup>773</sup> As noted also by Teemu Keskisarja, the term *raiskata* (rape) was commonly used in Finnish for describing the destruction of forests, before it took on its contemporary meaning related to sexual violence. The term used for sexual violence was “*väkisinmakaaminen*”. The verb *raiskata* was used also for other kinds of decay, for instance, the process of growing rusty. The noun *raiska* would translate into a “poor wretch”, “poor devil”. The expression “raping of forests” appeared at least in the 1850s. Teemu Keskisarja, *Vihreän kullan kirous: G.A. Serlachiuksen elämä ja afäärit* (Helsinki: Siltala, 2010), 257. Genetz (1887): *Svensk-Finsk ordbok*; Monialta tutkistelmuksia metsistä ja tilasta, minkä ne täyttävät luonnossa. Maamiehen ystävä, no 46 (17 November 1849); Muutama sana metsistä. Oulun Wiikko-Sanomia (14 February 1852); Moitteita. Sanomia Turusta, no 13 (29 March 1859).

<sup>774</sup> Kirje Satakunta-lehteen [Letter to the Newspaper Satakunta]. Satakunta, no 46 (13 December 1873).

country. The great “enthusiasm” about the matter is confirmed by the historical newspaper database. Whereas the terms of “forest wastage”<sup>775</sup> appeared in searches of all of the newspapers less than ten times per year between 1865 and 1871, 13 hits are found in 1872, and in the heated years of 1873 and 1874, the search provides 138 and 152 hits. In 1875, there is a drastic fall, but the terms were appropriated and kept appearing at a regular basis, with 30 to 60 annual hits.

The wastage of forests, and reports from the regions, were read in the newspapers in the early 1870s.<sup>776</sup> The increasing sales were still noted in a rather neutral tone in 1871, while more negative views about the sales were recorded in the following year, and in 1873, the on-going upturn and its effects became a widely discussed and mostly criticised topic. Much of the first reflection over this “*trädvarukonjunktur*” was influenced by the recent developments in Sweden<sup>777</sup>, where the timber sector and the industrial demand for wood had expanded steadily since the mid-century.<sup>778</sup> The wider debate was opened up on the pages of the *Åbo Underrättelser*, edited by the liberal Ernst Rönnbäck, who became the secretary of the Economic Society (*Finska hushållningssällskapet*) in 1875.<sup>779</sup> In February 1873, the newspaper referred to one of the issues covered at the meeting of the Royal Swedish Academy of

<sup>775</sup> The key words used were Finnish and Swedish terms of “forest destruction”: skogssköfling skogsåverkan; metsänhaaskaus, “metsän haaskaus”, “metsän haaskaaminen”, metsänraiskaus, “metsän raiskaus”, “metsien raiskaaminen”.

<sup>776</sup> At the sixth general agricultural meeting organised in Helsinki in 1870, the question did not yet appear among the topics over forestry. In the regional news from south-western Finnish *Kokemäki* from December 1871, the buyers were reported “rushing” to buy trees, but the article considered this as sensible thinning of older parts of the forests. In November 1871, the account from the south-eastern Jääski district refer mainly to the problems caused by the slash-and-burn cultivation in the region. Kutsumus kuudenteen yleiseen Suomen maanviljelyskokoukseen, joka avataan Helsingissä, syyskuun 5 p:nä 1870. Uusi Suometar, no 38 (12 May 1870); Någon om förhållandena i Jääskis härad. Wiborgs Tidning, no 91 (22 November 1871); Kokemäeltä Joulukuulla. Uusi Suometar, no 4 (10 January 1872).

<sup>777</sup> In 1872, Wiborgs Tidning published an article on the “importance and significance of forests” by the Swedish forester A. H. Sandblad. In the text, Sandblad emphasised the climatic and ecological importance of the forests for the country, and advised everyone to save the forests for the future (like money in banks) in these times when the value of forest land and its products were rising. The newspaper *Wiborgs Tidning* wrote how the text would certainly turn everyone's attention to “the danger of devastation of forests, which to some extent is becoming common also in our country”. Skogens vikt och värde (A. H. Sandblad). Wiborgs Tidning, no 15 and 16 (24 and 28 February 1872). See also, Våra skogar (an article from “Svenska Veckobladet”, also “to bear in mind by us”). Österbotten, no 24 (21 December 1872).

<sup>778</sup> In 1860, the Swedish timber exports were three times, and later that decade, almost five times higher than the exports from the Grand Duchy. The institutional reforms (the removal of restrictions: sawing limits, bans on steam sawing and privileges for the founding of sawmills) concerning the timber sector took place slightly earlier in Sweden than in the Grand-Duchy. According to Kuisma, however, the main reasons for the later expansion of the Finnish timber sector were related to weak communications and a stricter tax and customs policies of the Grand Duchy. Hoffman, *Suomen sahateollisuuden kasvu, rakenne ja rahoitus 1800-luvun jälkipuoliskolla*, 42–44; Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 244–45.

<sup>779</sup> Lars-Folke Landgrén, ‘Rönnbäck, Ernst (1838-1893)’, *Biografiskt lexikon för Finland*, December 2014, URN:NBN:fi:sls-4813-1416928957419.

Agriculture two weeks previously, the question of the “wastage of forests” (*skogssköfling*), which “was of great importance also for our country, and was becoming more relevant day after day”. In the current upswing, the felling and selling of trees by private owners had become excessive. Moreover, the low prices in the country, due to the sudden nature of the demand, were also attracting foreigners, mainly Swedes and Norwegians, who had turned the forests into a field for speculation.<sup>780</sup> As had been proposed in Sweden, legal measures were needed to stop the wastage, which had negative effects on the climate, economic conditions, and agriculture.

The newspaper then asked whether the use rights of the forest owners should be restricted and in what ways? According to the newspaper, it was clear that this should be done. As in the case of hunting and fishing regulations, the law needed to consider the cause of the upcoming generations in the matter. The newspaper concluded that there should be no disagreement about the matter that the public (*det allmänna*) had in this case a right to interfere with private economic affairs (*enskildes hushållning*).<sup>781</sup> The *Åbo Underrättelser* received a reply from the pen-name *Rusticus*, who disagreed especially over the harmfulness of the current economic juncture: selling one's forests was not devastation, but merely benefiting from the upswing. Moreover, this felling of trees was nothing at all in contrast to the real misuse of forests, which was conducted by the landowning *bonde* who wasted wood in their private consumption.<sup>782</sup> The newspaper gave a thorough reply to *Rusticus*. The newspaper agreed with the claim that other kinds of wasting also took place. However, when the price of the forests rose, the *bonde* would become more economical in their household use, whereas the commercial felling would only accelerate and worsen. Most importantly, to back its views, the author had nothing to present on the Grand Duchy, but referred to the developments in Sweden. The northern area of *Norrland*<sup>783</sup> was representative of the excessive felling that would also take place in the Grand Duchy.<sup>784</sup>

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<sup>780</sup> The newspaper was not moralising about the foreigner businessmen, but pointed out that their interest in the forests was simply and merely commercial.

<sup>781</sup> Åbo den 1 februari. Åbo Underrättelser, no 17 (1 February 1873).

<sup>782</sup> Åbo den 10 februari. Åbo Underrättelser, no 22 (10 February 1873).

<sup>783</sup> For the area of *Norrland* and the Swedish industrialisation, see for instance, Sverker Sörlin, *Framtidslandet: debatten om Norrland och naturresurserna under det industriella genombrottet*, Kungl. Skytteanska samfundets handlingar, nr 33 (Stockholm: Carlsson, 1988).

<sup>784</sup> Åbo den 15 februari. Åbo Underrättelser, no 25 (15 February 1873).

Such cases [the felling trees of small diameter] were exceptional even in Norrland 10 to 15 years ago, but as up there, the acquisitions of forest properties and sawing of small-sized trees will, without any doubt, proportionally increase in our country as the easily-accessible forests with large timber decrease. The same circumstances and same determining conditions must bring about the same consequences.

Sådana fall voro äfven i Norrland för 10 à 15 år sedan undantagsfall, men liksom dere skall, utan allt tvifvel, äfven köpen af skogsegendomar och försågingen af träd af små dimensioner i vårt land ökas i samma proportion som tillgången på lätt tillgängliga storvirkeskogor förminskas. Samma förhållanden och samma betingande omständigheter måste medföra samma följder.

The debate between Rusticus and the *Åbo Underrättelser* continued for several weeks. Notably, *Rusticus* challenged the validity of the newspaper's claims as they were not based on Finnish examples, but on something that took place abroad (besides, Rusticus wrote, the journalist did not know Finnish forests but was merely expressing his “coloured” views from an office in *Åbo*).<sup>785</sup> Meanwhile, the topic of forest devastation was taken up in the Finnish-language *Fennoman* newspaper *Uusi Suometar*. In mid-February 1873, the newspaper wrote that the country's forestry exports had developed considerably in recent years, which had led in some areas to the wasting and devastation of forests; even some foreigners had arrived to practice this “business that is disastrous to our country”. The *Uusi Suometar* published a large excerpt from a Swedish newspaper to demonstrate the importance of this “national property/wealth” (*kansallis-omaisuus*) to the country's economy and climate. Moreover, the newspaper opposed the claim that interfering with a private person's economy would be an infringement of his property rights. On the contrary, the newspaper noted, the interests of an individual citizen needed to adjust to the “common interests of the society” (*yhteiskunta*). The newspaper reminded, however, that education, not legal measures, was the best way to reduce the wastage; laws were not effective if the “opinion of the people” (*kansan yleinen mieli*) did not favour them.<sup>786</sup>

The *Fennoman* papers continued to discuss the topic in the following months and raised new arguments against this “swindle”: the landowners did not perceive the real value of their forests, and would not profit from the sales, while the work opportunities in the timber sector had raised the salaries of the day labourers who were needed on the farms. Besides, both the quick income and working on the logging sites were affecting the morals of the landowners and workers, and steering them away from their main livelihood, agriculture.<sup>787</sup> The *Uusi Suometar* paralleled the

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<sup>785</sup> *Åbo Underrättelser* (24 February; 10, 11, 18 and 29 March, 10 April 1873).

<sup>786</sup> Metsien haaskaamisesta. *Uusi Suometar*, no 19 (14 February 1873).

<sup>787</sup> For instance, *Samtal emellan Jöns och Måns*. *Morgonbladet*, no 104 (7 May 1873); *Valkealasta*. *Uusi Suometar* (1 August 1873).



current upswing to the example of the South American silver conquered in the sixteenth century, which did not improve the situation in Spain, but only filled the pockets of Florentine silk traders, and resulted in the avoidance of work and growing self-indulgence in Spain.<sup>788</sup> In this way, the question was being tied to the broader political programme of the Fennomans: economic progress did not come about with sudden richness, but by offering education to all classes, and being hard-working and thrifty.

The debate really exploded in October 1873, and turned more clearly into a hobby-horse for the parties, when the liberal *Helsingfors Dagblad* challenged the Fennoman commentators, and accused them of only concentrating on a triviality and ignoring the fact that real wastage of forests resulted from the use of wood in rural households. This issue had been also raised previously, but the *Helsingfors Dagblad* supported its claims with statistical information about the condition of the forests and the practices of forest use. In its first article on “Forest devastation” in late October, the newspaper presented calculations according to which the yearly amount of trees exported was equal to a very small amount of the country's forest area.<sup>789</sup> In the second text, the newspaper took the offensive: its figures demonstrated that the much younger forests were wasted as firewood or building material, in slash-and-burn cultivation or tar burning.<sup>790</sup> Several articles followed that looked at the question via the other statistical data available—export figures of single products, information from the exporting towns and data on forest growth—which all pointed out that the fears of deforestation due to growing exports were exaggerated.<sup>791</sup>

The Fennoman *Morgonbladet*, among other newspapers, replied to *Dagblad's* claims in several long articles. The newspaper published an article (extending over five issues) on the climatic role of forests and the dangers of deforestation, an article (also in five issues), with the contribution of the head of the national statistics K F. Ignatius, which aimed at shaking the grounds of the statistical data and reasoning offered in the *Helsingfors Dagblad*, and finally, articles by Swedish authors on the comparable situation in Sweden, such as a presentation from a meeting of the Royal Swedish Academy of Agriculture.<sup>792</sup> The main reply was read in

<sup>788</sup> Metsänhaaskauksen tuottama varallisuus. Uusi Suometar, no 94 and 95 (13 and 15 August 1873).

<sup>789</sup> Skogssköflingen I. Helsingfors Dagblad, no 291 (25 October 1873).

<sup>790</sup> Skogssköflingen II. Helsingfors Dagblad, no 294 (28 October 1873).

<sup>791</sup> Skogssköflingen. Helsingfors Dagblad, nos 302, 305, 313, 314 (5, 8, 16, 17 November 1873).

<sup>792</sup> Skogen och Klimatet (T. F.), nos 272–276 (22, 24, 25, 26, 27 November 1873); Helsingfors Dagblad och Skogssköflingen (K. F. I.). Morgonbladet, nos 253, 254, 279, 280, 281 (31 October; 1 November; 1, 2, 3 December 1873); Ett aktstycke i skogsfrågan. Morgonbladet, no 278 (29 November 1873).

November 1873. The *Morgonbladet* once again emphasised that the wastage of forests was not only a minor detail, but a real problem. In the situation in other countries, one could “see the destiny of our forests”: forestry speculation had clear-cut the rest of Europe and had now arrived in the Grand Duchy where prices would only keep rising. The property rights of the forest owners needed to be restricted to restrain the speculation, while a Nordic country without forests would be completely uninhabitable. The climatic factors could not be denied even by the *Dagbladists*, while they had been affirmed by “Europe's leading statisticians, physicians, foresters and economists”.<sup>793</sup>

The *Åbo Underrättelser* had proposed at the beginning of the year that the country's Economic Society (*Finska Hushållningssällskapet*) could study the question further. The issue was taken to the agenda of the Society in September 1873, and after a general discussion, a petition was sent to the Senate where measures against the wastage of forests were presented. The general discussion greatly reflected the views presented in the public debate, and included, for instance, a debate on the loggers' consumption of alcohol and the threat that the foreign speculation posed (to “the existence of the upcoming Finnish generations”, as a draft of the report put it).<sup>794</sup> The report of the Society was greeted warmly by the Fennoman *Uusi Suometar*, which wrote that the Senate was rumoured to be about to set up a Committee to study the question.<sup>795</sup> This took place in October 1873, when the Senate set up a committee consisting of civil servants and industrial representatives to study the measures against the devastation of forests. The Committee wrote that significant felling aiming at the export of small-sized timber had taken place, and would increase in the future, which had led the Senate to found a committee to propose measures for controlling the development.<sup>796</sup>

In its report, the Committee of 1873 first presented statistical information on the forests of various countries, and then introduced the reader to how other countries regulated forest use in their legislation. The analysis of the Finnish forests was based on regional reports from the 1860s, statistical information collected by different authors, and accounts by civil servants and

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<sup>793</sup> Låtågpartiet i skogsfrågan. *Morgonbladet*, no 267 (17 November 1873). A Finnish translation published in: *Metsänhaaskauksen puolustajat*. *Uusi Suometar*, no 137 (21 November 1873).

<sup>794</sup> Åbo den 13 September. *Åbo Underrättelser*, no 140 (13 September 1873); *Skogsfrågan vid k. finska hushållningssällskapets plenum den 17 dennes*. Nos 144, 145 (20, 22 September 1873).

<sup>795</sup> *Lausunto metsä-asiasta*. *Uusi Suometar*, no 112 (24 September 1873).

<sup>796</sup> Report of the Forest Committee of 1873: *Komitén för bedömande af frågan om befarad öfverafverkning i Finlands skogar*, [Komitébetänkande, 1874:1] (Helsingfors, 1874). See also, Helander, *Suomen metsätalouden historia*, 176–80.

the personal knowledge of the committee members themselves. In contrast to previous reports, the Committee concluded that the country was currently consuming more wood than was generated by the annual growth. This was due to the wasteful use by households, forest fires, and slash-and-burn cultivation, but also due to the growing exports and the industrial use of forests which led to the excessive felling of wood.<sup>797</sup>

The Committee of 1873 emphasised the role of state ownership in conserving the forests, as it could conduct the long-term planning necessary for forestry: the state should acquire more land and expand its forest administration and education. In addition, in his reservation to the Committee's report, Professor of Economic Law Axel Liljenstrand proposed that specific forest partnerships should be established that allowed private owners to form larger, commonly managed, blocks of forests.<sup>798</sup> On the other hand, the Committee found that the landowner's right to dispose of his forests, even though it was protected by the country's constitution, could be restricted if the bad condition of forests was a threat to the country's future. The Committee proposed that a law proposal should be drafted which would oblige the landowners to manage their forests (and, for instance, prepare a forestry plan for his properties).<sup>799</sup>

In 1874, a competing pamphlet on the "current forest question in Finland" by A. G. Blomqvist was published.<sup>800</sup> Blomqvist had been a teacher at the short-lived Evo Forest Institute, and now with the Institute's reopening, he had been appointed as its head. Blomqvist, one of the signatories of the programme of the liberal party in 1880, followed a rather liberal line similar to the views presented in the *Helsingfors Dagblad* in autumn 1873. Being one of the leading experts on forestry, Blomqvist participated in the legislative work which led to the Forest Law of 1886. As Helander notes, Blomqvist's views, such as his dislike of direct restrictions over the use rights of private owners, were influential in the Finnish forest legislation.<sup>801</sup> In his pamphlet, like in his later work from the 1890s, Blomqvist emphasised the role of the price mechanism in how forests were managed. He opposed the criticism presented against increasing timber exports, and noted that the important contribution made by trade had been its role in increasing the value of the country's forests. At the same time, as in the Forest Committee of 1873,

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<sup>797</sup> *Komitén för bedömande af frågan om befarad öfverafverkning i Finlands skogar.*

<sup>798</sup> *Ibid.*, 42–49.

<sup>799</sup> *Komitén för bedömande af frågan om befarad öfverafverkning i Finlands skogar.*

<sup>800</sup> A. G. Blomqvist, *Några ord till belysning af den närvarande skogsfrågan i Finland* (Helsingfors: Theodor Sederholm, 1874).

<sup>801</sup> A. Benjamin Helander, *Anton Gabriel Blomqvist ja hänen aikalaisensa*, *Acta forestalia Fennica*, 43:2 (Helsinki: Suomen metsätieteellinen seura, 1936), 289–91.

Blomqvist found that private owners were too short-sighted and not capable of conducting forestry. The future of the country's forests, thus, depended on the state and its foresters.<sup>802</sup>

The overheated years of the “timber swindle” ended up in the late 1870s. Although the international economy had been cooling down for years, the Russian-Turkish war of 1877 still stimulated the Finnish exports to a record level in 1877. After this, the forest sector fell: the dozens of sawmill bankruptcies and the falling exports—in 1877, the lumber industries and shipping generated 56 percent of the export income—would drastically affect the economy of the whole country. The levels of production, exports and employment in the late 1870s would be reached only in the 1890s.<sup>803</sup> In the 1870s, the political debate over the loggings was based on inaccurate statistics and local observations, and was backed by examples drawn from abroad, mainly the neighbouring countries. However, in this broad discussion, the phenomenon, with its negative and positive sides, was described as something that concerned the forests of the whole country.

Even though the commentators did not agree over how the forests were wasted and by whom, it seemed to be commonly acknowledged that the landowners were not managing their forests properly. Either they were recklessly consuming their forests for the purposes of their household (a common topic that had been voiced for decades)<sup>804</sup> or they were ignorantly selling their forests too cheaply to speculators. The national author Z. Topelius, who himself was a spokesperson for environmental and animal protection, recorded this experience in his best-selling school book *Boken om vårt land* from 1875. The forests in Finland were a “very precious property” for economic, domestic, and climatic reasons, and without them, the country would be “uninhabitable for people”. The book explained how no country needed its forests as much as Finland, but the Finnish common people, in their agricultural practices, treated it without due consideration. In the Finnish translation from the following year, this was expressed in even harsher words: “no people treats its forests as badly as the Finnish people”.<sup>805</sup>

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<sup>802</sup> Blomqvist, *Några ord till belysning af den närvarande skogsfrågan i Finland*, 8–10; Helander, Anton Gabriel Blomqvist ja hänen aikalaisensa, 286–88.

<sup>803</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620–1920*, 291–300.

<sup>804</sup> Tasanen, ‘Läksi puut ylenemään’, 293–95.

<sup>805</sup> “Ei yksikään maa tarvitse niin paljon metsää, kuin Suomi, eikä yksikään kansa käytä metsää niin pahasti, kuin Suomen kansa.” Zacharias Topelius, *Lukukirja alimmaisille oppilaitoksille Suomessa. Jakso 2, Maamme kirja Z. Topelius’elta* (Helsinki: S. W. Edlund, 1876), 95.

### 4.3 The Forest Law of 1886 and the attempts to enforce and restrict forest ownership

Even though the most intense debates on the condition of the country's forests quieted down after the middle of the century, the work on regulating forest use by legislation continued. The Forest Committee of 1873, which had studied the supposed excessive felling in the forests, had emphasised the need for a new, more up-to-date forest law. The legislative work was started in early 1876, when the Senate appointed a committee for preparing a new forest law for the country. A second committee was called by the Senate in 1881 to further study the matter and to prepare the final draft for the law. The law proposal was read and modified by the Estates in 1885, and was approved in the following year by the Emperor. This Forest Law of 1886 remained much less restrictive than had been demanded in the earlier debates. However, during the legal process, which was illustrated to some extent by the law itself, the private property rights were both enforced and restricted. The state and other forest communities appeared to be the only owners who could follow long-term forestry plans. Moreover, with the rapprochement with the Fennomans over the principles of rational forestry, the regulations over illegal taking of trees were urged to be tightened and equated to stealing.

The question of forest theft was one of the issues raised during the heated debate of the early 1870s, and would be taken up again during the legislative reform leading to the Forest Law of 1886. In the penal legislation of the country, an issue further discussed in the next chapter, the illegal taking of growing natural products was separated from the taking of cultivated plants and fruit, as well as from theft in general. As explained by the legal literature of the time, this distinction stemmed from the conceptual definition of theft and the view that the products of nature, which had not had a great value in the past, were different as “nature-grown” from those cultivated by man. Already in the 1850s, with the discussion of the condition of the country's forests, the reasons for the distinction were explained by the District Judge K. F. Forsström, who was the first to use the Finnish language in the court minutes.<sup>806</sup>

The Fennoman *Suometar* had published a text in 1856, in which the pen-name “P. H.”<sup>807</sup>

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<sup>806</sup> Johanna Forsström, ‘Forsström, Karl Ferdinand (1817 - 1903)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2004), URN:NBN:fi-fe20051410.

<sup>807</sup> This pen-name was used by writer and land surveyor Pietari Hannikainen, one of the pioneers in employing and developing the Finnish as a public language, and a contributor to the newspaper *Suometar*. Land surveyor P. Hannikainen was the father of P. W. Hannikainen, the major Fennoman figure of forestry in the

discussed the wastage of forests and the question of forest theft.<sup>808</sup> P. H. wrote about the practices of illegal taking of wood, which were sanctioned by the law: even though in everyday language the taking of wood from another's forest was called "stealing", its legal status and the minor punishment did not discourage people from stealing wood from other people's forests. In the worst case scenario, the poor thief did not use the wood himself, but sold the loot. According to P. H., many forest owners had expressed the wish that the law should also term the act "stealing". In his reply, which was published in the following year and also appeared in later collections of "legal questions", Forsström rejected the suggestion for equating the two.<sup>809</sup> Forsström first referred to conceptual differences: stealing usually referred to the taking of movable goods, whereas trees were unmovable. Moreover, the taking of a garden tree, in contrast to the fruit of the tree, had not been interpreted as stealing, because it was more difficult to cut down and take the tree in secret without being noticed. Forsström's main reasoning was probably that the revision would not be accepted by the people. The two things—the act of stealing in general and felling a tree—were seen not viewed as equally disgraceful, and the forest owners might not even take proceedings against the offenders, while it seemed too harsh to have them punished corporally (as for stealing) for this minor offence.

In the 1870s, the problem of "forest theft" was perceived as part of the problem of forest devastation. The *Åbo Underrättelser* wrote that it was time to challenge the common "sense of justice", and to listen to those who did not find it right that the person stealing a piece of cake was a bigger criminal than the one illegally felling thousands of trees. Besides, the higher the value of forest land rose, the more inviting it was to practice these old habits.<sup>810</sup> These views were voiced by the editor of the newspaper, the liberal E. Rönnbäck, at the Economic Society in autumn 1873. According to Rönnbäck's proposal, the request to equate illegal taking with stealing was included in the Society's petition to the Senate about the measures for studying the condition of the forests.<sup>811</sup> The Forest Committee of 1873 addressed the "recent demands for

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late nineteenth and early twentieth century. Silva Kiuru, 'Hannikainen, Pietari (1813 - 1899)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2004), URN:NBN:fi-fe20051410.

<sup>808</sup> Metsän-hävitys ja luvaton viljelys toisen metsässä. *Suometar*, no 26 (27 June 1856).

<sup>809</sup> Pitäisikö metsän luvattomasta viljelystä ja vahingoittamisesta oleman varkauden syy ja sakko? Supplement to *Suometar* no 48 (4 December 1857); Karl Ferdinand Forsström, *Kirjoituksia laki-asioista* (Helsinki: Theodor Sederholm, 1862), 84–94.

<sup>810</sup> Åbo den 15 Februari. *Åbo Underrättelser*, no 25, (15 February 1873).

<sup>811</sup> The discussion over the petition to be sent to the Senate at the meeting of the Economic Society in: Skogsfrågan vid k. finska hushållningssällskapets plenum den 17 dennes. *Åbo Underrättelser*, no 144 and 145 (20 and 22 September 1873); See also the newspapers editorial on the issue, Åbo den 16 september. *Åbo Underrättelser*, no 142 (16 September 1873);

equating stealing and the illegal taking of a growing tree”, but did not recommend any changes, while the adjustment did not find any echo in the Finnish “people's moral conscience” (“*folkets sedlig medvetande*”), while it could provoke social unrest. The Committee, however, proposed that the punishment for illegal taking could be moved closer to those set for stealing.<sup>812</sup>

The Fennoman press also raised the problem of “forest theft” in one of the areas to be reformed. According to *Morgonbladet*, until the illegal taking of trees had been placed on a par with stealing, forests were “not real property” (*ingen verklig egendom*): “why would forests not be protected by law like other property?”, the newspaper asked, polemically.<sup>813</sup> For *Morgonbladet*, the illegal taking of trees from private forests led indirectly to the wastage of forests. In some areas, the landowners sold and felled their forests, and they had no option to conserve them for their proper, normal use, because of forest thieves or the threat of carelessly lit forest fires. The newspaper noted that it was not right to prejudge forest owners who only became weary of this “system of plundering”, and converted their forest capital into cash. The Fennoman *Morgonbladet* addressed the topic later in the decade after the timber boom had waned, in relation to the ongoing committee work on the new Forest Law. In an article from 1879, the newspaper wrote that it might seem harsh to turn some poor crofter who only took a few windfalls from someone’s forest into a thief, but in many cases, the illegal taking was truly theft, and on an industrial scale at that. The newspaper noted that steps should be taken towards the direction of restrictions, to give enough legal protection to forest properties, and enable rational forestry.<sup>814</sup>

This article from 1879 was part of a wider review of a pamphlet on the Forest Law reform by one of the (moderate) liberal members of the Committee of 1876, Axel Liljenstrand, a former Professor of Economic Law.<sup>815</sup> In the review, *Morgonbladet* discussed and contrasted their views on good forestry with Liljenstrand’s opinions and the liberal side more generally. Particularly interesting is the part where the newspaper criticises the reliance on the price mechanism, so that low prices were an obstacle for the spreading of rational forestry throughout the country. Instead, *Morgonbladet* noted how forests could be managed even if the prices

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<sup>812</sup> *Komitén för bedömande af frågan om befarad öfverafverkning i Finlands skogar*, 36–37.

<sup>813</sup> Lätgåpartiet i skogsfrågan. *Morgonbladet*, no 267 (17 November 1873).

<sup>814</sup> Till skogslagstiftningen IV. *Morgonbladet*, no 15 (20 January 1879).

<sup>815</sup> Till skogslagstiftningen. Frågan om ny skogslag för Finland. Retrakter af Axel Liljenstrand (1878). *Morgonbladet*, nos 3, 4, 8 and 15 (4, 7, 11, 20 January 1879). For Liljenstrand, see Heikkinen et al., *The History of Finnish Economic Thought 1809-1917*, 81–88.

remained low. The newspaper observed that this depended on how “good forestry” was defined. According to the newspaper, “good forestry” did not always require direct methods of forestry, but in the areas where forests were abundant, it was worthwhile to merely avoid extravagance. More precisely, the newspaper explained, “good forestry” occurred when an individual landowner took care of his forest to the extent that the price of the forest allowed.<sup>816</sup> In other words, good forestry was not about following a certain technique of forestry, but rather the attitude of the landowner in aiming to take care of his forest, which was limited by the level of development of the country. Therefore, the ideas of rational forestry could be disseminated in the country via education—a common aim for the Fennomans—and by offering stable market conditions for the landowners by controlling “forest theft” and forest fires, for instance.

