

Law as a source of data on resource management ideas

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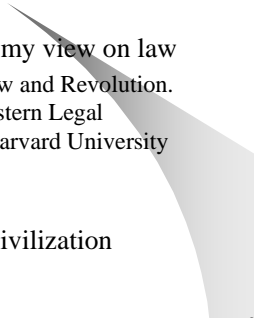
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Introduction

- Source of inspiration for my view on law
 - Harold Berman 1983 “Law and Revolution. The Formation of the Western Legal Tradition”, Cambridge, Harvard University Press
- Unit of study: Western Civilization



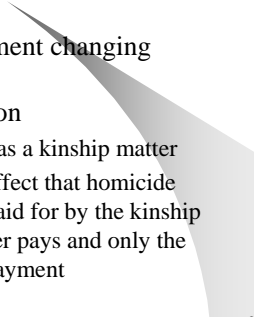
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Law expresses societal values

- History of law can document changing values
- Example: individualisation
 - Before 1270: homicide was a kinship matter
 - 1271 amendment to the effect that homicide should not any more be paid for by the kinship of the killer: only the killer pays and only the bereaved are entitled to payment



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How do we conceive of the “units” we purport to study? What kind of objects are they? States? Local communities? Associations? Belief systems?

Units:

Super-unit (context)	western legal tradition (national body of law)
Unit (linking data meaningful)	national body of law (on resource management)
Sub-unit (internal to unit)	single acts/ local “bylaws”/ area specific regulation mandated by law

Context of law: lawmaker, preferences of subjects, legal traditions

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Vocabulary

- Ideas about resource management?
 - Values at the level of culture/ lawmaking
- Law?
 - Customary law/ Folk law
 - Case law?
 - Statute law: local, state, federal
- Commons?

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What is the Unit of Study in Comparisons of Legislation?

- Unclear!
 - Not quite the law on “commons” (however defined).
 - Not quite the “commons” of Norway vs “commons” of Navarra
 - Perhaps something like the process of governance of land and renewable resources owned in common?

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Ideas found in Norwegian Law on Resource Management

From oldest to newest,
From most important to least:

- 1 Equity
- 2 Economic performance
- 3 Ecological maintenance

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The process of governance for commons

Implies such problem areas as

- Ecosystem limits
- Appropriation harvesting technology
- Collective action among rights holders
- State-appropriator relations
- Transfer of - or inheritance of - rights and duties

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Agenda for the study of social processes

- Substance – what is the process about?
- Actors – who makes things happen?
- Levels of activities: how do things happen?
 - Handling the substance
 - Organisation of activities
 - Governance

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Some observations from Norway

- Legislation on land held in common has a long and unbroken history: the first text may have been written ca 1050. The existing text is from ca 1250.
- Between 1274 and 1687 there were nearly no changes
- The first major change came in 1857
- Since then small changes have been introduced more frequently: lastly 1992

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The substance

Basic resource classes according to law

1. Ground and remainder
2. Pasture, timber, fuel wood,
3. Timber
4. Hunting of small game (except beaver)
5. Hunting of big game
6. Anadrome fish
7. Fresh water fish except anadrome species
8. Salt water fish except anadrome species

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Actors in the system

- Appropriators and appropriator organisations
- Governments (local and central with the authority to make law, global or local)
- Bureaucracies (mandated by government decisions or law) with authority to regulate activity or enforce legislation

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Appropriator units

- According to law
- 1. Legal persons (citizen, firm) in State commons, Salt water fisheries
 - 2. Cadastral units (farm, fishing vessel, herding unit) found in Bygd/ State commons, Salt water fisheries, Reindeer herding, Forest commons
 - 3. Registered persons (individuals according to registered residence) in Bygd/ State commons, reindeer herding

Relation between resource and owner

- “Form” of ownership of resource
- Fee simple (one owner)
 - Co-ownership (more than one owner)
 - Ownership in common (fractional interest)
 - Joint ownership (equal interest)

Handling the substance

- Type of organisation
- Type of technology
- Relation to market
 - Non-market products?
 - Market requirements

Organisation of activities

- Number of persons required?
- Frequency/ continuity of activities?
- Division of labour?
- Sharing of outcome?
- Monitoring of resources and appropriators
- Enforcement of internal division of labour
- Action against illegitimate activity

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Governance

- Degree of self-governance
- Relations to state
- Type of internal governance of appropriator units
- The role of professional managers

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Summary

- How are the real world commons made up?
- Which values are promoted by the law?
- What legal designs are used to overcome social dilemmas encountered?

- Questions?

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