This more holistic view of the country's forests, and the inclusive approach to forestry, were visible in the Finnish-language press and in the growing number of forestry manuals published in Finnish. The upswing of the early 1870s was portrayed as a lesson for the forest owners, who now needed to consider their properties much more carefully; they could offer extra income, and were an important heritage (for economic and climatic reasons) to be handed over to the upcoming generations. As the newspaper *Satakunta* wrote in January 1879, the forests were thought to be an “inexhaustible gold mine”, but now it had been learned that they did not secure the livelihood of the people. Only by using the forests “rationally” could they provide good support for the main activities of farming and tending cattle.<sup>817</sup> On a similar note, the Fennoman *Uusi Suometar* reported from the western Finnish town of Virrat in December 1878, that the loggings and the careless use of money had shown how important “rational forestry” was not only locally, but in the whole of the country. The article also reminded its readers how in many “well-organised countries” the forest owner did not have the right to make use of his forest as he wished—the “times, when the wastage of forests would be prohibited in our country, were surely not far away”.<sup>818</sup>

Moreover, even though forestry literature had already been translated into Finnish in the 1850s, many popular booklets were published in Finnish in the 1870s, which would help the landowners to make use of the lesson of the early decade. The problem was not the felling of the forests as such, but the thoughtless conduct of the owners. Some instructed the forest owners

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<sup>816</sup> Till skogslagstiftningen III. Morgonbladet, no 8 (11 January 1879).

<sup>817</sup> Mieteitä vuoden vaiheilla. Satakunta, no 1 (4 January 1879).

<sup>818</sup> Virtailta 7 p. jouluk. Uusi Suometar, no 150 (16 December 1878).



in selling their forests, such as “Advice for those selling forests” (*Neuvoja metsäin myyjille*) from 1874, and other booklets offered guidance in many areas of forestry.<sup>819</sup> In 1880 the booklet “On cultivating forests, for the common people” was published by P. W. Hannikainen, who would later in the late century become the leading Fennoman figure in forest sciences. In his work, Hannikainen introduced the forests as “one of the greatest riches of the country”. Besides providing wood for tools and heating, they could even offer their owners, if “rationally used”, a regular stream of income. On the first page, Hannikainen tackled the “much-debated issue of the wastage of woods”. According to him, it was not wastage, if the landowner logged his forests to gain arable land, and bought firewood from a neighbour with non-arable forest land. Devastation followed when the landowner left the logged area without further attention. Hannikainen paralleled forestry to farming: in the same way that the fields were ploughed after harvests, so should the forest owner take care of the new growth on the felled land.<sup>820</sup>

The debates over these intertwined issues—the shape of the country's forests and the proper conduct of the owners—continued in the two committees which were set up to draft a law to replace the outdated 1851 forest legislation. The first committee was mainly formed of state officials, from the forestry, agricultural and land surveying administrations, and published its report and law proposal in 1879.<sup>821</sup> The committee recognised and emphasised the property rights of their owners, but noted how exceptions had to be made especially regarding forest ownership, where a long-term perspective was required. The committee did not recommend any restrictions over private use of forests while earlier attempts had not proven very effective. Instead, the committee emphasised the role of the state or the community in securing the country's forests. It proposed, for instance, that the state should have the right to expropriate land areas where public interest so demanded. The committee also decided that it would be useful from “a common or societal perspective” that private owners could place their properties under common management. The private forest land lay often too scattered, and common management would protect the forests from the “fancies and distress” of the private owners.<sup>822</sup> Concerning the question of “forest theft”, the committee was not unanimous, but the majority

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<sup>819</sup> R. Montell, *Översigt Af Forstlitteraturen I Finland till År 1890* (Uleåborg: B. B. Bergdahls boktryckeri, 1891); Matti Leikola and yliopisto Helsingin, *Metsien hoidosta metsien ystävälle!: suomenkielistä metsäkirjallisuutta 200 vuoden ajalta* (Helsinki: Viikin tiedekirjasto, 2001), 7–9.

<sup>820</sup> P. W. Hannikainen, *Metsänkasvatuksesta, rahwaalle*, K. Suomen talousseuran kirjaisia kansalle 11 (Turussa: O. W. Wilén ja Kumpp. kirjapainossa, 1880), 3.

<sup>821</sup> Report of the Committee of 1876: *Komitén för utarbetande af förslag till ny allmän skogslag för Finland*, [Komitébetänkande, 1880:3] (Helsingfors, 1880). See also, Helander, *Suomen metsätalouden historia*, 180–82.

<sup>822</sup> *Komitén för utarbetande af förslag till ny allmän skogslag för Finland*, 3.

did not accept the change: the forests of the country were still in a state of nature, the borderlines of the forests were not always well defined, and the common view among the people was against the reform.

The second Committee, which was set up in 1881, followed along liberal and state-oriented lines in its work, but included rules about excessive felling on private land in its proposal. One of its four members was the head of the Evo Institute A. G. Blomqvist, who expressed his satisfaction about the “liberal direction” that the committee had taken in a letter to his colleague.<sup>823</sup> Like the earlier committee, the 1881 Committee recalled how the property rights of the forest owners were protected by the constitutional law, and how legal restrictions for preventing the wastage of forests had not proven out to be effective. The committee also noted that the claims about excessive felling that had been presented by the Committee of 1873 had been exaggerated; on the contrary, as foresters had reported from Norway and Sweden, the rising value of forests would only lead the forest owners to undertake better forestry. However, in their law proposal, the Forest Committee of 1881 took an important step forward in promoting public interference in forest ownership: the law proposal included a simple obligation for the landowners to take care of the regrowth of their forests by leaving seed trees on the logged land. This section, and its opening lines “forests must not be devastated” (*skogsmark må ej ödeläggas*), would be at the centre of attention during the reading of the law in 1885.<sup>824</sup>

The Forest Law proposal was presented to the Estates at the Assembly of 1885. The Senate had only made minor changes to the Committee's law proposal, and therefore, the views of the Committee were sent directly for study by the Estates. Preliminary debate only took place in the Estate of Clergy, where the importance of the law was emphasised by the moderate Fennoman A. Kihlman. Kihlman reminded his fellow representatives that the forest products were the foremost export article of the country. The central question in the matter, which had been difficult even for the three previous Forest Committees, was the reconciliation between public and private interests. Even though the Imperial Proposal sought a balance between the

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<sup>823</sup> Helander, *Suomen metsätalouden historia*, 183. Other members were the former Professor of Chemistry and university Rector A. E. Arppe, agronomist and landowner E. Duncker, one of the signatories of the programme of the Liberal Party in 1880, and assistant judge of the Court of Appeal A. Grönvik. Report of the Committee of 1881: *Komitébetänkande ang. förslag till skogslag för Finland m.m.*, [Komitébetänkande, 1883:1] (Helsingfors, 1883).

<sup>824</sup> *Komitébetänkande ang. förslag till skogslag för Finland m.m.*, 19.

two, the speaker found that the public interests were more neglected. Kihlman considered that more obligations to take care of the logged area should be set.<sup>825</sup> The law proposal was then sent to the Law and Economic Committee (LEC), where the main lines of the debate took shape; besides the actual report produced by the LEC, four objections were presented by the members of the committee.

First of all, the LEC itself did not follow Kihlman's recommendations, but called for an even more liberal line. According to them, as private property rights were at stake, all modifications to the current, liberal legislation needed to be considered carefully, and restrictions in general were described as impractical and ineffectual. It opposed Section 14 which set the obligation to leave seeding trees after extensive felling; this would increase the rights of the state to interfere in private forestry, it was not necessary in the “current situation” of the country, and was “a step backwards and in contradiction with newer principles in forestry.” It could therefore be dropped while there was no excessive wastage of forests taking place in the country (as noted by the Committee of 1881).<sup>826</sup> Neither was the LEC ready to add the principle of “forest theft” to the law; this would be too premature for the country. The only incidents of devastation that should be controlled, as in the previous Forest Law of 1851, were cases in which the actions of the forest owner threatened the capability of the estate to survive, which meant the capacity to pay taxes. The “real wastage of forests” was related to clearly harmful practices already restricted by law, for instance, slash-and-burn cultivation.<sup>827</sup>

Two of the objections related to Section 14, and underlined the importance of the obligation placed on private owners to take care of the regrowth of their forests. The first objection was signed by Baron Otto Wrede, a local agrarian reformer and the son-in-law of the former Head of State Forestry R. Z. Wrede, who noted that Section 14 was not revolutionary, but rather in accordance with the legal tradition of the country. Even though private use rights should not be restricted, the state had “the right and duty, when public interest demanded, to interfere to private economies”, especially when it was for the good of the person and his descendants. The state could try to get failing individuals back “on track”, so that individuals and regions would not fall into economic misery.<sup>828</sup> The second objection was written by two forest experts, senior

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<sup>825</sup> Minutes of the Estate of Clergy (1885), 28–29.

<sup>826</sup> In addition, the LEC considered that forest owners lacked the information on regrowth required in Section 14, and legal scholars were not able to judge disputes because they had little expertise in forestry.

<sup>827</sup> Report of the Law and Economy Committee (LEC) no 3 (Documents, 1885).

<sup>828</sup> Objection by Wrede in Report of the LEC no 3 (1885).

forester Carl Nummelin and regional secretary Karl Fabritius.<sup>829</sup> The objectors found that, as in the case of hunting and fishing, the state could interfere when the private owner's actions were harming the prosperity of others or society as a whole. Fabritius and Nummelin noted that by leaving the Section 14 out, the LEC had rejected one of the main modifications made to the new Forest Law: even though great devastation had not yet taken place, the process of devastation could always accelerate.<sup>830</sup>

The last two objections regarded other practices. For the first objection, a full ban on slash-and-burn cultivation was demanded following after a transitional period that would last until 1910.<sup>831</sup> The objectors acknowledged that the ban violated the use rights of private owners. However, this was justified, the objectors claimed, because the technique reduced the fertility of the soil for many years, or even destroyed it forever. For the second objection, the burning issue of forest theft was raised by a familiar person who had already advanced the matter in the early 1870s: E. Rönnbäck, currently the secretary of the Economic Society. Rönnbäck's objection reminded them that the current legislation had not prevented "the violations against private property rights", or the illegal takings of wood, which were "a stain in the otherwise honest character of the people". Rönnbäck provided statistical data from Sweden where the rates of illegal timber felling had decreased after illegal taking was labelled as stealing in 1875. As in the previous debates, Rönnbäck opposed against the claims of the LEC, that what the common and "uncultivated" people saw as right and wrong should not be confused with principles that guided legislation. In fact, the Forest Law could help to develop the people's sense of justice towards a more mature direction.

In the Estates, the discussion concentrated mainly on Section 13 and Section 14, which related to the use rights of the private owners, and the sections on slash-and-burn cultivation and the illegal taking of wood. The decision of the LEC to remove the obligations of the landowner to take care of regrowth after larger logging areas (Section 14) raised criticism in all the Estates. In all other Estates than the *Bonde*, the objection by Fabritius and Nummelin was approved,

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<sup>829</sup> Carl Nummelin was a forester in the town of Kemi in North-Western Finland, and had been a member of the Forest Committee of 1876. Karl Fabritius was the regional secretary of the town of Kuopio in Savonia.

<sup>830</sup> Objection by Fabritius and Nummelin in Report of the LEC no 3 (1885).

<sup>831</sup> This was signed by the Fredrik Stjernvall, future senator and current protocol secretary at the Senate, and was supported by baron Otto Wrede and two landowners from the *Bonde* Estate. The objectors noted how a ban had been already pronounced in the (Swedish) Code of 1734 but later lessened and permitted in the poorer regions of the country. The objectors saw that special permissions could be still given, but only until the year 1910. For this purpose, the Senate would form a list of the municipalities where the technique was needed and could be permitted.

and even in the *Bonde* Estate, a tie vote (25 against 25) took place, which only turned in favour of the LEC's proposal, when another unopened, but decisive, ballot paper was suddenly found.<sup>832</sup> As regards Rönnbäck's objection, which regarded the question of "forest theft", it received wide support especially in the Nobility, *Bonde* Estate and the Clergy. The Nobility even approved the objection and returned the whole chapter 6 to the re-examination of the LEC. No revision was needed, however, while the Clergy and *Bonde* voted down the objection. Notably, this was to large extent due to practical considerations emphasised by the leading Fennoman representatives: the Assembly was closing to its end, and reopening the question in the LEC would threaten the whole Forest Law project. Besides, the matter was not of great importance, while a new Penal Code was being currently legislated (discussed in the following chapter).<sup>833</sup>

The Estates approached Section 14 from rather different perspectives. In all Estates, the representatives raised concerns about how far the obligation to leave seed trees would interfere with the use rights of the landowner. However, the property rights of the landowner were not at stake as such, but it was questioned whether the intervention of the state in the use rights was necessary or not. In the Estate of Nobility, Representative Aminoff gave a long speech in which he used statistical data to demonstrate that no real wasting of forests took place in the country, and that the state forests stored resources for the future. Moreover, Aminoff noted that restrictions over private forests had generally turned out to be ineffective, and that the best way to encourage forestry was to guarantee the private owners freedom of action (he quoted writings by the head of the Evo Institute, A. G. Blomqvist).<sup>834</sup>

The liberal members of the Estate, however, aligned themselves with the objections, referring the future state of affairs and the cause of the coming generations. The forests were too important a matter for the state to leave without proper notice, and it was better to prepare for a future where the forests would be devastated again (as they had been in the early 1870s). As Leo Mechelin explained, the law could not consider the question of wasting of forests with indifference, but it needed to include general regulations and thereby affect the way of thinking in the country.<sup>835</sup> In the Estate of Burghers, the representatives also emphasised how the

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<sup>832</sup> Minutes of the Estate of *Bonde* (1885), 1177.

<sup>833</sup> For example, Professor of Law J. Forsman in Minutes of the Estate of Clergy (1885), 985–986; E. Avellan in Minutes of the Estate of *Bonde* (1885), 1197–1198.

<sup>834</sup> Minutes of the Estate of Nobility (1885), 1038–1051.

<sup>835</sup> Minutes of the Estate of Nobility (1885), 1061–1062.

restrictions proposed by the objectors were important and not a very serious infringement on private property rights. Even though the loggings were not currently a problem, improved communications had led to the local wastage of forests. It was also pointed out that several regions in Sweden had set preventive legislation.<sup>836</sup> In a similar way, the Estate of Clergy referred to past experience and the economic and climatic importance of the slowly-growing forests. If the tax-paying capacity of a farm was the only criteria, and no obligations towards regrowth were set, the state would always be too late in reacting to the possible devastation of the farm's forests.<sup>837</sup>

Finally, in the Estate of *Bonde*, many deemed the objection and Section 14 to be an unnecessary limitation over the use rights of the landowners. It was not just any restriction, but the obligation to leave seed trees after logging appeared as another attempt of state forestry to interfere with the landowners' practices. As Representative Hoikka explained, the regulation aimed at making the landowners bow to the state forestry and if such a principle became the law, the landowners would be "in great trouble, because I knew the consequences of being under the yoke of the state forestry".<sup>838</sup> At the same time, the methods of forestry themselves were not disliked in the debate. On the contrary, many representatives—both the opponents and the supporters of the objection—viewed the practice of leaving seed trees to be indispensable for regrowth, and therefore something that all reasonable landowners would do.<sup>839</sup> The debate, then, did not only echo the long-term distrust towards state forestry. The debaters appraised the country's forests, emphasised their climatic and economic significance, and most importantly, expressed approval of towards rational forestry which the landowners could (and would) conduct themselves, with or without guidance set in the Forest Law.

#### **4.4 Conclusion: The forests of the nation and perspectives on ownership in the late nineteenth century**

In the 1890s, the forest sector of the country, especially with the expansion of the pulp and paper industries to the Russian market, was again enhancing its leading role in the country's

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<sup>836</sup> Minutes of the Estate of Burghers (1885), 1082–1087.

<sup>837</sup> Minutes of the Estate of Clergy (1885), 967–973.

<sup>838</sup> Minutes of the Estate of *Bonde* (1885), 1169.

<sup>839</sup> For instance, representatives Klami and Halkilahti. Minutes of the Estate of *Bonde* (1885), 1172, 1175–1176.

exports, and the industrial and commercial demand for wood was reaching record levels.<sup>840</sup> Even though it is beyond the scope of this enquiry, in the late 1890s the forest companies began to buy actual forest land, not only trees.<sup>841</sup> This brought the misery of the (short-sighted) landowners, who were concentrated in certain regions, back into the public debate and the agendas of several committees.<sup>842</sup> As in the early 1870s, the question of the wastage of forests became topical again, but the views on forest use and ownership in the Forest Law were rather different.

The trees of the forests had been demarcated into a more distinct property object in the Forest Law of 1886, which had already been scripted by the liberal Forest Committee of 1881. At the same time, the attitudes towards forestry and the rational management of the forests had become more approving, especially in the Fennoman circles: forests were not only naturally-grown, but required some sort of long-term attention and human cultivation. This was exemplified by the petitions presented in the *Bonde Estate* and the Clergy in the 1890s that demanded stricter legal measures against the wastage of forests (1894), especially on private land, and the development of “rational forestry” in the country (1897). The principle of rational management was creating a breach to the interpretation that forests were nature-grown, but rather involved human planning (which encompassed several generations) and labour.<sup>843</sup> The demand to better manage the valuable forests had led, then, to both the enforcement of the property right from below (against forest theft), but also to the acceptance that mismanagement should be corrected to

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<sup>840</sup> At the turn of the century, the forest sector produced 70 percent of the country's exports. Joonas Järvinen et al., ‘The Evolution of Pulp and Paper Industries in Finland, Sweden, and Norway, 1800–2005’, in *The Evolution of Global Paper Industry 1800–2050*, ed. Juha-Antti Lamberg et al., World Forests (Springer Netherlands, 2012), 20–23; Kunnas, *Metsätaloustuotanto Suomessa 1860–1965 : Forestry in Finland*, 110–11; Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620–1920*, 344–52.

<sup>841</sup> In 1914, the Norwegian-owned forest company W. Gutzeit was the largest private land owner in Finland with 434 000 hectares of land. Kupiainen depicts the chain of acquisition of forest land in Northern Karelia, where Gutzeit owned 237 000 hectares in 1914. Gutzeit acquired land from other companies (for instance, the British forest company Utra Wood in 1902), but also directly from the landowners and brokers trading forest land. Heikki Kupiainen, ‘Savotta-Suomen synty, kukoistus ja hajoaminen. Talonpoikaisen maanomistuksen muutos ja elinkeinot Savossa ja Pohjois-Karjalassa 1850–2000’ (Doctoral Thesis, University of Joensuu, 2007), 62–67, <http://urn.fi/URN:ISBN:978-952-458-912-3>; Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620–1920*, 375–76.

<sup>842</sup> The land acquisitions of the companies were restricted by several law reforms in the early 20<sup>th</sup> century, most famously by the Lex Pulkkinen in 1925, which restored illegally acquired land to be used in settlement and farming. Paavo Harve, *Puunjalostusteollisuutta ja puutavarakauppaa harjoittavien yhtiöiden maan hankinta Suomessa*, Acta forestalia Fennica 52, 1 (Helsinki: Suomen metsätieteellinen seura, 1947); Tapio Karjalainen, ‘Puutavarayhtiöiden maanhankinta ja -omistus Pohjois-Suomessa vuosina 1885 - 1939’ (Doctoral Thesis, University of Oulu, 2000), <http://urn.fi/urn:isbn:9514256247>; Helander, *Suomen metsätalouden historia*, 256–78.

<sup>843</sup> This transformation regarding the concept of *åverkan* was discussed in Jaakko Forsman, *Anteckningar enligt föreläsningar öfver de särskilda brotten enligt strafflagen af den 19. december 1889*, ed. L. Aspegren and E. Saxén (Helsingfors, 1899), 321–22.

conserve the forests of the country for future generations.

In scholarship, two important names in forestry, A. G. Blomqvist and P. W. Hannikainen, have been contrasted to portray the differences in forest political opinions and the march of the Fennomans towards state forestry, which ultimately led to Finnish parties at the turn of the century accepting that the forest industries were not harmful, but instead beneficial for the economic development of rural areas.<sup>844</sup> Blomqvist, the head of the Evo Institute, was the main figure of Finnish forestry in the 1890s. Hannikainen, one of the first Finnish-speaking Laureates (1876-1878) of the Evo institute, criticized the Institute for its weak scientific ambitions and that Swedish was used as the Institute's main language.<sup>845</sup> In the mid-1890s, both foresters published major works on the political economy of forests. The works exemplified the perception that forests were seen as a resource that had major importance for the country as a whole. According to Blomqvist, there was "probably no other land where the forests had such a great importance as Finland", and paralleled the "national treasure" with the mythical machine *Sampo* from the Kalevala national epic which provided endless riches to its holder. The work by Hannikainen, on a similar note, was titled "Finnish forests: our national property" (*kansallisuus*).<sup>846</sup>

Some major differences in the views of the authors, however, reflect well the politics of forest property of the previous decades. As he had done in the 1870s, Blomqvist retained the division between private forests and collectively owned forests. Blomqvist spoke up for the sanctity of private property rights, believed in the instructive effect of rising prices, and considered restrictions to use rights to be ineffective, but he remained very critical of private owners. Forests were important for farms for their own consumption, but only the state or another collective actor, such as municipalities or common forests, could overcome the short-

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<sup>844</sup> Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920*, 477–517; Ilkka Hakalehto, 'Julkisen mielipiteen suhtautuminen puuteollisuuden raaka-aineen hankintaan 1861-1894' (Master's thesis, Helsingin yliopisto, 1957).

<sup>845</sup> Hannikainen was named the Head of State Forestry in 1902, which initiated the Fennicisation of Finnish forestry, and facilitated the transfer of forestry education to the University of Helsinki. Soon after Hannikainen stepped in, Blomqvist resigned as the head of the Evo Institute and was succeeded in 1907 by the Fennoman sympathiser A. K. Cajander. An important character behind the selection of both Hannikainen and Cajander was the old-Fennoman Senator, botanist and cooperative active A. Oswald Kihlman. Halonen, *Maasta ja puusta pidemmälle*, 151–54; Michelsen, *History of Forest Research in Finland*, 122–29; Parpola and Åberg, *Metsävaltio : Metsähallitus ja Suomi 1859-2009*, 61–63.

<sup>846</sup> A. G. Blomqvist, *Skogshushållningens nationalekonomi och synpunkter i forstpoliti* (Helsingfors: G. W. Edlund, 1893); Hannikainen, *Suomen metsät kansallisuusomaisuutenaamme*; Hannes Gebhard, *Metsäpolitiikkamme pääkysymyksiä* (Helsinki: Suomal. kirjall. seuran kirjapaino, 1897).



sightedness of private owners and follow principles of rational forestry in the production of proper timber wood.<sup>847</sup>

For Hannikainen, as for the Fennomans of the earlier decades, single landowners were raised to a much more central position in forest political discussions. The lesson of the 1870s had been learned, and also the private owners with smaller lands could, and should, be taught to rationally manage and sell their own forests, both for household use and for generating extra income by cultivating trees for the market.<sup>848</sup> It seems, then, that according to the Svecoman-Liberal side, forest ownership came to be divided into different spheres that reflected the aims of the different owners, which were framed by the law. Only the larger collectives, however, could truly practice rational forestry. In the Fennoman thinking, the smaller landowners could also follow the principles of rational forestry. They needed security for their property, as well as also guidance, and would contribute as individual owners for the benefit of the nation.

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<sup>847</sup> Blomqvist, *Skogshushållningens nationalekonomi och synpunkter i forstpoliti*, 121–58, 167–73.

<sup>848</sup> Hannikainen, *Suomen metsät kansallisomaisuutena*, 142–54, 204–16, 237–40; Kotilainen and Rytteri, ‘Transformation of Forest Policy Regimes in Finland since the 19th Century’, 292.



## 5 The ownership of wild berries and the tradition of *allemansrätt*

In the autumn of 1914, an interesting case was heard at the rural district court of the municipality of Ruokolahti in the south-east part of the Grand Duchy of Finland.<sup>849</sup> Four local women had summoned two men to court: landowner August Lempiäinen and his brother, forest ranger Esko Lempiäinen. The women claimed that the defendants had high-handedly seized 20 litres of wild berries picked by the women. The spokesperson for the women present at the court demanded that the Lempiäinen brothers be punished for their illegal act, and sought reimbursement for the berries and the legal expenses. According to the spokesperson, the group of women had not picked berries on the defendant's land, and thus the brothers had no right to steal the berries. The defendant replied that he had met the berry pickers on a piece of land that he had cleared and fenced. According to the defence, the women had first denied picking any berries from the area. However, August Lempiäinen had discovered four sacks of lingonberries hidden under branches, which the women had eventually acknowledged as theirs. The women had not agreed to pay any rent for using the area, and therefore Mr. Lempiäinen had ordered his brother to take the sacks and bring them to his home.

After hearing the witnesses summoned by both sides, the rural district court made a decision in favour of the defendants. Its judgement stated that the current Penal Code gave no legal protection to the landowner's right to the berries growing on his land. Because of his property right to the land, however, Mr. Lempiäinen had been entitled to protect his right to the berries. In addition, the court stated that the lingonberries had not been at that very moment in the women's possession. One of the women, Ilma Lindgren, was not satisfied with the decision, and appealed against it to the Court of Appeal at Wiborg, where the case was heard in the autumn of 1916. Both the plaintiff and the defendant brought out new details and proof about the incident and its circumstances. Ilma Lindgren's appeal stated that the defence had not demonstrated any proof that the berries had been picked from Mr. Lempiäinen's land. It also reminded that the Penal Code did not prohibit the picking of berries because it specifically aimed at allowing the picking of wild berries even without the landowner's permission. Finally,

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<sup>849</sup> The following sources are used throughout the chapter when the litigation is discussed. Material for the Supreme Court case 285. Akti 285. Ea:3384 Anomus- ja valitusaktit 1917. Senaatin oikeusosaston arkisto (FNA); February 6, 1920. Records of the Supreme Court. Jan-Jun, 1st department. Ca:6. Korkeimman oikeuden arkisto (FNA); October 19, 1914. Records of the Rural district court of Ruokolahti, section 305. Cva:58. Jääsken tuomiokunnan arkisto (Mikkelin maakunta-arkisto, MPA).

Ms. Lindgren presented two testimonies showing that Mr. Lempiäinen's land was not cleared for cultivating berries, but was just a normal piece of forest land.

The Court of Appeal left the decision made by the rural district court unchanged. It found that Ms. Lindgren had not presented any reason for modifying the judgement made by the rural district court. One of the court members was against the decision. According to Justice Suhonen, Mr. Lempiäinen had not had the right to seize the berries because picking berries on another's land had not been stipulated as punishable, and neither had it been shown that Mr. Lempiäinen had forbidden berry picking in the area. Ilma Lindgren continued the process and appealed to the Legal Division of the Senate, which became the Supreme Court in 1918, the year following Finnish independence. The case was introduced in the Court in December 1919 and tried three months later. Neither of the sides brought in new arguments—only more testimonies to support their stories.

Notably, in contrast to the lower courts, the Supreme Court came to a different conclusion: Mr. Lempiäinen had illegally seized the berries from the women. The Court was not unanimous, but reached the decision to change the previous judgements by three votes against two. The opinion of Justice Granfelt, supported by Justices Hirvinen and Nybergh, stated that as picking berries on another's land was not punishable by law, Mr. Lempiäinen had not had the legal right to seize the berries. Justice Fagerström also disagreed with the lower courts, but his statement was similar to that of Justice Suhonen of the Court of Appeal.<sup>850</sup> The only one to support the lower courts was Justice Serlachius who found that because he was the owner of the forest area, Mr. Lempiäinen had been entitled to protect his right to the wild berries.

After the chapter on the property rights to trees, the litigation over the 20 litres of lingonberries opens another view on the culture of ownership of natural resources in the Grand Duchy. In particular, what is striking from today's perspective is that no references were made during the litigation process to the principle of public access to nature, *allemansrätt*<sup>851</sup>, a central feature of

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<sup>850</sup> Both Justices mentioned in their statement that Mr. Lempiäinen had not forbidden berry-picking in the area. Implicitly, this meant that berry-picking could be prohibited. In addition, they did not propose any fines to the Lempiäinen brothers.

<sup>851</sup> In this thesis, the Swedish form of this principle of public access to nature is used. In this way, the Nordic context becomes underlined. The term *allemansrätt* appears as such in some non-Swedish literature, for example in Valguarnera, *Accesso alla natura*. The word form is discussed in more detail in the following chapter.

Nordic outdoor culture<sup>852</sup>, and an institution that is commonly described as customary in the Nordic region.<sup>853</sup> The principle of *Allemansrätt* allows everyone to roam freely around the natural landscape without the consent of the landowner, with the proviso that no harm is caused. As well as the right to roam, *Allemansrätt* includes a set of other activities that can be practised on another's land, including the picking of wild flowers, berries, and mushrooms. In this light, the decision taken by the lower courts in the 1910s appears odd: how could the courts judge against the customary practice of berry picking? At the same time, the penal legislation of the country seemed to allow berry picking on another's land, or at least did not explicitly forbid it, as was noted by all the court levels. Ultimately, this was the legal argument on which the Supreme Court based its judgement in 1920.

This chapter explores the ownership of wild berries in the late nineteenth century and its relation to the custom of *Allemansrätt*.<sup>854</sup> It focuses, on the one hand, on the development of the Penal Code legislation, where the illegal taking of natural products became regulated, and on the other, the culture of berry picking at the time. The chapter first looks at the role of wild berries in the legislation and for the inhabitants of the Grand Duchy. It is noted how the berries were relatively insignificant resources for the rural households, but still played a role in the exchanges between the poor and the landowning houses. The chapter then shows that based on news from the neighbouring Sweden, significant expectations for the economic potential of the berries had risen since the 1870s.

In its third part, the chapter discusses the Penal Code reform of the late 1880s, during which the criminalisation of berry picking on another's land was supported especially in the Fennoman Estates of *Bonde* and Clergy at the Assembly of Estates of 1888. However, the non-economic considerations of the matter triumphed, and the picking of wild berries was not criminalised but

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<sup>852</sup> Several studies show that the Finns give great value to the principle of *Allemansrätt*. Eija Pouta, Tuija Sievänen, and Marjo Neuvonen, 'Recreational Wild Berry Picking in Finland—Reflection of a Rural Lifestyle', *Society & Natural Resources* 19, no. 4 (2006): 301–2; Tuija Sievänen and Marjo Neuvonen, 'Luonnon virkistyskäyttö 2010', Text, Metlan työraportteja / Working Papers of the Finnish Forest Research Institute 212, (2010), 111–12. For the broader Nordic context, see for instance, Klas Sandell and Margaretha Svenning, *Allemansrätten och dess framtid : utredning om allemansrätten* (Stockholm: Naturvårdsverket, 2011).

<sup>853</sup> For *Allemansrätten* in Finland, see, for example: Everyman's right in Finland. Ministry of the Environment, 2013. <<http://www.ym.fi/download/noname/%7B595923BE-007D-4405-B69C-1748A02055EF%7D/57650>>; Kalevi Laaksonen, 'Jokamiehen oikeudet, laki ja perustuslaki', in *Juhlajulkaisu Veikko O. Hyvönen : 1929-18/9-1999*, ed. Kalevi Laaksonen (Helsinki: Lakimiesliiton kustannus, 1999), 163–67. For *Allemansrätten* in the Nordic countries, see: *Allemansrätten i Norden*.

<sup>854</sup> A similar, but less encompassing, investigation on *Allemansrätt* and berry-picking in the late nineteenth century has been done already in Mela, 'Property Rights in Conflict'.

left unmentioned in the penal code. Finally, the chapter argues that the unclear legal nature of the wild berries was used not only for national-economic goals but also for private aims, as the economic potential of the wild berries could be realised by interpreting them as being available to all. This would render the poor of the country as cheap but self-governing producers of berries for the export market and the industries.

## 5.1 Context for the Penal Code debate of 1888: Wild berry picking in the social fabric of the countryside

Recent scholarship has emphasised that *Allemansrätt*, in all Nordic countries, only took shape in the early twentieth-century with the progress of urbanisation, growth of free time, and the new practices of outdoor recreation.<sup>855</sup> Only by looking at the use of the term, can one find the first sporadic appearances in around 1900.<sup>856</sup> The term became applied in its current sense in the 1930s, as part of a discussion on land planning and nature use in urban environments<sup>857</sup>, but appeared in broader public debate, for instance in newspapers, only after the 1950s.<sup>858</sup> Already in the first accounts of the question, *Allemansrätt* was portrayed in the light of modern outdoor culture. In 1943, the Swedish legal scholar S. Ljungman wrote about a conflict of interests between the landowners and outdoor life enthusiasts; the latter employed a “newly-found catchphrase with legal value”, *Allemansrätt*.<sup>859</sup> At the same time, the institution and its

<sup>855</sup> For example, Valguarnera, *Accesso alla natura*; Klas Sandell, ‘Naturkontakt och allemansrätt : om friluftslivets naturmöte och friluftslivets tillgänglighet i Sverige 1880-2000’, *Svensk geografisk årsbok* 73 (1997): 38, 48, 52–54.

<sup>856</sup> In the case of Sweden, the work by legal scholar Adolf Åström on Swedish water law published in 1899 is often referred to. Åström described certain use rights as “alle mans rätt”. Seve Ljungman, *Om skada och olägenhet från grannfastighet : ett bidrag till läran om immissionernas rättsliga behandling* (Uppsala, 1943), 262; Wiktorsson, *Den grundlagsskyddade myten*, 83–85.

<sup>857</sup> The first official document describing the institution of *allemansrätt* as it is known today is a memorandum by Gunnar Carlesjö. The memorandum was appended to the report of the Swedish Outdoor Committee published in 1940. In Finnish literature, one of the first appearances in its modern sense is the work by V. K. Noponen on public and private roads published in 1946. One possible source of influence is the Swedish S. Ljungman, who in 1943 used the term in a similar way and introduced the idea of a “tolerance limit” for free roaming. Valguarnera, *Accesso alla natura*, 182–83, 189; V. K. Noponen, *Selvitys yksityisiä teitä koskevasta erikoislainsäädännöstä ja siihen liittyvistä oikeudellisista ja lainsäädännöllisistä kysymyksistä* (S.l, 1946).

<sup>858</sup> According to the Swedish newspaper database (tidninkar.kb.se), “allemansrätt\*” became employed for the first time in the 1940s. The search engine gives 7 hits for the term between 1940 and 1949, whereas in the following decade, the term appears 101 times. In the Finnish newspapers, the 1960s appears to be the decade when the Finnish term became commonly used. For scholarly literature, Åslund names Bengtsson 1966 [1963] as the first and one of the most comprehensive legal study on *allemansrätt*. Åslund, ‘Allemansrätten och marknyttjande’, 11; Bertil Bengtsson, *Allemansrätt och markägarskydd: om rätt att färdas och rasta på annans mark* (Stockholm, 1963).

<sup>859</sup> In 1963, in one of the first legal works on *allemansrätt*, Bengtsson noted how the concept had gained such a status that it could be used as a basis for major legislative projects, maybe due to its vagueness: *allemansrätt*

terminology was appropriated as part of national and regional identities, to later appear as unique and sacrosanct in public debates over the threat of foreign mass tourism, the disadvantages of the EC membership, or the inappropriateness of foreigners picking berries organised by commercial companies.<sup>860</sup>

If the term itself only became articulated in the early twentieth century, to what extent did similar practices already exist earlier? For one severe critic, the Swedish G. Wiktorsson, *allemannsrätt* is not age-old, but rather an ideologically-biased myth, which has become significant only because of the ties with the social-democratic policies since the 1930s.<sup>861</sup> Wiktorsson, however, remains in a small minority, and it is commonplace to argue that regardless of its modern nature, some specifically local or regional features of outdoor culture stand at the roots of the institution.<sup>862</sup> For instance, in a recent comparative work of legal cultures, F. Valguarnera has studied the historical conditions that made possible the political creation of *allemannsrätt* in the twentieth century. According to Valguarnera, the legal conception of property remained of a weak and practical nature in the Nordic countries, in

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was used ambiguously and meant some sort of freedom to roam. Ljungman, *Om skada och olägenhet från grannfastighet*, 265–66; Bengtsson, *Allemannsrätt och markägarskydd*, 77.

<sup>860</sup> Lars Kardell, *Svenskarna och skogen. Del 2, Från baggböleri till naturvård* (Jönköping: Skogsstyrelsens förlag, 2004), 234; Sténs and Sandström, ‘Allemannsrätten in Sweden’. For the discussion on EC membership, see Staffan Westerlund, *EG:s miljöregler ur svenskt perspektiv* (Stockholm: Naturskyddsföreningen, 1991); Pauli. Vuolle and Anu. Oittinen, *Jokamiehenoikeus : perinteistä nykypäivää : tutkimus jokamiehenoikeuden kulttuurisesta, oikeudellisesta ja luontoliikunnallisesta merkityksestä* (Jyväskylä : Liikunnan ja kansanterveyden edistämissäätiö, 1994). Recent discussions in Finland and Sweden on *allemannsrätt* have been studied in Seija Tuulentie and Outi Rantala, ‘Will “Free Entry into the Forest” Remain?’, in *New Issues in Polar Tourism* (Springer Netherlands, 2013), 177–188. The role of *allemannsrätt* as part of the Finnish or Swedish country brands, and thus suitability for commercial opportunities, was brought forward in two recent official reports. Mission for Finland : Country Brand Report 25.11.2010. Final Report of the Country Brand Delegation. <[http://www.maakuva.fi/wp-content/uploads/2011/06/TS\\_Report\\_EN.pdf](http://www.maakuva.fi/wp-content/uploads/2011/06/TS_Report_EN.pdf)>, 135, 138–139. Sandell and Svenning, *Allemannsrätten och dess framtid*.

<sup>861</sup> In his book from 1996, Wiktorsson describes how it is not apparent that practices of open access to nature existed. Wiktorsson argues that A. Åström, and his uses of *alle mans rätt* around 1900, should be seen only as part of his specific vision on history, which emphasised communal ownership. Based on this view, the state still had today the *dominium directum* over all land and the public could access what Åström called the commons of the realm (*riksallmänning*). Finally, inspired by Åström and the value-relativist Uppsala School, the institution of *allemannsrätten* was established as part of the social-democratic outdoor policies in the 1930s and onwards. Wiktorsson, *Den grundlagsskyddade myten*, 53–55, 65–67, 73–85; Valguarnera, *Accesso alla natura*, 182–83, 189; Åslund, ‘Allemannsrätten och marknyttjande’, 58–59.

<sup>862</sup> In his reply to Wiktorsson, Klas Sandell examined the differences between the late nineteenth century outdoor practices and the later mass practices more typical to *allemannsrätt*. Sandell noted how the question of free roaming was no issue at the beginnings of outdoor recreation in the 1880s and 1890s. Mainly based on these observations, he concludes that the “basic practice [of free roaming] behind allemannsrätten should therefore [...] be seen as a fundamental part of our cultural history!” Sandell, ‘Naturkontakt och allemannsrätt’, 52. See also: Bjørn P. Kaltenborn, Hanne Haaland, and Klas Sandell, ‘The Public Right of Access – Some Challenges to Sustainable Tourism Development in Scandinavia’, *Journal of Sustainable Tourism* 9, no. 5 (2001): 422–24.

contrast to the strong and abstract principle of property of western Europe. In the north, roaming on another's land was acceptable as long as it did not harm the economic interests of the landowners.<sup>863</sup>

The narrative of continuity is obviously appealing not only as it legitimises the modern *allemansträtt*, a project endorsed in the Nordic countries, but also emphasises a specific Nordic or national past.<sup>864</sup> Yet the danger is that the projection of a positively-seen current institution turns attention away of aspects of nature-use that are strange or contradictory to *allemansträtt*. It can be highlighted that the institution of *allemansträtt*, more explicit in the Finnish term “Everyman's right” (*jokamiehen oikeus*), is not merely about public access (*allmäns rätt*), but permits *everybody* to access the natural environment, in a commonly approved way.<sup>865</sup> It will be shown in the chapter, that in the late nineteenth century, certain common rights of access to nature similar to those in other countries existed. However, the arrival of unknown “Everymen” to the woods, that took place with improved communications and the growing value of the berries, caused tensions in the local communities. The case of the four berry-picking women is exemplary: it was constantly underlined by the defence that the women were strangers to the landowner. Moreover, the court case reminds us that these traditional Nordic practices of nature were not democratic, but included hierarchies between men and women, landowners and landless.

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<sup>863</sup> Valguarnera, *Accesso alla natura*, XV–XX, 166–173, 189–191.

<sup>864</sup> For instance, a work on the particular identity of Nordic Law by comparative-oriented legal scholars describes *allemansträtt* as an “expression of this [Nordic Lutheran] centuries-old social ethos. Rights, which “are constitutional rights without ever having been written down in legislation”, and have “rather lived in the shadows of criminal law provisions.” These rights “seem to provide support for the claims of a distinctive Nordic legal culture.” Husa, Nuotio, and Pihlajamäki, *Nordic Law*, 25–26.

<sup>865</sup> In Finnish, the term *allemansträtt* has been translated both as *jokamiehenoikeus* (“every man's right”), but also to *yleisoikeus* (general/common right) or *yleiskäyttö* (general/common use). The latter two relate to the Roman legal term *usus publicus* (in German, *Gemeingebrauch*), the use of public objects such as public roads. In the legal literature in Finland, this terminology appeared in the field of water law at the turn of the century. The Finnish legal scholar K. Haataja noted in 1954, how the vocabulary of *usus publicus* had been adopted to Nordic legal language only during the last decades. According to him the first translations of the term were “*allemansträtt*, *allmänningsrätt*, that is, the right of all men”. It seems that today the two translations of *allemansträtt* are used almost synonymously in scholarly literature; *yleiskäyttö* refers more common to issues of water law and *jokamiehenoikeus* regards land and forest use (one finds also the term *jokamiehenkäyttö*). Kyösti Haataja, ‘Review of E. J. Manner’s *Yleiskäyttö Vesioikeudellisena Käsitteenä*’, *Lakimies* IV (1953): 781; E. J. Manner, *Yleiskäyttö vesioikeudellisena käsitteenä*, Suomalaisen lakimiesyhdistyksen julkaisuja. 46 (Helsinki : Suomalainen lakimiesyhdistys, 1953), 11–17; Laaksonen, ‘Jokamiehenoikeudet, laki ja perustuslaki’, 163–64; Kalevi Laaksonen, *Toisen maan yleiskäytöstä* (Helsinki: Helsingin yliopisto, 1980), 30–32; Erkki J. Hollo, ‘Jokamiehenkäytön Sääntely Vanhalla Tolalla’, *Ympäristöjuridiikka* 1 (2004): 3–6.



In Sweden and Finland, *allmansrätt* is not codified in a separate law, but the institution is formed of regulations found in various laws.<sup>866</sup> For berry picking, the crux is the Penal Code, where the illegal taking of natural products has traditionally been regulated. The current Finnish Penal Code explicitly states that the taking of wild berries is permitted due to “the everyman's right”. This is, however, a recent expression that was taken in a reform in 1990. Before the reform, the Penal Code followed the opposite disposition, and listed all the objects that it was a punishable offence to take without the landowner's consent.<sup>867</sup> This was also the case in the Finnish Penal Code of 1889, which served as a guiding line in the litigation process. Section 1 of Chapter 33 of the code stated how

Quiconque, sur le terrain d'autrui, et sans motif légitime, aura volontairement abattu ou endommagé un arbre sur pied, ou qui aura enlevé des arbres morts ou des chablis, ou qui aura enlevé aux arbres sur pied des scions, des branches, des racines, de l'écorce, des feuilles, de la tille, de la résine, des glands, des pommes de pin ou des noix, ou qui aura fauché du gazon, ou pris de la mousse, de la tourbe, du terreau, de l'argile, du sable, du gravier ou de la pierre, et qui aura commis l'un de ces actes dans l'intention de s'approprier ou de procurer à un autre tout ou partie de ces objets, sera [...] <sup>868</sup>

The List of Illegal Taking in the Penal Code did not include wild berries, a fact which was stated by the courts in the berry litigation. Berries, however, had been added to the list during the Penal Code process, which had politicised the question and forced the Estates to discuss the role of berries more thoroughly at the Assembly of 1888. The work towards a new Penal Code had been started decades earlier. The criminal law in force was mainly based on the Swedish Code of 1734 and was seen as outdated to a great extent. In 1866, a partial reform was concluded

<sup>866</sup> The principle of *allmansrätt* appears in the Swedish constitutional law since 1994. In Finland it has not been included in the constitution, while it has been seen that its nature as a customary legal institution makes it problematic to demarcate. Emphasising the appreciation in Finland, Vuolle and Oittinen acknowledge *allmansrätt* ‘a quasi-constitutional role’. Karin Åhman, ‘Konstitutionellt perspektiv på allmansrätten’, in *Allmansrätten i förändring. Symposium 2012*, ed. Karin Åhman (Norstedts Juridik, 2012); Laaksonen, ‘Jokamiehen oikeudet, laki ja perustuslaki’, 179–80; Vuolle and Oittinen, *Jokamiehen oikeus*, 13–14, 46–48.

<sup>867</sup> Chapter 28, section 14 of the current Criminal code regulates the “Public rights (jokamiehen oikeuksista)”: “The provisions in this chapter [on theft] do not apply to the gathering, on the land of another, of dry twigs from the ground, cones or nuts that have fallen to the ground or wild berries, mushrooms, flowers or other similar natural products, with the exception of lichen and moss. Before the amendment in 1990, the chapter 33 stipulated “on unauthorized sowing, hunting and fishing”, stating in its first section that “[w]hosoever unlawfully on another's land has intentionally felled a living tree or damaged it in order to seize it or part of it for himself or for another, or with said intention has taken dried wood or wind-felled wood or has taken twigs, branches, roots, birchbark, bark, leaves, bast, pitch, acorns or nuts or has reaped grass or taken moss, lichen, peat, earth, clay, sand, gravel or stones, shall be sentenced [...] for wasting to a fine of [...]”. Unofficial translation of the “Criminal code of Finland” up to amendments of 927/2012 on <<http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>>; Matti Joutsen, ed., *The Penal Code of Finland and Related Laws* (Littleton, Colo. : London: Fred. B. Rothman ; Sweet & Maxwell, 1987), 91–92.

<sup>868</sup> This French translation of the chapter defines aptly the acts of *åverkan*, which include “illegal taking”: see below. Ludovic Beauchet, ed., *Code penal de Finlande du 19.12.1889* (Nancy, 1890), 97.

which especially regarded the penal system and the penitentiary.<sup>869</sup> The work on the Penal Code was continued by a Committee between 1865 and 1875. Regarding berry picking, the Committee proposed in 1875 a similar solution as in the Swedish Code of 1864; as we will see below, this early Committee discussed the role of the wild berries but did not add them to the Code.

The humane proposition of 1875 was examined and criticised by various commentators: it was seen as too kind and protective towards criminals.<sup>870</sup> The Senate set up a second Penal Code Committee in 1880 to rework the Penal Code proposal, and when the work of the Committee proceeded, the Senate ordered four senators to study the results and to prepare the actual law proposal for the next Assembly of Estates.<sup>871</sup> At the same time, Professor J. Hagströmer from Uppsala, who had also been asked by the liberals to comment on the earlier drafts to balance out the German influences that were strong in the committees, wrote a commentary on the proposal of the Committee. Thus, in December 1883, the Penal Code was prepared by three parties, and all three commentaries were given to the Estates in 1885 when the Penal Code proposal was introduced.<sup>872</sup> In these drafts, wild berries were only included in the proposal of the Committee of 1880, but was removed from the actual imperial proposal of 1885. The Committee did not comment on the decision to include berries and mushrooms on the list, and neither was their removal justified in the documents of the inspecting senators.<sup>873</sup> One challenge was the chapter itself, which regulated the illegal taking of natural products. Many of the objects, like wild berries, had recently risen in value, but they still differed greatly in how they were cultivated or used.

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<sup>869</sup> According to Kekkonen, this was the culmination of the reform which was then taken to its end with the Penal Code of 1889. Jukka Kekkonen, 'Autonomian ajan rikosoikeus', in *Suomen oikeushistorian pääpiirteet : sukuvallasta moderniin oikeuteen*, ed. Pia Letto-Vanamo (Helsinki: Gaudeamus, 1991), 264–65.

<sup>870</sup> Ibid., 266.

<sup>871</sup> Antti Kivivuori, 'Rikoslain suunnittelun vaiheita 1875-1884', *Lakimies* 1–2 (1971): 11–18.

<sup>872</sup> Ibid., 18–29.

<sup>873</sup> The Penal Code Committee of 1880 included three actual members, R. Idestam, J. Forsman and K. W. Sulin, and two members of the Senate, J. Ph. Palmén and J. D. Dahl, to supervise the work. From the members, Forsman and Sulin, participated in the actual reading of the work in the Assembly of Estates of 1888. The Old-Finnish Fennoman Forsman did not appear very enthusiastic about criminalising the wild berries, whereas Sulin, also a member of the parliamentary committee in 1888 which proposed that the wild berries should be added to the Penal Code, was favourable towards the reform. See chapter 5.3; *Förslag till strafflag för Storfurstendömet Finland* (Helsingfors: Kejserliga Senatens tryckeri, 1884). Amendments to the law proposal of the Penal Code Committee of 1880. Dc:5. K. G. Ehrströmin arkisto. Helsinki City Archives (HCA).

Chapter 33, where the taking of nature products was also regulated, regarded the acts of *åverkan*, illegal fishing, and hunting. As discussed in the previous chapter, a distinction had been made between stealing (which was further divided into theft and “petty theft”) and *åverkan*. The latter was a broad concept which concerned all harmful or unauthorised acts on another's land, including the “less serious” illegal taking of nature-grown products, that is, objects that had not been created or transformed by human labour.<sup>874</sup> In the Öhman's Swedish-English dictionary from 1872, we find *åverkan* translated as “depredation, waste”, and *göra åverkan* as “to commit depredation (on)”.<sup>875</sup> However, its broader meaning is found, for instance, in the French translation of the Penal code chapter, where *åverkan* was seen “des entreprises illicites sur le fond d'autrui”<sup>876</sup>, or in the Finnish translation “on unauthorised cultivation” (*luvattomasta viljelyksestä*). In mediaeval times, *åverkan* had signified the act of someone cultivating accidentally (or through an old habit) an area to which he was not entitled. As noted by Ågren, already in the Swedish law of 1734, *åverkan* has taken on a more negative connotation and meant “acting like the owner without being the owner”.<sup>877</sup> In the Lectures by J. Forsman from 1899, the definition of *åverkan* is in its broad meaning: “the illegal usufruct of the immovable property existing in others forest, field or water”.<sup>878</sup>

This division between stealing and *åverkan* was reflected and modified during the legislative process which led to the Penal Code of 1889. As shown in the previous chapter, criticism was increasingly raised against the mis-management, or “wasting”, of forests, but as well as their illegal taking since the mid-nineteenth century: some demanded that this should be seen as stealing instead of *åverkan*. The felling of a growing tree did not become stealing in the Penal Code of 1889, but at the same time, the more valuable tree trunk had to be distinguished from less valuable things such as grass. For instance, according to a law proposal from 1875, the taking of felled trees or timber was qualified as stealing (§ 385), whereas the harming or the

<sup>874</sup> Allan Serlachius, *Suomen rikosoikeuden oppikirja*, 2. p (Helsinki: Otava, 1924), 206.

<sup>875</sup> V. E. Öman, *Svensk-engelsk hand-ordbok* (Örebro: Abr. Bohlins Boktryckeri, 1872), <http://runeberg.org/svenhand/0453.html>.

<sup>876</sup> Beauchet, *Code penal de Finlande du 19.12.1889*, 97.

<sup>877</sup> Also law professor J. Forsman noted this “accidental” intention behind *åverkan* on other's field in his lectures published in 1887. For example, this could have taken place in open fields divided in strips. Jaakko Forsman, *Anteckningar enligt föreläsningar öfver straffrättens allmänna läror* (Helsingfors, 1887), 151; Maria Ågren, *Att hävda sin rätt: synen på jordägandet i 1600-talets Sverige, speglad i institutet urminnes hävd* [Summary: Asserting one's rights. Views of land ownership in seventeenth-century Sweden, as reflected in the institution of ancient usage] (Stockholm: Institutet för rättshistorisk forskning : Nerenius & Santerus, 1997), 233–34, 238–39.

<sup>878</sup> “ett olofligt nyttjande af annans i skog, mark eller vatten bestående fasta ägendom.” Forsman, *Anteckningar enligt föreläsningar öfver de särskilda brotten enligt strafflagen af den 19. december 1889*, 314.

felling of a growing tree was regulated as *åverkan* (§ 423), the taking of branches from a growing tree was included in the lesser category of *åverkan* (§ 425), and finally, the collection of a branch from a tree broken by the wind was regulated in the least notable category of *åverkan* (§ 426). Ultimately, there remained only a thin line between the categories of stealing and *åverkan*. In the draft papers for the law proposal of 1875, next to the section on taking of “growing grass”, a cross-reference to the corresponding section on stealing, “taking hay from a field”, has been made. Similarly, the hand-written text “close to stealing” (*nära stöld*) appears in the drafts next to some sections on *åverkan*.<sup>879</sup> In addition, the committee preparing the law proposal of 1875 described the sections of 424, 425 and 426 of the *åverkan* chapter as “stealing-like taking on other's land”.<sup>880</sup>

This distinction between stealing and *åverkan* was also noted in one of the commentaries on the law proposal of 1875. As there had been requests for public commentaries on the work, the Fennoman legal scholar J. Forsman—brother of the main Fennoman figure G. Z. Forsman and the first to present a Finnish-language law dissertation in 1874—published an extensive review of the law proposal in 1877.<sup>881</sup> In his scrutiny of the *åverkan* chapter, Forsman greeted the proposal of the committee to separate “theft-like *åverkan*” (*tjufsk åverkan*) from other kinds of *åverkan*.<sup>882</sup> This was in accordance with the recent claims that this kind of *åverkan* should be equal to stealing. Forsman, however, criticised that in some regards, the committee had gone beyond the sense of justice of the people.<sup>883</sup> Forsman reminded how in the sparsely inhabited country it was commonly seen that “what nature offered, generated without human labour, has been seen almost as common to everyone”. Even though this had radically changed, Forsman continued, due to the increase in the value of nature's resources, crimes against this “nature-given property” were not perceived as a “complete crime against property”.

At the same time, the relative nature of the list of objects has been emphasised. According to Wiktorsson, the Swedish Penal Code of 1864, which replaced parts of the Code of 1734 shared by the Grand Duchy, was a mixture of a casuistic style, with concrete and typical examples,

<sup>879</sup> “Kap. Om åverkan; så ock om olofligt jagande eller fiskande”. Documents by A. Grotenfelt. Kustavi Grotenfeltin arkisto. FNA; See also Ibid., 317–20.

<sup>880</sup> *Ehdotus Suomen Suuriruhtinaanmaan Rikoslainsi v. 1875* (Helsinki: SKS, 1884), 274–75.

<sup>881</sup> Kivivuori, ‘Rikoslain suunnittelun vaiheita 1875-1884’, 12–13.

<sup>882</sup> Jaakko Forsman, ‘Muistutuksia Alamaiseen Rikoslain Ehdotukseen, Jonka on Valmistanut Eräs Sitä Varten Asetettu Komitea’, *Juridiska Föreningens I Finland Tidskrift*, no. lisäviikko (1877): 3–83.

<sup>883</sup> This regarded, for instance, the proposal that attempted *åverkan* of certain kind should be punishable.

and a modern legislative style which aimed at generalisation.<sup>884</sup> Similarly to the Finnish Penal Code of 1889, section 3 of chapter 24 in the Swedish Penal Code gave a list of natural products which could not be taken without permission. In contrast to the Finnish equivalent, however, section 3 was followed by section 4 which Wiktorsson calls the “left-over section”. This section continued the list by adding “windfalls” and “twigs, sticks, or something similar [*sådant annat*], which is not for cultivation or work [*bruk eller beredt är*]”. According to Wiktorsson, at the time, berries and especially mushrooms were of such little value in Sweden that they were not considered worthwhile to be mentioned in the law. However, he argues that berries and mushrooms, and other non-valuable objects, were conceptually included in this left-over section.<sup>885</sup> According to him, it was only during the first decades of the twentieth century that this list turned into an absolute one, thus, the objects missing were free to be picked by anyone.<sup>886</sup>

The idea of a “left-over section” is not completely unfamiliar in the Finnish case, where the role of the berries and mushrooms were considered during the reform process. In the draft papers of the law proposal of 1875, it was noted that under the articles of “grass and peat”, it was possible to include the taking of “flowers and berries, and sand, top soil.”<sup>887</sup> In addition, at a later stage of the legislative process, the Senate asked the Swedish legal professor J. Hagströmer from Uppsala to comment on the drafts of the Finnish Penal Code.<sup>888</sup> In this law proposal from 1884, berries and mushrooms had been added to the criminalised natural resources. Professor Hagströmer noted this change in his commentary. He wrote that according to many, the taking of berries and mushrooms was not punishable by the Swedish law. However, should it be seen as punishable, the berries and mushrooms were to be equated with the taking of windfalls and similar things, that is, the “left-over section” of Wiktorsson. In the current draft, according to Hagströmer, berries and mushrooms were wrongly placed, and needed to be transferred to another section of the *åverkan* chapter, which described objects of lesser value.<sup>889</sup>

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<sup>884</sup> Wiktorsson, *Den grundlagsskyddade myten*, 46.

<sup>885</sup> One of the examples given by Wiktorsson is the reasoning made by the Law Committee preparing the Swedish Penal Code of 1864. The Committee discussed the question whether the illegal taking of natural products (*åverkan*) should be seen as stealing (*stöld*). The committee disagreed and noted that in this case even “the illegal picking of berries or flowers, if any value can be put, should be then seen as stealing.” (*att äfven [...] olofligt plockande af bär eller blommor, så vida något värde därå kan sättas, borde, såsom stöld anses*). Ibid., 51.

<sup>886</sup> Ibid., 50–55.

<sup>887</sup> Documents of A. Grotenfelt (1843-1890). 20, Kustavi Grotenfeltin arkisto. FNA.

<sup>888</sup> Kivivuori, ‘Rikoslain suunnittelun vaiheita 1875-1884’.

<sup>889</sup> In this modified version, the berries and mushrooms, which had been added by the Penal Code Committee of 1880, appeared in the section with objects of lesser value (272 §): “he, who takes without permission from

The Penal Code process offers important insights into the relative nature of ownership of wild berries. However, it mainly demonstrates that there were differing opinions on their role and place in the Penal Code legislation. Attention should also be paid to the actual practices of berry picking; what was the importance of wild berries and mushrooms for the legislator, or to the inhabitants of the rural country, at the time of the Penal Code reform. It will be observed, as has been noted by L. Kardell, that the wild berries were not as central to the rural households of the nineteenth century, as it might be supposed.<sup>890</sup> According to the statistics, more wild berries are picked today by the Finnish households than were picked in the late nineteenth century.<sup>891</sup> It should, however, be remembered already at this point that considerable regional differences existed in the habits of consumption and trade of wild berries and mushrooms. In the eastern parts of the Grand Duchy, which belonged to the Russian cultural hemisphere, berries and especially mushrooms played a more central cultural and economic role than elsewhere in the country.<sup>892</sup> For instance, in the western areas of the country, mushrooms aroused suspicion due to their potential toxicity and were not seen as edible.<sup>893</sup>

According to the court minutes of the berry picking case, dependant Ilma Lindgren was picking berries with three other women—Erika Wuori, Alina Syrjänen, and Emilia Luhanko—who were cited in the litigation records as “overseers’ wives”. Three witnesses stated that on the eve of the incident, the women had been staying overnight at their home. The women had left after

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other's land withered wood or windfalls, or dried bush, or something from them, or growing plant, mushroom or berry, or moss, mould, clay, [...]”. J. Hagströmer, *Granskning af underdåniga förslag till strafflag för storfurstendömet Finland*. (Upsala: Almqvist & Wiksell, 1884), 227–28.

<sup>890</sup> Lars Kardell, ‘Skogarnas bär och svampar, deras betydelse i hushållen förr, nu och i framtiden.’, in *Från Kulturdagarna i Bonäs bygdegård*, vol. 1984, s. 19–42 (Från Kulturdagarna i Bonäs bygdegård Uppsala : Akad., 1967–1987, 1985), 19–23; Lars Eriksson, Torleif Ingelög, and Lars Kardell, ‘Mat i nödfall’, in *Forskning och framsteg*, vol. 1978:6 (Forskning och framsteg Stockholm : Stiftelsen forskning och framsteg, 1966–, 1978), 30–32; Wiktorsson, *Den grundlagsskyddade myten*, 49.

<sup>891</sup> Pouta et al. have noted how in contrast to the other Nordic countries where the participation rates have declined, Finnish households still actively pick wild berries today. According to the Natural Resource Institute in Finland, households collected 25 million kilos of lingonberries and 22 million kilos of bilberries in 2015. Around 1880, households collected 9 million kilos of wild berries, which would equal, if related to today's population, 24 million kilos of wild berries. It remains to be discussed how well the statistics from Kunnas provide for the total collection. Pouta, Sievänen, and Neuvonen, ‘Recreational Wild Berry Picking’, 286–87; Kunnas, *Metsätaloustuotanto Suomessa 1860–1965 : Forestry in Finland*, 142–43. Robust Lingonberry to cap off good harvest year <<http://www.finlandtimes.fi/business/2015/09/09/20226/Robust-Lingonberry-to-cap-off-good-harvest-year>>, accessed 12 February 2016.

<sup>892</sup> Pirjo Hautala, ‘Marjojen ja sienien käyttö Suomen kansanomaisessa ruokataloudessa’ (Master’s thesis in Finnish-Ugrian ethnology, University of Helsinki, 1964), 111–13; Riitta Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’ (Master’s thesis, University of Helsinki, 1977), 114–16. Even today, the Eastern Finns consume twice as much wild berries as their western counterparts. Hannele Klemettilä, Laura Jaakola, and Riikka Juvonen, *Mansimarjasta punapuolaan: marjakasvien kulttuurihistoriaa* (Helsinki: Maahenki, 2011), 59.

<sup>893</sup> Hautala, ‘Marjojen ja sienien käyttö’, 10–11, 92–93. Berries were part of the fast diet of the Orthodox, who mainly lived in Eastern parts of the country.

6 a.m. by a boat, which was moored at a lake situated several hundred metres from the house, and several kilometres from the area where Landowner Lempiäinen had caught them. In their testimony, the witnesses wanted to prove that the women could not have already been picking berries in the morning on Mr. Lempiäinen's land, which was indirectly claimed by the defence: a witness for the defence was rowing at around 5 a.m. near the spot and saw four women come up to the shore and start picking berries.

During the litigation, Ilma Lindgren testified how the group of women had been picking berries from several islands near Mr. Lempiäinen's land. At some point, because of the heavy wind and rain, the women landed temporarily on his land which also included the beach. The women hid the lingonberries in the forest nearby, because they did not want sheep or local children to take them. At this point, however, Mr. Lempiäinen had arrived with his brother and one of the witnesses, Mr. Teräväinen. Mr. Teräväinen told the court that Mr. Lempiäinen had asked him to come along to see who was picking berries on the land. In the forest, the three men had found four women who were unknown to them.

The trip made by the four women was not a great exception at the turn of the century, as early autumn was a good season for berry picking, which was commonly practised in the countryside. The women were picking lingonberries (*vaccinium vitis-idaea*). Lingonberries grew in all parts of the country and became ripened in September. At the turn of the century, it was the most common berry consumed; it was found in abundance and because of its acidity, the berry was easily preserved for the winter months. Cranberries (*vaccinium oxycoccos*), even though rarer, served the same function as lingonberries. Other wild berries were consumed mainly when they became ripe. The bilberry (*vaccinium myrtillus*)—a very commonly picked berry today—was also used in the whole country, but less so in Ostrobothnia, Lapland, and southwestern Finland. Dried or bottled bilberries could be conserved. Lingonberries as well as bilberries were the berries used in everyday dishes. They could be eaten without cooking mixed with different flours and liquid, or prepared as a porridge or in pies.<sup>894</sup>

Some berries, such as raspberries (*rubus idaeus*) or arctic raspberries (*rubus arcticus*), were used for special dishes and drinks and were served only in special occasions. Wild berries have traditionally been used as medical cures for a variety of diseases; for example, the bilberry was

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<sup>894</sup> For a geographical description of berry dish preparation in Finland and in neighbouring areas, see Hautala, 'Marjojen ja sienien käyttö'.

used for stomach problems.<sup>895</sup> In addition, jams were made of berries in the nineteenth century, but often among the wealthier families because of the costliness of sugar.<sup>896</sup> According to Ailonen, however, berry picking became a nationwide hobby only at the beginning of the twentieth century, when better preservation methods were learned and berries became goods in demand.<sup>897</sup>

The berries were an important source of vitamins and could serve as medicine, but if we look at berries as a source of energy, their role as part of the rural diet was not very significant. In the Grand Duchy, approximately 40 to 50 grams of fruits and berries were consumed daily per capita around the turn of the century. The amount of berries consumed, if using figures of wild berries collected but not exported, remained much lower, and was approximately 5 grams in the 1860s and approximately 10 grams at the turn of the century.<sup>898</sup> These equal to around two and six kilocalories of energy. Berries were only minimal sources of calories compared to the main components of a rural diet, which were cereals (rye), potato and milk.<sup>899</sup> If we look at the energy content of lingonberries (39 kilocalories per 100 grams), it is lower than that of rye bread (225) or potatoes (78), but slightly higher than that of mushrooms (28 kilocalories, however, richer in protein) or turnips (27).<sup>900</sup>

Accordingly, as also noted by Kardell and Eriksson, berries could have served as a temporary and quick substitute in the diets of poor families.<sup>901</sup> For instance, the twenty litres of lingonberries picked by the four women were a source of energy of around 4700 kilocalories, which would have been more than sufficient for the daily energy intake of two adults. During the years of famine in between 1866 and 1868, the Senate promoted the use of new, healthy substitutes, such as certain lichen, moss, plants, and especially mushrooms, because they were usually consumed very little or not at all. The collection of berries was also promoted, but their

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<sup>895</sup> Ailonen, 'Luonnonvaraisten marjojen poiminta ja käyttö'; Klemettilä, Jaakola, and Juvonen, *Mansimarjasta punapuolaan*, 118–28. Medical uses of berries are described in the first Finnish-language *flora fennica* published in 1860 by Elias Lönnrot.

<sup>896</sup> Suomen naisyhdistys, ed., *Kalenteri Suomen naisten työstä* (Helsinki, 1894), 93–96.

<sup>897</sup> Ailonen, 'Luonnonvaraisten marjojen poiminta ja käyttö', 114–16.

<sup>898</sup> John Lefgren, 'Nälänhätä Suomessa 1967-68', *Historiallinen aikakauskirja* 3 (1974): 202–3; Kunnas, *Metsätaloustuotanto Suomessa 1860-1965: Forestry in Finland*, 142–43. *Annuaire statistique pour la Finlande*, 1909.

<sup>899</sup> Statistics about the consumption of most important food stuffs in 1890-1915. *Annuaire statistique pour la Finlande*, 1916.

<sup>900</sup> Nutrient values. National Institute for Health and Welfare in Finland.

<<http://www.fineli.fi/foodlist.php?lang=en>>.

<sup>901</sup> Kardell, 'Skogarnas bär och svampar, deras betydelse i hushållen förr, nu och i framtiden.', 19–23.



picking was emphasised especially for commercial gain.<sup>902</sup> The main recipe for providing actual emergency nutrition from the woods was designed to give information about edible mushrooms, and to teach the people to prepare bread flour from lichen.<sup>903</sup> The weak nutrition level of berries was recalled in memoirs and accounts of berry picking: berries were cited as “food for birds and gents (*herra*)” (Ostrobothnia) and that berries only brought hunger and were “food for the idle” (Kainuu-region).<sup>904</sup>

Due to their relative importance, during normal times berry picking was an activity for children, women, and the idle. In general, gathering activities have been traditionally labelled as an activity practised by women, in contrast to masculine activities such as hunting or fishing.<sup>905</sup> In the memories of berry picking practices in the Grand Duchy, the gendered nature of the activity is very visible. Many accounts note that the picking of berries was simply not seen to be suitable for men. It indecently undermined their manly honour (Karelia), berry picking was considered as a women’s job (Ostrobothnia) and berry picking men were viewed as childish (South-Western Finland). However, boys and girls were seen as equally suitable for berry picking.<sup>906</sup> Men could help in transporting the berries, and they searched for berry spots or “guided” a leisure trip. If they were to pick, men looked for the useful lingonberry or the precious cloudberry (*rubus chamaemorus*).<sup>907</sup>

Second, berry picking was viewed as ideal for children, women and old people because it was not physically hard, but helpful for the household.<sup>908</sup> It was also an activity for those who could not participate in harvests, which often took place when the berries were ripe. Small children were allowed to pick close to home, and longer berry-trips were made by adults who sometimes took children with them.<sup>909</sup> When the commercial importance of berry picking became more

<sup>902</sup> H. A. Turja, ‘Suurten Nälkävuosien Korvikeravintokysymyksestä’, *Historiallinen Aikakauskirja* 1 (1939): 93–96. Still in the beginning of the twentieth century, berry-picking was encouraged in public institutions for adding a cheap and healthy supplement to the diets. Kaija Rautavirta, ‘Petusta pitsaan : Ruokahuollon järjestelyt kriisiaikojen Suomessa’ (University of Helsinki, 2010), 41–51, <https://helda.helsinki.fi/handle/10138/20862>.

<sup>903</sup> Oiva Turpeinen, *Nälkä vai tauti tappoi? kauhunvuodet 1866-1868 [English summary: Was hunger or disease the killer? Years of terror 1866-1868]*, *Historiallisia tutkimuksia* 136 (Hki: SHS, Suomen historiallinen seura, 1986), 162–66, 303–4.

<sup>904</sup> Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 112–13.

<sup>905</sup> This gendered pattern is visible even in the berry-picking practices of today. Pouta, Sievänen, and Neuvonen, ‘Recreational Wild Berry Picking’.

<sup>906</sup> Sirkka-Liisa Ranta, *Naisten työt: pitkiä päiviä, arkisia askareita* (Hämeenlinna: Karisto, 2012), 32.

<sup>907</sup> Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 25–26.

<sup>908</sup> Roope Järvinen, *Marjakaupparamme ja sen tulevaisuusmahdollisuudet*, *Maakauppakirjasto*, n:o 1 (Helsinki: Maakauppiaslehti, 1913), 8–9.

<sup>909</sup> Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 29–34.

important towards the turn of the century, berry-picking was portrayed as a very suitable task for children. They were not only diligent children helping their mothers, but could actually earn an income for the family.<sup>910</sup> For instance, when the trade legislation was reformed in 1908, an objection was written regarding the tightening of the labour legislation for children. MP Vera Hjelt, a major figure in Finnish social protection, stated in her objection that picking and selling berries and mushrooms was important for rural children for both health-related and economic reasons. The legislation should not build obstacles to “this natural livelihood of children.”<sup>911</sup>

Moreover, as in the case of dependant Ilma Lindgren, the picking of wild berries was seen as more apt for women of small households or without land. The housewives simply did not have time to pick berries, and the task was not seen as suitable work for the women of the larger estates.<sup>912</sup> However, the housewives could ask the children or their own hirelings who had more hours of idle time to pick the berries for them. In some cases, the berries acted as gifts or local currency in personal exchanges. The child or the hireling offered the berries to the housewife, and let her decide what to give in return for the berries. According to some memories, the same berry-picking women brought their berries year after year to the same houses, even though the housewives had not asked for the berries. The berry-picker let the housewife decide what to give in return for the berries. In other cases, the berries had been taken to houses as a gift, so that the housewife could help in return during the coming winter.<sup>913</sup> Besides these informal exchanges, both in Finland and Sweden, berries were among the products that could be used for paying tenancy rents, and they also served as a payment for the rights to use wood, pasture, and even as the rent of the actual berry land.<sup>914</sup>

The tenant farmers or non-landowners had a specific role in the Finnish countryside of the late nineteenth century. Ilma Lindgren herself, besides being a woman in the rural patriarchal

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<sup>910</sup> Examples of children’s berry-picking “companies”, see: *Företagsamma ungdomar*. Åbo underrättelser, no 209 (5 August 1893); *Esimerkkiä seurattu*. Uusi Aura, no 175 (31 July 1904).

<sup>911</sup> The section 8 regarded restrictions for selling or professional activities at public places for children. Hjelt saw that only professional activities should be limited for children. *Eduskuntaesitysmiet. no 7, työväenasiain valiokunnan mietintö no 1, vastalause III*. The Parliamentary Session of 1908.

<sup>912</sup> Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 25–28.

<sup>913</sup> *Ibid.*, 27–28, 89–93.

<sup>914</sup> Kardell, ‘Skogarnas bär och svampar, deras betydelse i hushållen förr, nu och i framtiden.’, 23–25; Lars J. Larsson, ‘Den småländska lingonrushen’, in *Värendabygder*, vol. 1982 (Värendabygder Alvesta : Norra Allbo hembygdsförening, 1937–, 1982), 58; Torsten Ingeborn, ‘Bärplockare och bäragubbar i Ödenäs’, *Från Borås och de sju häraderna*, 1973, 43–68; Aksel Warén, *Torpparioloista Suomessa* (Helsinki : Suomalaisen kirjallisuuden seura, 1898), 292–93; Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 12, 94–96.

order<sup>915</sup>, was a cottager who did not possess any land. In the litigation material, Ilma Lindgren was titled as *itsellinen* or *itsellisnainen* (dependant or dependant-woman, lit. “self-owner” cf. *talollinen* “house-owner”). The meaning of the term is ambiguous, but referred to a person who did not own a house but made a living by working and staying temporarily at other people’s farms. *Itselliset* were part of the moving, landless work force of the countryside together with the *palkolliset* (hirelings), who in contrast to the former had a fixed annual contract to work at a farm.<sup>916</sup> The defendant, Mr. Lempiäinen, was a landowner. The majority of independent landowners were smallholders who cultivated relatively small land areas, which were on average under 10 hectares.<sup>917</sup> The third important rural group were the tenant farmers, who consisted mainly of *torpparit* (crofters). The crofters rented and farmed land which was part of the landlord’s property and paid the rent mainly in labour ordered by the landlord.<sup>918</sup>

These three groups, besides the educated and wealthy elite<sup>919</sup>, structured the rural communities of the Finnish countryside: at the turn of the century, the landowners formed 40 percent, landless labour force 40 percent and the tenant farmers 20 percent of the population living off agriculture.<sup>920</sup> The landowners played a central role in the rural communities and had important power over the other rural groups. They held major positions in the local administration and cooperated with the leading and norm-setting groups: the ecclesiastical, municipal and judicial officials.<sup>921</sup> First, the landowners participated in the vote of the *bonde* representatives for the

<sup>915</sup> Even though the legal position of women had been enforced by the legislation already in the mid-nineteenth century, for example, with the legal separation of property in marriage or full control over property for unmarried women over 25, women as legal actors were still defined as part of the patriarchal framework. Even though political and economic rights were fought for, the women's movement only legitimised the separation and creation of private space reigned by the woman. In the countryside, the associative action was not a step towards public participation, but merely a new form of traditional organisation along-side the men. Pylkkänen, *Trapped in Equality*, 42–62; Eira Juntti, ‘Development of the Concept “Woman” (Nainen) in Finnish Language Newspaper Texts, 1830-1860’, *Redescriptions: Yearbook of Political Thought, Conceptual History and Feminist Theory* 14 (2010): 83–106; Irma. Sulkunen, ‘Naisten järjestäytyminen ja kaksijakoinen kansalaisuus’, in *Kansa liikkeessä*, ed. Risto Alapuro et al. (Hki: Kirjayhtymä, 1987), 165–67, 169–71.

<sup>916</sup> Vihola, ‘Pärjääkö pienviljelys?’, 155–56.

<sup>917</sup> Peltonen, *Talolliset ja torpparit*, 415.

<sup>918</sup> Viljo Rasila, *Suomen torpparikysymys vuoteen 1909: yhteiskuntahistoriallinen tutkimus [English summary: The Finnish crofter question up to 1909]* (Helsinki: Suomen historiallinen seura, 1961), 15–16, 486.

<sup>919</sup> The top group included, roughly, the members of the other three Estates than the Peasants. They were, for instance, priests, industrialists, large landowners, officers, public officials and teachers. Alapuro, *State and Revolution in Finland*, 35–39; Viljo Rasila, ‘Suomalainen yhteiskunta 1865’, in *Suomen maatalouden historia. 1, Perinteisen maatalouden aika esihistoriasta 1870-luvulle*, ed. Viljo Rasila, Eino Jutikkala, and Anneli Mäkelä-Alitalo (Helsinki: SKS, 2003), 451–52.

<sup>920</sup> There were differences regarding the composition of rural actives between different areas of the country: in south and south-west the number of tenant farmers was higher and the farms in middle-eastern Finland had higher quantities of landless, temporary labourers.

<sup>921</sup> Miika Tervonen, ‘“Gypsies”, “Travellers” and “Peasants”: a Study on Ethnic Boundary Drawing in Finland and Sweden, c.1860-1925’ (Doctoral thesis, European University Institute, 2010), 42–43; Pasi Saarimäki,

Assemblies of Estates.<sup>922</sup> In 1865, the municipal administration was separated from the parishes, and a system of municipal rule was installed. The number of votes in municipal elections was tied to the amount of taxes paid, which favoured landowners and left out most women and the low-income groups.<sup>923</sup> Similarly, the landowners sat on the boards of poor-relief, rural district courts, and many of the local associations.

Second, the landowners, but also the tenant farmers to some extent, held legal means of physical control and surveillance. Until the Decree of Vagrants was pronounced in 1883, the non-owning population had to seek “legal protection” from the owning groups. This meant either becoming a hireling for a landowner or submitting to the guardianship of the local parish. If “legal protection” was not sought, the person fell into the group of vagrants and was arrested. As Pulma writes, this system enabled the control of migration and made the use of cheap labour possible for the landowners.<sup>924</sup> After 1883, the principle of free labour contracts did not create collective action among the rural workers, and the patriarchal order remained in force. Even on the largest estates, the relationships between the landowners and their hirelings remained personal. According to Kettunen, it was only after the general strike of November 1905 that the self-legitimising tie between the state, church, and the landowners started to break.<sup>925</sup>

Accordingly, at the turn of the century, basically all the rural labourers and the tenant farmers were tied to and dependent on the landowners both economically and socially. Many were hired on the farms (some temporary workers also on tenant farms) in yearly positions. These jobs were often inherited, but kinship ties or neighbourliness also defined the relationship. The economic ties were created because of reciprocal needs, and also to provide basic subsistence for the labourers. Not all of the wage was paid in money; the labourer received accommodation (a room or a cottage) or the right to cultivate a small piece of land. Half of the rural workers owned livestock, which created a demand for pasture land and cattle feed produced by the landowning peasants. Similarly, wood was needed from the landowner’s forests to survive through the cold winters.<sup>926</sup> In addition, hunger, malnutrition and diseases troubled the country,

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*Naimisen normit, käytännöt ja konfliktit : esiaviollinen ja aviollinen seksuaalisuus 1800-luvun lopun keski-suomalaisella maaseudulla* (Jyväskylä: Jyväskylän yliopisto, 2010), 36–37.

<sup>922</sup> See chapter 1.3.

<sup>923</sup> Jutikkala, *Suomen talonpojan historia*, 398–402.

<sup>924</sup> Panu Pulma, ‘Köyhästäkö kansalainen? - köyhyys poliittisena ongelmana’, in *Talous, valta ja valtio. Tutkimuksia 1800-luvun Suomesta*, ed. Pertti Haapala (Tampere: Vastapaino, 1999), 167–72.

<sup>925</sup> Kettunen, ‘Missä mielessä vanha työväenliike oli poliittinen liike’, 240–42.

<sup>926</sup> Peltonen, *Talolliset ja torpparit*, 268–69.

especially in the eastern and northern parts, well into the 1890s. The last major hunger years were experienced from 1866 to 1868 but crop failures still troubled the peripheral areas of the country between 1891 and 1902.<sup>927</sup> The landowners were not only funding the poor relief system via tax money, but in practice they took care of it with the parishes, until the modern poor relief institutions became common in the early twentieth century.<sup>928</sup>

The material conditions of tenant farmers were relatively better compared to the landless rural labourers. Very few of the tenant farmers, however, rented an actual farm, instead only a part of the main farm. These crofters (*torpparit*) paid the majority of their rent by working at the main farm and so have been defined both as rural labourers and small farmers. The landlords held a dominant position in this contractual relationship. Firstly, the duration of the contract could be stipulated to be short or conditional, and still in 1912, a third of the contracts were made orally; it was decreed in 1864 that an oral contract could be cancelled at any moment.<sup>929</sup> If the contract was cancelled, it was not clear what should be the compensation for the improvements the crofters had carried out on the plot.<sup>930</sup> The workload stipulated in the contracts was not clearly defined and the requests to work often coincided often with periods which were busy also at the crofters' plots.<sup>931</sup> Finally, what led to the aggravation of the position of the crofters, was that the landlords used them to cushion the international economic shocks of the late nineteenth century. They could demand more work from their crofters (and not hire other paid labour), cut down use rights and drive the crofter household away from the farm.<sup>932</sup>

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<sup>927</sup> The hunger years of the late 1860s caused around 150 000 people to perish. The developed aid and communication networks significantly relieved the distress produced by the crop failures of the 1890s. Oiva Turpeinen, *Näläntorjunta ja hyvinvointivaltion perusteet: hallinto ja kansalainen Suomessa 1808-1905*, Hallintohistoriallisia tutkimuksia 4 (Helsinki: VAPK-kustannus : Hallintohistoriakomitea, 1991), 101–2, 162, 171–72; Timo Myllyntaus, 'Summer Frost : A Natural Hazard with Fatal Consequences in Preindustrial Finland', in *Natural Disasters, Cultural Responses: Case Studies toward a Global Environmental History*, ed. Christof Mauch and Christian Pfister (Lanham, Md: Lexington Books, 2009), 77–102; Antti Häkkinen, ed., *1860-luvun suuret nälkävuodet: tutkimus eri väestöryhmien mielialoista ja toimintamalleista: loppuraportti*, Helsingin yliopiston talous- ja sosiaalishistorian laitoksen tiedonantoja 21 (Hki, 1989), 21, 33–39.

<sup>928</sup> According to Annola, the municipalities were not keen to build new poor houses, and the old systems of rotating house-to-house care (*ruotuhoito*, *rotegång*) and supporter's auctions (*elätehoito*) were still practiced in the twentieth century. Johanna Annola, *Äiti, emäntä, virkanainen, vartija. Köyhäintalojen johtajattaret ja yhteiskunnallinen äitiys 1880-1918*. (Helsinki: Suomen Kirjallisuuden Seura, 2011), 39.

<sup>929</sup> Peltonen, *Talolliset ja torpparit*, 271; Warén, *Torpparioloista Suomessa*, 177–82; Rasila, *Suomen torpparikysymys*, 58–60.

<sup>930</sup> The compensations were enforced by law only at the beginning of the twentieth century. Peltonen, *Talolliset ja torpparit*, 287–90.

<sup>931</sup> Warén, *Torpparioloista Suomessa*, 276–83, 312–23.

<sup>932</sup> Peltonen, *Talolliset ja torpparit*, 282–85.

When the contemporaries of the nineteenth century referred to wild berry picking, they did not speak about anonymous “everymen”, who could go to the woods to pick wild berries like everyone else. Berry picking was a secondary activity which was mainly practised by the idle or the poor—children, elderly people, and women. These groups, and consequently berry picking, had a particular place in the social fabric of the rural communities. After the mid nineteenth-century, however, the monetary value of the wild berries slowly started to rise. The focus remained on the traditional berry-picking groups, who could now earn an important income to support their livelihood. With the news of expanding berry exports in Sweden arriving to the country, some commentators emphasised the great potential the wild berries had for the broader national economy. However, the economic exploitation of wild berries in the 1880s remained only of regional importance, and the wild berries would mainly be considered as goods for the poor on the eve of the Penal Code debate of 1888.

## **5.2 The economic potential of wild berries and the Penal Code proposal of the 1880s**

At the rural district court in 1914, Ilma Lindgren’s claim from the men was the full compensation of her legal expenses and 15 pennies per litre for the berries they seized. This was confirmed in the judgement pronounced by the Supreme Court in 1920: the Lempiäinen brothers were sentenced to pay 50 Finnish marks to cover the legal expenses of Ilma Lindgren and as claimed by the plaintiff, 15 pennies per litre equalling 3 Finnish marks for 20 litres of lingonberries. The sum Ilma Lindgren demanded for 20 litres of lingonberries was a decent amount compared to the wages of the time, but unfortunately for Lindgren, the sum lost much of its value due to the inflation of the war years.<sup>933</sup> In 1914, when Ms. Lindgren pronounced her claim, there was a market for lingonberries which expanded especially at the turn of the century, and was led by foreign, mainly German demand. Wild berries, however, had already been traded and exported before this berry-boom of the turn of the century. What is notable is that the economic gains from wild berries were historically high just at the time when the Penal Code was debated, and the criminalisation of wild berries was discussed.

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<sup>933</sup> In 1914, the price of the berries equalled three hours of labour in the metal industry or to one kilo of unroasted coffee, whereas in 1920, three marks stretched to 100 grams of coffee and was earned in 45 minutes by the same labourer. Money value converter by the Bank of Finland Museum. <[http://www.rahamuseo.fi/en/multimediat\\_ja\\_oppimateriaalit\\_rahamuseon\\_kasittely.html](http://www.rahamuseo.fi/en/multimediat_ja_oppimateriaalit_rahamuseon_kasittely.html)>, accessed 4 April 2012. The figures are mainly from Vattula, *Suomen taloushistoria*. 3, *Historiallinen tilasto*.

Wild berries have not only been used as currency in exchanges at the country-side between the rural groups, but they have also been traded at the marketplaces during the berry-seasons. Exports of wild berries are registered in the trade statistics in the late 1850s.<sup>934</sup> The Saimaa Canal, which connected the eastern Finnish lake area to Saint Petersburg, and further to the Baltic sea, was opened in 1858, but according to S. Auvinen, the first wild berries were transported via the canal only in 1880, only to a small extent after that.<sup>935</sup> Wild berries were difficult to transport, as they were easily squashed. This made the durable lingonberries the main export article, but limited the exports to a regional activity. The question of exporting the lingonberry was discussed in the newspapers in the early 1860s, as they were one of the possible articles that the agrarian country could sell abroad.<sup>936</sup>

In the late 1860s, the potential of berries appeared in the context of the famine of 1866 to 1868. As noted above, berries did not appear so much as emergency nutrition, but rather as an export article which could provide income for the country. In August 1867, the *Helsingfors Dagblad* listed the prices of lingonberry on the English market and presented calculations about the gains of exporting them, and was cited by several other newspaper.<sup>937</sup> On the very same page, the newspaper gave instructions for preparing emergency bread from the bark of the pine tree. In March 1868, the State Board of Forestry published a text in the official newspaper about the collection and selling of berries, mushrooms, tree seeds and resin. Concerning wild berries and mushrooms, the newspaper instructed the reader about methods of preservation. To emphasise the value of mushrooms and berries, the newspaper noted that lingonberries were in demand especially in England, and that in certain areas of Germany, rent was paid for berry-land. Finally, the text gave a domestic example of a peasant in the region of Wiborg, close to Saint Petersburg, who had during one summer picked and sold mushrooms worth 1200 marks to Russia.<sup>938</sup>

It was finally in the 1870s that the potential of wild berries became broadly discussed among the public. First, attention was paid to the regional exports that took already place in south-

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<sup>934</sup> Kauko E. Joustela, 'Suomen Venäjän-kauppa autonomian ajan alkupuoliskolla vv. 1809-65' (1963), 332–33.

<sup>935</sup> Sakari Auvinen, *Kasvavan liikenteen kannattava kanava : Saimaan kanavan rahtiliikenne autonomian aikana* (Jyväskylän yliopisto, 2013), 283–84.

<sup>936</sup> Finlands handel 1863. Helsingfors Tidningar, no 208 (8 September 1864); Helsingfors d. 23 Dec. Vid industri-föreningens sammanträde. Helsingfors Dagblad, no 298 (23 December 1862).

<sup>937</sup> Lingonexport från Finland. Helsingfors Dagblad, no 177 (2 August 1877).

<sup>938</sup> Osoitus marjain, sienien, puunsiementen ja pihan kokoomiseen. Suomalainen wirallinen lehti. March 14, 1868.

eastern regions. These regions now benefited from the new railway finished in 1870, which connected the Grand Duchy directly to the capital of the Empire. There was a peak in the total amount of wild berries exported in the early 1870s, and the railways enabled diverse export strategies; the railways could be used for transporting the more delicate wild berries, which were often more valuable.<sup>939</sup> In late 1873, the official journal described how the exports to Saint Petersburg had become “a beneficial livelihood in many Eastern Finnish parishes since the opening of the railway”.<sup>940</sup> The newspapers explained how the trade was carried out between Finnish pickers, local shopkeepers, and buyers who transported the berries to Saint Petersburg.<sup>941</sup> Accounts of the profits of this trade, where different varieties of wild berries became sold, were reported. For instance, the local newspaper *Hämäläinen* wrote in September 1872 of how in the parish of Luumäki taxes were paid through berry picking. The area was “rich in berries”, and in that autumn bilberries had been “sent” to Saint Petersburg for thousands of marks.<sup>942</sup>

Second, the example of Sweden and its berry commerce became reported in the press. The common narrative of the Swedes in motion, and the Finns wasting their potential already in 1866 in the Finnish newspaper *Österbotten*, which cited a text from a trade and shipping newspaper from Malmö.<sup>943</sup> According to the *Österbotten*, the text was about an “export article, that we also have abundantly, if only its export could take shape”. The Malmö-based newspaper told its Swedish readers how any larger-scale exports of lingonberry were seldom considered in the country. The lingonberries were part of the “national wealth”, and as they were also easily preserved and prepared into a dish, the berry could be used even by the poor population. The cited text ended with an example of a shopkeeper who had exported large amounts of

<sup>939</sup> The export statistics of the 1880s reveal that railways were used almost exclusively for exporting berries other than lingonberries. For instance, in 1881, three barrels of lingonberries were transported on railways, whereas 1155 barrels of “other berries” travelled on tracks. Almost all lingonberry exports were conducted by land. *Exportations en Russie en 1881. Navigation et Commerce extérieur en 1881 et 1882*. Keisarillisen Senaatin kirjapaino, Helsinki 1885.

<sup>940</sup> Marjojen vienti Pietariin [Exporting berries to Saint Petersburg]. *Suomalainen Wirallinen Lehti*, no 152 (23 December 1873).

<sup>941</sup> Uudelta kirkolta. *Suomenlehti*, no 37 (15 September 1874); Ailonen, ‘Luonnonvaraisten marjojen poiminta ja käyttö’, 72–74. Notably, maybe a sign of the value or the extension of the activity, there is a prohibition of berry-picking already from 1878 at the Häyry manor close to Wiborg. *Wiborgs Tidning*, no 91 (3 August 1878).

<sup>942</sup> Marjoilla verot maksetaan. *Hämäläinen*, no 38 (19 September 1872). See also, Greta Karste-Liikkanen, *Pietari-suuntaus kannakselaisessa elämäntähtäyksessä 1800-luvun loppupuolelta vuoteen 1918 =: St. Petersburg im Leben der Karelischen Landenge vom ausgehenden 19. Jh. bis zum Jahre 1918* (Hki: Suomen muinaismuistoyhdistys, 1968), 141–50.

<sup>943</sup> *Sysselsättningar för de fattiga. Österbotten. Tidning för svenska allmoget i Finland*, no 16 (18 August 1866).



lingonberries preserved in water to England, where their value was ten times higher than in Sweden. The *Österbotten* article became a lament at its end, reflecting the difficult times preceding the Finnish famine of the late 1860s, and how “masses of lingonberries decayed in the woods, which could be picked by the many poor women and children, who were almost starving to death in the absence of work and nourishment”.

The Finnish *Österbotten* referred to the beginnings of an intensive commercial exploitation of wild berries that took place in Sweden in the late nineteenth century. Larsson has paralleled this *lingonrushen* to the gold rush of the late century, which emphasises well the high expectations that were set on the discovery of this “red gold”.<sup>944</sup> This *lingonrushen* started in around 1870 in southern Sweden, with the growth of exports of lingonberries to Germany. According to Kardell, it is not clear how the market relations were established.<sup>945</sup> In practice, however, German traders settled at the railway stations especially to buy lingonberries, which they then transported by train and steamboats to Germany—a development which resembled the Russian exports at the municipalities of south-eastern Finland. The berry exports increased towards the turn of the century, offering the locals an important source of income: in the 1890s, it was possible to earn three times as much as by berry picking as for day work in agriculture.<sup>946</sup> The highest export rates were registered between 1890 and 1910. The record year was 1903 when ten thousand tons of lingonberries were exported from Sweden to Germany—figures which have not been reached since.<sup>947</sup>

The berry news from Sweden received broader attention in the 1880s. The developments were taken by Finnish contemporaries as concrete advice, and the berry commerce was perceived as a future condition, something that could also take place in the Grand Duchy due to similarities between the countries. In addition, before turning its attention to Germany, it was noted that the growing Swedish market could offer opportunities for Finnish exporters.<sup>948</sup> Also in 1878, the

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<sup>944</sup> The term “red gold” of the forests was used for lingonberries in both the Swedish and Finnish press around the turn of the century. See for example, *Smålands röda guld*, Göteborgs aftonblad, no 243 (20 October 1898); *Våra skogsbär*, Wiborgs Nyheter, no 205 (7 September 1908). The high times of the North American gold rush, in 1898, was also plentiful with lingonberries in Sweden. Larsson, ‘Småländska lingonrushen’.

<sup>945</sup> Larsson names customs policy as a reason behind the increasing German exports. Raw lingonberries could be exported duty free. *Ibid.*, 50.

<sup>946</sup> *Ibid.*, 58–59.

<sup>947</sup> Kardell, *Svenskarna och skogen. Del 2, Från baggböleri till naturvård*, 96–97; Wiktorsson, *Den grundlagsskyddade myten*, 91–92.

<sup>948</sup> Export af lingon. Östra Nyland, no 64 (9 November 1881); Bärexporten till Sverige. Hufvudstadsbladet, no 206 (6 September 1882); Export af lingon. Norra Posten, no 39 (26 September 1885).

newspaper *Tapio* again discussed the potential of wild berries in the light of the recent crop failures caused by night frosts. It criticised the traditional emergency food, and instead turned the reader's attention to other products of nature: mushrooms and berries.<sup>949</sup> Notably, the regional *Tapio* promoted the consumption of mushrooms by referring to the philosopher Immanuel Kant, who had “apparently managed” well on his diet of mushrooms, salt, and water. Regarding berries, the text reminded of the major income earned from exporting berries to Russia, and marvelled at the fact that in the region, the wild berries were left to decay in the woods. Finally, the newspaper gave a translation from the Swedish newspaper *Norden*, in which advice had been given about the preservation of berries and fruits.

In an article titled “Something to consider also in our country” from 1885, the western Finnish *Vasabladet* cited a Swedish paper and described how recently, 470 barrels and 50 000 cans of lingonberries (a total of approximately 125 tonnes) had been traded from the Swedish towns of Karlshamn, Malmö, and Kalmar to Stettin and Lübeck in Germany.<sup>950</sup> The Swedish source had noted how more could have been exported, but in many areas the local population had still not learned to value berry picking. The text also cited other products of nature that could be picked by the “poorer population” to earn a considerable income. In its conclusion, the text noted how the lingonberry exports had reached considerable dimensions. Exporting them was relatively simple, as they did not need to be preserved, but could be picked, packed in baskets or boxes, and taken to the closest railway station. More news of the berry boom followed in the Finnish press; for instance, in 1884 the *Nya Pressen* reported direct numbers from Moheda, one of the central exporting railway stations, and other newspapers gave figures of the increasing Swedish exports.<sup>951</sup>

The Finnish exports of wild berries developed steadily in the 1880s, but any real berry-boom was not experienced in the country before the 1910s. In the 1880s, the annual exports of berries levelled at around 400 tonnes per year, and would peak slightly in 1889 at 600 tonnes. Even though it was still at a low level compared to the figures of the early twentieth century, the role

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<sup>949</sup> Lisä-elatusaineista ynnä hedelmäin, marjain y. m. säilyttämisestä. *Tapio*, no 65 (14 August 1878).

<sup>950</sup> Något att beakta äfven i vårt land. *Vasabladet*, no 77 (26 September 1885).

<sup>951</sup> Storartad lingonexport. *Nya Pressen*, no 281 (15 October 1884); Lingonexporten från Sverige. *Nya Pressen*, no 233 (29 August 1886); Metsämarjoja on Ruotsista. *Tampereen Sanomat*, no 125 (20 October 1886); Lingonexport från Sverige till utlandet. *Österbottenska Posten*, no 36 (6 September 1888).

of the berries as an export article was noted in the official statistics.<sup>952</sup> In 1887 and 1888, the category of “fruits and berries”, which consisted mainly of wild berries, was listed among the main export articles of the country, generating 0.36 (1887) and 0.38 (1888) percent of the exports.<sup>953</sup> In addition, in the late 1880s, the export market started to shift from Russia towards Germany, which became the main market around 1900. It is notable that there was no great increase in the annual yield of wild berries either. The growth that took place from the late 1870s onwards, from a level of eight thousand tonnes to an annual yield of more than ten thousand tonnes in the late 1880s, is explained by the population growth of the country.<sup>954</sup>

Besides emphasising the economic potential of wild berries, attention was turned towards the people picking the berries. The newspapers published success stories about poor families who had earned major sums of money from berry picking.<sup>955</sup> At the same time, it became clearly delineated that the activity was something to be practised by women, children, the poor and the idle, not by the landowners who were busy with their farms. In some accounts, the tone was moralising, and the texts blamed the poor without work—both children and adults—for lazing around and wasting their opportunity.<sup>956</sup> According to forestry statistics, it seems that the times were truly favourable for berry pickers. In the late 1880s, the share of earnings from the collection of non-wood products of the total forestry earnings, as well as the earnings per kilogram were at their highest in 1888 and 1889.<sup>957</sup>

The Fennoman newspaper *Aamulehti*, whose chief editor was an activist in the local temperance movement<sup>958</sup>, lamented the wasted potential of berries in August 1889.<sup>959</sup> In its editorial “All sources of income must be used”, the newspaper wrote that every year, large quantities of edible and healthy berries rotted in the woods. The text spared the hardworking landowners—who

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<sup>952</sup> The statistical annual of 1887-1888 mentioned that, among some other articles, the export of berries to Russia had been increasing in recent years. *Navigation et Commerce extérieur en 1887 et 1888*. Suomalaisen kirjallisuuden seuran kirjapaino, Helsinki 1890, VIII.

<sup>953</sup> In 1888, fruits and berries were the nineteenth important export article, and in 1887 were listed at number twenty. *Navigation et Commerce extérieur en 1887 et 1888*, 47.

<sup>954</sup> The amount of berries picked per capita remained at a very steady level of around 4.3 kilos picked per person per year since 1870. Annual yield of wild berries in Kunnas, *Metsätaloustuotanto Suomessa 1860-1965 : Forestry in Finland*, 142–43.

<sup>955</sup> Ahkera marjanpoimija. *Tapio*, no 65 (18 August 1886).

<sup>956</sup> Metsämarjat. *Kaiku*, no 68 (25 August 1886).

<sup>957</sup> Kunnas, *Metsätaloustuotanto Suomessa 1860-1965 : Forestry in Finland*, 142–43, 176–77. Kunnas, 142-143, 176-177.

<sup>958</sup> Jari Hanski, ‘Viljakainen, Kalle (1853 - 1913)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2007), URN:NBN:fi-fe20051410.

<sup>959</sup> Kaikki tulolähteet ovat käytettävät! *Aamulehti*, no 100 (22 August 1889).

were not used to picking up nature-grown products<sup>960</sup> and were too busy during the berry season—but moralised against the landless groups and the children, who were often idle, for not harvesting this “self-growing grain”. Besides, the newspaper wrote, the landowners, in general did not perceive the wild berries growing on their land as their specific property. The editorial continued by noting how many local shopkeepers had announced in newspapers and in churches that they wanted to buy berries, but had only received small quantities. Although some berries had been taken abroad during recent years, the balance of trade was negative; berries were not picked, and money was sent abroad to fill the local shops with imported fruit juices and jams. The newspaper then moved on to mushrooms, which were similar resources to wild berries. The article did not neglect the landowners; the editorial noted how they should occupy themselves with gardening, while the sales of cultivated berries could offer an income for many.

The use of wild berries, therefore, was envisaged in a broader industrial context than mere exports, yet wild berries were but one natural resource that was especially suitable for production by landless and idle groups.<sup>961</sup> In the late 1880s, the *Industrial Journal of Finland* published several articles on wild berries and the possibilities of processing them into berry wines, for instance.<sup>962</sup> In an article from 1887, “On Wild Berries”, the journal wrote of how this northern country had fewer fruit or berry varieties than the south, and therefore, the ones that were available should be collected and used well.<sup>963</sup> Currently, wild berries were picked, but it was “absolutely certain that this was a source of income, from which we could draw much more”, via direct exports, or by producing jams, juices, and berry-wines. In a similar tone, the “unused millions” were discussed in the newspaper *Wasa Tidning* in April 1888, in a text which became cited by many other papers.<sup>964</sup> The *Wasa Tidning* did not only write about future berry exports, but also saw that wild berries could be processed in to more valuable products such as

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<sup>960</sup> According to *Aamulehti*, people were accustomed to working hard in a cold country where harvests were scant, and consequently were ashamed to use the products of nature which had not required any labour to grow.

<sup>961</sup> This was also the approach in an editorial from another newspaper of the area, where the author described his journey in a Finnish forest, and where he evaluated the different, valuable aspects of it: the trees, which were not well managed, “other treasures”, which the poorer populace neglected, and which could be exported or even processed to make berry wines or other more refined products. *Miltä metsässä näytti?* *Tampereen Sanomat*, no 108 (10 September 1886).

<sup>962</sup> *Viiniä metsämarjoista* (from the Swedish journal “Norden”). *Suomen Teollisuuslehti*, no 3 (February 1889); *Viinin valmistaminen kotimaisista marjoista*. *Suomen Teollisuuslehti*, no 11-12 (June 1889); *Mustikkaviiniä* (from the journal “Die Fundgrube”). *Suomen Teollisuuslehti*, no 14-15 (August 1889).

<sup>963</sup> *Metsämarjoista*. *Suomen Teollisuuslehti*, no 11 (June 1887).

<sup>964</sup> *Oanwända miljoner*. *Wasa Tidning*, no 41 (8 April 1888).

berry wines or liquors, which were currently produced abroad and imported to the Grand Duchy.

At the same time, more news arrived from Sweden: the Finnish *Wasa Tidning* reported in 1889 that a “real berry-war” prevailed in the region of Skåne.<sup>965</sup> The commerce was doing so well that berry exporters had rented large areas of lingonberry land, but had difficulties in keeping out the berry pickers who were in the habit of perceiving the areas as “free” property. Moreover, in the summer of 1889, the newspaper *Östra Finland* reported the recent invention of a “berry-picking machine” by the Swede J. O. Andersson.<sup>966</sup> This machine was intended for the picking of “lingonberries and bilberries”, suited “well to the purpose”, and would be “of great benefit for the rural people”.<sup>967</sup> Finally, in the late 1880s, the great expectations for this hidden economic potential of wild berries even led to a state-supported initiative.

In March 1889, the Senate of the Grand Duchy received a grant application for actually inspecting the export potential the wild berries of the country possessed.<sup>968</sup> In his application, tradesman F. I. Mandellöf requested a grant for two years (totalling 4000 marks) to travel around the country and organise the systematic collection and export of wild berries, and at the same time, study the conditions abroad for establishing trade contacts and finding the best spots for sales. Mandellöf noted that it was unfortunate for “every patriot” that vast numbers of berries rotted in the woods every year, while they could be made to bear fruit for the country, and to produce a secure and necessary income for the common people. Mandellöf presented some preliminary observations about export destinations abroad; the German market was still young and possible to break into, but exports to other countries, like Brazil or Spain, had been the objects of Swedish experimentation. Finally, Mandellöf presented calculations which he had made based on the current Swedish exports.

The Senate sent the petition to the Industrial Board, which gave a report on the matter. It wrote in its opening lines that it would be desirable to export wild berries to the extent planned by the

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<sup>965</sup> Arrenderade lingonmarker. *Wasa Tidning*, no 133 (29 August 1889).

<sup>966</sup> The berry-picking machine is found in the Swedish patent database, and is the first patented berry-picking machine found in the database. The first patent in the database is from 1885 (registering started then due to institutional changes). Apparat för bärplockning (J. O. Andersson). Patent no 1677 (Kongl. Patentbyrån, 25 August 1888).

<sup>967</sup> Bärplockningsapparat. *Östra Finland*, no 142 (21 June 1889).

<sup>968</sup> Petition to the Economic Division of the Senate by F. Mandellöf (7 March 1889). AD 289/140, Eb:2263 Anomus- ja valitusaktit (1889). Talousosaston registraattorinkonttorin arkisto (FNA).

petitioner.<sup>969</sup> Currently, the wild berries were only exploited to a small extent, and as experience from other countries had shown, the berry exports could turn out to be profitable. Moreover, the field was not completely unknown in the country, as notable trade was made to Russia, which the Industrial Board demonstrated by the latest export statistics. The Board also noted how lingonberries had been the main export article, except to Russia, where other varieties had also been sold.

The Industrial Board then turned to the question of subsidising the export efforts. It noted how the export networks could not be established without considerable investments; the best trade spots should be found, different packing and conservation methods should be tried, and the collection of berries needed to be organised. While this initial investment would also benefit other exporters in the future, and could lead to the development of an export sector that had “rather large economic importance” for the whole country, the Board found that the state had good reasons to support the initiative. The only aspect which had to be thoroughly investigated was the suitability of Mandellöf for the task. The Board emphasised that personal qualities were of the utmost importance in such projects, as making such a “business venture” successful did not only require good will and capital, but also much “energy and business instinct”. The Board did not personally know Mandellöf, but according to a third person, Mandellöf was a talented businessman and acted with good intentions.

The Senate approved Mandellöf's petition, but voices of caution were also presented. The Senate approved the recommendation by the Industrial Board that the grant should be paid in two instalments. The Senate also required Mandellöf to provide a report for the Industrial Board on his findings, which would be then published.<sup>970</sup> Moreover, in an anonymous memorandum of the Senate, it was reminded that the berry business was riskier than was generally thought, and this was the reason for relatively low enterprise in the field.<sup>971</sup> An example was given of a Finnish tradesman from the town of *Tampere* who had exported lingonberries to Hull some years ago as an agent for a Norwegian company, and the expenses had been too high for the activity to be profitable. The memorandum, however, considered it advisable to give the grant, to develop new packing and methods of conservation, and to encourage exports on a wider

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<sup>969</sup> Report by the Industrial Board on Mandellöf's petition. 3 April 1889. AD 289/140, Eb:2263 Anomus- ja valitusaktit (1889). Talousosaston registraattorinkonttorin arkisto (FNA).

<sup>970</sup> Minutes of the Economic Division of the Senate, 11 April 1889. Talousosaston yhteisistuntoyhtäkirjat II, Ca:388, 921–923.

<sup>971</sup> AD 289/140, Eb:2263 Anomus- ja valitusaktit (1889). Talousosaston registraattorinkonttorin arkisto (FNA).

scale, which was something that private entrepreneurs currently were not ready to do. In addition, the initiative would offer an income, at least seasonally, for the poorer population of the country. The memorandum also proposed that Mandellöf's grant would be reduced by fourth quarter, but the Senate kept the subsidy at 4000 marks.<sup>972</sup>

Mandellöf's work did not lead to any visible results, such as the creation of an export organisation or breakthroughs in transport methods. It has to be acknowledged that the timing of his venture was not ideal; the international economic crisis of the early 1890s also struck the Grand Duchy, and was accompanied by crop failures and hunger in the northern parts of the country.<sup>973</sup> In 1891 and 1892, 30 percent fewer wild berries were collected in total than in 1890.<sup>974</sup> Moreover, the Industrial Board was not satisfied with Mandellöf's report in January 1891. The Board wrote back to Mandellöf and said that the report did not offer advice to the common people, and left unanswered almost all of the major issues Mandellöf sought to resolve: the organised collection of berries, experiments on packaging and conservation, information on export destinations.<sup>975</sup> Mandellöf replied with a more extensive report, which however merely included many observations he had already made in his original 1889 petition. However, this report was published in 1891 in many leading newspapers and journals, and offered guidelines for lingonberry exports.<sup>976</sup> Some newspapers still referred to Mandellöf's text in 1892, this time in terms of the crop failures, and discussed berry picking as one of the activities that helped the poor to survive the winter.<sup>977</sup>

In his report, Mandellöf briefly described his activities from 1889 to 1891, and then gave general recommendations about exporting lingonberries.<sup>978</sup> Mandellöf's actual work had consisted of travelling around the country and giving advice to local people about exports and

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<sup>972</sup> In 1889, the average daily wage of a saw-mill worker was 2.20 Finnish marks. Vattula, *Suomen taloushistoria*. 3, *Historiallinen tilasto*, 422.

<sup>973</sup> See footnote 927. For the Baring Crisis of 1890, see Youssef Cassis, *Crises and Opportunities: The Shaping of Modern Finance* (Oxford: Oxford University Press, 2011), 8–13.

<sup>974</sup> Kunnas, *Metsätaloustuotanto Suomessa 1860-1965 : Forestry in Finland*, 142–43. The newspapers report of very weak growth of lingonberries in some regions: Höstmarknaden. Åbo Underrättelser, no 252 (17 September 1891); Todellinen katovuosi puolukkamarjoista. Uusi Suometar, no 199 (29 August 1891).

<sup>975</sup> Letter of the Industrial Board to Mandellöf (30 January 1891). Da:7, kirjekonseptit (1891). Kauppa- ja teollisuushallituksen arkisto (FNA).

<sup>976</sup> Lingonexport från Finland. Nya Pressen, no 101-102 (16-18 April 1891); Toimenpiteitä marjain ulosvientiä varten. Uusi Suometar, no 89 (19 April 1891); Puolain vienti Suomesta. Suomen Teollisuuslehti, no 9 (May 1891). Den glömda skatten (F. I. M-f.). Turistföreningens i Finland årsbok för 1890. Helsingfors 1891.

<sup>977</sup> Oma apu paras apu. Uusi Suometar, no 222 (24 September 1892); Puolukkain poiminta ja vienti, no 115 (4 October 1892); Uusia tulo- ja ravintolähteitä nälänhädän uhatessa. Suomi, no 82 (12 October 1892).

<sup>978</sup> The complete report was published in Nya Pressen, no 101-102 (16-18 April 1891).

recruiting agents in the main port towns. He only discussed the exports of lingonberries due to their abundance and durability, and gave advice about the kind of berries to export, their transport, prices, and best export destinations. As already noted above, the report did provide very general (and self-evident) advice, for instance, by recommending that the berries should not be unripe or overripe, but perfectly ripe, red, round, and durable when collected and packed. Mandellöf mentioned only two potential markets—the German and the British—but preferred the former, as the berries could be exported there as they were, whereas in England and Scotland berry jams in greater demand. Moreover, he did not recommend selling the berries at the German northern port towns, as better prices could be found in other cities such as Berlin or Dresden. Mandellöf also gave detailed information about how the boxes in which the lingonberries would be exported should be built—an activity which would offer more work for the rural poor. The *Industrial Journal of Finland*, which published Mandellöf's report noted that these were exactly the same dimensions for the boxes that had been used by Swedish exporters for a long time already.<sup>979</sup>

The heyday of Finnish lingonberry exports was still ahead. The picking of lingonberries had been encouraged in the newspapers for decades via references to the news from Sweden and domestic success stories. Moreover, the potential of the berry exports had been noted in official statistical reports, and a state subsidy was given to Tradesman Mandellöf to work towards the exports, which did not seem to boom without public support. Not much seemed to happen, however, and the themes of hidden potential and great opportunities wasted by the poor became repeated among the public. The short piece of news published in the Official Journal in 1887 is emblematic of these expectations expressed in a very conditional language:<sup>980</sup>

A forgotten export article. Bilberries are used more and more abroad in producing juices and wines. If someone here in our country started to buy these berries, of which barrels and barrels rot in the woods, poor children and elderly people would receive a good income from it. If the berry pickers were also taught to stew the berries, exports would probably increase.

Unohdettu vientitavara. Mustikoita käytetään ulkomailla yhä enemmän mehuksi ja viinin valmistuksesta. Jos joku meillä alkaisi ostaa näitä marjoja, joita muutoin tynnyrimäärät pahenee metsissämme, niin köyhät lapset ja vanhukset saisivat siitä hyvää työnansiota. Jos poimijoita opetettaisiin myöskin keittämään marjoja, niin tuonti [vienti] varmaankin lisääntyisi.

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<sup>979</sup> Puolain vienti Suomesta. Suomen Teollisuuslehti, no 9 (May 1891), 132.

<sup>980</sup> Unohdettu vientitavara. Suomalainen virallinen lehti, no 17 (5 August 1887).



It was in this context that the criminalisation of berry picking on another's land was discussed at the Assembly of Estates, in a way that unified two narratives of the past decades: on the one hand, it seemed clear that lingonberries, as well as mushrooms, had economic potential, and on the other hand, they could be picked by the poor to sustain themselves (with the memory of the hunger years still fresh), which would ultimately generate export income for the country. Even though the initiative for including the wild berries in the Penal Code was made because of their economic value, much of the attention was paid to other aspects of berry picking. Many commentators noted how the landowners cared very little about the berries, and thus there would be no real economic losses if the traditional berry-picking groups profited from them. Instead, the debate would mainly regard the opportunities for the berry pickers—the weak of the rural communities—and their relation to the landowners.

### **5.3 The Penal Code debate of 1888: Should the Penal Code affect the poor berry and mushroom pickers?**

As noted previously, the role of berries and mushrooms had been reviewed in the drafts of the Penal Code in the 1870s and 1880s. The first draft in which the berries and mushrooms appeared as part of the list of illegally collected objects in the *åverkan* section was the law proposal of the second Penal Code committee in 1884. The objects were removed by the Senate committee, which surveyed the work of the former, and thus the imperial proposal that the Estate received in 1885, and due to time problems again in 1888, did not list berries and mushrooms in the Code.<sup>981</sup> At the Assembly of Estates of 1888, the law proposal was first studied by the parliamentary Penal Code committee. Interestingly, the Penal Code committee, which consisted of members from all the Estates, decided to add the berries back on to the list, and the law proposal that the Estate finally read included three new items, “berries, mushrooms and lichen” as part of the section on illegal collection. It could be asked whether the berries would have been discussed at all during the reading if the parliamentary committee had not modified the original law proposal. The modification was not made unanimously by the committee, but there were differing opinions among the representatives of the Estates. As a result, in the reading, the

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<sup>981</sup> The new Penal Code entered into force only in 1893. Even though the Emperor had signed the law in 1889, it was not entirely approved by the Russian judicial officers. The Code was modified regarding the expressions about the role of the Grand Duchy inside the Empire and entered in vigour in 1894. Tuominen, *Suomen kansanedustuslaitoksen historia. 3, Säätyedustuslaitos 1880-luvun alusta vuoteen 1906*, 237–39.

Estates had to decide whether the picking of wild berries on another's land should be seen as punishable according to the penal legislation.

The Assembly of Estates of 1888 has been characterised as productive and constructive, with the approval of the Penal Code proposal being one of its main achievements. There had been, however, major shifts within the political factions, which became apparent especially during the electoral campaigns. The liberals, losing their significance between the two “language parties”, did not form a proper group any more, but united with the Svecoman Swedish party.<sup>982</sup> An important division had occurred inside the Fennoman Finnish party, which had already been visible at the previous Assembly in 1885, as the radical youth of the party distanced themselves from the old party leadership; the young criticised the conservative “old” in societal questions, but especially for not being extreme enough in defending the cause of the Finnish-speaking people.<sup>983</sup> The “old guard” formed clear majorities in both Fennoman Estates, *Bonde* and Clergy, but the young were very visible in the Estate of *Bonde*, for instance, where Jonas Castrén, one of their main figures and an opponent of the Old-Finnish leadership was elected.<sup>984</sup> As we will see, these political tensions appeared even in the question on the wild berries.

The question of picking berries, mushrooms, and lichen awakened an intense debate during the reading of the Penal Code in 1888, and was one of the sections on which the Estates did not agree unanimously. Surprisingly, besides the section on committing murder, this section was among the last issues to be mediated between the Estates.<sup>985</sup> The question of moderating punishments was present during the whole Penal Code reform.<sup>986</sup> In the reading of 1888, the Estates disagreed on whether the death penalty could be sentenced for committing (ordinary)<sup>987</sup>

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<sup>982</sup> Ibid., 45–47, 52–55.

<sup>983</sup> Rommi and Pohls, ‘Poliittisen fennomanian synty ja nousu’, 114–18; Vares, *Varpuset ja pääskyset*, 28–36; Paaskoski, ‘Tuo siunattu 80-luku’, 34–46.

<sup>984</sup> It has been estimated that in the *Bonde* Estate, one quarter of the representatives, at most, were “young”. Tuominen, *Suomen kansanedustuslaitoksen historia. 3. Säätyedustuslaitos 1880-luvun alusta vuoteen 1906*, 46–47; Tekla Hultin, *Taistelun mies: piirteitä Jonas Castrénin elämästä ja toiminnasta: muistojulkaisu Karjalan kannaksen kulttuurirahaston isännistön toimesta* (Helsinki, 1927), 26–29.

<sup>985</sup> It has to be remembered that the law proposal given to the Estates was prepared by the Penal Code Committee which included members from all the Estates. Many disagreements could then be solved already at the Committee. In addition, sections approved by three Estates did not need settlement. In its settlement proposal given after the readings, the Penal Code Committee settled differing opinions in six sections and proposed linguistic corrections in four matters. The settlement of the Penal Code Committee regarding the Penal Code for the Grand-Duchy (1888). Documents at the Assembly of 1888 (Asiakirjat Valtiopäivillä 1888).

<sup>986</sup> Kekkonen, ‘Autonomian ajan rikosoikeus’, 264–68.

<sup>987</sup> It was generally agreed that capital punishment could be sentenced for crimes committed against the imperial family or other heads of the state.

murder. The Burghers and the Nobility wanted to remove the punishment, and even after the final settlement made by the Penal Code Committee, the Burghers still voted against the section on murder. In terms of the berries, the vote first resulted in two Estates standing against two. The Fennoman Estates of Clergy and *Bonde* decided, with a great majority, that the picking of berries, mushrooms, and lichen on another's land, as proposed by the parliamentary Penal Code Committee, should be criminalised. The Svecoman-liberal Estates of Nobility (with 36 votes to 23) and the Burghers (37 to 15) wanted to remove these objects from the list. Finally, at the reading of the settlement proposal, the Clergy changed its side and as the *Bonde* remained alone to defend their position, berries and mushrooms were not added to the *åverkan* section of the Penal Code.

Thus, criminalising the picking of these objects was supported especially in the *Bonde* Estate and the Clergy, but to a considerable extent also in the Estate of Nobility. K. W. Sulin, a judge who had participated both in the work of the Penal Code Committee of 1880 (the first to add the berries to the law proposal), and the Parliamentary Committee of the current Assembly, explained the reasons behind the decision to his fellow Burghers during the reading. According to Sulin, many of the *Bonde* members of the Committee had demanded that the objects be included to the Penal Code, because “mushrooms in Eastern Finland and berries in certain areas have a fairly high value”.<sup>988</sup> Sulin continued that if one had to decide between the landowner or “somebody else”, the landowner obviously had to be given the priority for their collection. If no liability was determined, any “stranger” [*främmande*] could pick the goods that the owner had possibly reserved for himself. Importantly, even though berries and mushrooms were only a minor matter, the revision would also be educative for “the rising generation” [*uppväxande släktet*], and reinforce the “sanctity” of property rights among this growing populace. Besides, it would not be difficult to get permission from the landowner, if he himself did not need the goods. And should a conflict occur, Sulin concluded, the *åverkan* section left the judges the possibility to free the collectors from liability if the case was of an insignificant nature.

The debate in the Estates would regard the aspects raised by Sulin, and as we will see, confirms the previous observations about regional differences, the minor significance of berries and mushrooms, and that the matter closely regarded the group of non-landowners, women, children, and the poor in general. At the same time, the debate illustrates how many approached

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<sup>988</sup> Minutes of the Estate of Burghers (1888), 1126.

the matter from a very pragmatic perspective, and were ready to compromise on the “sanctity” of property rights. Much of this flexibility was due to the view that criminalisation was not necessary in the current situation; the landowners had held a priority over the resources on their land in the past, and would have it even without these objects being added to the Penal Code. Moreover, the difference between man-made objects and the annually appearing naturally-grown products was made in the debates. To some, it appeared too harsh that formal property rights would be extended to wild berries and mushrooms, which were of little value and often ignored by the landowner.

In the debates, then, the side defending the criminalisation emphasised patriarchal values, and saw the revision as important not only for confirming the property right of the landowner over the resources, but for motives of social control in the countryside. These views also found resonance in the Estate of Nobility, where especially the damages caused by the wandering berry pickers became cited. The first address, and the only one to speak against the revision, was given by a senator from the Legal Division, J. C. E. af Frosterus. Af Frosterus noted how the decision to add the objects on the list of *åverkan* was against the common sense of justice. Everyone should be aware of the fact that in many regions, berry picking formed an important source of income for the poor populace. Af Frosterus found that the poor would not believe their ears, and would find it unjust, if it was explained to them that berry picking without permission could lead to charges and a punishment. Af Frosterus noted that as many of these offenders would be small children, they would become accustomed to breaking the law from their childhood. Finally, af Frosterus noted that if the products were not picked in the few days when they were ripe, they would just rot in the woods without any use for the landowner.<sup>989</sup>

Four representatives stood against af Frosterus' views. Baron E. Hisinger, a farmer and natural scientist, noted how the berries and mushrooms itself were not important, but foraging for berries and mushrooms could lead to other kinds of mischief; for example, in some areas, the forests had suffered from the extensive “taking-away” [*beröfvande*] of lichen. Professor of Law R. A. Wrede supported Hisinger's views, and added that the revision was about recognising a legal principle, and that the property rights of landowners should be protected, even if the products were of little monetary value. Wrede added that if the law made it possible for anybody to wander in another's forests, under the pretext of berry picking, this could lead to even greater

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<sup>989</sup> Minutes of the Estate of Nobility (1888), 1300–1301.

*åverkan*. In a similar tone, the former Senator H. A. Mechelin added how allowing berry picking would result in other, real *åverkan*; for example, when the berry pickers trampled growing hay. Finally, Doctor F. von Willebrand, the head of the State Department of Medicine, reflected on his personal experiences as a landowner. The speaker said he had never forbidden roaming on his land, but he had seen how the foragers did greater damage than the value of the wild berries they picked, by leaving gates open and breaking down fences. Without the law, there would ultimately be no assurance to move around one's property in safety, as "all kinds of people" [*folk af hvad slag*] could swarm around as berry pickers.<sup>990</sup>

In the Estate of Clergy and *Bonde*, the discussion was more centred around the question of respecting property rights, but also defining their reasonable limits. In the Estate of Clergy, where the longest debate on the matter was heard, the first speakers fiercely opposed the proposal to criminalise berry-picking. Vicar Wallin, who first took the floor, expressed how the revision was "draconian", and would only "take away" (*beröfva*) the little, and often the only, income from the poorest population. Dean Törnudd noted that the removal of the objects from the Penal Code was surely a breach against property rights, but it would be very difficult to convince the people that taking these objects was a crime. Törnudd saw it as very harsh to deprive the poor of their usufruct of these objects, and reminded the Estate of their relative unimportance and difference to other objects of *åverkan*: whereas a tree that had been felled grew back in tens of years, wild berries were ripe again the following year, and mushrooms even in a couple of days.<sup>991</sup> In a similar way, Headmaster P. G. Hällfors explained that the poor could pick berries and mushrooms to earn a living. He emphasised how the rich and the landowners used the wild berries on their land to only a small extent, and "in most parts of Finland *never used [...mushrooms...] as their food*".<sup>992</sup>

Also Vicar Torckell spoke about the diminishing rights and the difficult position of the poor. By referring to the work by the land reformer Henry George, Torckell compared the criminalisation to the developments in Ireland, where the landowners had tightened the common access rights, so that nothing was left accessible to the actual inhabitants apart from air (which would also be enclosed, if it was only possible). At a later phase of the debate, Torckell reminded them of the particular role the nature-grown objects had. Beautiful words

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<sup>990</sup> Minutes of the Estate of Nobility (1888), 1301–1302.

<sup>991</sup> Minutes of the Estate of Clergy (1888), 1334–1335.

<sup>992</sup> Emphasis in the original. Minutes of the Estate of Clergy (1888), 1339.

had been heard about the principle of property, and it was true that it was holy. However, Torckell continued, God had set people to live on earth, and as they could not be sent away, why should the lives of the poorest be made so burdensome and difficult? Property rights needed to be protected, but could not be extended so far that those who possessed no land were treated severely.<sup>993</sup>

Interestingly, there did not appear to be a lot of enthusiasm among the leading (old Finnish) Fennomans to stand up for private property rights in the matter—they rather opposed this insignificant change, which will be discussed below. In the Clergy, Professor of History E. G. Palmén, a liberal Fennoman of the *Valvoja*-group who aligned himself with the old Finnish Fennomans in the 1880s<sup>994</sup>, was strongly against the criminalisation of taking berries and mushrooms. Palmén said he was surprised that the matter had received so much attention in the reading. According to Palmén, the *åverkan* section was too detailed, and the more objects it listed, the more were lacking from it; a general regulation would have been better. In any case, Palmén explained, berries and mushrooms were different to the other objects currently listed. The latter were durable, whereas berries and mushrooms had value only for a short time, and thus they were not, in general, appreciated in the country. Besides, Palmén remarked, the law would not be very educational, but would only turn most of the people into lawbreakers. He also doubted that asking for permission would be simple, as for instance, the berry-picking children might not even know where the landowners lived. Palmén suggested that a better solution would be to announce penalty payments in the regions where the objects had some value.<sup>995</sup>

At the same time, the majority of the members of the Estate emphasised the importance of respecting (and formalising) property rights, and brought forward the view that the poor would also benefit from the revision. The rural Dean Walle marvelled at some of the opinions that completely rejected the “sanctity of property rights”. Walle reminded them that to some, these objects of *åverkan* might appear of little value, but in other regions they were much appreciated. For instance, in Karelia, berries and mushrooms were very valuable, and it would be a wrong against the principle of property to remove them from the section. According to Walle, the landowner should be able to reserve the berries and mushrooms for his own tenants, and deny

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<sup>993</sup> Minutes of the Estate of Clergy (1888), 1335, 1345.

<sup>994</sup> Liikanen, *Fennomania ja kansa*, 285–87, 318–21.

<sup>995</sup> Minutes of the Estate of Clergy (1888), 1341–1343

their collection by strangers. Moreover, the speaker noted that also the current law, as it was often emphasised in the Estate, was to be seen as instructive for the people<sup>996</sup>

I cannot leave it unmentioned how those who most outrageously break property rights by for example, forest theft, see the matter. They say: God has cultivated the forest as well as other products that man has not planted [...]; everything is *commune bonum*; there is no harm in taking God's gifts. [...] Now the question is, whether this opinion should still be kept among the people or should the law be made educational so that the sanctity of property rights is preserved, or not.

En voi olla mainitsematta miltä kannalta ne, jotka törkeämmästi omistusoikeutta esim. metsävarkaudella rikkovat, asiaa katselevat. Ne sanovat: Jumala on istuttanut metsän niinkuin muut tuotteet, jotka ihmiset eivät ole istuttaneet [...]; kaikki on *commune bonum*; siitä ei ole mitään jos Jumalan lahjaa ottaa. [...] Nyt on kysymys, onko tämä mielipide yhä kansassa pysytettävä tahi onko laki myös tehtävä kasvattavaksi niin, että omistusoikeuden pyhyttä pidetään, tahi ei.

Walle's views were shared by many in the Estate. J. G. Geitlin, the headmaster of the Helsinki Normal Lyceum, expressed that it was important to keep these objects in the *åverkan* section. Each farm owner had their own poor, and obviously those who lived on his lands were primarily entitled to receive help. This the landowner could not guarantee, if his property right was not protected. Vicar Karlsberg noted how the objects were highly valued in many regions, even mushrooms in Karelia, although he personally had not lived in areas where they grew. Karlsberg reminded the Estate of how the poor themselves had complained that people from other municipalities came to forage for the berries which should belong to them as locals. Karlsberg also emphasised that the poor populace should learn to ask for a permission, if they wanted to use the property belonging to someone else. Besides, if someone asked for permission and behaved appropriately, no landowner would refuse the berry picking.

Finally, the representatives of Clergy pointed at the harm that the uncontrolled picking of berries and mushrooms was causing and could cause in the future. Vicar Johansson reminded them that it had already been demonstrated how in Karelia the poor were competing over mushrooms, and while it had brought about disturbances, it should be up to the landowner to decide who had permission to use his land. On a similar note, Vicar Westerlund added how the poor had also to be taught good manners; there was no landowner who did not know the needs of poor and who would deny permission for berry picking, if a poor person "came to politely request it". The poor, however, did not only pick berries, but caused also damage such as setting

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<sup>996</sup> Minutes of the Estate of Clergy (1888), 1338.

forests on fire. Headmaster Blomstedt discussed at length the problems and morally dubious practices of those claiming to pick berries. According to him, especially in the proximity of cities, many kinds of wicked acts took place. For example, there were soldiers walking around with berry-baskets and picking berries in close proximity to berry-picking women. Other foul deeds were also done under the pretext of berry picking, and “the animals, plants, and others were not left alone”. Based on his personal experiences, Blomstedt noted that it would be easy for berry pickers to move from forests to the nearby fruit gardens and steal from there.<sup>997</sup> As a conclusion, thus, it would be “good to know who was roaming in the nearby woods.” If the berries were omitted from the list, there would be “all kinds of people” in the woods, and one would even need to hire a shepherd (equipped with a weapon) for the cattle.

In the Estate of *Bonde*, the opponents of criminalisation raised many pragmatic considerations. Landowner and farmer K. Ojanen, an old Finnish Fennoman loyal to the party leader Meurman<sup>998</sup>, noted that the list of *åverkan* was already very rigorous, but now the Penal Code Committee had thought that even berries and mushrooms should be protected. Ojanen said it was rare to refer to property rights when a neighbour or a child picked a berry on one's own land. According to him, some landowners could use the section to intentionally cause trouble for their neighbours or other people. Representative I. Hoikka, a fishing supervisor from the very north of the country<sup>999</sup>, supported the previous speaker, and reminded them how the government itself had encouraged the poor people to pick berries and mushrooms.

During the settlement of the differing views, others also pointed at the relative unimportance and practical difficulties regarding the matter. A. O. Ehrström, a Fennoman manor owner, explained how he perceived property rights to be holy. Yet, he continued, it was going too far if the picking of berries and mushrooms was prohibited from everyone else apart from the landowner. Representatives Svedberg, one of the liberals in the *Bonde* estate, and Fr. W. Lagersted, an Old-Finnish Fennoman and supporter of Meurman, noted how in their region, the forest properties were divided in a complicated way, so that a forager might not always know on whose land he was walking. This could lead to useless disputes or discomfort, as the berry-

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<sup>997</sup> In 1887, the newspaper Åbo Tidning wrote about a crofter woman who had tried to steal cow's milk. When she was caught, she pretended to be picking berries near the pasture. Ertappad mjölkstjuf. Åbo Tidning, no 284 (19 October 1887).

<sup>998</sup> Ojanen, Kaarle (1851–1927) in Viljo Hytönen, *Talonpoikaissäädyn historia Suomen valtiopäivillä 1809–1906*. 2, *Säädyn jäsenet, sihteerit ja tulkit* (Helsinki, 1926), 206–9.

<sup>999</sup> Hoikka, Iisakki (1840–1917) in *Ibid.*, 81–82.



picker had to ask for permissions from ten or more different landowners. Moreover, the liberal Svedberg even used the term “national wealth/property” (*nationalförmögenhet*) for the berries and mushrooms, which should not lie rotten in the woods, but be picked by the poor to make a living. Svedberg reminded them how this would also benefit the landowners, because the poor would not burden the municipal poor relief.<sup>1000</sup>

Those supporting the revision responded by emphasising that even the poor had to respect the landowners’ (property) rights. This was expressed by a major figure among the young-Finnish Fennomans, Jonas Castrén, who explained how both the rich and the poor alike were to respect property rights. The private landowner was entitled to all of the income of his land, which was protected while he paid tax on his land.<sup>1001</sup> Many representatives, as in the other Estates, brought forward that regionally, the objects were perceived as valuable. Representative Teittinen stated how, for him, the principle of private property was so dear that it could be not violated even for the sake of lenience. He defended this principle even more eagerly if the objects in question were valued, consumed and used in commerce, as for example lichen in Lapland. In the *Bonde* Estate, some also pointed out how the revision had politicised the question, and removing the items would only make social control more difficult. As Representative Hartonen noted, criminalisation was important especially in areas close to towns or factories, where there were already many landless people and children. If foraging for berries was now made permissible, the landowner would remain completely defenceless against them. In a similar tone, landowner M. Heikura, a long-standing representative and a supporter of the young faction of the Fennomans<sup>1002</sup>, commented on the situation in the region of Viborg:<sup>1003</sup>

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<sup>1000</sup> Minutes of the Estate of *Bonde* (1888), 1647–1648.

<sup>1001</sup> Minutes of the Estate of *Bonde* (1888), 1457, 1644; The same was noted by Representative Blomstedt. Minutes of the Estate of Clergy (1888), 1337.

<sup>1002</sup> Heikura, Mikko (1820–1903) in Hytönen, *Talonpoikaissäädyn historia*, 72–75.

<sup>1003</sup> Minutes of the Estate of *Bonde* (1888), 1646.

The loose population had until now respected the law at least to some extent, by asking for permission, even though there was no actual rule about it. But if the collection of these objects was made permissible, the berry-picker could say to the proprietor, when he comes to tell the berry-picker to go away, that he has as valid a right to the berries as the proprietor does.

Irtanainen väestö oli tähän asti edes johonkin määrin lakia pyhittänyt, pyytämällä lupaa, vaikkei siitä ollut nimenomaista määräystäkään. Mutta jos nyt näiden esineiden kokoominen tehtäisiin lualliseksi, niin saattaisi marjamies sanoa isännälle, kun tämä tulee häntä käskemään pois, että hänellä on marjamaahan yhtä hyvä oikeus kuin isännälläkin.

Finally, the criminalisation was most strongly opposed in the Estate of Burghers, where the representatives viewed that the berry pickers should be rewarded for their activity, not fined. According to A. O. Snellman, a major tradesman and liberal politician<sup>1004</sup>, the picking of wild berries and mushrooms was not only harmless but even beneficial; the poor population who were not capable of any other kind of work could earn a living if they learned to pick and use them, which would benefit whole regions. E. Rönnbäck, a liberal journalist and the secretary of the Finnish Economic Society<sup>1005</sup>, agreed with Snellman, and added how on the contrary, the foraging activity should be encouraged, not opposed. The objects had little significance to the landowner, and had greater value for the poor pickers. Rönnbäck acknowledged that it was contradictory to not approve this part of the committee's proposal (which protected the proprietor's interests), but due to the conditions in the country, this inconsistent decision had to be made. Only two speakers supported the criminalisation: Representative Sulin, as presented above, and R. B. Elving, a Svecoman lawyer and businessman<sup>1006</sup>, who emphasised that the interests of the proprietor should be defended.<sup>1007</sup>

In addition, the debate in the Estate of Burghers demonstrated how the decision to add berries and mushrooms to the list of illegal collectibles was reflected in the other objects listed and the principle of *åverkan*. Rönnbäck suggested at the reading that, similarly to what he had advocated in the forest law debate three years ago, the *åverkan* of the more valuable objects should be termed stealing. Rönnbäck especially was opposed to the division into organic and man-made objects; a growing tree was much more valuable than some fenced hay, yet the taking of the latter was called stealing.<sup>1008</sup> A major name of the Old-Finnish Fennoman minority of the

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<sup>1004</sup> Petri Karonen, 'Snellman, Albert Oskar (1844-1894)', *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2009), URN:NBN:fi-fe20051410.

<sup>1005</sup> Landgrén, 'Rönnbäck, Ernst (1838-1893)'.

<sup>1006</sup> Elving, Rudolf Bernhard in Tor Harald Carpelan, ed., *Finsk biografisk handbok* (Helsingfors: G.W. Edlunds förlag, 1903), 515.

<sup>1007</sup> Minutes of the Estate of Burghers (1888), 1123–1127.

<sup>1008</sup> Minutes of the Estate of Burghers (1888), 1124–1125.

Burghers, W. Eneberg, a member of the board of the Finnish Bank and a future senator<sup>1009</sup>, disagreed with Rönnbäck, and noted that the forests of the country were not yet the objects of such well-defined property rights that the taking of a wild tree could be called stealing. Regarding trees and plants that had been under human care, the notion of stealing could be aptly used. For this reason, Eneberg could not include wild berries and mushrooms on the list of *åverkan*, while they were insignificant compared to the wild trees, and commonly just rotted in the woods. Their criminalisation, Eneberg continued, would be particularly harsh while the concept of property was not “in this respect” very developed in the country.<sup>1010</sup>

The insignificance of the wild berries and mushrooms, *per se* and in respect to the more durable objects on the list of *åverkan*, was a central theme in the debate. This was one of the main reasons that foraging for these on another’s land did not, in the end, become criminalised. As shown above, the opinions that emphasised the principle of private property or sought to defend the interests of the landowner were heard in all of the Estates. Some emphasised the value the objects had in some regions, but many speakers arguing in favour of the criminalisation referred to other arguments: the damage caused by berry pickers, the threat of strangers, the educational value of property rights, and prioritising the landowner's own tenants’ right to the berries. In other words, the supporters of the criminalisation, to a great extent, emphasised the personal hierarchical relations that were in place in the countryside, which they also wanted to uphold in the future. These property rights were not aimed at regulating disputes between landowners over resources, for example, but very directly regarded the unequal relation between the landowners and the landless berry pickers.

It turned out, however, that all of the other Estates apart from the *Bonde* Estate were ready to compromise in the matter, and leave the berries and mushrooms out of the Penal Code. Even though some were afraid of such development, this did not imply, that the representatives aimed to establish a principle of open berry and mushroom picking. Notably, the issue represented a miniscule detail of the Penal Code project that had been prepared for over two decades. In addition, the objects appeared as insignificant to many, and as they were something picked by the poor, setting them under *penal control* seemed an exaggeration to many. Many also suggested that leaving the objects out of the list would not change the situation much, similarly

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<sup>1009</sup> Markku Tyynilä, ‘Eneberg, Waldemar (1840 - 1904)’, *The National Biography of Finland* (Suomalaisen Kirjallisuuden Seura, 2003), URN:NBN:fi-fe20051410.

<sup>1010</sup> Minutes of the Estate of Burghers (1888), 1125–1126.

to Headmaster Hällfors, whose moderate comment in the Estate of Clergy sums up the attitudes among the representatives well:<sup>1011</sup>

It is good that the people are gradually taught to distinguish what is one's own and what is another's. However, I do not find it useful that such insignificant matters are put under law and punishment, matters which in the common understanding among the people are not known to be against the law. Such matter is the picking of mushrooms and berries. [...]

He who owns land rarely uses the large berry riches that are found in the wide forests and heaths of our country; only the poorer populace uses them. I think that our people have such a sense of justice, that they will not take anything from another's land, if the landowner prohibits them from doing so. But if berry picking remains punishable, many disputes could often arise and create expenses and many kinds of unfortunate fights in vain. Because picking berries on another's land has not been rooted to the people's sense of justice in the way to make them know it to be something criminal, I would like the two words [...] to be removed from this law proposal.

On kyllä hyvä, että kansaa vähitellen opetetaan siihen että se voi erottaa, mikä on sen oma ja mikä toisen, mutta minusta ei ole miksikään hyödyksi, että semmoisia vähäpätöisiä asioita pannaan lain ja rangaistuksen alle, joista kansan yleinen tajunta ei vielä tiedä mitään lainrikkomista olevan. Sellainen on juuri sienien ja marjojen poimiminen. [...]

Se joka maata omistaa harvoin itse käyttää niitä suuria marjavarjoja, joita löytyy maamme avaroissa metsissä ja kankailla; ainoastaan köyhempi kansa niitä käyttää. Minä luulen että meidän kansallamme se oikeuden tunto, ettei se tule ottamaan mitään toisen maalta, jos talonmistaja antaa hänelle siitä kiellon. Mutta jos marjannoukkiminen pysyy rankaistuksen alaisena, niin siitä voi useinkin tulla riittoa, jotka voivat matkaan saattaa kustannuksia ja kaikenlaisia ikäviä rettelöitä aivan turhaan. Koska siis marjojen poimiminen toisen maalta, ei ole vielä meidän kansamme oikeudentuntoon niin juurtunut, että se tietäisi sen olevan jotakin rikoksellista, niin minä tahtoisin että ne kaksi sanaa [...] poistettaisiin tästä lakiehdotuksesta.

Finally, it is notable how the question did not raise attention among the public, and neither did the leading political figures at the Assembly, apart from some exceptions, seem to have any great interest in debating the matter. The Fennoman leaders of the old Finnish faction in the *Bonde* and Clergy even opposed the criminalisation, even though their Estates, especially the *Bonde*, were strongly defending the interests of the landowner. The reasons behind this hesitation were probably related to the insignificance of the question, as well as to the relative nature of the *åverkan* category, which included lesser violations to property in contrast to the stealing of human made objects. Moreover, it seems that geographic factors explain the division into those supporting the criminalisation and those opposing or hesitating about it. Among the members of the *Bonde* and Clergy, almost all of the latter group came from the western regions of the country, where the objects had traditionally been of lesser importance. At the same time,

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<sup>1011</sup> Minutes of the Estate of Clergy (1888), 1339-1340.

this division was of a political nature: in the *Bonde* Estate, the western regions were Old-Finnish (supporters of Meurman), and the eastern spoke for the “young” and their leader J. Castrén.<sup>1012</sup>

The main figures of the Old-Finnish party were reluctant to defend or even to comment on the ownership claims over wild berries. As noted in the first section, law professor J. Forsman, brother of the Fennomans leader Yrjö-Koskinen, had already expressed in his commentary on the Penal Code draft in 1877 that the naturally-grown objects were not under complete property rights. In addition, in his Lectures that were published in 1887 and 1898, Forsman emphasised the difference between actual stealing and *åverkan* as the illegal taking of natural products.<sup>1013</sup> During the reading in 1888, Forsman only took part in the debate during the settling of the differing views. He noted in frustration how there was no more to say about the matter, although the previous discussion had endured over two hours. For him, the matter was of little significance (even though berries and mushrooms might have value in some regions), and could be left aside to be able to approve the whole Penal Code. Forsman noted, agreeing with the previous speaker, Fennomans vicar Wallin, that the country had done well without regulations on these objects in the past, and would do well without them also in the future.

Similar views were presented by the other Old-Finnish Fennomans. E. G. Palmén, as already described, saw the criminalization too harsh and unnecessary. Similarly to Palmén, W. Eneberg of the Burgher Estate noted the minor value of the objects, and reminded them of how the concept of property was not very developed with regards to the naturally grown objects. In the *Bonde* Estate, A. Meurman, the main Old-Finnish name of the *Bonde*, took the floor only during the settlement of the differing views, as he had not previously wanted to say anything for or against the matter. Currently it seemed as if the other three Estates had rejected the criminalisation, and accordingly, Meurman considered that it was not worth aiming at further measures in the matter. In addition, Avellan of the *Bonde*, Meurman's “right-hand man”, recommended the approval of the settlement proposal. He noted that the law should protect the property rights over lichen, mushrooms, and wild berries. However, as the matter was trivial, and the other three Estates had rejected the criminalisation, the *Bonde* Estate should also do so.

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<sup>1012</sup> For example, Jutikkala, ‘Säätiedustuslaitoksen kokoonpano, työmuodot ja valtuudet’, 137–45.

<sup>1013</sup> Forsman, *Anteckningar enligt föreläsningar öfver straffrättens allmänna läror*, 85, 151–52; Forsman, *Anteckningar enligt föreläsningar öfver de särskilda brotten enligt strafflagen af den 19. december 1889*, 324–25.

The session of the Assembly was coming to its end, and the Estate should turn its attention to more important issues.

One important spokesperson for the importance of property rights in general, and wild berries and mushrooms, in particular, was Jonas Castrén of the Estate of *Bonde*. It is difficult to evaluate how much Castrén's views were an offensive against the reluctant Old-Finnish figures, while the Estate clearly supported the criminalisation of the wild berries. At the same time, even though he was pushing forward radical views on the language question and societal matters, Castrén was moderate and non-socialist, a defender of constitutional principles in the following decades, but building on the support and the popular values of the *bonde*, as in this matter.<sup>1014</sup> During the settlement of the differing views, when the Old-Finnish figures were pointing at a compromise and unimportance of the issue, Castrén continued to argue in favour of criminalisation (immediately after the address by A. Meurman). What is notable is that Castrén was among the representatives who emphasised that leaving the goods out of the List would aggravate the position of the landowner. According to Castrén, it had been possible to prohibit berry picking with the Code of 1734, but<sup>1015</sup>

if it will be decided, by leaving out the words in question, that it is permissible for everyone to collect lichen and pick mushrooms and berries on land owned by someone else, everybody surely understands what the consequences of this will be. Private landownership concerning these objects will not be protected at all and it might be questioned whether the landowner is at all justified in driving the berry pickers away from his fields and clearings. It is my opinion that he who pays taxes for his land, should also have the right to enjoy all the benefits of his land.

jos kysymyksenalaisten sanain poislykkäämisen kautta nimenomaan tulee päätökseksi että on luvallista jokaiselle ottaa jäkäliä sekä poimia sieniä ja marjoja toisen omistamalta maalta, niin ymmärtää jokainen mitä seurauksia tällaisesta tulee olemaan. Yksityisen maanomistus ei ole näiden esineiden suhteen laisinkaan turvattu ja kysymyksenalaiseksi voi tulla onko maanomistaja laisinkaan oikeutettu karkoittamaan pois ahoiltansa ja peltonsa pientareilta marjan poimijoita. Minun ajatukseni on se että sillä, joka kerran maksaa veronsa maastansa, tulee myös olla oikeus nauttimaan kaikki edut maastansa.

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<sup>1014</sup> For instance, in 1885, he spoke against historical land privileges, according to which certain farms were exempted from common payments. When the voting census of the Burgher Estate was discussed in the Assembly, Castrén did not support the radical claims of one man and one vote, but proposed a census of 400 marks and a maximum limit of ten votes. Hultin, *Taistelun mies*, 28, 38–45; Vares, *Varpuset ja pääskyset*, 36–38.

<sup>1015</sup> Minutes of the Estate of *Bonde* (1888), 1644.

Castrén was right in his prediction, but it would still take some time that the view about open berry picking became widespread. The important result of the debate was that the horizon of free berry picking was now open. Wild berries and mushrooms had been too insignificant to be included among the other more durable objects of the *åverkan* section. In addition, berry picking seemed to offer an important opportunity for the poor to earn an income. After the Penal Code debate, more news about the economic potential of berries was reported among the public. Instead of being portrayed as merely a supplementary source of income for the poor, wild berries seemed to offer broader commercial and even industrial potential. It was very much due to these economic expectations that berry picking then became portrayed as open for everyone: the poor and idle were the most suitable (and inexpensive) group to harvest the wild berries for the market. This development was prophesied, probably in its very practical meaning, by Representative Hartonen in the *Bonde* Estate. According to Hartonen, leaving out the word *berries* from the Penal Code was an easy way for the Burgher representatives to acquire berry land for themselves.<sup>1016</sup>

#### **5.4 Berry-picking strangers, patriarchal practices, and the turn-of-the-century economic expectations**

Whereas in Sweden, 23 proposals regarding the issue of berry picking were raised in the Parliament between 1899 and 1942, the legislative debate over berry picking on another's land was to a large extent concluded in the Grand Duchy with the approving of the Penal Code of 1889.<sup>1017</sup> There seem to have been no other major initiatives at the Assembly or at the Parliament before the Supreme Court decision of 1920. However, the matter remained under dispute in practice and in public debates even after the decision. The court litigation between the four berry-picking women and the landowner illustrates the situation. Even though the Penal Code did not define the collection of wild berries on another's land punishable, the landowners as part of the leading group of the countryside could, at least in practice, have their say about who could pick wild berries on their land. The question had been raised in the *Åbo tidning* in 1892, just some years after the Penal Code debate: the pseudonym Charlie reminded the public of the potential that berry picking offered to the poor.<sup>1018</sup> However, another difficult question loomed

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<sup>1016</sup> Minutes of the Estate of *Bonde* (1888), 1645.

<sup>1017</sup> Sténs and Sandström, 'Divergent Interests and Ideas around Property Rights'; Wiktorsson, *Den grundlagsskyddade myten*, 92–107; Valguarnera, *Accesso alla natura*, 178–81.

<sup>1018</sup> Korrespondens. *Åbo Tidning*, no 245 (10 September 1892).

ahead, posed by the landless berry pickers: “where can I pick berries?” Charlie himself could not find an answer to the question, but merely concluded that while the berries remained low in value, the matter was not pressing.

Regardless of the decision of the Estates, the options of the landowners to forbid berry picking on their land remained an open question; and if they could do so, what means did they possess to enforce the prohibition?<sup>1019</sup> Not even the Supreme Court stated that berry picking on another's land was permitted in all cases, but the landowner's intentions could have mattered.<sup>1020</sup> The legal scholars also seem to have remained divided in the matter. J. Serlachius, who sat in the Supreme Court during the berry case, saw in his law textbook from 1899 that picking berries and mushrooms had been allowed according to the Swedish-Finnish law.<sup>1021</sup> His brother, Professor of Criminal Law and Legal History A. Serlachius, on the other hand, wrote in a 1910 textbook that there were differing opinions about berry picking on another's land without permission. According to him, it seemed that the landowner ultimately had the right to prohibit berry picking. However, because of the poor conditions in many parts of the land, this would be a misuse of his right.<sup>1022</sup>

At around the turn of the century, the landowners kept publishing announcements in which they prohibited berry picking on their land. These did not cover only berry picking, but berry picking was lumped together with activities that were criminalised in the legislation. For example, the announcements stated that “all hunting and berry-picking [...] is forbidden under legal threat of fine”, “all kinds of forest *åverkan*, hunting, berry picking and fishing without permission” is banned, or “[...] 25 marks rewarded for reporting unauthorised hunting, berry picking, or other illegal activities, so that the offenders can be held legally responsible.”<sup>1023</sup> Some articles tried to explain that the prohibitions published by the landowners were not effective as long as the Penal Code allowed berry-picking.<sup>1024</sup> In 1899, the article “On the right to pick berries and

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<sup>1019</sup> For the possibilities of the landowner to prohibit roaming or berry picking, see Ilmari Ojanen, ‘Jokamiehen oikeus ja maanomistajan oikeussuoja’, *Lakimies* 4 (1969).

<sup>1020</sup> In his reasoning on the judgement, Judge Fagerström of the Supreme Court stated that it had not been shown that the landowner Lempiäinen had prohibited the picking of berries on his land.

<sup>1021</sup> Julian Serlachius, *Lärobok i sakrätten enligt gällande finsk rätt* (Helsingfors, 1899), 28.

<sup>1022</sup> A. Serlachius, *Lainopin alkeet* (Porvoo, 1910), 120; Toivo J. Komsa, ‘Rikoslaki Metsänvartijana’, *Lakimies* 4 (1938): 336–45.

<sup>1023</sup> All jagt och bärplockning.. *Vasabldet*, no 101 (22 August 1895); *Ilmoituksia*. *Wiipuri*, no 172 (28 July 1896); *Borgåbladet* no. 72, September 16, 1899. See also: *Diverse*. *Borgå Nya Tidning*, no 58 (2 August 1898); 80 markan sakon uhall. *Uusimaa*, no 107 (15 September 1899).

<sup>1024</sup> Kan bärplockning förbjudas? *Svenska Österbotten*, no 67 (31 August 1897).



mushrooms on another's land” explained how the question had been ambiguous until the new Penal Code.<sup>1025</sup> During the legislative process, the article wrote, the Estates had deliberately removed the terms “berries and mushrooms” from the Code. The Estates had seen it as too harsh to deny the poor from picking berries, and besides, berry picking was an activity which brought much greater benefit to the country than harm to the landowners.

However, opposing views about the question were presented, and as the former article also acknowledged, the prohibitions were intimidating and raised doubts about berry picking without permission among the poor and often infant berry pickers. In 1894, the *Wasa Tidning* related berry picking to the development of forestry and its economic use, which had also enforced the property rights. Even though some still perceived forests as inexhaustible *commune bonum*, nobody “had the right to take anything from the forest without the landowners permission”, except in cases of emergency.<sup>1026</sup> In their editorial “A rational wild berry industry” in 1901, the *Åbo Underrättelser* discussed the ownership of the wild berries.<sup>1027</sup> The newspaper saw that wild berries were “naturally” owned by him who owned the land. But as long as the berries did not have a significant value, the landowner “naturally” allowed “crofters, cottagers and others living on his land” to pick the berries and gain an income. Should berries reach a higher value, however, it was foreseeable that the landowners themselves would “exploit this, their property, to their own account”.

The newspapers also published accounts in which the berry picking without permission was described as morally reprehensible, some with an exaggerated tone. In 1900, the newspaper *Savonlinna* reported from the municipality of *Sääminki* in the south-eastern lake district, that the inhabitants of the neighbouring municipality had again started to “secretly”, without the landowner knowing about it, “steal” wild berries from the area.<sup>1028</sup> Dozens of loads had already been transported, and some of the berry pickers were even “equipped with guns” [!], to protect themselves against the landowners banning their entry. The newspaper concluded by asking on what (law) did the berry pickers base their acts. This the newspaper did not know, but added that it was clear that according to the current Penal Code, the taking of “berries etc. owned by the neighbour” was strictly forbidden and punishable.

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<sup>1025</sup> Oikeudesta poimia marjoja ja sienä toisen maalta. *Karjalatar*, no 92 (15 August 1899), published also in *Savo-Karjala*, no 92 (18 August 1899).

<sup>1026</sup> Våra skogar. *Wasa Tidning*, no 239 (12 October 1894).

<sup>1027</sup> En rationel skogsbärsindustri. *Åbo Underrättelser*, no 227 (23 August 1901).

<sup>1028</sup> Marjoja on muutamat perheet.. *Savonlinna*, no 104 (11 September 1900).

The prohibitions and repressive practices obviously caught the attention of the radical newspapers, especially those of the nascent socialist press.<sup>1029</sup> The newspaper *Wiipurin Sanomat* wrote how eight men accompanied by a police officer had “raided” (“*razzia*”) a local forest belonging to the parsonage. The newspaper marvelled at the severity of the act (by an cleric), as the wild berries were of little value and anyway would rot in the woods. In 1902, the newspaper *Uusimaa* prophesied in the editorial “Encouraged and then banned” that the recent prohibitions were making the poor embittered, even radicalised, as in the previous decades they had been encouraged to pick wild berries, and now, when they were finally learning to pick them, they were facing the prohibitions set by the landowners.<sup>1030</sup> The socialist newspaper *Työmies* published several agitating articles on the issue at around the turn of the century.<sup>1031</sup> In the article “Not even berries are left for the poor any more” from 1900, *Työmies* wrote of how the berry prohibitions in the newspapers could not be interpreted as individual cases of avarice, but were becoming a more general attitude among the landowners, and stood against the popular understanding of berry picking on another's land.<sup>1032</sup> The newspaper published a response from Pastor Pastinen, who had been accused in the article of forbidding berry picking on his land.<sup>1033</sup> Pastinen replied that the claims were completely wrong, and he had, on the contrary, turned a blind eye to some damage to his properties. According to Pastor Pastinen, the prohibitions had only been set in the area by some proprietors of extensive lands, who wanted to protect their fruit orchards and fields from vandalism.

It appears, then, that berry picking on another's land remained an ambiguous issue despite of the new Penal Code, and the role of the landowners as regulators of access to their lands was even strengthened (or at least became more visible). Moreover, foraging for wild berries became tied to the broader issue of land ownership and tenancy, which occupied much of the political agenda due to population growth since the late nineteenth century, as well as the tightening of rent contracts over use-rights in forests due to their increasing value.<sup>1034</sup> Notably, as Rasila writes, the aim of rendering berry picking independent from owning land was among the common demands presented at the meetings of the land tenants early in the century.<sup>1035</sup>

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<sup>1029</sup> Waltiopäivät. Hämäläinen, no 37 (8 May 1897);

<sup>1030</sup> Kehoitetaan ja kielletään. Uusimaa, no 101 (5 September 1902).

<sup>1031</sup> For instance, “Pyhän lain” nojalla. *Työmies*, no 218 (18 September 1900); Marjat metsään mätänemään. *Työmies*, no 222 (26 September 1901); Julkeus huipussaan. *Työmies*, no 149 (3 July 1903).

<sup>1032</sup> Ei köyhille enää metsänmarjojakaan! *Työmies*, no 205 (3 September 1900).

<sup>1033</sup> Yleisöltä. Arv. Työmiehen Toimitukselle. *Työmies*, no 222 (22 September 1900).

<sup>1034</sup> See chapter 5.1 and, for example, Rasila, *Suomen torpparikysymys*, 65–66, 249–56, 335–75.

<sup>1035</sup> *Ibid.*, 301, 66.

Again, it has to be added, that wild berries were not treated independently, but were among the use rights that were demanded, for instance, at the first general assembly of crofters in Tampere in 1906, and included free fishing, hunting, and catching crayfish.<sup>1036</sup> Similarly, the right to pick wild berries was one of the use rights discussed within the agrarian programmes of the political parties of the early centuries.<sup>1037</sup> In addition, as has been noted previously, at the turn of the century, wild berries were among the payments the landowners required from their crofters.<sup>1038</sup>

At the same time, a common understanding was emerging that the list of illegal collection described in the Penal Code was not relative, but rather the absolute expression of what could be taken and what could not. Already in the Lectures on the Penal Code by Professor J. Forsman, published by Aspegren and Saxén in 1899, it was explained how the list of objects was decisive, and an extensive (casuistic) interpretation, as in the case of the earlier laws, was not possible any more.<sup>1039</sup> Similarly, Professor of Law A. Serlachius wrote in his criminal law textbook that the objects listed in the section are “not mentioned as examples, but the aim is to really list them all.”<sup>1040</sup> This view has been acknowledged by later commentators<sup>1041</sup>, as in the work on the institution of *allemansrätt* as well.<sup>1042</sup>

In a similar way, the newspaper articles on berry-picking took this position in the early twentieth century, although they viewed it as a matter that remained unclear in practice.<sup>1043</sup> For instance,

<sup>1036</sup> Suomen ensimmäinen yleinen torpparien kokous Tampereella. Keski-Savo no 51, 08.05.1906.

<sup>1037</sup> The agrarian committee of the Old Finnish Party, which mapped out the draft for a law on land tenancy, proposed that the collection of wild berries on non-cultivated land should be free for the tenant. Torpparikysymys. Uusi Suometar, no 81 (7 April 1906).

<sup>1038</sup> Warén, *Torpparioloista Suomessa*, 292–93.

<sup>1039</sup> Forsman, *Anteckningar enligt föreläsningar öfver de särskilda brotten enligt strafflagen af den 19. december 1889*, 321.

<sup>1040</sup> Serlachius, *Suomen rikosoikeuden oppikirja*, 207.

<sup>1041</sup> In 1938, Komi discussed recent changes made to the section. He noted how certain objects had been added to the paragraph, but then listed all the objects which did not appear on the list and lacked protection (and could be protected according to him): “berries and mushrooms and the sprigs, branches, roots, bark, leaves, gum, cones, nuts of dried and fallen trees, and such forest product and export articles as ant eggs.” Komi, ‘Rikoslaki Metsänvartijana’, 336.

<sup>1042</sup> In 1980, in one of the early works on the Finnish *allemansrätt*, Laaksonen portrayed the List of the Code as an expression of open berry-picking: the exclusion of the wild berries from the list had been “no accident but a conscious declaration of intent of the legislator”. Laaksonen refers to the legislative process on the Penal Code of 1889 but claims mistakenly, referring to others, that it was the Nobility and the *Bonde* Estate who did not accept the criminalisation. Curiously, this mistaken description of the events already appeared in the Lectures of J. Forsman, who was at the Assembly of 1888, which were published by Aspegren and Saxén in 1899. This same account was given in another contemporary work on berry-picking by Järvinen. Laaksonen, *Toisen maan yleiskäytöstä*, 108–9; Forsman, *Anteckningar enligt föreläsningar öfver de särskilda brotten enligt strafflagen af den 19. december 1889*; Järvinen, *Marjakaupamme ja sen tulevaisuusmahdollisuudet*, 76–77.

<sup>1043</sup> In 1907, the newspaper *Östra Nyland* published a letter from a reader, who noted that the prohibitions against berry picking were ineffective. The author also wrote (and ridiculed) how he had heard that

whereas the *Työmies* requested in 1903 that “the lawyers should clarify the matter [of fining for berry picking on another's land] in the public”, in 1910, the same newspaper wrote, quoting the “legal advice” in the newspaper *Aamulehti*, that the prohibitions made in the newspaper were wrong. Berries and mushrooms, if not cultivated, could be picked on another's land, but for collecting “moss, sand, stones, etc.”, that is, the objects that appeared on the list, the permission of the landowner was needed.<sup>1044</sup> In 1909, the newspaper *Uusi Suometar* sought to rectify the erroneous view among the people that berry picking on another's land would be illegal: it wrote that during the Penal Code reform, the legislator had deliberately left berries and mushrooms out of the “list of punishable *åverkan*”.<sup>1045</sup> An interesting compromise was suggested in the newspaper *Karjala* in 1904. It explained that berry picking on another's land was not illegal (according to the Penal Code, and due to the decision made at the Assembly of 1888). However, the newspaper proposed that the berry pickers should anyway ask permission out of mere courtesy: the landowners should always grant it (because they could not prohibit berry picking), but this would allow them to know who was wandering in their woods.<sup>1046</sup>

One of the reasons why wild berry picking remained topical, and importantly reinforced the idea that the poor could access private land even without permission, was that the economic potential of the wild berries continued to be highlighted among the public. In practice, wild berries were increasingly in demand as a resource. After 1894, the berry exports began to rise steadily and became systematic, according to the contemporary commentators.<sup>1047</sup> The exports had peaked in 1894 and 1895 at almost 1500 tons, after which the numbers wavered at around 1000 tons to finally reach record figures in 1901 and 1904, when almost 2000 tons of wild berries were exported. During this period, the direction of the exports also shifted from Russia towards Germany, which became the main wild berry market for the Finnish exports in around 1900.<sup>1048</sup> The exports also visibly gained significance as part of the collection activity: in the late 1880s, only five percent of the all collected berries were exported, in the 1890s the share

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somebody stupid enough had even rented berry land for himself. The editorial staff of the newspaper, however, did not take any responsibility for these views on the legal nature of the question. Om rättigheten till bärplockning i skog och mark (O. L-s). Östra Nyland, no 71 (7 September 1907).

<sup>1044</sup> Torpparioloista Suomessa IV. *Työmies*, no 219 (23 September 1903); *Pari neuvoa lakiasioista*. *Työmies*, no 115 (24 May 1910); *Pari “neuvoa lakiasioista” ilmaiseksi*. *Aamulehti*, no 115 (22 May 1910).

<sup>1045</sup> *Bärplockning å annans mark*. *Hufvudstadsbladet*, no 250 (16 September 1909).

<sup>1046</sup> *Metsämarjain poimimiskiellot*. *Karjala*, no 174 (30 July 1904).

<sup>1047</sup> E. Eneberg, ‘Våra skogsbärs ekonomiska betydelse’, in *Ekonomiska Samfundet i Finland. Föredrag och förhandlingar*, vol. IV (Helsingfors, 1905), 60–61; Järvinen, *Marjakaupamme ja sen tulevaisuusmahdollisuudet*, 11.

<sup>1048</sup> During the war years of 1914–1917, the Russia temporarily became the main export country.

had gone up to ten percent, and during the best export years of the early 1910s, even as much as one quarter of the berries were taken abroad. The record figures of the Swedish exports, over 10 000 tons in 1903, were never reached, but between 1911 and 1913, the Grand Duchy overtook the already decreasing Swedish tonnages of around 4000.<sup>1049</sup>

At the same time, the first national industrial enterprises to refine berries took place, even though they were still at a small scale. In the late nineteenth century, conserved fruits and berries were already produced in the country.<sup>1050</sup> The retailer and industrialist Johan Parviainen experimented with the industrial methods in the region of Savonia in the late nineteenth century, but large-scale production was initiated with the founding of two companies in 1906: Chymos and Haapaveden Kotimarjala. The factory of Chymos was founded by engineer F. W. Tammenoksa and was situated at Imatra, close to where the court trial of Ilma Lindgren was held. The first products of the factory were berry juices. Haapaveden Kotimarjala was the enterprise of a landowner's daughter, R. Rantanen, in Ostrobothnia. Rantanen's enterprise produced jams and juices from wild berries.<sup>1051</sup> In the export statistics, there are no signs of berry products being taken abroad, but crude berries, mainly the lingonberry, formed the main export article in the 1920s.<sup>1052</sup>

The newspapers kept discussing the potential of berry-picking and encouraged the poor to pick this “red gold of the forests”. Notably, the attention started to shift from mere poor relief to a broader vision of the organised and commercial exploitation of the berries. This was partly due to the expansion of the Swedish exports, and later, commercial enterprises, which were presented in the Finnish newspapers. In August 1893, the periodical *Suomen maanviljelyslehti* (Finnish Agriculture) described the economic potential of wild berries and the Swedish experiences of exporting berries.<sup>1053</sup> The periodical portrayed how the Grand Duchy, a barren

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<sup>1049</sup> It has to be noted, however, that even though they were highlighted in the statistics of the late 1880s, the berry-exports in the Grand Duchy did not keep up with the country's total exports, and would only have some significance again in the 1910s.

<sup>1050</sup> Suomen naisyhdistys, *Kalenteri Suomen naisten työstä*, 93–96. However, the commercial jams, marmalades, sweets and juices sold in the country were mainly foreign products. Leena Paaskoski, ‘Haapaveden Kotimarjala’ (Master’s thesis in Finnish-Ugrian Ethnology, University of Helsinki, 1993), 8.

<sup>1051</sup> Reino. Hirvisepä, *Chymos 1906-1946 : 40 vuotta Suomen marjanjalostusteollisuuden historiaa* (Helsinki, 1946), 13–24; Paaskoski, ‘Haapaveden Kotimarjala’, 8.

<sup>1052</sup> For instance, in 1926, 6320 tons of dried or conserved fruits were imported, 0.3 tons exported. The corresponding numbers for crude fruits were 9821 and 3707 tons (of which basically all were lingonberries). *Annuaire statistique de Finlande*, 1927.

<sup>1053</sup> Marjanviennistä ulkomaille (On exporting berries abroad, by K. S.). *Suomen Maanviljelyslehti*, no 8 (1 August 1893).

and poor country, offered riches to be exploited. Wild berries were already bought by tradesmen in all towns, and some of them were exported abroad. Great potential, however, remained to be unleashed, not by the busy landowning population, but by the idle and weak who were not fit for any other kind of work. The end of the text included excerpts from a report on the functioning of the Swedish lingonberry exports written for the Swedish export association by a Swedish public fish [!] trade representative: the trade representative discussed, for instance, competition in the German market and problems of quarantine, and also advised on methods of transportation for providing berries of high quality. The periodical concluded by suggesting that the advice of this “informed person” should also be followed in Finland.<sup>1054</sup>

In addition, success stories about the income that could be earned by berry picking, and news about the high prices of wild berries were published.<sup>1055</sup> In September 1897, the newspaper *Vasabladet* wrote that berry picking was currently so profitable for the poor people that the local farmers had had difficulties in finding day labourers to work at their farms.<sup>1056</sup> What is notable is that some of the accounts portrayed the berry-picking children not merely as kids earning simple pocket-money but as entrepreneurs organising the trade with their partners. In 1893, the *Åbo Underrättelser* reported on “enterprising youngsters”, three small sons of crofters, who had organised a “berry-picking company” close to the train station of the municipality of Tervajoki.<sup>1057</sup> Two of the boys picked berries, and the third, “the travelling agent” of the company, sold the berries in town. In a similar manner, the article “Example has been followed” from 1904 depicted the activities of four school children, three boys and one girl, who had founded a “company”. The newspaper *Uusi Aura* reported how the boys went early in the morning to pick bilberries and the girl sold them and was responsible of the “accounting and cash”. Almost all of the berries had been bought in advance and some hundreds of litres had been sold already.<sup>1058</sup>

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<sup>1054</sup> As with Krüger's report, the news was not always positive but described also the difficulties related to exports, for example, with the standards of quality. For another Swedish export report discussing the German markets, and a reply from German lingonberry buyers (published in the Swedish press), see Lingonexporten. *Wiborgsbladet*, no 187 (14 August 1896) and *Nya Pressen*, no 222 (17 August 1896); Lingonexporten. *Wiborgsbladet*, no 195 (23 August 1896).

<sup>1055</sup> The newspaper *Hämäläinen* even wrote that the prices were so high that lingonberries had been imported from abroad. Puolukkain hinta. *Hämäläinen*, no 77 (25 September 1897); Puolukoita! *Mikkeli*, no 110 (22 September 1897).

<sup>1056</sup> Med lingonplockning. *Vasabladet*, no 108 (9 September 1897); The same was noted in Lingonplockning. *Wasa Tidning*, no 233 (8 October 1897).

<sup>1057</sup> Företagsamma ungdomar. *Åbo Underrättelser*, no 209 (5 August 1893). Original in *Wasabladet*, no 61 (2 August 1893).

<sup>1058</sup> Esimerkkiä seurattu. *Uusi Aura*, no 175 (31 July 1904).

Even though the same narrative “somebody ought to do something” was repeated among the public, the proposals became increasingly detailed and the rational organisation of a broader export association or berry refining industries were brought forward. The *Åbo Underrättelser* had titled its editorials from 1901 and 1902 as “a rational wild berry industry” and “rationally built berry exports”, and sought ways to “rationalise” and develop the field. In the former, the newspaper suggested that profitability should be increased and the exports made more stable by transforming the berries into a less “bulky” form, such as berry juices, as a company in Norway had done.<sup>1059</sup> The latter editorial suggested better organisation at all stages of the exports: primarily, the collection of the wild berries should be taken from the “crofter's children and the feeble” and put into the hands of the landowners. This might require prohibitions to be put in place to make the activity more “businesslike”, but the editorial continued that the landowner could still allow the poor to earn by berry picking.<sup>1060</sup>

Other newspapers proposed similar ideas of improving and stabilising the exports. In 1903, the newspaper *Wiipuri* suggested that it would be useful to care for and cultivate the wild berry lands like apple gardens. This was probably something to be left for the future, the newspaper noted, but the management of the berry lands would render the harvests more stable.<sup>1061</sup> Finally, similarly to a decade earlier, state aid was requested for the development of the berry sector. In March 1904, the Senate received a grant request not only for stimulating domestic exports, but also for studying the “rational methods” used abroad for the collection, conservation, transportation, and refinement of berries. The applicant was university student E. E. Eneberg, who had pursued national economic and scientific studies at the University of Helsinki as well as at the Mustiala Agricultural Institute. As he explained, the study was important for exploiting this “national wealth” and for developing it into a business that benefited “the whole people, especially the poor” (a classic example of a woman and her children earning a great income was given). Eneberg demonstrated the potential of the berry sector with export statistics from Sweden, and also pointed towards the high employment of refinement factories in Germany. For the study, Eneberg proposed a travel programme during which he would visit many cities

<sup>1059</sup> En rationel skogsbärsindustri. *Åbo Underrättelser*, no 227 (23 August 1901).

<sup>1060</sup> Rationelt anlagd bärexport från vårt land. *Åbo Underrättelser*, no 238 (3 September 1902).

<sup>1061</sup> Meidän marjat ja ulkomaan marjat. *Wiipuri*, no 217 (19 September 1903). Also *Kauppalehti* (the Finnish-language business newspaper) noted already in 1899 how the berry exports would not develop into anything larger as long as the berries were not cultivated but grew in the wild. *Suomen marjat ulosvientitavaraksi*. *Kauppalehti*, no 49 (6 December 1899).

and factories in Russia, Sweden, Germany, France and England, that would serve as examples.<sup>1062</sup>

The Senate asked for Eneberg's request to be assessed both by the state Industrial and the Agricultural Boards. Both authorities supported the initiative; while on the one hand, the wild berries had economic significance for the country, on the other hand, the Swedish example demonstrated that there remained much to do in the field. Again, as in the case of Mandellöf's application from 1889, to which the Industrial Board referred in its statement, the suitability of Eneberg for the task was questioned.<sup>1063</sup> The Senate approved Eneberg's request, but halved the grant money and subsidised Eneberg for 1500 marks.<sup>1064</sup> Eneberg's endeavour contributed guidelines and advice at least, but did not seem to result in anything stable, and in 1907, he started a long career in municipal finances and taxation in Helsinki.<sup>1065</sup> Eneberg published several articles in the newspapers giving advice about the berry industry.<sup>1066</sup> In addition, he participated practically in the berry business for some years; for instance, in 1905, he offered a "time-saving" berry-picking machine invented and in use in Sweden for sale (he had discussed and recommended the use of the machine in earlier articles).<sup>1067</sup> Eneberg was probably the advisor to the joint-stock company "Marja" (Berry), which was presented to the public in December 1904, but the business appears to have fallen through.<sup>1068</sup>

Notably, in Eneberg's descriptions on the organisation of the berry industry, the poor berry pickers were also at the lowest end of the activity and the ones highly benefiting from it. In a presentation on "Economic Significance of Our Wild Berries" held at the *Ekonomiska Samfundet i Finland* in February 1905, Eneberg once again emphasised the potential of the "sleeping millions", and use export statistics to demonstrate the recent positive development in

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<sup>1062</sup> The request by Emil Edvard Eneberg to the Economic Division of the Senate from Emil E. Eneberg (2 March 1904). AD 898/51, Eb:2813 Anomusaktit (1904). Talousosaston registraattorinkonttorin arkisto (FNA).

<sup>1063</sup> The Agricultural Board noted how the applicant had not even enclosed his study certificates, and how the person recommending Eneberg for his experience in the actual field of berry exports was unknown to the Board. Reports of the Boards in AD 898/51, Eb:2813. Talousosaston registraattorinkonttorin arkisto (FNA).

<sup>1064</sup> Minutes of the Economic Division of the Senate (26 April 1904). Talousosaston yhteisistuntopöytäkirjat IV, 920 (FNA).

<sup>1065</sup> Sextioåring (Emil Edv. Eneberg). Hufvudstadsbladet (19 March 1936).

<sup>1066</sup> For example, Om lingon (E.E. E-bg). Pellervo, no 9 (September 1904); Vähäsen metsämarjojemme viennistä ja kaupasta (E. E. Eneberg). Pellervo, no 7 (July 1906).

<sup>1067</sup> En beaktansvärd förvärfskälla för vårt folk. Vasabladet, no 112 (17 September 1904); Marjanpoimimiskone. Pellervo, no 7 (July 1905). The machine, or the idea of adding a sack to the berry machines, was patented in Sweden in 1895. Anordning vid bärplockningsapparater (J. Weström). Patent no 6601 (Kongl. Patentbyrån, 27 August 1895).

<sup>1068</sup> Osakeyhtiö "Marja". Uusi Suometar, no 286 (8 December 1904).



Finland and the differences to Sweden, where the berry business had become a real “branch of trade”.<sup>1069</sup> As well as exports, Eneberg talked about the refining of wild berries, especially into juices, jams, marmalades, and berry wines. He emphasised how both the berry exports and the (large-scale) industrial development that would also take place also in the berry sector, would benefit especially “our country's non-owning population” and the “people at the poorest strata of society”. Eneberg concluded his presentation by citing the total value of a normal wild berry yield in the country, and dividing this between 350 of the country's 500 municipalities. According to Eneberg, these 20 000 marks per municipality would be a reasonable addition to the means of the inhabitants, especially to those of the poor.

Similarly, in the news of the plans of the above-mentioned berry-company Marja, the poor played a role in the organisation. The company aimed to establish “the rational export of berries and mushrooms”, and at a later stage, processing them into other products. It was written that the company would work directly in contact with the berry pickers, and noted that the activity provided an income for the landless berry pickers, especially for the section of the population that could not otherwise make a living.<sup>1070</sup> The articles referred to a similar enterprise founded earlier in the spring (1904) in Sweden. The activities of this *Lingon*-company had been noted in the Finnish press, and would be covered in the future. For instance, in August 1904, the Finnish-language business newspaper *Kauppalehti* already highlighted how this export company had been designed to be “as rational as possible”, and was also processing the wild berries to cushion against the variations in prices of crude berries.<sup>1071</sup>

The promotional brochures of the *Lingon* company illustrate not only the commercial achievements of the berry business—factories, conservation stations, and hired tradesmen—but also the societal for the berry business. In a booklet on the “wild berry question” by *Lingon* from 1905, it was explained how the poor could earn considerable sums by berry picking and could better sustain themselves. Moreover, the text emphasised how berry picking would introduce children to industriousness, cheer their young spirits and lead to better “moral conduct” (*sedlig hållning*). This meant school children (calculations for the benefits of being

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<sup>1069</sup> Eneberg, ‘Våra skogsbärs ekonomiska betydelse’.

<sup>1070</sup> Aktiebolaget “Marja”. Hufvudstadsbladet, no 333A (7 December 1904); Aktiebolag Marja. Pellervo, no 2 (February 1905).

<sup>1071</sup> Metsämarjain talteenottaminen. Kauppalehti, no 35 (31 August 1904); Skogens röda guld. Åbo Underrättelser, no 232 (29 August 1905); Lingonförädling och lingonexport. Björneborgs tidning, no 64 (31 August 1905); Miljoonia poimimaan! Uusi Suometar, no 270 (21 November 1907).

allowed leave from school for berry picking were presented), urban poor children at summer camps, as well as idle people, who could in this way evade the “humiliating” feeling of being a burden to the public.<sup>1072</sup> In another brochure from 1907 on “a Swedish future and a patriotic, Swedish company”, the tone was even more progressive, and also pointed at the benefits of the particular distribution of work for the business:<sup>1073</sup>

*no industry in our land creates such rich possibilities for earning money as lingonberries. Labour force is very cheap and therefore valuable. The lingonberry industry can revolutionise society by making productive members out of the people who could not otherwise earn their living. We do not need to have poor people any more. [...]*

One cannot watch without being touched, the little children and the old women [...] arriving with their lingonberry rucksacks [...] and beaming with joy when they receive coins. They do not get only coins, but a consciousness that even they are fitted for something and that they are something, though they belong to the least in the country!

*Ingen industri i Vårt land lämnar så rika tillfällen till arbetsförtjänst som lingonen. Arbetskraften är så billig och därför värdefull. Lingonindustrien kan revolutionera samhället genom att skapa produktiva samhällsmedlemmar utaf människor, som ej på annat sätt kunna skaffa sig existensmedel. Vi behöfva icke längre ha några fattiga. [...]*

Man kan icke utan rörelse se småbarnen och gummorna [...] komma med sina lingonkontar [...] och lysa af glädje, när de få skillingar. Det är inte bara slantarna de få, utan också medvetandet, att äfven de duga till något och att de också äro något, fast de höra till de minsta i landet!

The “patriotic enterprise” of the *Lingon*-company ended after only a few years, when the company went bankrupt after a book-keeping scandal in 1908, and the founder S. J. Swensson was arrested for misuse of the company's funds.<sup>1074</sup> Still, these broader visions for the berry pickers were also explored in the Grand Duchy. In 1904, the newspaper *Kaleva* published excerpts from a meeting of the Swedish agricultural society, where it was recalled how the collection was suitable for “old women of the poorhouses, and the children of crofters and non-landowners”, and beneficial for the national economy.<sup>1075</sup> The meeting had also discussed the role of school children as a berry-picking labour force, an idea also taken up in another editorial of the *Åbo Underrättelser* in March 1904. The editorial discussed a proposal made in Sweden that a common berry-picking day should be organised in schools. The children would be taught

<sup>1072</sup> Johan Vilhelm Jonsson, *Några ord i skogsbärsfrågan* (Göteborg: Aktiebolaget Lingon, 1905), 6–7, 16.

<sup>1073</sup> Elon Wikmark, *Lingon. Om en svensk framtid och om ett fosterländskt svenskt företag : några ord* (Göteborg: W. Zachrisson, 1907), 4–5.

<sup>1074</sup> Aktiebolaget Lingons förre direktör häktad. Nya Pressen, no 248 (14 September 1908); Lingon-krachen. Östra Finland, no 211 (14 September 1908).

<sup>1075</sup> Metsämarjamme. Kaleva, no 148 (30 June 1904).

the value of work and diligence, and rendered into “missionaries of this national cause”.<sup>1076</sup> In this way, the poor would have a role in exploiting this “national wealth” and helping to take the country ahead. It was written in *Kauppalehti*, that the organised berry trade meant that the poor populace would also “have their own export article”. Whereas the rich exported trees, the poor, by picking berries, were “represented in our [foreign] trade with their own export goods”.<sup>1077</sup>

## **5.5 Conclusion: The unequal history of the Nordic tradition of equal and open access to nature**

It is symbolically notable that a landless cottager woman won the case of the wild berries against a male landowner in the Supreme Court. The judgement was also an important decision for the legal recognition of open access to wild berries, even though later legal literature, due to its indirect relevance for public access rights, has taken a conservative stance on the matter.<sup>1078</sup> It remains an unanswered question why a dispute over 20 litres of lingonberries was taken all the way to the Supreme Court. Did Ilma Lindgren feel so sure about her rights that she continued to appeal against the verdicts? Was there a personal dispute between the women and the landowners that materialised in the litigation on the lingonberries? It has to be noted that the four women at first, and later Ilma Lindgren on her own, did not fight the case alone. The women were not present even at the rural district court, but were represented by the former constable Jooseppi Lempiäinen. He had prepared the letter for the Court of Appeal, and Ilma Lindgren’s letter of appeal to the Supreme Court was composed by Magistrate Juho Puha from the town of Viborg. Did the men act for the sake of goodwill, or were there other motives for attacking the landowners? Perhaps the conflict was, at first, of a local nature, but later offered an excellent opportunity to have the first resolution on the ambiguous question of wild berry picking, which would be beneficial for many groups interested in the resource.

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<sup>1076</sup> The newspaper also presented calculations of how many lingonberries could be picked with this initiative. *Tillvaratagandet af våra skogsbär*. Åbo Underrättelser, no 88 (31 March 1904).

<sup>1077</sup> *Hiukan puolukkakaupastamme* (Roope Järvinen). *Kauppalehti*, no 19 (11 May 1904).

<sup>1078</sup> The case did not regard directly berry-picking on another’s land, but rather the lack of clarity in the possession of wild berries and the right of the landowner to seize the berries. It has been seen that, even though speaking in favour of open access to wild berries on another’s land, the case still left unanswered, at least in theory, what the limits were that the landowner could set against roaming and berry-picking. In his work on environmental law from 1991, E. J. Hollo noted that the legal literature has reviewed the case in a careful tone, and in general, the right of the landowner to set prohibitions and the *allemansrätt* to pick berries have not been paralleled. Ojanen, ‘Jokamiehen oikeus ja maanomistajan oikeussuoja’, 449; Erkki Hollo, *Ympäristöoikeus* (Helsinki: Lakimiesliiton kustannus, 1991), 410–12; Erkki J. Hollo, *Johdatus ympäristöoikeuteen*, 3., p (Helsinki: Talentum, 2009), 290–93.

In the late nineteenth century, the culture of wild berry picking, and accordingly the ownership of the berries, was under transformation due to an increased (foreign) demand for this resource. R. Mortazavi has argued how *allemansrätt*, in general, developed as a common solution within a stable and homogeneous population, where due to the long distances, everyone was a potential trespasser. Berries had nutritional value and thus it was recognised that they could be appropriated by anyone from the community. The institution persisted, and has been widely accepted, as part of the long-term relationships within the national community.<sup>1079</sup> This interpretation of communally regulated berry picking is also suitable for the case of the Grand Duchy. However, it has to be emphasised that the foraging was also tied to the patriarchal order of the countryside. The whole community was not picking berries, but the activity was mainly perceived to be something practised by the weak. Accordingly, the disputes over ownership also regarded, to a large extent, the access rights of this group. The patriarchal order was disturbed when the value of the berries rose, more expectations were set for the commercial potential of the berries, and “strangers” pursuing a good income challenged the social relations of the woods.

In this way, the defence of property rights over wild berries did not only regard the economic interests of the landowners, but also aimed at preserving, and formalising, the social order in the countryside. At the Assembly of Estates of 1888, the criminalisation of wild berry picking found spokespeople among the landowning nobles and the highest rural groups, *Bonde* and Clergy. At the same time, the views varied among the representatives, according to their personal experiences. Many acknowledged that the berries, and especially mushrooms, were insignificant and only a minor detail in the Penal Code. Moreover, in very practical terms, the berries were only ripe for a short period, and it seemed an exaggeration to parallel them with other more durable and valuable resources in the forests: as noted in the previous chapter, in the late nineteenth century, trees were no longer viewed as mere natural products, but were “invested” with human labour via rational forestry.

In 1888, the principle of the sanctity of property appeared very flexible, which was acknowledged even by the representatives. The old and the youth of the Finnish party were divided in the matter; the leading Old-Finnish from the western regions, who had called their opponents “socialists” and “communists” at the literary debate a decade earlier, were astonished

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<sup>1079</sup> Reza Mortazavi, ‘The Right of Public Access in Sweden’, *Annals of Tourism Research* 24, no. 3 (1997): 609–23.

by the rigid views expressed against the poor berry pickers. However, also the Old-Finnish also saw that rejecting the criminalisation would not be any major piece of news in the countryside, and the landless would respect the wish of the landowners. The Old-Finns were right: it remained, in practice, an open issue for decades whether a landowner could ban berry-picking on his land. This property right the landowners reinforced with announcements in the newspapers.

The prohibitions against picking berries, however, were strongly challenged in the press, as well as in the legal literature. The political decision made in 1888, which was not among the main issues present at the Assembly, gave a strong justification for this view. What was decisive for the free berry picking, was the narrative that envisaged a broader national-economic role for the wild berries; open berry picking appeared as an efficient solution which aided the poor to take care of themselves.<sup>1080</sup> Again, Sweden was an important “benchmark” for the Grand Duchy. The early 1900s saw the founding of the first berry companies as well as industries for refining wild berries. Moreover, the rational organisation of the business and the lost national-economic potential of the berries was widely discussed, and even considered in the cooperative movement.<sup>1081</sup> At the same time, the berry-picking groups remained the same; the idle women and children were very suited for the activity, which was also taking place in practice. Hilda Tammenoksa, the wife of the founder of the *Chymos* factory, explained in an interview how in 1906 word had spread quickly about a factory where wild berries were bought. The berries were picked by “wives and children, idle old women and men” and transported to the factory by foot, horse, bicycle, or on ships and boats from the isles of Lake Saimaa.<sup>1082</sup>

Everyone seemed to benefit from this enterprise, which at the same time, included important remnants of earlier patriarchal concerns. The poor earned an income from berry picking, and thus could sustain themselves and alleviate the poor relief costs. Most importantly, the poor were an inexpensive labour force, and with their broad picking network, rather effective

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<sup>1080</sup> For the dynamic of rationalisation and maintaining social cohesion, see Pauli Kettunen, ‘Vocational Education and the Tensions of Modernity in a Nordic Periphery’, in *Education, State and Citizenship*, ed. Mette. Buchardt, Pirjo. Markkola, and Heli. Valtonen (Helsinki: Nordic Centre of Excellence NordWel, 2013), 32–33.

<sup>1081</sup> The question of forming a “berry export co-operative” and later establishing refining industries was discussed at the general meetings of the representatives of retail cooperatives in 1908 and in 1909, but was ultimately rejected for not reflecting the principles of the co-operative movement well enough. Suomen osuuskauppojen VI yleinen edustajakokous Turussa. Helsingin Sanomat, no 96 (26 April 1908); Suomen osuuskauppojen VII edustajakokous. Savon Työmies, no 42 (20 April 1909).

<sup>1082</sup> Hirviseppä, *Chymos 1906-1946 : 40 vuotta Suomen marjanjalostusteollisuuden historiaa*, 121–23.

producers of the resource; the prohibitions were not only ineffective from a legal perspective, but were socially unjust and even harmed the country's berry exports. The role of the poor as part of the export process was also emphasised by R. Järvinen, one of the spokesmen for the berry trade and an active member of the union of rural shopkeepers.<sup>1083</sup> In his booklet on the issue from 1913, Järvinen also discussed the question of open access to berries. He noted how the Swedish landowners were attempting, again, to impose legal restrictions on berry picking. However, Järvinen suspected that as with previous attempts, the proposal would not be passed, as Sweden simply could not afford to sacrifice such an important field of exports. The landowners alone did not have the means to provide enough berries for the markets.<sup>1084</sup>

The expectations set for berry exports and their industrial exploitation seem to have remained unfulfilled. The sector was highly dependent on seasonal variation, and on the other hand, the people behind the (publicly supported) initiatives seemed to lack motivation. In the early twentieth century, however, the flow of news encouraging berry picking and reporting the potential of exporting and producing refined berry-products did not seem to dry out.<sup>1085</sup> In Sweden, there was even scientific research carried out on berry-picking equipment and drying techniques for berries.<sup>1086</sup> In 1913, at the request of the Royal Swedish Academy of Agriculture, the efficiency and accuracy of various berry-picking machines on the market were measured.<sup>1087</sup> One of the machines tested was the very berry-picking apparatus patented by Wikstrand, presented at the beginning of this thesis. It was therefore in this context that the Swede headed to the Finnish market; Wikstrand had experienced the berry rush in Sweden, and hoped that his

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<sup>1083</sup> In 1904, Järvinen received a state grant of 1000 marks for studying the coffee industry and for acquiring buyers for Finnish lingonberries in Germany. The following year he travelled to Sweden for studying their berry trade. Roope Järvinen (1878-1923). Kauppias, no 12 (16 June 1923); Kauppastipendit. Kauppalehti, no 21 (25 May 1904). For newspaper articles by Järvinen on the berry question, see Köyhän kansan vientitavara (K. J:n). Uusi Suometar, no 130 (8 June 1904); Puolukka-kaupan edistäminen (K. J:n). Uusi Suometar, no 127 (3 June 1905).

<sup>1084</sup> Järvinen, *Marjakaupamme ja sen tulevaisuusmahdollisuudet*, 76–78.

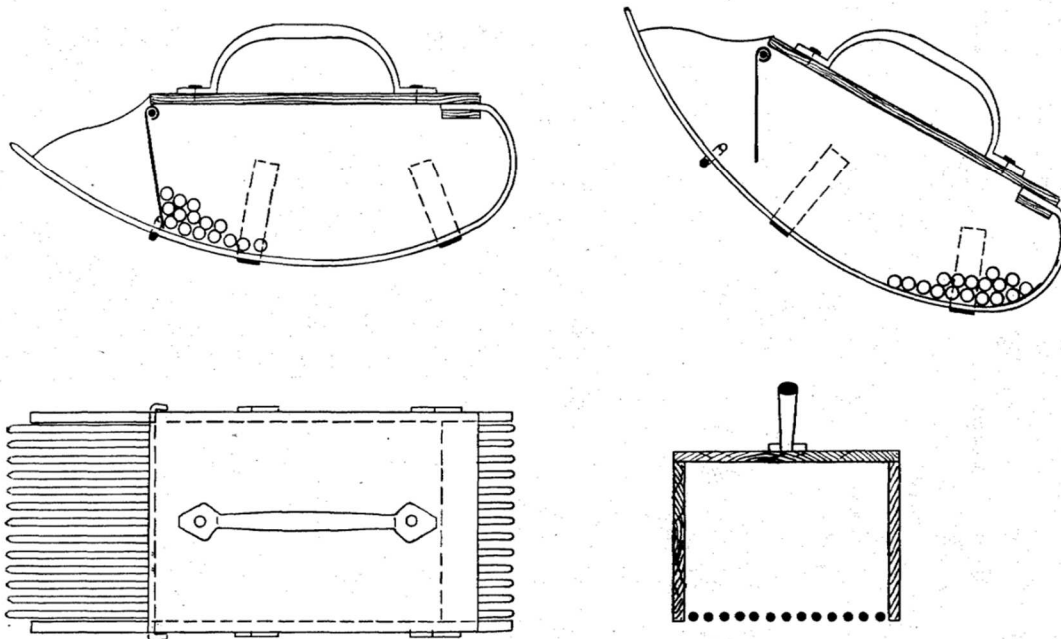
<sup>1085</sup> In Sweden, in 1910, some years after the collapse of the *Lingon* company, a travelogue funded by the agricultural officials was published. The aim had been to study the potential export countries for finding ways to expand the national berry trade. In the introduction, the author N. Flygare countered the critique about the insignificance of the wild berry business and wrote how 'our berry-exports have huge developmental potential.' Flygare's report was presented in the Finnish newspapers in autumn 1910. Natte Flygare, *I skogsbärsfrågan : reseberättelse från Danmark, Tyskland, Holland, Belgien och England* (Stockholm, 1910), 3–4, 54–55, 74–75. I skogsbärsfrågan. Östra Finland, no 215 (19 September 1910); See also, Natte Natanael Stefanus Flygare, *Sveriges Lingonexport. : En Återblick Och En Blick Framåt*. (Stockholm, 1908).

<sup>1086</sup> Kardell, 'Skogarnas bär och svampar, deras betydelse i hushållen förr, nu och i framtiden.', 30–32.

<sup>1087</sup> H. Juhlin Dannfelt et al., 'Redogörelse för profning af bärplockningsmaskiner utförd på uppdrag af Kungl. Landtbruksakademien sommaren 1913', *Kungl. landtbruksakademiens handlingar och tidskrift* 52 (1913): 569–76.

machine would find a niche in the neighbouring country, which was desperately attempting to commercialise the national wealth, the red gold of its woods.

BÄRPLOCKNINGSAPPARAT - MARJAINPOIMIMISKOJE.



Patent no. 4243 "berry-picking apparatus", granted to Anders Wikstrand in November 1910 (Industrial Board, the Patent office of the Grand Duchy of Finland).



## 6 Conclusions

The thesis has analysed the transformation of the property institutions since the mid-nineteenth century, which not only made it possible for A. Wikstrand to patent his berry-picking apparatus in the Grand Duchy of Finland in 1910, but encouraged him to do so. The aim of this study was to understand how the concept of property was perceived in this self-assertive nation-state, this peripheral country within the Russian Empire. To reach this objective, this thesis has examined the development of property rights to literary and artistic works, inventions, trees, and wild berries, and contributed to scholarship particularly in relation to three aspects which will be discussed further here. Firstly, this thesis enhances and consolidates the scattered knowledge of the history of these property institutions within the Grand Duchy, especially regarding intangible ownership and the “tradition” of *allemansträtt*. Secondly, this thesis shows how the peripheral dynamics related to the economic and intellectual context were central to conceptualising the ownership of the resources. Thirdly, this work expands on the identities of the national political factions and their views as a part of these peripheral politics of property.

The thesis has focused on key legislative reforms from the 1860s to the 1890s, when views of the current property institutions and visions for their development were formulated and debated. These reforms were one step in the complex transformation of these rights, and to a great extent served to confirm the informal rules of ownership that had developed within the country's administration or as a part of the market practices. Initially, the triggers for challenging and re-evaluating ownership in the Grand Duchy were already being generated and channelled in the Northern European economic and cultural space early in the century. The increasing number of exchanges in the area generated a demand for the country's resources, obliged the expanding state apparatus to examine the rules related to ownership (when foreign patent applications flowed in, for instance), and imported insights into major themes such as international piracy, the over-use of forests, and anti-patent opinions into the narrow field of public debate. These legal reforms were attempts to understand and respond to these changes in the late-coming Grand Duchy—a temporal attitude which became visible when the reforms were introduced; it was questioned whether the current protection or the existing regulations were *up-to-date* or *adequate* in the current situation.

The rhetoric of backwardness enabled commentators to frame the current practices according

to their views, and to turn attention towards the aspects of property rights that required reform. The evidence that could be presented—statistics, maps, comparative legislative data, professional or personal experiences, or news about conditions abroad—worked in two ways: on the one hand, the evidence produced a national culture of ownership, which, on the other hand, was both similar and different to foreign traditions of ownership. Following the aims of the debaters—and the economic logic around the resource—this peripheral dynamic was appropriated somehow differently in the debates studied here. As far as patents were concerned, the need to follow the more “civilised” countries and impose the universal principles discovered abroad was urged onwards. In the debates on the author's rights, the example of the more advanced countries was highlighted, but an equal emphasis was placed on the particular cultural conditions of the Grand Duchy. Finally, in terms of the ownership of trees, the Grand Duchy was portrayed largely as an exception, but only because the threatening stage of forest destruction that was visible elsewhere had not yet reached the country. Notably, Sweden played a pivotal role in the Finnish discussions; this Nordic dimension was politically coloured, but Sweden, and the Nordic context, was to many people the most appropriate (future) model for evaluating domestic economic development and the suitability of the law reforms.

In general, a rather pragmatic, liberal line of thinking permeated the reforms of the late nineteenth century, which entailed a better demarcation of the rights that would encourage learning and market exchanges but also secure the interests of the domestic public. These legal reforms were prepared in committees that included members from the liberal circles with ties to the state administration, and also professional expertise (often state-funded) in the fields to be reformed. The state bureaucracy endorsed this line of policy because it would emphasise efficiency in the use of resources. It must also be emphasised that the national interest—often represented by the nation-state—was expressed in the visions of ownership held by the major political factions, especially towards the end of the century. The state administered and managed the property rights, it had a large role as a forest owner<sup>1088</sup>, and many regulations were set which would benefit domestic actors; for instance, no copyright was granted for work published abroad.

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<sup>1088</sup> In Sweden, for instance, the state ownership of forests diminished in the course of the nineteenth century; at the turn of the century, the state owned 21 percent of the forest land. In the Grand Duchy, the share of the state was 40 percent. P. W. Hannikainen, *Suomen metsät kansallisomaisuutena* (Helsinki, 1896), 8–9; Markku. Kuisma, *Metsäteollisuuden maa. Suomi, metsät ja kansainvälinen järjestelmä 1620-1920* (Helsinki: Suomalaisen Kirjallisuuden Seura, 2006), 142–44.

The positions of the political factions in the reforms were intimately tied to their on-going confrontations, tensions within the parties and considerations of institutional constraints and opportunities related to the legislative process. The rhetoric of the “sanctity of private property” and references to constitutional principles were heard on all sides, but exceptions could be made due to pragmatic reasons or because the public interest so demanded. The legislative reforms were a prism for the views on the future of the nation-state held by the parties. For the Fennomans, the debate over the author's rights was another round in the struggle for popular education and the progression of Finnish-speaking culture, whereas the insistence on the universal characteristics of the patent reform would reinforce cultural and economic ties with the western neighbours which were envisaged by the advocates of the Svecoman-liberal faction. In a similar vein, the decision to leave berry picking open to all was more an attempt to discipline the poor in the modernising nation-state, than to promote (or oppose) the principle of open access to nature.

Some key differences, however, can be found in how the political factions perceived the concept of property. These differences especially pertain to the role of the “public” in the property relation, or the way in which the public interest would manifest itself in the practices of ownership. To put it bluntly, the liberals emphasised the rights of the public, whereas the Fennomans considered that the public had no direct claims to private property, but private proprietors should act according to the common interest. In other words, the Fennomanian concept of property incorporated the owner himself into an existing part of the national collective; a national writer with strong authorial rights created good national literature, a private owner practised rational forestry to the extent of his capacity, and a virtuous landowner allowed poor berry pickers to enter his land. At the same time, the Fennoman elite also struggled with their definition of virtuous proprietorship, as some landowners, for instance, called for greater restrictions against the landless groups than had originally been envisaged. Moreover, it should be remembered that both political factions accepted the broad role of the state, and that even for the liberals, private ownership was not contrasted with the interests of other individuals (as a public), but rather with the interest of the nation-state construed by the expert groups.<sup>1089</sup> With their ties to the industrial circles and the professionals of the modern fields, the

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<sup>1089</sup> In the Finnish (and Nordic) political languages, no clear distinction exists between the “state” and the “(civil) society”, but the terms are used rather synonymously (a transformation that took place in the late nineteenth century). Kettunen notes that neither the liberals seemed to hold a distinct concept of civil society referring to a sphere separate of the state. The uses of “public” in relation to private property supports and

liberal circles and the state administration shared similar concerns: the encouragement of the country's economic activities and the efficient use of its resources.

By focusing on the “supply side” of the property rights, this thesis has portrayed how the reform debates were tied to the broader societal aims of the political factions, but also brought out the particularities (and the contingency) in the development of these rights in the peripheral Grand Duchy. This politics of property, where the example of the neighbouring countries was keenly followed, produced a national culture of property that was pragmatic and protectionist. At the same time, it is important to highlight the variety of competing views about the property institutions, which ranged from individualistic voices proposing the registering of art work to those that fiercely attacked all violations of private lingonberries. Had some of the close votes been cast differently, it is not inconceivable that, for instance, the landless groups would have been termed “thieves” and excluded from using wild berries and fallen branches.<sup>1090</sup> In the case of the *allemanrätt*, “everyman's right”, this heritage of the late nineteenth century is unknown but could shed new light on later institutional development. The process of rationalising berry picking—making the poor the producers of the resource—aided the principle of open access to nature to appear in modern Nordic societies. Later in the twentieth century, these unequal aspects of the institution seemed to persist and influence the development of the industry; no organised cultivation of lingonberries developed while enough wild berries were being provided by the *Everymen*, and today, (self-funded) migrants from low-income countries are invited to the country during the berry season to make use of this “traditional” right.<sup>1091</sup>

The property reforms of the late nineteenth century, then, sustained peripheral learning dynamics; the country eagerly emulated foreign (legal) developments, and at the same time, imposed regulations and public control to protect the domestic proprietors (who were expected to conduct themselves properly as members of the national community). The thesis has highlighted the key channels—comparative data, professional meetings and contacts, newspapers, administrative responses—of the transnational space, but the actual commercial

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supplements this view. See for instance, Pauli Kettunen, ‘Yhteiskunta - Society in Finnish’, *Finnish Yearbook of Political Thought* 4 (2000): 159–97.

<sup>1090</sup> Similar discussion and arguments in the over the rights to pick wild berries were heard in the neighbouring countries, but led to restrictions of the activity for instance in Germany. Jeffrey K. Wilson, *German Forest: Nature, Identity, and the Contestation of a National Symbol, 1871-1914* (Toronto: University of Toronto Press, 2011), 56–63.

<sup>1091</sup> Rainer Peltola et al., ‘Social Licence for the Utilization of Wild Berries in the Context of Local Traditional Rights and the Interests of the Berry Industry’, 2014, <http://lauda.ulapland.fi/handle/10024/59411>.

ties would require closer scrutiny. Especially in the area of patents, the thesis has sketched the existence of a Nordic sphere of innovation that was similar to the symbiotic Finnish-Swedish market of literature.<sup>1092</sup> The international nature of the late nineteenth-century markets for innovation has been highlighted in several recent studies.<sup>1093</sup> However, it is yet to be explored in detail how the commercial exchanges contributed to the spread and convergence of the rules and language of (intangible) ownership. Even though the patent documents in paper, which became the crux of the nineteenth-century patent protection and trade, circulated around the European innovation market, a considerable amount of work was left for intermediaries to translate the documents into a valid and identifiable form in diverse national and linguistic environments—a further aspect of the peripheral politics of property in the nineteenth century.

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<sup>1092</sup> Jyrki Hakapää, 'Yhteiset kirjamarkkinat: Ruotsin ja Suomen kirjamarkkinoiden riippuvuus toisistaan 1840-1860', *Bibliophilos* 68, no. 2 (n.d.): 19–25.

<sup>1093</sup> For instance, the special issue of the *Business History Review* on the Markets for Innovation. 'Editors' Note', *Business History Review* 87, no. Special Issue 01 (March 2013): 1–2, doi:10.1017/S0007680513000366.



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